



## **RSAI Comments Regarding SF 496 Age Appropriate Rules**

January 3, 2024

Comments on proposed rules to amend Chapter 12 “General Accreditation Standards” to implement the provisions of SF 496 enacted in the 2023 Legislative Session by Margaret Buckton, RSAI Professional Advocate.

RSAI is comprised of over 180 school districts in Iowa from school districts of varying sizes, but more rural in nature.

The language in SF 496 is not as clear as it could have been. This testimony is limited to what is proposed in these rules and certainly not an endorsement of the legislation, which RSAI opposed during the 2023 Session. Additional clarity could be included in these rules, to be further reviewed by the Administrative Rules Review Committee whose members could affirm legislative intent. Our comments are centered on the definition of “age-appropriate” and the investigation processes the DE proposes regarding the library program and gender identity and sexual orientation instruction and parents’ rights provisions of the proposed rules.

Item 2 of the proposed rules defines “age-appropriate”. We would prefer that the definition specifically state that “*Age-appropriate* does not include any material with vivid or pornographic descriptions or graphic depictions of a sex act.” We support the additional clarity that the subsequent sentence of the draft rules provides, that “A reference or mention of a sex act in a way that does not describe or visually depict a sex act as defined in that section is not included in the previous sentence,” but again, including the adjectives of “vivid and pornographic” and “graphic” in this sentence would also clarify. After passage of the legislation, Education Committee chairs, Leaders of the House and Senate, and the Governor have all stated that the legislation was intended to prohibit pornography and obscenity in school libraries. Such clarity included in these administrative rules would allow school staff to confidently return classic pieces of literature and other books that mention a sex act, but do not vividly describe it, back on the library shelves. The question in Iowa Code 17A for the State Board of Education and the Administrative Rules Review Committee to consider, would this interpretation be unreasonable, arbitrary, capricious, or otherwise beyond the authority delegated to the agency? We think the addition of “vivid, pornographic and graphic” to the definition of age appropriate meets the intent of 17A to “strike a fair balance between the purposes of legislative oversight, public transparency and the need for efficient, economical and effective government administration.”

Regarding enforcement of the library program with age-appropriate materials in Item 4: subsection (1) mentions an investigation. There is a fearful undercurrent of being trapped by an investigation further fueled by the vagueness of the legislation. This fear, combined with legal advice to minimize risk, have fueled overcorrection in removing books from libraries in some districts. Additional description of the investigative process would mitigate this fearful undercurrent. Our suggestions regarding the investigation:

- Local complaints should first be submitted and handled at the local level. The proposed rules should state that any DE investigation first determines if there was a complaint submitted at the local level and whether the local district followed their policy process to resolve the issue. Once that step is completed, only then should a complainant be able to request state investigation.
- An important step in the investigation should also be mentioned in the rules, that the local district and any individuals under investigation for a violation of “age-appropriate” requirements should be notified that an investigation is pending, including the specifics of any violations alleged in the complaint.
- The statement in subsection (3) then has additional merit. We support the discretion given to the DE to stop short of licensure sanctions if any violation is voluntarily and permanently corrected prior to conclusion of the investigation. School staff and leaders would have additional comfort in knowing that the DE would notify them of any alleged violations, giving them an opportunity to resolve the issue voluntarily and permanently.

We are also supportive of the new subrule 12.3(15)(c) written as item 5, that a neutral statement regarding sexual orientation or gender identity instruction does not violate the subrule.

The investigation process under subsection 5 regarding parental notification of a student request to use a name or pronoun to affirm a gender identity different from that in the schools records would also benefit from the investigation process improvements suggest above, to 1) follow local process first and 2) timely notify licensed staff who are under investigation about the complaint, providing an opportunity to remedy voluntarily and permanently.

Thank you for the opportunity to comment and for the Department staff’s diligence in drafting rules that will be workable for local schools to implement and the DE to enforce.

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