

## **CHILD ADVOCACY BOARD[489]**

### **Notice of Intended Action**

The Child Advocacy Board hereby proposes to amend Chapter 1 “Purpose and Function,” Chapter 2, “Rules and Operation for the State Board,” Chapter 3 “Local Foster Care Review Boards,” Chapter 4, “Court Appointed Special Advocate Program,” and Chapter 5 “Public Records and Fair Information Practices,” Iowa Administrative Code.

#### *Legal Authority for Rule Making*

This rule making is proposed under the authority provided in Iowa Code section 237.18.

#### *State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code section 237.18, 2022 Iowa Acts, House File 2390, and 2022 Iowa Acts, House File 2252.

#### *Purpose and Summary*

A comprehensive review of Chapters 1–5 was performed in accordance with the requirements in Iowa Code section 17A.7(2) and the transmission of 2022 Iowa Acts, House File 2390 and 2022 Iowa Acts, House File 2252. The amendments proposed update rules in accordance with current practice and legislative changes, and to eliminate redundancy and make rules more user-friendly.

#### *Fiscal Impact*

This rule making has no fiscal impact to the state of Iowa.

#### *Jobs Impact*

After analysis and review of this rule making, no impact on jobs has been found.

#### *Waivers*

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Board for a waiver of the discretionary provisions, if any, pursuant to Iowa Code section 17A.9.

*Public Comment*

Any interested person may submit comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Board no later than 4:30 p.m. on \_\_\_\_\_. Comments should be directed to:

Ashleigh Hackel  
Iowa Department of Inspections and Appeals  
Lucas State Office Building  
321 East 12th Street  
Des Moines, Iowa 50319  
Email: [ashleigh.hackel@dia.iowa.gov](mailto:ashleigh.hackel@dia.iowa.gov)

*Public Hearing*

No public hearing is scheduled at this time. As provided in Iowa Code section 17A.4(1) “b,” an oral presentation regarding this rule making may be demanded by 25 interested persons, a governmental subdivision, the Administrative Rules Review Committee, an agency, or an association having 25 or more members.

*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its regular monthly meeting or at a special meeting. The Committee’s meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making actions are proposed:

ITEM 1. Amend rule 489—1.1(237), introductory paragraph, as follows:

**489—1.1(237) Purpose.** The child advocacy board is established by Iowa Code section 237.16 to carry out all duties described in Iowa Code section 237.18. The board is charged with the responsibility of establishing a foster care registry, establishing local review boards to review cases of children in foster care, establishing a training program for members of the state board members, establishing procedures and protocols for administering the local foster care review board and court appointed special advocate program, receiving and administering funds received for the state board's programs and annually reporting findings and making recommendations to the governor, ~~general assembly, the supreme court, the chief judge of each judicial district,~~ the department, and child-placing agencies, and the state court administrator for dissemination to the supreme court and the chief judge of each judicial district.

ITEM 2. Amend subrule 1.1(1) as follows:

**1.1(1) Location.** The child advocacy board is located in the Lucas State Office Building, 321 East 12th Street, Des Moines, Iowa 50319-0083; telephone ~~(515)281-7621~~866-448-4608. Office hours are 8 a.m. to 4:30 p.m., Monday through Friday, except on state holidays. The child advocacy board is ~~created within~~ an attached unit of the department of inspections and appeals.

ITEM 3. Amend subrule **1.1(2)**, definition of “*Case permanency plan*,” as follows:

“*Case permanency plan*” means the same as defined in Iowa Code section 232.2(4), except the plan shall also include ~~all of the following,~~ but not be limited to:

1. ~~The efforts to place the child with a relative.~~ Time frames to meet the stated permanency goal and short-term objectives.

2. ~~The rationale for an out-of-state placement, and the efforts to prevent such placement, if the child has been placed out of state.~~ The care and services that will be provided to the child, biological parents, the child’s fictive kin, and foster parents.

3. ~~Time frames to meet the stated permanency goal and short-term objectives.~~ The efforts to place the child with a relative or fictive kin.

4. The rationale for an out-of-state placement, and the efforts to prevent such placement, if the child has been placed out of state.

ITEM 4. Amend subrule **1.1(2)**, definition of “*Child receiving foster care*,” as follows:

“*Child receiving foster care*” means a child defined in Iowa Code section ~~234.1~~237.15(2) who is described by any of the following circumstances:

1.-4. No change

ITEM 5. Amend subrule **1.1(2)**, definition of “*Court appointed special advocate*,” as follows:

“*Court appointed special advocate*” means ~~the same as defined in Iowa Code section 232.2a~~ a person duly certified by the child advocacy board created in section 237.16 for participation in the court appointed special advocate program and appointed by the court to carry out the duties pursuant to section 237.24.

ITEM 6. Amend subrule **1.1(2)**, add definition of “*Fictive kin*,” as follows:

“*Fictive kin*” means an adult person who is not a relative of a child but who has an emotionally positive significant relationship with the child or the child’s family.

ITEM 7. Amend subrule 2.1(1) as follows:

**2.1(1) *Membership and terms.*** The child advocacy board is ~~created within~~ an attached unit of the department of inspections and appeals. The state board consists of nine members appointed by the governor, subject to confirmation by the senate and directly responsible to the governor. One member shall be an active court appointed special advocate volunteer, one member shall be an active member of a local citizen foster care review board, and one member shall be a judicial branch employee or judicial officer appointed from nominees submitted by the judicial branch. The appointment is for a term of four years that begins and ends as provided in Iowa Code section 69.19. Vacancies on the state board shall be filled in the same manner as original appointments are made. An employee of the department of human services or of the department of inspections and appeals, an employee of a child-placing agency, an employee of an agency with which the department of human services contracts for services for children under foster care, a foster parent providing foster care, or an employee of the district court is not eligible to serve on the state board. However, the judicial branch employee or judicial officer appointed from nominees submitted by the judicial branch in accordance with Iowa Code section 237.16(1) shall be eligible to serve on the state board.

ITEM 8. Amend subrule 2.1(3), introductory paragraph, as follows:

**2.1(3) Meetings.** The state board shall meet at least twice a year. Notice of a meeting is published at least seven days in advance of the meeting and will be ~~mailed~~ provided to interested persons upon request. The notice shall contain the specific date, time and place of the meeting. The agenda will be made available to any interested person not less than seven days in advance of the meeting. All meetings will be open to the public, pursuant to Iowa Code chapter 21, unless a closed session is voted by a quorum. The operation of the state board meetings will be governed by the following rules of procedure.

ITEM 9. Rescind subrules **2.2(9)–(10)**.

ITEM 10. Amend rule 489—2.3(237) as follows:

**489—2.3(237) Foster care registry.** The state board shall establish a registry of the placements of all children receiving foster care. The ~~department~~ agency responsible for placement shall notify the state board of each placement ~~within five working days of the department's notification of the placement~~ in accordance with written protocols adopted pursuant to Iowa Code section 237.16, subsection 4. The notification ~~to the state board~~ shall include information identifying the child receiving foster care and placement information for that child.

~~Within 30 days of the placement or 2 days after the dispositional hearing, the agency responsible for the placement shall submit the case permanency plan to the state board. All subsequent revisions of the case permanency plan shall be submitted when the revisions are developed.~~

This rule is intended to implement Iowa Code sections 17A.3 and 237.17.

ITEM 11. Amend rule 489—3.1, introductory paragraph, and subrule 3.1(1) as follows:

**489—3.1(237) Local boards.** The child advocacy board shall establish local foster care boards ~~in judicial districts as funding is made available for that purpose~~ throughout the State. The number of local boards needed and established shall be determined by the child advocacy board based on the number of children in foster care and funding available. ~~A sufficient number of boards will be established to ensure that no board shall carry a caseload larger than 100 cases.~~

**3.1(1)** The child advocacy board is responsible ~~under the statute~~ for establishment of policy and procedures ~~which must be consistent with the provisions of the statute~~ Iowa Code. Local boards are required to comply with policies and procedures. If a local board does not agree with a policy or procedure, the local board may bring that issue to the child advocacy board for discussion and request a change by the board. If the child advocacy board upholds the policy, local boards must comply.

ITEM 12. Amend rule 489—3.2 as follows:

**489—3.2(237) Membership.**

**3.2(1)** No change.

*a.* The process will culminate in the ~~coordinator's preparation of a written selection rationale statement about the prospective appointee to the child advocacy board~~ coordinator conducting a personal interview with the applicant, obtaining character references, and completing background checks on the applicant.

*b.* The process will include consultation ~~with the chief judge for the court district served by the local board~~ among the coordinator and coordinator's direct supervisor.

~~c. The administrator will submit each written selection rationale statement electronically to all child advocacy board members no later than 30 calendar days prior to the beginning date of the local board member's prospective term. If a board member vacates the position mid-term, the selection process and resulting written selection rationale statement shall be submitted to the child advocacy board as soon as practicable.~~

~~d. Within 15 calendar days after receipt of the written selection rationale statement, any child advocacy board member may request a telephonic child advocacy board meeting to review a prospective appointment. During the meeting, child advocacy board members may raise questions and then vote for the approval or disapproval of the prospective appointment.~~

~~e. If no meeting is requested, the prospective local board member is deemed approved by the child advocacy board.~~

**3.2(2)** A person employed by ~~the department of inspections and appeals,~~ the department of human services, the judicial department, an employee of an agency with which the department of human services contracts for services for children under foster care, a foster parent providing foster care, or a child-placing agency shall not serve on a local board. ~~The child advocacy board shall provide the names of the members of the local boards to the department of human services.~~

**3.2(3)** No change.

**3.2(4)** The term of a local board member's appointment shall not exceed ~~three~~ four years. The child advocacy board shall fix the tenure of individual appointments so that no more than one-third of the membership's terms expire in a given year. A local board member may serve continuous successive terms.

**3.2(5)** The administrator shall develop a local board member evaluation process. The local board coordinator shall complete the evaluation process at least once for each local board member

during the member's ~~three~~four-year term. The local board coordinator, in consultation with the coordinator's direct supervisor, shall consider the results of the evaluation when determining whether to ~~seek appointment~~ approve reappointment of the local board member to a successive term. Prior to any reappointment, the member shall complete updated background checks and a progress evaluation. ~~When submitting a written selection rationale statement to the child advocacy board for a local board member to serve a successive term, the local board coordinator shall include a summary of the evaluation results for that member.~~

~~3.2(6) A local board member may serve continuous successive terms when selected and approved in accordance with this rule.~~

~~3.2(7) A quorum consists of at least three is established when a majority of local review board members or alternates are present. A quorum shall be present before cases can be reviewed and recommendations can be voted on are formulated. At least two members must be present during questioning of interested parties.~~

This rule is intended to implement Iowa Code sections 17A.3 and 237.19.

ITEM 13. Rescind and reserve rule ~~489~~—**3.3**.

ITEM 14. Amend subrules 3.4(1)–(3) as follows:

**3.4(1)** Local board reviews. ~~Every~~ At least every six months ~~the local board shall review~~ the case of each child receiving foster care assigned to ~~the~~ a local board ~~by the child advocacy board~~ shall be reviewed in accordance with the written protocols adopted pursuant to Iowa Code section 237.16(4) to determine whether satisfactory progress is being made towards the goals of

the case permanency plan pursuant to Iowa Code section 237.2. Whenever possible, reviews shall be conducted prior to court review of the cases.

*a.* Each review will consider the following:

(1) No change.

(2) The efforts of the agency responsible for the placement of the child to locate and provide services to the child's biological or adoptive parents, legal guardians, or fictive kin providing the majority of the child's daily food, lodging, and support.

(3) No change.

*b.* ~~The agency responsible for placement of the child or the~~ The local board may request an investigation of any problems, solutions, or alternatives with regard to the best interest of the child or of the state.

*c.* ~~The review shall include issues pertaining to the permanency plan and shall not include issues that do not pertain to the permanency plan.~~ Each review shall include oral, written testimony, or recorded statements ~~of~~ submitted by any person notified pursuant to Iowa Code section 237.20(4), ~~and may include oral testimony from those persons when determined to be relevant and material to the child's placement. Case relevant written testimony from other interested parties may also be considered by the board in its review.~~

*d.* A person who gives an oral testimony statement has the right to representation by counsel at the review. ~~Oral testimony~~ An oral statement may, upon the request of ~~the testifier an interested party~~ or upon motion of the local board, be given in a private setting ~~when to do so would facilitate the presentation of evidence.~~ Local board questions shall pertain to the permanency plan and shall not include issues that do not pertain to the permanency plan.

~~e. — A list of documents and information considered by the local board shall be provided to the child, the parents, their attorneys, judge, department, and the county attorney at their request.~~

**3.4(2)** Findings and recommendations. The local board shall submit the findings and recommendations to the appropriate court and the department within 15 days after the review. The findings and recommendations shall include the proposed date of the next review by the local board. The report to the court shall include information regarding the permanency plan and the progress in attaining the permanency goals. The local board shall send a copy of the findings and recommendations to the persons specified in 3.4(3) within 15 days following the review.

**3.4(3)** The local board shall notify the following persons at least ten days prior to the review of the case of a child receiving foster care:

*a.-d.* No change.

*e.* The guardian ad litem of the foster child. The guardian ad litem shall be eligible for compensation through Iowa Code section 232.141, subsection 1, ~~paragraph “b.”~~2.

*f.-i.* No change.

*j.* Any intervenor.

ITEM 15. Rescind rule 489—3.5.

ITEM 16. Amend subrule 3.6(1) as follows:

**3.6(1)** To be eligible for review, the child shall meet the requirements set forth in Iowa Code sections 234.1(2), 234.35 and ~~234.36~~ 237.15; ~~or be under the guardianship of the department; and the child receiving foster care has lived out of the home for more than six months during the last two years.~~

ITEM 17. Amend subrule **4.1(1)**, add definition of “*Coach*” or “*CASA coach*,” as follows:

“Coach” or “CASA coach” means a duly certified court appointed special advocate volunteer who has received additional training to assist the coordinator by overseeing facets of the court appointed special advocate’s case work.

ITEM 18. Amend subrule **4.1(1)**, definition of “*Court appointed special advocate*” or “*CASA*” or “*advocate*” as follows:

“Court appointed special advocate” or “CASA volunteer” or “CASA” or “advocate” means a person who ~~has volunteered and~~ is duly certified by the child advocacy board for participation in the court appointed special advocate program and appointed by the court to represent the interest of a child in any judicial proceeding to which the child is a party or is called as a witness or relating to any dispositional order involving the child resulting from the proceeding. Unless otherwise enlarged or circumscribed by a court or juvenile court having jurisdiction over the child or by operation of law, the duties of a court appointed special advocate with respect to a child pursuant to Iowa Code section ~~232.2(22)“b”~~ 237.24 shall include the following:

1. Conducting in-person interviews with the child every thirty days, if the child’s age is appropriate for the interview, and interviewing each parent, guardian, or other person having custody of the child, if authorized by counsel.

~~2. Conducting interviews with the child, if the child’s age is appropriate for the interview, prior to any court ordered hearing.~~

~~3.~~ 32. Visiting the home, residence, or both home and residence of the child and any prospective home or residence of the child, including each time placement is changed.

~~43. Interviewing any person providing medical, mental health, social, educational, or other services to the child, before any hearing referred to in paragraph “2” of this definition.~~

~~54. Obtaining firsthand knowledge, if possible, of the facts, circumstances, and parties involved in the matter in which the person court appointed special advocate is appointed.~~

~~65. Attending any depositions, hearings, and trial proceedings in the matter in which the person court appointed special advocate is appointed for the purpose of supporting the child and advocating for the child’s protection.~~

~~76. If the child is required to have a transition plan developed in accordance with the child’s case permanency plan and subject to review and approval of a transition committee under Iowa Code section 235.7, assisting the transition committee in development of the transition plan. Assisting the transition committee in the development of a transition plan if the child’s case permanency plan calls for the development of a transition plan.~~

~~7. Submitting a written report to the juvenile court and to each of the parties identified in Section 237.2(4) prior to each court hearing, unless otherwise ordered by the court. The report shall include, but not be limited to, the identified strengths and concerns of the child and the child’s family, along with recommendations about the child’s placement and best interest.~~

ITEM 19. Amend subrules 4.1(2)–(3), as follows:

~~**4.1(2) Program mission.** The court appointed special advocate (CASA) program certifies and guides trained community volunteers to serve as an effective voice in court for abused and neglected children, strengthening efforts to ensure that each child is living in a safe, permanent and nurturing home. CASA of Iowa trains and supports community volunteers to advocate for a~~

safe and permanent home for children who have experienced abuse and neglect, and works collaboratively to ensure their voice is heard.

**4.1(3) Program goal.** The CASA program will provide certified advocates for every ~~abused and neglected child~~ child who has experienced abuse or neglect and for whom an advocate is authorized by an Iowa court.

ITEM 20. Rescind rule 489—4.2(237) and adopt the following **new** rule in lieu thereof:

**489—4.2(237) Program requirements.**

**4.2(1) Establishing additional procedures and protocols.**

a. The state board is responsible for establishment of procedures and protocols consistent with Iowa Code.

b. Responsibility is delegated by the state board to the administrator to establish and submit to the board for approval a program policy and procedures manual which provides detailed guidance to child advocacy board staff and volunteers on application of these rules and the statutes that govern the operation of the court appointed special advocate program.

c. Child advocacy board staff and volunteers are required to comply with the protocols and procedures established by the state board and the provisions of the policy and procedures manual established by the administrator and approved by the board.

d. Day-to-day implementation of program policy is delegated by the state board to administrative staff. Staff is responsible for bringing questions about policy issues to the state board for clarification or changes of state policy.

**4.2(2) Operation requirements.**

a. The state board delegates responsibility to the administrator to hire, train, and manage staff throughout the state to implement CASA programming. The administrator shall determine the number of court appointed special advocates or coaches an individual coordinator may supervise.

b. The state board delegates responsibility to the administrator to provide additional information or guidance in the program's policy and procedures manual regarding the analysis of applicant qualifications and requirements for the final selection of CASA volunteers and coaches.

c. The coordinator is responsible for recruiting, screening, selecting, training and supervising court appointed special advocates.

d. The CASA selection is made in a manner that provides the best match available between the knowledge, skills, abilities, and availability of the advocate and the needs of the child. The assignments shall be made in a manner that avoids conflicts of interest, risk to the child's or advocate's safety, and jeopardy to the program's integrity.

e. Upon selection of the CASA who will serve on an individual case, the court and all interested parties are notified of the selection.

h. The selected CASA continues to serve on the case until the assignment is terminated by the court.

**4.2(3) *CASA advocate qualifications.*** Potential coaches and advocates shall meet the following qualifications:

a. Possess a genuine interest in advocating for children and their rights and needs.

b. Have availability to complete mandatory duties.

c. Commit to serve on a case until terminated by the court.

d. Have the ability to interact with people involved in the child welfare system.

*e.* Have the ability to communicate effectively both in verbal and written presentations.

*f.* Be at least 19 years of age or older.

*g.* Not be a person employed by the state board, the department of human services, the district court, or an agency with which the department of human services contracts for services for children.

*h.* Agree to use the child advocacy board's data management system for case work.

**4.2(4)** *Application requirements for CASA volunteers.* All CASA volunteer applicants shall complete the following requirements:

*a.* Submit a program application to the program office.

*b.* Provide the names and addresses of at least three nonrelative personal references.

*c.* Participate in at least one personal interview with the local coordinator.

*d.* Complete mandatory CASA preservice training.

*e.* Take a confidentiality oath, administered by the presiding juvenile court judge, or designee, for whom the CASA will be performing official duties.

*f.* Authorize a release of information for the CASA program to conduct a complete criminal history check of the applicant's background, including, but not limited to, checking records in the court jurisdiction in which the applicant has resided, state criminal records, Federal Bureau of Investigation or other national criminal database, sex offender registry, child abuse registry, and social security number verification. Applicants who refuse to sign required background check releases will not be considered for the CASA program.

g. Individuals with a negative background check finding may be approved to be a court appointed special advocate in accordance with the CASA of Iowa Child Abuse Registry/Criminal Background Check Exemption Policy.

This rule is intended to implement Iowa Code sections 17A.3 and 237.18.

ITEM 21. Rescind rule 489—4.3(237) and adopt the following **new** rule in lieu thereof:

**489—4.3(237) Training.** All child advocacy board staff and court appointed special advocate volunteers shall complete preservice and continuing education requirements.

This rule is intended to implement Iowa Code sections 17A.3 and 237.18.

ITEM 22. Amend rule 489—4.4 as follows:

**489—4.4(237) Adherence to national guidelines.** The National Court Appointed Special Advocate/Guardian Ad Litem Association for Children has established a national quality assurance system for CASA programs. The primary goal of the system is to strengthen CASA organizations and support their efforts to provide high-quality child advocacy and achieve the maximum level of excellence. ~~The national CASA self-assessment tools, one for state organizations and another for local programs, are used once every four years to measure compliance with quality standards. The quality standards cover organizational mission; governance, ethics and compliance with laws and regulations; planning, assessment and evaluation; human resource management; financial and risk management; public relations; quality assurance; national CASA affiliation; new organization development; and inclusiveness and diversity. The child advocacy board has participated in this rigorous self-assessment process and has obtained certification of compliance with the standards. The board~~ CASA of Iowa shall continue to maintain compliance with the standards and, within

the limits of available funding, shall deploy resources to maintain compliance in the future.

This rule is intended to implement Iowa Code sections 17A.3 and 237.18.

ITEM 23. Amend rule 489—4.5 as follows:

**489—4.5(237) Children eligible for assignment of a court appointed special advocate.** ~~The court appointed special advocate program~~ CASA of Iowa serves any child for whom the court appoints a court appointed special advocate as long as the resources to do so are available.

This rule is intended to implement Iowa Code sections 17A.3 and 237.18.

ITEM 24. Rescind 489—Chapter 5 implementation sentence.

ITEM 25. Rescind rule 489—5.1 and adopt the following **new** rule in lieu thereof:

**489—5.1(22) Definitions.** As used in this chapter:

“*Agency*” in these rules means the child advocacy board.

“*Confidential record*” in these rules means a record which is not available as a matter of right for examination and copying by members of the public under applicable provisions of law. Confidential records include records or information contained in records that the agency is prohibited by law from making available for examination by members of the public, and records or information contained in records that are specified as confidential by Iowa Code section 22.7, or other provision of law, but that may be disclosed upon order of a court, the lawful custodian of the record, or by another person duly authorized to release the record. Mere inclusion in a record of information declared confidential by an applicable provision of law does not necessarily make that entire record a confidential record.

“*Custodian*” in these rules means an agency, or a person lawfully delegated authority by the agency to act for the agency in implementing Iowa Code chapter 22.

“*Open record*” in these rules means a record other than a confidential record.

“*Personally identifiable information*” in these rules means information about or pertaining to an individual in a record which identifies the individual and which is contained in a record system.

“*Record*” in these rules means the whole or a part of a “public record” as defined in Iowa Code section 22.1, that is owned by or in the physical possession of this agency.

“*Record system*” in these rules means any group of records under the control of the agency from which a record may be retrieved by a personal identifier such as the name of an individual, number, symbol, or other unique retriever assigned to an individual.

ITEM 26. Adopt the following **new** rule:

**489—5.2(22) Statement of policy.** The purpose of this chapter is to facilitate broad public access to open records. It also seeks to facilitate sound agency determinations with respect to the handling of confidential records and the implementation of the fair information practices Act. This agency is committed to the policies set forth in Iowa Code chapter 22; agency staff shall cooperate with members of the public in implementing the provisions of that chapter.

ITEM 27. Rescind rule 489—5.3 and adopt the following **new** rule in lieu thereof:

**489—5.3(22) Requests for access to records.**

**5.3(1) Location of record.** A request for access to a record should be directed to the child advocacy board or the particular agency office where the record is kept. If the location of the record is not known by the requester, the request shall be directed to the child advocacy board, Lucas State Office Building, 321 East 12th Street, Des Moines, Iowa 50319-0083. If a request for access to a record is misdirected, agency personnel will promptly forward the request to the appropriate person within the agency.

**5.3(2) Office hours.** Open records shall be made available during all customary office hours, which are 8 a.m. to 4:30 p.m. Monday through Friday, except legal holidays.

**5.3(7) Fees.**

*a. When charged.* The agency may charge fees in connection with the examination or copying of records only if the fees are authorized by law. To the extent permitted by applicable provisions of law, the payment of fees may be waived when the imposition of fees is inequitable or when a waiver is in the public interest.

*b. Copying and postage costs.* Price schedules for published materials and for photocopies of records supplied by the agency shall be prominently posted in agency offices. Copies of records may be made by or for members of the public on agency photocopy machines or from electronic storage systems at cost as determined and posted in agency offices by the custodian. When the mailing of copies of records is requested, the actual costs of such mailing may also be charged to the requester.

*c. Supervisory fee.* An hourly fee may be charged for actual agency expenses in supervising the examination and copying of requested records when the supervision time required is in excess of one hour. The custodian shall prominently post in agency offices the hourly fees to be charged for supervision of records during examination and copying. That hourly fee shall not be in excess

of the hourly wage of an agency clerical employee who ordinarily would be appropriate and suitable to perform this supervisory function.

*d. Advance deposits.*

(1) When the estimated total fee chargeable under this subrule exceeds \$25, the custodian may require a requester to make an advance payment to cover all or a part of the estimated fee.

(2) When a requester has previously failed to pay a fee chargeable under this subrule, the custodian may require advance payment of the full amount of any estimated fee before the custodian processes a new request from that requester.

ITEM 27. Adopt the following **new** rule:

**489—5.4(22) Access to confidential records.** Under Iowa Code section 22.7 or other applicable provisions of law, the lawful custodian may disclose certain confidential records to one or more members of the public. Other provisions of law authorize or require the custodian to release specified confidential records under certain circumstances or to particular persons. In requesting the custodian to permit the examination and copying of such a confidential record, the following procedures apply and are in addition to those specified for requests for access to records in rule 5.3(17A,22).

**5.4(1) Proof of identity.** A person requesting access to a confidential record may be required to provide proof of identity or authority to secure access to the record.

**5.4(2) Requests.** The custodian may require a request to examine and copy a confidential record to be in writing. A person requesting access to such a record may be required to sign a certified statement or affidavit enumerating the specific reasons justifying access to the confidential record and to provide any proof necessary to establish relevant facts.

**5.4(3)** *Notice to subject of record and opportunity to obtain injunction.* After the custodian receives a request for access to a confidential record, and before the custodian releases such a record, the custodian may make reasonable efforts to notify promptly any person who is a subject of that record, is identified in that record, and whose address or telephone number is contained in that record. To the extent such a delay is practicable and in the public interest, the custodian may give the subject of such a confidential record to whom notification is transmitted a reasonable opportunity to seek an injunction under Iowa Code section 22.8, and indicate to the subject of the record the specific period of time during which disclosure will be delayed for that purpose.

**5.4(4)** *Request denied.* When the custodian denies a request for access to a confidential record, the custodian shall promptly notify the requester. If the requester indicates to the custodian that a written notification of the denial is desired, the custodian shall promptly provide such a notification that is signed by the custodian and that includes:

- a. The name and title or position of the custodian responsible for the denial; and
- b. A citation to the provision of law vesting authority in the custodian to deny disclosure of the record and a brief statement of the reasons for the denial to this requester.

**5.4(5)** *Request granted.* When the custodian grants a request for access to a confidential record to a particular person, the custodian shall notify that person and indicate any lawful restrictions imposed by the custodian on that person's examination and copying of the record.

ITEM 28. Adopt the following **new** rule:

**489—5.5(17A,22) Requests for treatment of a record as a confidential record and its withholding from examination.** The custodian may treat a record as a confidential record and withhold it from examination only to the extent that the custodian is authorized by Iowa Code

section 22.7, another applicable provision of law, or a court order, to refuse to disclose that record to members of the public.

**5.5(1)** *Persons who may request.* Any person who would be aggrieved or adversely affected by disclosure of a record and who asserts that Iowa Code section 22.7, another applicable provision of law, or a court order, authorizes the custodian to treat the record as a confidential record, may request the custodian to treat that record as a confidential record and to withhold it from public inspection.

**5.5(2)** *Request.* A request that a record be treated as a confidential record and be withheld from public inspection shall be in writing and shall be filed with the custodian. The request must set forth the legal and factual basis justifying such confidential record treatment for that record, and the name, address, and telephone number of the person authorized to respond to any inquiry or action of the custodian concerning the request. A person requesting treatment of a record as a confidential record may also be required to sign a certified statement or affidavit enumerating the specific reasons justifying the treatment of that record as a confidential record and to provide any proof necessary to establish relevant facts. Requests for treatment of a record as such a confidential record for a limited time period shall also specify the precise period of time for which that treatment is requested.

A person filing such a request shall, if possible, accompany the request with a copy of the record in question from which those portions for which such confidential record treatment has been requested have been deleted. If the original record is being submitted to the agency by the person requesting such confidential treatment at the time the request is filed, the person shall indicate conspicuously on the original record that all or portions of it are confidential.

**5.5(3) *Failure to request.*** Failure of a person to request confidential record treatment for a record does not preclude the custodian from treating it as a confidential record. However, if a person who has submitted business information to the agency does not request that it be withheld from public inspection under Iowa Code sections 22.7(3) and 22.7(6), the custodian of records containing that information may proceed as if that person has no objection to its disclosure to members of the public.

**5.5(4) *Timing of decision.*** A decision by the custodian with respect to the disclosure of a record to members of the public may be made when a request for its treatment as a confidential record that is not available for public inspection is filed, or when the custodian receives a request for access to the record by a member of the public.

**5.5(5) *Request granted or deferred.*** If a request for such confidential record treatment is granted, or if action on such a request is deferred, a copy of the record from which the matter in question has been deleted and a copy of the decision to grant the request or to defer action upon the request will be made available for public inspection in lieu of the original record. If the custodian subsequently receives a request for access to the original record, the custodian will make reasonable and timely efforts to notify any person who has filed a request for its treatment as a confidential record that is not available for public inspection of the pendency of that subsequent request.

**5.5(6) *Request denied and opportunity to seek injunction.*** If a request that a record be treated as a confidential record and be withheld from public inspection is denied, the custodian shall notify the requester in writing of that determination and the reasons therefor. On application by the requester, the custodian may engage in a good faith, reasonable delay in allowing examination of the record so that the requester may seek injunctive relief under the provisions of

Iowa Code section 22.8, or other applicable provision of law. However, such a record shall not be withheld from public inspection for any period of time if the custodian determines that the requester had no reasonable grounds to justify the treatment of that record as a confidential record. The custodian shall notify requester in writing of the time period allowed to seek injunctive relief or the reasons for the determination that no reasonable grounds exist to justify the treatment of that record as a confidential record. The custodian may extend the period of good faith, reasonable delay in allowing examination of the record so that the requester may seek injunctive relief only if no request for examination of that record has been received, or if a court directs the custodian to treat it as a confidential record, or to the extent permitted by another applicable provision of law, or with the consent of the person requesting access.

ITEM 29. Amend rule 489—5.6 as follows:

**489—5.6(22) Procedure by which a subject may have additions, dissents, or objections entered into the record.** ~~In lieu of the words “(designate office)”, insert “the originating agency, or to the director’s office”.~~ Except as otherwise provided by law, a person may file a request with the custodian to review, and to have a written statement of additions, dissents, or objections entered into, a record containing personally identifiable information pertaining to that person. However, this does not authorize a person who is a subject of such a record to alter the original copy of that record or to expand the official record of any agency proceeding. Requester shall send the request to review such a record or the written statement of additions, dissents, or objections to the custodian agency. The request to review such a record or the written statement of such a record of additions, dissents, or objections must be dated and signed by requester, and shall include the current address and telephone number of the requester or the requester’s representative.

ITEM 30. Adopt the following **new** rule:

**489—5.7(17A,22) Consent to disclosure by the subject of a confidential record.** To the extent permitted by any applicable provision of law, a person who is the subject of a confidential record may have a copy of the portion of that record concerning the subject disclosed to a third party. A request for such a disclosure must be in writing and must identify the particular record or records that may be disclosed, and the particular person or class of persons to whom the record may be disclosed (and, where applicable, the time period during which the record may be disclosed). The person who is the subject of the record and, where applicable, the person to whom the record is to be disclosed, may be required to provide proof of identity. (Additional requirements may be necessary for special classes of records.) Appearance of counsel before the agency on behalf of a person who is the subject of a confidential record is deemed to constitute consent for the agency to disclose records about that person to the person's attorney.

ITEM 31. Adopt the following **new** rule:

**489—5.8(17A,22) Notice to suppliers of information.** When the agency requests a person to supply information about that person, the agency shall notify the person of the use that will be made of the information, which persons outside the agency might routinely be provided this information, which parts of the requested information are required and which are optional, and the consequences of a failure to provide the information requested. This notice may be given in these rules, on the written form used to collect the information, on a separate fact sheet or letter, in brochures, in formal agreements, in contracts, in handbooks, in manuals, verbally, or by other appropriate means.

ITEM 32. Amend subrule 5.10(1) as follows:

1. Disclosure to those officers, employees, agents, and ~~foster care review~~ child advocacy board members defined in Iowa Code section 237.18 of the agency or the originating agency who have a need for the record in the performance of their duties. The custodian of the record may, upon request of any officer or employee, or on the custodian's own initiative, determine what constitutes legitimate need to use confidential records.

ITEM 33. Amend subrule 5.11(3) as follows:

**5.11(3)** *Obtaining information from a third party.* The ~~foster care review board~~ child advocacy board requests personally identifiable information from third parties during the course of its authorized reviews. Requests to third parties for this information involve the release of confidential identifying information.

ITEM 34. Amend subrules 5.14(1)–(3) as follows:

1. Files are maintained by the child's name in the ~~foster care review~~ child advocacy board offices. Those files are kept in locked filing cabinets. (Iowa Code section 237.18(2)“a”)

2. The Foster Care Registry (Iowa Code section 237.17) is a computerized tracking system of the children reported to the ~~foster care review~~ child advocacy board. The information of each case is personally identifiable by name.

3. Personnel files for each employee of the ~~foster care review~~ child advocacy board. These may be confidential pursuant to Iowa Code section 22.7(11).