INTRODUCTION TO ADMINISTRATIVE RULES

Why Does the Board Promulgate Rules?
The Illinois Administrative Procedure Act requires state agencies to conduct administrative rulemaking as the vehicle for adopting and changing all their policies that qualify as “rules” under that Act. The Act defines “rule” as:

“each Agency statement of general applicability that implements, applies, interprets, or prescribes law or policy...” with certain exceptions for internal agency actions.

General rulemaking authority is given to the State Board in Section 2-3.6 of the School Code. Many other sections of the School Code authorize and/or direct the Board to adopt rules governing specific programs, services, or situations. Changes in those laws often also mean changes in the agency’s rules.

What is the Process?
Rulemaking consists of the six main episodes outlined below. These are described in more detail on the attachment.

1) Initiation of Rulemaking - A need to write new rules or change existing ones is identified by staff and approved by the Superintendent.

2) Development of Proposal - A draft of the language is prepared by staff and reviewed by a sample of the affected parties (e.g., school districts, regional superintendents, special education directors, private business and vocational schools). When a final draft of the proposed rules has been cleared by the Superintendent, the rules are brought to the State Board for “initial review.” The Board is asked to authorize release of the proposed rules to initiate the formal public comment period. The version that is published is the version the Board will adopt unless public comment indicates a need for changes.

3) First Notice Period - The proposal is published in the Illinois Register and distributed to interested parties through various means to elicit public comment. At least 45 days must be allotted for the receipt of comments.

4) Agency Response/Adoption - The comments received are analyzed, the rules are changed if appropriate, and the resulting version is presented to the State Board for adoption.

5) Second Notice Period - The adopted rules are reviewed by the Joint Committee on Administrative Rules (JCAR), a legislative body charged with overseeing the rulemaking process.

6) Filing/Completion - Any changes resulting from the Joint Committee’s review are incorporated, and the final version of the rules is filed with the Secretary of State and disseminated as appropriate.

What is the Board’s Role?
Each set of rules is presented to the Board for review on the two occasions highlighted above.

- In the first instance, the Board is made aware of the need for the rulemaking and any policy decisions involved, and the Board is asked to authorize distribution of the proposed rules to elicit public comment.
• In the second instance, the Board is asked to adopt the version presented, including any changes made in response to public comment. That version is then final, except for any changes necessitated by JCAR’s review, and will be filed with the Secretary of State to be available to the public. The rules take effect on the day they are accepted by staff in the Index Department in the Office of the Secretary of State.

**What are the Differences between the First and Second Notice Periods?**

The first and second notice periods have different purposes. A timeframe of 45 days applies to each, but in the first instance the notice period must be at least 45 days while in the second instance the notice period is limited to 45 days, as explained below.

**First Notice**

The first notice period is the period of time during which members of the public may submit comments, suggestions, and criticisms to the agency on a proposed rulemaking. It must be at least 45 days in length, counted from the date of the rules’ publication in the Illinois Register. That is, Register publication is the agency’s notice to the public of its intended action, as represented by the text of the proposed rules.

The agency may elect to hold one or more public hearings during this time to facilitate the submission of comments. The agency may also be required to hold a public hearing under circumstances specified in the Illinois Administrative Procedure Act. At the conclusion of the first notice period, the agency decides whether to make changes in the proposed rules in response to the public comment received. Changes may only be made in response to public comment.

**Second Notice**

The second notice period begins after the State Board has adopted a rulemaking. The agency provides notice to the Joint Committee on Administrative Rules (JCAR), thereby initiating JCAR’s review of the rules. The second notice period begins on the day JCAR accepts the notice (meaning that the required materials have been submitted and are complete). The second notice period is no more than 45 days in length, unless an extension (of not more than 45 additional days) is agreed to by JCAR and the agency. JCAR is required to complete its review of the rulemaking during this time. Members of the public may, if they wish, submit written comments to JCAR during the second notice period. These items, if any, are not part of the public comment that the agency is obligated to consider. They may or may not result in the agency’s receipt of any questions from the JCAR staff or in any requests for changes in the rules.

The Joint Committee holds monthly meetings at which it deals with pending rules. The staff prepares and mails review materials in advance of these meetings, much as the State Board’s meeting packets are prepared. There is no monthly deadline by which agencies can submit notice materials to guarantee their consideration at the next JCAR meeting. If two meetings fall within the notice period, the JCAR staff may schedule consideration at either of those meetings.

JCAR’s monthly meetings are sometimes referred to as “hearings.” However, only JCAR staff and representatives of affected agencies may testify during these hearings. A JCAR meeting is thus not a hearing in the sense of a forum for public comment. Most rulemakings are not discussed at all; they are placed on a “no objection list” which is adopted by the Committee after a motion. When a rulemaking raises issues that are of concern to one or more members of the Committee or their legislative colleagues, that rulemaking will not be included in the no objection list. It will be called separately, and agency representatives can expect to be questioned, after which the Joint Committee will take whichever of the available actions it deems appropriate.