



IOWA ADMINISTRATIVE BULLETIN

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PREFACE

The Iowa Administrative Bulletin is published biweekly pursuant to Iowa Code chapters 2B and 17A and contains Notices of Intended Action and rules adopted by state agencies.

It also contains Proclamations and Executive Orders of the Governor which are general and permanent in nature; Regulatory Analyses; effective date delays and objections filed by the Administrative Rules Review Committee; Agenda for monthly Administrative Rules Review Committee meetings; and other materials deemed fitting and proper by the Administrative Rules Review Committee.

The Bulletin may also contain public funds interest rates [12C.6]; usury rates [535.2(3)“a”]; agricultural credit corporation maximum loan rates [535.12]; and other items required by statute to be published in the Bulletin.

PLEASE NOTE: Underscore indicates new material added to existing rules; ~~strike-through~~ indicates deleted material.

JACK EWING, Administrative Code Editor
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CITATION of Administrative Rules

The Iowa Administrative Code shall be cited as (agency identification number) IAC (chapter, rule, subrule, paragraph, subparagraph, or numbered paragraph).

This citation format applies only to external citations to the Iowa Administrative Code or Iowa Administrative Bulletin and does not apply to citations within the Iowa Administrative Code or Iowa Administrative Bulletin.

441 IAC 79	(Chapter)
441 IAC 79.1	(Rule)
441 IAC 79.1(1)	(Subrule)
441 IAC 79.1(1)“a”	(Paragraph)
441 IAC 79.1(1)“a”(1)	(Subparagraph)
441 IAC 79.1(1)“a”(1)“1”	(Numbered paragraph)

The Iowa Administrative Bulletin shall be cited as IAB (volume), (number), (publication date), (page number), (ARC number).

IAB Vol. XII, No. 23 (5/16/90) p. 2050, ARC 872A

NOTE: In accordance with Iowa Code section 2B.5A, a rule number within the Iowa Administrative Code includes a reference to the statute which the rule is intended to implement: 441—79.1(249A).

Schedule for Rulemaking 2023

NOTICE† SUBMISSION DEADLINE	NOTICE PUB. DATE	HEARING OR COMMENTS 20 DAYS	FIRST POSSIBLE ADOPTION DATE 35 DAYS	ADOPTED FILING DEADLINE	ADOPTED PUB. DATE	FIRST POSSIBLE EFFECTIVE DATE	POSSIBLE EXPIRATION OF NOTICE 180 DAYS
Dec. 20 '23	Jan. 10 '24	Jan. 30 '24	Feb. 14 '24	Feb. 16 '24	Mar. 6 '24	Apr. 10 '24	July 8 '24
Jan. 3 '24	Jan. 24 '24	Feb. 13 '24	Feb. 28 '24	Mar. 1 '24	Mar. 20 '24	Apr. 24 '24	July 22 '24
Jan. 19 '24	Feb. 7 '24	Feb. 27 '24	Mar. 13 '24	Mar. 15 '24	Apr. 3 '24	May 8 '24	Aug. 5 '24
Feb. 2 '24	Feb. 21 '24	Mar. 12 '24	Mar. 27 '24	Mar. 29 '24	Apr. 17 '24	May 22 '24	Aug. 19 '24
Feb. 16 '24	Mar. 6 '24	Mar. 26 '24	Apr. 10 '24	Apr. 12 '24	May 1 '24	June 5 '24	Sep. 2 '24
Mar. 1 '24	Mar. 20 '24	Apr. 9 '24	Apr. 24 '24	Apr. 26 '24	May 15 '24	June 19 '24	Sep. 16 '24
Mar. 15 '24	Apr. 3 '24	Apr. 23 '24	May 8 '24	**May 8 '24**	May 29 '24	July 3 '24	Sep. 30 '24
Mar. 29 '24	Apr. 17 '24	May 7 '24	May 22 '24	May 24 '24	June 12 '24	July 17 '24	Oct. 14 '24
Apr. 12 '24	May 1 '24	May 21 '24	June 5 '24	June 7 '24	June 26 '24	July 31 '24	Oct. 28 '24
Apr. 26 '24	May 15 '24	June 4 '24	June 19 '24	**June 19 '24**	July 10 '24	Aug. 14 '24	Nov. 11 '24
May 8 '24	May 29 '24	June 18 '24	July 3 '24	July 5 '24	July 24 '24	Aug. 28 '24	Nov. 25 '24
May 24 '24	June 12 '24	July 2 '24	July 17 '24	July 19 '24	Aug. 7 '24	Sep. 11 '24	Dec. 9 '24
June 7 '24	June 26 '24	July 16 '24	July 31 '24	Aug. 2 '24	Aug. 21 '24	Sep. 25 '24	Dec. 23 '24
June 19 '24	July 10 '24	July 30 '24	Aug. 14 '24	**Aug. 14 '24**	Sep. 4 '24	Oct. 9 '24	Jan. 6 '25
July 5 '24	July 24 '24	Aug. 13 '24	Aug. 28 '24	Aug. 30 '24	Sep. 18 '24	Oct. 23 '24	Jan. 20 '25
July 19 '24	Aug. 7 '24	Aug. 27 '24	Sep. 11 '24	Sep. 13 '24	Oct. 2 '24	Nov. 6 '24	Feb. 3 '25
Aug. 2 '24	Aug. 21 '24	Sep. 10 '24	Sep. 25 '24	Sep. 27 '24	Oct. 16 '24	Nov. 20 '24	Feb. 17 '25
Aug. 14 '24	Sep. 4 '24	Sep. 24 '24	Oct. 9 '24	Oct. 11 '24	Oct. 30 '24	Dec. 4 '24	Mar. 3 '25
Aug. 30 '24	Sep. 18 '24	Oct. 8 '24	Oct. 23 '24	**Oct. 23 '24**	Nov. 13 '24	Dec. 18 '24	Mar. 17 '25
Sep. 13 '24	Oct. 2 '24	Oct. 22 '24	Nov. 6 '24	**Nov. 6 '24**	Nov. 27 '24	Jan. 1 '25	Mar. 31 '25
Sep. 27 '24	Oct. 16 '24	Nov. 5 '24	Nov. 20 '24	**Nov. 20 '24**	Dec. 11 '24	Jan. 15 '25	Apr. 14 '25
Oct. 11 '24	Oct. 30 '24	Nov. 19 '24	Dec. 4 '24	**Dec. 4 '24**	Dec. 25 '24	Jan. 29 '25	Apr. 28 '25
Oct. 23 '24	Nov. 13 '24	Dec. 3 '24	Dec. 18 '24	**Dec. 18 '24**	Jan. 8 '25	Feb. 12 '25	May 12 '25
Nov. 6 '24	Nov. 27 '24	Dec. 17 '24	Jan. 1 '25	**Jan. 2 '25**	Jan. 22 '25	Feb. 26 '25	May 26 '25
Nov. 20 '24	Dec. 11 '24	Dec. 31 '24	Jan. 15 '25	Jan. 17 '25	Feb. 5 '25	Mar. 12 '25	June 9 '25
Dec. 4 '24	Dec. 25 '24	Jan. 14 '25	Jan. 29 '25	Jan. 31 '25	Feb. 19 '25	Mar. 26 '25	June 23 '25
Dec. 18 '24	Jan. 8 '25	Jan. 28 '25	Feb. 12 '25	Feb. 14 '25	Mar. 5 '25	Apr. 9 '25	July 7 '25

PRINTING SCHEDULE FOR IAB

<u>ISSUE NUMBER</u>	<u>SUBMISSION DEADLINE</u>	<u>ISSUE DATE</u>
18	Friday, February 16, 2024	March 6, 2024
19	Friday, March 1, 2024	March 20, 2024
20	Friday, March 15, 2024	April 3, 2024

PLEASE NOTE:

Rules will not be accepted by the Publications Editing Office after **12 o'clock noon** on the filing deadline unless prior approval has been received from the Administrative Rules Coordinator and the Administrative Code Editor.

If the filing deadline falls on a legal holiday, submissions made on the following Monday will be accepted.

†To allow time for review by the Administrative Rules Coordinator prior to the Notice submission deadline, Notices should generally be submitted in RMS four or more working days in advance of the deadline.

****Note change of filing deadline****

COMMERCE DEPARTMENT[181]

Organization and operation, ch 1 IAB 1/24/24 ARC 7343C	1963 Bell Ave., Suite 100 Des Moines, Iowa	February 15, 2024 10 to 11 a.m.
		February 15, 2024 3 to 4 p.m.

ECONOMIC DEVELOPMENT AUTHORITY[261]

Enterprise zone (EZ) program; entrepreneurial ventures assistance (EVA) program; high quality jobs program (HQP); environmental law compliance; violations of law; standard definitions; wage, benefit, and investment requirements; contracting; contract compliance and job counting; annual reporting, rescind chs 59, 60, 172 to 175, 187 to 189; adopt ch 68 IAB 2/7/24 Regulatory Analysis	1963 Bell Ave. Des Moines, Iowa	February 27, 2024 1 to 1:15 p.m.
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Iowa energy center grant program, ch 404 IAB 2/7/24 Regulatory Analysis	1963 Bell Ave. Des Moines, Iowa	February 27, 2024 1:15 to 1:30 p.m.
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EDUCATION DEPARTMENT[281]

Community colleges; community college accreditation, adopt ch 21, rescind ch 24; senior year plus program, ch 22; funding for children residing in state institutions or mental health institutes, ch 34; career and technical education, ch 46; educational programs and services for pupils in juvenile homes, ch 63 IAB 2/7/24 ARCs 7586C, 7588C, 7592C, 7594C, 7603C	Room B100 Grimes State Office Bldg. Des Moines, Iowa Room B50 Grimes State Office Bldg. Des Moines, Iowa	February 27, 2024 9:30 to 10 a.m. February 27, 2024 1:30 to 2 p.m.
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Special education, ch 41; state standards for progression in reading, ch 62; supplementary weighting, ch 97; procedures for charging and investigating incidents of abuse of students by school employees, ch 102; corporal punishment, physical restraint, seclusion, and other physical contact with students, ch 103; early access integrated system of early intervention services, ch 120 IAB 2/7/24 ARCs 7593C, 7589C, 7597C, 7599C to 7601C	Room B100 Grimes State Office Bldg. Des Moines, Iowa Room B50 Grimes State Office Bldg. Des Moines, Iowa	February 27, 2024 10 to 11 a.m. February 27, 2024 2 to 3 p.m.
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EDUCATION DEPARTMENT[281](cont'd)

Standards for school business official preparation programs, ch 81; statewide sales and services tax for school infrastructure, ch 96; financial management of categorical funding, ch 98 IAB 2/7/24 ARCs 7595C, 7596C, 7598C	Room B100 Grimes State Office Bldg. Des Moines, Iowa Room B50 Grimes State Office Bldg. Des Moines, Iowa	February 27, 2024 11 to 11:30 a.m. February 27, 2024 3 to 3:30 p.m.
Public records and fair information practices, ch 5; unsafe school choice option; open enrollment, rescind ch 11; adopt ch 17; general accreditation standards, ch 12; school health services, ch 14; online and virtual learning, ch 15 IAB 2/7/24 ARCs 7582C, 7602C, 7583C	Room B100 Grimes State Office Bldg. Des Moines, Iowa Room B50 Grimes State Office Bldg. Des Moines, Iowa	February 27, 2024 9 to 9:30 a.m. February 27, 2024 1 to 1:30 p.m.
Private instruction and dual enrollment, ch 31; pupil transportation, ch 43; school buses, ch 44; child development coordinating council, educational support programs for parents of children aged birth through five years who are at risk, adopt ch 64, rescind ch 67 IAB 2/7/24 ARCs 7587C, 7590C, 7591C, 7604C	Room B100 Grimes State Office Bldg. Des Moines, Iowa Room B50 Grimes State Office Bldg. Des Moines, Iowa	February 27, 2024 11:30 a.m. to 12 noon February 27, 2024 3:30 to 4 p.m.

ENVIRONMENTAL PROTECTION COMMISSION[567]

Animal feeding operations, ch 65 IAB 12/27/23 ARC 7214C	Auditorium Wallace State Office Bldg. Des Moines, Iowa	February 14, 2024 1:30 to 3:30 p.m.
	Via video/conference call Contact the Department of Natural Resources Email: afo@dnr.iowa.gov	February 19, 2024 1:30 to 3:30 p.m.

HUMAN SERVICES DEPARTMENT[441]

Department organization and general definitions, department procedure for rulemaking, petitions for rulemaking, declaratory orders, appeals and hearings, public records and fair information practices, notices, chs 1, 3 to 5, 7, 9, 16; payment of small claims, ch 8; collection of delinquent debts, collection of debt, rescind ch 10, adopt ch 11; program evaluation, ch 13; fiscal oversight of the early childhood Iowa initiative, ch 122; adoption services, ch 200; subsidized adoptions, ch 201; Iowa adoption exchange, ch 203; subsidized guardianship program, ch 204 IAB 1/24/24 ARCs 7358C, 7359C, 7362C to 7365C, 7389C, 7369C, 7378C	Microsoft Teams ID: 212 588 466 197 Passcode: SThXzX	February 14, 2024 11 to 11:30 a.m.
	Microsoft Teams ID: 249 196 980 071 Passcode: 9dQkSC	February 26, 2024 1 to 2 p.m.
Disability services management, ch 25; foster care placement and services, ch 202 IAB 1/10/24 Regulatory Analyses	Meeting ID: 212 588 466 197 Passcode: SThXzX	February 14, 2024 11 to 11:30 a.m.

INSPECTIONS AND APPEALS DEPARTMENT[481]

Hospitals, ch 51 IAB 2/7/24 ARC 7572C (See also ARC 7573C)	6200 Park Ave., Suite 100 Des Moines, Iowa meet.google.com/omy-errx-ppx Or dial: 1.570.915.0075 PIN: 255 876 356# More phone numbers: tel.meet/omy-errx-ppx?pin=1328955137110	February 27, 2024 10:30 a.m.
		February 28, 2024 10:30

INSURANCE DIVISION[191]

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		February 15, 2024 3 to 4 p.m.

INTERIOR DESIGN EXAMINING BOARD[193G]

Professional conduct, ch 4
IAB 1/24/24 **ARC 7510C**

6200 Park Ave.
Des Moines, Iowa
Video call link:
meet.google.com/zuu-vunu-dcc

February 13, 2024
12:10 p.m.

February 14, 2024
12:10 p.m.

NATURAL RESOURCE COMMISSION[571]

State parks, recreation areas, and
state forest camping, ch 61
IAB 1/24/24 **ARC 7509C**

Conference Room 4E
Wallace State Office Bldg.
Des Moines, Iowa

February 13, 2024
12 noon to 1 p.m.

February 15, 2024
4 to 5 p.m.

PROFESSIONAL LICENSING AND REGULATION BUREAU[193]

Organization and operation, ch 1;
allocation of disciplinary fees
and costs, ch 2; vendor appeals,
ch 3; social security numbers
and proof of legal presence,
ch 4; waivers, rescind ch 5;
investigatory subpoenas, ch 6;
contested cases, ch 7; denial of
issuance or renewal, suspension,
or revocation of license for
nonpayment of child support
or state debt, rescind ch 8;
petition for rule making, rescind
ch 9; declaratory orders, rescind
ch 10; sales and leases of goods
and services, ch 11; impaired
licensee review committee,
ch 12; public records and fair
information practices, rescind
ch 13; licensure by verification
or work experience, ch 14;
use of criminal convictions in
eligibility determinations and
initial licensing decisions, ch 15
IAB 1/24/24 **ARCs 7511C to
7525C**

6200 Park Ave., Suite 100
Des Moines, Iowa
Video call link:
meet.google.com/zuu-vunu-dcc

February 13, 2024
11:30 a.m.

February 14, 2024
11:30 a.m.

PROFESSIONAL LICENSURE DIVISION[645]

Board administrative processes, ch 4; fees, ch 5; petitions for rule making, rescind ch 6; agency procedure for rule making, rescind ch 7; declaratory orders, rescind ch 8; complaints and investigations, ch 9; public records and fair information practices, rescind ch 10; contested cases and informal settlement, ch 11; informal settlement, rescind ch 12; discipline, ch 13; use of criminal convictions in eligibility determinations and initial licensing decisions, ch 14; Iowa professional review committee, ch 16; materials for board review, rescind ch 17; waivers or variances from administrative rules, rescind ch 18; licensure by verification and of applicants with work experience, ch 19; military service and veteran reciprocity, rescind ch 20
IAB 1/24/24 **ARCs 7296C to 7311C**

6200 Park Ave.
Des Moines, Iowa
Video call link:
meet.google.com/isb-pmab-qob
Or dial: 1.813.252.1868
PIN: 724 486 884#
More phone numbers:
[tel.meet/isb-pmab-qob?pin=8352415222450](tel:meet/isb-pmab-qob?pin=8352415222450)

February 13, 2024
9 to 9:20 a.m.

February 14, 2024
9 to 9:20 a.m.

Behavioral scientists—licensure of marital and family therapists, mental health counselors, behavior analysts, and assistant behavior analysts, ch 31; continuing education for marital and family therapists and mental health counselors, ch 32; discipline for marital and family therapists, mental health counselors, behavior analysts, and assistant behavior analysts, ch 33
IAB 1/24/24 **ARCs 7293C to 7295C**

6200 Park Ave.
Des Moines, Iowa
Video call link:
meet.google.com/isb-pmab-qob
Phone numbers:
[tel.meet/isb-pmab-qob?pin=8352415222450](tel:meet/isb-pmab-qob?pin=8352415222450)

February 13, 2024
9:40 to 10 a.m.

February 14, 2024
9:40 to 10 a.m.

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

<p>Licensure of barbers, cosmetologists, electrologists, estheticians, nail technologists, and instructors of barbering cosmetology arts and sciences, ch 60; licensure of establishments and schools of barbering and cosmetology arts and sciences, ch 61; infection control for establishments and schools of barbering and cosmetology arts and sciences, ch 63; continuing education for barbering and cosmetology arts and sciences, ch 64; discipline for barbering and cosmetology arts and sciences licensees, instructors, establishments, and schools, ch 65 IAB 1/24/24 ARCs 7537C to 7541C</p>	<p>6200 Park Ave. Des Moines, Iowa Video call link: meet.google.com/jji-jaoj-uqy Or dial: 1.904.330.1060 PIN: 744 558 427# More phone numbers: tel.meet/jji-jaoj-uqy?pin=4753713549740</p>	<p>February 13, 2024 1:50 to 2 p.m.</p> <p>February 14, 2024 1:50 to 2 p.m.</p>
<p>Dietitians—licensure, ch 81; continuing education, ch 82; discipline, ch 83 IAB 1/24/24 ARCs 7542C to 7544C</p>	<p>6200 Park Ave. Des Moines, Iowa Video call link: meet.google.com/jji-jaoj-uqy Phone numbers: tel.meet/yxd-hmkw-ppo?pin=1779851586643</p>	<p>February 14, 2024 2:10 to 2:30 p.m.</p> <p>February 13, 2024 2:10 to 2:30 p.m.</p>
<p>Practice of funeral directors, funeral establishments, and cremation establishments, ch 100; licensure of funeral directors, funeral establishments, and cremation establishments, ch 101; continuing education for funeral directors, ch 102; disciplinary proceedings; enforcement proceedings against nonlicensees, rescind ch 103, adopt ch 104; enforcement proceedings against nonlicensees, adopt ch 105 IAB 1/24/24 ARCs 7526C, 7531C to 7534C</p>	<p>6200 Park Ave. Des Moines, Iowa</p>	<p>February 13, 2024 1:30 p.m.</p> <p>February 14, 2024 1:30 p.m.</p>

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

<p>Physical and occupational therapists—licensure of physical therapists and physical therapist assistants, ch 200; practice of physical therapists and physical therapist assistants, ch 201; discipline for physical therapists and physical therapist assistants, ch 202; continuing education for physical therapists and physical therapist assistants, ch 203; licensure of occupational therapists and occupational therapy assistants, ch 206; continuing education for occupational therapists and occupational therapy assistants, ch 207; practice of occupational therapists and occupational therapy assistants, ch 208; discipline for occupational therapists and occupational therapy assistants, ch 209 IAB 1/24/24 ARCs 7545C to 7552C</p>	<p>6200 Park Ave. Des Moines, Iowa Video call link: meet.google.com/jji-jaoj-uqy Phone numbers: tel.meet/yxd-hmkw-ppo?pin=1779851586643</p>	<p>February 13, 2024 2:30 to 2:50 p.m. February 14, 2024 2:30 to 2:50 p.m.</p>
<p>Psychologists—licensure of psychologists, ch 240; continuing education for psychologists, ch 241; discipline for psychologists, ch 242; practice of psychology, ch 243; prescribing psychologists, ch 244 IAB 1/24/24 ARCs 7288C to 7292C</p>	<p>6200 Park Ave. Des Moines, Iowa Video call link: meet.google.com/isb-pmab-qob More phone numbers: tel.meet/isb-pmab-qob?pin=8352415222450</p>	<p>February 13, 2024 9:20 to 9:40 a.m. February 14, 2024 9:20 to 9:40 a.m.</p>
<p>Licensure of respiratory care practitioners, polysomnographic technologists, and respiratory care and polysomnography practitioners, ch 261; continuing education for respiratory care practitioners and polysomnographic technologists, ch 262; discipline for respiratory care practitioners and polysomnographic technologists, rescind ch 263; practice of respiratory care practitioners and polysomnographic technologists, ch 265 IAB 1/24/24 ARCs 7503C to 7506C</p>	<p>6200 Park Ave. Des Moines, Iowa Video call link: meet.google.com/jji-jaoj-uqy Or dial: 1.904.330.1060 PIN: 744 558 427# More phone numbers: tel.meet/jji-jaoj-uqy?pin=4753713549740</p>	<p>February 13, 2024 12:50 p.m. February 14, 2024 12:50 p.m.</p>

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

Physician assistants—practice, ch 327; continuing education, ch 328; discipline, ch 329 IAB 1/24/24 ARCs 7528C to 7530C	6200 Park Ave. Des Moines, Iowa Video call link: meet.google.com/isb-pmab-qob Or dial: 1.813.252.1868 PIN: 724 486 884# Phone numbers: tel.meet/isb-pmab-qob?pin=8352415222450	February 13, 2024 1:10 to 1:30 p.m. February 14, 2024 1:10 to 1:30 p.m.
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Athletic trainers—licensure, ch 351; continuing education, ch 352; discipline, ch 353 IAB 1/24/24 ARCs 7553C to 7555C	6200 Park Ave. Des Moines, Iowa Video call link: meet.google.com/jji-jaoj-uqy Phone numbers: tel.meet/yxd-hmkw-ppo?pin=1779851586643	February 13, 2024 2:50 to 3:10 p.m. February 14, 2024 2:50 to 3:10 p.m.
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PUBLIC HEALTH DEPARTMENT[641]

Reportable diseases, poisonings and conditions, and quarantine and isolation, ch 1; hepatitis programs, ch 2; Immunization and immunization education: persons attending elementary or secondary schools, licensed child care centers or institutions of higher education, ch 7; human immunodeficiency virus (HIV) infection and acquired immune deficiency syndrome (AIDS), ch 11; private well testing, reconstruction, and plugging—grants to counties, ch 24; establishment of new certificate of live birth following adoption, 95.6(1)“b,” 99.14; state-funded family medicine obstetrics fellowship program, ch 106; smokefree air, ch 153; medical cannabidiol program, ch 154; health data, ch 177; nonpayment of state debt, ch 194; emergency medical services—military service, veteran reciprocity, and spouses of active duty service members, ch 196 IAB 1/24/24 ARCs 7374C, 7360C, 7361C, 7366C, 7367C, 7370C to 7374C, 7507C, 7508C	Microsoft Teams ID: 212 588 466 197 Passcode: SThXzX Microsoft Teams ID: 249 196 980 071 Passcode: 9dQkSC	February 14, 2024 11 to 11:30 a.m. February 26, 2024 1 to 2 p.m.
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PUBLIC SAFETY DEPARTMENT[661]

Carriers—adoption by reference of federal safety and hazardous materials regulations, 22.1(1) IAB 1/24/24

Regulatory Analysis

First Floor Public Conference Room
Oran Pape State Office Bldg.
Des Moines, Iowa

February 13, 2024
8 to 8:30 a.m.

Fire safe cigarette certification program, ch 61; licensing for commercial explosive contractors and blasters, ch 235; consumer fireworks retail seller licensing and wholesaler registration, ch 265; licensing of fire protection system contractors, ch 275; licensing of fire protection system technicians, ch 276; licensing of alarm system contractors and technicians, ch 277; military service, veteran reciprocity, and spouses of active duty service members for fire extinguishing and alarm systems contractors and installers, rescind ch 278; Electrician and electrical contractor licensing program—organization and administration, ch 500; electrician and electrical contractor licensing program—administrative procedures, rescind ch 501; electrician and electrical contractor licensing program—licensing requirements, procedures, and fees, ch 502; electrician and electrical contractor licensing program—complaints and discipline, ch 503; electrician and electrical contractor licensing program—education, ch 505; military service and veteran reciprocity for electricians and electrical contractors, rescind ch 506
IAB 1/24/24 **ARCs 7276C to 7281C, 7330C to 7336C**

6200 Park Ave.
Des Moines, Iowa
Video call link:
meet.google.com/zuu-vunu-dcc
Or dial: +1 774.338.0928
PIN: 195 434 437#
More phone numbers:
[tel.meet/zuu-vunu-dcc?pin=9691567757424](tel:meet/zuu-vunu-dcc?pin=9691567757424)

February 13, 2024
10 to 10:20 a.m.

February 14, 2024
10 to 10:20 a.m.

REAL ESTATE APPRAISER EXAMINING BOARD[193F]

Organization and administration, ch 1; definitions, ch 2; general provisions for examinations, ch 3; associate real estate appraiser, ch 4; certified residential real property appraiser, rescind ch 5; certified general real property appraiser, adopt ch 5, rescind ch 6; disciplinary actions, adopt ch 6, rescind ch 7; investigations and disciplinary procedures, adopt ch 7, rescind ch 8; renewal, expiration and reinstatement of certificates and registrations, retired status, and inactive status, adopt ch 8, rescind ch 9; reciprocity, adopt ch 9, rescind ch 10; continuing education, adopt ch 10, rescind ch 11; fees, adopt ch 11, rescind ch 12; enforcement proceedings against nonlicensees, adopt ch 12; rescind ch 16; use of criminal convictions in eligibility determinations and initial licensing decisions, rescind ch 13; persons licensed in other jurisdictions; military service, veteran reciprocity, and licensure of persons licensed in other jurisdictions; adopt ch 13, rescind ch 26; supervisor responsibilities, rescind ch 15; superintendent supervision standards and procedures, rescind ch 17; waivers, rescind ch 18; investigatory subpoenas, rescind ch 19; contested cases, rescind ch 20; denial of issuance or renewal, suspension, or revocation of license for nonpayment of child support or state debt, rescind ch 21; petition for rule making, rescind ch 22; declaratory orders, rescind ch 23; sales and leases of goods and services, rescind ch 24; public records and fair information practices, rescind ch 25; impaired licensee review committee and impaired licensee recovery program, rescind ch 27; social security numbers and proof of legal presence, rescind ch 28; vendor appeals, rescind ch 29

IAB 1/24/24 **ARCs 7257C to 7269C, 7271C to 7275C**

6200 Park Ave.
Des Moines, Iowa
Video call link:
meet.google.com/zuu-vunu-dcc

February 13, 2024
10:40 to 11 a.m.

February 14, 2024
10:40 to 11 a.m.

TRANSPORTATION DEPARTMENT[761]

Interstate motor carriers, commercial driver's licenses—adoption by reference of federal regulations, 529.1, 607.10(1), 800.4(1), 800.15(4), 800.20(1), 810.1(1), 911.5(1) IAB 2/7/24 Regulatory Analysis	Via video/conference call: Microsoft Teams link Or dial: 1.515.817.6093 Conference ID: 529 274 993	March 1, 2024 10 a.m.
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UTILITIES DIVISION[199]

Forms, rescind ch 2 IAB 1/24/24 ARC 7535C	Board Hearing Room 1375 E. Court Ave. Des Moines, Iowa	February 20, 2024 9 to 11 a.m. February 29, 2024 9 to 11 a.m.
Rulemaking, ch 3 IAB 2/7/24 ARC 7577C	Board Hearing Room 1375 E. Court Ave. Des Moines, Iowa	February 27, 2024 10 to 11 a.m. March 5, 2024 10 to 11 a.m.
Declaratory orders, ch 4 IAB 2/7/24 ARC 7578C	Board Hearing Room 1375 E. Court Ave. Des Moines, Iowa	February 27, 2024 9 to 10 a.m. March 5, 2024 9 to 10 a.m.
Civil penalties, rescind ch 8 IAB 1/24/24 ARC 7536C	Board Hearing Room 1375 E. Court Ave. Des Moines, Iowa	February 20, 2024 9 to 11 a.m.
Annual report, ch 23 IAB 2/7/24 ARC 7579C	Board Hearing Room 1375 E. Court Ave. Des Moines, Iowa	February 27, 2024 11 a.m. to 12 noon March 5, 2024 11 a.m. to 12 noon
Regulation of electric cooperatives and municipal electric utilities under Iowa Code chapter 476, ch 27 IAB 2/7/24 ARC 7580C	Board Hearing Room 1375 E. Court Ave. Des Moines, Iowa	February 27, 2024 2 to 3 p.m. March 5, 2024 2 to 3 p.m.
Access to affiliate records, requirements for annual filings, and service and asset transfer costing standards, ch 31 IAB 2/7/24 ARC 7581C	Board Hearing Room 1375 E. Court Ave. Des Moines, Iowa	February 27, 2024 1 to 2 p.m. March 5, 2024 1 to 2 p.m.
Reorganization, ch 32 IAB 1/24/24 Regulatory Analysis	Board Hearing Room 1375 E. Court Ave. Des Moines, Iowa	February 14, 2024 10 a.m. (If requested)

VETERINARY MEDICINE BOARD[811]

Description of organization and definitions, ch 1; petitions for rulemaking, ch 2; declaratory orders, ch 3; agency procedure for rulemaking, ch 4; public records and fair information practices, ch 5; application for veterinary licensure, ch 6; veterinary examinations, ch 7; auxiliary personnel, ch 8; Temporary veterinary permits, ch 9; discipline, ch 10; continuing education, ch 11; standards of practice, ch 12; collection procedures, ch 13; waiver of rules, ch 14; contested cases, adopt ch 16 IAB 1/24/24 ARCs 7556C to 7570C	Second Floor Boardroom Wallace State Office Bldg. Des Moines, Iowa	February 29, 2024 10 a.m. March 8, 2024 10 a.m.
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**WORKFORCE DEVELOPMENT BOARD AND
WORKFORCE DEVELOPMENT CENTER ADMINISTRATION DIVISION[877]**

Adult education and literacy programs, ch 32 IAB 2/7/24 ARC 7574C	Capitol View Room 1000 E. Grand Ave. Des Moines, Iowa	February 27, 2024 9 to 10 a.m. February 27, 2024 1 p.m.
Iowa vocational rehabilitation services, ch 33 IAB 2/7/24 ARC 7575C	Capitol View Room 1000 E. Grand Ave. Des Moines, Iowa	February 27, 2024 10 to 11 a.m. February 27, 2024 1 p.m.

The following list will be updated as changes occur.

“Umbrella” agencies and elected officials are set out below at the left-hand margin in CAPITAL letters.

Divisions (boards, commissions, etc.) are indented and set out in lowercase type under their statutory “umbrellas.”

Other autonomous agencies are included alphabetically in SMALL CAPITALS at the left-hand margin.

ADMINISTRATIVE SERVICES DEPARTMENT[11]
AGING, DEPARTMENT ON[17]
AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]
 Soil Conservation and Water Quality Division[27]
ATTORNEY GENERAL[61]
AUDITOR OF STATE[81]
BEEF CATTLE PRODUCERS ASSOCIATION, IOWA[101]
BLIND, DEPARTMENT FOR THE[111]
CAPITAL INVESTMENT BOARD, IOWA[123]
CHIEF INFORMATION OFFICER, OFFICE OF THE[129]
OMBUDSMAN[141]
CIVIL RIGHTS COMMISSION[161]
COMMERCE DEPARTMENT[181]
 Alcoholic Beverages Division[185]
 Banking Division[187]
 Credit Union Division[189]
 Insurance Division[191]
 Professional Licensing and Regulation Bureau[193]
 Accountancy Examining Board[193A]
 Architectural Examining Board[193B]
 Engineering and Land Surveying Examining Board[193C]
 Landscape Architectural Examining Board[193D]
 Real Estate Commission[193E]
 Real Estate Appraiser Examining Board[193F]
 Interior Design Examining Board[193G]
 Utilities Division[199]
CORRECTIONS DEPARTMENT[201]
 Parole Board[205]
CULTURAL AFFAIRS DEPARTMENT[221]
 Arts Division[222]
 Historical Division[223]
ECONOMIC DEVELOPMENT AUTHORITY[261]
 City Development Board[263]
IOWA FINANCE AUTHORITY[265]
EDUCATION DEPARTMENT[281]
 Educational Examiners Board[282]
 College Student Aid Commission[283]
 Higher Education Loan Authority[284]
 Libraries and Information Services Division[286]
 Public Broadcasting Division[288]
 School Budget Review Committee[289]
EGG COUNCIL, IOWA[301]
ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA[351]
EXECUTIVE COUNCIL[361]
FAIR BOARD[371]
HUMAN RIGHTS DEPARTMENT[421]
HUMAN SERVICES DEPARTMENT[441]
INSPECTIONS AND APPEALS DEPARTMENT[481]
 Employment Appeal Board[486]
 Child Advocacy Board[489]
 Racing and Gaming Commission[491]
 State Public Defender[493]
IOWA PUBLIC EMPLOYEES' RETIREMENT SYSTEM[495]
IOWA PUBLIC INFORMATION BOARD[497]
LAW ENFORCEMENT ACADEMY[501]

LIVESTOCK HEALTH ADVISORY COUNCIL[521]
LOTTERY AUTHORITY, IOWA[531]
MANAGEMENT DEPARTMENT[541]
 Appeal Board, State[543]
 City Finance Committee[545]
 County Finance Committee[547]
NATURAL RESOURCES DEPARTMENT[561]
 Environmental Protection Commission[567]
 Natural Resource Commission[571]
 Preserves, State Advisory Board for[575]
PETROLEUM UNDERGROUND STORAGE TANK FUND BOARD, IOWA COMPREHENSIVE[591]
PROPANE EDUCATION AND RESEARCH COUNCIL, IOWA[599]
PUBLIC DEFENSE DEPARTMENT[601]
HOMELAND SECURITY AND EMERGENCY MANAGEMENT DEPARTMENT[605]
PUBLIC EMPLOYMENT RELATIONS BOARD[621]
PUBLIC HEALTH DEPARTMENT[641]
 Professional Licensure Division[645]
 Dental Board[650]
 Medicine Board[653]
 Nursing Board[655]
 Pharmacy Board[657]
PUBLIC SAFETY DEPARTMENT[661]
RECORDS COMMISSION[671]
REGENTS BOARD[681]
 Archaeologist[685]
REVENUE DEPARTMENT[701]
SECRETARY OF STATE[721]
SHEEP AND WOOL PROMOTION BOARD, IOWA[741]
TELECOMMUNICATIONS AND TECHNOLOGY COMMISSION, IOWA[751]
TRANSPORTATION DEPARTMENT[761]
TREASURER OF STATE[781]
TURKEY MARKETING COUNCIL, IOWA[787]
VETERANS AFFAIRS, IOWA DEPARTMENT OF[801]
VETERINARY MEDICINE BOARD[811]
VOLUNTEER SERVICE, IOWA COMMISSION ON[817]
VOTER REGISTRATION COMMISSION[821]
WORKFORCE DEVELOPMENT DEPARTMENT[871]
 Labor Services Division[875]
 Workers' Compensation Division[876]
 Workforce Development Board and Workforce Development Center Administration Division[877]

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 261—Chapters 59, 60, 68, 172 to 175, 187 to 189
“High Quality Jobs Program and Related Incentive Programs”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 15.106A, 15.327, 15.330, and 15.335C
State or federal law(s) implemented by the rulemaking: Iowa Code chapter 15, subchapter II, part 13, and Iowa Code section 15A.1

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

February 27, 2024
1 to 1:15 p.m.

1963 Bell Avenue
Des Moines, Iowa

Public Comment

Any interested person may submit written comments concerning this Regulatory Analysis. Written comments in response to this Regulatory Analysis must be received by the Economic Development Authority (IEDA) no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Lisa Connell
Iowa Economic Development Authority
1963 Bell Avenue, Suite 200
Des Moines, Iowa 50315
Email: lisa.connell@iowaeda.com

Purpose and Summary

Pursuant to Executive Order 10 (January 10, 2023), IEDA proposes to rescind Chapter 68 relating to the High Quality Jobs Program and adopt a new chapter in lieu thereof. The new chapter eliminates language that is duplicative of statutory language and Iowa Department of Revenue (IDR) rules. Additionally, the following changes to the chapter are proposed:

- Rule 261—68.1(15) would be updated to remove references to 261—Chapters 172, 173, 174, 175, 187, 188, and 189, which are proposed for rescission. Language included in complex definitions will be removed from this rule and instead included in relevant rules later in the chapter.
- Rule 261—68.2(15) would be updated to describe how local match requirements would be approved by the IEDA Board (Board), to clarify policies on acquisition of a business as a going concern and project initiation, and to add portions from rule 261—68.3(15) that relate to eligibility.
- Rule 261—68.3(15) would be updated to remove language regarding project initiation that is proposed to be added to rule 261—68.2(15) and add language from 261—Chapters 174, 175, and 187 relating to the application and review process.
- A new rule 261—68.6(15) would address contracting and compliance policies currently addressed in 261—Chapters 172, 187, 188, and 189. The new rule would streamline the current process to extend the deadline for program recipients to execute an agreement with IEDA. A new requirement to maintain a base employment level is added for businesses receiving incentives based on retained jobs only.
- A new rule 261—68.7(15) would address job counting policies and procedures currently addressed in the definitions in rule 261—68.1(15) and 261—Chapter 188. The new rule will also address considerations relating to remote workers.

- A new rule 261—68.8(15) would describe the procedure by which the authority establishes wage requirements for the program, which is currently addressed in 261—Chapter 174.
- A new rule 261—68.9(15) would describe the procedure by which the authority establishes investment requirements for the program, which is currently addressed in 261—Chapter 174.

IEDA further proposes to permanently rescind the following obsolete chapters:

- Chapter 59, which describes the policies and procedures applicable to the enterprise zone program. The program was repealed by 2014 Iowa Acts, House File 2448. Only one award contract remains open and closeout procedures are expected to conclude in the coming months, prior to the effective date of rescission of the rules.
- Chapter 60, which describes the eligibility criteria, application, and review process for the entrepreneurial ventures assistance program. The authority ceased accepting applications for the program effective July 1, 2009, pursuant to 2009 Iowa Acts, Senate File 344.
- Chapters 172, 173, 174, 175, 187, 188, and 189, which describe various policies and procedures applicable to multiple IEDA programs, including the High Quality Jobs Program and several repealed programs. The portions of these chapters that are relevant to the High Quality Jobs Program are proposed to be incorporated into Chapter 68.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

- Classes of persons that will bear the costs of the proposed rulemaking:

The proposed rulemaking does not impose any meaningful additional costs on applicants for or recipients of the incentives available through the High Quality Jobs Program compared to the existing Chapter 68. Rescission of 261—Chapters 59, 60, 172, 173, 174, 175, 187, 188, and 189 does not impose any costs.

- Classes of persons that will benefit from the proposed rulemaking:

Businesses that apply for and are approved for the High Quality Jobs Program will benefit from clarity and streamlining of the rules.

2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:

- Quantitative description of impact:

Businesses interested in applying for the program may require staff time to complete an application to receive an award. Awarded businesses may similarly incur costs to comply with reporting and monitoring requirements of the program. Some businesses may choose to rely on an external service provider to complete these tasks, such as a consultant or accountant. The amount of the costs will vary, depending on the compensation of staff or service providers involved. The application and required reports require minimal time to complete. Compliance costs fees are imposed pursuant to Iowa Code section 15.330(12).

- Qualitative description of impact:

Streamlining all rules applicable to the High Quality Jobs Program into a single chapter will benefit those seeking information about the program. Rescinding chapters for programs that have been discontinued will provide clarity about the responsibilities of IEDA.

3. Costs to the State:

- Implementation and enforcement costs borne by the agency or any other agency:

IEDA staff time is required to review and prepare applications for approval by the Board, draft and execute program contracts, issue tax credit certificates, disburse loan/forgivable loan funds, review reports, and communicate with program applicants and recipients. The IDR also incurs staff time to process tax credit claims.

- Anticipated effect on state revenues:

The chapter has no anticipated fiscal impact. Iowa Code section 15.119(2)“a”(2) limits the aggregate amount of tax credits that the authority may approve to \$68 million per fiscal year.

4. Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:

The current rule structure relating to the High Quality Jobs Program can be difficult for program participants and IEDA staff to navigate because the applicable rules are found in multiple chapters. The new chapter does not impose any meaningful additional costs on applicants for or recipients of the program compared to the current chapter. The only businesses that bear the costs of the rules are those that will potentially benefit from the program.

5. Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:

IEDA has not identified less costly methods or less intrusive methods of administering the High Quality Jobs Program.

6. Alternative methods considered by the agency:

- Description of any alternative methods that were seriously considered by the agency: IEDA did not consider any other methods.
- Reasons why alternative methods were rejected in favor of the proposed rulemaking: IEDA did not consider any other methods.

Small Business Impact

If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.
- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.
- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.
- Establish performance standards to replace design or operational standards in the rulemaking for small business.
- Exempt small business from any or all requirements of the rulemaking.

If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?

The proposed rules do not have a substantial impact on small business. The application, contracting, and monitoring requirements related to the program are no more than necessary to administer the statutory requirements of the program. The rules do not establish design or operational standards.

Text of Proposed Rulemaking

ITEM 1. Rescind and reserve **261—Chapter 59**.

ITEM 2. Rescind and reserve **261—Chapter 60**.

ITEM 3. Rescind 261—Chapter 68 and adopt the following **new** chapter in lieu thereof:

CHAPTER 68 HIGH QUALITY JOBS PROGRAM (HQJP)

261—68.1(15) Definitions. For purposes of this chapter, unless the context otherwise requires: “*Authority*” means the same as defined in Iowa Code section 15.327(1).

“*Award date*” means the date the board approved an application for project completion assistance or tax incentives.

“*Base employment level*” means the same as defined in Iowa Code section 15.327(2).

“*Benefit*” means the same as defined in Iowa Code section 15.327(3).

“*Board*” means the same as defined in Iowa Code section 15.102(4).

“*Brownfield site*” means the same as defined in Iowa Code section 15.291(2).

“*Business*” means a sole proprietorship, partnership, corporation, or other business entity organized for profit under the laws of the state of Iowa or another state, under federal statutes, or under the laws of another country.

“*Community*” means the same as defined in Iowa Code section 15.327(6).

“*Created job*” means the same as defined in Iowa Code section 15.327(8).

“*Eligible business*” means a business that meets the conditions of Iowa Code section 15.329.

“*Fiscal impact ratio*” means the same as defined in Iowa Code section 15.327(11).

“*Forgivable loan*” is a loan for which repayment is eliminated in part or entirely if the borrower satisfies specified conditions.

“*Full-time equivalent position*” means the same as defined in Iowa Code section 15.327(12).

“*Grayfield site*” means the same as defined in Iowa Code section 15.291(4).

“*High quality jobs*” means created or retained jobs that meet the applicable wage requirements established in Iowa Code section 15.329(1)“c” or 15.335C.

“*Laborshed area*” means the geographic area surrounding an employment center from which the employment center draws its commuting workers as defined by the department of workforce development.

“*Laborshed wage*” means the same as defined in Iowa Code section 15.327(15).

“*Loan*” means funds provided that must be repaid with term, interest rate, and other conditions specified in an agreement entered into pursuant to Iowa Code section 15.330.

“*Maintenance period*” means the same as defined in Iowa Code section 15.327(17).

“*Maintenance period completion date*” means the same as defined in Iowa Code section 15.327(18).

“*Modernization project*” means a project that will result in increased skills and wages for current employees and that does not involve created or retained jobs.

“*Program*” means the same as defined in Iowa Code section 15.327(19).

“*Project*” means the same as defined in Iowa Code section 15.327(21).

“*Project completion assistance*” means the same as defined in Iowa Code section 15.327(22).

“*Project completion date*” means the same as defined in Iowa Code section 15.327(23).

“*Project completion period*” means the same as defined in Iowa Code section 15.327(24).

“*Qualifying wage threshold*” means the same as defined in Iowa Code section 15.327(26).

“*Retained job*” means the same as defined in Iowa Code section 15.327(27).

“*Retention-only project*” means a project that involves only retained jobs.

261—68.2(15) Eligibility requirements.

68.2(1) *Community approval and local match.* Community approval of the project by ordinance or resolution is required as specified in Iowa Code section 15.329(1)“a.” Local match may be required from the community or other relevant entity pursuant to criteria established by the board. The board will periodically approve such criteria to reflect meaningful types and amounts of local match that may be provided. The criteria established by the board may include but not be limited to when local match is required, entities that may provide local match, and acceptable amounts and forms of local match.

68.2(2) *Relocations and reductions in operations.* The authority will determine whether a business is ineligible due to a relocation or reduction in operations pursuant to Iowa Code section 15.329(1)“b.”

68.2(3) *Retail or service businesses.* For the purposes of determining whether a business is an ineligible retail business pursuant to Iowa Code section 15.329(1)“f,” “retail business” means any business engaged in the business of selling tangible personal property or taxable services at retail in this state. “Retail business” includes a business obligated to collect sales or use tax under Iowa Code chapter 423. “Retail business” includes any business engaged in selling tangible personal property or

taxable services online. A service business is not eligible for the program unless a significant proportion of its sales, as determined by the authority, are outside this state.

68.2(4) *Created and retained jobs.* The jobs created or retained by a business shall pay the applicable wages as established in Iowa Code section 15.329(1) “c” or 15.335C.

68.2(5) *Determination of sufficient benefits.* The business shall offer a sufficient package of benefits to each full-time equivalent position included in the business’s base employment level and to each full-time equivalent position at the project location until the maintenance period completion date. The benefits package provided shall meet the criteria established by the board. The board will periodically approve such criteria to reflect the most current benefits package typically offered by employers. The criteria established by the board may include but not be limited to premium percentages to be paid by the business, deductible amounts, and other such criteria as determined necessary to the evaluation of benefits offered by a business.

68.2(6) *Sufficient fiscal impact.* The business shall demonstrate a sufficient fiscal impact as described in Iowa Code section 15.329(1) “e.”

68.2(7) *Violations of law.* If the authority finds that a business has a record of violations of law, including but not limited to environmental and worker safety laws, over a period of time that tends to show a consistent pattern as described in Iowa Code section 15.329(2) “a,” the business shall not qualify for the program.

68.2(8) *Other factors.* The authority shall consider any applicable additional factors pursuant to Iowa Code section 15.329(3).

68.2(9) *Ineligible projects.*

a. If a project is creating or retaining jobs, but none are high quality jobs, then the project is not eligible for the program.

b. A project representing solely acquisition of a business as a going concern that does not include creation or retention of jobs and capital investment at the acquired business facility is not eligible for the program. A qualified project that occurs following acquisition of a business as a going concern may be eligible for the program.

c. The authority may determine that the applicant is ineligible to receive assistance until resolution of any outstanding issues identified by the board based on any of the following factors:

(1) Applicant’s past or current performance. If an applicant received a prior award from the authority, the authority and board will consider the applicant’s past or current performance under the prior award.

(2) Results of due diligence review. This review will include but is not limited to lien searches, reports of violations, lawsuits and other relevant information about the applicant.

68.2(10) *Project initiation.* A project shall not be initiated prior to the award date. The authority will accept applications only for projects proposed to begin after the anticipated award date.

a. Any one of the following may indicate that a project has been initiated:

(1) The start of construction of new or expanded buildings;

(2) The start of rehabilitation of existing buildings;

(3) The purchase or leasing of existing buildings; or

(4) The installation of new machinery and equipment or new computers to be used in the operation of the business’s project.

b. The following shall not indicate a project has been initiated:

(1) The purchase of land or signing an option to purchase land;

(2) Earthmoving or other site development activities not involving actual building construction, expansion or rehabilitation; or

(3) Acquisition of a business as a going concern.

c. Any costs incurred prior to the award date are not eligible qualifying investment expenses.

261—68.3(15) Application process and review.

68.3(1) *Application.* Businesses applying for the program shall utilize a standardized application developed by the authority. A signature from an official authorized to represent the affected local

community is required to indicate that the community supports the project. For a project with a qualifying investment of \$10 million or more, the application shall include an ordinance or resolution of the community's governing body approving the project.

68.3(2) *Applicability of wage requirements.* The qualifying wage threshold applicable to a project is the threshold in effect on the date the fully completed project application is received by the authority. If such an application is received but not acted upon by the board before the qualifying wage thresholds are updated, the thresholds in effect on the date the application was received will remain in effect for a period of three months if the thresholds are subsequently updated. The authority shall have sole discretion in determining whether an application is fully completed. Qualifying wage thresholds will be calculated and applied as described in rule 261—68.8(15).

68.3(3) *Job requirements.* The created job and retained job requirements applicable to a project, identified as described in rule 261—68.7(15), will be established at the time of application. Job requirements will be based on the base employment level and eligible business's job projections and will be utilized to determine the amount of tax incentives and assistance.

68.3(4) *Investment requirements.* The investment requirements applicable to a project, identified as described in rule 261—68.9(15), will be established at the time of application. Investment requirements are based on an eligible business's estimates of project costs and will be utilized to determine the amount of tax incentives and assistance.

68.3(5) *Negotiations.* Authority staff may negotiate with the applicant concerning dollar amounts, terms, collateral, conditions of award, or any other elements of the project. All forms of tax incentives and assistance available under the program are subject to negotiations. The authority shall consider all of the following factors in negotiating with the business:

a. Level of need. The following factors will determine the authority's assessment of need:

(1) Whether the business can raise only a portion of the debt and equity necessary to complete the project. The existence of a gap between the financing required and the financing on hand indicates that tax incentives or assistance may be needed to fill the gap.

(2) Whether the likely returns of the project are inadequate to motivate a company decision maker to proceed with the project even if sufficient debt or equity can be raised to finance the project. The existence of such a condition indicates that the project's risks may outweigh its rewards and that tax incentives or assistance may be needed to reduce the project's risks.

(3) Whether the business is deciding between an Iowa site and a site in another state for its project and the cost of completing the project at the out-of-state site is demonstrably lower. Such a condition indicates that tax incentives or assistance may be needed to equalize the cost differential between the two sites. The authority will attempt to quantify the cost differential between the sites.

b. Quality of the jobs. The authority shall place greater emphasis on projects involving created or retained jobs rated as higher quality jobs pursuant to the factors listed in Iowa Code section 15.329(3) "a."

c. Percentage of created jobs defined as high quality jobs. The authority will consider the number of high quality jobs to be created versus the total number of created jobs in determining what amount of tax incentives and assistance to offer the business.

d. Economic impact. In measuring the economic impact to this state, the authority shall place greater emphasis on projects that demonstrate the factors listed in Iowa Code section 15.329(3) "c."

68.3(6) *Board approval and notice.*

a. Authority staff will review applications to ensure program eligibility requirements are satisfied. Authority staff may request additional information from the business or may use other resources to obtain the needed information.

b. Complete and eligible applications will be forwarded to the board. Authority staff will generate a report that summarizes the project and provide a recommendation on the amount of tax incentives and assistance to be offered to the business. The board may offer an award in a lesser amount or that is structured in a manner different from that requested or recommended by authority staff. Meeting eligibility requirements does not guarantee that assistance will be offered or provided in the manner sought by the applicant.

c. The due diligence committee of the board established pursuant to 261—subrule 1.3(7) will review applications and make recommendations regarding the size and conditions of awards. The board may accept or reject recommendations from the due diligence committee.

d. If the board approves an award, an applicant will be notified in writing, including any conditions and terms of the approval.

261—68.4(15) Tax incentives. The authority may approve a business to receive any combination of applicable tax incentives allowed through the program pursuant to Iowa Code section 15.331A, 15.331C, 15.332, 15.333, 15.333A, or 15.335. An approved business shall not claim a tax incentive in excess of the amount specified in an agreement entered pursuant to Iowa Code section 15.330.

68.4(1) Sales and use tax refund or tax credit for racks, shelving, and conveyor equipment. An approved business that receives a refund of sales and use taxes attributable to racks, shelving, and conveyor equipment in one fiscal year shall not be considered in a succeeding fiscal year. No business shall receive more than \$500,000 in refunds pursuant to this subrule. The limitations in this subrule also apply to an approved business that receives tax credit up to the amount of sales and use taxes paid by a third-party developer and attributable to racks, shelving, and conveyor equipment pursuant to Iowa Code section 15.331C.

68.4(2) Value-added property tax exemption. If a community approves an exemption from taxation pursuant to Iowa Code section 15.332, the community shall provide the authority and the local assessor with a copy of the resolution adopted by the community's governing body that indicates the estimated value and duration of the authorized exemption.

68.4(3) Investment tax credit—treatment of rent. The annual base rent paid to a third-party developer by an approved business may be considered new investment for the purpose of an investment tax credit approved pursuant to Iowa Code section 15.333 or an insurance premium tax credit approved pursuant to Iowa Code section 15.333A. Annual base rent may be included as new investment for a period equal to the term of the lease agreement but not to exceed the maximum term specified in a contract entered into with the authority. Annual base rent shall be considered only when the project includes the construction of a new building or the major renovation of an existing building. The approved business shall enter into a lease agreement with the third-party developer for a minimum of five years. For the purposes of this subrule, “annual base rent” means the business's annual lease payment minus taxes, insurance and operating or maintenance expenses.

68.4(4) Maximum tax incentives available. Tax incentives awarded under this program are based upon the number of jobs created or retained that pay the applicable wages as established in Iowa Code section 15.329(1) “c” or 15.335C and the amount of qualifying investment. The amount of tax incentives is subject to negotiations based on the factors identified in subrule 68.3(4). The maximum possible award is based on the following schedule:

a. The business is required to maintain the base employment level, but no high quality jobs are created or retained and economic activity is furthered by the qualifying investment. For purposes of this paragraph, “economic activity” means a modernization project that will result in increased skills and wages for the current employees.

(1) Less than \$100,000 in qualifying investment. Investment tax credit or insurance premium tax credit of up to 1 percent.

(2) \$100,000 to \$499,999 in qualifying investment.

1. Investment tax credit or insurance premium tax credit of up to 1 percent.

2. Sales and use tax refund or third-party developer tax credit, or both, if applicable.

(3) \$500,000 or more in qualifying investment.

1. Investment tax credit or insurance premium tax credit of up to 1 percent.

2. Sales and use tax refund or third-party developer tax credit, or both, if applicable.

3. Research activities credit.

b. One to five high quality jobs are created or retained.

(1) Less than \$100,000 in qualifying investment. Investment tax credit or insurance premium tax credit of up to 2 percent.

- (2) \$100,000 to \$499,999 in qualifying investment.
 - 1. Investment tax credit or insurance premium tax credit of up to 2 percent.
 - 2. Sales and use tax refund or third-party developer tax credit, or both, if applicable.
- (3) \$500,000 or more in qualifying investment.
 - 1. Investment tax credit or insurance premium tax credit of up to 2 percent.
 - 2. Sales and use tax refund or third-party developer tax credit, or both, if applicable.
 - 3. Research activities credit.
- c. Six to ten high quality jobs are created or retained.
 - (1) Less than \$100,000 in qualifying investment. Investment tax credit or insurance premium tax credit of up to 3 percent.
 - (2) \$100,000 to \$499,999 in qualifying investment.
 - 1. Investment tax credit or insurance premium tax credit of up to 3 percent.
 - 2. Sales and use tax refund or third-party developer tax credit, or both, if applicable.
 - (3) \$500,000 or more in qualifying investment.
 - 1. Investment tax credit or insurance premium tax credit of up to 3 percent.
 - 2. Sales and use tax refund or third-party developer tax credit, or both, if applicable.
 - 3. Research activities credit.
- d. 11 to 15 high quality jobs are created or retained.
 - (1) Less than \$100,000 in qualifying investment. Investment tax credit or insurance premium tax credit of up to 4 percent.
 - (2) \$100,000 to \$499,999 in qualifying investment.
 - 1. Investment tax credit or insurance premium tax credit of up to 4 percent.
 - 2. Sales and use tax refund or third-party developer tax credit, or both, if applicable.
 - (3) \$500,000 or more in qualifying investment.
 - 1. Investment tax credit or insurance premium tax credit of up to 4 percent.
 - 2. Sales and use tax refund or third-party developer tax credit, or both, if applicable.
 - 3. Research activities credit.
- e. 16 to 30 high quality jobs are created or retained.
 - (1) Less than \$100,000 in qualifying investment. Investment tax credit or insurance premium tax credit of up to 5 percent.
 - (2) \$100,000 to \$499,999 in qualifying investment.
 - 1. Investment tax credit or insurance premium tax credit of up to 5 percent.
 - 2. Sales and use tax refund or third-party developer tax credit, or both, if applicable.
 - (3) \$500,000 or more in qualifying investment.
 - 1. Investment tax credit or insurance premium tax credit of up to 4 percent.
 - 2. Sales and use tax refund or third-party developer tax credit, or both, if applicable.
 - 3. Research activities credit.
- f. 31 to 40 high quality jobs are created or retained.
 - (1) \$10 million or more in qualifying investment.
 - 1. Investment tax credit or insurance premium tax credit of up to 6 percent.
 - 2. Sales and use tax refund or third-party developer tax credit, or both, if applicable.
 - 3. Research activities credit.
 - 4. Value-added property tax exemption.
 - (2) Reserved.
- g. 41 to 60 high quality jobs are created or retained.
 - (1) \$10 million or more in qualifying investment.
 - 1. Investment tax credit or insurance premium tax credit of up to 7 percent.
 - 2. Sales and use tax refund or third-party developer tax credit, or both, if applicable.
 - 3. Research activities credit.
 - 4. Value-added property tax exemption.
 - (2) Reserved.
- h. 61 to 80 high quality jobs are created or retained.

- (1) \$10 million or more in qualifying investment.
 - 1. Investment tax credit or insurance premium tax credit of up to 8 percent.
 - 2. Sales and use tax refund or third-party developer tax credit, or both, if applicable.
 - 3. Research activities credit.
 - 4. Value-added property tax exemption.
- (2) Reserved.
 - i.* 81 to 100 high quality jobs are created or retained.
 - (1) \$10 million or more in qualifying investment.
 - 1. Investment tax credit or insurance premium tax credit of up to 9 percent.
 - 2. Sales and use tax refund or third-party developer tax credit, or both, if applicable.
 - 3. Research activities credit.
 - 4. Value-added property tax exemption.
 - (2) Reserved.
 - j.* 101 or more high quality jobs are created or retained.
 - (1) \$10 million or more in qualifying investment.
 - 1. Investment tax credit or insurance premium tax credit of up to 10 percent.
 - 2. Sales and use tax refund or third-party developer tax credit, or both, if applicable.
 - 3. Research activities credit.
 - 4. Value-added property tax exemption.
 - (2) Reserved.

261—68.5(15) Project completion assistance.

68.5(1) Awards and negotiations. The authority may award project completion assistance, in the form of a loan or forgivable loan or combination of both, to a business that meets the eligibility requirements of the program. All award determinations are subject to the requirements of Iowa Code section 15.335B(3). The board, with the assistance of authority staff, will attempt to determine the amount of project completion assistance that will ensure successful completion of a project, and the board will make a good-faith effort to provide only the amount of incentives and assistance necessary to facilitate the project's successful completion. The amount, type, and terms of the assistance provided typically vary according to the needs of each project, and each award is subject to negotiation. The board and the authority will attempt to treat similarly situated applicants similarly; however, the amount, type, and terms of project completion assistance most appropriate for a given project are necessarily dependent on many factors, and awards of project completion assistance shall be entirely at the discretion of the board.

68.5(2) Factors affecting the amount, type, and terms of project completion assistance. When determining an award of project completion assistance, the board, with the assistance of authority staff, typically considers the following factors:

- a.* The fiscal impact ratio of the project.
- b.* Whether the amount of assistance to be awarded is appropriate to the number of jobs that will be created.
- c.* The availability of funding.
- d.* Whether other forms of assistance, including tax incentives, are available.
- e.* The project's level of need, including whether the local community and the private sector are also contributing to the success of the project.
- f.* The total amount of funds from other sources that can be leveraged.
- g.* The quality of the project.

261—68.6(15) Agreements and compliance.

68.6(1) Execution. Successful applicants will be required to execute an agreement with the authority within 180 days of the award date. The time limit for execution may be extended by the authority director for an additional 180 days for good cause shown. Upon expiration of the time limit, including any

extensions approved pursuant to this subrule, the board may approve additional extensions or rescind the award.

68.6(2) Requirements. An agreement shall meet all requirements of and be administered pursuant to Iowa Code sections 15.330 and 15.330A.

68.6(3) Jobs. An agreement will specify the number of jobs the business has pledged to create in addition to the base employment level and the number of retained jobs, if applicable. If the project is a modernization project or retention-only project, the business shall maintain the base employment level. Job obligations will be established and monitored pursuant to rule 261—68.7(15).

68.6(4) Investment. An agreement will describe the project and specify the investment the business proposes to make.

68.6(5) Project completion date. An agreement will specify the project completion date. The project completion date will be the date on which a program recipient has agreed to meet all the terms and obligations contained in an agreement with the authority, including but not limited to completing the project and creating or retaining jobs. The project completion period will be at least three years. The project completion date is calculated by the authority from the end of the month during which an award is made. For example, if an award is made on June 13, 2023, the three-year project completion date will be calculated from June 30, 2023. The project completion date for this award would be June 30, 2026.

68.6(6) Maintenance period completion date. An agreement will specify the maintenance period completion date. The maintenance period completion date will be used to establish the period during which the project, the created jobs, and the retained jobs must be maintained. The total contract length, including the maintenance period, will be at least five years.

68.6(7) Conditions to disbursement. An agreement will specify the conditions to disbursement of project completion assistance funds or issuance of a tax credit certificate, including but not limited to compliance with the requirements of Iowa Code section 15A.1(3) “b” regarding solid and hazardous waste.

68.6(8) Monitoring and reports. The authority shall ensure that program recipients comply with contracts entered pursuant to this rule. An agreement will specify the reports a program recipient must submit to the authority and due dates for such reports. Reports shall be provided in form and content acceptable to the authority.

a. Recipients shall report annually to the authority about the status of the funded project, including but not limited to employment, wages, benefits, project costs, capital investment, and compliance with the contract. The authority will use the data it collects in the authority’s annual report to the general assembly.

b. Recipients shall submit a report to the authority following the project completion date and the maintenance period completion date to verify compliance with the agreement. On-site or remote monitoring may be conducted following the project completion date as deemed appropriate by the authority. On-site or remote monitoring may be conducted following the maintenance period completion date as deemed appropriate by the authority.

68.6(9) Default. An agreement will specify events of default and the remedies available to the authority.

a. *Project completion assistance.* If the authority determines that a recipient is in default, the authority may seek recovery of all project completion assistance funds plus interest, assess penalties, negotiate alternative repayment schedules, suspend or discontinue collection efforts, and take other appropriate action as the board deems necessary. Negotiated settlements, write-offs or discontinuance of collection efforts are subject to approval by the board. If the authority or board refers defaulted contracts to outside counsel for collection, then the terms of the agreement between the authority and the outside counsel regarding scope of counsel’s authorization to accept settlements shall apply.

b. *Tax incentives.* If the authority determines that a recipient is in default, the authority may seek recovery of all state tax incentives by notifying the department of revenue of the event of default and the required repayment amount. The repayment amount is subject to applicable interest and penalties as determined by the department of revenue. The department of revenue will undertake collection efforts. If the business is an entity that has elected pass-through taxation status for income tax purposes, the

department of revenue may undertake collection efforts against members, individuals, or shareholders to whom the tax incentives were passed through. If the agreement provided for local tax incentives, the authority will notify the community that provided incentives.

c. Calculation of repayment due or reduction of incentives.

(1) Job shortfall. If a business does not meet its job requirements, the repayment amount or reduction of incentives shall be the same proportion as the amount of the job shortfall. For example, if the business creates 50 percent of the jobs required, the business shall repay 50 percent of the incentives received or incentives will be reduced by 50 percent.

(2) Capital investment shortfall. If a business does not meet the capital investment requirement, the repayment amount or reduction of incentives shall be the same proportion as the amount of the shortfall in required capital investment. For example, if the business meets 75 percent of the amount of required capital investment, the business shall repay 25 percent of the amount of the incentives received or incentives will be reduced by 25 percent.

(3) Job and capital investment shortfalls. If a business has a shortfall in both capital investment and job requirements, the repayment amount or reduction of incentives shall be the same proportion as the greater of the two shortfalls. For example, if a business creates 50 percent of the required jobs and meets 75 percent of the required capital investment, the business shall be required to repay 50 percent of the amount of the incentives received or incentives will be reduced by 50 percent.

(4) Benefits. Notwithstanding any other provision in this subrule, if a business fails to comply with the benefit requirements of the agreement, the business shall be required to repay all of the incentives received or incentives will be fully revoked.

(5) Minimum eligibility. Notwithstanding any other provision in this subrule, if a business fails to maintain eligibility for the program, the business shall repay all of the incentives received or incentives will be fully revoked.

68.6(10) Amendments. Agreement amendments must comply with Iowa Code chapter 15, subchapter II, part 13, and this chapter. Participating businesses may submit requests for amendments to authority staff.

a. Except as provided in paragraph 68.6(10) “*b.*,” requests for amendments must be approved by the due diligence committee established pursuant to 261—subrule 1.3(7) and the board.

b. Authority staff may approve nonsubstantive changes, including but not limited to the following:

- (1) Recipient name, address and similar changes.
- (2) Collateral changes that do not materially and substantially impact the authority’s security.
- (3) Line item budget changes that do not reduce overall total project costs.
- (4) Loan repayment amounts or due dates that do not extend the final due date of a loan.
- (5) Changes to tax credit amortization schedules.

261—68.7(15) Job counting.

68.7(1) Overview. The authority will count created and retained jobs using a base employment analysis comparing the base employment level to employment at another date. The business’s base employment level will be established at the time of application for the program. The number of jobs the business has pledged to create shall be in addition to the base employment level. Retained jobs may be included in the base employment level as established at the time of approval.

68.7(2) Base employment level.

a. Base employment level will include the number of full-time equivalent positions employed at the project location. If the project occurs at more than one physical location, the business’s base employment level will include the total number of full-time equivalent positions working at the identified locations. Base employment level may include the business’s full-time equivalent positions as identified by the authority who are employed in this state but are not employed at the project location.

b. If a business receives multiple awards to the same location, the base employment level will be calculated by using the payroll document from the oldest award that is open. Job obligations from each new award will be added to this base employment level.

c. The authority will collect payroll documents to calculate and verify base employment level used in each award. Payroll documents must include a name or employee identification number and the hourly rate of pay for all full-time equivalent positions.

d. If the base employment level includes retained jobs, the authority will require a business to verify that a job is at risk. Such verification may include the signed statement of an officer of the business, documentation that the business is actively exploring other sites for the project, or any other information the authority may reasonably require during the application review process to establish that a job is at risk.

68.7(3) Verification. At the project completion date, during the maintenance period, and following the maintenance period completion date, payroll documents will be used to calculate and verify compliance with job obligations. The person who submits the documents must, under penalty of perjury, verify that the documents are true and correct.

68.7(4) Full-time equivalent positions. Only a full-time equivalent position filled by an individual will be considered an employee of the business for the purpose of establishing the base employment level, retained jobs, or created jobs. The authority will not consider “job sharing” or any other means of aggregation or combination of hours worked by more than one natural person in counting jobs. The authority will verify that full-time equivalent positions constitute the employment of one person for:

a. Eight hours per day for a five-day, 40-hour workweek for 52 weeks per year, including paid holidays, vacations and other paid leave; or

b. The number of hours or days per week, including paid holidays, vacations and other paid leave, currently established by schedule, custom, or otherwise, as constituting a week of full-time work for the kind of service an individual performs for an employing unit, provided that the number of hours per week is at least 32 hours per week for 52 weeks per year, including paid holidays, vacations, and other paid leave.

If employees at the facility do not typically work 40 hours per week, documentation must be collected from the business outlining what the business considers a full-time workweek and how the business’s interpretation fits within the norms of its industry standards. This interpretation may or may not be accepted by the authority.

68.7(5) Contract employees. A business’s leased or contract employee may be included in the base employment level as a created job or as a retained job only if the following requirements are met:

a. The business receiving the tax incentives or project completion assistance has a legally binding contract with a third-party provider to provide the leased or contract employee.

b. The contract between the third-party provider and the business specifically requires the third-party provider to pay the wages and benefits at the levels required and for the time period required by the authority as conditions of the award to the business.

c. The contract between the third-party provider and the business specifically requires the third-party provider to submit payroll records to the authority, in form and content and as frequently as required by the authority, for purposes of verifying that the business’s job creation/retention and benefit requirements are being met.

d. The contract between the third-party provider and the business specifically authorizes the authority, or its authorized representatives, to access the third-party provider’s records related to the funded project.

e. The business receiving the tax incentives or project completion assistance agrees to be contractually liable to the authority for the performance or nonperformance of the third-party provider.

68.7(6) Remote employees. Employees with a reasonable connection to a project location who work remotely may be included in the base employment level as a created job or as a retained job as established by the authority at the time of application. To determine whether employees who work remotely should be included, the authority will consider a business’s policies on establishing remote work locations for employees, reporting structures, percentage of time worked at the project location, and the distance of employees’ remote work locations from the project location. Only employees who work remotely within a defined geographic area established by the authority will be included.

261—68.8(15) Authority procedure for establishing wage requirements. Created or retained jobs shall meet the qualifying wage threshold requirements as established pursuant to this rule and as indicated in an agreement entered pursuant to Iowa Code section 15.330. Jobs that do not meet the qualifying wage threshold requirements will not be counted toward a business's job creation or job retention obligations.

68.8(1) The authority will update the qualifying wage thresholds annually each fiscal year. The thresholds will take effect on September 1 of each fiscal year and remain in effect until August 31 of the following fiscal year. If the authority determines that the laborshed wage of a laborshed area would increase by more than one dollar per hour, the authority will limit the increase to the qualifying wage threshold for that laborshed area for that annual update to one dollar per hour.

68.8(2) The authority will calculate the laborshed wage as follows:

a. The most current covered wage and employment data available from the department of workforce development will be used.

b. The wage will be computed as a mean wage figure and represented in terms of an hourly wage rate.

c. Only the wages paid by employers for jobs performed within the first two zones of a laborshed area will be included.

d. The wages paid by employers in the following categories will be excluded from the calculation: government, retail trade, health care and social assistance, and accommodations and food service. The wages paid by employers in all other categories will be included in the calculation.

e. To the extent that a laborshed area includes zip codes from states other than Iowa, the wages paid by employers in those zip codes may be included if the department of workforce development has finalized a data-sharing agreement with the state in question and has received the necessary data.

f. Only those wages within two standard deviations from the mean wage will be included.

68.8(3) For the purposes of establishing wage requirements, the authority may designate a county that does not meet at least three of the criteria listed in Iowa Code section 15.335C(1) as an economically distressed area if a business located in the county experiences a layoff or a closure that has a significant impact on a community within the county.

a. Factors the authority will consider in determining whether a layoff or closure has a significant impact on a community within the county include but are not limited to total number of employees impacted; percentage of the applicable laborshed impacted; number of employees impacted as a percentage of population; current unemployment rate; and unemployment rate, including the employees affected by a layoff or closure.

b. A city or county shall request designation of a county as an economically distressed area, pursuant to this subrule, in writing. Such requests are subject to approval by the board. Requests may be made simultaneously with a project application that would qualify for a lower qualifying wage threshold requirement pursuant to this subrule if the request is approved.

68.8(4) The authority will update the list of economically distressed areas, including those designated pursuant to subrule 68.8(3), according to the same schedule as the qualifying wage thresholds are updated pursuant to subrule 68.8(1). Designations of economically distressed areas will apply in the same manner as wage thresholds are applied as described in subrule 68.3(2).

68.8(5) The authority may consult with the brownfield redevelopment advisory council established pursuant to Iowa Code section 15.294 in order to make a determination as to whether a project site is a brownfield site or a grayfield site for purposes of determining wage requirements. The determination as to whether a project site qualifies as a brownfield site or a grayfield site shall be within the discretion of the authority. In making such determinations, the authority will attempt to apply the same definition in substantially the same manner as similar definitions are applied by the brownfield redevelopment advisory council. A project that is not a brownfield site or a grayfield site will be presumed to be a greenfield site.

68.8(6) To determine the wages paid to the employees of an eligible business, the authority will include only monetary compensation, represented in terms of an hourly rate, paid by an employer to an employee for work or services provided, typically on a weekly or biweekly basis. The wage will not include nonregular forms of compensation, such as bonuses, unusual overtime pay, commissions, stock

options, pensions, retirement or death benefits, unemployment benefits, life or other insurance, or other fringe benefits.

261—68.9(15) Authority procedure for establishing investment requirements.

68.9(1) Capital investment. The authority reports on the amount of capital investment involved with funded projects. This rule lists the categories of expenditures that are included when the authority determines the amount of capital investment associated with a project.

68.9(2) Qualifying investment for tax credit programs. Minimum investment thresholds must be met for the project to be considered to receive an award. Not all expenditures count toward meeting the investment threshold. This rule identifies the categories of expenditures that can be included when the amount of investment is calculated for purposes of meeting program eligibility threshold requirements.

68.9(3) Investment qualifying for tax credits. Not all of the expenditures categories used to calculate the investment amount needed to meet program threshold requirements qualify for purposes of claiming the tax credits. The following table identifies the expenditures that do not qualify for tax credits.

	Capital Investment ¹	Qualifying Investment ²	Investment Qualifying for Tax Credits ³
Land acquisition	Yes	Yes	Yes
Site preparation	Yes	Yes	Yes
Building acquisition	Yes	Yes	Yes
Building construction	Yes	Yes	Yes
Building remodeling	Yes	Yes	Yes
Mfg. machinery & equip.	Yes	Yes	Yes
Other machinery & equip.	Yes	No	No
Racking, shelving, etc.	Yes	No	No
Computer hardware	Yes	Yes	Yes
Computer software	No	No	No
Furniture & fixtures	Yes	Yes	No
Working capital	No	No	No
Research & development	No	No	No
Job training	No	No	No
Capital or synthetic lease	No	Yes	Yes
Rail improvements ⁴	Yes	Yes	Yes
Public infrastructure ⁵	Yes	Yes	Yes

¹ “Capital investment” is used to calculate project investment on depreciable assets.

² “Qualifying investment” is used to determine eligibility for the program.

³ “Investment qualifying for tax credits” is used to calculate the maximum available tax credit award for a project.

⁴ “Rail improvements” includes hard construction costs for rail improvements. (These costs are included as part of construction or site preparation costs.)

⁵ “Public infrastructure” includes any publicly owned utility service, such as water, sewer, storm sewer or roadway construction and improvements. (These costs are included as part of construction costs.)

These rules are intended to implement Iowa Code chapter 15, subchapter II, part 13, and Iowa Code section 15A.1.

- ITEM 4. Rescind and reserve **261—Chapter 172.**
- ITEM 5. Rescind and reserve **261—Chapter 173.**
- ITEM 6. Rescind and reserve **261—Chapter 174.**
- ITEM 7. Rescind and reserve **261—Chapter 175.**
- ITEM 8. Rescind and reserve **261—Chapter 187.**
- ITEM 9. Rescind and reserve **261—Chapter 188.**
- ITEM 10. Rescind and reserve **261—Chapter 189.**

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 261—Chapter 404
“Iowa Energy Center Grant Program”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 15.120
State or federal law(s) implemented by the rulemaking: Iowa Code section 15.120

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

February 27, 2024
1:15 to 1:30 p.m.

1963 Bell Avenue
Des Moines, Iowa

Public Comment

Any interested person may submit written comments concerning this Regulatory Analysis. Written comments in response to this Regulatory Analysis must be received by the Economic Development Authority (IEDA) no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Lisa Connell
Iowa Economic Development Authority
1963 Bell Avenue, Suite 200
Des Moines, Iowa 50315
Email: lisa.connell@iowaeda.com

Purpose and Summary

Pursuant to Executive Order 10 (January 10, 2023), IEDA proposes to rescind Chapter 404 relating to the Iowa Energy Center grant program and adopt a new chapter in lieu thereof. The new chapter eliminates language that is duplicative of statutory language. Additionally, the following changes to the chapter are proposed:

- Rule 261—404.1(15) would be updated to eliminate unnecessary definitions and to be more concise.
- Rule 261—404.2(15) would be updated to be more concise. Additionally, paragraph 404.3(6)“d” would be updated so that private asset development is an eligible project. Such projects would be subject to limitations imposed by the rewritten paragraph (which excludes projects that entail improvements to existing buildings) and changes to other rules as described in this analysis.
 - Rule 261—404.3(15) would be updated for clarity.
 - Rule 261—404.4(15) would be updated to be more concise and to address equipment purchases.
 - Rule 261—404.5(15) would be updated to allow for use of application websites other than iowagrants.gov and to correct IEDA’s website. The review criteria would be updated to reflect evaluation of project sustainability in addition to dissemination of project results. The updated rule would allow the IEDA to require applicants to submit a preapplication but will no longer mandate that the IEDA utilize a preapplication process. The updated rule also would eliminate the necessity for the Iowa Energy Board (Board) to deny or defer applications that are not approved for awards.
- Rule 261—404.6(15) would be updated to be more concise and to increase the minimum dollar amount for disbursement requests from \$500 to \$1,000.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

- Classes of persons that will bear the costs of the proposed rulemaking:

The proposed rulemaking does not impose any meaningful additional costs on applicants for or recipients of grants available through the program compared to the existing Chapter 404.

- Classes of persons that will benefit from the proposed rulemaking:

Eligible entities that apply for and are approved for grants through the program will benefit from clarity of the rules and elimination of the preapplication requirement. The updated policies regarding private asset development will make it more likely that for-profit entities can benefit from the program.

2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:

- Quantitative description of impact:

Entities interested in applying for the program may require staff time to complete an application to receive a grant. Award recipients may similarly incur costs to comply with reporting and monitoring requirements of the program. Some applicants and recipients may choose to rely on an external service provider to complete these tasks, such as a consultant or accountant. The amount of the costs will vary, depending on the compensation of staff or service providers involved. The application and required reports require minimal time to complete.

- Qualitative description of impact:

The proposed rulemaking benefits persons interested in understanding the application process and requirements of the program.

3. Costs to the State:

- Implementation and enforcement costs borne by the agency or any other agency:

IEDA staff time is required to review and prepare applications for approval by the Board, draft and execute program contracts, disburse funds, review reports, and communicate with program applicants and recipients.

- Anticipated effect on state revenues:

The chapter has no anticipated fiscal impact. Funds were remitted to the Iowa Energy Center pursuant to Iowa Code section 476.10A until June 30, 2022.

4. Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:

The Iowa Energy Center is directed to administer a grant program by Iowa Code section 15.120. The documentation and procedures outlined in the chapter are no more than necessary to fulfill the obligation to administer grants. The proposed Chapter 404 does not impose any meaningful additional costs on applicants for or recipients of the program compared to the current chapter. Elimination of a preapplication process will likely reduce time required for entities to apply for the program. The only entities that bear the costs of the rules are those that will potentially benefit from the program.

5. Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:

IEDA has not identified less costly methods or less intrusive methods of administering the program.

6. Alternative methods considered by the agency:

- Description of any alternative methods that were seriously considered by the agency:

IEDA did not consider any other methods.

- Reasons why alternative methods were rejected in favor of the proposed rulemaking:

IEDA did not consider any other methods.

Small Business Impact

If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.
- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.
- Consolidate or simplify the rulemaking’s compliance or reporting requirements for small business.
- Establish performance standards to replace design or operational standards in the rulemaking for small business.
- Exempt small business from any or all requirements of the rulemaking.

If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?

The proposed rules do not have a substantial impact on small business. The application, contracting, and monitoring requirements relating to the program are no more than necessary to administer the program. The rules do not establish design or operational standards.

Text of Proposed Rulemaking

ITEM 1. Rescind 261—Chapter 404 and adopt the following new chapter in lieu thereof:

CHAPTER 404
IOWA ENERGY CENTER GRANT PROGRAM

261—404.1(15) Definitions.

“*Activity*” means one or more specific activities, projects or programs associated with Iowa energy center grant funds.

“*Authority*” means the economic development authority created in Iowa Code section 15.105.

“*Board*” means the governing board of the Iowa energy center established pursuant to Iowa Code section 15.120(2).

“*Co-investigator*” means a person who shares the responsibility of conducting grant activities with the principal investigator of a project.

“*Funding announcement*” means a publicly available document that contains the official information for a grant, including the application deadline, goals of the activity, eligibility, reporting, availability of funds and instructions on applying for the grant.

“*Iowa energy center*” or “*IEC*” means the Iowa energy center established by Iowa Code section 15.120.

“*Principal investigator*” means a person with the primary responsibility for conducting research.

“*Recipient*” means an organization that was awarded an Iowa energy center grant.

“*Subrecipient*” means an organization contracting with and receiving funds from a recipient to carry out IEC grant activities.

261—404.2(15) Eligibility.

404.2(1) Eligible applicants are identified in Iowa Code section 15.120(3)“*a.*”

404.2(2) Any eligible applicant may submit an application that includes one or more subrecipients. The board may limit the amount of an award that a subrecipient can receive.

404.2(3) Any eligible applicant may apply individually or jointly with another eligible applicant or other eligible applicants.

404.2(4) A principal investigator will be allowed to submit one application per funding announcement. An applicant who has submitted an application as the principal investigator for a

funding announcement may also be named as a co-investigator on one additional application submitted for the same funding announcement.

404.2(5) Requirements for IEC grant awards include but are not limited to the following:

- a.* Applicants shall demonstrate a benefit for ratepayers.
- b.* Applicants shall demonstrate that they are eligible candidates.
- c.* Applicants shall demonstrate the capacity for grants administration.
- d.* Applicants who have previously received Iowa energy center awards shall have demonstrated acceptable past performance, including the timely expenditure of funds.
- e.* Applications shall demonstrate the feasibility of completing the proposed activities with the funds requested.
- f.* Applications shall identify and describe any other sources of funding for the proposed activities.

404.2(6) The following types of projects are ineligible:

- a.* Relocation of a business.
- b.* Expansion of a business.
- c.* Funding for existing training programs.
- d.* Improvements to existing buildings, including energy efficiency or energy generation projects.
- e.* Pipeline, transmission line, and distribution line construction.
- f.* First generation ethanol.
- g.* Cellulosic ethanol.

261—404.3(15) Funding and award terms.

404.3(1) For each fiscal year that funds are available, the board will determine the amount of funds available to be awarded as grants in that fiscal year.

404.3(2) If any funds are allocated to a specific grant activity but are not awarded after a funding cycle, the board may reallocate those funds to a different grant activity.

404.3(3) The board may reallocate any recaptured funds to a different grant activity.

404.3(4) The maximum grant award is \$1 million per application. The minimum grant award is \$10,000 per application.

404.3(5) The initial duration of a grant agreement will be no longer than three years. However, a recipient may apply for a no-cost extension of an agreement. If the approval of a no-cost extension would cause the duration of the grant agreement to exceed five years, the no-cost extension will not be granted.

261—404.4(15) Project budget.

404.4(1) Only expenditures directly related to the implementation of the funded grant activity will be reimbursed. Vehicle and equipment purchases are eligible only when the purchase is an integral part of the funded grant activity and must be approved by the board at the time the award is made.

404.4(2) Ineligible expenses include but are not limited to:

- a.* Purchase or rental of buildings.
- b.* Office equipment.
- c.* Furniture and fixtures.
- d.* Intangible assets.
- e.* International travel.
- f.* Insurance.
- g.* Phone expenses.

404.4(3) Other budget requirements include the following:

- a.* Indirect costs shall not exceed more than 20 percent of a grant award.
- b.* IEC grant funds shall not be used as cost share to a federal grant award.
- c.* Vehicle and equipment purchases or other expenses relating to vehicles or equipment are not eligible if the purchase or expense supports the proposed grant activity but is not an integral part of the proposed grant activity. If a vehicle or equipment purchase is an integral part of a grant activity but a recipient fails to obtain board approval prior to the purchase, then the purchase is ineligible.

261—404.5(15) Application process and review.

404.5(1) The board will issue funding announcements for grant applications at least once per fiscal year, provided funds are available.

404.5(2) Application forms will be available at iowagrants.gov or other website as identified by the authority.

404.5(3) Applications will only be accepted during the established application period, as identified at www.iowaeda.com.

404.5(4) Review criteria may include but are not limited to:

a. The proposed project demonstrates a need for further research, development, training or pilot projects.

b. The proposed project provides a benefit to ratepayers.

c. The application has a well-developed budget that is relevant to the project and that provides documentation of planned project expenses.

d. The application describes a plan for the dissemination of project results or to sustain the project after the grant period ends.

404.5(5) The authority may require applicants to submit a preapplication to determine eligibility and competitiveness for the program.

404.5(6) The authority will review applications for completeness, eligibility, and technical and financial merit. The authority may engage an outside technical review panel to complete technical review of applications. The authority will prepare recommendations for the grant committee. The grant committee will review staff recommendations, score applications, and make recommendations to the board. Upon review of the recommendations of the grant committee, the board may approve grant awards.

261—404.6(15) Administration.

404.6(1) *Notice of approval and agreement execution.* The authority will notify successful applicants in writing of an approved request for funding. After notifying the recipient of an award, the authority will prepare an agreement that reflects the terms of the award. The recipient must execute and return the agreement to the authority within 60 days of the transmittal of the final agreement from the authority. Failure to do so may be cause for the board to terminate the award.

404.6(2) *Disbursement of funds.* Recipients shall submit requests for grant funds in the manner prescribed by the authority. Disbursements shall be made on a reimbursement basis. No advance disbursements shall be allowed. Disbursements may be withheld if applicable performance reports have not been received and approved. Individual requests for funds shall be made in an amount equal to or greater than \$1,000 per request, except for the final draw of funds.

404.6(3) *Record keeping and retention.* Recipients shall retain all financial records, supporting documents and all other records pertinent to the grant for five years after agreement closeout.

404.6(4) *Performance reports and reviews.* Recipients shall submit performance reports to the authority as described in the agreement executed pursuant to subrule 404.6(1). The authority may perform project reviews and site inspections as necessary to ensure program compliance.

404.6(5) *Agreement amendments.*

a. Any substantive change to a funded IEC project, including time extensions, budget revisions, and alterations to proposed activities, will be considered an agreement amendment. The recipient shall request an amendment in writing. No amendment shall be valid until approved by the board, except as provided in paragraph 404.6(7) “*b*” and confirmed in writing by the authority.

b. Staff approvals.

(1) Staff may approve one no-cost extension provided that the extension complies with subrule 404.3(5). Additional no-cost extensions shall be presented to the board for approval.

(2) Budget modifications. Any substantial modification of a project budget shall require board approval. Staff may approve budget modifications that are not substantial. For purposes of this

subparagraph, “substantial modification” means a budget modification of either \$10,000 or 10 percent of the total grant award, whichever is less.

404.6(6) *Agreement closeout.* Upon agreement expiration or project completion, the authority will initiate project closeout procedures.

404.6(7) *Compliance with state and local laws and rules.* Recipients shall comply with these rules, with any applicable provisions of the Iowa Code, and with any applicable local rules.

404.6(8) *Noncompliance.* At any time during a project, the IEC may, for cause, find that a recipient is not in compliance with the requirements of this program. At the board’s discretion, remedies may include penalties up to and including the return of grant funds to the IEC. Findings of noncompliance may include the use of Iowa energy center funds for activities not described in the application; failure to complete approved activities in a timely manner; failure to comply with any applicable state or federal rules, regulations, or laws; or the lack of a continuing capacity of the recipient to carry out the approved project in a timely manner.

These rules are intended to implement Iowa Code section 15.120.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 761—Chapters 529, 607, 800, 810, and 911
“Federal Regulation Changes”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 307.27(8), 321.188, 321.377, 324A.4(2) and 327G.24

State or federal law(s) implemented by the rulemaking: Iowa Code sections 307.26, 307.27, 321.187, 321.188, 321.207, 321.208, 321.208A, and 321.377; chapters 324A and 327B; and sections 327C.4, 327C.38, 327C.41, 327F.31 and 327G.24

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

March 1, 2024
10 a.m.

Via video/conference call: [Microsoft Teams link](#)
Or dial: 1.515.817.6093
Conference ID: 529 274 993

Public Comment

Any interested person may submit written comments concerning this Regulatory Analysis. Written comments in response to this Regulatory Analysis must be received by the Department no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Tracy George
Department of Transportation
DOT Rules Administrator, Government and Community Relations
800 Lincoln Way
Ames, Iowa 50010
Email: tracy.george@iowadot.us

Purpose and Summary

Chapters 529 and 607:

The Department proposes to update Chapters 529 and 607 to align with federal regulation changes occurring during federal fiscal year 2023, as required by Iowa Code section 307.27(8), which requires the Department to administer the registration of interstate authority of motor carriers pursuant to federal regulations contained in 49 Code of Federal Regulations (CFR) Parts 365 to 368 and 370 to 379, and Iowa Code section 321.188, which requires the Department to adopt rules to administer commercial driver’s licenses (CDL) in compliance with certain portions of 49 CFR Part 383.

Proposed amendments to the federal regulations are published in the Federal Register (FR) to allow a period for public comment, and after adoption, the final regulations are published in the FR. To ensure the consistency required by statute, the Department adopts the specified parts of 49 CFR as adopted by the United States Department of Transportation (U.S. DOT).

The following paragraphs provide a specific description of the amendments to the Federal Motor Carrier Safety Regulations (FMCSRs) concerning Chapters 529 and 607:

1. The proposed amendment to Chapter 529 adopts the current CFR dated October 1, 2023, for 49 CFR Parts 365 to 368 and 370 to 379. The following amendments to the FMCSR impacting Chapter 529 have become final and effective since the 2022 edition of the CFR:

a. Part 365 (FR Vol. 87, No. 219, Pages 68367-68381, 11-15-22). This interpretive rule added appendices to the FMCSRs to explain existing statutes and regulations the Federal Motor Carrier

Safety Administration (FMCSA) administers related to the applicability of the FMCSRs, including the financial responsibility regulations, to motor carriers of passengers operating in interstate commerce, including limitations on such applicability based on characteristics of the vehicle operated or the scope of operations conducted; and the applicability of commercial operating authority registration based on the FMCSA's jurisdiction over motor carriers of passengers, regardless of vehicle characteristics, when operating for-hire in interstate commerce. Under certain conditions, motor carriers performing intrastate movements of passengers may still be operating in interstate commerce and, unless otherwise exempt, are subject to applicable FMCSA statutory and regulatory requirements. Effective date: November 15, 2022.

b. Part 365 (FR Vol. 87, No. 227, Page 72898, 11-28-22). This notice corrected errors in the docket number, address section, and supplementary information section contained in the interpretive rule issued on November 15, 2022. Effective date: November 28, 2022.

c. Part 367 (FR Vol. 88, No. 119, Pages 40719-40724, 6-22-23). FMCSA amended the regulations for the annual registration fees states collect from motor carriers, motor private carriers of property, brokers, freight forwarders, and leasing companies for the Unified Carrier Registration (UCR) Plan and Agreement for the 2024 registration year and subsequent registration years. The fees for the 2024 registration year are approximately 9 percent less than the fees for the 2023 registration year, with varying reductions between \$4 and \$3,453 per entity, depending on the applicable fee bracket. Effective date: July 24, 2023.

d. Part 371 (FR Vol. 88, No. 116, Pages 39368-39373, 6-16-23). This notice contained FMCSA's final guidance, in response to a mandate in the Infrastructure Investment and Jobs Act to inform the public and regulated entities about FMCSA's interpretation of the definitions of "broker" and "bona fide agents" as they relate to all brokers of transportation by motor vehicle. Effective date: June 16, 2023.

2. The proposed amendment to Chapter 607 adopts the current CFR dated October 1, 2023, for 49 CFR Part 380 and certain portions of 49 CFR Part 383. There were no amendments to the FMCSRs impacting Chapter 607 since the 2022 edition of the FMCSR was adopted by the Department.

3. The proposed amendment to Chapter 607 also adds the adoption of 49 CFR Part 383, Subpart F (Vehicle groups and endorsements), and 49 CFR Part 384, Subpart B (Minimum standards for substantial compliance by states). The Department has determined that, in order to comply with date certain requirements in Iowa Code chapter 17A as amended by 2023 Iowa Acts, House File 688, it is preferable to adopt the subparts rather than add a date certain to the numerous references to the subparts in Chapter 607.

a. 49 CFR Part 383, Subpart F. Subpart F concerns vehicle groups and endorsements and Iowa Code sections 383.91, 383.93 and 383.95. In summary, Subpart F does the following:

i. Adopts vehicle group descriptions for combination vehicles (group A), heavy straight vehicles (group B), and small vehicles (group C) and provides illustrations and examples of such vehicles.

ii. Sets standards for taking commercial driving skills tests in representative vehicles, according to the type of vehicle the applicant wishes to drive and the tests the applicant has already taken for prior licensing.

iii. Establishes descriptions and testing requirements for vehicle endorsements and restrictions on a commercial learner's permit (CLP) or CDL.

b. 49 CFR Part 384, Subpart B. Subpart B concerns CDL testing and issuance standards that state driver's license agencies must adhere to. The Department already is in substantial compliance with this subpart and is intending to adopt this subpart as part of a separate rulemaking (Notice **ARC 7491C**, 1/10/24) due to 2023 legislation that impacts Chapter 607. However, as those amendments have not yet been adopted, they are included in this rulemaking in the event of overlapping rulemaking processes.

Chapters 800 and 810:

The Department proposes to update Chapters 800 and 810 to align with federal regulation changes occurring during federal fiscal year 2023. Iowa Code section 327G.24 allows the Department or roadway jurisdiction having authority over the roadway to remove tracks from a roadway crossing pursuant to federal regulations adopted by the Department. The proposed amendments to these two chapters adopt

the October 1, 2023, CFR for 49 CFR Part 213, 49 CFR Part 1152 and 49 CFR Part 1241 and adopt a date certain to requirements within 49 U.S.C. Section 20106.

There have been no changes since the last update to 49 CFR Part 1152 or 49 CFR Part 1241 for Chapter 800.

The following paragraphs provide a specific description of the amendments to 49 CFR Part 213 for Chapter 810:

Part 213 (FR Vol. 88, No. 4, Pages 1114-1132, 1-6-23)

This final rule provides the statutorily prescribed 2023 adjustment to civil penalty amounts that may be imposed for violations for certain U.S. DOT regulations. Effective date: January 6, 2023.

Part 213 (FR Vol. 87, No. 54, Pages 15839-15873, 3-21-22)

This final rule provides the statutorily prescribed 2022 adjustment to civil penalty amounts that may be imposed for violations for certain U.S. DOT regulations. In addition, this rule notes new U.S. DOT civil penalties. Effective date: March 21, 2022.

Chapter 911:

The Department proposes to update Chapter 911 to align with federal regulation changes occurring during federal fiscal year 2023. The proposed amendment to Chapter 911 adopts the October 1, 2023, CFR for 49 CFR Part 38, 49 CFR Part 571, and 49 CFR Part 655 to ensure the rule contains the most up-to-date federal requirements for the Americans with Disabilities Act, proper construction of buses providing school transportation, and drug and alcohol testing for school bus and public transit operators. The CFR changes found since the last update of this chapter were in 49 CFR Part 655 that now allow for oral fluids to be used for drug testing. 49 CFR Section 655.53 adds “oral fluid collector” and 49 CFR Section 655.71 explicitly adds “oral fluid specimen” as an alternate to urine specimens. The changes to 49 CFR Part 655 were effective May 2, 2023. There were no pertinent changes to 49 CFR Part 38 or 49 CFR Part 571 affecting this chapter.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

- Classes of persons that will bear the costs of the proposed rulemaking:

The proposed amendments to Chapters 511, 607, 800 and 810 do not create additional costs for any classes of persons. The adoption of the applicable federal regulations does not impose any requirements on commercial motor carriers, commercial drivers or railroad corporations beyond the requirements already contained in the applicable federal regulations. The purpose of adoption of the federal regulations is to conform with the Iowa Code requiring such adoption and to ensure the Department’s compliance with these federal regulations.

In reference to the proposed amendment within Chapter 911, the costs for the oral fluid specimen drug testing will be borne by Iowa’s public transit agencies, not a particular class of person. It is noted, however, that the oral fluid specimen drug testing method would be in place of a urine specimen test; therefore, the cost difference should be minimal.

- Classes of persons that will benefit from the proposed rulemaking:

Iowa motor carriers, commercial drivers, law enforcement, and employers of commercial drivers will benefit from the proposed amendments to Chapters 511 and 607 because adoption of the federal regulations ensures consistency and compliance with FMCSA standards. Compliance ensures that the Department will remain authorized to issue CDLs and remain in receipt of federal highway funding that is contingent upon such compliance.

The State, Department, and railroad corporations will not benefit from the proposed rule amendments within Chapters 800 and 810 because adoption of the federal regulations ensures consistency and compliance with the federal regulations.

With respect to the proposed amendment to Chapter 911, those safety-sensitive employees of Iowa’s public transit agencies subject to preemployment, random, and post-accident drug testing will benefit from the option of oral fluid drug testing since it will be a less invasive, more convenient test.

2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:

- Quantitative description of impact:

Within Chapter 529, there is one quantitative impact to motor carriers and other entities that are registered under the UCR Plan and Agreement, due to the FR changes described in 1(c) of the purpose and summary section of this Regulatory Analysis. The effect is to reduce the annual registration fee that motor carriers, motor private carriers of property, brokers, freight forwarders, and leasing companies are currently required to pay under the UCR. As noted in the FR, the reduction will be approximately 9 percent, ranging from \$4 to \$3,453 per entity, depending on the number of vehicles owned and/or operated by the affected entities.

There are no additional quantitative impacts to Chapter 529 or 607.

There are no additional quantitative impacts to Chapter 800 or 810.

The oral fluid testing included in the proposed amendment to Chapter 911 is noted in the FR as costing less than the traditional urine specimen testing, “an oral fluid test can cost between \$10 to \$20 less than a urine test (e.g., about \$50 for a typical urine testing process, vs. about \$35 for an oral fluid testing process, with the largest part of the difference being attributable to the collection process).” There may be some other small cost increases from using oral fluids, such as the cost of the collection kits, which can expire, at approximately \$4 each, whereas the urine collection test kits do not expire.

Additional quantitative benefits are also listed in the FR: eliminating the costs of shy bladder evaluations and the thwarting of cheating.

- Qualitative description of impact:

There are no additional qualitative impacts of this proposed rulemaking concerning Chapter 529 or 607 other than the benefits described under the answer to Question 1.

There are no additional qualitative impacts of this proposed rulemaking concerning Chapter 800 or 810.

For Chapter 911, qualitative benefits of oral fluid testing are noted in the FR Notice: alleviating the burden on individuals who cannot produce a sufficient urine specimen due to a psychological and/or physical medical condition and opening transportation safety-sensitive employment possibilities to many who have disabilities rendering them unable to produce an adequate urine specimen.

3. Costs to the State:

- Implementation and enforcement costs borne by the agency or any other agency:

There are no costs to the State due to implementation or enforcement of Chapters 529, 607, 800, 810 and 911. The Department is already in substantial compliance with the applicable federal regulations.

As noted in the quantitative costs question above, Iowa’s public transit agencies may see a small increase in drug testing costs due to the oral fluid specimen kits, but that cost is expected to be minimal and possibly offset by the lower expected overall cost of oral fluid collection.

- Anticipated effect on state revenues:

The proposed rulemaking that affects Chapters 529, 607, 800, 810 and 911 has no anticipated effect on state revenues.

Regarding the proposed amendment within Chapter 529 to 1(c) described in the purpose and summary section of this Regulatory Analysis, there will be no impact to Iowa from the reduction of UCR fees. This is because participating UCR states, such as Iowa, do not receive any fees or revenue directly from registering entities and instead receive a set amount of UCR revenue entitlements for each fiscal year as adopted by federal rulemaking. As noted in the FR, “no changes in the revenue allocations to the participating States were recommended by the UCR Plan Board or authorized by this rule.” In other words, registration fees paid by motor carriers are decreasing, but states will receive the same amount of revenue allocations.

4. Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:

There is no cost to the State, the Department, or the public for the proposed amendments concerning Chapters 529 and 607. The cost of inaction would be to have administrative rules that are not reflective of the most current version of the FMCSR, which would result in confusion and inconsistency from Iowa motor carriers, commercial drivers, and law enforcement and department employees responsible for administering these regulations.

There is no benefit to inaction. The benefit of the proposed amendments to Chapters 529 and 607 is compliance with and consistency between Iowa administrative rules and the FMCSR.

There is no cost to the State, the Department, or the public for the proposed amendments concerning Chapters 800 and 810. Updating the date certain within specific federal regulations and federal law creates consistency and eliminates confusion. There is no benefit to inaction.

There are no costs to the State for updating the CFR sections included in Chapter 911. The costs to Iowa's public transit agencies will be minimal for the oral fluid testing if the transit agency chooses to utilize this testing method in place of urine specimens for drug testing. The transit agencies may benefit from more eligible applicants for safety-sensitive positions due to offering oral fluid testing. Inaction in incorporating the most up-to-date CFRs could jeopardize federal transit funding to the State since adherence with federal rules and regulations is required to receive federal dollars.

5. Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:

Since the proposed amendments to Chapters 529, 607, 800, 810 and 911 do not impose any requirements beyond those contained in underlying federal regulations, no less costly or less intrusive methods exist to achieve this purpose.

6. Alternative methods considered by the agency:

- Description of any alternative methods that were seriously considered by the agency:

The Department did not consider alternative methods for the proposed amendments in this rulemaking.

- Reasons why alternative methods were rejected in favor of the proposed rulemaking:

Adopting and amending the date certain for the affected parts of the CFR are required under Iowa Code and are consistent with applicable federal motor carrier safety regulations, federal railroad regulations and federal transit regulations.

Small Business Impact

If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.
- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.
- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.
- Establish performance standards to replace design or operational standards in the rulemaking for small business.
- Exempt small business from any or all requirements of the rulemaking.

If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?

The proposed amendments to Chapters 529 and 607 have no impact to small businesses other than the benefits described in the quantitative impact section of this Regulatory Analysis due to the reduction in annual fees under the UCR Plan and Agreement.

The proposed amendments to Chapters 800 and 810 have no impact to small business.

The proposed amendment to Chapter 911 does not have substantial impact on small business interests.

Text of Proposed Rulemaking

ITEM 1. Amend rule 761—529.1(327B) as follows:

761—529.1(327B) Motor carrier regulations. The Iowa department of transportation adopts the Code of Federal Regulations, 49 CFR Parts 365-368 and 370-379, dated October 1, ~~2022~~ 2023, for regulating interstate for-hire carriers.

Copies of this publication are available from the state law library or at www.fmcsa.dot.gov.

ITEM 2. Amend **761—Chapter 529**, implementation sentence, as follows:

These rules are intended to implement Iowa Code section 307.27 and chapter 327B.

ITEM 3. Amend subrule 607.10(1) as follows:

607.10(1) Code of Federal Regulations. The department's administration of commercial driver's licenses shall be in compliance with the state procedures set forth in 49 CFR Section 383.73, and this chapter shall be construed to that effect. The department adopts the following portions of the Code of Federal Regulations which are referenced throughout this chapter of rules:

- a. 49 CFR Section 391.11 as adopted in 661—Chapter 22.
- b. 49 CFR Section 392.5 as adopted in 661—Chapter 22.
- c. 49 CFR Part 380, Subpart F (October 1, 2023).
- d. The following portions of 49 CFR Part 383 (October 1, 2022 2023):
 - (1) Section 383.51, Disqualification of drivers.
 - (2) Subpart E—Testing and Licensing Procedures.
 - (3) Subpart F—Vehicle Groups and Endorsements.
 - (~~3~~) (~~4~~) Subpart G—Required Knowledge and Skills.
 - (~~4~~) (~~5~~) Subpart H—Tests.
- e. 49 CFR Part 384, Subpart B (October 1, 2023).

ITEM 4. Amend subrule 800.4(1) as follows:

800.4(1) A railroad company submitting an annual report to the Surface Transportation Board under 49 CFR Part 1241 shall submit a copy of this report to the department on or before April 1 following the close of the calendar year. Included with this report shall be a “State Statistics” report which shall include the following: annual data on additions and deletions of mileage within the state; mileage operated within the state at the end of the year; railway operating revenues earned within the state; statistics on rail line operations within the state including locomotive unit-miles, car-miles and ton-miles; revenue freight carried within the state by commodity class; and a freight density map showing gross ton-miles for the railroad company's system within the state.

For the purpose of this rule, 49 CFR Part 1241 is adopted as of October 1, 2023.

ITEM 5. Amend paragraph **800.15(4)“a”** as follows:

a. The department may approve the proposed ordinance/resolution only if the proposal satisfies the requirements of 49 U.S.C. 20106 as amended to August 3, 2007: (1) it is necessary to eliminate or reduce a an essentially local safety or security hazard; (2) it is not incompatible with a federal law, regulation or order of the United States government; and (3) it does not unreasonably burden interstate commerce.

ITEM 6. Amend subrule 800.20(1) as follows:

800.20(1) 49 CFR Part 1152 contains the regulations governing the abandonment and discontinuance of railroad lines and rail transportation under 49 U.S.C. 10903 et seq. This part also contains the regulations and procedures for the acquisition or use of railroad rights-of-way proposed for abandonment for interim trail use and rail banking pursuant to 16 U.S.C. 1247(d).

For the purpose of this rule, 49 CFR Part 1152 is adopted as of October 1, 2024 2023.

ITEM 7. Amend subrule 810.1(1) as follows:

810.1(1) Standards. The department adopts the railroad track safety standards contained in 49 CFR Part 213 (October 1, ~~2021~~ 2023).

ITEM 8. Amend subrule 911.5(1) as follows:

911.5(1) Code of Federal Regulations. The department of transportation adopts the following portions of the October 1, ~~2021~~ 2023, Code of Federal Regulations, which are referenced throughout this chapter:

a. 49 CFR Part 38, Americans with Disabilities Act (ADA) Accessibility Specifications for Transportation Vehicles.

b. 49 CFR Part 571, Federal Motor Vehicle Safety Standards.

c. 49 CFR Part 655, Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations.

ARC 7576C

BANKING DIVISION[187]**Notice of Intended Action****Proposing rulemaking related to required fees
and providing an opportunity for public comment**

The Iowa Division of Banking (IDOB) hereby proposes to amend Chapter 2, “Application Procedures,” Iowa Administrative Code.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code section 524.213.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code sections 524.213, 524.303, 524.305, 524.312, 524.544, 524.802A, 524.1201, 524.1303, 524.1309, 524.1401, 524.1402, 524.1403, 524.1404, 524.1405, 524.1410, 524.1413, 524.1415, 524.1505, 524.1508 and 524.1509.

Purpose and Summary

This proposed rule codifies the administrative fees the IDOB has adopted for banks when filing certain corporate applications. The proposed fees are identical to the fees the IDOB currently charges for the specified applications but which have not previously been adopted by rule.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa. All fees the IDOB collects in connection with corporate applications filed by banks effectively reduce the amount of the quarterly assessments the IDOB charges to all state banks to cover the IDOB’s operating expenses, enabling the IDOB to collect the same total amount of funds for operations.

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the IDOB for a waiver of the discretionary provisions, if any, pursuant to 187—Chapter 12.

Public Comment

Any interested person may submit written comments concerning this proposed rulemaking. Written comments in response to this rulemaking must be received by the IDOB no later than 4:30 p.m. on February 27, 2024. Comments should be directed to:

Zak Hingst
Iowa Division of Banking
200 East Grand Avenue, Suite 300
Des Moines, Iowa 50312
Phone: 515.242.0332
Email: zak.hingst@idob.state.ia.us

Public Hearing

BANKING DIVISION[187](cont'd)

No public hearing is scheduled at this time. As provided in Iowa Code section 17A.4(1)“b,” an oral presentation regarding this rulemaking 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 rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking 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 rulemaking action is proposed:

ITEM 1. Adopt the following new rule 187—2.19(17A,524):

187—2.19(17A,524) Required fees. The following is a schedule of the fees for corporate applications filed by state banks adopted by the superintendent:

Establish a bank office:	\$2,000
Establish a mobile bank office, courier service, or convenience office:	\$2,000
Relocate principal place of business:	\$1,050
Relocate a bank office:	\$1,000
Conversion to a state bank:	\$5,050 + examination fee
Merger:	
Two banks:	\$3,050
More than two banks (for each additional bank):	\$1,500
Bank holding company into state bank:	\$1,550
Voluntary dissolution:	\$5,550
Purchase and assumption of assets and liabilities:	\$3,000
New (de novo) state bank:	\$15,050
Reverse stock split:	\$2,050
Change in bank control:	\$1,000
Failure resolutions:	
Acquisition by de novo group:	\$5,500
Acquisition by existing bank, bank holding company, or experienced group:	\$3,000
Amendment or restatement of articles of incorporation:	
Review and file documents with secretary of state not in conjunction with a pending application (example: amendments):	\$550
Review and file documents with secretary of state in conjunction with a conversion to or merger with a national bank or thrift:	\$550
State bank merger into out-of-state bank or national bank:	\$505
Certificate of Good Standing or Proof of Official Records:	\$25

This rule is intended to implement Iowa Code sections 524.213, 524.303, 524.305, 524.312, 524.544, 524.802A, 524.1201, 524.1303, 524.1309, 524.1401, 524.1402, 524.1403, 524.1404, 524.1405, 524.1410, 524.1413, 524.1415, 524.1505, 524.1508 and 524.1509.

ARC 7582C**EDUCATION DEPARTMENT[281]****Notice of Intended Action****Proposing rulemaking related to public records and fair information practices
and providing an opportunity for public comment**

The State Board of Education hereby proposes to rescind Chapter 5, “Public Records and Fair Information Practices,” Iowa Administrative Code, and adopt a new chapter with the same title.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code section 22.11.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code section 22.11.

Purpose and Summary

This is a rulemaking arising out of Executive Order 10. The Department of Education proposes removing unduly restrictive rules language, removing outdated or obsolete programs, making reference to uniform rules when applicable, and renumbering rules.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the State Board for a waiver of the discretionary provisions, if any, pursuant to 281—Chapter 4.

Public Comment

Any interested person may submit written or oral comments concerning this proposed rulemaking. Written or oral comments in response to this rulemaking must be received by the Department no later than 4:30 p.m. on February 27, 2024. Comments should be directed to:

Thomas A. Mayes
Department of Education
Grimes State Office Building, Second Floor
400 East 14th Street
Des Moines, Iowa 50319-0146
Phone: 515.281.8661
Email: thomas.mayes@iowa.gov

Public Hearing

Public hearings at which persons may present their views orally or in writing will be held as follows:

EDUCATION DEPARTMENT[281](cont'd)

February 27, 2024
9 to 9:30 a.m.

Room B100
Grimes State Office Building
Des Moines, Iowa

February 27, 2024
1 to 1:30 p.m.

Room B50
Grimes State Office Building
Des Moines, Iowa

Persons who wish to make oral comments at a public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rulemaking.

Any persons who intend to attend a public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department and advise of specific needs by calling 515.281.5295.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking 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 rulemaking action is proposed:

ITEM 1. Rescind 281—Chapter 5 and adopt the following **new** chapter in lieu thereof:

CHAPTER 5
PUBLIC RECORDS AND FAIR INFORMATION PRACTICES

The department of education hereby adopts, with the following exceptions and amendments, Uniform Rules of Agency Procedure relating to public records and fair information practices, which are published at www.legis.iowa.gov/docs/Rules/Current/UniformRules.pdf on the general assembly's website. Rule 281—5.1(22,256) sets forth the exceptions and additions to rules, numbered X.1(17A,22) through X.8(17A,22), in the uniform rules chapter in roughly the order in which they appear. Rules 281—5.2(22,256) through 281—5.6(22,256) are additional rules specific to the department.

281—5.1(22,256) Exceptions and additions.

5.1(1) Definition of "agency." In lieu of the words "(official or body issuing these rules)" in uniform rule X.1, insert "department of education".

5.1(2) Request for access to record. In subrule X.3(1), replace the paragraph with "Requests for access to records of the Iowa department of education are to be directed to the Grimes State Office Building, Des Moines, Iowa 50319-0146, regardless of where those records are located."

5.1(3) Office hours. In lieu of the words "(insert customary office hours and, if agency does not have customary office hours of at least thirty hours per week, insert hours specified in Iowa Code section 22.4)" in subrule X.3(2), insert "8 a.m. to 4:30 p.m. daily, excluding Saturdays, Sundays, and legal holidays".

5.1(4) Fees. In paragraph X.3(7) "c," in lieu of the words "(specify time period)", insert "one hour". The fee will be \$60 per hour.

5.1(5) Procedure by which additions, dissents, or objections may be entered into certain records. In rule X.6, in lieu of the words "(designate office)", insert "the office of the director of the agency".

5.1(6) Consent to disclosure by the subject of a confidential record. In rule X.7, add the following paragraphs:

X.7(1) A letter from a subject of a confidential record to a public official who seeks the official's intervention on behalf of the subject in a matter that involves the agency may to the extent permitted

EDUCATION DEPARTMENT[281](cont'd)

by law be treated as an authorization to release sufficient information about the subject to the official to resolve the matter.

X.7(2) The subject of a confidential record may file a written request to review confidential records about that person as provided in rule 281—5.6(22,256). However, the agency need not release records to the subject in the following circumstances:

a. The identity of a person providing information to the agency need not be disclosed directly or indirectly to the subject of the information when the information is authorized to be held confidential pursuant to Iowa Code section 22.7(18) or other provision of law.

b. Records need not be disclosed to the subject when they are the work product of an attorney or are otherwise privileged.

c. Peace officers' investigative reports may be withheld from the subject, except as provided by the Iowa Code. (See Iowa Code section 22.7(5).)

d. As otherwise authorized by law.

X.7(3) Where a record has multiple subjects with interest in the confidentiality of the record, the agency may take reasonable steps to protect confidential information relating to another subject.

281—5.2(22,256) Disclosures without the consent of the subject.

5.2(1) Records that are not confidential are routinely disclosed without the consent of the subject.

5.2(2) Records that are confidential will be disclosed outside of the department only with the consent of the subject of the record or in circumstances in which consent of the subject is not legally necessary.

281—5.3(22,256) Availability of records. Agency records are open for public inspection and copying unless otherwise provided by rule or law. The agency may have discretion to disclose some confidential records that are exempt from disclosure under Iowa Code section 22.7 or other law. Any person may request permission to inspect records withheld from inspection under a statute that authorizes limited or discretionary disclosure as provided in rule X.4(17A,22). If the agency initially determines that it will release these records, the agency may, where appropriate, notify interested parties and withhold the records from inspection as provided in this chapter.

281—5.4(22,256) Personally identifiable information. This rule describes the nature and extent of personally identifiable information that is collected, maintained, and retrieved by the agency by personal identifier in record systems as defined in rule X.1(17A,22). For each record system, this rule describes the legal authority for the collection of that information and indicates whether a data processing system matches, collates, or permits the comparison of personally identifiable information in one record system with that in another record system. The record systems maintained by the agency include:

5.4(1) Staff records of the basic educational data survey. Records of employees of area educational agencies, merged area schools, and approved public and private schools, whose positions require an Iowa teacher's certificate and contain such personally identifiable information as name, Iowa teacher's certificate number, and social security number. Other data collected are date of birth, teaching experience, sex, current position and assignments. This information is collected pursuant to Iowa Code section 256.9(18). Data processing systems match, collate, and compare the personally identifiable information of the staff records with that of teacher certification records.

5.4(2) Driver education records. Driver education records contain personally identifiable information such as name, driver's license number, and Iowa teacher's certificate number collected pursuant to Iowa Code section 321.178. Data processing systems match, collate, and compare the personally identifiable information of the driver education records with that of the teacher certification records and BEDS staff records.

5.4(3) Bus driver permit records. Bus driver permit records contain personally identifiable information such as name, social security number, driver's license number, and bus driver's permit number collected pursuant to Iowa Code sections 321.376 and 285.11(10) and 281—Chapter 43. Data processing systems match, collate, and compare the personally identifiable information of the bus driver permit numbers with that of bus accident records.

EDUCATION DEPARTMENT[281](cont'd)

5.4(4) *Teacher certification records.* Teacher certification records contain information about each individual issued an Iowa teacher's certificate. These records contain such personally identifiable information as name, teacher's certificate number and social security number. Other data collected are date of birth, type and source of degree, completion of mandatory postgraduation coursework, experience, and the subjects and grade level authorized to teach. This information is collected pursuant to Iowa Code section 256.7(3) and 256.7(5). Data processing systems match, collate, and compare the personally identifiable information of the teacher certification records with that of BEDS staff records, driver education records, and career education records.

5.4(5) *Exceptional child survey.* These records are exempt from disclosure under Iowa Code section 22.7(1). The information gathered by this system relates to children and youth eligible for special education. Each student record contains a code derived from the child's name and birth date. The coded identifier is the personally identifiable information. Information in each record pertains to the child's condition and the special education instructional and support-related services provided to the child. Each record may also contain the child's teacher's name and teaching certificate number. This information is collected pursuant to Iowa Code chapter 256B and 34 CFR Parts 300 and 303. Procedures for protection of and access to this information are set forth in this state's plan under 20 U.S.C. §1401 et seq. These policies and procedures comply with the Family Educational Rights and Privacy Act of 1974 (34 CFR Part 90) and 34 CFR Part 300.

This information is stored in an automated data processing system that does not match, collate, or compare the personally identifiable information of the exceptional child survey records with the personally identifiable information of other records systems.

5.4(6) *Department approval—special education placements.* These are requests for approval to place a pupil eligible for special education in an out-of-state educational program and would contain personally identifiable information such as the pupil's name, birth date, residence, condition and other information relative to the identified special education needs of the pupil. Response to these requests for department approval would contain similar information.

This information is collected pursuant to Iowa Code section 273.3(5). Data processing systems do not match, collate, or compare the personally identifiable information with other records. All personally identifiable information gathered through this effort is confidential under the provisions of 34 CFR Parts 90 and 300.

5.4(7) *Special education complaint management system.* Information gathered in this record system is utilized as documentation of concerns or complaints related to special education programs and services to children with disabilities under the provisions of 34 CFR Part 300. Personally identifiable information includes the student's name, parent's name, and the nature of the concern or complaint being registered. Data processing systems do not match, collate, or compare personally identifiable information from these records with personally identifiable information of other records systems. Personally identifiable information gathered by this system is confidential under the provisions of 34 CFR Parts 90 and 300.

5.4(8) *Deaf-blind student registry.* This data collection system gathers information related to deaf-blind children and youth in Iowa. Personally identifiable information items would include the child's name, birth date, location, and services being provided to the child. Information is utilized to plan programs and services for all deaf-blind children and their families in the state. Data processing systems do not compare, collate or match personally identifiable information in this system with personally identifiable information in other data systems. Personally identifiable information gathered and maintained by this system is confidential under the provisions of 34 CFR Parts 90 and 300.

5.4(9) *Career education records.* Career education records contain personally identifiable information such as the names and certificate numbers of staff members employed to conduct career education programs. Other data collected concern approvals, reimbursements, enrollments, expenditures, and student characteristics, and completion status relating to career education programs. This information is collected pursuant to Iowa Code chapter 258. Data processing systems match, collate, and compare the personally identifiable information of career education records with that of teacher certification records.

EDUCATION DEPARTMENT[281](cont'd)

5.4(10) *Drinking driver course records.* These records contain such personally identifiable information as name, address, birth date and social security number. Other data collected are the driver's pre- and post-test scores. This information is collected pursuant to Iowa Code chapter 321J. Data processing systems in this agency do not match, collate, or compare the personally identifiable information of drinking driver records with other record systems.

5.4(11) *Personnel records.* The agency has records concerning individual agency employees, some of which may contain confidential information under Iowa Code section 22.7(11) and other legal provisions. Personnel records may be subject to the rules of the department of administrative services.

5.4(12) *Special project applications.* Applications from public school districts may contain personally identifiable information about qualifications of project staff members. No personally identifiable student data are collected. This information is collected pursuant to Iowa Code sections 442.31 to 442.35.

5.4(13) *Grants/awards/projects.* Records of persons or agencies applying for grants, awards, or funds for projects may contain information about individuals collected pursuant to specific federal or state statutes or regulations. This information may be stored in an automated data processing system.

5.4(14) *Appeal records.* These records contain data supplied by persons or entities appealing to the agency and may contain personally identifiable information such as student name, age, scholastic and disciplinary record, and status as regular or special education pupil. This information is collected pursuant to Iowa Code chapters 256B, 260, 275, 280, 282, and 285. The personally identifiable information is not matched, collated, or compared with data in other record systems.

5.4(15) *Litigation files.* These files or records contain information regarding litigation or anticipated litigation, which includes judicial and administrative proceedings. The records include briefs, depositions, docket sheets, documents, correspondence, attorneys notes, memoranda, research materials, witness information, investigation materials, information compiled under the direction of the attorney, and case management records. The files contain materials that are confidential as attorney work product and attorney-client communications. Some materials are confidential under other applicable provisions of law or because of a court order. Persons wishing copies of pleadings and other documents filed in litigation should obtain these from the clerk of the appropriate court that maintains the official copy.

281—5.5(22,256) Other groups of records. This rule describes groups of records maintained by the agency other than record systems as defined in rule 281—5.1(22,256). These records are routinely available to the public. However, the agency's files of these records may contain confidential information, which will be addressed as provided in this chapter. The records listed may contain information about individuals.

5.5(1) *Rulemaking.* Rulemaking records may contain information about individuals making written or oral comments on proposed rules or proposing rules or rule amendments. This information is collected pursuant to Iowa Code sections 17A.3, 17A.4, and 17A.7. These records are stored on paper and not in an automated data processing system.

5.5(2) *State board records.* Records contain agendas, minutes, and materials presented to the board. Records concerning closed sessions are exempt from disclosure under Iowa Code section 21.5(4). State board records contain information about people who participate in meetings. This information is collected under the authority of Iowa Code section 21.3. State board records are not stored in an automated data processing system.

5.5(3) *Publications.* Publications include news releases, annual reports, project reports, agency newsletters, etc., which describe various agency programs. Agency news releases, project reports, and newsletters may contain information about individuals, including agency staff or members of agency councils or committees. This information is not stored in an automated data processing system.

5.5(4) *Statistical reports.* Periodic reports of various agency programs are available from the department of education. Statistical reports are not stored in an automated data processing system.

5.5(5) *Address lists/directories.* The names and mailing addresses of members of councils, working groups, program participants and members of the general public evidencing interest in particular

EDUCATION DEPARTMENT[281](cont'd)

programs/events of the agency are maintained in order to provide mailing labels for mass distribution of literature. This information is collected under the provisions of Iowa Code chapter 256.

5.5(6) *Appeal decisions and declaratory rulings.* All final orders, decisions and rulings are available for public inspection in accordance with Iowa Code section 17A.3. These records may contain personally identifiable information regarding individuals who are the subjects of the appeals or rulings. This information is collected pursuant to Iowa Code chapters 17A, 256B, 280, 282, 282A, 285, and 290 and 281—Chapters 6, 7 and 41 and is also available on the department's web page.

5.5(7) *Published materials.* The agency uses many legal and technical publications in its work. The public may inspect these publications upon request. Some of these materials may be protected by copyright law.

5.5(8) *Basic educational data survey system records.* Curriculum, address, policy and procedures, and enrollment records of the basic educational data survey system contain data concerning the curriculum, building, policy and procedures, and enrollment of merged area schools, area education agencies, and approved public and private K-12 educational agencies.

Address records contain the addresses of buildings in which educational agencies are located and the names of the chief administrators of those agencies collected pursuant to Iowa Code sections 256.7 and 256.9.

5.5(9) *Secretary's annual report.* This record contains information related to public school districts' attendance figures, revenues and expenditures.

5.5(10) *Certified enrollment records.* Public school district records with enrollments of resident students in district schools; resident students enrolled in another district; nonresident and out-of-state students enrolled in district schools; and full-time equivalent (FTE) enrollment of shared time, part-time and area school students of high school age. These records do not contain student names or other personally identifiable information.

5.5(11) *School lunch program records.* Records of public and private schools participating in the national school lunch program. Records contain information relating to funds available for reimbursements, advance payments, claims, and reimbursements made to schools; dates that participating schools were inspected; and individual employees of school food services of agencies participating in child nutrition programs. The personally identifiable information is collected pursuant to 7 CFR Section 210.9.

5.5(12) *Commodity distribution records.* Records of the allocation and delivery of federally provided commodities to participating schools.

5.5(13) *Transportation records.* Transportation records contain operational data for school buses.

5.5(14) *Facilities' records.* Records of buildings and additions to buildings owned by public and private K-12 educational agencies.

5.5(15) *Child care food program records.* Records contain information concerning advance payments made to institutions participating in the federal child care food program, agreements between institutions and their sites with program administrators, claims and reimbursements for meals served, and inspections of programs. The name of each program administrator is included in agreement records collected pursuant to 7 CFR Section 226.6(e)(1).

5.5(16) *Career information system.* Records of a project that stores and utilizes occupational and educational data for student use in career decision making.

5.5(17) *Merged area school records.* These records contain data concerning equipment (inventory), enrollment (by sex and residence), and the number of pupils completing programs.

5.5(18) *High school equivalency diploma records.* General equivalency diploma (GED) records contain the names, addresses, social security numbers, and test scores of individuals granted an Iowa high school equivalency diploma. This information is collected pursuant to Iowa Code chapter 259A.

5.5(19) *Area education agency budget records.* These records contain data used by the state board of education to approve AEA annual budgets.

5.5(20) *Area education agency annual financial report records.* These records contain data relating to revenue, expenditures, and balances as well as the number of AEA employees in each program.

EDUCATION DEPARTMENT[281](cont'd)

5.5(21) Juvenile home records. The juvenile home educational program budget and claim documents collect financial, employee, and student operation data. Budget records are used by the agency for program approval. Claim records are used for approving reimbursements and program results.

5.5(22) Nonpublic school pupil textbook services records. These records contain data on public school per pupil textbook expenditures, number of resident nonpublic school pupils requesting textbook services and the cost of providing textbook services for nonpublic school pupils.

5.5(23) Nonpublic school pupils transportation services claims. These records contain data on expenditures for providing transportation to pupils attending approved nonpublic schools and requests for reimbursement.

281—5.6(22,256) Applicability. This chapter does not:

1. Compel the agency to create a record that does not otherwise exist.
 2. Require the agency to index or retrieve records that contain information about individuals by that person's name or other personal identifier.
 3. Make available to the general public records that would otherwise not be available under the public records law, Iowa Code chapter 22.
 4. Govern the maintenance or disclosure of, notification of or access to records in the possession of the agency that are governed by the rules of another agency. This chapter applies to all records of the department of education. This chapter does not apply to the records of the following agencies under the department that have their own rulemaking authority: college student aid commission, educational examiners board, and school budget review committee.
 5. Apply to grantees, including local governments or subdivisions thereof, administering state-funded programs, unless otherwise provided by law or agreement.
 6. Make available records compiled by the agency in reasonable anticipation of court litigation or formal administrative proceedings. The availability of such records to the general public or to any subject individual or party to such litigation or proceedings is governed by applicable legal and constitutional principles, statutes, rules of discovery, evidentiary privileges, and applicable rules of the agency.
- These rules are intended to implement Iowa Code section 22.11.

ARC 7602C

EDUCATION DEPARTMENT[281]

Notice of Intended Action

Proposing rulemaking related to open enrollment and unsafe school choice option and providing an opportunity for public comment

The State Board of Education hereby proposes to rescind Chapter 11, "Unsafe School Choice Option," rescind Chapter 17, "Open Enrollment," and adopt a new Chapter 17, "Open Enrollment and Other Enrollment Options," Iowa Administrative Code.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code section 282.18; 2023 Iowa Acts, Senate File 496; and 20 U.S.C. Section 7912.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code section 282.18; 2023 Iowa Acts, Senate File 496; and 20 U.S.C. Section 7912.

Purpose and Summary

EDUCATION DEPARTMENT[281](cont'd)

The Department of Education proposes removing obsolete language (including language remaining from when there was an open enrollment deadline), removing language that merely restates statutory requirements, removing restrictive terms that do not add value, and consolidating a similar chapter on intradistrict choice concerning persistently dangerous schools. The Department is also proposing to include a division implementing the intradistrict choice provisions of 2023 Iowa Acts, Senate File 496.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the State Board for a waiver of the discretionary provisions, if any, pursuant to 281—Chapter 4.

Public Comment

Any interested person may submit written or oral comments concerning this proposed rulemaking. Written or oral comments in response to this rulemaking must be received by the Department no later than 4:30 p.m. on February 27, 2024. Comments should be directed to:

Thomas A. Mayes
 Department of Education
 Grimes State Office Building, Second Floor
 400 East 14th Street
 Des Moines, Iowa 50319-0146
 Phone: 515.281.8661
 Email: thomas.mayes@iowa.gov

Public Hearing

Public hearings at which persons may present their views orally or in writing will be held as follows:

February 27, 2024 9 to 9:30 a.m.	Room B100 Grimes State Office Building Des Moines, Iowa
February 27, 2024 1 to 1:30 p.m.	Room B50 Grimes State Office Building Des Moines, Iowa

Persons who wish to make oral comments at a public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rulemaking.

Any persons who intend to attend a public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department and advise of specific needs by calling 515.281.5295.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking 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).

EDUCATION DEPARTMENT[281](cont'd)

The following rulemaking action is proposed:

ITEM 1. Rescind and reserve **281—Chapter 11**.

ITEM 2. Rescind 281—Chapter 17 and adopt the following new chapter in lieu thereof:

CHAPTER 17
OPEN ENROLLMENT AND OTHER ENROLLMENT OPTIONS

DIVISION I
OPEN ENROLLMENT

281—17.1(282) Definitions. For the purpose of this chapter, the indicated terms are defined as follows:

“Alternative receiving district” means a district to which a parent/guardian petitions for the open enrollment of a pupil from a receiving district. An alternative receiving district could be the district of residence of the parents/guardians.

“Attendance center” means a public school building that contains classrooms used for instructional purposes for elementary, middle, or secondary school students.

“Court-ordered desegregation plan” means a decree, judgment, or order entered by a court in response to a case or controversy alleging the district engaged in unlawful segregation. A desegregation plan is not “court-ordered” merely because a school district seeks approval of a voluntarily developed desegregation plan.

“Department” means the department of education.

“Director” means the director of the department or the director’s designee.

“Open enrollment” is the procedure allowing a parent/guardian to enroll one or more pupils in a public school district other than the district of residence at no tuition cost to the parent.

“Receiving district” is the public school district in which a parent/guardian desires to have the pupil enrolled or the district accepting the application for enrollment of a pupil under the provisions of Iowa Code section 282.18.

“Resident district” is the district of residence for school purposes of the parent/guardian and the district in which an open enrollment pupil will be counted for the purpose of generating state aid regardless of the district in which the pupil is enrolled.

“Sending district” is synonymous with the term resident district.

“Sibling” means a child residing primarily in the same household as the child for whom an open enrollment request is filed and who is related by adoption, blood or marriage to the child for whom an open enrollment request is filed. “Sibling” also includes a foster child who is placed in the same household as the child for whom an open enrollment request is filed.

281—17.2(282) Application process. The following procedure is to be used by parents/guardians and school districts in processing open enrollment applications.

17.2(1) Parent/guardian responsibilities. Iowa Code section 282.18 governs the application process and responsibilities for parents/guardians and school districts. An application completed and submitted under this rule will include all information set forth in Iowa Code section 282.18(2) “a.”

17.2(2) Petition for attendance in an alternative receiving district. Once the pupil of a parent/guardian has been accepted for open enrollment, attendance in an alternative receiving district under open enrollment can be initiated by filing a petition for change with the receiving district. The timelines and notification provisions for such a request are the same as outlined in subrule 17.2(3).

17.2(3) School district responsibilities.

a. The board of the resident district takes no action on an open enrollment request except for a request made under rule 281—17.3(282). The parent/guardian may withdraw an open enrollment request any time prior to the board’s action on the application.

b. The board of the receiving district will act on an open enrollment request as outlined in Iowa Code section 282.18(2) “b.”

EDUCATION DEPARTMENT[281](cont'd)

c. The board of the receiving district will comply with the provisions of rule 281—17.10(282) if the application for open enrollment is for a pupil requiring special education as provided by Iowa Code chapter 256B.

d. If the application is a request to attend in an alternate receiving district, the alternative district will send notice of this action to the parent/guardian, to the original receiving district, and to the resident district of the pupil. Petitions for change will be for not less than one year. A pupil in good standing may return to the district of residence at any time following written notice from the parent/guardian to both the resident district and the receiving district.

e. Notification to parents.

(1) By September 30 of each school year, all districts must notify parents of the following:

1. Transportation assistance; and
2. Possible loss of athletic eligibility for open enrollment pupils.

(2) This notification may be published in a school newsletter, a newspaper of general circulation, a website, or a parent handbook provided to all patrons of the district. This information will also be provided to any parent/guardian of a pupil who enrolls in the district during the school year.

17.2(4) Exception to process when resident district is under court-ordered desegregation. If the resident district has a court-ordered desegregation plan, the superintendent of the resident district may act upon the request for transfer as outlined in Iowa Code section 282.18(3)“a.” A denial by the superintendent may be appealed following the procedures outlined in Iowa Code section 282.18(3)“b.”

281—17.3(282) Court-ordered desegregation plans.

17.3(1) Applicability. These rules govern only the components of a court-ordered desegregation plan as the plan affects open enrollment requests.

17.3(2) Nature of court-ordered desegregation plan. The language of the court order outlines a district’s implementation of open enrollment. The district will notify the department of any court-ordered desegregation plan and any court-ordered modifications to that plan.

281—17.4(282) Open enrollment for kindergarten or certain prekindergarten programs.

A parent/guardian of a kindergarten pupil or a parent/guardian of a prekindergarten student enrolled in a special education program and eligible to be included in the resident school district’s basic enrollment under Iowa Code section 257.6(1)“a”(1) may request to enroll the pupil or student in a district other than the district of residence. In considering an application under this rule, the resident and the receiving district are not precluded from administering board-adopted policies related to insufficient classroom space, the provisions of rule 281—17.11(282), or the provisions of a desegregation order. As an alternative procedure, the receiving board may, by policy, authorize the superintendent to approve, but not deny, applications filed under this rule.

281—17.5(282) Open enrollment and online coursework.

17.5(1) General. A school district may provide courses developed by private providers and delivered primarily over the Internet to pupils who are participating in open enrollment under Iowa Code section 282.18. However, if a student’s participation in open enrollment to receive educational instruction and course content delivered primarily over the Internet results in the termination of enrollment in the receiving district, the receiving district will, within 30 days of the termination, notify the district of residence of the termination and the date of the termination.

17.5(2) Participation in activities in the resident district. A pupil participating in open enrollment for purposes of receiving educational instruction and course content primarily over the Internet in accordance with Iowa Code section 256.7(32) may participate in any cocurricular or extracurricular activities offered to children in the pupil’s grade or group and sponsored by the district of residence under the same conditions and requirements as the pupils enrolled in the district of residence. The pupil may participate in not more than two cocurricular or extracurricular activities during a school year unless the resident district approves the student’s participation in additional activities. The student will comply with the

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eligibility, conduct, and other requirements relating to the activity that are established by the district of residence for any student who applies to participate or who is participating in the activity.

281—17.6(282) Limitations on open enrollment requests. A district board may apply the following provisions related to open enrollment requests:

17.6(1) *Court-ordered desegregation plans.* If the resident district has a court-ordered desegregation plan, the superintendent of the resident district may act upon the request for transfer as outlined in Iowa Code section 282.18(3)“a.” A denial by the superintendent may be appealed following the procedures outlined in Iowa Code section 282.18(3)“b.”

17.6(2) *Policy on insufficient classroom space.* No receiving district is required to accept an open enrollment request if it has insufficient classroom space to accommodate the pupil(s). Each district board must adopt a policy which defines the term “insufficient classroom space” for that district. This policy will establish a basis for the district to make determinations on the acceptance or denial, as a receiving district, of an open enrollment request. This policy may include, but is not limited to, one or more of the following: nature of the educational program, grade level, available instructional staff, instructional method, physical space, pupil-teacher ratio, equipment and materials, facilities either being planned or under construction, facilities planned to be closed, finances available, sharing agreement in force or planned, bargaining agreement in force, special education class size or caseload established pursuant to rule 281—41.408(256B,273,34CFR300), or board-adopted district educational goals and objectives. This policy will be reviewed annually by the district board.

17.6(3) *Designation of attendance center.* The right of a parent/guardian to request open enrollment is to a district other than the district of residence, not to an attendance center within the nonresident district. In accepting an open enrollment pupil, the receiving district board has the same authority it has in regard to its resident pupils as provided by Iowa Code section 279.11, to “determine the particular school which each child shall attend.” In the application process, however, the parent or guardian may request an attendance center of preference.

17.6(4) *Expelled or suspended students.* A pupil who has been suspended or expelled by action of the administration or board of the resident district is not permitted to enroll if an open enrollment request is filed until the pupil is reinstated for school attendance in the resident district. Once reinstated, the application for open enrollment will be considered in the same manner as any other open enrollment request. If a pupil for whom an open enrollment request has been filed is subsequently expelled by action of the resident district board, the pupil may be denied enrollment by the receiving district board until the pupil is reinstated for school attendance by the resident district. The provisions of this subrule also apply to a pupil who has been suspended or expelled in a receiving district and is requesting open enrollment to an alternative receiving district or is seeking to return to the resident district as outlined in subrule 17.2(3).

17.6(5) *Participation in interscholastic athletic contests and competitions.* A student in grades 9 through 12 whose transfer of schools had occurred due to a request for open enrollment by the student’s parent or guardian is ineligible to compete in interscholastic athletics during the first 90 school days of transfer except that a student may participate immediately if the student is entering grade 9 for the first time and did not participate in an interscholastic athletic competition for another school during the summer immediately following eighth grade. The period of ineligibility applies only to varsity-level contests and competitions. (“Varsity” means the highest level of competition offered by one school or school district against the highest level of competition offered by an opposing school or school district.) If a pupil is declared ineligible for interscholastic athletic contests and athletic competitions in the pupil’s district of residence due to the pupil’s academic performance, upon participating in open enrollment, in addition to any other period of ineligibility under this rule, the pupil will be ineligible in the receiving district for the remaining period of ineligibility declared by the district of residence.

a. The period of ineligibility does not apply if the board of directors of the district of residence and the board of directors of the receiving district both agree to waive the ineligibility period or under any reason outlined in Iowa Code section 282.18(9).

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b. The resident district may charge the receiving district for participation in cocurricular or extracurricular activities in accordance with Iowa Code section 282.18(5).

281—17.7(282) Provisions applicable to parents/guardians and students.

17.7(1) *Renewal of an open enrollment agreement.* An open enrollment agreement remains in place unless canceled by the parent/guardian or terminated as outlined in the provisions of subrule 17.7(5).

17.7(2) *Change in residence when participating in open enrollment.* If the parent/guardian of a pupil who is participating in open enrollment changes the school district of residence during the term of the agreement, the parent/guardian has the option to leave the pupil in the receiving district under open enrollment or to enroll the pupil in the new district of residence, thus terminating the open enrollment agreement.

If the pupil is to remain under open enrollment or to open enroll to another school district, the parent/guardian will write a letter, delivered by mail, by hand, or by electronic means, to notify the original resident district, the new resident district, and the receiving district of this decision. Requests under this rule shall not be denied. If the request is for a high school pupil, the pupil is not subject to the initial 90-school-day ineligibility period of subrule 17.6(5).

17.7(3) *Change in residence when not participating in open enrollment.* If a parent/guardian moves out of the school district of residence, and the pupil is not currently under open enrollment, the parent/guardian has the option for the pupil to remain in the original district of residence as an open enrollment pupil with no interruption in the education program. The parent/guardian exercising this option will file an open enrollment request form with the new district of residence for processing and record purposes. Requests under this subrule shall not be denied. If the request is for a high school pupil, the pupil is not subject to the initial 90-school-day ineligibility period of subrule 17.6(5). If the move is on or after the date specified in Iowa Code section 257.6(1), the new district of residence is not required to pay per-pupil costs or applicable weighting or special education costs to the receiving district until the first full year of the open enrollment.

a. This subrule applies in the following circumstances: a change in family residence, a change in a child's residence from the residence of one parent or guardian to the residence of a different parent or guardian, a change in the state in which the family residence is located, a change in a child's parents' marital status, a guardianship proceeding, placement in foster care, adoption, participation in a foreign exchange program, or participation in a substance abuse or mental health treatment program.

b. This rule applies to the following children:

(1) A child who is enrolled in any grade from kindergarten through grade 12.

(2) A prekindergarten student who is enrolled in a special education program at the time of the request and is not currently using any provision of open enrollment.

17.7(4) *Pupil governance.* An open enrollment pupil and, where applicable, the pupil's parent/guardian is governed by the rules and policies established by the board of directors of the receiving district. Any complaint or appeal by the parent/guardian concerning the educational system, its process, or administration in the receiving district will be initially directed to the board of directors of that district in compliance with the policy of that district.

17.7(5) *Open enrollment termination.* Open enrollment ends when:

a. The pupil graduates, moves into the receiving district, moves into a third district and does not elect to continue attending in the receiving district, moves out of state, elects to attend a nonpublic school instead of the receiving district, or any other circumstance not excepted below that results in the pupil no longer attending the receiving district.

EXCEPTIONS: This rule does not apply if the pupil is placed temporarily in foster care, a juvenile detention center, mental health or substance abuse treatment facility, or other similar placement. In such cases, the open enrollment status will automatically be reinstated when the pupil returns.

b. The pupil drops out of school. In this instance, if the pupil desires to return to the resident district during the term of the original open enrollment, notice will be given as outlined in the provisions of subrule 17.2(3).

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281—17.8(282) Transportation.

17.8(1) Parent responsibilities. The parent/guardian of a pupil who has been accepted for open enrollment is to be responsible to transport the pupil without reimbursement, except as provided in subrule 17.8(2), to a point on a regular school bus route of the receiving district as defined in Iowa Code section 282.18(8)“a.” A receiving district may send buses into a resident district solely for the purpose of transporting an open enrollment pupil if the boards of both the sending and receiving districts agree to this arrangement. Bus routes that are outside the boundary of the receiving district that have been authorized by an area education agency board of directors, as provided by Iowa Code section 285.9(3), may be used to transport open enrollment pupils if boards of directors of the resident and receiving districts have both acted to approve such an arrangement. Bus routes that have been established by the receiving district for the purpose of transporting nonpublic school or special education pupils that operate in the resident district of an open enrollment pupil cannot be utilized for the transportation of such pupil for the portion of the route that is within the resident district unless the boards of directors of the resident and receiving districts have both acted to approve such an arrangement. Bus routes transporting pupils for the purpose of whole-grade sharing cannot be used to transport open enrollment pupils for the portion of the route that is within the resident district unless the boards of directors of the resident and receiving districts have both acted to approve such an arrangement.

17.8(2) Economic qualifications, eligibility and provisions for transportation assistance. Open enrollment pupils who meet the economic eligibility provisions established by the department of education will receive transportation assistance from their resident district under the terms and conditions established by the department and state board of education as outlined in Iowa Code section 282.18(8)“c.” The resident district may withhold from the amount it is required to pay to a receiving district for an open enrollment pupil the actual amount or the average cost per pupil transported amount it pays for transportation assistance, whichever is the lesser amount.

281—17.9(282) Method of finance. Open enrollment options are available for pupils at no instructional cost to their parents/guardians. Open enrollment pupils are considered enrolled resident pupils in the resident district and are included in the certified enrollment count of that district for the purposes of generating school foundation aid.

17.9(1) Full-time pupils. The resident district will pay each year to the receiving district an amount equal to the sum of the state cost per pupil for the previous year; plus any moneys received pursuant to Iowa Code section 282.18(7)“b”(1). If the pupil participating in open enrollment is also an eligible pupil under Iowa Code section 261E.6 (postsecondary enrollment options program), the receiving district will pay the tuition reimbursement amount to an eligible postsecondary institution as provided in Iowa Code section 261E.7.

17.9(2) Dual enrolled pupils. For pupils who receive competent private instruction and are dual enrolled, the resident district will pay each year to the receiving district an amount equal to 0.1 times the state cost per pupil for the previous year plus any moneys received for the pupil as a result of English learner weighting provided by Iowa Code section 280.4. However, a pupil dual enrolled in grades 9 through 12 will be counted by the receiving district in the same manner as a shared-time pupil under Iowa Code section 257.6(1)“c.”

17.9(3) Home school assistance program pupils. For pupils who receive competent private instruction and are registered for a home school assistance program, the resident district will pay each year to the receiving district an amount equal to 0.3 times the state cost per pupil under Iowa Code chapter 257 for the previous year plus any moneys received for the pupil as a result of English learner weighting provided by Iowa Code section 280.4.

17.9(4) Transportation assistance. The resident district may deduct any transportation assistance funds for which the pupil is eligible as provided by subrule 17.8(2).

17.9(5) Method of payment. These moneys will be paid to the receiving district by the resident district during the period of open enrollment according to the timeline in Iowa Code section 282.20(3). The district cost per pupil for nonspecial education students will be the cost calculated each year for

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the school year preceding the school year for which the open enrollment takes place. Costs for special education students are outlined in rule 281—17.10(282).

17.9(6) *Partial-year situations.* If a pupil participating in open enrollment attends school in the receiving district for any reason for less than a full school year, payment from the district of residence at the time of open enrollment to the receiving district is prorated on a per diem basis.

17.9(7) *Supplemental weighting.* A student under open enrollment is eligible to be counted for supplementary weighting pursuant to 281—Chapter 97 for qualifying concurrent enrollment classes in which the student is enrolled, including concurrent enrollment classes provided via the Iowa communications network (ICN), or supplementary weighting for project lead the way (PLTW) enrollment through sharing with a community college. An open enrolled student who is under competent private instruction (CPI) will be weighted in the student's receiving district, and no tuition will be billed to the resident district. An open enrolled student who is not under CPI will be weighted in the resident district, and the funding will be sent to the receiving district in addition to open enrollment tuition.

a. If the open enrolled student is present in the resident district on October 1 of the school year, the resident district will count the student, excluding a student under CPI, for supplementary weighting.

b. The concurrent enrollment course needs to qualify for supplementary weighting in the receiving district pursuant to 281—Chapter 97, and the PLTW course needs to qualify for supplementary weighting in the receiving district pursuant to the same chapter.

c. The resident district will forward the weighting generated for the concurrent or PLTW enrollment for that student using the district cost per pupil of the school year. The amount generated is calculated as the supplementary weighting full-time-equivalency for that one student for each qualified concurrent or PLTW enrollment course multiplied by the current school year's district cost per pupil in the resident district.

d. The receiving district will pay the community college the tuition negotiated for the course. The tuition negotiated may cost the receiving district a different amount than that received from the resident district. No additional amount may be charged to the resident district, the student, or the parent, guardian, or legal custodian.

281—17.10(282) *Special education students.* If a parent or guardian requests open enrollment for a pupil requiring special education, as provided by Iowa Code chapter 256B and 281—Chapter 41, this request will receive consideration under the following conditions.

17.10(1) *Appropriateness of program.* The request will be granted only if the receiving district is able to provide within that district the appropriate special education program for that student in accordance with 281—Chapter 41. This determination will be made by the receiving district in consultation with the resident district and the appropriate area education agency(ies) before approval of the application. In a situation where the appropriateness of the program is in question, the pupil will remain enrolled in the program of the resident district until a final determination is made, unless all parties otherwise agree, as provided in 281—Chapter 41. If the appropriateness of the special education program in the receiving district is at issue, the final determination of the appropriateness of a special education instructional program will be the responsibility of the child's individualized education program team, which must include a representative from the resident district that has the authority to commit district resources, and which decision is subject to the parent's procedural safeguards under 281—Chapter 41.

17.10(2) *Class size and caseload.* The provisions of subrule 17.6(2) apply to requests for open enrollment for a child with a disability. The following conditions apply:

a. The enrollment of the child in the receiving district's program would not cause the size of the class or caseload in that special education instructional program in the receiving district to exceed the maximum class size or caseload set forth in subrule 17.6(2).

b. If the child would be assigned to a general education class, there is sufficient classroom space, as established in subrule 17.6(2), for the general education class to which the child would be assigned.

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17.10(3) Transportation. District transportation requirements, parent/guardian responsibilities and, where applicable, financial assistance for an open enrollment special education pupil is available as provided by rules 281—17.8(282) and 281—41.412(256B,34CFR300).

17.10(4) Finance. The district of residence, as determined on the date specified in Iowa Code section 257.6(1), will pay according to the timeline in Iowa Code section 282.20(3) to the receiving district the actual costs incurred by the receiving district in providing the appropriate special education program. These costs will be based on the current year expenditures with needed adjustments made in the final payment. The responsibility for ensuring that an appropriate program is maintained for an open enrollment special education pupil rests with the resident district. The receiving district and the receiving area education agency director will provide, at least on an annual basis, evaluation reports and information to the resident district on each special education open enrollment pupil. The receiving district will provide notice to the resident district of all staffings scheduled for each open enrollment pupil. For an open enrolled special education pupil where the receiving district is located in an area education agency other than the area education agency within which the resident district is located, the resident district and the receiving district are to forward a copy of any approved open enrollment request to the director of special education of their respective area education agencies. Any moneys received by the area education agency of the resident district for an approved open enrollment special education pupil will be forwarded to the receiving district's area education agency. For children requiring special education, the receiving district will complete and provide to the district of residence the documentation necessary to seek Medicaid reimbursement for eligible services.

This division is intended to implement Iowa Code section 282.18.

DIVISION II
INTRA-DISTRICT SCHOOL CHOICE UNDER IOWA LAW

281—17.11(279) General. Subject to Iowa Code section 279.82 as enacted by 2023 Iowa Acts, Senate File 496, a school district may permit parents or guardians of students to transfer to other attendance centers operated by the district. Such transfers are at the discretion of the district, subject to terms that the district adopts.

281—17.12(279) Intra-district transfers due to bullying and harassment. If a school district determines that a student has been bullied or harassed, then the school will permit the student to transfer under the provisions of Iowa Code section 279.82 as enacted by 2023 Iowa Acts, House File 496. For purposes of this rule, “harassment” and “bullying” mean the same as defined in Iowa Code section 280.28. Subrule 17.6(2) and rule 281—17.10(282) apply to transfers under this rule. A student who is enrolled in another attendance center within the same school district pursuant to this rule is eligible to participate immediately in varsity interscholastic athletic contests and athletic competitions as a member of a team from the receiving attendance center, notwithstanding any local policy on intra-district transfers and athletic eligibility.

This division is intended to implement Iowa Code section 279.82 as enacted by 2023 Iowa Acts, Senate File 496.

DIVISION III
UNSAFE SCHOOL CHOICE OPTION UNDER FEDERAL LAW

281—17.13(20USC7912) Definitions. For purposes of this chapter, the following definitions apply:

“*Department*” means the Iowa department of education.

“*Forcible felony*” means any crime defined in Iowa Code section 702.11. This includes felonious child endangerment, assault, murder, sexual abuse, kidnapping, robbery, arson in the first degree, or burglary in the first degree. Forcible felonies are not willful injury in violation of Iowa Code section 708.4(2); sexual abuse in the third degree committed between spouses; sexual abuse in violation of Iowa Code section 709.4(2) “c”(4); or sexual exploitation by a counselor or therapist in violation of Iowa Code section 709.15.

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“*School*” means an attendance center within a school district.

“*School district*” means a public school district in Iowa.

“*School year*” means from July 1 until June 30 of the following year.

281—17.14(20USC7912) Whole school option. Any student attending a persistently dangerous school as defined in this rule is eligible to transfer to a different school within the district. Transportation for students electing to transfer will be provided according to the district’s transportation policy. The transfers may be temporary or permanent, but will be in effect as long as the student’s original school is identified as persistently dangerous.

In making the determination of whether a transfer should be temporary or permanent, the district will consider the educational needs of the student, as well as other factors affecting the student’s ability to succeed in the student’s new school environment. The district is encouraged to explore other appropriate options such as an agreement with a contiguous school district to accept students if there is no safe school within the transferring district.

17.14(1) A persistently dangerous school is one that meets the following criteria for three consecutive school years:

a. The school has violence-related, long-term suspensions or expulsions for more than 1 percent of the student population. Long-term suspensions or expulsions are more than ten days in length and require the action of the local school board. For purposes of this subrule, a violence-related, long-term suspension or expulsion occurs as a result of physical injury or the threat of physical injury to a student while the student is in the school building or on the grounds of the attendance center during the hours of the regular school day or while the student is in attendance at school-sponsored activities that occur during the hours before or after the regular school day under one of the following:

- (1) A forcible felony as defined in rule 281—17.13(20USC7912);
- (2) Offenses, excluding simple misdemeanors, involving physical assault under Iowa Code chapter 708;
- (3) Offenses, excluding simple misdemeanors, involving sexual assault under Iowa Code chapter 709;
- (4) Extortion under Iowa Code section 711.4;
- (5) Use of incendiary or explosive devices such as bombs under Iowa Code section 712.5;
- (6) Criminal gang activity under Iowa Code chapter 723A;
- (7) Carrying or using a weapon under Iowa Code sections 724.3 and 724.4.

b. The school has two or more students expelled for violating the federal gun-free school laws.

c. The school has 1 percent of the enrolled student population or five students, whichever is greater, who exercised the individual student option defined in rule 281—17.15(20USC7912).

17.14(2) For the school year starting July 1, 2003, and in the years thereafter, a school identified as meeting the criteria in paragraphs 17.14(1)“*a*” through “*c*” for one year will be given a warning by the department. The school will review the school’s safety plan and prevention activities.

17.14(3) For the school year starting July 1, 2004, and in the years thereafter, a school identified as meeting the criteria in paragraphs 17.14(1)“*a*” through “*c*” for two consecutive years will develop and implement a remedial plan. The plan will include schoolwide efforts to support positive student behavior and improve student discipline. The department will conduct a site visit to the school.

17.14(4) For the school year starting July 1, 2005, and in the years thereafter, a school identified as meeting the criteria in paragraphs 17.14(1)“*a*” through “*c*” for three consecutive years is eligible to be designated as a persistently dangerous school by the department. Prior to the department’s assigning the designation, the district may submit information to the department including:

- a.* The school’s safety plan;
- b.* Local efforts to address the school’s safety concerns;
- c.* The school safety data reported to the state consistent with requirements of the federal Safe and Drug-Free Schools and Communities Program;
- d.* More current data that the school may have available but has not yet reported; and
- e.* Any other information deemed relevant.

EDUCATION DEPARTMENT[281](cont'd)

17.14(5) Within 30 days of receipt and review of the information, the department may determine that the school demonstrates improvement and may delay the designation for one year. By July 31, the department may, upon review of information that demonstrates improvement, delay the designation for one year. The department will determine whether the district has made sufficient progress to warrant further consideration as a persistently dangerous school.

17.14(6) Upon designation, the district will adopt a corrective action plan, to be approved by the department. The department will monitor the district's timely completion of the approved plan. The department will annually assess the school using the criteria listed in paragraphs 17.14(1) "a" through "c" by July 31 to determine whether the school will remain identified as a persistently dangerous school for the following school year.

17.14(7) At minimum, a district that has one or more schools identified as persistently dangerous will, within 14 days of the designation, notify parents of each student attending the school that the school has been identified by the department as persistently dangerous. The district must offer students the opportunity to transfer to a safe public school within the district; and for those students who accept the offer, the district will complete the transfer. A district may deny the transfer if space at the requested school is unavailable. A district will offer the parent other available options within the district, when available.

281—17.15(20USC7912) Individual student option.

17.15(1) Any student who becomes a victim of a violent criminal offense will, to the extent feasible, be permitted to transfer to another school within the district. For purposes of this rule, a victim of a violent criminal offense is a student who is physically injured or threatened with physical injury as a result of the commission of one or more of the following crimes against the student while the student is in the school building or on the grounds of the attendance center:

- a. A forcible felony as defined in rule 281—17.13(20USC7912);
- b. Offenses, excluding simple misdemeanors, involving physical assault under Iowa Code chapter 708;
- c. Offenses, excluding simple misdemeanors, involving sexual assault under Iowa Code chapter 709;
- d. Extortion under Iowa Code section 711.4.

17.15(2) Within ten calendar days following the date of the request, a local school district will offer an opportunity to transfer to the parent/guardian of a student who meets the definition of a victim of a violent crime.

281—17.16(20USC7912) District reporting. For purposes of federal compliance, districts will report data and requested information related to this division in a manner prescribed by the department.

This division is intended to implement 20 U.S.C. Section 7912.

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EDUCATION DEPARTMENT[281]

Notice of Intended Action

**Proposing rulemaking related to general accreditation standards
and providing an opportunity for public comment**

The State Board of Education hereby proposes to rescind Chapter 12, "General Accreditation Standards," Iowa Administrative Code, and to adopt a new chapter with the same title.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code section 256.11.

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State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code section 256.11.

Purpose and Summary

This chapter contains a substantial amount of verbatim statutory language, a substantial number of restrictive terms that do not add value, and some obsolete requirements. The Department of Education proposes removing them. The Department is also making some of the adjustments required by the last legislative session. The Department proposes to remove the division structure as completely unnecessary.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the State Board for a waiver of the discretionary provisions, if any, pursuant to 281—Chapter 4.

Public Comment

Any interested person may submit written or oral comments concerning this proposed rulemaking. Written or oral comments in response to this rulemaking must be received by the Department no later than 4:30 p.m. on February 27, 2024. Comments should be directed to:

Thomas A. Mayes
Department of Education
Grimes State Office Building, Second Floor
400 East 14th Street
Des Moines, Iowa 50319-0146
Phone: 515.281.8661
Email: thomas.mayes@iowa.gov

Public Hearing

Public hearings at which persons may present their views orally or in writing will be held as follows:

February 27, 2024 9 to 9:30 a.m.	Room B100 Grimes State Office Building Des Moines, Iowa
February 27, 2024 1 to 1:30 p.m.	Room B50 Grimes State Office Building Des Moines, Iowa

Persons who wish to make oral comments at a public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rulemaking.

Any persons who intend to attend a public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department and advise of specific needs by calling 515.281.5295.

Review by Administrative Rules Review Committee

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The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking 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 rulemaking action is proposed:

ITEM 1. Rescind 281—Chapter 12 and adopt the following **new** chapter in lieu thereof:

CHAPTER 12
GENERAL ACCREDITATION STANDARDS

281—12.1(256) General standards.

12.1(1) *Schools and school districts governed by general accreditation standards.* To become or remain accredited, school districts and accredited nonpublic schools are to comply with Iowa Code section 256.11 and this chapter.

12.1(2) *School board.* Each school or school district shall be governed by an identifiable authority that exercises the functions necessary for the effective operation of the school and is referred to in these rules as the “board” and as referenced in Iowa Code sections 280.2 and 280.3.

12.1(3) *Application for accreditation.*

a. The board of any school or school district that is not accredited on the effective date of these standards and that seeks accreditation shall file an application with the director of the department on or before the first day of January of the school year preceding the school year for which accreditation is sought.

b. The board of any school or school district that is not accredited on the effective date of these standards and that seeks accreditation from the department shall file an application with the director of the department on or before the first day of January of the school year preceding the school year for which accreditation is sought.

c. Nonpublic schools seeking accreditation under rule 281—12.10(256) shall provide evidence of accreditation by an organization approved under subrule 12.10(1) and such assurances of compliance with Iowa school law that the department may prescribe.

12.1(4) *Accredited schools and school districts.* Each school or school district receiving accreditation under the provisions of these standards will remain accredited except when by action of the state board of education it is removed from the list of accredited schools maintained by the department in accordance with Iowa Code sections 256.11(11) and 256.11(12).

12.1(5) *When nonaccredited.* A school district is nonaccredited on the day after the date it is removed from the list of accredited schools by action of the state board of education. A nonpublic school is nonaccredited on the date established by the resolution of the state board, which will be no later than the end of the school year in which the nonpublic school is declared to be nonaccredited.

12.1(6) *Alternative provisions for accreditation.* School districts may meet accreditation requirements through the provisions of Iowa Code sections 256.13, nonresident students; 273.7A, services to school districts; 279.20, superintendent—term; 280.15, joint employment and sharing; 282.7, attending in another corporation—payment; and 282.10, whole grade sharing. Nonpublic schools may meet accreditation requirements through the provisions of Iowa Code section 256.12.

12.1(7) *Minimum school calendar.* The minimum school calendar is set, either by a minimum number of hours or a minimum number of days, pursuant to Iowa Code sections 256.7(19), 279.10, and 279.11.

12.1(8) *Kindergarten.* The number of instructional days or hours within the school calendar and the length of the school day for kindergarten will be defined by the board or by authorities in charge of an accredited nonpublic school that operates a kindergarten program.

281—12.2(256) Definitions. For purposes of this chapter, the following definitions apply:

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“Annual improvement goals” means the desired one-year rate of improvement for students. Data from multiple measures may be used to determine the rate of improvement.

“Baseline data” means information gathered at a selected point in time and used thereafter as a basis from which to monitor change.

“Benchmarks” means specific knowledge and skills anchored to content standards that a student needs to accomplish by a specific grade or grade span.

“Board” means the board of directors in charge of a public school district or the authorities in charge of an accredited nonpublic school.

“Competency-based education” means that learners advance through content or earn credit based on demonstration of proficiency of competencies. Proficiency for this context is the demonstrated skill or knowledge required to advance to and be successful in higher levels of learning in that content area. Some students may advance through more content or earn more credit than in a traditional school year while others might take more than a traditional school year to advance through the same content and to earn credit. A student must meet the requirements of subrule 12.5(13) to be awarded credit in a competency-based system of education.

“Curriculum” means a plan that outlines what students shall be taught. Curriculum refers to all the courses offered, or all the courses offered in a particular area of study.

“Department” means the department of education.

“Districtwide” means all attendance centers within a school district or accredited nonpublic school.

“Districtwide assessments” means large-scale achievement or performance measures. At least one districtwide assessment shall allow for the following: the comparison of the same group of students over time as they progress through the grades or the cross-sectional comparison of students at the same grades over multiple years.

“Districtwide progress” means the quantifiable change in school or school district student achievement and performance.

“Dropout” means a school-age student who is served by a public school district and enrolled in any of grades 7 through 12 and who does not attend school or withdraws from school for a reason other than death or transfer to another approved school or school district or has been expelled with no option to return.

“Educational program.” The educational program adopted by the board is the entire offering of the school, including out-of-class activities and the sequence of curriculum areas and activities. The educational program will provide articulated, developmental learning experiences from the date of student entrance until high school graduation.

“Enrolled student” means a person who has officially registered with the school or school district and is taking part in the educational program.

“Indicators” provide information about the general status, quality, or performance of an educational system.

“Library program” means an articulated sequential kindergarten through grade 12 library or media program that enhances student achievement and is integral to the school district’s curricula and instructional program. The library program is planned and implemented by a qualified teacher librarian working collaboratively with the district’s administration and instructional staff. The library program services provided to students and staff will include the following:

1. Support of the overall school curricula;
2. Collaborative planning and teaching;
3. Promotion of reading and literacy;
4. Information literacy instruction;
5. Access to a diverse and appropriate school library collection; and
6. Learning enhancement through technologies.

“Long-range goals” means desired targets to be reached over an extended period of time.

“Multiple assessment measures,” for reporting to the local community or the state, means more than one valid and reliable instrument that quantifies districtwide student learning, including specific grade-level data.

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“Performance levels.” The federal Elementary and Secondary Education Act (ESEA) requires that at least three levels of performance be established to assist in determining which students have or have not achieved a satisfactory or proficient level of performance. At least two of those three levels will describe what all students ought to know or be able to do if their achievement or performance is deemed proficient or advanced. The third level will describe students who are not yet performing at the proficient level. A school or school district may establish more than three performance levels that include all students for districtwide or other assessments.

“Prekindergarten program” includes a school district’s implementation of the preschool program pursuant to Iowa Code chapter 256C.

“Proficient,” as it relates to content standards, characterizes student performance at a level that is acceptable by the school or school district.

“School” means an accredited nonpublic school.

“School counseling program” means an articulated sequential kindergarten through grade 12 program that is comprehensive in scope, preventive in design, developmental in nature, driven by data, and integral to the school district’s curricula and instructional program. The program is implemented by at least one school counselor, appropriately licensed by the board of educational examiners, who works collaboratively with the district’s administration and instructional staff. The program standards are described in subrule 12.3(11). The program’s delivery system components will include the following:

1. School guidance curriculum;
2. Support of the overall school curriculum;
3. Individual student planning;
4. Responsive services; and
5. System support.

“School district” means a public school district.

“School improvement advisory committee” means a committee, as defined in Iowa Code section 280.12, that is appointed by the board. Committee membership will include students, parents, teachers, administrators, and representatives from the local community that may include business, industry, labor, community agencies, higher education, or other community constituents. To the extent possible, committee membership is to have balanced representation of the following: race, gender, national origin, and disability. The school improvement advisory committee as defined by Iowa Code section 280.12 and the board are also part of, but not inclusive of, the local community.

“Student learning goals” means general statements of expectations for all graduates.

“Students with disabilities” means students who have individualized education programs regardless of the disability.

“Subgroups” means a subset of the student population that has a common characteristic. Subgroups include, but are not limited to, gender, race, students with disabilities, and socioeconomic status.

281—12.3(256) Administration. The following standards apply to the administration of accredited schools and school districts.

12.3(1) Board records. Each board is to adopt by written policy a system for maintaining accurate records. The system will provide for recording and maintaining the minutes of all board meetings, coding all receipts and expenditures, and recording and filing all reports required by the Iowa Code or requested by the director of the department. Financial records of school districts are to be maintained in a manner as to be easily audited according to accepted accounting procedures.

12.3(2) Policy manual. The board shall develop and maintain a policy manual that provides a codification of its policies, including the adoption date, the review date, and any revision date for each policy. Policies shall be reviewed at least every five years to ensure relevance to current practices and compliance with the Iowa Code, administrative rules and decisions, and court decisions.

12.3(3) Personnel evaluation. Each board will adopt evaluation criteria and procedures that conform to Iowa Code sections 279.14 and 279.23A for all contracted staff.

12.3(4) Student records. Each board will establish and maintain a system of student records, which will include for each student a permanent office record and a cumulative record.

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The permanent office record serves as a historical record of official information concerning the student's education. The permanent office record is to be recorded and maintained under the student's legal name. At a minimum, the permanent office record will contain evidence of attendance and educational progress, serve as an official transcript, contain other data for use in planning to meet student needs, and provide data for official school and school district reports. This record is to be permanently maintained and stored in a fire-resistant safe or vault or can be maintained and stored electronically with a secure backup file.

The cumulative record provides a continuous and current record of significant information on progress and growth. It should reflect information such as courses taken, scholastic progress, school attendance, physical and health record, experiences, interests, aptitudes, attitudes, abilities, honors, extracurricular activities, part-time employment, and future plans. It is the "working record" used by the instructional professional staff in understanding the student. At the request of a receiving school or school district, a copy of the cumulative record will be sent to officials of that school when a student transfers.

For the sole purpose of implementing an interagency agreement with state and local agencies in accordance with Iowa Code section 280.25, a student's permanent record may include information contained in the cumulative record as defined above.

The board is to adopt a policy concerning the accessibility and confidentiality of student records that complies with the provisions of the federal Family Educational Rights and Privacy Act of 1974 and Iowa Code chapter 22.

12.3(5) *Requirements for graduation.* Each board providing a program through grade 12 will adopt a policy establishing the requirements students will meet for high school graduation. This policy will make provision for early graduation and be consistent with these requirements, Iowa Code sections 280.14 and 256.7(26).

12.3(6) *Student responsibility and discipline.* The board will adopt student responsibility and discipline policies as required by Iowa Code section 279.8. The board will involve parents, students, instructional and noninstructional professional staff, and community members in the development and revision of those policies where practicable or unless specific policy is mandated by legislation. The policies will relate to the educational purposes of the school or school district. The policies will include the following: attendance; use of tobacco; the use or possession of alcoholic beverages or any controlled substance; harassment of or by students and staff as detailed in subrule 12.3(13); violent, destructive, and seriously disruptive behavior; suspension, expulsion, emergency removal, weapons, and physical restraint; out-of-school behavior; participation in extracurricular activities; academic progress; and citizenship.

The policies will ensure due process rights for students and parents, including consideration for students who have been identified as requiring special education programs and services.

The board will also consider the potential, disparate impact of the policies on students because of race, color, national origin, gender, sexual orientation as defined in Iowa Code section 216.2, gender identity as defined in Iowa Code section 216.2, disability, religion, creed, or socioeconomic status.

The board will publicize its support of these policies, its support of the staff in enforcing them, and the staff's accountability for implementing them.

12.3(7) *Audit of school funds.* This subrule applies to school districts. The results of the annual audit of all school district funds conducted by the state auditor or a private auditing firm will be made part of the official records of the board as described in Iowa Code section 11.6.

12.3(8) *School or school district building grade-level organization.* The board shall adopt a grade-level organization for the buildings under its jurisdiction as described in Iowa Code sections 279.39 and 280.3.

12.3(9) *Standards for school counseling programs.* Each school district will establish a kindergarten through grade 12 comprehensive school counseling program, driven by student data and based on standards in academic, career, personal, and social areas, which supports the student achievement goals of the total school curriculum and to which all students have equitable access.

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a. A qualified school counselor, licensed by the board of educational examiners, who works collaboratively with students, teachers, support staff and administrators will direct the program and provide services and instruction in support of the curricular goals of each attendance center. The school counselor is the member of the attendance center instructional team with special expertise in identifying resources and technologies to support teaching and learning. The school counselor and classroom teachers will collaborate to develop, teach, and evaluate attendance center curricular goals with emphasis on the following:

(1) Sequentially presented curriculum, programs, and responsive services that address growth and development of all students; and

(2) Attainment of student competencies in academic, career, personal, and social areas.

b. The program will be regularly reviewed and revised and designed to provide all of the following:

(1) Curriculum that is embedded throughout the district's overall curriculum and systemically delivered by the school counselor in collaboration with instructional staff through classroom and group activities and that consists of structured lessons to help students achieve desired competencies and to provide all students with the knowledge and skills appropriate for their developmental levels;

(2) Individual student planning through ongoing systemic activities designed to help students establish educational and career goals to develop future plans;

(3) Responsive services through intervention and curriculum that meet students' immediate and future needs as occasioned by events and conditions in students' lives and that may require any of the following: individual or group counseling; consultation with parents, teachers, and other educators; referrals to other school support services or community resources; peer helping; and information; and

(4) Systemic support through management activities that establish, maintain, and enhance the total school counseling program, including professional development, consultation, collaboration, program management, and operations.

12.3(10) Standards for library programs. The board of directors of each school district shall establish a kindergarten through grade 12 library program to support the student achievement goals of the total school curriculum as referenced in Iowa Code section 256.11(9). The board of directors of each school district will adopt policies to address selection and reconsideration of school library materials; confidentiality of student library records; and legal and ethical use of information resources, including plagiarism and intellectual property rights.

12.3(11) Policy declaring harassment and bullying against state and school policy. Each school and school district will adopt a policy declaring harassment and bullying against state and school policy and complying with the terms of Iowa Code section 280.28.

12.3(12) Policy prohibiting the aiding and abetting of sexual abuse.

a. General. The department and each public school district and area education agency shall adopt policies that prohibit any individual who is a school employee, contractor, or agent, or any state educational agency or local educational agency, from assisting a school employee, contractor, or agent in obtaining a new job, apart from the routine transmission of administrative and personnel files, if the individual or agency knows, or has probable cause to believe, that such school employee, contractor, or agent engaged in sexual misconduct regarding a minor or student in violation of the law.

b. Exception. The requirements of paragraph 12.3(12) "a" do not apply if all of the following conditions are met.

(1) The information giving rise to probable cause has been properly reported to a law enforcement agency with jurisdiction over the alleged misconduct; and has been properly reported to any other authorities as required by federal, state, or local law, including Title IX of the Education Amendments of 1972 (20 U.S.C. 1681 et seq.) and the regulations implementing such title under Part 106 of Title 34, Code of Federal Regulations, or any succeeding regulations.

(2) The matter has been officially closed or the prosecutor or police with jurisdiction over the alleged misconduct have investigated the allegations and notified school officials that there is insufficient information to establish probable cause that the school employee, contractor, or agent engaged in sexual misconduct regarding a minor or student in violation of the law; or the school employee, contractor, or agent has been charged with, and acquitted or otherwise exonerated of, the alleged misconduct; or

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the case or investigation remains open and there have been no charges filed against, or indictment of, the school employee, contractor, or agent within four years of the date on which the information was reported to a law enforcement agency.

12.3(13) *Display of United States flag, Iowa state flag, Pledge of Allegiance.* Iowa Code section 280.5 is incorporated by this reference.

281—12.4(256) School personnel. License/certificate and endorsement standards required in this rule relate to licenses/certificates and endorsements issued by the state board of educational examiners as referenced in Iowa Code chapter 272. The following standards apply to personnel employed in accredited schools:

12.4(1) *Instructional professional staff.* Each person who holds a license/certificate endorsed for the service for which that person is employed is eligible for classification as a member of the instructional professional staff as referenced in Iowa Code section 279.13.

12.4(2) *Noninstructional professional staff.* A person who holds a statement of professional recognition, including a physician, dentist, nurse, speech therapist, or a person in one of the other noninstructional professional areas designated by the state board of education, is eligible for classification as a member of the noninstructional professional staff.

12.4(3) *Basis for approval of professional staff.* Each member of the professional staff will be classified as either instructional or noninstructional. An instructional professional staff member will be regarded as approved when holding either an appropriate license/certificate with endorsement or endorsements, or a license/certificate with an endorsement statement, indicating the specific teaching assignments that may be given. A noninstructional professional staff member will be regarded as approved when holding a statement of professional recognition for the specific type of noninstructional professional school service for which employed.

12.4(4) *Required administrative personnel.* Each board that operates both an elementary school and a secondary school will employ as its executive officer and chief administrator a person who holds a license/certificate endorsed for service as a superintendent. The board of a school district may meet this provision by contracting with its area education agency for “superintendency services” as provided by Iowa Code section 273.7A. The individual employed or contracted for as superintendent may serve as an elementary principal or as a high school principal in that school or school district provided that the superintendent holds the proper licensure/certification. For purposes of this subrule, high school means a school that commences with either grade 9 or grade 10, as determined by the board of directors of the school district, or by the governing authority of the nonpublic school in the case of nonpublic schools. Boards of school districts may jointly employ a superintendent, provided such arrangements comply with the provisions of Iowa Code section 279.23(4).

12.4(5) *Staffing policies—elementary schools.* The board operating an elementary school will develop and adopt staffing policies designed to attract, retain, and effectively utilize competent personnel. Each board operating an elementary school will employ at least one elementary principal. This position may be combined with that of secondary principal or with a teaching assignment at the elementary or secondary level, provided the individual holds the proper licenses/certificates and endorsements.

When grades 7 and 8 are part of an organized and administered junior high school, the staffing policies adopted by the board for secondary schools apply. When grades 7 and 8 are part of an organized and administered middle school, the staffing policies adopted by the board for elementary schools apply.

12.4(6) *Staffing policies—secondary schools.* The board operating a secondary school will develop and adopt staffing policies designed to attract, retain, and effectively utilize competent personnel. Each board operating a secondary school will employ at least one secondary principal. This position may be combined with that of elementary principal or with a teaching assignment at the elementary or secondary level, provided the individual holds the proper licenses/certificates and endorsements. This position may be combined with that of superintendent, but one person may not serve as elementary principal, secondary principal, and superintendent.

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12.4(7) *Principal.* “Principal” means a licensed/certificated member of a school’s instructional staff who serves as an instructional leader, coordinates the process and substance of educational and instructional programs, coordinates the budget of the school, provides formative evaluation for all practitioners and other persons in the school, recommends or has effective authority to appoint, assign, promote, or transfer personnel in a school building, implements the local school board’s policy in a manner consistent with professional practice and ethics, and assists in the development and supervision of a school’s student activities program.

12.4(8) *Teacher.* A teacher is defined as a member of the instructional professional staff who holds a license/certificate endorsed for the type of position in which employed. A teacher diagnoses, prescribes, evaluates, and directs student learnings in terms of the school’s objectives, either singly or in concert with other professional staff members; shares responsibility with the total professional staff for developing educational procedures and student activities to be used in achieving the school’s objectives; supervises educational aides who assist in serving students for whom the teacher is responsible; and evaluates or assesses student progress during and following instruction in terms of the objectives sought, and uses this information to develop further educational procedures.

12.4(9) *Educational assistant.* An educational assistant is defined as an employee who, in the presence or absence of an instructional professional staff member but under the direction, supervision, and control of the instructional professional staff, supervises students or assists in providing instructional and other direct educational services to students and their families. An educational assistant shall not substitute for or replace the functions and duties of a teacher as established in subrule 12.4(8).

During the initial year of employment, an educational assistant will complete staff development approved by the board as provided in subrule 12.7(1).

12.4(10) *Record of license/certificate or statement of professional recognition.* The board shall require each administrator, teacher, support service staff member, and noninstructional professional staff member on its staff to supply evidence that each holds a license/certificate or statement of professional recognition that is in force and valid for the type of position in which the individual is employed.

12.4(11) *Record required regarding teacher and administrative assignments.* The board shall require its superintendent or other designated administrator to maintain a file for all regularly employed members of the instructional professional staff, including substitute teachers. The file will consist of official licenses/certificates or copies thereof for all members of the instructional professional staff, including substitute teachers, showing that they are eligible for the position in which employed. The official will also maintain on file an official license/certificate or statement of professional recognition as defined in subrule 12.4(2) for each member of the noninstructional professional staff. These records will be on file at the beginning of and throughout each school year and updated annually to reflect all professional growth.

On December 1 of each year, the official will verify to the department the licensure/certification and endorsement status of each member of the instructional and administrative staff. This report will be on forms provided by the department and identify all persons holding authorizations and their specific assignment(s) with the authorization(s).

12.4(12) *Nurses.* The board of each school district shall employ a school nurse and require a current license to be filed with the superintendent or other designated administrator as specified in subrule 12.4(10).

12.4(13) *Prekindergarten staff.* Prekindergarten teachers shall hold a license/certificate valid for the prekindergarten level. The board will employ personnel as necessary to provide effective supervision and instruction in the prekindergarten program as referenced in Iowa Code sections 256.11(1) and 256.11(2).

12.4(14) *Support staff.* The board shall develop and implement procedures for the use of educational support staff to augment classroom instruction and to meet individual student needs. These staff members may be employed by the board or by the area education agency.

12.4(15) *Volunteer.* A volunteer is defined as an individual who, without compensation or remuneration, provides a supportive role and performs tasks under the direction, supervision, and control of the school or school district staff. A volunteer shall not work as a substitute for or replace the functions and duties of a teacher as established in subrule 12.4(8).

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281—12.5(256) Education program. The following education program standards shall be met by schools and school districts for accreditation:

12.5(1) Prekindergarten program. Iowa Code section 256.11(1) is incorporated by this reference.

12.5(2) Kindergarten program. Iowa Code section 256.11(2) is incorporated by this reference. Any classroom serving students at least five years of age by September 15 is considered kindergarten.

12.5(3) Elementary program, grades 1 through 6. Iowa Code section 256.11(3) is incorporated by this reference. All content areas may be taught by the general education teacher in the teacher's own classroom. In implementing the elementary program standards, the following general curriculum definitions apply. It is locally determined how to incorporate these content specifications into relevant standards and benchmarks.

a. English-language arts. English-language arts are as referenced in Iowa Code sections 256.7(28) and 256.9(49) "a."

b. Social studies. Social studies are as referenced in Iowa Code section 256.7(26) "a"(3).

c. Mathematics. Mathematics instruction is as referenced in Iowa Code section 256.7(28).

d. Science. Science instruction is as referenced in Iowa Code section 256.7(28).

e. Health. Health instruction is as referenced in Iowa Code sections 256.7(26) "a"(3) and 279.50.

f. Physical education. Physical education instruction will include movement experiences and body mechanics; fitness activities; rhythmic activities; stunts and tumbling; simple games and relays; sports skills and activities; and water safety.

g. Traffic safety. Traffic safety instruction will include pedestrian safety; bicycle safety; auto passenger safety; school bus passenger safety; seat belt use; substance education; and the application of legal responsibility and risk management to these concepts.

h. Music. Music instruction will include skills, knowledge, and attitudes and will include singing and playing music; listening to and using music; reading and writing music; recognizing the value of the world's musical heritage; respecting individual musical aspirations and values; and preparing for consuming, performing, or composing.

i. Visual art. Visual art instruction will include perceiving, comprehending, and evaluating the visual world; viewing and understanding the visual arts; developing and communicating imaginative and inventive ideas; and making art.

j. Computer science. Computer science instruction incorporating the standards established under Iowa Code sections 256.7(26) "a"(4) and 256.9(61) is to be offered in at least one grade level.

12.5(4) Grades 7 and 8. The following will be taught in grades 7 and 8 pursuant to Iowa Code section 256.11(4). If grade 6 is configured with grades 7 and 8, the grade 7 and 8 requirements apply. It is a local decision whether all students are required to take visual arts or music. In implementing the grade 7 and 8 program standards, the following general curriculum definitions apply. It is locally determined how to incorporate the content specifications into relevant standards and benchmarks.

a. English-language arts. English-language arts instruction is as referenced in Iowa Code section 256.7(28).

b. Social studies. Social studies are as referenced in Iowa Code section 256.7(26) "a"(3).

c. Mathematics. Mathematics instruction is as referenced in Iowa Code section 256.7(28).

d. Science. Science instruction is as referenced in Iowa Code section 256.7(28).

e. Health. Health instruction is as referenced in Iowa Code sections 256.7(26) "a"(3) and 279.50.

f. Physical education. Physical education will include the physical fitness activities that increase cardiovascular endurance, muscular strength, and flexibility; sports and games; tumbling and gymnastics; rhythms and dance; water safety; and leisure and lifetime activities.

g. Music. Paragraph 12.5(3) "h" applies, with the addition of using music as an avocation or vocation.

h. Visual art. Paragraph 12.5(3) "i" applies, with the addition of using visual arts as an avocation or vocation.

i. Career education. Career education instruction will include exploration of employment opportunities, experiences in career decision making, and experiences to help students integrate work

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values and work skills into their lives. This paragraph does not apply to nonpublic schools. However, nonpublic schools will comply with subrule 12.5(7).

j. Computer science. Computer science instruction incorporating the standards established under Iowa Code section 256.7(26) “a”(4) will be offered in at least one grade level.

k. Secondary credit. Secondary credit will be awarded as referenced in Iowa Code section 256.7(26) “a”(1).

12.5(5) High school program, grades 9 through 12. In grades 9 through 12, a unit is a course or equivalent related components or partial units taught throughout the academic year as defined in subrule 12.5(13). The following will be offered and taught as the minimum program as referenced in Iowa Code section 256.11(5). All students in schools and school districts shall satisfactorily complete requirements as referenced in Iowa Code sections 256.7(26), 256.11(5) “b” and “g,” and 256.11(6) “c” in order to graduate. It is locally determined how to incorporate the content specifications into relevant standards and benchmarks.

In implementing the high school program standards, the following curriculum standards apply:

a. English-language arts (six units). English-language arts instruction is as referenced in Iowa Code section 256.7(28).

b. Social studies (five units). Social studies is as referenced in Iowa Code sections 256.7(26) “a”(3), 256.11(5) “b,” and 280.9A.

c. Mathematics (six units). Mathematics instruction is as referenced in Iowa Code sections 256.7(28) and 256.11(5) “d” through “e,” including:

(1) Four sequential units that are preparatory to postsecondary educational programs.

(2) Two additional units.

d. Science (five units). Science instruction is as referenced in Iowa Code sections 256.7(28) and 256.11(5) “a.”

e. Health (one unit). Health instruction is as referenced in Iowa Code sections 256.7(26) “a”(3), 256.11(5) “j,” and 279.50.

f. Physical education (one unit). Physical education, as well as any exemption or excusal, is as referenced in Iowa Code sections 256.11(5) “g” and 256.11(18).

g. Fine arts (two units). Fine arts instruction will include at least two of the following:

(1) Dance. Dance instruction encompasses developing basic movement skills, elementary movement concepts, study of dance forms and dance heritage, participating in dance, evaluating dance as a creative art, and using dance as an avocation or vocation.

(2) Music. Music instruction include skills, knowledge, and attitudes and the singing and playing of music; listening to and using music; reading and writing music; recognizing the value of the world’s musical heritage; respecting individual musical aspirations and values; preparing for consuming, performing, or composing; and using music as an avocation or vocation.

(3) Theatre. Theatre instruction encompasses developing the internal and external resources used in the theatre process; creating theatre through artistic collaboration; relating theatre to its social context; forming aesthetic judgments; and using theatre as an avocation or vocation.

(4) Visual art. Visual art instruction includes developing concepts and values about natural and created environments; critiquing works of art; evaluating relationships between art and societies; analyzing, abstracting, and synthesizing visual forms to express ideas; making art; and using visual art as an avocation or vocation.

h. World language (two units). The world language program will be a two-unit sequence of uninterrupted study in at least one language, which may include American Sign Language.

i. Career and technical education service areas—school districts (three units each in at least four of the six service areas). A minimum of three sequential units, of which only one may be a core unit, will be taught in four of the six service areas as referenced by Iowa Code section 256.11(5) “h,” Iowa Code chapter 258, and 281—Chapter 46.

j. Vocational education/nonpublic schools (five units). A nonpublic school that provides an educational program that includes grades 9 through 12 will comply with Iowa Code section 256.11B.

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k. Personal finance literacy (one-half unit). Iowa Code section 256.11(5) “k” is incorporated by this reference.

l. Computer science (one-half unit). Iowa Code section 256.7(26) “a”(4) is incorporated by this reference.

12.5(6) Exemption from physical education course, health course, physical activity, or cardiopulmonary resuscitation course completion. Exemptions from these activities are governed by Iowa Code section 256.11(5) “g” and 256.11(6).

12.5(7) Career education. Iowa Code sections 256.9(42), 279.61, and 280.9 are incorporated by this reference.

12.5(8) Age-appropriate, multicultural and gender-fair approaches to the educational program. Iowa Code section 256.11’s provisions for an age-appropriate, multicultural, and gender-fair program are incorporated by this reference.

12.5(9) Special education. The board of each school district shall provide special education programs and services for its resident children that comply with rules of the state board of education implementing Iowa Code chapters 256, 256B, 273, and 280.

12.5(10) Global education. Iowa Code section 256.11’s provisions for a global education are incorporated by this reference.

12.5(11) Provisions for gifted and talented students. Iowa Code sections 257.42 through 257.49 are incorporated by this reference.

12.5(12) Provisions for at-risk students. Iowa Code sections 280.19 and 280.19A are incorporated by this reference.

12.5(13) Unit. A unit is a course that meets one of the following criteria: it is taught for at least 200 minutes per week for 36 weeks; it is taught for the equivalent of 120 hours of instruction; it requires the demonstration of proficiency of formal competencies associated with the course according to the State Guidelines for Competency-Based Education or its successor organization; or it is an equated requirement as a part of a flexible student and school support program filed as prescribed in rule 281—12.9(256). A fractional unit will be calculated in a manner consistent with this subrule. Unless the method of instruction is competency-based, multiple-section courses taught at the same time in a single classroom situation by one teacher do not meet this unit definition for the assignment of a unit of credit, unless otherwise provided by Iowa Code section 256.11.

12.5(14) Credit. A student shall receive a credit or a partial credit upon successful completion of a course that meets one of the criteria in subrule 12.5(13). The board may award high school credit to a student who demonstrates required competencies for a course or content area in accordance with assessment methods approved by the local board.

12.5(15) Subject offering. Except as provided for under subrule 12.5(20), a subject is regarded as offered when the teacher of the subject has met the licensure and endorsement standards of the state board of educational examiners for that subject; instructional materials and facilities for that subject have been provided; and students have been informed, based on their aptitudes, interests, and abilities, about possible value of the subject. A subject is regarded as taught only when students are instructed in it in accordance with all applicable requirements outlined herein. Subjects that the law requires schools and school districts to offer and teach shall be made available during the school day as defined in subrules 12.1(8) to 12.1(10).

12.5(16) Twenty-first century learning skills. Twenty-first century learning skills are as referenced in Iowa Code section 256.7(26) “a”(3).

12.5(17) Early intervention program. Iowa Code section 279.50(8) is incorporated by this reference.

12.5(18) Physical activity.

a. Iowa Code sections 256.11(6) and 256.11(18) are incorporated by this reference. In no event may a school or school district reduce the regular instructional time, as defined by “unit” in subrule 12.5(13), for any pupil to enable the pupil to meet the physical activity requirement. However, this requirement may be met by physical education classes, activities at recess or during class time, and before- or after-school activities.

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b. Schools and school districts must provide documentation that pupils are being provided with the support to complete the physical activity requirement. This documentation may be provided through printed schedules, district policies, student handbooks, and similar means.

12.5(19) *Cardiopulmonary resuscitation course completion.* Cardiopulmonary resuscitation course completion requirements are as referenced in Iowa Code section 256.11(6).

12.5(20) *Contracted courses used to meet school or school district requirements.* Contracted courses used to meet school or school district requirements are as referenced in Iowa Code section 279.50A.

281—12.6(256) Activity program. The following standards apply to the activity program of accredited schools and school districts.

12.6(1) *General guidelines.* Each board will sponsor a pupil activity program sufficiently broad and balanced to offer opportunities for all pupils to participate. The program will be supervised by qualified professional staff and designed to meet the needs and interests and challenge the abilities of all pupils consistent with their individual stages of development; contribute to the physical, mental, athletic, civic, social, moral, and emotional growth of all pupils; offer opportunities for both individual and group activities; be integrated with the instructional program; and provide balance so a limited number of activities will not be perpetuated at the expense of others.

12.6(2) *Supervised intramural sports.* If the board sponsors a voluntary program of supervised intramural sports for pupils in grades 7 through 12, qualified personnel and adequate facilities, equipment, and supplies will be provided. Middle school grades below grade 7 may also participate.

281—12.7(256,284,284A) Professional development.

12.7(1) The standards set forth in the following Iowa Code sections apply to staff development for accredited schools and school districts: Iowa Code sections 256.7(3), 256.7(25), 256.9(47), 256.9(49), and 256.9(62) and chapter 284.

12.7(2) To meet the professional needs of all staff, professional development activities will align with district goals; will be based on student and staff information; will prepare all employees to work effectively with diverse learners and to implement age-appropriate, multicultural, gender-fair approaches to the educational program; and will adhere to the professional development standards in 281—paragraph 83.6(2) “*b*” to realize increased student achievement, learning, and performance.

281—12.8(256) Accountability for student achievement. Schools and school districts shall meet the following accountability provisions for increased student achievement. Area education agencies will provide technical assistance as required by 281—subrule 72.4(7).

12.8(1) *School improvement advisory committee.* Each school and school district will establish a school improvement advisory committee that is governed by Iowa Code section 280.12.

a. Community involvement.

(1) Local community. The school or school district will involve the local community in decision-making processes as appropriate. The school or school district will seek input from the local community about, but not limited to, the following elements at least once every five years:

1. Statement of philosophy, beliefs, mission, or vision;
2. Major educational needs; and
3. Student learning goals.

(2) School improvement advisory committee. To meet provisions of Iowa Code section 280.12(2), the board will appoint and charge a school improvement advisory committee to make recommendations to the board. Based on the committee members’ analysis of the needs assessment data, the committee will make recommendations to the board about the following components:

1. Major educational needs;
2. Student learning goals;
3. Long-range goals that include, but are not limited to, the state indicators that address reading, mathematics, and science achievement; and
4. Harassment or bullying prevention goals, programs, training, and other initiatives.

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(3) At least annually, the school improvement advisory committee will also make recommendations to the board with regard to, but not limited to, the following:

1. Progress achieved with the annual improvement goals for the state indicators that address reading, mathematics, and science in subrule 12.8(3);
2. Progress achieved with other locally determined core indicators; and
3. Annual improvement goals for the state indicators that address reading, mathematics, and science achievement.

b. Data collection, analysis, and goal setting.

(1) Policy. The board will adopt a policy for conducting ongoing and long-range needs assessment processes. This policy will ensure involvement of and communication with the local community regarding its expectations for adequate preparation for all students as responsible citizens and successful wage earners. The policy will include provisions for keeping the local community regularly informed of progress on state indicators as described in subrule 12.8(3), other locally determined indicators and the methods a school district will use to inform kindergarten through grade 3 parents of their individual child's performance biannually. The policy will describe how the school or school district will provide opportunities for local community feedback on an ongoing basis.

(2) Long-range data collection and analysis. The long-range needs assessment process is to include provisions for collecting, analyzing, and reporting information derived from local, state, and national sources. The process will include provisions for reviewing information acquired over time on the following:

1. State indicators and other locally determined indicators;
2. Locally established student learning goals; and
3. Specific data collection required by federal and state programs.

Schools and school districts are to also collect information about additional factors influencing student achievement that may include, but are not limited to, demographics, attitudes, health, and other risk factors.

(3) Long-range goals. The board, with input from its school improvement advisory committee, will adopt long-range goals to improve student achievement in at least the areas of reading, mathematics, and science.

(4) Annual data collection and analysis. The ongoing needs assessment process will include provisions for collecting and analyzing annual assessment data on the state indicators, other locally determined indicators, and locally established student learning goals.

(5) Annual improvement goals. The board, with input from its school improvement advisory committee, will adopt annual improvement goals based on data from at least one districtwide assessment. The goals will describe desired annual increase in the curriculum areas of, but not limited to, mathematics, reading, and science achievement for all students, for particular subgroups of students, or both. Annual improvement goals may be set for the early intervention program as described in subrule 12.5(18), other state indicators, locally determined indicators, locally established student learning goals, other curriculum areas, future student employability, or factors influencing student achievement.

c. Content standards and benchmarks.

(1) Policy. The board will adopt a policy outlining its procedures for developing, implementing, and evaluating its total curriculum. The policy will describe a process for establishing content standards, benchmarks, performance levels, and annual improvement goals aligned with needs assessment information.

(2) Content standards and benchmarks. The board will adopt clear, rigorous, and challenging content standards and benchmarks in reading, mathematics, and science to guide the learning of students from the date of school entrance until high school graduation. Included in the local standards and benchmarks are the core content standards from Iowa's approved standards and assessment system under the applicable provisions of the federal Elementary and Secondary Education Act. Standards and benchmarks may be adopted for other curriculum areas defined in rule 281—12.5(256).

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d. Determination and implementation of actions to meet the needs. The school or school district will specify actions it will take in order to accomplish its long-range and annual improvement goals as established in Iowa Code section 280.12(1)“b.”

(1) Actions will include addressing the improvement of curricular and instructional practices to attain the long-range goals, annual improvement goals, and the early intervention goals as described in subrule 12.5(18).

(2) A school or school district will document consolidation of state and federal resources and requirements. State and federal resources will be used, as applicable, to support implementation of the plan.

(3) A school or school district may have building-level action plans.

e. Evaluation of plan. A school or school district will develop strategies to collect data and information to determine if it is accomplishing the goals it set.

f. Assessment of student progress. Each school or school district will provide for districtwide assessment of student progress for all students. It will identify valid and reliable student assessments aligned with local content standards, which include the core content standards referenced in subparagraph 12.8(1)“c”(2). These assessments are not limited to commercially developed measures. School districts receiving early intervention funding described in subrule 12.5(18) will provide for diagnostic reading assessments for kindergarten through grade 3 students.

(1) State indicators. Using at least one districtwide assessment, a school or school district will assess student progress on the state indicators in reading, mathematics, and science as specified in subrule 12.8(3). At least one districtwide assessment will allow for the comparison of the school or school district’s students with students from across the state and in the nation in reading, mathematics, and science.

(2) Performance levels. A school or school district will establish at least three performance levels on at least one districtwide valid and reliable assessment in the areas of reading and mathematics for at least grades 4, 8, and 11 and science in grades 8 and 10 or use the achievement levels as established by the Iowa testing program to meet the intent of this subparagraph.

g. Assurances and support. A school or school district will provide evidence that its board has approved and supports the actions under this rule. This assurance includes the commitment for ongoing improvement of the educational system.

h. Statewide summative assessment.

(1) For purposes of this chapter, the statewide summative assessment of student progress administered by school districts for purposes of the core academic indicators is the summative assessment developed by the Iowa testing program within the University of Iowa college of education and administered by the Iowa testing program’s designee. The department may require the Iowa testing program to enter into agreements with such designee to ensure the department is able to comply with Iowa Code chapter 256; this chapter; the provisions of the federal Every Student Succeeds Act, Pub. L. No. 114-95; the provisions of the Family Educational Rights and Privacy Act, 20 U.S.C. 1232g; and any other applicable state or federal law.

(2) For the school year beginning July 1, 2018, and each succeeding school year, the statewide summative assessment referred in this paragraph is to meet all of the following provisions:

1. All students enrolled in school districts in grades 3 through 11 will be administered an assessment in mathematics and English language arts, including reading and writing, during the last quarter of the school year, and all students enrolled in school districts in grades 5, 8, and 10 will be administered an assessment in science during the last quarter of the school year.

2. The assessment, at a minimum, will assess the core academic indicators identified in Iowa Code section 256.7(21)“b”; be aligned with the Iowa common core standards in both content and rigor; accurately describe student achievement and growth for purposes of the school, the school district, and state accountability systems; provide valid, reliable, and fair measures of student progress toward college or career readiness; and meet the summative assessment provisions of the federal Every Student Succeeds Act, Pub. L. No. 114-95.

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3. The assessment will be available for administration in both paper-and-pencil and computer-based formats and include assessments in mathematics, science, and English language arts, including reading and writing.

4. The assessment will be peer-reviewed by an independent third-party evaluator to determine that the assessment is aligned with the Iowa core academic standards, provides a measurement of student growth and student proficiency, and meets the summative assessment provisions of the federal Every Student Succeeds Act, Pub. L. No. 114-95. The assessment developed by the Iowa testing service within the University of Iowa college of education will make any necessary adjustments as determined by the peer review to meet the provisions of this paragraph.

5. The costs of complying with this paragraph will be borne by the Iowa testing program within the University of Iowa college of education.

12.8(2) Annual reporting. A school or school district will, at minimum, report annually to its local community about the progress on the state indicators and other locally determined indicators.

a. State indicators. A school or school district will collect data on the following indicators for reporting purposes:

(1) The percentage of all fourth, eighth, and eleventh grade students achieving proficient or higher reading status using at least three achievement levels and by gender, race, socioeconomic status, students with disabilities, and other subgroups as required by state or federal law.

(2) The percentage of all fourth, eighth, and eleventh grade students achieving proficient or higher mathematics status using at least three achievement levels and for gender, race, socioeconomic status, students with disabilities, and other subgroups as required by state or federal law.

(3) The percentage of all eighth and tenth grade students achieving proficient or higher science status using at least three achievement levels.

(4) The percentage of students considered as dropouts for grades 7 to 12 by gender, race, students with disabilities, and other subgroups as required by state or federal law.

(5) The percentage of high school seniors who intend to pursue postsecondary education/training.

(6) The percentage of high school students achieving a score or status on a measure indicating probable postsecondary success. This measure should be the measure used by the majority of students in the school, school district, or attendance center who plan to attend a postsecondary institution.

(7) The percentage of high school graduates who complete a core program of four years of English-language arts and three or more years each of mathematics, science, and social studies.

b. Annual progress report. Each school or school district will submit an annual progress report to its local community, its respective area education agency, and the department. That report will be submitted to the department by September 15 of each year. The report will include the following information:

(1) Baseline data on at least one districtwide assessment for the state indicators described in subrule 12.8(3). Every year thereafter the school or school district will compare the annual data collected with the baseline data. A school or school district is not to report to the community about subgroup assessment results when a subgroup contains fewer than ten students at a grade level. A school or school district will report districtwide assessment results for all enrolled and tuitioned-in students.

(2) Locally determined performance levels for at least one districtwide assessment in, at a minimum, the areas of reading, mathematics, and science. Student achievement levels as defined by the Iowa Testing Program may be used to fulfill this provision.

(3) Long-range goals to improve student achievement in the areas of, but not limited to, reading, mathematics, and science.

(4) Annual improvement goals based on at least one districtwide assessment in, at a minimum, the areas of reading, mathematics, and science. One annual improvement goal may address all areas, or individual annual improvement goals for each area may be identified. When a school or school district does not meet its annual improvement goals for one year, it shall include in its annual progress report the actions it will take to meet annual improvement goals for the next school year.

(5) Data on multiple assessments for reporting achievement for all students in the areas of reading, mathematics, and science.

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(6) Results by individual attendance centers, as appropriate, on the state indicators as stated in subrule 12.8(3) and any other locally determined factors or indicators. An attendance center, for reporting purposes, is a building that houses students in grade 4 or grade 8 or grade 11.

(7) School districts are encouraged to provide information on the reading proficiency of kindergarten through grade 3 students by grade level. However, all school districts receiving early intervention block grant funds will report to the department the progress toward achieving their early intervention goals.

(8) Other reports of progress as the director of the department requires and other reporting requirements as the result of federal and state program consolidation.

12.8(3) Accreditation, monitoring, and enforcement. Accreditation, monitoring, and enforcement is as referenced in Iowa Code section 256.11(10) and 256.11(11).

281—12.9(256) Flexible student and school support program.

12.9(1) General. The flexible student and school support program is as referenced by Iowa Code section 256.11(8). Applications are due to the department on May 31 prior to the school year the application will be implemented. Each school district or nonpublic school approved to participate in the flexible student and school support program will file an annual report with the department on the status of the program in a format prescribed by the department by May 31. Participation in the flexible student and school support program may be renewed for additional periods of years, each not to exceed three years. The director may revoke approval of all or part of any application or approved education program if the annual report or any other information available to the department indicates that conditions no longer warrant use of an exemption or funding from the school district's flexibility account under Iowa Code section 298A.2(2). Notice of revocation must be provided by the director to the school district or nonpublic school prior to the beginning of the school year for which participation is revoked.

12.9(2) Annual report to the department. Each school district or nonpublic school approved to participate in the flexible student and school support program will file an annual report with the department on the status of the program in a format prescribed by the department by May 31.

281—12.10(256) Independent accrediting agencies. Notwithstanding Iowa Code section 256.11(1) through 256.11(12) and this chapter, a nonpublic school may be accredited by an independent accrediting agency that appears on a list maintained by the state board of education instead of being accredited by the state board.

12.10(1) Compliance required by a nonpublic school. Iowa Code section 256.11(16) is incorporated by this reference. New accrediting agencies must apply by November 1. New schools shall notify the department by April 1 if they wish to be included in the independently accredited list for the following school year. Each year the department will contact the approved accrediting agencies requesting an updated list of the schools that are accredited or in the accrediting process for the upcoming school year. This list is due to the department by April 1. A nonpublic school that participates in the accreditation process offered by an independent accrediting agency on the approved list published pursuant to this rule is deemed to meet the education standards of Iowa Code section 256.11 and this chapter. However, such a school shall comply with statutory health and safety requirements for school facilities. A nonpublic school accredited under this chapter shall abide by all state and federal laws and regulations. Notwithstanding Iowa Code section 256.11, the department is not precluded from enforcing compliance with all state and federal laws and regulations.

12.10(2) List maintained by state board. The state board will maintain a list of approved independent accrediting agencies comprised of at least six regional or national nonprofit, nongovernmental agencies recognized as reliable authorities concerning the quality of education offered by a school and shall publish the list of independent accrediting agencies on the department's Internet site. The list will include accrediting agencies that, as of January 1, 2013, accredited a nonpublic school in this state that was concurrently accredited under this rule and include any agency that has a formalized partnership agreement with another agency on the list and has member schools in this state as of January 1, 2013. Agencies that met this standard as of November 20, 2013, are the Independent Schools Association of the

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Central States (ISACS), Christian Schools International (CSI), Cognia, the National Lutheran Schools Association (NLSA), and the Association of Christian Schools International (ASCI).

12.10(3) *Criteria for recognizing an agency as a “reliable authority concerning the quality of education offered by a school.”* In any decision to add an agency to the list maintained pursuant to subrule 12.10(1) or to remove an agency from the list pursuant to subrule 12.10(2), the following criteria may be applied:

a. Whether the agency’s accreditation standards require a school to set high academic and nonacademic standards for all students, including preparation of students for postsecondary success.

b. Whether the agency’s accreditation standards require a school to monitor and assess all students’ progress toward high academic and nonacademic standards.

c. Whether the agency’s accreditation standards require a school to recruit and retain properly licensed quality professional staff, and provide those staff members with ongoing professional development.

d. Whether the agency’s accreditation standards set requirements for fiscal, data, and contract management.

e. Whether the agency monitors compliance with its standards and takes appropriate corrective action when standards are not met.

f. Whether the agency itself has appropriate fiscal, data, and contract management policies and procedures.

g. Any uncorrected citation of noncompliance by any governmental or nongovernmental agency or organization with jurisdiction or oversight of an accrediting agency listed pursuant to subrule 12.10(1).

h. Any uncorrected negative audit finding of an accrediting agency listed pursuant to subrule 12.10(1).

i. Any judgments, orders, decrees, consent decrees, settlement agreements, or verdicts concerning the agency listed pursuant to subrule 12.10(1) entered by any state or federal court of competent jurisdiction.

j. Whether the agency listed pursuant to subrule 12.10(1) continues to retain its nonprofit status.

k. Whether the agency listed pursuant to subrule 12.10(1) has received any form of recognition for innovation or excellence concerning its work.

l. Any other criterion used by the agency to determine accreditation.

m. Any other reports or findings sent to the nonpublic school regarding accreditation, including findings related to Iowa Code section 256.11.

12.10(4) *Removal of agency from approved independent accrediting agencies.* If the state board takes preliminary action to remove an agency from the approved list published on the department’s Internet site pursuant to subrule 12.10(1), the department will, at least one year prior to removing the agency from the approved list, notify the nonpublic schools participating in the accreditation process offered by the agency of the state board’s intent to remove the accrediting agency from its approved list of independent accrediting agencies. The department will give notice to the independent accrediting agency, along with an opportunity to respond. The notice will also be posted on the department’s Internet site and contain the proposed date of removal. If a nonpublic school receives notice pursuant to this subrule and it chooses to remain accredited, the nonpublic school is to attain accreditation under this rule or otherwise attain accreditation in a manner provided by this chapter or Iowa Code section 256.11, not later than one year following the date on which the state board removes the agency from its list of independent accrediting agencies.

12.10(5) *Rule of construction: “at least six.”* The obligation to maintain a list of at least six agencies in subrule 12.10(1) will not be construed to require the list to contain an agency that is not a regional or national nonprofit, nongovernmental agency recognized as a reliable authority concerning the quality of education offered by a school.

12.10(6) *Adoption by the department of standard procedures.* The department will adopt standard procedures, schedules, and forms for the implementation of this rule, including procedures for adding independent accrediting agencies from the list maintained by the state board pursuant to subrule 12.10(1) and removing agencies from that list pursuant to subrule 12.10(4).

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281—12.11(256) High-quality standards for computer science. Iowa Code sections 256.7(26) and 256.9(61) are incorporated by this reference. A computer science professional development incentive fund is established in the state treasury under the control of the department. The department may accept gifts, grants, bequests, and other private contributions, as well as state or federal moneys, for deposit in the fund. The department may disburse moneys contained in the fund for professional development activities or tuition reimbursement. Notwithstanding Iowa Code section 8.33, moneys in the computer science professional development incentive fund that remain unencumbered or unobligated at the close of the fiscal year will not revert but remain available for expenditure for the purposes designated until the close of the succeeding fiscal year. The department may disburse those moneys in the following ways:

1. A school district or accredited nonpublic school, or a collaborative of one or more school districts, accredited nonpublic schools, and area education agencies, may apply to the department, in the manner prescribed by the department, to receive moneys from the fund to provide proven professional development activities for Iowa teachers in the area of computer science education.

2. A school district or accredited nonpublic school may apply to the department, in the manner prescribed by the department, to receive moneys from the fund to provide tuition reimbursement for Iowa teachers seeking endorsements or authorizations for computer science under Iowa Code section 272.2(20).

These rules are intended to implement Iowa Code sections 256.11, 280.23, and 256.7(21).

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EDUCATION DEPARTMENT[281]

Notice of Intended Action

**Proposing rulemaking related to school health services
and providing an opportunity for public comment**

The State Board of Education hereby proposes to rescind Chapter 14, “School Health Services,” Iowa Administrative Code, and to adopt a new chapter with the same title.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code sections 135.185, 256.7, 279.70 and 280.16.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code sections 135.185, 256.7, 279.70 and 280.16.

Purpose and Summary

This rulemaking is proposed pursuant to Executive Order 10 review. The Department of Education proposes to remove restrictive terms that do not add value and remove language where a statutory cross-reference would suffice.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

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

Waivers

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Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the State Board for a waiver of the discretionary provisions, if any, pursuant to 281—Chapter 4.

Public Comment

Any interested person may submit written or oral comments concerning this proposed rulemaking. Written or oral comments in response to this rulemaking must be received by the Department no later than 4:30 p.m. on February 27, 2024. Comments should be directed to:

Thomas A. Mayes
 Department of Education
 Grimes State Office Building, Second Floor
 400 East 14th Street
 Des Moines, Iowa 50319-0146
 Phone: 515.281.8661
 Email: thomas.mayes@iowa.gov

Public Hearing

Public hearings at which persons may present their views orally or in writing will be held as follows:

February 27, 2024 9 to 9:30 a.m.	Room B100 Grimes State Office Building Des Moines, Iowa
February 27, 2024 1 to 1:30 p.m.	Room B50 Grimes State Office Building Des Moines, Iowa

Persons who wish to make oral comments at a public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rulemaking.

Any persons who intend to attend a public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department and advise of specific needs by calling 515.281.5295.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking 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 rulemaking action is proposed:

ITEM 1. Rescind 281—Chapter 14 and adopt the following **new** chapter in lieu thereof:

CHAPTER 14
 SCHOOL HEALTH SERVICES

DIVISION I
 IN GENERAL

281—14.1(256) Medication administration. Each school district, area education agency, and school shall establish medication administration policy and procedures, which include the following:

14.1(1) A statement on administration of prescription and nonprescription medication.

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14.1(2) A statement on an individual health plan pursuant to rule 281—14.2(256) when administration requires ongoing professional health judgment.

14.1(3) A statement that authorized persons administering medication include licensed health personnel working under the auspices of the school, such as licensed registered nurses, physicians, physician assistants, and persons to whom authorized practitioners have delegated the administration of prescription and nonprescription drugs (who have successfully completed a medication administration course). Individuals who have demonstrated competency in administering their own medications may self-administer their medication. Individuals may self-administer asthma or other airway constricting disease medication, use a bronchodilator canister or bronchodilator canister and spacer, or possess and have use of an epinephrine auto-injector with parent and physician (or physician assistant) consent on file for each school year, without the necessity of demonstrating competency to self-administer these medications. If a student misuses this privilege, it may be withdrawn. For purposes of this chapter, “self-administration” and “medication” mean the same as defined in Iowa Code section 280.16(1).

14.1(4) A provision for a medication administration course provided by the department that is completed every five years with an annual medication administration procedural skills check completed with licensed health personnel. Licensed health personnel working under the auspices of the school who delegate medication administration within their scope of practice will conduct the course. A record of course completion will be maintained by the school.

14.1(5) A provision that the individual’s parent provide a signed and dated written statement requesting medication administration at school.

14.1(6) A statement that medication will be in the original labeled container either as dispensed or in the manufacturer’s container.

14.1(7) A provision that a written medication administration record is to be on file at the school and include:

- a. Date.
- b. Individual’s name.
- c. Prescriber or person authorizing administration.
- d. Medication name and purpose, including the use of a bronchodilator canister or a bronchodilator canister and spacer or the use of an epinephrine auto-injector.
- e. Medication dosage.
- f. Administration time.
- g. Administration method.
- h. Signature and title of the person administering medication.
- i. Any unusual circumstances, actions or omissions.

14.1(8) A statement that medication shall be stored in a secured area unless an alternate provision is documented.

14.1(9) A provision for a written statement by the individual’s parent or guardian requesting the individual’s co-administration of medication, when competency is demonstrated.

14.1(10) A provision for emergency protocols for medication-related reactions.

14.1(11) A statement regarding confidentiality of information.

281—14.2(256) Special health services. Some individuals need special health services to participate in an educational program. These individuals will receive special health services along with their educational program.

14.2(1) Definitions. The following definitions are used in this rule, unless the context otherwise demands:

“*Assignment and delegation.*” “Assignment” means the routine health care, activities and health procedures that are within the licensed health personnel’s authorized scope of practice as defined by state law. “Delegation” means the process within the licensed health personnel’s scope of practice in transferring a task, skill, or procedure of the licensed health personnel to qualified designated personnel. Primary consideration is given to the recommendation of the licensed health personnel and health

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instruction competence of the delegate is documented to perform a specific activity, skill, or procedure that is beyond the qualified personnel's traditional role and not routinely performed.

"Co-administration" means the eligible individual's participation in the planning, management and implementation of the individual's special health service and demonstration of proficiency to licensed health personnel.

"Educational program" includes all school curricular programs and activities both on and off school grounds.

"Education team" may include the individual, the individual's parent, administrator, teacher, licensed health personnel, and others involved in the individual's educational program. The education team may be the team under the Individuals with Disabilities Education Act or Section 504 of the Rehabilitation Act of 1973 if the child is eligible under either of those statutes.

"Health assessment" means the systematic collection of data collected by the licensed health personnel to determine the student's health status and initial plan of care, to identify any actual or potential health problems, or upon any significant change in the student's status relating to the individual's education program.

"Health instruction" means education by licensed health personnel to prepare qualified designated personnel to deliver and perform special health services contained in the eligible individual's health plan. Documentation of education and periodic updates will be on file at school.

"Individual health plan" means the documented plan of care utilizing the nursing process as defined in 655—Chapter 6 for evidence-based management of the student's ongoing special health service in the educational program. The school nurse may develop this plan in collaboration with the education team. The plan also includes a provision for emergencies to provide direction in managing an individual's health condition (stable or unstable). Documentation of evaluation and updates to the plan are completed as needed and at least annually.

"Licensed health personnel" means a licensed registered nurse, licensed physician, licensed physician assistant, or other licensed health personnel legally authorized to delegate or provide special health services and medications under the auspices of the school.

"Prescriber" means licensed health personnel legally authorized to prescribe special health services and medications.

"Qualified designated personnel" means individuals who perform delegated tasks, activities and procedures beyond their traditional role who are instructed, supervised, and competent in implementing the eligible individual's health plan or delegation of special health services.

"Special health services" includes services for eligible individuals whose health status (stable or unstable) necessitates:

1. Interpretation or intervention,
2. Administration of health procedures and health care, or
3. Use of a health device to compensate for the reduction or loss of a body function.

"Supervision" means the assessment, delegation, monitoring, and frequency of evaluation and documentation of special health services by licensed health personnel. Levels of supervision include situations in which:

1. Licensed health personnel are physically present.
2. Licensed health personnel are available at the same site.
3. Licensed health personnel are available on call.

14.2(2) *Special health services policy.* Each board of a public school or the authorities in charge of an accredited nonpublic school shall, in consultation with licensed health personnel, establish policy and guidelines for the provision of confidential special health services in conformity with this chapter. Such policy and guidelines will address the following:

- a. Licensed health personnel provide special health services under the auspices of the school.

Duties of the licensed health personnel include:

- (1) Participating as a member of the education team.
- (2) Providing the health assessment.
- (3) Planning, implementing and evaluating the written individual health plan.

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- (4) Planning, implementing and evaluating special emergency health services.
- (5) Serving as a liaison and encouraging participation and communication with health service agencies and individuals providing health care.
- (6) Providing health consultation, counseling and instruction with the eligible individual, the individual's parent and the staff in cooperation and conjunction with the prescriber.
- (7) Maintaining a record of special health services. The documentation includes the eligible individual's name, special health service, prescriber or person authorizing, date and time, signature and title of the person providing the special health service and any unusual circumstances in the provision of such services.
- (8) Reporting unusual circumstances to the parent, school administration, and prescriber.
- (9) Assigning and delegating to, instructing, providing technical assistance to and supervising qualified designated personnel.
- (10) Updating knowledge and skills to meet special health service needs.
 - b. Prior to the provision of ongoing special health services, the following are to be on file:
 - (1) A written statement by the prescriber detailing the specific method and schedule of the special health service, when indicated.
 - (2) A written statement by the individual's parent requesting the provision of the ongoing special health service.
 - (3) A written individual health plan available in the health record and integrated into the IEP or 504 plan, if applicable, for ongoing health services and documentation of the education team meeting.
 - c. Licensed health personnel delegating health services, in collaboration with the education team, determine the special health services to be provided designated qualified personnel. The documented rationale will include the following:
 - (1) Analysis and interpretation of the special health service needs, health status stability, complexity of the service, predictability of the service outcome and risk of improperly performed service.
 - (2) Determination that the special health service, task, procedure or function is part of the person's job description.
 - (3) Determination of the assignment and delegation based on the scope of the licensed personnel's practice, the student's needs and the qualifications of school personnel performing health services.
 - (4) Review of the designated person's competency.
 - (5) Determination of initial and ongoing level of supervision, monitoring and evaluation required for safe, quality services.
 - d. Licensed health personnel supervise the delegated special health services, define the level of frequency of supervision and document the supervision.
 - e. Licensed health personnel instruct qualified designated personnel to deliver and perform delegated special health services. Documentation of instruction, written consent of personnel pursuant to Iowa Code section 280.23 and evaluations are to be on file at the school.
 - f. Parents provide the usual equipment, supplies, and necessary maintenance of the equipment, unless the school is required to provide the equipment, supplies, and maintenance under the Individuals with Disabilities Education Act and 281—Chapter 41 or Section 504 of the Rehabilitation Act of 1973. The equipment will be stored in a secure area. The individual health plan is to designate the responsibilities roles of the school, parents and others in the provision, supply, storage and maintenance of necessary equipment.

14.2(3) *Relationship between this rule and other laws and rules.* In complying with this rule, for children who are eligible under the Individuals with Disabilities Education Act and 281—Chapter 41 or Section 504 of the Rehabilitation Act of 1973, the school health services is to comply with any additional or differing provisions of those laws based on a specific child's needs.

281—14.3(256) School district and accredited nonpublic school stock epinephrine auto-injector, bronchodilator canister, or bronchodilator canister and spacer voluntary supply.

14.3(1) *Definitions.* For the purpose of this rule, the following definitions apply:

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“*Act*” means 2015 Iowa Acts, Senate File 462, which amended Iowa Code section 280.16 and created Iowa Code section 280.16A.

“*Bronchodilator*” means the same as defined in Iowa Code section 280.16(1)“a.”

“*Bronchodilator canister*” means the same as defined in Iowa Code section 280.16(1)“b.”

“*Department*” means the department of education.

“*Epinephrine auto-injector*” means the same as defined in Iowa Code section 280.16(1)“c.”

“*Licensed health care professional*” means the same as defined in Iowa Code section 280.16(1)“d.”

“*Medication administration course*” means a course approved or provided by the department that includes safe storage of medication, handling of medication, general principles, procedural aspects, skills demonstration and documentation requirements of safe medication administration in schools.

“*Medication error*” means the failure to administer an epinephrine auto-injector to a student or individual by proper route, failure to administer the correct dosage, or failure to administer an epinephrine auto-injector, bronchodilator, or bronchodilator canister and spacer according to generally accepted standards of practice.

“*Medication incident*” means accidental injection of an epinephrine auto-injector into a digit of the authorized personnel administering the medication.

“*Personnel authorized to administer epinephrine or a bronchodilator*” means the same as defined in Iowa Code section 280.16A(1)“e.”

“*School building*” means each attendance center within a school district or accredited nonpublic school where students or other individuals are present.

“*School nurse*” means the same as defined in Iowa Code section 280.16A(1)“f.”

“*Spacer*” means the same as defined in Iowa Code section 280.16A(1)“g.”

14.3(2) *Applicability.* This rule applies to and permits:

a. A licensed health care professional to prescribe a stock epinephrine auto-injector, a bronchodilator canister, or a bronchodilator canister and spacer in the name of a school district or accredited nonpublic school for use in accordance with the Act and this rule;

b. A pharmacist to dispense a stock supply pursuant to paragraph 14.3(2)“a”; and

c. A school district or accredited nonpublic school to acquire and maintain a stock supply pursuant to paragraphs 14.3(2)“a” and 14.3(2)“b.”

14.3(3) *Prescription for stock epinephrine auto-injectors, bronchodilator canisters, and bronchodilator canisters and spacers.* A school district or accredited nonpublic school may obtain a prescription for epinephrine auto-injectors, bronchodilator canisters, and bronchodilator canisters and spacers from a licensed health care professional annually in the name of the school district or accredited nonpublic school for administration to a student or individual who may be experiencing an anaphylactic reaction or may need treatment for respiratory distress, asthma, or other airway constricting disease. The school district or accredited nonpublic school is to maintain the supply of such auto-injectors, bronchodilator canisters, and bronchodilator canisters and spacers according to manufacturer instructions. If a school district or accredited nonpublic school obtains a prescription pursuant to the Act and these rules for epinephrine auto-injectors, the school district or accredited nonpublic school will stock a minimum of one pediatric dose and one adult dose for each school building. A school district or accredited nonpublic school may obtain a prescription for more than the minimum and may maintain a supply in other buildings.

14.3(4) *Authorized personnel and stock epinephrine auto-injector, bronchodilator canister, or bronchodilator canister and spacer administration.* A school nurse or personnel trained and authorized may provide or administer an epinephrine auto-injector, bronchodilator canister, or bronchodilator canister and spacer from a school supply to a student or individual in circumstances authorized by Iowa Code section 280.16.

a. Pursuant to Iowa Code section 280.23, authorized personnel will submit a signed statement to the school nurse stating that the authorized personnel agree to perform the service of administering a stock epinephrine auto-injector to a student or individual who may be experiencing an anaphylactic reaction or administering a bronchodilator canister or a bronchodilator canister and spacer to a student or individual experiencing respiratory distress, asthma, or other airway constricting disease.

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b. Emergency medical services (911) will be contacted immediately after a stock epinephrine auto-injector is administered to a student or individual, and the school nurse or authorized personnel will remain with the student or individual until emergency medical services arrive. In the event of administration of a stock bronchodilator or bronchodilator canister and spacer to a student or individual, the school nurse will be contacted and will determine, based on professional judgment, the necessary care of a student or individual.

c. The administration of an epinephrine auto-injector, a bronchodilator, or a bronchodilator canister and spacer in accordance with this rule is not the practice of medicine.

14.3(5) *Stock epinephrine auto-injector, bronchodilator, or bronchodilator canister and spacer training.* School employees may obtain a signed certificate to become authorized personnel.

a. Training to obtain a signed certificate may be accomplished by:

(1) Successfully completing, every five years, the medication administration course provided by the department;

(2) Annually demonstrating to the school nurse a procedural return-skills check on medication administration;

(3) Annually completing an anaphylaxis, asthma, or airway constricting disease training program approved by the department;

(4) Demonstrating to the school nurse a procedural return-skills check on the use of an epinephrine auto-injector, bronchodilator canister, and bronchodilator canister and spacer using information from the training, using authorized prescriber instructions, and as directed by the prescription manufacturing label; and

(5) Providing to the school nurse a signed statement, pursuant to Iowa Code section 280.23, that the person agrees to perform one or more of the services described in this rule.

b. Training required after a medication error or medication incident. Authorized personnel or the school nurse directly involved with a medication error or medication incident involving the administration of stock epinephrine auto-injectors, bronchodilators, or bronchodilator canisters and spacers are required to follow the medication error or medication incident protocol adopted by the board of directors of the school district or authorities in charge of the school district or accredited nonpublic school. To retain authorization to administer stock epinephrine auto-injectors, bronchodilators, or bronchodilator canisters and spacers in the school setting, authorized personnel directly involved with a medication error or medication incident will be required to provide a procedural skills demonstration to the school nurse demonstrating competency in the administration of stock epinephrine auto-injectors, bronchodilators, or bronchodilator canisters and spacers.

14.3(6) *Procurement and maintenance of stock epinephrine auto-injector, bronchodilator, or bronchodilator canister and spacer supplies.* A school district or accredited nonpublic school may obtain a prescription to stock, possess, and maintain epinephrine auto-injectors, bronchodilators, or bronchodilator canisters and spacers.

a. Stock epinephrine auto-injectors, bronchodilator canisters, and bronchodilator canisters and spacers will be stored in a secure, easily accessible area for an emergency within the school building, or in addition to other locations as determined by the school district or accredited nonpublic school, and in accordance with the manufacturing label of the stock epinephrine auto-injector, bronchodilator canister, or bronchodilator canister and spacer.

b. A school district or school will designate an employee to routinely check stock epinephrine auto-injectors, bronchodilator canisters, and bronchodilator canisters and spacers and document the following in a log monthly throughout the calendar year:

(1) The expiration date;

(2) Any visualized particles or color change, for epinephrine auto-injectors; or

(3) Bronchodilator canister damage.

c. The school district or school will develop a protocol to replace as soon as reasonably possible any logged epinephrine auto-injector, bronchodilator canister, or bronchodilator canister and spacer that is used, is damaged, is close to expiration, or is discolored or has particles visible in the epinephrine auto-injector liquid.

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14.3(7) *Disposal of used stock epinephrine auto-injectors, bronchodilators, or bronchodilator canisters and spacers.* The school district or school that administers epinephrine auto-injectors, bronchodilators, or bronchodilator canisters and spacers shall dispose of used cartridge injectors as infectious waste pursuant to the department's medication waste guidance and bronchodilators or bronchodilator canisters and spacers pursuant to the department's medication waste guidance. For purposes of this rule, a multiuse bronchodilator canister is considered "used" when it no longer contains sufficient active ingredient to be medically useful.

14.3(8) *Reporting.* A school district or school that obtains a prescription for stock medications under this rule will report to the department within 48 hours, using the reporting format approved by the department, each medication incident or error with the administration of a stock epinephrine injector, bronchodilator canister, or bronchodilator canister and spacer or administration of a stock epinephrine auto-injector.

14.3(9) *School district or accredited nonpublic school policy.* A school district or school may stock epinephrine auto-injectors, bronchodilator canisters, or bronchodilator canisters and spacers. The board of directors in charge of the school district or authorities in charge of the accredited nonpublic school that stocks epinephrine auto-injectors, bronchodilator canisters, or bronchodilator canisters and spacers shall establish a policy and procedure for the administration of a stock epinephrine auto-injector, bronchodilator canister, or bronchodilator canister and spacer, which is to comply with the minimum provisions of this rule.

14.3(10) *Rule of construction.* This rule will not be construed to require school districts or accredited nonpublic schools to maintain a stock of epinephrine auto-injectors, bronchodilator canisters, or bronchodilator canisters and spacers. An election not to maintain such a stock is not to be considered to be negligence.

14.3(11) *Opioid antagonists.* A school district may obtain a valid prescription for an opioid antagonist and maintain a supply of opioid antagonists in a secure location at each location where a student may be present for use as provided in this rule. Any school district that does so is to comply with rules and procedures adopted by the department of health and human services.

281—14.4(279) Suicide prevention, identification of adverse childhood experiences, and strategies to mitigate toxic stress response. Iowa Code section 279.70 is incorporated by this reference.

281—14.5(256,280) Severability. If any provisions of this chapter or the application thereof to any person or circumstance are held invalid, such invalidity does not affect the provisions or application of this chapter that can be given effect, and to this end the provisions of this chapter are declared to be severable.

This division is intended to implement Iowa Code sections 135.185, 256.7(33), 279.70 and 280.16.

DIVISION II
COMPREHENSIVE HEALTHY AND SAFE LEARNING ENVIRONMENTS

281—14.6(279) Purpose and objectives: comprehensive healthy and safe learning environments. The purpose of this division is to provide uniform definitions and rules for public schools, accredited nonpublic schools, and area education agencies (AEAs) regarding standards for professional development and training in evidence-based classroom management practices, evidence-based interventions, appropriate and inappropriate responses to behavior in the classroom that present an imminent threat of bodily injury to a student or another person, and in accordance with 281—Chapter 103 for the reasonable, necessary, and appropriate physical restraint of a student. This division gives clear guidance that classroom clearance may be used only to terminate or prevent a threat of bodily injury and clarifies the required parental notification, response, and reporting of school behavior challenges.

This division also provides clarification of Iowa AEAs', public school districts', and accredited nonpublic school districts' responsibilities and the responsibilities of behavioral health service providers

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under Iowa Code section 280A.1, should they choose to enter into agreements for behavioral health screenings or telehealth services.

This division is intended to promote a comprehensive safe learning space for learners and school staff, and to promote the dignity, care, safety, welfare, and security of each child and the school community; encourage the use of proactive, effective, and evidence- and research-based strategies resulting in increased learning for all students; lessen disruption to instruction; and expand supports for educators through teacher preparation, revised protocols, training and professional learning.

281—14.7(279) Definitions. For the purposes of this division:

“Assault” means the same as defined in Iowa Code section 708.1.

“Bodily injury” or *“injury”* means physical pain, illness, or any other impairment of physical condition. For purposes of required reporting, the injury is to be the result of intentional act and not accidental and a physical injury to a person’s body that is apparent within 24 hours after the incident and may include damage to any bodily tissue to the extent that the tissue must undergo a healing process in order to be restored to a sound and healthy condition. Mental or verbal insult is not covered by this definition.

“Classroom clear” means clearing all other students out of the classroom to calm a child or to address disruption by a child. It is not necessary to use the phrase “classroom clear” to be covered by this division. The mere use of the term “classroom clear” does not bring that activity within the coverage of this division. Using another term for a “classroom clear” does not remove that activity from the coverage of this division. A classroom clear is not either of the following:

1. Removing other students from a classroom to preserve a student’s dignity/privacy in the event of a medical emergency, health issue, or both, or
2. Emergency procedures a school/district may use in the event of a school crisis or natural disaster.

“Classroom management” means the set of skills, practices, and strategies teachers use to maintain productive and prosocial behaviors that enable effective instruction in whole class or small group settings.

“Department” means the Iowa department of education.

“Evidence-based” means an activity, strategy or intervention that demonstrates a significant effect on improving student outcomes or other relevant outcomes. Activities, strategies, or interventions with strong or moderate evidence should be prioritized.

“Parent” means an individual included in the definition of “parent” in rule 281—41.30(256B,34CFR300) and also includes an individual authorized to make decisions for the child pursuant to a power of attorney for temporary delegation of custody or for making educational decisions.

“Physical restraint” means the same as defined in rule 281—103.2(256B,280).

“Property damage” means serious damage to property of significant monetary value or significant nonmonetary value or importance because of violence. For purposes of required reporting, the property damage must be the result of intentional act and not accidental. In assessing significant nonmonetary value for purposes of this definition, the following will be considered: the property is not of significant monetary value but difficult to replace or its loss or damage impedes learning, or an object(s) used as a weapon resulting in damage to the object or property.

“Reasonable and necessary force” means that force, and no more, which a reasonable person would judge to be necessary under the circumstances that existed at the time, that is not intended to cause pain, and that does not exceed the degree or duration needed to accomplish the purposes set forth in rule 281—103.5(256B,280).

“School district” means an Iowa public school district directly supported in whole or in part by tax dollars, as defined in Iowa Code section 280.2, and with the power and jurisdiction provided by Iowa Code section 274.1.

“Social-emotional-behavioral health” or *“SEBH”* means social, emotional, behavioral and mental well-being that affects how one thinks, feels, communicates, acts, and learns. These contribute to resilience and to how one relates to others, responds to stress and emotions, and makes choices. Foundational knowledge and skills that promote SEBH include self-awareness, self-management,

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responsible decision-making, social awareness, and relationship skills that support positive well-being and academic success.

“*Therapeutic classroom*” means a classroom designed for the purpose of providing support for any student whose emotional, social, or behavioral needs interfere with the student’s ability to be successful in the current educational environment, with or without supports, until the student is able to successfully return to the student’s current education environment, with or without supports, including but not limited to the general education classroom. It is not necessary to use the phrase “therapeutic classroom” to be covered by this division. The mere use of the term “therapeutic classroom” does not bring those services or locations within the coverage of this division. Using another term for a “therapeutic classroom” does not remove that service or location from the coverage of this division.

281—14.8(279) Classroom clears.

14.8(1) A classroom teacher may clear students from the classroom only if necessary to prevent or terminate an imminent threat of bodily injury to a student or another person in the classroom. A threat is imminent when it is reasonably likely to inflict pain, illness, or any other impairment of physical condition.

14.8(2) A classroom clear means clearing all other students out of the classroom to calm a child. A classroom clear in which an adult remains with a student to calm the student is not considered seclusion.

14.8(3) The limitations on use of classroom clears pertains to all classrooms, general and special education, ages 3 through 21, when a child is served in a setting that is using public funds for educational purposes.

14.8(4) If a classroom clear is included within a school’s or district’s crisis response plan, the school or district will also follow the additional provisions of Iowa Code section 279.51A and this division.

14.8(5) In determining if a classroom clear may be used to prevent or terminate an imminent threat, the following factors apply:

- a. The size and physical, mental, and psychological condition of the student;
- b. The nature of the student’s behavior;
- c. The presence of a weapon or material that can be weaponized;
- d. The extent and nature of resulting bodily injury to the student and other persons in the classroom; and
- e. The prevention of physical intervention that will likely escalate behavior and result in bodily injury.

281—14.9(279) Required parent/guardian notifications and responses.

14.9(1) General. If a classroom clear is used to prevent an imminent threat, the following notifications and actions shall occur:

- a. The school principal will, by the end of the school day if possible, but at least within 24 hours after the incident, notify the parents/guardians of all students assigned to the classroom that it was cleared.
- b. The notification will not identify, directly or indirectly, any students involved in the incident giving rise to the classroom clearance.
- c. The principal will request that the parent/guardian of the student whose behavior caused the classroom clear meet with the principal, the classroom teacher, and other staff as appropriate.

14.9(2) Students with disabilities. When a student with a disability whose behavior caused a classroom clear and has an individualized education program (IEP) or a behavioral intervention plan (BIP), the classroom teacher will call for and be included in a review and potential revision of the student’s IEP or BIP by the student’s IEP team. The AEA, in collaboration with the school district, may, when the parent or guardian meets with the IEP team during the review or reevaluation of the student’s IEP, inform the parent or guardian of individual or family counseling services available in the area. The public agencies are to provide those services if those services are necessary for a free appropriate public education, pursuant to 281—subrule 41.320(7).

14.9(3) Students without disabilities.

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a. If a student does not have an IEP or a BIP, the meeting will include an intervention plan that reduces the likelihood of the recurrence of behaviors requiring a classroom clear.

b. If a student has a BIP but does not have an IEP, the classroom teacher will call for and be included in a review and potential revision of the student's behavioral intervention plan.

c. If the school suspects the student whose behavior resulted in a classroom clear might be eligible for a BIP, individual health plan (IHP), safety plan, or IEP, the public agencies shall promptly determine the child's eligibility in accordance with the procedures required for determining eligibility.

14.9(4) Parent input. The team is to consider parent input in identifying supports to address behaviors that caused the classroom clear.

a. If the parent of a student with an IEP chooses not to participate in the meeting, the school will follow procedures to document efforts to invite the parent, as required by rule 281—41.322(256B,34CFR300), and inform the parent of proposed changes to the IEP or BIP, or both, pursuant to rule 281—41.503(256B,34CFR300).

b. If the parent of a student without an IEP chooses not to participate in the meeting, the school will continue to support the student's needs by planning and providing intervention for the student.

14.9(5) Additional provisions. When calling for a meeting, the classroom teacher may be required to follow procedures established by the school district or AEA to request such a meeting. Any recommended change to a student's behavior intervention plan, individual health plan, safety plan, or educational placement is to be made in accordance with the procedures required for amending said plan or changing said placement.

281—14.10(279) Documentation and reporting.

14.10(1) General. A classroom teacher shall report to the principal any incident of assault or violence that results in injury or property damage by a student enrolled in the school. For purposes of this rule, "attending students" includes all students who are actively attending school, suspended or expelled during the reporting school year. Districts should document all incidents that occur in a school building, on school grounds, or at a school-sponsored function by students attending school in the district. The school district shall report to the department, in a manner prescribed by the department, an annual count of disaggregated incidents of assault, violence resulting in injury, violence resulting in property damage, and referral/transfer to a therapeutic classroom that includes the therapeutic components as described in subrule 14.13(2). Incidents shall be reported if they occurred by a student in a school building, on school grounds, or at a school-sponsored function.

14.10(2) Contents of report. The report will include demographic information on students reported as victims and perpetrators, disaggregated by race, gender, national origin, age, grade level, and disability status, along with any other data needed by the department to implement the Elementary and Secondary Education Act as amended by the Every Student Succeeds Act, Public Law 114-95, and with safeguards to ensure student privacy.

14.10(3) Reporting by the department. The department of education will compile and summarize the data it receives under this rule and submit a report to the general assembly each year by November 1.

281—14.11(256) Crisis response.

14.11(1) General. The following consists of appropriate responses to classroom behavior that presents an imminent threat of bodily injury and consistent with rules for seclusion and restraint:

a. Responses are to include nationally recognized best practices of crisis response/intervention to de-escalate behaviors that are likely to result in bodily harm.

b. Crisis response strategies are to include a safety assessment and continuum of strategies informed by the level of risk and the safety assessment.

c. When possible, response strategies are to use less disruptive, nonphysical intervention prior to the use of physical interventions, unless the circumstances are such that physical intervention is necessary to ensure the safety of the student and others.

14.11(2) Use of reasonable force. Notwithstanding the ban on corporal punishment in rule 281—103.3(256B,280), no employee subject to these rules is prohibited from using reasonable and

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necessary force in compliance with this chapter and 281—Chapter 103. An employee is not privileged to use unreasonable force to accomplish any of the purposes listed in this chapter and 281—Chapter 103. If physical force is used, school employees shall comply with any provisions of 281—Chapter 103 and this chapter.

281—14.12(256) Prevention of classroom behaviors that present an imminent threat.

14.12(1) Appropriate responses to behaviors, including classroom behavior that presents an imminent threat of bodily injury, are to be part of evidence-based tiered supports within the department's continuous improvement framework to support student SEBH.

14.12(2) The evidence-based tiered supports will:

- a. Include universal support for all students that foster the emotional well-being of students through schoolwide safe and supportive environments.
- b. Be culturally responsive.
- c. Be trauma responsive.
- d. Include positive school discipline practices.
- e. Include crisis prevention, intervention and de-escalation that is based on student SEBH needs and reasonable in response to the behavior that is being exhibited.
- f. Include proactive strategies that enable schools to identify and intervene early in order to minimize the escalation of identified behavioral health symptoms and other barriers to school success.
- g. Include classroom management practices that include the following evidence-based practices:
 - (1) An effectively designed physical classroom.
 - (2) Predictable classroom routines.
 - (3) Posted positive classroom expectations.
 - (4) Prompts and active supervision.
 - (5) Varied opportunities to respond.
 - (6) Acknowledgments for expected behavior.
- h. Engage parents and guardians as partners in identifying appropriate supports for the students.
- i. Support student development of social-emotional competencies and skills through planned universal instruction.
- j. Have a set of specific supplemental interventions and intensive intervention supports that:
 - (1) Are for students whose behaviors are unresponsive to low-intensity strategies.
 - (2) Are based on functional behavior assessment (FBA).
 - (3) Are supported by individuals trained to handle such issues.
 - (4) Involve parents in development and ongoing review.

281—14.13(256) Therapeutic classroom. A school district may include therapeutic classrooms as part of its district's or building's tiers of SEBH supports. A therapeutic classroom is designed for the purpose of providing support for any student, with or without an IEP, whose emotional, social, or behavioral needs interfere with the student's ability to be successful in the current educational environment, with or without supports, until the student is able to successfully return to the student's current education environment, with or without supports, including but not limited to the general education classroom. A placement in a therapeutic classroom shall not be permanent or indefinite but will be reviewed periodically as called for in this rule. For the purpose of this chapter, the word "classroom" is a descriptor of an educational set of services that create the educational environment that may include a separate physical setting from other students.

14.13(1) *Continuum of programming.* Therapeutic classrooms include the therapeutic programming students may need to support them across a range of educational settings or learning spaces, or both, and are not necessarily standalone or isolated classrooms. Therapeutic classroom supports are part of a district's tiers of SEBH supports.

14.13(2) *Therapeutic classrooms.* For state cost reimbursement and reporting purposes, a therapeutic classroom will:

- a. Include the following therapeutic components:

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(1) A multidisciplinary team who collaborates regularly to support design, implementation and decision-making regarding therapeutic program supports including but not limited to an individual qualified to conduct diagnostic assessments and support SEBH programming for individuals with social-emotional concerns;

(2) Practices that enhance positive childhood experiences;

(3) Clearly articulated and taught behavioral expectations and routines;

(4) Regular assessment of social-emotional competencies with targeted individualized instruction, small group social-emotional instruction, or both;

(5) Individualized BIPs developed based on FBAs and trauma-informed practice;

(6) Regular engagement of family to review progress and make decisions for more or less restrictive programming;

(7) Supports for generalization and transition to less restrictive supports/settings since a therapeutic classroom is a temporary intervention. Supports include opportunities to practice social-emotional skills in natural contexts with similar age/grade peers.

b. Be operated by and housed in the school district seeking reimbursement.

c. Have appropriately licensed and certified teacher(s).

d. Follow program standards for the age(s) served and the full extent of the district's comprehensive education program, including:

(1) Preschool programs follow preschool program standards, as specified in 281—Chapter 16;

(2) Prekindergarten through twelfth grade programs follow 281—Chapter 12;

(3) Programs that serve students with IEPs also follow 281—Chapter 41.

e. Not solely consist of any one of the following:

(1) Calming room/space;

(2) Single strategy or program without individualization;

(3) Space/location for disciplinary action;

(4) Seclusion room.

14.13(3) *General education students.* When general education students are served through a therapeutic classroom, the following must occur:

a. The therapeutic classroom has have clear requirements for referral, admission, progress monitoring, and exit that focus on supporting learners to return to general services,

b. Each general education student has an individualized BIP developed based on an FBA,

c. When a student receives therapeutic services for 50 percent or more of the school day, a team of qualified professionals, the teacher, and the family will review the BIP every 60 days to consider the need for transition to more or less intensive programming,

d. If, at any point, public agencies suspect a disability, the public agencies are to request consent for a full and individual evaluation for special education from the parent pursuant to 281—Chapter 41.

14.13(4) *Special education students.* Districts operating therapeutic classrooms that serve learners with IEPs will follow 281—Chapter 41, including provisions for education in the least restrictive environment.

14.13(5) *Consortium agreements.* A district may enter into a cost-sharing consortium agreement with one or more school districts or area education agencies to provide therapeutic classroom supports. Districts shall not enter into an agreement to purchase or hold seats in a therapeutic classroom. If a district seeks cost reimbursement for student(s) who attend a therapeutic classroom:

a. The therapeutic classroom is to be housed within the district's boundaries;

b. The district seeking reimbursement is fiscally responsible for the therapeutic classroom;

c. The district seeking reimbursement is responsible for operating the therapeutic classroom.

14.13(6) *Rule of construction.* A school district is not required to operate a therapeutic classroom; however, a school district is required to ensure therapeutic services are available, whether in-district or otherwise, to students who need those services to access or benefit from an education.

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281—14.14(256) Therapeutic classroom—claims. A school district may submit claims to the department for the costs of providing therapeutic classroom services and transportation services in accordance with this rule and Iowa Code section 256.25A.

14.14(1) Reimbursement of transportation services. If the general assembly appropriates moneys for purposes of transportation claims reimbursement in accordance with this subrule, the resident school district may submit a claim to the department for reimbursement for transportation services for a student who is transported to a therapeutic classroom operated by another school district or accredited nonpublic school and located more than 30 miles from the student's designated school or accredited nonpublic school.

a. Claims are allowable for students enrolled in the school district or in an accredited nonpublic school located in the district boundary and who do not have an assigned special education weighting.

b. Such claims may be allowable when the school districts or school district and accredited nonpublic school have a shared agreement to provide the therapeutic classroom.

c. Claims will be made to the department of education using an invoice supplied by the department and completed by the school district providing transportation during the school year.

d. Claims include a listing of actual costs per student transported to a therapeutic classroom, including number of days transported, transportation miles, and other actual costs.

14.14(2) Claims for reimbursement of services.

a. By June 15, 2022, and annually by June 15 thereafter, districts may submit a claim for reimbursement of therapeutic classroom services for the prior school year.

b. By July 1 of each year, the department will draw warrants payable to school districts for such claims.

c. On June 15, 2022, and continuing each June 15 thereafter, districts providing therapeutic classrooms may submit a claim for reimbursement to the department for students served by their therapeutic classroom during the prior school year who have BIPs but no IEP weighting. Districts may submit claims for 1.5 weighting for the number of days they served the student and the number of days in the school district's calendar.

d. School districts will collect student-level data throughout the year and submit it at the end of the year using a department invoice.

e. In order for the school district to submit a claim for reimbursement for students attending an accredited nonpublic school or receiving competent private instruction, the student will be counted as a shared-time student in the district in which the nonpublic school of attendance is located.

f. Reimbursement will be prorated if claims exceed the amount appropriated.

g. Claims must include: student served in a therapeutic classroom, confirmation the student has a BIP and does not have a weighted IEP for the period claimed, number of days served and the number of days in the school district's calendar.

h. The costs of providing transportation to nonpublic school pupils as provided in this rule will not be included in the computation of district cost under Iowa Code chapter 257 but will be shown in the budget as an expense from miscellaneous income. Any transportation reimbursements received by a school district for transporting nonpublic school pupils does not affect district cost limitations of Iowa Code chapter 257. The reimbursements provided in this rule are miscellaneous income as defined in Iowa Code section 257.2.

281—14.15(256,279,280) Required training. This rule applies to public schools, nonpublic school districts and area education agencies.

14.15(1) An employee must receive training that complies with 281—Chapter 103 prior to using any form of physical restraint or seclusion and includes research-based alternatives to physical restraint and seclusion.

14.15(2) An employee must receive training regarding the least restrictive environment. While there is a presumption that the general education environment is the least restrictive environment, data may overcome that presumption. "General education classroom" is not synonymous with "least restrictive environment." Training will include the process and procedures for:

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a. Making placement decisions based on individual student performance data and participation with peers without disabilities; and

b. Reviewing student performance data to determine whether changes need to be made to ensure the individual is being educated in the learner's least restrictive environment.

14.15(3) AEA staff, classroom teachers and school administrators shall receive training prior to using a classroom clear to calm a student. Training shall be reviewed regularly, but no less frequently than once every three school years, and cover the following topics:

a. The rules of this chapter;

b. The school's specific policies and procedures regarding the rules of this chapter;

c. Training on recognizing and responding to incidents that are an imminent threat of bodily injury;

d. Student, parent/guardian, and staff notifications and parent follow-up requirements;

e. Reporting requirements for incidents of assault and violence resulting in injury or property damage;

f. Reporting requirements for referral and transfer to therapeutic classroom(s);

g. The school's specific crisis response plan for incidents of imminent threat;

h. Staff supports following a crisis or significant event.

14.15(4) Within one year of beginning employment in a teaching position in Iowa, a classroom teacher shall receive training on the prevention of behaviors that present an imminent threat. Training must include the following topics:

a. The school's specific policies and procedures for creating learning environments that are safe and supportive.

b. Evidence-based culturally responsive approaches to student discipline.

c. Evidence-based classroom management strategies that include:

(1) An effectively designed physical classroom.

(2) Predictable classroom routines.

(3) Posted positive classroom expectations.

(4) Prompts and active supervision.

(5) Varied opportunities to respond.

(6) Acknowledgments for expected behavior.

d. Universal instruction of social-emotional competencies.

e. Engaging families as partners in identifying appropriate supports for learner success.

f. Crisis prevention, crisis intervention, and crisis de-escalation techniques consistent with rule 281—14.4(279).

14.15(5) AEA and school district staff who engage in intervention planning to support supplemental and intensive social-emotional interventions shall receive training on evidence-based interventions for challenging classroom behaviors. Training must include the following topics:

a. FBAs;

b. Using FBAs to design BIPs;

c. Individual safety plans;

d. Supports for student reentry to learning following a significant event;

e. Supports for teacher implementation of BIPs;

f. Crisis prevention, crisis intervention, and crisis de-escalation techniques consistent with rule 281—14.4(279) that are culturally responsive and trauma responsive;

g. Duties and responsibilities of school resource officers and other responders; the techniques, strategies and procedures used by responders; and knowledge of who in the building is trained and authorized in seclusion and restraint;

h. Documentation and notification requirements for incidents of seclusion, restraint, classroom clear and transfer/referral to a therapeutic classroom.

281—14.16(256) Department responsibilities, evidence-based standards, guidelines and expectations. By June 30, 2022, the department will develop, establish, and distribute to all school districts evidence-based standards, guidelines, and expectations for the appropriate and inappropriate

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responses to behavior in the classroom that present an imminent threat of bodily injury to a student or another person to assist the districts in compliance with this rule. The standards, guidelines, and expectations will be consistent with 281—Chapter 103. The evidence-based standards, guidelines, and expectations for the appropriate and inappropriate responses to behavior in the classroom that presents an imminent threat of bodily injury will be based on the department's continuous improvement framework to support student social-emotional-behavioral health (SEBH). The director will consult with the area education agencies to create comprehensive and consistent standards and guidance for professional development relating to successfully educating individuals in the least restrictive environment, and for evidence-based interventions consistent with the standards established pursuant to this rule.

This division is intended to implement Iowa Code chapters 256, 279 and 280.

281—14.17 to 14.19 Reserved.

DIVISION III
SCHOOL BEHAVIORAL HEALTH SCREENING AND TELEHEALTH

281—14.20(256B,280A) Definitions. For the purposes of this division, the definitions contained in Iowa Code section 280A.1 are incorporated by this reference.

281—14.21(280A) Behavioral health screenings in school settings.

14.21(1) A school district, an accredited nonpublic school, or an AEA may contract with a mental health professional or a nationally accredited behavioral health care organization in order to provide universal behavioral health screenings to students. If the school district, accredited nonpublic school, or area education agency contracts with mental health professionals to conduct behavioral health screenings, the following paragraphs apply:

a. The screenings will be administered with the contracted mental health professional present, using a screener approved by the department, in consultation with the department of health and human services.

b. The school district, accredited nonpublic school, or AEA that contracts for on-site student behavioral health screenings will obtain written parent or guardian consent or, in the case of a student who has reached the age of majority, the student's written consent prior to the student's participating in each screening.

c. At any point before or during the screening, a student may opt out or discontinue participation in the screening without retribution.

14.21(2) The parental consent is to allow for the mental health professional to disclose the screening results to the school or AEA if there is a credible threat to the health and safety of the student or others and provide the appropriate emergency contact. The parental consent may allow for the mental health professional to disclose screening information to the school or AEA in order to support the student(s) who may need intervention that could be provided through the school.

14.21(3) The school district or AEA will ensure that the mental health professionals contracted to administer the screeners are qualified to administer the selected behavioral health screener.

14.21(4) The school district or AEA will have procedures to secure and limit the access to health information to comply with the Health Insurance Portability and Accountability Act (HIPAA) in accordance with parental consent.

14.21(5) If a mental health professional conducts the screening and determines that a student needs additional behavioral health services, the mental health professional:

- a.* Notifies the parent or guardian of the student of the results of the screening.
- b.* May notify the student's primary care provider, with parent or guardian consent, or the consent of the student who has reached the age of majority.
- c.* May provide a list of local primary care providers to the parent or guardian if the student does not have a primary care provider.

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281—14.22(280A) Establishment of provider-patient relationship for telehealth in school setting.**14.22(1)** Iowa Code section 280A.3(1), 280A.3(3), and 280A.3(4) are incorporated by this reference.**14.22(2)** If a mental health professional provides behavioral health services via telehealth on school/AEA premises, the mental health professional will first establish a valid provider-patient relationship. The provider-patient relationship is established when:

- a.* The student, with the consent of the student's parent or guardian when the student has not yet reached the age of majority, seeks help from a mental health professional;
- b.* The mental health professional agrees to provide treatment of the student; and
- c.* The student's parent or guardian agrees to have the student treated by the mental health professional.

14.22(3) If a provider-patient relationship is established and the student has not yet reached the age of majority, parent or guardian consent will be obtained prior to the student receiving behavioral health services via telehealth in a school or AEA setting and is necessary each academic year that the student receives telehealth services.**281—14.23(280A) Behavioral health services provided via telehealth in a school setting.** Iowa Code section 280A.4 is incorporated by this reference.**ARC 7585C****EDUCATION DEPARTMENT[281]****Notice of Intended Action****Proposing rulemaking related to online and virtual learning
and providing an opportunity for public comment**

The State Board of Education hereby proposes to rescind Chapter 15, "Online and Virtual Learning," Iowa Administrative Code, and to adopt a new chapter with the same title.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code section 256.7.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code sections 256.7, 256.9, 256.11, 256.41 and 256.43.

Purpose and Summary

This rulemaking is proposed pursuant to Executive Order 10 review. The Department of Education proposes removing restrictive terms that do not add value, removing rule text that may be addressed by a cross-reference to statutory provisions, and providing additional flexibility for approval of schools and providers (e.g., a five-year approval cycle versus a three-year cycle).

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

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

Waivers

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Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the State Board for a waiver of the discretionary provisions, if any, pursuant to 281—Chapter 4.

Public Comment

Any interested person may submit written or oral comments concerning this proposed rulemaking. Written or oral comments in response to this rulemaking must be received by the Department no later than 4:30 p.m. on February 27, 2024. Comments should be directed to:

Thomas A. Mayes
 Department of Education
 Grimes State Office Building, Second Floor
 400 East 14th Street
 Des Moines, Iowa 50319-0146
 Phone: 515.281.8661
 Email: thomas.mayes@iowa.gov

Public Hearing

Public hearings at which persons may present their views orally or in writing will be held as follows:

February 27, 2024 9 to 9:30 a.m.	Room B100 Grimes State Office Building Des Moines, Iowa
February 27, 2024 1 to 1:30 p.m.	Room B50 Grimes State Office Building Des Moines, Iowa

Persons who wish to make oral comments at a public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rulemaking.

Any persons who intend to attend a public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department and advise of specific needs by calling 515.281.5295.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking 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 rulemaking action is proposed:

ITEM 1. Rescind 281—Chapter 15 and adopt the following **new** chapter in lieu thereof:

CHAPTER 15
 ONLINE AND VIRTUAL LEARNING

281—15.1(256) Definitions.

“*Accredited nonpublic school*” means a nonpublic school accredited pursuant to Iowa Code section 256.11.

“*Appropriately licensed and endorsed*” or “*appropriately licensed*” means possession of current and valid licensure by the Iowa board of educational examiners to practice at a prescribed educational level in a specified content area.

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“Area education agency” or “AEA” refers to a political subdivision organized pursuant to Iowa Code chapter 273.

“Board of educational examiners” or “BOEE” refers to the body with the statutory responsibility to license Iowa educators.

“Delivered primarily over the Internet” means more than 50 percent of the course content or instruction or both is delivered using the Internet.

“Department” means the department of education.

“Director” means the director of the department of education.

“Exclusive instruction” means without the use of any other form of instructional delivery.

“Online learning” and “online coursework” mean educational instruction and content that are delivered primarily over the Internet. “Online learning” and “online coursework” do not include print-based correspondence education, broadcast television or radio, videocassettes, or stand-alone educational software programs that do not have a significant Internet-based instructional component.

“Online learning platform” means a set of services by which students access course content and by which students and teachers connect and communicate.

“Online school” refers to a district or nonpublic school providing educational instruction and course content delivered primarily over the Internet for a group of students for whom this method of delivery is the primary method of education. “Online school” also refers to a school for which a district accepts open enrollment for the express purpose of attendance at the online school and that has received permission from the department to operate.

“Participating school district or accredited nonpublic school” means a school district or accredited nonpublic school that is providing online learning or online coursework.

“Private provider” means, for purposes of this chapter, any public or private entity that is not a school district, an accredited nonpublic school, or an AEA.

“School district” means a political subdivision organized pursuant to Iowa Code chapter 274.

“Telecommunications” means narrowcast communications through systems that are directed toward a narrowly defined audience and includes interactive live communications. “Telecommunications” does not include online learning.

281—15.2(256) Telecommunications for instruction.

15.2(1) Applicability. This rule applies to all AEAs, school districts, accredited nonpublic schools, community colleges, and institutes of higher education using telecommunications to serve students in kindergarten through grade 12.

15.2(2) Course eligibility. Telecommunications may be employed as a means to deliver any course, including a course necessary for accreditation by the department, provided it is not the exclusive means of instructional delivery.

15.2(3) Appropriately licensed and endorsed teachers. Instruction provided by telecommunications is to be taught by an appropriately licensed and endorsed teacher, in a manner provided by Iowa Code section 256.7(7)“a.”

281—15.3(256) Online learning—private providers.

15.3(1) Online learning model established. An online learning program model is established by the director, pursuant to Iowa Code section 256.9, that provides districts and accredited nonpublic schools with a list of approved online providers. Approved providers will meet criteria for approval in accordance with Iowa Code section 256.43(1)“a.”

15.3(2) Use of approved private providers. Courses developed by private providers may be utilized by a school district or school in implementing a high-quality online learning program in circumstances described in Iowa Code section 256.43(2)“a.”

15.3(3) Approval criteria. The department will maintain a list of approved online providers that provide course content through an online learning platform whose content and delivery meet the following provisions:

a. Courses meet the standards of Iowa Code section 256.7(32)“c.”

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- b. The provider supplies coursework customized to the needs of the student.
- c. The provider offers a means for a student to demonstrate competency in completed online coursework.
- d. Courses provide online content and instruction evaluated on the basis of student learning outcomes.

15.3(4) Approval process. Private providers of online course content or full-time online instruction will apply for approval to offer such services to Iowa school districts and accredited nonpublic schools a minimum of once every five years on forms provided by the department. Applications to provide services may be received at any time; however, the department will give preference to applications received no later than May 1 during the year prior to the school year in which the provider intends to provide services. Applications received by the deadline of May 1 will be answered no later than June 1. An approved provider will also apply in each year that any of these alterations take place, which are substantial in nature:

- a. The provider altered the courses or content offered by either adding or subtracting grade levels or subjects.
- b. The provider altered the delivery of the courses or content offered by altering the learning management system or delivery of assessments.
- c. The provider altered the evaluation of student learning used in the system.
- d. The provider altered the online learning content or delivery in any other way that may reasonably be considered material to a school district considering the use of a private provider.

281—15.4(256) Online learning provided by area education agencies.

15.4(1) Online learning program delivered by area education agencies. Subject to an appropriation of funds by the general assembly for this purpose, AEAs may provide an online learning program to deliver distance education to Iowa's secondary students, including students receiving competent private instruction under Iowa Code chapter 299A. An AEA may provide an online learning program separately, in collaboration with other AEAs, or in partnership with school districts and accredited nonpublic schools.

15.4(2) Student participation. To participate in an online learning program offered by an AEA, a student must be enrolled in a participating school district or accredited nonpublic school or be receiving competent private instruction under Iowa Code chapter 299A.

15.4(3) District responsibility. The school district or accredited nonpublic school in which the student is enrolled is responsible for:

- a. Recording a student's program coursework grades in the student's permanent record.
- b. Awarding high school credit for program coursework.
- c. Issuing a high school diploma to a student enrolled in the district or school who participates and completes coursework under the program.
- d. Identifying a site coordinator to serve as a student advocate and as a liaison between the program staff and teachers and the school district or accredited nonpublic school.

15.4(4) Cost. School districts and accredited nonpublic schools will pay to AEAs the actual cost of providing coursework under an online learning program offered in accordance with this rule.

15.4(5) Course content and delivery. Content and delivery provided by an online learning program established pursuant to this rule must meet the provisions of Iowa Code section 256.7(32) "c." Grades in online courses are awarded based on Iowa Code section 256.43(3).

15.4(6) Competent private instruction. This rule applies to students receiving competent private instruction under Iowa Code chapter 299A. To participate in an online learning program offered by an area education agency, a student receiving competent private instruction under Iowa Code chapter 299A will take whatever steps are necessary to enroll with the student's district of residence. The coursework offered by AEAs pursuant to this subrule must be taught and supervised by a teacher appropriately licensed by the BOEE who has online learning experience, and the course content must meet the provisions of Iowa Code section 256.7(32) "c."

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281—15.5(256) Online learning program provided by a school district—online schools.

15.5(1) *Online learning program provided by a school district.* A school district may provide an online learning program delivered primarily over the Internet that operates as an online school. Such a program is governed by Iowa Code section 256.41.

15.5(2) *Course content and delivery.* Content and delivery provided by an online learning program established pursuant to this rule must meet the provisions of Iowa Code section 256.7(32)“c.” Grades in online courses are awarded based on Iowa Code section 256.43(3).

15.5(3) *Approval criteria.* The department will maintain a list of approved school districts that provide course content through an online learning platform whose content and delivery meet the provisions of subrule 15.5(2).

15.5(4) *Approval process.* School district providers of online course content or full-time online instruction will apply for approval to offer such services to Iowa districts and accredited nonpublic schools a minimum of once every five years on forms provided by the department. If a school district is providing full-time online instruction only to its resident students and not to any other students, the school district need not seek approval; however, the school district must ensure it meets the provisions of subrules 15.5(1) and 15.5(2). Applications may be received at any time; however, the department will give preference to applications received no later than May 1 during the year prior to the school year in which the provider intends to provide services. Applications received by the deadline of May 1 will be answered no later than June 1. An approved district provider under this rule will also apply in each year that any of these alterations take place, which are substantial in nature:

- a. The provider altered the courses or content offered by either adding or subtracting grade levels or subjects.
- b. The provider altered the delivery of the courses or content offered by altering the learning management system or delivery of assessments.
- c. The provider altered the evaluation of student learning used in the system.
- d. The provider altered the online learning content or delivery in any other way that may reasonably be considered material to a school district considering the use of a private provider.

281—15.6(256) Online learning provided by a school district or accredited nonpublic school—courses.

15.6(1) *Course content and delivery.* A school district or accredited nonpublic school may provide an online learning program to deliver online learning and online coursework to students attending the district or school. Content and delivery provided by an online learning program established pursuant to this rule must meet the provisions of Iowa Code section 256.7(32)“c.” Grades in online courses are awarded based on Iowa Code section 256.43(3).

15.6(2) *Use to meet general accreditation standards.* Any course that is not part of the offer-and-teach standards for grades 9 through 12 may be provided by an area education agency, by the school district or accredited nonpublic school, or through an online learning platform or online exchange offered by the department in collaboration with area education agencies, school districts, or accredited nonpublic schools. Online courses may be used to meet offer-and-teach standards for grades 9 through 12 in the circumstances described in Iowa Code section 256.11(17)“a.” Additionally, a school district or accredited nonpublic school may apply for an annual waiver of the standards for up to two specified subjects in the circumstances described in Iowa Code section 256.11(17)“b.”

15.6(3) *Delivery options for general accreditation standards.* Delivery of coursework used to meet general accreditation standards is governed by Iowa Code section 256.11(17)“c.”

15.6(4) *Competent private instruction.* The online learning platform described in subparagraph 15.8(3)“b”(3) may deliver distance education to students receiving competent private instruction under Iowa Code chapter 299A, provided such students register with the school district of residence and the coursework offered by the online learning platform is taught and supervised by a teacher appropriately licensed by the BOEE who has online learning experience, and the course content meets the provisions of Iowa Code section 256.7(32)“c.”

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15.6(5) *Coordination and costs.* The department and the area education agencies operating online learning programs pursuant to Iowa Code section 273.16 will coordinate to ensure the most effective use of resources and delivery of services. Federal or other funds, if available, may be used to offset what would otherwise be costs to school districts for participation in the program.

281—15.7(256) *Open enrollment.* Content and delivery provided online pursuant to rule 281—15.3(256), 281—15.4(256), 281—15.5(256) or 281—15.6(256) may be provided to pupils who are participating in open enrollment under Iowa Code section 282.18.

15.7(1) *Courses.* A school district may provide individual courses it developed, or any other courses developed pursuant to this chapter (including courses developed by private providers), delivered primarily over the Internet to pupils who are participating in open enrollment under Iowa Code section 282.18.

15.7(2) *Termination.* If a student's participation in open enrollment to receive educational instruction and course content delivered primarily over the Internet results in the termination of enrollment in the receiving district, the receiving district will, within 30 days of the termination, notify the district of residence of the termination and the date of the termination.

281—15.8(256) *Online learning—access by students receiving competent private instruction.* Students enrolled in competent private instruction pursuant to Iowa Code chapter 299A may participate in online instruction pursuant to subrules 15.4(6) and 15.6(4). The individual providing instruction to a student under Iowa Code chapter 299A as described in Iowa Code section 299A.1(1) will receive the student's score for completed program coursework.

281—15.9(256,256B) *Online learning—students with disabilities.*

15.9(1) Children with disabilities are not to be categorically excluded from admission to online learning programs or from enrollment in online coursework.

15.9(2) Whether an online course or online learning is appropriate to a child with a disability must be determined by the child's needs, not by the child's assigned weighting under Iowa Code section 256B.9. If a child's individualized education program (IEP) goals cannot be met in online learning, with or without supplementary aids and services or modifications, online learning is not appropriate to the child.

15.9(3) If a child's IEP team determines that online learning is inappropriate to the child, the child's parents are entitled to prior written notice pursuant to rule 281—41.503(256B,34CFR300) and to have available to them the procedural safeguards provided under rule 281—41.504(256B,34CFR300).

15.9(4) When a child with an IEP seeks open enrollment into an online learning program, the child's IEP team will determine whether the child meets the open enrollment provisions of 281—Chapter 17. In addition, the child's IEP team, together with representatives of the resident and receiving districts and the relevant area education agencies, will determine whether the receiving district is able to provide an appropriate online education to the child, either with or without supplementary aids and services or modifications. Any dispute about whether the receiving district's program is appropriate will be resolved pursuant to 281—Chapter 17. The child is to remain in the child's resident district while any dispute about the appropriateness of the receiving district's program is pending.

281—15.10(256) *Department general supervision of telecommunications and online learning.*

15.10(1) *Nature of general supervision.* The department will exercise general supervision over compliance with this chapter and offer advice and technical assistance to foster compliance and improved outcomes. This will be accomplished by department staff.

15.10(2) *Data collection and reporting.*

a. Each school district and accredited nonpublic school will list and describe the online coursework offered by the school district or accredited nonpublic school in which the student is enrolled.

b. A school district providing educational instruction and course content delivered primarily over the Internet that is required to seek approval under subrule 15.5(4) will annually submit to the department,

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in the manner prescribed by the department, data sought by the department, including data specified in Iowa Code section 256.7(32)“b”(1).

c. The department will comply with the responsibilities set out in Iowa Code section 256.7(32)“b.”

15.10(3) Accreditation criteria. All online courses and programs shall meet existing accreditation standards.

15.10(4) Prohibited activities. A rebate for tuition or fees paid or any other dividend or bonus moneys for enrollment of a child shall not be offered or provided directly or indirectly by a school district, school, or private provider to the parent or guardian of a pupil who enrolls in a school district or school to receive educational instruction and course content delivered primarily over the Internet.

15.10(5) Rules of construction.

a. Nothing in this chapter will be construed to require a school district, accredited nonpublic school, or AEA to use a particular assessment, curricular material, online learning platform, provider, or textbook.

b. Unless otherwise prescribed by a state or federal law protecting students with disabilities, or in accordance with a proclamation of public health disaster emergency issued by the governor pursuant to Iowa Code section 29C.6, nothing in this chapter will be construed to require a school district or accredited nonpublic school to offer continuous remote learning, to maintain a program of continuous remote learning, to deliver instruction primarily over the Internet, to continue delivering instruction primarily over the Internet, or to become or remain an approved provider of online learning.

c. Schools may use virtual learning or online learning for days of inclement weather to count toward the minimum school calendar to the extent permitted by the Iowa Code.

d. The Iowa learning online (ILO) initiative was repealed by 2020 Iowa Acts, chapter 1107, section 10. Any remaining references to ILO in any department policy, document, or procedure will be construed to comply with this chapter until that policy, document, or procedure is amended, corrected, rescinded, or repealed.

e. This chapter will be broadly construed to allow school districts, accredited nonpublic schools, and AEAs to meet the needs of individual students and the local community.

15.10(6) Prohibition on offering a completely online educational program. Unless specifically authorized by statute or by a governor’s proclamation on a temporary basis, no school district, accredited nonpublic school, or AEA is authorized to provide a completely online educational program, including completely online instruction for a particular grade. All school districts, accredited nonpublic schools, and AEAs will maintain a physical presence for their educational programs.

These rules are intended to implement Iowa Code sections 256.7(32), 256.9(55), 256.11(17), 256.41, and 256.43.

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EDUCATION DEPARTMENT[281]

Notice of Intended Action

**Proposing rulemaking related to community colleges
and providing an opportunity for public comment**

The State Board of Education hereby proposes to rescind Chapter 21, “Community Colleges,” and to adopt a new chapter with the same title, and to rescind Chapter 24, “Community College Accreditation,” Iowa Administrative Code.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code section 260C.49.

State or Federal Law Implemented

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This rulemaking implements, in whole or in part, Iowa Code chapter 260C.

Purpose and Summary

Pursuant to Executive Order 10, the Department of Education proposes consolidating two chapters into one. This will allow common language across rules. The Department also proposes removing unnecessarily restrictive language, references to obsolete standards and degree types, and verbatim statutory language.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the State Board for a waiver of the discretionary provisions, if any, pursuant to 281—Chapter 4.

Public Comment

Any interested person may submit written or oral comments concerning this proposed rulemaking. Written or oral comments in response to this rulemaking must be received by the Department no later than 4:30 p.m. on February 27, 2024. Comments should be directed to:

Thomas A. Mayes
Department of Education
Grimes State Office Building, Second Floor
400 East 14th Street
Des Moines, Iowa 50319-0146
Phone: 515.281.8661
Email: thomas.mayes@iowa.gov

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

February 27, 2024
9:30 to 10 a.m.

Room B100
Grimes State Office Building
Des Moines, Iowa

February 27, 2024
1:30 to 2 p.m.

Room B50
Grimes State Office Building
Des Moines, Iowa

Persons who wish to make oral comments at a public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rulemaking.

Any persons who intend to attend a public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department and advise of specific needs by calling 515.281.5295.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its [regular monthly meeting](#) or at a special meeting. The Committee's

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meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rulemaking action is proposed:

ITEM 1. Rescind 281—Chapter 21 and adopt the following **new** chapter in lieu thereof:

TITLE III
COMMUNITY COLLEGES
CHAPTER 21
COMMUNITY COLLEGES

DIVISION I
APPROVAL STANDARDS

281—21.1(260C) Definitions. For purposes of this chapter, the indicated terms are defined as follows:

“Applied liberal arts and sciences course” means a course that is classified as arts and sciences in Iowa’s common course numbering system and that primarily consists of hands-on or occupational skill development, including but not limited to accounting, ceramics, criminal investigation, dance, drama, music, photography, and physical education.

“Department” means the Iowa department of education.

“Director” means the director of the department.

“Field of instruction” means the discipline or occupational area within which an instructor teaches, which aligns with the content of the course being taught as indicated by the course prefix, title, or description.

“Full-time instructor” means an instructor who is considered to be full-time if the community college board of directors designates the instructor as full-time. Determination of full-time status is based on local board-approved contracts.

“Higher Learning Commission” means the regional accrediting authority recognized by the United States Department of Education. Iowa Code sections 260C.47 and 260C.48 require that the state accreditation process be integrated with that of the Higher Learning Commission.

“Joint enrollment” means any community college credit course offered to students enrolled in a secondary school. Courses offered for joint enrollment include courses delivered through contractual agreements between school districts and community colleges, courses delivered through the postsecondary enrollment options program, and college credit courses taken independently by tuition-paying secondary school students.

“Qualifying graduate field or major” means a qualifying graduate field or major that represents an academic discipline in which an instructor must have earned credit in order to teach courses in specified fields of instruction.

“Relevant tested experience” means the breadth, depth, and currency of work experience outside of the classroom in real-world situations relevant to the field of instruction.

281—21.2(260C) Administration.

21.2(1) Policy manual. A community college board of directors will develop and maintain a policy manual that adequately describes the official policies of the institution.

21.2(2) Administrative staff. A community college will develop an administrative staff appropriate to the size and the purpose of the institution and one that permits the institution to function effectively and efficiently. This administrative staff will provide effective leadership for the major divisions of the institution including administrative services, adult and continuing education, career and technical education, college parallel education, and student services.

21.2(3) Chief executive officer. A community college will have a chief executive officer who is also the executive officer of the board of directors. The executive officer is responsible for the operation of the community college with respect to its educational program, its faculty and student services programs,

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and the use of its facilities. The executive officer may delegate to the staff all necessary administrative and supervisory responsibilities to ensure an efficient operation of the institution.

21.2(4) *Financial records and reports.* The community college will maintain accurate financial records and make reports in the form and pursuant to the timeline prescribed by the department and other state agencies.

21.2(5) *Enrollment.* A community college will meet minimum enrollment requirements if it offers instruction as authorized in Iowa Code chapter 260C and if, to the satisfaction of the state board of education, it is able to provide classes of reasonable economic size as needed by students, meets the needs of the students, and shows by its past and present enrollment and placement record that it meets individual and employment needs.

21.2(6) *Catalog.* The catalog is the official publication of the community college. It will include accurate information on institutional policies, admissions requirements, procedures and fees, refund policies, residency requirements, program enrollment and degree requirements, due process procedures, affirmative action, and other information as recommended by the department. Students' rights and responsibilities may be included in the catalog or in a separate document.

21.2(7) *Admissions and program/course enrollment requirements.* The community college will maintain an open-door admission policy for students of postsecondary age. This admission policy will recognize that students should demonstrate a reasonable prospect for success in the program in which they are admitted. Applicants who cannot demonstrate a reasonable prospect for success in the program for which they apply should be assisted to enroll in courses where deficiencies may be remediated or into programs appropriate to the individual's preparation and objectives. The community college may set reasonable requirements for student enrollment in specified programs and courses. Admissions and program enrollment requirements established by each community college will be published in the community college catalog.

21.2(8) *Academic year.* The academic year of the community college will consist of semester, trimester, or quarter terms, and will be a period of time beginning with the first day of the fall term and continuing through the day preceding the start of the next fall term as indicated in the official college calendar. A community college may offer instruction in units of length (i.e., days and weeks) consistent with the identified scope and depth of the instructional content.

21.2(9) *Award requirements.* The director will approve all new credit certificate, diploma, and degree award programs in accordance with Iowa Code section 260C.14. Awards from a community college will be certified by the issuance of appropriate recognition, pursuant to award approval requirement guidelines issued by the department, indicating the type of program the student has completed. The minimum number and maximum number of credit hours required for each award type contained within this subrule may be waived pursuant to paragraph 21.2(13) "i." Each award will meet the expectations of statewide articulation agreements between Iowa community colleges and public universities.

a. Associate of arts (AA). The degree is awarded upon completion of a college parallel (transfer) course of study that provides a strong general education component to satisfy the lower division general education liberal arts and sciences requirements for a baccalaureate degree. An associate of arts degree consists of a minimum of 60 semester (90 quarter) credit hours and a maximum of 64 semester (96 quarter) credit hours.

b. Associate of science (AS). The degree is awarded upon completion of a course of study that requires a strong background in mathematics or science. The degree is intended to prepare students to transfer and initiate upper division work in baccalaureate programs. An associate of science degree awarded upon completion of an arts and sciences course of study consists of a minimum of 60 semester (90 quarter) credit hours and a maximum of 64 semester (96 quarter) credit hours.

c. Associate of general studies (AGS). The degree is awarded upon completion of an individualized course of study that is primarily designed for the acquisition of a broad educational background rather than the pursuit of a specific college major or professional/technical program. The AGS is intended as a flexible course of study and may include specific curriculum in lower division transfer, occupational education, or professional-technical education. It will not include a marketed

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course of study. An associate of general studies degree consists of a minimum of 60 semester (90 quarter) credit hours and a maximum of 64 semester (96 quarter) credit hours.

d. Associate of applied science (AAS). The degree is awarded upon completion of a state-approved program of study that is intended to prepare students for entry-level career and technical occupations. An associate of applied science degree consists of a minimum of 60 semester (90 quarter) credit hours and a maximum of 86 semester (129 quarter) credit hours. The general education component of the associate of applied science degree program consists of a minimum of 15 semester (22.5 quarter) credit hours of general education and include at least one course from each of the following areas: communications, social science or humanities, and mathematics or science. A maximum of 3 semester (4.5 quarter) credit hours of the required 15 general education credits may be documented through an integrated, embedded, and interdisciplinary model adopted by the chief academic officers of the 15 community colleges in consultation with the department. The technical core of the associate of applied science degree will constitute a minimum of 50 percent of the course credits.

e. Associate of applied arts (AAA). The degree is awarded upon completion of a state-approved program of study that is primarily intended for career training in providing students with professional skills for employment in a specific field of work, such as arts, humanities, or graphic design. An associate of applied arts degree consists of a minimum of 60 semester (90 quarter) credit hours and a maximum of 86 semester (129 quarter) credit hours. The general education component of the associate of applied arts degree program will consist of a minimum of 15 semester (22.5 quarter) credit hours of general education and include at least one course from each of the following: communications, social science or humanities, and mathematics or science. A maximum of 3 semester (4.5 quarter) credit hours of the required 15 general education credits may be documented through an integrated, embedded, and interdisciplinary model adopted by the chief academic officers of the 15 community colleges in consultation with the department. The technical core of the associate of applied arts degree will constitute a minimum of 50 percent of the course credits.

f. Associate of professional studies (APS). The degree is awarded upon completion of a state-approved program of study that is intended to prepare students for transfer and upper division coursework in aligned baccalaureate programs or immediate entry into the workforce.

(1) To be eligible to offer this award type, a college shall demonstrate that other award types cannot meet needs and the associate of professional studies award is appropriate.

(2) An associate of professional studies degree will consist of a minimum of 62 semester (93 quarter) credit hours and a maximum of 68 semester (102 quarter) credit hours. The general education component of the associate of professional studies degree will consist of a minimum of 30 semester (45 quarter) credit hours of general education including 3 semester (4.5 quarter) credit hours of each of the following: speech, mathematics, humanities, social and behavioral sciences, science; 6 semester (9 quarter) credit hours of writing; and 9 semester (13.5 quarter) credit hours distributed among mathematics, social and behavioral sciences, humanities, and science. The technical core of the associate of professional studies degree will consist of a minimum of 16 semester (24 quarter) credit hours of career and technical coursework accepted by a receiving baccalaureate degree-granting institution with an aligned program as applying toward a specific major or program of study. The technical core of the degree will also consist of a minimum of 16 additional semester (24 quarter) credit hours of career and technical coursework accepted by the receiving institution as electives.

(3) An associate of professional studies degree program of study will have a minimum of three program-to-program articulation agreements with baccalaureate degree-granting institutions, at least one of which must be a public institution. A program will have a minimum of one articulation agreement effective prior to program implementation, provided all three agreements are effective within the program's first year of student enrollment. The agreements will provide for the application of no fewer than 60 semester (90 quarter) credit hours toward the graduation requirements of each articulated baccalaureate degree program.

g. Diploma. The diploma is awarded upon completion of a state-approved program of study that is a coherent sequence of courses consisting of a minimum of 15 semester (22.5 quarter) credit hours and a maximum of 48 semester (72 quarter) credit hours including at least 3 semester (4.5 quarter) credit

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hours of general education. The general education component will be from any of the following areas: communications, social science or humanities, and mathematics or science. The technical core of the diploma will constitute a minimum of 70 percent of the course credits. A diploma may be a component of and apply toward subsequent completion of an associate of applied science or associate of applied arts degree.

h. Certificate. The certificate is awarded upon completion of a state-approved program of study that is designed for entry-level employment and consists of a maximum of 48 semester (72 quarter) credit hours. A certificate may be a component of and apply toward subsequent completion of a diploma or associate of applied science or associate of applied arts degree and may be developed in rapid response to the needs of business and industry. A certificate may consist of only career and technical courses and no general education course requirements.

21.2(10) Academic records. The community college shall maintain in perpetuity for each student the complete academic record including every course attempted and grade received. An official transcript must be created at the time of course enrollment. The credit hour(s) and grade will be recorded on the student's official transcripts upon completion of a community college course. These records shall be kept in disaster-resistant storage, unless other equivalent safeguards are used, such as maintaining duplicate files (electronic or otherwise) in separate facilities. The method of storage will be consistent with current technology to ensure the ability to retrieve records. The community college will implement a security plan that ensures the confidentiality of student records.

21.2(11) Residency status and tuition. A student who has been admitted to an Iowa community college will be classified as a resident or as a nonresident for admission, tuition, and fee purposes. A student classified as a resident will pay resident tuition costs. A student classified as a nonresident will pay nonresident tuition costs. Tuition rates are established by a community college's board of trustees pursuant to Iowa Code section 260C.14(2).

a. Tuition rates. Tuition rates adopted by a community college's board of trustees will be consistent with the following requirements:

(1) Resident tuition.

1. Tuition for residents will not exceed the lowest tuition rate per semester, or the equivalent, for a full-time student charged by an institution of higher education under the state board of regents.

2. For students of high school age enrolled in a course through a contractual agreement with a school district, the limit on resident tuition does not apply, and the amount of tuition will be determined by the community college's board of trustees with the consent of the school board.

3. Resident tuition rates do not require department approval.

(2) Nonresident tuition. Tuition for nonresidents will be not less than the marginal cost of instruction of a student attending the college. The establishment of nonresident tuition rates do not require department approval, with the exception of rates established pursuant to numbered paragraph 21.2(11) "a"(2) "2" and "3" and subparagraph 21.2(11) "a"(3).

1. International student tuition rates. A separate nonresident rate for international students is permissible, provided the rate is reasonable and reflects the cost of appropriate services.

2. Reciprocal agreements. A lower tuition rate for nonresidents is permitted under a reciprocal tuition agreement between a community college and an educational institution in another state, if the rate established in the agreement is approved by the department.

3. Other nonresident rates. Other nonresident tuition rates may be established for specific purposes provided the tuition rate is greater than the resident tuition rate, the tuition rate is not less than the marginal cost of instruction, and the arrangement is approved by the department.

(3) Consortia. A separate tuition rate for residents and nonresidents is permitted for courses delivered through a consortia agreement for online, distance education, or other coursework between Iowa community colleges, if the rate established in the agreement is approved by the department. Tuition will not be less than the lowest resident rate or higher than the highest nonresident rate of institutions within the consortium.

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(4) Noncredit course tuition. Tuition for noncredit continuing education courses will be determined based on course costs and market demand. Tuition rates for courses that are not credit-bearing do not require department approval.

(5) Department approval. For tuition rates requiring department approval, the department will approve rates that comply with the requirements set forth in this chapter. Before a rate is adopted by a community college's board of trustees and charged to students, the community college will request and receive approval for a tuition rate.

(6) Reporting. A community college will annually report all tuition rates and mandatory fees in a manner prescribed by the department.

(7) Notification. A community college will inform all students about residency status determinations, the appeal process, and tuition policies. Information will be included in appropriate publications, such as the college's catalog, registration materials, Web site, and student handbook.

b. Determination of residency status. In determining a community college resident or nonresident classification, the primary determinant is the reason the student is in the state of Iowa. The second determinant is the length of time a student has resided in Iowa. If a student is in the state primarily for educational purposes, that student is considered a nonresident. The burden of establishing the reason a student is in Iowa for other than educational purposes rests with the student.

(1) Procedure. The registrar or officially designated community college office will require written documents, affidavits, or other related evidence deemed necessary to determine why a student is in Iowa. A student will be required to file at least two documents from different sources to determine residency status. Examples of acceptable documentation include: written and notarized documentation from an employer that the student is employed in Iowa or a signed and notarized statement from the student describing employment and sources of support; an Iowa state income tax return; an Iowa driver's license; an Iowa vehicle registration card; an Iowa voter registration card; or proof of Iowa Homestead credit on property taxes. In all events, to be determined a resident of Iowa, the student must document residing in the state of Iowa for at least 90 days prior to the beginning of the term for which the student is enrolling.

1. If a student gives misleading or incorrect information for the purpose of evading payment of nonresident tuition, the student must pay the nonresident tuition for each term the student was not officially classified as a nonresident.

2. The procedures described in paragraph 21.2(11) "b" will be administered by the registrar or staff designated by the community college.

(2) Residency of minor students. The domicile of a minor follows that of the parent with whom the minor resides, except where emancipation of said minor can be proven. The word "parent" includes legal guardian or others in cases where the lawful custody of a minor has been awarded to persons other than the minor's actual parents. A minor living with a resident of Iowa who is legally responsible for the minor shall be granted resident status if the minor has lived with the Iowa resident for at least 90 days immediately prior to enrollment. The residency status of an emancipated minor is based upon the same qualifications established for a student having attained majority.

(3) Residency of students who are not citizens of the United States. The residency status of students who are not citizens of the United States will be determined consistent with the following procedures:

1. A student who is a refugee or who is granted asylum by an appropriate agency of the United States must provide proof of certification of refugee or asylum grantee status. A student may be accorded resident status for admission and tuition purposes when the student comes directly, or within a reasonable time, to the state of Iowa from a refugee facility or port of debarkation and has not established domicile in another state.

2. A student who has immigrant status, and the student's spouse or dependents, may establish Iowa residency in the same manner as a United States citizen.

3. A student who has nonimmigrant status and who holds a nonstudent visa, and the student's spouse or dependents, may establish residency in the same manner as a United States citizen. An alien who has nonimmigrant status and whose primary purpose for being in Iowa is educational is classified as nonresident.

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4. A student who is a resident of an Iowa sister state may be classified as a resident or nonresident, in accordance with rules adopted by the college's board of directors.

(4) Residency of federal personnel and dependents. A student, or the student's spouse or dependent child, who has moved into the state of Iowa as the result of military or civil orders from the federal government, and the minor children of such student, is immediately an Iowa resident.

(5) Residency of veterans and family members and individuals covered under Section 702 of the Veterans Access, Choice and Accountability Act of 2014. A veteran of a uniformed service, a member of the National Guard, or the veteran's or member's spouse or dependent child will be classified as an Iowa resident student and be eligible for resident tuition and fee amounts, if the veteran or national guard member meets the requirements of numbered paragraph 21.2(11) "b"(5) "1," "2," or "3."

1. The veteran has separated from a uniformed service with an honorable or general discharge, is eligible for benefits, or has exhausted benefits under the federal Post-9/11 Veterans Educational Assistance Act of 2008 or any other federal authorizing veteran educational benefits program.

2. The individual is an active duty military person or activated or temporarily mobilized National Guard member.

3. The individual is a covered person under Section 702 of the Veterans Access, Choice and Accountability Act of 2014 or subsequent legislation.

(6) Reclassification of residency status. It is the responsibility of a student to request a reclassification of residency status. If a student is reclassified as a resident for tuition purposes, such classification is effective beginning with the next term for which the student enrolls. In no case will reclassification to residency status be made retroactive for tuition and fee purposes, even though the student could have previously qualified for residency status had the student applied.

(7) Appeal. The decision on the residency status of a student for admission, tuition, and fee purposes may be appealed to a review committee established by the community college. The findings of the review committee may be appealed to the community college's board of trustees, whose decision is a final administrative decision.

21.2(12) Credit hours. Credit hours will be determined consistent with the following procedures.

a. Specifically stated criteria are minimal requirements only, which institutions may exceed at their discretion.

b. Conventional instruction is subdivided into four instructional methods as herein defined.

(1) Classroom work — lecture and formalized classroom instruction under the supervision of an instructor.

(2) Laboratory work — experimentation and practice by students under the supervision of an instructor.

(3) Clinical practice — applied learning experience in a health agency or office under the supervision of an instructor.

(4) Work-based learning — employment-related experience planned and coordinated by an institutional representative and the employer, with control and supervision of the student on the job being the responsibility of the employer. Planned and supervised connections of classroom, laboratory and industry that prepare students for current and future careers.

c. No registration or orientation hours may be included when determining credit hours.

d. Institutions will take into account the soundness of the learning environment being created by the scheduling sequence and length of classroom, laboratory, clinical, and work-based learning sessions. However, the final decision on these matters is left to the institutional administration so long as minimal standards are met.

e. Only minutes for students officially registered for courses or programs, including audit registration, may be included when determining credit hours.

f. Each community college must establish a policy that defines its methods of equating alternative instruction to credit hours and the process for evaluating the effectiveness of the alternative instruction to meet or exceed the expected student outcomes as if the course were taught utilizing conventional methods in paragraph 21.2(12) "b." Colleges will be held accountable for evaluating and maintaining high-quality programs, and their evaluations may be subject to department review. Students will be

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expected to meet all approved course requirements and will be expected to demonstrate the acquisition of knowledge and competencies/outcomes at the same level as those obtained in traditional classroom settings, in the time frames set by the institution. Alternative courses or programs of study must be approved by the college's review processes including faculty review and input. Courses will be listed in the college catalog. Instructional formats for which alternative methods of determining credit hours are applicable include the following:

(1) Accelerated courses (study, programs). Courses or programs of study that allow students to complete courses or programs at a faster pace than if offered by conventional methods. Courses and programs will be tailored to involve more student participation and self-directed study. Instructors may teach in traditional classroom settings or by alternative methods specified in this subrule.

(2) Distance education. Courses or programs of study taught over the Internet, Iowa Communications Network (ICN), or other electronic means that allow students to receive instruction in the classroom or other sites, over personal computers, television, or other electronic means. Courses may or may not be interactive with direct communication between the teacher and students. Credit hours will be awarded in accordance with the credit hours that would have been assigned if the course or program were taught by conventional methods.

1. Correspondence courses. Courses offered outside the classroom setting in which the instruction is delivered indirectly to the student. Instruction is provided through another medium, such as written material, computer, television, or electronic means. Course materials are sent to a student who follows a detailed syllabus to complete assignments. Students correspond with and transmit assignments to the instructor by telephone, computer, mail, or electronic means. A third party may administer tests.

2. Television courses. Courses or programs delivered primarily via broadcast television, such as Iowa Public Television, digital video disc, or other media allowing students to receive instruction in a classroom or equipped remote location.

3. Video conference courses. Courses or programs delivered via a closed synchronous audio-video conferencing system, such as the Iowa Communications Network or similar system that allows students to receive instruction in a classroom or any equipped remote location via an audio-video feed to a television, computer, or other electronic device.

4. Online courses. Courses or programs delivered via the Internet. Courses may be taken using computers in a classroom setting or using personal computers or other electronic devices from the student's home or other location using an online learning management system or mixed-media methods. Students may be linked at times directly with the instructor or with other students electronically. Interaction may be direct (synchronous) or indirect (asynchronous) allowing students to participate during their own time frames.

5. In-class hybrid courses. Courses or programs that combine traditional classroom and computer-based instruction. In-class sessions are offered with online instructional activities to promote independent learning and reduce seat-time.

(3) Self-paced instruction. Courses or programs that permit a student to enter at variable times or progress at the student's own rate of speed. Start and end dates may or may not correspond to the official college calendar. Contact or credit hours for self-paced programs or courses will be computed by assigning to each registration the total number of credit or contact hours the student would have received if the student enrolled in a conventional program or course with stipulated beginning and ending dates.

(4) Arranged study. Instruction offered to students at times other than stated or scheduled class times to accommodate specific scheduling or program needs of students. Credit hours will be awarded in accordance with the credit hours that would have been assigned if the course or program were taught by conventional methods.

(5) Multiformat nontraditional instruction. Instruction utilizing a variety of nontraditional methods that may incorporate self-paced learning, text, video, computer instructional delivery, accelerated training, independent study, Internet delivery, or other methods that do not follow standard classroom work guidelines. Credit hours will be awarded in accordance with the credit hours that would have been assigned if the course or program were taught by conventional methods.

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(6) Competency-based instruction. Programs delivered using an outcomes-based approach, where the curriculum is structured around specified competencies and satisfactory academic progress is expressed as the attainment or mastery of the identified competencies.

g. Individualized learning experiences for which an equivalent course is not offered will have the program length computed from records of attendance using such procedures as a time clock or sign-in records. Individualized learning experiences means independent study courses in which an equivalent course is not offered by the college or listed in the college catalog. Independent study permits in-depth or focused learning on special topics of particular interest to the student.

h. Each course must have a minimum length of one credit hour. A fractional unit of credit may be awarded, provided the course exceeds the minimum length of one credit hour.

i. Each credit hour shall consist of a minimum number of contact hours as defined in paragraphs 21.2(12) "h" to "m." One contact hour equals 50 minutes.

j. Classroom work.

(1) The minimum requirement for one semester hour of credit is 800 minutes (16 contact hours) of scheduled instruction.

(2) The minimum requirement for one quarter hour of credit is 533 minutes (10.7 contact hours) of scheduled instruction.

k. Laboratory work.

(1) The minimum requirement for one semester hour of credit is 1,600 minutes (32 contact hours) of scheduled laboratory work.

(2) The minimum requirement for one quarter hour of credit is 1,066 minutes (21.3 contact hours) of scheduled laboratory work.

l. Clinical practice.

(1) The minimum requirement for one semester hour of credit is 2,400 minutes (48 contact hours) of scheduled clinical practice.

(2) The minimum requirement for one quarter hour of credit is 1,599 minutes (32 contact hours) of scheduled clinical practice.

m. Work-based learning.

(1) The minimum requirement for one semester hour of credit is 3,200 minutes (64 contact hours) of scheduled work-based learning.

(2) The minimum requirement for one quarter hour of credit is 2,132 minutes (42.6 contact hours) of scheduled work-based learning.

21.2(13) Career and technical program length.

a. Program length for the associate of applied science (AAS) degree in career and technical education, for the associate of applied arts (AAA) degree, and for the associate of professional studies (APS) degree will consist of an academic program not to exceed two academic years. All required course offerings are to be available within two academic years. All required offerings in AAS and AAA degree programs will not exceed a maximum of 86 semester (129 quarter) credit hours unless the department has granted a waiver pursuant to paragraph 21.2(13) "i." All required offerings in APS degree programs will not exceed a maximum of 68 credit hours. Programs will not exceed an average of 19 credit hours per regular term.

b. All credit-bearing courses required for program admittance or graduation, or both, will be included in the program length credit hour maximum, with the exception of developmental course credit hours. Prerequisites that provide an option to students for either credit or noncredit shall be counted toward the program parameters. Prerequisite options that are only offered for noncredit will not be counted toward program length parameters. A high school course prerequisite is permissible and will not count toward program length parameters, provided the prerequisite is reasonable. A high school course prerequisite is reasonable if a community college demonstrates that students entering the program predominantly meet the requirement without prior college coursework.

c. Associate of applied science (AAS) and associate of applied arts (AAA) programs that receive accreditation from nationally recognized accrediting bodies may appeal maximum credit hour length requirements to the department for consideration of a waiver. All AAS and AAA degree programs

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over the 86 semester (129 quarter) credit hour maximum must have approved program-length waivers pursuant to paragraph 21.2(13)“i.”

d. Associate of professional studies programs are not eligible for a program-length waiver pursuant to paragraph 21.2(13)“i.”

e. All credit certificate and diploma programs as defined in subrule 21.2(9) will not exceed 48 semester (72 quarter) credit hours.

f. Each course offered in the area of career and technical education will be taught in the shortest practical period of time at a standard consistent with the quality and quantity of work needed to prepare the student for successful employment in the occupation for which instruction is being offered.

g. A full-time student in career and technical education is defined as a student enrolling in 12 or more semester credit hours or the equivalent in career and technical education.

h. Curricula in full-time career and technical education programs will ordinarily be offered on the basis of student workload of 20 to 30 contact hours per week.

i. Waiver process. A college may petition the department to suspend in whole or in part a program-length requirement contained in paragraphs 21.2(13)“a” to “e” as applied to a specific program on the basis of the particular circumstances of that program.

(1) Waivers are issued at the director’s sole discretion. Waivers will be narrowly tailored and granted for a period no longer than two academic years, after which reapplication is necessary. A waiver may be granted on a long-term basis, not to exceed ten years, if issuing the waiver for a shorter period is not practical.

(2) All petitions for waiver must be submitted in writing to the department and include the following information: specific waiver request including scope and duration, the relevant facts that the petitioner believes would justify a waiver, a detailed statement of the impact on student achievement, any information known regarding the department’s treatment of similar cases, and any additional information deemed relevant by the petitioner. The department will acknowledge a petition upon receipt.

(3) The department will ensure that, within 30 calendar days, notice of pendency of the petition and a concise summary of its contents have been provided to a committee consisting of the chief academic officers of each community college. In addition, the department may give notice to other persons.

(4) A committee consisting of the chief academic officers of a majority of community colleges will review the waiver request and provide a recommendation to the department regarding whether approval should be granted. Within 90 calendar days of receiving the recommendation, the department will review the petition and issue a ruling. Failure of the department to grant or deny a petition within the required time period is deemed a denial of that petition. If a waiver is issued, the department will provide a description of the precise scope and operative period to all interested parties.

21.2(14) Faculty organization. The faculty shall be organized in such a way as to promote communication among administration, faculty and students and to encourage faculty participation in the development of the curriculum, instructional procedures, general policies, and such other matters as are appropriate.

281—21.3(260C) Associate of arts and associate of science transfer major programs.

21.3(1) General program. Each community college shall offer a general college parallel program of study leading to an associate of arts award or an associate of science award, pursuant to subrules 21.2(9) and 21.4(2). These programs shall offer courses equivalent to the first two years of a baccalaureate program and will not be discipline-specific.

21.3(2) Transfer majors. A community college may establish discipline-specific transfer major programs to improve student recruitment, advising, and success and enhance transferability of associate-level courses into aligned baccalaureate degree programs. The transfer major program will consist of discipline-relevant credits from an approved discipline framework that satisfies the requirements of paragraph 21.3(2)“b.” A community college will ensure all students are appropriately advised regarding the availability, structure, purpose, and other pertinent information related to the transfer major program.

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a. Degree option. A transfer major will be embedded within an associate of arts or associate of science degree that meets the requirements of this chapter and any applicable statewide transfer agreement between the Iowa community colleges and public universities. Credits within the transfer major may be utilized to fulfill the general education requirements of an associate of arts or associate of science degree, as appropriate.

b. Discipline framework. Each approved transfer major program will adhere to the appropriate adopted discipline framework to ensure transferability with the aligned baccalaureate program of study at one or more public universities in Iowa.

(1) A discipline framework consists of a minimum of 18 discipline-relevant semester credits (27 quarter credits) that align with a framework of elements based on accepted practices of an aligned baccalaureate degree program of study at a public university in Iowa.

(2) The courses within the discipline framework will articulate with a regionally accredited public university in Iowa so that the course credits are recognized by the university as fulfilling equivalent course requirements in at least one aligned baccalaureate degree program of study.

(3) If the provisions of subparagraph 21.3(2)“b”(2) cannot be achieved with at least one regionally accredited public university in Iowa, a request may be submitted to the department for articulation with a regionally accredited public institution in a contiguous state or a group of no less than three regionally accredited private postsecondary institutions that confer baccalaureate degrees, are based in Iowa, and are approved under Iowa Code chapter 261 to operate in the state of Iowa.

(4) The discipline framework will be developed and adopted by a statewide committee convened by the department.

c. Use of term. Consistent with department guidance, each community college will exclusively use the term “transfer major” to record the completion of an approved transfer major program on the student’s official transcript and other academic records, publish in the college catalog, and market the transfer major program to current and potential students and the general public. A community college shall not transcript, catalog, or market an associate of arts or associate of science program using other terms that contain or are synonymous with the term “major” or “transfer” or that imply a specialization within a subject area.

21.3(3) Approval. Pursuant to Iowa Code section 260C.14, each transfer major program will be submitted to the department for approval utilizing the state system for program management. Approval will be obtained prior to the enrollment of students in the transfer major program. The approval process does not include components specific to career and technical education program approval, including advisory committees and labor market analysis.

21.3(4) Reporting. Each community college will comply with data reporting requirements established by the department. The department shall produce and make available a report detailing enrollment and outcomes of participants in transfer major programs.

281—21.4(260C) Curriculum and evaluation.

21.4(1) General education. General education is intended to provide breadth of learning to the community college experience. General education imparts common knowledge, promotes intellectual inquiry, and stimulates the examination of different perspectives, thus enabling people to function effectively in a complex and changing world. General education tends to emphasize oral and written communication, critical analysis of information, knowledge and appreciation of diverse cultures, ways of knowing and human expression, knowledge of mathematical processes and natural sciences investigations, and ethics. General education courses are not intended to be developmental in nature. Each community college is responsible for clarifying, articulating, publicizing, and assessing its general education program.

21.4(2) College parallel or transfer.

a. This program shall offer courses that are the equivalent of the first two years of a baccalaureate program and may also include such courses as may be necessary to develop skills that are prerequisite to other courses and objectives, specialized courses required to provide career options within the college parallel or transfer program, and approved transfer major programs meeting the requirements of rule

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281—21.3(260C). College parallel or transfer programs are associate of arts and associate of science degree programs. General education courses in college parallel or transfer programs are required to be college transfer courses. Data will be collected and analyzed to determine how well students have succeeded and which adjustments in the curriculum, if any, need to be made.

b. Courses of a developmental or remedial nature or prefreshman level will not bear college transfer credit and will be clearly identified in the college catalog. Developmental courses on the transcript will be identifiable through the adoption of the community college common course numbering system.

21.4(3) Career and technical education. Instruction will be offered in career and technical education programs in no fewer than five different occupational fields as defined by the department. College parallel or transfer courses may be offered as needed in career and technical education programs. Career and technical education programs must meet program approval requirements set by the state board of education. The director's approval of new career and technical education programs is necessary. Instruction will be offered in career and technical education programs, ensuring that they are competency-based, contain all minimum competencies required by the department, articulate with local school districts' career and technical education programs, and comply with any applicable requirements in Iowa Code chapter 258. The occupational fields in which instruction is offered will be determined by merged area and geographical area needs as identified by surveys in these areas. Occupational advisory committees may be used to assist in developing and maintaining instructional content, including leadership development.

21.4(4) Developmental education. Students who enter community colleges underprepared for postsecondary coursework are provided opportunities to improve their cognitive and noncognitive skills via developmental education academic and student support services. In an effort to enhance these opportunities, while respecting the local authority of Iowa's community colleges, each college will adopt proven developmental education strategies to identify and address the needs of students, shorten the time to completion, prepare students for academic success, and reduce the financial burden for students underprepared for postsecondary coursework. Such proven strategies include multiple measures of placement; accelerated and integrated strategies, such as co-requisite models; and support services that address students' cognitive and noncognitive needs. These reform efforts require collaboration among community colleges, school corporations, and education stakeholders to systemically expand proven strategies to prepare students for postsecondary success.

21.4(5) Adult and continuing education. Adult education shall be offered and may include adult basic education, adult continuing and general education, college parallel or transfer, high school completion, supplementary and preparatory career education programs, and other programs and experiences as may be required to meet the needs of people in the merged area.

21.4(6) Continuing education. The community colleges shall provide a program of community services designed to meet the needs of persons residing in the merged area. The purpose of the continuing education program is to foster agricultural, business, cultural, industrial, recreational and social development in the area.

281—21.5(260C) Nonreimbursable facilities. No facility intended primarily for events for which admission may be charged nor any facility specially designed for athletic or recreational activities, other than physical education, may be constructed with state-appropriated funds.

281—21.6 to 21.19 Reserved.

The rules in this division are intended to implement Iowa Code chapter 260C and 2007 Iowa Acts, Senate File 601.

DIVISION II
INSTRUCTIONAL COURSE FOR DRINKING DRIVERS

281—21.20(321J) Course.

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21.20(1) A course provided in accordance with Division II of this chapter will be offered on a regular basis at each community college or by a substance abuse treatment program licensed under Iowa Code chapter 125. However, a community college is not required to offer the course if a substance abuse treatment program licensed under Iowa Code chapter 125 offers the course within the merged area served by the community college. A course provided in accordance with Division II of this chapter may be offered at a state correctional facility listed in Iowa Code section 904.102.

21.20(2) The department will maintain a listing of all providers of approved courses in the state and publish this listing on the department's website.

21.20(3) Individuals who reside outside the state of Iowa and who are required by the state of Iowa to take a course for drinking drivers will have the opportunity to take the course in another state, provided the out-of-state course is comparable to those courses approved to be offered in the state of Iowa.

21.20(4) Enrollment in the course is not limited to persons ordered to enroll, attend, and successfully complete the course required under Iowa Code sections 321J.1 and 321J.17(2). Any person under the age of 18 who is required to attend the courses for violation of Iowa Code section 321J.2 or 321J.17 must attend a course offered by a substance abuse treatment program licensed under Iowa Code chapter 125.

21.20(5) An instructional course, including allowable delivery formats, will be approved by the department in consultation with the community colleges, substance abuse treatment programs licensed under Iowa Code chapter 125, the Iowa department of health and human services, and the Iowa department of corrections. The course will consist of at least 12 hours of instructional time. In-person instruction will be delivered over a minimum of a two-day period in blocks not to exceed four hours with a minimum of a 30-minute break between blocks. Each student attending a course will be provided with the appropriate course materials necessary to complete the course, which will not be reused. The course will be taught by an instructor certified by the curriculum provider to teach the course. Each course of instruction will establish the following:

a. An understanding that alcohol-related problems could happen to anyone and that a person's drinking choices matter. The course illustrates common views of society that prevent people from taking drinking choices seriously. Research is presented to challenge common views with an understanding that alcohol problems are related to lifestyle choices.

b. An understanding that specific low-risk choices will help reduce the risk of experiencing alcohol-related problems at any point in life. The course presents research-based, low-risk guidelines.

c. Methods of providing support for making low-risk choices.

d. An accurate description of the progression of drinking to the development of alcoholism to help people weigh the risk involved with high-risk drinking and to see how high-risk choices may jeopardize their lives and the lives of others.

e. Opportunities to develop a specific plan of action to follow through with low-risk choices. A list of community resources is provided for ongoing support and treatment as needed.

281—21.21(321J) Tuition fee established.

21.21(1) Each person enrolled in an instructional course for drinking drivers will pay to the community college or a substance abuse treatment program licensed under Iowa Code chapter 125 a tuition fee of \$140 for the approved 12-hour course, plus a reasonable course materials fee. The court may allow an offender to combine the required course with a program that incorporates jail time. Reasonable fees may be assessed for costs associated with lodging, meals, and security.

21.21(2) A person will not be denied enrollment in a course by reason of a person's indigency. For court-ordered placement, the court will determine a person's indigency. In all other instances, the community college, substance abuse treatment program licensed under Iowa Code chapter 125, or state correctional facility will determine indigence upon application.

281—21.22(321J) Administrative fee established.

21.22(1) *Students enrolled in Iowa.* Each person enrolled in Iowa in an instructional course for drinking drivers under this chapter will be charged an administrative fee of \$15. This fee is in addition to tuition and will be collected by the provider of the instructional course in conjunction with the tuition fee

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established under rule 281—21.32(321J). The administrative fee will be forwarded to the department on a quarterly basis as prescribed by the department. If a student has been declared by the court as indigent, no administrative fee will be charged to that student.

21.22(2) *Students enrolled in another state.* Each person enrolled outside the state of Iowa in an instructional course for drinking drivers under this chapter will be charged an administrative fee of \$37.50. This fee is in addition to tuition and will be paid directly to the department of education by the student. Upon payment of the fee, the department shall review the educational component of the course taken by the student and shall inform the department of transportation whether the educational component is approved by the department.

281—21.23(321J) Advisory committee. A drinking driver education advisory committee is established by the department to serve in an advisory capacity to the department in matters relevant to the instructional course for drinking drivers. Membership on this committee will include representatives from agencies currently offering the instructional course for drinking drivers and may include other stakeholders.

281—21.24 to 21.30 Reserved.

The rules in this division are intended to implement Iowa Code section 321J.22.

DIVISION III
STATE COMMUNITY COLLEGE FUNDING PLAN

281—21.31(260C) General. Funds appropriated by the general assembly to the department for general financial aid to community colleges shall be allocated to each community college in the manner defined in this chapter.

21.31(1) Distribution formula. Moneys appropriated by the general assembly from the general fund to the department for community college purposes for general state financial aid for a budget year shall be allocated to each community college by the department according to the provisions of Iowa Code section 260C.18C.

21.31(2) Each community college will provide student and financial information in the manner and form as determined by the department and before the deadline announced by the department. If the community college fails to provide the student or financial information as required, the department will estimate the full-time equivalent enrollment (FTEE) of that college that will be used in the state general aid distribution formula.

21.31(3) Each community college is required to hire an auditing firm to complete and submit the schedule of credit-hour and contact-hour enrollment and a letter certifying that specified department of education procedures were followed. These schedules will be used in calculating the college's FTEE utilized in the community college state general aid distribution formula.

281—21.32 to 21.40 Reserved.

The rules in this division are intended to implement Iowa Code section 260C.18C.

DIVISION IV
APPRENTICESHIP PROGRAM

281—21.41(260C) Definitions. For the purpose of Division IV, the following definitions apply:

“Apprentice” means a worker at least 16 years of age, except where a higher minimum age standard is otherwise fixed by law, who is employed to learn a skilled trade or occupation under the standards of apprenticeship.

“Apprenticeable occupation” means a skilled trade that possesses all of the following characteristics:

1. It is customarily learned in a practical way through a structured, systematic program of on-the-job, supervised training.
2. It is clearly identified and commonly recognized throughout an industry.

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3. It involves manual, mechanical or technical skills and knowledge that require a minimum of 2,000 hours of on-the-job work experience.

4. It requires related instruction to supplement on-the-job training.

“Apprenticeship agreement” means a written agreement between an apprentice and the apprentice’s employer, or an apprenticeship committee acting as the agent for the employer(s). The agreement contains the terms and conditions of the employment and training of the apprentice.

“Apprenticeship committee” means those persons designated by the sponsor to act for it in the administration of the program. A committee may be “joint,” i.e., composed of an equal number of representatives of the employer(s) and of the employees represented by a bona fide collective bargaining agent(s), and is established to conduct, operate, or administer an apprenticeship program and enter into apprenticeship agreements with apprentices. A committee may be “unilateral” or “nonjoint” and shall mean a program sponsor in which a bona fide collective bargaining agent is not a participant.

“Apprenticeship program” means a plan containing all terms and conditions for the qualification, recruitment, selection, employment and training of apprentices, including such matters as required under 29 CFR Parts 29 and 30, including the requirement for a written apprenticeship agreement.

“Cancellation” means the termination of the registration or approval status of a program at the request of the sponsor or termination of an apprenticeship agreement at the request of the apprentice.

“Certification” or *“certificate”* means documentary evidence that at least one of the following has been met:

1. The Office of Apprenticeship has approved a set of National Guidelines for Apprenticeship Standards developed by a national committee or organization, joint or unilateral, or policy or guideline used by local affiliates, as conforming to the standards of apprenticeship set forth in 29 CFR Section 29.5;

2. A registration agency has established that an individual is eligible for probationary employment as an apprentice under a registered apprenticeship program;

3. A registration agency has registered an apprenticeship program as evidenced by a certificate of registration or other written indicia;

4. A registration agency has determined that an apprenticeship has successfully met the requirements to receive an interim credential; or

5. A registration agency has determined that an individual has successfully completed an apprenticeship.

“Competency” means the attainment of manual or technical skill and knowledge as specified by an occupational standard.

“Employer” means any person or organization employing an apprentice whether or not such person or organization is a party to an apprenticeship agreement with the apprentice.

“Office of Apprenticeship” mean the office designated by the Employment and Training Administration to administer the National Apprenticeship System or its successor organization.

“Registration agency” shall mean the Office of Apprenticeship.

“Registration of an apprenticeship agreement” means the acceptance and recording of an apprenticeship agreement by the Office of Apprenticeship as evidence of the apprentice’s participation in a particular registered apprenticeship program.

“Related instruction” or *“related technical instruction”* means an organized and systematic form of instruction designed to provide the apprentice with the core knowledge of the theoretical and technical subjects related to the apprentice’s occupation. Such instruction may be given in a classroom through occupational or industrial courses, by correspondence courses of equivalent value, by electronic media, or by other forms of self-study approved by the registration agency.

“Sponsor” means any person, association, committee or organization operating an apprenticeship program and in whose name the program is (or is to be) registered or approved.

281—21.42(260C) Apprenticeship programs. For an apprenticeship program to be offered by a community college or a local educational agency, the program must be approved by the U.S. Department

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of Labor, Office of Apprenticeship, and meet all requirements outlined in the National Apprenticeship Act, 29 U.S.C. §50, 29 CFR Parts 29 and 30 or as specified in Iowa Code chapter 84D.

281—21.43 to 21.49 Reserved.

The rules in this division are intended to implement Iowa Code section 260C.44 and the National Apprenticeship Act, 29 U.S.C. §50, and 29 CFR Parts 29 and 30.

DIVISION V
MISCELLANEOUS PROVISIONS

281—21.50(260C,322) Used motor vehicle dealer education program. An applicant for a license from the department of transportation as a used motor vehicle dealer will complete a minimum of eight hours of prelicensing education program courses pursuant to Iowa Code section 322.7A prior to submitting the application. The education program courses are provided by community colleges or by the Iowa Independent Automobile Dealers Association in conjunction with a community college. The reasonable fee for both the prelicensing education program courses and continuing education courses will not exceed \$55 per contact hour of instruction, which includes course materials and administrative costs.

281—21.51 to 21.59 Reserved.

The rules in this division are intended to implement Iowa Code chapter 260C and section 322.7A.

DIVISION VI
COMMUNITY COLLEGE ACCREDITATION

281—21.60(260C) Scope. Each community college is subject to accreditation by the state board of education, as provided in Iowa Code section 260C.47. The state board of education will grant accreditation if a community college meets the standards established in this chapter.

281—21.61(260C) Accreditation components and criteria—Higher Learning Commission. To be accredited by the state board of education and maintain accreditation status, a community college must meet the accreditation criteria of the Higher Learning Commission and additional state standards. Documents and materials provided in accordance with the accreditation requirements of the Higher Learning Commission will also be provided to the department for the state accreditation process.

281—21.62(260C) Accreditation components and criteria—additional state standards. To be granted accreditation by the state board of education, an Iowa community college will also meet additional standards pertaining to minimum or quality assurance standards for faculty (Iowa Code section 260C.48(1)); faculty load (Iowa Code section 260C.48(2)); special needs and protected classes (Iowa Code section 260C.48(3)); career and technical education program evaluation (Iowa Code section 258.4(7)); facilities, parking lots and roads; strategic planning; quality faculty plan (Iowa Code section 260C.36); senior year plus programs (Iowa Code chapter 261E); as well as any other items referenced in this chapter.

21.62(1) Faculty.

a. Community college-employed instructors who teach college credit courses shall meet minimum standards and institutional quality faculty plan requirements. Standards will at a minimum require that all community college instructors meet the following requirements:

(1) Instructors teaching courses in the area of career and technical education will be registered, certified, or licensed in the occupational area in which the state requires registration, certification, or licensure and shall meet at least one of the following qualifications:

1. Possess a baccalaureate degree or higher in the field of instruction in which the instructor teaches classes, or possess a baccalaureate degree in any area of study if at least 18 of the credit hours completed were in the career and technical field of instruction in which the instructor teaches classes.

2. Possess an associate degree in the career and technical education field of instruction in which the instructor is teaching, if such degree is considered terminal for that field of instruction, and have at

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least 3,000 hours of recent and relevant work experience in the occupational area or related occupational area in which the instructor teaches classes.

3. Have special training and at least 6,000 hours of relevant tested experience in the occupational area or related occupational area in which the instructor teaches classes if the instructor possesses less than a baccalaureate degree in the area or related area of study or occupational area in which the instructor is teaching classes and the instructor does not meet the requirements of subparagraph 21.62(1)“a”(2).

(2) For purposes of numbered paragraphs 21.62(1)“a”(1)“2” and “3,” if the instructor is a licensed practitioner who holds a career and technical endorsement under Iowa Code chapter 256, subchapter VII, part 3, relevant work experience in the occupational area includes, but is not limited to, classroom instruction in a career and technical education subject area offered by a school district or accredited nonpublic school.

(3) Instructors in the area of arts and sciences shall meet one of the following qualifications:

1. Possess a master’s degree or higher from an accredited graduate school in each field of instruction in which the instructor is teaching classes.

2. Possess a master’s degree or higher from an accredited graduate school and have completed a minimum of 18 graduate semester hours in a combination of the qualifying graduate fields identified as related to the field of instruction in which the instructor is teaching classes. These 18 graduate semester hours must include at least 6 credits in the specific course content being taught, with at least 12 credits required for courses that serve as prerequisites for junior-level courses at transfer institutions.

b. For courses identified as applied liberal arts and sciences, possess at least a bachelor’s degree and a combination of formal training and professional tested experience equivalent to 6,000 hours. The instructor shall hold the appropriate registration, certification, or licensure in occupational areas in which such credential is necessary for practice.

c. Developmental education and noncredit instructors are not subject to standards under this subrule.

d. Adult education instructors will meet the minimum standards set forth in 877—Chapter 32. Instructional staff providing instruction in an adult education and literacy program to students must possess at minimum a bachelor’s degree.

e. A faculty standards council will be convened by the department to review procedures for establishing and reviewing minimum instructor qualifications and definitions for “field of instruction,” “applied liberal arts and sciences courses,” “qualifying graduate field or major,” and “relevant tested experience.” Definitions will be based on accepted practices of regionally accredited two- and four-year institutions of higher education.

(1) The council will include faculty and academic administrators and meet at least annually. The council will make recommendations to a committee consisting of the chief academic officers of Iowa’s 15 community colleges. The committee will adopt definitions and minimum faculty qualification standards to be utilized for the state accreditation process. Each community college will adhere to the adopted definitions and minimum faculty qualification standards.

(2) When utilizing relevant tested experience to qualify an instructor to teach classes within a specific field of instruction, each community college will maintain well-defined policies, procedures, and documentation in alignment with the adopted definitions and minimum faculty qualification standards. This documentation will demonstrate that the instructor possesses the experience and expertise necessary to teach in the specified field of instruction and is current in the instructor’s discipline. When tested experience is assessed, an hour of relevant work is equal to 60 minutes and one full-time year of relevant work is equal to 2,000 hours.

f. Volunteer staff will possess at minimum a high school diploma or high school equivalency diploma.

21.62(2) Faculty load.

a. Arts and sciences. The full-time teaching load of an instructor in arts and sciences courses will be 15 credit hours within a traditional semester or the equivalent and will not exceed a maximum of 16 credit hours within a traditional semester or the equivalent. An instructor may also have an additional teaching assignment beyond the maximum academic workload, provided the instructor

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and the community college administration mutually consent to this additional assignment and the total workload does not exceed the equivalent of 22 credit hours within a traditional semester or the equivalent.

b. Career and technical education. The full-time teaching load of an instructor in career and technical education programs will not exceed an aggregate of 30 hours per week or the equivalent. An instructor may also teach the equivalent of an additional three credit hours, provided the instructor consents to this additional assignment. When the teaching assignment includes classroom subjects (nonlaboratory), consideration will be given to establishing the teaching load more in conformity with that of paragraph 21.62(2)“a.”

21.62(3) Special needs and protected classes. Community colleges shall provide equal access to the full range of program offerings and services including recruitment, enrollment, and placement activities for students with special education needs or protected by state or federal civil rights regulations. Students with disabilities shall be given access to the full range of program offerings at a college through reasonable accommodations.

21.62(4) Career and technical education evaluation. The director of the department shall ensure that Iowa’s community colleges annually review at least 20 percent of approved career and technical education programs. The community college career and technical program review and evaluation system must ensure that the programs meet requirements as specified in 281—Chapter 46.

21.62(5) Facilities, parking lots and roads.

a. Facilities master planning. Each community college shall present evidence of adequate planning, including a board-approved facilities plan. Planning includes tentative program approval, a master campus plan, written educational specifications, site plot showing location of proposed and existing facilities, elevations and floor plans.

b. Accessibility and safety. All new or remodeled facilities (buildings and programs offered in such facilities) and services in such facilities shall be made functional and usable for persons with special needs, comply with Iowa Code chapter 104A and the Americans With Disabilities Act, 42 U.S.C. §12101, and address issues of campus safety and security as required by Iowa Code chapter 260C and by the federal Clery Act, 20 U.S.C. §1092(f). All parking areas and roads will comply with all state and federal rules and regulations dealing with roads, parking ramps, and accessibility requirements.

c. Adequate facilities. All administrative facilities, classrooms, laboratories, and related facilities will be educationally adequate for the purpose for which they are designed.

d. Library or learning resource center. A library or learning resource center will be planned as part of the master campus plan and space made for library or learning resource center services within the initial construction.

(1) Facilities. Community college libraries or learning resource centers shall provide the facilities and resources needed to support the total educational program of the institution and shall show evidence that the facilities and the resources are being used effectively and efficiently. Adequate consideration shall be given to the seating, comfort, setting, and technology of the facility used to house the collection and learning resources.

(2) Staffing. The library or learning resource center will be adequately staffed with qualified professionals and skilled nonprofessional personnel.

(3) Collection. The library and learning resource center materials collection of a community college shall be accessible and adequate in size and scope to serve effectively the number and variety of programs offered and the number of students enrolled, including distance and satellite sites. The library and learning resource center materials collection will show evidence of having been selected by faculty as well as professional library or learning resource staff and shall be kept up to date through a planned program of acquisition and deletion. The library and learning resource center materials collection will contain a range and number of print and nonprint materials and appropriate electronic information resources.

(4) Expenditures. The budget of the library or learning resource center will be appropriate for the programs and services offered by the institution. New programs and new curricula will be reflected in library or learning resource center expenditures.

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e. Student center. An area of the college will be provided where students may gather informally and where food is available.

f. Laboratories, equipment and supplies. Laboratories, equipment and supplies will be comparable with those used in the occupations for which instruction is offered. Similarly, college parallel or transfer courses will be supported in a manner comparable to those conditions that prevail in standard, regionally accredited colleges and universities to which students may wish to transfer college credits.

g. Physical plant. The site, buildings and equipment of the community college will be well maintained and in good condition. At a minimum, a five-year ongoing, systematic maintenance and facilities plan approved by the local community college board will be in evidence. The physical plant will be adequate in size and properly equipped for the program offered. All remodeling of existing facilities will comply with Iowa Code chapter 104A and the federal Americans with Disabilities Act, 42 U.S.C. §12101 et seq.

21.62(6) Strategic planning. At a minimum, the community college will prepare a high-quality, board-approved strategic plan at least once every five years, and that plan will be effectively implemented to guide the college and its decision-making.

21.62(7) Quality faculty plan. The community college will establish a quality faculty committee consisting of instructors and administrators to develop and maintain a plan for hiring and developing quality faculty. The committee will have equal representatives of arts and sciences and career and technical faculty with no more than a simple majority of members of the same gender. Faculty will be appointed by the certified employee organization representing faculty, if any, and administrators will be appointed by the college's administration. If no faculty-certified employee organization representing faculty exists, the faculty will be appointed by administration pursuant to Iowa Code section 260C.48(4). The committee will submit the plan to the board of directors for consideration, approval and submittal to the department. Standards relating to quality assurance of faculty and ongoing quality professional development will be the accreditation standards of similar accredited institutions of higher education that are consistent with the standards established pursuant to this rule and the faculty standards required under specific programs offered by the community college that are accredited by other accrediting agencies. For purposes of this subrule, "accredited" means that an institution of higher education meets the standards established by an accrediting agency recognized under 34 CFR Part 602 and by Title IV of the federal Higher Education Opportunity Act, Pub. L. No. 110-315.

a. For purposes of this subrule, the following definitions apply:

"*Counselor*" means those who are classified as counselors as defined in the college's collective bargaining agreement or written policy.

"*Media specialist*" means those who are classified as media specialists as defined in the college's collective bargaining agreement or written policy.

b. The institutional quality faculty plan is applicable to all community college-employed faculty teaching college credit courses, counselors, and media specialists. The plan requirements may be differentiated for each type of employee. The plan will include, at a minimum, each of the following components:

(1) Plan maintenance. The quality faculty committee will submit proposed plan modifications to the board of directors for consideration and approval. It is recommended that the plan be updated at least annually.

(2) A determination of the faculty and staff to be included in the plan, including all instructors teaching college credit courses, counselors, and media specialists.

(3) Orientation for new faculty. It is recommended that new faculty orientation be initiated within six months from the hiring date. It is recommended that the orientation of new faculty be flexible to meet current and future needs and provide options other than structured college courses for faculty to improve teaching strategies, curriculum development and evaluation strategies. It is recommended that the college consider developing a faculty mentoring program.

(4) Continuing professional development for faculty. It is recommended that the plan clearly specify required components including time frame for continuing professional development for faculty.

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It is recommended that the plan include the number of hours, courses, workshops, professional and academic conferences or other experiences, such as industry internships, cooperatives and exchange programs that faculty may use for continuing professional development. It is recommended that the plan include prescribed and elective topics, such as discipline-specific content and educational trends and research. Examples of topics that may be considered include dealing with the complexities of learners, skills in teaching adults, curriculum development, assessment, evaluation, enhancing students' retention and success, reaching nontraditional and minority students, improving skills in implementing technology and applied learning, leadership development, and issues unique to a particular college. The institutional quality faculty plan will include continuing professional development components for all instructional staff, counselors, and media specialists, and may include reciprocity features that facilitate movement from one college to another.

(5) Procedures for accurate record keeping and documentation for plan monitoring. It is recommended that the plan identify the college officials or administrators responsible for the administration, record keeping and ongoing evaluation and monitoring of the plan. It is recommended the plan monitoring, evidence collected, and records maintained showing implementation of the plan be comprehensive in scope. It is recommended that the plan provide for the documentation that each faculty member appropriately possesses, attains or progresses toward attaining minimum competencies.

(6) Consortium arrangements where appropriate, cost-effective and mutually beneficial. It is recommended that the plan provide an outline of existing and potential consortium arrangements including a description of the benefits, cost-effectiveness, and method of evaluating consortium services.

(7) Specific activities that ensure that faculty attain and demonstrate instructional competencies and knowledge in their subject or technical areas. It is recommended that the plan identify faculty minimum competencies and explain the method or methods of determining and assessing competencies. It is recommended that the plan contain procedures for reporting faculty progress. It is recommended that faculty be notified at least once a year of their progress in attaining competencies.

(8) Procedures for collection and maintenance of records demonstrating that each faculty member has attained or documented progress toward attaining minimum competencies. It is recommended that the plan specify data collection procedures that demonstrate how each faculty member has attained or has documented progress toward attaining minimum competencies.

c. Compliance with the faculty accreditation standards of similar accredited institutions of higher education that are consistent with the standards established pursuant to Iowa Code section 260C.48 and with faculty standards required under specific programs offered by the community college that are accredited by other accrediting agencies. For purposes of this paragraph, "accredited" means that an institution of higher education meets the standards established by an accrediting agency recognized under 34 CFR Part 602 and by Title IV of the federal Higher Education Opportunity Act, Pub. L. No. 110-315.

d. The department will review the plan during the state accreditation evaluations to ensure each community college's compliance and progress in implementing a quality faculty plan as approved by the local board of directors. The department shall review the following:

(1) Documents submitted by the college that demonstrate that the plan includes each component required by paragraph 21.62(7) "b."

(2) Documentation submitted by the college that the board of directors approved the plan.

(3) Documentation submitted by the college that the college is implementing the approved plan, including evidence of plan monitoring, evaluation and updating; evidence that the faculty has met minimum requirements of the quality faculty plan contained in Iowa Code section 260C.48; and evidence that faculty members have been notified of their progress toward attaining minimum requirements.

(4) Documentation that the college administration encourages the continued development of faculty potential as defined in Iowa Code section 260C.36.

(5) Documentation of the human resources report submitted by the college through the department's community college management information system.

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21.62(8) *Senior year plus.* The community college shall provide access to joint enrollment opportunities for high school age students. Each college will comply with the appropriate standards defined in Iowa Code chapter 261E.

21.62(9) *Student services.* A program of student services will be provided to meet the needs of students in the community college. The program of student services, at a minimum, will include the following functional areas:

- a. Orientation to college and career opportunities and requirements.
- b. Appraisal of individual potential.
- c. Consultation with students about their plans, progress and problems.
- d. Participation of students in activities that supplement classroom experiences.
- e. Regulation to provide an optimal climate for social and academic development.
- f. Services that facilitate community college attendance through a program of financial assistance, and facilitate transition to further education or employment.
- g. Organization that provides for continuing articulation, evaluation and improvement of the student services program.
- h. Campus safety and security as required by Iowa Code chapter 260C and the federal Clery Act, 20 U.S.C. §1092(f), 34 CFR Section 668.46.

281—21.63(260C) Accreditation process.

21.63(1) *Components.* The community college accreditation process includes the following components:

- a. Each community college will submit information on an annual basis to the department of education to comply with program evaluation requirements adopted by the state board of education.
- b. The department will conduct a comprehensive on-site accreditation evaluation of each community college on a ten-year interval. An interim evaluation midway between comprehensive evaluations will also be conducted. The department will prepare a staggered evaluation schedule that sets no more than three comprehensive or interim evaluations in any one year. No comprehensive or interim evaluation will be required for continued accreditation prior to a community college's first evaluation under the schedule. The department has the authority to conduct focused evaluation visits as needed.

21.63(2) *Accreditation team.* The size and composition of the accreditation team is determined by the director of the department, but the team will include members of the department staff and staff members from community colleges other than the community college being evaluated for accreditation, and any other technical experts as needed.

21.63(3) *Accreditation team action.* After a visit to a community college, the accreditation team shall evaluate whether the accreditation standards have been met and shall make a report to the director of the department and the state board of education, together with a recommendation as to whether the community college shall remain accredited. The accreditation team will report strengths and opportunities for improvement, if any, for each standard and criterion and will advise the community college of available resources and technical assistance to further enhance strengths and address areas for improvement. A community college may respond to the accreditation team's report.

21.63(4) *State board of education consideration of accreditation.* The state board of education will determine whether a community college remains accredited. Approval of accreditation for a community college by the state board of education will be based upon the recommendation of the director of the department after study of the factual and evaluative evidence on record pursuant to the standards and criteria described in this chapter, and based upon the timely submission of information required by the department in a format provided by the department. With the approval of the director of the department, a focused visit may be conducted if the situation at a particular college warrants such a visit.

a. ***Accreditation granted.*** Continuation of accreditation, if granted, will be for a ten-year term with a comprehensive evaluation occurring once every ten years and an interim evaluation midway between comprehensive evaluations; however, approval for a lesser term may be granted by the state board of education if the board determines that conditions so warrant.

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b. Accreditation denied or conditional accreditation. If the state board of education denies accreditation or grants conditional accreditation, the director of the department, in cooperation with the board of directors of the community college, will establish a plan prescribing the procedures that must be taken to correct deficiencies in meeting the standards and criteria and will establish a deadline for correction of the deficiencies. The plan will be submitted to the director within 45 days following the notice of accreditation denial or conditional accreditation. The plan will include components that address correcting deficiencies, sharing or merger options, discontinuance of specific programs or courses of study, and any other options proposed by the state board of education or the accreditation team to allow the college to meet the accreditation standards and criteria.

c. Implementation of plan. During the time specified in the plan for its implementation, the community college remains accredited. The accreditation team will revisit the community college to evaluate whether the deficiencies in the standards or criteria have been corrected and will make a report and recommendation to the director and the state board of education. The state board of education will review the report and recommendation, may request additional information and determine whether the deficiencies have been corrected.

d. Removal of accreditation. The director will give a community college that fails to meet accreditation standards, as determined by the state board of education, at least one year's notice prior to removal of accreditation. The notice will be sent by certified mail or restricted certified mail addressed to the chief executive officer of the community college and will specify the reasons for removal of accreditation. The notice will also be sent to each member of the board of directors of the community college. If, during the year, the community college remedies the reasons for removal of accreditation and satisfies the director that the community college will comply with the accreditation standards and criteria in the future, the director will continue the accreditation and will transmit notice of the action to the community college by certified mail or restricted certified mail.

e. Failure to correct deficiencies. If the deficiencies have not been corrected in a program of a community college, the community college board of directors will take one of the following actions within 60 days from removal of accreditation:

- (1) Merge the deficient program or programs with a program or programs from another accredited community college.
- (2) Contract with another accredited postsecondary educational institution for purposes of program delivery at the community college.
- (3) Discontinue the program or programs that have been identified as deficient.

f. Appeal process provided. The action of the director to remove the state accreditation of a community college program may be appealed to the state board of education as provided in Iowa Code section 260C.47(7).

The rules in this division are intended to implement Iowa Code section 258.4(7) and chapters 260C and 261E.

ITEM 2. Rescind and reserve **281—Chapter 24.**

ARC 7586C

EDUCATION DEPARTMENT[281]

Notice of Intended Action

**Proposing rulemaking related to senior year plus program
and providing an opportunity for public comment**

The State Board of Education hereby proposes to rescind Chapter 22, "Senior Year Plus Program," Iowa Administrative Code, and to adopt a new chapter with the same title.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code section 261E.3.

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State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code chapter 261E.

Purpose and Summary

This rulemaking is proposed pursuant to Executive Order 10 review. The Department of Education proposes to remove unduly restrictive rules language, remove outdated or obsolete programs, incorporate statutory language by reference when available, and renumber rules.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the State Board for a waiver of the discretionary provisions, if any, pursuant to 281—Chapter 4.

Public Comment

Any interested person may submit written or oral comments concerning this proposed rulemaking. Written or oral comments in response to this rulemaking must be received by the Department no later than 4:30 p.m. on February 27, 2024. Comments should be directed to:

Thomas A. Mayes
 Department of Education
 Grimes State Office Building, Second Floor
 400 East 14th Street
 Des Moines, Iowa 50319-0146
 Phone: 515.281.8661
 Email: thomas.mayes@iowa.gov

Public Hearing

Public hearings at which persons may present their views orally or in writing will be held as follows:

February 27, 2024 9:30 to 10 a.m.	Room B100 Grimes State Office Building Des Moines, Iowa
February 27, 2024 1:30 to 2 p.m.	Room B50 Grimes State Office Building Des Moines, Iowa

Persons who wish to make oral comments at a public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rulemaking.

Any persons who intend to attend a public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department and advise of specific needs by calling 515.281.5295.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual

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or group, review this rulemaking 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 rulemaking action is proposed:

ITEM 1. Rescind 281—Chapter 22 and adopt the following **new** chapter in lieu thereof:

CHAPTER 22
SENIOR YEAR PLUS PROGRAM

DIVISION I
GENERAL PROVISIONS

281—22.1(261E) Definitions. For the purposes of this chapter, the indicated terms are defined as follows:

“Concurrent enrollment” means the same as defined in Iowa Code section 261E.2(1).

“Department” means the department of education.

“Director” means the director of the department of education.

“Dually enrolled” means the status of a student who receives competent private instruction under Iowa Code chapter 299A and whose parent, guardian, or legal custodian has registered the student pursuant to Iowa Code section 299A.8 in a school district for any of the purposes listed therein, including, for purposes of these rules, participation in any part of the senior year plus program on the same basis as public school students but subject to the enrollment percentage limitation contained in 281—Chapter 33.

“Eligible postsecondary institution” means the same as defined in Iowa Code section 261E.2(4).

“Institution” means the same as defined in Iowa Code section 261E.2(5).

“School board” means the board of directors of a school district or a collaboration of boards of directors of school districts.

“State board” means the state board of education.

“Student” means the same as defined in Iowa Code section 261E.2(8).

281—22.2(261E) Student eligibility. A student is eligible if the student satisfies the provisions of Iowa Code section 261E.3(1). If the student was absent for the most recent administration of the statewide assessment, and such absence was not excused by the student's school of enrollment, the student is deemed not to be proficient in any of the content areas. Measures of college readiness may be jointly agreed upon by the school board and the eligible postsecondary institution that allow a student to demonstrate competency in one or all of the required subject areas. Institutions will ensure the following:

22.2(1) The measures of college readiness align to the proficiency levels established for the statewide assessment and reflect the competence of entering first-year students at the postsecondary institution.

22.2(2) The measures of college readiness are specified in a contract entered into by the participating institutions.

281—22.3(261E) Teacher eligibility, responsibilities. A teacher employed to provide instruction under this chapter is eligible if the teacher satisfies the criteria and responsibilities of Iowa Code section 261E.3(2). The background investigation also applies to a teacher or instructor who is employed by an eligible postsecondary institution if the teacher or instructor provides instruction under this chapter at a school district facility, an accredited nonpublic school facility, or a neutral site. For purposes of this rule, “neutral site” is defined in Iowa Code section 261E.3(2).

281—22.4(261E) Institutional eligibility, responsibilities.

22.4(1) General. Institutions are governed by the provisions of Iowa Code section 261E.3(3).

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a. If a fee is charged to other students of the eligible postsecondary institution for any of the services specified in Iowa Code section 261E.3(3) “*b.*,” that fee may also be charged to participating secondary students on the same basis as it is charged to postsecondary students.

b. The institutions will provide the teacher or instructor appropriate orientation and training in secondary and postsecondary professional development related to curriculum, pedagogy, assessment, policy implementation, technology, and discipline issues.

c. The institutions will provide the teacher or instructor adequate notification of an assignment to teach a course under this chapter, as well as adequate preparation time to ensure that the course is taught at the college level. The specifics of this paragraph are locally determined.

22.4(2) *Requirements of school district or accredited nonpublic school only.*

a. Except as provided under Iowa Code sections 257.11(3) “*c.*,” 279.50A and 261E.8(2) “*b.*,” the school district or accredited nonpublic school shall certify annually to the department, as an assurance in the district’s or accredited nonpublic school’s basic education data survey, that the course provided to a high school student for postsecondary credit in accordance with this chapter supplements, and does not supplant, a course provided by the school district or accredited nonpublic school in which the student is enrolled. For purposes of these rules, to comply with the “supplement, not supplant” requirement, the content of a course provided to a high school student for postsecondary credit is not to consist of substantially the same concepts and skills as the content of a course provided by the school district or accredited nonpublic school.

b. If the teacher or instructor is employed by an eligible postsecondary institution, the school district or accredited nonpublic school will pay for the background investigation but may request reimbursement of the actual cost to the eligible postsecondary institution.

22.4(3) *Requirements of eligible postsecondary institution only.*

a. All eligible postsecondary institutions providing programming under this chapter will include the unique student identifier assigned to students while in the kindergarten through grade 12 system as a part of the institution’s student data management system.

(1) Eligible postsecondary institutions providing programming under this chapter will cooperate with the department on data requests related to the programming.

(2) All eligible postsecondary institutions providing programming under this chapter are to collect data and report to the department on the proportion of females and minorities enrolled in science-, technology-, engineering-, and mathematics-oriented educational opportunities provided in accordance with this chapter.

b. The eligible postsecondary institution will provide the teacher or instructor with ongoing communication and access to instructional resources and support, and encourage the teacher or instructor to participate in the postsecondary institution’s academic departmental activities.

DIVISION II
ADVANCED PLACEMENT PROGRAM

281—22.5(261E) School district obligations. School districts will make advanced placement courses available to students under the terms of Iowa Code section 261E.4, including making such coursework available to a dually enrolled student under competent private instruction or to a student enrolled in an accredited nonpublic school located in the district if the student meets the same criteria as a regularly enrolled student of the district. An international baccalaureate program is not an advanced placement program.

281—22.6(261E) Obligations regarding registration for advanced placement examinations. The board of directors of a school district or authorities in charge of an accredited nonpublic school are governed by Iowa Code section 261E.5.

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DIVISION III
CONCURRENT ENROLLMENT PROGRAM

281—22.7(261E) Applicability. The concurrent enrollment program, also known as district-to-community college sharing, is subject to the provisions of Iowa Code section 261E.8. A student enrolled in a career and technical course under this division does not have to meet the proficiency requirements set forth in Iowa Code section 261E.3(1)“e.”

22.7(1) “Auditing” not allowed. Students are not permitted to “audit” a concurrent enrollment course; the student is to take the course for credit.

22.7(2) Funding. Regardless of whether a district receives supplementary weighted funding, the district will not charge tuition of any of its students who participate in a concurrent enrollment course.

22.7(3) Data collection. Institutions participating in the program established by this rule will comply with data reporting and verification processes established by the department, including the data elements set forth in Iowa Code section 261E.8(9).

281—22.8(261E) Accredited nonpublic school concurrent enrollment option.

22.8(1) Authorization. In addition to enrollment through a school district as authorized under rule 281—22.7(261E), students enrolled at an accredited nonpublic school may access concurrent enrollment coursework through a direct contract between the authorities in charge of an accredited nonpublic school and a community college.

22.8(2) General. For any coursework delivered through a contract established pursuant to this rule, students, institutions, and instructors will meet the requirements for concurrent enrollment established under rule 281—22.7(261E). However, such coursework is not eligible for funding under that rule.

22.8(3) Funding. Subject to the appropriation of funds by the Iowa legislature for such purposes, coursework delivered through a contract between the authorities in charge of an accredited nonpublic school and a community college pursuant to this rule may be eligible for funding under rule 281—97.7(257).

22.8(4) Data collection. Institutions participating in a contract pursuant to this rule are to comply with data reporting and verification processes established by the department.

DIVISION IV
POSTSECONDARY ENROLLMENT OPTIONS PROGRAM

281—22.9(261E) Postsecondary enrollment options program—general. The postsecondary enrollment options (PSEO) program is established pursuant to the terms of Iowa Code section 261E.6. PSEO programming provided by a school district pursuant to this division may be but is not required to be available to students on a year-round basis.

281—22.10(261E) Student eligibility. Student eligibility is described in Iowa Code section 261E.6(6). Persons who have graduated from high school are not eligible for this program. Students who are not residents of Iowa are not eligible.

22.10(1) A student enrolled in an accredited nonpublic school who meets all eligibility requirements may apply to take courses under this division in the school district where the accredited nonpublic school is located, provided that neither the accredited nonpublic school nor the school district offers a comparable course.

22.10(2) A student under competent private instruction who meets the eligibility requirements in this chapter may apply to take courses under this division through the public school district in which the student is dually enrolled, provided that the resident school district does not offer a comparable course.

22.10(3) Postsecondary institutions may require students to meet appropriate standards or requirements for entrance into a course, which may include prerequisite courses, scores on national academic aptitude and achievement tests, or other evaluation procedures to determine competency. Acceptance of a student into a course by a postsecondary institution is not a guarantee that a student will be enrolled in all requested courses. Priority may be given to postsecondary students before eligible

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secondary students are enrolled in courses. However, once an eligible secondary student has enrolled in a postsecondary course, the student cannot be displaced by another student for the duration of the course. Students must take the course for credit (no auditing of courses allowed) and meet all of the requirements of the course that are required of postsecondary students.

281—22.11(261E) Eligible postsecondary courses. These rules are intended to implement the policy of the state to promote rigorous academic pursuits.

22.11(1) Postsecondary courses eligible for students to enroll in under this division are limited to:

- a. Nonsectarian courses;
- b. Courses that are not comparable to courses offered by the school district where the student attends that are defined in rules adopted by the board of directors of the public school district. For purposes of these rules, “comparable” is not synonymous with “identical,” but means that the content of a course provided to a high school student for postsecondary credit consists of substantially the same concepts and skills as the content of a course provided by the school district or accredited nonpublic school;
- c. Credit-bearing courses that lead to an educational degree;
- d. Courses in the discipline areas of mathematics, science, social sciences, humanities, and vocational-technical education; and also the courses in career option programs offered by area schools established under the authorization provided in Iowa Code chapter 260C.

22.11(2) A school district or accredited nonpublic school will grant academic or vocational-technical credit to an eligible student enrolled in an eligible postsecondary course.

22.11(3) A course is ineligible for purposes of this rule if the school district has a contractual agreement with the eligible postsecondary institution under Iowa Code section 261E.8 that meets the requirements of Iowa Code section 257.11(3) and if the course may be delivered through such an agreement in accordance with Iowa Code section 257.11(3).

22.11(4) Matters pertaining to the granting and awarding of credit are set forth in Iowa Code section 261E.6(4).

281—22.12(261E) Application process. The application process is set forth in Iowa Code section 261E.6(3).

281—22.13(261E) Transportation. The parent or guardian of an eligible student who has enrolled in and is attending an eligible postsecondary institution under this division is solely responsible to furnish transportation to and from the postsecondary institution for the student.

281—22.14(261E) Payments, claims, and reimbursements. Payments, claims, and reimbursements, including reimbursements and adjustments, under this division are set forth in Iowa Code section 261E.7.

DIVISION V
CAREER ACADEMIES

281—22.15(261E) Career academies. A career academy is defined in Iowa Code section 258.6. Career academies are established and governed by Iowa Code section 261E.10, which is incorporated by this reference. A course offered by a career academy will not qualify as a regional academy course.

DIVISION VI
REGIONAL ACADEMIES

281—22.16(261E) Regional academies. A regional academy is a program established and governed by Iowa Code section 261E.9, which is incorporated by this reference. School districts participating in a regional academy pursuant to this rule are to comply with the application and verification processes established by the department.

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DIVISION VII
INTERNET-BASED COURSEWORK

281—22.17(261E) Internet-based coursework. The programming in this chapter may be delivered as specified in Iowa Code section 261E.11.

DIVISION VIII
PROJECT LEAD THE WAY

281—22.18(261E) Project lead the way.

22.18(1) Program established. A project lead the way program is established to be administered by the department to promote rigorous science, technology, engineering, and mathematics pursuits.

22.18(2) Notification. A school district shall provide descriptions of the project lead the way courses available to students using a course registration handbook. The handbook is to identify which courses, if successfully completed, generate college credit under the program. Information about available project lead the way courses is to be provided to every junior high school student or middle school student prior to the development of a core curriculum plan pursuant to Iowa Code section 279.61.

22.18(3) Access. Students from accredited nonpublic schools and students receiving competent private instruction under Iowa Code chapter 299A may access the program through the school district in which the accredited nonpublic school or private institution is located.

22.18(4) Curriculum. A school district offering a project lead the way program will offer the curriculum developed by the national organization that administers the project lead the way program.

22.18(5) Instructor. A school district will ensure that a teacher or instructor employed to provide instruction under this rule meets the following additional criteria:

a. The teacher has successfully completed the training required by the national organization that administers the project lead the way program.

b. The teacher meets the minimum requirements of the national organization that administers the project lead the way program.

c. The teacher participates, on a regular basis, in available professional development provided by the national organization that administers the project lead the way program.

22.18(6) Accreditation standards.

a. A project lead the way course may apply toward high school program accreditation standards pursuant to 281—Chapter 12. To meet the requirement, the instructor must be appropriately licensed and endorsed by the board of educational examiners to teach the subject area of the accreditation standard.

b. If the project lead the way course being taught is within a career and technical education program or is one in a sequence of project lead the way courses that collectively are used to meet one of the career and technical education sequential unit requirements of 281—Chapter 12, the program must be approved by the department pursuant to 281—Chapter 46.

22.18(7) Collaborative project lead the way courses.

a. A collaborative program for project lead the way courses is established to be administered by the department to promote rigorous science, technology, engineering, and mathematics pursuits in partnership with a community college established under Iowa Code chapter 260C. The program is to be made available to all resident students in grades 9 through 12.

b. A comparable course, as defined in rules adopted by the board of directors of the school district consistent with department administrative rule, is not offered by the school district or accredited nonpublic school the student attends.

c. A school district is to be certified by the national organization that administers the project lead the way program and have a signed agreement with that organization.

d. To be eligible, institutions, instructors, and students meet the provisions of Iowa Code section 261E.3.

e. A school district may set additional eligibility requirements to ensure student readiness to achieve success. All students in the shared course are to meet the expectations of the national organization that administers the project lead the way program and be registered for college credit.

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f. A district-to-community college sharing program for project lead the way courses that meets the requirements of 281—subrule 97.2(6) is eligible for funding under that provision for collaborative project lead the way career and technical education courses.

22.18(8) Credit.

a. The school district shall grant high school credit to a student enrolled in a project lead the way course not offered by a community college. At a school district's discretion, a project lead the way course may count toward a school district's graduation requirements provided that the teacher is licensed by the board of educational examiners and endorsed within the subject area of the graduation requirement.

b. The school district shall grant high school credit to a student enrolled in a project lead the way course for college credit under this chapter if the student successfully completes the course as determined by the community college and the course was previously approved by the school board pursuant to Iowa Code section 261E.8(3). If a student is not successful in completing a project lead the way course as determined by the community college, the student's high school transcript will reflect the failing grade. The board of directors of the school district determines the number of high school credits to be granted to a student who successfully completes a project lead the way course.

c. The school district may offer a project lead the way course as an articulated course. Articulated courses are offered through an agreement between the district and postsecondary institution that allows students to receive college credit at the postsecondary institution upon matriculation based on the demonstrated mastery of concepts in the high school course. An articulated course shall not be delivered by a postsecondary institution.

DIVISION IX
SUMMER COLLEGE CREDIT PROGRAM

281—22.19(261E) Summer college credit program.

22.19(1) Program established. A summer college credit program is established to expand access for high school students to high-quality career and technical education experiences aligned with career pathways leading to postsecondary credentials and high-demand jobs. Programs approved under subrule 22.19(3) will be offered during the summer term of an eligible postsecondary institution.

22.19(2) Type of coursework offered. The following provisions apply to coursework delivered through an approved program under this rule:

a. Coursework eligible to be offered through an approved program under this rule will be technical core coursework within and prerequisite coursework for a career and technical education program approved under 281—subrule 21.4(3).

b. The career and technical education program is to be aligned to in-demand occupations identified by the state workforce development board and community colleges pursuant to Iowa Code section 84A.1B(14).

c. Coursework delivered under this rule shall comply with Iowa Code section 257.11(3). The course will not be eligible for supplementary weighting under that section.

22.19(3) Program proposals. The department will establish an annual process for the submission and review of proposals for summer college credit programs. A postsecondary institution eligible to offer programming under Division III of this chapter may submit program proposals to the department.

a. Minimum components. The proposal will detail the following components.

(1) A program description, including the course or courses to be made available through the program; total number of credit hours; additional cocurricular experiences and activities including project-, problem-, and work-based learning opportunities; additional support services to be made available through the program; and any other pertinent program information.

(2) The total number of students that the program is capable of serving.

(3) The start date and duration of the program.

b. Enrollment threshold. The postsecondary institution will propose, and the department will approve, a minimum program enrollment threshold. Programs that surpass the minimum enrollment threshold shall be eligible for funding under paragraph 22.19(4) "b."

EDUCATION DEPARTMENT[281](cont'd)

c. Review of proposals. The department will establish a review process to evaluate all program proposals. In reviewing proposals, the department will give priority consideration to program proposals that will ensure equitable geographic disbursement of approved programs. The department will consider additional criteria including number of students served; alignment to in-demand occupations; the inclusion of extracurricular experiences with an emphasis on project-, problem-, and work-based learning opportunities; and the inclusion of provisions that address and remove barriers to participation for nontraditional students, underrepresented minority students, and low-income students.

d. Funding of proposals. A program proposal approved under this rule is funded under paragraph 22.19(4)“a” for the amount described under paragraph 22.19(3)“a.”

22.19(4) Disbursement of funds. Subject to the appropriation of funds, the department will disburse funds to a postsecondary institution offering an approved program in the following manner. All funds received under this rule shall be used to support and sustain the approved program.

a. Base funding. The amount of funds reserved for base funding as specified in paragraph 22.19(4)“c” will be distributed equally between approved programs.

b. Enrollment. Any funds not distributed under paragraph 22.19(4)“a” will be distributed to postsecondary institutions offering an approved program with student enrollment greater than the minimum enrollment threshold.

(1) An approved program shall gather a count of students enrolled in the program on the third day following the start date of the program, and submit this count to the department in a manner prescribed by the department.

(2) Enrollment funding shall be calculated by the department for each program with enrollment greater than the minimum enrollment threshold. For purposes of this rule, the portion of enrollment funding to be received by a postsecondary institution offering an approved program is equal to the total student enrollment in the approved program divided by the total student enrollments statewide.

c. Subsequent years. In each of the subsequent three years following the implementation year, the portion of the allocation distributed based on enrollment will increase by 10 percent each year until the minimum amount awarded based on enrollment is equal to 80 percent of the total allocation.

22.19(5) Availability. A postsecondary institution offering an approved program shall enter into a contract with a school district interested in making the program available to eligible students of the school district. The program will be made available to any eligible student from a participating school district. An institution offering programming to a student under this rule will comply with Division III of this chapter.

a. Student eligibility. To participate in an approved program, a student will comply with the criteria established under rules 281—22.2(261E) and 281—22.7(261E).

b. Teacher eligibility. A teacher assigned to provide instruction under this rule will comply with the criteria established under rule 281—22.3(261E) and be a community college-employed instructor.

c. Institutional eligibility. Institutions offering an approved program under this rule will comply with the criteria established under rule 281—22.4(261E).

These rules are intended to implement Iowa Code chapter 261E.

ARC 7587C

EDUCATION DEPARTMENT[281]

Notice of Intended Action

Proposing rulemaking related to private instruction and dual enrollment and providing an opportunity for public comment

The State Board of Education hereby proposes to rescind Chapter 31, “Private Instruction and Dual Enrollment,” Iowa Administrative Code, and to adopt a new chapter with the same title.

Legal Authority for Rulemaking

EDUCATION DEPARTMENT[281](cont'd)

This rulemaking is proposed under the authority provided in Iowa Code section 299A.10.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code chapter 299A.

Purpose and Summary

This rulemaking is proposed pursuant to Executive Order 10 review. The Department of Education proposes to remove unduly restrictive rules language, remove inflexible rule language, and incorporate statutory language by reference when available.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the State Board for a waiver of the discretionary provisions, if any, pursuant to 281—Chapter 4.

Public Comment

Any interested person may submit written or oral comments concerning this proposed rulemaking. Written or oral comments in response to this rulemaking must be received by the Department no later than 4:30 p.m. on February 27, 2024. Comments should be directed to:

Thomas A. Mayes
 Department of Education
 Grimes State Office Building, Second Floor
 400 East 14th Street
 Des Moines, Iowa 50319-0146
 Phone: 515.281.8661
 Email: thomas.mayes@iowa.gov

Public Hearing

Public hearings at which persons may present their views orally or in writing will be held as follows:

February 27, 2024 11:30 a.m. to 12 noon	Room B100 Grimes State Office Building Des Moines, Iowa
February 27, 2024 3:30 to 4 p.m.	Room B50 Grimes State Office Building Des Moines, Iowa

Persons who wish to make oral comments at a public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rulemaking.

Any persons who intend to attend a public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department and advise of specific needs by calling 515.281.5295.

Review by Administrative Rules Review Committee

EDUCATION DEPARTMENT[281](cont'd)

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking 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 rulemaking action is proposed:

ITEM 1. Rescind 281—Chapter 31 and adopt the following **new** chapter in lieu thereof:

TITLE V
NONTRADITIONAL STUDENTS
CHAPTER 31
PRIVATE INSTRUCTION AND DUAL ENROLLMENT

281—31.1(299,299A) General. Any parent, guardian, or legal custodian of a child of compulsory attendance age may place the child under competent private instruction or independent private instruction in adherence to all provisions within Iowa Code chapter 299A. This includes any child identified as requiring special education under Iowa Code chapter 256B. If a child's performance indicates a need for special education, the child will be referred and evaluated as indicated in Iowa Code section 299A.9.

281—31.2(299,299A) Definitions. For purposes of this chapter:

The following terms apply as defined in Iowa Code section 299A.1:

"Competent private instruction."

"Independent private instruction."

"Private instruction."

The following term applies as defined in Iowa Code section 299A.6:

"Adequate progress."

281—31.3(299,299A) Competent private instruction.

31.3(1) *By licensed practitioner.* Competent private instruction by a licensed practitioner complies with this chapter.

a. Instruction under this subrule may include a home school assistance program. A home school assistance program is provided by instructional assistance and supervision to a parent, guardian, or legal custodian providing instruction to a child through an accredited nonpublic school or public school district by an appropriately certified or licensed educator.

b. If instruction is provided through a public school district:

(1) The child will be enrolled and included in the basic enrollment of the school district.

(2) Iowa Code sections 299A.3 through 299A.7 do not apply in this circumstance with the exception of the reporting provision in Iowa Code section 299A.3(1).

c. If a person is a privately retained licensed practitioner (who possesses a valid Iowa teaching certificate or practitioner license, including a substitute teacher's license or a substitute authorization that is appropriate to the grade level of the student), that practitioner may provide competent private instruction.

(1) The duties of a licensed teacher who instructs or provides instructional supervision of a student include the following:

1. Contact with the student and the student's parent, guardian, or legal or actual custodian at least twice per 45 days of instruction, during which time the teacher practitioner fulfills the duties described below. One of every two contacts will be face-to-face with the student.

2. Consulting with and advising the student's parent, guardian, or legal or actual custodian as requested by the student's parent, guardian, or legal or actual custodian or as deemed necessary in the professional judgment of the practitioner.

EDUCATION DEPARTMENT[281](cont'd)

3. Providing formal and informal assessments of the student's progress to the student and the student's parent, guardian, or legal or actual custodian.
4. Annually maintaining a diary, record, or log of visitations and assistance provided.
5. Referring to the child's district of residence for evaluation of a child who the practitioner has reason to believe may need special education.

(2) A licensed Iowa practitioner who is employed under this rule will not serve in that capacity on behalf of more than 25 families, or more than 50 children of compulsory attendance age, in an academic year unless the service is provided pursuant to the teacher's employment with a nonaccredited nonpublic entity.

A licensed practitioner may seek exemption from the above limitation by submitting a written request to the director of the department of education. Exemptions will be granted when the director is satisfied that the limitation will pose a substantial hardship on the person or the school providing instruction or instructional supervision and that the best interests of all children being served by the practitioner will continue to be met.

31.3(2) *By parent, guardian, or legal custodian.* A parent, guardian, or legal custodian without a current Iowa teaching license providing competent private instruction for any child of compulsory age will:

- a. Provide a report to the school district of residence of the child within 30 days of commencing instruction under this rule, which report demonstrates compliance with Iowa Code chapter 299A and this chapter.
- b. Annually evaluate the child to determine whether the child is making adequate progress.
- c. Report the child's annual evaluation to the school district of residence of the child and to the department of education by August 1.

281—31.4(299,299A) Annual achievement evaluations.

31.4(1) *General.* Each child receiving competent private instruction will be evaluated annually by May 31 through the use of:

- a. A nationally recognized standardized achievement evaluation; or
- b. Other assessment tool selected by parent, guardian, or legal custodian from an approved list provided by the department of education, which will include:
 - (1) The costs and administration time of listed evaluations, and
 - (2) A process to approve new or alternate assessments that meet the provisions of Iowa Code chapter 299A.

31.4(2) *Duties of educational agencies.* The director of the department of education, or the director's designee, which may include a school district or an area education agency (AEA), will:

- a. Conduct annual evaluations at a time and place determined by the person responsible for conducting the evaluation, which includes but is not limited to purchasing of evaluation materials, giving the evaluations, scoring and interpreting the evaluations, and reporting the evaluation results; and
- b. Provide for the parent, guardian, or legal custodian of the child to be present when the child is evaluated.

31.4(3) *Additional testing.* If requested, the school district or AEA will conduct annual evaluations at no cost to the parent, guardian, or legal custodian. Further:

- a. The parent, guardian, or legal custodian under competent private instruction is not required to reimburse any of the evaluation costs; and
- b. The annual achievement evaluation does not meet dual enrollment purposes under Iowa Code section 299A.8.

31.4(4) *Additional evidence of progress.* A parent, guardian, or legal custodian of a child may submit, as evidence of adequate academic progress, completed assessment evaluations, other than the annual achievement evaluation, if assessment evaluations are administered as part of the competent private instruction.

EDUCATION DEPARTMENT[281](cont'd)

a. A parent, guardian, or legal or actual custodian of a child subject to the annual assessment requirement may arrange to have an appropriately licensed Iowa practitioner review a portfolio of evidence of the child's progress annually by May 31.

(1) A single evaluator will be designated by the parent, guardian, or legal or actual custodian who has selected the portfolio evaluation option for annual assessment. The evaluator so identified will be approved by the superintendent of the local school district or the superintendent's designee and will hold a valid Iowa practitioner license or teacher certificate appropriate to the ages and grade levels of the children whose portfolios are being assessed.

(2) The child's portfolio will contain evidence of academic progress in the minimum curriculum areas of reading, language arts, and mathematics if the child is in grades 1 through 5. For children in grades 6 through 12, the portfolio will contain evidence in the minimum curriculum areas of reading, language arts, mathematics, science, and social studies.

b. For a child subject to annual assessment under this rule who is enrolled as a student of a correspondence school that is a member of an accrediting association recognized by the federal Department of Education and accredited for elementary and secondary education, the district of residence and the department will accept the annual report of progress (report card) sent by the correspondence school to the child's parent, guardian, or legal or actual custodian if the annual report of progress includes a listing of subjects taken and grades received. A passing grade in all content areas for which annual assessment is required is deemed evidence of adequate progress for the purpose of annual assessment.

31.4(5) *Reporting of evaluation results.* Evaluation results will be handled pursuant to Iowa Code section 22.7(1) and reported by the evaluation administrator to the child's parent, guardian, or legal custodian; the school district of residence of the child; and the department of education.

31.4(6) *Failure to make adequate progress—notice to parents.* If annual evaluation results indicate the child has not made adequate progress:

a. The director of the department of education, or the director's designee, will notify the parent, guardian, or custodian of the child that the child is required to attend an accredited public or nonpublic school.

b. The child will attend an accredited public or nonpublic school at the start of the next school year until evaluation results indicate the child has made adequate progress, unless, before the beginning of the next school year, the director or director's designee grants approval for competent private instruction to continue under a plan for remediation.

31.4(7) *Rules of construction.*

a. Nothing in this section requires or prohibits testing in any way other than what is set forth in Iowa Code section 256.7(21) "b"(2).

b. The parent, guardian, or custodian of students who are receiving independent private instruction are responsible for the cost of annual assessment if requested, through the local school district or AEA.

c. The parent, guardian, or legal or actual custodian of a child subject to this rule and who has a physical or mental disability so significant that the results of a standardized test would not yield relevant results for assessment purposes may request the department's approval of an alternative evaluation.

281—31.5(299,299A) Dual enrollment.

31.5(1) If a parent, guardian, or legal custodian submits a request, the child will be registered in a public school for dual enrollment purposes and included in the public school's basic enrollment under Iowa Code section 257.6.

31.5(2) A child who is dual-enrolled will:

a. Be permitted to participate in any academic activities in the district;

b. Be permitted to participate in any extracurricular activities on the same basis as any public school child; and

c. Be counted under Iowa Code section 257.6(1) "a"(6); or

d. In the case of a child in grades 9 through 12, be counted in the same manner as a shared-time pupil under Iowa Code section 257.6(1) "a"(3).

EDUCATION DEPARTMENT[281](cont'd)

31.5(3) Enrollment of a child solely for purposes of accessing the annual achievement evaluation does not constitute dual enrollment.

31.5(4) A child under dual enrollment must receive at least one-quarter of the child's instruction by way of competent private instruction and no more than three-quarters by way of the district's academic programs.

281—31.6(299,299A) Home school assistance program. The board of directors of a school district will expend funds received pursuant to Iowa Code section 257.6(1)“a”(5), and amounts designated from the school district's flexibility account under Iowa Code section 298A.2(2), for providing a home school assistance program. Funds will be expended for intended purposes identified in Iowa Code sections 299A.12(2) through 299A.12(4). A district will not employ as a home school assistance program instructor a person who currently holds only a substitute authorization. A home school assistance program teacher will have contact with the student and the student's parent, guardian, or legal or actual custodian at least four times per 45 days of instruction. One of every two contacts will be face-to-face with the student.

281—31.7(299,299A) Miscellaneous provisions.

31.7(1) *Special education.* Special education services to students in competent private instruction, including dual enrollment for special education services, are governed by Iowa Code section 299A.9.

31.7(2) *Open enrollment.* Open enrollment for a student under this chapter is governed by Iowa Code section 282.18. A receiving district may only bill a resident district if the receiving district complies with the provisions of this chapter.

31.7(3) *Instructional materials.*

a. A school district will not make monetary payments, including cash and cash equivalents, or give publicly funded resources, directly or indirectly, to the parent, guardian, or legal or actual custodian or to a child receiving competent private instruction. A school district will not purchase texts or supplementary materials for or on behalf of a child receiving competent private instruction if such texts or supplementary materials are not appropriate for use by regularly enrolled students of the school district.

b. A district may provide to children receiving competent private instruction available texts or supplementary materials on the same basis as they are provided to enrolled students and will provide available texts or supplemental instructional materials on the same basis as they are provided to enrolled students when a child is under dual enrollment or in a home school assistance program. If a fee, such as a textbook or towel rental fee, is charged to regularly enrolled students for participation in a class or extracurricular activity, that fee may also be charged to dual-enrolled students on the same basis as it is charged to enrolled students, but only for the specific class or extracurricular activity.

c. The parent, guardian, or legal or actual custodian who provides competent private instruction to a child of compulsory attendance age may access the services and materials available from the AEA by requesting assistance through the school district of residence. The AEA will make services and materials available to the child on the same basis as they are available to regularly enrolled students of the district if the child is dual enrolled or enrolled in a home school assistance program. The district of residence will act as liaison between the parent, guardian, or legal or actual custodian of a child who is receiving competent private instruction and the AEA.

31.7(4) *Driver education.* The public school district will offer or make available to all resident students, including those receiving competent private instruction on an equal basis with students enrolled in the district, an approved course in driver education pursuant to Iowa Code section 321.178(1)“c.”

31.7(5) *Private instruction reporting exemption.* A parent, guardian, or legal or actual custodian of a child of compulsory attendance age providing competent private instruction to the child under Iowa Code section 299A.3 may meet, but is not required to meet, the provisions of Iowa Code section 299A.3.

The reporting option provided in this subrule is not available to any parent, guardian, or legal or actual custodian who requests services from a school district or AEA under this chapter, including the provision of instructional materials, assistance from a home school assistance program, dual enrollment, open enrollment, or special education services. Parents who elect the reporting option under this subrule

EDUCATION DEPARTMENT[281](cont'd)

and who request testing assistance under or an approved course in driver education under subrule 31.5(6) need not complete any particular form, but must demonstrate that the child is receiving competent private instruction pursuant to this chapter.

31.7(6) *Independent private instruction: services available.* For students under independent private instruction, only the following services are available: an approved course in driver education and concurrent enrollment programs, also known as district-to-community college sharing, subject to the terms of Iowa Code section 261E.8.

31.7(7) *Student records confidential.* Personal information in records pursuant to this chapter will be kept confidential in compliance with district student directory policy in accordance with Iowa Code section 22.7(1).

These rules are intended to implement Iowa Code chapters 299 and 299A.

ARC 7588C

EDUCATION DEPARTMENT[281]

Notice of Intended Action

Proposing rulemaking related to funding for children residing in state institutions or mental health institutes and providing an opportunity for public comment

The State Board of Education hereby proposes to rescind Chapter 34, "Funding for Children Residing in State Institutions or Mental Health Institutes," Iowa Administrative Code, and to adopt a new chapter with the same title.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code section 256.7.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code section 282.33.

Purpose and Summary

This rulemaking is proposed pursuant to Executive Order 10 review. The Department of Education proposes removing an obsolete rule (current rule 281—34.13(281)), language that merely restates statutory texts, and restrictive terms that do not add value.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the State Board for a waiver of the discretionary provisions, if any, pursuant to 281—Chapter 4.

Public Comment

Any interested person may submit written or oral comments concerning this proposed rulemaking. Written or oral comments in response to this rulemaking must be received by the Department no later than 4:30 p.m. on February 27, 2024. Comments should be directed to:

EDUCATION DEPARTMENT[281](cont'd)

Thomas A. Mayes
 Department of Education
 Grimes State Office Building, Second Floor
 400 East 14th Street
 Des Moines, Iowa 50319-0146
 Phone: 515.281.8661
 Email: thomas.mayes@iowa.gov

Public Hearing

Public hearings at which persons may present their views orally or in writing will be held as follows:

February 27, 2024 9:30 to 10 a.m.	Room B100 Grimes State Office Building Des Moines, Iowa
February 27, 2024 1:30 to 2 p.m.	Room B50 Grimes State Office Building Des Moines, Iowa

Persons who wish to make oral comments at a public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rulemaking.

Any persons who intend to attend a public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department and advise of specific needs by calling 515.281.5295.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking 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 rulemaking action is proposed:

ITEM 1. Rescind 281—Chapter 34 and adopt the following **new** chapter in lieu thereof:

CHAPTER 34
 FUNDING FOR CHILDREN RESIDING IN STATE INSTITUTIONS
 OR MENTAL HEALTH INSTITUTES

281—34.1(282) Scope. These rules apply to the funding and provision of appropriate educational services to children residing in the following institutions under the jurisdiction of the director of the department of health and human services: the Mental Health Institute, Independence, Iowa; and the State Training School, Eldora, Iowa.

281—34.2(282) Definitions. For the purposes of these rules, the following definitions apply:

“*AEA*” means an area education agency.

“*Aggregate days*” means the sum of the number of days of attendance, excluding days absent, for all school-age pupils who are enrolled during the school year. A student is considered enrolled after being placed in the institution and taking part in the educational program. Enrollment begins on the date that the student begins taking part in the educational program and ends on the date that the student leaves the institution or receives a high school diploma or its equivalent, whichever occurs first.

EDUCATION DEPARTMENT[281](cont'd)

“*Average daily attendance*” or “*ADA*” means the average obtained by dividing the total of the aggregate days of attendance by the total number of student contact days. ADA for purposes of this chapter will be calculated on the regular school year exclusive of summer session.

“*Department*” means the Iowa department of education.

“*District of residence*” means the school district in which the parent or guardian of the child resides or as defined under operation of law. If the student’s parental rights have been terminated or if a parent cannot be located in Iowa after a reasonable effort has been made, the school district of the child’s residence is considered the district where the institution is physically located.

“*Individualized education program*” or “*IEP*” means the written record of an eligible individual’s special education and related services developed in accordance with 281—Chapter 41. The IEP document records the decisions reached at the IEP meeting and sets forth in writing a commitment of resources necessary to enable an eligible individual to receive needed special education and related services appropriate to the individual’s special learning needs. There is one IEP that specifies all the special education and related services for an eligible individual.

“*Institution*” means the Mental Health Institute, Independence, Iowa; and the State Training School, Eldora, Iowa.

“*Proposed educational program*” means a written description of the general education program, special education services, transition activities, and summer school programs that are proposed to be implemented in order to provide appropriate educational services for each child residing in an institution.

“*Proposed educational program budget*” means a document that outlines the costs for providing the proposed educational program as defined in these rules.

“*Regular school year*” means the number of days that school is in session, not to exceed 180 days. The regular school year for each institution shall begin on the first day of school established by the school district in which each institution is located.

“*School-age pupil*” means a student who is a resident of the state of Iowa and who is at least 5 years of age but less than 21 years of age on September 15 of the school year, or a younger age if served pursuant to an IEP.

“*Student contact days*” means the days during which the educational program is provided and students are under the guidance and instruction of the professional instructional staff.

“*Transition*” means communication between the institution, the child’s district of residence, and any other relevant stakeholders to develop a plan for assisting the child to adjust to school in the district of residence upon the child’s return. Planning for support and follow-up includes contacts with the child’s district of residence, community agencies, and the AEA when needed.

281—34.3(282) General principles.

34.3(1) *Availability.* All children who reside in state institutions and the mental health institute shall be provided appropriate educational services in accordance with these rules. Special education services to eligible individuals in institutions will be provided in accordance with 281—Chapter 41.

34.3(2) *Responsibility of institutions.* It is the responsibility of institutions to provide or make provisions for appropriate educational services to children residing in these institutions and to ensure appropriate transition of children back to the school district of residence. The institution may make provisions by contracting with the AEA, the school district in which the institution is located, or an approved charter school.

34.3(3) *Basis for funding.* Funding for general education programs at the institutions is determined using a formula similar to the formula used for the determination of funding for local school districts while considering the unique setting of the institutions. The amount of special education funding is determined by comparing the structure of the general education program at each institution to the nature and extent of services necessary for students with special education needs beyond what is provided to all students by the general education program.

34.3(4) *Responsibility of the AEA.* It is the responsibility of the AEA in which the institution is located to provide media services, educational services, and special education support services. The nature and extent of these services will be comparable to those provided to school districts in the AEA.

EDUCATION DEPARTMENT[281](cont'd)

281—34.4(282) Notification.

34.4(1) *Students served at mental health institute.* The Mental Health Institute, Independence, Iowa, will notify the district of residence of each child who, on the date specified in Iowa Code section 257.6(1), is residing in this institution. The notification will occur on or before October 10 and be in writing or in a printable electronic medium and include the child's name, birth date, and grade level and the names and addresses of the child's parents or guardians.

34.4(2) *Students served at the State Training School at Eldora.* The State Training School at Eldora will notify the AEA in which the institution is located and the district of residence of each child who, on the date specified in Iowa Code section 257.6(1), is residing in the institution if the child's release date is known and the release date is within the current school year. The notification will occur on or before October 10. For students served pursuant to an IEP, the State Training School at Eldora will by the last Friday in October also notify the AEA in which the institution is located and the district of residence of each child residing in the institution if the child's release date is known and the release date is within the current school year. Notifications will be in writing or in a printable electronic medium and include the child's name, birth date, and grade level and the names and addresses of the child's parents or guardians.

281—34.5(218) Program submission and approval. Educational programs will be submitted, reviewed, modified, and approved using the following procedures:

34.5(1) *Submission.* Each institution will submit a proposed educational program in a time and manner specified by Iowa Code section 282.33(1). The proposed program will be submitted in the manner prescribed by the department and include a description of the following:

a. The general education program, including content standards, benchmarks, student learning goals and all other provisions of 281—Chapter 12.

b. Special education services, including instructional, support and other services that ensure the provision of a free appropriate public education in the least restrictive environment for students with disabilities in accordance with 281—Chapter 41.

c. Procedures that will be implemented to ensure the effective transition of each child back to the district of residence.

34.5(2) *Approval.* The department will review and approve or modify the proposed educational program at a time and manner specified in Iowa Code section 282.33(1).

281—34.6(218) Budget submission and approval. Educational program budgets will be submitted, reviewed, modified, and approved using the following procedures:

34.6(1) *Submission.* Each institution will submit a proposed educational program budget in a time and manner specified by Iowa Code section 282.33(1). The proposed budget is to be based on the ADA of the children residing in the institution. The ADA used for the proposed budget is the ADA for the school year that ended the previous June 30.

34.6(2) *Students not served pursuant to an IEP.* The budget will be calculated as the sum of the following:

a. ADA multiplied by the state cost per pupil for the budget year established pursuant to Iowa Code section 257.9.

b. ADA multiplied by the per pupil media services funding for the AEA in which the institution is located as established by Iowa Code section 257.37.

c. ADA multiplied by the per pupil educational services funding for the AEA in which the institution is located as established by Iowa Code section 257.37.

34.6(3) *Students served pursuant to an IEP.* The budget will be calculated as the sum of the following:

a. Costs established pursuant to subrule 34.6(2) for students not served pursuant to an IEP.

b. Additional weighting established by the special education weighting plan pursuant to Iowa Code section 257.31(12) as appropriate to support the nature and extent of special education services provided pursuant to subrule 34.3(3).

EDUCATION DEPARTMENT[281](cont'd)

c. Special education student count multiplied by the special education support cost per pupil funding established for the AEA in which the institution is located pursuant to Iowa Code section 257.9.

d. The State Training School at Eldora may include in its budget an amount that represents the difference between the amount established pursuant to Iowa Code section 282.28 (2003) and approved by the department for the 2003-2004 fiscal year included in the fiscal year beginning July 1, 2003, and the amount the institution has budgeted under paragraph 34.6(3) "c." The budget amount will increase annually by the allowable growth rate established for that year.

e. In addition to the amount the institution has budgeted as specified in paragraph 34.6(3) "c," the mental health institute at Independence may include annually in its budget an amount not to exceed \$200,000 based on the budget calculation specified in paragraph 34.6(2) "a." This budgeted amount may be adjusted to an amount that exceeds \$200,000 in circumstances when there is a significant increase in the number of students in attendance. This additional amount will increase annually by the allowable growth rate established for that year.

34.6(4) Approval. The department will review and approve or modify the proposed educational program budget at a time and manner specified in Iowa Code section 282.33(1).

281—34.7(282) Payments.

34.7(1) General. Payments to institutions will be made at a time and manner specified in Iowa Code section 282.33(1).

34.7(2) Payments to the AEA. Within ten days of receiving its payment, the institution shall pay to the AEA in which the institution is located one-tenth of the total funding included in its approved budget for AEA media services, educational services, and special education support services.

281—34.8(282) Accounting for actual program costs. Each institution will submit an accounting for the actual cost of the program to the department at a time and manner specified by Iowa Code section 282.33(1).

34.8(1) Instructional costs. Actual costs include salaries and benefits of instructional staff, instructional supplies and materials, professional development for instructional staff, student transportation, contracted services related to instruction or instructional staff, and instructional equipment.

34.8(2) Administrative costs. Costs for administering the educational program may be included in actual costs based on the ADA of students in the institution. Costs are to be limited to the salary and benefits of the full-time equivalent education administrators and clerical support for the instructional program. However, the full-time equivalent (FTE) positions at any institution will not exceed 1.0 FTE position for education administration and 1.0 FTE position for clerical support.

34.8(3) Unallowed costs. Costs will not include expenditures for debt services or for facilities acquisition and construction services, including remodeling and facility repair. Costs of residential, custodial, treatment, and similar services provided by the institution will not be included in the actual costs. Costs provided for by a grant or other categorical aid shall not be included in the actual cost calculations pursuant to this chapter.

34.8(4) Summer school costs. Costs for providing summer school will be reported separately from regular session costs. Except as approved by the department of education, summer session costs are considered to be included in the state cost per pupil, or as provided in an appropriation through the department of health and human services.

34.8(5) Instruction to nonresident students. Costs for providing instruction to students who are not residents of the state of Iowa are excluded from the actual cost calculations.

34.8(6) Maximum costs for students who are not served pursuant to an IEP. Actual costs for serving students who are not served pursuant to an IEP will not exceed the greater of the actual ADA for the school year multiplied by the state cost per pupil or the ADA from the approved budget multiplied by the state cost per pupil.

34.8(7) Maximum costs for students served pursuant to an IEP. Actual costs for students served pursuant to an IEP will not exceed the amount calculated in subrule 34.6(3).

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34.8(8) Approval of expenditures. The department will review and approve or modify all expenditures incurred in compliance with the guidelines adopted pursuant to Iowa Code section 256.7(10) and notify the department of revenue of the approved accounting amount. The approved accounting amount will be compared with any amounts paid by the department of revenue to the department of health and human services and any differences added to or subtracted from the October payment made under these rules for the next school year.

34.8(9) Costs of courses. Costs include the actual expenses, if reasonable and customary, for tuition, textbooks, course materials, and fees directly related to courses taken pursuant to rule 281—34.10(282) by students who are residents of the state of Iowa.

34.8(10) Accounting for ADA. Each institution will keep a daily register that includes the name, birth date, district of residence, attendance, and enrollment status of each student. At the end of the school year, each institution will calculate the ADA for students served pursuant to an IEP and the ADA for students not served pursuant to an IEP. This information will be reported with the accounting for the actual program costs submitted to the department by August 1.

34.8(11) Audit. Each institution will make the records related to providing educational services to students residing within the institution available to independent auditors, state auditors and department of education staff upon request.

281—34.9(282) AEA services. Each institution will purchase from the AEA in which the institution is located support, related and other services necessary to provide appropriate educational programs to students requiring special education, and payment for the purchased services shall be made in accordance with subrule 34.7(2). The nature and extent of such services will be comparable to those provided to school districts in the AEA.

281—34.10(282) Postsecondary credit courses. High school students who attend an institution and are residents of the state of Iowa are eligible to be enrolled in college courses offered by an eligible postsecondary institution as defined in Iowa Code section 261C.3(1) and to receive both secondary and postsecondary credit therefor.

34.10(1) Noneligible courses. Postsecondary courses utilized in the attainment of an adult diploma or high school equivalency diploma are not eligible for funding hereunder.

34.10(2) Eligible courses. Postsecondary courses eligible for funding hereunder must meet all of the following paragraphs. The course is to be:

- a. Supplementing, not supplanting, courses offered at the institution.
- b. Included in the college catalog or an amendment or addendum to the catalog.
- c. Open to all registered college students, not just secondary students.
- d. Taught by a college-employed instructor.
- e. Taught utilizing the college course syllabus.
- f. Of the same quality as a course offered on a college campus.
- g. Nonsectarian.

34.10(3) Maximum number of college courses allowed. A student is allowed to take a maximum of three college courses during a semester, for a maximum of six college courses per regular school year, while the student is in attendance at the institution. College courses taken outside the regular school year will not be funded under this chapter. If the student exceeds the course limit, the costs of the additional courses will not be funded under this chapter.

These rules are intended to implement Iowa Code section 282.33.

ARC 7589C**EDUCATION DEPARTMENT[281]****Notice of Intended Action****Proposing rulemaking related to special education
and providing an opportunity for public comment**

The State Board of Education hereby proposes to rescind Chapter 41, “Special Education,” Iowa Administrative Code, and to adopt a new chapter with the same title.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code section 256B.3.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code chapter 256B and 34 CFR Part 300.

Purpose and Summary

This rulemaking is proposed pursuant to Executive Order 10 review. The Department of Education proposes removing obsolete language as well as restrictive language that does not add value. During the Regulatory Analysis process, one commenter requested that language that was removed because it restated statutory or regulatory text be restored. The Department is not taking action on that request at this time.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the State Board for a waiver of the discretionary provisions, if any, pursuant to 281—Chapter 4.

Public Comment

Any interested person may submit written or oral comments concerning this proposed rulemaking. Written or oral comments in response to this rulemaking must be received by the Department no later than 4:30 p.m. on February 27, 2024. Comments should be directed to:

Thomas A. Mayes
Department of Education
Grimes State Office Building, Second Floor
400 East 14th Street
Des Moines, Iowa 50319-0146
Phone: 515.281.8661
Email: thomas.mayes@iowa.gov

Public Hearing

Public hearings at which persons may present their views orally or in writing will be held as follows:

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February 27, 2024
10 to 11 a.m.

Room B100
Grimes State Office Building
Des Moines, Iowa

February 27, 2024
2 to 3 p.m.

Room B50
Grimes State Office Building
Des Moines, Iowa

Persons who wish to make oral comments at a public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rulemaking.

Any persons who intend to attend a public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department and advise of specific needs by calling 515.281.5295.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking 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 rulemaking action is proposed:

ITEM 1. Rescind 281—Chapter 41 and adopt the following **new** chapter in lieu thereof:

TITLE VII
SPECIAL EDUCATION
CHAPTER 41
SPECIAL EDUCATION

DIVISION I
PURPOSE AND APPLICABILITY

281—41.1(256B,34CFR300) Purposes. The purposes of this chapter are set forth in 34 CFR Section 300.1.

281—41.2(256B,34CFR300) Applicability of this chapter. The provisions of this chapter are binding on each public agency in the state that provides special education and related services to children with disabilities, regardless of whether that agency is receiving funds under Part B of the Individuals with Disabilities Education Act (Act).

41.2(1) General. The provisions of this chapter apply to all political subdivisions of the state that are involved in the education of children with disabilities, including:

- a. The state educational agency (SEA).
- b. Local educational agencies (LEAs), area education agencies (AEAs), and public charter schools that are not otherwise included as LEAs or educational service agencies (ESAs) and are not a school of an LEA or ESA.
- c. Other state agencies and schools, including but not limited to the department of health and human services and state schools and programs for children who are deaf or hard of hearing or children who are blind or visually impaired.
- d. State and local juvenile and adult correctional facilities.

41.2(2) Private schools and facilities. Each public agency in the state is responsible for ensuring that the rights and protections under Part B of the Act are given to children with disabilities referred to or placed in private schools and facilities by that public agency; or placed in private schools by their parents under the provisions of rule 281—41.148(256B,34CFR300).

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41.2(3) Age. This chapter applies to all children requiring special education between birth and the twenty-first birthday and to a maximum allowable age under Iowa Code section 256B.8.

DIVISION II
DEFINITIONS

281—41.3(256B,34CFR300) Act. “Act” means the Individuals with Disabilities Education Act as amended through August 14, 2006.

281—41.4(256B,273) Area education agency. “Area education agency” or “AEA” is a political subdivision of the state organized pursuant to Iowa Code chapter 273. An area education agency, depending on context, may be a local educational agency as defined in rule 281—41.28(256B,34CFR300), an educational service agency as defined in rule 281—41.12(256B,34CFR300), or both simultaneously.

281—41.5(256B,34CFR300) Assistive technology device. “Assistive technology device” means any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve the functional capabilities of a child with a disability. The term does not include a medical device that is surgically implanted or the replacement of such device.

281—41.6(256B,34CFR300) Assistive technology service. “Assistive technology service” means any service that directly assists a child with a disability in the selection, acquisition, or use of an assistive technology device. The term includes the following:

1. The evaluation of the needs of a child with a disability, including a functional evaluation of the child in the child’s customary environment;
2. Purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by children with disabilities;
3. Selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing assistive technology devices;
4. Coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs;
5. Training or technical assistance for a child with a disability or, if appropriate, that child’s family; and
6. Training or technical assistance for professionals (including individuals providing education or rehabilitation services), employers, or other individuals who provide services to, employ, or are otherwise substantially involved in the major life functions of that child.

281—41.7(256B,34CFR300) Charter school. “Charter school” has the meaning given the term in Section 4310(2) of the Elementary and Secondary Education Act of 1965 as amended through December 10, 2015, 20 U.S.C. 6301 et seq. (ESEA).

281—41.8(256B,34CFR300) Child with a disability. “Child with a disability” refers to a person under 21 years of age, including a child under 5 years of age, who has a disability in obtaining an education. The term includes an individual who is over 6 and under 16 years of age who, pursuant to the statutes of this state, is required to receive a public education; an individual under 6 or over 16 years of age who, pursuant to the statutes of this state, is entitled to receive a public education; and an individual between the ages of 21 and 24 who, pursuant to the statutes of this state, is entitled to receive special education and related services. In federal usage, this refers to infants, toddlers, children and young adults. In these rules, this term is synonymous with “child requiring special education” and “eligible individual.” “Disability in obtaining an education” refers to a condition, identified in accordance with this chapter, which, by reason thereof, causes a child to require special education and support and related services.

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281—41.9(256B,34CFR300) Consent.

41.9(1) *Obtaining consent.* “Consent” is obtained when all of the following conditions are satisfied:

a. The parent has been fully informed of all information relevant to the activity for which consent is sought, in his or her native language, or through another mode of communication;

b. The parent understands and agrees in writing to the carrying out of the activity for which parental consent is sought, and the consent describes that activity and lists the records (if any) that will be released and to whom; and

c. The parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time.

41.9(2) *When revocation of consent is effective.* If a parent revokes consent, that revocation is not retroactive (i.e., it does not negate an action that occurred after the consent was given and before the consent was revoked).

41.9(3) *Special rule.* If a parent of a child revokes consent, in writing, for the child’s receipt of special education services after the child is initially provided special education and related services, the public agency is not required to amend the child’s education records to remove any references to the child’s receipt of special education and related services because of the revocation of consent.

281—41.10(256B,34CFR300) Core academic subjects. “Core academic subjects” means English, reading or language arts, mathematics, science, foreign languages, civics and government, economics, arts, history, and geography.

281—41.11(256B,34CFR300) Day; business day; school day. “Day” means calendar day unless otherwise indicated as business day or school day.

1. “Business day” means Monday through Friday, except for federal and state holidays, unless holidays are specifically included in the designation of business day, as in paragraph 41.148(4) “*b.*”

2. “School day” means any day, including a partial day, when children are in attendance at school for instructional purposes. School day has the same meaning for all children in school, including children with and without disabilities. The length of the school day for an eligible individual shall be the same as that determined by the local educational agency’s board of directors for all other individuals, unless a shorter day or longer day is prescribed in the eligible individual’s individualized education program.

281—41.12(256B,34CFR300) Educational service agency. “Educational service agency” means a regional public multiservice agency that is authorized by state law to develop, manage, and provide services or programs to LEAs; and is recognized as an administrative agency for purposes of the provision of special education and related services provided within public elementary schools and secondary schools of the state. “Educational service agency” includes any other public institution or agency that has administrative control and direction over a public elementary school or secondary school and includes entities that meet the definition of intermediate educational unit in Section 602(23) of the Act as in effect prior to June 4, 1997.

281—41.13(256B,34CFR300) Elementary school. “Elementary school” means a nonprofit institutional day or residential school, including a public elementary charter school, that provides elementary education, as determined under state law.

281—41.14(256B,34CFR300) Equipment. “Equipment” means machinery, utilities, and built-in equipment and any necessary enclosures or structures to house the machinery, utilities, or equipment. “Equipment” includes other items necessary for the functioning of a particular facility as a facility for the provision of educational services, including items such as instructional equipment and necessary furniture; printed, published and audio-visual instructional materials; telecommunications, sensory, and other technological aids and devices; and books, periodicals, documents, and other related materials.

281—41.15(256B,34CFR300) Evaluation. “Evaluation” means procedures used in accordance with rules 281—41.304(256B,34CFR300) to 281—41.311(256B,34CFR300) to determine whether a child

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has a disability and the nature and extent of the special education and related services that the child needs.

281—41.16(256B,34CFR300) Excess costs. “Excess costs” means those costs that are in excess of the average annual per-student expenditure in an LEA during the preceding school year for an elementary school or secondary school student, as may be appropriate, and that must be computed after deducting the following:

41.16(1) *Certain federal funds.* Amounts received under Part B of the Act; under Part A of Title I of the ESEA; and under Part A of Title III of the ESEA; and

41.16(2) *Certain state or local funds.* Any state or local funds expended for programs that would qualify for assistance under subrule 41.16(1), but excluding any amounts for capital outlay or debt service.

281—41.17(256B,34CFR300) Free appropriate public education. “Free appropriate public education” or “FAPE” means special education and related services that are provided at public expense, under public supervision and direction, and without charge; that meet the standards of the SEA, including the requirements of this chapter; that include an appropriate preschool, elementary school, or secondary school education; and that are provided in conformity with an individualized education program (IEP) that meets the requirements of rules 281—41.320(256B,34CFR300) to 281—41.324(256B,34CFR300).

281—41.18 Reserved.

281—41.19(256B,34CFR300) Homeless children. “Homeless children” has the meaning given the term “homeless children and youths” in Section 725 (42 U.S.C. 11434a) of the McKinney-Vento Homeless Assistance Act as amended through August 14, 2006, 42 U.S.C. 11431 et seq.

281—41.20(256B,34CFR300) Include. “Include” means that the items named are not all of the possible items that are covered, whether like or unlike the ones named.

281—41.21(256B,34CFR300) Indian and Indian tribe. “Indian” means an individual who is a member of an Indian tribe. “Indian tribe” means any federal or state Indian tribe, settlement, band, rancheria, pueblo, colony, or community, including any Alaska native village or regional village corporation as defined in or established under the Alaska Native Claims Settlement Act, 43 U.S.C. 1601 et seq.

281—41.22(256B,34CFR300) Individualized education program. “Individualized education program” or “IEP” means a written statement for a child with a disability that is developed, reviewed, and revised in accordance with rules 281—41.320(256B,34CFR300) to 281—41.324(256B,34CFR300). A single IEP for each eligible individual, which specifies all the special education and related services the eligible individual is to receive, is required.

281—41.23(256B,34CFR300) Individualized education program team. “Individualized education program team” or “IEP team” means a group of individuals described in rule 281—41.321(256B,34CFR300) that is responsible for developing, reviewing, or revising an IEP for a child with a disability.

281—41.24(256B,34CFR300) Individualized family service plan. “Individualized family service plan” or “IFSP” has the meaning given the term in Section 636 of the Act.

281—41.25(256B,34CFR300) Infant or toddler with a disability. “Infant or toddler with a disability” means an individual under three years of age who needs early intervention services either because the individual has a condition, based on informed clinical opinion, known to have a high probability of resulting in later delays in growth and development if early intervention services are not provided;

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or the individual has a developmental delay, which is a 25 percent delay as measured by appropriate diagnostic instruments and procedures, based on informed clinical opinion, in one or more of the following developmental areas: cognitive development, physical development including vision and hearing, communication development, social or emotional development, or adaptive development.

281—41.26(256B,34CFR300) Institution of higher education. “Institution of higher education” has the meaning given the term in Section 101 of the Higher Education Act of 1965 as amended through August 14, 2006, 20 U.S.C. 1021 et seq. (HEA); and also includes any community college receiving funds from the Secretary of the Interior under the Tribally Controlled Community College or University Assistance Act of 1978, 25 U.S.C. 1801 et seq.

281—41.27(256B,34CFR300) Limited English proficient. “Limited English proficient” has the meaning given the term “English learner” in Section 8101 of the ESEA.

281—41.28(256B,34CFR300) Local educational agency.

41.28(1) General. “Local educational agency” or “LEA” means a public board of education or other public authority legally constituted within a state for either administrative control or direction of, or to perform a service function for, public elementary or secondary schools in a city, county, township, school district, or other political subdivision of a state, or for a combination of school districts or counties as are recognized in a state as an administrative agency for its public elementary schools or secondary schools.

41.28(2) Educational service agencies and other public institutions or agencies. The term includes an educational service agency, as defined in rule 281—41.12(256B,34CFR300) and any other public institution or agency having administrative control and direction of a public elementary school or secondary school, including a public nonprofit charter school that is established as an LEA under state law.

41.28(3) BIA-funded schools. The term includes an elementary school or secondary school funded by the Bureau of Indian Affairs, and not subject to the jurisdiction of any SEA other than the Bureau of Indian Affairs, but only to the extent that the inclusion makes the school eligible for programs for which specific eligibility is not provided to the school in another provision of law and the school does not have a student population that is smaller than the student population of the LEA receiving assistance under the Act with the smallest student population.

281—41.29(256B,34CFR300) Native language.

41.29(1) General. “Native language,” when used with respect to an individual who is limited English proficient, means the following:

a. The language normally used by that individual or, in the case of a child, the language normally used by the parents of the child; or

b. The language normally used by the child in the home or learning environment; this language shall be considered “native language” in all direct contact with a child, including evaluation of the child.

41.29(2) Special rule. For an individual who is deaf or hard of hearing or who is blind or visually impaired, or for an individual with no written language, the mode of communication is that normally used by the individual, such as sign language, braille, or oral communication.

281—41.30(256B,34CFR300) Parent.

41.30(1) General. “Parent” means:

a. A biological or adoptive parent of a child;

b. A foster parent, unless state law, regulations, or contractual obligations with a state or local entity prohibit a foster parent from acting as a parent;

c. A guardian generally authorized to act as the child’s parent, or authorized to make educational decisions for the child, but not the state if the child is a ward of the state;

d. An individual acting in the place of a biological or adoptive parent including a grandparent, stepparent, or other relative with whom the child lives or an individual who is legally responsible for the child’s welfare; or

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e. A surrogate parent who has been appointed in accordance with rule 281—41.519(256B,34CFR300) or 20 U.S.C. 1439(a)(5).

41.30(2) Rules of construction and application. The following rules are to be used to determine whether a party qualifies as a parent:

a. Except as provided in paragraph 41.30(2)“*b.*,” the biological or adoptive parent, when attempting to act as the parent under this chapter and when more than one party is qualified to act as a parent under this chapter, must be presumed to be the parent for purposes of this rule unless the biological or adoptive parent does not have legal authority to make educational decisions for the child.

b. If a judicial decree or order identifies a specific person or persons under paragraphs “*a*” to “*d*” of subrule 41.30(1) to act as the parent of a child or to make educational decisions on behalf of a child, then such person or persons shall be determined to be the parent for purposes of this rule.

c. “Parent” does not include a public or private agency involved in the education or care of a child or an employee or contractor with any public or private agency involved in the education or care of the child in that employee’s or contractor’s official capacity.

281—41.31(256B,34CFR300) Parent training and information center. “Parent training and information center” means a center assisted under Section 671 or 672 of the Act.

281—41.32(256B,34CFR300) Personally identifiable. “Personally identifiable” means information that contains the name of the child, the child’s parent, or other family member; the address of the child; a personal identifier, such as the child’s social security number or student number; or a list of personal characteristics or other information that would make it possible to identify the child with reasonable certainty.

281—41.33(256B,34CFR300) Public agency; nonpublic agency; agency. “Public agency” includes the SEA, LEAs, ESAs, nonprofit public charter schools that are not otherwise included as LEAs or ESAs and are not a school of an LEA or ESA, and any other political subdivisions of the state that are responsible for providing education to children with disabilities. “Nonpublic agency” includes any private organization of whatever form that is responsible for providing education to children with disabilities and that is not a public agency. “Agency” includes public agencies and nonpublic agencies.

281—41.34(256B,34CFR300) Related services.

41.34(1) General. “Related services” means transportation and such developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special education. “Related services” includes speech-language pathology and audiology services; interpreting services; psychological services; physical and occupational therapy; recreation, including therapeutic recreation; early identification and assessment of disabilities in children; counseling services, including rehabilitation counseling; orientation and mobility services; and medical services for diagnostic or evaluation purposes. “Related services” also includes school health services and school nurse services, social work services in schools, and parent counseling and training.

41.34(2) Exception; services that apply to children with surgically implanted devices, including cochlear implants.

a. “Related services” does not include a medical device that is surgically implanted, the optimization of that device’s functioning (e.g., mapping), maintenance of that device, or the replacement of that device.

b. Nothing in paragraph “*a*” of this subrule shall:

(1) Limit the right of a child with a surgically implanted device (e.g., cochlear implant) to receive related services as listed in subrule 41.34(1) that are determined by the IEP team to be necessary for the child to receive FAPE;

(2) Limit the responsibility of a public agency to appropriately monitor and maintain medical devices that are needed to maintain the health and safety of the child, including breathing, nutrition, or operation of other bodily functions, while the child is transported to and from school or is at school; or

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(3) Prevent the routine checking of an external component of a surgically implanted device to make sure it is functioning properly, as required in rule 281—41.113(256B,34CFR300).

41.34(3) *Individual related services terms defined.* The terms used in this definition are defined as follows:

a. *“Audiology”* includes:

- (1) Identification of children with hearing loss;
- (2) Determination of the range, nature, and degree of hearing loss, including referral for medical or other professional attention for the habilitation of hearing;
- (3) Provision of habilitative activities, such as language habilitation, auditory training, speech reading (lipreading), hearing evaluation, and speech conservation;
- (4) Creation and administration of programs for prevention of hearing loss;
- (5) Counseling and guidance of children, parents, and teachers regarding hearing loss; and
- (6) Determination of children’s needs for group and individual amplification, selecting and fitting an appropriate aid, and evaluating the effectiveness of amplification.

b. *“Counseling services”* means services provided by qualified social workers, psychologists, guidance counselors, or other qualified personnel.

c. *“Early identification and assessment of disabilities in children”* means the implementation of a formal plan for identifying a disability as early as possible in a child’s life.

d. *“Interpreting services”* includes the following:

- (1) For children who are deaf or hard of hearing, oral transliteration services, cued language transliteration services, sign language transliteration and interpreting services, and transcription services, such as communication access real-time translation (CART), C-Print, and TypeWell; and
- (2) For children who are deaf-blind, special interpreting services.

e. *“Medical services”* means services provided by a licensed physician to determine a child’s medically related disability that results in the child’s need for special education and related services.

f. *“Occupational therapy”* means services provided by a qualified occupational therapist, and includes the following:

- (1) Improving, developing, or restoring functions impaired or lost through illness, injury, or deprivation;
- (2) Improving ability to perform tasks for independent functioning if functions are impaired or lost; and
- (3) Preventing, through early intervention, initial or further impairment or loss of function.

g. *“Orientation and mobility services”* means services provided to children who are blind or visually impaired by qualified personnel to enable those students to attain systematic orientation to and safe movement within their environments in school, home, and community, and includes teaching children the following, as appropriate:

- (1) Spatial and environmental concepts and use of information received by the senses (such as sound, temperature and vibrations) to establish, maintain, or regain orientation and line of travel (e.g., using sound at a traffic light to cross the street);
- (2) To use the long cane or a service animal to supplement visual travel skills or as a tool for safely negotiating the environment for children with no available travel vision;
- (3) To understand and use remaining vision and distance low vision aids; and
- (4) Other concepts, techniques, and tools.

h. *“Parent counseling and training”* means assisting parents in understanding the special needs of their child; providing parents with information about child development; and helping parents to acquire the necessary skills that will allow them to support the implementation of their child’s IEP or IFSP.

i. *“Physical therapy”* means services provided by a qualified physical therapist.

j. *“Psychological services”* includes the following:

- (1) Administering psychological and educational tests, and other assessment procedures;
- (2) Interpreting assessment results;
- (3) Obtaining, integrating, and interpreting information about child behavior and conditions relating to learning;

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(4) Consulting with other staff members in planning school programs to meet the special educational needs of children as indicated by psychological tests, interviews, direct observation, and behavioral evaluations;

(5) Planning and managing a program of psychological services, including psychological counseling for children and parents; and

(6) Assisting in developing positive behavioral intervention strategies.

k. "Recreation" includes the following:

(1) Assessment of leisure function;

(2) Therapeutic recreation services;

(3) Recreation programs in schools and community agencies; and

(4) Leisure education.

l. "Rehabilitation counseling services" means services provided by qualified personnel in individual or group sessions that focus specifically on career development, employment preparation, achieving independence, and integration in the workplace and community of a student with a disability. The term also includes vocational rehabilitation services provided to a student with a disability by vocational rehabilitation programs funded under the Rehabilitation Act of 1973 as amended through August 14, 2006, 29 U.S.C. 701 et seq.

m. "School health services and school nurse services" means health services that are designed to enable a child with a disability to receive FAPE as described in the child's IEP. School nurse services are services provided by a qualified school nurse. School health services are services that may be provided by either a qualified school nurse or other qualified person.

n. "Social work services in schools" includes the following:

(1) Preparing a social or developmental history concerning a child with a disability;

(2) Group and individual counseling with the child and family;

(3) Working in partnership with parents and others on those problems in a child's living situation (home, school, and community) that affect the child's adjustment in school;

(4) Mobilizing school and community resources to enable the child to learn as effectively as possible in his or her educational program; and

(5) Assisting in developing positive behavioral intervention strategies.

o. "Speech-language pathology services" includes the following:

(1) Identification of children with speech or language impairments;

(2) Diagnosis and appraisal of specific speech or language impairments;

(3) Referral for medical or other professional attention necessary for the habilitation of speech or language impairments;

(4) Provision of speech and language services for the habilitation or prevention of communicative impairments; and

(5) Counseling and guidance of parents, children, and teachers regarding speech and language impairments.

p. "Transportation" includes the following:

(1) Travel to and from school and between schools;

(2) Travel in and around school buildings; and

(3) Specialized equipment, such as special or adapted buses, lifts, and ramps, if required to provide special transportation for a child with a disability.

41.34(4) Rule of construction. A particular service listed in this rule may also be considered special education under rule 281—41.39(256B,34CFR300), a supplementary aid and service under rule 281—41.42(256B,34CFR300), or a support service under rule 281—41.409(256B,34CFR300).

281—41.35 Reserved.

281—41.36(256B,34CFR300) Secondary school. "Secondary school" means a nonprofit institutional day or residential school, including a public secondary charter school, that provides secondary education, as determined under state law, except that it does not include any education beyond grade 12.

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281—41.37(34CFR300) Services plan. “Services plan” has the meaning given the term in 34 CFR 300.37.

281—41.38(34CFR300) Secretary. “Secretary” means the Secretary of the United States Department of Education.

281—41.39(256B,34CFR300) Special education.

41.39(1) General. “Special education” means specially designed instruction, at no cost to the parents, to meet the unique needs of a child with a disability, including:

a. Instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings; and

b. Instruction in physical education.

41.39(2) Specific services included in special education. Special education includes each of the following, if the services otherwise meet the requirements of subrule 41.39(1):

a. Any service listed in this chapter, including support services, related services, and supplemental aids and services, that is specially designed instruction under subrule 41.39(1) or state standards or is required to assist an eligible individual in taking advantage of, or responding to, educational programs and opportunities;

b. Travel training; and

c. Vocational education.

41.39(3) Individual special education terms defined. The terms in this definition are defined as follows:

a. “*At no cost*” means that all specially designed instruction is provided without charge, but does not preclude incidental fees that are normally charged to nondisabled students or their parents as a part of the regular education program. An AEA or LEA may ask, but not require, parents of children with disabilities to use public insurance or benefits or private insurance proceeds to pay for services if they would not incur a financial cost, as described in rule 281—41.154(256B,34CFR300).

b. “*Physical education*” means the development of physical and motor fitness; fundamental motor skills and patterns; and skills in aquatics, dance, and individual and group games and sports, including intramural and lifetime sports; and includes special physical education, adapted physical education, movement education, and motor development.

c. “*Specially designed instruction*” means adapting, as appropriate to the needs of an eligible child under this chapter, the content, methodology, or delivery of instruction:

(1) To address the unique needs of the child that result from the child’s disability; and

(2) To ensure access of the child to the general curriculum, so that the child can meet the educational standards within the jurisdiction of the public agency that apply to all children.

d. “*Travel training*” means providing instruction, as appropriate, to children with significant cognitive disabilities, and any other children with disabilities who require this instruction, to enable them to:

(1) Develop an awareness of the environment in which they live; and

(2) Learn the skills necessary to move effectively and safely from place to place within that environment (e.g., in school, in the home, at work, and in the community).

e. “*Vocational education*” means organized educational programs that are directly related to the preparation of individuals for paid or unpaid employment, or for additional preparation for a career not requiring a baccalaureate or advanced degree.

281—41.40(34CFR300) State. “State” means each of the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, and each of the outlying areas.

281—41.41(256B,34CFR300) State educational agency. “State educational agency” or “SEA” means the state board of education or other agency or officer primarily responsible for the state supervision of

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public elementary schools and secondary schools, or, if there is no such officer or agency, an officer or agency designated by the governor or by state law.

281—41.42(256B,34CFR300) Supplementary aids and services. “Supplementary aids and services” means aids, services, and other supports that are provided in regular education classes, other education-related settings, and in extracurricular and nonacademic settings, to enable children with disabilities to be educated with nondisabled children to the maximum extent appropriate in accordance with rules 281—41.114(256B,34CFR300) to 281—41.116(256B,34CFR300).

281—41.43(256B,34CFR300) Transition services.

41.43(1) General. “Transition services” means a coordinated set of activities for a child with a disability and meets the following description:

a. Is designed to be within a results-oriented process that is focused on improving the academic and functional achievement of the child with a disability to facilitate the child’s movement from school to postschool activities, including postsecondary education, vocational education, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation;

b. Is based on the individual child’s needs, taking into account the child’s strengths, preferences, and interests; and includes the following:

- (1) Instruction;
- (2) Related services;
- (3) Community experiences;
- (4) The development of employment and other post-school adult living objectives; and
- (5) If appropriate, acquisition of daily living skills and provision of a functional vocational evaluation.

41.43(2) May be special education or a related service. Transition services for children with disabilities may be special education, if provided as specially designed instruction, or a related service if required to assist a child with a disability to benefit from special education.

281—41.44(34CFR300) Universal design. “Universal design” has the meaning given the term in Section 3 of the Assistive Technology Act of 1998 as amended through August 14, 2006, 29 U.S.C. 3002.

281—41.45(256B,34CFR300) Ward of the state.

41.45(1) General. Subject to subrules 41.45(2) and 41.45(3), “ward of the state” means a child who, as determined by the state where the child resides, is:

- a.* A foster child;
- b.* In the custody of a public child welfare agency; or
- c.* A ward of the state.

41.45(2) Exception. “Ward of the state” does not include a foster child who has a foster parent who meets the definition of a parent in rule 281—41.30(256B,34CFR300).

41.45(3) Interpretive note. “Ward of the state” is a term rarely used in Iowa law. It would be an extremely rare occurrence for a child to be a ward of the state while not being either a foster child or in the custody of a public child welfare agency.

281—41.46 to 41.49 Reserved.

281—41.50(256B,34CFR300) Other definitions associated with identification of eligible individuals. The following terms may be encountered in the identification of children with disabilities.

41.50(1) Autism. “Autism” means a developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before the age of three, which adversely affects a child’s educational performance. Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change

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or change in daily routines, and unusual responses to sensory experiences. Autism does not apply if a child's educational performance is adversely affected primarily because the child has a behavior disorder, as defined in subrule 41.50(2). A child who manifests the characteristics of autism after the age of three could be identified as having autism if the criteria in the first sentence of this subrule are satisfied. This term includes all conditions described by the term "autism spectrum disorder," which adversely affects a child's educational performance.

41.50(2) Behavior disorder. "Behavior disorder" (or emotional disturbance) means any condition that exhibits one or more of the following five characteristics over a long period of time and to a marked degree that adversely affects a child's educational performance.

- a. An inability to learn that cannot be explained by intellectual, sensory, or health factors.
- b. An inability to build or maintain satisfactory interpersonal relationships with peers and teachers.
- c. Inappropriate types of behavior or feelings under normal circumstances.
- d. A general pervasive mood of unhappiness or depression.
- e. A tendency to develop physical symptoms or fears associated with personal or school problems.

41.50(3) Deaf-blindness. "Deaf-blindness" means concomitant hearing and visual impairments, the combination of which causes such severe communication and other developmental and educational needs that they cannot be accommodated in special education programs solely for children who are deaf or hard of hearing or children who are blind or visually impaired.

41.50(4) Deafness. "Deafness" means a hearing impairment that is so severe that the child is impaired in processing linguistic information through hearing, with or without amplification, and that adversely affects a child's educational performance.

41.50(5) Hearing impairment. "Hearing impairment" means an impairment in hearing, whether permanent or fluctuating, that adversely affects a child's educational performance but that is not included under the definition of deafness in subrule 41.50(4).

41.50(6) Intellectual disability. "Intellectual disability" means significantly subaverage general intellectual functioning, that exists concurrently with deficits in adaptive behavior and is manifested during the developmental period, and which adversely affects a child's educational performance.

41.50(7) Multiple disabilities. "Multiple disabilities" means concomitant impairments, such as intellectual disability-blindness or intellectual disability-orthopedic impairment, the combination of which causes such severe educational needs that they cannot be accommodated in special education programs solely for one of the impairments. Multiple disabilities does not include deaf-blindness.

41.50(8) Orthopedic impairment. "Orthopedic impairment" means a severe orthopedic impairment that adversely affects a child's educational performance. The term includes impairments caused by a congenital anomaly; impairments caused by disease, e.g., poliomyelitis or bone tuberculosis; and impairments from other causes, e.g., cerebral palsy, amputations, and fractures or burns that cause contractures.

41.50(9) Other health impairment. "Other health impairment" means having limited strength, vitality, or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment, that:

- a. Is due to a chronic or acute health problem such as asthma, attention deficit disorder or attention deficit hyperactivity disorder, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, sickle cell anemia, and Tourette syndrome; and
- b. Adversely affects a child's educational performance.

41.50(10) Specific learning disability. "Specific learning disability" means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in the imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations, including conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. Specific learning disability does not include learning problems that are primarily the result of visual, hearing, or motor disabilities, of intellectual disability, of emotional disturbance, or of environmental, cultural, or economic disadvantage.

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41.50(11) *Speech or language impairment.* “Speech or language impairment” means a communication disorder, such as stuttering, impaired articulation, a language impairment, or a voice impairment, that adversely affects a child’s educational performance.

41.50(12) *Traumatic brain injury.* “Traumatic brain injury” means an acquired injury to the brain caused by an external physical force, resulting in total or partial functional disability or psychosocial impairment, or both, that adversely affects a child’s educational performance. Traumatic brain injury applies to open or closed head injuries resulting in impairments in one or more areas, such as cognition; language; memory; attention; reasoning; abstract thinking; judgment; problem solving; sensory, perceptual, and motor abilities; psychosocial behavior; physical functions; information processing; and speech. Traumatic brain injury does not apply to brain injuries that are congenital or degenerative, or to brain injuries induced by birth trauma.

41.50(13) *Visual impairment.* “Visual impairment,” including blindness, means an impairment in vision that, even with correction, adversely affects a child’s educational performance. The term includes both partial sight and blindness. Individuals who have a medically diagnosed expectation of visual deterioration in adolescence or early adulthood may qualify for instruction in braille reading and writing.

281—41.51(256B,34CFR300) Other definitions applicable to this chapter. The following additional definitions apply to this chapter.

41.51(1) *Appropriate activities.* “Appropriate activities” means those activities that are consistent with age-relevant abilities or milestones that typically developing children of the same age would be performing or would have achieved.

41.51(2) *Board.* “Board” means the Iowa state board of education.

41.51(3) *Department.* “Department” means the state department of education.

41.51(4) *Director.* “Director” means the director of special education of the AEA.

41.51(5) *Director of education.* “Director of education” means the state director of the department of education.

41.51(6) *Early childhood special education.* “Early childhood special education” or “ECSE” means special education and related services for those individuals below the age of six.

41.51(7) *General curriculum.* “General curriculum” means the curriculum adopted by an LEA or schools within the LEA for all children from preschool through secondary school.

41.51(8) *General education environment.* “General education environment” includes, but is not limited to, the classes, classrooms, services, and nonacademic and extracurricular services and activities made available by an agency to all students. For preschool children who require special education, the general education environment is the environment where appropriate activities occur for children of similar age without disabilities.

41.51(9) *General education interventions.* “General education interventions” means attempts to resolve presenting problems or behaviors of concern in the general education environment prior to conducting a full and individual evaluation as described in rule 281—41.312(256B,34CFR300).

41.51(10) *Head injury.* “Head injury” means an acquired injury to the brain caused by an external physical force, resulting in total or partial functional disability or psychosocial impairment, or both, that adversely affects an individual’s educational performance. The term applies to open or closed head injuries resulting in impairments in one or more areas such as cognition; language; memory; attention; reasoning; abstract thinking; judgment; problem solving; sensory, perceptual and motor abilities; psychosocial behavior; physical functions; information processing; and speech. The term does not apply to brain injuries that are congenital or degenerative or brain injuries induced by birth trauma.

41.51(11) *Multicategorical.* “Multicategorical” means special education in which the individuals receiving special education have different types of disabilities.

41.51(12) *School district of the child’s residence.* “School district of the child’s residence” or “district of residence of the child” is that school district in which the parent of the individual resides, subject to the following:

a. If an eligible individual is physically present (“lives”) in a district other than the district of residence of the individual’s parent for a primary purpose other than school attendance, then the district

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of residence of the individual is the district in which the individual resides, and that district becomes responsible for providing and funding the special education and related services.

b. If an eligible individual is physically present (“lives”) in a district other than the district of residence of the individual’s parent solely for the purpose of school attendance, the district of residence remains that of the parent; therefore, the parent must pay tuition to the receiving district. The district of residence cannot be held responsible for tuition payment.

c. If an individual is physically present (“lives”) in an intermediate care facility, residential care facility, or other similar facility, the individual’s district of residence is deemed to be that of the individual’s parents.

d. “Children living in a foster care facility” are individuals requiring special education who are living in a licensed individual or agency child foster care facility, as defined in Iowa Code section 237.1, or in an unlicensed relative foster care placement. District of residence of an individual living in a foster care facility and financial responsibility for special education and related services are determined pursuant to paragraph 41.907(5)“a.”

e. “Children living in a treatment facility” are individuals requiring special education who are living in a facility providing residential treatment as defined in Iowa Code section 125.2. District of residence of an individual living in a treatment facility and financial responsibility for special education and related services are determined pursuant to paragraph 41.907(5)“b.”

f. “Children placed by the district court” are pupils requiring special education for whom parental rights have been terminated and who have been placed in a facility or home by a district court. Financial responsibility for special education and related services of individuals placed by the district court is determined pursuant to subrule 41.907(6).

41.51(13) Severely disabled. “Severely disabled” is an adjective applied to individuals with any severe disability including individuals who are profoundly, multiply disabled.

41.51(14) Signature. “Signature” has the meaning given the term in Iowa Code section 4.1(39).

41.51(15) Systematic progress monitoring. “Systematic progress monitoring” means a systematic procedure for collecting and displaying an individual’s performance over time for the purpose of making educational decisions.

281—41.52 to 41.99 Reserved.

DIVISION III
RULES APPLICABLE TO THE STATE AND TO ALL AGENCIES

281—41.100(256B,34CFR300) Eligibility for assistance. To be eligible for assistance under Part B of the Act for a fiscal year, the state shall submit a plan that provides assurances to the Secretary that the state has in effect policies and procedures to ensure that the state meets the conditions in rules 281—41.101(256B,34CFR300) to 281—41.176(256B).

281—41.101(256B,34CFR300) Free appropriate public education (FAPE).

41.101(1) General. A free appropriate public education must be available to all children residing in the state for the time period permitted by Iowa Code chapter 256B, including children with disabilities who have been suspended or expelled from school, as provided for in subrule 41.530(4).

41.101(2) FAPE for children beginning at the age of three. The state shall ensure that:

a. The obligation to make FAPE available to each eligible child residing in the state begins no later than the child’s third birthday; and

b. An IEP is in effect for the child by that date.

c. If a child’s third birthday occurs during the summer, the child’s IEP team shall determine the date when services under the IEP will begin.

41.101(3) Children advancing from grade to grade. FAPE shall be available to any individual child with a disability who needs special education and related services, even though the child has not failed or been retained in a course or grade and is advancing from grade to grade. The determination that a child

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described in the first sentence of this subrule is eligible under this chapter must be made on an individual basis by the group responsible within the child's LEA for making eligibility determinations.

281—41.102(256B,34CFR300) Limitation—exceptions to FAPE for certain ages.

41.102(1) Exceptions. The obligation to make FAPE available to all children with disabilities does not apply with respect to the following:

a. Children over the age provided in Iowa Code chapter 256B, unless otherwise provided in this rule.

b. Certain children incarcerated in adult prisons.

(1) General. A child aged 18 to 21 who, in the last educational placement prior to incarceration in an adult correctional facility:

1. Was not actually identified as being a child with a disability under this chapter; and
2. Did not have an IEP under Part B of the Act.

(2) Inapplicability of exception. The exception in subparagraph 41.102(1)“*b*”(1) does not apply to a child with disabilities, aged 18 to 21, who:

1. Had been identified as a child with a disability under this chapter and had received services in accordance with an IEP, but who left school prior to incarceration; or
2. Did not have an IEP in the child's last educational setting, but who had actually been identified as a child with a disability under this chapter.

c. Graduates with a regular high school diploma.

(1) General. Children with disabilities who have graduated from high school with a regular high school diploma.

(2) Inapplicability of exception. The exception in subparagraph 41.102(1)“*c*”(1) does not apply to children who have graduated from high school but have not been awarded a regular high school diploma.

(3) Graduation is a change in placement. Graduation from high school with a regular high school diploma constitutes a change in placement requiring written prior notice in accordance with rule 281—41.503(256B,34CFR300).

(4) Rule of construction. As used in subparagraphs 41.102(1)“*c*”(1) to (3), the term “regular high school diploma” means the standard high school diploma awarded to the preponderance of students in the state that is fully aligned with state standards, or a higher diploma, except that a regular high school diploma shall not be aligned to the alternate academic achievement standards described in Section 1111(b)(1)(E) of the ESEA. A regular high school diploma does not include a recognized equivalent of a diploma, such as a general equivalency diploma, certificate of completion, certificate of attendance, or similar lesser credential.

d. Reserved.

e. Eligibility beyond period specified in Iowa Code chapter 256B. An agency may continue the special education and related services of an eligible individual beyond the time period specified in the Iowa Code if the person had an accident or prolonged illness that resulted in delays in the initiation of or in the interruption of that individual's special education program. The AEA director of special education must request approval from the department, which may be granted for up to the individual's twenty-fourth birthday.

41.102(2) Documents relating to exceptions. The state must ensure that the information it has provided to the Secretary regarding the exceptions in subrule 41.102(1) is current and accurate.

281—41.103(256B,34CFR300) FAPE—methods and payments.

41.103(1) All means available to meet Part B requirements. The state may use whatever state, local, federal, and private sources of support that are available in the state to meet the requirements of Part B of the Act.

41.103(2) Third-party obligations not eliminated. Nothing in this chapter relieves an insurer or similar third party from an otherwise valid obligation to provide or to pay for services provided to a child with a disability.

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41.103(3) *No delay in implementing an IEP.* Consistent with rule 281—41.323(256B,34CFR300), there shall be no delay in implementing an eligible individual's IEP, including any case in which the payment source for providing or paying for special education and related services to the child is being determined.

281—41.104(256B,34CFR300) Residential placement. If placement in a public or private residential program is necessary to provide special education and related services to an eligible individual, the program, including nonmedical care and room and board, must be at no cost to the parents of the child.

281—41.105(256B,34CFR300) Assistive technology.

41.105(1) General. Each public agency must ensure that assistive technology devices or assistive technology services, or both, as those terms are defined in rules 281—41.5(256B,34CFR300) and 281—41.6(256B,34CFR300), respectively, are made available to a child with a disability if required as a part of the child's:

- a. Special education under rule 281—41.39(256B,34CFR300);
- b. Related services under rule 281—41.34(256B,34CFR300); or
- c. Supplementary aids and services under rule 281—41.42(256B,34CFR300) and paragraph 41.114(2) "b."

41.105(2) Use of assistive technology devices at home or in other settings. On a case-by-case basis, the use of school-purchased assistive technology devices in a child's home or in other settings is required if the child's IEP team determines that the child needs access to those devices in order to receive FAPE.

281—41.106(256B,34CFR300) Extended school year services.

41.106(1) General. Each public agency must ensure that extended school year services are available as necessary to provide FAPE.

a. Extended school year services must be provided only if a child's IEP team determines, on an individual basis, in accordance with rules 281—41.320(256B,34CFR300) to 281—41.324(256B,34CFR300), that the services are necessary for the provision of FAPE to the child.

b. In implementing the requirements of this rule, a public agency may not limit extended school year services to particular categories of disability or unilaterally limit the type, amount, or duration of those services.

41.106(2) Definition. As used in this rule, the term "extended school year services" means special education and related services that meet the standards of the SEA and are provided to a child with a disability beyond the normal school year of the public agency, in accordance with the child's IEP and at no cost to the parents of the child.

281—41.107(256B,34CFR300) Nonacademic services.

41.107(1) General. Each public agency must take steps, including the provision of supplementary aids and services determined appropriate and necessary by the child's IEP team, to provide nonacademic and extracurricular services and activities in the manner necessary to afford children with disabilities an equal opportunity for participation in those services and activities.

41.107(2) Definition. Nonacademic and extracurricular services and activities may include counseling services, athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the public agency, referrals to agencies that provide assistance to individuals with disabilities, and employment of students, including both employment by the public agency and assistance in making outside employment available.

281—41.108(256B,34CFR300) Physical education. All public agencies in the state shall comply with the following:

41.108(1) General. Physical education services, specially designed if necessary, must be made available to every child with a disability receiving FAPE, unless the public agency enrolls children without disabilities and does not provide physical education to children without disabilities in the same grades.

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41.108(2) *Regular physical education.* Each child with a disability must be afforded the opportunity to participate in the regular physical education program available to nondisabled children unless the child is enrolled full-time in a separate facility or the child needs specially designed physical education, as prescribed in the child's IEP.

41.108(3) *Special physical education.* If specially designed physical education is prescribed in a child's IEP, the public agency responsible for the education of that child must provide the services directly or make arrangements for those services to be provided through other public or private programs.

41.108(4) *Education in separate facilities.* The public agency responsible for the education of a child with a disability who is enrolled in a separate facility must ensure that the child receives appropriate physical education services in compliance with this rule.

281—41.109(256B,34CFR300) Full educational opportunity goal (FEOG). Each public agency shall ensure the provision of full educational opportunity to children requiring special education. Each public agency shall have in effect policies and procedures to demonstrate that the agency has established a goal of providing full educational opportunity to all children with disabilities, aged birth to 21, and a detailed timetable for accomplishing that goal.

281—41.110(256B,34CFR300) Program options. Each public agency shall take steps to ensure that its children with disabilities have available to them the variety of educational programs and services available to nondisabled children in the area served by the agency, including art, music, industrial arts, consumer and homemaking education, and vocational education.

281—41.111(256B,34CFR300) Child find.

41.111(1) *General.* All children with disabilities residing in the state, including children with disabilities who are homeless children or are wards of the state and children with disabilities who attend private schools, regardless of the severity of their disability, and who are in need of special education and related services, must be identified, located, and evaluated; and a practical method must be developed and implemented to determine which children are currently receiving needed special education and related services.

41.111(2) *High-quality general education instruction; general education interventions.*

a. As a component of efficient and effective, high-quality general education instruction, it shall be the responsibility of the general education program of each LEA to provide additional support and assistance to all students who may need such additional support and assistance to attain the educational standards of the LEA applicable to all children. Receipt of such additional support and assistance, when considered alone, does not create a suspicion that a child is an eligible individual under this chapter. Activities under this paragraph shall be provided by general education personnel, with occasional or incidental assistance from special education instructional and support personnel.

b. General education interventions involving activities described in rule 281—41.312(256B,34CFR300) are a recognized component of an AEA's child find policy pursuant to the policies set forth in subrule 41.407(1) and the procedures set forth in subrule 41.407(2).

41.111(3) *Other children in child find.* Child find also must include the following:

a. A child who is suspected of being a child with a disability and in need of special education, even though the child is advancing from grade to grade; and

b. Highly mobile children, including migrant children.

41.111(4) *Classification based on disability not required.* Nothing in the Act requires that children be classified by their disability so long as each child who has a disability that is listed in 34 CFR Section 300.8 and who, by reason of that disability, needs special education and related services is regarded as a child with a disability under Part B of the Act.

41.111(5) *Evaluation required when disability is suspected.* At the point when a public agency suspects a child is a child with a disability under this chapter, the public agency must seek parental consent for an initial evaluation of that child, pursuant to subrule 41.300(1).

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41.111(6) *Rule of construction—suspicion of a disability.* As a general rule, a public agency suspects a child is a child with a disability when the public agency is aware of facts and circumstances that, when considered as a whole, would cause a reasonably prudent public agency to believe that the child's performance might be explained because the child is an eligible individual under this chapter.

281—41.112(256B,34CFR300) Individualized education programs (IEPs). An IEP, or an IFSP that meets the requirements of Section 636(d) of the Act (for eligible individuals aged birth to three), is developed, reviewed, and revised for each child with a disability in accordance with rules 281—41.320(256B,34CFR300) to 281—41.324(256B,34CFR300), except as provided in subparagraph 41.300(2)“d”(2).

281—41.113(256B,34CFR300) Routine checking of hearing aids and external components of surgically implanted medical devices.

41.113(1) *Hearing aids.* Each public agency must ensure that hearing aids worn in school by children who are deaf or hard of hearing are functioning properly.

41.113(2) *External components of surgically implanted medical devices.*

a. Subject to paragraph 41.113(2)“b,” each public agency must ensure that the external components of surgically implanted medical devices are functioning properly.

b. For a child with a surgically implanted medical device who is receiving special education and related services under this chapter, a public agency is not responsible for the postsurgical maintenance, programming, or replacement of the medical device that has been surgically implanted or of an external component of the surgically implanted medical device.

281—41.114(256B,34CFR300) Least restrictive environment (LRE).

41.114(1) *General.* Except as provided in paragraph 41.324(4)“a” regarding children with disabilities in adult prisons, each public agency in the state shall have policies and procedures in place to meet the LRE requirements of this rule and rules 281—41.115(256B,34CFR300) to 281—41.120(256B,34CFR300).

41.114(2) *Public agency assurances.* Each public agency must ensure and maintain adequate documentation that:

a. To the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are nondisabled; and

b. Special classes, separate schooling, or other removal of children with disabilities from the general education environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

41.114(3) *State funding mechanism.* A state funding mechanism must not result in placements that violate the requirements of this rule; and the state must not use a funding mechanism by which funds are distributed on the basis of the type of setting in which a child is served or which will result in the failure to provide a child with a disability FAPE according to the unique needs of the child, as described in the child's IEP.

281—41.115(256B,34CFR300) Continuum of alternative services and placements.

41.115(1) *General.* Each public agency must ensure that a continuum of alternative services and placements is available to meet the needs of children with disabilities for special education and related services.

41.115(2) *Requirements.* The continuum required in subrule 41.115(1) must meet the following requirements:

a. Include the alternative placements listed in the definition of special education under rule 281—41.39(256B,34CFR300) (instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions); and

b. Make provision for supplementary services, such as resource room or itinerant instruction, to be provided in conjunction with regular class placement.

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281—41.116(256B,34CFR300) Placements.

41.116(1) General. In determining the educational placement of a child with a disability, including a preschool child with a disability, each public agency must ensure the following:

a. The placement decision shall be made:

(1) By a group of persons, including the parents and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options; and

(2) In conformity with the LRE provisions of this chapter, including rules 281—41.114(256B,34CFR300) to 281—41.118(256B,34CFR300);

b. The child's placement shall be:

(1) Determined at least annually;

(2) Based on the child's IEP; and

(3) Located as close as possible to the child's home;

c. Unless the IEP of a child with a disability requires some other arrangement, the child shall be educated in the school that he or she would attend if nondisabled;

d. In selecting the LRE, the agency shall consider any potential harmful effect on the child or on the quality of services that he or she needs; and

e. A child with a disability shall not be removed from education in age-appropriate regular classrooms solely because of needed modifications in the general education curriculum.

41.116(2) Special rule: Iowa Code section 282.9. For eligible individuals subject to Iowa Code section 282.9, any decision of educational setting for such eligible individuals shall be made in accordance with this rule.

41.116(3) Special rule: disciplinary placements. If a child is placed in an interim alternative educational setting pursuant to rules 281—41.530(256B,34CFR300) and 281—41.531(256B,34CFR300), that setting shall be determined by the IEP team.

41.116(4) Special considerations. The team establishing the eligible individual's placement must answer the following questions.

a. Questions concerning least restrictive environment. When developing an eligible individual's IEP and placement, the team shall consider the following questions, as well as any other factor appropriate under the circumstances, regarding the provision of special education and related services:

(1) What accommodations, modifications and adaptations does the individual require to be successful in a general education environment?

(2) Why is it not possible for these accommodations, modifications and adaptations to be provided within the general education environment?

(3) What supports are needed to assist the teacher and other personnel in providing these accommodations, modifications and adaptations?

(4) How will receipt of special education services and activities in the general education environment impact this individual?

(5) How will provision of special education services and activities in the general education environment impact other students?

b. Additional questions concerning special school placement. When some or all of an eligible individual's special education is to be provided in a special school, the individual's IEP, or an associated or attached document, shall include specific answers to the following additional four questions:

(1) What are the reasons the eligible individual cannot be provided an education program in an integrated school setting?

(2) What supplementary aids and supports are needed to support the eligible individual in the special education program?

(3) Why is it not possible for these aids and supports to be provided in an integrated setting?

(4) What is the continuum of placements and services available for the eligible individual?

41.116(5) Out-of-state placements. When special education and related services appropriate to an eligible individual's needs are not available within the state, or when appropriate special education and related services in an adjoining state are nearer than the appropriate special education and related services in Iowa, the director may certify an eligible individual for appropriate special education and related

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services outside the state in accordance with Iowa Code section 273.3 when it has been determined by the department that the special education and related services meet standards set forth in these rules.

41.116(6) *Department approval for out-of-state placement.* Contracts may be negotiated with out-of-state agencies, in accordance with Iowa Code section 273.3(5), with department approval. The department uses the following procedures to determine if an out-of-state agency meets the rules of the board:

a. When requested to determine an agency's approval status, the department contacts the appropriate state education agency to determine if that state's rules are comparable to those of the board and whether the specified out-of-state agency meets those rules.

b. If the appropriate state education agency's rules are not comparable, the department will contact the out-of-state agency to ascertain if its special education complies with the rules of the board.

41.116(7) *Trial placements.* Prior to transfer from a special education program or service, an eligible individual may be provided a trial placement in the general education setting of not more than 45 school days. A trial placement shall be incorporated into this individual's IEP.

281—41.117(256B,34CFR300) *Nonacademic settings.* In providing or arranging for the provision of nonacademic and extracurricular services and activities, including meals, recess periods, and the services and activities set forth in rule 281—41.107(256B,34CFR300), each public agency must ensure that each child with a disability participates with nondisabled children in the extracurricular services and activities to the maximum extent appropriate to the needs of that child. The public agency must ensure that each child with a disability has the supplementary aids and services determined by the child's IEP team to be appropriate and necessary for the child to participate in nonacademic settings.

281—41.118(256B,34CFR300) *Children in public or private institutions.* Except as provided in rule 281—41.149(256B,34CFR300) regarding agency responsibility for general supervision of some individuals in adult prisons, the department must ensure that rule 281—41.114(256B,34CFR300) is effectively implemented, including, if necessary, making arrangements with public and private institutions such as a memorandum of agreement or special implementation procedures.

281—41.119(256B,34CFR300) *Technical assistance and training activities.* The state shall carry out activities to ensure that teachers and administrators in all public agencies are fully informed about their responsibilities for implementing rule 281—41.114(256B,34CFR300) and are provided with technical assistance and training necessary to assist them in this effort. If a public agency is having difficulty in locating an appropriate placement for an eligible individual, the public agency may contact the department for potential assistance.

281—41.120(256B,34CFR300) *Monitoring activities.* The state shall carry out activities to ensure that rule 281—41.114(256B,34CFR300) is implemented by each public agency. If there is evidence that a public agency makes placements that are inconsistent with rule 281—41.114(256B,34CFR300), the department must review the public agency's justification for its actions and assist in planning and implementing any necessary corrective action. Failure of the public agency to implement any necessary corrective action may result in adverse determinations under rule 281—41.603(256B,34CFR300) or any other available enforcement action.

281—41.121(256B,34CFR300) *Procedural safeguards.* Each public agency in the state shall meet the requirements of rules 281—41.500(256B,34CFR300) to 281—41.536(256B,34CFR300), and children with disabilities and their parents must be afforded the procedural safeguards identified in those rules.

281—41.122(256B,34CFR300) *Evaluation.* Children with disabilities must be evaluated in accordance with rules 281—41.300(256B,34CFR300) to 281—41.313(256B,34CFR300), and each AEA shall develop and use procedures to implement those rules.

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281—41.123(256B,34CFR300) Confidentiality of personally identifiable information. All public agencies in the state shall comply with rules 281—41.610(256B,34CFR300) to 281—41.626(256B,34CFR300) related to protecting the confidentiality of any personally identifiable information collected, used, or maintained under Part B of the Act.

281—41.124(256B,34CFR300) Transition of children from the Part C program to preschool programs. Each public agency shall comply with the state's policies concerning the transition of infants and toddlers from programs under Part C to programs under Part B of the Act and shall ensure the following regarding such transition:

41.124(1) Smooth transition. Children participating in early intervention programs assisted under Part C of the Act, and who will participate in preschool programs assisted under Part B of the Act, experience a smooth and effective transition to those preschool programs in a manner consistent with Section 637(a)(9) of the Act;

41.124(2) IEP developed. By the third birthday of a child described in subrule 41.124(1), an IEP has been developed and is being implemented for the child consistent with subrule 41.101(2); and

41.124(3) Participating agencies. Each affected LEA will participate in transition planning conferences arranged by the designated lead agency under Section 635(a)(10) of the Act.

281—41.125 to 41.128 Reserved.

281—41.129(256B,34CFR300) Responsibility regarding children in private schools. Each public agency shall meet the private school requirements in rules 281—41.130(256,256B,34CFR300) to 281—41.148(256B,34CFR300).

281—41.130(256,256B,34CFR300) Definition of parentally placed private school children with disabilities. "Parentally placed private school children with disabilities" means children with disabilities enrolled by their parents in accredited nonpublic, including religious, schools or facilities that meet the definition of elementary school in rule 281—41.13(256B,34CFR300) or secondary school in rule 281—41.36(256B,34CFR300), other than children with disabilities covered under rules 281—41.145(256B,34CFR300) to 281—41.147(256B,34CFR300).

281—41.131(256,256B,34CFR300) Child find for parentally placed private school children with disabilities.

41.131(1) General. Each AEA must locate, identify, and evaluate all children with disabilities who are enrolled by their parents in accredited nonpublic, including religious, elementary schools and secondary schools located in the school district served by the AEA, in accordance with subrules 41.131(2) to 41.131(5) and rules 281—41.111(256B,34CFR300) and 281—41.201(256B,34CFR300).

41.131(2) Child find design. The child find process must be designed to ensure:

- a. The equitable participation of parentally placed private school children; and
- b. An accurate count of those children.

41.131(3) Activities. In carrying out the requirements of this rule, the AEA or, if applicable, the SEA must undertake activities similar to the activities undertaken for the agency's public school children.

41.131(4) Cost. The cost of carrying out the child find requirements in this rule, including individual evaluations, may not be considered in determining whether an AEA has met its obligation under rule 281—41.133(256,256B,34CFR300).

41.131(5) Completion period. The child find process must be completed in a time period comparable to that for students attending public schools in the AEA consistent with rule 281—41.301(256B,34CFR300).

41.131(6) Out-of-state children. Each AEA in which accredited nonpublic, including religious, elementary schools and secondary schools are located must, in carrying out the child find requirements in this rule, include parentally placed private school children who reside in a state other than the state in which the accredited nonpublic schools that they attend are located.

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281—41.132(256,256B,34CFR300) Provision of services for parentally placed private school children with disabilities: basic requirement.

41.132(1) General. To the extent consistent with the number and location of children with disabilities who are enrolled by their parents in accredited nonpublic, including religious, elementary schools and secondary schools located in the area served by the AEA, provision is made for the participation of those children in the program assisted or carried out under Part B of the Act by providing them with special education and related services, including direct services determined in accordance with rule 281—41.137(256,256B,34CFR300), unless the Secretary has arranged for services to those children under the bypass provisions in 34 CFR Sections 300.190 to 300.198.

41.132(2) IEP for parentally placed private school children with disabilities. In accordance with subrule 41.132(1) and rules 281—41.137(256,256B,34CFR300) to 281—41.139(256,256B,34CFR300), as well as Iowa Code section 256.12, an IEP must be developed and implemented for each private school child with a disability who has been designated by the AEA in which the private school is located to receive special education and related services under this chapter.

41.132(3) Record keeping. Each AEA must maintain in its records, and provide to the state, the following information related to parentally placed private school children covered under rules 281—41.130(256,256B,34CFR300) to 281—41.144(256,256B,34CFR300):

- a. The number of children evaluated;
- b. The number of children determined to be children with disabilities; and
- c. The number of children served.

281—41.133(256,256B,34CFR300) Expenditures.

41.133(1) Formula. To meet the requirement of subrule 41.132(1), each AEA must spend the following on providing special education and related services, including direct services, to parentally placed private school children with disabilities:

a. For children aged 3 to 21, an amount that is the same proportion of the AEA's total subgrant under Section 611(f) of the Act as the number of private school children with disabilities aged 3 to 21 who are enrolled by their parents in private, including religious, elementary schools and secondary schools located in the school district served by the AEA, is to the total number of children with disabilities in its jurisdiction aged 3 to 21.

b. Additional calculation for children aged 3 through 5.

(1) For children aged 3 through 5, an amount that is the same proportion of the AEA's total subgrant under Section 619(g) of the Act as the number of parentally placed private school children with disabilities aged 3 through 5 who are enrolled by their parents in a private, including religious, elementary school located in the school district served by the AEA, is to the total number of children with disabilities in its jurisdiction aged 3 through 5.

(2) As described in subparagraph 41.133(1) "b"(1), children aged 3 through 5 are considered to be parentally placed private school children with disabilities enrolled by their parents in private, including religious, elementary schools, if and only if they are enrolled in a private school that meets the definition of elementary school in rule 281—41.13(256B,34CFR300).

c. If an AEA has not expended for equitable services all of the funds described in paragraphs 41.133(1) "a" and "b" by the end of the fiscal year for which Congress appropriated the funds, the AEA must obligate the remaining funds for special education and related services, including direct services, to parentally placed private school children with disabilities during a carry-over period of one additional year.

41.133(2) Calculating proportionate amount. The state shall calculate each AEA's proportionate share from data provided by each AEA after each AEA has completed the consultation described in rule 281—41.134(256,256B,34CFR300) and the child count described in rule 281—41.131(256,256B,34CFR300) and subrule 41.133(3).

41.133(3) Annual count of the number of parentally placed private school children with disabilities.

- a. Each AEA must:

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(1) After timely and meaningful consultation with representatives of parentally placed private school children with disabilities, consistent with rule 281—41.134(256,256B,34CFR300), determine the number of parentally placed private school children with disabilities attending private schools located in the AEA; and

(2) Ensure that the count is conducted on any date between October 1 and December 1, inclusive, of each year.

b. The count must be used to determine the amount that the AEA must spend on providing special education and related services to parentally placed private school children with disabilities in the next subsequent fiscal year.

41.133(4) *Supplement, not supplant.* State and local funds may supplement, and in no case supplant, the proportionate amount of federal funds required to be expended for parentally placed private school children with disabilities under this chapter.

281—41.134(256,256B,34CFR300) Consultation. To ensure timely and meaningful consultation, an AEA or, if appropriate, an SEA must consult with private school representatives and representatives of parents of parentally placed private school children with disabilities during the design and development of special education and related services for the children regarding the following:

41.134(1) *Child find.* The child find process shall determine:

a. How parentally placed private school children suspected of having a disability can participate equitably; and

b. How parents, teachers, and private school officials will be informed of the process.

41.134(2) *Proportionate share of funds.* An explanation that the proportionate share shall be calculated by the state based on data submitted by the AEA, consistent with rule 281—41.133(256,256B,34CFR300).

41.134(3) *Consultation process.* The consultation process among the AEA, private school officials, and representatives of parents of parentally placed private school children with disabilities, including how the process will operate throughout the school year to ensure that parentally placed children with disabilities identified through the child find process can meaningfully participate in special education and related services.

41.134(4) *Provision of special education and related services.* How, where, and by whom special education and related services funded by Part B of the Act under rules 281—41.130(256,256B,34CFR300) to 281—41.147(256B,34CFR300) will be provided for parentally placed private school children with disabilities, including a discussion of the following:

a. The types of services, including direct services and alternate service delivery mechanisms;

b. How special education and related services will be apportioned if funds are insufficient to serve all parentally placed private school children;

c. How and when decisions regarding paragraphs 41.134(4) “a” and “b” will be made;

d. That the consultation process concerns only funds under Part B of the Act, and does not concern special education and related services provided under Iowa Code section 256.12. The consultation process may, but is not required to, include discussions of special education and related services provided under Iowa Code section 256.12.

41.134(5) *Written explanation by AEA regarding services.* How, if the AEA disagrees with the views of the private school officials on the provision of services or the types of services, whether provided directly or through a contract, the AEA will provide to the private school officials a written explanation of the reasons why the AEA chose not to provide services directly or through a contract.

281—41.135(256,256B,34CFR300) Written affirmation. When timely and meaningful consultation, as required by rule 281—41.134(256,256B,34CFR300), has occurred, the AEA must obtain a written affirmation signed by the representatives of participating private schools. If the representatives do not provide the affirmation within a reasonable period of time, the AEA must forward the documentation of the consultation process to the department.

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281—41.136(256,256B,34CFR300) Compliance.

41.136(1) General. A private school official has the right to submit a complaint to the department that the AEA:

- a. Did not engage in consultation that was meaningful and timely; or
- b. Did not give due consideration to the views of the private school official.

41.136(2) Procedure.

a. If the private school official wishes to submit a complaint, the official must provide to the department the basis of the noncompliance by the AEA with the applicable private school provisions in this chapter; and

b. The AEA must forward the appropriate documentation to the department.

c. If the private school official is dissatisfied with the decision of the department, the official may submit a complaint to the Secretary by providing the information on noncompliance described in paragraph 41.136(2) "a." The department must forward the appropriate documentation to the Secretary.

281—41.137(256,256B,34CFR300) Equitable services determined.

41.137(1) Nature and scope of individual right to special education and related services. Each parentally placed private school child with a disability has a right to receive any special education or related services permitted by Iowa Code section 256.12. Funding for and accounting for such services shall be determined by the provisions of Part B of the Act, this chapter, and Iowa Code section 256.12.

41.137(2) Decisions. Decisions about the services that will be provided to parentally placed private school children with disabilities funded by Part B of the Act under rules 281—41.130(256,256B,34CFR300) to 281—41.144(256,256B,34CFR300) must be made in accordance with subrules 41.134(4) and 41.137(3). The AEA must make the final decisions with respect to the services to be provided to eligible parentally placed private school children with disabilities and funded by Part B of the Act.

41.137(3) IEP for parentally placed private school children with disabilities. The AEA or LEA must offer to develop an IEP for each child with a disability who is enrolled in a religious or other private school by the child's parents and develop an IEP if one is requested, pursuant to this chapter. An IEP is offered and prepared pursuant to Iowa Code section 256.12. There is no need to prepare a services plan (see rule 281—41.37(34CFR300)) for such a student. A parent of a child with a disability who is voluntarily enrolled in a private school may not reject an IEP and demand a services plan instead. At any IEP team meeting for a parentally placed private school student with a disability, the AEA or LEA must ensure that a representative of the private school attends each meeting. If the representative cannot attend, the AEA or LEA shall use other methods to ensure participation by the private school, including individual or conference telephone calls.

281—41.138(256,256B,34CFR300) Equitable services provided.

41.138(1) General. The services provided to parentally placed private school children with disabilities must be provided by personnel meeting the same standards as personnel providing services in the public schools, except that private elementary school and secondary school teachers who are providing equitable services to parentally placed private school children with disabilities do not have to meet the special education teacher requirements of rule 281—41.156(256B,34CFR300). Parentally placed private school children with disabilities receive the special education and related services required by Iowa Code section 256.12, although the source of the funding for such education and services may be different than funding for education and services for children with disabilities in public schools.

41.138(2) Services provided in accordance with an IEP. Each parentally placed private school child with a disability who will receive special education and related services pursuant to the Act and Iowa Code section 256.12 must have an IEP developed in accordance with this chapter.

41.138(3) Provision of equitable services. The provision of services pursuant to this rule and rules 281—41.139(256,256B,34CFR300) to 281—41.143(256,256B,34CFR300) must be provided by

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employees of a public agency or through contract by the public agency with an individual, association, agency, organization, or other entity.

41.138(4) *Secular, neutral and nonideological.* Special education and related services, including materials and equipment, provided to parentally placed private school children with disabilities, including children attending religious schools, must be secular, neutral, and nonideological.

281—41.139(256,256B,34CFR300) Location of services and transportation.

41.139(1) *Services on private school premises.* Services to parentally placed private school children with disabilities may be provided on the premises of private, including religious, schools to the extent consistent with Iowa Code section 256.12.

41.139(2) *Transportation.**a. General.*

(1) If necessary for the child to benefit from or participate in the services provided under this chapter, a parentally placed private school child with a disability must be provided transportation from the child's school or the child's home to a site other than the private school and from the service site to the private school or to the child's home, depending on the timing of the services.

(2) AEAs or LEAs are not required to provide transportation from the child's home to the private school.

b. Cost of transportation. The cost of the transportation described in subparagraph 41.139(2) "a"(1) may be included in calculating whether the AEA has met the requirement of rule 281—41.133(256,256B,34CFR300).

281—41.140(256,256B,34CFR300) Due process complaints and state complaints.

41.140(1) *When due process complaints available.* Pursuant to Iowa Code section 256.12, parents of children with disabilities who are voluntarily placed in accredited nonpublic schools may file a due process complaint as provided in rules 281—41.504(256B,34CFR300) to 281—41.519(256B,34CFR300), except as provided in subrule 41.140(2).

41.140(2) *When due process complaints unavailable.* The procedures in rules 281—41.504(256B,34CFR300) to 281—41.519(256B,34CFR300) may not be used to challenge the particular amount of services funded by Part B that a parentally placed private school child with disabilities receives unless the allegation is made that the child was denied FAPE under Iowa Code section 256.12, but a parent of a child with a disability may file a due process complaint alleging the AEA failed to comply with the child find requirements of rule 281—41.131(256,256B,34CFR300). A private school official may not file a due process complaint under this chapter.

41.140(3) *State complaints.* Any complaint that an SEA or AEA has failed to meet the requirements in rules 281—41.132(256,256B,34CFR300) to 281—41.135(256,256B,34CFR300) and 281—41.137(256,256B,34CFR300) to 281—41.144(256,256B,34CFR300) must be filed in accordance with the procedures described in rules 281—41.151(256B,34CFR300) to 281—41.153(256B,34CFR300). A complaint filed by a private school official under subrule 41.136(1) must be filed with the SEA in accordance with the procedures in subrule 41.136(2).

281—41.141(256,256B,34CFR300) Requirement that funds not benefit a private school.

41.141(1) *Funds may not benefit private school.* An AEA may not use funds provided under Section 611 or 619 of the Act to finance the existing level of instruction in a private school or to otherwise benefit the private school.

41.141(2) *Funds only for special education.* The AEA must use funds provided under Part B of the Act to meet the special education and related services needs of parentally placed private school children with disabilities, but not for meeting either of the following needs:

- a.* The needs of a private school; or
- b.* The general needs of the students enrolled in the private school.

281—41.142(256,256B,34CFR300) Use of personnel.

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41.142(1) Use of public school personnel. An AEA may use funds available under Sections 611 and 619 of the Act to make public school personnel available in other than public facilities based on the following two criteria:

a. If and to the extent necessary to provide services under rules 281—41.130(256,256B,34CFR300) to 281—41.144(256,256B,34CFR300) for parentally placed private school children with disabilities; and

b. If those services are not normally provided by the private school.

41.142(2) Use of private school personnel. An AEA may use funds available under Sections 611 and 619 of the Act to pay for the services of an employee of a private school to provide services under rules 281—41.130(256,256B,34CFR300) to 281—41.144(256,256B,34CFR300) if the following two conditions are met:

a. The employee performs the services outside of the employee's regular hours of duty; and

b. The employee performs the services under public supervision and control.

281—41.143(256,256B,34CFR300) Separate classes prohibited. An AEA may not use funds available under Section 611 or 619 of the Act for classes that are organized separately on the basis of school enrollment or religion of the children if the classes are at the same site; and the classes include both children enrolled in public schools and children enrolled in private schools.

281—41.144(256,256B,34CFR300) Property, equipment, and supplies.

41.144(1) General. A public agency must control and administer the funds used to provide special education and related services under rules 281—41.137(256,256B,34CFR300) to 281—41.139(256,256B,34CFR300) and hold title to and administer materials, equipment, and property purchased with those funds for the uses and purposes provided in the Act.

41.144(2) Equipment and supplies on private school premises only while needed. The public agency may place equipment and supplies in a private school for the period of time needed for the Part B program.

41.144(3) Public agency to supervise placement and use of equipment and supplies. The public agency must ensure that the equipment and supplies placed in a private school are used only for Part B purposes and can be removed from the private school without remodeling the private school facility.

41.144(4) Duty to remove equipment and supplies. The public agency must remove equipment and supplies from a private school if the equipment and supplies are no longer needed for Part B purposes or removal is necessary to avoid unauthorized use of the equipment and supplies for other than Part B purposes.

41.144(5) No Part B funds for repair or construction. No funds under Part B of the Act may be used for repairs, minor remodeling, or construction of private school facilities.

281—41.145(256B,34CFR300) Applicability of rules 281—41.146(256B,34CFR300) and 281—41.147(256B,34CFR300). Rules 281—41.146(256B,34CFR300) and 281—41.147(256B,34CFR300) apply only to children with disabilities who are or have been placed in or referred to a private school or facility by a public agency as a means of providing special education and related services.

281—41.146(256B,34CFR300) Responsibility of department. The department must ensure the following for each child with a disability who is placed in or referred to a private school or facility by a public agency.

41.146(1) FAPE. The child is provided special education and related services in conformance with an IEP that meets the requirements of rules 281—41.320(256B,34CFR300) to 281—41.325(256B,34CFR300) and at no cost to the parents.

41.146(2) Meet state standards. The child is provided an education that meets the standards that apply to education provided by the SEA and LEAs, including the requirements of this chapter except for subrule 41.156(3).

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41.146(3) *All rights.* The child has all of the rights of a child with a disability who is served by a public agency.

281—41.147(256B,34CFR300) Implementation by department. In implementing rule 281—41.146(256B,34CFR300), the department must monitor compliance through procedures such as written reports, on-site visits, and parent questionnaires; disseminate copies of applicable standards to each private school and facility to which a public agency has referred or placed a child with a disability; and provide an opportunity for those private schools and facilities to participate in the development and revision of state standards that apply to them.

281—41.148(256B,34CFR300) Placement of children by parents when FAPE is at issue.

41.148(1) *General.* An LEA or AEA is not required to pay for the cost of education, including special education and related services, of a child with a disability at a private school or facility if that agency made FAPE available to the child and the parents elected to place the child in a private school or facility. However, the public agency must include that child in the population whose needs are addressed consistent with rules 281—41.131(256,256B,34CFR300) to 281—41.144(256,256B,34CFR300) and Iowa Code section 256.12.

41.148(2) *Disagreements about FAPE.* Disagreements between the parents and a public agency regarding the availability of a program appropriate for the child, and the question of financial reimbursement, are subject to the due process procedures in rules 281—41.504(256B,34CFR300) to 281—41.520(256B,34CFR300).

41.148(3) *Reimbursement for private school placement.* If the parents of a child with a disability who previously received special education and related services under the authority of a public agency enroll the child in a private preschool, elementary school, or secondary school without the consent of or referral by the public agency, a court or an administrative law judge may require the agency to reimburse the parents for the cost of that enrollment if the court or administrative law judge finds that the agency had not made FAPE available to the child in a timely manner prior to that enrollment and that the private placement is appropriate. A parental placement may be found to be appropriate by an administrative law judge or a court even if it does not meet the state standards that apply to education provided by the SEA and LEAs.

41.148(4) *Limitation on reimbursement.* The cost of reimbursement described in subrule 41.148(3) may be reduced or denied in any of the following cases.

a. At the most recent IEP team meeting that the parents attended prior to removal of the child from the public school, the parents did not inform the IEP team that they were rejecting the placement proposed by the public agency to provide FAPE to their child, including stating their concerns and their intent to enroll their child in a private school at public expense;

b. At least ten business days, including any holidays that occur on a business day, prior to the removal of the child from the public school, the parents did not give written notice to the public agency of the information described in paragraph 41.148(4)“*a*”;

c. If, prior to the parents’ removal of the child from the public school, the public agency informed the parents, through the notice requirements described in paragraph 41.503(1)“*a*,” of its intent to evaluate the child, including a statement of the purpose of the evaluation that was appropriate and reasonable, but the parents did not make the child available for the evaluation; or

d. Upon a judicial finding of unreasonableness with respect to actions taken by the parents.

41.148(5) *Exceptions.* Notwithstanding the notice requirement in paragraphs 41.148(4)“*a*” and “*b*,” the cost of reimbursement:

a. Must not be reduced or denied for failure to provide the notice if:

(1) The school prevented the parents from providing the notice;

(2) The parents had not received notice, pursuant to rule 281—41.504(256B,34CFR300), of the notice requirement in paragraphs 41.148(4)“*a*” and “*b*”; or

(3) Compliance with paragraphs 41.148(4)“*a*” and “*b*” would likely result in physical harm to the child; and

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b. May, in the discretion of the court or an administrative law judge, not be reduced or denied for failure to provide this notice if:

- (1) The parents are not literate or cannot write in English; or
- (2) Compliance with paragraphs 41.148(4) “*a*” and “*b*” would likely result in serious emotional harm to the child.

281—41.149(256B,34CFR300) SEA responsibility for general supervision. The state shall exercise general supervision over the implementation of Part B of the Act and this chapter. Part B of the Act does not limit the responsibility of agencies other than educational agencies for providing or paying for some or all of the costs of FAPE to eligible individuals.

281—41.150 Reserved.

281—41.151(256B,34CFR300) Adoption of state complaint procedures.

41.151(1) General. The state maintains written procedures for the following:

a. Resolving any complaint, including a complaint filed by an organization or individual from another state, that meets the requirements of rule 281—41.153(256B,34CFR300) by providing for the filing of a complaint with the department.

b. Widely disseminating to parents and other interested individuals, including parent training and information centers, protection and advocacy agencies, independent living centers, and other appropriate entities, the state procedures under rules 281—41.151(256B,34CFR300) to 281—41.153(256B,34CFR300).

41.151(2) Remedies for denial of appropriate services. In resolving a complaint in which the state has found a failure to provide appropriate services, the state, pursuant to its general supervisory authority under Part B of the Act, shall address the following:

- a.* The failure to provide appropriate services, including corrective action appropriate to address the needs of the child, such as compensatory services or monetary reimbursement; and
- b.* Appropriate future provision of services for all children with disabilities.

281—41.152(256B,34CFR300) Minimum state complaint procedures.

41.152(1) Time limit; minimum procedures. The state shall include in its complaint procedures a time limit of 60 days after a complaint is filed under rule 281—41.153(256B,34CFR300) to do the following:

a. Carry out an independent on-site investigation, if the state determines that an investigation is necessary;

b. Give the complainant the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint;

c. Provide the public agency with the opportunity to respond to the complaint, including, at a minimum:

- (1) At the discretion of the public agency, a proposal to resolve the complaint; and
- (2) An opportunity for a parent who has filed a complaint and the public agency to voluntarily engage in mediation consistent with rules 281—41.506(256B,34CFR300) and 281—41.1002(256B,34CFR300);

d. Review all relevant information and make an independent determination as to whether the public agency is violating a requirement of Part B of the Act or of this chapter; and

e. Issue a written decision to the complainant that addresses each allegation in the complaint and contains:

- (1) Findings of fact and conclusions; and
- (2) The reasons for the state’s final decision.

41.152(2) Time extension; final decision; implementation. The state’s procedures described in subrule 41.152(1) shall do the following:

- a.* Permit an extension of the time limit under subrule 41.152(1) only if:

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- (1) Exceptional circumstances exist with respect to a particular complaint; or
- (2) The parent or individual or organization and the public agency involved agree to extend the time to engage in mediation pursuant to subparagraph 41.152(1)“c”(2), or to engage in other alternative means of dispute resolution, if available in the state; and

b. Include procedures for effective implementation of the state’s final decision, if needed, including:

- (1) Technical assistance activities;
- (2) Negotiations; and
- (3) Corrective actions to achieve compliance.

41.152(3) *Complaints filed under this rule and due process hearings.* If a written complaint is received that is also the subject of a due process hearing under rule 281—41.507(256B,34CFR300) or 281—41.530(256B,34CFR300) to 281—41.532(256B,34CFR300), or that contains multiple issues of which one or more are part of that hearing, the state must set aside any part of the complaint that is being addressed in the due process hearing until the conclusion of the hearing. However, any issue in the complaint that is not a part of the due process action must be resolved using the time limit and procedures described in subrules 41.152(1) and 41.152(2). If an issue raised in a complaint filed under this rule has previously been decided in a due process hearing involving the same parties, the due process hearing decision is binding on that issue and the state must inform the complainant to that effect. A complaint alleging a public agency’s failure to implement a due process hearing decision must be resolved by the state.

281—41.153(256B,34CFR300) Filing a complaint.

41.153(1) *Complainant.* An organization or individual may file a signed written complaint under the procedures described in rules 281—41.151(256B,34CFR300) and 281—41.152(256B,34CFR300).

41.153(2) *Contents of complaint.* The complaint must include the following:

a. A statement that a public agency has violated a requirement of Part B of the Act or of this chapter;

b. The facts on which the statement is based;

c. The signature and contact information for the complainant; and

d. If alleging violations with respect to a specific child:

(1) The name and address of the residence of the child;

(2) The name of the school the child is attending;

(3) In the case of a homeless child or youth within the meaning of Section 725(2) of the McKinney-Vento Homeless Assistance Act, 42 U.S.C. 11434a(2), available contact information for the child, and the name of the school the child is attending;

(4) A description of the nature of the problem of the child, including facts relating to the problem; and

(5) A proposed resolution of the problem to the extent known and available to the party at the time the complaint is filed.

41.153(3) *Time limit.* The complaint must allege a violation that occurred not more than one year prior to the date that the complaint is received in accordance with rule 281—41.151(256B,34CFR300).

41.153(4) *Complainant must provide copy of complaint to AEA and LEA.* The party filing the complaint must forward a copy of the complaint to the AEA and LEA or public agency serving the child at the same time the party files the complaint with the state.

41.153(5) *Failure to comply with due process hearing decision, mediation agreement, resolution meeting agreement.* A complainant may allege a public agency has failed to comply with a due process hearing decision, or a mediation agreement, or a resolution meeting agreement. If the complaint is substantiated, the state will grant appropriate relief.

281—41.154(256B,34CFR300) Methods of ensuring services.

41.154(1) *Interagency agreements.* An interagency agreement or other mechanism for interagency coordination shall be developed between each noneducational public agency described in subrule

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41.154(2) and the SEA, in order to ensure that all services described in paragraph 41.154(2)“a” that are needed to ensure FAPE are provided, including the provision of these services during the pendency of any dispute under paragraph “c” of this subrule. The agreement or mechanism must include the following:

a. An identification of, or a method for defining, the financial responsibility of each agency for providing services described in paragraph 41.154(2)“a” to ensure FAPE to children with disabilities. The financial responsibility of each noneducational public agency described in subrule 41.154(2), including the state Medicaid agency and other public insurers of children with disabilities, must precede the financial responsibility of the LEA (or the state agency responsible for developing the child’s IEP).

b. The conditions, terms, and procedures under which an LEA must be reimbursed by other agencies.

c. Procedures for resolving interagency disputes, including procedures under which LEAs may initiate proceedings, under the agreement or other mechanism to secure reimbursement from other agencies or otherwise implement the provisions of the agreement or mechanism.

d. Policies and procedures for agencies to determine and identify the interagency coordination responsibilities of each agency to promote the coordination and timely and appropriate delivery of services described in paragraph 41.154(2)“a.”

41.154(2) *Obligation of noneducational public agencies.*

a. General rule.

(1) If any public agency other than an educational agency is otherwise obligated under federal or state law, or assigned responsibility under state policy or pursuant to subrule 41.154(1), to provide or pay for any services that are also considered special education or related services (such as, but not limited to, services described in rule 281—41.5(256B,34CFR300) relating to assistive technology devices, rule 281—41.6(256B,34CFR300) relating to assistive technology services, rule 281—41.34(256B,34CFR300) relating to related services, rule 281—41.42(256B,34CFR300) relating to supplementary aids and services, and rule 281—41.43(256B,34CFR300) relating to transition services) that are necessary for ensuring FAPE to children with disabilities within the state, the public agency must fulfill that obligation or responsibility, either directly or through contract or other arrangement pursuant to subrule 41.154(1) or an agreement pursuant to subrule 41.154(3).

(2) A noneducational public agency described in subparagraph 41.154(2)“a”(1) may not disqualify an eligible service for Medicaid reimbursement because that service is provided in a school context.

b. Failure to comply with general rule. If a public agency other than an educational agency fails to provide or pay for the special education and related services described in paragraph 41.154(2)“a,” the LEA (or state agency responsible for developing the child’s IEP) must provide or pay for these services to the child in a timely manner. The LEA or state agency is authorized to claim reimbursement for the services from the noneducational public agency that failed to provide or pay for these services, and that agency must reimburse the LEA or state agency in accordance with the terms of the interagency agreement or other mechanism described in subrule 41.154(1).

41.154(3) *Special rule.* The requirements of subrule 41.154(1) may be met through the following:

a. State statute or regulation;

b. Signed agreements between respective agency officials that clearly identify the responsibilities of each agency relating to the provision of services; or

c. Other appropriate written methods as determined by the chief executive officer of the state or designee of that officer and approved by the Secretary.

41.154(4) *Children with disabilities who are covered by public benefits or insurance.*

a. General. A public agency may use the Medicaid or other public benefits or insurance programs in which a child participates to provide or pay for services required under this chapter, as permitted under the public benefits or insurance program, except as provided in paragraphs 41.154(4)“b” through “d.”

b. Exceptions to ability to use public benefits or insurance. With regard to services required to provide FAPE to an eligible child under this chapter, the public agency:

(1) May not require parents to sign up for or enroll in public benefits or insurance programs in order for their child to receive FAPE under Part B of the Act;

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(2) May not require parents to incur an out-of-pocket expense such as the payment of a deductible or copay amount incurred in filing a claim for services provided pursuant to this chapter but, pursuant to paragraph 41.154(6) "b," may pay the cost that the parents otherwise would be required to pay; and

(3) May not use a child's benefits under a public benefits or insurance program if that use would do any of the following:

1. Decrease available lifetime coverage or any other insured benefit;
2. Result in the family's paying for services that would otherwise be covered by the public benefits or insurance program and that are required for the child outside of the time the child is in school;
3. Increase premiums or lead to the discontinuation of benefits or insurance; or
4. Risk loss of eligibility for home- and community-based waivers, based on aggregate health-related expenditures.

c. Consent requirements. Prior to accessing a child's or parent's public benefits or insurance for the first time, and after providing notification to the child's parents consistent with paragraph 41.154(4) "d," the public agency must obtain written parental consent that:

(1) Meets the requirements of 34 CFR Section 99.30 and rule 281—41.622(256B,34CFR300), which consent must specify the personally identifiable information that may be disclosed (e.g., records or information about the services that may be provided to a particular child), the purpose of the disclosure (e.g., billing for services under this chapter), and the agency to which the disclosure may be made (e.g., the state's public benefits or insurance program (e.g., Medicaid)); and

(2) Specifies that the parent understands and agrees that the public agency may access the parent's or child's public benefits or insurance to pay for services under this chapter.

d. Notification requirements. Prior to accessing a child's or parent's public benefits or insurance for the first time, and annually thereafter, the public agency must provide written notification, consistent with subrule 41.503(3), to the child's parents, that includes:

- (1) A statement of the parental consent provisions in paragraph 41.154(4) "c";
- (2) A statement of the "no cost" provisions in paragraph 41.154(4) "b";
- (3) A statement that the parents have the right under 34 CFR Part 99 and this chapter to withdraw their consent to disclosure of their child's personally identifiable information to the agency responsible for the administration of the state's public benefits or insurance program (e.g., Medicaid) at any time; and

(4) A statement that the withdrawal of consent or refusal to provide consent under 34 CFR Part 99 and this chapter to disclose personally identifiable information to the agency responsible for the administration of the state's public benefits or insurance program (e.g., Medicaid) does not relieve the public agency of its responsibility to ensure that all required services are provided at no cost to the parents.

41.154(5) Children with disabilities who are covered by private insurance.

a. General. With regard to services required to provide FAPE to an eligible child under this chapter, a public agency may access the parents' private insurance proceeds only if the parents provide consent consistent with rule 281—41.9(256B,34CFR300).

b. Obtaining access to private insurance proceeds. Each time the public agency proposes to access the parents' private insurance proceeds, the agency must:

- (1) Obtain parental consent in accordance with paragraph 41.154(5) "a"; and
- (2) Inform the parents that their refusal to permit the public agency to access their private insurance does not relieve the public agency of its responsibility to ensure that all required services are provided at no cost to the parents.

41.154(6) Use of Part B funds.

a. Agency unable to obtain consent. If a public agency is unable to obtain parental consent to use the parents' private insurance, or public benefits or insurance when the parents would incur a cost for a specified service required under this chapter, to ensure FAPE, the public agency may use its Part B funds to pay for the service.

b. Use of Part B funds to avoid cost to parents. To avoid financial cost to parents who otherwise would consent to use private insurance, or public benefits or insurance if the parents would incur a cost,

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the public agency may use its Part B funds to pay the cost that the parents otherwise would have to pay to use the parents' benefits or insurance (e.g., the deductible or copay amounts).

41.154(7) *Proceeds from public benefits or insurance or private insurance.* Proceeds from public benefits or insurance or private insurance will not be treated as program income for purposes of 34 CFR 80.25. If a public agency spends reimbursements from federal funds (e.g., Medicaid) for services under this chapter, those funds will not be considered state or local funds for purposes of the maintenance of effort provisions in rules 281—41.163(256B,34CFR300) and 281—41.203(256B,34CFR300).

41.154(8) *Rule of construction.* Nothing in this chapter should be construed to alter the requirements imposed on a state Medicaid agency, or any other agency administering a public benefits or insurance program by federal statute, regulations or policy under Title XIX or Title XXI of the Social Security Act, 42 U.S.C. 1396 through 1396v and 42 U.S.C. 1397aa through 1397jj, or any other public benefits or insurance program.

281—41.155(256B,34CFR300) *Hearings relating to AEA or LEA eligibility.* The department shall not make any final determination that an AEA or LEA is not eligible for assistance under Part B of the Act without first giving the AEA or LEA reasonable notice and an opportunity for a hearing under 34 CFR 76.401(d).

281—41.156(256B,34CFR300) *Personnel qualifications.*

41.156(1) *General.* The SEA must establish and maintain qualifications to ensure that personnel necessary to carry out the purposes of Part B of the Act and of this chapter are appropriately and adequately prepared, trained, and licensed, including ensuring that those personnel have the content knowledge and skills to serve children with disabilities.

41.156(2) *Related services personnel and paraprofessionals.* The qualifications under subrule 41.156(1) must include qualifications for related services personnel and paraprofessionals that:

a. Are consistent with any state-approved or state-recognized certification, licensing, registration, or other comparable requirements that apply to the professional discipline in which those personnel are providing special education or related services; and

b. Ensure that related services personnel who deliver services in their discipline or profession:

(1) Meet the requirements of paragraph 41.156(2)“*a*”; and

(2) Have not had certification or licensure requirements waived on an emergency, temporary, or provisional basis; and

(3) Allow paraprofessionals and assistants who are appropriately trained and supervised, in accordance with state law, regulation, or written policy, in meeting the requirements of this chapter to be used to assist in the provision of special education and related services under this chapter to children with disabilities.

41.156(3) *Qualifications for special education teachers.* The qualifications described in subrule 41.156(1) must ensure that each person employed as a public school special education teacher in the state who teaches in an elementary school, middle school, or secondary school meets the following standards:

a. The teacher has obtained full state certification as a special education teacher, including certification obtained through alternative routes to certification, or has passed the state special education teacher licensing examination and holds a license to teach in the state as a special education teacher, except that a teacher teaching in a public charter school must meet the certification or licensing requirements, if any, set forth in the state's public charter school law;

b. The teacher has not had special education certification or licensure requirements waived on an emergency, temporary, or provisional basis; and

c. The teacher holds at least a bachelor's degree.

41.156(4) *Policy.* In implementing this rule, the state must adopt a policy that includes a requirement that AEAs and LEAs in the state take measurable steps to recruit, hire, train, and retain personnel described in this rule to provide special education and related services under Part B of the Act and this chapter to children with disabilities.

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41.156(5) *Rule of construction.* Notwithstanding any other individual right of action that a parent or student may maintain under this chapter, nothing in this chapter shall be construed to create a right of action on behalf of an individual student or a class of students for the failure of a particular SEA, AEA, or LEA employee to meet the requirements of this rule, or to prevent a parent from filing a complaint about staff qualifications with the SEA as provided for under this chapter.

41.156(6) *Positive efforts to employ and advance qualified individuals with disabilities.* Each recipient of assistance under Part B of the Act must make positive efforts to employ, and advance in employment, qualified individuals with disabilities in programs assisted under Part B of the Act.

41.156(7) *Additional rules of construction.*

a. A special educator teaching in one or more core academic subjects must be appropriately licensed in each core academic subject or must collaborate with an appropriately licensed teacher.

b. A teacher will be considered to meet the standard in subrule 41.156(3) if that teacher is participating in an alternative route to special education certification program as follows:

(1) The teacher meets the following requirements:

1. Before and while teaching, receives high-quality professional development that is sustained, intensive, and classroom-focused in order to have a positive and lasting impact on classroom instruction;

2. Participates in a program of intensive supervision that consists of structured guidance and regular ongoing support for teachers or in a teacher mentoring program;

3. Assumes functions as a teacher only for a specified period of time not to exceed three years; and

4. Demonstrates satisfactory progress toward full certification as prescribed by the state; and

(2) The state ensures, through its certification and licensure process, that the provisions in subparagraph 41.156(7) “b”(1) are met.

281—41.157 to 41.159 Reserved.

281—41.160(256B,34CFR300) Participation in assessments.

41.160(1) *General.* The state must ensure that all children with disabilities are included in all general state and districtwide assessment programs, including assessments described under Section 1111 of the ESEA, 20 U.S.C. Section 6311, with appropriate accommodations and alternate assessments, if necessary, as indicated in their respective IEPs.

41.160(2) *Accommodation guidelines.*

a. The state (or, in the case of a districtwide assessment, an LEA) must develop guidelines for the provision of appropriate accommodations.

b. The state’s (or, in the case of a districtwide assessment, the LEA’s) guidelines must:

(1) Identify only those accommodations for each assessment that do not invalidate the score; and

(2) Instruct IEP teams to select, for each assessment, only those accommodations that do not invalidate the score.

41.160(3) *Alternate assessments.*

a. The state (or, in the case of a districtwide assessment, an LEA) must develop and implement alternate assessments and guidelines for the participation of children with disabilities in alternate assessments for those children who cannot participate in regular assessments, even with accommodations, as indicated in their respective IEPs, as provided in subrule 41.160(1).

b. For assessing the academic progress of students with disabilities under Title I of the ESEA, the alternate assessments and guidelines in paragraph 41.160(3) “a” must provide for alternate assessments that:

(1) Are aligned with the state’s challenging academic content standards and challenging student academic achievement standards;

(2) If the state has adopted alternate academic achievement standards permitted in 34 CFR 200.1(d), measure the achievement of children with the most significant cognitive disabilities against those standards; and

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(3) Except as provided in subparagraph 41.160(3) “b”(2), a state’s alternate assessments, if any, must measure the achievement of children with disabilities against the state’s grade-level academic achievement standards, consistent with 34 CFR 200.6(a)(2)(ii)(A).

c. Consistent with 34 CFR 200.1(e), a state may not adopt modified academic achievement standards for any students with disabilities under Section 602(3) of the Act.

41.160(4) *Explanation to IEP teams.* The state (or, in the case of a districtwide assessment, an LEA) must provide IEP teams with a clear explanation of the differences between assessments based on grade-level academic achievement standards and those based on alternate academic achievement standards, including any effects of state or local policies on the student’s education resulting from taking an alternate assessment based on alternate academic achievement standards (such as whether only satisfactory performance on a regular assessment would qualify a student for a regular high school diploma).

41.160(5) *Inform parents.* The state (or, in the case of a districtwide assessment, an LEA) must ensure that parents of students selected to be assessed based on alternate academic achievement standards are informed that their child’s achievement will be measured based on alternate academic achievement standards.

41.160(6) *Reports.* The state (or, in the case of a districtwide assessment, an LEA) must make available to the public, and report to the public with the same frequency and in the same detail as it reports on the assessment of nondisabled children, the following:

a. The number of children with disabilities participating in regular assessments, and the number of those children who were provided accommodations (that did not result in an invalid score) in order to participate in those assessments.

b. The number of children with disabilities, if any, participating in alternate assessments based on grade-level academic achievement standards.

c. The number of children with disabilities, if any, participating in alternate assessments based on modified academic achievement standards in school years prior to 2015-2016.

d. The number of children with disabilities, if any, participating in alternate assessments based on alternate academic achievement standards.

e. Compared with the achievement of all children, including children with disabilities, the performance results of children with disabilities on regular assessments, alternate assessments based on grade-level academic achievement standards, alternate assessments based on modified academic achievement standards (prior to 2015-2016), and alternate assessments based on alternate academic achievement standards if:

(1) The number of children participating in those assessments is sufficient to yield statistically reliable information; and

(2) Reporting that information will not reveal personally identifiable information about an individual student on those assessments.

41.160(7) *Universal design.* The state (or, in the case of a districtwide assessment, an LEA) must, to the extent possible, use universal design principles in developing and administering any assessments under this rule.

281—41.161 Reserved.

281—41.162(256B,34CFR300) Supplementation of state, local, and other federal funds.

41.162(1) *Expenditures.* Funds paid to a state under this chapter must be expended in accordance with all the provisions of this chapter.

41.162(2) *Prohibition against commingling.*

a. Funds paid to a state under this chapter must not be commingled with state funds.

b. The requirement in paragraph 41.162(2) “a” is satisfied by the use of a separate accounting system that includes an audit trail of the expenditure of funds paid to a state under this chapter. Separate bank accounts are not required. (See 34 CFR 76.702, fiscal control and fund accounting procedures.)

41.162(3) *State-level nonsupplanting.*

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a. Except as provided in rule 281—41.203(256B,34CFR300), funds paid to a state under Part B of the Act must be used to supplement the level of federal, state, and local funds, including funds that are not under the direct control of the SEA or LEAs, expended for special education and related services provided to children with disabilities under Part B of the Act, and in no case to supplant those federal, state, and local funds.

b. If the state provides clear and convincing evidence that all children with disabilities have available to them FAPE, the Secretary may waive, in whole or in part, the requirements of paragraph 41.162(3)“*a*” if the Secretary concurs with the evidence provided by the state under 34 CFR Section 300.164.

281—41.163(256B,34CFR300) Maintenance of state financial support. The state must not reduce the amount of state financial support for special education and related services for children with disabilities, or otherwise made available because of the excess costs of educating those children, below the amount of that support for the preceding fiscal year.

281—41.164 Reserved.

281—41.165(256B,34CFR300) Public participation.

41.165(1) General. Prior to the adoption of any policies and procedures needed to comply with Part B of the Act, including any amendments to those policies and procedures, the state must ensure that there are public hearings, adequate notice of the hearings, and an opportunity for comment available to the general public, including individuals with disabilities and parents of children with disabilities.

41.165(2) State plan. Before submitting a state plan under this chapter, the state must comply with the public participation requirements in subrule 41.165(1) and those in 20 U.S.C. 1232d(b)(7).

281—41.166(256B,34CFR300) Rule of construction. In complying with rules 281—41.162(256B,34CFR300) and 281—41.163(256B,34CFR300), the state may not use funds paid to it under this chapter to satisfy state-mandated funding obligations to LEAs, including funding based on student attendance or enrollment, or inflation.

281—41.167(256B,34CFR300) State advisory panel. An advisory panel is established and maintained for the purpose of providing policy guidance with respect to special education and related services for children with disabilities in the state.

281—41.168(256B,34CFR300) Advisory panel membership.

41.168(1) General. The advisory panel must consist of members appointed by the director of education, be representative of the state population and be composed of individuals involved in or concerned with the education of children with disabilities, including:

- a.* Parents of children with disabilities aged birth to 26;
- b.* Individuals with disabilities;
- c.* Teachers;
- d.* Representatives of institutions of higher education that prepare special education and related services personnel;
- e.* State and local education officials, including officials who carry out activities under Subtitle B of Title VII of the McKinney-Vento Homeless Assistance Act, 42 U.S.C. 11431 et seq.;
- f.* Administrators of programs for children with disabilities;
- g.* Representatives of other state agencies involved in the financing or delivery of related services to children with disabilities;
- h.* Representatives of private schools and public charter schools;
- i.* At least one representative of a vocational, community, or business organization concerned with the provision of transition services to children with disabilities;
- j.* A representative from the state child welfare agency responsible for foster care; and
- k.* Representatives from the state juvenile and adult corrections agencies.

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41.168(2) *Special rule.* A majority of the members of the panel must be individuals with disabilities or parents of children with disabilities aged birth to 26.

281—41.169(256B,34CFR300) Advisory panel duties. The advisory panel must:

1. Advise the department of unmet needs within the state in the education of children with disabilities;
2. Comment publicly on any rules or regulations proposed by the state regarding the education of children with disabilities;
3. Advise the department in developing evaluations and reporting on data to the Secretary under Section 618 of the Act;
4. Advise the department in developing corrective action plans to address findings identified in federal monitoring reports under Part B of the Act;
5. Advise the department in developing and implementing policies relating to the coordination of services for children with disabilities; and
6. Advise the department on eligible individuals with disabilities in adult prisons.

281—41.170(256B,34CFR300) Suspension and expulsion rates.

41.170(1) *General.* The department must examine data, including data disaggregated by race and ethnicity, to determine if significant discrepancies are occurring in the rate of long-term suspensions and expulsions of children with disabilities:

- a. Among LEAs in the state; or
- b. Compared to the rates for nondisabled children within an LEA.

41.170(2) *Review and revision of policies.* If the discrepancies described in subrule 41.170(1) are occurring, the department must review and, if appropriate, revise (or require the affected state agency or LEA to revise) its policies, procedures, and practices relating to the development and implementation of IEPs, the use of positive behavioral interventions and supports, and procedural safeguards to ensure that these policies, procedures, and practices comply with the Act.

281—41.171 Reserved.

281—41.172(256B,34CFR300) Access to instructional materials.

41.172(1) *General.* The state:

a. Adopts the National Instructional Materials Accessibility Standard (NIMAS) published in the Federal Register on July 19, 2006 (71 Fed. Reg. 41084), for the purposes of providing instructional materials to persons who are blind or visually impaired or other persons with print disabilities in a timely manner; and

b. Establishes the following definition of “timely manner” for purposes of this chapter: Providing instructional materials in accessible formats to children with disabilities in a “timely manner” means delivering those accessible instructional materials at the same time as other children receive instructional materials.

41.172(2) *Public agencies.* All public agencies must comply with rule 281—41.210(256B,34CFR300).

41.172(3) *Assistive technology.* In carrying out this rule, the department, to the maximum extent possible, must work collaboratively with the state agency responsible for assistive technology programs.

281—41.173(256B,34CFR300) Overidentification and disproportionality. Each public agency shall implement policies and procedures developed by the department designed to prevent the inappropriate overidentification or disproportionate representation by race and ethnicity of children as children with disabilities, including children with disabilities with a particular impairment.

281—41.174(256B,34CFR300) Prohibition on mandatory medication.

41.174(1) *General.* No public agency personnel are permitted to require parents to obtain a prescription for substances identified under Schedule I, II, III, IV, or V in Section 202(c) of the

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Controlled Substances Act (21 U.S.C. 812(c)) for a child as a condition of attending school, receiving an evaluation or services under Part B or this chapter.

41.174(2) *Rule of construction.* Nothing in subrule 41.174(1) shall be construed to create a federal prohibition against teachers and other school personnel consulting or sharing classroom-based observations with parents or guardians regarding a student's academic and functional performance, or behavior in the classroom or school, or regarding the need for evaluation for special education or related services under rule 281—41.111(256B,34CFR300) related to child find.

281—41.175 Reserved.

281—41.176(256B) Special school provisions.

41.176(1) *Providers.* Special schools for eligible individuals who require special education outside the general education environment may be maintained by individual LEAs, jointly by two or more LEAs, by the AEA, jointly by two or more AEAs, by the state directly, or by approved private providers.

41.176(2) *Department recognition.* Department recognition of agencies providing special education and related services shall be of two types:

a. Recognition of nonpublic agencies and state-operated programs providing special education and related services in compliance with these rules.

b. Approval for nonpublic agencies to provide special education and related services and to receive special education funds for the special education and related services contracted for by an LEA or an AEA.

281—41.177(256B) Facilities.

41.177(1) *Equivalent to general education.* Each agency providing special education and related services shall supply facilities that shall be at least equivalent in quality to general education classrooms in the system, located in buildings housing regularly enrolled individuals of comparable ages, and readily accessible to individuals with disabilities.

41.177(2) *Personnel space and assistance.* Each agency providing special education shall ensure that special education personnel are provided adequate access to telephone service and clerical assistance and sufficient and appropriate work space regularly available for their use that is readily accessible to individuals with disabilities.

281—41.178(256B) Materials, equipment and assistive technology.

41.178(1) *Provision for materials, equipment, and assistive technology.* Each LEA shall make provision for special education and related services, facility modifications, assistive technology, necessary equipment and materials, including both durable items and expendable supplies; provided that, where an AEA, pursuant to appropriate arrangements authorized by the Iowa Code, furnishes special education and related services, performance by the AEA shall be accepted in lieu of performance by the LEA.

41.178(2) *Acquire and maintain equipment.* Each agency providing special education and related services shall have a comprehensive program in operation under which equipment for special education is acquired, inventoried, maintained, calibrated and replaced on a planned and regular basis.

281—41.179 to 41.185 Reserved.

281—41.186(256B,34CFR300) Assistance under other federal programs. Part B of the Act will not be construed to permit a state to reduce medical and other assistance available, or to alter eligibility, under Titles V and XIX of the Social Security Act with respect to the provision of FAPE to children with disabilities in the state.

281—41.187(256B) Research, innovation, and improvement.

41.187(1) *Evaluation and improvement.* Each agency, in conjunction with other agencies, the department, or both, shall implement activities designed to evaluate and improve special education.

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These activities shall document the individual performance resulting from the provision of special education.

41.187(2) *Research.* Each agency shall cooperate in research activities designed to evaluate and improve special education when such activities are sponsored by an LEA, an AEA or the department, or another agency, when approved by the department, to assess and ensure the effectiveness of efforts to educate all children with disabilities.

41.187(3) *Support and facilitation.* State rules, regulations, and policies under Part B of the Act must support and facilitate AEA, LEA and school-level system improvement designed to enable children with disabilities to meet the challenging state student academic achievement standards.

281—41.188 to 41.199 Reserved.

DIVISION IV
LEA AND AEA ELIGIBILITY, IN GENERAL

281—41.200(256B,34CFR300) Condition of assistance. An AEA or an LEA is eligible for assistance under Part B of the Act for a fiscal year if the agency submits a plan that provides assurances to the state that the LEA meets each of the conditions in rules 281—41.201(256B,34CFR300) to 281—41.213(256B,34CFR300).

41.200(1) *Required descriptions, policies and procedures.* Each AEA will submit to the department the policies and procedures identified in subrules 41.407(1) and 41.407(2) and other descriptions that may be required by the department for approval. Any modifications to an AEA's descriptions, policies or procedures are to be submitted to the department for approval.

41.200(2) *AEA application.* Each AEA will submit to the department, 45 calendar days prior to the start of the project year, an application for federal funds under Part B of the Act, implementing federal regulations, and this chapter. An AEA application will receive department approval only when there is an approved AEA comprehensive plan as described in rule 281—72.9(273) on file at the department and the requirements of subrule 41.200(1) have been met. The application, on forms provided by the department, includes the following:

- a. General information.
- b. Utilization of funds.
- c. Assurances.

281—41.201(256B,34CFR300) Consistency with state policies. The AEA or LEA, in providing for the education of children with disabilities within its jurisdiction, must have in effect policies, procedures, and programs that are consistent with the state policies and procedures established under 281—41.101(256B,34CFR300) to 281—41.163(256B,34CFR300) and 281—41.165(256B,34CFR300) to 281—41.187(256B).

281—41.202(256B,34CFR300) Use of amounts.

41.202(1) *General.* Amounts provided to the AEA or LEA under Part B of the Act must be:

- a. Expended in accordance with the applicable provisions of Part B of the Act and this chapter;
- b. Used only to pay the excess costs of providing special education and related services to children with disabilities, consistent with subrule 41.202(2); and
- c. Used to supplement state, local, and other federal funds, and not to supplant those funds.

41.202(2) *Excess cost requirement.*

a. *General.*

(1) The excess cost requirement prevents an AEA or LEA from using funds provided under Part B of the Act to pay for all of the costs directly attributable to the education of a child with a disability, subject to subparagraph 41.202(2) "a"(2).

(2) The excess cost requirement does not prevent an AEA or LEA from using Part B funds to pay for all of the costs directly attributable to the education of a child with a disability aged 3 to 5 or 18 to 20 if no local or state funds are available for nondisabled children of these ages. However, the AEA or LEA

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must comply with the nonsupplanting and other requirements of Part B of the Act and of this chapter in providing the education and services for these children.

b. Meeting excess cost requirement.

(1) An AEA or LEA meets the excess cost requirement if it has spent at least a minimum average amount for the education of its children with disabilities before funds under Part B of the Act are used.

(2) The amount described in subparagraph 41.202(2) “b”(1) is determined in accordance with the definition of excess costs in rule 281—41.16(256B,34CFR300). That amount may not include capital outlay or debt service.

c. Joint establishment of eligibility. If two or more AEAs or LEAs jointly establish eligibility in accordance with rule 281—41.223(256B,34CFR300), the minimum average amount is the average of the combined minimum average amounts determined in accordance with the definition of excess costs in rule 281—41.16(256B,34CFR300) in those agencies for elementary or secondary school students, as the case may be.

281—41.203(256B,34CFR300) Maintenance of effort.

41.203(1) Eligibility standard.

a. For purposes of establishing the LEA’s eligibility for an award for a fiscal year, the SEA must determine that the LEA budgets, for the education of children with disabilities, at least the same amount, from at least one of the following sources, as the LEA spent for that purpose from the same source for the most recent fiscal year for which information is available:

- (1) Local funds only;
- (2) The combination of state and local funds;
- (3) Local funds only on a per capita basis; or
- (4) The combination of state and local funds on a per capita basis.

b. When determining the amount of funds that the LEA must budget to meet the requirement in paragraph 41.203(1) “a,” the LEA may take into consideration, to the extent the information is available, the exceptions and adjustment provided in rules 281—41.204(256B,34CFR300) and 281—41.205(256B,34CFR300) that the LEA:

- (1) Took in the intervening year or years between the most recent fiscal year for which information is available and the fiscal year for which the LEA is budgeting; and
- (2) Reasonably expects to take in the fiscal year for which the LEA is budgeting.

c. Expenditures made from funds provided by the federal government for which the SEA is required to account to the federal government or for which the LEA is required to account to the federal government directly or through the SEA may not be considered in determining whether an LEA meets the standard in paragraph 41.203(1) “a.”

41.203(2) Compliance standard.

a. Except as provided in rules 281—41.204(256B,34CFR300) and 281—41.205(256B,34CFR300), funds provided to an LEA under Part B of the Act must not be used to reduce the level of expenditures for the education of children with disabilities made by the LEA from local funds below the level of those expenditures for the preceding fiscal year.

b. An LEA meets this standard if it does not reduce the level of expenditures for the education of children with disabilities made by the LEA from at least one of the following sources below the level of those expenditures from the same source for the preceding fiscal year, except as provided in rules 281—41.204(256B,34CFR300) and 281—41.205(256B,34CFR300):

- (1) Local funds only;
- (2) The combination of state and local funds;
- (3) Local funds only on a per capita basis; or
- (4) The combination of state and local funds on a per capita basis.

c. Expenditures made from funds provided by the federal government for which the SEA is required to account to the federal government or for which the LEA is required to account to the federal

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government directly or through the SEA may not be considered in determining whether an LEA meets the standard in paragraphs 41.203(2)“a” and 41.203(2)“b.”

41.203(3) Subsequent years.

a. If, in the fiscal year beginning on July 1, 2013, or July 1, 2014, an LEA fails to meet the requirements of 34 CFR 300.203 and rule 281—41.203(256B,34CFR300) in effect at that time, the level of expenditures required of the LEA for the fiscal year subsequent to the year of the failure is the amount that would have been required in the absence of that failure, not the LEA’s reduced level of expenditures.

b. If, in any fiscal year beginning on or after July 1, 2015, an LEA fails to meet the requirement of subparagraph 41.203(2)“b”(1) or 41.203(2)“b”(3) and the LEA is relying on local funds only, or local funds only on a per capita basis, to meet the requirements of subrule 41.203(1) or 41.203(2), the level of expenditures required of the LEA for the fiscal year subsequent to the year of the failure is the amount that would have been required under subparagraph 41.203(2)“b”(1) or 41.203(2)“b”(3) in the absence of that failure, not the LEA’s reduced level of expenditures.

c. If, in any fiscal year beginning on or after July 1, 2015, an LEA fails to meet the requirement of subparagraph 41.203(2)“b”(2) or 41.203(2)“b”(4) and the LEA is relying on the combination of state and local funds, or the combination of state and local funds on a per capita basis, to meet the requirements of subrule 41.203(1) or 41.203(2), the level of expenditures required of the LEA for the fiscal year subsequent to the year of the failure is the amount that would have been required under subparagraph 41.203(2)“b”(2) or 41.203(2)“b”(4) in the absence of that failure, not the LEA’s reduced level of expenditures.

41.203(4) Consequence of failure to maintain effort. If an LEA fails to maintain its level of expenditures for the education of children with disabilities in accordance with subrule 41.203(2), the SEA is liable in a recovery action under Section 452 of the General Education Provisions Act (20 U.S.C. 1234a) to return to the U.S. Department of Education, using nonfederal funds, an amount equal to the amount by which the LEA failed to maintain its level of expenditures in accordance with subrule 41.203(2) in that fiscal year, or the amount of the LEA’s Part B subgrant in that fiscal year, whichever is lower.

281—41.204(256B,34CFR300) Exception to maintenance of effort. Notwithstanding the restriction in subrule 41.203(2), an AEA or LEA may reduce the level of expenditures by the AEA or LEA under Part B of the Act below the level of those expenditures for the preceding fiscal year if the reduction is attributable to any of the following:

41.204(1) Departure of personnel. The voluntary departure, by retirement or otherwise, or departure for just cause, of special education or related services personnel.

41.204(2) Decrease in enrollment. A decrease in the enrollment of children with disabilities.

41.204(3) Termination of obligation to provide an “exceptionally costly” program to a particular child. The termination of the obligation of the agency to provide a program of special education to a particular child with a disability that is an exceptionally costly program, as determined by the SEA, because the child:

- a. Has left the jurisdiction of the agency;
- b. Has reached the age at which the obligation of the agency to provide FAPE to the child has terminated; or
- c. No longer needs the program of special education.

41.204(4) Termination of costly expenditures for long-term purchases. The termination of costly expenditures for long-term purchases, such as the acquisition of equipment.

41.204(5) High-cost fund. The assumption of cost by the high-cost fund operated by the state under this chapter.

281—41.205(256B,34CFR300) Adjustment to local fiscal efforts in certain fiscal years.

41.205(1) Amounts in excess. Notwithstanding paragraph 41.202(1)“b” and subrules 41.202(2) and 41.203(2), and except as provided in subrule 41.205(4) and 34 CFR 300.230(e)(2), for any fiscal year for which the allocation received by an LEA under rule 281—41.705(256B,34CFR300) exceeds the amount

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the LEA received for the previous fiscal year, the LEA may reduce the level of expenditures otherwise required by subrule 41.203(2) by not more than 50 percent of the amount of that excess.

41.205(2) *Use of amounts to carry out activities under ESEA.* If an LEA exercises the authority under subrule 41.205(1), the LEA must use an amount of local funds equal to the reduction in expenditures under subrule 41.205(1) to carry out activities that could be supported with funds under the ESEA regardless of whether the LEA is using funds under the ESEA for those activities.

41.205(3) *State prohibition.* Notwithstanding subrule 41.205(1), if the SEA determines that an LEA is unable to establish and maintain programs of FAPE that meet the requirements of Section 613(a) of the Act and of this chapter or the SEA has taken action against the LEA under Section 616 of the Act and rules 281—41.600(256B,34CFR300) to 281—41.609(256B,34CFR300), the SEA must prohibit the LEA from reducing the level of expenditures under subrule 41.205(1) for that fiscal year.

41.205(4) *Special rule.* The amount of funds expended by an LEA for early intervening services under rule 281—41.226(256B,34CFR300) shall count toward the maximum amount of expenditures that the LEA may reduce under subrule 41.205(1).

281—41.206(256B,34CFR300) Schoolwide programs under Title I of the ESEA.

41.206(1) *General.* Notwithstanding the provisions of rules 281—41.202(256B,34CFR300) and 281—41.203(256B,34CFR300) or any other provision of Part B of the Act, an LEA may use funds received under Part B of the Act for any fiscal year to carry out a schoolwide program under Section 1114 of the ESEA, except that the amount used in any schoolwide program may not exceed the amount received by the LEA under Part B of the Act for that fiscal year; divided by the number of children with disabilities in the jurisdiction of the LEA; and multiplied by the number of children with disabilities participating in the schoolwide program.

41.206(2) *Funding conditions.* The funds described in subrule 41.206(1) are subject to the following conditions:

a. The funds must be considered as federal Part B funds for purposes of the calculations required by paragraphs 41.202(1) “*b*” and “*c*.”

b. The funds may be used without regard to the requirements of paragraph 41.202(1) “*a*.”

41.206(3) *Meeting other Part B requirements.* Except as provided in subrule 41.206(2), all other requirements of Part B of the Act must be met by an LEA using Part B funds in accordance with subrule 41.206(1), including ensuring that children with disabilities in schoolwide program schools:

a. Receive services in accordance with a properly developed IEP; and

b. Are afforded all of the rights and services guaranteed to children with disabilities under the Act.

281—41.207(256B,34CFR300) Personnel development. Each public agency must ensure that all personnel necessary to carry out Part B of the Act are appropriately and adequately prepared, subject to the requirements of rule 281—41.156(256B,34CFR300) related to personnel qualifications and Section 2102(b) of the ESEA.

281—41.208(256B,34CFR300) Permissive use of funds.

41.208(1) *Uses.* Notwithstanding rule 281—41.202(256B,34CFR300) and subrules 41.203(2) and 41.162(2), funds provided to an LEA under Part B of the Act may be used for the following activities:

a. Services and aids that also benefit nondisabled children. For the costs of special education and related services and supplementary aids and services provided in a regular class or other education-related setting to a child with a disability in accordance with the IEP of the child, even if one or more nondisabled children benefit from these services. This provision may not be construed to apply to rules 281—41.172(256B,34CFR300) and 281—41.210(256B,34CFR300).

b. Early intervening services. To develop and implement coordinated, early intervening educational services in accordance with rule 281—41.226(256B,34CFR300). Such development and implementation may be required by the SEA under subrule 41.646(2).

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c. High-cost special education and related services. To establish and implement cost- or risk-sharing funds, consortia, or cooperatives for the LEA itself, or for LEAs working in a consortium of which the LEA is a part, to pay for high-cost special education and related services.

41.208(2) Administrative case management. An LEA may use funds received under Part B of the Act to purchase appropriate technology for record keeping, data collection, and related case management activities of teachers and related services personnel providing services described in the IEP of children with disabilities, that is needed for the implementation of those case management activities.

281—41.209(256B,34CFR300) Treatment of charter schools and their students.

41.209(1) Rights of children with disabilities. Children with disabilities who attend public charter schools and their parents retain all rights under this chapter.

41.209(2) Charter schools that are public schools of the LEA.

a. General. In carrying out Part B of the Act and these rules with respect to charter schools that are public schools of the LEA, the LEA must:

(1) Serve children with disabilities attending those charter schools in the same manner as the LEA serves children with disabilities in its other schools, including providing supplementary and related services on site at the charter school to the same extent to which the LEA has a policy or practice of providing such services on the site to its other public schools; and

(2) Provide funds under Part B of the Act to those charter schools:

1. On the same basis as the LEA provides funds to the LEA's other public schools, including proportional distribution based on relative enrollment of children with disabilities; and

2. At the same time as the LEA distributes other federal funds to the LEA's other public schools, consistent with the state's charter school law.

b. Relationship to rule 281—41.705(256B,34CFR300). If the public charter school is a school of an LEA that receives funding under rule 281—41.705(256B,34CFR300) and includes other public schools:

(1) The LEA is responsible for ensuring that the requirements of this chapter are met, unless state law assigns that responsibility to some other entity; and

(2) The LEA must meet the requirements of paragraph 41.209(2) "a."

281—41.210(256B,34CFR300) Purchase of instructional materials.

41.210(1) General. An AEA, an LEA, or any other public agency, when purchasing print instructional materials, must acquire those instructional materials for children who are blind or visually impaired or for other persons with print disabilities in a manner consistent with subrule 41.210(3) and ensure delivery of those materials in a timely manner to those children.

41.210(2) Rights and responsibilities of AEA or LEA. Nothing in this rule relieves the LEA or AEA or any other public agency of its responsibility to ensure that children with disabilities who need instructional materials in accessible formats, but who are not included under the definition of persons who are blind or visually impaired or other persons with print disabilities in paragraph 41.210(4) "a" or who need materials that cannot be produced from NIMAS files, receive those instructional materials in a timely manner, as defined in paragraph 41.172(1) "b."

41.210(3) Preparation and delivery of files. Because the state chooses to coordinate with the NIMAC, an AEA, an LEA, or any other public agency must:

a. As part of any print instructional materials adoption process, procurement contract, or other practice or instrument used for purchase of print instructional materials, enter into a written contract with the publisher of the print instructional materials to:

(1) Require the publisher to prepare and, on or before delivery of the print instructional materials, provide to NIMAC electronic files containing the contents of the print instructional materials using the NIMAS; or

(2) Purchase instructional materials from the publisher that are produced in, or may be rendered in, specialized formats.

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b. Provide instructional materials to persons who are blind or visually impaired or other persons with print disabilities in a timely manner.

41.210(4) Definitions. The following definitions apply to this rule and rule 281—41.172(256B,34CFR300), and apply to each state and LEA, regardless of whether the state or LEA chooses to coordinate with the NIMAC:

a. “Persons who are blind or visually impaired or other persons with print disabilities” means children served under this chapter who may qualify to receive books and other publications produced in specialized formats in accordance with 2 U.S.C. 135a and 36 CFR 701.6. Persons who may receive material in specialized formats include persons who are blind, who have visual disabilities, who have certain physical disabilities, or who have reading disabilities resulting from organic dysfunction as those terms are defined in 36 CFR 701.6(b)(1) and who have obtained certification from a “competent authority” as defined in 36 CFR 701.6(b)(2).

b. “National Instructional Materials Access Center” or “NIMAC” means the center established pursuant to Section 674(e) of the Act.

c. “National Instructional Materials Accessibility Standard” or “NIMAS” has the meaning given the term in Section 674(e)(3)(B) of the Act.

d. “Print instructional materials” has the meaning given the term in Section 674(e)(3)(C) of the Act.

e. “Specialized formats” has the meaning given the term in Section 674(e)(3)(D) of the Act.

281—41.211(256B,34CFR300) Information for department. Each public agency will provide the department with information necessary to enable the department to carry out its duties under Part B of the Act and this chapter, including, with respect to 34 CFR Section 300.157, information relating to the performance of children with disabilities participating in programs carried out under Part B of the Act. This information, including such quantitative and qualitative data as the department may demand, is to be submitted in a manner and at a time determined by the department. Failure to submit timely and accurate information may be considered by the department in making the determinations under rule 281—41.603(256B,34CFR300) or in taking any other action to enforce Part B of the Act or this chapter.

281—41.212(256B,34CFR300) Public information. Each public agency must make available to parents of children with disabilities and to the general public all documents relating to the eligibility of the agency under Part B of the Act.

281—41.213(256B,34CFR300) Records regarding migratory children with disabilities. Each AEA or LEA must cooperate in the Secretary’s efforts under Section 1308 of the ESEA to ensure the linkage of records pertaining to migratory children with disabilities for the purpose of electronically exchanging, among the states, health and educational information regarding those children.

281—41.214 to 41.219 Reserved.

281—41.220(256B,34CFR300) Exception for prior local plans.

41.220(1) General. If an AEA or LEA or a state agency described in rule 281—41.228(256B,34CFR300) has on file with the SEA policies and procedures that demonstrate that the AEA or LEA or state agency meets any requirement of rule 281—41.200(256B,34CFR300), including any policies and procedures filed under Part B of the Act as in effect before December 3, 2004, the SEA must consider the AEA or LEA or state agency to have met that requirement for purposes of receiving assistance under Part B of the Act.

41.220(2) Modification made by an AEA or LEA or state agency. Subject to subrule 41.220(3), policies and procedures submitted by an LEA or a state agency remain in effect until the AEA or LEA or state agency submits to the SEA the modifications that the AEA or LEA or state agency determines are necessary.

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41.220(3) Modifications required by the SEA. The SEA may require an AEA or LEA or a state agency to modify its policies and procedures, but only to the extent necessary to ensure the LEA's or state agency's compliance with Part B of the Act or state law, if:

- a. After December 3, 2004, the effective date of the Individuals with Disabilities Education Improvement Act of 2004, the applicable provisions of the Act, or the regulations developed to carry out the Act, are amended;
- b. There is a new interpretation of an applicable provision of the Act by federal or state courts; or
- c. There is an official finding of noncompliance with federal or state law or regulations.

281—41.221(256B,34CFR300) Notification of AEA or LEA or state agency in case of ineligibility. If the state determines that an AEA or LEA or state agency is not eligible under Part B of the Act, then the state must notify the AEA or LEA or state agency of that determination and provide the AEA or LEA or state agency with reasonable notice and an opportunity for a hearing. This hearing shall not be considered a contested case under Iowa Code chapter 17A.

281—41.222(256B,34CFR300) AEA or LEA and state agency compliance.

41.222(1) General. If the state, after reasonable notice and an opportunity for a hearing, finds that an AEA or LEA or state agency that has been determined to be eligible under this chapter is failing to comply with any requirement described in rules 281—41.201(256B,34CFR300) to 281—41.213(256B,34CFR300), the state must reduce or must not provide any further payments to the AEA or LEA or state agency until the state is satisfied that the AEA or LEA or state agency is complying with that requirement.

41.222(2) Notice requirement. Any state agency or AEA or LEA in receipt of a notice described in subrule 41.222(1), by means of public notice, must take the measures necessary to bring the pendency of an action pursuant to this rule to the attention of the public within the jurisdiction of the agency.

41.222(3) Consideration. In carrying out its responsibilities under this rule, the state must consider any decision resulting from a hearing held under rules 281—41.511(256B,34CFR300) to 281—41.533(256B,34CFR300) that is adverse to the AEA or LEA or state agency involved in the decision.

281—41.223(256B,34CFR300) Joint establishment of eligibility.

41.223(1) General. The state may require an AEA or LEA to establish its eligibility jointly with another AEA or LEA if the state determines that the AEA or LEA will be ineligible because the agency will not be able to establish and maintain programs of sufficient size and scope to effectively meet the needs of children with disabilities.

41.223(2) Reserved.

41.223(3) Amount of payments. If the state requires the joint establishment of eligibility under subrule 41.223(1), the total amount of funds made available to the affected AEAs or LEAs must be equal to the sum of the payments that each AEA or LEA would have received under rule 281—41.705(256B,34CFR300) if the agencies were eligible for those payments.

281—41.224(256B,34CFR300) Requirements for jointly establishing eligibility.

41.224(1) Requirements for AEAs or LEAs in general. AEAs or LEAs that establish joint eligibility under this rule must:

- a. Adopt policies and procedures that are consistent with the state's policies and procedures under rules 281—41.101(256B,34CFR300) to 281—41.163(256B,34CFR300) and 281—41.165(256B,34CFR300) to 281—41.187(256B); and
- b. Be jointly responsible for implementing programs that receive assistance under Part B of the Act.

41.224(2) Requirements for educational service agencies in general. If an educational service agency is required by state law to carry out programs under Part B of the Act, the joint responsibilities given to AEAs or LEAs under Part B of the Act:

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a. Do not apply to the administration and disbursement of any payments received by that educational service agency; and

b. Must be carried out only by that educational service agency.

41.224(3) Additional requirement. Notwithstanding any other provision of rule 281—41.223(256B,34CFR300) and this rule, an educational service agency must provide for the education of children with disabilities in the least restrictive environment, as required by this chapter.

281—41.225 Reserved.

281—41.226(256B,34CFR300) Early intervening services.

41.226(1) General. An AEA or LEA may use no more than 15 percent of the amount the AEA or LEA receives under Part B of the Act for any fiscal year, less any amount reduced by the AEA or LEA pursuant to rule 281—41.205(256B,34CFR300), if any, in combination with other amounts, which may include amounts other than education funds, to develop and implement coordinated, early intervening services, which may include interagency financing structures, for students in kindergarten through grade 12, with a particular emphasis on students in kindergarten through grade 3, who are not currently identified as needing special education or related services, but who need additional academic and behavioral support to succeed in a general education environment.

41.226(2) Activities. In implementing coordinated, early intervening services under this rule, an AEA or LEA may carry out activities that include:

a. Professional development, which may be provided by other entities, for teachers and other school staff to enable such personnel to deliver scientifically based academic and behavioral interventions, including scientifically based literacy instruction and, where appropriate, instruction on the use of adaptive and instructional software; and

b. Providing educational and behavioral evaluations, services, and supports, including scientifically based literacy instruction.

41.226(3) Construction. Nothing in this rule shall be construed to either limit or create a right to FAPE under Part B of the Act or to delay appropriate evaluation of a child suspected of having a disability.

41.226(4) Reporting: in general. Each AEA or LEA that develops and maintains coordinated, early intervening services under this rule must annually report to the SEA on:

a. The number of children served under this rule who received early intervening services; and

b. The number of children served under this rule who received early intervening services and subsequently receive special education and related services under Part B of the Act during the preceding two-year period.

41.226(5) Reporting: disproportionality. If an LEA is required to reserve the maximum amount available under this rule for early intervening services because of a determination of significant disproportionality under rule 281—41.646(256B,34CFR300), that LEA must make additional reports on the use of funds under this rule and rule 281—41.646(256B,34CFR300), as required by the SEA.

41.226(6) Coordination with ESEA. Funds made available to carry out this rule may be used to carry out coordinated, early intervening services aligned with activities funded by and carried out under the ESEA if those funds are used to supplement, and not supplant, funds made available under the ESEA for the activities and services assisted under this rule.

281—41.227 Reserved.

281—41.228(256B,34CFR300) State agency eligibility. Any state agency that desires to receive a subgrant for any fiscal year under rule 281—41.705(256B,34CFR300) is to meet the provisions of 34 CFR Section 300.228.

281—41.229(256B,34CFR300) Disciplinary information.

41.229(1) Requirement of transmittal of disciplinary records. Pursuant to Iowa Code section 279.9A, the state requires that a public agency include in the records of a child with a disability a statement of any current or previous disciplinary action that has been taken against the child and

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transmit the statement to the same extent that the disciplinary information is included in, and transmitted with, the student records of children without disabilities.

41.229(2) *Contents of transmittal.* The transmittal shall include an accurate record of any suspension or expulsion actions taken and the basis for those actions taken. It may include any other information that is relevant to the safety of the child and other individuals involved with the child, to the extent that information is transmitted for children without disabilities.

41.229(3) *Additional contents of transmittal.* If the child transfers from one school to another, the transmission of any of the child's records must include both the child's current IEP and any statement of current or previous disciplinary action that has been taken against the child.

41.229(4) *When transmittal must occur.* Pursuant to Iowa Code section 279.9A, a transmittal of records under this rule shall occur if requested by officials of the school to which the student seeks to transfer or has transferred.

41.229(5) *Additional state law requirement.* Pursuant to Iowa Code section 279.9A, this rule applies also to accredited nonpublic schools, as well as AEAs.

281—41.230(256B,34CFR300) SEA flexibility. The department reserves to itself the flexibility provided by 34 CFR Section 300.230.

281—41.231 to 41.299 Reserved.

DIVISION V
EVALUATION, ELIGIBILITY, IEPs, AND PLACEMENT DECISIONS

281—41.300(256B,34CFR300) Parental consent and participation.

41.300(1) *Parental consent for initial evaluation.*

a. General.

(1) The public agency proposing to conduct an initial evaluation to determine if a child qualifies as a child with a disability under this chapter must, after providing notice consistent with rules 281—41.503(256B,34CFR300) and 281—41.504(256B,34CFR300), obtain informed consent, consistent with rule 281—41.9(256B,34CFR300), from the parent of the child before conducting the evaluation.

(2) Parental consent for an initial evaluation must not be construed as consent for initial provision of special education and related services.

(3) The public agency must make reasonable efforts to obtain the informed consent from the parent for an initial evaluation to determine whether the child is a child with a disability.

b. Special rule: initial evaluation for a child who is a ward of the state and not residing with a parent. For initial evaluations only, if the child is a ward of the state and is not residing with the child's parent, the public agency is not required to obtain informed consent from the parent for an initial evaluation to determine whether the child is a child with a disability if:

(1) Despite reasonable efforts to do so, the public agency cannot discover the whereabouts of the parent of the child;

(2) The rights of the parents of the child have been terminated in accordance with state law; or

(3) The rights of the parent to make educational decisions have been subrogated by a judge in accordance with state law and consent for an initial evaluation has been given by an individual appointed by the judge to represent the child.

c. Parental refusal to provide consent for initial evaluation.

(1) If the parent of a child enrolled in public school or seeking to be enrolled in public school does not provide consent for initial evaluation under paragraph 41.300(1) "a," or the parent fails to respond to a request to provide consent, the public agency may, but is not required to, pursue the initial evaluation of the child by utilizing the procedural safeguards in this chapter, including the mediation procedures under rule 281—41.506(256B,34CFR300) or the due process procedures under rules 281—41.507(256B,34CFR300) to 281—41.516(256B,34CFR300), if appropriate, except to the extent inconsistent with state law relating to such parental consent.

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(2) The public agency does not violate its obligation under rules 281—41.111(256B,34CFR300) and 281—41.301(256B,34CFR300) to 281—41.311(256B,34CFR300) if it declines to pursue the evaluation under subparagraph 41.300(1)“c”(1).

41.300(2) Parental consent for services.

a. A public agency that is responsible for making FAPE available to a child with a disability must obtain informed consent from the parent of the child before the initial provision of special education and related services to the child.

b. The public agency must make reasonable efforts to obtain informed consent from the parent for the initial provision of special education and related services to the child.

c. If the parent of a child fails to respond to a request for, or refuses to consent to, the initial provision of special education and related services, the public agency:

(1) May not use the procedural safeguards in this chapter, including the mediation procedures rule 281—41.506(256B,34CFR300) or the due process procedures under rules 281—41.507(256B,34CFR300) through 281—41.516(256B,34CFR300) in order to obtain agreement or a ruling that the services may be provided to the child;

(2) Will not be considered to be in violation of the requirement to make FAPE available to the child because of the failure to provide the child with the special education and related services for which the parent refuses to or fails to provide consent; and

(3) Is not required to convene an IEP team meeting or develop an IEP under rules 281—41.320(256B,34CFR300) and 281—41.324(256B,34CFR300) for the child.

d. If, at any time subsequent to the initial provision of special education and related services, the parent of a child revokes consent in writing for the continued provision of special education and related services, the public agency:

(1) May not continue to provide special education and related services to the child, but must provide prior written notice in accordance with rule 281—41.503(256B,34CFR300) before ceasing the provision of special education and related services;

(2) May not use the procedural safeguards in this chapter, including the mediation procedures rule 281—41.506(256B,34CFR300) or the due process procedures under rules 281—41.507(256B,34CFR300) through 281—41.516(256B,34CFR300) in order to obtain agreement or a ruling that the services may be provided to the child;

(3) Will not be considered to be in violation of the requirement to make FAPE available to the child because of the failure to provide the child with further special education and related services; and

(4) Is not required to convene an IEP team meeting or develop an IEP under rules 281—41.320(256B,34CFR300) and 281—41.324(256B,34CFR300) for the child for further provision of special education and related services.

41.300(3) Parental consent for reevaluations.

a. General. Subject to paragraph 41.300(3)“b”:

(1) Each public agency must obtain informed parental consent, in accordance with paragraph 41.300(1)“a,” prior to conducting any reevaluation of a child with a disability.

(2) If the parent refuses to consent to the reevaluation, the public agency may, but is not required to, pursue the reevaluation by using the consent override procedures described in paragraph 41.300(1)“c.”

(3) The public agency does not violate its obligation under rules 281—41.111(256B,34CFR300) and 281—41.301(256B,34CFR300) to 281—41.311(256B,34CFR300) if it declines to pursue the evaluation or reevaluation.

b. Exception. The informed parental consent described in paragraph 41.300(3)“a” need not be obtained if the public agency can demonstrate that:

(1) It made reasonable efforts to obtain such consent; and

(2) The child’s parent has failed to respond.

41.300(4) Other consent requirements.

a. When parental consent not required. Parental consent is not required before:

(1) A review of existing data as part of an evaluation or a reevaluation; or

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(2) Administration of a test or other evaluation that is administered to all children unless, before administration of that test or evaluation, consent is required of parents of all children.

b. Additional consent requirements. In addition to the parental consent requirements described in subrules 41.300(1) through 41.300(3), the state may require parental consent for other services and activities under Part B of the Act and of this chapter if it ensures that each public agency in the state establishes and implements effective procedures to ensure that a parent's refusal to consent does not result in a failure to provide the child with FAPE.

c. Limitation on public agency's use of failure to give consent. A public agency may not use a parent's refusal to consent to one service or activity under subrules 41.300(1) through 41.300(3) or paragraph 41.300(4) "b" to deny the parent or child any other service, benefit, or activity of the public agency, except as required by this chapter.

d. Children who are home schooled or placed by their parents in private schools.

(1) If a parent of a child who is home schooled or placed in a private school by the parents at their own expense does not provide consent for the initial evaluation or the reevaluation, or the parent fails to respond to a request to provide consent, the public agency may not use the consent override procedures described in paragraphs 41.300(1) "c" and 41.300(3) "a"; and

(2) The public agency is not required to consider the child as eligible for services under rules 281—41.132(256B,34CFR300) to 281—41.144(256B,34CFR300).

e. Documenting reasonable efforts. To meet the reasonable efforts requirement in subparagraph 41.300(1) "a"(3), subparagraph 41.300(1) "b"(1), paragraph 41.300(2) "b," and subparagraph 41.300(3) "b"(1), the public agency must document its attempts to obtain parental consent using the procedures in subrule 41.322(4).

41.300(5) Parent participation. The identification process is to include interactions with the individual, the individual's parents, school personnel, and others having specific responsibilities for or knowledge of the individual. AEA and LEA personnel will seek active parent participation throughout the process, directly communicate with parents, and encourage parents to participate at all decision points.

281—41.301(256B,34CFR300) Full and individual initial evaluations.

41.301(1) General. Each public agency must conduct a full and individual initial evaluation, in accordance with rules 281—41.304(256B,34CFR300) to 281—41.306(256B,34CFR300), before the initial provision of special education and related services to a child with a disability under this chapter.

41.301(2) Request for initial evaluation. Consistent with the consent requirements in rule 281—41.300(256B,34CFR300), either a parent of a child or a public agency may initiate a request for an initial evaluation to determine if the child is a child with a disability.

41.301(3) Procedures for initial evaluation. The initial evaluation:

a. Must be conducted within 60 calendar days of receiving parental consent for the evaluation;

b. Must consist of procedures:

(1) To determine if the child is a child with a disability under this chapter; and

(2) To determine the educational needs of the child.

41.301(4) Exception. The time frame described in paragraph 41.301(3) "a" does not apply to a public agency if:

a. The parent of a child repeatedly fails or refuses to produce the child for the evaluation; or

b. A child enrolls in a school of another public agency after the relevant time frame in paragraph 41.301(3) "a" has begun, and prior to a determination by the child's previous public agency as to whether the child is a child with a disability under this chapter.

41.301(5) Applicability of exception in paragraph 41.301(4) "b." The exception in paragraph 41.301(4) "b" applies only if the subsequent public agency is making sufficient progress to ensure a prompt completion of the evaluation and the parent and the subsequent public agency agree to a specific time when the evaluation will be completed.

41.301(6) Content of full and individual initial evaluation. The purpose of the evaluation is to determine the educational interventions that are required to resolve the presenting problem, behaviors of

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concern, or suspected disability, including whether the educational interventions are special education. An evaluation shall include:

- a. An objective definition of the presenting problem, behaviors of concern, or suspected disability.
- b. Analysis of existing information about the individual, as described in paragraph 41.305(1) "a."
- c. Identification of the individual's strengths or areas of competence relevant to the presenting problem, behaviors of concern, or suspected disability.
- d. Collection of additional information needed to design interventions intended to resolve the presenting problem, behaviors of concern, or suspected disability, including, if appropriate, assessment or evaluation of health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, adaptive behavior and motor abilities.

281—41.302(256B,34CFR300) Screening for instructional purposes is not evaluation. The screening of a student by a teacher or specialist to determine appropriate instructional strategies for curriculum implementation shall not be considered to be an evaluation for eligibility for special education and related services.

281—41.303(256B,34CFR300) Reevaluations.

41.303(1) General. A public agency must ensure that a reevaluation of each child with a disability is conducted in accordance with rules 281—41.304(256B,34CFR300) to 281—41.311(256B,34CFR300):

- a. If the public agency determines that the educational or related services needs, including improved academic achievement and functional performance, of the child warrant a reevaluation; or
- b. If the child's parent or teacher requests a reevaluation.

41.303(2) Limitation. A reevaluation conducted under subrule 41.303(1):

- a. May occur not more than once a year, unless the parent and the public agency agree otherwise; and
- b. Must occur at least once every three years, unless the parent and the public agency agree that a reevaluation is unnecessary.

281—41.304(256B,34CFR300) Evaluation procedures.

41.304(1) Notice. The public agency must provide notice to the parents of a child with a disability, in accordance with rule 281—41.503(256B,34CFR300), that describes any evaluation procedures the agency proposes to conduct.

41.304(2) Conduct of evaluation. In conducting the evaluation, the public agency must:

- a. Use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child, including information provided by the parent, that may assist in determining:
 - (1) Whether the child is a child with a disability under this chapter; and
 - (2) The content of the child's IEP, including information related to enabling the child to be involved in and progress in the general education curriculum (or for a preschool child, to participate in appropriate activities);
- b. Not use any single measure or assessment as the sole criterion for determining whether a child is a child with a disability and for determining an appropriate educational program for the child; and
- c. Use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.

41.304(3) Other evaluation procedures. Each public agency must ensure that:

- a. Assessments and other evaluation materials used to assess a child under this chapter:
 - (1) Are selected and administered so as not to be discriminatory on a racial or cultural basis;
 - (2) Are provided and administered in the child's native language or other mode of communication and in the form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally, unless it is clearly not feasible to so provide or administer;
 - (3) Are used for the purposes for which the assessments or measures are valid and reliable;

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- (4) Are administered by trained and knowledgeable personnel; and
- (5) Are administered in accordance with any instructions provided by the producer of the assessments.

b. Assessments and other evaluation materials include those tailored to assess specific areas of educational need and not merely those that are designed to provide a single general intelligence quotient.

c. Assessments are selected and administered so as best to ensure that if an assessment is administered to a child with impaired sensory, manual, or speaking skills, the assessment results accurately reflect the child's aptitude or achievement level or whatever other factors the test purports to measure, rather than reflecting the child's impaired sensory, manual, or speaking skills (unless those skills are the factors that the test purports to measure).

d. The child is assessed in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities.

e. Assessments of children with disabilities who transfer from one public agency to another public agency in the same school year are coordinated with those children's prior and subsequent schools, as necessary and as expeditiously as possible, consistent with paragraph 41.301(4) "b" and subrule 41.301(5), to ensure prompt completion of full evaluations.

f. The evaluation of each child with a disability under rules 281—41.304(256B,34CFR300) to 281—41.306(256B,34CFR300) is sufficiently comprehensive to identify all of the child's special education and related services needs, whether or not commonly linked to the disability category in which the child has been classified.

g. Assessment tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the child are provided.

281—41.305(256B,34CFR300) Additional requirements for evaluations and reevaluations.

41.305(1) *Review of existing evaluation data.* As part of an initial evaluation, if appropriate, and as part of any reevaluation under this chapter, the IEP team and other qualified professionals, as appropriate, must:

- a.* Review existing evaluation data on the child, including:
 - (1) Evaluations and information provided by the parents of the child;
 - (2) Current classroom-based, local, or state assessments, and classroom-based observations; and
 - (3) Observations by teachers and related services providers; and
- b.* On the basis of that review, and input from the child's parents, identify what additional data, if any, are needed to determine:
 - (1) Whether the child is a child with a disability, as defined in this chapter, and the educational needs of the child or, in the case of a reevaluation of a child, whether the child continues to have such a disability, and the educational needs of the child;
 - (2) The present levels of academic achievement and related developmental needs of the child;
 - (3) Whether the child needs special education and related services, or in the case of a reevaluation of a child, whether the child continues to need special education and related services; and
 - (4) Whether any additions or modifications to the special education and related services are needed to enable the child to meet the measurable annual goals set out in the IEP of the child and to participate, as appropriate, in the general education curriculum.

41.305(2) *Conduct of review.* The group described in subrule 41.305(1) may conduct its review without a meeting.

41.305(3) *Source of data.* The public agency must administer such assessments and other evaluation measures as may be needed to produce the data identified under subrule 41.305(1).

41.305(4) *Requirements if additional data are not needed.*

a. If the IEP team and other qualified professionals, as appropriate, determine that no additional data are needed to determine whether the child continues to be a child with a disability or to determine the child's educational needs, the public agency must notify the child's parents of:

- (1) The determination and the reasons for the determination; and

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(2) The right of the parents to request an assessment to determine whether the child continues to be a child with a disability and to determine the child's educational needs.

b. The public agency is not required to conduct the assessment described in subparagraph 41.305(4) "a"(2) unless requested to do so by the child's parents.

41.305(5) Evaluations before change in eligibility.

a. Except as provided in paragraph 41.305(5) "b," a public agency must evaluate a child with a disability in accordance with these rules before determining that the child is no longer a child with a disability.

b. The evaluation described in paragraph 41.305(5) "a" is not required before the termination of a child's eligibility under this chapter due to graduation from secondary school with a regular diploma, or due to exceeding the age eligibility for FAPE under state law.

c. For a child whose eligibility terminates under circumstances described in paragraph 41.305(5) "b," a public agency must provide the child with a summary of the child's academic achievement and functional performance, which shall include recommendations on how to assist the child in meeting the child's postsecondary goals.

41.305(6) At no cost to parent. Evaluations or reevaluations under this chapter, including any outside consultations or evaluations, shall be at no cost to the parent. AEAs or LEAs may access a parent's private insurance or public benefits or insurance, however, provided that a parent gives informed consent consistent with rule 281—41.9(256B,34CFR300) and subrules 41.154(4) and 41.154(5).

281—41.306(256B,34CFR300) Determination of eligibility.

41.306(1) General. Upon completion of the administration of assessments and other evaluation measures:

a. A group of qualified professionals and the parent of the child determine whether the child is a child with a disability, as defined in this chapter, in accordance with subrule 41.306(3) and the educational needs of the child; and

b. The public agency provides a copy of the evaluation report and the documentation of determination of eligibility at no cost to the parent.

41.306(2) Special rule for eligibility determination. A child must not be determined to be a child with a disability under this chapter:

a. If the determinant factor for that determination is:

(1) Lack of appropriate instruction in reading, including the essential components of reading instruction, as defined in Section 1208(3) of the ESEA, as such section was in effect on the day before the date of enactment of the Every Student Succeeds Act (December 9, 2015);

(2) Lack of appropriate instruction in math; or

(3) Limited English proficiency; and

b. If the child does not otherwise meet the eligibility criteria under this chapter.

41.306(3) Procedures for determining eligibility and educational need.

a. In interpreting evaluation data for the purpose of determining if a child is a child with a disability under this chapter, and the educational needs of the child, each public agency must:

(1) Draw upon information from a variety of sources, including aptitude and achievement tests, parent input, and teacher recommendations, as well as information about the child's physical condition, social or cultural background, and adaptive behavior; and

(2) Ensure that information obtained from all of these sources is documented and carefully considered.

b. If a determination is made that a child has a disability and needs special education and related services, an IEP must be developed for the child in accordance with these rules.

c. All determinations of eligibility must be based on the individual's disability (progress and discrepancy) and need for special education.

41.306(4) Director's certification. If a child is determined to be an eligible individual pursuant to these rules, the AEA director of special education will certify the individual's entitlement for special education. A confidential record, subject to audit by the department, registering the name and required

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special education and related services of each eligible individual will be maintained by the AEA, and provision will be made for its periodic revision.

281—41.307(256B,34CFR300) Specific learning disabilities.

41.307(1) General. The state adopts, consistent with rule 281—41.309(256B,34CFR300), criteria for determining whether a child is an eligible individual on the basis of a specific learning disability as defined in subrule 41.50(10). In addition, the criteria adopted by the state:

a. Require the use of a process based on the child's response to scientific, research-based intervention or the use of other alternative research-based procedures for determining whether a child has a specific learning disability, as defined in subrule 41.50(10); and

b. Prohibit the use of a severe discrepancy between intellectual ability and achievement for determining whether a child is an eligible individual on the basis of a specific learning disability.

41.307(2) Consistency with state criteria. A public agency must use the state criteria adopted pursuant to subrule 41.307(1) in determining whether a child is an eligible individual on the basis of a specific learning disability.

41.307(3) Rule of construction: “*Labelling.*” Nothing in this rule or rules 281—41.308(256B,34CFR300) to 281—41.311(256B,34CFR300) is to be construed as requiring children evaluated under these rules to be classified as having a specific learning disability, as long as the child is regarded as a child with a disability or an eligible individual under this chapter.

41.307(4) Rule of construction: *Use of rules 281—41.307(256B,34CFR300) to 281—41.310(256B,34CFR300).* Nothing in this rule or rule 281—41.308(256B,34CFR300) or 281—41.311(256B,34CFR300) is to be construed as limiting its applicability solely to determining whether a child is an eligible individual on the basis of a specific learning disability. The procedures, methods, etc. listed in this rule and rules 281—41.308(256B,34CFR300) and 281—41.310(256B,34CFR300) may be employed in evaluating any child suspected of being an eligible individual, if appropriate in the child's circumstances.

281—41.308(256B,34CFR300) Additional group members. The determination of whether a child suspected of being an eligible individual due to the presence of a specific learning disability is a child with a disability, as defined in this chapter, must be made by the child's parents and a team of qualified professionals, which must include the following persons:

41.308(1) Required teachers.

- a.* The child's general education teacher; or
- b.* If the child does not have a general education teacher, a general education teacher qualified to teach a child of his or her age; or
- c.* For a child of less than school age, an individual qualified by the SEA to teach a child of his or her age.

41.308(2) Individual qualified to conduct diagnostic examinations. At least one person qualified to conduct individual diagnostic examinations of children, such as a school psychologist, speech-language pathologist, or a remedial reading teacher.

281—41.309(256B,34CFR300) Determining the existence of a specific learning disability.

41.309(1) Required determinations. The group described in rule 281—41.306(256B,34CFR300) may determine that a child has a specific learning disability, as defined in subrule 41.50(10), after considering the following three factors:

a. Lack of adequate achievement. The child does not achieve adequately for the child's age, grade-level expectations or such grade-level standards the SEA may choose to adopt in one or more of the following areas, when provided with learning experiences and instruction appropriate for the child's age or grade-level expectations or such grade-level standards the SEA may choose to adopt:

- (1) Oral expression.
- (2) Listening comprehension.
- (3) Written expression.

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- (4) Basic reading skill.
- (5) Reading fluency skills.
- (6) Reading comprehension.
- (7) Mathematics calculation.
- (8) Mathematics problem solving.

b. Lack of adequate progress.

(1) The child does not make sufficient progress to meet age expectations, grade-level expectations, or such state-approved grade-level standards as the state may choose to adopt in one or more of the areas identified in paragraph 41.309(1)“a” when using a process based on the child’s response to scientific, research-based intervention; or

(2) The child exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, grade-level expectations, such state-approved grade-level standards as the state may choose to adopt, or intellectual development, that is determined by the group to be relevant to the identification of a specific learning disability, using appropriate assessments, consistent with rules 281—41.304(256B,34CFR300) and 281—41.305(256B,34CFR300).

c. Exclusionary factors. The group determines that its findings under paragraphs 41.309(1)“a” and 41.309(1)“b” are not primarily the result of:

- (1) A visual, hearing, or motor disability;
- (2) Intellectual disability;
- (3) Emotional disturbance;
- (4) Cultural factors;
- (5) Environmental or economic disadvantage; or
- (6) Limited English proficiency.

41.309(2) Review of data. To ensure that underachievement in a child suspected of having a specific learning disability is not due to lack of appropriate instruction in reading or math, the group must consider, as part of the evaluation described in rules 281—41.304(256B,34CFR300) to 281—41.306(256B,34CFR300):

a. Data that demonstrate that prior to, or as a part of, the referral process, the child was provided appropriate instruction in regular education settings, delivered by qualified personnel; and

b. Data-based documentation of repeated assessments of achievement at reasonable intervals, reflecting formal assessment of student progress during instruction, which was provided to the child’s parents.

41.309(3) When consent required. The public agency must promptly request parental consent to evaluate the child to determine if the child needs special education and related services and must adhere to the time frames described in rules 281—41.301(256B,34CFR300) and 281—41.303(256B,34CFR300):

a. If, prior to a referral, a child has not made adequate progress after an appropriate period of time when provided instruction, as described in paragraphs 41.309(2)“a” and “b”; and

b. Whenever a child is referred for an evaluation.

41.309(4) Rule of construction. Subparagraph 41.309(1)“b”(2) shall not be construed to require a child with a pattern of strengths and weaknesses in performance, achievement, or both, to be identified as an eligible individual, absent a determination that the child has a disability and needs special education and related services.

41.309(5) Rule of construction. A process by which a child’s response to intervention is measured is a component of a full and individual evaluation and is not, considered alone, a full and individual evaluation, unless the response to intervention process contains all required elements of a full and individual evaluation under this chapter.

281—41.310(256B,34CFR300) Observation.

41.310(1) Observation required. The public agency must ensure that the child is observed in the child’s learning environment, including the regular classroom setting, to document the child’s academic performance and behavior in the areas of difficulty.

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41.310(2) *Who must observe.* The group described in paragraph 41.306(1)“a,” in determining whether a child has a specific learning disability, must decide to:

a. Use information from an observation in routine classroom instruction and monitoring of the child’s performance that was done before the child was referred for an evaluation, consistent with rules 281—41.306(256B,34CFR300), 281—41.309(256B,34CFR300), 281—41.312(256B,34CFR300) and 281—41.313(256B,34CFR300); or

b. Have at least one member of the group described in paragraph 41.306(1)“a” conduct an observation of the child’s academic performance in the regular classroom after the child has been referred for an evaluation and parental consent, consistent with subrule 41.300(1), is obtained.

41.310(3) *Child less than school age or out of school.* In the case of a child of less than school age or out of school, a group member must observe the child in an environment appropriate for a child of that age. This subrule also applies to school-age children who must be evaluated during school breaks.

281—41.311(256B,34CFR300) Specific documentation for the eligibility determination.

41.311(1) *Documentation required.* For a child suspected of having a specific learning disability, the documentation of the determination that the child is an eligible individual, as required in paragraph 41.306(1)“b,” must contain a statement of:

a. Whether the child has a specific learning disability;

b. The basis for making the determination, including an assurance that the determination has been made in accordance with paragraph 41.306(3)“a”;

c. The relevant behavior, if any, noted during the observation of the child and the relationship of that behavior to the child’s academic functioning;

d. The educationally relevant medical findings, if any;

e. The determination that:

(1) The child does not achieve adequately for the child’s age or to meet grade-level expectations or such grade-level standards the SEA may choose to adopt consistent with paragraph 41.309(1)“a”; and

(2) The child does not make sufficient progress for the child’s age or to meet grade-level expectations or such grade-level standards the SEA may choose to adopt consistent with subparagraph 41.309(1)“b”(1); or the child exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to the child’s age or to meet grade-level expectations, such grade-level standards the SEA may choose to adopt, or intellectual development consistent with subparagraph 41.309(1)“b”(2);

f. The determination of the group concerning the effects of a visual, hearing, or motor disability; intellectual disability; emotional disturbance; cultural factors; environmental or economic disadvantage; or limited English proficiency on the child’s achievement level; and

g. If the child has participated in a process that assesses the child’s response to scientific, research-based intervention:

(1) The instructional strategies used and the student-centered data collected; and

(2) The documentation that the child’s parents were notified about:

1. The state’s policies regarding the amount and nature of student performance data that would be collected and the general education services that would be provided;

2. Strategies for increasing the child’s rate of learning; and

3. The parents’ right to request an evaluation.

41.311(2) *Certification required.* Each group member must certify in writing whether the report reflects the member’s conclusion. If it does not reflect the member’s conclusion, the group member must submit a separate statement presenting the member’s conclusions.

281—41.312(256B,34CFR300) General education interventions. Each LEA, in conjunction with the AEA, shall attempt to resolve the presenting problem or behaviors of concern in the general education environment prior to conducting a full and individual evaluation. In circumstances when there is a suspicion that a child is an eligible individual under this chapter, the AEA or AEA in collaboration with

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the LEA will conduct a full and individual initial evaluation. Documentation of the rationale for such action will be included in the individual's educational record.

41.312(1) *Notice to parents.* Each LEA will provide general notice to parents on an annual basis about the provision of general education interventions that occur as a part of the agency's general program and that may occur at any time throughout the school year.

41.312(2) *Nature of general education interventions.* General education interventions will include consultation with special education support and instructional personnel. General education intervention activities will be documented and include measurable and goal-directed attempts to resolve the presenting problem or behaviors of concern, communication with parents, collection of data related to the presenting problem or behaviors of concern, intervention design and implementation, and systematic progress monitoring to measure the effects of interventions.

41.312(3) *Referral for full and individual initial evaluation.* If the referring problem or behaviors of concern are shown to be resistant to general education interventions or if interventions are demonstrated to be effective but need continued and substantial effort that may include the provision of special education and related services, the agency shall then conduct a full and individual initial evaluation.

41.312(4) *Parent may request evaluation at any time.* The parent of a child receiving general education interventions may request that the agency conduct a full and individual initial evaluation at any time during the implementation of such interventions.

281—41.313(256B,34CFR300) Systematic problem-solving process.

41.313(1) *Definition.* When used by an AEA in its identification process, "systematic problem-solving" means a set of procedures that is used to examine the nature and severity of an educationally related problem. These procedures primarily focus on variables related to developing effective educationally related interventions.

41.313(2) *Parent participation in systematic problem-solving process.* Active parent participation is an integral aspect of the process and is solicited throughout.

41.313(3) *Components.* At a minimum, a systematic problem-solving process includes the following components.

a. Description of problem. The presenting problem or behavior of concern is described in objective, measurable terms that focus on alterable characteristics of the individual and the environment. The individual and environment are examined through systematic data collection. The presenting problem or behaviors of concern are defined in a problem statement that describes the degree of discrepancy between the demands of the educational setting and the individual's performance.

b. Data collection and problem analysis. A systematic, data-based process for examining all that is known about the presenting problem or behaviors of concern is used to identify interventions that have a high likelihood of success. Data collected on the presenting problem or behaviors of concern are used to plan and monitor interventions. Data collected are to be relevant to the presenting problem or behaviors of concern and shall be collected in multiple settings using multiple sources of information and multiple data collection methods. Data collection procedures are to be individually tailored, valid, and reliable, and allow for frequent and repeated measurement of intervention effectiveness.

c. Intervention design and implementation. Interventions will be designed based on the preceding analysis, the defined problem, parent input, and professional judgments about the potential effectiveness of interventions. The interventions are to be described in an intervention plan that includes goals and strategies, a progress monitoring plan, a decision-making plan for summarizing and analyzing progress monitoring data, and responsible parties. Interventions will be implemented as developed and modified on the basis of objective data and with the agreement of the responsible parties.

d. Progress monitoring. Systematic progress monitoring will be conducted that includes regular and frequent data collection, analysis of individual performance across time, and modification of interventions as frequently as necessary based on systematic progress monitoring data.

e. Evaluation of intervention effects. The effectiveness of interventions will be evaluated through a systematic procedure in which patterns of individual performance are analyzed and summarized.

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Decisions regarding the effectiveness of interventions focus on comparisons with initial levels of performance.

41.313(4) *Rule of construction.* A systematic problem-solving process may be used for any child suspected of being an eligible individual, and nothing in this chapter nor in Part B of the Act is to be construed to limit the applicability of a systematic problem-solving process to children suspected of having a certain type of disability.

281—41.314(256B,34CFR300) Progress monitoring and data collection.

41.314(1) *Evidence of progress in general education instruction.* Each public agency shall establish standards, consistent with those the department may establish, by which the adequacy of general education instruction, including the quality and quantity of data gathered, is assessed, and whether such data are sufficient in quantity and quality to make decisions under Part B of the Act and this chapter.

41.314(2) *Progress monitoring and determining eligibility.* Each public agency shall engage in progress monitoring of each individual's progress as the department may prescribe during the process of evaluating whether a child is an eligible individual and record such progress in any manner that the department may permit or prescribe. If the AEA or LEA serving an individual imposes additional standards for the monitoring of progress of individuals during the process of evaluation, personnel serving that individual are to comply with those additional requirements. The team determining the child's eligibility may increase the frequency with which the child's progress is monitored.

41.314(3) *Progress monitoring and eligible individuals.* Each public agency shall engage in progress monitoring of each eligible individual's progress as the department may prescribe and record such progress in any manner that the department may permit or require. If the AEA or LEA serving an eligible individual imposes additional requirements for the monitoring of progress of eligible individuals, personnel serving that individual will comply with those additional requirements. An IEP team may increase the frequency with which an eligible individual's progress is monitored.

281—41.315 to 41.319 Reserved.

281—41.320(256B,34CFR300) Definition of individualized education program.

41.320(1) *General.* As used in this chapter, the term "individualized education program" or "IEP" means a written statement for each child with a disability that is developed, reviewed, and revised in a meeting in accordance with these rules, and that must include:

a. A statement of the child's present levels of academic achievement and functional performance, including:

(1) How the child's disability affects the child's involvement and progress in the general education curriculum (i.e., the same curriculum as for nondisabled children); or

(2) For preschool children, as appropriate, how the disability affects the child's participation in appropriate activities;

b. A statement of measurable annual goals, including academic and functional goals designed to meet:

(1) The child's needs that result from the child's disability to enable the child to be involved in and make progress in the general education curriculum; and

(2) Each of the child's other educational needs that result from the child's disability;

c. For children with disabilities who take alternate assessments aligned to alternate academic achievement standards, a description of benchmarks or short-term objectives;

d. A description of:

(1) How the child's progress toward meeting the annual goals described in paragraph 41.320(1) "*b*" will be measured; and

(2) When periodic reports on the progress the child is making toward meeting the annual goals, such as through the use of quarterly or other periodic reports, concurrent with the issuance of report cards, will be provided;

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e. A statement of the special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided to enable the child:

- (1) To advance appropriately toward attaining the annual goals;
- (2) To be involved in and make progress in the general education curriculum in accordance with paragraph 41.320(1) “a,” and to participate in extracurricular and other nonacademic activities; and
- (3) To be educated and participate with other children with disabilities and nondisabled children in the activities described in this rule;

f. An explanation of the extent, if any, to which the child will not participate with nondisabled children in the regular class and in the activities described in paragraph 41.320(1) “e”;

g. A statement of any individual appropriate accommodations that are necessary to measure the academic achievement and functional performance of the child on state and districtwide assessments consistent with Section 612(a)(16) of the Act; and, if the IEP team determines that the child must take an alternate assessment instead of a particular regular state or districtwide assessment of student achievement, a statement of why the child cannot participate in the regular assessment and why the particular alternate assessment selected is appropriate for the child; and

h. The projected date for the beginning of the services and modifications described in paragraph 41.320(1) “e” and the anticipated frequency, location, and duration of those services and modifications.

41.320(2) *Transition services.* Beginning not later than the first IEP to be in effect when the child turns 14, or younger if determined appropriate by the IEP team, and updated annually, thereafter, the IEP must include:

a. Appropriate measurable postsecondary goals based upon age-appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills; and

b. The transition services, including courses of study, needed to assist the child in reaching those goals.

41.320(3) *Transfer of rights at age of majority.* Beginning not later than one year before the child reaches the age of majority under state law, the IEP must include a statement that the child has been informed of the child’s rights under Part B of the Act, if any, that will transfer to the child on reaching the age of majority under rule 281—41.520(256B,34CFR300).

41.320(4) *Construction.* Nothing in this rule shall be construed to require:

a. That additional information be included in a child’s IEP beyond what is explicitly required in Section 614 of the Act; or

b. The IEP team to include information under one component of a child’s IEP that is already contained under another component of the child’s IEP.

41.320(5) *Special considerations.* The IEP, or an associated document, must contain the answers to the questions contained in subrule 41.116(4).

41.320(6) *Prohibited practices.* An IEP shall not include practices that are precluded by constitution, statute, this chapter, or any other applicable law.

41.320(7) *Clearing classrooms.* An IEP or a behavioral intervention plan shall not include provisions for clearing all other students out of the regular classroom in order to calm the child requiring special education or the child for whom a behavioral intervention plan has been implemented except as provided in Iowa Code section 279.51A.

If a student whose behavior caused a classroom clearance has an IEP or a behavioral intervention plan, the classroom teacher shall call for and be included in a review and potential revision of the student’s IEP or behavioral intervention plan by the student’s IEP team. The AEA, in collaboration with the school district, may, when the parent or guardian meets with the IEP team during the review or reevaluation of the student’s IEP, inform the parent or guardian of individual or family counseling services available in the area. The public agencies must provide those services if those services are necessary for a FAPE.

281—41.321(256B,34CFR300) IEP team.

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41.321(1) General. The public agency must ensure that the IEP team for each child with a disability includes the following:

- a. The parents of the child;
- b. At least one regular education teacher of the child if the child is, or may be, participating in the regular education environment;
- c. At least one special education teacher of the child or, where appropriate, at least one special education provider of the child;
- d. A representative of the public agency who:
 - (1) Is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities;
 - (2) Is knowledgeable about the general education curriculum; and
 - (3) Is knowledgeable about the availability of resources of the public agency.
- e. An individual who can interpret the instructional implications of evaluation results, who may be a member of the team described in paragraphs 41.321(1) "b" to "f";
- f. At the discretion of the parent or the agency, other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate; and
- g. Whenever appropriate, the child with a disability.

41.321(2) Transition services participants.

a. In accordance with paragraph 41.321(1) "g," the public agency must invite a child with a disability to attend the child's IEP team meeting if a purpose of the meeting will be the consideration of the postsecondary goals for the child and the transition services needed to assist the child in reaching those goals under subrule 41.320(2).

b. If the child does not attend the IEP team meeting, the public agency must take other steps to ensure that the child's preferences and interests are considered.

c. To the extent appropriate, with the consent of the parents or a child who has reached the age of majority, in implementing the requirements of paragraph 41.321(2) "a," the public agency must invite a representative of any participating agency that is likely to be responsible for providing or paying for transition services.

41.321(3) Determination of knowledge and special expertise. The determination of the knowledge or special expertise of any individual described in paragraph 41.321(1) "f" must be made by the party (parents or public agency) who invited the individual to be a member of the IEP team.

41.321(4) Designating a public agency representative. A public agency may designate a public agency member of the IEP team to also serve as the agency representative, if the criteria in paragraph 41.321(1) "d" are satisfied.

41.321(5) IEP team attendance.

a. A member of the IEP team described in paragraphs 41.321(1) "b" to "e" is not required to attend an IEP team meeting, in whole or in part, if the parent of a child with a disability and the public agency agree, in writing, that the attendance of the member is not necessary because the member's area of the curriculum or related services is not being modified or discussed in the meeting.

b. A member of the IEP team described in paragraph 41.321(5) "a" may be excused from attending an IEP team meeting, in whole or in part, when the meeting involves a modification to or discussion of the member's area of the curriculum or related services, if:

- (1) The parent, in writing, and the public agency consent to the excusal; and
- (2) The member submits, in writing to the parent and the IEP team, input into the development of the IEP prior to the meeting.

41.321(6) Initial IEP team meeting for child under Part C. In the case of a child who was previously served under Part C of the Act, an invitation to the initial IEP team meeting must, at the request of the parent, be sent to the Part C service coordinator or other representatives of the Part C system to assist with the smooth transition of services.

281—41.322(256B,34CFR300) Parent participation.

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41.322(1) Public agency responsibility—general. Each public agency must take steps to ensure that one or both of the parents of a child with a disability are present at each IEP team meeting or are afforded the opportunity to participate, including:

- a. Notifying parents of the meeting early enough to ensure that they will have an opportunity to attend; and
- b. Scheduling the meeting at a mutually agreed-upon time and place.

41.322(2) Information provided to parents.

- a. The notice required under paragraph 41.322(1) “a” must:
 - (1) Indicate the purpose, time, and location of the meeting and who will be in attendance (name and position); and
 - (2) Inform the parents of the provisions in paragraph 41.321(1) “f” and subrule 41.321(3) relating to the participation of other individuals on the IEP team who have knowledge or special expertise about the child and subrule 41.321(6) relating to the participation of the Part C service coordinator or other representatives of the Part C system at the initial IEP team meeting for a child previously served under Part C of the Act.

b. For a child with a disability, beginning not later than the first IEP to be in effect when the child turns 14, or younger if determined appropriate by the IEP team, the notice also must:

- (1) Indicate that a purpose of the meeting will be the consideration of the postsecondary goals and transition services for the child, in accordance with subrule 41.320(2), and that the agency will invite the student; and
- (2) Identify any other agency that will be invited to send a representative.

41.322(3) Other methods to ensure parent participation. If neither parent can attend an IEP team meeting, the public agency must use other methods to ensure parent participation, including individual or conference telephone calls, consistent with rule 281—41.328(256B,34CFR300) related to alternative means of meeting participation.

41.322(4) Conducting an IEP team meeting without a parent in attendance. A meeting may be conducted without a parent in attendance if the public agency is unable to convince the parents that they should attend. In this case, the public agency must keep a record of its attempts to arrange a mutually agreed-upon time and place, including:

- a. Detailed records of telephone calls made or attempted and the results of those calls;
- b. Copies of correspondence sent to the parents and any responses received; and
- c. Detailed records of visits made to the parent’s home or place of employment and the results of those visits.

41.322(5) Use of interpreters or other action, as appropriate. The public agency must take whatever action is necessary to ensure that the parent understands the proceedings of the IEP team meeting, including arranging for an interpreter for parents who are deaf or hard of hearing or whose native language is other than English.

41.322(6) Parent copy of child’s IEP. The public agency must give the parent a copy of the child’s IEP at no cost to the parent.

41.322(7) Rule of construction: “final” versus “draft” IEPs. An agency shall not present a completed and finalized IEP to parents before there has been a full discussion with the parents regarding the eligible individual’s need for special education and related services and the services the agency will provide to the individual. An agency may come prepared with evaluation findings, proposed statements of present levels of educational performance, proposed recommendations regarding annual goals or instructional objectives, and proposals concerning the nature of special education and related services to be provided. The agency shall inform the parents at the outset of the meeting that the proposals are only recommendations for review and discussion with the parents.

281—41.323(256B,34CFR300) When IEPs must be in effect.

41.323(1) General. An IEP must be in effect before special education and related services are provided to eligible individuals. At the beginning of each school year, each public agency must

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have in effect, for each child with a disability within its jurisdiction, an IEP, as defined in rule 281—41.320(256B,34CFR300).

41.323(2) Reserved.

41.323(3) *Initial IEPs; provision of services.* Each public agency must ensure that:

a. A meeting to develop an IEP for a child is conducted within 30 days of a determination that the child needs special education and related services; and

b. As soon as possible following development of the IEP, special education and related services are made available to the child in accordance with the child's IEP.

41.323(4) *Accessibility of child's IEP to teachers and others.* Each public agency must ensure that:

a. The child's IEP is accessible to each regular education teacher, special education teacher, related services provider, and any other service provider who is responsible for its implementation; and

b. Each teacher and provider described in paragraph 41.323(4) "a" is informed of:

(1) His or her specific responsibilities related to implementing the child's IEP; and

(2) The specific accommodations, modifications, and supports that must be provided for the child in accordance with the IEP.

41.323(5) *IEPs for children who transfer public agencies in the same state.* If a child with a disability who had an IEP that was in effect in a previous public agency in this state transfers to a new public agency in this state and enrolls in a new school within the same school year, the new public agency, in consultation with the parents, must provide FAPE to the child including services comparable to those described in the child's IEP from the previous public agency until the new public agency either:

a. Adopts the child's IEP from the previous public agency; or

b. Develops, adopts, and implements a new IEP that meets the applicable requirements in these rules.

41.323(6) *IEPs for children who transfer from another state.* If a child with a disability who had an IEP that was in effect in a previous public agency in another state transfers to a public agency in this state and enrolls in a new school within the same school year, the receiving public agency, in consultation with the parents, must provide the child with FAPE, including services comparable to those described in the child's IEP from the previous public agency, until the receiving public agency:

a. Conducts an evaluation pursuant to these rules if determined to be necessary by the receiving public agency; and

b. Develops, adopts, and implements a new IEP, if appropriate, that meets the applicable requirements in these rules.

41.323(7) *Transmittal of records.* To facilitate the transition for a child described in subrules 41.323(5) and 41.323(6):

a. The receiving public agency in which the child enrolls must take all reasonable steps to promptly obtain the child's records, including the IEP and supporting documents and any other records relating to the provision of special education or related services to the child, from the previous public agency in which the child was enrolled, pursuant to 34 CFR Section 99.31(a)(2); and

b. The previous public agency in which the child was enrolled must take all reasonable steps to promptly respond to the request from the receiving public agency.

41.323(8) *Other.* An IEP of an eligible individual will be implemented immediately after an IEP team meeting. Exceptions to this would be when the meeting occurs during the summer or vacation period, unless the child requires services during that period, or where there are circumstances requiring a short delay (e.g., making transportation arrangements); however, there can be no undue delay in providing special education and related services to an eligible individual.

281—41.324(256B,34CFR300) Development, review, and revision of IEP.

41.324(1) *Development of IEP.*

a. General. In developing each child's IEP, the IEP team must consider:

(1) The strengths of the child;

(2) The concerns of the parents for enhancing the education of their child;

(3) The results of the initial or most recent evaluation of the child; and

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(4) The academic, developmental, and functional needs of the child.

b. Consideration of special factors. The IEP team must:

(1) In the case of a child whose behavior impedes the child's learning or that of others, consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior;

(2) In the case of a child with limited English proficiency, consider the language needs of the child as those needs relate to the child's IEP;

(3) In the case of a child who is blind or visually impaired, provide for instruction in braille and the use of braille unless the IEP team determines, after an evaluation of the child's reading and writing skills, needs, and appropriate reading and writing media, including an evaluation of the child's future needs for instruction in braille or the use of braille, that instruction in braille or the use of braille is not appropriate for the child;

(4) Consider the communication needs of the child and, in the case of a child who is deaf or hard of hearing, consider the child's language and communication needs, opportunities for direct communications with peers and professional personnel in the child's language and communication mode, academic level, and full range of needs, including opportunities for direct instruction in the child's language and communication mode; and

(5) Consider whether the child needs assistive technology devices and services, including accessible instructional materials.

c. Requirement with respect to regular education teacher. A regular education teacher of a child with a disability, as a member of the IEP team, must, to the extent appropriate, participate in the development of the IEP of the child, including the determination of:

(1) Appropriate positive behavioral interventions and supports and other strategies for the child; and

(2) Supplementary aids and services, program modifications, and support for school personnel consistent with paragraph 41.320(1) "e."

d. Agreement.

(1) In making changes to a child's IEP after the annual IEP team meeting for a school year, the parent of a child with a disability and the public agency may agree not to convene an IEP team meeting for the purposes of making those changes and instead may develop a written document to amend or modify the child's current IEP.

(2) If changes are made to the child's IEP in accordance with subparagraph 41.324(1) "d"(1), the public agency must ensure that the child's IEP team is informed of those changes.

(3) A public agency may only agree to make changes pursuant to subparagraph 41.324(1) "d"(1) concerning resources the public agency has the authority to commit.

e. Consolidation of IEP team meetings. To the extent possible, the public agency must encourage the consolidation of reevaluation meetings for the child and other IEP team meetings for the child.

f. Amendments. Changes to the IEP may be made either by the entire IEP team at an IEP team meeting or as provided in paragraph 41.324(1) "d" by amending the IEP rather than by redrafting the entire IEP. Upon request, a parent must be provided with a revised copy of the IEP with the amendments incorporated.

41.324(2) Review and revision of IEPs.

a. General. Each public agency must ensure that, subject to paragraphs 41.324(2) "b" and "c," the IEP team:

(1) Reviews the child's IEP periodically, but not less frequently than annually, to determine whether the annual goals for the child are being achieved; and

(2) Revises the IEP, as appropriate, to address the following:

1. Any lack of expected progress toward the annual goals described in paragraph 41.320(1) "b," and in the general education curriculum, if appropriate;

2. The results of any reevaluation conducted under rule 281—41.303(256B,34CFR300);

3. Information about the child provided to or by the parents, as described in paragraph 41.305(1) "b";

4. The child's anticipated needs; or

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5. Other matters.

b. Consideration of special factors. In conducting a review of the child's IEP, the IEP team must consider the special factors described in paragraph 41.324(1) "b."

c. Requirement with respect to regular education teacher. A regular education teacher of the child, as a member of the IEP team, must, consistent with paragraph 41.324(1) "c," participate in the review and revision of the IEP of the child.

41.324(3) Failure to meet transition objectives.

a. Participating agency failure. If a participating agency, other than the public agency, fails to provide the transition services described in the IEP in accordance with subrule 41.320(2), the public agency must reconvene the IEP team to identify alternative strategies to meet the transition objectives for the child set out in the IEP.

b. Construction. Nothing in this chapter relieves any participating agency, including a state vocational rehabilitation agency, of the responsibility to provide or pay for any transition service that the agency would otherwise provide to children with disabilities who meet the eligibility criteria of that agency.

41.324(4) Children with disabilities in adult prisons.

a. Requirements that do not apply. The following requirements do not apply to children with disabilities who are convicted as adults under state law and incarcerated in adult prisons:

(1) The requirements contained in Section 612(a)(16) of the Act and paragraph 41.320(1) "g" relating to participation of children with disabilities in general assessments.

(2) The requirements in subrule 41.320(2) relating to transition planning and transition services do not apply with respect to the children whose eligibility under Part B of the Act will end because of their age before they will be eligible to be released from prison based on consideration of their sentence and eligibility for early release.

b. Modifications of IEP or placement.

(1) Subject to subparagraph 41.324(4) "b"(2), the IEP team of a child with a disability who is convicted as an adult under state law and incarcerated in an adult prison may modify the child's IEP or placement if the state has demonstrated a bona fide security or compelling penological interest that cannot otherwise be accommodated.

(2) The requirements in rule 281—41.320(256B,34CFR300) relating to IEPs and rule 281—41.114(256B,34CFR300) relating to LRE do not apply with respect to the modifications described in subparagraph 41.324(4) "b"(1).

41.324(5) Interim IEP. An IEP must be in effect before special education and related services are provided to an eligible individual. This does not preclude the development of an interim IEP that meets all the requirements of rule 281—41.320(256B,34CFR300) when the IEP team determines that it is necessary to temporarily provide special education and related services to an eligible individual as part of the evaluation process, before the IEP is finalized, to aid in determining the appropriate services for the individual. An interim IEP may also be developed when an eligible individual moves from one LEA to another and a copy of the current IEP is not available, or either the LEA or the parent believes that the current IEP is not appropriate or that additional information is needed before a final decision can be made regarding the specific special education and related services that are needed. IEP teams cannot use interim IEPs to circumvent the requirements of this division. It is essential that the temporary provision of service not become the final special education for the individual before the IEP is finalized. In order to ensure that this does not happen, IEP teams shall take the following actions:

a. Specific conditions and timelines. Develop an interim IEP for the individual that sets out the specific conditions and timelines for the temporary service. An interim IEP shall not be in place for more than 30 school days.

b. Parent agreement and involvement. Ensure that the parents agree to the interim service before it is carried out and that they are involved throughout the process of developing, reviewing, and revising the individual's IEP.

c. Complete evaluation and make judgments. Set a specific timeline for completing the evaluation and making judgments about the appropriate services for the individual.

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d. Conduct meeting. Conduct an IEP meeting at the end of the trial period in order to finalize the individual's IEP.

41.324(6) Rules of construction—instruction in braille. For an eligible individual for whom instruction in braille is determined to be appropriate, as provided in subparagraph 41.324(1) "b"(3), that eligible individual is entitled to instruction in braille reading and writing that is sufficient to enable the individual to communicate with the same level of proficiency as an individual of otherwise comparable ability at the same grade level. Instruction in braille reading and writing may only be provided by a teacher with an endorsement to teach individuals who are blind or visually impaired.

281—41.325(256B,34CFR300) Private school placements by public agencies.**41.325(1) Developing IEPs.**

a. Before a public agency places a child with a disability in, or refers a child to, a private school or facility, the agency must initiate and conduct a meeting to develop an IEP for the child in accordance with these rules.

b. The agency must ensure that a representative of the private school or facility attends the meeting. If the representative cannot attend, the agency must use other methods to ensure participation by the private school or facility, including individual or conference telephone calls.

41.325(2) Reviewing and revising IEPs.

a. After a child with a disability enters a private school or facility, any meetings to review and revise the child's IEP may be initiated and conducted by the private school or facility at the discretion of the public agency.

b. If the private school or facility initiates and conducts these meetings, the public agency must ensure that the parents and an agency representative are involved in any decision about the child's IEP and agree to any proposed changes in the IEP before those changes are implemented.

41.325(3) Responsibility. Even if a private school or facility implements a child's IEP, responsibility for compliance with this chapter remains with the public agency and the SEA.

281—41.326(256B,34CFR300) Other rules concerning IEPs.

41.326(1) Children from birth to the age of three. A fully developed IFSP is considered to have met the rules for an IEP for an eligible individual younger than the age of three.

41.326(2) Support services only. An IEP that satisfies the requirements of this chapter will be developed for eligible individuals who need only special education support services. The special education support service specialist with knowledge in the area of need will have primary responsibility for recommending the need for support service, the type or model of service to be provided, and the amount of service to be provided; however, the determination that an individual is eligible for special education will be based on these rules. Attendance at IEP meetings for students will be determined in accordance with rule 281—41.325(256B,34CFR300).

281—41.327(256B,34CFR300) Educational placements. Consistent with subrule 41.501(3), each public agency must ensure that the parents of each child with a disability are members of any group that makes decisions on the educational placement of the child.

281—41.328(256B,34CFR300) Alternative means of meeting participation. When conducting IEP team meetings and placement meetings under this chapter and carrying out administrative matters under Section 615 of the Act, such as scheduling, exchange of witness lists, and status conferences, the parent of a child with a disability and a public agency may agree to use alternative means of meeting participation, such as video conferences and conference calls.

281—41.329(256B,34CFR300) Family support mentoring program. If moneys are appropriated by the general assembly for a fiscal year for the purpose provided in this rule, the department will develop guidelines for a comprehensive family support mentoring program that meets the language and communication needs of families, or implement them if guidelines already exist. The department, in

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consultation with the Iowa school for the deaf, will administer the family support mentoring program for deaf or hard-of-hearing children.

41.329(1) General department powers. In establishing the family support mentoring program, the department may do all of the following, either directly or through a contract or agreement:

- a. Hire a family support mentoring coordinator.
- b. Utilize the parent resource created in Iowa Code section 256B.10(2) as well as other resources to provide families with information and guidance on language, communication, social, and emotional development of their child.
- c. Recruit family support mentors to serve the needs of the family support mentoring program.
- d. Train parents of a deaf or hard-of-hearing child to become family support mentors and train deaf or hard-of-hearing adults to become deaf or hard-of-hearing adult family support mentors.
- e. Reach out to parents of children identified through the early hearing detection and intervention program in the Iowa department of health and human services and share information about the family support mentoring program services available to such parents.
- f. Reach out to families referred by primary care providers, the area education agencies, and from other agencies that provide services to deaf or hard-of-hearing children.
- g. Provide follow-up contact, as necessary, to establish services after initial referral.
- h. Provide administrative oversight of any program established under this rule. Administrative oversight may include:
 - (1) Review of the qualifications of mentors;
 - (2) Alignment of family needs with paired mentors;
 - (3) Administration and analysis of satisfaction surveys; and
 - (4) Gathering demographic data of those served, such as ages and geographic location of children.

41.329(2) Collaboration.

a. The department shall work with the early hearing detection and intervention program in the Iowa department of health and human services, the Iowa school for the deaf, and the area education agencies when developing the guidelines.

b. The department shall coordinate family support mentoring activities with the early hearing detection and intervention program in the Iowa department of health and human services, the Iowa school for the deaf, the area education agencies, and nonprofit organizations that provide family support mentoring to parents with deaf or hard-of-hearing children.

41.329(3) Nature of the program.

- a. A family support mentor may be any of the following:
- (1) A parent who has experience raising a child who is deaf or hard of hearing and who has experience supporting the child's communication and language development.
 - (2) A deaf or hard-of-hearing adult who serves as a deaf or hard-of-hearing role model for the children and their families. Deaf or hard-of-hearing family support mentors may provide parents with an understanding of American sign language and English, including instructional philosophies for both, such as bilingual bimodal, listening and spoken language, total communication, and other philosophies, as well as other forms of communication, deaf culture, deaf community, and self-identity.
 - (3) The department will ensure mentors are qualified to provide supports that match the specific needs, experiences, and desires of families of children who are deaf or hard-of-hearing.
 - (4) Nothing in this rule shall be construed to create or require any credential or certification to serve as a family support mentor.
- b. With the consent of the parent of the deaf or hard-of-hearing child, the family support mentoring program shall pair families based on the specific need, experience, or want of the parent of the deaf or hard-of-hearing child with another family mentor or deaf or hard-of-hearing adult mentor to provide support.
- c. The family support mentoring program under this rule shall meet the following additional standards:
- (1) Serve families of children who are deaf or hard-of-hearing from the child's birth through age 8, and may serve learners up to age 21;

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- (2) Provide services statewide, regardless of educational setting of the child;
- (3) Make services available to families based on their specific need, experience, or want;
- (4) Make services available to all children who are deaf or hard-of-hearing and their families, regardless of children's eligibility for other programs, including Section 504 of the Rehabilitation Act of 1973; and
- (5) Not condition receipt of services under this rule upon eligibility under this chapter or 281—Chapter 120.

41.329(4) *Rule of construction.* This rule only applies in a fiscal year for which there is an appropriation by the general assembly.

281—41.330 to 41.399 Reserved.

DIVISION VI
ADDITIONAL RULES RELATED TO AEAs, LEAs, AND SPECIAL EDUCATION

281—41.400(256B,34CFR300) Shared responsibility.

41.400(1) *General.* It is the responsibility of each eligible individual's resident LEA to provide or make provision for appropriate special education and related services to meet the requirements of state and federal statutes and rules. This responsibility may be met by one or more of the following: by each LEA acting for itself, by action of two or more LEAs through the establishment and maintenance of joint programs, by the AEA, by contract for services from approved public or private agencies offering the appropriate special education and related services, or by any combination of these options. The AEA shall support and assist LEAs in meeting their responsibilities for providing appropriate special education and related services. Part B of the Act and this chapter are binding on each public agency that has direct or delegated authority to provide special education and related services regardless of whether that agency is receiving funds under Part B of the Act.

41.400(2) *Shared responsibility between general education and special education.* General education and special education personnel share responsibility in providing appropriate educational programs for eligible individuals and in providing intervention and prevention services to individuals who are experiencing learning or adjustment problems.

281—41.401(256B,34CFR300) Licensure (certification). Special education personnel shall meet the board of educational examiners' licensure (certification) and endorsement or recognition requirements for the position for which they are employed. In addition, personnel providing special education and related services who do not hold board of educational examiners' licensure (certification) or other recognition required by its board, and who, by the nature of their work, are required to hold a professional or occupational license, certificate or permit in order to practice or perform the particular duties involved in this state shall be required to hold a license, certificate, or permit.

281—41.402(256B,273,34CFR300) Authorized personnel. An agency is authorized to employ the following types of special education personnel, as appropriate to the special education and related services provided.

41.402(1) *Director of special education.* The director shall be responsible for the implementation of special education for eligible individuals pursuant to Iowa Code section 273.5 and these rules. The director's powers and duties shall include:

- a. Properly identifying children requiring special education,
- b. Ensuring that each child requiring special education in the area receives an appropriate special education program or service,
- c. Assigning appropriate weights for each child requiring special education programs or services as provided in Iowa Code section 256B.9,
- d. Supervising special education support personnel,

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e. Providing each school district within the area served and the department with a special education weighted enrollment count, including the additional enrollment because of special education by the date specified in the Iowa Code,

f. Submitting to the department special education instructional and support program plans and applications, subject to the criteria listed in Iowa Code chapters 256B and 273, for approval by the deadline specified in the Iowa Code,

g. Coordinating the special education program within the area served, and

h. Reporting any violation of the Act or this chapter to the department for appropriate action.

41.402(2) *Special education instructional personnel.* Special education instructional personnel serve as teachers or instructional assistants at the preschool, elementary or secondary levels for eligible individuals.

41.402(3) *Special education support personnel.* The following positions are those of special education support personnel who provide special education and related services as stated in each definition. These personnel work under the direction of the director and may provide identification, evaluation, remediation, consultation, systematic progress monitoring, continuing education and referral services in accordance with appropriate licensure (certification) and endorsement or approval, or statement of professional recognition. They may also engage in data collection, applied research and program evaluation.

“Assistant director of special education” provides specific areawide administrative, supervisory and coordinating functions as delegated by the director.

“Audiologist” applies principles, methods and procedures for analysis of hearing functioning in order to plan, counsel, coordinate and provide intervention strategies and services for individuals who are deaf or hard of hearing.

“Consultant” is the special education instructional specialist who provides ongoing support to special and general education instructional personnel delivering services to eligible individuals. The consultant participates in the identification process and program planning of eligible individuals as well as working to attain the least restrictive environment appropriate for each eligible individual. The consultant demonstrates instructional procedures, strategies, and techniques; assists in the development of curriculum and instructional materials; assists in transition planning; and provides assistance in classroom management and behavioral intervention.

“Educational interpreter” interprets or translates spoken language into sign language commensurate with the receiver’s language comprehension and interprets or translates sign language into spoken language.

“Educational strategist” provides assistance to general education classroom teachers in developing intervention strategies for individuals who are disabled in obtaining an education but can be accommodated in the general education classroom environment.

“Itinerant teacher” provides special education on an itinerant basis to eligible individuals.

“Occupational therapist” is a licensed health professional who applies principles, methods and procedures for analysis of, but not limited to, motor or sensorimotor functions to determine the educational significance of identified problem areas including fine motor manipulation, self-help, adaptive work skills, and play or leisure skills in order to provide planning, coordination, and implementation of intervention strategies and services for eligible individuals.

“Physical therapist” is a licensed health professional who applies principles, methods and procedures for analysis of motor or sensorimotor functioning to determine the educational significance of motor or sensorimotor problems within, but not limited to, areas such as mobility and positioning in order to provide planning, coordination, and the implementation of intervention strategies and services for eligible individuals.

“School psychologist” assists in the identification of needs regarding behavioral, social, emotional, educational and vocational functioning of individuals; analyzes and integrates information about behavior and conditions affecting learning; consults with school personnel and parents regarding planning, implementing and evaluating individual and group interventions; provides direct services

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through counseling with parents, individuals and families; and conducts applied research related to psychological and educational variables affecting learning.

“School social worker” enhances the educational programs of individuals by assisting in identification and assessment of individuals’ educational needs including social, emotional, behavioral and adaptive needs; provides intervention services including individual, group, parent and family counseling; provides consultation and planning; and serves as a liaison among home, school and community.

“Special education coordinator” facilitates the provision of special education within a specific geographic area.

“Special education media specialist” is a media specialist who facilitates the provision of media services to eligible individuals; provides consultation regarding media and materials used to support special education and related services for eligible individuals; and aids in the effective use of media by special education personnel.

“Special education nurse” is a professional registered nurse who assesses, identifies and evaluates the health needs of eligible individuals; interprets for the family and educational personnel how health needs relate to individuals’ education; implements specific activities commensurate with the practice of professional nursing; and integrates health into the educational program.

“Speech-language pathologist” applies principles, methods and procedures for an analysis of speech and language comprehension and production to determine communicative competencies and provides intervention strategies and services related to speech and language development as well as disorders of language, voice, articulation and fluency.

“Supervisor” is the professional discipline specialist who provides for the development, maintenance, supervision, improvement and evaluation of professional practices and personnel within a specialty area.

“Work experience coordinator” plans and implements sequential secondary programs that provide on- and off-campus work experience for individuals requiring specially designed career exploration and vocational preparation when they are not available through the general education curriculum.

“Others (other special education support personnel)” may be employed as approved by the department and board of educational examiners.

281—41.403(256B) Paraprofessionals.

41.403(1) Responsibilities. Special education personnel may be employed to assist in the provision of special education and related services to children with disabilities and shall:

a. Complete appropriate preservice and ongoing staff development specific to the functions to be performed. The agency shall make provisions for or require such completion prior to the beginning of service wherever practicable and within a reasonable time of the beginning of service where the preentry completion is not practicable.

b. Work under the supervision of professional personnel who are appropriately authorized to provide direct services in the same area where the paraprofessional provides assistive services.

c. Not serve as a substitute for appropriately authorized professional personnel.

41.403(2) Authorized special education paraprofessionals. Authorized special education paraprofessional roles include:

“Audiometrist” provides hearing screening and other specific hearing-related activities as assigned by the audiologist.

“Licensed practical nurse” shall be permitted to provide supportive and restorative care to an eligible individual in the school setting in accordance with the student’s health plan when under the supervision of and as delegated by the registered nurse employed by the school district.

“Occupational therapy assistant” is licensed to perform occupational therapy procedures and related tasks that have been selected and delegated by the supervising occupational therapist.

“Para-educator” is a licensed educational assistant as defined in Iowa Code section 272.12.

“Physical therapist assistant” is licensed to perform physical therapy procedures and related tasks that have been selected and delegated by the supervising physical therapist.

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“Psychology assistant” collects screening data through records review, systematic behavior observations, standardized interviews, group and individual assessment techniques; implements psychological intervention plans; and maintains psychological records under supervision of the school psychologist.

“Speech-language pathology assistant” provides certain language, articulation, voice and fluency activities as assigned by the supervising speech-language pathologist.

“Vision assistant” provides materials in the appropriate medium for use by individuals who are blind or visually impaired and performs other duties as assigned by the supervising teacher of the visually impaired.

“Others” as approved by the department, such as educational assistants described in 281—subrule 12.4(9).

281—41.404(256B) Policies and procedures required of all public agencies.

41.404(1) Policies. Policies related to the provision of special education and related services shall be developed by each public agency and made available to the department upon request to include the following:

- a. Policy to ensure the provision of a free appropriate public education.
- b. Policy for the provision of special education and related services.
- c. Policies to ensure the provision of special education and related services in the least restrictive environment.
- d. Policy concerning the protection of confidentiality of personally identifiable information.
- e. Policy concerning graduation requirements for eligible individuals.
- f. Policy to ensure the participation of eligible individuals in districtwide assessment programs.

41.404(2) Procedures. Each public agency shall develop written procedures concerning the provision of special education and related services and shall make such procedures available to the department upon request and shall, at a minimum, include:

- a. Procedures to ensure the provision of special education and related services.
- b. Procedures for protecting the confidentiality of personally identifiable information.
- c. Procedures for the graduation of eligible individuals.
- d. Procedures for providing continuing education opportunities.
- e. A procedure for its continued participation in the development of the eligible individual’s IEP in out-of-state placements and shall outline a program to prepare for the eligible individual’s transition back to the LEA before the eligible individual is placed out of state.
- f. Procedures for ensuring procedural safeguards for children with disabilities and their parents.
- g. Procedures to ensure the participation of eligible individuals in districtwide assessment programs.

41.404(3) Rule of construction. Any public agency will adopt any policy and procedure necessary to comply with Part B of the Act and this chapter, even if such a policy or procedure is not listed in this rule.

281—41.405 Reserved.

281—41.406(256B) Additional requirements of LEAs. The following provisions are applicable to each LEA that provides special education and related services.

41.406(1) Policies. Each LEA will develop written policies pertinent to the provision of special education and related services and make such policies available to the department upon request. At a minimum, such policies include those identified in subrule 41.404(1).

41.406(2) Procedures. Each LEA will develop written procedures pertinent to the provision of special education and related services and make such procedures available to the department upon request. At a minimum, such procedures include those identified in subrule 41.404(2).

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41.406(3) Plans. Districtwide plans required by the department or federal programs and regulations will address eligible individuals and describe the relationship to or involvement of special education services.

41.406(4) Nonpublic schools. Each LEA shall provide special education and related services designed to meet the needs of nonpublic school students with disabilities residing in the jurisdiction of the agency in accordance with Iowa Code sections 256.12(2) and 273.2.

281—41.407(256B,273,34CFR300) Additional requirements of AEAs. The following provisions are applicable to each AEA that provides special education and related services.

41.407(1) Policies. Each AEA will develop written policies pertinent to the provision of special education and related services and will make such policies available to the department upon request. At a minimum, such policies will include those identified in paragraphs 41.404(1) “a” to “e” and the following:

- a. Policy regarding appointment of surrogate parents.
- b. Policy regarding provision of and payment for independent educational evaluations.
- c. Policy to ensure the goal of providing a full educational opportunity to all eligible individuals.
- d. Policy addressing the methods of ensuring services to eligible individuals.
- e. Child find policy that ensures that individuals with disabilities who are in need of special education and related services are identified, located and evaluated.

f. A policy that meets the requirements of these rules for evaluating and determining eligibility of students who require special education, including a description of the extent to which the AEA system uses categorical designations. While AEAs may identify students as eligible for special education without designating a specific disability category, it is recognized that in certain circumstances the identification of a specific disability may enhance the development and ongoing provision of an appropriate educational program.

- g. Policy for the development, review and revision of IEPs.
- h. Policy for transition from Part C to Part B.
- i. Policy for provision of special education and related services to students in accredited, nonpublic schools.

41.407(2) Procedures. Each AEA will develop written procedures pertinent to the provision of special education and related services and make such procedures available to the department upon request. At a minimum, such procedures include those identified in subrule 41.404(2) and the following:

- a. Appointment of surrogate parents.
- b. Provision of and payment for independent educational evaluations.
- c. Procedures for monitoring the caseloads of LEA and AEA special education personnel to ensure that the IEPs of eligible individuals are able to be fully implemented. The description shall include the procedures for timely and effective resolution of concerns about caseloads and paraprofessional assistance that have not been resolved satisfactorily pursuant to subparagraph 41.408(2) “b”(3).

d. Procedures for evaluating the effectiveness of services in meeting the needs of eligible individuals in order to receive federal assistance.

e. Child find procedures that ensure that individuals with disabilities who are in need of special education and related services are identified, located and evaluated.

f. Evaluation and determination of eligibility procedures for identifying students who require special education that meet the requirements of these rules, including a description of the extent to which the AEA system uses categorical designations.

- g. Procedures for the development, review and revision of IEPs.
- h. Procedures to ensure the provision of special education and related services in the least restrictive environment.

i. Procedures for transition from Part C to Part B.

j. Procedures for provision of special education and related services to students in accredited, nonpublic schools.

- k. Procedures describing the methods of ensuring services to eligible individuals.

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41.407(3) *Responsibility for monitoring of compliance.* The AEA shall conduct activities in each constituent LEA to monitor compliance with the provisions of all applicable federal and state statutes and regulations and rules applicable to the education of eligible individuals. Monitoring of compliance activities will be as directed by the department.

41.407(4) *Educate and inform.* The AEA will provide the department with a description of proactive steps to inform and educate parents, AEA and LEA staff regarding eligibility, identification criteria and process, and due process steps to be followed when parents disagree regarding eligibility.

41.407(5) *Coordination of services.* The AEA will provide the department with a description of how the AEA identification process and LEA delivery systems for instructional services will be coordinated.

281—41.408(256B,273,34CFR300) Instructional services.

41.408(1) *General.* Instructional services are the specially designed instruction and accommodations provided by special education instructional personnel to eligible individuals. These services are ordinarily provided by the LEA but, in limited circumstances, may be provided by another LEA, the AEA or another recognized agency through contractual agreement. An agency must use the procedure and criteria described in subrule 41.408(2) for creating a delivery system for instructional services.

41.408(2) *Delivery system.* An agency shall use the following development process for creating a system for delivering instructional services.

a. The delivery system shall meet this chapter's requirements relating to a continuum of services and placements, address the needs of eligible individuals aged 3 to 21, and provide for the following:

(1) The provision of accommodations and modifications to the general education environment and program, including settings and programs in which eligible individuals aged 3 through 5 receive specially designed instruction, including modification and adaptation of curriculum, instructional techniques and strategies, and instructional materials.

(2) The provision of specially designed instruction and related activities through cooperative efforts of special education teachers and general education teachers in the general education classroom.

(3) The provision of specially designed instruction on a limited basis by a special education teacher in the general classroom or in an environment other than the general classroom, including consultation with general education teachers.

(4) The provision of specially designed instruction to eligible individuals with similar special education instructional needs organized according to the type of curriculum and instruction to be provided, and the severity of the educational needs of the eligible individuals served.

b. The delivery system shall be described in writing and shall include the following components:

(1) A description of how services will be organized and how services will be provided to eligible individuals consistent with the requirements of this chapter, and the provisions described in paragraph 41.408(2) "a."

(2) A description of how the caseloads of special education teachers will be determined and regularly monitored to ensure that the IEPs of eligible individuals are able to be fully implemented.

(3) A description of the procedures a special education teacher can use to resolve concerns about caseload. The procedures shall specify timelines for the resolution of a concern and identify the person to whom a teacher reports a concern. The procedures shall also identify the person or persons who are responsible for reviewing a concern and rendering a decision, including the specification of any corrective actions.

(4) A description of the process that will be used to evaluate the effectiveness of the system.

(5) A description of how the delivery system will meet the targets identified in the state's performance plan, described in this chapter.

(6) A description of how the delivery system will address needs identified by the state in any determination made under this chapter.

c. The following procedures shall be followed by the agency:

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(1) The delivery system will be developed by a group of individuals that includes parents of eligible individuals, special education and general education teachers, administrators, and at least one AEA representative. The AEA representative will be selected by the AEA director.

(2) The AEA director of special education will verify that the delivery system complies with these rules prior to LEA board adoption.

(3) Prior to presenting the delivery system to the LEA board for adoption, the group responsible for its development will provide an opportunity for comment on the system by the general public. In presenting the delivery system to the LEA board for adoption, the group will describe the comment received from the general public and how the comment was considered.

(4) The LEA board will approve the system prior to implementation.

d. The procedure presented in subrule 41.907(9) shall be followed in applying the weighting plan for special education instructional funds described in Iowa Code section 256B.9 to any delivery system developed under these provisions.

e. An LEA shall review, revise, and readopt its delivery system using the procedures identified in paragraph “*c*” of this subrule at least every five years, or sooner if required by the state in conjunction with any determination made under this chapter.

f. An LEA shall make the document describing its delivery system readily available to LEA personnel and members of the public.

281—41.409(256B,34CFR300) Support services. Support services are the specially designed instruction and activities that augment, supplement or support the educational program of eligible individuals. These services include special education consultant services, educational strategist services, audiology, occupational therapy, physical therapy, school psychology, school social work services, special education nursing services, and speech-language services. Support services are usually provided by the AEA but may be provided by contractual agreement, subject to the approval of the board, by another qualified agency.

281—41.410(256B,34CFR300) Itinerant services. Special education may be provided to eligible individuals on an itinerant basis.

41.410(1) School based. Special education may be provided on an itinerant basis whenever the number, age, severity, or location of eligible individuals to be served does not justify the provision of professional personnel on a full-time basis to an attendance center. These services are usually provided by the AEA but may be provided by contractual agreement, subject to the approval of the AEA board, by the LEA or another qualified agency.

41.410(2) Home service or hospital service. Special education shall be provided to eligible individuals whose condition precludes their participation in the general and special education provided in schools or related facilities. Home or hospital instructional services shall in ordinary circumstances be provided by the LEA but may be provided by contractual agreement, subject to the approval of the LEA board, by the AEA or another qualified agency. Home or hospital support or related services are usually provided by the AEA but may be provided by contractual agreement, subject to the approval of the AEA board, by the LEA or another qualified agency. The provision of services in a home or hospital setting shall satisfy the following:

a. The service and the location of the service shall be specified in the individual’s IEP.

b. The status of these individuals shall be periodically reviewed to substantiate the continuing need for and the appropriateness of the service.

c. Procedural safeguards shall be afforded to individuals receiving special education through itinerant services in a home or hospital setting. A need for itinerant services in a home or hospital setting must be determined at a meeting to develop or revise the individual’s IEP, and parents must give consent or be given notice, as appropriate.

281—41.411(256B,34CFR300) Related services, supplementary aids and services. Related services and supplementary aids and services shall be provided to an eligible individual in accordance with an

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IEP. Such services that are also support services under rule 281—41.409(256B,34CFR300) are usually provided by the AEA but may be provided by contractual agreement, subject to the approval of the board, by another qualified agency. Other such services are usually provided by the LEA but may be provided by contractual agreement, subject to the approval of the board, by another qualified agency.

281—41.412(256B,34CFR300) Transportation. Transportation of eligible individuals shall generally be provided as for other individuals, when appropriate. Specialized transportation of an eligible individual to and from a special education instructional service is a function of that service and, therefore, an appropriate expenditure of special education instructional funds generated through the weighting plan. Transportation includes travel to and from school and between schools; travel in and around school buildings; and specialized equipment, such as special or adapted buses, lifts, and ramps, if required to provide special transportation for a child with a disability.

41.412(1) *Special arrangements.* Transportation of an eligible individual to and from a special education support service is a function of that service, shall be specified in the IEP, and be considered an appropriate expenditure of funds generated for special education support services. When, because of an eligible individual's educational needs or because of the location of the program, the IEP team determines that unique transportation arrangements are required and the arrangements are specified in the IEP, the resident LEA shall be required to provide one or more of the following transportation arrangements for instructional services and the AEA for support services:

a. Transportation from the eligible individual's residence to the location of the special education services and back to the individual's residence, or child care placement for eligible individuals below the age of six.

b. Special assistance or adaptations in getting the eligible individual to and from and on and off the vehicle, en route to and from the special education services.

c. Reimbursement of the actual costs of transportation when by mutual agreement the parents provide transportation for the eligible individual to and from the special education services.

d. Agencies are not required to provide reimbursement to parents who elect to provide transportation in lieu of agency-provided transportation.

41.412(2) *Responsibility for transportation.*

a. The AEA shall provide the cost of transportation of eligible individuals to and from special education support services. The AEA shall provide the cost of transportation necessary for the provision of special education support services to nonpublic school eligible individuals if the cost of that transportation is in addition to the cost of transportation provided for special education instructional services.

b. When individuals enrolled in nonpublic schools are enrolled in public schools to receive special education instructional services, transportation provisions between nonpublic and public attendance centers will be the responsibility of the school district of residence.

c. Transportation of individuals, when required for educational diagnostic purposes, is a special education support service and, therefore, an appropriate expenditure of funds generated for special education support services.

41.412(3) *Purchase of transportation equipment.* When it is necessary for an LEA to purchase equipment to transport eligible individuals to special education instructional services, this equipment shall be purchased from the LEA's general fund, the physical plant and equipment levy (PPEL) fund, or the secure an advanced vision for education (SAVE) fund, if appropriate. The direct purchase of transportation equipment is not an appropriate expenditure of special education instructional funds generated through the weighting plan. A written schedule of depreciation for this transportation equipment shall be developed by the LEA, using the method specified in Iowa Code section 285.1(12). An annual charge to special education instructional funds generated through the weighting plan for depreciation of the equipment shall be made and reported as a special education transportation cost in the LEA Certified Annual Report if the equipment was purchased from the general fund. If the transportation equipment was purchased using funds from the PPEL fund or SAVE fund, that purchase is not reported as a cost from special education funds generated through the weighting plan. Annual

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depreciation charges on transportation equipment purchased with funds from the PPEL fund or SAVE fund shall be calculated by the LEA according to the directions provided with the Annual Transportation Report and adjusted to reflect the proportion of special education mileage to the total annual mileage.

41.412(4) *Lease of transportation equipment.* An LEA may elect to lease equipment to transport eligible individuals to special education instructional services, in which case the lease cost would be an expenditure from the PPEL fund or the SAVE fund, if appropriate. Cost of the lease, or that portion of the lease attributable to special education transportation expense, shall not be considered a special education transportation cost and shall not be reported in the LEA Certified Annual Report.

41.412(5) *Transportation equipment safety standards.* All transportation equipment, either purchased or leased by an LEA to transport eligible individuals to special education instructional services or provided by an AEA, must conform to the transportation equipment safety and construction standards contained in 281—Chapters 43 and 44.

41.412(6) *Transportation for students in interdistrict and intradistrict school choice programs, such as open enrollment.* The following provisions apply to the transportation of eligible individuals who participate in school choice programs.

a. A parent who elects to have an eligible individual attend another school within an LEA may be required by the LEA to provide transportation to that eligible individual, even if transportation is listed on the eligible individual's IEP as a service.

b. If a parent elects to have an eligible individual with transportation listed as a service on the individual's IEP attend a school in a different LEA under the open enrollment provisions of Iowa Code section 282.18 and 281—Chapter 17, and the resident district informs the parent it will not be providing transportation for the eligible individual to the receiving district, a parent who chooses to proceed with open enrollment will be deemed, as a matter of law, to have waived the transportation listed as a service on the IEP.

c. If a parent of an eligible individual with transportation listed as a service on the individual's IEP elects to have the eligible individual attend a school in a different LEA under the open enrollment provisions of Iowa Code section 282.18 and 281—Chapter 17, and the resident district elects to provide that transportation as a service, such transportation as a related service may be provided by the resident district, regardless of consent granted or refused by the receiving district and notwithstanding any other statute or rule to the contrary.

d. If a parent of an eligible individual with transportation listed as a service on the individual's IEP elects to have the eligible individual attend a school in a different LEA under the open enrollment provisions of Iowa Code section 282.18 and 281—Chapter 17, and the receiving district elects to provide that transportation as a service, such transportation as a related service may be provided by the receiving district, regardless of consent granted or refused by the resident district and notwithstanding any other statute or rule to the contrary, but the costs of such transportation shall not be paid by the individual's resident district.

e. If an eligible individual's placement team proposes placement in a district other than the district of residence based on a tuition arrangement, regardless of whether the eligible individual's IEP lists transportation as a related service, and the other district agrees to accept the eligible individual as an open enrollment student but not as a tuition student, the receiving district must provide transportation as a related service, regardless of consent granted or refused by the receiving district and notwithstanding any other statute or rule to the contrary.

f. Except as expressly provided in this subrule, nothing in this subrule creates or expands any right, license, or privilege concerning transportation of persons who are not eligible individuals or transportation of eligible individuals who do not have transportation listed as a service on an IEP.

281—41.413(256,256B,34CFR300) Additional rules relating to accredited nonpublic schools.

41.413(1) *State and local funds under Iowa Code section 256.12.* State and local funds expended to provide special education and related services to eligible individuals who receive special education and related services in accredited nonpublic schools under Iowa Code section 256.12 must be expended on services, including materials and equipment, that are secular, neutral, and nonideological and, unless a

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provision of Iowa Code section 256.12 specifically requires the contrary, are subject to the restrictions contained in rules 281—41.138(256,256B,34CFR300) to 281—41.144(256,256B,34CFR300).

41.413(2) *Placements by public agencies.* State and local funds expended to provide special education and related services to eligible individuals who receive special education and related services in accredited nonpublic schools pursuant to a placement made or referred by a public agency pursuant to rules 281—41.145(256B,34CFR300) to 281—41.147(256B,34CFR300) must be expended on services, including materials and equipment, that are secular, neutral, and nonideological and, unless a provision of law specifically requires the contrary, are subject to the restrictions contained in rules 281—41.138(256,256B,34CFR300) to 281—41.144(256,256B,34CFR300).

281—41.414 to 41.499 Reserved.

DIVISION VII
PROCEDURAL SAFEGUARDS

281—41.500(256B,34CFR300) Responsibility of SEA and other public agencies. The department shall ensure that each public agency establishes, maintains, and implements procedural safeguards that meet the requirements of rules 281—41.500(256B,34CFR300) to 281—41.536(256B,34CFR300).

281—41.501(256B,34CFR300) Opportunity to examine records; parent participation in meetings.

41.501(1) *Opportunity to examine records.* The parents of a child with a disability must be afforded, in accordance with the procedures of rules 281—41.613(256B,34CFR300) to 281—41.621(256B,34CFR300), an opportunity to inspect and review all education records with respect to:

- a. The identification, evaluation, and educational placement of the child; and
- b. The provision of FAPE to the child.

41.501(2) *Parent participation in meetings.*

a. The parents of a child with a disability must be afforded an opportunity to participate in meetings with respect to:

- (1) The identification, evaluation, and educational placement of the child; and
- (2) The provision of FAPE to the child.

b. Each public agency must provide notice consistent with paragraphs 41.322(1)“a” and 41.322(2)“b” to ensure that parents of children with disabilities have the opportunity to participate in meetings described in paragraph 41.501(2)“a.”

c. A meeting does not include informal or unscheduled conversations involving public agency personnel and conversations on issues such as teaching methodology, lesson plans, or coordination of service provision. A meeting also does not include preparatory activities that public agency personnel engage in to develop a proposal or response to a parent proposal that will be discussed at a later meeting.

41.501(3) *Parent involvement in placement decisions.*

a. Each public agency must ensure that a parent of each child with a disability is a member of any group that makes decisions on the educational placement of the parent’s child.

b. In implementing the requirements of paragraph 41.501(3)“a,” the public agency must use procedures consistent with the procedures described in subrule 41.322(1) to paragraph 41.322(2)“a.”

c. If neither parent can participate in a meeting in which a decision is to be made relating to the educational placement of their child, the public agency must use other methods to ensure their participation, including individual or conference telephone calls, or video conferencing.

d. A placement decision may be made by a group without the involvement of a parent, if the public agency is unable to obtain the parent’s participation in the decision. In this case, the public agency must have a record of its attempt to ensure parental involvement.

281—41.502(256B,34CFR300) Independent educational evaluation.

41.502(1) *General.*

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a. The parents of a child with a disability have the right to obtain an independent educational evaluation of the child, subject to subrules 41.502(2) to 41.502(5).

b. Each public agency must provide to parents, upon request for an independent educational evaluation, information about where an independent educational evaluation may be obtained and the agency criteria applicable for independent educational evaluations as set forth in subrule 41.502(5).

c. For the purposes of this division:

(1) “Independent educational evaluation” means an evaluation conducted by a qualified examiner who is not employed by the public agency responsible for the education of the child in question; and

(2) “Public expense” means that the AEA either pays for the full cost of the evaluation or ensures that the evaluation is otherwise provided at no cost to the parent.

41.502(2) *Parent right to evaluation at public expense.*

a. A parent has the right to an independent educational evaluation at public expense if the parent disagrees with an evaluation obtained by the AEA, subject to the conditions in paragraphs 41.502(2) “*b*” to “*d*.”

b. If a parent requests an independent educational evaluation at public expense, the AEA must, without unnecessary delay, either:

(1) File a due process complaint to request a hearing to show that its evaluation is appropriate; or

(2) Ensure that an independent educational evaluation is provided at public expense, unless the AEA demonstrates in a hearing pursuant to these rules that the evaluation obtained by the parent did not meet agency criteria.

c. If the AEA files a due process complaint notice to request a hearing and the final decision is that the AEA’s evaluation is appropriate, the parent still has the right to an independent educational evaluation, but not at public expense.

d. If a parent requests an independent educational evaluation, the AEA may ask for the parent’s reason why the parent objects to the public evaluation. However, the AEA may not require the parent to provide an explanation and may not unreasonably delay either providing the independent educational evaluation at public expense or filing a due process complaint to request a due process hearing to defend the public evaluation.

e. A parent is entitled to only one independent educational evaluation at public expense each time a public agency conducts an evaluation with which the parent disagrees.

41.502(3) *Parent-initiated evaluations.* If the parent obtains an independent educational evaluation at public expense or shares with a public agency an evaluation obtained at private expense, the results of the evaluation:

a. Must be considered by the public agency, if it meets agency criteria, in any decision made with respect to the provision of FAPE to the child; and

b. May be presented by any party as evidence at a hearing on a due process complaint under this chapter regarding that child.

41.502(4) *Requests for evaluations by administrative law judges.* If an administrative law judge requests an independent educational evaluation as part of a hearing on a due process complaint, the cost of the evaluation must be at public expense.

41.502(5) *Agency criteria.*

a. If an independent educational evaluation is at public expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, must be the same as the criteria that the public agency uses when it initiates an evaluation, to the extent those criteria are consistent with the parent’s right to an independent educational evaluation.

b. Except for the criteria described in paragraph 41.502(5) “*a*,” a public agency may not impose conditions or timelines related to obtaining an independent educational evaluation at public expense.

281—41.503(256B,34CFR300) Prior notice by the public agency; content of notice.

41.503(1) *Notice.* Written notice that meets the requirements of subrule 41.503(2) must be given to the parents of a child with a disability within a reasonable time before the public agency:

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a. Proposes to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child; or

b. Refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child.

41.503(2) *Content of notice.* The notice required under subrule 41.503(1) must include the following:

a. A description of the action proposed or refused by the agency;

b. An explanation of why the agency proposes or refuses to take the action;

c. A description of each evaluation procedure, assessment, record, or report the agency used as a basis for the proposed or refused action;

d. A statement that the parents of a child with a disability have protection under the procedural safeguards of this chapter and, if this notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained;

e. Sources for parents to contact to obtain assistance in understanding the provisions of this chapter;

f. A description of other options that the IEP team considered and the reasons why those options were rejected; and

g. A description of other factors that are relevant to the agency's proposal or refusal.

41.503(3) *Notice in understandable language.*

a. The notice required under subrule 41.503(1) must be written in language understandable to the general public, and must be provided in the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so.

b. If the native language or other mode of communication of the parent is not a written language, the public agency must take steps to ensure the following:

(1) The notice is translated orally or by other means to the parent in the parent's native language or other mode of communication;

(2) The parent understands the content of the notice; and

(3) There is written evidence that the requirements in subparagraphs 41.503(3) "b"(1) and (2) have been met.

281—41.504(256B,34CFR300) Procedural safeguards notice.

41.504(1) *General.* A copy of the procedural safeguards available to the parents of a child with a disability must be given to the parents only once a school year, except that a copy also must be given to the parents as follows:

a. Upon initial referral or parent request for evaluation;

b. Upon receipt of the first state complaint under rules 281—41.151(256B,34CFR300) to 281—41.153(256B,34CFR300) and upon receipt of the first due process complaint under rule 281—41.507(256B,34CFR300) in a school year;

c. In accordance with the discipline procedures in subrule 41.530(8); and

d. Upon request by a parent.

41.504(2) *Internet website.* A public agency may place a current copy of the procedural safeguards notice on its Internet website if a website exists.

41.504(3) *Contents.* The procedural safeguards notice must include a full explanation of all the procedural safeguards available under this chapter relating to the following:

a. Independent educational evaluations;

b. Prior written notice;

c. Parental consent;

d. Access to education records;

e. Opportunity to present and resolve complaints through the due process complaint and state complaint procedures, and must explain:

(1) The time period in which to file a complaint;

(2) The opportunity for the agency to resolve the complaint; and

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(3) The difference between the due process complaint and the state complaint procedures, including the jurisdiction of each procedure, what issues may be raised, filing and decisional timelines, and relevant procedures;

- f.* The availability of mediation;
- g.* The child's placement during the pendency of any due process complaint;
- h.* Procedures for students who are subject to placement in an interim alternative educational setting;
- i.* Requirements for unilateral placement by parents of children in private schools at public expense;
- j.* Hearings on due process complaints, including requirements for disclosure of evaluation results and recommendations;
- k.* Civil actions, including the time period in which to file those actions; and
- l.* Attorneys' fees.

41.504(4) *Notice in understandable language.* The notice required under subrule 41.504(1) must meet the requirements of subrule 41.503(3).

41.504(5) *"Summaries" of procedural safeguards limited.* An AEA or LEA may only provide a document summarizing the procedural safeguards notice if that document has been approved by the department. Any summary is to inform parents that the summary is only provided for the convenience of the reader and is not a replacement for the procedural safeguards notice. Any approved summary of the procedural safeguards notice will be given along with the procedural safeguards notice and will not be given in place of the procedural safeguards notice.

281—41.505(256B,34CFR300) Electronic mail. A parent of a child with a disability may elect to receive notices required by these rules by an electronic mail communication, if the public agency makes that option available.

281—41.506(256B,34CFR300) Mediation.

41.506(1) *General.* Each public agency must ensure that procedures are established and implemented to allow parties involved in disputes relating to any matter under this chapter, including matters arising prior to the filing of a due process complaint, to resolve disputes through a mediation process.

41.506(2) *Requirements.* The procedures must meet the following requirements:

- a.* The procedures must ensure that the mediation process:
 - (1) Is voluntary on the part of the parties;
 - (2) Is not used to deny or delay a parent's right to a hearing on the parent's due process complaint, or to deny any other rights afforded under Part B of the Act; and
 - (3) Is conducted by a qualified and impartial mediator who is trained in effective mediation techniques.

b. A public agency may establish procedures to offer to parents and schools that choose not to use the mediation process, an opportunity to meet, at a time and location convenient to the parents, with a disinterested party:

(1) Who is under contract with an appropriate alternative dispute resolution entity, or a parent training and information center or community parent resource center in the state established under Section 671 or 672 of the Act; and

(2) Who would explain the benefits of, and encourage the use of, the mediation process to the parents.

c. State responsibility for mediation.

(1) The state must maintain a list of individuals who are qualified mediators and knowledgeable in laws and regulations relating to the provision of special education and related services.

(2) The SEA must select mediators on a random, rotational, or other impartial basis.

d. The state must bear the cost of the mediation process, including the costs of meetings described in paragraph 41.506(2) "b."

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e. Each session in the mediation process must be scheduled in a timely manner and must be held in a location that is convenient to the parties to the dispute.

f. If the parties resolve a dispute through the mediation process, the parties must execute a legally binding agreement that sets forth that resolution and that:

(1) States that all discussions that occurred during the mediation process will remain confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding; and

(2) Is signed by both the parent and a representative of the agency who has the authority to bind the agency.

g. A written, signed mediation agreement is enforceable in any state court of competent jurisdiction or in a district court of the United States.

h. Discussions that occur during the mediation process must be confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding of any federal court or state court.

41.506(3) *Impartiality of mediator.*

a. An individual who serves as a mediator under this chapter:

(1) May not be an employee of the SEA or the LEA that is involved in the education or care of the child; and

(2) Must not have a personal or professional interest that conflicts with the person's objectivity.

b. A person who otherwise qualifies as a mediator is not an employee of an LEA or state agency described under rule 281—41.228(256B,34CFR300) solely because the person is paid by the agency to serve as a mediator.

41.506(4) *Mediation procedures.* A request for mediation filed before the filing of a due process complaint shall be conducted according to the procedures described in rule 281—41.1002(256B,34CFR300).

41.506(5) *Rule of construction.* The department shall accept documents captioned as requests for a “preappeal conference” as requests for mediation prior to the filing of a due process complaint.

281—41.507(256B,34CFR300) Filing a due process complaint.

41.507(1) *General.*

a. Subject matter of due process complaint. A parent or a public agency may file a due process complaint on any of the matters described in subrule 41.503(1) relating to the identification, evaluation or educational placement of a child with a disability, or the provision of FAPE to the child.

b. The due process complaint must allege a violation that occurred not more than two years before the date the parent or public agency knew or should have known about the alleged action that forms the basis of the due process complaint, except that the exceptions to the timeline described in subrule 41.511(6) apply to the timeline in this rule.

41.507(2) *Information for parents.* The public agency must inform the parent of any free or low-cost legal and other relevant services available in the area if the parent requests the information or the parent or the agency files a due process complaint under this rule.

41.507(3) *Synonymous term.* Whenever the term “request for due process hearing” is used in prior department rules and documents, that term shall be construed to mean “due process complaint.”

281—41.508(256B,34CFR300) Due process complaint.

41.508(1) *General.* A due process complaint shall be provided to the department, and a copy shall be provided to each party to the complaint.

41.508(2) *Content of complaint.* The due process complaint required in subrule 41.508(1) must include the following information:

a. The name of the child;

b. The address of the residence of the child;

c. The name of the school the child is attending;

d. In the case of a homeless child or youth within the meaning of Section 725(2) of the McKinney-Vento Homeless Assistance Act, 42 U.S.C. 11434a(2), available contact information for the child and the name of the school the child is attending;

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e. A description of the nature of the problem of the child relating to the proposed or refused initiation or change, including facts relating to the problem; and

f. A proposed resolution of the problem to the extent known and available to the party at the time.

41.508(3) Notice required before a hearing on a due process complaint. A party may not have a hearing on a due process complaint until the party, or the attorney representing the party, files a due process complaint that meets the requirements of subrule 41.508(2).

41.508(4) Sufficiency of complaint.

a. General. The due process complaint required by this rule must be deemed sufficient unless the party receiving the due process complaint notifies the administrative law judge and the other party in writing, within 15 days of receipt of the due process complaint, that the receiving party believes the due process complaint does not meet the requirements in subrule 41.508(2).

b. Determination. Within five days of receipt of notification under paragraph 41.508(4)“a,” the administrative law judge must make a determination on the face of the due process complaint of whether the due process complaint meets the requirements of subrule 41.508(2) and must immediately notify the parties in writing of that determination.

c. Amending due process complaint. A party may amend its due process complaint only if:

(1) The other party consents in writing to the amendment and is given the opportunity to resolve the due process complaint through a meeting held pursuant to rule 281—41.510(256B,34CFR300); or

(2) The administrative law judge grants permission, except that the administrative law judge may only grant permission to amend at any time not later than five days before the due process hearing begins.

d. Timelines after amendment. If a party files an amended due process complaint, the timelines for the resolution meeting in subrule 41.510(1) and the time period to resolve in subrule 41.510(2) begin again with the filing of the amended due process complaint.

41.508(5) LEA response to a due process complaint.

a. General. If the LEA has not sent a prior written notice to the parent regarding the subject matter contained in the parent’s due process complaint, the LEA must, within ten days of receiving the due process complaint, send to the parent a response that includes the following:

(1) An explanation of why the agency proposed or refused to take the action raised in the due process complaint;

(2) A description of other options that the IEP team considered and the reasons why those options were rejected;

(3) A description of each evaluation procedure, assessment, record, or report the agency used as the basis for the proposed or refused action; and

(4) A description of the other factors that are relevant to the agency’s proposed or refused action.

b. Rule of construction. A response by an LEA under paragraph 41.508(5)“a” shall not be construed to preclude the LEA from asserting that the parent’s due process complaint was insufficient, where appropriate.

41.508(6) Other party response to a due process complaint. Except as provided in subrule 41.508(5), the party receiving a due process complaint must, within ten days of receiving the due process complaint, send to the other party a response that specifically addresses the issues raised in the due process complaint.

281—41.509(256B,34CFR300) Model forms.

41.509(1) Forms available. The department shall develop model forms to assist parents and public agencies in filing a due process complaint and to assist parents and other parties in filing a state complaint; however, the department or LEA may not require the use of the model forms.

41.509(2) Use of forms. Parents, public agencies, and other parties may use the appropriate model form described in subrule 41.509(1), or another form or other document, so long as the form or document that is used meets, as appropriate, the content requirements in subrule 41.508(2) for filing a due process complaint or the requirements in subrule 41.153(2) for filing a state complaint.

281—41.510(256B,34CFR300) Resolution process.

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41.510(1) Resolution meeting.

a. General. Within 15 days of receiving notice of the parent's due process complaint and prior to the initiation of a due process hearing, the LEA must convene a meeting with the parent and the relevant member or members of the IEP team who have specific knowledge of the facts identified in the due process complaint that:

(1) Includes a representative of the public agency who has decision-making authority on behalf of that agency; and

(2) May not include an attorney of the LEA unless the parent is accompanied by an attorney.

b. Purpose of meeting. The purpose of the meeting is for the parent of the child to discuss the due process complaint and the facts that form the basis of the due process complaint so that the LEA has the opportunity to resolve the dispute that is the basis for the due process complaint.

c. When meeting not necessary. The meeting described in paragraphs 41.510(1) "a" and "b" need not be held if the parent and the LEA agree in writing to waive the meeting, or the parent and the LEA agree to use the mediation process described in rule 281—41.506(256B,34CFR300).

d. Determining relevant members of IEP team. The parent and the LEA determine the relevant members of the IEP team to attend the meeting.

41.510(2) Resolution period.

a. General. If the LEA has not resolved the due process complaint to the satisfaction of the parent within 30 days of the receipt of the due process complaint, the due process hearing may occur.

b. Timeline for decision. Except as provided in subrule 41.510(3), the timeline for issuing a final decision under rule 281—41.515(256B,34CFR300) begins at the expiration of this 30-day period.

c. Failure of parent to participate: delay of timeline. Except where the parties have jointly agreed to waive the resolution process or to use mediation, the failure of the parent filing a due process complaint to participate in the resolution meeting will delay the timelines for the resolution process and due process hearing until the meeting is held.

d. Failure of parent to participate: dismissal of complaint. If the LEA is unable to obtain the participation of the parent in the resolution meeting after reasonable efforts have been made and documented using the procedures in subrule 41.322(4), the LEA may, at the conclusion of the 30-day period, request that the administrative law judge dismiss the parent's due process complaint.

e. Failure of LEA to hold meeting. If the LEA fails to hold the resolution meeting specified in subrule 41.510(1) within 15 days of receiving notice of a parent's due process complaint or fails to participate in the resolution meeting, the parent may seek the intervention of the administrative law judge to begin the due process hearing timeline.

41.510(3) Adjustments to 30-day resolution period. The 45-day timeline for the due process hearing in subrule 41.515(1) starts the day after one of the following events:

a. Both parties agree in writing to waive the resolution meeting;

b. After either the mediation or resolution meeting starts but before the end of the 30-day period, the parties agree in writing that no agreement is possible;

c. If all parties agree in writing to continue the mediation at the end of the 30-day resolution period, but later the parent or public agency withdraws from the mediation process.

41.510(4) Written settlement agreement. If a resolution to the dispute is reached at the meeting described in paragraphs 41.510(1) "a" and "b," the parties must execute a legally binding agreement that is:

a. Signed by both the parent and a representative of the agency who has the authority to bind the agency; and

b. Enforceable in any state court of competent jurisdiction or in a district court of the United States, or, by the department, including but not limited to through the state complaint process.

41.510(5) Agreement review period. If the parties execute an agreement pursuant to subrule 41.510(4), a party may void the agreement within three business days of the agreement's execution.

281—41.511(256B,34CFR300) Impartial due process hearing.

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41.511(1) General. Whenever a due process complaint is received under this division, the parents or the LEA involved in the dispute must have an opportunity for an impartial due process hearing, consistent with the procedures in this chapter.

41.511(2) SEA responsible for conducting the due process hearing. The hearing described in subrule 41.511(1) must be conducted by the department.

41.511(3) Administrative law judge.

a. Minimum qualifications. At a minimum, an administrative law judge:

(1) Must not be an employee of the SEA or the LEA that is involved in the education or care of the child or a person having a personal or professional interest that conflicts with the person's objectivity in the hearing;

(2) Must possess knowledge of, and the ability to understand, the provisions of the Act, federal and state regulations pertaining to the Act, and legal interpretations of the Act by federal and state courts;

(3) Must possess the knowledge and ability to conduct hearings in accordance with appropriate, standard legal practice; and

(4) Must possess the knowledge and ability to render and write decisions in accordance with appropriate, standard legal practice.

b. Rule of construction. A person who otherwise qualifies to conduct a hearing under 41.511(3) "a" is not an employee of the agency solely because the person is paid by the agency to serve as an administrative law judge.

c. SEA to maintain list of administrative law judges. The department shall keep a list of the persons who serve as administrative law judges. The list must include a statement of the qualifications of each of those persons.

41.511(4) Subject matter of due process hearings. The party requesting the due process hearing may not raise issues at the due process hearing that were not raised in the due process complaint filed under subrule 41.508(2), unless each of the other parties agrees otherwise.

41.511(5) Timeline for requesting a hearing. A parent or agency must request an impartial hearing on the due process complaint within two years of the date the parent or agency knew or should have known about the alleged action that forms the basis of the due process complaint.

41.511(6) Exceptions to the timeline. The timeline described in subrule 41.511(5) does not apply to a parent if the parent was prevented from filing a due process complaint due to either of the following:

a. Specific misrepresentations by the LEA that it had resolved the problem forming the basis of the due process complaint; or

b. The LEA's withholding of information from the parent that was required under this chapter to be provided to the parent.

281—41.512(256B,34CFR300) Hearing rights.

41.512(1) General. Any party to a hearing conducted pursuant to the rules of this division and Division XII has the right to:

a. Be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of children with disabilities;

b. Present evidence and confront, cross-examine, and compel the attendance of witnesses;

c. Prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least five business days before the hearing;

d. Obtain a written or, at the option of the parents, electronic, verbatim record of the hearing; and

e. Obtain written or, at the option of the parents, electronic findings of fact and decisions.

41.512(2) Additional disclosure of information.

a. At least five business days prior to a hearing conducted pursuant to subrule 41.511(1), each party must disclose to all other parties all evaluations completed by that date and recommendations based on the offering party's evaluations that the party intends to use at the hearing.

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b. An administrative law judge may bar any party that fails to comply with paragraph 41.512(2)“a” from introducing the relevant evaluation or recommendation at the hearing without the consent of the other party.

41.512(3) Parental rights at hearings. Parents involved in hearings must be given the right to:

- a. Have the child who is the subject of the hearing present;
- b. Open the hearing to the public; and
- c. Have the record of the hearing and the findings of fact and decisions described in paragraphs 41.512(1)“d” and “e” provided at no cost to parents.

281—41.513(256B,34CFR300) Hearing decisions.

41.513(1) Decision of administrative law judge on the provision of FAPE.

a. Subject to paragraph 41.513(1)“b,” an administrative law judge’s determination of whether a child received FAPE must be based on substantive grounds.

b. In matters alleging a procedural violation, an administrative law judge may find that a child did not receive FAPE only if the procedural inadequacies:

- (1) Impeded the child’s right to FAPE;
- (2) Significantly impeded the parent’s opportunity to participate in the decision-making process regarding the provision of FAPE to the parent’s child; or
- (3) Caused a deprivation of educational benefit.

c. Nothing in this subrule shall be construed to preclude an administrative law judge from ordering an LEA to comply with procedural requirements under this division.

41.513(2) Reserved.

41.513(3) Separate request for a due process hearing. Nothing in this division shall be construed to preclude a parent from filing a separate due process complaint on an issue separate from a due process complaint already filed.

41.513(4) Findings and decision to advisory panel and general public. The department, after deleting any personally identifiable information, must:

- a. Transmit the findings and decisions referred to in paragraph 41.512(1)“e” to the state advisory panel established under rule 281—41.167(256B,34CFR300); and
- b. Make those findings and decisions available to the public.

281—41.514(256B,34CFR300) Finality of decision. A decision made in a hearing conducted pursuant to this division is final, except that any party involved in the hearing may appeal the decision by filing a civil action in state or federal court.

281—41.515(256B,34CFR300) Timelines and convenience of hearings.

41.515(1) Timeline. The public agency must ensure that not later than 45 days after the expiration of the 30-day period under subrule 41.510(2) or the adjusted time periods described in subrule 41.510(3):

- a. A final decision is reached in the hearing; and
- b. A copy of the decision is mailed to each of the parties.

41.515(2) Reserved.

41.515(3) Extensions of time or continuances. An administrative law judge may grant specific extensions of time or continuances beyond the periods set out in subrule 41.515(1) at the request of either party.

41.515(4) Hearing time. Each hearing must be conducted at a time and place that is reasonably convenient to the parents and child involved.

281—41.516(256B,34CFR300) Civil action.

41.516(1) General. Any party aggrieved by the findings and decision made under this division has the right to bring a civil action with respect to the due process complaint notice requesting a due process hearing under this division. The action may be brought in any state court of competent jurisdiction or in a district court of the United States without regard to the amount in controversy.

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41.516(2) Time limitation. The party bringing the action shall have 90 days from the date of the decision of the administrative law judge to file a civil action.

41.516(3) Additional requirements. In any action brought under subrule 41.516(1), the court:

- a. Receives the records of the administrative proceedings;
- b. Hears additional evidence at the request of a party; and
- c. Basing its decision on the preponderance of the evidence, grants the relief that the court determines to be appropriate.

41.516(4) Jurisdiction of United States district courts. The district courts of the United States have jurisdiction of actions brought under Section 615 of the Act without regard to the amount in controversy.

41.516(5) Rule of construction. Nothing in Part B of the Act or this chapter restricts or limits the rights, procedures, and remedies available under the Constitution, the Americans with Disabilities Act of 1990, Title V of the Rehabilitation Act of 1973, or other federal laws protecting the rights of children with disabilities, except that before the filing of a civil action under these laws seeking relief that is also available under Section 615 of the Act, the procedures under rules 281—41.507(256B,34CFR300) and 281—41.514(256B,34CFR300) must be exhausted to the same extent as would be required had the action been brought under Section 615 of the Act.

281—41.517(256B,34CFR300) Attorneys' fees.

41.517(1) General. In any action or proceeding brought under Section 615 of the Act, the court, in its discretion, may award reasonable attorneys' fees as part of the costs to any of the following:

- a. The prevailing party who is the parent of a child with a disability;
- b. To a prevailing party who is an SEA or LEA against the attorney of a parent who files a complaint or subsequent cause of action that is frivolous, unreasonable, or without foundation, or against the attorney of a parent who continued to litigate after the litigation clearly became frivolous, unreasonable, or without foundation; or
- c. To a prevailing SEA or LEA against the attorney of a parent, or against the parent, if the parent's request for a due process hearing or subsequent cause of action was presented for any improper purpose, such as to harass, to cause unnecessary delay, or to needlessly increase the cost of litigation.

41.517(2) Prohibition on use of funds.

- a. Funds under Part B of the Act may not be used to pay attorneys' fees or costs of a party related to any action or proceeding under Section 615 of the Act and this division.
- b. Paragraph 41.517(2) "a" does not preclude a public agency from using funds under Part B of the Act for conducting an action or proceeding under Section 615 of the Act.

41.517(3) Award of fees. A court awards reasonable attorneys' fees under Section 615(i)(3) of the Act consistent with the following:

a. *Amount of fees.* Fees awarded under Section 615(i)(3) of the Act must be based on rates prevailing in the community in which the action or proceeding arose for the kind and quality of services furnished. No bonus or multiplier may be used in calculating the fees awarded under this paragraph.

b. *When fees and costs may not be awarded.*

(1) Attorneys' fees may not be awarded and related costs may not be reimbursed in any action or proceeding under Section 615 of the Act for services performed subsequent to the time of a written offer of settlement to a parent if:

1. The offer is made within the time prescribed by Rule 68 of the federal Rules of Civil Procedure or, in the case of an administrative proceeding, at any time more than ten days before the proceeding begins;

2. The offer is not accepted within ten days; and

3. The court or administrative law judge finds that the relief finally obtained by the parents is not more favorable to the parents than the offer of settlement.

(2) Attorneys' fees may not be awarded relating to any meeting of the IEP team unless the meeting is convened as a result of an administrative proceeding or judicial action, or at the discretion of the state, for a mediation described in rule 281—41.506(256B,34CFR300).

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(3) A meeting conducted pursuant to rule 281—41.510(256B,34CFR300) shall not be considered either of the following:

1. A meeting convened as a result of an administrative hearing or judicial action; or
2. An administrative hearing or judicial action for purposes of this rule.

c. Exception to offer of settlement subrule. Notwithstanding subparagraph 41.517(3)“b”(1), an award of attorneys’ fees and related costs may be made to a parent who is the prevailing party and who was substantially justified in rejecting the settlement offer.

d. Reduction in attorney fees. Except as provided in paragraph 41.517(3)“e,” the court reduces, accordingly, the amount of the attorneys’ fees awarded under Section 615 of the Act, if the court finds that:

(1) The parent, or the parent’s attorney, during the course of the action or proceeding, unreasonably protracted the final resolution of the controversy;

(2) The amount of the attorneys’ fees otherwise authorized to be awarded unreasonably exceeds the hourly rate prevailing in the community for similar services by attorneys of reasonably comparable skill, reputation, and experience;

(3) The time spent and legal services furnished were excessive considering the nature of the action or proceeding; or

(4) The attorney representing the parent did not provide to the LEA the appropriate information in the due process request notice in accordance with rule 281—41.508(256B,34CFR300).

e. Exception to reduction in fees subrule. The provisions of paragraph 41.517(3)“d” do not apply in any action or proceeding if the court finds that the state or local agency unreasonably protracted the final resolution of the action or proceeding or there was a violation of Section 615 of the Act.

281—41.518(256B,34CFR300) Child’s status during proceedings.

41.518(1) General. Except as provided in rule 281—41.533(256B,34CFR300), during the pendency of any administrative or judicial proceeding regarding a due process complaint notice requesting a due process hearing under rule 281—41.507(256B,34CFR300), unless the state or local agency and the parents of the child agree otherwise, the child involved in the complaint must remain in his or her current educational placement.

41.518(2) Initial admission to public school. If the complaint involves an application for initial admission to public school, the child, with the consent of the parents, must be placed in the public school until the completion of all the proceedings.

41.518(3) Transition from Part C to Part B. If the complaint involves an application for initial services under this chapter from a child who is transitioning from Part C of the Act to Part B and is no longer eligible for Part C services because the child has reached the age of three, the public agency is not required to provide the Part C services that the child had been receiving. If the child is found eligible for special education and related services under Part B and the parent consents to the initial provision of special education and related services under subrule 41.300(2), then the public agency must provide those special education and related services that are not in dispute between the parent and the public agency.

41.518(4) Administrative law judge decision. If the administrative law judge in a due process hearing conducted by the SEA agrees with the child’s parents that a change of placement is appropriate, that placement must be treated as an agreement between the state and the parents for purposes of subrule 41.518(1).

41.518(5) Mediation requested prior to the filing of a due process complaint. Except as provided in rule 281—41.533(256B,34CFR300), during the pendency of any request for mediation filed prior to or in lieu of a due process complaint under rule 281—41.506(256B,34CFR300) and for ten days after any such mediation conference at which no agreement is reached, unless the state or local agency and the parents of the child agree otherwise, the child involved in any such mediation conference must remain in his or her current educational placement.

281—41.519(256B,34CFR300) Surrogate parents.

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41.519(1) General. Each public agency must ensure that the rights of a child are protected when:

- a. No parent as defined in rule 281—41.30(256B,34CFR300) can be identified;
- b. The public agency, after reasonable efforts, cannot locate a parent;
- c. The child is a ward of the state under the laws of the state; or
- d. The child is an unaccompanied homeless youth as defined in Section 725(6) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(6)).

41.519(2) Duties of public agency. The duties of a public agency under subrule 41.519(1) include the assignment of an individual to act as a surrogate for the parents. This must include a method for determining whether a child needs a surrogate parent and for assigning a surrogate parent to the child.

41.519(3) Wards of the state. In the case of a child who is a ward of the state, the surrogate parent alternatively may be appointed by the judge presiding in the child's case, provided that the surrogate meets the requirements in subparagraph 41.519(4) "b"(1) and subrule 41.519(5).

41.519(4) Criteria for selection of surrogate parents.

- a. The public agency may select a surrogate parent in any way permitted under state law.
- b. Public agencies must ensure that a person selected as a surrogate parent:
 - (1) Is not an employee of the SEA, the LEA, or any other public or private agency that is involved in the education or care of the child;
 - (2) Has no personal or professional interest that conflicts with the interest of the child the surrogate parent represents; and
 - (3) Has knowledge and skills that ensure adequate representation of the child.

41.519(5) Nonemployee requirement; compensation. A person otherwise qualified to be a surrogate parent under subrule 41.519(4) is not an employee of the agency solely because the person is paid by the agency to serve as a surrogate parent.

41.519(6) Unaccompanied homeless youth. In the case of a child who is an unaccompanied homeless youth, appropriate staff of emergency shelters, transitional shelters, independent living programs, and street outreach programs may be appointed as temporary surrogate parents without regard to subparagraph 41.519(4) "b"(1), until a surrogate parent can be appointed that meets all of the requirements of subrule 41.519(4).

41.519(7) Surrogate parent responsibilities. The surrogate parent may represent the child in all matters relating to the identification, evaluation, and educational placement of the child, and the provision of FAPE to the child.

41.519(8) Training of surrogate parents. Training will be conducted as necessary by each AEA using a training procedure approved by the department, which includes rights and responsibilities of a surrogate parent, sample forms used by LEAs and AEAs, specific needs of individuals with disabilities and resources for legal and instructional technical assistance. The department will provide continuing education and assistance to AEAs upon request.

41.519(9) SEA responsibility. The department must make reasonable efforts to ensure the assignment of a surrogate parent not more than 30 days after a public agency determines that the child needs a surrogate parent.

281—41.520(256B,34CFR300) Transfer of parental rights at age of majority.

41.520(1) General. The state provides, when a child with a disability (except for a child with a disability who has been determined to be incompetent under state law) reaches the age of majority under Iowa Code section 599.1, all of the following:

- a. *General rule.*
 - (1) The public agency must provide any notice required by this chapter to both the child and the parents; and
 - (2) All rights accorded to parents under Part B of the Act transfer to the child.
- b. *Special rule: incarcerated eligible individuals.* All rights accorded to parents under Part B of the Act transfer to children who are incarcerated in an adult or juvenile, state or local correctional institution.

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c. Notice requirement. Whenever a state provides for the transfer of rights under Part B of the Act and this chapter pursuant to paragraph 41.520(1) “a” or “b,” the agency must notify the child and the parents of the transfer of rights.

41.520(2) Special rules. If a court appoints a guardian for an eligible individual who has attained the age of majority under subrule 41.520(1) and the court determines all decisions shall be made by the guardian or specifically determines all educational decisions should be made by the guardian, then rights under subrule 41.520(1) do not transfer but are exercised pursuant to any applicable orders of the court. If a court determines a child who has attained the age of majority under subrule 41.520(1) does not have capacity to make educational decisions under any other applicable statute, then rights under subrule 41.520(1) do not transfer and are exercised by the child’s parent or pursuant to court order. If and when state law provides that a competent authority may determine that an eligible individual who has attained the age of majority under subrule 41.520(1) and who has not been found incompetent by any court under this subrule, the department shall establish procedures for appointing the parent of a child with a disability, or, if the parent is not available, another appropriate individual, to represent the educational interests of the child throughout the period of the child’s eligibility under Part B of the Act if the child can be determined by the competent authority, by clear and convincing evidence, not to have the ability to provide informed consent with respect to the child’s educational program.

281—41.521 to 41.529 Reserved.

281—41.530(256B,34CFR300) Authority of school personnel.

41.530(1) Case-by-case determination. School personnel may consider any unique circumstances on a case-by-case basis when determining whether a change in placement, consistent with the other requirements of this rule, is appropriate for a child with a disability who violates a code of student conduct.

41.530(2) General.

a. School personnel under this rule may remove a child with a disability who violates a code of student conduct from his or her current placement to an appropriate interim alternative educational setting, another setting, or suspension, for not more than ten consecutive school days, to the extent those alternatives are applied to children without disabilities, and for additional removals of not more than ten consecutive school days in that same school year for separate incidents of misconduct, as long as those removals do not constitute a change of placement under rule 281—41.536(256B,34CFR300).

b. After a child with a disability has been removed from his or her current placement for ten school days in the same school year, during any subsequent days of removal the public agency must provide services to the extent required under subrule 41.530(4).

41.530(3) Additional authority. For disciplinary changes in placement that would exceed ten consecutive school days, if the behavior that gave rise to the violation of the school code is determined not to be a manifestation of the child’s disability pursuant to subrule 41.530(5), school personnel may apply the relevant disciplinary procedures to children with disabilities in the same manner and for the same duration as the procedures would be applied to children without disabilities, except as provided in subrule 41.530(4).

41.530(4) Services.

a. A child with a disability who is removed from the child’s current placement pursuant to subrule 41.530(3) or 41.530(7) must receive the following:

(1) Educational services, as provided in subrule 41.101(1), so as to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child’s IEP; and

(2) As appropriate, a functional behavioral assessment, and behavioral intervention services and modifications, that are designed to address the behavior violation so that it does not recur.

b. The services required by paragraphs 41.530(4) “a” and “c” to “e” may be provided in an interim alternative educational setting.

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c. A public agency is required to provide services during periods of removal to a child with a disability who has been removed from his or her current placement for ten school days or less in that school year, only if it provides services to a child without disabilities who is similarly removed.

d. After a child with a disability has been removed from his or her current placement for ten school days in the same school year, if the current removal is for not more than ten consecutive school days and is not a change of placement under rule 281—41.536(256B,34CFR300), school personnel, in consultation with at least one of the child's teachers, shall determine the extent to which services are needed, as provided in subrule 41.101(1), so as to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP.

e. If the removal is a change of placement under rule 281—41.536(256B,34CFR300), the child's IEP team determines appropriate services under paragraph 41.530(4) "a."

41.530(5) *Manifestation determination.*

a. Within ten school days of any decision to change the placement of a child with a disability because of a violation of a code of student conduct, the AEA, the LEA, the parent, and relevant members of the child's IEP team, as determined by the parent and the AEA and LEA, must review all relevant information in the student's file, including the child's IEP, any teacher observations, and any relevant information provided by the parents to determine:

(1) If the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability; or

(2) If the conduct in question was the direct result of the failure by the AEA or LEA to implement the IEP.

b. The conduct must be determined to be a manifestation of the child's disability if the AEA, the LEA, the parent, and relevant members of the child's IEP team determine that a condition in either subparagraph 41.530(5) "a"(1) or (2) was met.

c. If the AEA, the LEA, the parent, and relevant members of the child's IEP team determine the condition described in subparagraph 41.530(5) "a"(2) was met, the public agency must take immediate steps to remedy those deficiencies.

41.530(6) *Determination that behavior was a manifestation.* If the AEA, the LEA, the parent, and relevant members of the IEP team make the determination that the conduct was a manifestation of the child's disability, the IEP team must proceed as follows:

a. Conduct a functional behavioral assessment, unless the AEA or LEA had conducted a functional behavioral assessment before the behavior that resulted in the change of placement occurred, and implement a behavioral intervention plan for the child; or

b. If a behavioral intervention plan already has been developed, review the behavioral intervention plan and modify it, as necessary, to address the behavior; and

c. Except as provided in subrule 41.530(7), return the child to the placement from which the child was removed, unless the parent and the public agency agree to a change of placement as part of the modification of the behavioral intervention plan.

41.530(7) *Special circumstances.* School personnel may remove a student to an interim alternative educational setting for not more than 45 school days without regard to whether the behavior is determined to be a manifestation of the child's disability, if the child:

a. Carries a weapon to or possesses a weapon at school, on school premises, or to or at a school function under the jurisdiction of an SEA or an LEA;

b. Knowingly possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance, while at school, on school premises, or at a school function under the jurisdiction of an SEA or an LEA; or

c. Has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of an SEA or an LEA.

41.530(8) *Notification.* On the date on which the decision is made to make a removal that constitutes a change of placement of a child with a disability because of a violation of a code of student conduct, the

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LEA must notify the parents of that decision and provide the parents the procedural safeguards notice described in rule 281—41.504(256B,34CFR300).

41.530(9) Definitions. For purposes of this rule, the following definitions apply:

a. Controlled substance. “Controlled substance” means a drug or other substance identified under Schedule I, II, III, IV, or V in Section 202(c) of the Controlled Substances Act (21 U.S.C. 812(c)).

b. Illegal drug. “Illegal drug” means a controlled substance; but does not include a controlled substance that is legally possessed or used under the supervision of a licensed health care professional or that is legally possessed or used under any other authority under that Act or under any other provision of federal law.

c. Serious bodily injury. “Serious bodily injury” has the meaning given the term “serious bodily injury” under paragraph (3) of subsection (h) of Section 1365 of Title 18, United States Code.

d. Weapon. “Weapon” has the meaning given the term “dangerous weapon” under paragraph (2) of the first subsection (g) of Section 930 of Title 18, United States Code. A “weapon” under Iowa law is not necessarily a weapon for purposes of this rule unless it meets this definition of a “dangerous weapon.”

281—41.531(256B,34CFR300) Determination of setting. The child’s IEP team determines the interim alternative educational setting for services under subrule 41.530(3), paragraph 41.530(4) “e,” and subrule 41.530(7).

281—41.532(256B,34CFR300) Appeal.

41.532(1) General. The parent of a child with a disability who disagrees with any decision regarding placement under rules 281—41.530(256B,34CFR300) and 281—41.531(256B,34CFR300), or the manifestation determination under subrule 41.530(5), or an LEA that believes that maintaining the current placement of the child is substantially likely to result in injury to the child or others, may appeal the decision by requesting a hearing. The hearing is requested by filing a complaint pursuant to rule 281—41.507(256B,34CFR300) and subrules 41.508(1) and 41.508(2).

41.532(2) Authority of administrative law judge.

a. An administrative law judge under rule 281—41.511(256B,34CFR300) hears and makes a determination regarding an appeal under subrule 41.532(1).

b. In making the determination under subrule 41.532(1), the administrative law judge may do either of the following:

(1) Return the child with a disability to the placement from which the child was removed if the administrative law judge determines that the removal was a violation of rule 281—41.530(256B,34CFR300) or that the child’s behavior was a manifestation of the child’s disability; or

(2) Order a change of placement of the child with a disability to an appropriate interim alternative educational setting for not more than 45 school days if the administrative law judge determines that maintaining the current placement of the child is substantially likely to result in injury to the child or to others.

c. The procedures under subrule 41.532(1) and paragraphs 41.532(2) “a” and “b” may be repeated, if the LEA believes that returning the child to the original placement is substantially likely to result in injury to the child or to others.

41.532(3) Expedited due process hearing.

a. Whenever a hearing is requested under subrule 41.532(1), the parents or the LEA involved in the dispute must have an opportunity for an impartial due process hearing consistent with the requirements of rule 281—41.507(256B,34CFR300), subrules 41.508(1) to 41.508(3), and rules 281—41.510(256B,34CFR300) to 281—41.514(256B,34CFR300), except as provided in paragraphs 41.532(3) “b” and “c.”

b. The department is responsible for arranging the expedited due process hearing, which must occur within 20 school days of the date the complaint requesting the hearing is filed. The administrative law judge must make a determination within ten school days after the hearing.

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c. Unless the parents and LEA agree in writing to waive the resolution meeting described in this paragraph, or agree to use the mediation process described in rule 281—41.506(256B,34CFR300), the procedure is as follows:

(1) A resolution meeting must occur within seven days of receiving notice of the due process complaint; and

(2) The due process hearing may proceed unless the matter has been resolved to the satisfaction of all parties within 15 days of the receipt of the due process complaint.

d. Reserved.

e. The decisions on expedited due process hearings are appealable consistent with rule 281—41.514(256B,34CFR300).

281—41.533(256B,34CFR300) Placement during appeals and mediations. When an appeal under rule 281—41.532(256B,34CFR300) or a request for mediation under rules 281—41.506(256B,34CFR300) and 281—41.1002(256B,34CFR300) has been made by either the parent or the LEA, the child must remain in the interim alternative educational setting pending the decision of the administrative law judge or until the expiration of the time period specified in subrule 41.530(3) or 41.530(7), whichever occurs first, unless the parent and the SEA or LEA agree otherwise.

281—41.534(256B,34CFR300) Protections for children not determined eligible for special education and related services.

41.534(1) General. A child who has not been determined to be eligible for special education and related services under this chapter and who has engaged in behavior that violated a code of student conduct may assert any of the protections provided for in this chapter if the public agency had knowledge, as determined in accordance with subrule 41.534(2), that the child was a child with a disability before the behavior that precipitated the disciplinary action occurred.

41.534(2) Basis of knowledge. A public agency must be deemed to have knowledge that a child is a child with a disability if before the behavior that precipitated the disciplinary action occurred any of the following occurred:

a. The parent of the child expressed concern in writing to supervisory or administrative personnel of the appropriate educational agency or to a teacher of the child that the child is in need of special education and related services;

b. The parent of the child requested an evaluation of the child pursuant to this chapter; or

c. The teacher of the child, or other personnel of the LEA, expressed specific concerns about a pattern of behavior demonstrated by the child directly to the director of special education of the agency or to other supervisory personnel of the agency.

41.534(3) Exception. A public agency would not be deemed to have knowledge under subrule 41.534(2) under the following conditions:

a. The parent of the child has not allowed an evaluation of the child pursuant to this chapter or has refused services under Part B of the Act or this chapter; or

b. The child has been evaluated in accordance with this chapter and determined not to be a child with a disability under Part B of the Act and this chapter.

41.534(4) Conditions that apply if no basis of knowledge.

a. *General.* If a public agency does not have knowledge that a child is a child with a disability, in accordance with subrules 41.534(2) and 41.534(3), prior to taking disciplinary measures against the child, the child may be subjected to the disciplinary measures applied to children without disabilities who engage in comparable behaviors consistent with paragraph 41.534(4)“b.”

b. *Request for evaluation.*

(1) If a request is made for an evaluation of a child during the time period in which the child is subjected to disciplinary measures under rule 281—41.530(256B,34CFR300), the evaluation must be conducted in an expedited manner.

(2) Until the evaluation is completed, the child remains in the educational placement determined by school authorities, which can include suspension or expulsion without educational services.

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(3) If the child is determined to be a child with a disability, taking into consideration information from the evaluation conducted by the agency and information provided by the parents, the agency must provide special education and related services in accordance with Part B of the Act and this chapter, including the requirements of rules 281—41.530(256B,34CFR300) to 281—41.536(256B,34CFR300) and Section 612(a)(1)(A) of the Act.

281—41.535(256B,34CFR300) Referral to and action by law enforcement and judicial authorities.

41.535(1) Rule of construction. Nothing in Part B of the Act or this chapter prohibits an agency from reporting a crime committed by a child with a disability to appropriate authorities or prevents state law enforcement and judicial authorities from exercising their responsibilities with regard to the application of federal and state law to crimes committed by a child with a disability.

41.535(2) Transmittal of records.

a. An agency reporting a crime committed by a child with a disability must ensure that copies of the special education and disciplinary records of the child are transmitted for consideration by the appropriate authorities to whom the agency reports the crime.

b. An agency reporting a crime under this rule may transmit copies of the child's special education and disciplinary records only to the extent that the transmission is permitted by the Family Educational Rights and Privacy Act, such as by obtaining consent (34 CFR Section 99.30) or in instances where disclosure without consent is permitted (34 CFR Section 99.31).

281—41.536(256B,34CFR300) Change of placement because of disciplinary removals.

41.536(1) General. For purposes of removals of a child with a disability from the child's current educational placement under rules 281—41.530(256B,34CFR300) to 281—41.535(256B,34CFR300), a change of placement occurs under the following circumstances:

- a.* The removal is for more than ten consecutive school days; or
- b.* The child has been subjected to a series of removals that constitute a pattern based on the following:
 - (1) The series of removals total more than ten school days in a school year;
 - (2) The child's behavior is substantially similar to the child's behavior in previous incidents that resulted in the series of removals; and
 - (3) Additional factors, such as the length of each removal, the total amount of time the child has been removed, and the proximity of the removals to one another.

41.536(2) Rules of construction.

a. The public agency determines on a case-by-case basis whether a pattern of removals constitutes a change of placement.

b. This determination is subject to review through due process and judicial proceedings.

c. Nothing in this rule shall be construed to prohibit LEAs from establishing policies that a change of placement occurs on the eleventh cumulative day of removal, regardless of the factors set forth in paragraph 41.536(1) "b."

41.536(3) In-school suspensions and other actions. In determining whether an in-school suspension or other disciplinary action is to be considered a removal for purposes of this rule, an in-school suspension or other disciplinary action will not be considered a removal if all three of the following questions are answered in the affirmative:

- a.* Will the child be able to appropriately participate in the general education curriculum?
- b.* Will the child be able to receive the services specified in the child's IEP?
- c.* Will the child be able to participate with children without disabilities to the extent provided in the child's current placement?

281—41.537(256B,34CFR300) State enforcement mechanisms. Notwithstanding paragraphs 41.506(2) "g" and 41.510(4) "b," which provide for judicial enforcement of a written agreement reached as a result of mediation or a resolution meeting, there is nothing in Part B of the Act that would prevent the department from using other mechanisms to seek enforcement of that agreement, such as the state

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complaint procedure, provided that use of those mechanisms is not mandatory and does not delay or deny a party the right to seek enforcement of the written agreement in a state court of competent jurisdiction or in a district court of the United States.

281—41.538 to 41.599 Reserved.

DIVISION VIII
MONITORING, ENFORCEMENT, CONFIDENTIALITY, AND PROGRAM INFORMATION

281—41.600(256B,34CFR300) State monitoring and enforcement.

41.600(1) General. The state must monitor the implementation of Part B of the Act and this chapter, enforce this chapter in accordance with rule 281—41.604(256B,34CFR300), and annually report on performance under Part B of the Act and this chapter.

41.600(2) Primary focus of monitoring activity. The primary focus of the state's monitoring activities must be on the following:

- a. Improving educational results and functional outcomes for all children with disabilities; and
- b. Ensuring that public agencies meet the program requirements under Part B of the Act, with a particular emphasis on those requirements that are most closely related to improving educational results for children with disabilities.

41.600(3) Indicators of performance and compliance. As a part of its responsibilities under subrule 41.600(1), the state must use quantifiable indicators and such qualitative indicators as are needed to adequately measure performance in the priority areas identified in subrule 41.600(4) and the indicators established by the Secretary for the state performance plans.

41.600(4) Priority indicators. The state must monitor the LEAs located in the state, using quantifiable indicators in each of the following priority areas and using such qualitative indicators as are needed to adequately measure performance in those areas:

- a. Provision of FAPE in the least restrictive environment.
- b. State exercise of general supervision, including child find, effective monitoring, the use of resolution meetings, mediation, and a system of transition services as defined in rule 281—41.43(256B,34CFR300) and in 20 U.S.C. 1437(a)(9).
- c. Disproportionate representation of racial and ethnic groups in special education and related services, to the extent the representation is the result of inappropriate identification.

41.600(5) Correction of noncompliance. In exercising its monitoring responsibilities under subrule 41.600(4), the state must ensure that when it identifies noncompliance with the requirements of this chapter by an LEA, the noncompliance is corrected as soon as possible, but in no case later than one year after the state's identification of the LEA's noncompliance.

281—41.601(256B,34CFR300) State performance plans and data collection.

41.601(1) General. Each state must have in place a performance plan that evaluates the state's efforts to implement the requirements and purposes of Part B of the Act and describes how the state will improve such implementation.

a. Each state must submit the state's performance plan to the Secretary for approval in accordance with the approval process described in Section 616(c) of the Act.

b. Each state must review its state performance plan at least once every six years and submit any amendments to the Secretary.

c. As part of the state performance plan, each state must establish measurable and rigorous targets for the indicators established by the Secretary under the priority areas described in 34 CFR Section 300.600(d).

41.601(2) Data collection.

a. The state must collect valid and reliable information as needed to report annually to the Secretary on the indicators established by the Secretary for the state performance plans.

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b. If the Secretary permits states to collect data on specific indicators through state monitoring or sampling, and the state collects the data through state monitoring or sampling, the state must collect data on those indicators for each LEA at least once during the period of the state performance plan.

281—41.602(256B,34CFR300) State use of targets and reporting.

41.602(1) General. The state shall use the targets established in the state's performance plan under rule 281—41.601(256B,34CFR300) and the priority areas described in subrule 41.600(4) to analyze the performance of each LEA.

41.602(2) Public reporting and privacy.

a. *Public report.* The state must:

(1) Report annually to the public on the performance of each LEA located in the state on the targets in the state's performance plan as soon as practicable but no later than 120 days following the state's submission of its annual performance report under paragraph 41.602(2) "b"; and

(2) Make the state's performance plan, the state's annual performance reports, and annual reports on the performance of each LEA located in the state available through public means, including, at a minimum, by posting these documents on the website of the department, distribution to the media, and distribution through public agencies.

(3) If the state collects performance data through state monitoring or sampling, the state must include in its report under subparagraph 41.602(2) "a"(1) the most recently available performance data on each LEA, and the date the data were obtained.

b. *State performance report.* The state shall report annually to the Secretary on the performance of the state under the state's performance plan.

c. *Privacy.* The state shall not report to the public or the Secretary any information on performance that would result in the disclosure of personally identifiable information about individual children or where the available data are insufficient to yield statistically reliable information.

281—41.603(256B,34CFR300) Department review and determination regarding public agency performance.

41.603(1) Review. The state shall annually review the performance of each LEA and AEA, including but not limited to data on indicators identified in the state's performance plan, information obtained through monitoring visits, and any other public information made available.

41.603(2) Determination. Based on the information obtained and reviewed by the state, the state shall determine whether each LEA and AEA:

a. Meets the requirements and purposes of Part B of the Act and of this chapter;

b. Needs assistance in implementing the requirements of Part B of the Act and of this chapter;

c. Needs intervention in implementing the requirements of Part B of the Act and of this chapter;

or

d. Needs substantial intervention in implementing the requirements of Part B of the Act and of this chapter.

41.603(3) Criteria for determination. The department shall develop criteria for making the determinations required by subrule 41.603(2).

41.603(4) Variance of determination. In making the determination required by subrule 41.603(2), the SEA in its discretion may adjust or vary from the criteria described in subrule 41.603(3) based on unusual, unanticipated, or extraordinary aggravating or mitigating factors, on a case-by-case basis.

41.603(5) Notice and opportunity for a hearing. For determinations made under paragraph 41.603(2) "a" or "b," the state shall provide reasonable notice of its determination. For determinations made under paragraph 41.603(2) "c" or "d," the state shall provide reasonable notice of its determination and may, in its sound discretion, grant an informal hearing to an AEA or LEA; however, if withholding of funds is a remedy associated with a particular determination, the state shall provide a hearing under rule 281—41.605(256B,34CFR300). Under any hearing granted under this rule or rule 281—41.605(256B,34CFR300), the AEA or LEA must demonstrate that the state abused its discretion in making the determination described in subrule 41.603(2).

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281—41.604(256B,34CFR300) Enforcement.

41.604(1) Needs assistance. If the state determines for two consecutive years that an LEA or AEA needs assistance under paragraph 41.603(2)“b” in implementing the requirements of Part B of the Act, the state shall take one or more of the following actions:

a. Advise the LEA or AEA of available sources of technical assistance that may help the LEA or AEA to address the areas in which it needs assistance, which may include assistance from the Iowa department of education, other state agencies, technical assistance providers approved by the Secretary, and other federally funded and state-funded nonprofit agencies, and require it to work with appropriate entities. Such technical assistance may include any of the following:

(1) The provision of advice by experts to address the areas in which the LEA or AEA needs assistance, including explicit plans for addressing the area for concern within a specified period of time;

(2) Assistance in identifying and implementing professional development, instructional strategies, and methods of instruction that are based on scientifically based research;

(3) Designating and using distinguished superintendents, principals, special education administrators, special education teachers and other teachers to provide advice, technical assistance, and support; and

(4) Devising additional approaches to providing technical assistance, such as collaborating with institutions of higher education, educational service agencies, national centers of technical assistance supported under Part D of the Act, and private providers of scientifically based technical assistance.

b. Identify the LEA or AEA as a high-risk grantee and impose special conditions on its grant under Part B of the Act.

41.604(2) Needs intervention. If the state determines for three or more consecutive years that an LEA or AEA needs intervention under paragraph 41.603(2)“c” in implementing the requirements of Part B of the Act, the following shall apply:

a. The state may take any of the actions described in subrule 41.604(1).

b. The state shall take one or more of the following actions:

(1) Require the LEA or AEA to prepare a corrective action plan or improvement plan if the state determines that the LEA or AEA should be able to correct the problem within one year.

(2) Withhold, in whole or in part, any further payments to the AEA or LEA under Part B of the Act.

41.604(3) Needs substantial intervention. Notwithstanding subrule 41.604(1) or 41.604(2), at any time that the state determines that an LEA or AEA needs substantial intervention in implementing the requirements of Part B of the Act or of this chapter or that there is a substantial failure to comply with any condition of an LEA’s eligibility or an AEA’s eligibility under Part B of the Act or this chapter, the state shall take one or more of the following actions:

a. Withhold, in whole or in part, any further payments to the LEA or AEA under Part B of the Act.

b. Refer the matter for appropriate enforcement action, which may include referral to the Iowa department of justice or the auditor of state.

41.604(4) Rule of construction. The listing of specific enforcement mechanisms in this rule shall not be construed to limit the enforcement mechanisms at the state’s disposal in its enforcement of this rule or any other rule in this chapter.

281—41.605(256B,34CFR300) Withholding funds.

41.605(1) General. As a consequence of a determination made under rule 281—41.603(256B,34CFR300) or enforcement of any provision of Part B of the Act and this chapter, the state may withhold some or all of the funds from an AEA or LEA or a program or service of an AEA or LEA, or may direct an AEA to withhold all or some funds from an LEA or a program or service of an LEA.

41.605(2) Hearing. If the state intends to withhold funds, the state shall provide notice and an opportunity for a hearing to the AEA or LEA. If a hearing is requested, the state may suspend payments to an AEA or LEA, or suspend the authority of the AEA or LEA to obligate funds, or both, until a decision is made after the hearing. A hearing under this rule, which shall not be a contested case under Iowa Code chapter 17A, shall be requested within 30 days of notice of withholding by requesting

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a hearing before the director of the Iowa department of education or the director's designee. The presiding officer at the hearing shall consider the purposes of Part B of the Act and of this chapter and shall determine whether the state abused its discretion in its decision under subrule 41.605(1).

41.605(3) Reinstatement. If the LEA or AEA substantially rectifies the condition that prompted the initial withholding under subrule 41.605(1), then the state may reinstate payments to the LEA or AEA. If an LEA or AEA disagrees with the state's decision that it has not substantially rectified the condition that prompted the initial withholding under subrule 41.605(1), the LEA or AEA may request a hearing under subrule 41.605(2).

281—41.606(256B,34CFR300) Public attention. Any LEA or AEA that has received notice under paragraph 41.603(2) "b," "c," or "d" must, by means of a public notice, take such measures as may be necessary to notify the public within the LEA or AEA of such notice and of the pendency of an action taken pursuant to rule 281—41.604(256B,34CFR300).

281—41.607 Reserved.

281—41.608(256B,34CFR300) State enforcement.

41.608(1) Prohibition on reduction of maintenance of effort. If the state determines that an LEA or AEA is not meeting the requirements of Part B of the Act, including the targets in the state's performance plan, the state must prohibit the LEA or AEA from reducing its maintenance of effort under rule 281—41.203(256B,34CFR300) for any fiscal year.

41.608(2) Rule of construction. Nothing in this chapter shall be construed to restrict the state from utilizing any other authority available to it to monitor and enforce the requirements of Part B of the Act or of this chapter.

281—41.609(256B,34CFR300) State consideration of other state or federal laws. In making the determinations required by rule 281—41.603(256B,34CFR300), in ordering actions pursuant to rule 281—41.604(256B,34CFR300), and in taking any other action under this chapter, the department may consider whether any agency has complied with any other applicable state or federal law, including but not limited to education law or disability law, or with any corrective action ordered by any competent authority for violation of any such law.

281—41.610(256B,34CFR300) Confidentiality. The state shall take appropriate action, in accordance with Section 444 of the General Education Provisions Act, to ensure the protection of the confidentiality of any personally identifiable data, information, and records collected or maintained by the state and by LEAs and AEAs pursuant to Part B of the Act and this chapter, and consistent with rules 281—41.611(256B,34CFR300) to 281—41.626(256B,34CFR300).

281—41.611(256B,34CFR300) Definitions. The following definitions apply to rules 281—41.611(256B,34CFR300) to 281—41.625(256B,34CFR300).

"Destruction" means physical destruction or removal of personal identifiers from information so that the information is no longer personally identifiable.

"Education records" means the type of records covered under the definition of "education records" in 34 CFR Part 99 (the regulations implementing the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. 1232g (FERPA)).

"Participating agency" means any agency or institution that collects, maintains, or uses personally identifiable information, or from which information is obtained, under Part B of the Act or this chapter.

281—41.612(256B,34CFR300) Notice to parents.

41.612(1) General. The department must give notice that is adequate to fully inform parents about the requirements of rule 281—41.123(256B,34CFR300), including the following information:

a. A description of the extent that the notice is given in the native languages of the various population groups in the state;

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b. A description of the children on whom personally identifiable information is maintained, the types of information sought, the methods the state intends to use in gathering the information, including the sources from whom information is gathered, and the uses to be made of the information;

c. A summary of the policies and procedures that participating agencies must follow regarding storage, disclosure to third parties, retention, and destruction of personally identifiable information; and

d. A description of all of the rights of parents and children regarding this information, including the rights under FERPA and implementing regulations in 34 CFR Part 99.

41.612(2) *Media announcements required.* Before any major identification, location, or evaluation activity, the notice must be published or announced in newspapers or other media, or both, with circulation adequate to notify parents throughout the state of the activity.

281—41.613(256B,34CFR300) Access rights.

41.613(1) *General.* Each participating agency must permit parents to inspect and review any education records relating to their children that are collected, maintained, or used by the agency under this chapter. The agency must comply with a request without unnecessary delay and before any meeting regarding an IEP, any hearing pursuant to rule 281—41.507(256B,34CFR300) or rules 281—41.530(256B,34CFR300) to 281—41.532(256B,34CFR300), or any resolution session pursuant to rule 281—41.510(256B,34CFR300), and in no case more than 45 days after the request has been made.

41.613(2) *Extent of right to inspect and review.* The right to inspect and review education records under this rule includes the following:

a. The right to a response from the participating agency to reasonable requests for explanations and interpretations of the records;

b. The right to request that the agency provide copies of the records containing the information if failure to provide those copies would effectively prevent the parent from exercising the right to inspect and review the records; and

c. The right to have a representative of the parent inspect and review the records.

41.613(3) *Who may inspect and review.* An agency may presume that the parent has authority to inspect and review records relating to the parent's child unless the agency has been advised that the parent does not have the authority under applicable state law governing such matters as guardianship, separation, and divorce.

281—41.614(256B,34CFR300) Record of access. Each participating agency must keep a record of parties that obtain access to education records collected, maintained, or used under Part B of the Act, except access by parents and authorized employees of the participating agency, including the name of the party, the date access was given, and the purpose for which the party is authorized to use the records.

281—41.615(256B,34CFR300) Records on more than one child. If any education record includes information on more than one child, the parents of those children have the right to inspect and review only the information relating to their child or to be informed of that specific information.

281—41.616(256B,34CFR300) List of types and locations of information. Each participating agency must provide parents on request a list of the types and locations of education records collected, maintained, or used by the agency.

281—41.617(256B,34CFR300) Fees.

41.617(1) *Fees for copies in certain circumstances.* Each participating agency may charge a fee for copies of records that are made for parents under this chapter if the fee does not effectively prevent the parents from exercising their right to inspect and review those records.

41.617(2) *No fees permitted for record retrieval.* A participating agency may not charge a fee to search for or to retrieve information under this chapter.

281—41.618(256B,34CFR300) Amendment of records at parent's request.

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41.618(1) Parent may request amendment. A parent who believes that information in the education records collected, maintained, or used under this chapter is inaccurate or misleading or violates the privacy or other rights of the child may request the participating agency that maintains the information to amend the information.

41.618(2) Agency to act on parent's request. The agency must decide whether to amend the information in accordance with the request within a reasonable period of time of receipt of the request.

41.618(3) Agency to inform parent of hearing rights. If the agency decides to refuse to amend the information in accordance with the request, it must inform the parent of the refusal and advise the parent of the right to a hearing under rule 281—41.619(256B,34CFR300).

281—41.619(256B,34CFR300) Opportunity for a hearing. The agency must, on request, provide an opportunity for a hearing to challenge information in education records to ensure that it is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child.

281—41.620(256B,34CFR300) Result of hearing.

41.620(1) Information to be amended. If, as a result of the hearing, the agency decides that the information is inaccurate, misleading or otherwise in violation of the privacy or other rights of the child, it must amend the information accordingly and so inform the parent in writing.

41.620(2) Information not to be amended. If, as a result of the hearing, the agency decides that the information is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child, it must inform the parent of the parent's right to place in the records the agency maintains on the child a statement commenting on the information or setting forth any reasons for disagreeing with the decision of the agency.

41.620(3) Explanation placed in student records. Any explanation placed in the records of the child under this rule must be maintained by the agency as part of the records of the child as long as the record or contested portion is maintained by the agency; and, if the records of the child or the contested portion is disclosed by the agency to any party, the explanation must also be disclosed to the party.

281—41.621(256B,34CFR300) Hearing procedures. A hearing held under rule 281—41.619(256B,34CFR300) must be conducted according to the procedures in 34 CFR 99.22.

281—41.622(256B,34CFR300) Consent.

41.622(1) When parental consent required. Parental consent must be obtained before personally identifiable information is disclosed to parties, other than officials of participating agencies in accordance with subrule 41.622(2), unless the information is contained in education records and the disclosure is authorized without parental consent under 34 CFR Part 99.

41.622(2) When parental consent not required. Except as provided in subrules 41.622(3) and 41.622(4), parental consent is not required before personally identifiable information is released to officials of participating agencies for purposes of meeting a requirement of this chapter.

41.622(3) Parental consent required related to transition. Parental consent, or the consent of an eligible child who has reached the age of majority under state law, must be obtained before personally identifiable information is released to officials of participating agencies providing or paying for transition services in accordance with paragraph 41.321(2) "c."

41.622(4) Parental consent required relating to students enrolled in certain private schools. If a child is enrolled or is going to enroll in a private school that is not located in the LEA and AEA of the parent's residence, parental consent must be obtained before any personally identifiable information about the child is released between officials in the LEA and AEA where the private school is located and officials in the LEA and AEA of the parent's residence.

281—41.623(256B,34CFR300) Safeguards. Each participating agency must protect the confidentiality of personally identifiable information at collection, storage, disclosure, and destruction stages. One official at each participating agency must assume responsibility for ensuring the confidentiality of any personally identifiable information. All persons collecting or using personally identifiable

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information must receive training or instruction regarding the state's policies and procedures under rule 281—41.123(256B,34CFR300) and 34 CFR Part 99. Each participating agency must maintain, for public inspection, a current listing of the names and positions of those employees within the agency who may have access to personally identifiable information.

281—41.624(256B,34CFR300) Destruction of information.

41.624(1) *Parents to be informed when information no longer required.* The public agency must inform parents when personally identifiable information collected, maintained, or used under Part B of the Act or this chapter is no longer needed to provide educational services to the child.

41.624(2) *Mandatory and permissive destruction of information.* The information must be destroyed at the request of the parents. However, a permanent record of a student's name, address, and telephone number, his or her grades, attendance record, classes attended, grade level completed, and year completed may be maintained without time limitation. This permanent record must contain the information required by rule 281—12.3(256).

41.624(3) *Rule of construction—no longer needed to provide educational services to the child.* For purposes of this rule, “no longer needed to provide educational services” means that a record is no longer relevant to the provision of instructional, support, or related services and it is no longer needed for accountability and audit purposes. At a minimum, a record needed for accountability and audit purposes must be retained for five years after completion of the activity for which funds were used.

281—41.625(256B,34CFR300) Children's rights.

41.625(1) *General.* The state must have in effect policies and procedures regarding the extent to which children are afforded rights of privacy similar to those afforded to parents, taking into consideration the age of the child and type or severity of disability.

41.625(2) *Transfer of rights under FERPA.* Under the regulations for FERPA in 34 CFR 99.5(a), the rights of parents regarding education records are transferred to the student at the age of 18.

41.625(3) *Transfer of rights under Part B of the Act.* If the rights accorded to parents under Part B of the Act are transferred to a student who reaches the age of majority, consistent with rule 281—41.520(256B,34CFR300), the rights regarding educational records in rules 281—41.613(256B,34CFR300) to 281—41.624(256B,34CFR300) must also be transferred to the student. However, the public agency must provide any notice required under Section 615 of the Act to the student and the parents.

281—41.626(256B,34CFR300) Enforcement. The state must have in effect policies and procedures, including sanctions that the state uses, to ensure that its policies and procedures consistent with rules 281—41.611(256B,34CFR300) to 281—41.625(256B,34CFR300) are followed and that the requirements of the Act and the rules in this chapter are met.

281—41.627 to 41.639 Reserved.

281—41.640(256B,34CFR300) Annual report of children served—report requirement. The SEA must annually report to the Secretary on the information required by Section 618 of the Act at the times specified by the Secretary, and on forms provided by the Secretary.

281—41.641(256B,34CFR300) Annual report of children served—information required in the report.

41.641(1) *Date of count.* For purposes of the annual report required by Section 618 of the Act and rule 281—41.640(256B,34CFR300), the state and the Secretary of the Interior must count and report the number of children with disabilities receiving special education and related services on any date between October 1 and December 1 of each year.

41.641(2) *Child's age.* For the purpose of this reporting provision, a child's age is the child's actual age on the date of the child count.

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41.641(3) *Count each child under only one disability category.* The SEA may not report a child under more than one disability category.

41.641(4) *Child with more than one disability.* If a child with a disability has more than one disability, the SEA must report that child in accordance with the following procedure:

a. If a child has only two disabilities and those disabilities are deafness and blindness, and the child is not reported as having a developmental delay, that child must be reported under the category “deaf-blindness.”

b. A child who has more than one disability and is not reported as having deaf-blindness or as having a developmental delay must be reported under the category “multiple disabilities.”

281—41.642(256B,34CFR300) Data reporting.

41.642(1) *Protection of personally identifiable data.* The data described in Section 618(a) of the Act and in rule 281—41.641(256B,34CFR300) must be publicly reported by each state in a manner that does not result in disclosure of data identifiable to individual children.

41.642(2) *Sampling permitted.* The Secretary permits the SEA to obtain data in Section 618(a) of the Act through sampling.

281—41.643(256B,34CFR300) Annual report of children served—certification. The SEA must include in its report a certification signed by an authorized official of the agency that the information provided under rule 281—41.640(256B,34CFR300) is an accurate and unduplicated count of children with disabilities receiving special education and related services on the dates in question.

281—41.644(256B,34CFR300) Annual report of children served—criteria for counting children. The SEA may include in its report children with disabilities who are enrolled in a school or program that is operated or supported by a public agency, and that provides them with both special education and related services that meet state standards; provides them only with special education, if a related service is not required, that meets state standards; or, in the case of children with disabilities enrolled by their parents in private schools, counts those children who are eligible under the Act and receive special education or related services or both that meet state standards under rules 281—41.132(256,256B,34CFR300) to 281—41.144(256,256B,34CFR300).

281—41.645(256B,34CFR300) Annual report of children served—other responsibilities of the SEA. In addition to meeting the other requirements of rules 281—41.640(256B,34CFR300) to 281—41.644(256B,34CFR300), the SEA must establish procedures to be used by LEAs and other educational institutions in counting the number of children with disabilities receiving special education and related services; set dates by which those agencies and institutions must report to the SEA to ensure that the state complies with rule 281—41.640(256B,34CFR300); obtain certification from each agency and institution that an unduplicated and accurate count has been made; aggregate the data from the count obtained from each agency and institution, and prepare the reports required under rules 281—41.640(256B,34CFR300) to 281—41.644(256B,34CFR300); and ensure that documentation is maintained that enables the state and the Secretary to audit the accuracy of the count.

281—41.646(256B,34CFR300) Disproportionality.

41.646(1) *General.* Using the methodology required by rule 281—41.647(256B,34CFR300), the state shall collect and examine data to determine if significant disproportionality based on race and ethnicity is occurring in the state and the LEAs of the state with respect to the following:

a. The identification of children as children with disabilities, including the identification of children as children with disabilities in accordance with a particular impairment described in Section 602(3) of the Act;

b. The placement in particular educational settings of these children; and

c. The incidence, duration, and type of disciplinary actions, including suspensions and expulsions.

41.646(2) *Review and revision of policies, practices, and procedures.* In the case of a determination of significant disproportionality with respect to the identification of children as children with disabilities,

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or the placement in particular educational settings of these children, or the incidence, duration, and type of disciplinary actions, in accordance with subrule 41.646(1) and rule 281—41.647(256B,34CFR300), the state must proceed as follows:

a. Provide for the annual review and, if appropriate, revision of the policies, procedures, and practices used in the identification, placement, or disciplinary actions to ensure that the policies, procedures, and practices comply with the requirements of the Act; and

b. Require the LEA to publicly report on the revision of policies, practices, and procedures described under paragraph 41.646(2) “*a*” in a manner consistent with the requirements of the Family Educational Rights and Privacy Act, its implementing regulations in 34 CFR Part 99, and Section 618(b)(1) of the Act.

41.646(3) *Comprehensive coordinated early intervening services.* Except as provided in subrule 41.646(4), any LEA identified under subrule 41.646(1) shall reserve the maximum amount of funds under Section 613(f) of the Act to provide comprehensive coordinated early intervening services to address factors contributing to the significant disproportionality.

a. In implementing comprehensive coordinated early intervening services, an LEA:

(1) May carry out activities that include professional development and educational and behavioral evaluations, services, and supports.

(2) Must identify and address the factors contributing to the significant disproportionality, which may include, among other identified factors, a lack of access to scientifically based instruction; economic, cultural, or linguistic barriers to appropriate identification or placement in particular educational settings; inappropriate use of disciplinary removals; lack of access to appropriate diagnostic screenings; differences in academic achievement levels; and policies, practices, or procedures that contribute to the significant disproportionality.

(3) Must address a policy, practice, or procedure it identifies as contributing to the significant disproportionality, including a policy, practice or procedure that results in a failure to identify, or the inappropriate identification of, a racial or ethnic group (or groups).

b. An LEA may use funds reserved for comprehensive coordinated early intervening services to serve children from age 3 through grade 12, particularly, but not exclusively, children in those groups that were significantly over identified under subrule 41.646(1), including:

(1) Children who are not currently identified as needing special education or related services but who need additional academic and behavioral support to succeed in a general education environment; and

(2) Children with disabilities.

c. An LEA may not limit the provision of comprehensive coordinated early intervening services under this subrule to children with disabilities.

41.646(4) *Exception to comprehensive coordinated early intervening services.* The state shall not require any LEA that serves only children with disabilities identified under subrule 41.646(1) to reserve funds to provide comprehensive coordinated early intervening services.

41.646(5) *Rule of construction.* Nothing in this rule authorizes the state or an LEA to develop or implement policies, practices, or procedures that result in actions that violate the requirements of this chapter, including requirements related to child find and ensuring that a free appropriate public education is available to all eligible children with disabilities.

281—41.647(256B,34CFR300) Determining significant disproportionality.

41.647(1) *Definitions.*

“*Alternate risk ratio*” is a calculation performed by dividing the risk of a particular outcome for children in one racial or ethnic group within an LEA by the risk of that outcome for children in all other racial or ethnic groups in the state.

“*Comparison group*” consists of the children in all other racial or ethnic groups within an LEA or within the state, when reviewing a particular racial or ethnic group within an LEA for significant disproportionality.

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“*Minimum cell size*” is the minimum number of children experiencing a particular outcome, to be used as the numerator when calculating either the risk for a particular racial or ethnic group or the risk for children in all other racial or ethnic groups.

“*Minimum n-size*” is the minimum number of children enrolled in an LEA with respect to identification, and the minimum number of children with disabilities enrolled in an LEA with respect to placement and discipline, to be used as the denominator when calculating either the risk for a particular racial or ethnic group or the risk for children in all other racial or ethnic groups.

“*Risk*” is the likelihood of a particular outcome (identification, placement, or disciplinary removal) for a specified racial or ethnic group (or groups), calculated by dividing the number of children from a specified racial or ethnic group (or groups) experiencing that outcome by the total number of children from that racial or ethnic group or groups enrolled in the LEA.

“*Risk ratio*” is a calculation performed by dividing the risk of a particular outcome for children in one racial or ethnic group within an LEA by the risk for children in all other racial and ethnic groups within the LEA.

“*Risk ratio threshold*” is a threshold, determined by the state, over which disproportionality based on race or ethnicity is significant under subrule 41.646(1).

41.647(2) Significant disproportionality determinations. In determining whether significant disproportionality exists in the state or LEA under subrule 41.646(1), the state must do all of the following:

a. General. The state must set a:

- (1) Reasonable risk ratio threshold;
- (2) Reasonable minimum cell size;
- (3) Reasonable minimum n-size; and
- (4) Standard for measuring reasonable progress if the state uses the flexibility described in paragraph 41.647(4) “b.”

b. Flexibility. The state may, but is not required to, set the standards set forth in paragraph 41.647(2) “a” at different levels for each of the categories described in paragraphs 41.647(2) “f” and 41.647(2) “g.”

c. Development and review of standards. The standards set forth in paragraph 41.647(2) “a”:

- (1) Must be based on advice from stakeholders, including state advisory panels, as provided under Section 612(a)(21)(D)(iii) of the Act; and
- (2) Are subject to monitoring and enforcement for reasonableness by the Secretary consistent with Section 616 of the Act.

d. Presumption of reasonability. When monitoring for reasonableness under subparagraph 41.647(2) “c”(2), the following are presumptively reasonable:

- (1) A minimum cell size under subparagraph 41.647(2) “a”(2) no greater than ten; and
- (2) A minimum n-size under subparagraph 41.647(2) “a”(3) no greater than 30.

e. Application. The state must apply the risk ratio threshold or thresholds determined in paragraph 41.647(2) “a” to risk ratios or alternate risk ratios, as appropriate, in each category described in paragraphs 41.647(2) “f” and 41.647(2) “g” and the following racial and ethnic groups:

- (1) Hispanic/Latino of any race; and, for individuals who are non-Hispanic/Latino only;
- (2) American Indian or Alaska Native;
- (3) Asian;
- (4) Black or African American;
- (5) Native Hawaiian or Other Pacific Islander;
- (6) White; and
- (7) Two or more races.

f. Calculation of risk ratio: identification. Except as provided in paragraph 41.647(2) “h” and subrule 41.647(3), the state must calculate the risk ratio for each LEA, for each racial and ethnic group in paragraph 41.647(2) “e” with respect to:

- (1) The identification of children ages 3 through 21 as children with disabilities; and
- (2) The identification of children ages 3 through 21 as children with the following impairments:

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1. Intellectual disabilities;
2. Specific learning disabilities;
3. Emotional disturbance;
4. Speech or language impairments;
5. Other health impairments; and
6. Autism.

g. Calculation of risk ratio: placement and disciplinary removals. Except as provided in paragraph 41.647(2) "h" and subrule 41.647(3), the state must calculate the risk ratio for each LEA, for each racial and ethnic group in paragraph 41.647(2) "e" with respect to the following placements into particular educational settings, including disciplinary removals:

- (1) For children with disabilities ages 6 through 21, inside a regular class less than 40 percent of the day;
- (2) For children with disabilities ages 6 through 21, inside separate schools and residential facilities, not including homebound or hospital settings, correctional facilities, or private schools;
- (3) For children with disabilities ages 3 through 21, out-of-school suspensions and expulsions of ten days or fewer;
- (4) For children with disabilities ages 3 through 21, out-of-school suspensions and expulsions of more than ten days;
- (5) For children with disabilities ages 3 through 21, in-school suspensions of ten days or fewer;
- (6) For children with disabilities ages 3 through 21, in-school suspensions of more than ten days; and
- (7) For children with disabilities ages 3 through 21, disciplinary removals in total, including in-school and out-of-school suspensions, expulsions, removals by school personnel to an interim alternative education setting, and removals by a hearing officer.

h. Alternate risk ratio. The state must calculate an alternate risk ratio with respect to the categories described in paragraphs 41.647(2) "f" and 41.647(2) "g" if the comparison group in the LEA does not meet the minimum cell size or the minimum n-size.

i. Identification as having significant disproportionality. Except as provided in subrule 41.647(4), the state must identify as having significant disproportionality based on race or ethnicity under subrule 41.646(1) any LEA that has a risk ratio or alternate risk ratio for any racial or ethnic group in any of the categories described in paragraphs 41.647(2) "f" and 41.647(2) "g" that exceeds the risk ratio threshold set by the state for that category.

j. Reporting under this subrule to the Secretary. The state must report all risk ratio thresholds, minimum cell sizes, minimum n-sizes, and standards for measuring reasonable progress selected under subparagraphs 41.647(2) "a"(1) through 41.647(2) "a"(4), and the rationales for each, to the U.S. Department of Education at a time and in a manner determined by the Secretary. Rationales for minimum cell sizes and minimum n-sizes not presumptively reasonable under paragraph 41.647(2) "d" must include a detailed explanation of why the numbers chosen are reasonable and how they ensure that the state is appropriately analyzing and identifying LEAs with significant disparities, based on race and ethnicity, in the identification, placement, or discipline of children with disabilities.

41.647(3) Exception. The state is not required to calculate a risk ratio or alternate risk ratio, as outlined in paragraphs 41.647(2) "f," 41.647(2) "g," and 41.647(2) "h," to determine significant disproportionality if:

- a.* The particular racial or ethnic group being analyzed does not meet the minimum cell size or minimum n-size; or
- b.* In calculating the alternate risk ratio under paragraph 41.647(2) "h," the comparison group in the state does not meet the minimum cell size or minimum n-size.

41.647(4) Flexibility. The state is not required to identify an LEA as having significant disproportionality based on race or ethnicity under subrule 41.646(1) until:

- a.* The LEA has exceeded a risk ratio threshold set by the state for a racial or ethnic group in a category described in paragraphs 41.647(2) "f" and 41.647(2) "g" for up to three prior consecutive years preceding the identification; and

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b. The LEA has exceeded the risk ratio threshold and has failed to demonstrate reasonable progress, as determined by the state, in lowering the risk ratio or alternate risk ratio for the group and category in each of the two prior consecutive years.

41.647(5) Rule of construction. Nothing in this rule shall be construed to require identification or classification of any child by impairment.

281—41.648 to 41.699 Reserved.

DIVISION IX
RESERVED

281—41.700 to 41.799 Reserved.

DIVISION X
PRESCHOOL GRANTS FOR CHILDREN WITH DISABILITIES

281—41.800(256B,34CFR300) General rule. The Secretary provides grants under Section 619 of the Act to assist states to provide special education and related services in accordance with Part B of the Act to children with disabilities aged three through five years; and, at a state's discretion, to two-year-old children with disabilities who will turn three during the school year.

281—41.801 to 41.803 Reserved.

281—41.804(256B,34CFR300) Eligibility. A state is eligible for a grant under Section 619 of the Act if the state is eligible under Section 612 of the Act to receive a grant under Part B of the Act and makes FAPE available to all children with disabilities, aged three through five, residing in the state.

281—41.805 Reserved.

281—41.806(256B,34CFR300) Eligibility for financial assistance. No state or LEA, or other public institution or agency, may receive a grant or enter into a contract or cooperative agreement under Subpart 2 or 3 of Part D of the Act that relates exclusively to programs, projects, and activities pertaining to children aged three through five years, unless the state is eligible to receive a grant under Section 619(b) of the Act.

281—41.807 to 41.812 Reserved.

281—41.813(256B,34CFR300) State administration.

41.813(1) General. For the purpose of administering Section 619 of the Act, including the coordination of activities under Part B of the Act with and providing technical assistance to other programs that provide services to children with disabilities, the state may use not more than 20 percent of the maximum amount the state may reserve under rule 281—41.812(256B,34CFR300) for any fiscal year.

41.813(2) Use for administering Part C. Funds described in subrule 41.813(1) may also be used for the administration of Part C of the Act.

281—41.814(256B,34CFR300) Other state-level activities. The state must use any funds the state reserves under rule 281—41.812(256B,34CFR300) and does not use for administration under rule 281—41.813(256B,34CFR300) for other state-level activities, consistent with 34 CFR Section 300.814.

281—41.815(256B,34CFR300) Subgrants to AEAs. The state shall make subgrants to AEAs consistent with 34 CFR Section 300.815.

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281—41.816(256B,34CFR300) Allocations to AEAs. The state must allocate to AEAs the amount described in rule 281—41.815(256B,34CFR300), consistent with 34 CFR Section 300.816.

281—41.817(256B,34CFR300) Reallocation of AEA funds. The state shall reallocate AEA funds under conditions listed and in a manner specified by 34 CFR Section 300.817.

281—41.818(256B,34CFR300) Part C of the Act inapplicable. Part C of the Act does not apply to any child with a disability receiving FAPE, in accordance with Part B of the Act, with funds received under Section 619 of the Act.

281—41.819 to 41.899 Reserved.

DIVISION XI
ADDITIONAL RULES CONCERNING FINANCE AND PUBLIC ACCOUNTABILITY

281—41.900 Reserved.

281—41.901(256B,282) Records and reports. Each agency shall maintain sufficient records and reports for audit by the department. Records and reports shall include at a minimum: licensure (certification) and endorsements or recognition requirements for all special education personnel under rules 281—41.401(256B,34CFR300) to 281—41.403(256B); all IEP and IFSP meetings and three-year reevaluations for each eligible individual; and data required for federal and state reporting.

281—41.902(256B,282) Audit. The department reserves the right to audit the records of any agency providing special education for eligible individuals and utilizing funds generated under Iowa Code chapters 256B, 273 and 282.

281—41.903(256B,282) Contractual agreements.

41.903(1) General. Any special education instructional program not provided directly by an LEA or any special education support service not provided by an AEA can only be provided through a contractual agreement. The board shall approve contractual agreements for AEA-operated special education instructional programs and contractual agreements permitting special education support services to be provided by agencies other than the AEA.

41.903(2) Specific requirements. Each agency contracting with other agencies to provide special education and related services for individuals or groups of individuals maintain responsibility for individuals receiving such special education and related services by:

a. Ensuring that all the requirements related to the development of each eligible individual's IEP are met.

b. Requiring and reviewing periodic progress reports to ensure the adequacy and appropriateness of the special education and related services provided.

c. Conditioning payments on delivery of special education and related services in accordance with the eligible individual's IEP and in compliance with these rules.

281—41.904(256B) Research and demonstration projects and models for special education program development. Applications for aid, whether provided directly from state or federal funds, for special education research and demonstration projects and models for program development shall be submitted to the department.

281—41.905(256B,273) Additional special education. Additional special education made available through the provisions of Iowa Code section 273.3 will be furnished in a manner consistent with these rules.

281—41.906(256B,273,282) Extended school year services. Approved extended school year programs for special education support services, when provided by the AEA for eligible individuals, will be funded

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through procedures as provided for special education support services. Approved extended school year instructional programs will be funded through procedures as provided for special education instructional programs.

281—41.907(256B,282,34CFR300,303) Program costs.

41.907(1) *Nonresident individual.* Subject to subrule 41.131(6), the program costs charged by an LEA or an AEA for an instructional program for a nonresident eligible individual shall be the actual costs incurred in providing that program.

41.907(2) *Contracted special education.* An AEA or LEA may make provisions for resident eligible individuals through contracts with public or private agencies that provide appropriate and approved special education. The program costs charged by or paid to a public or private agency for special education instructional programs shall be the actual costs incurred in providing that program.

41.907(3) *LEA responsibility.* The resident LEA shall be liable only for instructional costs incurred by an agency for those individuals certified as eligible in accordance with these rules unless required by 34 CFR Section 300.104.

41.907(4) *Support service funds.* Support service funds may not be utilized to supplement any special education programs authorized to use special education instructional funds generated through the weighting plan.

41.907(5) *Responsibility for special education for children living in a foster care facility or treatment facility.*

a. Eligible individuals who are living in a licensed individual or agency child foster care facility, as defined in Iowa Code section 237.1, or in an unlicensed relative foster care placement shall remain enrolled in and attend an accredited school in the school district in which the child resided and is enrolled at the time of placement, unless it is determined by the juvenile court or a public or private agency of this state that has responsibility for the child's placement that remaining in such school is not in the best interests of the child. If such a determination is made, the child may be enrolled in the district in which the child is placed and not in the district in which the child resided prior to receiving foster care. The costs of the special education required by this chapter shall be paid, in either case, by the school district of residence of the eligible individual.

b. For eligible individuals who are living in a facility as defined in Iowa Code section 125.2, the LEA in which the facility is located must provide special education if the facility does not maintain a school. The costs of the special education shall be paid by the school district of residence of the eligible individual.

c. If the school district of residence of the eligible individual cannot be determined and this individual is not included in the weighted enrollment of any LEA in the state, the LEA in which the facility is located may certify the costs to the director of education by August 1 of each year for the preceding fiscal year. Payment shall be made from the general fund of the state.

41.907(6) *Responsibility for special education for individuals after termination of parental rights.* For eligible individuals placed by the district court, and for whom parental rights have been terminated by the district court, the LEA in which the facility or home is located must provide special education. Costs shall be certified to the director of education by August 1 of each year for the preceding fiscal year by the director of the AEA in which this individual has been placed. Payment shall be made from the general fund of the state.

41.907(7) *Proper use of special education instructional and support service funds.* Special education instructional funds generated through the weighting plan may be utilized to provide special education instructional services both in state and out of state with the exceptions of itinerant instructional services under subrule 41.410(1) and special education consultant services that shall utilize special education support service funds for both in-state and out-of-state placements.

41.907(8) *Funding of ECSE instructional options.* Eligible individuals below the age of six may be designated as full-time or part-time students depending on the needs of the child. Funding shall be based on individual needs as determined by the IEP team. Special education instructional funds

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generated through the weighting plan can be used to pay tuition, transportation, and other necessary special education costs, but shall not be used to provide child care.

a. Full-time ECSE instructional services shall include 20 hours or more of instruction per week. The total hours of participation in special education and general education may be combined to constitute a full-time program.

b. Part-time ECSE instructional services shall include up to 20 hours of instruction per week. The total hours of participation in special education and general education may be combined to constitute a part-time program.

c. Funds under 20 U.S.C. Chapter 33, Part C, may be used to provide FAPE, in accordance with these rules, to eligible individuals from their third birthday to the beginning of the following school year.

41.907(9) *Funding for instructional services.* After an LEA board approves a delivery system for instructional services as described in subrule 41.408(2), the director, in accordance with Iowa Code sections 256B.9 and 273.5, will assign the appropriate special education weighting to each eligible individual by designating a level of service. The level of service refers to the relationship between the general education program and specially designed instruction for an eligible individual. The level of service is determined based on an eligible individual's educational need and independent of the environment in which the specially designed instruction is provided. The level of service assigned shall not be a factor in a services or placement decision, and shall be made only after those decisions have been made. One of three levels of service shall be assigned by the director:

a. Level I. A level of service that provides specially designed instruction for a limited portion or part of the educational program. A majority of the general education program is appropriate. This level of service includes modifications and adaptations to the general education program. (Reference Iowa Code section 256B.9(1)“b”)

b. Level II. A level of service that provides specially designed instruction for a majority of the educational program. This level of service includes substantial modifications, adaptations, and special education accommodations to the general education program. (Reference Iowa Code section 256B.9(1)“c”)

c. Level III. A level of service that provides specially designed instruction for most or all of the educational program. This level of service requires extensive redesign of curriculum and substantial modification of instructional techniques, strategies and materials. (Reference Iowa Code section 256B.9(1)“d”)

41.907(10) *Procedures for billing under subrules 41.907(5) and 41.907(6).* The department may establish procedures by which it determines which district initially pays the costs of special education and related services and seeks reimbursement in situations where a parent of a child cannot be located, parental rights have been terminated, or parents are deceased.

281—41.908(256B,282) *Accountability.* The responsible agency shall provide special education and related services in accordance with the individual's IEP; but the agency, teacher, or other person is not held accountable if an individual does not achieve the growth projected in the annual goals and objectives of the IEP, so long as the individual's IEP was reasonably calculated to confer education benefit and was implemented. Nothing in this rule or this chapter is to be construed to create a right of action against any individual.

281—41.909 to 41.999 Reserved.

DIVISION XII
PRACTICE BEFORE MEDIATORS AND ADMINISTRATIVE LAW JUDGES

281—41.1000 and 41.1001

281—41.1002(256B,34CFR300) *Special education mediation conference.*

41.1002(1) *Procedures.* The parent, the LEA or the AEA may request a special education mediation conference on any decision relating to the identification, evaluation, educational placement, or the

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provision of FAPE without the need for filing a due process complaint. The mediation conference shall comply with rule 281—41.506(256B,34CFR300).

a. A request for a special education mediation conference may be in the form of a letter or a pleading or on a form provided by the department. The request will identify the student, LEA and AEA and set forth the facts, the issues of concern, or the reasons for the conference. The letter will be provided to the department, to the AEA, and to the LEA.

b. Within five business days of receipt of the request for the conference, the department will contact all pertinent parties to determine whether participation is desired.

c. A mediation conference will be scheduled and held at a time and place reasonably convenient to all parties involved. Written notice will be sent to all parties by the department.

d. The student's complete school record will be made available for review by the parent prior to the conference, if requested in writing at least ten calendar days before the conference.

e. The individual's complete school record will be available to the participants at the conference if the record is requested in writing at least ten calendar days prior to any scheduling conference call or within two days following the scheduling conference call. The parties may agree to make less than the complete educational record available, or make no educational records available, at the mediation conference.

f. A mediator provided by the department will preside over the conference.

g. If an agreement is reached, a document meeting the requirements of paragraph 41.506(2) "f" will be executed.

h. If agreement is not reached at the conference, all parties will be informed of the procedures for filing a due process complaint.

41.1002(2) *Placement during proceedings.* Pursuant to rule 281—41.518(256B,34CFR300), unless the parties agree otherwise, the student involved in the mediation conference must remain in the student's present educational placement during the pendency of the proceedings.

41.1002(3) *Withdrawals or automatic closures.* The initiating party may request a withdrawal prior to the conference. Automatic closure of the department file will occur if any of the following circumstances apply:

a. One of the parties refuses to participate in the voluntary process.

b. The conference is held, but parties are not able to reach an agreement. There will be a ten-calendar-day waiting period after the conference to continue the placement as described in subrule 41.1002(2) in the event a party wishes to pursue a hearing.

c. The conference is held, the parties are able to reach an agreement, and the agreement does not specify a withdrawal date. If a withdrawal date is part of the agreement, an agency withdrawal will occur on the designated date.

41.1002(4) *Confidentiality of discussions.* Discussions that occur during the special education mediation conference must be confidential, except as may be provided in Iowa Code chapter 679C, and may not be used as evidence in any subsequent due process hearings or civil proceedings; however, the parties may stipulate to agreements reached at the conference. Prior to the start of the conference, the parties and the mediator will be required to sign an Agreement to Mediate form containing this confidentiality provision.

281—41.1003(17A,256B) *Procedures concerning due process complaints.* Due process hearings will be conducted pursuant to these rules, the rules of the department of inspections, appeals, and licensing, and any order made by the presiding administrative law judge.

281—41.1004 to 41.1008 Reserved.

281—41.1009(17A,256B) *Witnesses.*

41.1009(1) *Subpoenas.* The director of education has the power to issue, but not to serve, subpoenas for witnesses and to compel the attendance of those thus served and the giving of evidence by them. The subpoenas will be given to the requesting parties whose responsibility it is to serve to the designated

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witnesses. Requests for subpoenas may be denied or delayed if not submitted to the department at least five business days prior to the hearing date.

41.1009(2) *Attendance of witness compelled.* Any party may compel by subpoena the attendance of witnesses, subject to limitations imposed by state law.

41.1009(3) *Cross-examination.* Witnesses at the hearing are subject to cross-examination. An individual whose testimony has been submitted in written form, if available, will be subject to cross-examination by any party necessary for a full and true disclosure of the facts. If the individual is not available and cross-examination is necessary for a full and true disclosure of the facts, the administrative law judge may exclude the individual's testimony in written form.

281—41.1010(17A,256B) Rules of evidence.

41.1010(1) *Receiving relevant evidence.* Because the administrative law judge must decide each case fairly, based on the information presented, it is necessary to allow for the reception of all relevant evidence that will contribute to an informed result. The ultimate test of admissibility is whether the offered evidence is reliable, probative and relevant.

41.1010(2) *Acceptable evidence.* Irrelevant, immaterial or unduly repetitious evidence will be excluded. The kind of evidence reasonably prudent persons rely on may be accepted even if it would be inadmissible in a jury trial. The administrative law judge will give effect to the rules of privilege recognized by law. Objections to evidence may be made and shall be noted in the record. When a hearing is expedited and the interests of the parties are not prejudiced substantially, any part of the evidence may be required to be submitted in verified written form.

41.1010(3) *Documentary evidence.* Documentary evidence may be received in the form of copies or excerpts, if the original is not readily available. Upon request, parties will be given an opportunity to compare the copy with the original, if available. Any party has the right to prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least five business days before the hearing.

41.1010(4) *Administrative notice and opportunity to contest.* The administrative law judge may take official notice of all facts of which judicial notice may be taken and of other facts within the specialized knowledge of the administrative law judge. Parties will be notified at the earliest practicable time, either before or during the hearing or by reference in preliminary reports, and afforded an opportunity to contest such facts before the decision is announced unless the administrative law judge determines as part of the record or decision that fairness to the parties does not require an opportunity to contest such facts.

41.1010(5) *Discovery.* Discovery procedures applicable to civil actions are available to all parties in due process hearings under this chapter. Evidence obtained in discovery may be used in the hearing before the agency if that evidence would otherwise be admissible in the agency hearing. The administrative law judge may exercise such control over discovery, including its nature, scope, frequency, duration, or sequence, as permitted by the Iowa rules of civil procedure, and for such grounds as those rules may provide.

41.1010(6) *Administrative law judge may evaluate evidence.* The administrative law judge's experience, technical competence and specialized knowledge may be utilized in the evaluation of the evidence.

41.1010(7) *Decision.* A decision will be made upon consideration of the whole record or such portions that are supported by and in accordance with reliable, probative and substantial evidence.

281—41.1011(17A,256B) Communications.

41.1011(1) *Restrictions on communications—administrative law judge.* The administrative law judge will not communicate directly or indirectly in connection with any issue of fact or law in that contested case with any person or party except upon notice and opportunity for all parties to participate.

41.1011(2) *Restrictions on communications—parties.* Parties or their representatives will not communicate directly or indirectly in connection with any issue of fact or law with the administrative law judge except upon notice and opportunity for all parties to participate as are provided for by

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administrative rules. The recipient of any prohibited communication will submit the communication, if written, or a summary of the communication, if oral, for inclusion in the record of the proceeding.

41.1011(3) Sanctions. Any or all of the following sanctions may be imposed upon a party who violates this rule: censure, suspension or revocation of the privilege to practice before the department, or the rendering of a decision against a party who violates the rules.

281—41.1012(17A,256B) Record.

41.1012(1) Transcripts. All recordings or notes by certified court reporters of oral proceedings or the transcripts thereof will be maintained and preserved by the department for at least five years from the date of decision.

41.1012(2) Hearing record. The record of a hearing will be maintained and preserved by the department for at least five years from the date of the decision. The record under this division includes the following:

- a. All pleadings, motions and intermediate rulings.
- b. All evidence received or considered and all other submissions.
- c. A statement of matters officially noted.
- d. All questions and offers of proof, objections and rulings thereof.
- e. All proposed findings and exceptions.
- f. Any decision, opinion or report by the administrative law judge presented at the hearing.

281—41.1013 Reserved.

281—41.1014(17A,256B) Finality of decision.

41.1014(1) Decision final. The decision of the administrative law judge is final. The date of postmark of the decision is the date used to compute time for purposes of appeal.

41.1014(2) Notice to department of a civil action. A party initiating a civil action in state or federal court under rule 281—41.516(256B,34CFR300) shall provide an informational copy of the petition or complaint to the department within 14 days of filing the action.

41.1014(3) Filing of certified administrative record. The department shall file a certified copy of the administrative record within 30 days of receiving the informational copy referred to in subrule 41.1014(2).

281—41.1015(256B,34CFR300) Disqualification of mediator. Any party may request an appointment of a new mediator for any reason listed in subrule 41.1004(1). The department will determine whether such grounds exist and, if so, shall appoint a new mediator.

281—41.1016(17A) Correcting decisions of administrative law judges. An administrative law judge may, on the motion of any party or on the administrative law judge's own motion, correct any error in a decision or order under this chapter that does not substantively alter the administrative law judge's findings of fact, conclusions of law, or ordered relief, including clerical errors, errors in grammar or spelling, and errors in the form of legal citation. Any such correction will be made within 90 days of the date of the order or decision, will relate back to the date of the order or decision, and will not extend any applicable statute of limitations.

281—41.1017 to 41.1099 Reserved.

DIVISION XIII
ADDITIONAL RULES NECESSARY TO IMPLEMENT AND APPLY THIS CHAPTER

281—41.1100(256B,34CFR300) References to federal law. All references in this chapter to the United States Code or to the Code of Federal Regulations are to those provisions in effect on February 7, 2024.

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281—41.1101(256B,34CFR300) Severability. Should any rule or subrule in this chapter be declared invalid by a court of competent jurisdiction, every other rule and subrule not affected by that declaration of invalidity remains valid.

281—41.1102(256B,34CFR300) Rule of construction. Language adopted pursuant to 2020 Iowa Acts, House File 2585, is to be construed in a manner consistent with federal law and shall not be construed to confer any different or greater right or responsibility under this chapter.

These rules are intended to implement Iowa Code chapter 256B, the 2004 amendments to the Individuals with Disabilities Education Act, and Part 300 of Title 34 of the Code of Federal Regulations published in the Federal Register on August 14, 2006.

ARC 7590C**EDUCATION DEPARTMENT[281]****Notice of Intended Action****Proposing rulemaking related to pupil transportation
and providing an opportunity for public comment**

The State Board of Education hereby proposes to rescind Chapter 43, “Pupil Transportation,” Iowa Administrative Code, and to adopt a new chapter with the same title.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code section 285.8.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code chapter 285.

Purpose and Summary

This rulemaking is proposed pursuant to Executive Order 10 review. The current chapter contains verbatim statutory language, unnecessarily restrictive terms, and unenforceable aspirational language. The Department of Education proposes eliminating that language and consolidating rules with similar subject matter to improve the end user’s experience.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the State Board for a waiver of the discretionary provisions, if any, pursuant to 281—Chapter 4.

Public Comment

Any interested person may submit written or oral comments concerning this proposed rulemaking. Written or oral comments in response to this rulemaking must be received by the Department no later than 4:30 p.m. on February 27, 2024. Comments should be directed to:

EDUCATION DEPARTMENT[281](cont'd)

Thomas A. Mayes
 Department of Education
 Grimes State Office Building, Second Floor
 400 East 14th Street
 Des Moines, Iowa 50319-0146
 Phone: 515.281.8661
 Email: thomas.mayes@iowa.gov

Public Hearing

Public hearings at which persons may present their views orally or in writing will be held as follows:

February 27, 2024 11:30 a.m. to 12 noon	Room B100 Grimes State Office Building Des Moines, Iowa
February 27, 2024 3:30 to 4 p.m.	Room B50 Grimes State Office Building Des Moines, Iowa

Persons who wish to make oral comments at a public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rulemaking.

Any persons who intend to attend a public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department and advise of specific needs by calling 515.281.5295.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking 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 rulemaking action is proposed:

ITEM 1. Rescind 281—Chapter 43 and adopt the following **new** chapter in lieu thereof:

TITLE VIII
 SCHOOL TRANSPORTATION
 CHAPTER 43
 PUPIL TRANSPORTATION
 DIVISION I
 TRANSPORTATION ROUTES

281—43.1(285) Intra-area education agency routes.

43.1(1) Bus routes within the boundaries of transporting districts as well as within designated areas will be as efficient and economical as possible under existing conditions.

43.1(2) The riding time, under normal conditions, from the designated stop to the attendance center, or on the return trip, will not exceed 75 minutes for high school pupils or 60 minutes for elementary pupils. A school district may extend the riding time limits up to 15 minutes subsequent to a public hearing. (These limits may be waived upon request of the parents.)

43.1(3) Pupils whose residence is within two miles of an established stop on a bus route are within the area served by the bus and are not eligible for parent or private transportation at public expense to the school served by the bus, except as follows:

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- a. Bus is fully loaded.
- b. Physical disability makes bus transportation impractical.

All parents or guardians who are required by their school district to furnish transportation for their children up to two miles to an established stop on a bus route shall be reimbursed pursuant to Iowa Code section 285.1(4).

43.1(4) Transporting districts are to arrange routes to provide the greatest possible convenience to the pupils. The distance for pupils who are required to travel to meet the bus is to be kept to the minimum consistent with road conditions, uniform standards, and legal provisions for locating bus routes.

43.1(5) Each bus route will be reviewed annually by local transportation staff for safety hazards, and a record of the annual review maintained.

281—43.2(285) Interarea education agency routes.

43.2(1) Joint consultation will be held by the area education agency boards involved. The initial steps may be undertaken by the area education agency administrators. If there are no difficulties and agreement is reached, the route is approved and no further action need be taken.

43.2(2) If agreement is not reached in the initial attempt, the administrator of the area education agency in which the applying school is located will advise the superintendent of reasons for failure to reach agreement and request that the superintendent revise the transportation plan to meet the objection and resubmit same.

43.2(3) If the area education agency boards do not reach agreement on the route, the home area education agency administrator will forward the complete record of the case together with disapproved transportation plan to the state department of education. Every effort should be made, however, to settle the matter locally.

43.2(4) All legal provisions, standards and regulations applying to approval and operation of bus routes apply equally to interarea education agency bus routes.

43.2(5) All interarea education agency bus routes are to be approved each year. If there has been no change in the designations, nor in the proposed route, the transportation plan may be made and agreement indicated by letter.

DIVISION II
PRIVATE CONTRACTORS

281—43.3(285) Contract necessary. All private contractors wishing to transport pupils to and from school in privately owned vehicles are to be under contract with the local board of education. This rule does not apply to individuals who transport their own children or other children on a not-for-hire basis.

The contract will include, but not be limited to, all provisions prescribed by the department of education.

281—43.4(285) Uniform charge. The contract will provide for a uniform charge for all pupils transported. No differentiations may be made between pupils of different districts except as provided in Iowa Code section 285.1(12). A private contractor may establish a variance in fees when differences in how transportation is provided are necessary in order to meet student needs.

281—43.5(285) Board to be a party. The contractor may not arrange with individual families for transportation. The contractor undertakes to transport only those families indicated by the board of education.

281—43.6(285) Contract with parents. Parents, guardians, or custodians undertaking to transport other children for hire, in addition to their own, are private contractors. These individuals are to be under contract and obtain an appropriate driver's license and a school bus driver's authorization.

281—43.7(285) Vehicles. Any vehicle used, other than that used by individuals to transport their own children or other children on a not-for-hire basis, is considered to be a school bus and is to meet all

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requirements for the type of vehicle used, including semiannual inspection. This rule is not intended to govern the use of passenger vehicles during the time the vehicles are not actually engaged in transporting school pupils.

DIVISION III
FINANCIAL RECORDS AND REPORTS

281—43.8(285) Required charges. Full pro rata costs are to be charged and collected for the transportation of all nonresident pupils. No differentiation may be made in charges due to differences in distance or grade in school.

281—43.9(285) Activity trips deducted. Transporting school districts that use their equipment for activity trips, educational tours, or other types of transportation services as permitted in Iowa Code section 285.10(9) and 285.10(10) are to deduct the cost of trips from the total yearly transportation cost. These costs may not be included in the pro rata costs that determine the charge to sending districts.

DIVISION IV
USE OF SCHOOL BUSES OTHER THAN FOR ROUTES

281—43.10(285) Permitted uses listed. School buses may be used to transport pupils under the following conditions:

43.10(1) The program is a part of the regular or extracurricular program of a public school and has been so adopted and made a matter of record in the minutes of all the boards involved.

43.10(2) The pupils are enrolled in a public or accredited nonpublic school.

43.10(3) The program or activity is sponsored by a school or group of schools cooperatively and is under the direct control of a qualified staff member of a school district.

43.10(4) The bus will be driven by an approved driver holding an appropriate driver's license and a school bus driver's authorization. In addition, the buses will be accompanied by a member of the faculty or other employee of the school or a parent or other adult volunteer as authorized by a school administrator who will be responsible for the conduct and the general supervision of the pupils on the bus and at the place of the activity. This person shall ride the bus. If the faculty member is an approved driver, that person can act both as a driver and faculty sponsor.

43.10(5) School buses may be used by an organization of, or sponsoring activities for, senior citizens, children, individuals with disabilities, and other persons and groups, and for transportation of persons other than pupils to activities in which pupils from the school are participants or are attending the activity or for which the school is a sponsor under the following conditions:

a. The "school bus" signs are covered and the flashing warning lamps and stop arm made inoperable when the bus is being used in a nonschool-sponsored activity.

b. Transportation outside the state of Iowa is not provided without the approval of the Federal Motor Carrier Safety Administration of the United States Department of Transportation.

c. A chaperone rides each bus to assist the passengers in boarding and disembarking from the bus and to aid them in case of illness or injury.

d. The driver of the bus is approved by the local board of education and possesses an appropriate driver's license and a school bus driver's authorization.

e. The driver of the bus observes all motor vehicle laws for school buses at all times.

43.10(6) The bus meets passenger seating requirements.

a. Each passenger has a seat, with no part of the passenger's body extending into the aisle.

b. Student passengers have a minimum of 13 inches of allowable seating per person.

c. For adult groups, no more than two persons occupy a 39-inch seat.

d. Standees are prohibited in all situations, whether the bus is transporting students or adults.

e. The maximum number of passengers never exceeds the rated capacity of the vehicle as it is equipped.

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f. Districts with buses utilizing 3-point lap-shoulder belts adopts a board policy regarding use of these lap-shoulder belts by passengers.

DIVISION V
THE BUS DRIVER

281—43.11(285) Driver age. School bus drivers must be at least 18 years of age on or before August 1 preceding the opening of the school year for which a school bus driver's authorization is required.

281—43.12(285) Physical fitness.

43.12(1) General. Except for insulin-dependent diabetics, an applicant for a school bus driver's authorization is to undergo a biennial physical examination by a certified medical examiner who is listed on the National Registry of Certified Medical Examiners. The applicant will submit annually to the applicant's employer the signed medical examiner's certificate pursuant to Federal Motor Carrier Safety Administration regulations 49 CFR Sections 391.41 to 391.49, indicating, among other requirements, sufficient physical capacity to operate the bus effectively and to render assistance to the passengers in case of illness or injury and freedom from any communicable disease. At the discretion of the chief administrator or designee of the employer or prospective employer, the chief administrator or designee shall evaluate the applicant's ability in operating a school bus, including all safety equipment, in providing assistance to passengers in evacuation of the school bus, and in performing other duties required of a school bus driver.

43.12(2) Insulin-dependent diabetics. A person who is an insulin-dependent diabetic may qualify to be a school bus driver if the person meets all qualifications of Iowa Code section 321.375(3). Such driver is subject to an annual physical examination by a qualified medical examiner as listed in subrule 43.12(1).

281—43.13(285) Authorization.

43.13(1) General. The local board of education or its designee will issue a school bus driver's authorization for each approved driver annually once the provisions of Iowa Code section 321.375 are satisfied.

43.13(2) Authorization to be carried by driver. Every school bus driver is to carry a copy of the driver's school bus driver's authorization at all times when the driver is acting in that capacity.

43.13(3) Authorization denials and revocations. A person who believes that a school bus driver who holds an authorization issued by the department of education or who seeks a school bus authorization has committed acts in violation of Iowa Code section 321.375(2) may file a complaint with the department against the driver or applicant. The department will notify the driver or applicant that a complaint has been filed and provide the driver or applicant with a copy of the complaint. A hearing will be set for the purpose of determining whether the bus driver's authorization will be denied, suspended, or revoked, or whether the bus driver should receive a reprimand or warning. Hearing procedures in 281—Chapter 6 apply to such proceedings. No school bus driver or applicant may retain or obtain employment if the local district finds that the individual is listed on the sex offender registry under Iowa Code section 692A.121 available to the general public, the central registry for child abuse information established under Iowa Code section 235A.14, or the central registry for dependent adult abuse information established under Iowa Code section 235B.5. A hearing conducted pursuant to Iowa Code section 321.375(3) or 321.376 is to be limited to the question of whether the school bus driver or applicant was incorrectly listed on the registry. The driver or applicant will not serve in the capacity of a school bus driver while the appeal process is being conducted.

281—43.14(321) Fee collection and distribution of funds. The department of education will assess a fee for semiannual school bus inspections for each vehicle inspected by the department. The department will present for payment a fee statement to the owner of each vehicle inspected. For districts transporting pupils through a private contractor under rule 281—43.3(285), the fee statement will be presented to the contracting district for payment.

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The department of education will submit an annual budget request for an amount equal to 100 percent of the total projected fees to be collected during the next fiscal year, which is to be based on an amount equal to the number of vehicle inspections completed during the previous school year multiplied by the inspection fee authorized by statute.

DIVISION VI
PURCHASE OF BUSES

281—43.15(285) Local board procedure. The board of education will proceed as follows in purchasing school buses:

43.15(1) Request bids unless the bus is a used or demonstrator bus.

43.15(2) Notify dealers of intent to purchase school transportation equipment and request bids.

43.15(3) Reserve right to reject all bids.

43.15(4) Require all bids to be on comparable equipment that meets all state and federal requirements.

43.15(5) Hold an open meeting for dealers to present merits of their equipment.

43.15(6) Review bids, tabulate all bids, and make a record of action taken.

43.15(7) Sign contracts or orders for purchase of school transportation equipment. The purchase agreement must provide that the dealer will deliver equipment that will pass initial state inspection at no further cost to the school.

43.15(8) Notify the department of education of delivery so that arrangements can be made for the initial school bus inspection. No school bus may be put into service until it has passed a pre-use inspection conducted, documented, and reported by the local board of education or its designee on a form prescribed by the department of education. The initial school bus inspection will be conducted at the earliest possible time convenient to the school and the department of education.

281—43.16(285) Financing. The board of education may finance purchase of transportation equipment as follows:

43.16(1) The board may pay all of the cost of each bus from funds on hand in the general fund or other funds allowed by statute.

43.16(2) Bonds may be voted to purchase equipment, and funds so derived are to be used for that purpose.

DIVISION VII
MISCELLANEOUS PROVISIONS

281—43.17(285) Semiannual inspection. To facilitate the semiannual inspection program, school and school district officials shall send all vehicles used for student transportation to designated inspection locations as scheduled. A sufficient number of drivers or other school personnel shall be available at the inspection to operate the equipment for the inspectors. The fee for each vehicle inspected is \$50.

281—43.18(285) Maintenance record. School officials shall cause the chassis of all vehicles used for student transportation, whether publicly or privately owned, to be inspected annually and all necessary repairs made before the vehicle is put into service. The inspection and repairs will be recorded on a form prescribed by the department of education. The completed form is to be signed and dated by the mechanic and carried in the glove compartment of the bus.

281—43.19(285) Drivers' schools. All school bus drivers shall attend classes or schools of instruction as approved by the department of education and provided for in Iowa Code section 321.376(2). All new drivers will, within the first six months of employment, successfully complete the "new driver STOP class" approved by the department. All current school bus drivers are to attend the annual course of instruction. Upon missing a year of instruction, a current driver must successfully complete the course

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of instruction for new drivers prior to receiving an authorization. The employer of a school bus driver may impose additional training for any new or current driver.

281—43.20(285) Insurance. The board of education will carry insurance on all school-owned buses and see that insurance is carried by all contractors engaged in transporting pupils for the district in the coverages and limits as determined by the board of education.

281—43.21(285) Contract—privately owned buses. The board of education and a contractor who undertakes to transport school pupils for the board, in privately owned vehicles, shall sign a contract that includes the following provisions:

43.21(1) To furnish and operate at the contractor's own expense a legally approved vehicle of transportation transporting only children attending the school designated by the board of education.

43.21(2) To comply with all legal and established uniform standards of operation as required by statute or by legally constituted authorities.

43.21(3) To comply with all uniform standards established for protection of health and safety for pupils transported.

43.21(4) To comply with all rules and regulations adopted by the board of education for the protection of the children, or to govern the conduct of the driver of bus.

43.21(5) To keep bus in good mechanical condition and up to standards required by statutes or by legally constituted authorities.

43.21(6) To take school bus to official inspection when held by state authorities with no additional expense to party of second part.

43.21(7) To use only drivers and substitute drivers who have been approved by the board of education and have been issued a current school bus driver's authorization.

43.21(8) To furnish the board of education an approved certificate of medical examination for each person who is approved by the board of education to drive the bus.

43.21(9) To attend a school of instruction for bus drivers as prescribed by the department of education. (If the owner does not drive the bus, the regular approved driver of the bus shall attend.)

43.21(10) To carry insurance on bus and pupils in the coverages and limits as determined by the board of education, with a copy of the policy filed with superintendent of schools.

43.21(11) To make such reports as may be required by state department of education, area education agency board of education, and superintendent of schools.

43.21(12) To use the school bus only for transporting regularly enrolled students to and from public school and to extracurricular activities approved and designated by the board of education and further to comply with all legal restrictions on use of bus.

43.21(13) To obtain, if possible, the license plate numbers of all vehicles violating the school bus passing law, Iowa Code section 321.372, and file information for prosecution.

43.21(14) To reserve the right of the board of education to change routing of the bus and, if additional mileage is required, allow for an extra cost.

43.21(15) To ensure immoral conduct or the use of alcoholic beverages by the contractor or driver employed by the contractor shall result in appropriate sanctions as provided in Iowa Code section 321.375.

43.21(16) To allow the contract to be terminated on 90-day notice by either party as provided by Iowa Code section 285.5(4).

43.21(17) An agreement that, if the contractor desires to terminate the contract, the school bus will be sold to the board of education at its request as provided in Iowa Code section 285.5(1). This provision does not apply to a passenger vehicle used as a school bus.

281—43.22(285) Contract—district-owned buses. The board of education and a private individual undertaking to transport school pupils for the board in school district-owned vehicles shall sign a contract substantially similar to that prescribed by the department of education. The contract will contain the following provisions:

EDUCATION DEPARTMENT[281](cont'd)

43.22(1) To conform to all rules of the board of education in and for the district adopted for the protection of the children and to govern the conduct of the person in charge of the conveyance.

43.22(2) To make reports as may be required by the department of education, area education agency, or superintendent of schools.

43.22(3) To conform to all standards for operation of the school buses as provided by statute or by legally constituted authorities.

43.22(4) That the employee is entitled to benefits as outlined in the school board policy for the school district.

43.22(5) To attend a school of instruction for bus drivers as prescribed by the department of education.

43.22(6) That the employer may terminate the contract and dismiss the employee for failure to conform to all laws of the state of Iowa and rules promulgated by the Iowa department of education applicable to drivers of school buses.

43.22(7) That the contract is not in force until the driver presents an official school bus driver's authorization.

281—43.23(285) Railroad crossings. The driver of any school bus will comply with Iowa Code section 321.343, regardless of whether or not there are any pupils in the bus, and regardless of whether or not there is an automatic signal at the crossing. After stopping, the driver shall open the entrance door, shall look and listen for approaching trains, and shall not proceed to cross the tracks until it is safe to do so.

281—43.24(285) Driver regulations.

43.24(1) The driver of a school vehicle shall not smoke in the vehicle or on any school property.

43.24(2) The driver shall not permit firearms or other weapons, nor ammunition, to be carried in the passenger compartment of any school vehicle transporting pupils.

43.24(3) The driver shall not fill the fuel tank while the motor is running or when there are passengers in the vehicle.

43.24(4) The driver shall ensure that aisles and exits are not blocked.

281—43.25(285) Civil defense projects. Civil defense projects may be recognized by the board of directors of any school district as an authorized extracurricular activity.

43.25(1) The use of school buses for field trips and exercises, and the planned use of school buses in connection with actual emergency procedures to be carried on in cooperation with local, state or national authorities, civil or military, is hereby defined as properly incident to such authorized extracurricular activity.

43.25(2) The bus will be driven by an approved driver holding an appropriate driver's license and a school bus driver's authorization except that in actual emergency situations, where approved drivers are not available, other drivers, including students and teachers, may be used if allowed by local school board policy.

281—43.26(285) Pupil instruction. At least twice during each school year, once in the fall and once in the spring, each pupil who is transported in a school vehicle shall be instructed in safe riding practices and participate in emergency evacuation drills. Documentation of these drills will be maintained locally for five years and made available upon request.

281—43.27(285) Trip inspections.

43.27(1) A pretrip inspection of each school vehicle will be performed and recorded prior to each trip to determine if any defects or deficiencies exist that may affect the safety of the vehicle's operation or result in its mechanical breakdown. The pretrip inspection report is to be signed by the driver and submitted promptly to the person responsible for the school transportation program. Any deficiencies that merit an OOS (out of service) rating pursuant to department of education school bus inspection guidelines must be repaired prior to use of the vehicle. All other deficiencies should be repaired as soon as possible but do not bar the use of the vehicle.

EDUCATION DEPARTMENT[281](cont'd)

43.27(2) A posttrip inspection of the interior of the school vehicle shall be performed after each trip to ensure no passengers remain.

281—43.28(285) Loading and unloading areas. Restricted loading and unloading areas will be established for school buses at or near schools.

281—43.29(285) Communication equipment. Each school bus is to have a communications system capable of communication between the driver of the bus and the school's base of operations for school transportation.

DIVISION VIII
COMMON CARRIERS

281—43.30(285) Standards for common carriers. This rule applies to any vehicle operated by a common carrier when used exclusively for student transportation to and from school. "Common carrier" refers to a person or entity in the business of transporting goods or people for hire as a public service.

43.30(1) Vehicles.

- a. The vehicles need not be painted yellow and black as required for conventional school buses.
- b. The vehicles, while transporting children to and from school, are to be equipped with temporary signs, located conspicuously on the front and back of the vehicle. The sign on the front is to have the words "School Bus" printed in black letters six inches high, on a background of National School Bus Yellow. The sign on the rear is to be painted National School Bus Yellow and have the words "School Bus" printed in black letters six inches high. The colors are to conform to those described within 281—subrule 44.3(10).

43.30(2) Drivers.

- a. The driver is to have an appropriate driver's license issued by the Iowa department of transportation.
- b. The driver is to possess a school bus driver's authorization issued by the Iowa department of education.
- c. The driver will receive training in accordance with state statutes and rules for school bus drivers.

43.30(3) Seating. Each passenger is to have a seat; standees are prohibited. No passenger may be present in the bed of a pickup when the vehicle is being operated.

43.30(4) Loading and unloading procedures.

- a. The vehicle is to pull close enough to the curb to prevent another vehicle from passing on its right side.
- b. If the vehicle is not equipped with flashing warning lights and stop arm, or if use of this equipment is not allowed by law, the pupils, on unloading, are to be instructed to remain at the curb until the bus has pulled away and it is safe for them to cross the street.

43.30(5) Inspection of vehicles.

- a. Drivers are to perform pretrip inspections of their vehicles to determine if any defects or deficiencies exist that may affect the safety of the vehicle's operation or result in its mechanical breakdown. The pretrip inspection report is to be submitted promptly to the person charged with maintenance of the vehicle. Any defects or deficiencies that merit an OOS (out of service) rating pursuant to department of education school bus inspection guidelines are to be repaired prior to use of the vehicle. All other defects or deficiencies should be repaired as soon as possible but do not bar the use of the vehicle.
- b. Vehicles are to be inspected semiannually by personnel of the department of education in accordance with the provisions of Iowa Code section 285.8(4).

43.30(6) Other provisions.

- a. Local school officials are to provide the carrier with passenger conduct rules and the driver is to abide by the policies and procedures established by the local district.

EDUCATION DEPARTMENT[281](cont'd)

b. Student instruction for passenger safety is the responsibility of the local school district as specified in rule 281—43.26(285).

These rules are intended to implement Iowa Code chapter 285.

ARC 7591C

EDUCATION DEPARTMENT[281]

Notice of Intended Action

Proposing rulemaking related to school buses and providing an opportunity for public comment

The State Board of Education hereby proposes to rescind Chapter 44, “School Buses,” Iowa Administrative Code, and to adopt a new chapter with the same title.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code section 285.8.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code chapter 285.

Purpose and Summary

This rulemaking is proposed pursuant to Executive Order 10 review. The Department of Education proposes removing rule language that recites statutory text, removing restrictive terms that do not contribute to health and safety, and removing obsolete or unnecessary requirements.

The Department proposes adding rule language specific to buses with alternate fuel sources, such as electric buses (proposed subrule 44.3(25)). Even with this additional language, the Department’s proposal reduces the regulatory burden in this chapter.

In reviewing this chapter, the Department consulted with a broad group of stakeholders, including public safety officials, school leaders, school transportation directors, mechanics, and dealers.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the State Board for a waiver of the discretionary provisions, if any, pursuant to 281—Chapter 4.

Public Comment

Any interested person may submit written or oral comments concerning this proposed rulemaking. Written or oral comments in response to this rulemaking must be received by the Department no later than 4:30 p.m. on February 27, 2024. Comments should be directed to:

EDUCATION DEPARTMENT[281](cont'd)

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 Grimes State Office Building, Second Floor
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 Email: thomas.mayes@iowa.gov

Public Hearing

Public hearings at which persons may present their views orally or in writing will be held as follows:

February 27, 2024 11:30 a.m. to 12 noon	Room B100 Grimes State Office Building Des Moines, Iowa
February 27, 2024 3:30 to 4 p.m.	Room B50 Grimes State Office Building Des Moines, Iowa

Persons who wish to make oral comments at a public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rulemaking.

Any persons who intend to attend a public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department and advise of specific needs by calling 515.281.5295.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking 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 rulemaking action is proposed:

ITEM 1. Rescind 281—Chapter 44 and adopt the following **new** chapter in lieu thereof:

CHAPTER 44
SCHOOL BUSES

281—44.1(285) Requirements for manufacturers. In order to protect both the boards of education and manufacturers of school transportation vehicles and equipment from misunderstanding and confusion, all manufacturers shall provide equipment meeting all Iowa vehicle construction requirements described in this chapter as well as all applicable federal motor vehicle safety standards (FMVSS) that are in effect on February 7, 2024, which include the following:

- 101—Control location, identification, and illumination.
- 102—Transmission shift lever sequence, starter interlock, and transmission braking effect.
- 103—Windshield defrosting and defogging systems.
- 104—Windshield wiping and washing systems.
- 105—Hydraulic braking systems.
- 106—Brake hoses.
- 107—Reflecting surfaces.
- 108—Lamps, reflective devices, and associated equipment.
- 109—New pneumatic tires.
- 110—Tire selection and rims.

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- 111—Rearview mirrors.
- 113—Hood latch systems.
- 116—Motor vehicle brake fluids.
- 119—New pneumatic tires for vehicles other than passenger cars.
- 120—Tire selection and rims for motor vehicles other than passenger cars.
- 121—Air brake systems.
- 124—Accelerator control systems.
- 131—School bus pedestrian safety devices.
- 205—Glazing materials.
- 206—Door locks and door retention components.
- 207—Seating systems.
- 208—Occupant crash protection.
- 209—Seat belt assemblies.
- 210—Seat belt assembly anchorages.
- 217—Bus window retention and release.
- 219—Windshield zone intrusion for vehicles with a GVWR of 10,000 pounds or less.
- 220—School bus rollover protection.
- 221—School bus body joint strength.
- 222—School bus passenger seating and crash protection.
- 301—Fuel system integrity.
- 302—Flammability of interior materials.
- 303—Fuel system integrity of compressed natural gas vehicles.
- 304—Compressed natural gas fuel container integrity.

281—44.2(285) School bus—type classifications. A bus owned, leased, contracted to or operated by a school or school district and regularly used to transport students to and from school or school-related activities, but not including a charter bus or transit bus, meets all applicable FMVSS, and is readily identified by alternately flashing lights, National School Bus Glossy Yellow (NSBY) paint, and the legend “School Bus.” Schools and school districts in Iowa are not allowed to own or lease motor coaches but may charter them for activities.

44.2(1) Type A. A Type A school bus is a conversion or bus constructed utilizing a cutaway front-section vehicle with a left side driver’s door. This definition includes two classifications: Type A-1, with a gross vehicle weight rating (GVWR) of 14,500 pounds or less; and Type A-2, with a GVWR greater than 14,500 and less than or equal to 21,500 pounds.

44.2(2) Type B. A Type B school bus is constructed utilizing a stripped chassis. The entrance door is behind the front wheels. This definition includes two classifications: Type B-1, with a GVWR of 10,000 pounds or less; and Type B-2, with a GVWR greater than 10,000 pounds.

44.2(3) Type C. A Type C school bus, also known as a conventional school bus, is constructed utilizing a chassis with a hood and front fender assembly. The entrance door is behind the front wheels. This type of school bus also includes the cutaway truck chassis or truck chassis with cab with or without a left side door and with a GVWR greater than 21,500 pounds.

44.2(4) Type D. A Type D school bus, also known as a rear or front engine transit-style school bus, is constructed utilizing a stripped chassis. The entrance door is ahead of the front wheels.

44.2(5) Type III. Type III vehicles are not regular school buses but nonetheless are used to transport students in a school-related context and may be marked as a “school bus.” To qualify as a Type III vehicle, the vehicle may carry a maximum of 12 or fewer people, including the driver, and weigh 10,000 pounds or less. These vehicles will be subject to school bus inspections per Iowa Code and rule.

44.2(6) Specially equipped. A specially equipped school bus is a school bus designed, equipped, or modified to accommodate students with special needs.

44.2(7) Multifunction school activity bus (MFSAB). A multifunction school activity bus is a school bus whose purposes do not include transporting students to and from home or school bus stops as defined in 49 CFR 571.3. MFSABs meet all FMVSS for school buses except the traffic control requirements

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(alternately flashing signal and stop arm). These vehicles will be subject to school bus inspections per Iowa Code and rule.

281—44.3(285) School bus body and chassis specifications.

44.3(1) Aisle. All emergency doors shall be accessible by a 12-inch minimum aisle. Aisles are to be unobstructed at all times by any type of barrier, seat, wheelchair, tie-down, or other object(s), with the exception of a flip seat that is installed and occupied at a side emergency door position. The track of a track-seating system is exempt from this subrule. A flip seat in the unoccupied (up) position is not to obstruct the 12-inch minimum aisle to any side emergency door.

44.3(2) Axles. The front and rear axle and suspension systems are to have gross axle weight rating (GAWR) at ground commensurate with the respective front and rear weight loads that will be imposed by the bus.

44.3(3) Backup warning alarm. An automatic audible alarm shall be installed behind the rear axle on every school bus/MFSAB and comply with the published Backup Alarm Standards (SAE J994B), providing a minimum of 112 dBA. A variable volume feature is not allowed.

44.3(4) Body sizes. Type A vehicles may be purchased with manufacturer's recommended seating capacities when the chassis is manufactured with rear dual tires.

44.3(5) Brakes.*a. Brakes, all, general requirements.*

(1) All buses will have either a parking pawl in the transmission or a parking brake interlock that requires the service brake to be applied to allow release of the parking brake.

(2) All brake systems will be designed to permit visual inspection of brake lining wear without removal of any chassis component(s).

(3) The brake lines, booster-assist lines, and control cables will be protected from excessive heat, vibration and corrosion and installed in a manner that prevents chafing.

(4) The parking brake system may be of a power-assisted design. The power parking brake actuator should be a device located on the instrument panel within reach of a seated driver. As an option, the parking brake may be set by placing the automatic transmission shift control mechanism in the "park" position.

(5) Every vehicle is to be equipped with a signal that provides a warning to the driver when a failure occurs in the vehicle's brake system. A warning signal will be audible and visible to the driver. A Type A vehicle under 10,000 lbs. GVWR may have a visible warning signal only.

(6) The power-operated parking brake system may be interlocked to the engine key switch. Once the parking brake has been set and the ignition switch turned to the "off" position, the parking brake cannot be released until the key switch is turned back to the "on" position.

b. Air brakes, general requirements.

(1) The air pressure supply system will include a desiccant-type air dryer installed according to the manufacturer's recommendations. The air pressure storage tank system may incorporate an automatic drain valve.

(2) The manufacturer will provide an accessory outlet for other air-operated systems installed in or on the bus. This outlet is to include a pressure protection valve to prevent loss of air pressure in the service brake reservoir.

(3) For air brake systems, an air pressure gauge capable of complying with commercial driver's license (CDL) pre-trip inspection requirements will be provided in the instrument panel.

(4) Air brake systems will include a system for anticomponding of the service brakes and parking brakes.

c. Brakes, all, specific requirements.

(1) The braking system shall include the service brake, an emergency brake that is part of the service brake system and controlled by the service brake pedal, and a parking brake meeting FMVSS at date of manufacture.

(2) An air brake system is required on every chassis meeting one or more of the following:

1. Wheelbase equal to or greater than 274 inches.

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2. Designed seating capacity rating greater than 66 passengers. Designed seating capacity, also known as manufacturer's seating capacity, is the actual or theoretical passenger capacity of the vehicle if it were constructed with the maximum number of seating positions.

(3) An air brake system is to comply with the following system and component designs:

1. The system cannot be of wedge design.

2. The system will include an air dryer system having design features equal to or exceeding the Bendix Westinghouse Model AD9. The system is to be self-purging and capable of removing oil, dirt, and moisture. The dryer system will also be equipped with a heater to prevent the freezing of moisture within the system. All plumbing from air compressor to input of air dryer or after-cooler will provide soft flow bends not producing sumps in the air compressor line having direct entry into the dryer.

3. A system of automatic adjustment compensating for service brake wear is to be installed at all wheel positions.

4. The air compressor produces a minimum output of 12.0 cubic feet per minute (CFM).

(4) Vehicles with 10,000 pounds GVWR or less will be equipped with a hydraulic, dual-braking system of manufacturer's standard, with power assist.

44.3(6) Bumper, front.

a. All school buses will be equipped with a front bumper painted glossy black, a chrome front bumper, or a front bumper coated with a black corrosion-resistant texturized material.

b. The front bumper on buses of Type A-2 (with GVWR greater than 14,500 pounds), Type B, Type C, and Type D is to be equivalent in strength and durability to pressed steel channel at least 3/16 inches thick and not less than 8 inches wide (high). The front bumper will extend beyond the forward-most part of the body, grille, hood and fenders and extend to the outer edges of the fenders at the bumper's top line. Type A buses having a GVWR of 14,500 pounds or less may be equipped with an original equipment manufacturer (OEM)-supplied front bumper.

c. The front bumper, except breakaway bumper ends, is to be of sufficient strength to permit pushing a vehicle of equal gross vehicle weight without permanent distortion to the bumper, chassis or body.

d. The bumper will be designed or reinforced so that it will not deform when the bus is lifted by a chain that is passed under the bumper (or through the bumper if holes are provided for this purpose) and attached to both tow hooks/eyes.

e. Tow eyes or hooks are required on Type B, C, and D buses of 14,501 pounds GVWR or greater. Two tow eyes or hooks are to be installed by the bus manufacturer so as not to project beyond the front bumper.

f. An optional energy-absorbing front bumper may be used, provided its design incorporates a self-restoring, energy-absorbing system of sufficient strength to:

(1) Push another vehicle of similar GVWR without permanent distortion to the bumper, chassis, or body; and

(2) Withstand repeated impacts without damage to the bumper, chassis, or body according to the following performance standards:

1. 7.5 mph fixed-barrier impact (FMVSS cart and barrier test).

2. 4.0 mph corner impact at 30 degrees (Part 581, CFR Title 49).

3. 20.0 mph into parked passenger car (Type B, C, and D buses of 18,000 pounds GVWR or more).

The manufacturer of the energy-absorbing bumper system is to provide evidence of conformance to the above standards from an approved test facility capable of performing the above FMVSS tests.

44.3(7) Bumper, rear.

a. All school buses are to be equipped with a rear bumper painted glossy black or coated with a black corrosion-resistant texturized material.

b. The rear bumper is to be pressed steel channel or equivalent material, at least 3/16 inches thick and is to be a minimum of 8 inches wide (high) on Type A-2 vehicles and a minimum of 9½ inches wide (high) on Type A-1, B, C and D buses. The rear bumper will be of sufficient strength to permit its being pushed by another vehicle without permanent distortion to the bumper, body, or chassis.

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c. The rear bumper will be wrapped around the back corners of the bus. It is to extend forward at least 12 inches, measured from the rear-most point of the body at the floor line and is to be flush-mounted to the body side or protected with an end panel.

d. The rear bumper will be attached to the chassis frame in such a manner that the bumper may be easily removed. It is to be braced so as to resist deformation of the bumper resulting from a rear or side impact and designed so as to discourage the hitching of rides.

e. The bumper is to extend at least 1 inch beyond the rear-most part of body surface measured at the floor line.

f. Additions or alterations to the rear bumper, including the installation of trailer hitches, are not allowed.

g. An optional energy-absorbing rear bumper may be used, provided a self-restoring, energy-absorbing bumper system attached to prevent the hitching of rides is of sufficient strength to:

(1) Permit pushing by another vehicle without permanent distortion to the bumper, chassis, or body; and

(2) Withstand repeated impacts without damage to the bumper, chassis, or body according to the following FMVSS performance standards:

1. 2.0 mph fixed barrier impact (FMVSS cart and barrier test).

2. 4.0 mph corner impact at 30 degrees (Part 581, CFR Title 49).

3. 5.0 mph center impact (Part 581, CFR Title 49).

The manufacturer of the energy-absorbing system will provide evidence of conformance to the above standards from an approved test facility capable of performing the above FMVSS tests.

44.3(8) Certification. The manufacturer(s) will, upon request, certify to the department of education that the manufacturer's product(s) meets Iowa minimum standards on items not covered by FMVSS certification provisions of 49 CFR Part 567.

44.3(9) Color.

a. Chassis will be black. Body cowl, hood, and fenders will be National School Bus Glossy Yellow. The flat top surface of the hood may be nonreflective National School Bus Glossy Yellow or flat black.

b. Wheels and rims will be gray, black, or National School Bus Glossy Yellow. Aluminum wheels are also allowed.

c. The grille is to be gray, black, chrome, or National School Bus Glossy Yellow.

d. The school bus body will be painted National School Bus Glossy Yellow. (See color standard, Appendix B, National School Transportation Specifications and Procedures Manual 2015.)

e. The body exterior trim will be glossy black, including the exterior lettering, numbering, body trim, rub rails, lamp hoods (if any), and emergency door arrow. This may also include the entrance door and window sashes. In addition, the rear bumper may be covered with a black retroreflective material as described in subrule 44.3(48). When the bus number is placed on the front or rear bumper, the number is to be National School Bus Glossy Yellow.

f. As an option, the roof of the bus may be painted white extending down to within 6 inches above the drip rails on the sides of the body, except that the vertical portion of the front and rear roof caps is to remain National School Bus Glossy Yellow.

g. Commercial advertising is forbidden on the exterior and in the interior of all school buses.

44.3(10) Construction.

a. The school bus body will be constructed of materials certified to be durable under normal operating conditions and meet all applicable FMVSS at the date of manufacture as certified by the bus body manufacturer.

b. Construction will be reasonably dustproof and watertight.

c. Body joints present in that portion of the Type A school bus body furnished exclusively by the body manufacturer will conform to the performance requirements of FMVSS No. 221. This does not include the body joints created when body components are attached to components furnished by the chassis manufacturer.

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d. A flat floor system featuring no wheel wells and no step-up at the rear of the passenger compartment may be used in accordance with the following:

(1) The inside height of the body remains at least 72 inches, when measured in accordance with subrule 44.3(39), when this option is installed.

(2) If this option utilizes a raised floor that is stepped up behind the driver's area, the forward edge of the aisle has a white or yellow stripe and is labeled "Step Up" visible to passengers upon entering the aisle; and a label "Step Down" is visible to passengers as they exit the aisle. Minimum headroom of 72 inches is maintained at all times.

(3) A flat floor design provides for the additional option for a track-mounted seating system using button-type (L track) and a wheelchair securement system meeting Iowa specifications but mounting into the track of the track-seating system. Aisle clearances are maintained in accordance with these rules.

44.3(11) Crossing control arms.

a. Type A, B, and C school buses are to be equipped, and Type D buses may be equipped, with a crossing control arm that is mounted on the right side of the front bumper and that will not open more than 90 degrees. When opened, the crossing control arm will extend in a line parallel to the body side and aligned with the right front wheel.

b. All components of the crossing control arm and all connections are weatherproofed.

c. The crossing control arm is constructed of noncorrodible or nonferrous material or treated in accordance with the body sheet metal standard. See subrule 44.3(40).

d. There are no sharp edges or projections that could cause hazard or injury to students.

e. The crossing control arm extends a minimum of 70 inches from the front bumper when in the extended position. This measurement is to be taken from the arm assembly attachment point on the bumper. However, the crossing control arm does not extend past the ends of the bumper when in the stowed position.

f. The crossing control arm extends simultaneously with the stop arm(s) by means of the stop arm controls.

g. The crossing control arm system is designed to operate in extreme weather conditions, including freezing rain, snow and temperatures below 0 degrees Fahrenheit, without malfunctioning. The crossing control arm itself is constructed of a material that will prevent the arm from prematurely extending or from failing to retract due to sustained wind or wind gusts of up to 40 miles per hour.

h. To ensure that the unit mounts flush and operates properly, the chassis bumper mounting bracket is designed for the specific model chassis on which it will be mounted.

i. A single, cycle-interrupt switch with automatic reset will be installed in the driver's compartment and be accessible to the driver from the driver's seat.

j. The assembly may include a device attached to the bumper near the end of the arm to automatically retain the arm while in the stowed position. That device is not to interfere with normal operations of the crossing control arm.

44.3(12) Daytime running lights (DRL). See subrule 44.3(31).

44.3(13) Defrosters.

a. Defrosting and defogging equipment direct a sufficient flow of heated air onto the interior surfaces of the windshield, the window to the left of the driver, and the glass in the viewing area directly to the right of the driver to eliminate frost, fog and snow.

b. The defrosting system conforms to SAE J381.

c. The defroster and defogging system is capable of furnishing heated outside ambient air; however, the part of the system furnishing additional air to the windshield, entrance door and step well may be of the recirculating air type.

d. Auxiliary fans are required; however, they are not considered defrosting or defogging systems. See also subrule 44.3(73).

e. Portable heaters shall not be used.

44.3(14) Doors and exits.

a. *Service door.*

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(1) The service door will be heavy-duty power- or manually operated under the control of the driver and designed to afford easy release and prevent accidental opening. When a hand lever is used, no parts come together to shear or crush fingers. Manual door controls do not need more than 25 pounds of force to operate at any point throughout the range of operation. A power-operated door provides for manual operation in case of power failure. In all instances, the power-operated door control is to be located in the steering wheel or to the left or right of the driver.

(2) The primary service door is located on the right side of the bus opposite the driver and within the driver's direct view and will remain closed anytime the vehicle is in motion.

(3) The service door has a minimum horizontal opening of 24 inches and a minimum vertical opening of 68 inches.

(4) The entrance door is a split-type door that opens outward.

(5) All glass panels are of approved safety glass as defined in subrule 44.3(75). The bottom of each lower glass panel is not more than 10 inches from the top surface of the bottom step. The top of each upper glass panel is not more than 3 inches from the top of the door.

(6) Vertical closing edges on split or folding entrance doors are equipped with flexible material to protect children's fingers.

(7) There is no door to the left of the driver on Type B, C or D vehicles. All Type A vehicles may be equipped with the chassis manufacturer's standard left side (driver's side) door.

(8) All doors are equipped with padding at the top edge of each door opening. Padding is at least 3 inches wide and 1 inch thick and extends horizontally the full width of the door opening.

(9) A door-locking mechanism may be installed in accordance with subrule 44.3(72).

(10) On power-operated service doors, the emergency release valve, switch or device to release the service door is placed above the service door, to the right side of the driver console, or to the left or right of the service door and be clearly labeled. The emergency release valve, switch or device will work in the absence of power.

b. Emergency doors.

(1) Emergency door(s) and other emergency exits comply with the provisions of FMVSS No. 217 and any provision of these rules that exceed FMVSS No. 217.

(2) The exposed area of the upper panel of emergency doors is a minimum of 400 square inches of approved safety glazing. If installed, all other glass panels on emergency doors are of approved safety glazing.

(3) There shall be no steps leading to an emergency door.

(4) The emergency door(s) are equipped with padding at the top edge of each door opening. Padding is at least 3 inches wide and 1 inch thick and extends the full width of the door opening.

(5) There is to be no obstruction higher than ¼ inch across the bottom of any emergency door opening. Fasteners used within the emergency exit opening are free of sharp edges or burrs.

c. Emergency exit requirements.

(1) Any installed emergency exit complies with the design and performance requirements of FMVSS No. 217, applicable to that type of exit, whether or not that exit is required by FMVSS No. 217, and complies with any of the requirements of these rules that exceed FMVSS No. 217.

(2) An emergency exit may include either an emergency door or emergency exit-type windows. Where emergency exit-type windows are used, they are to be installed in pairs, one on each side of the bus. Type A, B, C, and D vehicles will be equipped with a total number of emergency exits as follows for the designed capacities of vehicles:

1. 0 to 42 passengers = 1 emergency exit per side and 1 roof hatch.
2. 43 to 78 passengers = 2 emergency exits per side and 2 roof hatches.
3. 79 to 90 passengers = 3 emergency exits per side and 2 roof hatches.

These emergency exits are in addition to the rear emergency door or rear pushout window/side emergency door combination required by FMVSS No. 217. Additional emergency exits installed to meet the capacity-based requirements of FMVSS No. 217 may be included to comprise the total number of exits specified. All roof hatches are to have design features as specified in subrule 44.3(73).

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(3) Side and rear emergency doors and each emergency window exit are equipped with an audible warning device.

(4) Roof hatches are equipped with an audible warning device and work appropriately without the wiring becoming disconnected from the switch.

(5) Rear emergency windows on Type D rear-engine buses have a lifting-assistance device that will aid in lifting and holding the rear emergency window open.

(6) Side emergency windows may be either top-hinged or vertically hinged on the forward side of the window. No side emergency exit window will be located above a stop sign.

(7) On the inside surface of each school bus, located directly beneath or above all emergency doors and windows, is to be a "DO NOT BLOCK" label in a color that contrasts with the background of the label. The letters on this label are at least 1 inch high.

44.3(15) Drive shaft. The drive shaft is to be protected by a metal guard or guards around the circumference of the drive shaft to reduce the possibility of its whipping through the floor or dropping to the ground if broken.

44.3(16) Driver's compartment.

a. A driver's document compartment or pouch is provided. The document compartment or pouch measures at least 17 inches × 12 inches × 4 inches. If a document pouch, rather than a covered compartment, is provided, it is located on the barrier behind the driver. It will be constructed of a material of equal durability to that of the covering on the barrier and have a lid or cover with a latching device to hold the cover or lid closed.

b. Mobile data terminals are allowed. Programs loaded on the data terminal will be specific to school bus operations such as passenger accountability, routing, navigation, emergency notification, tracking, messaging, and equipment monitoring.

(1) The data terminal is mounted within the driver's compartment in a location that allows the driver to see the data terminal display screen at a glance but does not obstruct the driver's view in any direction when the driver is seated in a normal driving position. This would include impeding the view of the road, mirrors, highway signs, signals, other instruments, entrance door, and passengers. The data terminal display screen and audio turn-by-turn instructions may remain active while the bus is in motion.

(2) Overhead mounting of the data terminal is not allowed. The device will not impede space within the aisle and will not be mounted in such a way as to be a snagging hazard in the student loading area of the service door.

(3) The data terminal is securely mounted to the vehicle when in use in such a way as to minimize sharp edges. The device may be removed when not in use.

(4) The data terminal is not to be connected to the passenger compartment sound system.

(5) Distractive manipulation of a data terminal is prohibited while the school bus is being driven. For the purposes of this subparagraph, "driven" means operating a school bus, with the motor running, including while temporarily stationary because of traffic, a traffic control device, or other momentary delays such as picking up or discharging students. "Driven" does not include operating a school bus, with or without the motor running, when the school bus is legally stopped or parked upon the highway for a prolonged period of time.

c. Commercially produced pedal blocks or OEM adjustable pedals are allowed.

44.3(17) Electrical system.

a. *Battery, does not include electric powertrain batteries.*

(1) The storage batteries have a minimum cold cranking capacity rating (cold cranking amps) equal to the cranking current required for 30 seconds at 0 degrees Fahrenheit and a minimum reserve capacity rating of 120 minutes at 25 amps. Higher capacities may be necessary, depending upon optional equipment and local environmental conditions.

(2) The manufacturer will securely attach the battery on a slide-out or swing-out tray in a closed, vented compartment in the body skirt or chassis frame so that the battery is accessible for convenient servicing from the outside. When in the stored position, the tray is retained by a securing mechanism capable of holding the tray (with battery[ies]) in position. The battery compartment door or cover, if separate from the tray, is hinged at the front or top. It is secured by a positive operated latching system

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or other type fastener. The door may be an integral part of the battery slide tray. The door or cover will fit tightly to the body and not present sharp edges or snagging points. Battery cables meet Society of Automotive Engineers (SAE) requirements. Battery cables are of sufficient length to allow the battery tray to fully extend. Any chassis frame-mounted batteries will be relocated to a battery compartment on Type A buses.

(3) All batteries are to be secured in a sliding tray except that on van conversion or cutaway front-section chassis, batteries may be secured in accordance with the manufacturer's standard configuration. The battery cable provided with the chassis is of sufficient length to allow some slack and of sufficient gauge to carry the required amperage.

(4) The top surface area of the inside of the battery compartment (the area likely to come into contact with battery electrical terminals as the result of a blow to, and upward collapse of, the bottom of the battery box in the event of an accident or other event) is covered with a rubber matting or other impact-resistant nonconductive material. The matting is a minimum of 1/8 inch thick and covers the entire top inside surface of the battery box. The matting is securely installed to maintain its position at all times.

(5) Buses may be equipped with a battery shut-off switch. The switch is to be placed in a location not readily accessible to the driver or passengers.

b. Alternator.

(1) All Type A and Type B buses with a GVWR of 15,000 pounds or less have a minimum 130-amp alternator. Buses equipped with an electrically powered wheelchair lift, air conditioning, or both are to be equipped with the highest rated capacity available from the chassis OEM.

(2) All buses over 15,000 pounds GVWR are equipped with a heavy-duty truck- or bus-type alternator that has a minimum output rating of 200 amps or higher and that produces a minimum current output of 50 percent of the rating at engine idle speed.

(3) Buses other than those described in subparagraph 44.3(17) "b"(1) equipped with an electrically powered wheelchair lift, air conditioning, or both shall have a minimum alternator output of 240 amps.

(4) A belt-driven alternator is capable of handling the rated capacity of the alternator with no detrimental effect on any other driven components. (For estimating required alternator capacity, see School Bus Manufacturers Technical Council's publication "School Bus Technical Reference," dated August 2001 and available at www.nasdpts.org.)

(5) A direct/gear-drive alternator is permissible in lieu of a belt-driven alternator.

c. Electrical components. Materials in electrical components shall contain no mercury.

d. Wiring, chassis.

(1) All wiring conforms to current applicable recommended practices of the Society of Automotive Engineers (SAE). All wiring uses color and at least one other method for identification. The other method is to be either a number code or name code, and each chassis will be delivered with a wiring diagram that illustrates the wiring of the chassis.

(2) The chassis manufacturer of an incomplete vehicle will install a readily accessible terminal strip or connector on the body side of the cowl or in an accessible location in the engine compartment of vehicles designed without a cowl. The strip or connector will contain the following terminals for the body connections:

1. Main 100-amp body circuit.
2. Tail lamps.
3. Right turn signal.
4. Left turn signal.
5. Stop lamps.
6. Backup lamps.
7. Instrument panel lights (rheostat controlled by headlamp switch).

(3) An appropriate identifying diagram (color plus a name or number code) for all chassis electrical circuits will be provided to the body manufacturer for distribution to the end user.

(4) Wiring for the headlamp system will be separate from the electronic controlled body solenoid/module.

e. Wiring, body.

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- (1) All wiring conforms to current applicable SAE recommended practices.
- (2) All wiring has an amperage capacity exceeding the design load by at least 25 percent. All wiring splices are to be accessible and noted as splices on the wiring diagram.
- (3) A body wiring diagram, sized to be easily read, will be furnished with each bus body or affixed to an area convenient to the electrical accessory control panel.
- (4) The body power wire will be attached to a special terminal on the chassis.
- (5) Each wire passing through metal openings will be protected by a grommet.
- (6) Wires not enclosed within the body will be fastened securely at intervals of not more than 18 inches. All joints are to be soldered or joined by equally effective connectors, which are to be water-resistant and corrosion-resistant.
- (7) Wiring will be arranged in circuits, as required, with each circuit protected by a fuse breaker or electronic protection device. A system of color- and number-coding will be used and an appropriate identifying diagram shall be provided to the end user, along with the wiring diagram provided by the chassis manufacturer. The wiring diagrams will be specific to the bus model supplied and include any changes to wiring made by the body manufacturer. The following body interconnecting circuits will be color-coded, as noted:

FUNCTION	COLOR
Left Rear Directional Lamp	Yellow
Right Rear Directional Lamp	Dark Green
Stop Lamps	Red
Back-Up Lamps	Blue
Tail Lamps	Brown
Ground	White
Ignition Feed, Primary Feed	Black

The color of the cables will correspond to SAE J1128, Low-Tension Primary Cable.

- (8) Wiring will be arranged in at least six regular circuits, as follows:
 1. Head, tail, stop (brake), clearance and instrument panel lamps;
 2. Step well lamps, which are actuated when the entrance door is open;
 3. Dome lamps;
 4. Ignition and emergency door signal;
 5. Turn signal lamps; and
 6. Alternately flashing signal lamps.
- (9) Any of the above combination circuits may be subdivided into additional independent circuits.
- (10) Heaters and defrosters will be wired on an independent circuit.
- (11) Whenever possible, all other electrical functions (such as wipers and electric-type windshield wipers) will be provided with independent and properly protected circuits.
- (12) Each body circuit will be coded by number or letter on a diagram of circuits and attached to the body in a readily accessible location.
- (13) Buses may be equipped with a 12-volt power port in the driver's area.
- (14) There will be a manual noise suppression switch installed in the control panel. The switch is to be labeled and alternately colored. This switch will be an on/off type that deactivates body equipment that produces noise, including at least the AM/FM radio, heaters, air conditioners, fans and defrosters. This switch will not deactivate safety systems, such as windshield wipers or lighting systems.

44.3(18) Emergency equipment.

- a. All Type A, B, C, and D school buses will be equipped with the following emergency equipment mounted forward of front barriers: first aid kit, fire extinguisher, webbing cutter, and body fluid cleanup kit. Three triangular warning devices are required in each vehicle and may be mounted in the driver's compartment or behind the rear seat.

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b. All emergency equipment will be securely mounted so that, in the event the bus is overturned, this equipment is held in place. Emergency equipment, with the exception of the webbing cutter mounted in a location accessible to the driver, may be mounted in an enclosed compartment provided that the compartment is labeled in not less than 1-inch letters, stating the piece(s) of equipment contained therein.

c. Fire extinguishers will meet the following provisions:

(1) The bus will be equipped with at least one 5-pound capacity, UL-approved, pressurized dry chemical fire extinguisher complete with hose. The extinguisher will be securely mounted in a heavy-duty automotive bracket so as to prevent accidental release in case of a crash or in the event the bus overturns.

(2) A calibrated or marked gauge is to be mounted on the extinguisher to indicate the amount of pressure in the extinguisher and easily read without moving the extinguisher from its mounted position. Plastic discharge heads and related parts are not acceptable.

(3) The fire extinguisher will have a rating of 2A-10BC or greater. The operating mechanism will be sealed with a type of seal that will not interfere with the use of the fire extinguisher.

(4) All fire extinguishers are to be inspected and maintained in accordance with the National Fire Protection Association requirements.

(5) Each extinguisher will have a tag or label securely attached that indicates the month and year the extinguisher received its last maintenance and the identity of the person performing the service.

d. First aid kit. A first aid kit meeting the national recommendations (most current National School Transportation Specifications and Procedures Manual—first aid kit) is needed on all vehicles used for student transportation.

e. Body fluid cleanup kit. Each vehicle used for student transportation will be equipped with a disposable, removable, and moistureproof body fluid cleanup kit in a disposable container that includes the following items:

(1) An EPA-registered liquid germicide (tuberculocidal) disinfectant;

(2) A fully disposable wiping cloth;

(3) A water-resistant spatula;

(4) Step-by-step directions;

(5) Absorbent material with odor counteractant;

(6) Two pairs of gloves;

(7) One package towelettes;

(8) A discard bag (unlabeled paper bag with a plastic liner and a twist tie). This bag is to be approximately 4 inches × 6 inches × 14 inches. The kit will be removable without the use of tools.

f. Each vehicle used for student transportation will be equipped with a durable webbing cutter having a full-width handgrip and a protected, replaceable or noncorrodible blade. One or more of these devices will be mounted in an easily detachable manner and in a location accessible to the seated driver.

g. Axes are not allowed.

44.3(19) Exhaust system.

a. The exhaust pipe, muffler and tailpipe will be outside the bus body compartment and attached to the chassis so as not to damage any other chassis component.

b. The tailpipe will be constructed of a corrosion-resistant tubing material at least equal in strength and durability to 16-gauge steel tubing.

c. The tailpipe may be flush with, or will not extend more than 2 inches beyond, the perimeter of the body for side-exit pipe or the bumper for rear-exit pipe. The exhaust system will be designed such that exhaust gas will not be trapped under the body of the bus.

d. The tailpipe will exit to the left or right of the emergency exit door in the rear of the vehicle or to the left side of the bus in front of or behind the rear drive axle or the tailpipe may extend through the bumper. The tailpipe exit location on all Type A-1 or B-1 buses may be in accordance with the manufacturer's standards. The tailpipe will not exit beneath any fuel filler location, emergency door or lift door.

e. The exhaust system on a chassis will be adequately insulated from the fuel system.

f. The muffler is to be constructed of corrosion-resistant material.

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g. The exhaust system on vehicles equipped with a power lift unit may be routed to the left of the right frame rail to allow for the installation of a power lift unit on the right side of the vehicle.

h. The design of the aftertreatment systems is not to allow active (non-manual) regeneration of the particulate filter during the loading and unloading of passengers. Manual regeneration systems will be designed such that unintentional operation will not occur.

i. For aftertreatment systems that require diesel exhaust fluid (DEF) to meet federally mandated emissions:

(1) The composition of diesel exhaust fluid (DEF) complies with International Standard ISO 22241-1. Refer to engine manufacturer for any additional DEF requirements.

(2) The DEF supply tank is sized to meet a minimum ratio of 3 diesel fills to 1 DEF fill.

44.3(20) Fenders, front and hood. This subrule does not apply to Type A or D vehicles.

a. The total spread of outer edges of front fenders, measured at the fender line, is to exceed the total spread of front tires when the front wheels are in the straight-ahead position.

b. Front fenders will be properly braced and not require attachment to any part of the body.

c. Chassis sheet metal will not extend beyond the rear face of the cowl.

d. Front fenders and hood may be of manufacturer's standard material and construction.

e. The hood will not require more than 20 pounds of force to open and include design features to secure the hood in an open position.

44.3(21) Fire suppression system. An automatic fire suppression system may be installed. Fire suppression system nozzles will be located in the engine compartment, under the bus, in the electrical panel or under the dash, but they are not to be located in the passenger compartment. The system is to include a lamp or buzzer to alert the driver that the system has been activated.

44.3(22) Floor insulation and covering.

a. The floor structure of Type A, B, C and D school buses will be covered with an insulating layer of either a 5-ply minimum $\frac{5}{8}$ -inch-thick plywood, or a material of equal or greater strength and insulation R-value, having properties equal to or exceeding exterior-type softwood plywood, C-D grade as specified in standards issued by the United States Department of Commerce. All edges will be sealed.

b. Type A buses may be equipped with a minimum $\frac{1}{2}$ -inch-thick plywood meeting the above requirements.

c. The floor in the under-seat area of Type B, C, and D buses, including tops of wheelhousings, driver's compartment and toeboard, will be covered with an elastomer floor covering having a minimum overall thickness of .125 inch and a calculated burn rate of 0.1 mm per minute or less using the test methods, procedures and formulas listed in FMVSS No. 302. The floor covering of the driver's area and toeboard area on all Type A buses may be the manufacturer's standard flooring and floor covering.

d. The floor covering in the aisles will be of a ribbed or other raised-pattern elastomer and have a calculated burn rate of 0.1 mm per minute or less using the test methods, procedures and formulas listed in FMVSS No. 302. Minimum overall thickness is .187 inch measured from tops of ribs.

e. Floor covering are to be permanently bonded to the floor and must not crack when subjected to sudden changes in temperature. Bonding or adhesive material is to be waterproof and of a type recommended by the manufacturer of the floor-covering material. All seams are to be sealed with waterproof sealer. One-piece floor covering is allowed.

f. On Type B, C and D buses, access to the fuel tank sending unit will be provided. The access opening will be large enough and positioned to allow easy removal of the sending unit. Any access opening in the body is capable of being sealed with a screw-down plate from within the body. When in place, the screw-down plate will seal out dust, moisture and exhaust fumes. This plate will not be installed under flooring material.

g. Cove molding or watertight sealant will be used along the sidewalls and rear corners. All joints or seams in the floor covering will be covered with nonferrous metal stripping or stripping constructed of material exhibiting equal durability and sealing qualities.

44.3(23) Frame.

a. The steel frame will have design and strength characteristics corresponding at least to standard practice for trucks of the same general load characteristics that are used for highway service.

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b. Any secondary manufacturer that modifies the original chassis frame will guarantee the performance of workmanship and materials resulting from such modification.

c. Extensions of frame lengths are permissible only when alterations are behind the rear hanger of the rear spring or in front of the front hanger of front spring and will not be for the purpose of extending the wheelbase.

d. Holes in top or bottom flanges or side units of the frame and welding to the frame will not be permitted except as provided or accepted by the chassis manufacturer.

e. Frame lengths are to be established in accordance with the design criteria for the complete vehicle.

44.3(24) Fuel system.

a. The fuel system will comply with FMVSS No. 301, Fuel System Integrity. On Type A-1 and A-2 vehicles, the fuel tank may be of the manufacturer's standard construction.

b. On chassis with a wheelbase greater than 170 inches, at least one fuel tank of 60-gallon capacity will be provided and installed by the manufacturer. Chassis with a wheelbase of 170 inches or less will be equipped with at least one fuel tank of 25-gallon minimum capacity, as provided and installed by the manufacturer.

c. The fuel tank(s) may be mounted between the chassis frame rails or outboard of the frame rails on either the left or right side of the vehicle by the manufacturer. Tanks are to be mounted directly to the chassis frame, filled, and vented outside the body, in a location where accidental fuel spillage will not drip or drain on any part of the exhaust system.

d. Fuel filtration is to be accomplished by means of the following:

(1) Gasoline-powered systems—one in-line fuel filter is to be installed between the fuel tank and the engine.

(2) Diesel-powered systems—one mounted fuel filter with water/fuel separator is to be supplied and installed by the engine manufacturer.

44.3(25) Fuel system, alternative fuels. An alternative fuel is defined as liquefied petroleum gas (LPG), compressed natural gas (CNG), liquefied natural gas (LNG), electricity, hydrogen, methanol, ethanol, clean diesel, biodiesel, reformulated gasoline, or any type of hybrid system. Vehicles that operate on an alternative fuel are to meet the following provisions:

a. Chassis will meet all standards of this rule.

b. Chassis will meet all applicable FMVSS standards including the fuel system integrity standards of FMVSS No. 301 or FMVSS No. 303 and FMVSS No. 304.

c. OEMs and conversion systems using CNG or LPG will comply with NFPA standards in effect at the time of manufacture (Standard 52, "Compressed Natural Gas Vehicular Fuel Systems," and Standard 58, "Liquefied Petroleum Gases Engine Fuel Systems").

d. LNG-powered buses will comply with NFPA Standard 57, "Liquefied Natural Gas Vehicular-Fueled Systems," and be equipped with an interior/exterior gas detection system. All natural gas-powered buses will be equipped with a fire detection and suppression system.

e. All materials and assemblies used to transfer or store alternative fuels are to be installed outside the passenger/driver compartment.

f. The total weight will not exceed the GVWR when loaded to rated capacity.

g. The manufacturer supplying the alternative fuel equipment are to provide the owner and operator with adequate training in fueling procedures, scheduled maintenance, troubleshooting, and repair of alternative fuel equipment. Overflow protection device (OPD) testing are to be done yearly by a tester trained in this procedure and whose training has been documented. Documentation of the annual OPD valve test will be a label or identification tag affixed to the step well of the bus, signed and dated by the test person with permanent marker. The label will indicate the expiration date of the successful test.

h. All on-board fuel supply containers will meet all appropriate provisions of the ASME code, the DOT regulations, or applicable FMVSS and NFPA standards.

i. All fuel supply containers will be securely mounted.

j. All safety devices that may discharge to the atmosphere will be vented to the outside of the vehicle. The discharge line from the safety relief valve on all school buses will be located in a manner

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appropriate to the characteristics of the alternative fuel. Discharge lines are not to pass through the passenger compartment and are to be kept clear with flapper-valve or other device that will allow low-pressure discharge but prevent clogging by foreign matter or insects.

k. A positive, quick-acting ($\frac{1}{4}$ turn), shut-off control valve will be installed in the gaseous fuel supply lines as close to the fuel supply containers as possible. The controls for this valve are to be placed in a location easily operable from the exterior of the vehicle. The location of the valve control will be clearly marked on the exterior surface of the bus.

l. A grounding system is required for grounding of the fuel system during maintenance-related venting.

m. Storage batteries for hybrid power systems will be protected from crash impacts; encased in a nonconductive, acid-resistant compartment; and well-ventilated to preclude the possibility of hydrogen gas buildup.

n. Additional specific specifications for electric vehicles.

(1) All electric school bus systems will be in full compliance with all applicable FMVSS and all Society of Automotive Engineers (SAE) standards that are applicable at time of manufacture.

(2) Batteries of high voltage will meet manufacturer's specifications and comply with the following provisions:

1. The propulsion power source (batteries, fuel cells, etc.) will be located outside the passenger compartment and not be accessible from the interior of the school bus. The power source will be located in between or under chassis frame rails protected by a steel cage. Extended range power sources, if located outside the frame rails, will be protected by a steel cage.

2. High voltage batteries will have a main service disconnect device that does not allow high voltage outside the battery system. This disconnect device will not be in or accessible from the passenger area. Any disconnect device will be clearly marked on the bus body adjacent to each cutoff switch and easily recognized in the event of a crash.

3. High voltage batteries will be designed to prevent the passenger compartment from becoming energized.

4. All batteries will be designed to prevent any dangerous fluids or fumes from entering the passenger area.

5. All high voltage access areas, including the charging port, will be equipped with a lock or otherwise secured to prevent unauthorized access.

(3) Batteries of low voltage will have a low voltage battery shutoff switch installed in the vicinity of the low voltage battery compartment in an area not easily accessible to the driver or passengers. The location of the low voltage battery shutoff switch will be clearly labeled on the exterior of the vehicle.

(4) The charging system will comply with the following provisions:

1. The charging connection point will be outside the passenger compartment.

2. While charging, the transmission/propulsion system will be rendered inoperative.

3. The charging port will be located behind a door or an access panel in accordance with manufacturer standards, with the door or access panel clearly labeled with the location of the charging port. The port will include a status light to indicate the charging status of the battery.

(5) A DC-DC converter will be provided and deliver a minimum of 200 amps at 12VDC. The converter system will incorporate a ground fault interrupt (GFI) that disconnects/isolates the high voltage batteries in the event of a shorted circuit or water intrusion.

(6) Heaters will be capable of heating the passenger and driver's compartments to a comfortable temperature.

(7) The ignition switch circuit will be linked to the battery management system and will prevent the driving of the vehicle while it is connected to an external battery charging source and designed so that when the ignition switch is off, the high voltage is positively disconnected.

(8) The instrument panel will monitor and display battery health. This displayed information will include:

1. High voltage battery state of charge and range in miles.

2. Electric motor temperature.

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3. Battery discharge and regeneration rates.
4. Battery health (as applicable: temperature, battery cell balancing, etc.).
- (9) Electric vehicles will comply with all identification per subrule 44.3(34). The bus will also display specific electric vehicle markings as provided below.
 1. The outer layer of insulation or wiring conduit for drive system high-voltage wiring will be industry standard orange color or otherwise labeled as “HIGH VOLTAGE”.
 2. All high-voltage components will be labeled with a “HIGH VOLTAGE” marking/warning. Each door, cover, or other panel or enclosed compartment that affords immediate access to any high voltage area will be plainly marked with a hazard warning label that reads “WARNING—HIGH VOLTAGE” or “DANGER—HIGH VOLTAGE”. This label will be located in a highly conspicuous place.
 3. An electric vehicle identifying label of no less than 2 inches in height will be affixed on the right rear corner of the bus body, on the right side of the bus rearward of the entrance door, and to the left side of the bus aft of the driver’s window.
 4. Additional lettering/imagery may be located on both sides of the bus along the roof cap starting above the service door and ending no further back than the forward edge of the second passenger window, but none is to be placed on/in any window.
 5. Electric vehicle image graphics may be used in combination with words.
- (10) The operating range will be OEM design and capable of operating with a range of 100 miles or more.
 - (11) The propulsion/drivetrain system is exempted from all internal combustion engine specifications.
 - (12) All seats will be mounted to eliminate contact with batteries and underside of the bus if seat replacement or reconfiguration is necessary.
 - (13) All electric school buses will produce adequate sound for pedestrian alert while in motion below 20 miles per hour.
 - (14) Overall system protection will include:
 1. Wire, cable, and conductor insulation in the high voltage system will provide adequate insulation for the voltage used and for ambient temperatures ranging from -15°F to 120°F.
 2. All high voltage circuits will provide adequate and automatic protection against electrical overloads or malfunctions caused by short circuits, charging/discharging faults, battery overheating, electrical overheating, degraded battery health, or other excessive current conditions through the use of fuses, circuit breakers, and ground fault interruption.
 3. Prior to any type of automatic shutdown, a warning or maintenance indicator will display in the driver console to notify the driver of impending shutdown or the need for immediate maintenance and allow enough time to safely reposition and stop the bus via a gradual derating of propulsion prior to complete automatic shutdown.
- 44.3(26) Fuel system, fuel fill opening and cover.** Where an opening in the school bus body skirt is needed for access to the fuel fill cap, the opening will be large enough to permit filling the fuel tank without the need for special fuel nozzle adapters, a funnel, or other device. The opening will be equipped with a forward hinged cover held closed by a spring or other conveniently operated device. The cover may be of a lockable design. Type A buses are exempt from the requirement of a cover.
- 44.3(27) Governor.** An electronic engine speed limiter will be provided and set to limit engine speed, not to exceed the maximum revolutions per minute as recommended by the engine manufacturer.
- 44.3(28) Handrails.** At least one handrail is to be installed. The handrail will be a minimum of 1 inch in diameter and be constructed from corrosion-resistant material(s). The handrail(s) will be designed to assist passengers during entry or exit and to prevent entanglement, as evidenced by the passing of the National Highway Traffic Safety Administration (NHTSA) string and nut test.
- 44.3(29) Heating and air conditioning.**
 - a. The heater will be hot-water combustion type, electric heating element, or heat pump.
 - b. If only one heater is used, it will be a fresh-air or combination fresh-air and recirculation type.
 - c. If more than one heater is used, additional heaters may be recirculating air type.

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d. The heating system will be capable of maintaining bus interior temperatures as specified in SAE test procedure J2233.

e. Auxiliary fuel-fired heating systems are permitted, provided that they comply with the following:

- (1) Heater(s) may be direct hot air or connected to the engine's coolant system.
- (2) An auxiliary heating system, when connected to the engine's coolant system, may be used to preheat the engine coolant or preheat and add supplementary heat to the bus's heating system.
- (3) Auxiliary heating systems must be installed pursuant to the manufacturer's recommendations and will not direct exhaust in a manner that will endanger bus passengers.
- (4) Auxiliary heating systems that operate on diesel fuel are to be capable of operating on #1, #2 or blended diesel fuel without the need for system adjustment.
- (5) The auxiliary heating system is to be low voltage.
- (6) Auxiliary heating systems will comply with all applicable FMVSS including FMVSS No. 301 as well as SAE test procedures.

f. Heater hoses will be adequately supported to guard against excessive wear due to vibration. The hoses will not dangle or rub against the chassis or any sharp edges and not interfere with or restrict the operation of any engine function. Heater hoses will conform to SAE Standard J20c, "Coolant System Hoses." Heater lines, cores, and elements on the interior of the bus are to be shielded to prevent scalding or burning of the driver or passengers.

g. Each hot water system installed by a body manufacturer will include one shut-off valve in the pressure line and one shut-off valve in the return line with both valves at the engine in an accessible location, except that on all Type A and B buses, the valves may be installed in another accessible location.

h. Each hot water heating system will be equipped with a device that is installed in the hot water pressure line that regulates the water flow to all heaters and that is located for convenient operation by the driver while seated.

i. All combustion heaters will comply with current Federal Motor Carrier Safety Regulations.

j. Accessible bleeder valves will be installed in an appropriate place in the return lines of body manufacturer-installed heaters to remove air from the heater lines.

k. Access panels will be provided to make heater motors, cores, elements, and fans readily accessible for service. An outside access panel may be provided for the driver's heater.

l. Air-conditioning systems may be installed in accordance with the following:

(1) Evaporator cases, lines and ducting (as equipped) will be designed so that all condensation is effectively drained to the exterior of the bus below floor level under all conditions of vehicle movement without leakage on any interior portion of the bus.

(2) Any evaporator or ducting system will be designed and installed so as to be free of injury-producing projections or sharp edges. Installation will not reduce compliance with any FMVSS applicable to the school bus. Ductwork will be installed so that exposed edges face the front of the bus and do not present sharp edges.

(3) Any evaporators used are to be copper-cored (aluminum or copper fins acceptable), except that the front evaporator, if provided by a Type A chassis manufacturer, may be aluminum-cored.

(4) Air intake for any evaporator assembly(ies) except for the front evaporator of a Type A bus will be equipped with replaceable air filter(s) accessible without disassembly of the evaporator case.

(5) On buses equipped for the transportation of persons with disabilities, the evaporator and ducting will be placed high enough so that they will not obstruct existing or potential occupant securement shoulder strap upper attachment points. This clearance will be provided along the entire length of the passenger area on both sides of the bus interior to allow for potential retrofitting of new wheelchair positions and occupant securement devices throughout the bus.

(6) The total air-conditioning system will be warranted, including parts and labor, for at least two years and include compressor-mounting bracketry and hardware and any belts that, directly or indirectly, drive the compressor(s). Air-conditioning compressor applications are to be approved in writing by the chassis engine manufacturer, stating that the installations will not void or reduce the engine manufacturer's warranty or extended service coverage liabilities in any way.

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- (7) All components requiring periodic servicing are to be readily accessible for servicing.
- (8) Parts and service manuals are to be provided for the entire system including compressor(s), wiring (includes wiring diagram), evaporators, condensers, controls, hoses and lines.
- (9) Electrical requirements for the air-conditioning system will be provided to the customer prior to vehicle purchase or, in the case of an after-purchase installation, prior to installing the air-conditioning system to ensure that adequate electrical demands imposed by the air-conditioning system are capable of being met.
- (10) The installed air-conditioning system should cool the interior of the bus down to at least 80 degrees Fahrenheit, measured at a minimum of three points, located 4 feet above the floor at the longitudinal centerline of the bus. The three points are near the driver's location; at the midpoint of the body; and 2 feet forward of the emergency door, or for Type D rear engine buses, 2 feet forward of the end of the aisle. Test conditions will be those as outlined in the National School Transportation Specifications and Procedures Manual 2015.

44.3(30) Heating system, provisions for:

- a. The engine is to be capable of supplying coolant per SBMTC-001, Standard Code for Testing and Rating Automotive Bus Hot Water Heating and Ventilating Equipment, of the School Bus.
- b. For Type A vehicles with GVWR of 10,000 pounds or less, the chassis manufacturer will provide a fresh-air front heater and defroster of recirculating hot water type. See also subrules 44.3(13) and 44.3(29).

44.3(31) Headlamps.

- a. The headlamp switch will be of adequate ampere capacity to carry the load of the clearance and identification lamps in addition to the headlamps and tail lamps since these will be activated by the same switch.
- b. There will be a manually operated switch for selection of high- or low-beam distribution of the headlamps.
- c. The headlight system will be wired separately from the body-controlled solenoid.
- d. A daytime running lamp (DRL) system will be provided.

44.3(32) Hinges. All exposed metal passenger-door hinges subject to corrosion will be designed to allow lubrication without disassembly. All passenger-door hinges will be securely bolted to the bus body. Metal screws are not acceptable.

44.3(33) Horn. The bus is to be equipped with a horn(s) of standard make and tested in accordance with SAE J377, Horn—Forward Warning—Electric—Performance, Test, and Application.

44.3(34) Identification.

- a. The body will bear the words "SCHOOL BUS" in black letters at least 8 inches high on both front and rear of the body or on attached signs. The lettering is to be placed as high as possible without impairment of its visibility. The lettering will conform to Series B of Standard Alphabets of Highway Signs. "SCHOOL BUS" lettering will have a reflective background or, as an option, may be illuminated by backlighting.
- b. The bus, whether school-owned or contractor-owned, will have displayed at the beltline on each side of the vehicle the official public school district or nonpublic school name in black standard unshaded letters at least 5 inches high, but not more than 7 inches high.

Examples:

- (1) Blank community school district.
- (2) Blank independent school district.
- (3) Blank consolidated school district.

If there is insufficient space due to the length of the name of the school district, the words "community," "independent," "consolidated," and "district" may be abbreviated. If, after these abbreviations, there is still insufficient space available, the words "community school district" may be replaced by the uppercase letters "CSD".

- c. Buses privately owned and operated by an individual or individuals and used exclusively for transportation of students will bear the name of the owner, at the beltline on each side of the vehicle in black standard unshaded letters at least 5 inches high, but not more than 7 inches high.

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d. The words “RATED CAPACITY,” along with the appropriate number indicating the rated pupil seating capacity of the bus, are to be printed to the left of the entrance door, at least 6 inches below the name of the school district and on the bulkhead of the bus above the right windshield. The letters will be black in color and at least 2 inches in height. The word “CAPACITY” may be abbreviated and shown as “CAP.” where necessary.

e. The number of the bus will be printed in not less than 5-inch nor more than 8-inch black letters, except as otherwise noted in this subrule, and displayed on both sides, the front and the rear of the bus. The location of the bus number is at the discretion of the vehicle owner except that the number:

(1) Will be located to the rear of the service door not more than 36 inches from the ground on the right side of the bus and at the same respective position on the left side of the bus.

(2) Will be yellow if located on either the front or rear bumper.

(3) May be placed on the roof of the bus at a position representing the approximate lateral and longitudinal midpoint of the bus. The bus number will be black and measure not less than 24 inches in length.

(4) Will not be located on the same line as the name of the school district on either side of the bus, on the emergency door, or in a location that will interfere with the words “SCHOOL BUS.”

f. Buses privately owned by individuals, a company, or a contractor will also bear the name of the owner, followed by the word “OWNER” in not more than 2-inch characters printed approximately 6 inches below the bus capacity on the right side of the bus.

g. Symbols, characters or letters, for the purpose of vehicle or route identification by students, may be displayed below the belt line or in the lower, split-sash, glass portion of the third passenger window from the front on the service entrance side of the bus. Such symbols, characters or lettering, if used, will not exceed 36 square inches. This provision applies to all school buses regardless of date of purchase.

h. Symbols identifying the bus as equipped for or transporting students with special needs will be displayed. See subrule 44.4(2).

i. The words “UNLAWFUL TO PASS WHEN LIGHTS FLASH” is to be displayed on the rear emergency door of the bus between the upper and lower window glass sections. The letters are to be black and not less than 2 inches nor more than 6 inches in height. If there is not sufficient space on the emergency door, letter size may be reduced upon approval of the department of education.

j. The word “BATTERY” in 2-inch black letters will be placed on the door covering the battery opening.

k. Pressure-sensitive markings of vinyl material may be used for the lettering mentioned in this subrule in lieu of painting.

l. Any lettering, including the name of the school’s athletic team(s), numbers, drawings, bumper stickers, characters, holiday decorations, or mascot symbols other than the bus manufacturer’s registered trademarks or those specifically noted in paragraphs 44.3(35) “a” through “k” above are prohibited.

m. Fuel type will be clearly displayed in 2-inch letters either on the fuel door or directly above the fuel door. Examples:

Gasoline or Gasoline Only

Diesel or Diesel Fuel or Diesel Only

Propane or Propane Only

Diesel Exhaust Fluid (DEF)

n. A “No Trespassing” sign may be affixed to the face of the top step in 2-inch black letters on a white background.

44.3(35) Instruments and instrument panel.

a. Chassis will be equipped with an instrument panel having, as a minimum, the following instrumentation: (Lights in lieu of gauges are not acceptable except as noted.)

(1) Speedometer.

(2) Odometer with accrued mileage including tenths of miles unless tenths of miles are registered on a trip odometer.

(3) Voltmeter with graduated scale.

(4) Oil pressure gauge.

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- (5) Water temperature gauge.
- (6) Fuel gauge.
- (7) High-beam headlamp indicator.
- (8) Air pressure gauge, where air brakes are used. A light indicator in lieu of a gauge is permitted on vehicles equipped with hydraulic-over-hydraulic brake system.
- (9) Turn signal indicator.
- (10) Glow-plug indicator light, where appropriate.
- (11) Tachometer required on vehicles 14,500 pounds GVWR and greater.

b. Gauges will be displayed as single-gauge installations or as gauges contained in a multifunction instrument display. The multifunction instrument display will comply, as a minimum, with the following design criteria:

(1) The driver must be able to manually select any displayable function of the gauge on a multifunction display whenever desired.

(2) Whenever an out-of-limits condition occurs, which would be displayed on one or more functions of a multifunction gauge, the multifunction gauge controller should automatically display this condition on the instrument cluster. This should be in the form of an illuminated warning light as well as having the multifunction gauge automatically display the out-of-limits indications. Should two or more functions displayed on the multifunction gauge go out of limits simultaneously, the multifunction gauge should automatically sequence between those functions continuously until the condition(s) is corrected.

(3) The use of a multifunction instrument display does not relieve the requirement of audible warning devices pursuant to this subrule.

c. All instruments will be easily accessible for maintenance and repair.

d. Instruments and gauges will be mounted on the instrument panel so each is clearly visible to the driver in a normal seated position.

e. The instrument panel will have rheostatically controlled lamps of sufficient candlepower to illuminate all instruments, gauges, and the shift selector indicator for automatic transmission.

44.3(36) Insulation.

a. Thermal insulation in the ceiling and walls will be fire-resistant, UL-approved, and approximately 1½-inch thick with a minimum R-value of 5.5. Insulation will be installed in such a way as to prevent it from sagging.

b. Roof bows will be insulated in accordance with paragraph 44.3(36)“a.”

44.3(37) Interior.

a. The interior of the bus is to be free of all unnecessary projections, including luggage racks and attendant handrails, to minimize the potential for injury. This standard requires inner lining on ceilings and walls. If the ceiling is constructed to contain lapped joints, the forward panel will be lapped by the rear panel and exposed edges will be beaded, hemmed, flanged, or otherwise treated to minimize sharp edges. Buses may be equipped with a storage compartment for tools, tire chains, and tow chains. See also subrule 44.3(61).

b. Radio speakers are permitted in the passenger compartment area only. No radio speaker, other than that which is necessary for use with two-way communication equipment, will be located within the driver's compartment area. All radio speakers will be flush-mounted with the roof or side panels and free of sharp edges.

c. The driver's area forward of the foremost padded barriers will permit the mounting of required safety equipment and vehicle operation equipment.

d. Every school bus will be constructed so that the noise level taken at the ear of the occupant nearest to the primary vehicle noise source does not exceed 85 dBA when tested according to the procedure found in Appendix B, National School Transportation Specifications and Procedures Manual 2015.

e. An access panel will be provided, front and rear, so lights and wiring for the 8-light warning system may be repaired or serviced without removing ceiling panels.

f. Ceiling material designed to reduce noise within the driver compartment or passenger compartment may be installed by the manufacturer.

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g. An electronic “child check” monitor will be installed. This monitor will operate in such a way as to require the driver to physically walk to the back of the bus to disengage the monitor system after having first shut off the engine of the bus.

h. Mobile Wi-Fi Internet and USB ports are allowed, in accordance with other provisions of subrule 44.3(37).

i. On-board interior bus camera heads are allowed within the passenger area of the bus. Camera heads are not to extend more than 1½ inches from the ceiling and are to have rounded edges as much as possible. Camera heads will not be mounted directly above the aisle. Exterior cameras are allowed.

j. Electronic student detection systems are allowed on both the interior and exterior of the bus. Interior systems will detect students left behind after the bus is shut off. Exterior systems will detect students in the danger zones.

44.3(38) Lamps and signals.

a. All lamps and lamp components will meet or exceed applicable standards established by the Society of Automotive Engineers (SAE), the American Association of Motor Vehicle Administrators (AAMVA), and FMVSS. These lamps will be of incandescent or LED design.

b. Clearance lamps. The body will be equipped with two amber clearance lamps at the front and two red clearance lamps at the rear mounted at the highest and widest portion of the body.

c. Identification lamps. The bus will be equipped with three amber identification lamps on the front and three red identification lamps on the rear. Each group will be evenly spaced not less than 6 or more than 12 inches apart along a horizontal line near the top of the vehicle.

d. Intermediate side marker lamps. On all buses over 30 feet long, one amber side lamp is necessary on each side, located midway between the front and rear clearance lamps.

e. Stop/tail (brake) lamps. Buses will be equipped with four combination, red stop/tail lamps meeting SAE specifications. Each lamp will have double filament lamp bulbs or LEDs that are connected to the headlamp and brake-operated stop lamp circuits. These should be positioned as follows:

(1) Two combination lamps with a minimum diameter of 7 inches or, if a shape other than round, a minimum of 38 square inches of illuminated area will be mounted on the rear of the bus just to the inside of the turn signal lamps.

(2) Two combination lamps with a minimum diameter of 4 inches or, if a shape other than round, a minimum of 12 square inches of illuminated area will be mounted on the rear of the body between the beltline and the floor line. The rear license plate lamp may be combined with one lower tail lamp. Stop lamps will be activated by the service brakes and emit a steady light when illuminated. Type A-2 buses with bodies supplied by the chassis manufacturer may have the manufacturer’s standard stop and tail lamps.

f. Items described in paragraphs 44.3(38) “b,” “c,” “d,” and “e” will be connected to the headlamp switch.

g. Backup lamps. The bus body will be equipped with two white rear backup lamps. All vehicles will be equipped with lamps at least 4 inches in diameter or, if a shape other than round, a minimum of 13 square inches of illuminated area. All lamps will have a white or clear lens and meet SAE specifications. If backup lamps are placed on the same line as the brake lamps and turn signal lamps, they will be to the inside. Exterior perimeter lighting behind rear axle, activated by reverse switch, is allowed.

h. Interior lamps. Interior lamps will be provided that adequately illuminate the interior aisle and the step well. Step well lights and exterior boarding lights are required and will be illuminated by a service door-operated switch, to illuminate only when headlights and clearance lights are on and the service door is open. In addition, the following interior lamps will be provided:

(1) Supervisor’s light. The rearmost ceiling light or a separate light may be used as a supervisor’s light and will be activated by a separate switch controlled by the driver.

(2) Driver’s area dome light. This light will have a separate switch controlled by the driver and illuminate the driver’s compartment area.

(3) Body instrument panel lights will be controlled by a rheostat switch.

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(4) On buses equipped with a monitor for the front and rear lamps of the school bus, the monitor will be mounted in full view of the driver. If the full circuit current passes through the monitor, each circuit will be protected by a fuse or circuit breaker against any short circuit or intermittent shorts.

i. License plate lamp. The bus will be equipped with a rear license plate illuminator. This lamp may be combined with one of the tail lamps.

j. Reflectors. Reflectors will be securely attached to the body with sheet metal screws or another method having equivalent securement properties and installed in accordance with the requirements of FMVSS No. 108; however, the vehicle will, as a minimum, be equipped with the following:

(1) Two amber reflectors, one on each side at the lower front and corner of the body approximately at floor level and back of the door on the right side, and at a similar location on the left side. For all buses over 30 feet long, an additional amber reflector is necessary on each side at or near the midpoint between the front and rear side reflectors.

(2) Four red reflectors, one at each side at or near the rear and two on the rear, one at each side.

(3) Reflectors are to be mounted at a height not more than 42 inches or less than 30 inches above the ground on which the vehicle stands.

k. Warning signal lamps.

(1) Buses will be equipped with two red lamps at the rear of the vehicle and two red lamps at the front of the vehicle.

(2) In addition to the four red lamps described above, four amber lamps will be installed so that one amber lamp is located near each red signal lamp, at the same level, but closer to the vertical centerline of the bus. The system of red and amber signal lamps will be wired so that amber lamps are energized manually and the red lamps are automatically energized (sequential), with amber lamps being automatically de-energized, when the stop signal arm is extended or when the bus service door is opened. An amber pilot light and a red pilot light will be installed adjacent to the driver controls for the flashing signal lamp to indicate to the driver which lamp system is activated.

(3) The area immediately around the lens of each alternately flashing signal lamp is to be black. In installations where there is no flat vertical portion of body immediately surrounding the entire lens of the lamp, there will be a circular or square band of black immediately below and to both sides of the lens, on the body or roof area against which the signal lamp is seen from a distance of 500 feet along the axis of the vehicle. Black visors or hoods, with a minimum depth of 4 inches, may be provided.

(4) Red lamps will flash at any time the stop signal arm is extended.

(5) All flashers for alternately flashing red and amber signal lamps will be enclosed in the body in a readily accessible location.

(6) Strobe lights are permissible.

(7) Additional electronic/lighted warning devices mounted on the rear of the bus are allowed. Each design will be evaluated and approved by Iowa department of education personnel per established criteria.

(8) Supplemental warning lights may be installed by the vehicle owner. The supplemental warning lights may be mounted to the front and rear of all Type A, B, C and D school buses and will meet the following provisions:

1. Will be wired into the existing 8-way warning light system, operate only with the existing red lights of that system, and use the same flash pattern.

2. Will be a four-light system (two front, two rear) and will not be mounted directly to either the front or rear bumper.

- Front lights will be located between the outer edge of the grill opening and the outer edge of the headlight(s), and sit horizontally rather than vertically. The lens of the light will be approximately perpendicular to the ground and to the outside edge of the bus body.

- Rear lights will be located 1 inch to 3 inches above the bumper, with a maximum of 4 inches above the bumper; will be located at least 1 inch inboard from the outside edge of the bus, but left and right of the emergency door; and will sit horizontally rather than vertically. The lens of the light will be approximately perpendicular to the ground and to the outside edge of the bus body.

l. Turn signal lamps.

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(1) The bus body will be equipped with amber rear turn signal lamps that meet SAE specifications and are at least 7 inches in diameter or, if a shape other than round, a minimum of 38 square inches of illuminated area. These signal lamps will be connected to the chassis hazard warning switch to cause simultaneous flashing of turning signal lamps when needed as a vehicular traffic hazard warning. Turn signal lamps are to be placed as far apart as practical, and their centerline will be approximately 8 inches below the rear window. Type A-2 conversion vehicle lamps will be at least 21 square inches in lens area and in the manufacturer's standard color.

(2) Buses will be equipped with amber side-mounted turn signal lights. The turn signal lamp on the left side will be mounted rearward of the stop signal arm, and the turn signal lamp on the right side will be mounted rearward of the service door.

m. A white flashing strobe light rated for outdoor use and weather-sealed will be installed on the roof of the bus not less than 1 foot or more than 18 inches from the rear center of the bus. The strobe light will be located to the rear of the rearmost emergency roof hatch to prevent the roof hatch from diminishing the effectiveness of the strobe light. In addition:

(1) The strobe light will have a single clear lens emitting light 360 degrees around its vertical axis and will not extend above the roof more than the maximum legal height pursuant to Iowa Code section 321.456.

(2) The strobe light will be controlled by a separate switch with an indicator light that when lit will indicate that the strobe light is turned on.

(3) The light will be used in fog, rain, snow, or at times when visibility is restricted. The light may also be used as determined to be appropriate.

(4) Each model strobe light will meet the provisions of SAE J845 Class 1.

n. Pedestrian safety crossing lights are allowed and will activate automatically in conjunction with the stepwell and boarding lights.

44.3(39) Measurements.

a. Interior body height will be 72 inches or more, measured metal to metal, at any point on the longitudinal centerline from the front vertical bow to the rear vertical bow. Inside body height of Type A-2 buses will be 62 inches or more.

b. Overall height, length and width of the bus will not exceed the maximums allowed by the department of transportation.

44.3(40) Metal treatment.

a. All metal, except high-grade stainless steel or aluminum, used in construction of the bus body will be zinc-coated or aluminum-coated to prevent corrosion. This provision applies to such items as structural members, inside and outside panels, door panels and floor sills. Excluded are such items as door handles, grab handles, interior decorative parts and other interior plated parts.

b. All metal parts that will be painted will be, in addition to above requirements, chemically cleaned, etched, zinc-phosphate coated and zinc-chromate or epoxy primed to improve paint adhesion.

c. In providing for these provisions, particular attention will be given lapped surfaces, welded connections of structural members, cut edges, punched or drilled hole areas in sheet metal, closed or box sections, unvented or undrained areas, and surfaces subjected to abrasion during vehicle operation.

d. As evidence that the above requirements have been met, samples of materials and sections used in construction of the bus body will be subjected to cyclic corrosion testing as outlined in SAE J1563.

44.3(41) Mirrors.

a. The interior mirror will be either clear view laminated glass or clear view glass bonded to a backing that retains the glass in the event of breakage. The mirror will have rounded corners and protected edges. All Type A buses will have a minimum of a 6-inch × 16-inch mirror; and Type B, C, and D buses will have a minimum of a 6-inch × 30-inch mirror.

b. Each school bus will be equipped with exterior mirrors meeting the requirements of FMVSS No. 111. Mirrors will be easily adjustable, but rigidly braced so as to reduce vibration.

c. All exterior mirrors will be heated.

d. Systems offering a design feature permitting the driver to remotely adjust rearview mirrors from the driver's compartment will be utilized.

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- e.* The right-side rearview mirrors will be unobstructed by the unwiped section of the windshield.
- f.* Stainless steel mirror brackets are allowed.
- g.* An interior mirror utilizing a secondary screen linked to an exterior camera is allowed. However, the secondary screen must revert to a mirror status when the bus is moving forward.

44.3(42) Mounting.

a. The chassis frame will support the rear body cross member. Except where chassis components interfere, the bus body will be attached to the chassis frame at each main floor sill in such manner as to prevent shifting or separation of the body from the chassis under severe operating conditions.

b. Isolators will be placed at all contact points between the body and chassis frame and secured by a positive means to the chassis frame or body to prevent shifting, separation, or displacement of the isolators under severe operating conditions.

c. The body front will be attached and sealed to the chassis cowl to prevent entry of water, dust, and fumes through the joint between the chassis cowl and body.

d. The refurbishing or reconditioning of a body-on-chassis school bus is limited to the repair and replacement of school bus body or chassis components. The original body and chassis, as certified by the OEMs, will be retained as a unit upon completion of repairs. It is not permissible to exchange or interchange school bus bodies and chassis. The refurbisher or reconditioner will certify that the vehicle meets all state and federal construction standards in effect as of the date of manufacture and will provide suitable warranty on all work performed. See also subrule 44.6(1).

44.3(43) Mud flaps.

a. Mud flaps or guards are required and provided and installed by the body manufacturer or manufacturer's representative for both front and rear wheels.

b. Front mud flaps or guards will be of adequate size to protect body areas vulnerable to road debris from wheels and mounted so as to be free of wheel movement at all times.

c. Rear mud flaps or guards will be comparable in size to the width of the rear wheelhousing and reach within approximately 9 inches of the ground when the bus is empty. They will be mounted at a distance from the wheels to permit free access to spring hangers for lubrication and maintenance and to prevent their being damaged by tire chains or being pulled off while the vehicle is in reverse motion.

d. All mud flaps will be constructed of rubber or a rubber composite. Vinyl or plastic is not acceptable.

44.3(44) Openings. All openings in the floorboard or fire wall between the chassis and passenger compartment, such as for gearshift selector and parking brake lever, will be sealed.

44.3(45) Passenger securement seating system.

a. All vehicles will conform to all FMVSS at date of manufacture.

b. Unless otherwise provided by FMVSS, school bus seats may be equipped with passenger securement systems for passengers with disabilities in accordance with 281—Chapter 41 when the child's individual education program staffing team determines that special seating and positioning are necessary during transportation. When a child securement system is necessary, the seat, including seat frame, seat cushion, belt attachment points, belts and hardware, will comply with all applicable FMVSS at the time of manufacture.

c. Children transported in child safety seats will be secured to a school bus seat utilizing a seat belt-ready seat frame, according to the child safety seat manufacturer's instructions.

44.3(46) Public address system. A public address system permitting interior, exterior or both interior and exterior communication with passengers may be installed.

44.3(47) Radio/communication system. Each school bus will have a communication system to allow communication between the driver of the bus and the school's base of operations for school transportation. This system will be a two-way radio, cellular phone, or similar device as allowed by local and state policies regarding use of handheld communication equipment.

44.3(48) Retroreflective material.

a. Retroreflective material will be provided in accordance with the following:

(1) The rear of the bus body is marked with strips of reflective NSBY material to outline the perimeter of the back of the bus using material that conforms with the requirements of FMVSS No. 131.

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The perimeter marking of rear emergency exits per FMVSS No. 217 or the use of retroreflective "SCHOOL BUS" signs partially accomplish the objective of this provision. To complete the perimeter marking of the back of the bus, strips of retroreflective NSBY material, a minimum of 1 inch and a maximum of 2 inches in width, is applied horizontally above the rear windows and above the rear bumper, extending from the rear emergency exit perimeter marking outward to the left and right rear corners of the bus. Vertical strips are applied at the corners connecting these horizontal strips. Multifunction school activity buses (MFSABs) are exempt from these color requirements.

(2) "SCHOOL BUS" signs, if not of lighted design, are marked with reflective NSBY material comprising background for lettering of the front and rear "SCHOOL BUS" signs.

(3) Sides of the bus body are marked with reflective NSBY material at least 1¾ inches in width, extending the length of the bus body and located within 6 inches above or below the floor line or on the beltline.

b. Front and rear bumpers may be marked diagonally 45 degrees down to centerline of pavement with 2-inch +/- ¼ inch wide strips of noncontrasting reflective material. This material will appear black during daylight hours; however, it will be seen as a reflective material during periods of reduced light conditions when a direct light source strikes the material.

44.3(49) Road speed control. A road speed control device or a vehicle cruise control may be utilized.

44.3(50) Rub rails.

a. One rub rail located on each side of the bus at, or no more than 8 inches above, the seat level will extend from the rear side of the entrance door completely around the bus body (except for emergency door or any maintenance access door) to the point of curvature near the outside cowl on the left side.

b. One rub rail located at, or no more than 10 inches above, the floor line will cover the same longitudinal area as the upper rub rail, except at wheelhousings, and will extend only to radii of the right and left rear corners.

c. Rub rails at or above the floor line will be attached at each body post and all other upright structural members.

d. Each rub rail will be 4 inches or more in width in its finished form, be of 16-gauge steel or suitable material of equivalent strength, and be constructed in corrugated or ribbed fashion.

e. Rub rails will be applied to outside body or outside body posts. Pressed-in or snap-on rub rails do not satisfy this provision. For all buses using a rear luggage or rear engine compartment, rub rails need not extend around rear corners.

f. The bottom edge of the body side skirts will be stiffened by application of a rub rail, or the edge may be stiffened by providing a flange or other stiffeners.

g. Rub rails will be painted black or be covered with black retroreflective material.

44.3(51) Seating, crash barriers.

a. All school buses (including Type A) will be equipped with restraining barriers that conform to FMVSS No. 222.

b. Crash barriers will be installed conforming to FMVSS No. 222; however, all Type A-2 school bus bodies will be equipped with padded crash barriers, one located immediately to the rear of the driver's seat and one at the service door entrance immediately to the rear of the step well.

c. Crash barriers will be constructed with materials that enable the crash barriers and passenger seats to meet the criteria contained in the School Bus Seat Upholstery Fire Block Test specified in the National School Transportation Specifications and Procedures Manual 2015. Fire block material, when used, will include the covering of seat bottoms.

d. All crash/restraining barriers will be the same height as the passenger seating height in the bus.

44.3(52) Seating, driver. Buses will be equipped with a Type 2 lap belt/shoulder harness seat belt assembly for the driver. This assembly may be integrated into the driver's seat. The seat belt assembly and anchorage will meet applicable FMVSS. The design will also meet the following additional provisions:

a. The lap portion of the belt will be anchored or guided at the seat frame by a metal loop or other such device attached to the right side of the seat to prevent the driver from sliding sideways out of the seat.

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b. There will be a minimum of 7 inches of adjustment of the “D” loop of the driver’s shoulder harness on a nonintegrated style of seat belt assembly.

c. The driver’s seat belt assembly will incorporate high-visibility material. An audible alarm is also allowed.

44.3(53) Seating, passenger.

a. All seats, component parts, seat anchorage, cushion depth, seat back height, rump width, and seat-to-seat or seat-to-barrier measurements will comply with applicable federal requirements as of the date of manufacture, including FMVSS No. 217 and No. 222.

b. Seat-to-seat and seat-to-barrier measurements will be on a label permanently affixed to the bus.

c. Jump seats or portable seats are prohibited; however, use of a flip seat at any side emergency door location in conformance with FMVSS No. 222, including required aisle width to side door, is acceptable. Any flip seat will be free of sharp projections on the underside of the seat bottom. The underside of the flip-up seat bottoms will be padded or contoured to reduce the possibility of snagged clothing or injury during use. Flip seats will be constructed to prevent passenger limbs from becoming entrapped between the seat back and the seat cushion when in an upright position. The seat cushion will be designed to rise to a vertical position automatically when not occupied.

d. Passenger seats will be constructed with materials that enable them to meet the criteria contained in the School Bus Seat Upholstery Fire Block Test specified in the most current National School Transportation Specifications and Procedures Manual. Fire block material, when used, will include the covering of seat bottoms.

e. Seat cushions will contain a positive locking mechanism that requires removal of a security device before the seat may be unlatched.

f. For Type C and D buses, the distance between the rearmost portion of the seat backs of the rear row of seats and outside rear of the bus body (rear seat buffer zone), measured at the floor line, will be at least 8 inches. For Type A buses, the distance will be at least 6 inches.

44.3(54) Seating, passenger restraints.

a. Lap belts will not be installed on passenger seats in large school buses (over 10,000 pounds GVWR) except in conjunction with child safety restraint systems that comply with the provisions of FMVSS No. 213, Child Restraint Systems.

b. Three-point lap-shoulder belts will be installed in all new buses. The restraint system shall include a flexible design feature, thus allowing three-two seating on the same 39-inch seat, depending on student size.

44.3(55) Shock absorbers. Buses will be equipped with double-action shock absorbers compatible with manufacturer’s rated axle capacity at each wheel location.

44.3(56) Steering gear.

a. The steering gear will be approved by the chassis manufacturer and designed to ensure safe and accurate performance when the vehicle is operated with maximum load and at maximum speed.

b. If external adjustments are necessary, the steering mechanism will be accessible.

c. No changes will be made in the steering apparatus, including the addition of spinners or knobs that are not approved by the chassis manufacturer.

d. There will be a clearance of at least 2 inches between the steering wheel and cowl, instrument panel, windshield, or any other surface.

e. Power steering is required and will be of the integral type with integral valves. Electric power-assisted steering systems are allowed.

f. The steering system will be designed to provide a means for lubrication of all wear points, if wear points are not permanently lubricated.

g. Tilting and telescopic steering wheels are acceptable.

44.3(57) Steps.

a. The first step at the service door will be not less than 10 inches and not more than 14 inches from the ground when measured from the top surface of the step to the ground, based on standard chassis specifications, except that on Type D vehicles, the first step at the service door will be 11 inches to 16

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inches from the ground. A step well guard/skid plate will be installed by the manufacturer on all Type D vehicles.

b. Step risers will not exceed a height of 10 inches. When plywood is used on a steel floor or step, the riser height may be increased by the thickness of the plywood.

c. Steps will be enclosed to prevent accumulation of ice and snow. See subparagraph 44.4(2) "g"(1) for exception.

d. Steps will not protrude beyond the side body line.

44.3(58) Step treads.

a. All steps, including floor line platform area, will be covered with an elastomer floor covering having a minimum overall thickness of 3/16 inch.

b. The step covering will be permanently bonded to a durable backing material that is resistant to corrosion.

c. Step treads will have a 1½-inch white or yellow nosing as an integral piece without any joint.

d. Step treads will have abrasion resistance, slip resistance, weathering resistance, and flame resistance as outlined in the National School Transportation Specifications and Procedures Manual 2015.

e. A 3-inch white or yellow rubber step edge at floor level, flush with the floor covering, will be provided.

f. Step treads will have a calculated burn rate of .01 mm per minute or less using the test methods, procedures and formulas listed in FMVSS No. 302, Flammability of Interior Materials.

g. A spray-on application type material that meets all other step tread requirements may be used in lieu of the floor covering described in paragraph 44.3(58) "a." The material will be applied not only to the interior surfaces of the service door step treads but also to the exterior if the exterior is not covered by undercoating.

44.3(59) Stirrup steps.

a. There will be at least one folding stirrup step or recessed foothold and suitably located handles on each side of the front of the body for easy accessibility for cleaning.

b. Steps or cutouts are permitted in the front bumper only, in lieu of the stirrup steps, if the windshield and lamps are easily accessible for cleaning from that position.

44.3(60) Stop signal arm.

a. The stop signal arm will be a flat 18-inch octagon exclusive of brackets for mounting. Stop arms or other warning devices will not extend more than 30 inches beyond the side of the bus body. All lamps and lamp components will comply with the requirements of FMVSS No. 131.

b. Both surfaces of the sign will be covered with reflectorized material having a reflective capability equal to or exceeding that of 3M Corporation high-intensity sheeting.

c. The application of the reflective sheeting material will be in accordance with the sheeting manufacturer's suggested application process. All copy will be sharply defined and clean cut.

d. The stop arm blade will be mounted in the area below the driver's window on the left side of the bus.

e. A second stop signal arm will be installed on the left side at or near the left rear corner of Type C and D school buses and meet the requirements of FMVSS No. 131.

f. Each stop arm blade will be automatically extended upon activation of the red warning signal lamp system and remain extended until the red signal lamps are deactivated. In addition, each stop arm blade will be equipped with two double-faced, 4-inch, alternately flashing red lights. The use of strobe lamps in the stop arm blade is acceptable.

g. A wind guard will be installed that prevents air currents from circulating behind the blades.

h. The stop arm will be vacuum-, electric-, or air-operated; and the system will positively hold the sign in extended or retracted position to prevent whipping in the wind.

i. If the air for an air-operated stop arm comes from the regular air brake system, the body manufacturer will provide the necessary check valve and pressure reduction valve to safeguard the air supply for brake application.

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j. The two double-faced, 4-inch flashing lights may be replaced with an LED illuminated, high-visibility display, spelling out the word “STOP” visible to the front and rear. This lighting system will comply with applicable FMVSS prior to installation.

44.3(61) Storage compartments.

a. A storage container for tools, tire chains, and tow chains may be located either inside or outside the passenger compartment; but, if inside, it will have a cover (seat cushion may not serve this purpose) capable of being securely latched and fastened to the floor, convenient to either the service or emergency door.

b. Luggage compartments are allowed. Compartments will include a door and a means of holding the door in an open position when the compartment is being loaded or unloaded.

44.3(62) Suspensions. The capacity of springs or suspension assemblies will be commensurate with the chassis manufacturer’s GVWR rating.

44.3(63) Sun shield.

a. For Type B, C, and D vehicles, an interior adjustable transparent sun shield not less than 6 inches × 30 inches with a finished edge will be installed in a position convenient for use by the driver. An interior adjustable transparent driver’s side mounted sun shield of manufacturer’s specification is allowed.

b. On all Type A buses, the sun shield will be the manufacturer’s standard.

44.3(64) Tires and rims.

a. Tires and rims of the proper size and tires with a load rating commensurate with the chassis manufacturer’s gross vehicle weight rating (GVWR) will be provided.

b. Tires will be of tubeless, steel-belted, radial (standard or low-profile) construction.

c. “Bud” type, hub-piloted steel rims are required. Multipiece and “Dayton” rims are prohibited. Manufactured non-ferrous spacers are required between steel and aluminum rims.

d. Dual tires will be provided on all vehicles listed in rule 281—44.2(285), except Type III and Type A1 vehicles.

e. All tires on a vehicle will be of the same size, and the load range of the tires will meet or exceed the GVWR as specified in FMVSS No. 120.

f. Spare tires are not necessary; however, if specified, the spare tire will be located outside the passenger compartment. The spare tire will not be attached to any part of the rear portion of the body including the emergency door, bumper or roof. If a tire carrier is necessary, it will be suitably mounted in an accessible location outside the passenger compartment.

g. Recapped tires are permissible as replacements on equipment now in operation for use on rear wheels only, providing tires are guaranteed by the seller. Recapped tires are not permissible where single rear wheels are used.

h. Tires, when measured on any two or more adjacent tread grooves, will have a tread groove pattern depth of at least 4/32 of an inch on the front wheels and 2/32 of an inch on the rear wheels. No measurement will be made where tire bars, humps, or fillets are located. On Type A-1 and Type A-2 buses, the tread groove pattern depth will be at least 4/32 of an inch. Where specific measurement points are provided by the tire manufacturer, they will be utilized in determining tires approved for service. This provision also applies to buses now in service.

i. Tire pressure equalizing systems for dual rear wheels are acceptable.

j. Wheel check indicators for lug nuts are allowed.

44.3(65) Tow hooks, front. Tow eyes or hooks are necessary on Type B, C and D buses of 14,501 pounds GVWR or greater. Two tow eyes or hooks will be installed by the manufacturer so as not to project beyond the front bumper.

44.3(66) Tow hooks, rear. Two rear tow hooks are necessary on all school buses. Rear tow hooks will be attached to the chassis frame and located under the rear bumper so the hook portion is under the body.

44.3(67) Traction-assisting devices. Traction-assisting devices including hopper-sanders, tire chains or automatic traction chains may be installed.

44.3(68) Transmission.

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a. Automatic transmissions will provide for not less than three forward speeds and one reverse speed. The shift lever, if applicable, will provide a detent between each gear position when the gear selector quadrant and shift lever are not steering column-mounted.

b. Automatic transmissions will have a transmission shifter interlock controlled by the application of the service brake to prohibit accidental engagement of the transmission.

44.3(69) Trash container and holding device.

a. When a trash container is placed on the school bus, it will comply with the following:

(1) Meet the requirements of FMVSS No. 302, Flammability of Interior Materials.

(2) Be no greater than 20-quart capacity.

(3) Be secured by a holding device that is designed to prevent movement and to allow easy removal and replacement.

b. The container will be placed in an accessible location in the driver's compartment of the school bus subject to department of education approval. The container will not obstruct the aisle of the bus, access to safety equipment or passenger use of the service entrance door.

c. Trash containers meeting the requirements of paragraph 44.3(69) "a" are allowable behind the rear seat.

44.3(70) Turning radius.

a. A chassis with a wheelbase of 264 inches or less will have a right and left turning radius of not more than 42½ feet, curb-to-curb measurement.

b. A chassis with a wheelbase of 265 inches or more will have a right and left turning radius of not more than 44½ feet, curb-to-curb measurement.

44.3(71) Undercoating.

a. The entire underside of the bus body, including floor sections, cross member and below floor line side panels, and chassis front fenders will be coated with rustproofing material for which the material manufacturer has issued to the bus body manufacturer a notarized certification that materials meet or exceed all performance standards of SAE J1959, Sept. 2003 Edition.

b. Undercoating material will be applied with suitable airless or conventional spray equipment to the undercoating material manufacturer's recommended film thickness and show no evidence of voids in cured film.

c. The undercoating material will not cover any exhaust components of the chassis.

d. If chassis is built as a separate unit, the chassis manufacturer or its agents are responsible for providing undercoating to the chassis areas.

44.3(72) Vandal lock.

a. The school bus may be equipped with a vandal locking system for securing the service entrance, emergency, and wheelchair lift door(s).

b. The vandal locking system will include the following design features:

(1) The entrance door is to be locked by an exterior key with a dead bolt, a remote control (cable) device or an electric device. The system is to prevent the door from being accidentally locked by any motion the bus may encounter during its normal operation. This provision does not apply to Type A vehicles with a left-side driver's door.

(2) When the bus is equipped with a rear-mounted engine, the emergency door and rear emergency exit window are to be locked by an interior slide bolt that will activate a buzzer when the door or emergency exit window is locked and the ignition of the bus is turned on. The locking mechanism is to be capable of being locked or unlocked without the use of a separate key or other similar device.

(3) The engine starting system of the bus will not operate if the rear or side emergency door or rear emergency exit window over the rear engine compartment is locked from either the inside or outside of the bus.

(4) Hasp-type devices is not to be attached to the bus for the purpose of securing any door or window.

44.3(73) Ventilation.

a. The body ventilation system on Type A, B, C and D buses will include one or more combination roof ventilation/emergency escape hatches in accordance with subrule 44.3(14). The ventilation system

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will be capable of being controlled and have sufficient capacity to maintain a proper quantity of air under operating conditions without the opening of windows except in extremely warm weather.

b. Each combination roof ventilation/emergency escape hatch will be installed by the school bus body manufacturer or the body manufacturer's approved representative and will have the following design and installation features:

- (1) Multiposition fresh air ventilation.
- (2) Release handle(s) permitting operation as an emergency exit(s), accessible inside and outside the vehicle.
- (3) An audible warning system that sounds an alarm in the driver's compartment area when the emergency roof hatch is unlatched will be installed as a design feature by the manufacturer.
- (4) When more than one ventilation/emergency roof hatch is necessary, one will be installed forward of the intersection of the horizontal and longitudinal midpoints of the bus in a low-pressure area of the roof. The second unit will be installed on the roof in a location behind the rear axle. When only one ventilation/emergency roof hatch is necessary, it will be installed in a low-pressure area of the roof at or near the longitudinal midpoint of the bus.
- (5) Ventilation/emergency escape hatches may include static-type nonclosable ventilation.

c. Auxiliary fans will be installed and meet the following provisions:

- (1) Two adjustable fans will be installed on Type B, C and D buses. Fans for left and right sides will be placed in a location where they can be adjusted for maximum effectiveness and do not obstruct vision to any mirror.
- (2) Fans will be a nominal 6-inch diameter except where noted below.
- (3) Fan blades are to be covered with a protective cage. Each fan will be controlled by a separate switch capable of two-speed operation.
- (4) Type A buses will have at least one fan that has a nominal diameter of at least 4 inches and meets the above requirements.

44.3(74) Wheelhousings.

a. The wheelhousing will be attached to the floor sheets in such a manner as to prevent any dust, water or fumes from entering the bus body. Wheelhousings will be constructed of at least 16-gauge steel or other material capable of withstanding passenger or other expected loads applied internally or externally without deformation.

b. The inside height of the wheelhousing above the floor line will not exceed 12 inches.

c. The wheelhousing will provide clearance for installation and use of tire chains on single and dual (if so equipped) power-driving wheels.

44.3(75) Windshield and windows.

a. All glass in windshield, windows, and doors will be of approved safety glass consistent with American National Standard, Safety Code for Safety Glazing Materials for Glazing Motor Vehicles Operating on Land Highways, ANSI/SAE Z-26.1-1990, mounted so the permanent mark is visible, and of sufficient quality to prevent distortion of view in any direction.

b. Glass in windshields may be heat-absorbing and may contain a shaded band across the top. Location of "fade out" will be above the upper limit for maximum visibility.

c. Each full side window, other than emergency exits designated to comply with FMVSS No. 217, will be split-sash type and provide an unobstructed emergency opening of at least 9 inches high, but not more than 13 inches high, and 22 inches wide, obtained by lowering the window. When the driver's window consists of two sections, both sections will be capable of being moved or opened.

d. The school bus body manufacturer may design and install a protective device over the inside, lower window glass of a rear emergency door to protect it from being damaged or broken during normal operation. The protective device will be securely mounted by the manufacturer, be free of projections that might harm passengers, and permit visibility through the device to the area outside and to the rear of the bus.

e. Tinted glazing capable of reducing the amount of light passing through a window may be installed consistent with rules established by the department of public safety relating to automotive window transparency standards, except that the following windows shall be of AS-II clear glass rating:

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- (1) All glass to the immediate left of the driver.
- (2) All glass forward of the driver and service door.
- (3) All glass in the service entrance door.

44.3(76) Windshield washer system.

a. All buses will be equipped with electric wet-arm windshield washers that conform to the body manufacturer's recommendation as to type and size for the bus on which they are to be used. The windshield washer system on Type A and A-2 vehicles may be of the manufacturer's standard design.

b. The washer control(s) will be located within easy reach of the driver.

44.3(77) Windshield wiper system.

a. For Type A vehicles, windshield wipers will be supplied by the chassis manufacturer and be of the manufacturer's standard design.

b. Type B, C and D buses will be equipped with two positive-action, two-speed or variable-speed electric windshield wipers. Windshield wipers will have an intermittent wiping feature and be operated by a single switch.

c. The wipers will be operated by one or more electric motors of sufficient power to operate wipers. If one motor is used, the wipers will work in tandem to give a full sweep of the windshield.

d. Wiper control(s) will be located within easy reach of the driver and designed to move the blades from the driver's view when the wiper control is in the "off" position.

e. Windshield wipers will meet the requirements of FMVSS No. 104.

281—44.4(285) Construction of vehicles for children with mobility disabilities. The following apply to vehicles constructed for the transportation of children with mobility disabilities of such severity that the children are unable to use the regular service door entrance. Vehicles constructed for transporting these children will meet all FMVSS relating to school bus construction and Iowa school bus construction requirements as described in rules 281—44.1(285) and 281—44.3(285). The following standards also apply:

44.4(1) General provisions.

a. Certification of these vehicles as multipurpose passenger vehicles due to capacity rating do not relieve the manufacturer of the responsibility to provide a completed vehicle meeting all FMVSS for school buses as well as rules 281—44.1(285) through 281—44.3(285) relating to the construction of a school bus.

b. Alteration of the interior of the vehicle is permissible if all seats and barriers, component parts, anchorages, wheelchair securement devices, and placement of seats and barriers and wheelchair securement devices comply with federal provisions as of date of manufacture. All equipment will be supplied by the original manufacturer and installed per the original manufacturer's specification. Alteration that would return the vehicle to conventional passenger seating will include removal of all wheelchair securement devices, removal of the power lift, and rendering the special service door inoperable.

c. Any school bus that is used for the transportation of children who use a wheelchair or other restraining devices that prevent use of the regular service entrance will be equipped with a power lift located on the right side of the bus body located either forward of or behind the rear wheels on a Type A, B, C, or D bus.

d. The actual rated seating capacity following modification of a vehicle will be placed at locations indicated in paragraph 44.3(34) "e."

44.4(2) Specific provisions.

a. *Aisle.* Aisles leading from the wheelchair placements to the special service door and either the service door or one 30-inch wide emergency door will be a minimum of 30 inches in width.

(1) Aisles leading from wheelchair placements to all other doors will be at least 20 inches in width.

(2) A wheelchair securement position will not be located directly in front of a power lift door.

b. *Barriers.*

(1) Barriers will comply with and be installed as required by federal standards as of date of manufacture.

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(2) A heavy-duty padded barrier or stanchion will be provided immediately to the rear of the step well opening extending from the side wall of the bus to approximately the aisle to prevent a person from accidentally falling into the step well opening from floor level. A barrier or stanchion as mentioned above will also be placed directly behind the driver.

(3) The power lift mechanism will be padded and protected to prevent a child from accidentally getting any part of the child's body caught in the power lift mechanism or special service door at any time.

(4) All crash/restraining barriers will be the same height as the passenger seating height in the bus.

c. Glazing. Tinted glazing may be installed in all doors, windows, and windshield.

d. Heaters. An additional heater(s) may be installed in the rear portion of the bus on or behind wheel wells.

e. Identification. Buses with wheelchair lifts used for transporting children with physical disabilities will display the International Symbol of Accessibility located on the front and rear of the vehicle below the window line. Emblems will be white on blue, shall not exceed 12 × 12 inches in size, and may be reflectorized.

f. Power lift.

(1) The power lift will meet all FMVSS and ADA requirements at the time of manufacture.

(2) The power lift may be located either forward of or behind the rear wheels of the vehicle on the right side of Type A, B, C and D buses.

(3) All lift controls will be portable and conveniently located on the inside of the bus near the special service door opening. Controls will be easily operable from inside or outside the bus. A master cut-off switch controlling on/off power to the lift will be located in the driver's compartment. There will be a means of preventing the lift platform from falling while in operation due to a power failure.

(4) Power lifts will be equipped so they may be manually raised or lowered in the event of power failure of the power lift mechanism.

(5) All edges of the platform will be designed to restrain a wheelchair and to prevent the operator's feet from being entangled during the raising and lowering process.

(6) A circuit breaker, fuse, or other electrical protection device will be installed between the power source and the lift motor if electrical power is used.

(7) When hydraulic pressure is used in the lifting process, the system will be equipped with adjustable limit switches or bypass valves to prevent excessive pressure from building in the hydraulic system when the platform reaches the full "up" position or full "down" position.

(8) All exposed parts of the power lift that are in direct line with the forward or rearward travel of a wheelchair student or attendant will be padded with energy-absorbing material.

(9) Power lifts are not allowed on vehicles with single rear wheels.

g. Ramps. Ramps are not permitted on Type A, B, C, and D buses.

h. Regular service entrance.

(1) An additional fold-out or slide-out step may be provided that will provide for the step level to be no more than 6 inches from the ground level to assist persons with disabilities that prohibit the use of the standard entrance step. This step, when stored and not in use, will not impede or in any way block the normal use of the entrance.

(2) On power lift-equipped vehicles, service entrance steps will be the full width of the step well, excluding the thickness of the doors in the open position.

(3) In addition to the standard handrail required in all buses, an additional handrail may be provided on all specially equipped school buses. If so equipped, this rail will be located on the opposite side of the entrance door from the required rail and will meet the same provisions for handrails.

i. Seating and seating arrangements.

(1) All seat spacing, seats, and related components will comply with applicable federal standards as of date of manufacture.

(2) All seats are to be forward facing. Side-facing seats are prohibited.

(3) Seat frames may be equipped by the school bus body manufacturer with rings or other devices to which passenger restraint systems may be attached.

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j. Special light. Light(s) will be placed inside the bus to sufficiently illuminate the lift area and activated from the door area.

k. Special service opening.

(1) There will be an enclosed service opening located on the right side (curb side) of the body to accommodate a wheelchair lift on Type A, B, C and D buses.

(2) The opening will be at least 52 inches high and 40 inches wide and with doors open will be of sufficient width to allow for the installation of various power lifts and related accessories as well as a lifting platform at least 32 inches wide.

(3) The opening will be positioned far enough to the rear of the regular service door opening to prevent interference of the special service door(s) opening with the regular service doors.

(4) A drip molding will be installed above the opening to effectively divert water from the entrance.

(5) Doorposts, headers, and all floor sections around this special opening will be reinforced to provide strength and support equivalent to adjacent side wall and floor construction of an unaltered model.

(6) A header pad at least 3 inches wide, extending the width of special service door, will be placed above the opening on the inside of the bus.

l. Special service door(s).

(1) All doors will open outwardly.

(2) All doors will have positive fastening devices to hold doors in the open position.

(3) All doors will be equipped with heavy-duty hinges and will be hinged to the side of the bus.

(4) All doors will be weather sealed; and on buses with double doors, each door will be of the same size and constructed so a flange on the forward door overlaps the edge of the rear door when closed.

(5) If optional power doors are installed, the design will permit release of the doors for opening and closing by the attendant from the platform inside the bus.

(6) When manually operated dual doors are provided, the rear door will have at least a one-point fastening device to the header. The forward-mounted door will have at least three-point fastening devices: One will be to the header, one will be to the floor line of the body, and the other will be into the rear door. These locking devices will afford maximum safety when the doors are in the closed position. The door and hinge mechanism is to be of a strength that will provide the same type of use as that of a standard entrance door.

(7) If the door is made of one-piece construction, the door will be equipped with a slidebar, cam-operated locking device.

(8) Each door will have installed a safety glass window, set in a waterproof manner, and aligned with the lower line of adjacent sash and as nearly as practical to the same size as other bus windows.

(9) Door materials, panels, and structural strength will be equivalent to the conventional service and emergency doors. Color, rub rail extensions, lettering, and other exterior features will match adjacent sections of the body.

(10) The door(s) will be equipped with a device(s) that will actuate a flashing visible signal located in the driver's compartment when the door(s) is not securely closed. (An audible signal is not permitted.)

m. Special student restraining devices.

(1) Each wheelchair station will be equipped with a lap and torso restraint system that meets applicable FMVSS.

(2) Special restraining devices such as shoulder harnesses, lap belts, and chest restraint systems may be installed to the seats providing that the devices do not require the alteration in any form of the school bus seat, seat cushion, framework, or related seat components. These restraints are for the sole purpose of restraining passengers.

(3) All child safety restraint systems will comply with the requirements of FMVSS No. 213, Child Restraint Systems.

n. Wheelchair securement systems.

(1) Securement systems for wheelchairs will meet or exceed applicable FMVSS.

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(2) All wheelchair securement systems or devices will be placed in the vehicle so that, when secured, both wheelchair and occupant are facing toward the front of the vehicle. Fastening devices resulting in a side-facing wheelchair and occupant are not permissible.

(3) Straps or seat-belt devices running through the wheels of the wheelchair or around the student seated in the wheelchair for the purpose of securing the wheelchair to the floor are not acceptable.

(4) The wheelchair securement system(s) will be located in a school bus so that when a wheelchair is not secured in place the floor attachment system does not extend above the floor level more than ½ inch.

281—44.5(285) Type III vehicles.

44.5(1) General information. These vehicles may be used for student transportation in accordance with the following general provisions:

a. The vehicle will be an OEM product and manufactured as a family-type or multipurpose passenger vehicle (MPV).

Vehicles used exclusively for driver's education are exempt from these provisions.

b. The manufacturer's rated capacity of this vehicle, which is determined only by the OEM on the date of manufacture, will not exceed 12 persons including the driver. The capacity rating may not be changed or modified except by the OEM, dealer, or remanufacturer. Secondary stage or vehicle conversion manufacturers will not establish vehicle capacity. Seating capacities that vary from the OEM are required by NHTSA to be identified by an alterer's certification and information label that shall be affixed to the frame of the driver's door.

(1) Vehicles with a capacity of ten or fewer passengers including the driver may be acquired new or used.

(2) Vehicles with a capacity of 11 or 12 passengers, including the driver, may only be acquired used. For purposes of this subrule, "used" means a vehicle that has had a title transfer from a dealer to one or more previous retail owners.

c. Alteration of a vehicle, following manufacture by the OEM, is prohibited. This includes the addition or removal of seats, wheelchair securement devices, and power lifts. Ramps are allowed on the passenger side of the vehicle only and will comply with all applicable FMVSS and ADA requirements. The following exceptions apply:

(1) OEM options or other manufacturer's accessories not in violation of these standards may be installed.

(2) Seats may be added or removed as long as the seating capacity does not exceed the capacity as certified by the OEM or on the label installed according to paragraph 44.5(1) "b."

d. The vehicle will not carry more passengers than there are seat belts as installed by the manufacturer.

e. The vehicle will not be painted the color known as National School Bus Glossy Yellow.

f. The vehicle will not be equipped with a stop arm or flashing warning signal lamps.

g. This vehicle will load and unload students off the traveled portion of the roadway.

44.5(2) Special equipment.

a. Interior liner. An interior liner that covers all exposed ceiling girders, sidewall posts, or other structural projections is to be provided and installed by the manufacturer.

b. The vehicle, while transporting students to and from school, will display a sign, visible to the rear, with the words "SCHOOL BUS." The sign will be National School Bus Glossy Yellow with black letters 6 inches high. The sign will be a type that can be removed, dismounted, or covered when the vehicle is not transporting pupils to and from school.

c. A sign with the words "THIS VEHICLE STOPS AT ALL RAILROAD CROSSINGS," visible to the rear, may be used where appropriate and not in conflict with current statutes. If used, the words will be black letters on a yellow background. The sign will be of a type that can be dismounted, turned down, or covered when the vehicle is not transporting pupils to and from school.

d. Special brake lamps. The vehicle may be equipped with two roof-mounted lights not greater than 4 inches in diameter and positioned horizontally on the roof at least 36 inches apart. The lights will

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be connected to the brake lamp circuit of the vehicle's electrical system and will operate only when the brakes are applied. When lit, the lamps will be red and visible only to the rear.

e. First aid kit. A first aid kit meeting the national recommendations (most current National School Transportation Specifications and Procedures Manual—first aid kit) is required on all vehicles used for student transportation.

f. Fire extinguisher. The vehicle will carry a dry chemical fire extinguisher of at least 2½-pound capacity with a rating of 2A-10BC. The extinguisher will be equipped with a calibrated or marked gauge. Plastic discharge heads and related parts are not acceptable.

g. Each vehicle will be equipped with a durable webbing cutter having a full-width handgrip and a protected, replaceable or noncorrodible blade. This device will be mounted in a location accessible to the seated driver in an easily detachable manner.

h. Each vehicle will be equipped with a body fluid cleanup kit.

i. Each vehicle will be equipped with a backup alarm beeper capable of a minimum of 112 db. NOTE: This is effective for 2007 model year vehicles and newer.

j. Trailer hitches are allowed on Type III vehicles in accordance with the manufacturer's rated towing capacity. Students are not allowed to be transported in the vehicle when the vehicle is being used to tow.

44.5(3) *Applicability of standards.* The above standards apply to all vehicles (except as noted in paragraph 44.5(2) "i") of this type and those currently in service used to transport students.

281—44.6(285) Repair, replacement of school bus body and chassis components following original equipment manufacture.

44.6(1) *Body and chassis repair following an accident.*

a. A school bus that has been involved in an accident in which there is damage to the body or chassis components may be repaired to the extent that such repair is possible and that the damaged component can be returned to the OEM's specification and function.

b. The individual or company making the repairs is to certify to the vehicle's owner that all repairs have been made in accordance with the original vehicle or component manufacturer's recommendations using OEM's materials and parts, or their guaranteed equal.

c. Repairs are not to cause the vehicle to no longer comply with any FMVSS in effect and applicable at the time the vehicle or component was manufactured.

44.6(2) *New technology and equipment approval procedure.* It is the intent of these rules to accommodate new technologies and equipment that will better facilitate the transportation of students to and from school and related activities. A new technology, piece of equipment or component that meets the following criteria may be adopted under the following conditions pending formal rule adoption:

a. The technology, equipment or component will not compromise the effectiveness or integrity of any major safety system, unless it completely replaces the system.

b. It will not diminish the safe environment of the interior of the bus.

c. It will not create additional risk to students who are boarding or exiting the bus or are in or near the school bus loading zone.

d. It will not create undue additional activity or responsibility for the driver.

e. It will not generally decrease the safety or efficiency of the bus.

f. It will generally provide for a safer or more pleasant experience for the occupants and pedestrians in the vicinity of the bus or generally assist the driver or make the driver's many tasks easier to perform.

g. A pilot test for the purpose of evaluating the performance of the new technology, product or vehicle component may be conducted at the direction of the school transportation consultant with the approval of the director of the department of education. The pilot test will include a minimum of five, but not more than ten, applications of the technology, product or component at locations and over a period of time to be mutually agreed upon by the department and the manufacturer of the product.

h. The cost of the technology, product or vehicle component and its installation is the responsibility of the manufacturer unless other arrangements are made prior to testing or evaluation.

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i. An evaluation of the product's performance shall be conducted by department staff, and if the product is determined to meet the criteria listed in paragraphs 44.6(2) "a" to "f," measures will be taken as soon as practicable to formally approve the product.

j. A technology, product or component not recommended for approval by the department will immediately be removed from vehicles upon which pilot tests were being conducted; and its use will be discontinued by schools or individuals serving as pilot test sites, upon receipt of written notice from the department of education.

These rules are intended to implement Iowa Code sections 285.8 and 321.373.

ARC 7592C

EDUCATION DEPARTMENT[281]

Notice of Intended Action

**Proposing rulemaking related to career and technical education
and providing an opportunity for public comment**

The State Board of Education hereby proposes to rescind Chapter 46, "Career and Technical Education," Iowa Administrative Code, and to adopt a new chapter with the same title.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code section 256.129.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code chapter 256.

Purpose and Summary

This rulemaking is proposed pursuant to Executive Order 10 review. The Department of Education proposes to remove unnecessarily restrictive language and verbatim statutory text, which are not necessary to achieve the public policy outcomes.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the State Board for a waiver of the discretionary provisions, if any, pursuant to 281—Chapter 4.

Public Comment

Any interested person may submit written or oral comments concerning this proposed rulemaking. Written or oral comments in response to this rulemaking must be received by the Department no later than 4:30 p.m. on February 27, 2024. Comments should be directed to:

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Thomas A. Mayes
 Department of Education
 Grimes State Office Building, Second Floor
 400 East 14th Street
 Des Moines, Iowa 50319-0146
 Phone: 515.281.8661
 Email: thomas.mayes@iowa.gov

Public Hearing

Public hearings at which persons may present their views orally or in writing will be held as follows:

February 27, 2024 9:30 to 10 a.m.	Room B100 Grimes State Office Building Des Moines, Iowa
February 27, 2024 1:30 to 2 p.m.	Room B50 Grimes State Office Building Des Moines, Iowa

Persons who wish to make oral comments at a public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rulemaking.

Any persons who intend to attend a public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department and advise of specific needs by calling 515.281.5295.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking 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 rulemaking action is proposed:

ITEM 1. Rescind 281—Chapter 46 and adopt the following **new** chapter in lieu thereof:

TITLE IX
 VOCATIONAL EDUCATION
 CHAPTER 46
 CAREER AND TECHNICAL EDUCATION

281—46.1(256) Federal Act accepted. The provisions of the Act of Congress known as the Carl D. Perkins Career and Technical Education Improvement Act of 2006, codified at 20 U.S.C. §2301 et seq., as amended, and the benefit of all funds appropriated under said Act and all other Acts pertaining to career and technical education, are accepted. All references to this Act in this chapter are to the Act as amended through February 7, 2024.

281—46.2(256) Definitions. As used in this chapter, the definitions in Iowa Code section 256.125 apply. Additionally, “shared program” means a program or portion of a program offered through an agreement pursuant to Iowa Code section 256.13.

281—46.3(256) State board for career and technical education. The state board of education constitutes the board for career and technical education. In that capacity, the board will approve

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the multiyear state plan developed by the director in accordance with applicable federal laws and regulations governing career and technical education.

281—46.4(256) Career and technical education service areas. Districts shall comply with rule 281—46.5(256) in offering programming pursuant to this rule. Instructors teaching courses pursuant to this rule are to hold and maintain appropriate licensure pursuant to Iowa Code chapter 256, subchapter VII, part 3.

46.4(1) Grades 7-8. Pursuant to 281—Chapter 12, districts will offer career exploration and development in grades 7 and 8. Career exploration and development is designed so that students are appropriately prepared to create an individual career and academic plan pursuant to 281—Chapter 49, incorporate foundational career and technical education concepts aligned with the six career and technical education service areas as defined in subrule 46.4(2), and incorporate relevant twenty-first century skills.

46.4(2) Grades 9-12. Pursuant to 281—Chapter 12, districts will offer career and technical education programming in the following service areas:

a. Agriculture, food, and natural resources, including the career cluster of agriculture, food, and natural resources.

b. Information solutions, including the career clusters of arts, audio and video technology, and communications; and information technology.

c. Applied sciences, technology, engineering, and manufacturing, including the career clusters of architecture and construction; manufacturing; science, technology, engineering, and mathematics; and transportation, distribution, and logistics.

d. Health sciences, including the career cluster of health science.

e. Human services, including the career clusters of education and training; human services; hospitality and tourism; government and public administration; and law, public safety, corrections, and security.

f. Business, finance, marketing, and management, including the career clusters of business, management, and administration; finance; and marketing.

281—46.5(256) Standards for career and technical education. The board will adopt content standards for the career and technical education service areas. Districts will include, at a minimum, the content standards for career and technical education service areas adopted pursuant to this rule in career and technical education programs as the standards are adopted by the board.

281—46.6(256) Career and technical education program approval and review.

46.6(1) Secondary program approval. All career and technical education programs offered by a district are to be approved by the department. As a condition for approval, a district will comply with the following paragraphs.

a. Data collection and analysis. A district, for each program, will conduct an analysis of appropriate data and information related to the program and occupational fields applicable to the program. For purposes of this subrule, data includes, at a minimum, program enrollment numbers and trends by high school, course completion rates and trends, data needed under federal statutes governing career and technical education, and labor market information and socioeconomic and demographic data elements as provided by the partnership.

b. Program report and self-study. A district will create a program report and self-study for each offered program. The program report and self-study includes the following minimum criteria:

(1) Program overview. This section includes an overview of the program's purpose, a summary of data and information as described under paragraph 46.6(1) "a" and any conclusions drawn from this data and information, and an analysis of future trends in occupations associated with the program.

(2) Statement of program goals, objectives, and outcomes. This section includes clear statements of the program's goals, objectives, and outcomes, including a justification of the program's goal(s),

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objective(s), and outcome(s) based on the review conducted under subparagraph 46.6(1)“b”(1), and describes methods that will be used to measure the program’s stated outcomes.

(3) Competencies. This section describes the established program competencies aligned with state standards pursuant to rule 281—46.5(256) and the program’s goals, objectives, and outcomes; includes evidence of advisory committee approval of competencies, technical skill assessment tool(s), and proficiency benchmarks; includes evidence of postsecondary approval of competencies and technical skill assessment tool(s); outlines and describe the coherent sequence of coursework that constitutes the program, including any related foundational and concurrent enrollment coursework, depicted in a plan of study template; describes processes utilized to employ contextualized and effective work-based, project-based, and problem-based learning approaches; describes efforts to integrate career and technical education student organization(s) into the program, if applicable; and describes processes utilized to review and update the curriculum, ensuring continued relevancy to the occupational field.

(4) Student assessment. This section describes how the program will assess student outcomes established under subparagraph 46.6(1)“b”(2) and program competencies established under subparagraph 46.6(1)“b”(3) and the established technical skill assessment tool(s) to measure competencies, utilizing industry-approved technical skill assessments, where available and appropriate.

(5) Educational resources. This section describes key equipment and materials currently used in instruction; processes to determine whether the equipment is relevant and up to date; processes to maintain the equipment; and new equipment needs, with a description of how the proposed new equipment would improve the program.

(6) Advisory council. This section describes how the program engages with the business community to recruit members for the advisory council pursuant to rule 281—46.8(258) and includes a current member list with titles and company; describes advisory committee meeting logistics including, but not limited to, meeting frequency, agendas, and minutes; details and describes the advice the advisory council has suggested for the program and any actions or results taken by the program that stem from this advice as well as any advice not acted upon by the program; and includes, as an appendix to the narrative, advisory council minutes from the prior year.

(7) Partnerships. This section describes how the program’s curriculum is integrated with other curricular offerings required of all students; describes the articulation, contractual agreements for shared courses with community colleges, and other agreements with community colleges and other postsecondary institutions; and describes how the program partners with counselors at various levels to assist all students and stakeholders in the exploration of pathway opportunities within the service area.

(8) Removing barriers. This section describes how the program removes barriers for all students to access education opportunities both while in and beyond high school.

c. Feedback. The district will submit the program report and self-study completed under paragraph 46.6(1)“b” to the partnership for peer review and feedback. The partnership is to complete a review of the program report and self-study and provide the district with recommendations and feedback based on that review. The partnership’s recommendations will be documented and submitted to the department and the district. The partnership will include in the recommendations a determination of whether the program should or should not receive department approval. A program must be recommended for approval by the partnership for the program to receive approval by the department. The district will modify the program report and self-study based on the partnership’s recommendations. The partnership’s recommendations will be included as an appendix to the program report and self-study submitted to the department. The final program report and self-study will be submitted by the district to the department.

d. Department approval. Final approval of programs is reserved to the department. Approval will be awarded to a program if clear evidence of compliance with the criteria established in this rule is provided in the program report and self-study under paragraph 46.6(1)“b.” A program that fails to be approved by the department will have one year to address identified deficiencies and resubmit for approval of the program. The department will provide a summary of the deficiencies in need of addressing.

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46.6(2) *Postsecondary program approval.* All community college career and technical education programs will be approved through the process established in 281—Chapter 21.

46.6(3) *Secondary program review.* The program review process will ensure that 20 percent of secondary career and technical education programs are reviewed on an annual basis and that career and technical education programs meet standards adopted by the board. The review will include an assessment of the extent to which the competencies in the program are being mastered by the students enrolled, the costs are proportionate to educational benefits received, the career and technical education curriculum is articulated and integrated with other curricular offerings required of all students, the programs would permit students with career and technical education backgrounds to pursue other educational interests in a postsecondary institutional setting, and the programs remove barriers for all students to access educational and employment opportunities.

a. Secondary program review. As a condition of continuing approval, districts will comply with the following provisions for career and technical education program review. Units of instruction necessary under rule 281—46.4(258) are to have students from each participating high school enrolled. Each district that sends students to a shared program with another district that is used by the sending district to fulfill rule 281—46.4(258) is to have students from the sending district enrolled in the shared program.

(1) Conclusions drawn from annual program measurement. A district will, for each program, annually review and evaluate program outcomes and student assessment data. The district will document any conclusions drawn from the review and evaluation of program outcomes and student assessment data, and how those conclusions impact the future direction of the program. In addition to and as a result of this review, the district will identify program strengths, in order of importance, and describe how these strengths will be maintained; perceived barriers to accomplishing the program's goal(s) and objective(s); and primary opportunities for improvement, in order of importance, and how these opportunities for improvement will be addressed. The district will also review program enrollment and participation data by high school to determine if students from each participating high school have access to the program. The district will describe how the district is ensuring access to the program for all students from each participating high school.

(2) Revision of program goals, objectives, and outcomes. The district is to update and make appropriate revisions to the program, including goals, objectives, and outcomes, as outlined in the program report and self-study based on the results of the activities prescribed under subparagraph 46.6(3) "a"(1).

b. Feedback. The district will submit the program report and self-study completed under subparagraph 46.6(3) "a"(2) to the partnership for peer review and feedback. The partnership will complete a review of the program report and self-study and provide the district with recommendations and feedback based on the review. The partnership's recommendations are to be documented and submitted to the department and the district. The partnership will include in the recommendations a determination of whether the program should or should not receive department approval. A program is to be recommended for approval by the partnership for the program to receive approval by the department. The district will modify the program report and self-study based on the partnership's recommendations. The partnership's recommendations will be included as an appendix to the program report and self-study submitted to the department. The final program report and self-study will be submitted by the district to the department.

c. Department approval. Final approval of programs will be reserved for the department. Approval will be awarded to a program if clear evidence of compliance with the criteria established in this rule is provided in the program report and self-study under this rule. A program that fails to be approved by the department will have one year to address identified deficiencies and resubmit for approval of the program. The department will provide a summary of the deficiencies in need of addressing.

46.6(4) *Postsecondary program review.* The postsecondary program review process is to ensure career and technical education programs meet standards adopted by the board. The review will include an assessment of the extent to which the competencies in the program are being mastered by the

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students enrolled, the program costs are proportionate to educational benefits received, the curriculum is articulated and integrated with other curricular offerings required of all students, the program provides opportunities for students to pursue other educational interests in a postsecondary institutional setting, and the program removes barriers for all students to access educational and employment opportunities.

a. Process. Each community college will establish a process that ensures at least 20 percent of career and technical education programs are reviewed on an annual basis. The department will ensure compliance with this paragraph through the community college accreditation process established in 281—Chapter 21.

b. Components. The following minimum components will be addressed through the process outlined in paragraph 46.6(4)“a.”

(1) Industry or professional standards. Community colleges will utilize standards established and recognized by industry or professional organizations when available and appropriate. In lieu of these standards, community colleges will develop program standards through a structured group interview process, which involves committees of incumbent workers within an occupational cluster analyzing standards that include new and emerging technologies, job seeking, leadership, entrepreneurial, and occupational competencies. This analysis includes identifying standards that ensure program participants have access to instruction that leads to employment and further training. All standards will be analyzed for the reinforcement of academic skills.

(2) Program standards. Additional standards to be addressed during the program review include currency of curriculum; faculty qualifications; professional development; adequacy of equipment and facilities; student outcomes, in terms of student demographics to include gender, race and ethnicity, national origin, and disability; enrollment retention, completion, and replacement rates; articulation; and employment rates and wages.

(3) Advisory council. The community college will document how the program engages with the business community to recruit members for the advisory council under rule 281—46.8(258). Program review documentation will include a current member list with titles and employer; advisory committee meeting logistics including, but not limited to, meeting frequency, agendas, and minutes; advice the advisory council has suggested for the program; and any actions or results taken by the program that stem from this advice.

(4) Articulation. Teachers and administrators from both secondary and postsecondary instructional levels (when applicable) meet to identify competencies required at each level and to jointly prepare agreements of articulation between secondary and postsecondary levels for specific occupational areas. Such joint articulation efforts will facilitate the secondary-postsecondary transition and help reduce duplication between the two levels.

46.6(5) Program modification. Any modifications to a program are to be approved by the department. Modification includes a change to the courses in the program, a change to the description of a program, discontinuing a program or option, a change to instructional or occupational classification, or changes in program entrance requirements.

281—46.7(258) Accreditation standards not met.

46.7(1) The following are conditions under which a district has failed to meet accreditation standards:

a. A district fails to submit a program for approval under rule 281—46.6(256).

b. A program fails to comply with the corrective action process outlined in paragraph 46.6(1)“d” or 46.6(3)“c.”

46.7(2) Any findings under subrule 46.7(1) will be documented and reviewed as part of the comprehensive desk audit established under Iowa Code section 256.11(10)“a”(1).

a. A program identified under paragraph 46.7(1)“a” will not be used by a district to satisfy the minimum education program for career and technical education specified under 281—paragraph 12.5(5)“i.” Such a program is ineligible to receive funds distributed under rule 281—46.9(258).

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b. A program identified under paragraph 46.7(1)“*b*” will not be used by a district to satisfy the minimum education program for career and technical education specified under 281—paragraph 12.5(5)“*i*.”

281—46.8(258) Advisory council.

46.8(1) *General.* The board of directors of a school district or community college that maintains a career and technical education program receiving federal or state funds under this chapter will appoint an advisory council, which is governed by Iowa Code section 256.132. An advisory council established under this rule is to meet at least twice annually.

46.8(2) *Joint advisory council.* A school district and a community college that maintain a career and technical education program receiving federal or state funds may create a joint local advisory council that may serve in place of an advisory council under subrule 46.8(1).

46.8(3) *Regional advisory council.* A regional advisory council established by a regional career and technical education planning partnership approved by the department pursuant to rule 281—46.10(258) may serve in place of an advisory council under subrule 46.8(1).

46.8(4) *Membership.* The membership of each advisory council established under this rule is to consist of public members from multiple businesses within the occupation or occupational field related to the career and technical education program and of other stakeholders with expertise in the occupation or occupational field related to the career and technical education program. There will be a good-faith effort to include secondary and postsecondary career and technical education teachers from related secondary and postsecondary programs on the advisory council.

281—46.9(258) Distribution of career and technical education funds.

46.9(1) An approved regional career and technical education planning partnership is eligible to receive state funds for school districts and community colleges participating in the regional career and technical education planning partnership for purposes allowed under subrule 46.10(6).

a. At the beginning of a fiscal year, the department will assign to each partnership a portion of the total designated career and technical education funds appropriated to the department. The department will disburse funds to a partnership following approval of the multiyear plan pursuant to subrule 46.10(2).

b. Each partnership will be assigned a portion of the total career and technical education funds based on the following formula:

(1) Half of the total career and technical education funds to be disbursed equally between the approved partnerships.

(2) Half of the total career and technical education funds to be disbursed based on the number of students enrolled in approved career and technical education programs.

46.9(2) All federal funds shall be spent pursuant to the state plan pursuant to the federal Carl D. Perkins Career and Technical Education Improvement Act of 2006, codified at 20 U.S.C. §2301 et seq., as amended.

46.9(3) An approved regional career and technical education planning partnership receiving funds under this rule will comply with financial monitoring processes established by the department.

a. At the end of the state fiscal year, the fiscal agent of an approved regional career and technical education planning partnership will submit to the department financial forms and other evidence documents necessary for the department to complete a comprehensive review of all transactions completed during the previous fiscal year that involve state and federal funds issued to the approved regional career and technical education planning partnership by the department. Documentation will be submitted by the regional career and technical education planning partnership in a manner prescribed by the department.

b. Instances of transactions involving state and federal funds issued to an approved regional career and technical education planning partnership that are found to be noncompliant with state and federal regulations governing the use of such funds, including subrule 46.10(6), will be documented by the department.

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(1) The fiscal agent of the approved regional career and technical education planning partnership will be notified of any instances of noncompliance, and prepare, in consultation with the regional career and technical education planning partnership and department, a corrective action plan. The plan will, at a minimum, detail the policies and procedures to be implemented by the fiscal agent to ensure that subsequent transactions involving state and federal funds issued to the regional career and technical education planning partnership are compliant with applicable state and federal regulations.

(2) The corrective action plan is to be approved by the regional career and technical education planning partnership and submitted to the department for approval through the annual approval process established under subrule 46.10(2). The department will review and approve or deny approval of the corrective action plan. A regional career and technical education planning partnership required to create a corrective action plan must secure approval of the corrective action plan to be awarded continuing approval. A regional planning partnership that fails to secure continuing approval is subject to paragraph 46.10(2)“c.”

281—46.10(258) Regional career and technical education planning partnerships. Regional career and technical education planning partnerships are established to assist school districts in providing an effective, efficient, and economical means of delivering high-quality secondary career and technical education programs.

46.10(1) Establishment. Partnerships will be established to serve all school districts in the state no later than June 30, 2017.

a. There are established in the state no fewer than 12 and no more than 15 regions in which partnerships may operate.

b. A partnership will be considered established if approved pursuant to subrule 46.10(2).

c. Convening the regional career and technical education planning partnership is the joint responsibility of the area education agency and community college located within the region. In convening the partnership, the area education agency and community college will secure the participation of interim members of the partnership. When selecting interim members, the area education agency and community college are to ensure the membership provisions of subrule 46.10(3) are satisfied.

46.10(2) Approval. All partnerships will be approved by the department. As a condition of approval, each partnership will meet the following provisions:

a. Approval. Each partnership adopts bylaws in a manner and format prescribed by the department. The partnership submits to the department the partnership’s bylaws, a membership list that clearly denotes the membership under subrule 46.10(3) and the chair, vice-chair, and secretary, the designated fiscal agent for the partnership, minutes from recent meetings, and a schedule of future meetings.

b. Continuing approval. By June 30, 2018, and for each subsequent year, each partnership is to adopt a multiyear plan satisfying subrule 46.10(5). The multiyear plan and documents under paragraph 46.10(2)“a” will be reviewed and, as necessary, revised on an annual basis by the partnership and submitted to the department. To maintain approval, the partnership will maintain evidence that the duties assigned to the partnership under subrule 46.10(4) are performed on a continuing basis. In awarding continuing approval, the department will consider documented findings from the financial monitoring process established under subrule 46.9(3).

c. Failure to maintain approval. If the department denies or grants conditional approval of a partnership, the director, in consultation with the partnership, will establish a plan detailing all areas of deficiency and prescribing the procedures that must be taken to achieve approval and a timeline for completion of the prescribed procedures. A final plan will be submitted to the director within 45 days following notice of the department denying or granting conditional approval of a partnership. The partnership will continue to perform the duties assigned to the partnership under subrule 46.10(4) for the duration of the timeline established in the plan. If at the end of the timeline established in the plan the noted deficiencies have not been adequately addressed, the partnership will be denied approval. Within

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one year of the action to deny approval of the partnership, the director will establish a plan that details how the partnership will be merged or restructured.

d. Resolution of disputes. In the event of a dispute regarding the assignment of a district to a partnership under this rule, the director will first attempt to mediate the dispute. If mediation is unsuccessful, the director will schedule a hearing to obtain testimony. At the sole discretion of the director, the hearing may be held electronically or in person. The director will issue within ten days after the hearing a written decision that is a final administrative decision.

46.10(3) Membership. The membership of each partnership will consist of stakeholders in a position to contribute to the development and successful implementation of high-quality career and technical education programs. Each district that falls within the boundaries of the partnership will be represented on the partnership. Once established pursuant to subrule 46.10(1), the partnership is responsible for identifying and maintaining appropriate membership. Membership of the partnership will include the following:

a. The superintendent of a school district within the regional planning partnership, or the superintendent's designee.

b. The president of a community college within the regional planning partnership, or the president's designee.

c. The chief administrator of an area education agency within the regional planning partnership, or the chief administrator's designee.

d. Representatives of a regional work-based learning intermediary network.

e. Representatives of regional economic and workforce entities including regional advisory boards established under Iowa Code section 84A.4.

f. Representatives of business and industry, including representatives of regional industry sector partnerships.

g. Career and technical education teachers and faculty.

46.10(4) Duties. The partnership will perform the following duties on a continuing basis:

a. Develop a multiyear plan pursuant to subrule 46.10(5), which is to be updated annually.

b. Collect and review all relevant plans pursuant to the federal Carl D. Perkins Career and Technical Education Improvement Act of 2006, codified at 20 U.S.C. §2301 et seq., as amended; career and academic plans under 281—Chapter 49; and regional labor market, socioeconomic, and demographic information for purposes of facilitating the program review process specified under paragraph 46.10(4) "f" and regional activities specified in the state plan developed under the aforementioned federal Act.

c. Ensure compliance with standards adopted by the board for regional career and technical education planning partnerships.

d. Appropriately expend career and technical education funds in accordance with subrule 46.10(6) assigned to the partnership pursuant to rule 281—46.9(258).

e. Collect, review, and make available to districts appropriate labor market, socioeconomic, and other state, regional, or national information necessary for completing the program approval and review process pursuant to rule 281—46.6(256).

f. Review career and technical education programs of school districts within the region and recommend to the department career and technical education programs for approval in accordance with subrules 46.6(1) and 46.6(3).

g. Coordinate and facilitate advisory councils for career and technical education programs and, as necessary, establish regional advisory councils to serve in the same capacity as local advisory councils.

h. Plan for regional centers with the purpose of achieving equitable access to high-quality career and technical education programming and concurrent enrollment opportunities for all students.

46.10(5) Multiyear plan. The multiyear plan developed by the partnership will outline the partnership's goals, objectives, and outcomes; how the partnership will execute the authority and duties assigned to the partnership; how the partnership will secure collaboration with secondary schools, postsecondary educational institutions, and employers to ensure students have access to high-quality career and technical education programming, including career academies, that aligns career guidance,

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twenty-first century career and technical education and academic curricula, and work-based learning opportunities that empower students to be successful learners and practitioners; and how the partnership will ensure compliance with standards established under this rule. In addition, the multiyear state plan will include the following components:

a. Goals, objectives, and outcomes. The plan will detail the partnership's goals, objectives, and outcomes, which will include the following goals:

(1) Promote career and college readiness through thoughtful career guidance and purposeful academic and technical planning practices.

(2) Promote high-quality, integrated career and technical education programming, including career academies and the delivery of quality career and technical education programs by school districts in fulfillment of rule 281—46.4(256) comprised of secondary exploratory and transitory coursework to prepare students for higher-level, specialized academic and technical training aligned with labor market needs.

(3) Afford students the opportunity to access a spectrum of high-quality work-based learning experiences through collaboration with a work-based learning intermediary network.

(4) Afford all students equitable access to programs and encourage the participation of underrepresented student populations in career and technical education programming.

b. Process to measure goals, objectives, and outcomes. The plan will outline the processes to be used by the partnership to measure all goals, objectives, and outcomes established pursuant to paragraph 46.10(5)“a.”

c. Program approval and review process. The plan will outline the process the partnership will utilize in reviewing career and technical education programs of school districts within the region based on standards established in rule 281—46.6(256). The process will detail how 20 percent of programs will be reviewed on an annual basis. The partnership will provide a written five-year program review schedule that clearly indicates the specific year in which a program is to be reviewed within the five-year cycle.

d. Advisory councils. The plan will outline the process that the partnership will utilize in coordinating and facilitating local advisory councils for career and technical education programs under rule 281—46.8(258) and establishing regional advisory councils to serve in the same capacity as local advisory councils, as necessary.

e. Use of funds. The plan will detail the partnership's budget including intended use of funds designated to the partnership pursuant to rule 281—46.9(258). The intended use of funds will comply with subrule 46.10(6) and be clearly connected to the goals, objectives, and outcomes of the partnership established under paragraph 46.10(5)“a” and the needs of career and technical education programs and teachers as identified through the program approval and review process under rule 281—46.6(256).

f. Planning for regional centers. The plan will outline the process that the partnership will utilize in planning for regional centers, consistent with rule 281—46.12(258), with the purpose of achieving equitable access to high-quality career and technical education programming and concurrent enrollment opportunities for all students.

g. Meeting regularly. The plan will outline the intended schedule of partnership meetings for a five-year period. The partnership will meet at least twice per academic year.

h. Annual review of multiyear plan. The plan will outline the process to be utilized by the partnership to annually review and, as necessary, revise the plan. This process is to ensure that all members and stakeholders are included in the review and revision of the plan. The partnership will maintain a written record of all reviews of and revisions to the plan.

i. Assurance statement. The plan shall include, in a format prescribed by the department, an assurance that in all operations of and matters related to the partnership, the partnership does not discriminate against individuals protected under federal and state civil rights statutes.

46.10(6) Secondary career and technical education funds. An approved regional career and technical education partnership may use funds received from state and federal sources on behalf of school districts and community colleges participating in the regional career and technical education planning partnership for the following:

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a. Staffing and resources to ensure the minimum duties and responsibilities assigned to the regional planning partnership under subrules 46.10(4) and 46.10(5) are satisfactorily executed. The partnership will ensure adequate staffing and resources are committed to these purposes prior to allocating funds for any use authorized under paragraph 46.10(6)“*b.*”

b. To offer regional career and technical education professional development opportunities; coordinate, maintain, and support a career guidance system pursuant to 281—Chapter 49 and related work-based learning opportunities for students; and purchase career and technical education equipment and curricular resources to include standard classroom consumable supplies directly related to and necessary for the course curriculum, other than basic consumable supplies that will be made into products to be sold or used personally by students, teachers, and other persons.

281—46.11(258) Career academies.

46.11(1) *Establishment and responsibilities.* A career academy may be established under an agreement between a single school district and a community college, or by multiple school districts and a community college organized into a regional career and technical education planning partnership pursuant to rule 281—46.10(258). A career academy established under this rule will be a career-oriented or occupation-oriented program of study that includes a minimum of two years of secondary education, which may fulfill the sequential unit requirement in one of the four service areas pursuant to 281—subrule 12.5(5), includes concurrent enrollment programming aligned with a postsecondary education program that meets the requirements of 281—Chapter 22, and is approved by the director. A career academy will do all of the following:

a. Utilize regional career and technical education planning partnerships outlined in rule 281—46.10(258) in an advisory capacity to inform the selection and design of the career academy and establishment of industry standards.

b. Establish a program of study that meets all of the following criteria:

(1) Is designed to meet industry standards and prepare students for success in postsecondary education and the workforce.

(2) Integrates academic coursework; includes foundational and transitory career and technical education coursework; includes work-based learning; and utilizes the individual career and academic planning process established under 281—Chapter 49.

(3) Integrates as a portion of the career academy a hands-on, contextualized learning component.

(4) Allows students enrolled in the academy an opportunity to continue on to an associate degree and, if applicable, a postsecondary baccalaureate degree program.

46.11(2) *Contract or agreement.* A career academy must receive approval from district and community college boards participating in the career academy. A contract or 28E agreement is to set forth the purposes, powers, rights, objectives, and responsibilities of the contracting parties and be signed by all participating parties and be in effect prior to initiation of a career academy. An assurance form, as defined by the department, which specifies that the career academy includes all the components under this rule will be sent to the director.

46.11(3) *Faculty.* Faculty providing college credit instruction in a career academy program of study will meet community college faculty minimum standards as specified in 281—subrule 24.5(1) and the quality faculty plan as approved by the community college board pursuant to 281—subrule 24.5(7). Instructors teaching courses that provide only secondary level credit are to have appropriate secondary licensure pursuant to Iowa Code chapter 256, subchapter VII, part 3.

46.11(4) *Compliance.* Districts and community colleges will maintain compliance with the federal Carl D. Perkins Career and Technical Education Improvement Act of 2006, 20 U.S.C. §2301 et seq., as amended, in implementing career academies.

46.11(5) *Data collection.* Data collection and enrollment reporting is to contain such items as determined by the department.

281—46.12(258) Regional centers. The state board will adopt standards pertaining to regional centers. The standards include those which provide for increased and equitable access to high-quality career

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and technical education programs and require that regional centers incorporate appropriate educational programs, meet appropriate state and federal regulations for safety and access, maintain adequate participation, and are located within an appropriate distance of participating high schools, and that transportation is provided to all students.

46.12(1) *Minimum requirements.* As a condition for approval, a regional center will comply with standards adopted by the board and consist of a minimum of four career academies on site. A regional center will be compatible with the development of a statewide system of regional centers serving all students. A regional center will serve either of the following:

- a. A combined minimum of 120 students from no fewer than two school districts.
- b. A minimum of four school districts.

46.12(2) *Approval.* The director will approve all facilities meeting the standards for regional centers under this rule.

281—46.13(423F) Career academy incentive fund. A career academy incentive fund is a competitive grant program established by the department to expand opportunities for students to access high-quality career and technical education programming through innovative partnerships between school districts and community colleges.

46.13(1) *Allowable expenses.* Funding issued under this rule will be used by the recipient for purposes outlined in the proposal approved by the department to support the development of career academy infrastructure, including regional centers as defined under rule 281—46.12(258). For purposes of this rule, allowable expenses include the following:

- a. Purchase and improvement of grounds, including the legal costs relating to the property acquisition and surveys of the property.
- b. Construction of buildings and roads to buildings.
- c. Purchase or lease-purchase option agreements for buildings.
- d. Rental of facilities under Iowa Code chapter 28E.
- e. Purchase, lease, or lease-purchase of equipment or technology exceeding \$500 in value per purchase or lease-purchase transaction. “Equipment” means both equipment and furnishings.
- f. Repair, remodel, reconstruction, improvement, or expansion of buildings and the additions to existing buildings.

46.13(2) *Applicants.* Institutions eligible to apply for funds include a school district as defined under rule 281—12.2(256) or community college as defined under Iowa Code chapter 260C.

46.13(3) *Application proposals.* Institutions seeking funds under this rule shall submit an application proposal to the department in a format prescribed by the department. An application for funding that includes more than one institution will designate a single institution to receive funds on behalf of all participating institutions. At a minimum, all applications will include one school district and one community college, though applications consisting of multiple school districts and a community college are encouraged.

a. *Service area and aligned occupation.* Program information will be collected to identify the aligned service area and in-demand occupation as identified by the state workforce development board pursuant to Iowa Code section 84A.1B(14).

b. *Offerings and enrollments.* Information will be provided on all career academy offerings made available by the participating institutions. All school districts will provide actual or estimated enrollment by high school in each of the offered career academies over the proceeding five-year period.

c. *Program structure.* Each proposal will include a response to the following components:

(1) A sequence of coursework, inclusive of all aligned middle school, high school, and postsecondary offerings that constitute the career academy. The sequence of coursework is developed collaboratively between the school district or school districts and community college, and is to be depicted in a template provided by the department.

(2) A description and evidence of integrated project-, problem-, and work-based learning experiences.

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(3) Identification of the third-party industry certifications either made available to the student through the program or which the program prepares the student to complete.

d. Partnerships. If applicable, the applicant will provide information on all partnering institutions, and the extent to which each partnering institution is contributing resources to the initiative, including funds, staff, equipment, or other related resources.

e. Business and industry involvement. If applicable, the applicant will provide information on business and industry involvement, including input solicited on offerings, donation of equipment, and contribution of funds.

f. Approved contracts. Each district participating in the career academy will submit as evidence the contract approved by the district's board established pursuant to subrule 46.11(2).

46.13(4) Criteria for evaluating proposals.

a. Priority. Application proposals will be ranked and sorted according to the following priorities:

(1) First priority. Proposals for new career academies delivered collaboratively between multiple school districts and a community college through a regional center as defined under rule 281—46.12(258) will receive priority consideration.

(2) Second priority. Proposals for existing career academies delivered collaboratively between multiple school districts and a community college through a regional center as defined under rule 281—46.12(258) will receive second-priority consideration.

(3) Third priority. Proposals for new or existing career academies delivered through partnership arrangements other than a regional center, including but not limited to individual career academy offerings delivered by one school district, will receive third-priority consideration.

b. Occupational alignment. Proposals for career academies aligned with high-demand occupations as identified by the state workforce development board pursuant to Iowa Code section 84A.1B(14) will be given preferential consideration.

c. Improving access. Proposals for career academies that demonstrate that the grant funds will result in improved access to career and technical education programs for all students enrolled in participating school districts, including underrepresented and nontraditional students, as well as underserved geographical areas, will be given preferential consideration.

d. Program structure. The proposals will be evaluated to determine the extent to which the components of paragraph 46.13(3)“c” are evident in the career academy program.

e. Additional criteria. Subject to paragraphs 46.13(4)“a” and “b,” proposals will be evaluated against additional criteria including the following:

(1) Actual or projected enrollment for each participating high school over a five-year period is of sufficient size to support robust and sustainable offerings and justify the request for funding.

(2) Cumulative offerings provide students with access to a diverse array of coursework in multiple career and technical education service areas.

(3) If programming is delivered at an off-site location, the sending school district provides transportation to participating students.

f. Budget. Institutions will submit a complete budget for the proposal, including a comprehensive summary of costs and a complete list of funding sources to be put toward implementing and sustaining the initiative.

g. Regional center plan. Evidence will be provided to the department that the regional planning partnership established under this chapter and in which the applicants are participating members has developed a plan for regional centers under paragraph 46.10(4)“h.” The plan will identify any underserved areas of the region, including areas of low career and technical education enrollment and program offerings.

46.13(5) Awarding grants. The department may fully or partially award funds for proposals submitted pursuant to subrule 46.13(3).

a. The department will award funds for first-priority proposals that meet the criteria established in rank order. The department may award funds for second- and third-priority proposals based on availability of funds.

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b. A grant award issued under this rule will not exceed \$1 million. A first-priority proposal selected for funding will receive an award of no less than \$1 million. A second-priority proposal selected for funding will receive an award of no less than \$250,000.

46.13(6) Distribution of awarded grants. The department will award funds to the designated fiscal agent for approved proposals according to a payment schedule set by the department in consultation with the applicant. Initiatives approved for funding under this rule are to be completed within the agreed-upon time frame established in the payment schedule, with final payment awarded upon receipt of evidence that the initiative was completed as specified in the approved proposal, unless a waiver issued at the discretion of the director grants the recipient additional time to complete the approved proposal. Any unclaimed award balance will be used by the department to fund future initiatives under this rule.

These rules are intended to implement Iowa Code chapter 258.

ARC 7593C

EDUCATION DEPARTMENT[281]

Notice of Intended Action

Proposing rulemaking related to state standards and providing an opportunity for public comment

The State Board of Education hereby proposes to rescind Chapter 62, “State Standards for Progression in Reading,” Iowa Administrative Code, and to adopt a new chapter with the same title.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code section 256.7.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code section 279.68.

Purpose and Summary

Pursuant to Executive Order 10, this proposed rulemaking removes restrictive terms and unnecessarily duplicative statutory language. During the Regulatory Analysis process, one commenter requested that language that was removed because it restated statutory or regulatory text be restored. The Department of Education is not taking action on that request at this time.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the State Board for a waiver of the discretionary provisions, if any, pursuant to 281—Chapter 4.

Public Comment

Any interested person may submit written or oral comments concerning this proposed rulemaking. Written or oral comments in response to this rulemaking must be received by the Department no later than 4:30 p.m. on February 28, 2024. Comments should be directed to:

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Thomas A. Mayes
 Department of Education
 Grimes State Office Building, Second Floor
 400 East 14th Street
 Des Moines, Iowa 50319-0146
 Phone: 515.281.8661
 Email: thomas.mayes@iowa.gov

Public Hearing

Public hearings at which persons may present their views orally or in writing will be held as follows:

February 27, 2024 10 to 11 a.m.	Room B100 Grimes State Office Building Des Moines, Iowa
February 27, 2024 2 to 3 p.m.	Room B50 Grimes State Office Building Des Moines, Iowa

Persons who wish to make oral comments at a public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rulemaking.

Any persons who intend to attend a public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department and advise of specific needs by calling 515.281.5295.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking 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 rulemaking action is proposed:

ITEM 1. Rescind 281—Chapter 62 and adopt the following **new** chapter in lieu thereof:

CHAPTER 62
 STATE STANDARDS FOR PROGRESSION IN READING

281—62.1(256,279) Assessment of reading proficiency. All school districts shall assess reading proficiency of all students pursuant to this rule.

62.1(1) Assessment at beginning of school year. A school district will assess all students enrolled in kindergarten through grade three at the beginning of each school year for the students' level of reading or reading readiness.

62.1(2) Subsequent assessments throughout school year. A school district will provide to all students additional, brief assessments of reading achievement in a manner specified by the department, using assessments that meet the standards described in subrule 62.1(5).

62.1(3) Progress-monitoring instruments. For students identified as being persistently at risk in reading, as well as students who are becoming persistently at risk in reading, a school district will monitor the students' progress in reading with instruments that meet the standards in subrule 62.1(5), in at least a frequency specified by the department.

62.1(4) Statewide or locally determined assessments. Assessments may be locally determined or statewide, including an annual standard-based assessment, provided that all assessments for purposes of implementing this chapter meet the standards described in subrule 62.1(5).

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62.1(5) Standards for approval for assessments. Any assessment of reading or reading readiness under this rule and used to implement this chapter is to meet the following minimum standards before use by a school district:

a. Standards for all assessments. Any assessment used under this chapter, including instruments described in paragraphs 62.1(5)“b” and “c,” is to meet department-adopted minimum standards for reliability and validity, at the appropriate grade level and for the skills assessed. In addition, all assessments are to have information available concerning administration time per student, access to student data after completion, and amount of teacher training required.

b. Standards for universal-screening instruments. Any assessment used for universal-screening purposes under this chapter is to meet department-adopted minimum standards for the following statistical measures: area under the curve and specificity/sensitivity.

c. Standards for progress-monitoring instruments. Any assessment used for progress-monitoring purposes under this chapter is to meet department-adopted standards for number of forms of demonstrated equivalence and for the following statistical measure: reliability of slope.

d. Department publication of approved assessments. The department will annually publish or update a list of assessments approved pursuant to this subrule. Approved assessments will have a demonstrated ability to predict future reading performance.

62.1(6) Basic levels of reading proficiency on approved assessments. The department will determine benchmarks for basic levels of reading proficiency to be used with approved assessments based on the ability to predict meaningful future outcomes of a student’s reading performance that is sufficient to master appropriate grade four reading skills prior to the student’s promotion to grade four.

62.1(7) Assessment measures. Assessments administered to implement this chapter, when taken as a whole, are to measure phonemic awareness, phonics, fluency, vocabulary, and comprehension.

62.1(8) Noncompliant assessments. Assessments that do not meet the provisions of this rule may not be used by any school district to implement this chapter.

281—62.2(256,279) Tools for evaluating and reevaluating reading proficiency. The department identifies the following attributes of tools that may be used in evaluating and reevaluating reading proficiency:

62.2(1) Locally determined or statewide assessments. In evaluating and reevaluating students who are or may be at risk or persistently at risk in reading, school districts are to use assessments that meet the standards referenced in subrule 62.1(5).

62.2(2) Alternative assessments. If a school district determines, based on the clear and unique facts of a particular student’s case, that a particular student needs an alternative assessment to determine proficiency in reading, in addition to the assessments referred to in rule 281—62.1(256,279) and subrule 62.2(1), the alternative assessment is to be founded on scientifically based research and reasonably calculated to provide equivalent information about the student’s reading, in addition to information provided by the assessments referred to in rule 281—62.1(256,279) and subrule 62.3(1).

62.2(3) Portfolio reviews. School districts may review a portfolio of a student’s work to determine reading proficiency. Portfolio reviews are to be conducted using standard review criteria that are founded on scientifically based research. A portfolio review may be used along with assessments in rule 281—62.1(256,279) and subrule 62.2(1), but is not to be used in lieu of such assessments. The department is to maintain a list of portfolio review criteria that are adequate under this subrule.

62.2(4) Teacher observation. A student may initially be identified as being persistently at risk in reading proficiency based on teacher observation. A teacher observation under this subrule is to be based on department-approved observation criteria. Teacher observation shall not be used to determine that a student continues to be persistently at risk in reading.

62.2(5) Other tools. The department may identify additional tools for use in evaluating and reevaluating reading proficiency, so long as those tools are founded on scientifically based research.

62.2(6) Alternate assessment. If an individual with a disability has been determined to need an alternate assessment aligned to alternate academic achievement standards in reading, pursuant to rule 281—41.320(256B,34CFR300), that individual is to receive such alternate assessment, as well as

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alternate universal screening and progress monitoring pursuant to this chapter on instruments approved by the department.

62.2(7) *Noncompliant tools.* Tools that do not meet the provisions of this rule shall not be used by any school district to implement this chapter.

281—62.3(256,279) Identification of a student as being persistently at risk in reading.

62.3(1) *Definition of “persistently at risk in reading.”* A student is determined “persistently at risk” under the standard in Iowa Code section 279.68(1) “a.” A student is “at risk in reading” if the student did not meet the grade-level benchmark for one of the two most recent screening assessments administered pursuant to this chapter.

62.3(2) *Determination of a persistent risk in reading.*

a. In initially determining whether a student is persistently at risk in reading as defined in subrule 62.3(1), the school district will consider assessments referred to in rule 281—62.1(256,279) and subrule 62.2(1) or teacher observations that meet the criteria referenced in subrule 62.2(4).

b. In determining whether a student continues to be persistently at risk in reading, a school district will consider assessments referred to in rule 281—62.1(256,279) and subrule 62.2(1), with specific attention given to progress-monitoring results under subrule 62.2(3).

62.3(3) *Services offered to all students who are persistently at risk in reading.* A school district will provide intensive reading instruction to any student who is persistently at risk in reading. A school district will continue to provide the student with intensive reading instruction until the student is reading at grade level, at grade levels beyond grade three if necessary, as determined by the student’s consistently proficient performance on valid and reliable measures of reading ability that meet the provisions of rule 281—62.1(256,279). All services provided under this subrule will comply with rule 281—62.4(256,279).

62.3(4) *Notice to parents.* The district will comply with Iowa Code section 279.68(2) “b” and “c.”

281—62.4(256,279) Successful progression for early readers. Each school district shall provide the following:

62.4(1) *Intensive instructional services.* A school district will provide students who are persistently at risk in reading with the services specified in Iowa Code section 279.68(2) “a.”

62.4(2) *Reading enhancement and acceleration development initiative.* The intensive instructional services described in subrule 62.4(1) will be provided to all students in kindergarten through grade three who are identified as being persistently at risk in reading. The services will meet the specifications in the following paragraphs:

a. A school district will provide intensive instructional services during regular school hours, in addition to the regular reading instruction.

b. A school district will provide a reading curriculum that meets the standards of subrule 62.4(3).

62.4(3) *Reading curriculum for students who are persistently at risk in reading.* A curriculum that does not meet the standards of this subrule shall not be used to implement this chapter. To implement this subrule, a school district will provide a curriculum that meets the following guidelines and specifications:

a. Assists students assessed as persistently at risk in reading to develop the skills to read at grade level. Assistance shall include but not be limited to strategies that formally address dyslexia, when appropriate. For purposes of this paragraph, “dyslexia” means a specific learning disability that is neurobiological in origin, is characterized by difficulties with accurate or fluent word recognition and by poor spelling and decoding abilities, and may include difficulties that typically result from a deficit in the phonological component of language that is often unexpected in relation to other cognitive abilities and the provision of effective classroom instruction, as well as secondary consequences such as problems in reading comprehension and reduced reading experience that can impede growth of vocabulary and background knowledge.

b. Provides skill development in phonemic awareness, phonics, fluency, vocabulary, and comprehension.

c. Is supported by scientifically based research in reading.

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d. Is implemented by certified instructional staff with appropriate training and professional development. Such training and professional development will meet the provisions of 281—Chapter 83.

e. Is implemented by certified instructional staff with fidelity, which meets such standards for fidelity of implementation that the department may adopt.

f. Includes a scientifically based and reliable assessment, which meets the provisions of rule 281—62.1(256,279).

g. Provides initial and ongoing analysis of each student's reading progress, which meets the provisions of rule 281—62.1(256,279), with notice provided to parents pursuant to subrule 62.4(4).

h. Is implemented during regular school hours.

i. Provides a curriculum in core academic subjects to assist the student in maintaining or meeting proficiency levels for the appropriate grade in all academic subjects.

62.4(4) *Parent notice, involvement and support.* At a minimum and in addition to other provisions of this chapter, school districts will provide the following to all parents or guardians of students who are persistently at risk in reading:

a. At regular intervals, a school district will apprise the parent or guardian of academic and other progress being made by the student and give the parent or guardian other useful information.

b. In addition to required reading enhancement and acceleration strategies provided to students, a school district will provide parents or guardians of students who are persistently at risk in reading with a plan outlined in a parental contract, including participation in regular parent-guided home reading.

62.4(5) *Report to the department.* Each school district will report to the department the specific intensive reading interventions and supports implemented by the school district pursuant to this chapter. The department will annually prescribe the components of required or requested reports.

62.4(6) *Rule of construction: students who are at risk in reading.* Subject to paragraphs 62.4(6) "a" and "b," school districts may voluntarily provide additional services and interventions to students who are "at risk in reading" as defined in subrule 62.3(1).

a. School districts will provide progress monitoring to students who are at risk in reading.

b. If a student who was previously persistently at risk and is currently identified as at risk and falls below the grade-level benchmark on a locally determined number of progress monitoring probes, the student will be provided services under this rule until the next screening assessment administered pursuant to this chapter.

281—62.5(256,279) Ensuring continuous improvement in reading proficiency.

62.5(1) *General.* To ensure all children are reading proficiently by the end of third grade, each school district will comply with the provisions of Iowa Code section 279.68(3) "a."

62.5(2) *Relationship between this chapter and the department's general accreditation standards.* In addition to subrule 62.5(1), the department will consider compliance with and performance under this chapter in its enforcement of the general accreditation standards and school improvement process described in 281—Chapter 12.

281—62.6(256,279) Miscellaneous provisions.

62.6(1) *Services beyond third grade.* Students who are identified as persistently at risk in reading at the end of third grade remain entitled to intensive reading instruction. Nothing in this chapter prohibits a school district from determining a student above third grade is persistently at risk in reading or from providing services to a student so identified.

62.6(2) *Database.* In implementing subrule 62.4(5), the department may require school districts to enter assessment and progress monitoring data into a statewide database.

62.6(3) *Accredited nonpublic schools.* Nothing in this chapter prevents an accredited nonpublic school from voluntarily complying with this chapter. Nothing in this chapter prevents the department from offering universal screening or progress monitoring instruments to accredited nonpublic school students or prevents the department from allowing inclusion of those students' data in the database described in subrule 62.6(2).

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62.6(4) Rule of construction. Nothing in this chapter obligates a school district to select a particular assessment, instrument, tool, curriculum, or program, so long as the assessment, instrument, tool, curriculum, or program used meets the provisions of this chapter.

These rules are intended to implement Iowa Code section 279.68.

ARC 7594C**EDUCATION DEPARTMENT[281]****Notice of Intended Action****Proposing rulemaking related to educational programs and services for pupils in juvenile homes and providing an opportunity for public comment**

The State Board of Education hereby proposes to rescind Chapter 63, “Educational Programs and Services for Pupils in Juvenile Homes,” Iowa Administrative Code, and to adopt a new chapter with the same title.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code section 282.34.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code sections 280.30 and 280.31.

Purpose and Summary

Pursuant to Executive Order 10, this proposed rulemaking removes outdated, unnecessarily restrictive, and unnecessarily repetitive language. Additionally, the Department of Education has revised proposed rule 281—63.11(282) to provide additional staffing flexibility to Area Education Agencies (AEAs).

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the State Board for a waiver of the discretionary provisions, if any, pursuant to 281—Chapter 4.

Public Comment

Any interested person may submit written or oral comments concerning this proposed rulemaking. Written or oral comments in response to this rulemaking must be received by the Department no later than 4:30 p.m. on February 28, 2024. Comments should be directed to:

Thomas A. Mayes
Department of Education
Grimes State Office Building, Second Floor
400 East 14th Street
Des Moines, Iowa 50319-0146
Phone: 515.281.8661
Email: thomas.mayes@iowa.gov

EDUCATION DEPARTMENT[281](cont'd)

Public Hearing

Public hearings at which persons may present their views orally or in writing will be held as follows:

February 27, 2024 9:30 to 10 a.m.	Room B100 Grimes State Office Building Des Moines, Iowa
February 27, 2024 1:30 to 2 p.m.	Room B50 Grimes State Office Building Des Moines, Iowa

Persons who wish to make oral comments at a public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rulemaking.

Any persons who intend to attend a public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department and advise of specific needs by calling 515.281.5295.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking 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 rulemaking action is proposed:

ITEM 1. Rescind 281—Chapter 63 and adopt the following **new** chapter in lieu thereof:

CHAPTER 63
EDUCATIONAL PROGRAMS AND SERVICES
FOR PUPILS IN JUVENILE HOMES

281—63.1(282) Definitions.

63.1(1) Special programs cited in Iowa Code section 282.30 are referred to as juvenile shelter care homes and juvenile detention homes, and are referred to jointly as juvenile homes.

63.1(2) For purposes of this chapter, “school corporation” refers to school districts, state-approved charter schools, area education agencies (AEAs), and community colleges.

63.1(3) For purposes of this chapter, “aides” refers to aides and paraeducators as defined in Iowa Code section 272.12.

281—63.2(282) Forms.

63.2(1) The department of education will provide forms, which may be electronic or web-based, to AEAs for submitting program and budget proposals and for submitting claims, which are due according to Iowa Code section 282.31(1)“a.”

63.2(2) The department of education will also provide forms, which may be electronic or web-based, to AEAs for use by the juvenile homes requesting educational services, which are due according to the timelines in Iowa Code section 282.31 “b”(2). An AEA is to file a budget amendment for a newly established juvenile home requesting educational services 90 days prior to the initial delivery of the educational services.

281—63.3(282) Budget amendments. An AEA is to amend the budget during the fiscal year in which actual classrooms implemented are different than budgeted or there is a significant decrease or increase in the student membership that would change the number of teachers or aides necessary to support the average daily membership. An amendment is also necessary if actual expenditures vary significantly

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from expenditures that were budgeted. A significant variance in actual expenditures means that the amount of funding that would be reverted to or due from the state equals or exceeds 10 percent of the advance payments in the subsequent year prior to adjustments.

281—63.4(282) Area education agency responsibility. An AEA shall provide or make provision for an appropriate educational program pursuant to Iowa Code section 282.30(1) “a.” The provision of the educational program is to be pursuant to a written agreement that identifies the responsibilities of the AEA, juvenile home, and any other agency with which the AEA contracts to provide the educational program.

281—63.5(282) Educational program.

63.5(1) *Methods of program provision.* The AEA will provide the educational program by a manner specified by Iowa Code section 282.30(1) “b,” by enrolling the child in the educational program provided in the juvenile home, or by another delivery method with the approval of the department of education.

In accordance with Iowa Code section 273.2, an AEA will contract, whenever practicable, with other school corporations for the use of personnel, buildings, facilities, supplies, equipment, programs, and services.

63.5(2) *Final determination.* In the absence of a decision of a court regarding a child’s educational placement, the AEA where the child is living will make the final determination regarding the provision of the appropriate educational program for the child, in consultation with the district of residence of the child and with the juvenile home. In making this determination, consideration will be given to:

a. A preference for continuance of the child’s educational program that was in place prior to the child’s placement in the home. For students in custody of the state’s child welfare agency, school stability and the student’s ability to remain in his or her school of origin will be prioritized to the maximum extent appropriate consistent with the child’s best interest.

b. Placement into the least restrictive environment.

c. Development of a plan for future educational programming.

d. The provisions of the court order if the child was placed in the facility by a court.

e. Factors including, but not limited to, the child’s emotional or physical state, the child’s safety and the safety of others, the child’s identified or assessed academic abilities, and the projected duration of stay in the home.

63.5(3) *Cooperation with area education agency.* The AEA of the child’s district of residence, the school district of residence, the school district in which the home is located, other AEAs, the juvenile home and other appropriate agencies involved with the care or placement of the child will cooperate pursuant to Iowa Code section 282.30(2).

63.5(4) *Summer school programs.* Summer school programs, as distinguished from extended year programming, may be operated pursuant to Iowa Code section 282.31(5) and are considered as separate programs in each home. The fiscal year for a juvenile home program is from July 1 through June 30. Program and budget proposals submitted to the department of education prior to January 1, pursuant to Iowa Code section 282.31, may include requests for summer school programs, or portions of summer school programs, commencing July 1 of the subsequent fiscal year and summer school programs, or portions of summer school programs, ending June 30 of the subsequent fiscal year.

281—63.6(282) Special education. The AEA will establish policies and procedures for screening and evaluating students living in juvenile homes who may need special education.

63.6(1) *Assignment.* A diagnostic-educational team will be assigned by the AEA in which each program is located. This diagnostic-educational team includes individuals who are appropriately qualified to conduct special education evaluations and to assist in planning programs for students who are provided a special education program pursuant to an individualized education program (IEP).

63.6(2) *Duties.* The duties of this diagnostic-educational team include the screening of all students for potential special education needs, identifying children in need of special education, providing

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needed special education support services and assisting in the implementation of needed special education programs.

63.6(3) *Role of director of special education.* It is the responsibility of the AEA director of special education to ensure that all procedures related to due process, protection in evaluation, least restrictive environment, development of individual educational programs and other provisions of 281—Chapter 41 are adhered to for students provided a special education program pursuant to an IEP who are served in juvenile homes. In addition, the director is responsible for coordinating the activities of the special education program with other programs and services provided.

281—63.7(282) Other AEA services.

63.7(1) *Educational services.* Personnel from the educational services division of the local AEA will be made available to each program. Personnel will assist with curriculum development as well as provide all other services that are made available to local education agencies within the particular AEA.

63.7(2) *Media services.* Personnel from the media services division of the local AEA will be made available to each program. All services that are made available to local education agencies within the particular AEA are to be made available to these programs and students.

63.7(3) *Other responsibilities.* In addition to the above-mentioned responsibilities, AEA personnel will assist with coordination of program curricula with the curricula of the local district in which the home is located and with the transition of students from these programs to subsequent program placement. This coordination includes the establishment of procedures for ensuring that appropriate credit is available to the students while participating in the program.

281—63.8(282) Curriculum. Each program will use the minimum curriculum requirements for approved or accredited schools as a guide to developing specific content for each student's educational program. The content of each student's program is to be sufficient to enable the student to earn credit while participating in the program.

281—63.9(282) Disaster procedures. Each home will maintain a written plan containing emergency and disaster procedures that are clearly communicated to and periodically reviewed with staff.

281—63.10(282) Maximum class size.

63.10(1) Maximum class size in shelter care homes. The following maximum class size-to-staff ratio will be used in shelter care homes:

<u>Average Daily Membership</u>	<u>Full-Time Teacher</u>	<u>Educational Aide(s)</u>
10 or fewer	1	1 aide
More than 10 through 20	2	1 aide with more than 10 but fewer than 15 students 2 aides with 15 through 20 students
More than 20 through 30	3	2 aides with more than 20 but fewer than 25 students 3 aides with 25 through 30 students

63.10(2) Maximum class size in detention homes. The class size-to-staff ratio used in detention homes will be the same as that defined in subrule 63.10(1) unless the needs of the students in the class require a lesser ratio. If the needs of students in the class require a lesser ratio, it will be no greater than the following class size-to-staff ratio:

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<u>Average Daily Membership</u>	<u>Full-Time Teacher</u>	<u>Educational Aide(s)</u>
Fewer than 10	1	1 aide with 5 or fewer students 2 aides with more than 5 students
10 through 20	2	2 aides with fewer than 15 students 3 aides with 15 through 20 students
More than 20 through 30	3	3 aides with fewer than 25 students 4 aides with 25 through 30 students

Support for this staffing ratio is to be provided with the juvenile home budget proposals and with the juvenile home claims.

63.10(3) When a classroom is located in an off-site facility, a full-time educational aide may be assigned for each off-site classroom in addition to the number allowed in subrule 63.10(1) or 63.10(2).

63.10(4) The department of education may waive subrules 63.10(1), 63.10(2), and 63.10(3) if student characteristics such as the age range of students in the home or the percentage of students in the home involved in adult criminal proceedings necessitate a different class size-to-staff ratio. Any variance from the maximum prescribed class size-to-staff ratio must be approved by the department of education on an annual basis. Support for the waiver request is to be provided with the juvenile home budget proposals and with the juvenile home claims.

63.10(5) Average daily membership for determining class size in subrules 63.10(1) to 63.10(4) for the juvenile home budget proposals is based on the actual average daily membership from the year previous to the base year, average daily membership to date in the base year, and factors known at the time of the budget proposals that would impact the average daily membership in the budget year.

63.10(6) If the number of teachers and aides as determined in subrules 63.10(1), 63.10(2), and 63.10(3) was appropriately estimated for the juvenile home budget proposal and was approved by the department of education, and the actual number of teachers or aides is determined to be in excess of maximum class sizes based on the actual average daily membership of students on the juvenile home claims, the department of education may waive subrule 63.10(1), 63.10(2), or 63.10(3).

63.10(7) If the educational program at any one juvenile home is provided in more than one classroom location and using multiple classroom locations results in a different number of teachers and aides than would have been allowed if the students were in one classroom, the department of education may waive subrules 63.10(1) and 63.10(2). Support for the waiver request is to be provided with the juvenile home budget proposals annually.

63.10(8) The AEA will develop policies and procedures to monitor and ensure that the educational program is provided sufficient instructional staff.

281—63.11(282) Teacher certification and preparation.

63.11(1) Certification. At least one teacher who is assigned to these programs shall hold Iowa certification for Instructional Strategist I or II, or both, as appropriate to the grade level and needs of the students served.

63.11(2) In-service. Each teacher is to be provided appropriate in-service education opportunities annually in areas defined through needs assessments.

281—63.12(282) Aides. Educational aides will be provided preservice and in-service opportunities consistent with duties to be performed and work under the direct supervision of the teacher.

281—63.13(282) Accounting. Revenues, expenditures, and balances of the juvenile home programs will be accounted for in the manner provided in Uniform Financial Accounting for Iowa LEAs and AEAs, in effect on February 7, 2024, except as otherwise noted in these rules.

63.13(1) Fund. Juvenile home instructional programs will be accounted for in a special revenue fund. The fund balances are to be maintained in the special revenue fund at year-end, and the continuance or disposition of positive or negative fund balances will be determined by the department of education.

63.13(2) Tuition. Tuition paid or received will be calculated as follows:

EDUCATION DEPARTMENT[281](cont'd)

a. If juvenile home students not requiring special education attend a local school district, other than the district of residence, tuition is to be calculated in the manner prescribed in Iowa Code section 282.24 for determining tuition costs for any nonresident student attending a local school district. In lieu of paying tuition to the local school district for these students, the AEA may request the local school district to account for these students through the foster care facility claim process.

b. Tuition for students provided a special education program pursuant to an IEP will be paid by the district of residence, in accordance with the rules of special education and pursuant to Iowa Code chapter 282, to the district in which the juvenile home is located or to the AEA, whichever is providing the special education. The district in which the juvenile home is located or the AEA, whichever is providing the special education, will notify the district of residence if the child was being served on the third Friday in September by the district in which the home is located or by the AEA. The district in which the juvenile home is located or the AEA, whichever is providing the special education, will also notify the district of residence if the child was being served on December 1 by the district in which the home is located or by the AEA.

281—63.14(282) Revenues. Revenues include:

1. Funding received pursuant to Iowa Code section 282.31,
2. Tuition revenue from the district of residence or agency in another state for educational services provided for out-of-state students,
3. Tuition revenue from the district of residence for educational services for students provided a special education program pursuant to an IEP, and
4. Other miscellaneous funding received or accrued for the purpose of operating the juvenile home instructional programs.

281—63.15(282) Expenditures. Expenditures may include actual instructional expenditures, student support services expenditures, instructional staff support services expenditures, administrative support services, operations and maintenance of plant services, student transportation services, and interfund transfers for indirect costs. Supplies and equipment necessary to provide the educational program will be equivalent to those provided to a comparable number of students by the district in which the juvenile home is located. Classroom space is to be adequate for the number and needs of children in the juvenile home instructional program.

63.15(1) Instructional expenditures. Instructional expenditures include:

- a.* Salaries and employee benefits of employees providing instructional services. Included are teachers, substitutes, other instructional personnel, and aides.
- b.* Purchased services, supplies, and equipment, which are customarily considered instructional expenditures.
- c.* Intrafund transfers.
- d.* The department of education will annually determine the maximum amount that may be expended on instructional expenditures. Total expenditures for instructional services for each continuing classroom, other than salary and employee benefits, which are not provided pursuant to an IEP will not exceed 10 percent of the state average expenditure on instructional salaries and employee benefits in the juvenile home program in the year prior to the base year. New classrooms in the first year of operation will not exceed twice the maximum amount calculated.

63.15(2) Student and instructional staff support services and student transportation services expenditures. Among the services included in these categories are guidance services, transportation services, curriculum development, and library and instructional technology. Expenditures may include salaries, employee benefits, purchased services, supplies, equipment, and intrafund transfers.

63.15(3) Administrative support services, operation and maintenance of plant services, and interfund transfers. Administrative support services, operation and maintenance of plant services and interfund transfer expenditures may include:

EDUCATION DEPARTMENT[281](cont'd)

a. Intrafund transfers and actual costs of general administration services provided to the juvenile home program. Expenditures for general administrative costs will correspond to the amount of the administrator's time assigned and provided to the juvenile home program.

b. Intrafund transfers and actual costs of division administrative services provided to the juvenile home program. Expenditures for division administrative costs will correspond to the amount of the administrator's time assigned and provided to the juvenile home program.

c. Expenditures for the administrative services of administrative staff assigned directly to the juvenile home program.

d. Expenditures for business administration services provided to the juvenile home program. The juvenile home program may be charged for costs of providing business administration services. If the juvenile home program is charged for providing business administration services, the amount is to be either actual costs or the amount determined by using the restricted indirect cost rate applied to allowable juvenile home program expenditures.

e. The total of all expenditures for administrative services is to be no greater than the actual cost determined by the AEA's accounting records or 10 percent of the total expenditures in the juvenile home program, whichever is less.

f. Expenditures for operation and maintenance of plant services except as provided in subrule 63.15(4).

g. The total of all expenditures for administrative services and for operation and maintenance of plant services is to be no greater than the actual cost determined by the AEA's cost accounting system or 20 percent of the total expenditures in the juvenile home program, whichever is less.

63.15(4) *Unauthorized expenditures.* Expenditures do not include expenditures for debt services, for facilities acquisition and construction services including remodeling and facility repair, or for rental expenditures for classroom facilities when adequate space is available at the juvenile home or AEA.

63.15(5) *Charges for AEA services.* As provided by rule 281—63.6(282), subrule 63.7(1), or subrule 63.7(2), juvenile home students will have available to them special education support services, educational services, and media services comparable to those services made available to other students in the AEA; however, expenditures for these services are inherent costs to the respective AEA programs and are not to be assessed to the juvenile home educational program.

281—63.16(282) Claims. AEAs will submit program and budget proposals and claims consolidating all juvenile home education programs within each AEA. Certain program information may be required for each separate juvenile home.

63.16(1) The number of classrooms being provided by each AEA is to be reported on the budget proposals and claims. The number is to be expressed in terms of full-time equivalent (FTE) classrooms. One FTE represents a full-time teacher providing a program during the normal school year. One-tenth FTE will be added for each month of summer school taught on a daily full-time basis. A full school year and three months of summer school is calculated as 1.3 FTE.

63.16(2) Each teacher will keep a daily register pursuant to Iowa Code section 294.4.

63.16(3) The average daily membership of students of school age living in juvenile homes who are being provided an educational program will be reported on the budget proposals and claims. "Average daily membership (ADM)" means the average obtained by dividing the total of the aggregate days of attendance plus the aggregate days of absence by the total number of student contact days. Student contact days are the days during which the educational program is provided and students are under the guidance and instruction of the instructional professional staff. "Aggregate days" means the sum of the number of days of attendance and days of absence for all pupils who are enrolled during the school year. A student is considered enrolled after being placed in a juvenile home and taking part in the educational program. A student is considered to be in membership from the date of enrollment until the date of leaving the juvenile home or receiving a high school diploma or its equivalent, whichever occurs first. ADM will be calculated on the regular school year exclusive of summer session. School age is defined pursuant to Iowa Code chapter 282.

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281—63.17(282) Audits. AEAs will make the records related to providing educational services for juvenile homes available to independent auditors, state auditors and department of education staff on request.

281—63.18(282) Waivers. A waiver may be requested by an AEA that presents evidence of a need for a different configuration of expenditures under paragraph 63.15(1) “d,” 63.15(3) “a,” 63.15(3) “b,” 63.15(3) “e,” or 63.15(3) “g,” or subrule 63.15(4) or 63.15(5). The AEA may annually request the waiver and will include the waiver request and the evidence specified by this rule with the program and budget proposal or budget amendment submitted pursuant to rule 281—63.2(282) or 281—63.3(282). An approved waiver related to rent payment to the juvenile home does not necessitate an annual waiver request except in any year that the rental contract terms change from the rental contract terms in the previous year.

63.18(1) If the department denies a waiver request, the AEA that was denied may request within ten days of notification of the denial that the director of the department of education review the denial of the waiver request.

63.18(2) It is the intent of the department of education to waive provisions of this chapter only when it is determined that they would result in unequal treatment of the AEAs or cause an undue hardship to the requesting AEA and the waiver clearly is in the public interest.

These rules are intended to implement Iowa Code sections 282.30 and 282.31.

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EDUCATION DEPARTMENT[281]

Notice of Intended Action

**Proposing rulemaking related to child development coordinating council
and providing an opportunity for public comment**

The State Board of Education hereby proposes to rescind Chapter 64, “Child Development Coordinating Council,” and to adopt a new chapter with the same title, and to rescind Chapter 67, “Educational Support Programs for Parents of Children Aged Birth Through Five Years Who Are at Risk,” Iowa Administrative Code.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code section 279.51.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code chapter 256A and Iowa Code section 279.51.

Purpose and Summary

This Notice is proposed pursuant to Executive Order 10. The current chapters provide grant support for a preschool program (281—Chapter 64) and a family support program (281—Chapter 67), both for at-risk children and families and both administered by the Department of Education on behalf of the Child Development Coordinating Council (CDCC). Both programs are supported by an annual legislative appropriation.

Because of similar standards and objectives, the Department proposes consolidating the two chapters into one. The current chapters contain unnecessarily restrictive terms and unneeded duplication of statutory text. Additionally, by consolidating these two chapters into one, the Department proposes reducing rules that are duplicative between the chapters.

Fiscal Impact

EDUCATION DEPARTMENT[281](cont'd)

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the State Board for a waiver of the discretionary provisions, if any, pursuant to 281—Chapter 4.

Public Comment

Any interested person may submit written or oral comments concerning this proposed rulemaking. Written or oral comments in response to this rulemaking must be received by the Department no later than 4:30 p.m. on February 27, 2024. Comments should be directed to:

Thomas A. Mayes
Department of Education
Grimes State Office Building, Second Floor
400 East 14th Street
Des Moines, Iowa 50319
Phone: 515.281.8661
Email: thomas.mayes@iowa.gov

Public Hearing

Public hearings at which persons may present their views orally or in writing will be held as follows:

February 27, 2024 11:30 a.m. to 12 noon	Room B100 Grimes State Office Building Des Moines, Iowa
February 27, 2024 3:30 to 4 p.m.	Room B50 Grimes State Office Building Des Moines, Iowa

Persons who wish to make oral comments at a public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rulemaking.

Any persons who intend to attend a public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department and advise of specific needs by calling 515.281.5295.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking 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 rulemaking action is proposed:

ITEM 1. Rescind 281—Chapter 64 and adopt the following **new** chapter in lieu thereof:

CHAPTER 64
CHILD DEVELOPMENT COORDINATING COUNCIL

EDUCATION DEPARTMENT[281](cont'd)

281—64.1(256A,279) Purpose. These rules structure the child development coordinating council and set forth its operating procedures.

281—64.2(256A,279) Definitions applicable to this chapter.

“*Council*” means the child development coordinating council.

“*Department*” means the department of education.

“*Grantee*” means the applicant designated to a grant under this chapter.

“*Parent*” means biological, adoptive, surrogate, or foster parent, or guardian.

281—64.3(256A,279) Child development coordinating council. The council members are set forth in Iowa Code section 256A.2. The Iowa resident parent will be chosen by the Iowa Head Start Association.

281—64.4(256A,279) Procedures.

64.4(1) A quorum consists of two-thirds of the voting members.

64.4(2) When a quorum is present, a position passes when approved by a majority of voting members.

64.4(3) The council will meet at least four times per year and may meet more often at the call of the chair or a majority of voting members.

64.4(4) The chairperson and vice-chair will be elected by the council for a term of two years. After the initial two-year term as vice-chair, the vice-chair will assume the role of chairperson for a term of two years.

281—64.5(256A,279) Duties. The duties of the council are provided in Iowa Code sections 256A.3 and 279.51.

281—64.6(256A,279) Application process. The council will advise the department to announce through public notice the opening of an application period for both Division I and Division II of this chapter.

281—64.7(256A,279) Request for proposals. Applications for grants under either division of this chapter will be distributed by the department upon request. Proposals not containing the specified information or not received by the specified date will not be considered. All applications are to be submitted in accordance with instructions in the requests for proposals and are to be submitted to the department.

281—64.8(256A,279) Notification of applicants. The council will advise the department to notify applicants of the decision to approve or disapprove the proposal within 45 days of the deadline for applications. Negotiations may be required. Successful applicants will be requested to have an official with vested authority sign a contract with the department.

281—64.9(256A,279) Withdrawal of contract offer. If the applicant and the department are unable to successfully negotiate a contract, the council may withdraw the award offer.

281—64.10(256A,279) Evaluation. The grantee will cooperate with the council and provide requested information to determine how well the goals and objectives of the project are being met.

281—64.11(256A,279) Contract revisions and budget reversions. The grantee will immediately inform the department of any revisions in the project budget. The department and the grantee may negotiate a revision to the contract to allow for expansion or modification of services but will not increase the total amount of the grant. Grant funds unencumbered or unobligated at the conclusion of the program period revert to the department. The program period concludes at the end of the five-year grant cycle, if an annual renewal grant within the five-year grant cycle is not awarded, or at any time the grant is discontinued during the five-year grant cycle.

EDUCATION DEPARTMENT[281](cont'd)

281—64.12(256A,279) Termination for convenience. The contract may be terminated in whole or in part when both parties agree that the continuation of the project would not produce beneficial results commensurate with the future expenditure of funds. The parties will agree upon the termination conditions, including the effective date, and in the case of partial terminations, the portion to be terminated. The grantee shall not incur new obligations for the terminated portion after the effective date, and cancel as many outstanding obligations as possible.

281—64.13(256A,279) Termination for cause. The contract may be terminated in whole or in part at any time before the date of completion, whenever it is determined by the council that the grantee has failed to comply substantially with the conditions of the contract. The grantee will be notified in writing by the department of the reasons for the termination and the effective date. The grantee shall not incur new obligations for the terminated portion after the effective date of termination and cancel as many outstanding obligations as possible.

The department will administer the grants under this chapter contingent upon funding availability. If there is a lack of funds necessary to fulfill the fiscal responsibility of the child development grants and the public school grants, the contracts will be terminated or renegotiated. The department may terminate or renegotiate a contract upon 30 days' notice when there is a reduction of funds by executive order.

281—64.14(256A,279) Responsibility of grantee at termination. Within 45 days of the termination, the grantee will supply the department with a financial statement detailing all costs up to the effective date of the termination. If the grantee expends money for other than specified budget items approved by the council, the grantee will return moneys for unapproved expenditures.

281—64.15(256A,279) Appeal from terminations. Any agency or public school aggrieved by a termination of a contract for cause pursuant to rule 281—64.13(256A,279) may appeal the decision to the director of the department in writing within 30 days of the decision to terminate. The hearing procedures found at 281—Chapter 6 apply to appeals of terminated grantees, except that the rules on consolidation, severance, waiver of proceedings, and manner of hearing do not apply.

In the notice of appeal, the grantee will give a short and plain statement of the reason for the appeal.

The director will issue a decision within a reasonable time, not to exceed 120 days from the date of the hearing.

281—64.16(256A,279) Refusal to issue ruling. The director may refuse to issue a ruling or decision upon an appeal for good cause. Good cause includes the following reasons:

1. The appeal is untimely;
2. The appellant lacks standing to appeal;
3. The appeal is not in the proper form or is based upon frivolous grounds;
4. The appeal is moot because the issues raised in the notice of appeal or at the hearing have been settled by the parties;
5. The termination of the grant was beyond the control of the department because it was due to lack of funds available for the contract.

281—64.17(256A,279) Request for Reconsideration. An applicant who has not been approved for funding may file a Request for Reconsideration with the director of the department in writing within ten days of the decision to decline to award a grant. In order to be considered by the director, the Request for Reconsideration is to be based upon one of the following grounds:

1. The decision process was conducted in violation of statute or rule;
2. The decision violates state or federal law, policy, or rule (to be cited in the Request);
3. The decision process involved a conflict of interest.

Within 20 days of filing a Request for Reconsideration, the requester will submit all written documentation, evidence, or argument in support of the request. The director will notify the council of the request and provide the council an opportunity to defend its decision with written documentation,

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evidence, or argument, which is to be submitted within 20 days of receipt of the request. The council will provide copies of all documents to the requester at the time the items are submitted to the director.

The director will issue a decision granting or denying the Request for Reconsideration within 30 days of the receipt of the evidence, or no later than 60 days from the date of Request for Reconsideration, unless a later date is agreeable to the requester and the council.

281—64.18(256A,279) Refusal to issue decision on request. The director may refuse to issue a decision on a Request for Reconsideration upon good cause. Good cause includes the following reasons:

1. The request was untimely;
2. The requester lacks standing to seek reconsideration;
3. The request is not based on any of the available grounds in rule 281—64.17(256A,279), or is merely frivolous or vexatious;
4. The requester failed to provide documentation, evidence or argument in support of its request;
5. The request is moot due to negotiation and settlement of the issue(s).

281—64.19(256A,279) Granting a Request for Reconsideration. If the director grants a Request for Reconsideration, the council will consider the grantee's application in accordance with the director's findings and decision.

DIVISION I

EDUCATIONAL SUPPORT PROGRAMS FOR PARENTS OF CHILDREN AGED BIRTH THROUGH FIVE YEARS WHO ARE AT RISK (ALSO KNOWN AS SHARED VISIONS PARENT SUPPORT PROGRAMS)

281—64.20(256A,279) Definitions.

"Applicant" means a public school district, an area education agency or an agency which applies for the funds to provide quality educational support programs to parents of children aged birth through five years who are at risk, with an emphasis on parents of children aged birth through three years.

"Children who are at risk" means children aged birth through five years who are at risk because of physical or environmental influence.

"Educational support services" means individual or group opportunities providing information to parents which focuses on parenting skills, child growth and development, building of self-concept, nutrition, positive guidance techniques, family resource management, parent literacy, and how to access the array of supportive services from a network of agencies that are available to families with young children who are at risk.

"Quality educational support services" means educational support services that have a qualified or trained staff to provide a program which meets the needs of parents through the use of a validated curriculum or which is based on a model project which has proven successful in another state or location.

281—64.21(256A,279) Eligibility identification procedures. In a year in which funds are made available by the Iowa legislature, the council will award grants to applicants for the provision of educational support services to parents of children aged birth through five years who are at risk, with priority to applicants that serve parents of children aged birth through three years who are at risk. Funds will be made available on a competitive basis to schools or nonprofit agencies demonstrating an ability to provide quality educational support services to parents of children aged birth through five years who are at risk. Competitive grants will be awarded with a renewal option for up to five years contingent upon the awardee's meeting program requirements. If program requirements are not met, the council will advise the department to discontinue grant funding at the start of the following fiscal year.

281—64.22(256A,279) Eligibility. The available funds shall be directed to serve parents of children aged birth through five years who are at risk in the primary eligibility category as follows:

Parents having one or more children aged birth through five years who meet the current income eligibility guidelines for free and reduced price meals under the child nutrition program.

EDUCATION DEPARTMENT[281](cont'd)

281—64.23(256A,279) Secondary eligibility. The available funds shall be directed to serve parents of children aged birth through five years who are at risk when children qualify in one or more of the secondary eligibility categories as follows:

1. Children who are abused.
2. Children functioning below chronological age in two or more developmental areas, one of which may be English proficiency, as determined by an appropriate professional.
3. Children born with one or more factors that are established as high risk for developmental delay, such as very low birth weight (under 1,500 grams—approximately three pounds) or with conditions such as spina bifida, Down syndrome, or other genetic disorders.
4. Children born to a parent who was under the age of 18.
5. Children residing in a household where one or more of the parents or guardians:
 - Has not completed high school;
 - Has a substance use disorder;
 - Has a chronic mental illness;
 - Is incarcerated;
 - Has low literacy skills;
 - Has a history of child or spouse abuse; or
 - Is an English learner.
6. Children having other special circumstances, such as foster care or being homeless.

281—64.24(256A,279) Grant awards criteria.

64.24(1) Criteria points. The following information will be provided and points will be awarded to applicants based on the following criteria as stated in the request for proposal:

- a. Identification of parents of children who are at risk.
- b. Positive family focus.
- c. Educational support programs to provide family services.
- d. Community and interagency coordination.
- e. Overall program evaluation.
- f. Letters of community support.
- g. Program budget (administrative costs not to exceed 10 percent of total award).

64.24(2) Additional grant components. The following information will be provided and points will be awarded to applicants based on the following additional components.

- a. Documentation of a need for this project.
- b. Justification of how this project will utilize services from other agencies and how this project will supplement services to the eligible population.
- c. Identification of the curriculum to be used or the model to be replicated.
- d. Demonstration that persons qualified to administer these educational support services to parents will be employed.

281—64.25(256A,279) Award contracts.

64.25(1) Grants for educational support services to parents of children aged birth through five years who are at risk shall not supplant other existing funding sources.

64.25(2) Administrative costs are limited to 10 percent of the total award.

281—64.26(256A,279) Grantee responsibilities. The grantee will maintain records which include:

1. Demographic information on parents and children served.
2. Qualifying criteria for those parents receiving educational support services.
3. Documentation of the number of contact hours in either individual or group sessions with parents.
4. Documentation of the type of educational support service provided to parents.
5. Indication of where the services were provided, i.e., home, school or community facility.

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6. Evaluation of how each project goal and objective was met, on what timeline, and with what success rate.

7. Record of expenditures and an annual audit. Grant funding is to support direct services to families and their children to the fullest extent possible.

8. Other information specified by the council necessary to the overall evaluation.

Grantees will complete a year-end report on forms provided by the department documenting the information outlined in this rule.

DIVISION II
CHILD DEVELOPMENT PROGRAMS (ALSO KNOWN AS SHARED VISIONS PRESCHOOL PROGRAMS)

281—64.27(256A,279) Definitions applicable to this division.

“*Applicant*” means a public or private nonprofit organization, licensed by the department of health and human services or approved by the department of education, which applies for the state child development funds.

“*Child development grants*” means the funds awarded by the council to assist child development programs.

“*Children who are at risk*” means a student who meets one or more of the primary and secondary risk factors stated in rules 281—64.29(256A,279) and 281—64.30(256A,279).

“*Low-income family*” means a family who meets the financial eligibility criteria for free and reduced price meals offered under the child nutrition program.

“*Project*” means the child development program for which grant funds are requested.

“*Public school applicant*” means a public school district approved by the department which applies for the state public school child development funds.

“*Public school child development grants*” means the funds awarded by the council to assist public school child development programs as established in Iowa Code section 279.51.

“*Public school grantee*” means the applicant designated to receive public school child development grants.

“*Public school project*” means the public school child development program for which grant funds are requested.

281—64.28(256A,279) Eligibility identification procedures. In a year in which funds are made available by the Iowa legislature, the council will grant awards on a competitive basis to child development programs for three- and four-year-old children who are at risk and public school child development programs for three-, four-, and five-year-old children who are at risk. Competitive grants will be awarded with a renewal option for up to five years when grantees meet program requirements. If program requirements are not met, the council will advise the department to discontinue grant funding at the start of the following fiscal year.

281—64.29(256A,279) Primary eligibility.

64.29(1) *Child development grants.* At least 80 percent of the funded available enrollment slots for three- and four-year-old children who are at risk will be directed to serve children in primary eligibility categories as follows:

- a. Children reaching three or four years of age on or before September 15 of the contract year; and
- b. Members of a low-income family.

64.29(2) *Public school child development grants.* At least 80 percent of the funded available enrollment for three-, four-, and five-year-old children who are at risk in public school child development programs will be directed to serve children in primary eligibility categories as follows:

- a. Children reaching three, four, or five years of age on or before September 15 of the contract year; and
- b. Members of a low-income family.

64.29(3) *Enrollment criteria.* Applicants are to document the number of children enrolled under primary eligibility and the criteria used for enrollment.

EDUCATION DEPARTMENT[281](cont'd)

281—64.30(256A,279) Secondary eligibility.

64.30(1) Criteria. Up to 20 percent of the available funded child development enrollment slots for at-risk may be filled by children who are three or four years of age on or before September 15 or public school enrollment slots by children who are three, four, or five years of age on or before September 15; are above the income eligibility guidelines provided that they are served on a sliding fee schedule determined at the local level; and are eligible according to one or more of the following criteria if the child:

- a. Is functioning below chronological age in two or more developmental areas, one of which may be English proficiency, as determined by an appropriate professional;
- b. Was born with one or more factors that are established as high risk for developmental delay, such as very low birth weight (under 1,500 grams—approximately three pounds) or with conditions such as spina bifida, Down syndrome, or other genetic disorders;
- c. Was born to a parent who was under the age of 18;
- d. Resides in a household where one or more of the parents or guardians:
 - (1) Has not completed high school;
 - (2) Has a substance use disorder;
 - (3) Has a chronic mental illness;
 - (4) Has low literacy skills;
 - (5) Is incarcerated; or
 - (6) Has a history of child or spousal abuse; or
- e. Has other special circumstances, such as foster care or being homeless.

The program may include children without risk factors, provided they are at full pay and meet other age requirements.

64.30(2) Enrollment criteria. Applicants are to document the number of children enrolled under secondary eligibility and the criteria used for enrollment.

281—64.31(256A,279) Grant awards criteria.

64.31(1) Criteria points. The following information shall be provided and points awarded to applicants based on the following criteria as stated in the request for proposal:

- a. Provision of a comprehensive child development program.
- b. Limited class size.
- c. Child-teacher ratios of not less than one staff member per eight children.
- d. Provision of parental involvement.
- e. Demonstration of community support.
- f. Utilization of services provided by other community agencies.
- g. Use of qualified teachers.
- h. Existence of a plan for program evaluation including, but not limited to, measurement of student outcomes.
- i. Developmentally appropriate practices.

64.31(2) Additional grant components. The following information shall be provided and points awarded to applicants based on the following additional components.

- a. Program summary.
- b. Research documentation.
- c. Identification and documentation of local populations who are at risk.
- d. Letters of community support.
- e. Program budget (administrative costs not to exceed 10 percent of total award).

281—64.32(256A,279) Grant process.

64.32(1) An applicant will make formal response using forms issued and procedures established by the council.

64.32(2) A rating team composed of persons with expertise in child development programs and fiscal management experience will review and rank the proposals.

EDUCATION DEPARTMENT[281](cont'd)

64.32(3) The council has the final discretion to award funds.

64.32(4) The council will advise the department to notify successful applicants and to provide to each of them a contract for signature.

281—64.33(256A,279) Grantee responsibilities.

64.33(1) The grantee will maintain records which include but are not limited to:

a. Information on children and families served.

b. Direct services provided to children.

c. Record of budget, including expenditures. Grant funding is to support direct services to children to the fullest extent possible. Administrative costs under these programs is limited to 10 percent of the total award.

d. Other appropriate information specified by the council necessary to the overall evaluation.

Monitoring of such records will be conducted through the submission of annual reports by the grantee and may include on-site review as determined necessary by the department.

64.33(2) Programs in year one of award. Each program in year one of a grant shall meet the program standards and accreditation criteria of the National Association for the Education of Young Children, the Iowa quality preschool program standards, or other approved program standards as determined by the department during the program's first year of funding. Programs that do not attain accreditation or that do not receive a waiver will not be funded.

64.33(3) Programs in renewal years.

a. Programs shall participate in the renewal process and maintain accreditation with the National Association for the Education of Young Children, the Iowa quality preschool program standards and criteria, or other approved program standards as determined by the department. Programs unable to maintain accreditation may apply for a waiver of accreditation within 30 days of the change in accreditation status. Waivers are awarded at the discretion of the council. Programs that do not maintain accreditation or that do not receive a waiver will not be funded.

b. Continuation of a grantee's participation for a second or subsequent renewal year is subject to the approval of the department based upon the grantee's compliance with program requirements and the department's review of the grantee's implementation of the grant program.

c. Awarded grantees are to maintain the program standards identified in the awarded application throughout the five-year grant cycle, unless unforeseen circumstances occur. Such circumstances will be considered at the discretion of the council.

64.33(4) Grantees will provide annual reports that include information detailing progress toward goals and objectives, expenditures and services provided on forms provided for those reports. Failure to submit reports by the due date will result in suspension of financial payments to the grantee until the time that the report is received. No funds will be made available to programs in renewal years when there are delinquent reports from prior years. No new initial awards will be made to programs when there are delinquent reports from prior grant cycles.

64.33(5) Grantees may use funds in a manner consistent with Iowa Code section 279.51(2) "b."

64.33(6) Any contract under this division may be terminated in whole or in part by June 30 of the current fiscal year in the event that the grantee has not attained accreditation of the program standards identified in the awarded application or has not been awarded a waiver of accreditation by the council.

These rules are intended to implement Iowa Code chapter 256A and section 279.51.

ITEM 2. Rescind and reserve **281—Chapter 67.**

ARC 7595C**EDUCATION DEPARTMENT[281]****Notice of Intended Action****Proposing rulemaking related to school business official preparation programs
and providing an opportunity for public comment**

The State Board of Education hereby proposes to rescind Chapter 81, “Standards for School Business Official Preparation Programs,” Iowa Administrative Code, and to adopt a new chapter with the same title.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code section 256.7(5) and 256.7(30)“a.”

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code section 256.7(30)“a.”

Purpose and Summary

Pursuant to Executive Order 10, the Department of Education is proposing to remove unduly restrictive language, remove inflexible language that does not apply to all potential eligible institutions, and incorporate statutory language by reference when available.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the State Board for a waiver of the discretionary provisions, if any, pursuant to 281—Chapter 4.

Public Comment

Any interested person may submit written or oral comments concerning this proposed rulemaking. Written or oral comments in response to this rulemaking must be received by the Department no later than 4:30 p.m. on February 28, 2024. Comments should be directed to:

Thomas A. Mayes
Department of Education
Grimes State Office Building, Second Floor
400 East 14th Street
Des Moines, Iowa 50319-0146
Phone: 515.281.8661
Email: thomas.mayes@iowa.gov

Public Hearing

Public hearings at which persons may present their views orally or in writing will be held as follows:

EDUCATION DEPARTMENT[281](cont'd)

February 27, 2024
11 to 11:30 a.m.

Room B100
Grimes State Office Building
Des Moines, Iowa

February 27, 2024
3 to 3:30 p.m.

Room B50
Grimes State Office Building
Des Moines, Iowa

Persons who wish to make oral comments at a public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rulemaking.

Any persons who intend to attend a public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department and advise of specific needs by calling 515.281.5295.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking 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 rulemaking action is proposed:

ITEM 1. Rescind 281—Chapter 81 and adopt the following **new** chapter in lieu thereof:

CHAPTER 81

STANDARDS FOR SCHOOL BUSINESS OFFICIAL PREPARATION PROGRAMS

281—81.1(256) Definitions.

“*Area education agency*” or “*AEA*” means a regional service agency that provides school improvement services for students, families, teachers, administrators, and the community.

“*Department*” means the department of education.

“*Director*” means the director of the department of education.

“*Institution*” means a public or private institution of higher education, an AEA, or a professional organization offering a school business official preparation program(s) and renewal credits.

“*Novice*” means an individual in a school business official position who has no previous experience in that position or who is newly authorized by the board of educational examiners.

“*School business official candidates*” means individuals who are enrolled in school business official preparation programs leading to authorization by the board of educational examiners to practice as school business officials.

“*School business official preparation programs*” means the programs of school business official preparation that lead to authorization to practice as a school business official.

“*State board*” means the Iowa state board of education.

281—81.2(256) Institutions eligible to provide a school business official preparation program. Institutions of public and private higher education, AEAs, and professional organizations engaged in the preparation of school business officials shall meet the standards contained in this chapter to obtain and maintain state board approval of their programs. Each institution that seeks state board approval of its programs for school business official preparation will file evidence of the extent to which each program meets the standards contained in this chapter. Such evidence will be demonstrated by means of a written self-evaluation report and an evaluation conducted by the department and prepared using a template developed by the department. Only approved programs may recommend candidates for school business official authorization.

EDUCATION DEPARTMENT[281](cont'd)

281—81.3(256) Approval of programs. Approval by the state board of an institution's school business official preparation program will be based on the recommendation of the director after study of the factual and evaluative evidence on record about each program in terms of the standards contained in this chapter.

81.3(1) Approval, if granted, is for a term of seven years; however, approval for a lesser term may be granted by the state board if it determines conditions so warrant.

81.3(2) If approval is not granted, the applicant institution will be advised of the areas in which improvement or changes appear to be essential for approval. In this case, the institution will be given the opportunity to present information concerning its programs at a regularly scheduled meeting of the state board, no later than three months following the board's initial decision.

81.3(3) Programs may be granted conditional approval upon review of appropriate documentation. In such an instance, the program will receive a full review after one year or, in the case of a new program, at the point at which candidates demonstrate mastery of standards for authorization.

81.3(4) The standards herein apply regardless of delivery mode of instruction.

281—81.4(256) Governance and resources standard. An institution's governance structure and resources will adequately support the preparation of school business official candidates to meet professional, state, and institutional standards in accordance with the following provisions.

81.4(1) A clearly understood governance structure provides guidance and support for the school business official preparation program.

81.4(2) Procedures for an appeals process for candidates are clearly communicated and provided to all candidates.

81.4(3) The program administers a comprehensive evaluation system designed to enhance the teaching competence and intellectual vitality of the professional educational institution.

81.4(4) Institutional commitment to the program includes financial resources, facilities, appropriate educational materials, and equipment to ensure the fulfillment of the institution's and program's missions and the delivery of quality programs.

81.4(5) The institution provides sufficient instructors and administrative, clerical, and technical staff to plan and deliver a quality school business official preparation program.

81.4(6) Resources are available to support professional development opportunities for instructors.

81.4(7) Resources are available to support technological and instructional needs to enhance candidate learning.

281—81.5(256) Instructor standard. Instructor qualifications and performance will facilitate the professional development of school business official candidates in accordance with the following provisions:

81.5(1) Instructors are adequately prepared for assigned responsibilities and have had experiences relative to the curricula the instructors are teaching and in situations similar to those for which the school business official candidates are being prepared. Instructors have experience and adequate preparation in effective methods for any mode of program delivery in which the instructors are assigned responsibilities.

81.5(2) Instructors instruct and model best practices in teaching, including the assessment of the instructors' own effectiveness as it relates to candidate performance and engaging in professional development on adult teaching and learning.

81.5(3) Instructors are engaged in professional development that relates to school business official preparation.

81.5(4) Instructors collaborate regularly and in significant ways with colleagues in the institution and other institutions, schools, the department, and professional associations as well as with community representatives.

281—81.6(256) Assessment system and institution evaluation standard. The institution's assessment system will appropriately monitor individual candidate performance and use the performance data in concert with other information to evaluate and improve the institution and its programs.

81.6(1) *Program assessment system.*

EDUCATION DEPARTMENT[281](cont'd)

- a. The program utilizes a clearly defined management system for the collection, analysis, and use of assessment data.
- b. The institution clearly documents candidates' attainment of the program standards.
- c. The institution demonstrates the propriety, utility, accuracy and fairness of both the overall assessment system and the instruments used and provides scoring rubrics or other criteria used in evaluation instruments.
- d. The institution documents the quality of programs through the collective presentation of assessment data related to performance of school business official candidates. Documentation will include the following:
 - (1) Data collected throughout the program, including data from all delivery models;
 - (2) Evidence of evaluative data collected on a biennial basis from school business officials who work with the program's candidates; and
 - (3) Evidence of evaluative data collected on a biennial basis by the institution through follow-up studies of graduates and their employers.
- e. The institution explains the process for reviewing and revising the assessment system.
- f. The institution demonstrates how the information gathered by the institution and from the performance assessment system for candidates is shared with instructors and other stakeholders and used for program improvement.

81.6(2) Performance assessment system for candidates.

- a. The performance assessment system for candidates is an integral part of the institution's planning and evaluation system.
- b. The performance assessment system for candidates includes a coherent, sequential assessment system for individual school business official candidates. The assessment system is shared with instructors to provide guidance for course and program improvement. The assessment system also provides ongoing feedback to school business official candidates about their achievement of program standards and guidance for reflection and improvement. Data are drawn from multiple formative and summative assessments of institutional evaluation of the candidates' content knowledge and professional knowledge and from application of this knowledge to the necessary skills and attributes appropriate for a novice school business official.
- c. School business official candidate performance is assessed at the same standard regardless of the place or way the program is delivered.

81.6(3) Survey of graduates. The department periodically conducts a survey of schools, agencies, or facilities that employ licensed graduates of approved programs to ensure that the graduates' needs are adequately met by their programs and by the approval process herein.

281—81.7(256) School business official candidate knowledge and skills standards and criteria. School business officials will demonstrate content knowledge, professional knowledge, and skills in accordance with the following standards and supporting criteria. In addition, each school business official candidate shall meet all requirements established by the board of educational examiners for an authorization for which the candidate is recommended. Programs will submit curriculum exhibit sheets for approval by the board of educational examiners and the department.

81.7(1) Standard 1. Each school business official demonstrates an understanding of Uniform Financial Accounting, governmental generally accepted accounting principles (GAAP) accounting, and statutory concepts. The school business official:

- a. Is responsible for understanding and adhering to the Uniform Financial Accounting Manual as effective on February 7, 2024, and the current, accepted chart of accounts.
 - (1) Codes all salaries and benefits to the appropriate function, program, and project (if applicable) on a monthly basis;
 - (2) Ensures revenues, expenditures, and expenses are appropriately coded to the correct account monthly; and
 - (3) Ensures balance sheet items are properly coded as directed.

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b. Understands and ensures implementation of state and federal law related to employment, personnel, and payroll.

c. Understands all projects and grants for which the district receives funding.

d. Understands the certified budgeting process and the content and purpose of each section of the aid and levy worksheet as well as other certified budget forms.

e. Understands the concept of spending authority.

81.7(2) Standard 2. Each school business official demonstrates the ability to implement effective internal controls and accounting processes. The school business official:

a. Provides data monthly in sufficient detail as to be informative and useful for decision makers and stakeholders in providing educational and co- and extracurricular programs.

b. Ensures delivery, monthly, of a statement of receipts, disbursements, and amount on hand for every fund.

c. Ensures reconciliation of bank statements monthly.

d. Consistently follows the procedure by which products and services may be purchased (state bidding, purchase orders, and purchasing processes).

e. Ensures that an annual line-item budget that aligns with the district-certified budget revenues and expenditures is completed in a timely manner for each fund.

f. Maintains an itemized statement no more than five years old of the appraised value of all buildings and other capital assets and a list of historical costs.

g. Invests moneys not needed as authorized under the Iowa Code and district policy.

h. Uses only depositories approved by the local school board.

i. Makes payments only to the person entitled to the payment and only for verified bills.

j. Understands and implements the various mechanisms by which to borrow money as well as the appropriate account coding and repayment processes.

k. Is able to produce budget forecasts and analyses of spending.

l. Is capable of preparing employee collective bargaining costing models and estimates.

81.7(3) Standard 3. Each school business official demonstrates an understanding of and compliance with federal, state, and local reporting requirements. The school business official:

a. Produces for the local school board periodic reports reflecting a financial statement in relation to spending authority and published budget control lines.

b. Ensures that an accurate and separate account of each fund is maintained.

c. Ensures the filing of all quarterly and annual payroll taxes and reports in a timely fashion, including but not limited to IRS Forms 941, 1099, W-2, and W-3 and relevant U.S. Office of Management and Budget (OMB) circulars.

d. Files with the department of education, the department of management, and the state auditor all required reports in a timely fashion.

e. Understands the local collective bargaining agreement as well as nonemployee contracts.

81.7(4) Standard 4. Each school business official demonstrates compliance with applicable federal, state, and local laws. The school business official:

a. Understands the district board's policies and procedures and effectively implements applicable policies and procedures.

b. Implements effective records management processes and procedures.

c. Has a working knowledge of laws applicable to school districts and area education agencies.

d. Understands and implements employment laws.

e. Understands and implements bidding and construction laws.

f. Understands and implements pension processes, including but not limited to retirement plans, IPERS, and 403B investments.

g. Ensures that the school board president's and secretary's signatures are on all checks and that the school board president's signature is on all contracts.

h. Ensures that billing for all tuition items is completed on the current prescribed timeline.

i. Manages scheduling and preparation for the local audit, including any request for proposals for audit services as applicable.

EDUCATION DEPARTMENT[281](cont'd)

81.7(5) Standard 5. Each school business official demonstrates competence in technology appropriate to the school business official position. The school business official:

- a. Effectively manages an integrated accounting system for fund accounting by the district and assesses technology needs for fiscal management issues.
- b. Maintains all funds in one integrated accounting system.
- c. Displays a working knowledge of other software programs, if required to be used by the school business official.
- d. Is able to use Word, database, and spreadsheet documents effectively to meet the needs of the district.
- e. Displays competence in using the department's secure website for reporting purposes.
- f. Is able to upload the chart of accounts and understands the relationship of the chart of accounts to the other reports, including but not limited to the special education supplement, the annual report on use of sales tax revenue, and the annual transportation report. This duty includes testing the functionality of accounts used for accuracy. The testing is carried out in a manner that allows for identification of issues prior to the actual submission deadline.

81.7(6) Standard 6. Each school business official demonstrates appropriate personal skills. The school business official:

- a. Is an effective communicator with all stakeholders, including but not limited to colleagues, policy makers, community members, and parents.
- b. Works effectively with employees and stakeholders.
- c. Ensures the timely flow of information.
- d. Maintains confidentiality with personal, restricted and embargoed information.
- e. Is able to analyze, evaluate, and solve problems.
- f. Timely and accurately performs the duties of a school business official.
- g. Maintains an environment of mutual respect, rapport, and fairness.
- h. Participates in and contributes to a school culture that focuses on improved student learning.

81.7(7) Standard 7. Each school business official engages in professional growth. The school business official:

- a. Stays current with accounting technologies and the department's financial reporting system.
- b. Demonstrates habits and skills of continuous inquiry and learning.
- c. Works collaboratively to improve professional practice.
- d. Applies research, knowledge, and skills acquired from professional development opportunities to improve practice.
- e. Engages with administration on an annual review of the effectiveness of district accounting and reporting processes and on an individual performance evaluation consistent with district policy.
- f. If the school business official has not earned full authorization as a school business official, participates in the school business official mentoring program to the extent necessary.

81.7(8) Standard 8. Each school business official fulfills professional responsibilities established by the school district. The school business official:

- a. Adheres to school board policies, district procedures, and contractual obligations and ensures that applicable district policies are not in conflict with state law.
- b. Demonstrates professional and ethical conduct as defined by state law and district policy.
- c. Contributes to efforts to achieve district goals.
- d. Is able to contribute to cost/benefit analyses.
- e. Participates in the board of educational examiners ethics program.
- f. Follows the code of professional conduct and ethics and the rights and responsibilities described in 282—Chapters 25 and 26.

81.7(9) Standard 9. If a school business official is also employed as the secretary or treasurer of the school board, the school business official:

- a. Takes the oath of office within ten days following appointment.
- b. Files a bond and ensures the level of coverage is adequate.
- c. Holds office until a successor has been appointed and qualified.

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- d. Publishes minutes, bills, and salaries on a timely basis.
- e. Ensures that the department, the county auditor, and the treasurer are informed in a timely manner of the names and addresses for board officers as well as any changes therein.
- f. Files and preserves copies of all required reports and all papers transmitted pertaining to the business of the school corporation, including all certificates, reports, and proofs related to compulsory education.
- g. Maintains separate books for minutes and elections and ensures that the records are complete.
- h. Delivers all claims to the board for audit and allowance.

281—81.8(256) School business official mentoring program. The one-year mentoring program and its partners will assist candidates in becoming successful school business officials in accordance with the following provisions. The candidate is to be employed as a school business official to be eligible to participate in the mentoring program.

81.8(1) Candidates admitted to a school business official preparation program will participate in the mentoring program. All hours spent in the mentoring program are outside of the nine semester hours required in the program.

81.8(2) Each school business official preparation program will inform all candidates of the following minimum expectations of the candidates as mentees:

- a. Participation in weekly conversations with the mentee's mentor, including a review of work assignments.
- b. Maintenance of a record of contacts with the mentor and submission of the record to the program. A template will be provided by the program.
- c. Completion of surveys to assist with program evaluation.
- d. Communication with the program if the relationship with the mentee's mentor is not meeting the needs or expectations of the mentee.
- e. Full participation in the mentoring program throughout the one-year period.

81.8(3) Each school business official preparation program will inform all program candidate mentors of the following minimum expectations:

- a. Contacting the mentee on a weekly basis.
- b. Completing surveys to assist with program evaluation.
- c. Informing the program if the relationship with the mentee is not meeting expectations.
- d. Maintaining confidentiality of the interactions between mentor and mentee.
- e. Supporting the mentee throughout the one-year period.

81.8(4) The institution will offer one or more workshops annually for all cooperating mentors to define the objectives of the mentoring program, review the responsibilities of the cooperating mentors, and provide the cooperating mentors other information and assistance the institution deems necessary. The workshops will utilize delivery strategies identified as appropriate for staff development and reflect information gathered through feedback from workshop participants.

281—81.9(256) Monitoring.

81.9(1) *Reports to the department.* Upon request by the department, programs will make periodic reports that include basic information necessary to maintain up-to-date records of each school business official preparation program and to carry out research studies relating to school business official preparation.

81.9(2) *Reevaluation of school business official preparation programs.* Every seven years or at any time deemed necessary by the director, an institution will file a written self-evaluation of its school business official preparation program. Any action for continued approval or rescission of approval is to be approved by the state board.

81.9(3) *Approval of program changes.* Upon application by an institution, the director is authorized to approve minor additions to or changes within the curriculum of an institution's approved school

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business official preparation program. When an institution proposes a revision that exceeds the primary scope of its programs, the revision shall become operative only after approval by the state board.

These rules are intended to implement Iowa Code section 256.7.

ARC 7596C

EDUCATION DEPARTMENT[281]

Notice of Intended Action

Proposing rulemaking related to statewide sales and services tax for school infrastructure and providing an opportunity for public comment

The State Board of Education hereby proposes to rescind Chapter 96, “Statewide Sales and Services Tax for School Infrastructure,” Iowa Administrative Code, and to adopt a new chapter with the same title.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code section 290.3.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code chapters 423E and 423F.

Purpose and Summary

Pursuant to Executive Order 10, the Department of Education proposes removing verbatim statutory text, removing restrictive terms that do not provide any additional protection to the taxpayer, and modernizing filing requirements (such as eliminating the requirement for paper copies).

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the State Board for a waiver of the discretionary provisions, if any, pursuant to 281—Chapter 4.

Public Comment

Any interested person may submit written or oral comments concerning this proposed rulemaking. Written or oral comments in response to this rulemaking must be received by the Department no later than 4:30 p.m. on February 28, 2024. Comments should be directed to:

Thomas A. Mayes
Department of Education
Grimes State Office Building, Second Floor
400 East 14th Street
Des Moines, Iowa 50319-0146
Phone: 515.281.8661
Email: thomas.mayes@iowa.gov

Public Hearing

EDUCATION DEPARTMENT[281](cont'd)

Public hearings at which persons may present their views orally or in writing will be held as follows:

February 27, 2024 11 to 11:30 a.m.	Room B100 Grimes State Office Building Des Moines, Iowa
February 27, 2024 3 to 3:30 p.m.	Room B50 Grimes State Office Building Des Moines, Iowa

Persons who wish to make oral comments at a public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rulemaking.

Any persons who intend to attend a public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department and advise of specific needs by calling 515.281.5295.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking 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 rulemaking action is proposed:

ITEM 1. Rescind 281—Chapter 96 and adopt the following **new** chapter in lieu thereof:

TITLE XVI
SCHOOL FACILITIES
CHAPTER 96
STATEWIDE SALES AND
SERVICES TAX FOR SCHOOL INFRASTRUCTURE

281—96.1(423E,423F) Definitions.

“*Actual enrollment*” means the number of students each school district certifies to the department by October 15 of each year in accordance with Iowa Code section 257.6(1).

“*Base year*” means the school year ending during the calendar year in which the budget is certified.

“*Certificate of need*” means the written department of education approval a school district must obtain if the district has a certified enrollment of fewer than 250 students or a certified enrollment of fewer than 100 students in grades 9 through 12.

“*Combined actual enrollment*” means the sum of the students in each school district located in whole or in part in a county who are residents of that county as determined by rule 281—96.2(423E,423F).

“*Department*” means the state department of education.

“*Guaranteed school infrastructure amount*” means for a school district the statewide tax revenues per student, multiplied by the quotient of the tax rate percent imposed in the county, divided by 1 percent and multiplied by the quotient of the number of quarters the tax is imposed during the fiscal year divided by four quarters.

“*New construction*” means any erection of a facility or any modification or addition to a facility except for repairing existing schoolhouses or school buildings or for construction necessary for compliance with the federal Americans with Disabilities Act, 42 U.S.C. Sections 12101 to 12117.

“*Nonresident student*” means a student enrolled in a school district who does not meet the definition of a resident in Iowa Code section 282.1.

“*Reconstruction*” means rebuilding or restoring as an entity a thing that was lost or destroyed.

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“*Repair*” means restoring an existing structure or thing to its original condition, as near as may be, after decay, waste, injury, or partial destruction, but does not include maintenance.

“*Resident student*” means a student enrolled in a school district who meets the definition of a resident in Iowa Code section 282.1.

“*Revenue purpose statement*” means a document prepared by the school district indicating the specific purpose or purposes for which the funding, pursuant to Iowa Code chapters 423E and 423F, will be expended.

“*Sales tax*” means the statewide sales and services tax for school infrastructure imposed in accordance with Iowa Code chapter 423F.

“*School budget review committee*” or “*SBRC*” means a committee that is established under Iowa Code section 257.30.

“*School district*” means a public school district in Iowa accredited by the state department of education.

“*School infrastructure*” means the same as defined in Iowa Code section 423F.3(6).

“*Site improvement*” means grading, landscaping, paving, seeding, and planting of shrubs and trees; constructing sidewalks, roadways, retaining walls, sewers and storm drains, and installing hydrants; surfacing and soil treatment of athletic fields and tennis courts; exterior lighting, including athletic fields and tennis courts; furnishing and installing flagpoles, gateways, fences, and underground storage tanks that are not parts of building service systems; demolition work; and special assessments against the school district for public improvements defined in Iowa Code section 384.37.

“*Statewide tax revenues per student*” means the amount per student established by Iowa Code section 423E.4(2) “b”(3).

281—96.2(423E,423F) Reports to the department. Each school district shall, by October 15, annually report the school district’s actual enrollment on October 1 by the student’s county of residency according to the following:

96.2(1) *County of residency.* The county of residency for each of the students is the county in which the student lives in accordance with Iowa Code section 282.1.

96.2(2) *Emancipated minor.* The county of residency for an emancipated minor attending the school district is the county in which the emancipated minor is living.

96.2(3) *County of residency unknown.* If a school district cannot determine an enrolled student’s county of residency or if the county of residency is not a county in which the school district is located, the county of residency is the county in which the school district certifies its budget.

281—96.3(423E,423F) Combined actual enrollment. By March 1, annually, the department will forward to the department of management the actual enrollment and the actual enrollment by the student’s county of residency for each school district located in whole or in part in a county where a sales tax has been imposed and the combined actual enrollment for that county.

281—96.4(423E,423F) Application and certificate of need process.

96.4(1) *When application is needed; application period.* A school district that does not exceed enrollment thresholds defined in Iowa Code section 423F.3(5) shall not expend the amount of statewide sales and services tax received for new construction without prior application to the department and receipt of a certificate of need. A certificate of need is not necessary for repair of school facilities; for purchase of equipment, technology, or transportation equipment for transporting students as provided in Iowa Code section 298.3; school safety and security infrastructure as provided in Iowa Code section 423F.3(6) other than new construction; or for construction necessary to comply with the federal Americans With Disabilities Act, 42 U.S.C. Sections 12101 to 12117. Applications are due no later than eight weeks prior to a regularly scheduled meeting of the SBRC. The SBRC holds regularly scheduled meetings as stipulated in rule 289—1.4(257).

EDUCATION DEPARTMENT[281](cont'd)

96.4(2) Application form. Each applicant school district is to use the form prepared by the department for this purpose and in the manner prescribed by the department. The application form includes at least the following information:

a. The total capital investment of the project. If the project is in collaboration with other public or private entities, a school district is to include the following information:

- (1) Identification of the collaborating public or private entities;
- (2) Total cost of the collaborative project; and
- (3) Total cost of the school district's portion of the project.

b. The infrastructure needs of a school district specific to the application, especially the fire and health safety needs, including the extent to which the project would allow the school district to meet its infrastructure needs on a long-term basis. If a school district's needs include fire and health safety needs, the school district is to attach to its application form a copy of the citation from the fire marshal for the safety deficiency or evidence of consultation with the fire marshal or other qualified inspector related to the health safety deficiency. A school district is to include evidence of public involvement in assessing the need for this project.

c. The description of need including a cost-benefit analysis of remodeling, reconstructing, or repairing the existing structure rather than implementing this project and a description of any alternatives considered and the reasons for rejection.

d. Enrollment trends by grade in a school district showing a five-year history and five years of projected enrollment by grade. The school district is to identify the grades that will be served at the new construction site. If a school district uses enrollment projections other than those prepared by the department, the school district is to submit a description of the basis for those projections. The school district is to demonstrate that there is sufficient economic activity and stability to support and sustain enrollment projections of the affected attendance center.

e. If a school district's enrollment in the current year or any of the five years of projected enrollments is fewer than 250 students, the school district is to attach a copy of a feasibility study pursuant to Iowa Code section 256.9(30) or similar study conducted within the past three years with an explanation of how the study supports the project that is the subject of the application.

f. A description of the benefits and effects of the project and its relationship to improving student learning including alignment with school district student achievement goals and including the school district's ability to meet or exceed the educational standards. A school district is to provide:

(1) A list of waivers applied for and granted to the school district or any deficiencies from educational standards if no waiver was granted.

(2) A list of courses offered by major curricular area in grades 9 through 12, including five years of history and three years of projected curricula if the proposed new construction will house any of the grades 9 through 12.

(3) A list of current and projected staffing patterns including assignments and licensure.

g. Description of transportation barriers, if any, to the current site and to the proposed site and the distance in miles and in travel time from the nearest and furthest boundaries of the school district to the current site and the proposed site.

h. Evidence of a healthy financial condition and long-term financial stability. The school district is to provide:

(1) Calculation of unspent balance on the generally accepted accounting principles (GAAP) basis, including five years of history and three years of projected balances. The calculation of budget authority is to show and project the effect of the budget adjustment under Iowa Code section 257.14. Projected allowable growth is that which is known or generally anticipated at the time of the application. If the percent of allowable growth is not known or anticipated, a district may use an annual projected allowable growth of up to 2 percent.

(2) If the unspent balance is negative in any current or projected year on the GAAP basis, the school district shall include a copy of the corrective action plan, if any, submitted to the SBRC.

(3) Calculation of fund balance on the GAAP basis by fund. The calculation shall include five years of history and three years of projected balances.

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i. If a school district currently has bonded indebtedness, the voter-approved physical plant and equipment levy, or categorical funding for school infrastructure, the school district is to include a statement identifying the implementation date, final year of the bonded indebtedness or the final year of the levy or categorical funding, and the levy rate. The school district is to list any obligations against those current balances and future revenues or against the statewide sales and services tax for school infrastructure amounts. The school district is to attach a copy of the school district's revenue purpose statement, if any.

j. A comprehensive, districtwide infrastructure plan. The school district is to include the date that the plan was adopted by the board, an executive summary of the plan, and a description of how the project fits within the infrastructure plan.

k. A five-year history of significant infrastructure maintenance and repair.

l. A statement certifying the accuracy of the information contained in the application.

96.4(3) Board minutes. A school district that is applying for a certificate of need is to submit with its application a copy of the published minutes of the board of director's meeting showing that the board has authorized the application and the project and that the public has been informed, with the section of the board minutes containing this information marked in such a way as to make it easily identifiable.

96.4(4) Reapplication. A school district that is not successful in obtaining a certificate of need for the project that is the subject of the application may apply for a certificate of need in succeeding application periods if its circumstances change substantially.

96.4(5) Application timeline. A school district is to apply for a certificate of need either:

a. When the school district has received amounts that it intends to accumulate for new construction or for payment of debt related to new construction; or

b. When the school district board has accumulated amounts and wants to proceed with the new construction project or debt issuance related to new construction, whichever occurs first.

96.4(6) Compliance requirement on uses. All projects included in the application must be consistent with the provisions of the Americans With Disabilities Act and the Rehabilitation Act of 1973, Section 504, and Iowa Code chapter 104A.

281—96.5(423E,423F) Review process.

96.5(1) Task force. The department will form a task force to review applications for certificate of need and to provide recommendations to the SBRC. The department will invite participants from large, medium, and small school districts, the state fire marshal's office, education and professional organizations, or other individuals knowledgeable in school infrastructure and construction issues. The department, in consultation with the task force, will establish the parameters and criteria for awarding certificates of need based on information listed in Iowa Code section 423E.4(5), which includes consideration of the following:

a. Enrollment trends in the grades that will be served at the new construction site.

b. The cost-benefit analysis of remodeling, reconstructing, or repairing existing buildings.

c. The fire and health safety needs of the school district.

d. The distance, convenience, cost of transportation, and accessibility of the new construction site to the students to be served at the new construction site.

e. Unavailability of alternative, less costly, or more effective means of serving the needs of the students.

f. The financial condition of the school district, including the effect of the budget adjustment and unspent balance.

g. Broad and long-term ability of the school district to support the facility and the quality of the academic program.

h. Cooperation with other educational entities including other school districts, area education agencies, postsecondary institutions, and local communities.

96.5(2) Task force review. The task force, or a subcommittee of the task force, and its designees, will review each application and make recommendations to the school budget review committee regarding approval of certificates of need based on the evidence provided by the applicant pursuant to

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subrule 96.4(2) and the criteria listed in subrule 96.5(1). More than one member of the task force or subcommittee of the task force and its designees shall review each application. A reviewer will not review any application in which the reviewer has a conflict of interest.

96.5(3) Approval process. Applications will be reviewed and recommended for approval or denial based on any or all of the following individual or collective criteria, with each applicable criterion scored on a scale of zero to ten. Applicable scores will be averaged. Nonapplicable criteria will not be used in determining the average score. An application shall have a minimum average score of five to be eligible to be recommended for approval. If an application receives a score of zero on one or more applicable criteria, the application will not be recommended for approval. A recommendation for approval by the task force does not constitute final approval of the application. The following categories on the application will be evaluated and scored:

- a. Infrastructure needs the project proposes to alleviate. Special consideration shall be given to infrastructure needs that relate to fire or health safety issues.
- b. Evidence that remodeling, reconstructing, or repairing the existing buildings is not feasible.
- c. Unavailability of alternative, less costly, or more effective means of serving student needs.
- d. Improvement of transportation distance, convenience, cost and accessibility with the new construction.
- e. Sustainable financial condition and long-term financial stability of the school district.
- f. Evidence that the proposed project will improve educational opportunities for students and enable the school district to meet or exceed educational standards.
- g. Current comprehensive, districtwide infrastructure plan and the description of how this project fits within that plan.
- h. Description of collaboration with one or more other public or private entities.

96.5(4) Ineligibility for approval. If either of the following two descriptions applies to the school district, the school district is not eligible for a certificate of need unless a feasibility study conducted within the past three years pursuant to Iowa Code section 256.9(30) and the AEA plan pursuant to Iowa Code sections 275.1 through 275.4 determine that sharing, reorganization, or dissolution is not feasible for the school district.

- a. The current enrollment or any of the five years of projected enrollments for the school district is fewer than 250 students.
- b. The current enrollment or any of the five years of projected enrollments for the school district for grades 9 through 12 is fewer than a total of 100 students, if a high school building is the subject of the application.

96.5(5) School budget review committee. The SBRC will review the recommendations from the task force for approval of certificates of need and make recommendations on approval to the department for final consideration.

281—96.6(423E,423F) Award process.

96.6(1) Department determination. The department will make the final determination on approval of certificates of need.

96.6(2) Notification. The department will notify applicants no later than two weeks following the date of receipt of the recommendations from the SBRC.

281—96.7(423E,423F) Applicant responsibilities.

96.7(1) Change in the project. If a school district significantly changes the proposed project, the school district shall notify the department within ten working days of the change and submit a new application for a certificate of need for the newly changed project.

96.7(2) Accounting for the funding. All revenues and all expenditures from the statewide school infrastructure amounts are to be separately identified and accounted for in a capital projects fund established for the statewide sales and services tax for school infrastructure proceeds.

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96.7(3) *Withdrawal of application.* If a school district is granted a certificate of need for a project and the school district elects not to continue with the project, the school district is to notify the department within ten working days following the board action to discontinue the project.

96.7(4) *Forfeiture of certificate.* Failure to comply with any of the rules in this chapter or provide information that is included in the certificate of need application or that is requested by the department may result in the forfeiture of the certificate of need or removal from the application cycle.

281—96.8(423E,423F) Appeal of certificate denial. Any applicant may appeal the denial of a properly submitted application for certificate of need to the director of the department. Appeals are to be (1) in writing, (2) received within ten working days of the date of the notice of the decision to deny, and (3) based on a contention that the process was conducted outside of statutory authority; violated state or federal law, policy, or rule; did not provide adequate public notice; was altered without adequate public notice; or involved conflict of interest by staff or committee members. The hearing and appeals procedures found in 281—Chapter 6 that govern the director’s decisions apply to any appeal of denial.

These rules are intended to implement Iowa Code chapters 423E and 423F.

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EDUCATION DEPARTMENT[281]

Notice of Intended Action

**Proposing rulemaking related to supplementary weighting
and providing an opportunity for public comment**

The State Board of Education hereby proposes to rescind Chapter 97, “Supplementary Weighting,” Iowa Administrative Code, and to adopt a new chapter with the same title.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code sections 256.7 and 257.11.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code chapter 257.

Purpose and Summary

Pursuant to Executive Order 10, the Department of Education proposes removing language that does no more than restate statutory requirements, removing restrictive terms that do not add value, and removing an obsolete rule.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the State Board for a waiver of the discretionary provisions, if any, pursuant to 281—Chapter 4.

Public Comment

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Any interested person may submit written or oral comments concerning this proposed rulemaking. Written or oral comments in response to this rulemaking must be received by the Department no later than 4:30 p.m. on February 28, 2024. Comments should be directed to:

Thomas A. Mayes
 Department of Education
 Grimes State Office Building, Second Floor
 400 East 14th Street
 Des Moines, Iowa 50319-0146
 Phone: 515.281.8661
 Email: thomas.mayes@iowa.gov

Public Hearing

Public hearings at which persons may present their views orally or in writing will be held as follows:

February 27, 2024 11 to 11:30 a.m.	Room B100 Grimes State Office Building Des Moines, Iowa
February 27, 2024 3 to 3:30 p.m.	Room B50 Grimes State Office Building Des Moines, Iowa

Persons who wish to make oral comments at a public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rulemaking.

Any persons who intend to attend a public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department and advise of specific needs by calling 515.281.5295.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking 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 rulemaking action is proposed:

ITEM 1. Rescind 281—Chapter 97 and adopt the following **new** chapter in lieu thereof:

CHAPTER 97
 SUPPLEMENTARY WEIGHTING

281—97.1(257) Definitions. For the purpose of this chapter, the following definitions apply:

“*Actual enrollment*” means the enrollment determined pursuant to Iowa Code section 257.6(1)“*a.*”

“*Career academy*” means a program of study as defined in 281—Chapter 46. A course offered by a career academy does not qualify as a regional academy course. A career academy course may qualify as a concurrent enrollment course if it meets the provisions of Iowa Code section 261E.8.

“*Class*” means a course for academic credit that applies toward a high school or community college diploma.

“*Department*” means the Iowa department of education.

“*Enrolled*” means that a student has registered with the school district and is taking part in the educational program.

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“*Fraction of a school year*” means the product of the minutes per day of class multiplied by the number of days per year the class meets divided by the product of the total number of minutes in a school day multiplied by the total number of days in a school year. All minutes available in a normal day will be used in the calculation.

“*ICN*” means the Iowa Communications Network.

“*Political subdivision*” means a political subdivision in the state of Iowa and includes a city, a township, a county, a public school district, a community college, an area education agency, or an institution governed by the state board of regents (Iowa State University, University of Iowa, and University of Northern Iowa).

“*Project lead the way*” means the nonprofit organization with 501(c)(3) tax-exempt status that provides rigorous and innovative science, technology, engineering, and mathematics education curriculum founded in fundamental problem-solving and critical-thinking skills while integrating national academic and technical learning standards.

“*Regional academy*” means an educational program established by a school district to which multiple school districts send students in grades 7 through 12. The curriculum will include advanced-level courses and, in addition, may include career-technical courses, Internet-based courses, and coursework delivered via the ICN. Regional academy courses do not qualify as concurrent enrollment courses and do not generate any postsecondary credit. School districts participating in regional academies are eligible for supplementary weighting as provided in Iowa Code section 257.11(2).

“*Superintendent*” means the same as defined in Iowa Code section 272.1.

“*Supplant*” means the community college’s offering a course that consists of substantially the same concepts and skills as the content of a course provided by the school district or accredited nonpublic school or the community college’s offering a course that is required by the school district or accredited nonpublic school in order to meet the minimum accreditation standards in Iowa Code section 256.11. If a student is unable to earn credit in both courses, then the two courses would be deemed similar enough in content and skills to be defined as supplanting.

“*Supplementary weighting plan*” means a plan as defined in this chapter to add a weighting for each eligible Iowa resident student who is enrolled in an eligible class taught by a teacher employed by another school district or taught by a teacher employed jointly with another school district or sent to and enrolled in an eligible class in another school district or sent to and enrolled in an eligible community college class. The supplementary weighting for each eligible class is calculated by multiplying the fraction of a school year that class represents by the number of eligible Iowa resident students enrolled in that class and then multiplying that figure by the weighting factor established in Iowa Code chapter 257.

“*Teacher*” means the same as defined in Iowa Code section 272.1.

281—97.2(257) Supplementary weighting plan.

97.2(1) Eligibility. Except if listed under subrule 97.2(7), a resident student is eligible for supplementary weighting if the student is eligible to be counted as a resident student for certified enrollment and if one of the following conditions is met pursuant to Iowa Code section 257.11:

- a. Resident student attends class in another school district pursuant to subrule 97.2(2), or
- b. Resident student attends class taught by a teacher employed by another school district pursuant to subrule 97.2(3), or
- c. Resident student attends class taught by a teacher jointly employed by two or more school districts pursuant to subrule 97.2(4), or
- d. Resident student attends class in a community college for college credit pursuant to subrule 97.2(5), or
- e. Resident student attends class in a community college for college credit pursuant to subrule 97.2(6).

Other than as listed in paragraphs 97.2(1)“a” to “e” above and in rules 281—97.3(257), 281—97.4(257), and 281—97.7(257), no other sharing arrangement is eligible for supplementary weighting.

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97.2(2) *Attend class in another school district.* Students attending class in another school district will be eligible for supplementary weighting under paragraph 97.2(1) “a” only if the school district does not have a licensed and endorsed teacher available within the school district to teach the course(s) being provided.

97.2(3) *Attend class taught by a teacher employed by another school district.* Students attending class taught by a teacher employed by another school district will be eligible for supplementary weighting under paragraph 97.2(1) “b” only if the school district does not have a licensed and endorsed teacher available within the school district to teach the course(s) being provided.

97.2(4) *Attend class taught by a teacher jointly employed with another school district.* All of the following conditions must be met for any student attending class taught by a teacher jointly employed to be eligible for supplementary weighting under paragraph 97.2(1) “c.” The school districts jointly employing the teacher must have:

- a. A joint teacher evaluation process and instruments.
- b. A joint teacher professional development plan.
- c. One single salary schedule.

Except for joint employment contracts that meet the provisions of paragraphs “a” to “c” above, no two or more school districts will list each other for the same classes and grade levels.

97.2(5) *Attend class in a community college.* To be eligible for supplementary weighting, a course will comply with Iowa Code section 257.11(3).

97.2(6) *Attend a project lead the way class in a community college.* Students attending a science, technology, engineering, or mathematics class that uses an activities-based, project-based, and problem-based learning approach and that is offered collaboratively by the students’ school district and a community college in partnership with a nationally recognized provider of rigorous and innovative science, technology, engineering, and mathematics curriculum are eligible for supplementary weighting under paragraph 97.2(1) “e” if the curriculum provider is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code.

97.2(7) *Ineligibility.* The following students are ineligible for supplementary weighting:

- a. Nonresident students attending the school district under any arrangement except open enrolled in students, nonpublic shared-time students, or dual enrolled competent private instruction students in grades 9 through 12.
- b. Students eligible for the special education weighting plan provided in Iowa Code section 256B.9 when being served by special education programs or services that carry additional weighting.
- c. Students in whole-grade sharing arrangements except under sharing pursuant to subrule 97.2(5) or 97.2(7).
- d. Students open enrolled out except under sharing pursuant to subrule 97.2(5) or paragraph 97.6(1) “c.”
- e. Students open enrolled in, except under sharing pursuant to subrule 97.2(5) or paragraph 97.6(1) “c,” when the students are under competent private instruction and are dual enrolled in grades 9 through 12.
- f. Students participating in shared services rather than shared classes except under sharing pursuant to rule 281—97.7(257).
- g. Students taking postsecondary enrollment options (PSEO) courses.
- h. Students enrolled in courses or programs offered by their resident school districts unless those courses meet the conditions for attending classes in a community college under subrule 97.2(5) or if the teacher is employed by another school district pursuant to subrule 97.2(3) or if a teacher is jointly employed with another school district pursuant to subrule 97.2(4) or if the courses are included in the curriculum of an in-district regional academy pursuant to subrule 97.4(1) or if the courses are in-district virtual classes provided via ICN video services to other districts pursuant to subrule 97.6(1).
- i. Students enrolled in courses or programs taught by teachers employed by their resident school districts unless the employment meets the criteria of joint employment with another school district under subrule 97.2(4) or if the criteria in subrule 97.2(5) are met for students attending class in a community college or if the courses are included in the curriculum of an in-district regional academy pursuant to

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subrule 97.4(1) or if the courses are in-district virtual classes provided via ICN video services to other districts pursuant to subrule 97.6(1).

j. Students enrolled in an at-risk program or alternative school program when being served by such program.

k. Students enrolled in summer school courses.

97.2(8) Whole-grade sharing. If all or a substantial portion of the students in any grade are shared with another one or more school districts for all or a substantial portion of a school day, then no students in that grade level are eligible for supplementary weighting except as authorized by rule 281—97.5(257). No students in the grade levels who meet the criterion in this subrule are eligible for supplementary weighting even in the absence of an agreement executed pursuant to Iowa Code sections 282.10 through 282.12. A district that discontinues grades pursuant to Iowa Code section 282.7 is deemed to be whole-grade sharing the resident students in those discontinued grades for purposes of these rules.

a. In a one-way whole-grade sharing arrangement, the receiving district may count its resident students in the grade levels that are whole-grade shared if the resident students are shared pursuant to subrule 97.2(2), 97.2(3), or 97.2(5).

b. In a one-way whole-grade sharing arrangement, the receiving district may not count its resident students in the grade levels that are whole-grade shared pursuant to subrule 97.2(3) if the teacher is employed by the same district that is sending students under the whole-grade sharing arrangement.

97.2(9) Due date. Supplementary weighting will be included with the certified enrollment that is due October 15 following the October 1, or the first Monday in October if October 1 falls on a Saturday or Sunday, on which the enrollment was taken.

281—97.3(257) Supplementary weighting plan for a regional academy.

97.3(1) Eligibility. Except if listed under subrule 97.2(6), a resident student is eligible for supplementary weighting if the student is eligible to be counted as a resident student for certified enrollment and if all of the following criteria are met:

a. Two or more Iowa school districts, other than a whole-grade sharing partner district, send students to advanced-level courses that are included in the curriculum of the regional academy, and these students are eligible for supplementary weighting under paragraph 97.2(1) “*a*” or “*c*.” In addition, for the host district to qualify for the minimum weighting pursuant to subrule 97.3(4), one or more Iowa school districts, other than a whole-grade sharing partner district, must send students to career-technical classes that are included in the curriculum of the regional academy.

b. The regional academy is located in the district.

c. The grade levels include one or more grades seven through twelve.

d. The curriculum is an organized course of study, adopted by the board, that includes a minimum of two advanced-level courses that are not part of a career-technical program. An advanced-level course is a course that is above the level of the course units required as minimum curriculum in 281—Chapter 12 in the host district.

e. The resident students are not eligible for supplementary weighting under another supplementary weighting plan.

f. No resident or nonresident students are attending the regional academy under a whole-grade sharing arrangement as defined in subrule 97.2(7).

g. Two or more sending districts that are whole-grade sharing partner districts will be treated as one sending district for purposes of paragraph 97.3(1) “*a*.”

h. The school districts participating in a regional academy will enter into an agreement on how the funding generated by the supplementary weighting received will be used and will submit the agreement, as well as a copy of the minutes of meetings of the local school district boards of directors in which the boards approved the agreement, to the department for approval by October 1 of the year in which the districts intend to request supplementary weighting for the regional academy.

97.3(2) Weighting. Resident students eligible for supplementary weighting pursuant to subrule 97.3(1) are eligible for a weighting of one-tenth of the fraction of a school year during which the

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pupil attends courses at the regional academy in which nonresident students are enrolled pursuant to paragraph 97.3(1)“a.”

97.3(3) *Maximum weighting.* The maximum amount of additional weighting for which a school district establishing a regional academy is eligible is an amount corresponding to 30 full-time-equivalent pupils.

97.3(4) *Minimum weighting.* The minimum amount of additional weighting for which a school district establishing a regional academy is eligible is an amount corresponding to 15 full-time-equivalent pupils if the academy provides both advanced-level courses and career-technical courses.

97.3(5) *Additional programs.* If all of the criteria in subrule 97.3(1) are met, the regional academy may also include in its curriculum career-technical courses, Internet-based courses and ICN courses.

97.3(6) *Career academy.* A career academy is not a regional academy for purposes of these rules.

281—97.4(257) Supplementary weighting plan for whole-grade sharing.

97.4(1) *Whole-grade sharing.* A school district that participates in a whole-grade sharing arrangement executed pursuant to Iowa Code sections 282.10 to 282.12 and that has adopted a board resolution to study dissolution or has adopted a board resolution jointly with all other affected boards to study reorganization to take effect on or before July 1, 2024, is eligible to assign a weighting of one-tenth of the fraction of the school year during which resident pupils attend classes pursuant to paragraph 97.2(1)“a,” “b,” or “c.” A school district participating in a whole-grade sharing arrangement is eligible for supplementary weighting under this subrule for a maximum of three years. Receipt of supplementary weighting for the second year and for the third year is conditioned upon submission of information resulting from the study to the school budget review committee indicating progress or continued progress toward the objective of dissolution or reorganization on or before July 1, 2024.

97.4(2) *Contiguous districts.* School districts that adopt a board resolution jointly with all other affected boards to study reorganization must be contiguous school districts. If two or more of the affected districts are not contiguous to each other, all districts separating those districts must be a party to the whole-grade sharing arrangement and the board resolution adopted jointly to study reorganization.

97.4(3) *Consecutive years.* A school district that is eligible to add a supplementary weighting for resident students attending classes under a whole-grade sharing arrangement pursuant to subrule 97.4(1) is not required to utilize consecutive years. However, the final year in which a supplementary weighting may be added on October 1 for this purpose will not be later than the school year that begins July 1, 2024.

97.4(4) *Change in sharing districts.* A school district that is eligible to add a supplementary weighting for resident students attending classes under a whole-grade sharing arrangement pursuant to subrule 97.4(1) may enter into a whole-grade sharing arrangement with one or more different districts for its second or third year of eligible weighting by adopting and filing a new joint board resolution pursuant to this subrule. Establishing a new whole-grade sharing arrangement does not extend the maximum number of years for which a school district is eligible.

97.4(5) *Filing board resolutions.* Each school district that adopts a board resolution to study dissolution or has adopted a board resolution jointly with all other affected boards to study reorganization will file a copy of the board resolution with the department not later than October 1 on which date the district intends to request supplementary weighting for whole-grade sharing.

97.4(6) *Filing progress reports.* Each school district that intends to assign a supplementary weighting to resident students attending class in a whole-grade sharing arrangement in any year following the initial year for which supplementary weighting for whole-grade sharing was approved will file a report of progress toward reorganization with the school budget review committee, on forms developed by the department, no later than August 1 preceding October 1 on which date the district intends to request the second or third year of supplementary weighting for whole-grade sharing.

a. The progress report will include the following information:

(1) Names of districts with which the district is studying reorganization.

(2) Descriptive information on the whole-grade sharing arrangement.

(3) Information on whether a plan for reorganization has been approved by the AEA and an election date has been set.

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b. The report must indicate progress toward a reorganization or dissolution to occur on or before July 1, 2024. The indicators of progress include:

- (1) For the second year of supplementary weighting, establishing a reorganization committee.
- (2) For the third year of supplementary weighting, having an AEA-approved plan for reorganization and a date set for an election on the proposed reorganization.

c. The school budget review committee will consider each progress report at its first regular meeting of the fiscal year and will accept the progress report or reject the progress report with comments. The reports will be evaluated on demonstrated progress within the past year toward reorganization or dissolution.

d. A school district whose progress report is not accepted will be allowed to submit a revised progress report at the second regular meeting of the school budget review committee. The committee will accept or reject the revised progress report.

e. If the school budget review committee rejects the progress report and the district does not submit a revised progress report or if the school budget review committee rejects the revised progress report, the school district is not eligible for supplementary weighting for whole-grade sharing but may reapply in a subsequent year.

f. In the event that an election on reorganization fails to pass after the school budget review committee has approved a district's application for whole-grade sharing supplementary weighting and prior to January 1 of the year in which the reorganization was to take effect, a district may rescind the request for whole-grade sharing supplementary weighting by submitting a request to the school budget review committee asking to withdraw the application. The request to withdraw the application must be completed no later than one week prior to the committee's second regular meeting.

281—97.5(257) Supplementary weighting plan for ICN video services.

97.5(1) Eligibility. Except for students listed under subrule 97.2(6), a resident student is eligible for supplementary weighting if the student is eligible to be counted as a resident student for certified enrollment, is not eligible for supplementary weighting for the same course under another supplementary weighting plan, and meets any of the criteria in paragraph 97.5(1) "a," "b," or "c." For purposes of this subrule, the portion of a course offered via ICN video services will be considered separately from the portion of the course not offered via ICN video services. Eligible students include:

- a.* Resident students who receive a virtual class provided by another school district via ICN video services.
- b.* Resident students who attend a virtual class that the resident district is providing to students in one or more other school districts via ICN video services.
- c.* Resident students who receive a virtual community college class via ICN video services. The community college class must be a course eligible for supplementary weighting under the criteria listed in subrule 97.2(5).

97.5(2) Weighting. Resident students eligible for supplementary weighting pursuant to subrule 97.5(1) are eligible for a weighting of one-twentieth of the fraction of the school year during which the pupil attends the virtual class.

97.5(3) Payment to teachers. A school district that includes students in a virtual class for supplementary weighting will reserve 50 percent of the supplementary weighting funding the district will receive as a result of including the resident students in the virtual class for supplementary weighting as additional pay for the virtual class teacher.

- a.* The employer of the virtual class teacher will make the payment.
- b.* The additional pay includes salary and the employer's share of FICA and IPERS.
- c.* The employer will pay the virtual class teacher during the same school year in which the virtual class is provided.

d. The employer may pay the virtual class teacher at the conclusion of the virtual class or may pay the teacher periodic payments that represent the portion of the virtual class that has been provided. The employer may not pay the teacher prior to services being rendered.

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e. The additional pay is calculated as 0.5 multiplied by the supplementary weighting for the virtual class multiplied by the district cost per pupil in the subsequent budget year.

f. If the teacher's contract includes additional pay for teaching the virtual class, the teacher will receive the higher amount of the additional pay in the contract or the amount of the additional pay calculated pursuant to paragraphs 97.5(3) "b" and "e." For purposes of this comparison, the employer will compare the salary portions only.

g. The contract between the agencies will provide for the additional pay for the teacher of the virtual class. That 50 percent of the supplementary weighting funding would be paid in addition to the tuition sent to the providing district or community college to be paid as additional pay to its teacher employee.

281—97.6(257) Supplementary weighting plan for operational services.

97.6(1) Eligibility. Supplementary weighting is available if all of the following criteria are met:

a. The district shares a discrete operational function with one or more other political subdivisions pursuant to a written contract.

b. The district shares an operational function for at least 20 percent of the contract time period during the fiscal year that is customary for a full-time employee in the operational function for at least 20 percent of the contract time period during the fiscal year. The 20 percent is measured each fiscal year and for each discrete operational function.

c. Personnel shared as part of an operational function are employees of one of the sharing partners but are not employees of more than one of the sharing partners.

d. If the district shares an operational function with more than one political subdivision, the sharing arrangement is listed only once for purposes of supplementary weighting.

e. If the district shares more than one individual in the same operational function, that operational function will be listed only once for the purposes of supplementary weighting.

f. No individual personnel will be included for operational function sharing more than once for supplementary weighting in the same fiscal year.

g. If more than one sharing arrangement is implemented in any one operational function area and the services shared are substantially similar as determined by the department, only the sharing arrangement implemented first will be eligible for supplementary weighting.

h. The operational function areas shared include one or more of the areas listed in subrule 97.6(2).

97.6(2) Operational function area eligibility. "Operational function sharing" means sharing of managerial personnel in the discrete operational function areas of superintendent management, business management, human resources management, student transportation management, facility operation or maintenance management, curriculum director, master social worker, independent social worker, school counselor, special education director, work-based learning coordinator, mental health professional if the mental health professional holds a statement of recognition issued by the board of educational examiners, school resource officer, or college and career transition counselor or coordinator. "Operational function sharing" does not mean sharing of clerical personnel or school principals. The operational function sharing arrangement does not need to be a newly implemented sharing arrangement in order to be eligible for supplementary weighting.

a. Superintendent management.

(1) Shared personnel perform the services of a superintendent, in the case of a school district, or chief administrator, in the case of an area education agency, or executive administrator, in the case of other political subdivisions. An individual performing the function of a superintendent or chief administrator must be properly licensed for that position.

(2) Clerical or other support services personnel in the superintendent function area or executive administrator function area will not be considered shared superintendent management under this subrule.

(3) Shared superintendent services or executive administrator services does not include contracting for services from a private provider even if another political subdivision is contracting for services from the same private provider.

b. Business management.

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(1) Shared personnel perform the services of managing the business operations. Managing business operations includes personnel performing the duties of a business manager or school business official, or personnel performing duties including those listed in Iowa Code chapter 291 for a board secretary or board treasurer.

(2) Services of clerical personnel, school administration managers, superintendents, principals, teachers, board officers except those listed in subparagraph 97.6(2) "b"(1), or any other nonbusiness administration personnel are not considered shared business management under this subrule.

(3) Shared business management does not include contracting for services from a private provider even if another political subdivision is contracting for services from the same private provider.

c. Human resources management.

(1) Shared personnel perform the services of managing human resources.

(2) Services of clerical personnel, superintendents, principals, curriculum directors, teachers, or board officers are not considered shared human resources management under this subrule.

(3) Shared human resources management does not include contracting for services from a private provider even if another political subdivision is contracting for services from the same private provider.

d. Student transportation management.

(1) Shared personnel include transportation directors or supervisors. Shared personnel must perform services related to transportation.

(2) Services of school business officials, business managers, school administration managers, clerical or paraprofessional personnel, school bus mechanics, and school bus drivers are not considered shared student transportation management under this subrule.

(3) Shared transportation management does not include contracting for services from a private provider even if another political subdivision is contracting for services from the same private provider.

e. Facility operations and maintenance.

(1) Shared personnel include facility managers and supervisors of buildings or grounds. Shared personnel perform services related to facility operations and maintenance.

(2) Services of school business officials, business managers, school administration managers, clerical personnel or custodians are not considered shared facility operations and maintenance management for supplementary weighting under this subrule.

(3) Shared facility operations and maintenance management do not include contracting for services from a private provider even if another political subdivision is contracting for services from the same private provider.

f. Curriculum director.

(1) Shared personnel perform the services of a curriculum director.

(2) Technology directors and clerical, paraprofessional, or other support services personnel in the improvement of instruction function area are not considered a shared curriculum director under this subrule.

(3) Shared curriculum director services do not include contracting for services from a private provider even if another political subdivision is contracting for services from the same private provider.

g. School counselor.

(1) Shared personnel perform the services of a school counselor. An individual performing the function of a school counselor must be properly licensed for that position.

(2) Deans of students, social workers, or clerical, paraprofessional, or other support services personnel in the guidance services function area are not considered a shared school counselor under this subrule.

(3) Shared school counselor services do not include contracting for services from a private provider even if another political subdivision is contracting for services from the same private provider.

h. School social worker.

(1) Shared personnel perform the services of a school social worker. An individual performing the function of a school social worker must be properly licensed for that position.

(2) Social workers providing services required to be provided by an area education agency are not considered a shared school social worker under this subrule.

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(3) Shared school social worker services do not include contracting for services from a private provider even if another political subdivision is contracting for services from the same private provider.

i. Special education director.

(1) Shared personnel perform the services of a special education director. An individual performing the function of a special education director must be properly licensed for that position.

(2) Teachers, superintendents, principals, curriculum directors, or other support services personnel in the improvement of instruction services function area are not considered a shared special education director under this subrule.

(3) Shared special education director services do not include contracting for services from a private provider even if another political subdivision is contracting for services from the same private provider.

j. Work-based learning coordinator.

(1) Shared personnel perform the services of a work-based learning coordinator. An individual performing the function of a work-based learning coordinator must be properly trained for that position.

(2) Superintendents, principals, curriculum directors, deans of students, school counselors, or other support services personnel in the guidance services function area are not considered a shared work-based learning coordinator under this subrule.

(3) “Work-based learning coordinator” means the same as defined in Iowa Code section 257.11(5)“a”(2).

(4) Shared work-based learning coordinator services do not include contracting for services from a private provider even if another political subdivision is contracting for services from the same private provider.

k. Mental health professional.

(1) Shared personnel perform the services of a mental health professional. An individual performing the function of a mental health professional must hold a statement of professional recognition issued by the board of educational examiners.

(2) Deans of students, school counselors, or other support services personnel in the guidance services function area are not considered a shared mental health professional under this subrule.

(3) Shared mental health professional services do not include contracting for services from a private provider even if another political subdivision is contracting for services from the same private provider.

l. School resource officer.

(1) Shared personnel perform the function of a school resource officer. An individual performing the function of a school resource officer must meet the definition in subparagraph 97.6(2)“l”(3).

(2) Deans of students, school business managers, school administration managers, school counselors, clerical personnel, paraprofessionals, private security guards, or custodians are not be considered shared school resource officers for supplementary weighting under this subrule.

(3) “School resource officer” means the same as defined in 34 U.S.C. Section 10389.

(4) Shared school resource officer services do not include contracting for services from a private provider even if another political subdivision is contracting for services from the same private provider.

m. College and career transition counselor or coordinator.

(1) Shared personnel perform the services of a college and career transition counselor or coordinator as defined in subparagraph 97.6(2)“m”(3).

(2) Superintendents, principals, curriculum directors, deans of students, school counselors, work-based learning coordinators, or other support services personnel in the guidance services function area are not considered a shared college and career transition counselor or coordinator under this subrule.

(3) “College and career transition counselor or coordinator” means the same as defined in Iowa Code section 257.11(5)“a”(2).

(4) Shared college and career transition counselor or coordinator services do not include contracting for services from a private provider even if another political subdivision is contracting for services from the same private provider.

97.6(3) Eligibility. The supplementary weighting for eligible shared operational functions may be included beginning on October 1, 2013.

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a. Receipt of supplementary weighting is conditioned upon the submission of information provided in the format prescribed by the department as part of the BEDS fall data collection.

b. The documentation on the BEDS fall data collection will be filed no later than the published deadline for that data collection.

97.6(4) *Consecutive years.* A school district that is eligible to add a supplementary weighting for a shared operational function is not required to utilize consecutive years. However, the final year in which a supplementary weighting may be added on October 1 for this purpose will not be later than the school year that begins July 1, 2034.

97.6(5) *Change in sharing partners.* A school district that is eligible to add a supplementary weighting for a shared operational function may enter into an operational function sharing arrangement with one or more different sharing partners.

97.6(6) *Change in shared personnel.* A school district that is eligible to add a supplementary weighting for a shared operational function may enter into an operational function arrangement for a different individual in a substantially similar position.

97.6(7) *Multiple shared operational functions.* A school district that implements more than one sharing arrangement within any discrete operational function area is eligible for supplementary weighting for only one sharing arrangement in that discrete operational function.

97.6(8) *Multiple shared individuals within an operational function.* A school district that implements more than one sharing arrangement within any discrete operational function area, as both the contract holder and the purchaser of services, are not eligible for supplementary weighting if the sharing arrangements would not have been necessary had the district utilized its own properly licensed and qualified employee(s).

97.6(9) *Weighting.* A school district that shares an eligible operational function listed in subrule 97.6(2) is assigned a supplementary weighting as stipulated in Iowa Code section 257.11(5).

97.6(10) *Maximum weighting.* The maximum amount of additional weighting for which a school district participating in operational function sharing is eligible in a budget year is an amount corresponding to 21 full-time equivalent pupils. The maximum additional weighting applies to the total of all operational function sharing rather than to each discrete operational function. Each eligible discrete operational function sharing arrangement is included in the total of all operational function sharing. If the district's total of all discrete operational function sharing exceeds 21 full-time equivalent pupils, the department will make a reduction in the total rather than separately adjusting the discrete operational function sharing that made up the total.

97.6(11) *Uses of funding.* Additional funds provided through supplementary weighting for operational function sharing will be used for any general fund purpose pursuant to rule 281—98.61(24,143,257,275,279,280,285,297,298,298A,301,473,670).

281—97.7(261E) *Concurrent enrollment program contracts between accredited nonpublic schools and community colleges.* For the purpose of determining funding to the community college, subject to an appropriation to the department for this purpose, a student enrolled in a unit of concurrent enrollment coursework offered through a contract by an accredited nonpublic school with an Iowa community college pursuant to Iowa Code section 261E.8(2) will be counted as if the student were assigned a weighting as described in subrule 97.2(5).

97.7(1) *Eligibility.* To be eligible for supplementary weighting, a course will comply with Iowa Code section 257.11(3).

97.7(2) *Reporting and billing.* An accredited nonpublic school that enters into a contract for concurrent enrollment courses will submit student and course information as determined by and according to the timeline established by the department. The community college and accredited nonpublic school will verify the submitted information by semesters or the equivalent. Projected supplementary weighting calculations will be available midyear, but payments to community colleges will not be disbursed until final costs are known at the end of the school year. Community colleges will

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not bill the accredited nonpublic school until all calculations of supplementary weighting for accredited nonpublic schools are completed.

These rules are intended to implement Iowa Code sections 257.6, 257.11, and 257.12 and chapter 261E.

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EDUCATION DEPARTMENT[281]

Notice of Intended Action

Proposing rulemaking related to financial management of categorical funding and providing an opportunity for public comment

The State Board of Education hereby proposes to rescind Chapter 98, “Financial Management of Categorical Funding,” Iowa Administrative Code, and to adopt a new chapter with the same title.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code section 256.7.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code chapters 24, 29C, 76, 143, 256, 256B, 257, 274, 275, 276, 279, 280, 282, 283A, 284, 284A, 285, 291, 294A, 296, 298, 298A, 299A, 300, 301, 423E, 423F, 565 and 670 and sections 11.6(1)“a”(1), 256C.4(1)“c,” 256D.4(3) and 284.13.

Purpose and Summary

Pursuant to Executive Order 10, the Department of Education is proposing to remove restrictive terms that do not add value, remove language where a statutory cross reference would suffice, and add language to recognize the flexibility created in 2023 Iowa Acts, House File 68. The Department also proposes to add additional language to provide greater clarity and flexibility in the Management Fund and the Public Education and Recreation Levy (PERL) Fund.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the State Board for a waiver of the discretionary provisions, if any, pursuant to 281—Chapter 4.

Public Comment

Any interested person may submit written or oral comments concerning this proposed rulemaking. Written or oral comments in response to this rulemaking must be received by the Department no later than 4:30 p.m. on February 28, 2024. Comments should be directed to:

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Thomas A. Mayes
 Department of Education
 Grimes State Office Building, Second Floor
 400 East 14th Street
 Des Moines, Iowa 50319-0146
 Phone: 515.281.8661
 Email: thomas.mayes@iowa.gov

Public Hearing

Public hearings at which persons may present their views orally or in writing will be held as follows:

February 27, 2024 11 to 11:30 a.m.	Room B100 Grimes State Office Building Des Moines, Iowa
February 27, 2024 3 to 3:30 p.m.	Room B50 Grimes State Office Building Des Moines, Iowa

Persons who wish to make oral comments at a public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rulemaking.

Any persons who intend to attend a public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department and advise of specific needs by calling 515.281.5295.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking 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 rulemaking action is proposed:

ITEM 1. Rescind 281—Chapter 98 and adopt the following **new** chapter in lieu thereof:

CHAPTER 98
 FINANCIAL MANAGEMENT OF CATEGORICAL FUNDING

DIVISION I
 GENERAL PROVISIONS

281—98.1(256,257) Definitions. For the purposes of this chapter, the following definitions apply:

“*Budgetary allocation*” means the portion of the funding that is specifically earmarked for a particular purpose or designated program and that, in the case of the general fund, has been rolled into, or added to, the school district cost per pupil or school district regular program cost. Budgetary allocations may include both state aid and property tax. Budgetary allocations increase budget authority on the first day of the fiscal year for which the allocation has been certified or on the date that the school budget review committee approves the modified supplemental amount for a specific purpose or program; the budget authority remains even if the full amount of revenue is not received or if the local board does not levy a cash reserve. There is no assumption that a school district or area education agency will receive the same amount of revenue as it has received in budget authority due to delinquent property taxes, cuts in state aid, or legislative decisions to fund other instructional programs off the top of state aid. The school district or area education agency must expend the full amount of budget

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authority for the specific purposes for which it was earmarked. When the school district or state cost per pupil is transferred from one school district to another school district in the form of tuition as required by the Iowa Code, any budgetary allocation that is included in the school district or state cost per pupil will be considered transferred to the receiving school district and will be expended for the specific purpose for which it was earmarked.

“*Categorical funding*” means financial support from state and federal governments that is targeted for particular categories of students, special programs, or special purposes. This support is in addition to school district or area education agency general purpose revenue, is beyond the basic educational program, and most often has restrictions on its use. Where categorical funding requires a local match, that local match also is considered to be categorical funding. Categorical funding includes both grants in aid and budgetary allocations. Although grants in aid and budgetary allocations are both categorical funding, they are defined separately to distinguish unique characteristics of each type of categorical funding.

“*Community education*” means a life-long education process concerning itself with every facet that affects the well-being of all citizens within a given community. It extends the role of the school from one of teaching children through an elementary and secondary program to one of providing for citizen participation in identifying the wants, needs, and concerns of the neighborhood community and coordinating all educational, recreational, and cultural opportunities within the community with community education being the catalyst for providing for citizen participation in the development and implementation of programs toward the goal of improving the entire community.

“*Grants in aid*” means financial support, usually from state or federal appropriations, that is either allocated to the school district or area education agency or for which a school district or area education agency applies. This support is paid separately from state foundation aid. In the general fund, grants in aid become miscellaneous income and increase budget authority when the support is received as revenue.

“*Supplement, not supplant*” means, when a funding stream contains this provision, that the categorical funding is in addition to general purpose revenues; that categorical funding will not be used to provide services required by federal or state law, administrative rule, or local policy; and that general purpose revenues will not be diverted for other purposes because of the availability of categorical funding. Supplanting is presumed to have occurred if the school district or area education agency uses categorical funding to provide services that it was required to make available under other categorical funding or law, or uses categorical funding to provide services that it provided in prior years from general purpose revenues, or uses categorical funding to provide services to a particular group of children or programs for which it uses general purpose revenues to provide the same or similar services to other groups of children or programs. These presumptions are rebuttable if the school district or area education agency can demonstrate that it would not have provided the services in question with general purpose revenues if the categorical funding had not been available.

“*Technology*” means hardware, noninstructional software and software required to provide functionality to the hardware, wireless presenters, networking and connectivity systems, computing storage, website development services, hardware carrying equipment, licensing, and technical assistance for installation of hardware, software, or software updates. Technology does not include such items as instructional software or textbook substitutes as defined in Iowa Code chapter 301, professional development, staff providing support to teachers or students, general supplies, district personnel or individuals/companies hired or contracted in lieu of district personnel, travel, printing costs or media services not listed in this definition, insurance, most purchased services, or similar district functions. Maintenance contracts do not meet the definition of “technology” unless they are actually a license renewal fee; Internet subscriptions, licenses, or fees; cable or satellite services; or very similar services.

281—98.2(256,257) General finance. The categorical funding provided for various purposes to school districts and area education agencies includes general financial characteristics that are detailed in the following subrules:

98.2(1) Indirect cost recovery. Categorical funding provided by the state to school districts or area education agencies is not eligible for indirect cost recovery unless the Iowa Code section authorizing

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the funding or allocation expressly states that indirect cost recovery is permitted from that source. If the Iowa Code permits indirect cost recovery, the school district or area education agency will utilize its restricted indirect cost rate developed by the department for federal programs from data submitted by the school district or area education agency on its certified annual report.

98.2(2) *Mandatory carryforward.* Notwithstanding the flexibility account as described in rule 281—98.27(257,298A), any portion of categorical funding provided by the state that is not expended by the end of the fiscal year in which it was received by or for which it was allocated to the school district or area education agency will be carried forward as a reserved fund balance and added to the subsequent year's budget for that purpose. The funding can only be expended for the purposes permitted for that categorical funding. Where a local match is required for categorical funding, the amount unexpended at the end of the fiscal year that is carried forward will not be used as part of the required local match.

98.2(3) *Discontinued funding.* In the event that a categorical funding source is discontinued and an unexpended balance remains, the school district or area education agency may do one of, or a combination of, the following:

a. Carry forward the unexpended balance and expend the remaining balance within the subsequent 24 months for the purposes that were allowed in the final year that the funding was allocated or granted prior to discontinuation unless a rule in this chapter provides for a longer period. This option does not apply to market factor incentive pay funding, which may be carried forward until expended, but any expenditures from the market factor incentive pay funding must be appropriate under Iowa Code section 284.11.

b. Transfer the unexpended balance to the flexibility account as described in rule 281—98.27(257,298A).

98.2(4) *Expenditures.* Expenditures from categorical funding are limited to direct costs of providing the program or service for which the funding was intended. Expenditures will not include costs that are allocated costs or that are considered indirect costs or overhead. Expenditures for the functions of administration, business and central services, operation and maintenance of plant, transportation, enterprise and community service operations, facility acquisition and construction, or debt service generally are not allowed from categorical funding unless expressly allowed by the Iowa Code or if the expenditure represents a direct, allowable cost. In order for costs of administration, business and central services, operation and maintenance of plant, transportation, or enterprise and community service operations to be considered direct costs, the costs must be necessary because of something that is unique to the program that is causing the need for the service, not otherwise needed or not otherwise provided to similar programs; the costs must be in addition to those that are normally incurred; and the costs must be measurable directly without allocating. Where a local match is required for categorical funding, that local match requirement will not be met by the use of other categorical funding except where expressly allowed by the Iowa Code. Expenditures do not include reimbursing the school district or area education agency for expenditures it paid in a previous year in excess of the funding available for that year.

98.2(5) *Restriction on duplication.* The school district or area education agency will not charge the same cost to more than one funding source.

98.2(6) *Excess expenditures.* The school district or area education agency will not charge to categorical funding more expenditures than the total of the current year's funding or allocation, plus any carryforward balance from the previous year, plus any moneys designated from the flexibility account as described in rule 281—98.27(257,298A).

98.2(7) *Commingling prohibited.* Categorical funding shall not be commingled with other funding. All categorical funding will be accounted for separately from other funding. School districts and area education agencies will use a project code and program code as defined by Uniform Financial Accounting for Iowa School Districts and Area Education Agencies, as appropriate or required.

281—98.3 to 98.10 Reserved.

DIVISION II
APPROPRIATE USE OF BUDGETARY ALLOCATIONS

281—98.11(257) Categorical and noncategorical student counts. The certified enrollment data collection includes both student counts related to budgetary allocations for the subsequent budget year that are provided for the purpose of offering a program that is in addition to the basic educational program for a specific category of students and student counts that are general in nature and can be used for any legal general fund purpose. Student counts that are general in nature are used to generate funding through the school aid foundation formula and are not intended to fund a specific program or a specific category of students. General student counts include the basic enrollment of full-time resident students.

Counts for part-time nonpublic students participating in public school classes pursuant to Iowa Code section 257.6(3) and counts for part-time dual enrolled competent private instruction students in grades 9 through 12 are the full-time equivalent enrollment of a regularly enrolled student. Counts for dual enrolled competent private instruction students in grades lower than grade 9 are the legislatively set equivalent of a regularly enrolled full-time student. Counts for part-time nonpublic students and for part-time dual enrolled competent private instruction students in grades 9 through 12 who participate in the postsecondary enrollment option Act classes are the full-time equivalent of a regularly enrolled student based on cost. Because these counts are the full-time equivalent of a regularly enrolled student, and are not in addition to the full-time equivalent, the funding generated within the school aid foundation formula based on these counts is considered general in nature.

Student counts related to categorical budgetary allocations are those that generate funding intended to be used for only that specific category of students being counted or for the specific program for which the additional counts are authorized in the Iowa Code.

281—98.12(257,299A) Home school assistance program. The home school assistance program (HSAP) is a program for a specific category of students and is provided outside the basic educational program provided to regularly enrolled students by the school district. If a district offers a home school assistance program, the state foundation aid that the district receives pursuant to Iowa Code section 257.6(1)“a”(5), and any amount designated for this purpose from the flexibility account as described in rule 281—98.27(257,298A), will be expended for purposes of providing the home school assistance program. However, a district may use items and materials purchased for the home school assistance program for other purposes so long as this use does not prevent or interfere with the item’s or material’s use by parents or students utilizing the program.

98.12(1) *Appropriate uses of categorical funding.* Appropriate uses of the home school assistance program funding include the following:

- a. Instruction for students and assistance for parents with instruction.
- b. Services to support students enrolled in a home school assistance program, to support the teaching parents of the students, and to support home school assistance program staff.
- c. Salary and benefits for the supervising teacher of the home school assistance program. If the teacher is a part-time home school assistance program teacher and a part-time regular classroom teacher, then the portion of time that is related to providing the home school assistance program can be charged to the program, but the regular classroom portion cannot.
- d. Salary and benefits for clerical and office staff of the home school assistance program. If the staff member’s employment supports other programs of the school district, only that portion of the staff member’s salary and benefits that is related to providing the home school assistance program can be charged to the program.
- e. Staff development for the home school assistance program teacher.
- f. Travel for the home school assistance program teacher.
- g. Resources, materials, computer software, supplies, equipment, and purchased services (1) that are necessary to provide the services of home school assistance and (2) that will remain with the school district for its home school assistance program.
- h. A copier and computer hardware that support the home school assistance program.

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i. Student transportation exclusively for home school assistance program-approved field trips or other educational activities.

98.12(2) *Inappropriate uses of categorical funding.* Inappropriate uses of the home school assistance program funding include indirect costs or use charges; operational or maintenance costs other than those necessary to operate and maintain the program; capital expenditures other than equipment or the lease or rental of space to supplement existing schoolhouse facilities for the program; student transportation except in cases of home school assistance program-approved field trips or other educational activities; administrative costs other than the costs necessary to administer the program; concurrent and dual enrollment costs, including postsecondary enrollment options program costs; or any other expenditures not directly related to providing the home school assistance program. A home school assistance program shall not provide moneys or resources paid for with this program funding to parents or students utilizing the program. For capital expenditures for lease or rental of classrooms or facilities for this program, the cost will be expended from a capital projects fund. A reimbursement for that cost related to the program will be an interfund transfer to the capital project fund from the program funding.

98.12(3) *Flexibility account.* All or a portion of the amount remaining unexpended and unobligated at the end of a budget year beginning on or after July 1, 2017, may be transferred for deposit into the flexibility account established under Iowa Code section 298A.2, provided all statutory requirements of the home school assistance program have been met, including funding all requests for services and materials from parents or guardians of students eligible to access the program.

281—98.13(256C,257) Statewide voluntary four-year-old preschool program. The statewide voluntary four-year-old preschool program is a program for a specific category of students. Funding for the program is for the purpose of providing a high-quality early learning environment for four-year-old children whose families choose to access such programs.

98.13(1) *Appropriate uses of categorical funding.* Foundation aid funding provided for the program may be used by approved local programs and community providers for any purpose designated by the board of directors of the school district to meet standards for high-quality preschool instruction and for purposes that directly or indirectly benefit students enrolled in the approved local program. These purposes include the following:

- a.* Functions of instruction, including instructional equipment and supplies and material and equipment designed to develop students' large and small motor skills.
- b.* Functions of student support services, including translation services.
- c.* Functions of staff support services, including professional development for preschool teachers.
- d.* Up to 5 percent of the allocation can be used for actual documented costs of program administration, outreach activities, and rent for facilities not owned by the school district.
- e.* Food and beverages used by enrolled students.
- f.* Safety equipment.
- g.* Playground equipment and repair costs.
- h.* Costs of transportation involving children participating in the approved program. The costs of transporting other children associated with the preschool program or transporting as provided in Iowa Code section 256C.3(3) "h" may be prorated by the school district.
- i.* Other direct costs that enhance the approved local program, including contracting with community providers for such services.
- j.* Costs of attendance for a child who is younger or older than four years old and is enrolled in the program may be paid from these funds, or from another school district account or fund from which preschool program expenditures are authorized by law, if space and funding are available; however, the child will not be counted for statewide voluntary preschool program funding purposes.

98.13(2) *Pass-through funding to community-based providers.* The school district will pass through to a community-based provider for each eligible pupil enrolled in the district's approved local program not less than 95 percent of the per-pupil amount.

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a. The community-based provider may use up to 10 percent of the 95 percent portion for documented allowable administrative and operational costs of providing the district's approved local program. The costs of outreach activities, rent for facilities not owned by the school district, and transportation for children participating in the preschool program are also permissive costs allowed as part of the 10 percent under this paragraph.

b. Any portion of the 95 percent not documented as expended for direct instruction or administrative and operational costs as allowed by this rule will be refunded to the district annually on or before July 1.

c. Any portion refunded to the district will be added to the total amount available for the district's approved local program for the subsequent school year, excluding the portion of such unexpended and unobligated funding that the school district authorizes to be transferred to the district's flexibility account described in rule 281—98.27(257,298A).

98.13(3) *Inappropriate uses of categorical funding.* Inappropriate uses of the statewide voluntary four-year-old preschool program funding include indirect costs or use charges, capital expenditures other than equipment, facility acquisition not expressly allowed by the Iowa Code, construction, debt service, operational or maintenance costs or administrative costs that supplant or that exceed 5 percent, or any other expenditures not directly related to providing the statewide voluntary four-year-old preschool program or that supplant existing public funding for preschool programming.

98.13(4) *Flexibility account.* All or a portion of the amount remaining unexpended and unobligated at the end of a budget year beginning on or after July 1, 2017, may be transferred for deposit into the flexibility account established under Iowa Code section 298A.2 and described in rule 281—98.27(257,298A), provided the board of directors of the school district has determined all statutory requirements for the use of such funding have been met.

In order to transfer funds to the flexibility account, the district must have provided preschool programming during the fiscal year for which funding remained unexpended and unobligated to all eligible students for whom a timely application for enrollment was submitted.

281—98.14(257) *Supplementary weighting.* Supplementary weighting provides funding in addition to the student count that generates general purpose revenues and is for the purpose of incenting sharing of students and staff between school districts and providing postsecondary opportunities for qualified students. It is assumed that supplementary weighting covers only a portion of the costs of sharing or providing postsecondary opportunities and will be fully expended within the fiscal year. Therefore, school districts need not account for the supplementary weighting funding separate from the general purpose revenues.

281—98.15(257) *Operational function sharing supplementary weighting.* Operational function sharing supplementary weighting provides funding in addition to the student count that generates general purpose revenues and is for the purpose of incenting sharing of management-level staff. It is assumed that operational function sharing supplementary weighting covers only a portion of the costs of sharing staff identified in Iowa Code section 257.11(5) and will be fully expended within the period of sharing. Therefore, school districts need not account for the operational function sharing supplementary weighting funding separate from general purpose revenues.

281—98.16(257,280) *English learner weighting.* English learner weighting provides funding in addition to the student count that generates general purpose revenues and is for the purpose of providing funding for the excess costs of instruction of English learners above the costs of instruction of pupils in a regular curriculum. In addition, the school budget review committee may grant a modified supplemental amount to continue funding of the excess costs beyond the five years of weighting. Funding for the English learner weighting and the modified supplemental amount for English learner programs are both categorical funding and may have different restrictions than the federal English learner funding.

98.16(1) *Appropriate uses of categorical funding.* Appropriate uses of funding for the English learner program are those that are direct costs of providing instruction that supplement, but do not

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supplant, the costs of the regular curriculum. These expenditures include salaries and benefits of teachers and paraeducators; instructional supplies, textbooks, and technology; classroom interpreters; support services to students served in English learner programs above the services provided to pupils in regular programs; support services to instructional staff such as targeted professional development, curriculum development or academic student assessment; and support services provided to parents of English learners and community services specific to English learners.

98.16(2) *Inappropriate uses of categorical funding.* Inappropriate uses of funding for the English learner program include indirect costs, operational or maintenance costs, capital expenditures other than equipment, student transportation, administrative costs, or any other expenditures not directly related to providing the English learner program beyond the scope of the regular classroom.

281—98.17(256B,257) Special education weighting. Special education weighting provides funding in addition to the student count that generates general purpose revenues for the purpose of providing additional instruction and services to an identified group of students.

281—98.18(257) At-risk program, alternative program or alternative school, and potential or returning dropout prevention program formula supplementary weighting. Formula supplementary weighting provides funding in addition to the student count that generates general purpose revenues for the purpose of providing additional instruction and services to students identified as at-risk, potential or returning dropouts, and secondary students attending an alternative program or alternative school pursuant to Iowa Code section 257.11(4)“a.”

98.18(1) *Appropriate uses of categorical funding.* Appropriate uses of at-risk formula supplementary weighting funding include costs to develop or maintain programs for at-risk pupils, alternative programs and alternative schools for secondary students, and returning dropout and dropout prevention programs. Appropriate uses include those identified in subrule 98.21(2).

98.18(2) *Inappropriate uses of categorical funding.* Inappropriate uses of at-risk formula supplementary weighting program funding include those identified in subrule 98.21(3).

281—98.19(257) Reorganization incentive weighting. Reorganization incentive weighting provides funding in addition to the student count that generates general purpose revenues and is for the purpose of incenting reorganization of school districts to increase student learning opportunities. It is assumed that reorganization incentive weighting covers only a portion of the costs of reorganizing and will be fully expended within the fiscal year. Therefore, school districts need not account for the reorganization incentive weighting funding separate from the general purpose revenues.

281—98.20(257) Gifted and talented program. Gifted and talented program funding is included in the school district cost per pupil calculated for each school district under the school foundation formula. The per-pupil amount increases each year by the supplemental state aid percentage. This amount must account for not more than 75 percent of the school district’s total gifted and talented program budget. The school district must also provide a local match from the school district’s regular program district cost, and the local match portion must be a minimum of 25 percent of the total gifted and talented program budget. In addition, school districts may receive donations and grants, and the school district may contribute more local school district resources toward the gifted and talented program. The 75 percent portion, the local match, amounts designated from the flexibility account as described in rule 281—98.27(257,298A), and all donations and grants will be accounted for as categorical funding.

The purpose of the gifted and talented funding described in Iowa Code section 257.46 is to provide for identified gifted students’ needs beyond those provided by the regular school program pursuant to each gifted student’s individualized plan. The funding will be used only for expenditures that are directly related to providing the gifted and talented program.

98.20(1) *Appropriate uses of categorical funding.* Appropriate uses of the gifted and talented program funding include:

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a. Salary and benefits for the teacher of gifted and talented students. If the teacher is a part-time gifted and talented and a part-time regular classroom teacher, then only the portion of time that is related to the gifted and talented program may be charged to the program.

b. Staff development for the gifted and talented teacher.

c. Resources, materials, software, supplies, equipment, and purchased services that meet all of the following criteria:

(1) Meet the needs of K through 12 identified students,

(2) Are beyond those provided by the regular school program,

(3) Are necessary to provide the services listed on the gifted students' individualized plans, and

(4) Will remain with the K through 12 gifted and talented program.

d. Student transportation exclusively for approved gifted and talented program field trips or other educational activities.

98.20(2) *Inappropriate uses of categorical funding.* Inappropriate uses of the gifted and talented program funding include indirect costs or use charges, operational or maintenance costs, capital expenditures other than equipment, student transportation other than field trips exclusive to this program, administrative costs, or any other expenditures not directly related to providing the gifted and talented program beyond the scope of the regular classroom.

98.20(3) *Provisions for teacher salary supplement use.* Beginning July 1, 2023, all or a portion of the money carried forward from a prior year or received in the current year as gifted and talented funds may be restricted for use limitations described in rule 281—98.24(257,284).

281—98.21(257) **At-risk program, alternative program or alternative school, and potential or returning dropout prevention program—modified supplemental amount.** A modified supplemental amount is available through a school district-initiated request to the school budget review committee pursuant to Iowa Code sections 257.38 through 257.41. This amount must account for no more than 75 percent of the school district's total at-risk program, alternative program or alternative school, and potential or returning dropout budget. The school district must also provide a local match from the school district's regular program district cost, and the local match portion must be a minimum of 25 percent of the total program budget. In addition, school districts may receive donations and grants, and the school district may contribute more local school district resources toward the program. The 75 percent portion, local match, previous year carryforward, amounts designated from the flexibility account as described in rule 281—98.27(257,298A), and all donations and grants will be accounted for as categorical funding.

98.21(1) *Purpose of categorical funding.* The purpose of the modified supplemental amount is to provide funding to meet the needs of identified students for costs in excess of the amount received under rule 281—98.18(257) pursuant to Iowa Code section 257.11(4). The funding will be used only for expenditures that are directly related to the district's board-adopted program plan established pursuant to Iowa Code sections 257.38 through 257.41.

a. Returning dropouts are resident pupils who have been enrolled in a school district in any of grades 7 through 12 who withdrew from school for a reason other than transfer to another school or school district and who subsequently reenrolled in a public school in the school district.

b. Potential dropouts are resident pupils who are enrolled in a school district who demonstrate poor school adjustment as indicated by two or more of the following:

(1) High rate of absenteeism, truancy, or frequent tardiness.

(2) Limited or no extracurricular participation or lack of identification with school, including to expressed feelings of not belonging.

(3) Poor grades, including failing in one or more school subjects or grade levels.

(4) Low achievement scores in reading or mathematics that reflect achievement at two years or more below grade level.

(5) Children in grades kindergarten through 3 who meet the definition of at-risk children adopted by the department of education.

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98.21(2) *Appropriate uses of categorical funding.* Appropriate uses of the funding for a board-adopted program include:

a. Salary and benefits for staff, including instructional staff, instructional support staff, administrative staff, and guidance counselors; salary and benefits or contract payments for psychologists licensed under Iowa Code chapter 154B, licensed independent social workers or master social workers under Iowa Code chapter 154C, licensed mental health counselors under Iowa Code chapter 154D; and salaries and benefits for school-based youth services staff dedicated to providing services directly and exclusively to the identified students participating in the adopted program beyond the services provided by the school district to students who are not identified as at risk or as potential or returning dropouts. However, if the staff person works part-time or on a contract basis with students who are participating in the approved program and has another unrelated staff assignment, only the portion of the person's time that is related to the program or with such students may be charged to the program funding. The school district will have the authority to designate in its adopted program plan the portion of the person's time and related salary and benefits or contract payment amount dedicated to this purpose.

For purposes of this paragraph, an alternative setting may be necessary to provide for a program that is offered at a location off school grounds and that is intended to serve student needs by improving relationships and connections to school, decreasing truancy and tardiness, providing opportunities for course credit recovery, or helping students identified as at risk to accelerate through multiple grade levels of achievement within a shortened time frame.

b. Professional development for all staff identified in paragraph 98.21(2)“*a*” working with identified students under an adopted program.

c. Research-based resources, materials, software, supplies, equipment, and purchased services that meet all of the following criteria:

- (1) Meet the needs of kindergarten through grade 12 identified students,
- (2) Are beyond those provided by the regular school program,
- (3) Are necessary to provide the services listed in the school district's adopted at-risk or returning dropout and dropout prevention program plan, and
- (4) Will remain with the kindergarten through grade 12 at-risk program, alternative program or alternative school, or returning dropout and dropout prevention program.

d. Transportation provided by the school district exclusively to transport identified students to an alternative school or alternative program outside a student's regular attendance center, located in and provided by another Iowa school district, or an extended school year program.

e. The portion of the maximum tuition allowed by Iowa Code section 282.24 that corresponds to the portion exclusively providing direct additional instruction and services to an identified group of students above the costs of instruction of pupils in a regular curriculum.

f. Instructional costs necessary to address the behavior of a child during instructional time when those services are not otherwise provided to students who do not require special education and when the costs exceed the costs of instruction of pupils in a regular curriculum, the costs exceed the maximum tuition rate prescribed in Iowa Code section 282.24, the child has not been placed in a facility operated by the state, and all of the following apply:

- (1) The child does not require special education.
- (2) The child is not placed by the department of health and human services or a court in a residential or day treatment program where the treatment necessary to address the student's behavior was included in the contract with the placement agency.
- (3) The child is not placed in a hospital unit, health care facility, psychiatric medical institution for children or other treatment facility where the cost of treatment necessary to address the student's behavior is covered by insurance or Medicaid.
- (4) The board of directors of the district of residence has determined that the child is likely to inflict self-harm or likely to harm another student.

g. Costs incurred for a program intended to address high rates of absenteeism, truancy, or frequent tardiness.

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h. Amounts that a school district receives as formula supplementary weighting pursuant to Iowa Code section 257.11(4)“a” or as a modified supplemental amount received under Iowa Code section 257.41 may be used in the budget year for purposes of providing districtwide, buildingwide, or grade-specific at-risk and dropout prevention programming targeted to nonidentified students.

i. School security personnel costs.

j. Any purpose determined by the board of directors that directly benefits students participating in the adopted program.

98.21(3) *Inappropriate uses of categorical funding.* Inappropriate uses of the modified supplemental amount program funding include indirect costs or use charges, operational or maintenance costs, capital expenditures other than equipment, expenses related to the routine duties and activities performed by a staff member under paragraph 98.21(2)“a” with identified students that are also provided to all students, or any other expenditures not directly related to providing the board-adopted program beyond the scope of the regular classroom.

281—98.22(257) Use of the unexpended general fund balance. The unexpended general fund balance refers to the fund balance remaining in the general fund at the end of the fiscal year.

98.22(1) *Authorization required.* The school budget review committee may authorize a school district to spend a reasonable and specified amount from its unexpended general fund balance for either of the following purposes:

a. Furnishing, equipping, and contributing to the construction of a new building or structure for which the voters of the school district have approved a bond issue as provided by law or the tax levy provided in Iowa Code section 298.2.

b. The costs associated with the demolition of an unused school building, or the conversion of an unused school building for community use, in a school district involved in a dissolution or reorganization under Iowa Code chapter 275, if the costs are incurred within three years of the dissolution or reorganization.

98.22(2) *Appropriate uses of categorical funding.* Appropriate uses of the unexpended general fund balance include a transfer from the general fund to the capital projects fund in the amount approved by the school budget review committee. The moneys in the capital projects fund will be used exclusively for furnishing, equipping or constructing a new building or for demolishing an unused building.

98.22(3) *Inappropriate uses of categorical funding.* Inappropriate uses of the unexpended general fund balance include expenditures for salaries or recurring costs.

98.22(4) *Mandatory reversion of unused funding.* The portion of the unexpended general fund balance that is authorized to be transferred and expended will increase budget authority. However, any part of the amount not actually spent for the authorized purpose will revert to its former status as part of the unexpended general fund balance, and budget authority will be reduced by the amount not actually spent.

281—98.23(257) Early intervention supplement.

98.23(1) *Appropriate uses of categorical funding.* Appropriate uses of the early intervention-supplement funding include any general fund-appropriate use described in rule 281—98.61(24,143,257,275,279,280,285,297,298,298A,301,473,670).

98.23(2) *Inappropriate uses of categorical funding.* Inappropriate uses of the early intervention-supplement funding include those that are inappropriate to the general fund as described in rule 281—98.61(24,143,257,275,279,280,285,297,298,298A,301,473,670).

98.23(3) *Deference.* Deference will be given to the decisions of school districts’ boards of directors in accordance with Iowa Code section 257.10.

This rule is intended to implement Iowa Code section 257.9(8).

281—98.24(257,284) Teacher salary supplement. A teacher may be employed in both an administrative and a nonadministrative position by a board of directors of a school district and shall be

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considered a part-time teacher for the portion of time that the teacher is employed in a nonadministrative position.

98.24(1) *Appropriate use of categorical funding.* Appropriate use of the teacher salary supplement funding is limited to additional salary for teachers, including amounts necessary for the district to comply with statutory teacher salary minimums; the amount required to pay the employers' share of the federal social security and Iowa public employees' retirement system, or a pension and annuity retirement system established under Iowa Code chapter 294; and payments to another school district or districts as negotiated in a whole grade sharing agreement pursuant to Iowa Code section 282.10(4). Teacher salary supplement funding is intended to be fully expended in the fiscal year for which it is allocated; however, in the event that a small amount is remaining and it would not be cost-effective to reallocate the remainder to teachers in the fiscal year, the school district or area education agency will carry forward the remainder and add it to the amount to be allocated to teachers in the subsequent fiscal year.

98.24(2) *Inappropriate uses of categorical funding.* Inappropriate uses of the teacher salary supplement funding include any expenditures other than the appropriate use described in subrule 98.24(1) hereof.

98.24(3) *Deference.* Deference will be given to the decisions of school districts' boards of directors in accordance with Iowa Code section 257.10.

98.24(4) *Rule of construction.* Flexibility provided in 2023 Iowa Acts, House File 68, will be applied to this categorical fund.

281—98.25(257,284) Teacher leadership supplement. The purpose of the teacher leadership supplement is to improve instruction and elevate the quality of teaching and student learning.

98.25(1) *Appropriate uses of categorical funding.* Appropriate uses of teacher leadership supplement funding may be used to increase the payment for a teacher assigned to a leadership role pursuant to a framework or comparable system approved pursuant to Iowa Code section 284.15; to increase the percentages of teachers assigned to leadership roles; to increase the minimum teacher starting salary to \$33,500; to cover the costs for the time mentor and lead teachers are not providing instruction to students in a classroom; for coverage of a classroom when an initial or career teacher is observing or co-teaching with a teacher assigned to a leadership role; for professional development time to learn best practices associated with the career pathways leadership process; for other costs associated with a framework or comparable system approved by the department of education under Iowa Code section 284.15 with the goals of improving instruction and elevating the quality of teaching and student learning, or as described in subrule 98.25(4). "Payment for a teacher" as used in this rule means additional salary for teachers and the amount required to pay the employer's share of the federal social security and Iowa public employees' retirement system, or a pension and annuity retirement system established under Iowa Code chapter 294. Appropriate uses also include payments to another school district or districts as negotiated in a whole grade sharing agreement pursuant to Iowa Code section 282.10(4) and payment to another school district receiving an open enrolled student pursuant to Iowa Code section 282.18.

98.25(2) *Inappropriate uses of categorical funding.* Inappropriate uses of teacher leadership supplement funding include any expenditures other than the appropriate uses described in subrule 98.25(1).

98.25(3) *Flexibility account.* All or a portion of the amount remaining unexpended and unobligated at the end of a budget year beginning on or after July 1, 2020, may be transferred for deposit into the flexibility account established under Iowa Code section 298A.2, provided all statutory requirements of the teacher leadership program have been met.

98.25(4) *Additional provision.* Beginning July 1, 2023, all or a portion of the money carried forward from a prior year or received in the current year as teacher leadership supplement funds may be restricted for use limitations described in rule 281—98.24(257,284).

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281—98.26(257,284) Educator quality professional development, also known as professional development supplement. The purpose of the funding is to implement the professional development provisions of the teacher career paths and leadership roles specified in Iowa Code section 284.15.

98.26(1) *Appropriate uses of categorical funding.* Appropriate uses of the educator quality professional development funding, and any amount designated for professional development purposes from the flexibility account as described in rule 281—98.27(257,298A), are limited to providing professional development to teachers, including additional salaries for time beyond the normal negotiated agreement; activities and pay to support a beginning teacher mentoring and induction program that meets the requirements of Iowa Code section 284.5; pay for substitute teachers, professional development materials, speakers, and professional development content; textbooks and curriculum materials used for classroom purposes if such textbooks and curriculum materials include professional development; administering assessments pursuant to Iowa Code sections 256.7(21) “b”(1) and 256.7(21) “b”(2) if such assessments include professional development; costs associated with implementing the individual professional development plans; and payments to a whole grade sharing partner school district as negotiated as part of the new or existing agreement pursuant to Iowa Code section 282.10(4). Reasonable efforts will be made to provide equal access to all teachers.

98.26(2) *Inappropriate uses of categorical funding.* Inappropriate uses of educator quality professional development funding include any expenditures that supplant professional development opportunities the school district otherwise makes available.

98.26(3) *Deference.* Deference will be given to the decisions of school districts’ boards of directors in accordance with Iowa Code section 257.10.

98.26(4) *Transfer to flexibility account.* All or a portion of the moneys received as professional development supplement that remain unexpended and unobligated at the end of a fiscal year may be transferred for deposit to the flexibility account as described in rule 281—98.27(257,298A).

In order to transfer funds to the flexibility account, all requirements of Iowa Code chapter 284 must be met.

98.26(5) *Additional provision.* Beginning July 1, 2023, all or a portion of the money carried forward from a prior year or received in the current year as professional development supplement funds may be restricted for use limitations described in rule 281—98.24(257,284).

281—98.27(257,298A) Flexibility account. Beginning with the budget year beginning July 1, 2017, in accordance with Iowa Code section 298A.2, a flexibility account will be established in the general fund of each school corporation if the school corporation has authorized a transfer of all or a portion of its unexpended and unappropriated funds from any of the following sources: the statewide voluntary preschool program, the professional development supplement, the teacher leadership supplement, and the home school assistance program. Additionally, moneys from any other school district fund or general fund account can be transferred to the flexibility account if the program, purpose, or requirements for expenditure of such moneys have been repealed or are no longer in effect.

98.27(1) *Requirements for transfer to the flexibility account.* In order to transfer funds to the flexibility account, the board of directors of the school corporation must determine that the statutory requirements for the source funds have been met as described in Iowa Code section 298A.2.

98.27(2) *Requirements for use of funds deposited to the flexibility account.* Expenditures from the flexibility account will be approved by a resolution of the board of directors of the school corporation that meets all requirements stipulated in Iowa Code section 298A.2.

98.27(3) *Appropriate uses of categorical funding.* Appropriate uses of funds transferred to the flexibility account are limited to the purposes described in Iowa Code section 298A.2.

98.27(4) *Inappropriate uses of categorical funding.* Inappropriate uses of funds within the flexibility account include any expenditures for purposes not specified in Iowa Code section 298A.2.

98.27(5) *Deference.* Deference will be given to the decisions of school districts’ boards of directors in accordance with Iowa Code section 257.10.

281—98.28 to 98.39 Reserved.

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DIVISION III
APPROPRIATE USE OF GRANTS IN AID

281—98.40(256,257,298A) Grants in aid. The state provides a large amount of categorical funding for various purposes to school districts and area education agencies in the form of grants in aid. Only those grants in aid allocated to a substantial number of the school districts and area education agencies through the department of education are included in these rules.

281—98.41 Reserved.

281—98.42(257,284) Beginning teacher mentoring and induction program. The purpose of the beginning teacher mentoring and induction program is to promote excellence in teaching, enhance student achievement, build a supportive environment within school districts and area education agencies, increase the retention of promising beginning teachers, and promote the personal and professional well-being of teachers. Effective July 1, 2017, this program is addressed within educator quality professional development as described in rule 281—98.26(257,284).

281—98.43(257,284A) Beginning administrator mentoring and induction program. The purpose of the beginning administrator mentoring and induction program is to promote excellence in school leadership, improve classroom instruction, enhance student achievement, build a supportive environment within school districts, increase the retention of promising school leaders, and promote the personal and professional well-being of administrators.

98.43(1) *Appropriate uses of categorical funding.* Appropriate uses of the beginning administrator mentoring and induction program funding include costs to provide each mentor with the statutory award for participation in the school district's beginning administrator mentoring and induction program; to implement the plan; and to pay any applicable costs of the employer's share of contributions to federal social security and the Iowa public employees' retirement system, or a pension and annuity retirement system established under Iowa Code chapter 294, for such amounts paid by the school district.

98.43(2) *Inappropriate uses of categorical funding.* Inappropriate uses of beginning administrator mentoring and induction program funding includes any costs that are not listed in subrule 98.43(1) as appropriate uses.

281—98.44(257,301) Nonpublic textbook services. Textbooks adopted and purchased by a school district will, to the extent funds are appropriated by the general assembly, be made available to pupils attending accredited nonpublic schools upon request of the pupil or the pupil's parent under comparable terms as made available to pupils attending public schools.

98.44(1) *Appropriate uses of categorical funding.* The appropriate use of the nonpublic textbook services funding is for the public school district to purchase nonsectarian textbooks for the use of pupils attending accredited nonpublic schools located within the boundaries of the public school district. "Textbooks" means the same as defined in Iowa Code section 301.1(3).

In the event that a participating accredited nonpublic school physically relocates to another school district, textbooks purchased for the nonpublic school with funds appropriated for that purpose in accordance with the Iowa Code will be transferred to the school district in which the accredited nonpublic school has relocated and may be made available to the accredited nonpublic school by the school district in which the nonpublic school has relocated. Funds distributed to a former school district for purposes of purchasing textbooks and that are unexpended will also be transferred from the former school district to the school district in which the accredited nonpublic school has relocated.

In the event that a participating accredited nonpublic school ceases operation, textbooks purchased for the nonpublic school with funds appropriated for that purpose in accordance with the Iowa Code will be returned to the public school district in which the nonpublic school was located. Funds provided for the purpose of purchasing textbooks for the nonpublic school that are unexpended will be reverted to the department of education.

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98.44(2) *Inappropriate uses of categorical funding.* Inappropriate uses of nonpublic textbook services funding include reimbursements to accredited nonpublic schools for purchases made by the accredited nonpublic school, sectarian textbooks, computer hardware other than laptop computers or other portable personal computing devices that are used for nonreligious instructional use only, installation of hardware or other purchased services, teacher manuals or any other materials not available to the students attending the accredited nonpublic school, or any other expenditure that does not fit the definition of textbook. Funding provided for one nonpublic school located within the boundaries of the public school district will not be used for another accredited nonpublic school, even if the accredited nonpublic school is associated with the same parent organization.

281—98.45(279) Early literacy. School districts will provide intensive supplemental reading instruction to any student who has been identified as persistently at risk in reading, based upon an assessment or through teacher observations, and other activities required or authorized by Iowa Code section 279.68.

98.45(1) *Appropriate uses of categorical funding.* Appropriate uses of early literacy program funding include services and activities listed in Iowa Code section 279.68 and 281—Chapter 16.

98.45(2) *Inappropriate uses of categorical funding.* Inappropriate uses of early literacy program funding include indirect costs or use charges, operational or maintenance costs, capital expenditures other than equipment, student transportation other than as allowed in subrule 98.45(1), or administrative costs.

281—98.46 to 98.59 Reserved.

DIVISION IV
APPROPRIATE USE OF SPECIAL TAX LEVIES AND FUNDS

281—98.60(24,29C,76,143,256,257,274,275,276,279,280,282,283A,285,291,296,298,298A,300,301,423E,423F,565,670) Levies and funds. Tax levies or funds that are required by law to be expended only for the specific items listed in statute will be accounted for in a similar way to categorical funding. Each fund is mutually exclusive and completely independent of any other fund. No fund may be used as a clearing account for another fund, no fund may retire the debt of another fund unless specifically authorized in statute, and transfers between funds will be accomplished only as authorized in statute or as approved by the school budget review committee. Public funds shall not be used for private purposes.

281—98.61(24,143,257,275,279,280,285,297,298,298A,301,473,670) General fund. All moneys received by a school corporation from taxes and other sources will be accounted for in the general fund, except moneys required by law to be accounted for in another fund. If another fund specifically lists an expenditure to that other fund, it is assumed not to be appropriate to the general fund unless statute expressly states that it is an appropriate general fund expenditure. Each school district and each area education agency will have only one general fund.

98.61(1) *Sources of revenue in the general fund.* Sources of revenue in the general fund include all moneys not required by law to be accounted for in another fund and interest on the investment of those moneys. Proceeds from the sale or disposition of property other than real property, proceeds from the lease of real or other property, compensation or rent received for the use of school property, sales of school supplies, and sales or rentals of textbooks will be accounted for in the general fund. Proceeds for loans for equipment pursuant to Iowa Code section 279.48, federal loans for asbestos projects pursuant to Iowa Code section 279.52, or loans for energy conservation projects pursuant to Iowa Code section 473.20 may be accounted for in the general fund. Any revenue or receipt described in law as “miscellaneous income” or related to the modified supplemental amount is restricted to the general fund.

98.61(2) *Appropriate uses of the general fund.* Appropriate expenditures in the general fund include the following:

a. Providing day-to-day operations to the district or area education agency, such as salaries, employee benefits, purchased services, supplies, and expenditures for instructional equipment.

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- b. Purchasing school buses from unobligated funds on hand.
- c. Establishing and maintaining dental clinics for children and offering courses of instruction on oral hygiene.
- d. Employing public health nurses.
- e. Funding insurance agreements if the district has not certified a district management levy.
- f. Purchasing books and other supplies to be loaned, rented, or sold at cost to students.
- g. Purchasing safety eye-protective devices and safety ear-protective devices.
- h. Purchasing bonds and premiums for bonds for employees who have custody of funds belonging to the school district or area education agency or funds derived from extracurricular activities and other sources in the conduct of their duties.
- i. Paying assessed costs related to changes in boundaries, reorganization, or dissolution.
- j. Publishing the notices and estimates and the actual and necessary expenses of preparing the budget.
- k. Engraving and printing school bonds, in the case of a school district.
- l. Transferring interest and principal to the debt service fund when due for loans to purchase equipment authorized under Iowa Code section 279.48 and loans to be used for energy conservation measures under Iowa Code section 473.20, in the case of a school district, where the original proceeds were accounted for in the general fund.
- m. Transferring interest and principal to the debt service fund when due for lease purchase agreements related to capital projects authorized under Iowa Code section 273.3(7), in the case of an area education agency.
- n. Funding asbestos projects including the costs of inspection and reinspection, sampling, analysis, assessment, response actions, operations and maintenance, training, periodic surveillance, and developing of management plans and record-keeping requirements relating to the presence of asbestos in school buildings and its removal or encapsulation as authorized by the school budget review committee in the case of a school district.
- o. Funding energy conservation projects entered into with the department of natural resources or its duly authorized agents or representatives pursuant to Iowa Code section 473.20, in the case of a school district.
- p. Transferring to a capital projects fund as authorized by the school budget review committee, in the case of a school district.
- q. Transferring to a capital projects fund as funds are due to be expended on a capital project authorized under Iowa Code section 273.3(7), in the case of an area education agency.
- r. Start-up costs, other than land purchase, for the first year of a new student construction program.
- s. Beginning with the budget year beginning July 1, 2016, transferring, by board resolution, to the student activity fund an amount necessary to purchase or, beginning with the budget year beginning July 1, 2018, recondition protective and safety equipment required for any extracurricular interscholastic athletic contest or competition that is sponsored or administered by an organization as defined in Iowa Code section 280.13, as allowed under Iowa Code section 298A.2 pursuant to Iowa Code section 298A.8(2).
- t. Paying any other costs not required to be accounted for in another fund.
- u. Paying for costs of activity programming required pursuant to rule 281—12.6(256) from funds other than those required to be accounted for in the student activity fund pursuant to Iowa Code section 298A.8.

98.61(3) *Inappropriate uses of the general fund.* Inappropriate expenditures in the general fund include the following:

- a. Purchasing land or improvements.
- b. Purchasing or constructing buildings or for capital improvements to real property except under special circumstances authorized by the school budget review committee, in the case of a school district, or except as authorized under Iowa Code section 273.3(7), in the case of an area education agency.
- c. Modifying or remodeling school buildings or classrooms even if to make them accessible.

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- d. Paying interest and principal on long-term indebtedness for which the original proceeds were not accounted for in the general fund.
- e. Funding lease-purchases.
- f. Purchasing portable buildings.
- g. Paying individuals or private organizations that are not audited and allowed and related to goods received or services rendered.
- h. Paying other costs that are not operating or current expenditures for public education and are not expressly authorized in the Iowa Code.

98.61(4) *Special levies.* The general fund includes two special levy programs available to school districts, but not to area education agencies, that are restricted by the Iowa Code.

a. Instructional support program. The instructional support program is a district-initiated program to provide additional funding to the district's general fund.

(1) Appropriate uses of instructional support program funding. Moneys received by a district for the instructional support program may be used for any general fund purpose except those listed as inappropriate uses in subparagraph 98.61(4) "b"(2).

(2) Inappropriate uses of instructional support program funding. Moneys received by a district for the instructional support program will not be used as, or in a manner that has the effect of, supplanting funds authorized to be received under Iowa Code sections 257.41 (returning dropouts and dropout prevention programs), 257.46 (gifted and talented programs), 298.4 (management fund levy), and 298.2 (physical plant and equipment fund levy), or to cover any deficiencies in funding for special education instructional services resulting from the application of the special education weighting plan under Iowa Code section 256B.9.

b. Educational improvement program. The educational improvement program is a district-initiated program available to districts in special circumstances to provide additional funding to the district's general fund if the district already has the instructional support program in place.

(1) Appropriate uses of educational improvement program funding. Moneys received by a district for the educational improvement program may be used for any general fund purpose.

(2) Inappropriate uses of educational improvement program funding. Inappropriate uses of educational improvement program funding include any expenditure not appropriate to the general fund.

281—98.62(279,296,298,670) Management fund. The purpose of this fund is to pay the costs of unemployment benefits; early retirement benefits; insurance agreements; liability insurance to protect the school districts from tort liability, loss of property, and environmental hazards; and judgments or settlements relating to such liability. The authority to establish a management fund is available to school districts but not to area education agencies.

98.62(1) *Sources of revenue in the management fund.* Sources of revenue in the management fund include a property tax and interest on the investment of those moneys.

98.62(2) *Appropriate uses of the management fund.* Appropriate expenditures in the management fund include the following:

- a. Costs of unemployment benefits as provided in Iowa Code section 96.31.
- b. Costs of liability insurance to protect the school districts from tort liability, loss of property, and environmental hazards.
- c. Costs of final court judgments, including judgments for attorney fees and court costs, entered against the district or a settlement made for a tort liability claim including interest accruing on the judgment or settlement to the expected date of payment.
- d. Costs, including prepaid costs, of insurance agreements to protect the school districts from tort liability, loss of property, environmental hazards, or other risk associated with operations, but not including employee benefit plans.

e. Costs of early retirement benefits to employees under Iowa Code section 279.46 to pay a monetary bonus, continuation of health or medical insurance coverage, or other incentives for encouraging employees to retire before the normal retirement date for employees 55 years of age or

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older who notify the board of directors prior to April 1 of the fiscal year that they intend to retire not later than the start of the next following school calendar.

f. Costs of a physical inventory or cybersecurity vulnerability study conducted solely for the purpose of insurance.

g. Transfers to the debt service fund for payment of principal and interest when due on general obligation bonds issued under Iowa Code section 296.7 to protect the school district from tort liability, loss of property, environmental hazards, or other risk associated with operations.

h. Transfers to the appropriate fund for the portion of an insurance claim that was eligible under the insurance agreement but was denied because it was within the deductible limit.

i. Payment of costs of mediation and arbitration, including legal fees associated with such mediation or arbitration, but not including the results of the mediation or arbitration if those costs do not qualify under paragraph 98.62(2)“c” above.

98.62(3) *Inappropriate uses of the management fund.* Inappropriate expenditures in the management fund include the following:

- a.* Costs for employee health benefit plans.
- b.* Costs to conduct physical inventories of property for purposes other than insurance.
- c.* Costs to conduct actuarial studies.
- d.* Costs for supplies or capital outlay.
- e.* Transfer to a trust fund for other postemployment benefit (OPEB) cost or estimated cost calculated pursuant to Governmental Accounting Standards Board (GASB) Statement 45.
- f.* Any other costs not expressly authorized in the Iowa Code.

281—98.63(298) Library levy fund. The board of directors of a school district in which there is no free public library may contract with any free public library for the free use of such library by the residents of the school district and pay the library the amount agreed upon for the use of the library as provided by law. During the existence of the contract, the board will certify annually a tax sufficient to pay the library the agreed-upon consideration.

98.63(1) *Sources of revenue in the library levy fund.* Sources of revenue in the library levy fund include a property tax not to exceed \$0.20 per \$1,000 of assessed value of the taxable property of the district and interest on the investment of those moneys.

98.63(2) *Appropriate uses of the library levy fund.* Appropriate expenditures in the library levy fund include expenditures necessary to provide a free public library.

98.63(3) *Inappropriate uses of the library levy fund.* Inappropriate expenditures in the library levy fund include the following:

- a.* Capital expenditures related to land or buildings.
- b.* Debt service.
- c.* Any other costs not necessary to provide a free public library.

281—98.64(279,283,297,298) Physical plant and equipment levy (PPEL) fund. The physical plant and equipment levy (PPEL) consists of the regular PPEL not to exceed \$0.33 per \$1,000 of assessed valuation and a voter-approved PPEL not to exceed \$1.34 per \$1,000 of assessed valuation, for a total of \$1.67. The authority to establish a PPEL fund is available to school districts but not to area education agencies.

98.64(1) *Sources of revenue in the PPEL fund.* Sources of revenue in the PPEL fund include a property tax, income surtax, and interest on the investment of those moneys, and proceeds from loan agreements in anticipation of the collection of the voter-approved property. Proceeds from the condemnation, sale or disposition of real property are revenue to the PPEL fund. Proceeds from loans for equipment pursuant to Iowa Code section 279.48, federal loans for asbestos projects pursuant to Iowa Code section 279.52, or loans for energy conservation projects pursuant to Iowa Code section 473.20 may be accounted for in the PPEL fund. If the school board intends to enter into a rental, lease, or loan agreement, only a property tax will be levied for those purposes.

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98.64(2) *Appropriate uses of the PPEL fund.* Appropriate expenditures in the PPEL fund include the following:

a. Purchase of grounds including the legal costs relating to the property acquisition, costs of surveys of the property, costs of relocation assistance under state and federal law, and other costs incidental in the property acquisition.

b. Improvement of grounds including grading, landscaping, paving, seeding, and planting of shrubs and trees; constructing sidewalks, roadways, retaining walls, sewers and storm drains, and installing hydrants; surfacing and soil treatment of athletic fields and tennis courts; exterior lighting, including athletic fields and tennis courts; furnishing and installing flagpoles, gateways, fences, and underground storage tanks that are not parts of building service systems; demolition work; and special assessments against the school district for public improvements.

c. Construction of schoolhouses or buildings.

d. Construction of roads to schoolhouses or buildings.

e. Purchasing, leasing, or lease-purchasing equipment or technology exceeding \$500 in value per purchase, lease, or lease-purchase transaction.

(1) "Equipment" means both equipment and furnishings. The cost limitation for equipment does not apply to recreational equipment pursuant to paragraph 98.64(2)"*n*" or equipment that becomes an integral part of real property such as furnaces, boilers, water heaters, and central air-conditioning units that are included in repairs to a building pursuant to paragraph 98.64(2)"*h*."

(2) "Transaction" means a business deal or agreement between a school district and a provider of goods or services. Technology may be bundled for purposes of exceeding \$500 per transaction.

f. Transferring to debt service for payments, when due, of debts contracted for the erection or construction of schoolhouses or buildings, not including interest on bonds.

g. Procuring or acquisition of library facilities.

h. Repairing, remodeling, reconstructing, improving, or expanding the schoolhouses or buildings and the additions to existing schoolhouses. "Repairing" means restoring an existing structure or thing to its original condition, as near as may be, after decay, waste, injury, or partial destruction, but does not include maintenance. "Reconstructing" means rebuilding or restoring as an entity a thing that was lost or destroyed. "Maintenance" means to cause to remain in a state of good repair or to keep equipment in effective working condition and ready for daily use. Maintenance includes cleaning, upkeep, inspecting for needed maintenance, preserving the existing state or condition, preventing a decline in the existing state or condition, and replacing parts, unless otherwise a repair.

i. Energy conservation projects.

j. Transferring interest and principal to the debt service fund when due for loans to purchase equipment authorized under Iowa Code section 279.48, for loans in anticipation of the collection of the voter-approved property under Iowa Code section 297.36, and loans to be used for energy conservation measures under Iowa Code section 473.20, in the case of a school district, when the original proceeds were accounted for in the PPEL fund.

k. The rental of facilities under Iowa Code chapter 28E.

l. Purchase of transportation equipment for transporting students and for repairing such transportation equipment when the cost of the repair exceeds \$2,500. "Repairing," for purposes of this paragraph, means restoring an existing item of transportation equipment to its original condition, as near as may be, after gradual obsolescence of physical and functional use due to wear and tear, corrosion and decay, or partial destruction, and includes maintenance that meets the definition of equipment and repair and the cost of which exceeds \$2,500. Effective October 2, 2019, "repairing" also means retrofitting transportation equipment when such retrofitting aligns to the school bus construction standards in 281—Chapter 44.

m. Purchase of buildings or lease-purchase option agreements for school buildings.

n. Purchase of equipment for recreational purposes.

o. Payments to a municipality or other entity pursuant to Iowa Code section 403.19(2).

p. Asbestos projects including costs of inspection and reinspection, sampling, analysis, assessment, response actions, operations and maintenance, training, periodic surveillance, development

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of management plans and record-keeping requirements relating to the presence of asbestos in school buildings of the district and its removal or encapsulation.

q. Purchase, erect, or acquire a building for use as a school meal facility, and equip a building for that use.

r. Purchase of land as part of start-up costs for a new student construction program or if the sale proceeds of the previous student construction were insufficient to purchase land, but not for materials and supplies for a facility intended to be sold.

s. Construction materials and supplies for a student-constructed building or shed intended to be retained by and used by the district.

t. Demolition of a district-owned building.

u. Improving buildings or sites for the purpose of accessing digital telecommunications over multiple channels, often referred to as broadband.

98.64(3) *Inappropriate uses of the PPEL fund.* Inappropriate expenditures in the PPEL fund include the following:

a. Student construction materials and supplies for a facility intended to be sold.

b. Salaries and benefits.

c. Travel.

d. Supplies.

e. Facility, vehicle, or equipment maintenance.

f. Printing costs or media services.

g. Any other purpose not expressly authorized in the Iowa Code.

281—98.65(276,300) Public educational and recreational levy (PERL) fund. Boards of directors of school districts may establish and maintain for children and adults public recreation places and playgrounds, and necessary accommodations for the recreation places and playgrounds, in the public school buildings and on the grounds of the district. Financial support for the community education program will be provided from funds raised pursuant to Iowa Code chapter 300 and from any private funds and any federal funds made available for the purpose of implementing community education. Districts with a PERL fund may maintain their PERL fund. Districts no longer have the authority to authorize a new PERL fund.

98.65(1) *Sources of revenue in the PERL fund.* Sources of revenue in the PERL fund include a property tax levy not to exceed \$0.135 per \$1,000 of assessed valuation, any appropriation by the agencies involved in a cooperative effort under Iowa Code chapter 28E, federal grants, donations, and interest on the investment of those moneys.

98.65(2) *Appropriate uses of the PERL fund.* Appropriate expenditures in the PERL fund include the following:

a. Establishing and maintaining recreation places and playgrounds, including necessary accommodations, that are open to the public.

b. Providing public educational and recreational activities.

c. Establishing and supervising a community education program.

d. Providing a community education director if a community education program is established.

98.65(3) *Inappropriate uses of the PERL fund.* Inappropriate expenditures in the PERL fund include the following:

a. Programs that are not available to those living in the district boundaries.

b. Costs not necessary to provide programs for community education and for recreation places, playgrounds, and programs open to the public.

281—98.66(257,279,298A,565) District support trust fund. The district support trust fund is used to account for moneys received in trust where those moneys, both principal and interest, are to benefit the school district. The school district or area education agency will not transfer its own resources to a district support trust fund. If the school district or area education agency has more than one district support trust, it will use locally assigned project codes pursuant to Uniform Financial Accounting for

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Iowa School Districts and Area Education Agencies to identify the different trusts in the same fund. The district support trust fund is not an irrevocable trust. The board of directors of the school district must take action to accept or establish each gift, devise, or bequest in the district support trust fund. It is the board's responsibility to ensure that the terms of the gift, devise, or bequest are compatible with the mission of and legal restrictions on the school district. Once accepted, gifts, devises, and bequests become public funding under the stewardship of the school district. If the purpose for which the moneys are to be spent is not in keeping with the overall objectives of the school district or legal authority of the school district, the board shall not assume responsibility as the trustee.

98.66(1) *Sources of revenue in the district support trust fund.* Sources of revenue in the district support trust fund include donations of cash, investment instruments, property, and interest on investments held. In a district support trust fund, both principal and interest are available to benefit the school district's programs.

98.66(2) *Appropriate uses of the district support trust fund.* Appropriate expenditures in the district support trust fund include those that are consistent with the terms of the agreement, are legal expenditures to a school district, and are for the benefit of the school district.

98.66(3) *Inappropriate uses of the district support trust fund.* Inappropriate expenditures in the district support trust fund include transfers to nonprofit or private organizations or any expenditure that is not consistent with the terms of the agreement, legal to a school district, or for the benefit of the school district.

281—98.67(257,279,298A,565) Permanent funds. Permanent funds are used to account for resources received that are legally restricted to the extent that only earnings, and not principal, may be used for purposes that support the school district's programs. The school district or area education agency will not transfer its own resources to a permanent fund. The board of directors of the school district must take action to accept or establish each gift, devise, or bequest in permanent funds. It is the board's responsibility to ensure that the terms of the gift, devise, or bequest are compatible with the mission of and legal restrictions on the school district. Once accepted, gifts, devises, and bequests become public funding under the stewardship of the school district. If the purpose for which the moneys are to be spent is not in keeping with the overall objectives of the school district or legal authority of the school district, the board shall not assume responsibility of the moneys.

98.67(1) *Sources of revenue in the permanent funds.* Sources of revenue in the permanent funds include donations of cash, investment instruments, property, and interest on investments held. In permanent funds, only interest is available to benefit the school district's programs.

98.67(2) *Appropriate uses of the permanent funds.* Appropriate expenditures in the permanent funds include those that are consistent with the terms of the agreement, are legal expenditures to a school district, and are for the benefit of the school district.

98.67(3) *Inappropriate uses of the permanent funds.* Inappropriate expenditures in the permanent funds include transfers to nonprofit or private organizations, expenditure from principal, or any expenditure that is not consistent with the terms of the agreement, or legal to a school district, or for the benefit of the school district, or any expenditure from the principal portion.

281—98.68(76,274,296,298,298A) Debt service fund. A debt service fund is used to account for the accumulation of resources for, and the payment of, general long-term debt principal and interest. A school district or area education agency will have only one debt service fund.

98.68(1) *Sources of revenue in the debt service fund.* Sources of revenue in the debt service fund include the levy on taxable property authorized by the voters pursuant to Iowa Code section 298.21 and necessary to service bonds that mature in the current year, transfers from other funds for payments of interest and principal when due that are required under a loan, lease-purchase agreement, or other evidence of indebtedness authorized by the Iowa Code, and earnings from temporary investment of moneys in the debt service fund.

98.68(2) *Appropriate uses of the debt service fund.* Appropriate expenditures in the debt service fund include the following:

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a. Payment of principal and interest of the lawful bonded indebtedness maturing in the current year as it becomes due. In determining how much is necessary to service bonds that mature in the current year, the board of directors will consider the amount of earnings from temporary investments of debt service funds and beginning cash balances.

b. Payment of costs of registration of public bonds or obligations.

c. Payment of additional amounts as the board deems necessary to apply on the principal.

d. Payment of principal and interest when due that are required under a loan agreement, lease-purchase agreement, or other evidence of indebtedness authorized by the Iowa Code other than bonded indebtedness paid from resources transferred for that purpose to the debt service fund from other funds.

e. Payment of transfers to the PPEL fund by board resolution when funds remain in the debt service fund after payment of the entire balance of outstanding debt in accordance with the original purpose of the bonded indebtedness and after return of any excess amount transferred into the debt service fund from another fund or other indebtedness. The voters in the district may authorize the district to transfer the remaining balance to the general fund instead of the PPEL fund pursuant to Iowa Code section 278.1(1)“e.”

98.68(3) *Inappropriate uses of the debt service fund.* Inappropriate expenditures in the debt service fund include payment of debt issued by one fund from resources transferred from a different fund unless expressly authorized by the Iowa Code and any other expenditure not listed in subrule 98.68(2).

281—98.69(76,273,298,298A,423E,423F) **Capital projects fund.** Capital projects funds are used to account for financial resources to acquire or construct major capital facilities and to account for revenues from the state sales and services tax for school infrastructure. Boards of directors of school districts are authorized to establish more than one capital projects fund as necessary.

98.69(1) *Sources of revenue in the capital projects fund.* Sources of revenue in a capital projects fund include sale of general obligation bonds, grants and donations for capital facility projects, and transfers from other funds that authorized indebtedness for capital facility projects or that initiated a capital facility project or that received grants or other funding for capital projects, and tax receipts or revenue bonds issued for the state sales and services tax for school infrastructure. In the case of an area education agency, transfers from the general fund to a capital projects fund are limited to payments from proceeds accounted for in the general fund when payments are due on a capital project under a lease-purchase agreement pursuant to Iowa Code section 273.3(7).

98.69(2) *Appropriate uses of the capital projects fund.*

a. Appropriate expenditures in a capital projects fund, excluding state/local option sales and services tax for school infrastructure fund, include the following:

(1) Purchasing, constructing, furnishing, equipping, reconstructing, repairing, improving, or remodeling a schoolhouse or schoolhouses and additions thereto, gymnasium, stadium, field house, school bus garage, or teachers' or superintendents' home(s). Prior to approving the use of revenues for an athletic facility infrastructure project within the scope of the school district's approved revenue purpose statement, the board of directors shall adopt a resolution setting forth the proposal for the athletic facility infrastructure project and hold an additional public hearing on the issue of construction of the athletic facility as stipulated in Iowa Code section 423F.3(7).

(2) Procuring a site, or purchasing land to add to a site already owned, or procuring and improving a site for an athletic field, or improving a site already owned for an athletic field.

(3) Transferring to the PPEL fund or debt service fund by board resolution any balance remaining in a capital projects fund after the capital project is completed and after return of any excess amount transferred into the capital projects fund from another fund. The voters in the district may authorize the district to transfer the remaining balance to the general fund instead of the PPEL fund or debt service fund pursuant to Iowa Code section 278.1(1)“e.”

(4) Improving buildings or sites for the purpose of accessing digital telecommunications over multiple channels, often referred to as broadband.

(5) School safety and security infrastructure listed in Iowa Code section 423F.3(6).

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b. Appropriate expenditures in the state/local option sales and services tax for the school infrastructure capital projects fund shall be expended in accordance with a valid revenue purpose statement if a valid revenue purpose statement exists; otherwise, appropriate expenditures include the following in order:

(1) Payment of principal and interest on revenue bonds issued pursuant to Iowa Code sections 423E.5 and 423F.4 for which the revenue has been pledged.

(2) Reduction of debt service levies.

(3) Reduction of regular and voter-approved PPEL levies.

(4) Reduction of the PERL levy.

(5) Reduction of any schoolhouse tax levy under Iowa Code section 278.1(1)“e.”

(6) Any authorized infrastructure purpose of the district pursuant to Iowa Code section 423F.3(6), which includes the following:

1. Payment or retirement of outstanding general obligation bonded indebtedness issued for school infrastructure purposes.

2. Payment or retirement of outstanding revenue bonds issued for school infrastructure purposes.

3. Purchasing, constructing, furnishing, equipping, reconstructing, repairing, improving, remodeling, or demolition of a schoolhouse or schoolhouses and additions thereto, gymnasium, stadium, field house, or school bus garage.

4. Procuring a site, or purchasing land to add to a site already owned, or procuring and improving a site for an athletic field, or improving a site already owned for an athletic field.

5. Expenditures listed in Iowa Code section 298.3.

6. Expenditures listed in Iowa Code section 300.2.

(7) Improving buildings or sites for the purpose of accessing digital telecommunications over multiple channels, often referred to as broadband.

(8) School safety and security infrastructure listed in Iowa Code section 423F.3(6).

98.69(3) *Inappropriate uses of the capital projects fund.* Inappropriate expenditures in a capital projects fund include any expenditure not expressly authorized in the Iowa Code. Additionally, expenditures from the state sales and services tax for new construction or for payments for bonds issued for new construction in any district that has a certified enrollment of fewer than 250 pupils in the district or a certified enrollment of fewer than 100 pupils in the high school without a certificate of need issued, as described in Iowa Code chapter 423F, by the department of education. This restriction does not apply to payment of outstanding general obligation bonded indebtedness issued pursuant to Iowa Code section 296.1 before April 1, 2003. This restriction also does not apply to costs to repair school buildings; purchase of equipment, technology or transportation equipment authorized under Iowa Code section 298.3; or for construction necessary to comply with the federal Americans With Disabilities Act.

281—98.70(279,280,298A) Student activity fund. The student activity fund must be established in any school district receiving moneys from student-related activities such as admissions, activity fees, student dues, student fund-raising events, or other student-related cocurricular or extracurricular activities. Moneys collected through school activities are public funds that are the property of the school district and are under the financial control of the school board. Upon dissolution of an activity, such as a graduating class or student club, the surplus must be used to support other student activities in the student activity fund. Prudent and proper accounting of all receipts and expenditures in these accounts is the responsibility of the board secretary pursuant to Iowa Code section 291.6. School districts may maintain subsidiary records for student activities if those records are reconciled to the official records on a monthly basis; however, all official accounting records of the student activity fund shall be maintained within the school district’s chart of account pursuant to Uniform Financial Accounting for Iowa School Districts and Area Education Agencies.

98.70(1) *Sources of revenue in the student activity fund.* Sources of revenue in the student activity fund include income derived from student activities such as gate receipts, ticket sales, admissions, student club dues, donations, fund-raising events, any other receipts derived from student body cocurricular or extracurricular activities, contests, and exhibitions as well as interest on the investment of those moneys,

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and amounts transferred from the general fund under Iowa Code section 298A.2 as described in paragraph 98.61(2) "s."

98.70(2) *Appropriate uses of the student activity fund.* Appropriate expenditures in the student activity fund include ordinary and necessary expenses of operating school district-sponsored and district-supervised student cocurricular and extracurricular activities, including purchasing services from another school district to provide for the eligibility of enrolled students in interscholastic activities provided by the other school district when that school district does not provide an interscholastic activity for its students.

98.70(3) *Inappropriate uses of the student activity fund.* Inappropriate expenditures in the student activity fund include the following:

- a. Maintenance of funds raised by outside organizations.
- b. The cost of bonds for employees having custody of funds derived from cocurricular and extracurricular activities in the conduct of their duties. These are costs to the general fund.
- c. Expenditures that lack public purpose.
- d. Payments to any private organization unless a fundraiser was held expressly for that purpose and the purpose of the fundraiser was specifically identified.
- e. Transfers to any other fund of any surplus within the fund.
- f. Payments more properly accounted for in another fund such as public tax funds, trust funds, state and federal grants, textbook/library book fines, fees, rents, purchases or sales, sales of school supplies, or curricular activities.
- g. Use of the student activity fund as a clearing account for any other fund.
- h. Cash payments to student members of activity groups.
- i. The cost of optional equipment or customizing uniforms.
- j. The cost of uniforms when the following two tests are not met:
 - (1) The activity is a part of the school's educational program, and
 - (2) The wearing of the uniform or equipment is necessary in order to participate.
- k. Hospital or medical claims for student injuries or procurement of student medical insurance.
- l. Optional costs related to activities that are not necessary to the cocurricular and extracurricular program such as promotional costs.
- m. Membership fees in student activity-related associations if the fees are optional, i.e., nonmember schools may participate in sponsored events.
- n. Costs to participate in or to allow students to participate in any cocurricular and extracurricular interscholastic athletic contest or competition not sponsored or administered by either the Iowa High School Athletic Association or the Iowa Girls High School Athletic Union.

281—98.71(298A) Entrepreneurial education fund. The entrepreneurial education fund is used to enhance student learning by encouraging students to develop and practice entrepreneurial skills at an early age and to foster a business-ready workforce in this state. A school corporation may establish an entrepreneurial education fund at the request of a student organization or club and upon approval by the school board.

98.71(1) *Sources of revenue in the entrepreneurial education fund.* Sources of revenue in the entrepreneurial education fund consist only of moneys earned through entrepreneurial activities or returns on investments made for entrepreneurial purposes by the student organization or club, private donations and private contributions, and any interest earned on such moneys that are deposited in the fund. At the request of a student organization or club and upon approval by the school board, a school corporation will transfer moneys in a student activity fund established under Iowa Code section 298A.8, for deposit by the student organization or club in an entrepreneurial education fund. However, a school corporation will not transfer such moneys unless the moneys are attributable through appropriate documentation to the specific student organization or club and unless the student organization or club shows through appropriate documentation that the student organization or club earned the moneys through entrepreneurial activities of starting, maintaining, or expanding a business venture, including a seasonal business venture, or rendering other labor or services in return for

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compensation. Entrepreneurial activities do not include charitable contributions or other donations or gifts received by the student organization or club for which no labor or services are rendered.

98.71(2) *Appropriate uses of the entrepreneurial education fund.* Appropriate uses of the entrepreneurial education fund are limited to expending only for investments made, or activities undertaken, for board-approved entrepreneurial purposes that include investing in a start-up company, early-stage company, or existing company developing a new product or new technology if the investment is in keeping with the education program of the school corporation; if the student organization or club or its members will, as a stated condition of the investment, take an active role in the company which active role directly relates to and furthers the educational purposes for which the student organization or club is established; and if a reasonable return upon the investment is expected.

98.71(3) *Inappropriate uses of the entrepreneurial education fund.* A student organization or club will not invest moneys from an entrepreneurial education fund for an entrepreneurial purpose in which a member of the student organization or club, an advisor or supervisor of the student organization or club, or an immediate family member of such persons, has a financial interest.

98.71(4) *Fund closure.* An entrepreneurial education fund may be closed at the request of the student organization or club for which the school corporation established the fund. All moneys in the fund on the date of closure and any subsequent return on an investment made with moneys from the fund will be deposited in the school district's student activity fund.

281—98.72(256B,257,298A) Special education instruction fund. The special education instruction fund is used to account for the revenues and expenditures of the special education instructional program that an area education agency provides for its member districts under Iowa Code section 273.9(2). This does not include special education support services as provided by Iowa Code section 274.9(3) that are accounted for in the general fund.

98.72(1) *Sources of revenue in the special education instruction fund.* Sources of revenue in the special education instruction fund include sales of instructional services to districts with students in the special education instruction program and interest on the investment of those moneys.

98.72(2) *Appropriate uses of the special education instruction fund.* Appropriate expenditures in the special education instruction fund include those authorized to a school district pursuant to Iowa Code chapter 256B and 281—Chapter 41 and included in the written agreement with the school districts.

98.72(3) *Inappropriate uses of the special education instruction fund.* Inappropriate expenditures in the special education instruction fund include expenditures not allowed to school districts pursuant to Iowa Code chapter 256B and 281—Chapter 41, expenditures for special education support services provided pursuant to Iowa Code section 273.9(3), or expenditures for costs not included in the written agreement with the school districts.

281—98.73(282,298A) Juvenile home program instruction fund. The juvenile home program instruction fund is used to account for the revenues and expenditures for the educational program for students residing in juvenile homes as provided by Iowa Code section 282.30. The juvenile home program supplements, but does not supplant, expenditures required of an area education agency under Iowa Code chapter 273. Revenues and expenditures related to federal or state grants serving students in the juvenile homes that supplement, rather than supplant, the juvenile home program are included in the general fund, rather than the juvenile home fund. Educational program costs for students served pursuant to individualized education programs (IEPs) will not be included in the claim described in Iowa Code section 282.31 in lieu of billing those costs to the resident district. Educational program costs for out-of-state resident students will not be included in the claim described in Iowa Code section 282.31 in lieu of billing those costs to the resident state agency. The area education agency (AEA) is responsible for stewardship of public funds and ensuring that all costs are ordinary and necessary costs of instruction and that classrooms are not overstaffed for the number of students. The AEA will compare its costs, services, and staffing to the costs, services, and staffing of a similar classroom in the school district in which the juvenile home is located to ensure that they are comparable.

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98.73(1) *Sources of revenue in the juvenile home program instruction fund.* Sources of revenue in the juvenile home program instruction fund include an advance paid pursuant to Iowa Code section 282.31, tuition billed to Iowa resident districts or to out-of-state agencies, grants in aid and interest on the investment of those moneys.

98.73(2) *Appropriate uses of the juvenile home program instruction fund.* Appropriate expenditures in the juvenile home program instruction fund are ordinary and necessary expenditures approved by the department to provide an instructional program to students residing in juvenile homes and include:

a. Salary and benefits for classroom teachers and aides providing instruction to students placed in a juvenile home.

b. Professional development that is specific to strategies to meet the needs of students in placement for all classroom teachers and aides working with students placed in a juvenile home.

c. Research-based resources, materials, software, supplies, and equipment, and purchased services that are customarily considered instructional and that meet all of the following criteria:

(1) Meet the needs of school-age students placed in juvenile homes,

(2) Will remain with the AEA juvenile home program, and

(3) Do not duplicate support services responsibilities of the AEA or the responsibilities of the juvenile home in its agreement with the placement agencies.

d. Summer school when necessary for a valid, established educational reason such as being included in the student's IEP or pursuant to Iowa Code section 279.68.

e. Student support and instructional support expenditures to the extent that they are exclusively devoted to the juvenile home instructional program and are not administrative or clerical. This would include guidance services, curriculum development and instructional technology.

f. Administrative support to the extent the administrator is exclusively assigned to the juvenile home locations and is exclusively providing school-level administrative services directly for the student placed in the juvenile home or the classroom teachers. If the administrator is assigned part-time to the juvenile home locations, then only the portion of time that is exclusively and directly related to the juvenile home instructional programs may be charged to the program. The total administrative cost will not exceed 10 percent of the total of all allowable costs for the juvenile home program.

g. When the students are not required by the placement agency to remain at the juvenile home facility and the juvenile home has no responsibility for treatment in its agreement with the placement agency beyond custodial care, then rent may be allowed. Rent must be approved by the department. The space must be classroom space occupied exclusively by the AEA's instructional program and not include restrooms or any other common spaces. Only if rent is approved may any costs for operation or maintenance of that classroom space be allowed. The total administrative cost in paragraph 98.73(2) "f" and the total of rent and associated operation and maintenance will not exceed 20 percent of the total of all allowable costs for the juvenile home program.

h. Transportation provided by the AEA exclusively to transport students placed at the juvenile home to the students' resident school districts located in Iowa or to the school district in which the juvenile home is located.

98.73(3) *Inappropriate uses of the juvenile home program instruction fund.* Inappropriate expenditures in the juvenile home program instruction fund include the following:

a. Costs estimated or allocated that are expenditures of the agency, such as insuring agency property.

b. Costs that are not ordinary and necessary to provide instruction.

c. Costs related to the juvenile home facility, its responsibilities under the Iowa Code or its agreements with the placement agencies.

d. Costs that were or could have been filed with Medicaid for reimbursement.

e. Debt service.

f. Capital outlay related to facilities. This includes any costs for facility acquisition or construction services, including remodeling and facility repair.

g. Support services that are AEA responsibilities pursuant to the Iowa Code.

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h. Rental when adequate space is available at the AEA or at the district of location or when the students need treatment provided by the juvenile home or need to remain at the juvenile home pursuant to the agreement between the juvenile home and the placement agency.

i. Costs of an audit.

j. Indirect costs.

281—98.74(283A,298A) School nutrition fund. All school districts will operate or provide for the operation of lunch programs at all attendance centers in the school district. A school district may operate or provide for the operation of school breakfast programs at all attendance centers in the district, or provide access to a school breakfast program at an alternative site to students who wish to participate in a school breakfast program.

98.74(1) Sources of revenue in the school nutrition fund. Sources of revenue in the school nutrition fund include food sales to pupils and adults, ancillary food services, state and federal grants in aid for the operation of a nutrition program, gifts, sales of services to other funds, donated government commodities, and interest on investment of school nutrition fund moneys. Also included are fees charged for providing food services to staff meetings and authorized organizations for meetings on the premises in accordance with the rules of the board. The charges for such services must be no less than the actual costs involved in providing the services including the value of donated government commodities.

98.74(2) Appropriate uses of the school nutrition fund. Appropriate expenditures in the school nutrition fund include the following:

a. Expenditures necessary to operate a school breakfast or lunch program such as salaries and benefits for employees necessary to operate the food service program, food, purchased services, supplies, and school nutrition equipment not included in Iowa Code section 283A.9.

b. Costs to provide food service for school staff and ancillary food services to staff meetings and authorized organizations for meetings on the premises in accordance with the rules of the board of directors of the school district if those costs are reimbursed by another fund, organization, or individual.

98.74(3) Inappropriate uses of the school nutrition fund. Inappropriate expenditures in the school nutrition fund include the following:

a. Costs to provide food service for school staff and ancillary food services to staff meetings and authorized organizations for meetings on the premises at less than actual costs involved in providing the services including the value of donated government commodities.

b. Operating transfers to any other fund other than to claim indirect costs.

c. Costs to purchase, construct, reconstruct, repair, remodel, or otherwise acquire or equip a building for use as a school meal facility. These costs are permitted from the PPEL fund.

d. Costs estimated or allocated that are expenditures of the district.

98.74(4) Unpaid student meals account. Beginning with the budget year beginning July 1, 2018, in accordance with Iowa Code section 283A.11, a school district may establish an unpaid student meals account in the school nutrition fund and may deposit in the account moneys received from private sources for purposes of paying student meal debt accrued by individual students as well as amounts designated for the account from the school district's flexibility account as described in rule 281—98.27(257,298A). Moneys deposited in the unpaid student meals account will be used by the school district only to pay individual student meal debt. The school district will set fair and equitable procedures for such expenditures.

281—98.75(279,298A) Child care and before- and after-school programs fund. The board of directors of a school district may operate or contract for the operation of a program to provide child care to children not enrolled in school or to students enrolled in kindergarten through grade 6 before and after school, or to both.

98.75(1) Sources of revenue in the child care fund. Sources of revenue in the child care fund include a fee established by the board for the cost of participation in the program. The fee will be established pursuant to a sliding fee schedule based upon staffing costs and other expenses and a family's ability to pay. If a fee is established, the parent or guardian of a child participating in a program is be responsible for

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payment of any agreed-upon fee. The board may require the parent or guardian to furnish transportation of the child. If the board does not establish a fee, it must finance the program through grants or donations. The board may utilize or make application for program subsidies from any existing child care funding streams.

98.75(2) *Appropriate uses of the child care fund.* Appropriate expenditures in the child care fund include salaries and benefits for employees necessary to operate the child care program or before- and after-school program, purchased services, supplies, and equipment.

Effective with the budget year beginning July 1, 2018, if the balance in the before- and after-school program exceeds the amount necessary to operate the before- and after-school program, the excess amount may, following a public hearing, be transferred to the general fund by a resolution of the board of directors of the school corporation that meets all provisions of Iowa Code section 298A.12. A transfer under this subrule does not increase a school district's authorized expenditures as defined in Iowa Code section 257.7.

98.75(3) *Inappropriate uses of the child care fund.* Inappropriate expenditures in the child care fund include debt service, capital outlay related to facilities, or any other expenditure not ordinary and necessary to operate the child care program or before- and after-school program.

281—98.76(298A) Regular education preschool fund. The board of directors of a school district may establish a preschool for students who are not of school age.

98.76(1) *Sources of revenue in the regular education preschool fund.* Sources of revenue in the regular education preschool fund include a fee established by the board for the cost of participation in the program. If a fee is established, the parent or guardian of a child participating in a program is responsible for payment of any agreed-upon fee. If the board does not establish a fee, it must finance the program through grants or donations. The statewide voluntary four-year-old preschool program established under Iowa Code chapter 256C will not be accounted for in the regular education preschool fund.

98.76(2) *Appropriate uses of the regular education preschool fund.* Appropriate expenditures in the regular education preschool fund include salaries and benefits for employees necessary to operate the regular education preschool program, purchased services, instructional supplies, and instructional equipment.

98.76(3) *Inappropriate uses of the regular education preschool fund.* Inappropriate expenditures in the regular education preschool fund include debt service, capital outlay related to facilities, or any other expenditure not ordinary and necessary to operate the regular education preschool program or before- and after-school program.

281—98.77(298A) Student construction fund. If the board of directors of a school district establishes a construction program whereby students learn a construction trade and the facility constructed is sold to cover costs of construction, the revenues and expenses will be accounted for in the student construction fund.

281—98.78(298A) Other enterprise funds. Enterprise funds are used to account for any activity for which a fee is charged to external users for goods and services. Enterprise funds are required to be used to account for any activity whose principal revenue sources are fees and charges to recover the costs of providing goods or services where those fees and charges are permitted by the Iowa Code. Funds discussed in rules 281—98.74(283A,298A) through 281—98.77(298A) are enterprise funds. In addition, enterprise funds include those activities related to community service enterprises or enterprises that support the school curricular program. Community service enterprises are activities provided by the district for a fee to the general community or segment of the community that are not in the PERL or library funds such as public libraries, community pool, community wellness center, and community or adult education. Enterprises that support the school program include activities such as a student farm, greenhouse, cooperative purchasing, school stores, or major resale activities.

281—98.79 to 98.81 Reserved.

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281—98.82(298A) Internal service funds. Internal service funds are used to account for the financing of services provided within the district to provide goods or services to other funds, component units, or other governments on a cost-reimbursement basis. The use of an internal service fund is appropriate only for activities in which the agency, school district or area education agency is the predominant participant in the activity. If the district or area education agency is not the primary user of the goods or services provided by the internal service fund, then the activity should be accounted for in an enterprise fund rather than an internal service fund. Internal service funds include self-insurance funds, flex-benefit (cafeteria) plan funds, print shops, health reimbursement arrangements (HRAs), central warehousing and purchasing, and central data processing.

281—98.83 to 98.91 Reserved.

281—98.92(257,279,298A,565) Private purpose trust funds. Private purpose trust funds are fiduciary funds established to account for gifts the school district receives to be used for a particular purpose or to account for moneys and property received and administered by the school district as trustee. These trust funds are not irrevocable trusts and are used to account for assets held by a school district in a trustee capacity to benefit individuals, private organizations, or other governments, and therefore cannot be used to support the school district's own programs. These trust funds include both those that allow use of only the interest on the investments and those that allow use of both principal and interest. Scholarship trust funds are an example of private purpose trust funds. If a school district has more than one scholarship trust, the school district will use project codes in accordance with Uniform Financial Accounting for Iowa School Districts and Area Education Agencies to separately account for the trusts. The district or area education agency will not transfer its own resources to a private purpose trust fund.

98.92(1) Sources of revenue in private purpose trust funds. Sources of revenue in the private purpose trust fund include donations of cash, investment instruments, property, and interest on investments held.

98.92(2) Appropriate uses of private purpose trust funds. Appropriate expenditures in the private purpose trust fund include those that are consistent with the terms of the agreement or are for the benefit of a private purpose other than the school district. None of the expenditures will be for the benefit of the school district's programs.

98.92(3) Inappropriate uses of private purpose trust funds. Inappropriate expenditures in the private purpose trust fund include any expenditure that is not consistent with the terms of the agreement, not legal to a school district, or that benefits the school district's programs.

281—98.93(298A) Other trust funds. Trust funds are fiduciary funds established to account for gifts the school district receives to be used for a particular purpose or to account for moneys and property received and administered by the school district as trustee. These trust funds are used to account for assets held by a school district in a trustee capacity to benefit individuals, private organizations, or other governments, and cannot be used to support the school district's own programs. These trust funds include both those that allow use of only the interest on the investments and those that allow use of both principal and interest. The school district or area education agency shall not transfer its own resources to a trust fund. Other trust funds may include but not be limited to pension trust funds and investment trust funds. Pension trust funds are used to account for resources that are required to be held in trust for members and beneficiaries of defined benefit pension plans, defined contribution plans, other postemployment benefit plans, or other benefit plans. Typically, these pension trust funds are used to account for local pension and other employee benefit funds that are provided by a school district in lieu of or in addition to any state retirement system. Investment trust funds are used to account for the external portion (i.e., the portion that does not belong to the school district) of investment pools operated by the school district.

281—98.94 to 98.100 Reserved.

281—98.101(298A) Custodial funds. Custodial funds are used to account for funds that are held in a custodial capacity by the school district for individuals, private organizations, or other governments. Custodial funds may include moneys collected for another government, a grant consortium when the

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school district serves as fiscal agent for the other school districts but has no managerial responsibilities, or funds for a teacher or a parent-teacher organization that has its own federal identification number (FIN). In a custodial fund, the school district or area education agency merely renders a service as a custodian of the assets for the organization owning the assets and the school district or area education agency is not an owner. Custodial funds typically involve only the receipt, temporary investment and remittance of assets to their rightful owners.

98.101(1) Sources of receipts in custodial funds. Sources of receipts in custodial funds include temporary receipts of cash, investment instruments, property, and interest on investments held.

98.101(2) Appropriate uses of custodial funds. Appropriate disbursements from a custodial fund depend on the nature of the rightful owners' conditions or the responsibilities of the custodian. Typically, disbursement will involve remittance of assets to their rightful owners or to a third party on behalf and at the request of the rightful owners. The school district cannot disburse more funds at any point in time than it has received from the rightful owner.

98.101(3) Inappropriate uses of custodial funds. Inappropriate disbursements from custodial funds include any disbursement that is not consistent with the terms of the agreement, is not legal to a school district, or exceeds the amount of funds that have been received from the rightful owner or on behalf of the rightful owner.

281—98.102 to 98.110 Reserved.

281—98.111(24,29C,257,298A) Emergency levy fund. A school district may levy a tax for the emergency fund upon the approval of the state appeals board. Once the levy has been received, the district may request approval of the school budget review committee to transfer the funds to any other fund of the district for the purpose of meeting deficiencies in a fund arising within two years of a disaster as defined in Iowa Code section 29C.2(1).

98.111(1) Sources of revenue in the emergency levy fund. Sources of revenue for the emergency levy fund include a tax levy not to exceed \$0.27 per \$1,000 of assessed value of taxable property, and interest on those moneys.

98.111(2) Appropriate uses of emergency levy fund. Appropriate expenditures in the emergency levy fund include only transfers to other funds for the purpose of meeting deficiencies in a fund arising within two years of a disaster and upon the approval of the school budget review committee.

98.111(3) Inappropriate uses of emergency levy fund. Inappropriate expenditures in the emergency levy fund include any expenditures other than a transfer to another fund and any transfer not approved by the school budget review committee.

281—98.112(275) Equalization levy fund. If necessary to equalize the division of liabilities and distribution of assets in a reorganization, merger, or dissolution, the board of a school district may provide for the levy of additional taxes upon the property of the former district so as to effect equalization pursuant to Iowa Code section 275.31. Once the levy has been received, the district will transfer the funds before the end of the fiscal year to the funds for which equalization was necessary and for which the taxes were levied.

98.112(1) Sources of revenue for the equalization levy fund. Sources of revenue for the equalization levy fund include a tax levy, pursuant to Iowa Code section 275.31, and interest on those moneys.

98.112(2) Appropriate uses of the equalization levy fund. Appropriate expenditures from the equalization levy fund are limited to transfers to the funds, in the same proportion, for which equalization was necessary and for which the taxes were levied.

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98.112(3) *Inappropriate uses of the equalization levy fund.* Inappropriate uses of the equalization levy fund would include transfers to any fund for which equalization was not required or for which the equalization tax was not levied and any uses other than transfers.

These rules are intended to implement Iowa Code chapters 24, 29C, 76, 143, 256, 256B, 257, 274, 275, 276, 279, 280, 282, 283A, 284, 284A, 285, 291, 294A, 296, 298, 298A, 299A, 300, 301, 423E, 423F, 565, and 670 and sections 11.6(1)“a”(1), 256C.4(1)“c,” 256D.4(3) and 284.13.

ARC 7599C**EDUCATION DEPARTMENT[281]****Notice of Intended Action****Proposing rulemaking related to procedures for charging and investigating incidents of abuse and providing an opportunity for public comment**

The State Board of Education hereby proposes to rescind Chapter 102, “Procedures for Charging and Investigating Incidents of Abuse of Students by School Employees,” Iowa Administrative Code, and to adopt a new chapter with the same title.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code section 280.17.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code section 280.17.

Purpose and Summary

Pursuant to Executive Order 10, the Department of Education proposes to rescind an obsolete rule and remove restrictive terms that do not add value. The Department also proposes to add language to emphasize the proper role of Level 2 investigators and that an investigation may continue even if an employee resigns.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the State Board for a waiver of the discretionary provisions, if any, pursuant to 281—Chapter 4.

Public Comment

Any interested person may submit written or oral comments concerning this proposed rulemaking. Written or oral comments in response to this rulemaking must be received by the Department no later than 4:30 p.m. on February 28, 2024. Comments should be directed to:

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Thomas A. Mayes
 Department of Education
 Grimes State Office Building, Second Floor
 400 East 14th Street
 Des Moines, Iowa 50319-0146
 Phone: 515.281.8661
 Email: thomas.mayes@iowa.gov

Public Hearing

Public hearings at which persons may present their views orally or in writing will be held as follows:

February 27, 2024 10 to 11 a.m.	Room B100 Grimes State Office Building Des Moines, Iowa
February 27, 2024 2 to 3 p.m.	Room B50 Grimes State Office Building Des Moines, Iowa

Persons who wish to make oral comments at a public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rulemaking.

Any persons who intend to attend a public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department and advise of specific needs by calling 515.281.5295.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking 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 rulemaking action is proposed:

ITEM 1. Rescind 281—Chapter 102 and adopt the following **new** chapter in lieu thereof:

CHAPTER 102
 PROCEDURES FOR CHARGING AND INVESTIGATING INCIDENTS OF ABUSE
 OF STUDENTS BY SCHOOL EMPLOYEES

281—102.1(280) Definitions.

“Abuse” may fall into either of the following categories:

1. “Physical abuse” means nonaccidental physical injury to the student as a result of the actions of a school employee.

2. “Sexual abuse” means any sexual offense as defined by Iowa Code chapter 709 or Iowa Code section 728.12(1). The term also encompasses acts of the school employee that encourage the student to engage in prostitution as defined by Iowa law, as well as inappropriate, intentional sexual behavior, or sexual harassment by the school employee toward a student.

“Board of educational examiners” means the board created in Iowa Code chapter 256, subchapter VII, part 3.

“Designated investigator” means the person or persons appointed by the board of directors of a public school district, or the authorities in control of a nonpublic school, at level one, to investigate allegations or reports of abuse of students by school employees and also refers to the appointed alternate.

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“Incident” means an occurrence of behavior that meets the definition of physical or sexual abuse in these rules.

“Injury” occurs when evidence of it is still apparent at least 24 hours after the occurrence.

“Nonpublic school” means any school in which education is provided to a student, other than in a public school or in the home of the student.

“Preponderance of evidence” means reliable, credible evidence that is of greater weight than evidence offered in opposition to it.

“Public school” means any school directly supported in whole or in part by taxation.

“Reasonable force” means that force, and no more, that a reasonable person, in like circumstances, would judge to be necessary to prevent an injury or loss and can include deadly force if it is reasonable to believe that such force is necessary to avoid injury or risk to one’s life or safety or the life or safety of another, or it is reasonable to believe that such force is necessary to resist a like force or threat.

“School employee” means a person who works for pay or as a volunteer under the direction and control of:

1. The board of directors or any administrator of a public school district.
2. The board or authorities in control of a nonpublic school.
3. The board of directors or administrator of an agency called upon by a school official to provide services in an educational capacity to students.
4. A residential institution, not currently covered by Iowa Code chapter 232, providing educational services.

School employees are of two classes: licensed and unlicensed. A licensed employee holds an Iowa teacher’s certificate issued by the board of educational examiners.

“Sexual harassment” means unwelcome sexual advances, requests for sexual favors or other verbal or physical conduct of a sexual nature when:

1. Submission to the conduct is made either implicitly or explicitly a term or condition of the student’s education or benefits;
2. Submission to or rejection of the conduct is used as the basis for academic decisions affecting that student; or
3. The conduct has the purpose or effect of substantially interfering with a student’s academic performance by creating an objectively intimidating, hostile, or offensive education environment.

“Student” means a person enrolled in a public or nonpublic school or a prekindergarten program in a public or nonpublic school established under Iowa law, a child enrolled in a day care program operated by a public school or merged area school under Iowa Code section 279.49, or a resident between the ages of 5 and 21 of a state facility providing incidental formal education.

281—102.2(280) Jurisdiction. To constitute a violation of these rules, acts of the school employee must be alleged to have occurred on school grounds, on school time, on a school-sponsored activity, or in a school-related context. To be investigable, the written report is to include basic information showing that the student allegedly abused is or was a student at the time of the incident, that the alleged act of the school employee resulted in injury or otherwise meets the definition of abuse in these rules, and that the person responsible for the act is currently a school employee.

If the report is not investigable due to the absence of any of the jurisdictional facts, the level-one investigator will dismiss the complaint as lacking jurisdiction and notify the person filing the report of abuse of the options remaining as listed in paragraph 102.10(1) “i.” The dismissal of a report of abuse for lack of jurisdiction does not bar school officials from further forms of investigation and disciplinary action.

281—102.3 Reserved.

281—102.4(280) Exceptions.

102.4(1) The following do not constitute physical abuse, and no school employee is prohibited from:

- a. Using reasonable and necessary force, not designed or intended to cause pain:

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- (1) To quell a disturbance or prevent an act that threatens physical harm to any person.
- (2) To obtain possession of a weapon or other dangerous object within a pupil's control.
- (3) For the purposes of self-defense or defense of others as provided for in Iowa Code section 704.3.
- (4) For the protection of property as provided for in Iowa Code section 704.4 or 704.5.
- (5) To remove a disruptive pupil from class, or any area of school premises or from school-sponsored activities off school premises.
- (6) To prevent a student from the self-infliction of harm.
- (7) To protect the safety of others.

b. Using incidental, minor, or reasonable physical contact to maintain order and control.

102.4(2) In determining the reasonableness of the contact or force used, the following factors will be considered:

- a.* The nature of the misconduct of the student, if any, precipitating the physical contact by the school employee.
- b.* The size and physical condition of the student.
- c.* The instrumentality used in making the physical contact.
- d.* The motivation of the school employee in initiating the physical contact.
- e.* The extent of injury to the student resulting from the physical contact.

102.4(3) The provisions of this rule apply only at the level-two stage of any investigation and will not be considered by a level-one investigator.

281—102.5(280) Duties of school authorities. The board of directors of a public school district and the authorities in control of a nonpublic school shall:

102.5(1) Annually identify at least one designated investigator and alternate investigator at an open public meeting.

102.5(2) Adopt written procedures that establish persons to whom the school authorities will delegate a second level of investigation beyond the level-one procedures specifically described in these rules, including law enforcement authorities or the county attorney's office, personnel of the local office of the department of health and human services, or private parties experienced and knowledgeable in the area of abuse investigation. The second-level investigator is not to be a school employee and is considered an independent contractor if remunerated for services rendered. The second-level investigator is to be made aware of any request under this rule and be offered an opportunity to decline the request, with reasons given.

The adopted procedures are to conform to these rules and include provisions for the safety of a student when, in the opinion of the investigator, the student would be placed in imminent danger if continued contact is permitted between the school employee and the student. These provisions will include the options of:

- a.* Temporary removal of the student from contact with the school employee.
- b.* Temporary removal of the school employee from service.
- c.* Any other appropriate action permissible under Iowa law to ensure the student's safety.

The adopted written procedures will include a statement that the investigators appointed and retained under this chapter have access to any educational records of the allegedly abused student and access to the student for purposes of interviewing and investigating the allegation.

102.5(3) Annually publish the names or positions and telephone numbers or other contact information of the designated investigator and alternate:

- a.* In the student handbook,
- b.* In a local newspaper of general circulation, and
- c.* Prominently post the same information in all buildings operated by the school authorities.

102.5(4) Arrange for in-service training for the designated investigator and alternate. Initial training should be undertaken within six months of appointing a level-one investigator or alternate. Follow-up training should be undertaken at least once every five years.

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102.5(5) Place on administrative leave a school employee who is the subject of an investigation under this chapter of an alleged incident of physical or sexual abuse, once the level-one investigator has determined that the written complaint is investigable under rule 281—102.3(280).

102.5(6) Report to the board of educational examiners the results of an investigation that finds that the school employee's conduct constitutes a crime.

281—102.6(280) Filing of a report.

102.6(1) *Who may file.* Any person who has knowledge of an incident of abuse of a student committed by a school employee may file a report with the designated investigator.

102.6(2) *Content of report.* The report is to be in writing, signed, and, if signed by a minor, witnessed by a person of majority age and contain the following information:

- a. The full name, address, and telephone number of the person filing.
- b. The full name, age, address, telephone number, and attendance center of the student.
- c. The name and place of employment of the school employee(s) or agents who allegedly committed the abuse.
- d. A concise statement of the facts surrounding the incident, including date, time, and place of occurrence, if known.
- e. A list of possible witnesses by name, if known.
- f. Names and locations of any and all persons who examined, counseled or treated the student for the alleged abuse, including the dates on which those services were provided, if known.

102.6(3) *Incomplete reports.* The designated investigator shall aid parties requesting assistance in completing the report. An incomplete report will not be rejected unless a reasonable person would conclude that the missing information that is unable to be provided by the reporter would render investigation futile or impossible. An unsigned (anonymous) or unwitnessed report may be investigated, but the designated investigator then has no duty to report findings and conclusions to the reporter.

281—102.7(280) Receipt of report. Any school employee receiving a report of alleged abuse of a student by a school employee shall immediately give the report to the designated investigator or alternate and not reveal the existence or content of the report to any other person.

281—102.8(280) Duties of designated investigator—physical abuse allegations.

102.8(1) Upon receipt of the report, the designated investigator will make and provide a copy of the report to the person filing, to the student's parent or guardian if different from the person filing and to the supervisor of the employee named in the report. The school employee named in the report is to receive a copy of the report at the time the employee is initially interviewed by any investigator. However, if this action would conflict with the terms of a contractual agreement between the employer and employee, the terms of the contract control.

102.8(2) Within five school days of receipt of a report of physical abuse, the designated investigator will conduct and complete an informal investigation after reviewing the report to determine that the allegations, if true, support the exercise of jurisdiction pursuant to rule 281—102.3(280).

102.8(3) If, in the investigator's opinion, the magnitude of the allegations in the report suggests immediate and professional investigation is necessary, the designated investigator may temporarily defer the level-one investigation. In cases of deferred investigation, the investigator shall contact appropriate law enforcement officials, the student's parent or guardian and the person filing the report, if different from the student's parent or guardian, documenting in writing the action taken.

102.8(4) The investigator shall interview the allegedly abused student, any witnesses or persons who may have knowledge of the circumstances contained in the report, and the school employee named in the report. The investigator will exercise prudent discretion in the investigative process to preserve the privacy interests of the individuals involved. To the maximum extent possible, the investigator shall maintain the confidentiality of the report.

102.8(5) The designated investigator's role is not to determine the guilt or innocence of the school employee, the applicability of the exceptions or reasonableness of the contact or force listed in rule

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281—102.4(280). The designated investigator shall determine, by a preponderance of the evidence, whether it is likely that an incident took place between the student and the school employee. However, if the complaint has been withdrawn, the allegation recanted, or the employee has resigned, admitted the violation, or agreed to relinquish the employee's teacher's certificate or license, the designated investigator may, but need not, conclude the investigation at level one. The designated investigator will follow the applicable provisions of paragraphs 102.11(2) "b" and "c" when resolution occurs at level one.

The level-two investigator appointed, contracted, requested or retained under subrule 102.5(2), when called upon for further investigation, will consider the applicability of the exceptions listed in rule 281—102.4(280) and the reasonableness of the contact or force used under subrule 102.4(2) in reaching conclusions as to the occurrence of physical abuse as defined by these rules.

102.8(6) Within 15 calendar days of receipt of the report, the designated investigator will complete a written investigative report, unless investigation was temporarily deferred.

281—102.9(280) Duties of designated investigator—sexual abuse allegations.

102.9(1) Upon receipt of the report, the designated investigator will make and provide a copy of the report to the person filing the report, to the student's parent or guardian if different from the person filing the report, and to the supervisor of the employee named in the report. The school employee named in the report shall receive a copy of the report at the time the employee is initially interviewed by any investigator. However, if this action would conflict with the terms of a contractual agreement between the employer and employee, the terms of the contract control. The designated investigator shall not interview the school employee named in a report of sexual abuse until after a determination that jurisdiction exists is made, the allegedly abused student has been interviewed, and a determination is made that the investigation will not be deferred under subrule 102.9(5).

102.9(2) Upon receipt of a report of sexual abuse or other notice of an allegation of sexual abuse, the designated investigator shall review the facts alleged to determine that the allegations, if true, support the exercise of jurisdiction pursuant to rule 281—102.3(280).

102.9(3) The investigator shall notify the parent, guardian, or legal custodian of a child in prekindergarten through grade six of the date and time of the interview and of the right to be present or to see and hear the interview or to send a representative in the parent's, guardian's, or legal custodian's place. The investigator shall interview the allegedly abused student as soon as possible, but in no case later than five days from the receipt of a report or notice of the allegation of sexual abuse. The investigator may record the interview electronically.

The investigator shall exercise prudent discretion in the investigative process to preserve the privacy interests of the individuals involved. To the maximum extent possible, the investigator shall maintain the confidentiality of the report.

102.9(4) The designated investigator's role is not to determine the guilt or innocence of the school employee. The designated investigator shall determine, by a preponderance of the evidence and based upon the investigator's training and experience and the credibility of the student, whether it is likely that an incident took place between the student and the school employee. However, if the complaint has been withdrawn, the allegation recanted, or the employee has resigned, admitted the violation, or agreed to relinquish the employee's teacher's certificate or license, the designated investigator may, but need not, conclude the investigation at level one. The designated investigator will follow the applicable provisions of paragraphs 102.11(2) "b" and "c" when resolution occurs at level one.

102.9(5) If, in the investigator's opinion, it is likely that an incident in the nature of sexual abuse as defined by Iowa Code chapter 709 or section 728.12(1) took place, the investigator shall temporarily defer further level-one investigation. In cases of deferred investigation, the investigator shall immediately contact appropriate law enforcement officials, notifying the student's parent or guardian, and the person filing the report, if different from the student's parent or guardian, of the action taken.

If, in the investigator's opinion, an incident occurred that would not constitute sexual abuse as defined in Iowa Code chapter 709 or sexual exploitation as defined by Iowa Code section 728.12(1), but that was in the nature of inappropriate, intentional sexual behavior by the school employee, further investigation

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is warranted. The investigator may proceed to interview the school employee named in the report. Prior to interviewing any collateral sources who may have knowledge of the circumstance contained in the report, the investigator will provide notice of the impending interview of student witnesses who are in prekindergarten through grade six, to their parent, guardian, or legal custodian, and may provide notice to the parent or guardian of older students, prior to interviewing those students.

If, in the investigator's opinion, the allegation of sexual abuse is unfounded either because the conduct did not occur or the conduct did not meet the definition of abuse in these rules, further investigation is not warranted. The investigator shall notify the student's parent or guardian, the person filing the report, if different from the student's parent or guardian, and the school employee named in the report of this conclusion in a written investigative report.

102.9(6) Within 15 calendar days of receipt of the report or notice of alleged sexual abuse, the designated investigator will complete a written investigation report unless the investigation was temporarily deferred.

281—102.10(280) Content of investigative report.

102.10(1) The written investigative report is to include:

- a.* The name, age, address, and attendance center of the student named in the report.
- b.* The name and address of the student's parent or guardian and the name and address of the person filing the report, if different from the student's parent or guardian.
- c.* The name and work address of the school employee named in the report as allegedly responsible for the abuse of the student.
- d.* An identification of the nature, extent, and cause, if known, of any injuries or abuse to the student named in the report.
- e.* A general review of the investigation.
- f.* Any actions taken for the protection and safety of the student.
- g.* A statement that, in the investigator's opinion, the allegations in the report are either:
 - (1) Unfounded. (It is not likely that an incident, as defined in these rules, took place), or
 - (2) Founded. (It is likely that an incident took place.)
- h.* The disposition or current status of the investigation.
- i.* A listing of the options available to the parents or guardian of the student to pursue the allegations. These options include:
 - (1) Contacting law enforcement.
 - (2) Contacting private counsel for the purpose of filing a civil suit or complaint.
 - (3) Filing a complaint with the board of educational examiners if the school employee is certificated.

102.10(2) The investigator shall retain the original and provide a copy of the investigative report to the school employee named in the report, the school employee's supervisor and the named student's parent or guardian. The person filing the report, if not the student's parent or guardian, shall be notified only that the level-one investigation has been concluded and of the disposition or anticipated disposition of the case.

281—102.11(280) Founded reports—designated investigator's duties.

102.11(1) The investigator shall notify law enforcement authorities in founded cases of serious physical abuse and in any founded case of sexual abuse under Iowa Code chapter 709 or sexual exploitation under Iowa Code section 728.12(1). In founded cases of less serious physical incidents or sexual incidents not in the nature of statutory sexual abuse or exploitation as defined by Iowa law, the investigator shall arrange for the level-two investigator to carry out a professional investigation unless the level-one investigation has resulted in a final disposition of the investigation. In addition, the designated investigator shall give a copy of the investigative report to the employee's supervisor and document all action taken.

102.11(2) Upon receipt of the level-two investigator's report under rule 281—102.12(280) or upon resolution of the investigation at level one, the designated investigator will:

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a. Forward copies of the level-two investigator's report to the student's parent or guardian, the school employee named in the complaint, and the school employee's supervisor; notify the person filing the report, if different from the student's parent or guardian, of the disposition of the case or current status of the investigation;

b. File a complaint against the school employee who has been found to have physically or sexually abused a student, if that employee holds a teaching certificate, coaching authorization, or practitioner license, with the board on behalf of the school or district by obtaining the superintendent's signature on the complaint in cases where the level-two investigator or law enforcement officials have concluded abuse occurred as defined in these rules or where the employee has admitted the violation or agreed to surrender the employee's certificate or license. The designated investigator has discretion to file a complaint with the board in situations where the employee has resigned as a result of the allegation or investigation but has not admitted that a violation occurred. In the event an employee holding a school bus driver permit has been found to have physically or sexually abused a student, the designated investigator shall file a written complaint with the school transportation consultant at the department of education; the designated investigator shall file a written complaint with the local school board in founded cases involving other nonlicensed school employees; and

c. Arrange for counseling services for the student on request of the student, or the student's parent or guardian.

281—102.12(280) Level-two investigator's duties.

102.12(1) Upon referral by the designated investigator, the level-two investigator appointed, contracted, requested or retained under subrule 102.5(2) shall review the report of abuse and the designated investigator's report, if any, promptly conduct further investigation and create a written narrative report. The level-two investigator's report shall state:

- a.* Conclusions as to the occurrence of the alleged incident; and
- b.* Conclusions as to the applicability of the exceptions to physical abuse listed in rule 281—102.4(280); or
- c.* Conclusions as to the nature of the sexual abuse, if any; and
- d.* Recommendations regarding the need for further investigation.

102.12(2) The written report shall be delivered to the designated investigator as soon as practicable.

102.12(3) The level-two investigator shall exercise prudent discretion in the investigative process to preserve the privacy interests of the individuals involved. To the maximum extent possible, the level-two investigator shall maintain the confidentiality of the report.

281—102.13(280) Retention of records.

102.13(1) Any record created by an investigation will be handled according to formally adopted or bargained policies on the maintenance of personnel or other confidential records. Notes, tapes, memoranda, and related materials compiled in the investigation will be retained by the public or nonpublic school for a minimum of two years.

102.13(2) Unfounded reports shall not be placed in an employee's personnel file. If a report is founded at level one and unfounded at level two, the founded report from the level-one investigator shall be removed immediately upon receipt of an unfounded report from the level-two investigator.

281—102.14(280) Substantial compliance. Because investigative procedures seldom allow for rigid observance of the protocol, substantial compliance with the rules is required with the overriding goal of reaching a fair and unbiased resolution of the complaint.

These rules are intended to implement Iowa Code section 280.17.

ARC 7600C**EDUCATION DEPARTMENT[281]****Notice of Intended Action****Proposing rulemaking related to physical contact with students
and providing an opportunity for public comment**

The State Board of Education hereby proposes to rescind Chapter 103, “Corporal Punishment, Physical Restraint, Seclusion, and Other Physical Contact With Students,” Iowa Administrative Code, and to adopt a new chapter with the same title.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code section 280.21.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code section 280.21.

Purpose and Summary

Pursuant to Executive Order 10, existing Chapter 103 was recently revised through negotiated rulemaking and a consensus process. The Department of Education proposes to remove unduly restrictive language. The Department has determined that remaining rules are critical to maintain student and staff safety.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the State Board for a waiver of the discretionary provisions, if any, pursuant to 281—Chapter 4.

Public Comment

Any interested person may submit written or oral comments concerning this proposed rulemaking. Written or oral comments in response to this rulemaking must be received by the Department no later than 4:30 p.m. on February 28, 2024. Comments should be directed to:

Thomas A. Mayes
Department of Education
Grimes State Office Building, Second Floor
400 East 14th Street
Des Moines, Iowa 50319-0146
Phone: 515.281.8661
Email: thomas.mayes@iowa.gov

Public Hearing

Public hearings at which persons may present their views orally or in writing will be held as follows:

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February 27, 2024
10 to 11 a.m.

Room B100
Grimes State Office Building
Des Moines, Iowa

February 27, 2024
2 to 3 p.m.

Room B50
Grimes State Office Building
Des Moines, Iowa

Persons who wish to make oral comments at a public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rulemaking.

Any persons who intend to attend a public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department and advise of specific needs by calling 515.281.5295.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking 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 rulemaking action is proposed:

ITEM 1. Rescind 281—Chapter 103 and adopt the following **new** chapter in lieu thereof:

CHAPTER 103
CORPORAL PUNISHMENT, PHYSICAL RESTRAINT, SECLUSION, AND OTHER
PHYSICAL CONTACT WITH STUDENTS

281—103.1(256B,280) Purpose and objectives. The purpose of this chapter is to provide uniform definitions and policies for public school districts, accredited nonpublic schools, and area education agencies regarding the application of physical contact or force to enrolled students. These rules clarify that corporal punishment, prone restraint, and mechanical restraint are prohibited; explain the parameters and protocols for the use of physical restraint and seclusion; and describe other limits on physical contact with students. The applicability of this chapter to physical restraint, seclusion, or behavior management interventions does not depend on the terminology employed by the organization to describe the activity or space. These rules are intended to promote the dignity, care, safety, welfare, and security of each child and the school community; encourage the use of proactive, effective, and evidence- and research-based strategies and best practices to reduce the occurrence of challenging behaviors; increase meaningful instructional time for all students; ensure that seclusion and physical restraint are used only in specified circumstances and are subject to assessment, monitoring, documentation, and reporting by trained employees; and give clear guidance on whether a disciplinary or behavioral management technique is prohibited or may be used.

281—103.2(256B,280) Definitions. For the purposes of this chapter:

“*Bodily injury*” means physical pain, illness, or any impairment of physical condition.

“*Corporal punishment*” means the intentional physical punishment of a student. “Corporal punishment” includes the use of unreasonable or unnecessary physical force, or physical contact made with the intent to harm or cause pain.

“*Debriefings*” means meetings to collaboratively examine and determine what caused an incident or incidents resulting in the use of physical restraints or seclusion, how the incident or the use of physical restraints or seclusion or both could have been avoided and how future incidents could be avoided, and to plan for and implement positive and preventative supports. The debriefing process is intended to

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improve future outcomes by reducing the likelihood of future problem behavior and the subsequent use of physical restraint or seclusion.

“Mechanical restraint” means the use of a device as a means of restricting a student’s freedom of movement. “Mechanical restraint” does not mean a device used by trained school personnel, or used by a student, for the specific and approved therapeutic or safety purposes for which such a device was designed and, if applicable, prescribed, including restraints for medical immobilization, adaptive devices or mechanical supports used to allow greater freedom of mobility than would be possible without the use of such devices or mechanical supports, and vehicle safety restraints when used as intended during the transport of a student in a moving vehicle.

“Parent” means an individual included in the definition of “parent” in rule 281—41.30(256B,34CFR300), and also includes an individual authorized to make decisions for the child pursuant to a power of attorney for temporary delegation of custody or for making educational decisions.

“Physical restraint” means a personal restriction that immobilizes or reduces the ability of a child to move the child’s arms, legs, body, or head freely. “Physical restraint” does not mean a technique used by trained school personnel, or used by a student, for the specific and approved therapeutic or safety purposes for which such a technique was designed and, if applicable, prescribed. “Physical restraint” does not include instructional strategies, such as physically guiding a student during an educational task, hand-shaking, hugging, or other nondisciplinary physical contact.

“Prone restraint” means any restraint in which the child is held face down on the floor.

“Reasonable and necessary force” means that force, and no more, that a reasonable person would judge to be necessary under the circumstances that existed at the time, that is not intended to cause pain, and that does not exceed the degree or duration required to accomplish the purposes set forth in rule 281—103.5(256B,280).

“School” includes public school districts, accredited nonpublic schools, and area education agencies.

“Seclusion” means the involuntary confinement of a child in a seclusion room or area from which the child is prevented or prohibited from leaving; however, preventing a child from leaving a classroom or school building is not considered seclusion. “Seclusion” does not include instances when a school employee is present within the room and providing services to the child, such as crisis intervention or instruction.

“Seclusion room” means a room, area, or enclosure, whether within or outside the classroom, used for seclusion.

281—103.3(256B,280) Ban on corporal punishment and prone and mechanical restraints. An employee shall not inflict, or cause to be inflicted, corporal punishment upon a student or use prone restraints or mechanical restraints upon a student.

281—103.4(256B,280) Activities that are not considered corporal punishment. Corporal punishment does not include the following:

1. Verbal recrimination or chastisement directed toward a student;
2. Reasonable requests or requirements of a student engaged in activities associated with physical education class or extracurricular athletics;
3. Actions consistent with and included in an individualized education program (IEP) developed under the Individuals with Disabilities Education Act, as reauthorized, Iowa Code chapter 256B, and 281—Chapter 41; a behavior intervention plan (BIP); an individual health plan (IHP); or a safety plan. However, under no circumstance may an IEP, BIP, IHP, or safety plan violate the provisions of this chapter;
4. Reasonable periods of detention, not in excess of school hours, or brief periods of detention before or after school, in a seat, classroom, or other part of a school facility;
5. Actions by an employee subject to these rules toward a person who is not a student of the school or receiving the services of a school employing or utilizing the services of the employee.

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281—103.5(256B,280) Use of reasonable and necessary force.

103.5(1) Notwithstanding the ban on corporal punishment in rule 281—103.3(256B,280), no employee subject to these rules is prohibited from:

- a. Using reasonable and necessary force, not designed or intended to cause pain, in order to accomplish any of the purposes listed in Iowa Code section 280.21(2).
- b. Using incidental, minor, or reasonable physical contact to maintain order and control.

103.5(2) An employee subject to these rules is not privileged to use unreasonable force to accomplish any of the purposes listed above.

281—103.6(256B,280) Reasonable force.

103.6(1) In determining the reasonableness of the physical force used by a school employee, the following factors will be applied:

- a. The size and physical, mental, and psychological condition of the student;
- b. The nature of the student's behavior or misconduct resulting in the use of physical force;
- c. The instrumentality used in applying the physical force;
- d. The extent and nature of resulting injury to the student, if any, including mental and psychological injury;
- e. The motivation of the school employee using the physical force.

103.6(2) Reasonable physical force, privileged at its inception, does not lose its privileged status by reasons of an injury to the student, not reasonably foreseeable or otherwise caused by intervening acts of another, including the student.

281—103.7(256B,280) Reasonable and necessary force—use of physical restraint or seclusion.

103.7(1) Physical restraint or seclusion is reasonable and necessary only:

- a. To prevent or terminate an imminent threat of bodily injury to the student or others; or
- b. To prevent serious damage to property of significant monetary value or significant nonmonetary value or importance; or
- c. When the student's actions seriously disrupt the learning environment or when physical restraint or seclusion is necessary to ensure the safety of the student and others; and
- d. When less restrictive alternatives to seclusion or physical restraint would not be effective, would not be feasible under the circumstances, or have failed in preventing or terminating the imminent threat or behavior; and
- e. When the physical restraint or seclusion complies with all the rules of this chapter.

103.7(2) If seclusion or physical restraint is utilized, the following provisions apply:

- a. The seclusion or physical restraint must be imposed by an employee who:
 - (1) Is trained in accordance with rule 281—103.8(256B,280); or
 - (2) Is otherwise available and a trained employee is not immediately available due to the unforeseeable nature of the occurrence.
- b. A school will attempt to notify the student's parent using the school's emergency contact system as soon as practicable after the situation is under control, but no later than one hour or the end of the school day, whichever occurs first.
- c. The seclusion or physical restraint must only be used for as long as is necessary, based on research and evidence, to allow the student to regain control of the student's behavior to the point that the threat or behavior necessitating the use of the seclusion or physical restraint has ended, or when a medical condition occurs that puts the student at risk of harm.

Unless otherwise provided for in the student's written, approved IEP, BIP, IHP, or safety plan, if the seclusion or physical restraint continues for more than 15 minutes:

- (1) The student shall be provided with any necessary breaks to attend to personal and bodily needs, unless doing so would endanger the child or others.
- (2) An employee shall obtain approval from an administrator or administrator's designee to continue the seclusion or physical restraint beyond 15 minutes. After the initial approval, an employee

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must obtain additional approval every 30 minutes thereafter for the continuation of the seclusion or physical restraint. Approval will be documented in accordance with rule 281—103.8(256B,280).

(3) The student's parent and the school may agree to more frequent notifications than is provided by this subrule.

(4) Schools and employees will document and explain in writing, as provided by subrule 103.8(2), the reasons why it was not possible for them to obtain approval, notify parents, or take action under paragraphs 103.7(2) "b" and "c" within the prescribed time limits.

(5) Schools and employees who initiate and then end the use of nonapproved restraints must document and explain in writing the reasons why they had no other option but to use this type of behavioral intervention. This subparagraph is not intended to excuse or condone the use of nonapproved restraints.

d. The area of seclusion shall be a designated seclusion room that complies with the seclusion room requirements of rule 281—103.9(256B,280), unless the nature of the occurrence makes the use of the designated seclusion room impossible, clearly impractical, or clearly contrary to the safety of the student, others, or both; in that event, the school must document and explain in writing the reasons why a designated seclusion room was not used.

e. An employee must continually visually monitor the student for the duration of the seclusion or physical restraint.

f. An employee shall not use any physical restraint that obstructs the airway of the student.

g. If an employee restrains a student who uses sign language or an augmentative mode of communication as the student's primary mode of communication, the student shall be permitted to have the student's hands free of physical restraint, unless doing so is not feasible in view of the threat posed.

h. Seclusion or physical restraint shall not be used:

- (1) As punishment or discipline;
- (2) To force compliance or to retaliate;
- (3) As a substitute for appropriate educational or behavioral support;
- (4) To prevent property damage except as described in paragraph 103.7(1) "b";
- (5) As a routine school safety measure; or
- (6) As a convenience to staff.

103.7(3) An employee must document the use of the seclusion or physical restraint in accordance with rule 281—103.8(256B,280).

103.7(4) Nothing in this rule will be construed as limiting or eliminating any immunity conferred by Iowa Code section 280.21, rule 281—103.11(256B,280), or any other provision of law.

103.7(5) An agency covered by this chapter will investigate any complaint or allegation that one or more of its employees violated one or more provisions of this chapter. If an agency covered by this chapter determines that one or more of its employees violated one or more of the provisions of this chapter, the agency will take appropriate corrective action. If any allegation involves a specific student, the agency will transmit to the parents of the student the results of its investigation, including, to the extent permitted by law, any ordered corrective action.

103.7(6) If a child's IEP, BIP, IHP, or safety plan includes either or both physical restraint or seclusion measures, those measures will be individualized to the child; described with specificity in the child's IEP, BIP, IHP, or safety plan; and be reasonably calculated to enable the child to make progress appropriate in light of the child's circumstances.

103.7(7) These rules are binding whether or not a parent consents to the use of physical restraint or seclusion for the child.

103.7(8) If any alleged violation of this chapter is also an allegation of "abuse" as defined in rule 281—102.2(280), the procedures in 281—Chapter 102 are applicable.

103.7(9) Schools must provide a copy of this chapter and any school-adopted or school-used related policies, procedures and training materials to any individual who is not an employee but whose duties could require the individual to participate in or be present when physical restraints are or seclusion is being used. Schools must invite these individuals to participate in training offered to employees pursuant to this chapter.

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103.7(10) The provisions of Iowa Code section 280.21(3) and 280.21(4) apply to proceedings under this chapter.

281—103.8(256B,280) Training, documentation, debriefing, and reporting requirements.

103.8(1) *Training.* An employee must receive training prior to using any form of physical restraint or seclusion. Training will cover the following topics:

- a. The rules of this chapter;
- b. The school's specific policies and procedures regarding the rules of this chapter;
- c. Student and staff debriefing requirements;
- d. Positive behavior interventions and supports, and evidence-based approaches to student discipline and classroom management;
- e. Research-based alternatives to physical restraint and seclusion;
- f. Crisis prevention, crisis intervention, and crisis de-escalation techniques;
- g. Duties and responsibilities of school resource officers and other responders, and the techniques, strategies and procedures used by responders; and
- h. Safe and effective use of physical restraint and seclusion.

103.8(2) *Documentation and reporting.* Schools must maintain documentation for each occurrence of physical restraint and seclusion. Documentation will contain at least the following information:

- a. The name of the student;
- b. The names and job titles of employees who observed, implemented, or were involved in administering or monitoring the use of seclusion or physical restraints, including the administrator or individual who approved continuation of the seclusion or physical restraint pursuant to subparagraph 103.7(2) "c"(2);
- c. The date of the occurrence;
- d. The beginning and ending times of the occurrence;
- e. The date the employees who observed, implemented, or were involved in administering or monitoring the use of seclusion or physical restraints last completed training necessary under subrule 103.8(1);
- f. A description of the actions of the student before, during, and after the seclusion or physical restraint;
- g. A description of the actions of the employee(s) involved before, during, and after the seclusion or physical restraint, including the use of a nonapproved restraint (subparagraph 103.7(2) "c"(5)) or the use of other than a designated seclusion room (paragraph 103.7(2) "d");
- h. Documentation of approvals for continuation of the seclusion or physical restraint period generated in accordance with subrule 103.7(2), including why it was not possible to obtain approval;
- i. A description of the less restrictive means attempted as alternatives to seclusion or physical restraint;
- j. A description of any injuries, whether to the student or others, and any property damage;
- k. A description of future approaches to address the student's behavior, including any consequences or disciplinary actions that may be imposed on the student; and
- l. The time and manner by which the school notified the student's parent of the use of physical restraint or seclusion, including why it was not possible to attempt to give notice within the time specified by paragraph 103.7(2) "b."

Schools must provide the student's parent with a written copy of the report by the end of the third school day following the occurrence. The report will be accompanied by a letter inviting the parent to participate in a debriefing meeting, if necessary under subrule 103.8(3), to be held within five school days of the day the report and letter are mailed to or provided to the parent. The letter will include the date, time and place of the meeting and the names and titles of employees and other individuals who will attend the meeting. The parent may elect to receive the report and the letter via electronic mail or facsimile or by obtaining a copy at the school. If the parent does not provide instructions to the school or enter into an agreement with the school for alternate dates and methods of delivery, the school must

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mail the letter and report to the parent by first-class mail, postage prepaid, postmarked by end of the third school day after the occurrence.

103.8(3) Debriefing.

a. Schools must hold a debriefing meeting as soon as practicable whenever provided by paragraph 103.8(3) “*f*,” but within five school days of the day the report and letter are mailed or provided to the parent, unless a parent who wants to participate personally or through a representative asks for an extension of time, or the parent and school agree to an alternate date and time. The student may attend the meeting with the parent’s consent. The parent may elect to be accompanied by other individuals or representatives. The meeting must include employees who administered the physical restraint or seclusion, an administrator or employee who was not involved in the occurrence, the individual or administrator who approved continuation of the physical restraint or seclusion, other relevant personnel designated by the school (such as principal, counselor, classroom teacher, special education teacher), and, if indicated by the student’s behavior in the instances prompting the debriefing, an expert in behavioral health, mental health, or another appropriate discipline. The meeting, and the debriefing report that is to be provided to the parent after the meeting, will include the following information and subjects:

- (1) The date and location of the meeting, and the names and titles of the participants;
- (2) The documentation and report completed in compliance with subrule 103.8(2);
- (3) A review of the student’s BIP, IHP, safety plan, and IEP as applicable;
- (4) Identification of patterns of behavior and proportionate response, if any, in the student and the employees involved;
- (5) Determination of possible alternative responses to the incident/less restrictive means, if any;
- (6) Identification of additional resources that could facilitate those alternative responses in the future;
- (7) Planning for follow-up actions, such as behavior assessments, revisions of school intervention plans, medical consultations, and reintroduction plans.

b. Schools must complete the debriefing report and provide a copy of the report to the parent of the student within three school days of the debriefing meeting. The parent may elect to receive the report via electronic mail, or facsimile, or by obtaining a copy at the school. If the parent does not provide instructions to the school or enter into an agreement with the school for alternate dates and methods of delivery, the school must mail the debriefing report to the parent by first-class mail, postage prepaid, postmarked no later than three school days after the debriefing meeting.

c. If the debriefing session results in a recommendation that a child might be eligible for a BIP, IHP, safety plan, or IEP, the public agencies will promptly determine the child’s eligibility in accordance with the procedures for determining eligibility, including rules contained in 281—Chapter 14 and 281—Chapter 41, as applicable.

d. Any recommended change to a student’s BIP, IHP, safety plan, or IEP, or a student’s educational placement, will be made in accordance with the procedures for amending said plan or changing said placement, including rules contained in 281—Chapter 14 and 281—Chapter 41, as applicable.

e. Nothing in this subrule will be construed to require employers to include information about employees that would be legally protected personnel information, including employee disciplinary information under Iowa Code chapters 279 and 284, or to allow discussion of that personnel information, in debriefing meetings.

f. For purposes of this subrule, a debriefing session is necessary:

- (1) Upon the first instance of seclusion or physical restraint during a school year;
- (2) Whenever any personal injury occurs as a part of the use of seclusion or physical restraint;
- (3) Whenever a reasonable educator would determine a debriefing session is necessary;
- (4) Whenever suggested by a student’s IEP team (if any);
- (5) Whenever agreed by the parent and the school officials.

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However, in any case a debriefing session will occur after seven instances of seclusion or physical restraint. Nothing in this paragraph will be construed to prevent a school from offering more debriefing meetings.

103.8(4) Confidentiality. Schools are governed by the Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. §1232g; 34 CFR Part 99); Iowa Code chapter 22, “Examination of Public Records (Open Records)””; and other applicable federal and state laws, when taking action pursuant to this rule.

103.8(5) Reporting to department. Schools will report to the Iowa department of education, in a manner prescribed by the department, an annual count of all instances of seclusion or restraint, an annual count of the number of students who were subjected to seclusion or restraint, and any other data required for the department to implement the Elementary and Secondary Education Act, as amended by the Every Student Succeeds Act, Public Law 114-95.

281—103.9(256B,280) Seclusion room requirements. Schools must meet the following standards for the structural and physical requirements for rooms used for seclusion:

103.9(1) The room meets and complies with all applicable building, fire, safety, and health codes and standards and with the other provisions of this rule.

103.9(2) The dimensions of the room are of adequate width, length, and height to allow the student to move about and recline safely and comfortably, considering the age, size, and physical and mental condition of the student being secluded. The interior of the room is to be no less than 56 square feet, and the distance between opposing walls is to be no less than 7 feet across.

103.9(3) The room is not isolated from school employees or the facility.

103.9(4) Any wall that is part of the room is part of the structural integrity of the room (not free-standing cells or portable units attached to the existing wall or floor).

103.9(5) The room provides a means of continuous visual and auditory monitoring of the student.

103.9(6) The room is adequately lighted with switches to control lighting located outside the room.

103.9(7) The room is adequately ventilated with switches to control fans or other ventilation devices located outside the room.

103.9(8) The room maintains a temperature within the normal human comfort range and consistent with the rest of the building with temperature controls located outside of the room.

103.9(9) The room is clean and free of objects and fixtures that could be potentially dangerous to a student, including protruding, exposed, or sharp objects, exposed pipes, electrical wiring, or other objects in the room that could be used by students to harm themselves or to climb up a wall.

103.9(10) The room contains no free-standing furniture.

103.9(11) The room is constructed of materials safe for its intended use, including wall and floor coverings designed to prevent injury to the student. Interior finish of the seclusion room will comply with the state and local building and fire codes and standards.

103.9(12) Doors will open outward. The door will not be fitted with a lock unless it releases automatically when not physically held in the locked position by personnel on the outside of the door and permits the door to be opened from the inside. Doors, when fully open, do not reduce the required corridor width by more than seven inches. Doors in any position do not reduce the required width by more than one-half.

103.9(13) The room is able to be opened from the inside immediately upon the release of a security mechanism held in place by constant human contact.

103.9(14) Windows, if any, are transparent and made of unbreakable or shatterproof glass or plastic.

103.9(15) By July 1, 2021, schools will consult with appropriate state and local building, fire, safety, and health officials to ensure the room complies with all applicable codes and standards (for example, heating, ventilation, lighting, accessibility, dimensions, access, entry and exit, fire suppression, etc.), and maintain documentation of such consultation and compliance and approval.

103.9(16) Assuming approval pursuant to subrule 103.9(15), a school may continue to use a room that otherwise complies with this rule but for subrule 103.9(2) for a period of five years from January 20, 2021, or whenever the portion of the school containing the room is renovated or remodeled, whichever occurs first.

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281—103.10(256B,280) Department responsibilities. The department will develop, establish, and distribute to all school districts evidence-based standards, guidelines, and expectations for the appropriate and inappropriate responses to behavior in the classroom that presents an imminent threat of bodily injury to a student or another person and for the reasonable, necessary, and appropriate physical restraint of a student, consistent with these rules.

The director of the department will consult with the area education agencies to create comprehensive and consistent standards and guidance for professional development relating to successfully educating individuals in the least restrictive environment, and for evidence-based interventions consistent with the standards established pursuant to this rule.

These rules are intended to implement Iowa Code section 280.21.

ARC 7601C**EDUCATION DEPARTMENT[281]****Notice of Intended Action****Proposing rulemaking related to early access integrated system of early intervention services and providing an opportunity for public comment**

The State Board of Education hereby proposes to rescind Chapter 120, “Early Access Integrated System of Early Intervention Services,” Iowa Administrative Code, and to adopt a new chapter with the same title.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code section 256B.3(16).

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code chapter 256B and 34 CFR Part 303.

Purpose and Summary

Pursuant to Executive Order 10, the Department of Education proposes removing obsolete language, as well as restrictive language that does not add value.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the State Board for a waiver of the discretionary provisions, if any, pursuant to 281—Chapter 4.

Public Comment

Any interested person may submit written or oral comments concerning this proposed rulemaking. Written or oral comments in response to this rulemaking must be received by the Department no later than 4:30 p.m. on February 28, 2024. Comments should be directed to:

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Thomas A. Mayes
 Department of Education
 Grimes State Office Building, Second Floor
 400 East 14th Street
 Des Moines, Iowa 50319-0146
 Phone: 515.281.8661
 Email: thomas.mayes@iowa.gov

Public Hearing

Public hearings at which persons may present their views orally or in writing will be held as follows:

February 27, 2024 10 to 11 a.m.	Room B100 Grimes State Office Building Des Moines, Iowa
February 27, 2024 2 to 3 p.m.	Room B50 Grimes State Office Building Des Moines, Iowa

Persons who wish to make oral comments at a public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rulemaking.

Any persons who intend to attend a public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department and advise of specific needs by calling 515.281.5295.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking 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 rulemaking action is proposed:

ITEM 1. Rescind 281—Chapter 120 and adopt the following **new** chapter in lieu thereof:

TITLE XVIII
 EARLY CHILDHOOD
 CHAPTER 120
 EARLY ACCESS INTEGRATED SYSTEM OF
 EARLY INTERVENTION SERVICES
 DIVISION I
 PURPOSE AND APPLICABILITY

281—120.1(34CFR303) Purposes and outcomes of the Early ACCESS Integrated System of Early Intervention Services.

120.1(1) *Establishment of Early ACCESS Integrated System of Early Intervention Services.* This chapter establishes Iowa's Early ACCESS Integrated System of Early Intervention Services, which is Iowa's implementation of Part C of the Individuals with Disabilities Education Act.

120.1(2) *Purposes.* The purposes of this chapter are as follows:

a. Develop and implement a statewide, comprehensive, coordinated, multidisciplinary, interagency system that provides early intervention services for infants and toddlers with disabilities and their families;

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b. Facilitate the coordination of payment for early intervention services from federal, state, local, and private sources (including public and private insurance coverage);

c. Enhance Iowa's capacity to provide quality early intervention services and expand and improve existing early intervention services being provided to infants and toddlers with disabilities and their families; and

d. Enhance the capacity of state and local agencies and service providers to identify, evaluate, and meet the needs of all children, including historically underrepresented populations, particularly minority, low-income, inner-city, and rural children, and infants and toddlers in foster care.

120.1(3) Overall outcomes. The overall intended outcome of Early ACCESS is to provide early intervention resources, supports, and services to eligible children and their families within a coordinated, integrated system. Early ACCESS is aimed at the following four outcomes:

- a.* Enhancing the development of eligible children;
- b.* Reducing educational costs to society by minimizing the need for special education and related services after such children reach school age;
- c.* Preparing eligible children for school entry; and
- d.* Enhancing the capacity of families to meet the unique needs of their eligible children.

281—120.2(34CFR303) Applicability of this chapter. The provisions of this chapter apply to the Iowa department of education, as the state lead agency, the signatory agencies identified in subrule 120.39(15), and any early intervention service (EIS) provider that is part of the statewide system of early intervention, regardless of whether that EIS provider receives funds under Part C of the Act. The chapter applies to all children referred to the Part C program, including infants and toddlers with disabilities consistent with the definitions in rules 281—120.6(34CFR303) and 281—120.21(34CFR303), and their families. The provisions of this chapter do not apply to any child with a disability receiving a “free appropriate public education” or “FAPE” under 34 CFR Part 300.

281—120.3(34CFR303) Applicable federal regulations.

120.3(1) General. The following regulations apply to this chapter:

- a.* The regulations at 34 CFR Part 303.
- b.* The Education Department General Administrative Regulations (EDGAR), including 34 CFR Parts 76 (except for §76.103), 77, 79, 80, 81, 82, 84, 85, and 86.

120.3(2) References in EDGAR. In applying EDGAR regulations cited in subrule 120.3(1), any reference to:

- a.* “State educational agency” means the Iowa department of education, the lead agency under this chapter; and
- b.* “Education records” or “records” means early intervention records.

DIVISION II
DEFINITIONS

281—120.4(34CFR303) Act. “Act” means the Individuals with Disabilities Education Act. Part B of the Act, 34 CFR Part 300, establishes special education for children with disabilities who are age three to the maximum age in Iowa Code section 256B.8. Part B of the Act includes early childhood special education under Section 619 of the Act. Part C of the Act, 34 CFR Part 303, establishes the infants and toddlers program for eligible individuals from birth to age three.

281—120.5(34CFR303) At-risk infant or toddler. “At-risk infant or toddler” means an individual under three years of age who would be at risk of experiencing a substantial developmental delay if early intervention services were not provided to the individual.

281—120.6(34CFR303) Child. “Child” means an individual under the age of six and may include an “infant or toddler with a disability” as that term is defined in rule 281—120.21(34CFR303).

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281—120.7(34CFR303) Consent.

120.7(1) *Obtaining consent.* “Consent” is obtained when all of the following conditions are satisfied:

a. The parent has been fully informed of all information relevant to the activity for which consent is sought, in the parent’s native language as defined in rule 281—120.25(34CFR303);

b. The parent understands and agrees in writing to the carrying out of the activity for which the parent’s consent is sought, and the consent form describes that activity and lists the early intervention records (if any) that will be released and to whom they will be released; and

c. The parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time.

120.7(2) *Revoking consent.* If a parent revokes consent, that revocation is not retroactive (i.e., it does not apply to an action that occurred before the consent was revoked).

281—120.8(34CFR303) Council. “Council” means the Iowa council for Early ACCESS, which is the state interagency coordinating council that satisfies Division VIII of this chapter.

281—120.9(34CFR303) Day. “Day” means calendar day, unless otherwise indicated.

281—120.10(34CFR303) Developmental delay. “Developmental delay,” when used with respect to a child residing in a state, has the meaning given that term by the state under rule 281—120.111(34CFR303).

281—120.11(34CFR303) Early intervention service program. “Early intervention service program” or “EIS program” means an entity designated by the lead agency for reporting under rules 281—120.700(34CFR303) through 281—120.702(34CFR303).

281—120.12(34CFR303) Early intervention service provider.

120.12(1) *General.* “Early intervention service provider” or “EIS provider” means an entity (whether public, private, or nonprofit) or an individual that provides early intervention services under Part C of the Act, whether or not the entity or individual receives federal funds under Part C of the Act, and may include, where appropriate, the lead agency and a public agency responsible for providing early intervention services to infants and toddlers with disabilities in the state under Part C of the Act.

120.12(2) *Responsibilities.* An EIS provider is responsible for:

a. Participating in the multidisciplinary individualized family service plan (IFSP) team’s ongoing assessment of an infant or toddler with a disability and a family-directed assessment of the resources, priorities, and concerns of the infant’s or toddler’s family, as related to the needs of the infant or toddler, in the development of integrated goals and outcomes for the IFSP;

b. Providing early intervention services in accordance with the IFSP of the infant or toddler with a disability; and

c. Consulting with and training parents and others regarding the provision of the early intervention services described in the IFSP of the infant or toddler with a disability.

120.12(3) *Rule of construction.* “Early ACCESS service provider” is a synonym for “early intervention service provider.”

281—120.13(34CFR303) Early intervention services.

120.13(1) *General.* “Early intervention services” means developmental services that:

a. Are provided under public supervision;

b. Are selected in collaboration with the parents;

c. Are provided at no cost, except, subject to rules 281—120.520(34CFR303) and 281—120.521(34CFR303), where federal or state law provides for a system of payments by families, including, if applicable, a schedule of sliding fees;

d. Are designed to meet the developmental needs of an infant or toddler with a disability and the needs of the family to assist appropriately in the infant’s or toddler’s development, as identified by the IFSP team, in any one or more of the following areas, including:

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- (1) Physical development;
 - (2) Cognitive development;
 - (3) Communication development;
 - (4) Social or emotional development; or
 - (5) Adaptive development;
- e.* Meet the standards of the state in which the early intervention services are provided, including but not limited to the then-applicable version of Iowa's Early Learning Standards and Part C of the Act;
- f.* Include services identified under subrule 120.13(2);
- g.* Are provided by qualified personnel (as that term is defined in rule 281—120.31(34CFR303)), including the types of personnel listed in subrule 120.13(3);
- h.* To the maximum extent appropriate, are provided in natural environments, as defined in rule 281—120.26(34CFR303) and consistent with rule 281—120.126(34CFR303) and subrule 120.344(4); and
- i.* Are provided in conformity with an IFSP adopted in accordance with Section 636 of the Act and rule 281—120.20(34CFR303).

120.13(2) *Types of early intervention services.* Subject to subrule 120.13(4), early intervention services include the following services defined in this subrule:

- a.* “Assistive technology device” and “assistive technology service” are defined as follows:
- (1) “Assistive technology device” means any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve the functional capabilities of an infant or toddler with a disability. “Assistive technology device” does not include a medical device that is surgically implanted, including a cochlear implant, or the optimization (e.g., mapping), maintenance, or replacement of that device.
 - (2) “Assistive technology service” means any service that directly assists an infant or toddler with a disability in the selection, acquisition, or use of an assistive technology device. “Assistive technology service” includes:
 1. The evaluation of the needs of an infant or toddler with a disability, including a functional evaluation of the infant or toddler with a disability in the child's customary environment;
 2. Purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by infants or toddlers with disabilities;
 3. Selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing assistive technology devices;
 4. Coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs;
 5. Training or technical assistance for an infant or toddler with a disability or, if appropriate, that child's family; and
 6. Training or technical assistance for professionals (including individuals providing education or rehabilitation services) or other individuals who provide services to, or are otherwise substantially involved in the major life functions of, infants and toddlers with disabilities.
- b.* “Audiology services” includes:
- (1) Identification of children with auditory impairments, using at-risk criteria and appropriate audiologic screening techniques;
 - (2) Determination of the range, nature, and degree of hearing loss and communication functions, by use of audiological evaluation procedures;
 - (3) Referral for medical and other services necessary for the habilitation or rehabilitation of an infant or toddler with a disability who has an auditory impairment;
 - (4) Provision of auditory training, aural rehabilitation, speech reading and listening devices, orientation and training, and other services;
 - (5) Provision of services for prevention of hearing loss; and
 - (6) Determination of the child's individual amplification, including selecting, fitting, and dispensing appropriate listening and vibrotactile devices, and evaluating the effectiveness of those devices.

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- c.* “Family training, counseling, and home visits” means services provided, as appropriate, by social workers, psychologists, and other qualified personnel to assist the family of an infant or toddler with a disability in understanding the special needs of the child and enhancing the child’s development.
- d.* “Health services” has the meaning given the term in rule 281—120.16(34CFR303).
- e.* “Medical services” means services provided by a licensed physician for diagnostic or evaluation purposes to determine a child’s developmental status and need for early intervention services.
- f.* “Nursing services” includes:
- (1) The assessment of health status for the purpose of providing nursing care, including the identification of patterns of human response to actual or potential health problems;
 - (2) The provision of nursing care to prevent health problems, restore or improve functioning, and promote optimal health and development; and
 - (3) The administration of medications, treatments, and regimens prescribed by a licensed physician.
- g.* “Nutrition services” includes:
- (1) Conducting individual assessments in:
 1. Nutritional history and dietary intake;
 2. Anthropometric, biochemical, and clinical variables;
 3. Feeding skills and feeding problems; and
 4. Food habits and food preferences;
 - (2) Developing and monitoring appropriate plans to address the nutritional needs of children eligible under this chapter, based on the findings in subparagraph 120.13(2)“g”(1); and
 - (3) Making referrals to appropriate community resources to carry out nutrition goals.
- h.* “Occupational therapy” includes services to address the functional needs of an infant or toddler with a disability related to adaptive development, adaptive behavior, and play, and sensory, motor, and postural development. These services are designed to improve the child’s functional ability to perform tasks in home, school, and community settings, and include:
- (1) Identification, assessment, and intervention;
 - (2) Adaptation of the environment, and selection, design, and fabrication of assistive and orthotic devices to facilitate development and promote the acquisition of functional skills; and
 - (3) Prevention or minimization of the impact of initial or future impairment, delay in development, or loss of functional ability.
- i.* “Physical therapy” includes services to address the promotion of sensorimotor function through enhancement of musculoskeletal status, neurobehavioral organization, perceptual and motor development, cardiopulmonary status, and effective environmental adaptation. These services include:
- (1) Screening, evaluation, and assessment of children to identify movement dysfunction;
 - (2) Obtaining, interpreting, and integrating information appropriate to program planning to prevent, alleviate, or compensate for movement dysfunction and related functional problems; and
 - (3) Providing individual and group services or treatment to prevent, alleviate, or compensate for movement dysfunction and related functional problems.
- j.* “Psychological services” includes:
- (1) Administering psychological and developmental tests and other assessment procedures;
 - (2) Interpreting assessment results;
 - (3) Obtaining, integrating, and interpreting information about child behavior and child and family conditions related to learning, mental health, and development; and
 - (4) Planning and managing a program of psychological services, including psychological counseling for children and parents, family counseling, consultation on child development, parent training, and education programs.
- k.* “Service coordination services” has the meaning given the term in rule 281—120.34(34CFR303).
- l.* “Sign language and cued language services” includes teaching sign language, cued language, and auditory/oral language, providing oral transliteration services (such as amplification), and providing sign and cued language interpretation.
- m.* “Social work services” includes:

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(1) Making home visits to evaluate a child's living conditions and patterns of parent-child interaction;

(2) Preparing a social or emotional developmental assessment of the infant or toddler within the family context;

(3) Providing individual and family-group counseling with parents and other family members, and appropriate social skill-building activities with the infant or toddler and parents;

(4) Working with those problems in the living situation (home, community, and any center where early intervention services are provided) of an infant or toddler with a disability and the family of that child that affect the child's maximum utilization of early intervention services; and

(5) Identifying, mobilizing, and coordinating community resources and services to enable the infant or toddler with a disability and the family to receive maximum benefit from early intervention services.

n. "Special instruction" includes:

(1) The design of learning environments and activities that promote the infant's or toddler's acquisition of skills in a variety of developmental areas, including cognitive processes and social interaction;

(2) Curriculum planning, including the planned interaction of personnel, materials, and time and space, that leads to achieving the outcomes in the IFSP for the infant or toddler with a disability;

(3) Providing families with information, skills, and support related to enhancing the skill development of the child; and

(4) Working with the infant or toddler with a disability to enhance the child's development.

o. "Speech-language pathology services" includes:

(1) Identification of children with communication or language disorders and delays in development of communication skills, including the diagnosis and appraisal of specific disorders and delays in those skills;

(2) Referral for medical or other professional services necessary for the habilitation or rehabilitation of children with communication or language disorders and delays in development of communication skills; and

(3) Provision of services for the habilitation, rehabilitation, or prevention of communication or language disorders and delays in development of communication skills.

p. "Transportation and related costs" includes the cost of travel and other costs that are necessary to enable an infant or toddler with a disability and the child's family to receive early intervention services.

q. "Vision services" means:

(1) Evaluation and assessment of visual functioning, including the diagnosis and appraisal of specific visual disorders, delays, and abilities that affect early childhood development;

(2) Referral for medical or other professional services necessary for the habilitation or rehabilitation of visual functioning disorders, or both; and

(3) Communication skills training, orientation and mobility training for all environments, visual training, and additional training necessary to activate visual motor abilities.

120.13(3) *Qualified personnel.* The following are the types of qualified personnel who provide early intervention services under this chapter:

a. Audiologists.

b. Family therapists.

c. Nurses.

d. Occupational therapists.

e. Orientation and mobility specialists.

f. Pediatricians and other physicians for diagnostic and evaluation purposes.

g. Physical therapists.

h. Psychologists.

i. Registered dietitians.

j. Social workers.

k. Special educators, including teachers of children who are deaf or hard of hearing and teachers of children with visual impairments (including blindness).

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- l.* Speech and language pathologists.
- m.* Vision specialists, including ophthalmologists and optometrists.

120.13(4) Other services. The services and personnel identified and defined in subrules 120.13(2) and 120.13(3) do not comprise exhaustive lists of the types of services that may constitute early intervention services or the types of qualified personnel that may provide early intervention services. Nothing in rule 281—120.13(34CFR303) prohibits the identification in the IFSP of another type of service as an early intervention service provided that the service meets the criteria identified in subrule 120.13(1) or of another type of personnel that may provide early intervention services in accordance with this chapter, provided such personnel satisfy rule 281—120.31(34CFR303).

120.13(5) Rule of construction. “Early ACCESS services” is a synonym for the services described in this rule.

281—120.14(34CFR303) Elementary school. “Elementary school” means a nonprofit institutional day or residential school, including a public elementary charter school, that provides elementary education, as determined under state law.

281—120.15(34CFR303) Free appropriate public education. “Free appropriate public education” or “FAPE,” as used in rule 281—120.521(34CFR303), means special education and related services that are provided at public expense, under public supervision and direction, and without charge; that meet the standards of the state educational agency (SEA), including the requirements of Part B of the Act; that include an appropriate preschool, elementary school, or secondary school education in the state involved; and that are provided in conformity with an individualized education program (IEP) that satisfies 34 CFR 300.320 through 300.324.

281—120.16(34CFR303) Health services.

120.16(1) General. “Health services” means services necessary to enable an otherwise eligible child to benefit from the other early intervention services under this chapter during the time that the child is eligible to receive early intervention services.

120.16(2) Examples of health services. “Health services” includes:

- a.* Such services as clean intermittent catheterization, tracheostomy care, tube feeding, the changing of dressings or colostomy collection bags, and other health services; and
- b.* Consultation by physicians with other service providers concerning the special health care needs of infants and toddlers with disabilities that will need to be addressed in the course of providing other early intervention services.

120.16(3) Services excluded. “Health services” does not include:

- a.* Services that are:
 - (1) Surgical in nature (such as cleft palate surgery, surgery for club foot, or the shunting of hydrocephalus);
 - (2) Purely medical in nature (such as hospitalization for management of congenital heart ailments, or the prescribing of medicine or drugs for any purpose); or
 - (3) Related to the implementation, optimization (e.g., mapping), maintenance, or replacement of a medical device that is surgically implanted, including a cochlear implant.
 1. Nothing in this chapter limits the right of an infant or toddler with a disability with a surgically implanted device (e.g., cochlear implant) to receive the early intervention services that are identified in the child’s IFSP as being needed to meet the child’s developmental outcomes.
 2. Nothing in this chapter prevents the EIS provider from routinely checking that either the hearing aid or the external components of a surgically implanted device (e.g., cochlear implant) of an infant or toddler with a disability are functioning properly;
 - b.* Devices (such as heart monitors, respirators and oxygen, and gastrointestinal feeding tubes and pumps) necessary to control or treat a medical condition; and
 - c.* Medical-health services (such as immunizations and regular “well-baby” care) that are routinely recommended for all children.

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281—120.17(34CFR303) Homeless children. “Homeless children” means children who meet the definition given the term “homeless children and youths” in Section 725 (42 U.S.C. 11434a) of the McKinney-Vento Homeless Assistance Act, 42 U.S.C. 11431 et seq.

281—120.18(34CFR303) Include; including. “Include” or “including” means that the items named are not all of the possible items that are covered, whether like or unlike the ones named.

281—120.19(34CFR303) Indian; Indian tribe. “Indian” means an individual who is a member of an Indian tribe. “Indian tribe” means any federal or state Indian tribe, band, rancheria, pueblo, colony, community, or settlement, including any Alaska Native village or regional village corporation (as defined in or established under the Alaska Native Claims Settlement Act, 43 U.S.C. 1601 et seq.). Nothing in this definition is intended to indicate that the Secretary of the Interior is required to provide services or funding to a state Indian tribe that is not listed in the Federal Register list of Indian entities recognized as eligible to receive services from the United States, published pursuant to Section 104 of the Federally Recognized Indian Tribe List Act of 1994, 25 U.S.C. 479a-1.

281—120.20(34CFR303) Individualized family service plan. “Individualized family service plan” or “IFSP” means a written plan for providing early intervention services to an infant or toddler with a disability under this chapter and the infant’s or toddler’s family that is based on the evaluation and assessment described in rule 281—120.321(34CFR303); that includes the content specified in rule 281—120.344(34CFR303); that is implemented as soon as possible once parental consent for the early intervention services in the IFSP is obtained (consistent with rule 281—120.420(34CFR303)); and that is developed in accordance with the IFSP procedures in rules 281—120.342(34CFR303), 281—120.343(34CFR303), and 281—120.345(34CFR303).

281—120.21(34CFR303) Infant or toddler with a disability. “Infant or toddler with a disability” means an individual under three years of age who needs early intervention services because the individual:

120.21(1) Is experiencing a developmental delay, which is a 25 percent delay as measured by appropriate diagnostic instruments and procedures, in one or more of the following areas:

- a. Cognitive development;
- b. Physical development, including vision and hearing;
- c. Communication development;
- d. Social or emotional development;
- e. Adaptive development; or

120.21(2) Has a diagnosed physical or mental condition that:

- a. Has a high probability of resulting in developmental delay; and
- b. Includes conditions such as chromosomal abnormalities; genetic or congenital disorders; sensory impairments; inborn errors of metabolism; disorders reflecting disturbance of the development of the nervous system; congenital infections; severe attachment disorders; and disorders secondary to exposure to toxic substances, including fetal alcohol syndrome.

281—120.22(34CFR303) Lead agency. “Lead agency” is the Iowa department of education to receive funds under Section 643 of the Act and to administer the state’s responsibilities under Part C of the Act.

281—120.23(34CFR303) Local educational agency.

120.23(1) General. “Local educational agency” or “LEA” means a public board of education or other public authority legally constituted within the state for either administrative control or direction of, or to perform a service function for, public elementary schools or secondary schools in a city, county, township, school district, or other political subdivision of the state, or for a combination of school districts or counties as are recognized in the state as an administrative agency for its public elementary schools or secondary schools.

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120.23(2) Educational service agencies and other public institutions or agencies. “Educational service agencies and other public institutions or agencies” includes the following:

a. “Educational service agency,” defined as a regional public multiservice agency:

- (1) Authorized by state law to develop, manage, and provide services or programs to LEAs; and
- (2) Recognized as an administrative agency for purposes of the provision of special education and related services provided within public elementary schools and secondary schools of the state.

b. Any other public institution or agency having administrative control and direction of a public elementary school or secondary school, including a public charter school that is established as an LEA under state law.

c. Entities that meet the definition of “intermediate educational unit” or “IEU” in Section 602(23) of the Act, as in effect prior to June 4, 1997. Under that definition, an “intermediate educational unit” or “IEU” means any public authority other than an LEA that:

- (1) Is under the general supervision of the state educational agency;
- (2) Is established by state law for the purpose of providing FAPE on a regional basis; and
- (3) Provides special education and related services to children with disabilities within the state.

120.23(3) BIE-funded schools. “BIE-funded schools” includes an elementary school or secondary school funded by the Bureau of Indian Education, and not subject to the jurisdiction of any SEA other than the Bureau of Indian Education, but only to the extent that the inclusion makes the school eligible for programs for which specific eligibility is not provided to the school in another provision of law and the school does not have a student population that is smaller than the student population of the LEA receiving assistance under the Act with the smallest student population.

281—120.24(34CFR303) Multidisciplinary. “Multidisciplinary” means the involvement of two or more separate disciplines or professions and, with respect to:

1. Evaluation of the child in rule 281—120.113(34CFR303) and subrule 120.321(1) and assessments of the child and family in subrule 120.321(1), may include one individual who is qualified in more than one discipline or profession; and

2. The IFSP team in rule 281—120.340(34CFR303) must include the involvement of the parent and two or more individuals from separate disciplines or professions and one of these individuals must be the service coordinator (consistent with subrule 120.343(1)).

281—120.25(34CFR303) Native language.

120.25(1) Limited English proficiency. “Native language,” when used with respect to an individual who is limited English proficient or LEP (as that term is defined in Section 602(18) of the Act and in rule 281—41.27(256B,34CFR300)), means:

a. The language normally used by that individual, or, in the case of a child, the language normally used by the parents of the child, except as provided in paragraph 120.25(1)“*b*”; and

b. For evaluations and assessments conducted pursuant to subrule 120.321(1), the language normally used by the child, if determined developmentally appropriate for the child by qualified personnel conducting the evaluation or assessment.

120.25(2) Deaf or hard of hearing; blind or visually impaired; no written language. “Native language,” when used with respect to an individual who is deaf or hard of hearing, blind or visually impaired, or for an individual with no written language, means the mode of communication that is normally used by the individual (such as sign language, braille, or oral communication).

281—120.26(34CFR303) Natural environments. “Natural environments” means settings that are natural or typical for a same-aged infant or toddler without a disability, may include the home or community settings, and must be consistent with the provisions of rule 281—120.126(34CFR303).

281—120.27(34CFR303) Parent.

120.27(1) General. “Parent” means:

- a.* A biological or adoptive parent of a child;

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b. A foster parent, unless state law, regulations, or contractual obligations with a state or local entity prohibit a foster parent from acting as a parent;

c. A guardian generally authorized to act as the child's parent, or authorized to make early intervention, educational, health or developmental decisions for the child (but not the state if the child is a ward of the state);

d. An individual acting in the place of a biological or adoptive parent (including a grandparent, stepparent, or other relative) with whom the child lives, or an individual who is legally responsible for the child's welfare; or

e. A surrogate parent who has been appointed in accordance with rule 281—120.422(34CFR303) or Section 639(a)(5) of the Act.

120.27(2) Rules of construction and application. The following rules are to be used to determine whether a party qualifies as a "parent."

a. Except as provided in paragraph 120.27(2)"*b*," the biological or adoptive parent, when attempting to act as the parent under this chapter and when more than one party is qualified under subrule 120.27(1) to act as a parent, must be presumed to be the parent for purposes of rule 281—120.27(34CFR303) unless the biological or adoptive parent does not have legal authority to make educational or early intervention services decisions for the child.

b. If a judicial decree or order identifies a specific person or persons under paragraphs 120.27(1)"*a*" through "*d*" to act as the "parent" of a child or to make educational or early intervention service decisions on behalf of a child, then the person or persons must be determined to be the "parent" for purposes of Part C of the Act, except that if an EIS provider or a public agency provides any services to a child or any family member of that child, that EIS provider or public agency may not act as the parent for that child.

281—120.28(34CFR303) Parent training and information center. "Parent training and information center" means a center assisted under Section 671 or 672 of the Act.

281—120.29(34CFR303) Personally identifiable information. "Personally identifiable information" means personally identifiable information as defined in 34 CFR 99.3, except that the term "student" in the definition of "personally identifiable information" in 34 CFR 99.3 means "child" as used in this chapter and any reference to "school" means "EIS provider" as used in this chapter.

281—120.30(34CFR303) Public agency. As used in this chapter, "public agency" means the lead agency and any other agency or political subdivision of the state. The particular public agency serving each infant or toddler and that infant or toddler's family shall be determined by the particular Early ACCESS needs of each infant and toddler and pursuant to the interagency agreements established under this chapter. Disputes about which agency will serve a particular infant or toddler shall be resolved by the mechanisms that those agreements contain.

281—120.31(34CFR303) Qualified personnel. "Qualified personnel" means personnel who have met state-approved or state-recognized certification, licensing, registration, or other comparable requirements that apply to the areas in which the individuals are conducting evaluations or assessments or providing early intervention services.

281—120.32(34CFR303) Scientifically based research. "Scientifically based research" has the meaning given the term in Section 9101(37) of the Elementary and Secondary Education Act of 1965 (ESEA). In applying the ESEA to the regulations under Part C of the Act, any reference to "education activities and programs" refers to "early intervention services."

281—120.33(34CFR303) Secretary. "Secretary" means the Secretary of the United States Department of Education.

281—120.34(34CFR303) Service coordination services (case management).

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120.34(1) General.

a. As used in this chapter, “service coordination services” means services provided by a service coordinator to assist and enable an infant or toddler with a disability and the child’s family to receive the services and rights, including procedural safeguards, required under this chapter.

b. Each infant or toddler with a disability and the child’s family must be provided with one service coordinator who is responsible for:

(1) Coordinating all services required under this chapter across agency lines; and

(2) Serving as the single point of contact for carrying out the activities described in this subrule and subrule 120.34(2).

c. Service coordination is an active, ongoing process that involves:

(1) Assisting parents of infants and toddlers with disabilities in gaining access to, and coordinating the provision of, the early intervention services required under this chapter;

(2) Using family-centered practices in all contacts with families; and

(3) Coordinating the other services identified in the IFSP under subrule 120.344(5) that are needed by, or are being provided to, the infant or toddler with a disability and that child’s family.

120.34(2) Specific service coordination services. Service coordination services include:

a. Explaining the system of services and resources called Early ACCESS;

b. Assisting parents of infants and toddlers with disabilities in obtaining access to needed early intervention services and other services identified in the IFSP, including making referrals to providers for needed services and scheduling appointments for infants and toddlers with disabilities and their families;

c. Coordinating the provision of early intervention services and other services (such as educational, social, and medical services that are not provided for diagnostic or evaluative purposes) that the child needs or is being provided;

d. Coordinating evaluations and assessments;

e. Facilitating and participating in the development, review, and evaluation of IFSPs;

f. Conducting referral and other activities to assist families in identifying available EIS providers;

g. Coordinating, facilitating, and monitoring the delivery of services required under this chapter to ensure that the services are provided in a timely manner;

h. Conducting follow-up activities to determine that appropriate Part C services are being provided;

i. Informing families of their rights and procedural safeguards, as set forth in Division VI of this chapter and related resources;

j. Coordinating the funding sources for services required under this chapter; and

k. Facilitating the development of a transition plan to preschool, school, or, if appropriate, to other services.

120.34(3) Use of the term “service coordination” or “service coordination services.” The lead agency’s or an EIS provider’s use of the term “service coordination” or “service coordination services” does not preclude characterization of the services as case management or any other service that is covered by another payor of last resort (including Title XIX of the Social Security Act—Medicaid), for purposes of claims in compliance with rules 281—120.501(34CFR303) through 281—120.521(34CFR303) (payor of last resort provisions).

120.34(4) Appointment of service coordinator. A service coordinator shall be appointed to families as soon as possible after a referral is received. Continuity of services for the child and the child’s family shall be a consideration in the determination of whether a change is made in the service coordinator at any time following initial appointment.

120.34(5) Required service coordinator qualifications. In addition to satisfying subrule 120.119(1), a service coordinator must be a person who has completed a competency-based training program with content related to knowledge and understanding of eligible children, these rules, the nature and scope of services in Early ACCESS in the state, and the system of payments for services, as well as service coordination responsibilities and strategies. The competency-based training program, approved by the department, shall include different training formats and differentiated training to reflect the background and knowledge of the trainees, including those persons who are state-licensed professionals whose scope

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of practice includes service coordination. The department or its designee shall determine whether service coordinators have successfully completed the training.

281—120.35(34CFR303) State. “State” means each of the 50 states, the Commonwealth of Puerto Rico, the District of Columbia, and the four outlying areas and jurisdictions of Guam, American Samoa, the United States Virgin Islands, and the Commonwealth of the Northern Mariana Islands.

281—120.36(34CFR303) State educational agency. “State educational agency” or “SEA” means the state board of education or other agency or officer primarily responsible for the state supervision of public elementary schools and secondary schools or, if there is no such officer or agency, an officer or agency designated by the governor or by state law. “State educational agency” includes the agency that receives funds under Sections 611 and 619 of the Act to administer the state’s responsibilities under Part B of the Act. In Iowa, the SEA is the Iowa department of education.

281—120.37(34CFR303) Ward of the state.

120.37(1) General. Subject to subrules 120.37(2) and 120.37(3), “ward of the state” means a child who, as determined by the state where the child resides, is:

- a. A foster child;
- b. A ward of the state; or
- c. In the custody of a public child welfare agency.

120.37(2) Exception. “Ward of the state” does not include a foster child who has a foster parent who meets the definition of “parent” in rule 281—120.27(34CFR303).

120.37(3) Interpretive note. “Ward of the state” is a term rarely used in Iowa law. It would be an extremely rare occurrence for a child to be a ward of the state while not being either a foster child or in the custody of a public child welfare agency.

281—120.38(34CFR303) Other definitions used in this chapter. The following terms apply to this chapter:

120.38(1) Area education agency. “Area education agency” or “AEA” is a political subdivision of the state organized pursuant to Iowa Code chapter 273.

120.38(2) Board. “Board” means the Iowa state board of education.

120.38(3) Community partners. “Community partners” means local providers of signatory agencies, as well as other public or private community programs or agencies, including Early Head Start, child care providers, early childhood Iowa areas, and health programs, that work with Early ACCESS, as described in rule 281—120.803(34CFR303).

120.38(4) Department. “Department” means the Iowa department of education.

120.38(5) Director of education. “Director of education” means the director of the Iowa department of education.

120.38(6) Early childhood Iowa area. “Early childhood Iowa area” means a partnership in a local community with broad representation to lead collaborative efforts involving education, health, and human services programs and services on behalf of children, families and other citizens residing in the local community’s geographic area. An early childhood Iowa area mobilizes individuals and their communities to achieve desired results in order to improve the well-being and quality of life for families with young children from birth through the age of five years.

120.38(7) Early childhood special education. “Early childhood special education” or “ECSE” means special education and related services under Part B of the Act for those individuals with disabilities younger than the age of six.

120.38(8) Eligible child. “Eligible child” is a synonym for “infant or toddler with a disability,” as defined in rule 281—120.21(34CFR303).

120.38(9) Family. “Family” means the persons who are primarily responsible for the care and nurturing in a child’s daily life, including biological or adoptive parents, grandparents, guardians, persons acting as parents, siblings, stepparents, or unmarried partners of parents.

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120.38(10) GEPA. “GEPA” is an acronym for the General Education Provisions Act.

120.38(11) Grantee. “Grantee” means a recipient of funds under Part C of the Act or state funds designated for Early ACCESS that has the fiscal and legal obligation to ensure that the Early ACCESS system is implemented regionally. The term “grantee” shall not be construed in a manner that conflicts with the Act.

120.38(12) Individualized family service plan team. “Individualized family service plan team” or “IFSP team” includes the members described in subrule 120.343(1).

120.38(13) Informed clinical opinion. “Informed clinical opinion” means the integration of the results of evaluations, direct observations in various settings, and varied activities with the experience, knowledge, and skills of qualified personnel.

120.38(14) School year. “School year” means the period during which students who are 3 years of age through 21 years of age attend school.

120.38(15) Signatory agency. “Signatory agency” means the department of education, the department of health and human services, and the child health specialty clinics.

120.38(16) Signature. “Signature” has the meaning given the term in Iowa Code section 4.1(39).

281—120.39 to 120.99 Reserved.

DIVISION III
STATE ELIGIBILITY FOR A GRANT AND REQUIREMENTS
FOR A STATEWIDE SYSTEM: GENERAL AUTHORITY AND ELIGIBILITY

281—120.100 Reserved.

281—120.101(34CFR303) State eligibility—requirements for a grant under Part C of the Act. In order to be eligible for a grant under Part C of the Act for any fiscal year, the state must meet the following conditions:

120.101(1) Assurances regarding early intervention services and a statewide system. The state must provide the following assurances to the Secretary that:

a. The state has adopted a policy that appropriate early intervention services, as defined in rule 281—120.13(34CFR303), are available to all infants and toddlers with disabilities in the state and their families, including:

(1) Indian infants and toddlers with disabilities and their families residing on a reservation geographically located in the state;

(2) Infants and toddlers with disabilities who are homeless children and their families; and

(3) Infants and toddlers with disabilities who are wards of the state; and

b. The state has in effect a statewide system of early intervention services that satisfies Section 635 of the Act, including policies and procedures that address, at a minimum, the components required in rules 281—120.111(34CFR303) through 281—120.126(34CFR303).

120.101(2) State application and assurances. The state must provide information and assurances to the Secretary, in accordance with 34 CFR §303.200 through 34 CFR §303.236, including:

a. Information that shows that the state meets the application requirements in rules 281—120.200(34CFR303) through 281—120.212(34CFR303); and

b. Assurances that the state also satisfies rules 281—120.221(34CFR303) through 281—120.227(34CFR303).

120.101(3) Approval before implementation. The state must obtain approval by the Secretary before implementing any policy or procedure required to be submitted as part of the state’s application in 34 CFR §303.203, 303.204, 303.206, 303.207, 303.208, 303.209, and 303.211.

281—120.102(34CFR303) State conformity with Part C of the Act. Each state that receives funds under Part C of the Act must ensure that any state rules, regulations, and policies relating to this chapter conform to the purposes and requirements of 34 CFR Part 303.

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281—120.103 and 120.104 Reserved.

281—120.105(34CFR303) Positive efforts to employ and advance qualified individuals with disabilities. Each recipient of assistance under Part C of the Act must make positive efforts to employ and advance in employment qualified individuals with disabilities in programs assisted under Part C of the Act.

281—120.106 to 120.109 Reserved.

281—120.110(34CFR303) Minimum components of a statewide system. Each statewide system (system) must include, at a minimum, the components described in rules 281—120.111(34CFR303) through 281—120.126(34CFR303).

281—120.111(34CFR303) State definition of developmental delay. The system must include the state's rigorous definition of developmental delay, consistent with rule 281—120.10(34CFR303) and subrule 120.203(3), that will be used by the state in carrying out programs under Part C of the Act in order to appropriately identify infants and toddlers with disabilities who are in need of services under Part C of the Act. The definition must:

120.111(1) Describe, for each of the areas listed in subrule 120.21(1), the evaluation and assessment procedures, consistent with rule 281—120.321(34CFR303), that will be used to measure a child's development; and

120.111(2) Specify that 25 percent is the applicable level of developmental delay in functioning or other comparable criteria to constitute a developmental delay in one or more of the developmental areas identified in subrule 120.21(1).

281—120.112(34CFR303) Availability of early intervention services. Each system must include a state policy that is in effect and that ensures that appropriate early intervention services are based on scientifically based research, to the extent practicable, and are available to all infants and toddlers with disabilities and their families, including:

120.112(1) Indian infants and toddlers with disabilities and their families residing on a reservation geographically located in the state; and

120.112(2) Infants and toddlers with disabilities who are homeless children and their families.

281—120.113(34CFR303) Evaluation, assessment, and nondiscriminatory procedures.

120.113(1) General. Subject to subrule 120.113(2), each system must ensure the performance of the following:

a. A timely, comprehensive, multidisciplinary evaluation of the functioning of each infant or toddler with a disability in the state; and

b. A family-directed identification of the needs of the family of the infant or toddler to assist appropriately in the development of the infant or toddler.

120.113(2) Rule of construction. The evaluation and family-directed identification required in subrule 120.113(1) must satisfy rule 281—120.321(34CFR303).

281—120.114(34CFR303) Individualized family service plan (IFSP). Each system must ensure, for each infant or toddler with a disability and the infant's or toddler's family in the state, that an IFSP, as defined in rule 281—120.20(34CFR303), is developed and implemented that satisfies rules 281—120.340(34CFR303) through 281—120.345(34CFR303), and that includes service coordination services, as defined in rule 281—120.34(34CFR303).

281—120.115(34CFR303) Comprehensive child find system. Each system must include a comprehensive child find system that satisfies rules 281—120.302(34CFR303) and 281—120.303(34CFR303).

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281—120.116(34CFR303) Public awareness program. Each system must include a public awareness program that focuses on the early identification of infants and toddlers with disabilities; and provides information to parents of infants and toddlers through primary referral sources in accordance with rule 281—120.301(34CFR303).

281—120.117(34CFR303) Central directory. Each system must include a central directory that is accessible to the general public (i.e., through the department's website and other appropriate means) and includes accurate, up-to-date information about:

120.117(1) Public and private early intervention services, resources, and experts available in the state;

120.117(2) Professional and other groups (including parent support, and training and information centers, such as those funded under the Act) that provide assistance to infants and toddlers with disabilities eligible under Part C of the Act and their families; and

120.117(3) Research and demonstration projects being conducted in the state relating to infants and toddlers with disabilities.

281—120.118(34CFR303) Comprehensive system of personnel development (CSPD). Each system must include a comprehensive system of personnel development (CSPD), including the training of paraprofessionals and the training of primary referral sources with respect to the basic components of early intervention services available in the state.

120.118(1) Required elements. A CSPD must include:

a. Training personnel to implement innovative strategies and activities for the recruitment and retention of EIS providers;

b. Promoting the preparation of EIS providers who are fully and appropriately qualified to provide early intervention services under this chapter; and

c. Training personnel to coordinate transition services for infants and toddlers with disabilities who are transitioning from an early intervention service program under Part C of the Act to a preschool program under Section 619 of the Act, Head Start, Early Head Start, an elementary school program under Part B of the Act, or another appropriate program.

120.118(2) Optional elements. A CSPD may include:

a. Training personnel to work in rural and inner-city areas;

b. Training personnel in the emotional and social development of young children;

c. Training personnel to support families in participating fully in the development and implementation of the child's IFSP; and

d. Training personnel who provide services under this chapter using standards that are consistent with early learning personnel development standards funded under the state advisory council on early childhood education and care established under the Head Start Act, if applicable.

281—120.119(34CFR303) Personnel standards.

120.119(1) General. Each system must include policies and procedures relating to the establishment and maintenance of qualification standards to ensure that personnel necessary to carry out the purposes of this chapter are appropriately and adequately prepared and trained.

120.119(2) Qualification standards. The policies and procedures required in subrule 120.119(1) must provide for the establishment and maintenance of qualification standards that are consistent with any state-approved or state-recognized certification, licensing, registration, or other comparable requirements that apply to the profession, discipline, or area in which personnel are providing early intervention services.

120.119(3) Use of paraprofessionals and assistants. Nothing in Part C of the Act may be construed to prohibit the use of paraprofessionals and assistants who are appropriately trained and supervised in accordance with state law, regulation, or written policy to assist in the provision of early intervention services under Part C of the Act to infants and toddlers with disabilities.

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281—120.120(34CFR303) Lead agency role in supervision, monitoring, funding, interagency coordination, and other responsibilities. Iowa's system includes the designation of the Iowa department of education as lead agency, with a single line of responsibility for the following items:

120.120(1) General supervision. The department is responsible for the following:

a. The general administration and supervision of programs and activities administered by agencies, institutions, organizations, and EIS providers receiving assistance under Part C of the Act.

b. The monitoring of programs and activities used by the state to carry out Part C of the Act (whether or not the programs or activities are administered by agencies, institutions, organizations, and EIS providers that are receiving assistance under Part C of the Act) to ensure that the state complies with Part C of the Act, including:

(1) Monitoring agencies, institutions, organizations, and EIS providers used by the state to carry out Part C of the Act;

(2) Enforcing any obligations imposed on those agencies, institutions, organizations, and EIS providers under Part C of the Act and these rules;

(3) Providing technical assistance, if necessary, to those agencies, institutions, organizations, and EIS providers;

(4) Correcting any noncompliance identified through monitoring as soon as possible and in no case later than one year after the lead agency's identification of the noncompliance; and

(5) Conducting the activities in subparagraphs 120.120(1) "a"(1) through (4), consistent with rules 281—120.700(34CFR303) through 281—120.707(34CFR303), and any other activities required by the state under those rules.

120.120(2) Identification and coordination of resources. The identification and coordination of all available resources for early intervention services within the state, including those from federal, state, local, and private sources, consistent with rules 281—120.500(34CFR303) through 281—120.521(34CFR303).

120.120(3) Assignment of financial responsibility. The assignment of financial responsibility in accordance with rules 281—120.500(34CFR303) through 281—120.521(34CFR303).

120.120(4) Procedures concerning timely provision of services. The development of procedures in accordance with rules 281—120.500(34CFR303) through 281—120.521(34CFR303) to ensure that early intervention services are provided to infants and toddlers with disabilities and their families under Part C of the Act in a timely manner, pending the resolution of any disputes among public agencies or EIS providers.

120.120(5) Agency-level dispute resolution. The resolution of intra-agency and interagency disputes in accordance with rules 281—120.500(34CFR303) through 281—120.521(34CFR303).

120.120(6) Methods of establishing financial responsibility. The entry into formal interagency agreements or other written methods of establishing financial responsibility, consistent with rule 281—120.511(34CFR303), that define the financial responsibility of each agency for paying for early intervention services (consistent with state law) and procedures for resolving disputes and that include all additional components necessary to ensure meaningful cooperation and coordination as set forth in rules 281—120.500(34CFR303) through 281—120.521(34CFR303).

281—120.121(34CFR303) Policy for contracting or otherwise arranging for services. Each system must include a policy pertaining to the contracting or making of other arrangements with public or private individuals or agency service providers to provide early intervention services in the state, consistent with the provisions of Part C of the Act, including the contents of the application, and the conditions of the contract or other arrangements. The policy must:

1. Include a requirement that all early intervention services must meet state standards and be consistent with the provisions of this chapter; and

2. Be consistent with the Education Department General Administrative Regulations in 34 CFR Part 80.

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281—120.122(34CFR303) Reimbursement procedures. Each system must include procedures for securing the timely reimbursement of funds used under Part C of the Act, in accordance with rules 281—120.500(34CFR303) through 281—120.521(34CFR303).

281—120.123(34CFR303) Procedural safeguards. Each system must include procedural safeguards that satisfy rules 281—120.400(34CFR303) through 281—120.449(34CFR303).

281—120.124(34CFR303) Data collection.

120.124(1) General. Each statewide system must include a system for compiling and reporting timely and accurate data that satisfies subrule 120.124(2) and rules 281—120.700(34CFR303) through 281—120.702(34CFR303) and rules 281—120.720(34CFR303) through 281—120.724(34CFR303).

120.124(2) Required description. The data system required in subrule 120.124(1) must include a description of the process that the state uses, or will use, to compile data on infants or toddlers with disabilities receiving early intervention services under this chapter, including a description of the state's sampling methods, if sampling is used, for reporting the data required by the Secretary under Sections 616 and 618 of the Act and rules 281—120.700(34CFR303) through 281—120.707(34CFR303) and rules 281—120.720(34CFR303) through 281—120.724(34CFR303).

281—120.125(34CFR303) State interagency coordinating council. Each system must include a state interagency coordinating council satisfying rules 281—120.600(34CFR303) through 281—120.605(34CFR303).

281—120.126(34CFR303) Early intervention services in natural environments. Each system must include policies and procedures to ensure, consistent with rule 281—120.13(34CFR303) (early intervention services), rule 281—120.26(34CFR303) (natural environments), and subrule 120.344(4) (content of an IFSP), that early intervention services for infants and toddlers with disabilities are provided:

1. To the maximum extent appropriate, in natural environments; and
2. In settings other than the natural environment that are most appropriate, as determined by the parent and the IFSP team, only when early intervention services cannot be achieved satisfactorily in a natural environment.

281—120.127 to 120.199 Reserved.

DIVISION IV
STATE APPLICATION AND ASSURANCES

281—120.200 Reserved.

281—120.201(34CFR303) Designation of lead agency. Each application must include the designation of the department as the lead agency that will be responsible for the administration of funds provided under Part C of the Act.

281—120.202(34CFR303) Certification regarding financial responsibility. Each application must include a certification to the Secretary that the arrangements to establish financial responsibility for the provision of Part C services among appropriate public agencies under rule 281—120.511(34CFR303) and the lead agency's contracts with EIS providers regarding financial responsibility for the provision of Part C services both satisfy rules 281—120.500(34CFR303) through 281—120.521(34CFR303) and are current as of the date of submission of the certification.

281—120.203(34CFR303) Statewide system and description of services. Each application must include the following items:

120.203(1) Description of services. A description of services to be provided under this chapter to infants and toddlers with disabilities and their families through the state's system;

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120.203(2) Identification and coordination of resources. The state's policies and procedures regarding the identification and coordination of all available resources within the state from federal, state, local, and private sources as required under Division VII of this chapter and including:

- a. Policies or procedures adopted by the state as its system of payments that satisfy rules 281—120.510(34CFR303), 281—120.520(34CFR303), and 281—120.521(34CFR303); and
- b. Methods used by the state to implement subrule 120.511(2); and

120.203(3) Rigorous definition of developmental delay. The state's rigorous definition of developmental delay, under rule 281—120.111(34CFR303).

281—120.204 Reserved.

281—120.205(34CFR303) Description of use of funds.

120.205(1) General. Each application must include a description of the uses for funds under this chapter for the fiscal year or years covered by the application. The description must be presented separately for the lead agency and the council and include the information required in subrules 120.205(2) through 120.205(5).

120.205(2) Reserved.

120.205(3) Maintenance and implementation activities. Each application must include a description of the nature and scope of each major activity to be carried out under Part C of the Act, consistent with rule 281—120.501(34CFR303), and the approximate amount of funds to be spent for each activity.

120.205(4) Direct services. Each application must include a description of any direct services that the state expects to provide to infants and toddlers with disabilities and their families with funds under this chapter, consistent with rule 281—120.501(34CFR303), and the approximate amount of funds under this chapter to be used for the provision of each direct service.

120.205(5) Activities by other public agencies. If other public agencies are to receive funds under Part C of the Act, the application must include the name of each agency expected to receive funds, the approximate amount of funds each agency will receive, and a summary of the purposes for which the funds will be used.

281—120.206(34CFR303) Referral policies for specific children. Each application must include the state's policies and procedures that require the referral for early intervention services under this chapter of specific children under the age of three, as described in subrule 120.303(2).

281—120.207(34CFR303) Availability of resources. Each application must include a description of the procedure used by the state to ensure that resources are made available under this chapter for all geographic areas within the state.

281—120.208(34CFR303) Public participation policies and procedures.

120.208(1) Application. At least 60 days prior to being submitted to the department, each application for funds (including any policies, procedures, descriptions, methods, certifications, assurances and other information required in the application) must be published in a manner that will ensure circulation throughout the state for at least a 60-day period, with an opportunity for public comment on the application for at least 30 days during that period.

120.208(2) State policies and procedures. Each application must include a description of the policies and procedures used by the state to ensure that, before adopting any new policy or procedure (including any revision to an existing policy or procedure) needed to comply with Part C of the Act and these rules, the lead agency:

- a. Holds public hearings on the new policy or procedure (including any revision to an existing policy or procedure);
- b. Provides notice of the hearings held in accordance with paragraph 120.208(2)“a” at least 30 days before the hearings are conducted to enable public participation; and
- c. Provides an opportunity for the general public, including individuals with disabilities, parents of infants and toddlers with disabilities, EIS providers, and the members of the council, to comment for

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at least 30 days on the new policy or procedure (including any revision to an existing policy or procedure) needed to comply with Part C of the Act and these rules.

281—120.209(34CFR303) Transition to preschool and other programs.

120.209(1) Application requirements. The department must include the following in its application:

a. A description of the policies and procedures the state will use to ensure a smooth transition for infants and toddlers with disabilities under the age of three and their families from receiving early intervention services under this chapter to:

- (1) Preschool or other appropriate services (for toddlers with disabilities); or
- (2) Exiting the program for infants and toddlers with disabilities.

b. A description of how the state will satisfy subrules 120.209(2) through 120.209(6).

c. An intra-agency agreement between the department's program that administers Part C of the Act and the department's program that administers Section 619 of Part B of the Act (early childhood special education). To ensure a seamless transition between services under Parts C and B of the Act, the intra-agency agreement must address how the department will satisfy subrules 120.209(2) through 120.209(6) (including any policies adopted by the lead agency under 34 CFR §303.401(d) and (e)), subrule 120.344(8), rule 281—41.124(256B,34CFR300), and 281—subrules 41.101(2) and 41.321(6).

d. Any policy the department has adopted under 34 CFR §303.401(d) and (e).

120.209(2) Notification to the department and appropriate AEA.

a. The department must ensure that:

(1) Subject to paragraph 120.209(2)“*b*,” not fewer than 90 days before the third birthday of the toddler with a disability if that toddler may be eligible for preschool services under Part B of the Act, the public agency responsible for providing Early ACCESS services to the toddler notifies the department and the AEA for the area in which the toddler resides that the toddler on the toddler's third birthday will reach the age of eligibility for services under Part B of the Act, as determined in accordance with state law;

(2) Subject to paragraph 120.209(2)“*b*,” if the toddler is determined to be eligible for Early ACCESS services more than 45 but less than 90 days before that toddler's third birthday and if that toddler may be eligible for preschool services under Part B of the Act, the public agency responsible for providing Early ACCESS services to the toddler, as soon as possible after determining the child's eligibility, notifies the department and the AEA for the area in which the toddler with a disability resides that the toddler on the toddler's third birthday will reach the age of eligibility for services under Part B of the Act, as determined in accordance with state law; or

(3) Subject to paragraph 120.209(2)“*b*,” if a toddler is referred to Early ACCESS under rules 281—120.302(34CFR303) and 281—120.303(34CFR303) fewer than 45 days before that toddler's third birthday and that toddler may be eligible for preschool services under Part B of the Act, the public agency that would be responsible for determining the child's eligibility under this chapter, with parental consent required under rule 281—120.414(34CFR303), refers the toddler to the department and the AEA for the area in which the toddler resides; however, no agency is required to conduct an evaluation, assessment, or an initial IFSP meeting under these circumstances.

b. The department must ensure that the notification required under subparagraphs 120.209(2)“*a*”(1) and (2) is consistent with any policy that the state has adopted, under 34 CFR §303.401(e), permitting a parent to object to disclosure of personally identifiable information.

120.209(3) Conference to discuss services. The department must ensure that:

a. If a toddler with a disability may be eligible for preschool services under Part B of the Act, the public agency responsible for Early ACCESS services, with the approval of the family of the toddler, convenes a conference, among that agency, the family, and the AEA of the toddler's residence not fewer than 90 days—and, at the discretion of all parties, not more than nine months—before the toddler's third birthday to discuss any services the toddler may receive under Part B of the Act; and

b. If the public agency determines that a toddler with a disability is not potentially eligible for preschool services under Part B of the Act, the public agency, with the approval of the family of that

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toddler, makes reasonable efforts to convene a conference among that agency, the family, and providers of other appropriate services for the toddler to discuss appropriate services that the toddler may receive.

120.209(4) Transition plan. The department must ensure that for all toddlers with disabilities:

a. The appropriate public agency reviews the program options for the toddler with a disability for the period from the toddler's third birthday through the remainder of the school year and each family of a toddler with a disability who is served under this chapter is included in the development of the transition plan required under this rule and subrule 120.344(8);

b. The appropriate public agency establishes a transition plan in the IFSP not fewer than 90 days—and, at the discretion of all parties, not more than nine months—before the toddler's third birthday; and

c. The transition plan in the IFSP includes, consistent with subrule 120.344(8), as appropriate:

(1) Steps for the toddler with a disability and the toddler's family to exit from the Part C program; and

(2) Any transition services that the IFSP team identifies as needed by that toddler and the toddler's family.

120.209(5) Transition conference and meeting to develop transition plan. Any conference conducted under subrule 120.209(3) or meeting to develop the transition plan under subrule 120.209(4) (which conference and meeting may be combined into one meeting) must satisfy subrules 120.342(4), 120.342(5), and 120.343(1).

120.209(6) Applicability of transition requirements. The transition requirements in subparagraphs 120.209(2) "a" (1) and (2), paragraph 120.209(3) "a," and subrule 120.209(4) apply to all toddlers with disabilities receiving services under this chapter before those toddlers turn age three.

281—120.210(34CFR303) Coordination with Head Start and Early Head Start, early education, and child care programs. Each application must contain a description of state efforts to promote collaboration among Head Start and Early Head Start programs under the Head Start Act (42 U.S.C. 9801 et seq.), early education and child care programs, and services under this chapter. The department must participate, consistent with Section 642B(b)(1)(C)(viii) of the Head Start Act, on the state advisory council on early childhood education and care established under the Head Start Act.

281—120.211 Reserved.

281—120.212(34CFR303) Additional information and assurances. The department's application shall describe the steps the state is taking to ensure equitable access to, and equitable participation in, the Part C statewide system as required by Section 427(b) of GEPA and shall supply other information and assurances as the Secretary may reasonably require.

281—120.213 to 120.219 Reserved.

281—120.220(34CFR303) Assurances satisfactory to the Secretary. The department's application must contain assurances satisfactory to the Secretary that the state has satisfied rules 281—120.221(34CFR303) through 281—120.227(34CFR303).

281—120.221(34CFR303) Expenditure of funds. The department must ensure that federal funds made available to the state under Section 643 of the Act will be expended in accordance with the provisions of this chapter, including rules 281—120.500(34CFR303) and 281—120.501(34CFR303).

281—120.222(34CFR303) Payor of last resort. The department must ensure that it will comply with rules 281—120.510(34CFR303) and 281—120.511(34CFR303).

281—120.223(34CFR303) Control of funds and property. The department must ensure that the control of funds provided under Part C of the Act, and title to property acquired with those funds, will

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be in a public agency for the uses and purposes provided in this chapter and that a public agency will administer the funds and property.

281—120.224(34CFR303) Reports and records. The department must ensure that it will make reports in the form and containing the information that the Secretary may require and will keep records and afford access to those records as the Secretary may find necessary to ensure compliance with this chapter, the correctness and verification of reports, and the proper disbursement of funds provided under this chapter.

281—120.225(34CFR303) Prohibition against supplanting; indirect costs.

120.225(1) General. The department must provide satisfactory assurance that the federal funds made available under Section 643 of the Act to the state:

- a. Will not be commingled with state funds; and
- b. Will be used so as to supplement the level of state and local funds expended for infants and toddlers with disabilities and their families and in no case to supplant those state and local funds.

120.225(2) Additional information. To meet the requirement in subrule 120.225(1), the total amount of state and local funds budgeted for expenditures in the current fiscal year for early intervention services for children eligible under this chapter and their families must be at least equal to the total amount of state and local funds actually expended for early intervention services for these children and their families in the most recent preceding fiscal year for which the information is available. Allowance may be made for:

- a. A decrease in the number of infants and toddlers who are eligible to receive early intervention services under this chapter; and
- b. Unusually large amounts of funds expended for such long-term purposes as the acquisition of equipment.

120.225(3) Requirement regarding indirect costs.

a. Except as provided in paragraph 120.225(3) "b," the department may not charge indirect costs to its Part C grant.

b. If approved by the department's cognizant federal agency or by the Secretary, the department must charge indirect costs through either:

- (1) A restricted indirect cost rate that satisfies 34 CFR 76.560 through 76.569; or
- (2) A cost allocation plan that meets the non-supplanting requirements in subrule 120.225(2) and 34 CFR Part 76 of EDGAR.

c. In charging indirect costs under paragraph 120.225(3) "b," the department may not charge rent, occupancy, or space maintenance costs directly to the Part C grant, unless those costs are specifically approved in advance by the Secretary.

281—120.226(34CFR303) Fiscal control. The department must ensure that fiscal control and fund accounting procedures will be adopted as necessary to ensure proper disbursement of, and accounting for, federal funds paid under Part C of the Act.

281—120.227(34CFR303) Traditionally underserved groups. The department must ensure that policies and practices have been adopted to ensure that traditionally underserved groups, including minority, low-income, homeless, and rural families and children with disabilities who are wards of the state, are meaningfully involved in the planning and implementation of this chapter and that these families have access to culturally competent services within their local geographical areas.

281—120.228(34CFR303) Subsequent state application and modifications of application.

120.228(1) Subsequent state application. If the state has on file with the Secretary a policy, procedure, method, or assurance that demonstrates that the state meets an application requirement in this chapter, including any policy, procedure, method, or assurance filed under this chapter (as in effect before the date of enactment of the Act, December 3, 2004), the Secretary considers the state to have met that requirement for purposes of receiving a grant under Part C of the Act.

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120.228(2) *Modification of application.* An application submitted by the state that satisfies this chapter remains in effect until the state submits to the Secretary such modifications as the state determines necessary. This rule applies to a modification of an application to the same extent and in the same manner as this subrule applies to the original application.

120.228(3) *Modifications required by the Secretary.* The Secretary may require the state to modify its application under Part C of the Act to the extent necessary to ensure the state's compliance with Part C of the Act if:

- a. An amendment is made to the Act or to a federal regulation issued under the Act;
- b. A new interpretation of the Act is made by a federal court or the state's highest court; or
- c. An official finding of noncompliance with federal law or regulations is made with respect to the state.

281—120.229 to 120.299 Reserved.

DIVISION V
CHILD FIND; EVALUATIONS AND ASSESSMENTS; INDIVIDUALIZED FAMILY SERVICE PLANS

281—120.300(34CFR303) *General.* The statewide comprehensive, coordinated, multidisciplinary, interagency system to provide early intervention services for infants and toddlers with disabilities and their families must include the following components:

120.300(1) *Pre-referral activities.* The system must contain pre-referral policies and procedures that include:

- a. A public awareness program as described in rule 281—120.301(34CFR303); and
- b. A comprehensive child find system as described in rule 281—120.302(34CFR303).

120.300(2) *Referral activities.* The system must contain referral policies and procedures as described in rule 281—120.303(34CFR303).

120.300(3) *Post-referral activities.* The system must contain post-referral policies and procedures that ensure compliance with the timeline requirements in rule 281—120.310(34CFR303) and include:

- a. Screening, if applicable, as described in rule 281—120.320(34CFR303);
- b. Evaluations and assessments as described in rules 281—120.321(34CFR303) and 281—120.322(34CFR303); and
- c. Development, review, and implementation of IFSPs as described in rules 281—120.340(34CFR303) through 281—120.346(34CFR303).

281—120.301(34CFR303) *Public awareness program—information for parents.*

120.301(1) *Preparation and dissemination.* In accordance with rule 281—120.116(34CFR303), the system must include a public awareness program that requires the department to:

- a. Prepare information on the availability of early intervention services under this chapter, and other services, as described in subrule 120.301(2) and disseminate to all primary referral sources (especially hospitals and physicians) the information to be given to parents of infants and toddlers, especially parents with premature infants or infants with other physical risk factors associated with learning or developmental complications; and
- b. Adopt procedures for assisting the primary referral sources described in subrule 120.303(3) in disseminating the information described in subrule 120.301(2) to parents of infants and toddlers with disabilities.

120.301(2) *Information to be provided.* The information required to be prepared and disseminated under subrule 120.301(1) must include:

- a. A description of the availability of Early ACCESS services under this chapter;
- b. A description of the child find system and how to refer a child under the age of three for an evaluation or early intervention services; and
- c. A central directory, as described in rule 281—120.117(34CFR303).

120.301(3) *Information specific to toddlers with disabilities.* The public awareness program also must include a requirement that the department provide for informing parents of toddlers with disabilities

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of the availability of services under Section 619 of the Act not fewer than 90 days prior to the toddler's third birthday.

281—120.302(34CFR303) Comprehensive child find system.

120.302(1) General. The Early ACCESS system must include a comprehensive child find system that:

- a. Is consistent with Part B of the Act (see 34 CFR 300.111);
- b. Includes a system for making referrals to applicable public agencies or EIS providers under this chapter that:
 - (1) Includes timelines; and
 - (2) Provides for participation by the primary referral sources described in subrule 120.303(3);
- c. Ensures rigorous standards for appropriately identifying infants and toddlers with disabilities for early intervention services under this chapter that will reduce the need for future services; and
- d. Satisfies subrules 120.302(2) and 120.302(3) and rules 281—120.303(34CFR303), 281—120.310(34CFR303), 281—120.320(34CFR303), and 281—120.321(34CFR303).

120.302(2) Scope of child find. The department, as part of the child find system, must ensure that:

- a. All infants and toddlers with disabilities in the state who are eligible for early intervention services under this chapter are identified, located, and evaluated, including:
 - (1) Indian infants and toddlers with disabilities residing on a reservation or settlement geographically located in the state (including coordination, as necessary, with tribes, tribal organizations, and consortia to identify infants and toddlers with disabilities in the state based, in part, on the information provided by them to the department under 34 CFR §303.731(e)(1)); and
 - (2) Infants and toddlers with disabilities who are homeless, in foster care, and wards of the state; and
 - (3) Infants and toddlers with disabilities that are referenced in subrule 120.303(2); and
- b. An effective method is developed and implemented to identify children who are in need of early intervention services.

120.302(3) Coordination.

a. The department, with the assistance of the council, must ensure that the child find system under this chapter:

- (1) Is coordinated with all other major efforts to locate and identify children by other state agencies responsible for administering the various education, health, and social service programs relevant to this chapter, including Indian tribes that receive payments under this chapter, and other Indian tribes, as appropriate; and
- (2) Is coordinated with the efforts of the:
 - 1. Program authorized under Part B of the Act;
 - 2. Maternal and Child Health program, including the Maternal, Infant, and Early Childhood Home Visiting Program, under Title V of the Social Security Act (MCHB or Title V) (42 U.S.C. 701(a));
 - 3. Early Periodic Screening, Diagnosis, and Treatment (EPSDT) under Title XIX of the Social Security Act (42 U.S.C. 1396(a)(43) and 1396(a)(4)(B));
 - 4. Programs under the Developmental Disabilities Assistance and Bill of Rights Act of 2000 (42 U.S.C. 15001 et seq.);
 - 5. Head Start Act (including Early Head Start programs under Section 645A of the Head Start Act) (42 U.S.C. 9801 et seq.);
 - 6. Supplemental Security Income program under Title XVI of the Social Security Act (42 U.S.C. 1381);
 - 7. Child protection and child welfare programs, including programs administered by, and services provided through, the foster care agency and the state agency responsible for administering the Child Abuse Prevention and Treatment Act (CAPTA) (42 U.S.C. 5106(a));
 - 8. Child care programs in the state;
 - 9. Programs that provide services under the Family Violence Prevention and Services Act (42 U.S.C. 10401 et seq.);

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10. Early Hearing Detection and Intervention (EHDI) systems (42 U.S.C. 280g-1) administered by the Centers for Disease Control (CDC); and

11. Children's Health Insurance Program (CHIP) authorized under Title XXI of the Social Security Act (42 U.S.C. 1397aa et seq.).

b. The department, with the advice and assistance of the council, must take steps to ensure that:

(1) There will not be unnecessary duplication of effort by the programs identified in paragraph 120.302(3)“*a*”; and

(2) The state will make use of the resources available through each public agency and EIS provider in the state to implement the child find system in an effective manner.

281—120.303(34CFR303) Referral procedures.

120.303(1) General. The child find system described in rule 281—120.302(34CFR303) must include the state's procedures for use by primary referral sources for referring a child under the age of three to the Part C program. The procedures required in this subrule must:

a. Provide for referring a child as soon as possible, but in no case more than seven days, after the child has been identified; and

b. Meet the requirements in subrules 120.303(2) and 120.303(3).

120.303(2) Referral of specific at-risk infants and toddlers. The procedures required in subrule 120.303(1) must provide for requiring the referral of a child under the age of three who:

a. Is the subject of a substantiated case of child abuse or neglect; or

b. Is identified as directly affected by illegal substance abuse or withdrawal symptoms resulting from prenatal drug exposure.

120.303(3) Primary referral sources. As used in this division, primary referral sources include:

a. Hospitals, including prenatal and postnatal care facilities;

b. Physicians;

c. Parents, including parents of infants and toddlers;

d. Child care programs and early learning programs;

e. AEAs, LEAs and schools;

f. Public health facilities;

g. Other public health or social service agencies;

h. Other clinics and health care providers;

i. Public agencies and staff in the child welfare system, including child protective service and foster care;

j. Homeless family shelters; and

k. Domestic violence shelters and agencies.

281—120.304 to 120.309 Reserved.

281—120.310(34CFR303) Post-referral timeline (45 calendar days).

120.310(1) General. Except as provided in subrule 120.310(2), any screening under rule 281—120.320(34CFR303); the initial evaluation and the initial assessments of the child and family under rule 281—120.321(34CFR303); and the initial IFSP meeting under rule 281—120.342(34CFR303) must be completed within 45 calendar days from the date the public agency or EIS provider receives the referral of the child.

120.310(2) Limited exceptions. Subject to subrule 120.310(3), the 45-day timeline described in subrule 120.310(1) does not apply for any period when:

a. The child or parent is unavailable to complete the screening (if applicable), the initial evaluation, the initial assessments of the child and family, or the initial IFSP meeting due to exceptional family circumstances that are documented in the child's early intervention records; or

b. The parent has not provided consent for the screening (if applicable), the initial evaluation, or the initial assessment of the child, despite documented, repeated attempts by the public agency or EIS provider to obtain parental consent.

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120.310(3) Duties when limited exceptions occur. The department must develop procedures to ensure that in the event the circumstances described in subrule 120.310(2) exist, the public agency or EIS provider must:

a. Document in the child's early intervention records the exceptional family circumstances or repeated attempts by the public agency or EIS provider to obtain parental consent;

b. Complete the screening (if applicable), the initial evaluation, the initial assessments (of the child and family), and the initial IFSP meeting as soon as possible after the documented exceptional family circumstances described in paragraph 120.310(2) "a" no longer exist or parental consent is obtained for the screening (if applicable), the initial evaluation, and the initial assessment of the child; and

c. Develop and implement an interim IFSP, to the extent appropriate and consistent with rule 281—120.345(34CFR303).

120.310(4) Initial family assessment. The initial family assessment must be conducted within the 45-day timeline in subrule 120.310(1) if the parent concurs and even if other family members are unavailable.

281—120.311 to 120.319 Reserved.

281—120.320(34CFR303) Screening procedures.

120.320(1) General.

a. The department may adopt procedures, consistent with this rule, to screen children under the age of three who have been referred to the Part C program to determine whether they are suspected of having a disability under this chapter. If a public agency or EIS provider proposes to screen a child, the agency or EIS provider must:

(1) Provide the parent notice under rule 281—120.421(34CFR303) of the public agency's or EIS provider's intent to screen the child to identify whether the child is suspected of having a disability and include in that notice a description of the parent's right to request an evaluation under rule 281—120.321(34CFR303) at any time during the screening process; and

(2) Obtain parental consent as required in subrule 120.420(1) before conducting the screening procedures.

b. If the parent consents to the screening and the screening or other available information indicates that the child is:

(1) Suspected of having a disability, after notice is provided under rule 281—120.421(34CFR303) and once parental consent is obtained as required in rule 281—120.420(34CFR303), an evaluation and assessment of the child must be conducted under rule 281—120.321(34CFR303); or

(2) Not suspected of having a disability, the public agency or EIS provider must ensure that notice of that determination is provided to the parent under rule 281—120.421(34CFR303), and that the notice describes the parent's right to request an evaluation.

c. If the parent of the child requests and consents to an evaluation at any time during the screening process, evaluation of the child must be conducted under rule 281—120.321(34CFR303), even if the public agency or EIS provider has determined under subparagraph 120.320(1) "b" (2) that the child is not suspected of having a disability.

120.320(2) Definition of screening procedures. As used in this rule, "screening procedures":

a. Means activities under subrule 120.320(1) that are carried out by, or under the supervision of, a public agency or EIS provider to identify, at the earliest possible age, infants and toddlers suspected of having a disability and in need of early intervention services; and

b. Includes the administration of appropriate instruments by personnel trained to administer those instruments.

120.320(3) Condition for evaluation or early intervention services. For every child under the age of three who is referred to the Part C program or screened in accordance with subrule 120.320(1), the applicable agency is not required to:

a. Provide an evaluation of the child under rule 281—120.321(34CFR303) unless the child is suspected of having a disability or the parent requests an evaluation under paragraph 120.320(1) "c"; or

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b. Make Early ACCESS services available under this chapter to the child unless a determination is made that the child meets the definition of infant or toddler with a disability under rule 281—120.21(34CFR303).

120.320(4) Rules of construction.

a. This rule does not apply to activities undertaken by entities not regulated by this chapter, activities that are undertaken by grantees, signatory agencies, Early ACCESS providers prior to referral, activities undertaken after consent for an evaluation and assessment under rule 281—120.321(34CFR303) is received, or to activities taken pursuant to an IFSP.

b. As a general rule, a public agency suspects a child is a child with a disability when the public agency is aware of facts and circumstances that, when considered as a whole, would cause a reasonably prudent public agency to believe that the child's performance might be explained because the child is an eligible individual under this chapter.

281—120.321(34CFR303) Evaluation of the child and assessment of the child and family.

120.321(1) General. The department must ensure that, subject to obtaining parental consent in accordance with subrule 120.420(1), each child under the age of three who is referred for evaluation or early intervention services under this chapter and suspected of having a disability receives:

a. A timely, comprehensive, multidisciplinary evaluation of the child in accordance with subrule 120.321(4) unless eligibility is established in paragraph 120.321(3)“*a*”; and

b. If the child is determined eligible as an infant or toddler with a disability as defined in rule 281—120.21(34CFR303):

(1) A multidisciplinary assessment of the unique strengths and needs of that infant or toddler and the identification of services appropriate to meet those needs;

(2) A family-directed assessment of the resources, priorities, and concerns of the family and the identification of the supports and services necessary to enhance the family's capacity to meet the developmental needs of that infant or toddler. The assessments of the child and family are described in subrule 120.321(5), and these assessments may occur simultaneously with the evaluation, provided that the requirements of subrule 120.321(4) are met.

120.321(2) Definitions. As used in this chapter:

a. “Evaluation” means the procedures used by qualified personnel to determine a child's initial and continuing eligibility under this chapter, consistent with the definition of infant or toddler with a disability in rule 281—120.21(34CFR303);

b. “Initial evaluation” means the child's evaluation to determine the child's initial eligibility under this chapter;

c. “Assessment” means the ongoing procedures used by qualified personnel to identify the child's unique strengths and needs and the early intervention services appropriate to meet those needs throughout the period of the child's eligibility under this chapter and includes the assessment of the child, consistent with paragraph 120.321(5)“*a*” and the assessment of the child's family, consistent with paragraph 120.321(5)“*b*”; and

d. “Initial assessment” means the assessment of the child and the family assessment conducted prior to the child's first IFSP meeting.

120.321(3) General procedures.

a. A child's medical and other records may be used to establish eligibility (without conducting an evaluation of the child) under this chapter if those records indicate that the child's level of functioning in one or more of the developmental areas identified in subrule 120.21(1) constitutes a developmental delay or that the child otherwise meets the criteria for an infant or toddler with a disability under rule 281—120.21(34CFR303). If the child's Part C eligibility is established under this paragraph, the public agency or EIS provider must conduct assessments of the child and family in accordance with subrule 120.321(5).

b. Qualified personnel must use informed clinical opinion when conducting an evaluation and assessment of the child. In addition, the department must ensure that informed clinical opinion may be used as an independent basis to establish a child's eligibility under this chapter even when other

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instruments do not establish eligibility; however, in no event may informed clinical opinion be used to negate the results of evaluation instruments used to establish eligibility under subrule 120.321(4).

c. All evaluations and assessments of the child and family must be conducted by qualified personnel, in a nondiscriminatory manner, and selected and administered so as not to be racially or culturally discriminatory.

d. Unless clearly not feasible to do so, all evaluations and assessments of a child must be conducted in the native language of the child.

e. Unless clearly not feasible to do so, family assessments must be conducted in the native language of the family members being assessed.

120.321(4) *Procedures for evaluation of the child.* In conducting an evaluation, no single procedure may be used as the sole criterion for determining a child's eligibility under this chapter. Procedures must include:

a. Administering an evaluation instrument;

b. Taking the child's history (including interviewing the parent);

c. Identifying the child's level of functioning in each of the developmental areas in subrule 120.21(1);

d. Gathering information from other sources such as family members, other caregivers, medical providers, social workers, and educators, if necessary, to understand the full scope of the child's unique strengths and needs; and

e. Reviewing medical, educational, or other records.

120.321(5) *Procedures for assessment of the child and family.*

a. An assessment of each infant or toddler with a disability must be conducted by qualified personnel in order to identify the child's unique strengths and needs and the early intervention services appropriate to meet those needs. The assessment of the child must include the following:

- (1) A review of the results of the evaluation conducted under subrule 120.321(4);
- (2) Personal observations of the child; and
- (3) The identification of the child's needs in each of the developmental areas in subrule 120.21(1).

b. A family-directed assessment must be conducted by qualified personnel in order to identify the family's resources, priorities, and concerns and the supports and services necessary to enhance the family's capacity to meet the developmental needs of the family's infant or toddler with a disability. The family-directed assessment must:

- (1) Be voluntary on the part of each family member participating in the assessment;
- (2) Be based on information obtained through an assessment tool and also through an interview with those family members who elect to participate in the assessment; and
- (3) Include the family's description of its resources, priorities, and concerns related to enhancing the child's development.

281—120.322(34CFR303) *Determination that a child is not eligible.* If, based on the evaluation conducted under rule 281—120.321(34CFR303), the applicable agency determines that a child is not eligible under this chapter, the agency must provide the parent with prior written notice required in rule 281—120.421(34CFR303), and include in the notice information about the parent's right to dispute the eligibility determination through dispute resolution mechanisms under rule 281—120.430(34CFR303), such as requesting a due process hearing or mediation or filing a state complaint.

281—120.323 to 120.339 Reserved.

281—120.340(34CFR303) *Individualized family service plan—general.* For each infant or toddler with a disability, the department must ensure the development, review, and implementation of an individualized family service plan developed by a multidisciplinary team, which includes the parent, that is consistent with the definition of individualized family service plan in rule 281—120.20(34CFR303) and satisfies rules 281—120.342(34CFR303) through 281—120.346(34CFR303).

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281—120.341 Reserved.

281—120.342(34CFR303) Procedures for IFSP development, review, and evaluation.

120.342(1) *Meeting to develop initial IFSP—timelines.* For a child referred to the Early ACCESS system and determined to be eligible under this chapter as an infant or toddler with a disability, a meeting to develop the initial IFSP must be conducted within the 45-day time period described in rule 281—120.310(34CFR303).

120.342(2) *Periodic review.*

a. A review of the IFSP for a child and the child's family must be conducted every six months, or more frequently if conditions warrant, or if the family requests such a review. The purpose of the periodic review is to determine:

(1) The degree to which progress toward achieving the results or outcomes identified in the IFSP is being made; and

(2) Whether modification or revision of the results, outcomes, or early intervention services identified in the IFSP is necessary.

b. The review may be carried out by a meeting or by another means that is acceptable to the parents and other participants.

120.342(3) *Annual meeting to evaluate the IFSP.* A meeting must be conducted on at least an annual basis to evaluate and revise, as appropriate, the IFSP for a child and the child's family. The results of any current evaluations and other information available from the assessments of the child and family conducted under rule 281—120.321(34CFR303) must be used in determining the early intervention services that are needed and will be provided.

120.342(4) *Accessibility and convenience of meetings.*

a. IFSP meetings must be conducted:

(1) In settings and at times that are convenient for the family; and

(2) In the native language of the family or other mode of communication used by the family, unless it is clearly not feasible to do so.

b. Meeting arrangements must be made with, and written notice provided to, the family and other participants early enough before the meeting date to ensure that they will be able to attend.

120.342(5) *Parental consent.* The contents of the IFSP must be fully explained to the parents and informed written consent, as described in rule 281—120.7(34CFR303), must be obtained, as required in subrule 120.420(1), prior to the provision of early intervention services described in the IFSP. Each early intervention service must be provided as soon as possible after the parent provides consent for that service, as required in subrule 120.344(6).

281—120.343(34CFR303) IFSP team meeting and periodic review.

120.343(1) *Initial and annual IFSP team meeting.*

a. Each initial meeting and each annual IFSP team meeting to evaluate the IFSP must include the following participants:

(1) The parent or parents of the child.

(2) Other family members, as requested by the parent, if feasible to do so.

(3) An advocate or person outside of the family, if the parent requests that the person participate.

(4) The service coordinator designated by the public agency to be responsible for implementing the IFSP.

(5) A person or persons directly involved in conducting the evaluations and assessments in rule 281—120.321(34CFR303).

(6) As appropriate, persons who will be providing early intervention services under this chapter to the child or family.

b. If a person listed in subparagraph 120.343(1) "a"(5) is unable to attend a meeting, arrangements must be made for the person's involvement through other means, including one of the following:

(1) Participating in a telephone conference call.

(2) Having a knowledgeable authorized representative attend the meeting.

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(3) Making pertinent records available at the meeting.

120.343(2) *Periodic review.* Each periodic review under subrule 120.342(2) must provide for the participation of persons in subparagraphs 120.343(1)“a”(1) through (4). If conditions warrant, provisions must be made for the participation of other representatives identified in subrule 120.343(1).

281—120.344(34CFR303) Content of an IFSP.

120.344(1) *Information about the child's status.* The IFSP must include a statement of the infant or toddler with a disability's present levels of physical development (including vision, hearing, and health status), cognitive development, communication development, social or emotional development, and adaptive development based on the information from that child's evaluation and assessments conducted under rule 281—120.321(34CFR303).

120.344(2) *Family information.* With the concurrence of the family, the IFSP must include a statement of the family's resources, priorities, and concerns related to enhancing the development of the child as identified through the assessment of the family under paragraph 120.321(5)“b.”

120.344(3) *Results or outcomes.* The IFSP must include a statement of the measurable results or measurable outcomes expected to be achieved for the child (including preliteracy and language skills, as developmentally appropriate for the child) and family, and the criteria, procedures, and timelines used to determine:

a. The degree to which progress toward achieving the results or outcomes identified in the IFSP is being made; and

b. Whether modifications or revisions of the expected results or outcomes, or early intervention services identified in the IFSP are necessary.

120.344(4) *Early intervention services.*

a. The IFSP must include a statement of the specific early intervention services, based on peer-reviewed research (to the extent practicable), that are necessary to meet the unique needs of the child and the family to achieve the results or outcomes identified in subrule 120.344(3), including:

(1) The length, duration, frequency, intensity, and method of delivering the early intervention services;

(2) A statement that each early intervention service is provided in the natural environment for that child or service to the maximum extent appropriate, consistent with paragraph 120.13(1)“h,” rule 281—120.26(34CFR303), and rule 281—120.126(34CFR303), or, subject to subparagraph 120.344(4)“a”(3), a justification as to why an early intervention service will not be provided in the natural environment;

(3) The determination of the appropriate setting for providing early intervention services to an infant or toddler with a disability, including any justification for not providing a particular early intervention service in the natural environment for that infant or toddler with a disability and service, must be:

1. Made by the IFSP team (which includes the parent and other team members);

2. Consistent with the provisions in paragraph 120.13(1)“h,” rule 281—120.26(34CFR303), and rule 281—120.126(34CFR303); and

3. Based on the child's outcomes identified by the IFSP team in subrule 120.344(3);

(4) The location of the early intervention services; and

(5) The payment arrangements, if any.

b. As used in this subrule:

(1) “Frequency and intensity” means the number of days or sessions that a service will be provided and whether the service is provided on an individual or group basis.

(2) “Method” means how a service is provided.

(3) “Length” means the length of time the service is provided during each session of that service (such as an hour or other specified time period).

(4) “Duration” means projecting when a given service will no longer be provided (such as when the child is expected to achieve the results or outcomes in the child's IFSP).

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(5) “Location” means the actual place or places where a service will be provided.

120.344(5) Other services. To the extent appropriate, the IFSP also must:

- a. Identify medical and other services that the child or family needs or is receiving through other sources, but that are neither required nor funded under this chapter; and
- b. If those services are not currently being provided, include a description of the steps the service coordinator or family may take to assist the child and family in securing those other services.

120.344(6) Dates and duration of services. The IFSP must include:

- a. The projected date for the initiation of each early intervention service in subrule 120.344(4), which date must be as soon as possible after the parent consents to the service, as required in subrules 120.342(5) and 120.420(1); and
- b. The anticipated duration of each service.

120.344(7) Service coordinator. The IFSP must include the name of the service coordinator from the profession most relevant to the child’s or family’s needs (or who is otherwise qualified to carry out all applicable responsibilities under this chapter), who will be responsible for implementing the early intervention services identified in a child’s IFSP, including transition services, and coordination with other agencies and persons. In satisfying this subrule, the term “profession” includes “service coordination.”

120.344(8) Transition from Part C services.

a. The IFSP must include the steps and services to be taken to support the smooth transition of the child, in accordance with rule 281—120.209(34CFR303), from Part C services to:

- (1) Preschool services under Part B of the Act, to the extent that those services are appropriate; or
- (2) Other appropriate services.

b. The steps required in paragraph 120.344(8)“a” must include:

- (1) Discussions with, and training of, parents, as appropriate, regarding future placements and other matters related to the child’s transition;
- (2) Procedures to prepare the child for changes in service delivery, including steps to help the child adjust to, and function in, a new setting;
- (3) Confirmation that child find information about the child has been transmitted to the AEA or other relevant agency, in accordance with subrule 120.209(2) and, with parental consent if required under rule 281—120.414(34CFR303), transmission of additional information needed by the AEA to ensure continuity of services from the Part C program to the Part B program, including a copy of the most recent evaluation and assessments of the child and the family and most recent IFSP developed in accordance with rules 281—120.340(34CFR30) through 281—120.345(34CFR303); and
- (4) Identification of transition services and other activities that the IFSP team determines are necessary to support the transition of the child.

281—120.345(34CFR303) Interim IFSPs—provision of services before evaluations and assessments are completed. Early intervention services for an eligible child and the child’s family may commence before the completion of the evaluation and assessments in rule 281—120.321(34CFR303), if the following conditions are met:

120.345(1) Parental consent is obtained.

120.345(2) An interim IFSP is developed that includes the name of the service coordinator who will be responsible, consistent with subrule 120.344(7), for implementing the interim IFSP and coordinating with other agencies and persons and includes the early intervention services that have been determined to be needed immediately by the child and the child’s family.

120.345(3) Evaluations and assessments are completed within the 45-day timeline in rule 281—120.310(34CFR303).

281—120.346(34CFR303) Responsibility and accountability. Each public agency or EIS provider who has a direct role in the provision of early intervention services is responsible for making a good-faith effort to assist each eligible child in achieving the outcomes in the child’s IFSP. However, Part C of the Act does not require that any public agency or EIS provider be held accountable if an eligible child

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does not achieve the growth projected in the child's IFSP, so long as the child's IFSP was reasonably calculated to confer benefit and was implemented.

281—120.347(256B,34CFR303) Family support mentoring program. Rule 281—41.329(256B,34CFR300) is incorporated herein by this reference.

This rule is intended to implement Iowa Code section 256B.10.

281—120.348 to 120.399 Reserved.

DIVISION VI
PROCEDURAL SAFEGUARDS

281—120.400(34CFR303) General responsibility of lead agency for procedural safeguards. Subject to subrule 120.400(3), the department must:

120.400(1) Establish or adopt the procedural safeguards that satisfy this division, including the provisions on confidentiality in rules 281—120.401(34CFR303) through 281—120.417(34CFR303), parental consent and notice in rules 281—120.420(34CFR303) and 281—120.421(34CFR303), surrogate parents in rule 281—120.422(34CFR303), and dispute resolution procedures in rule 281—120.430(34CFR303);

120.400(2) Ensure the effective implementation of the safeguards by each participating agency (including the lead agency and EIS providers) in the statewide system that is involved in the provision of early intervention services under this chapter; and

120.400(3) Make available to parents an initial copy of the child's early intervention record, at no cost to the parents.

281—120.401(34CFR303) Confidentiality and opportunity to examine records.

120.401(1) General. The state must ensure that the parents of a child referred under this chapter are afforded the right to confidentiality of personally identifiable information, including the right to written notice of, and written consent to, the exchange of that information among agencies, consistent with federal and state laws.

120.401(2) Confidentiality procedures. As required under Sections 617(c) and 642 of the Act, rules 281—120.401(34CFR303) through 281—120.417(34CFR303) ensure the protection of the confidentiality of any personally identifiable data, information, and records collected or maintained pursuant to this chapter by the Secretary and by participating agencies, including the department and EIS providers, in accordance with the protections under the Family Educational Rights and Privacy Act (FERPA) in 20 U.S.C. 1232g and 34 CFR Part 99. The state must have procedures in effect to ensure that:

a. Participating agencies (including the lead agency and EIS providers) comply with the Part C confidentiality procedures in rules 281—120.401(34CFR303) through 281—120.417(34CFR303); and

b. The parents of infants or toddlers who are referred to or receive services under this chapter are afforded the opportunity to inspect and review all Part C early intervention records about the child and the child's family that are collected, maintained, or used under this chapter, including records related to evaluations and assessments, screening, eligibility determinations, development and implementation of IFSPs, provision of early intervention services, individual complaints involving the child, or any part of the child's early intervention record under this chapter.

120.401(3) Applicability and time frame of procedures. The confidentiality procedures described in subrule 120.401(2) apply to the personally identifiable information of a child and the child's family that:

a. Is contained in early intervention records collected, used, or maintained under this chapter by the department or an EIS provider; and

b. Applies from the point in time when the child is referred for early intervention services under this chapter until the later of when the participating agency is no longer required to maintain or no longer maintains that information under applicable federal and state laws.

120.401(4) Disclosure of information: transition from Part C to Part B.

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a. The department shall disclose to the AEA where the child resides, in accordance with subrule 120.209(2), the following personally identifiable information under the Act:

- (1) A child's name.
- (2) A child's date of birth.
- (3) Parent contact information (including parents' names, addresses, and telephone numbers).

b. The information described in this subrule is needed to enable the department, as well as LEAs and AEAs under Part B of the Act, to identify all children potentially eligible for services under Part B of the Act.

281—120.402(34CFR303) Confidentiality. The Secretary takes appropriate action, in accordance with Section 444 of GEPA, to ensure the protection of the confidentiality of any personally identifiable data, information, and records collected, maintained, or used by the Secretary and by all lead agencies and EIS providers pursuant to Part C of the Act and consistent with rules 281—120.401(34CFR303) through 281—120.417(34CFR303). Rules 281—120.401(34CFR303) through 281—120.417(34CFR303) ensure the protection of the confidentiality of any personally identifiable data, information, and records collected or maintained pursuant to this chapter by the Secretary and by participating agencies, including state lead agencies and EIS providers, in accordance with the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. 1232g, and 34 CFR Part 99.

281—120.403(34CFR303) Definitions. The following definitions apply to rules 281—120.402(34CFR303) through 281—120.417(34CFR303) in addition to the definition of “personally identifiable information” in rule 281—120.29(34CFR303) and the definition of “disclosure” in 34 CFR 99.3:

120.403(1) “Destruction” means physical destruction of the record or ensuring that personal identifiers are removed from a record so that the record is no longer personally identifiable under rule 281—120.29(34CFR303).

120.403(2) “Early intervention records” means all records regarding a child that are required to be collected, maintained, or used under Part C of the Act and the rules in this chapter.

120.403(3) “Participating agency” means any individual, agency, entity, or institution that collects, maintains, or uses personally identifiable information to implement Part C of the Act and the rules in this chapter with respect to a particular child. A participating agency includes the department and EIS providers and any individual or entity that provides any Part C services (including service coordination, evaluations and assessments), but does not include primary referral sources, or public agencies (such as the state Medicaid program or CHIP) or private entities (such as private insurance companies) that act solely as funding sources for Part C services.

281—120.404(34CFR303) Notice to parents. The relevant agency must give notice when a child is referred under Part C of the Act that is adequate to fully inform parents about rule 281—120.402(34CFR303), including:

120.404(1) A description of the children on whom personally identifiable information is maintained, the types of information sought, the methods the state intends to use in gathering the information (including the sources from whom information is gathered), and the uses to be made of the information;

120.404(2) A summary of the policies and procedures that participating agencies must follow regarding storage, disclosure to third parties, retention, and destruction of personally identifiable information;

120.404(3) A description of all the rights of parents and children regarding this information, including their rights under the Part C confidentiality provisions in rules 281—120.401(34CFR303) through 281—120.417(34CFR303); and

120.404(4) A description of the extent that the notice is provided in the native languages of the various population groups in the state.

281—120.405(34CFR303) Access rights.

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120.405(1) General. Each participating agency must permit parents to inspect and review any early intervention records relating to their children that are collected, maintained, or used by the agency under this chapter. The agency must comply with a parent's request to inspect and review records without unnecessary delay and before any meeting regarding an IFSP, or any hearing pursuant to subrule 120.430(4) and rules 281—120.435(34CFR303) through 281—120.439(34CFR303), and in no case more than ten days after the request is made.

120.405(2) Inspect and review. The right to inspect and review early intervention records under this rule includes:

a. The right to a response from the participating agency to reasonable requests for explanations and interpretations of the early intervention records;

b. The right to request that the participating agency provide copies of the early intervention records containing the information if failure to provide those copies would effectively prevent the parent from exercising the right to inspect and review the records; and

c. The right to have a representative of the parent inspect and review the early intervention records.

120.405(3) Rule of construction. An agency may presume that the parent has authority to inspect and review records relating to the parent's child unless the agency has been provided documentation that the parent does not have the authority under applicable state laws governing such matters as custody, foster care, guardianship, separation, and divorce.

281—120.406(34CFR303) Record of access. Each participating agency must keep a record of parties obtaining access to early intervention records collected, maintained, or used under Part C of the Act (except access by parents and authorized representatives and employees of the participating agency), including the name of the party, the date access was given, and the purpose for which the party is authorized to use the early intervention records.

281—120.407(34CFR303) Records on more than one child. If any early intervention record includes information on more than one child, the parents of those children have the right to inspect and review only the information relating to their child or to be informed of that specific information.

281—120.408(34CFR303) List of types and locations of information. Each participating agency must provide parents, on request, a list of the types and locations of early intervention records collected, maintained, or used by the agency.

281—120.409(34CFR303) Fees for records.

120.409(1) General. Each participating agency may charge a fee for copies of records that are made for parents under this chapter if the fee does not effectively prevent the parents from exercising their right to inspect and review those records, except as provided in subrule 120.409(3).

120.409(2) No fees to search or retrieve. A participating agency may not charge a fee to search for or to retrieve information under this chapter.

120.409(3) Copies of certain documents at no cost. A participating agency must provide at no cost to parents a copy of each evaluation, assessment of the child, family assessment, and IFSP as soon as possible after each IFSP meeting.

281—120.410(34CFR303) Amendment of records at a parent's request.

120.410(1) Parent permitted to request amendment. A parent who believes that information in the early intervention records collected, maintained, or used under this chapter is inaccurate, misleading, or violates the privacy or other rights of the child or parent may request that the participating agency that maintains the information amend the information.

120.410(2) Agency to act on parent's request. The participating agency must decide whether to amend the information in accordance with the request within a reasonable period of time of receipt of the request.

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120.410(3) Agency to inform parent of hearing rights. If the participating agency refuses to amend the information in accordance with the request, the participating agency must inform the parent of the refusal and advise the parent of the right to a hearing under rule 281—120.411(34CFR303).

281—120.411(34CFR303) Opportunity for a hearing. The participating agency must, on request, provide parents with the opportunity for a hearing to challenge information in their child's early intervention records to ensure that the information is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child or parents. A parent may request a due process hearing under the procedures in subrule 120.430(4), provided that such hearing procedures satisfy the hearing procedures in rule 281—120.413(34CFR303), or may request a hearing directly under rule 281—120.413(34CFR303).

281—120.412(34CFR303) Result of hearing.

120.412(1) Information to be amended. If, as a result of the hearing, the participating agency decides that the information is inaccurate, misleading or in violation of the privacy or other rights of the child or parent, the participating agency must amend the information accordingly and so inform the parent in writing.

120.412(2) Information not to be amended. If, as a result of the hearing, the agency decides that the information is not inaccurate, misleading, or in violation of the privacy or other rights of the child or parent, the agency must inform the parent of the right to place in the early intervention records the agency maintains on the child a statement commenting on the information or setting forth any reasons for disagreeing with the decision of the agency.

120.412(3) Explanation placed in records. Any explanation placed in the early intervention records of the child under this rule must be maintained by the agency as part of the early intervention records of the child as long as the record or contested portion is maintained by the agency. If the early intervention records of the child or the contested portion are disclosed by the agency to any party, the explanation must also be disclosed to the party.

281—120.413(34CFR303) Hearing procedures. A hearing held under rule 281—120.411(34CFR303) will be conducted according to the procedures under 34 CFR 99.22.

281—120.414(34CFR303) Consent prior to disclosure or use.

120.414(1) General. Except as provided in subrule 120.414(2), prior parental consent must be obtained before personally identifiable information is:

a. Disclosed to anyone other than authorized representatives, officials, or employees of participating agencies collecting, maintaining, or using the information under this chapter, subject to subrule 120.414(2); or

b. Used for any purpose other than meeting a requirement of this chapter.

120.414(2) Exceptions. The department or other participating agency may not disclose personally identifiable information, as defined in rule 281—120.29(34CFR303), to any party except participating agencies (including the department and EIS providers) that are part of the state's Part C system without parental consent unless authorized to do so under:

a. Subrules 120.401(1) and 120.209(2); or

b. One of the exceptions enumerated in 34 CFR 99.31 (where applicable to Part C), which are expressly adopted to apply to Part C through this reference. In applying the exceptions in 34 CFR 99.31 to this chapter, participating agencies must also comply with the pertinent conditions in 34 CFR 99.32, 99.33, 99.34, 99.35, 99.36, 99.38, and 99.39. In applying these provisions in 34 CFR Part 99 to Part C, the reference to:

(1) 34 CFR 99.30 means subrule 120.414(1);

(2) "Education records" means early intervention records under subrule 120.403(2);

(3) "Educational" means early intervention under this chapter;

(4) "Educational agency or institution" means the participating agency under subrule 120.403(3);

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(5) “School officials and officials of another school or school system” means qualified personnel or service coordinators under this chapter;

(6) “State and local educational authorities” means the department and EIS providers and grantees; and

(7) “Student” means child under this chapter.

120.414(3) Policies and procedures regarding refusal to provide consent. The department must provide policies and procedures to be used when a parent refuses to provide consent under this rule (such as a meeting to explain to parents how their failure to consent affects the ability of their child to receive services under this chapter), provided that those procedures do not override a parent’s right to refuse consent under rule 281—120.420(34CFR303).

281—120.415(34CFR303) Safeguards. Each participating agency must protect the confidentiality of personally identifiable information at the collection, maintenance, use, storage, disclosure, and destruction stages. One official at each participating agency must assume responsibility for ensuring the confidentiality of any personally identifiable information. All persons collecting or using personally identifiable information must receive training or instruction regarding the state’s policies and procedures under rules 281—120.401(34CFR303) through 281—120.417(34CFR303) and 34 CFR Part 99. Each participating agency must maintain, for public inspection, a current listing of the names and positions of those employees within the agency who may have access to personally identifiable information.

281—120.416(34CFR303) Destruction of information.

120.416(1) Notification to parent. The participating agency must inform parents when personally identifiable information collected, maintained, or used under this chapter is no longer needed to provide services to the child under Part C of the Act, the GEPA provisions in 20 U.S.C. 1232f, and EDGAR, 34 CFR Parts 76 and 80.

120.416(2) Mandatory and permissive destruction of personally identifiable information. Subject to subrule 120.416(1), the information must be destroyed at the request of the parents. However, a permanent record of a child’s name, date of birth, parent contact information (including address and telephone number), names of service coordinator(s) and EIS provider(s), and exit data (including year and age upon exit and any programs entered into upon exiting) may be maintained without time limitation.

120.416(3) Rule of construction—“no longer needed to provide services.” For purposes of this rule, “no longer needed to provide services” means that a record is no longer relevant to the provision of Early ACCESS services and is no longer needed for accountability and audit purposes. At a minimum, a record needed for accountability and audit purposes will be retained for five years after completion of the activity for which funds were used.

281—120.417(34CFR303) Enforcement. The department must have in effect the policies and procedures, including sanctions and the right to file a complaint under rules 281—120.432(34CFR303) through 281—120.434(34CFR303), that the department uses to ensure that its policies and procedures, consistent with rules 281—120.401(34CFR303) through 281—120.417(34CFR303), are followed and that the Act and the rules in this chapter are met.

281—120.418 and 120.419 Reserved.

281—120.420(34CFR303) Parental consent and ability to decline services.

120.420(1) General. The relevant agency must ensure parental consent is obtained before:

- a. Administering screening procedures under rule 281—120.320(34CFR303) that are used to determine whether a child is suspected of having a disability;
- b. All evaluations and assessments of a child are conducted under rule 281—120.321(34CFR303);
- c. Early intervention services are provided to a child under this chapter;
- d. Public benefits or insurance or private insurance is used if such consent is required under rule 281—120.520(34CFR303); and

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e. Disclosure of personally identifiable information consistent with rule 281—120.414(34CFR303).

120.420(2) Parent refusal to consent. If a parent does not give consent under paragraph 120.420(1) “a,” “b,” or “c,” the agency must make reasonable efforts to ensure that the parent:

a. Is fully aware of the nature of the evaluation and assessment of the child or early intervention services that may be available; and

b. Understands that the child will not be able to receive the evaluation, assessment, or early intervention services unless consent is given.

120.420(3) Due process procedures unavailable. The agency may not use the due process hearing procedures under this chapter to challenge a parent’s refusal to provide any consent that is required under subrule 120.420(1).

120.420(4) Parent rights. The parents of an infant or toddler with a disability:

a. Determine whether they, their infant or toddler with a disability, or other family members will accept or decline any Early ACCESS service under this chapter at any time, in accordance with state law; and

b. May decline a service after first accepting it, without jeopardizing other early intervention services under this chapter.

281—120.421(34CFR303) Prior written notice and procedural safeguards notice.

120.421(1) General. Prior written notice must be provided to parents a reasonable time before an agency or an EIS provider proposes, or refuses, to initiate or change the identification, evaluation, or placement of the parents’ infant or toddler or the provision of early intervention services to the infant or toddler with a disability and that infant’s or toddler’s family.

120.421(2) Content of notice. The notice must be in sufficient detail to inform parents about:

a. The action that is being proposed or refused;

b. The reasons for taking the action; and

c. All procedural safeguards that are available under this chapter, including a description of mediation in rule 281—120.431(34CFR303), how to file a state complaint in rules 281—120.432(34CFR303) through 281—120.434(34CFR303) and a due process complaint in the provisions adopted under subrule 120.430(4), and any timelines under those procedures.

120.421(3) Native language.

a. The notice must be:

(1) Written in language understandable to the general public; and

(2) Provided in the native language, as defined in rule 281—120.25(34CFR303), of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so.

b. If the native language or other mode of communication of the parent is not a written language, the public agency or designated EIS provider must take steps to ensure that:

(1) The notice is translated orally or by other means to the parent in the parent’s native language or other mode of communication;

(2) The parent understands the notice; and

(3) There is written evidence that this subrule has been satisfied.

281—120.422(34CFR303) Surrogate parents.

120.422(1) General. The department or other public agency must ensure that the rights of a child are protected when:

a. No parent (as defined in rule 281—120.27(34CFR303)) can be identified;

b. The department or AEA, after reasonable efforts, cannot locate a parent; or

c. The child is a ward of the state under the laws of the state.

120.422(2) Duty of other public agencies.

a. The duty of the AEA under subrule 120.422(1) includes the assignment of an individual to act as a surrogate for the parent. This assignment process must include a method for:

(1) Determining whether a child needs a surrogate parent; and

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(2) Assigning a surrogate parent to the child.

b. In implementing the provisions under this rule for children who are wards of the state or placed in foster care, the AEA must consult with the public agency that has been assigned care of the child.

120.422(3) *Wards of the state.* In the case of a child who is a ward of the state, the surrogate parent, instead of being appointed by the AEA under subrule 120.422(2), may be appointed by the judge presiding over the infant's or toddler's case provided that the surrogate parent satisfies subrules 120.422(4) and 120.422(5).

120.422(4) *Criteria for selection of surrogate parents.*

a. The AEA may select a surrogate parent in any way permitted under state law.

b. The AEA must ensure that a person selected as a surrogate parent:

(1) Is not an employee of the department or any other public agency or EIS provider that provides early intervention services, education, care, or other services to the child or any family member of the child;

(2) Has no personal or professional interest that conflicts with the interest of the child the person represents; and

(3) Has knowledge and skills that ensure adequate representation of the child.

120.422(5) *Nonemployee requirement; compensation.* A person who is otherwise qualified to be a surrogate parent under subrule 120.422(4) is not an employee of the agency solely because the person is paid by the agency to serve as a surrogate parent.

120.422(6) *Surrogate parent responsibilities.* The surrogate parent has the same rights as a parent for all purposes under this chapter.

120.422(7) *Department responsibility.* The department must make reasonable efforts to ensure the assignment of a surrogate parent not more than 30 days after a public agency determines that the child needs a surrogate parent.

281—120.423 to 120.429 Reserved.

281—120.430(34CFR303) State dispute resolution options.

120.430(1) *General.* Each statewide system must include written procedures for the timely administrative resolution of complaints through mediation, state complaint procedures, and due process hearing procedures, described in subrules 120.430(2) through 120.430(6).

120.430(2) *Mediation.* The department must make available to parties to disputes involving any matter under this chapter the opportunity for mediation that satisfies rule 281—120.431(34CFR303).

120.430(3) *State complaint procedures.* The department must adopt written state complaint procedures that satisfy rule 281—120.432(34CFR303) to resolve any state complaints filed by any party regarding any violation of this chapter.

120.430(4) *Due process hearing procedures.* The department must adopt written due process hearing procedures to resolve complaints with respect to a particular child regarding any matter identified in subrule 120.421(1). The department adopts the Part C due process hearing procedures under Section 639 of the Act.

120.430(5) *Status of a child during the pendency of a due process complaint.* During the pendency of any proceeding involving a due process complaint under subrule 120.430(4), unless the agency and parents of an infant or toddler with a disability otherwise agree, the child must continue to receive the appropriate early intervention services in the setting identified in the IFSP that is consented to by the parents. If the due process complaint under subrule 120.430(4) involves an application for initial services under Part C of the Act, the child must receive those services that are not in dispute.

120.430(6) *Status of a child during the pendency of mediation.* During the pendency of any request for mediation under subrule 120.430(2) and for ten days after any such mediation conference at which no agreement is reached, unless the agency and the parents of the child agree otherwise, the child involved in any such mediation conference will continue to receive the appropriate early intervention services identified in the IFSP in the setting that is consented to by the parents. If the mediation involves an

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application for initial services under Part C of the Act, the child will receive those services that are not in dispute.

281—120.431(34CFR303) Mediation.

120.431(1) General. The department must ensure that procedures are established and implemented to allow parties to disputes involving any matter under this chapter, including matters arising prior to the filing of a due process complaint, to resolve disputes through a mediation process at any time.

120.431(2) Requirements. The procedures must meet the following provisions:

- a.* The procedures must ensure that the mediation process:
- (1) Is voluntary on the part of the parties;
 - (2) Is not used to deny or delay a parent's right to a due process hearing, or to deny any other rights afforded under Part C of the Act; and
 - (3) Is conducted by a qualified and impartial mediator who is trained in effective mediation techniques.
- b.* The department must maintain a list of individuals who are qualified mediators and knowledgeable in laws and regulations relating to the provision of early intervention services. The department must select mediators on a random, rotational, or other impartial basis.
- c.* The department must bear the cost of the mediation process, including the costs of meetings described in subrule 120.431(4).
- d.* Each session in the mediation process must be scheduled in a timely manner and must be held in a location that is convenient to the parties to the dispute.
- e.* If the parties resolve a dispute through the mediation process, the parties must execute a legally binding agreement that sets forth that resolution and that:
- (1) States that all discussions that occurred during the mediation process will remain confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding; and
 - (2) Is signed by both the parent and a representative of the lead agency who has the authority to bind such agency.
- f.* A written, signed mediation agreement under this subrule is enforceable in any state court of competent jurisdiction or in a district court of the United States.
- g.* Discussions that occur during the mediation process must be confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding of any federal court or state court of a state receiving assistance under Part C of the Act.

120.431(3) Impartiality of mediator.

- a.* An individual who serves as a mediator under this chapter:
- (1) May not be an employee of the department or an EIS provider that is involved in the provision of early intervention services or other services to the child; and
 - (2) Must not have a personal or professional interest that conflicts with the person's objectivity.
- b.* An individual who otherwise qualifies as a mediator is not an employee of the department or an early intervention provider solely because the individual is paid by the agency or provider to serve as a mediator.

120.431(4) Meeting to encourage mediation. The department may establish procedures to offer to parents and EIS providers that choose not to use the mediation process an opportunity to meet, at a time and location convenient to the parents, with a disinterested party:

- a.* Who is under contract with an appropriate alternative dispute resolution entity or a parent training and information center or community parent resource center in the state established under Section 671 or 672 of the Act; and
- b.* Who would explain the benefits of, and encourage the use of, the mediation process to the parents.

281—120.432(34CFR303) Adoption of state complaint procedures. The state complaint procedures in rules 281—41.151(256B,34CFR300) through 281—41.153(256B,34CFR300), inclusive, are made applicable to this chapter by reference.

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281—120.433 and 120.434 Reserved.

281—120.435(34CFR303) Appointment of an administrative law judge.

120.435(1) *Qualifications and duties.* Whenever a due process complaint is received under subrule 120.430(4), the department will appoint an impartial administrative law judge (ALJ) to implement the complaint resolution process in this chapter. The person must:

- a.* Have knowledge about the provisions of Part C of the Act and of this chapter and the needs of, and early intervention services available for, infants and toddlers with disabilities and their families; and
- b.* Perform the following duties:
 - (1) Listen to the presentation of relevant viewpoints about the due process complaint;
 - (2) Examine all information relevant to the issues;
 - (3) Seek to reach a timely resolution of the due process complaint; and
 - (4) Provide a record of the proceedings, including a written decision.

120.435(2) *Definition of “impartial.”*

a. “Impartial” means that the administrative law judge appointed to implement the due process hearing under this chapter:

- (1) Is not an employee of the department or other agency or EIS provider involved in the provision of early intervention services or care of the child; and
- (2) Does not have a personal or professional interest that would conflict with the ALJ’s objectivity in implementing the process.

b. A person who otherwise qualifies under this subrule is not an employee of an agency solely because the person is paid by the agency to implement the due process hearing procedures or mediation procedures under this chapter.

281—120.436(34CFR303) Parental rights in due process hearing proceedings.

120.436(1) *General.* The department must ensure that the parents of a child referred to or receiving Part C services are afforded the rights in subrule 120.436(2) in the due process hearing carried out under subrule 120.430(4).

120.436(2) *Rights of parents.* Any parent involved in a due process hearing has the right to:

- a.* Be accompanied and advised by counsel and by individuals with special knowledge or training with respect to early intervention services for infants and toddlers with disabilities;
- b.* Present evidence and confront, cross-examine, and compel the attendance of witnesses;
- c.* Prohibit the introduction of any evidence at the hearing that has not been disclosed to the parent at least five days before the hearing;
- d.* Obtain a written or electronic verbatim transcription of the hearing at no cost to the parent; and
- e.* Receive a written copy of the findings of fact and decisions at no cost to the parent.

120.436(3) *Other party rights.* Any public agency or EIS provider that is a party to a due process hearing under subrule 120.430(4) has each of the rights listed in subrule 120.436(2).

281—120.437(34CFR303) Convenience of hearings and timelines.

120.437(1) *Time and place.* Any due process hearing conducted under this chapter must be carried out at a time and place that is reasonably convenient to the parents.

120.437(2) *Timeline for ALJ decision.* The department must ensure that, not later than 30 days after the receipt of a parent’s due process complaint, the due process hearing required under this chapter is completed and a written decision mailed to each of the parties.

120.437(3) *Extension of ALJ timeline.* An ALJ may grant specific extensions of time beyond the period set out in subrule 120.437(2) at the request of either party.

281—120.438(34CFR303) Civil action. Any party aggrieved by the findings and decision issued pursuant to a due process complaint has the right to bring a civil action in state or federal court under Section 639(a)(1) of the Act.

281—120.439(34CFR303) Limitation of actions.

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120.439(1) Limitation: due process complaints. A parent, agency, or EIS provider must request an impartial hearing on the due process complaint within two years of the date the parent, agency, or provider knew or should have known about the alleged action that forms the basis of the due process complaint.

120.439(2) Exceptions to timeline. The timeline described in subrule 120.439(1) does not apply to a parent if the parent was prevented from filing a due process complaint due to either of the following:

a. Specific misrepresentations by an agency or EIS provider that it had resolved the problem forming the basis of the due process complaint; or

b. The agency's or EIS provider's withholding of information from the parent that was required under this chapter to be provided to the parent.

120.439(3) Limitation: civil action. The party bringing the civil action under rule 281—120.438(34CFR303) shall have 90 days from the date of the decision of the administrative law judge to file a civil action.

281—120.440(34CFR303) Rule of construction. Nothing in this chapter restricts or limits the rights, procedures, and remedies available under the Constitution, the Americans with Disabilities Act of 1990, Title V of the Rehabilitation Act of 1973, or other federal laws protecting the rights of children with disabilities, except that, before the filing of a civil action under these laws seeking relief that is also available under Section 639 of the Act, the procedures under this chapter must be exhausted to the same extent as would be required had the action been brought under Section 639 of the Act.

281—120.441(34CFR303) Attorney fees. Reasonable attorney fees are available to a prevailing party (parent or, in certain circumstances, public agency or EIS provider) in a due process hearing or a mediation conference to the extent those fees are available under the Act. No fees are available under the state complaint procedure in subrule 120.430(3).

281—120.442 to 120.448 Reserved.

281—120.449(34CFR303) State enforcement mechanisms. Notwithstanding subrule 120.431(2), which provides for judicial enforcement of a written agreement reached as a result of a mediation, there is nothing in this chapter that would prevent the state from using other mechanisms to seek enforcement of that agreement, provided that use of those mechanisms is not mandatory and does not delay or deny a party the right to seek enforcement of the written agreement in a state court of competent jurisdiction or in a district court of the United States.

281—120.450 to 120.499 Reserved.

DIVISION VII
USE OF FUNDS; PAYOR OF LAST RESORT

281—120.500(34CFR303) Use of funds, payor of last resort, and system of payments.

120.500(1) Statewide system. The statewide system must include written policies and procedures that satisfy the following:

a. Use of funds provisions in rule 281—120.501(34CFR303); and

b. Payor of last resort provisions in rules 281—120.510(34CFR303) through 281—120.521(34CFR303) (regarding the identification and coordination of funding resources for, and the provision of, early intervention services under Part C of the Act within the state).

120.500(2) System of payments. The state may establish, consistent with subrules 120.13(1) and 120.203(2), a system of payments for early intervention services under Part C of the Act, including a schedule of sliding fees or cost participation fees (such as copayments, premiums, or deductibles) required to be paid under federal, state, local, or private programs of insurance or benefits for which the infant or toddler with a disability or the child's family is enrolled, that satisfies rules 281—120.520(34CFR303) and 281—120.521(34CFR303).

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281—120.501(34CFR303) Permissive use of funds by the department. Consistent with rules 281—120.120(34CFR303) through 281—120.122(34CFR303) and 281—120.220(34CFR303) through 281—120.226(34CFR303), the department may use funds under this chapter for activities or expenses that are reasonable and necessary for implementing Early ACCESS, including funds:

120.501(1) For direct early intervention services for infants and toddlers with disabilities and their families under this chapter that are not otherwise funded through other public or private sources (subject to rules 281—120.510(34CFR303) through 281—120.521(34CFR303));

120.501(2) To expand and improve services for infants and toddlers with disabilities and their families under this chapter that are otherwise available; and

120.501(3) In any state that does not provide services under 34 CFR 303.204 for at-risk infants and toddlers, as defined in rule 281—120.5(34CFR303), to strengthen the statewide system by initiating, expanding, or improving collaborative efforts related to at-risk infants and toddlers, including establishing linkages with appropriate public and private community-based organizations, services, and personnel for the purposes of:

- a. Identifying and evaluating at-risk infants and toddlers;
- b. Making referrals for the infants and toddlers identified and evaluated under paragraph 120.501(3)“a”; and
- c. Conducting periodic follow-up on each referral, to determine if the status of the infant or toddler involved has changed with respect to the eligibility of the infant or toddler for services under this chapter.

281—120.502 to 120.509 Reserved.

281—120.510(34CFR303) Payor of last resort.

120.510(1) *Nonsubstitution of funds.* Except as provided in subrule 120.510(2), funds under this chapter may not be used to satisfy a financial commitment for services that would otherwise have been paid for from another public or private source, including any medical program administered by the Department of Defense, but for the enactment of Part C of the Act. Therefore, funds under this chapter may be used only for early intervention services that an infant or toddler with a disability needs but is not currently entitled to receive or have payment made from any other federal, state, local, or private source (subject to rules 281—120.520(34CFR303) and 281—120.521(34CFR303)).

120.510(2) *Interim payments—reimbursement.* If necessary to prevent a delay in the timely provision of appropriate early intervention services to a child or the child’s family, funds under Part C of the Act may be used to pay the provider of services (for services and functions authorized under this chapter, including health services, as defined in rule 281—120.16(34CFR303) (but not medical services); functions of the child find system described in rules 281—120.115(34CFR303) through 281—120.117(34CFR303) and rules 281—120.301(34CFR303) through 281—120.320(34CFR303); and evaluations and assessments in rule 281—120.321(34CFR303)), pending reimbursement from the agency or entity that has ultimate responsibility for the payment.

120.510(3) *Nonreduction of benefits.* Nothing in this chapter may be construed to permit a state to reduce medical or other assistance available in the state or to alter eligibility under Title V of the Social Security Act, 42 U.S.C. 701 et seq. (SSA) (relating to maternal and child health) or Title XIX of the SSA, 42 U.S.C. 1396 (relating to Medicaid), including Section 1903(a) of the SSA regarding medical assistance for services furnished to an infant or toddler with a disability when those services are included in the child’s IFSP adopted pursuant to Part C of the Act.

281—120.511(34CFR303) Methods to ensure the provision of, and financial responsibility for, Early ACCESS services.

120.511(1) *General.* The state must ensure that it has in place methods for interagency coordination. Under these methods, the governor must ensure that the interagency agreement or other method for interagency coordination is in effect between the department and each signatory agency in order to ensure:

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a. The provision of, and establishing financial responsibility for, early intervention services provided under this chapter; and

b. Such services are consistent with the requirement in Section 635 of the Act and the state's application under Section 637 of the Act, including the provision of such services during the pendency of any dispute between state agencies.

120.511(2) *Methods.* The methods in subrule 120.511(1) must satisfy this rule and be set forth in one of the following:

a. State law or rule;

b. Signed interagency and intra-agency agreements between respective agency officials that clearly identify the financial and service provision responsibilities of each agency (or entity within the agency); or

c. Other appropriate written methods determined by the governor, or the governor's designee, and approved by the Secretary through the review and approval of the state's application.

120.511(3) *Procedures for resolving disputes.*

a. Each method must include procedures for achieving a timely resolution of intra-agency and interagency disputes about payments for a given service or disputes about other matters related to Early ACCESS. Those procedures must include a mechanism for resolution of disputes within agencies and for the governor, governor's designee, or the department to make a final determination for interagency disputes, which determination must be binding upon the agencies involved.

b. The method must:

(1) Permit the agency to resolve its own internal disputes (based on the agency's procedures that are included in the agreement), so long as the agency acts in a timely manner; and

(2) Include the process that the department will follow in achieving resolution of intra-agency disputes, if a given agency is unable to resolve its own internal disputes in a timely manner.

c. If, during the department's resolution of the dispute, the governor, governor's designee, or department determines that the assignment of financial responsibility under this rule was inappropriately made:

(1) The governor, governor's designee, or department must reassign the financial responsibility to the appropriate agency; and

(2) The department must make arrangements for reimbursement of any expenditures incurred by the agency originally assigned financial responsibility.

120.511(4) *Delivery of services in a timely manner.* The methods adopted by the state under this rule must:

a. Include a mechanism to ensure that no services that a child is entitled to receive under this chapter are delayed or denied because of disputes between agencies regarding financial or other responsibilities; and

b. Be consistent with the written funding policies adopted by the state under this division and include any provisions the state has adopted under rule 281—120.520(34CFR303) regarding the use of insurance to pay for Part C services.

120.511(5) *Additional components.* Each method must include any additional components necessary to ensure effective cooperation and coordination among, and the department's general supervision (including monitoring) of, EIS providers (including all public agencies) involved in Early ACCESS.

281—120.512 to 120.519 Reserved.

281—120.520(34CFR303) Policies related to use of public benefits or insurance or private insurance to pay for Early ACCESS services.

120.520(1) *Use of public benefits or public insurance to pay for Early ACCESS services.*

a. The state may not use the public benefits or insurance of a child or parent to pay for Part C services unless the state provides written notification, consistent with paragraph 120.521(1) "c," to the child's parents, and the state meets the no-cost protections identified in paragraph 120.520(1) "b."

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b. With regard to the state's using the public benefits or insurance of a child or parent to pay for Part C services, the state:

(1) May not require a parent to sign up for or enroll in public benefits or insurance programs as a condition of receiving Part C services and must obtain consent prior to using the public benefits or insurance of a child or parent if that child or parent is not already enrolled in such a program;

(2) Must obtain consent, consistent with rule 281—120.7(34CFR303) and subrule 120.420(1), to use a child's or parent's public benefits or insurance to pay for Part C services if that use would:

1. Decrease available lifetime coverage or any other insured benefit for that child or parent under that program;

2. Result in the child's parents paying for services that would otherwise be covered by the public benefits or insurance program;

3. Result in any increase in premiums or discontinuation of public benefits or insurance for that child or that child's parents; or

4. Risk loss of eligibility for the child or that child's parents for home- and community-based waivers based on aggregate health-related expenditures.

(3) If the parent does not provide consent under paragraph 120.520(1) "b," the state must still make available those Part C services on the IFSP to which the parent has provided consent.

c. Prior to the state's using a child's or parent's public benefits or insurance to pay for Part C services, the state must provide written notification to the child's parents. The notification must include:

(1) A statement that parental consent must be obtained under rule 281—120.414(34CFR303), if that rule applies, before the department or EIS provider discloses, for billing purposes, a child's personally identifiable information to the department of health and human services, the state public agency responsible for the administration of the state's public benefits or insurance program (e.g., Medicaid);

(2) A statement of the no-cost protection provisions in subrule 120.520(1) and that if the parent does not provide the consent under that subrule, the agency must still make available those Part C services on the IFSP for which the parent has provided consent;

(3) A statement that the parents have the right under rule 281—120.414(34CFR303), if that rule applies, to withdraw their consent to disclosure of personally identifiable information to the department of health and human services, the state public agency responsible for the administration of the state's public benefits or insurance program (e.g., Medicaid) at any time; and

(4) A statement of the general categories of costs that the parent would incur as a result of participating in a public benefits or insurance program (such as copayments or deductibles, or the required use of private insurance as the primary insurance).

d. If a state requires a parent to pay any costs that the parent would incur as a result of the state's using a child's or parent's public benefits or insurance to pay for Part C services (such as copayments or deductibles, or the required use of private insurance as the primary insurance), those costs must be identified in the state's system of payments policies under rule 281—120.521(34CFR303) and included in the notification provided to the parent under paragraph 120.520(1) "c"; otherwise, the state cannot charge those costs to the parent.

120.520(2) *Use of private insurance to pay for Part C services.*

a. The state may not use the private insurance of a parent of an infant or toddler with a disability to pay for Part C services unless the parent provides parental consent, consistent with rule 281—120.7(34CFR303) and subrule 120.420(1), to use private insurance to pay for Part C services for the parent's child or the state meets one of the exceptions in paragraph 120.520(2) "d." This includes the use of private insurance when such use is a prerequisite for the use of public benefits or insurance. Parental consent must be obtained:

(1) When an agency or EIS provider seeks to use the parent's private insurance or benefits to pay for the initial provision of an early intervention service in the IFSP; and

(2) Each time consent for services is required under subrule 120.420(1) due to an increase (in frequency, length, duration, or intensity) in the provision of services in the child's IFSP.

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b. If a state requires a parent to pay any costs that the parent would incur as a result of the state's use of private insurance to pay for early intervention services (such as copayments, premiums, or deductibles), those costs must be identified in the state's system of payments policies under rule 281—120.521(34CFR303); otherwise, the state may not charge those costs to the parent.

c. When obtaining parental consent required under paragraph 120.520(2)“*a*” or initially using benefits under a child's or parent's private insurance policy to pay for an early intervention service under paragraph 120.520(2)“*d*,” the state must provide to the parent a copy of the state's system of payments policies that identifies the potential costs that the parent may incur when the parent's private insurance is used to pay for early intervention services under this chapter (such as copayments, premiums, or deductibles or other long-term costs such as the loss of benefits because of annual or lifetime health insurance coverage caps under the insurance policy).

d. The parental consent requirements in paragraphs 120.520(2)“*a*” through “*c*” do not apply if the state has enacted a state statute regarding private health insurance coverage for early intervention services under Part C of the Act that expressly provides that:

(1) The use of private health insurance to pay for Part C services cannot count towards or result in a loss of benefits due to the annual or lifetime health insurance coverage caps for the infant or toddler with a disability, the parent, or the child's family members who are covered under that health insurance policy;

(2) The use of private health insurance to pay for Part C services cannot negatively affect the availability of health insurance to the infant or toddler with a disability, the parent, or the child's family members who are covered under that health insurance policy, and health insurance coverage may not be discontinued for these individuals due to the use of the health insurance to pay for services under Part C of the Act; and

(3) The use of private health insurance to pay for Part C services cannot be the basis for increasing the health insurance premiums of the infant or toddler with a disability, the parent, or the child's family members covered under that health insurance policy.

e. If the state has enacted a state statute that satisfies paragraph 120.520(2)“*d*,” regarding the use of private health insurance coverage to pay for early intervention services under Part C of the Act, the state may reestablish a new baseline of state and local expenditures under subrule 120.225(2) in the next federal fiscal year following the effective date of the statute.

120.520(3) *Inability to pay.* If a parent or family of an infant or toddler with a disability is determined unable to pay under the state's definition of inability to pay under subrule 120.521(1) and does not provide consent under paragraphs 120.520(2)“*a*” and “*b*,” the lack of consent may not be used to delay or deny any services under this chapter to that child or family.

120.520(4) *Proceeds or funds from public insurance or benefits or from private insurance.*

a. Proceeds or funds from public insurance or benefits or from private insurance are not treated as program income for purposes of 34 CFR 80.25.

b. If the state receives reimbursements from federal funds (e.g., Medicaid reimbursements attributable directly to federal funds) for services under Part C of the Act, those funds are considered neither state nor local funds under subrule 120.225(2).

c. If the state spends funds from private insurance for services under this chapter, those funds are considered neither state nor local funds under rule 281—120.225(34CFR303).

120.520(5) *Funds received from a parent or family member under the state's system of payments.* Funds received by the state from a parent or family member under the state's system of payments established under rule 281—120.521(34CFR303) are considered program income under 34 CFR 80.25. These funds:

a. Are not deducted from the total allowable costs charged under Part C of the Act (as set forth in 34 CFR 80.25(g)(1));

b. Must be used for the state's Part C early intervention service program, consistent with 34 CFR 80.25(g)(2); and

c. Are considered neither state nor local funds under subrule 120.225(2).

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281—120.521(34CFR303) System of payments and fees.

120.521(1) General. If a state elects to adopt a system of payments in subrule 120.500(2), the state's system of payments policies must be in writing and specify which functions or services, if any, are subject to the system of payments (including any fees charged to the family as a result of using one or more of the family's public insurance or benefits or private insurance), and include:

- a. The payment system and schedule of sliding or cost participation fees that may be charged to the parent for early intervention services under this chapter;
- b. The basis and amount of payments or fees;
- c. The state's definition of ability to pay (including its definition of income and family expenses, such as extraordinary medical expenses), its definition of inability to pay, and when and how the state makes its determination of the ability or inability to pay;
- d. An assurance that:
 - (1) Fees will not be charged to parents for the services that a child is otherwise entitled to receive at no cost (including those services identified under this subrule and subrules 120.521(2) and 120.521(3));
 - (2) The inability of the parents of an infant or toddler with a disability to pay for services will not result in a delay or denial of services under this chapter to the child or the child's family such that, if the parent or family meets the state's definition of inability to pay, the infant or toddler with a disability must be provided all Part C services at no cost;
 - (3) Families will not be charged any more than the actual cost of the Part C service (factoring in any amount received from other sources for payment for that service); and
 - (4) Families with public insurance or benefits or private insurance will not be charged disproportionately more than families who do not have public insurance or benefits or private insurance;
- e. Provisions stating that the failure to provide the requisite income information and documentation may result in a charge of a fee on the fee schedule and specify the fee to be charged; and
- f. Provisions that permit, but do not require, the department or other relevant agency to use Part C or other funds to pay for costs such as the premiums, deductibles, or copayments.

120.521(2) Functions not subject to fees. The following are required functions that must be carried out at public expense, and for which no fees may be charged to parents:

- a. Implementing the child find requirements in rules 281—120.301(34CFR303) through 281—120.303(34CFR303).
- b. Evaluation and assessment, in accordance with rule 281—120.320(34CFR303), and the functions related to evaluation and assessment in subrule 120.13(2).
- c. Service coordination services, as defined in subrule 120.13(2) and rule 281—120.33(34CFR303).
- d. Administrative and coordinative activities related to:
 - (1) The development, review, and evaluation of IFSPs and interim IFSPs in accordance with rules 281—120.342(34CFR303) through 281—120.345(34CFR303); and
 - (2) Implementation of the procedural safeguards in Division VI of this chapter and the other components of the statewide system of early intervention services in Division V of this chapter and this division.

120.521(3) FAPE mandates or use of funds under Part B of the Act to serve children under age three. If the state has in effect a state law requiring the provision of FAPE for, or uses Part B funds to serve, an infant or toddler with a disability under the age of three (or any subset of infants and toddlers with disabilities under the age of three), the state may not charge the parents of the infant or toddler with a disability for any services (e.g., physical or occupational therapy) under this chapter that are part of FAPE for that infant or toddler and the child's family, and those FAPE services must meet the provisions of both Parts B and C of the Act.

120.521(4) Family fees.

- a. Fees or costs collected from a parent or the child's family to pay for early intervention services under the state's system of payments are program income under 34 CFR 80.25. The state may add this program income to its Part C grant funds, rather than deducting the program income from the amount of

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the state's Part C grant. Any fees collected must be used for the purposes of the grant under Part C of the Act.

b. Fees collected under a system of payments are considered neither state nor local funds under subrule 120.225(2).

120.521(5) Procedural safeguards.

a. The state's system of payments must include written policies to inform parents that a parent who wishes to contest the imposition of a fee, or the state's determination of the parent's ability to pay, may do one of the following:

(1) Participate in mediation in accordance with rule 281—120.431(34CFR303).

(2) Request a due process hearing under rule 281—120.436(34CFR303).

(3) File a state complaint under rule 281—120.434(34CFR303).

(4) Use any other procedure established by the state for speedy resolution of financial claims, provided that such use does not delay or deny the parent's procedural rights under this chapter, including the right to pursue, in a timely manner, the redress options described in this subrule.

b. The state must inform parents of these procedural safeguard options by either:

(1) Providing parents with a copy of the state's system of payments policies when obtaining consent for provision of early intervention services under subrule 120.420(1); or

(2) Including this information with the notice provided to parents under rule 281—120.421(34CFR303).

281—120.522 to 120.599 Reserved.

DIVISION VIII
STATE INTERAGENCY COORDINATING COUNCIL

281—120.600(34CFR303) Establishment of council.

120.600(1) General. The state establishes a state interagency coordinating council, as defined in rule 281—120.8(34CFR303).

120.600(2) Appointment. The council must be appointed by the governor. The governor must ensure that the membership of the council reasonably represents the population of the state.

120.600(3) Chairperson. The governor must designate a member of the council to serve as the chairperson of the council or delegate that responsibility to the members of the council. Any member of the council who is a representative of the lead agency designated under rule 281—120.201(34CFR303) may not serve as the chairperson of the council.

120.600(4) Name of council. The council established by this division shall be known as the Iowa council for Early ACCESS (council).

281—120.601(34CFR303) Composition.

120.601(1) General. The council must be composed as follows:

a. At least 20 percent of the members must be parents, including minority parents, of infants or toddlers with disabilities or children with disabilities aged 12 years or younger, with knowledge of, or experience with, programs for infants and toddlers with disabilities. At least one parent member must be a parent of an infant or toddler with a disability or a child with a disability aged 6 years or younger.

b. At least 20 percent of the members must be public or private providers of early intervention services.

c. At least one member must be from the state legislature.

d. At least one member must be involved in personnel preparation.

e. At least one member must:

(1) Be from each of the state agencies involved in the provision of, or payment for, early intervention services to infants and toddlers with disabilities and their families; and

(2) Have sufficient authority to engage in policy planning and implementation on behalf of these agencies.

f. At least one member must:

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- (1) Be from the unit of the department responsible for preschool services to children with disabilities; and
- (2) Have sufficient authority to engage in policy planning and implementation on behalf of the department.
 - g.* At least one member must be from the agency responsible for the state Medicaid program and CHIP.
 - h.* At least one member must be from a Head Start or Early Head Start agency or program in the state.
 - i.* At least one member must be from a state agency responsible for child care.
 - j.* At least one member must be from the agency responsible for the state regulation of private health insurance.
 - k.* At least one member must be a representative designated by the Office of the Coordination of Education of Homeless Children and Youth.
 - l.* At least one member must be a representative from the state child welfare agency responsible for foster care.
 - m.* At least one member must be from the state agency responsible for children's mental health.

120.601(2) *Members serving more than one role.* The governor may appoint one member to represent more than one program or agency listed in paragraphs 120.601(1) "g" through "m."

120.601(3) *Additional members permitted.* The council may include other members selected by the governor, including a representative from the Bureau of Indian Education (BIE) or, where there is no school operated or funded by the BIE in the state, from the Indian Health Service or the tribe or tribal council.

120.601(4) *Limitation on voting: conflict of interest.* No member of the council may cast a vote on any matter that would provide direct financial benefit to that member or otherwise give the appearance of a conflict of interest under state law.

120.601(5) *Executive committee; other committees.* The executive committee shall consist of the council chairperson; the vice-chairperson; at least two council members, one of whom is a parent; and a council representative from each of the signatory agencies. The department's Early ACCESS program coordinator shall be an ex officio member of the executive committee. The executive committee is responsible for initially reviewing and discussing information and issues that will be addressed by the full council; establishing the framework for overall council business, including the calendar of meetings and the agenda for council meetings; and facilitating the implementation of the interagency agreement among the signatory agencies. The council may establish or dissolve other standing or ad hoc committees from time to time and in the furtherance of its work.

281—120.602(34CFR303) Meetings.

120.602(1) *Minimum number of meetings.* The council will meet, at a minimum, on a quarterly basis, and in such places as it determines necessary.

120.602(2) *Requirements for meetings.* The meetings must:

- a.* Be publicly announced sufficiently in advance of the dates they are to be held to ensure that all interested parties have an opportunity to attend;
- b.* To the extent appropriate, be open and accessible to the general public; and
- c.* As needed, provide for interpreters for persons who are deaf or hard of hearing and other necessary services for council members and participants. The council may use funds under this chapter to pay for those services.

281—120.603(34CFR303) Use of funds by the council.

120.603(1) *General.* Subject to the approval by the governor, the council may use funds under this chapter to:

- a.* Conduct hearings and forums;
- b.* Reimburse members of the council for reasonable and necessary expenses for attending council meetings and performing council duties (including child care for parent representatives);

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c. Pay compensation to a member of the council if the member is not employed or must forfeit wages from other employment when performing official council business;

d. Hire staff; and

e. Obtain the services of professional, technical, and clerical personnel as may be necessary to carry out the performance of its functions under Part C of the Act.

120.603(2) *No compensation for members.* Except as provided in subrule 120.603(1), council members must serve without compensation from funds available under Part C of the Act.

281—120.604(34CFR303) Functions of the council; required duties.

120.604(1) *Advising and assisting the department.* The council must advise and assist the department in the performance of the department's responsibilities in Section 635(a)(10) of the Act, including:

a. Identification of sources of fiscal and other support for services for early intervention service programs under Part C of the Act;

b. Assignment of financial responsibility to the appropriate agency;

c. Promotion of methods (including use of intra-agency and interagency agreements) for intra-agency and interagency collaboration regarding child find under rules 281—120.115(34CFR303) and 281—120.302(34CFR303), monitoring and enforcement under rules 281—120.120(34CFR303) and 281—120.700(34CFR303) through 281—120.708(34CFR303), financial responsibility and provision of early intervention services under rules 281—120.202(34CFR303) and 281—120.511(34CFR303), and transition under rule 281—120.209(34CFR303); and

d. Preparation of applications under this chapter and amendments to those applications.

120.604(2) *Advising and assisting on transition.* The council must advise and assist the department regarding the transition of toddlers with disabilities to preschool and other appropriate services.

120.604(3) *Annual report to the governor and to the Secretary.*

a. The council must:

(1) Prepare and submit an annual report to the governor and to the Secretary on the status of early intervention service programs for infants and toddlers with disabilities and their families under Part C of the Act operated within the state; and

(2) Submit the report to the Secretary by a date that the Secretary establishes.

b. Each annual report must contain the information required by the Secretary for the year for which the report is made.

281—120.605(34CFR303) Authorized activities by the council. The council may carry out the following activities:

120.605(1) Advise and assist the department regarding the provision of appropriate services for children with disabilities from birth through age five.

120.605(2) Advise appropriate agencies in the state with respect to the integration of services for infants and toddlers with disabilities and at-risk infants and toddlers and their families, regardless of whether at-risk infants and toddlers are eligible for early intervention services in the state.

120.605(3) Coordinate and collaborate with the state advisory council on early childhood education and care for children, as described in Section 642B(b)(1)(A)(i) of the Head Start Act, 42 U.S.C. 9837b(b)(1)(A)(i), if applicable, and other state interagency early learning initiatives, as appropriate.

281—120.606 to 120.699 Reserved.

DIVISION IX
FEDERAL AND STATE MONITORING AND ENFORCEMENT;
REPORTING; AND ALLOCATION OF FUNDS

281—120.700(34CFR303) State monitoring and enforcement.

120.700(1) *General.* The department must:

a. Monitor the implementation of this chapter;

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b. Make determinations annually about the performance of each EIS program, using the categories identified in subrule 120.703(2);

c. Enforce this chapter consistent with rule 281—120.704(34CFR303), using appropriate enforcement mechanisms listed therein; and

d. Report annually on the performance of the state and of each EIS program under this chapter as provided in rule 281—120.702(34CFR303).

120.700(2) Primary focus of monitoring activity. The primary focus of the state's monitoring activities must be on:

a. Improving early intervention results and functional outcomes for all infants and toddlers with disabilities; and

b. Ensuring that EIS programs meet the program requirements under Part C of the Act, with a particular emphasis on those requirements that are most closely related to improving early intervention results for infants and toddlers with disabilities.

120.700(3) Indicators of performance and compliance. As a part of its responsibilities under subrule 120.700(1), the state must use quantifiable indicators and such qualitative indicators as are needed to adequately measure performance in the priority areas identified in subrule 120.700(4), and the indicators established by the Secretary for the state performance plans.

120.700(4) Monitoring; priority areas. The department must monitor each EIS program located in the state, using quantifiable indicators in each of the following priority areas, and using such qualitative indicators as are needed to adequately measure performance in those areas:

a. Early intervention services in natural environments.

b. State exercise of general supervision, including child find, effective monitoring, mediation, and a system of transition services as defined in Section 637(a)(9) of the Act.

120.700(5) Correction of noncompliance. In exercising its monitoring responsibilities under subrule 120.700(4), the state must ensure that when it identifies noncompliance with this chapter by EIS programs and providers, the noncompliance is corrected as soon as possible and in no case later than one year after the state's identification of the noncompliance.

281—120.701(34CFR303) State performance plans and data collection.

120.701(1) General. The state must have in place a performance plan that satisfies Section 616 of the Act; is approved by the Secretary; and includes an evaluation of the state's efforts to implement the requirements and purposes of Part C of the Act, a description of how the state will improve implementation, and measurable and rigorous targets for the indicators established by the Secretary under the priority areas described in 34 CFR 303.700(d).

120.701(2) Review of state performance plan. The state must review its state performance plan at least once every six years and submit any amendments to the Secretary.

120.701(3) Data collection.

a. The state must collect valid and reliable information as needed to report annually to the Secretary on the indicators established by the Secretary for the state performance plans.

b. If the Secretary permits states to collect data on specific indicators through state monitoring or sampling, and the state collects data for a particular indicator through state monitoring or sampling, the state must collect and report data on those indicators for each EIS program at least once during the six-year period of a state performance plan.

c. Nothing in Part C of the Act or this chapter may be construed to authorize the development of a nationwide database of personally identifiable information on individuals involved in studies or other collections of data under Part C of the Act.

281—120.702(34CFR303) State use of targets and reporting.

120.702(1) General. The state must use the targets established in the state's performance plan under rule 281—120.701(34CFR303) and the priority areas described in subrule 120.700(4) to analyze the performance of each EIS program in implementing Part C of the Act.

120.702(2) Public reporting and privacy.

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a. Public report. The state must:

(1) Report annually to the public on the performance of each EIS program located in the state on the targets in the state's performance plan as soon as practicable but no later than 120 days following the state's submission of its annual performance report to the Secretary under paragraph 120.702(2) "b"; and

(2) Make the state's performance plan under subrule 120.701(1), annual performance reports under this subrule, and the state's annual reports on the performance of each EIS program under this subrule available through public means, including by posting on the department's website, distribution to the media, and distribution to EIS programs.

(3) If the state, in satisfying this subrule, collects data through state monitoring or sampling, the state must include in its public report on EIS programs under this subrule the most recently available performance data on each EIS program and the date the data were collected.

b. State performance report. The state must report annually to the Secretary on the performance of the state under the state's performance plan.

c. Privacy. The state must not report to the public or the Secretary any information on performance that would result in the disclosure of personally identifiable information about individual children, or where the available data are insufficient to yield statistically reliable information.

281—120.703(34CFR303) Department review and determination regarding EIS program performance.

120.703(1) Review. The department shall annually review the performance of each EIS provider, including but not limited to data on indicators identified in the state's performance plan, information obtained through monitoring visits, and any other public information made available.

120.703(2) Determination. Based on the information provided in subrule 120.703(1) to the department, the department shall determine if each EIS provider:

a. Meets the requirements and purposes of Part C of the Act;

b. Needs assistance in implementing the requirements of Part C of the Act;

c. Needs intervention in implementing the requirements of Part C of the Act; or

d. Needs substantial intervention in implementing the requirements of Part C of the Act.

120.703(3) Notice and opportunity for a hearing. For determinations made under paragraphs 120.703(2) "c" and "d," the department shall provide reasonable notice of its determination and may, in its sound discretion, grant an informal hearing to the EIS provider; however, if withholding of funds is a remedy associated with any particular determination, the department shall provide a hearing under rule 281—120.705(34CFR303). Under any hearing granted under this subrule or rule 281—120.705(34CFR303), the EIS provider must demonstrate that the department abused its discretion in making the determination described in subrule 120.703(2).

120.703(4) Criteria for determinations. The department shall develop criteria for making the determinations required by subrule 120.703(2).

120.703(5) Adjustment or variance of determination. In making the determination required by subrule 120.703(2), the department in its discretion may adjust or vary from the criteria described in subrule 120.703(4) based on unusual, unanticipated, or extraordinary aggravating or mitigating measures, on a case-by-case basis.

281—120.704(34CFR303) Enforcement.

120.704(1) Needs assistance. If the department determines, for two consecutive years, that an EIS provider needs assistance under paragraph 120.703(2) "b" in implementing the requirements of Part C of the Act, the department shall take one or more of the following actions:

a. Advise the EIS provider of available sources of technical assistance that may help the EIS provider address the areas in which the provider needs assistance, which may include assistance from the Office of Special Education Programs, other offices of the U.S. Department of Education, other federal agencies, technical assistance providers approved by the Secretary or the department, and other federally funded nonprofit agencies, and require the EIS provider to work with appropriate entities. This technical assistance may include:

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(1) The provision of advice by experts to address the areas in which the EIS provider needs assistance, including explicit plans for addressing the areas of concern within a specified period of time;

(2) Assistance in identifying and implementing professional development, early intervention service provision strategies, and methods of early intervention service provision that are based on scientifically based research;

(3) Designating and using administrators, service coordinators, service providers, and other personnel from the EIS program to provide advice, technical assistance, and support; and

(4) Devising additional approaches to providing technical assistance, such as collaborating with institutions of higher education, educational service agencies, national centers of technical assistance supported under Part D of the Act, and private providers of scientifically based technical assistance.

b. Identify the EIS provider as a high-risk grantee and impose special conditions on the provider's grant under this chapter.

120.704(2) Needs intervention. If the department determines, for three or more consecutive years, that an EIS provider needs intervention under paragraph 120.703(2) "c" in implementing the requirements of Part C of the Act, the following apply:

a. The department may take any of the actions described in subrule 120.704(1).

b. The department shall take one or both of the following actions:

(1) Require the EIS provider to prepare a corrective action plan or improvement plan if the department determines that the EIS provider should be able to correct the problem within one year.

(2) Withhold, in whole or in part, any further payments to the EIS provider under Part C of the Act.

120.704(3) Needs substantial intervention. Notwithstanding subrules 120.704(1) and 120.704(2), at any time that the department determines that an EIS provider needs substantial intervention in implementing the requirements of Part C of the Act or that there is a substantial failure to comply with any requirement under Part C of the Act by an EIS program, the department shall withhold, in whole or in part, any further payments to the EIS provider under Part C of the Act. In addition, the department may refer the matter to appropriate authorities, which include but are not limited to the Iowa department of justice or the auditor of state.

120.704(4) Rule of construction. The listing of specific enforcement mechanisms in this rule shall not be construed to limit the enforcement mechanisms at the department's disposal in its enforcement of this rule or any other rule in this chapter.

281—120.705(34CFR303) Withholding funds.

120.705(1) General. As a consequence of a determination made under rule 281—120.703(34CFR303) or enforcement of any provision of Part C of the Act and this chapter, the department may withhold some or all of the funds from an EIS provider or a program or service of an EIS provider.

120.705(2) Hearing. If the department intends to withhold funds, it shall provide notice and an opportunity for a hearing to an EIS provider. If a hearing is requested, the department may suspend payments to the EIS provider, suspend the authority of the EIS provider to obligate funds, or both, until a decision is made after the hearing. A hearing under this rule, which shall not be a contested case under Iowa Code chapter 17A, shall be requested within 30 days of notice of withholding by requesting a hearing before the director of the Iowa department of education or the director's designee. The presiding officer at the hearing shall consider the purposes of Part C of the Act and of this chapter and shall determine whether the state abused its discretion in its decision under subrule 120.705(1).

120.705(3) Reinstatement. If the EIS provider substantially rectifies the condition that prompted the initial withholding under subrule 120.705(1), then the department may reinstate payments. If an EIS provider disagrees with the department's decision that the provider has not substantially rectified the condition that prompted the initial withholding under subrule 120.705(1), the provider may request a hearing under subrule 120.705(2).

281—120.706(34CFR303) Public attention. Whenever the state receives notice that the Secretary is proposing to take or is taking an enforcement action pursuant to 34 CFR §303.704, the state must, by

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means of a public notice, take such measures as may be necessary to bring the pendency of an action pursuant to Section 616(e) of the Act and 34 CFR §303.704 to the attention of the public within the state, including by posting the notice on the department's website and distributing the notice to the media and to EIS programs.

281—120.707 Reserved.

281—120.708(34CFR303) State enforcement. Nothing in this division may be construed to restrict the state from utilizing any other authority available to it to monitor and enforce the Act.

281—120.709(34CFR303) State consideration of other state or federal laws. In making the determinations required by subrule 120.703(2), in taking actions pursuant to rule 281—120.704(34CFR303), and in taking any other action under this chapter, the department may consider whether any agency or provider has complied with any other applicable state or federal law, including education law or disability law, or with any corrective action ordered by any competent authority for violation of such a law.

281—120.710 to 120.719 Reserved.

281—120.720(34CFR303) Data requirements—general.

120.720(1) General. The department must annually report to the Secretary and to the public on the information required by Section 618 of the Act at the times specified by the Secretary.

120.720(2) Manner of reporting. The department must submit the report to the Secretary in the manner prescribed by the Secretary.

281—120.721(34CFR303) Annual report of children served—report requirement.

120.721(1) Date of count. For the purposes of the annual report required by Section 618 of the Act and rule 281—120.720(34CFR303), the department must count and report the number of infants and toddlers receiving early intervention services on any date between October 1 and December 1 of each year.

120.721(2) Information in report. The report must include:

a. The number and percentage of infants and toddlers with disabilities in the state, by race, gender, and ethnicity, who are receiving early intervention services (and include in this number any children reported to the department by tribes, tribal organizations, and consortia under 34 CFR 303.731(e)(1));

b. The number and percentage of infants and toddlers with disabilities, by race, gender, and ethnicity, who, from birth through age two, stopped receiving early intervention services because of program completion or for other reasons; and

c. The number and percentage of at-risk infants and toddlers (as defined in Section 632(1) of the Act), by race and ethnicity, who are receiving early intervention services under Part C of the Act.

120.721(3) Reserved.

120.721(4) Dispute prevention and resolution data. The report shall include the number of due process complaints filed under Section 615 of the Act, the number of hearings conducted and the number of mediations held, and the number of settlement agreements reached through such mediations.

281—120.722(34CFR303) Data reporting.

120.722(1) Protection of identifiable data. The data described in Section 618(a) of the Act and in rule 281—120.721(34CFR303) must be publicly reported by the state in a manner that does not result in disclosure of data identifiable to individual children.

120.722(2) Sampling. If permitted by the Secretary, the state may obtain data in Section 618(a) of the Act through sampling.

281—120.723(34CFR303) Annual report of children served—certification. The department must include in its report a certification signed by an authorized official of the department that the information

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provided under rule 281—120.721(34CFR303) is an accurate and unduplicated count of infants and toddlers with disabilities receiving early intervention services.

281—120.724(34CFR303) Annual report of children served—other responsibilities of the department. In addition to meeting the requirements of rules 281—120.721(34CFR303) through 281—120.723(34CFR303), the department must conduct its own child count or use EIS providers to complete its child count. If the department uses EIS providers to complete its child count, then the department must establish procedures to be used by EIS providers in counting the number of children with disabilities receiving early intervention services; establish dates by which those EIS providers must report to the department to ensure that the state complies with subrule 120.721(1); obtain certification from each EIS provider that an unduplicated and accurate count has been made; aggregate the data from the count obtained from each EIS provider and prepare the report required under rules 281—120.721(34CFR303) through 281—120.723(34CFR303); and ensure that documentation is maintained to enable the department and the Secretary to audit the accuracy of the count.

281—120.725 to 120.800 Reserved.

DIVISION X
OTHER PROVISIONS

281—120.801(34CFR303) Early ACCESS system—state level.

120.801(1) Lead agency. The Iowa department of education was appointed lead agency on June 24, 1987. Responsibilities of the lead agency include:

- a. Developing and implementing policies and procedures regarding the types of information to be gathered and the policies and parameters for sharing of information across agencies and programs, as well as such information that might be necessary for an annual report to the governor and the U.S. Department of Education;
- b. Monitoring the agencies, institutions and organizations that provide early intervention services and supports;
- c. Enforcing any obligations imposed under Part C of the Act on the agencies listed in paragraph 120.801(1)“b”;
- d. Providing technical assistance, if necessary, to the agencies, institutions and organizations listed in paragraph 120.801(1)“b”;
- e. Correcting deficiencies that are identified through monitoring;
- f. Adopting and carrying out complaint procedures;
- g. Mediating any interagency disputes regarding early intervention services;
- h. Establishing policies related to how early intervention services to eligible children and their families shall be paid for;
- i. Establishing procedures to ensure the timely provision of services;
- j. Ensuring that the following functions and services are provided at public expense:
 - (1) Child find requirements;
 - (2) Evaluation and assessment functions;
 - (3) Service coordination;
 - (4) Development and review of IFSPs;
 - (5) Implementation of procedural safeguards; and
 - (6) Other components of the statewide system of Early ACCESS;
- k. Maintaining a data system to be utilized for gathering information regarding early intervention services provided for eligible children in Early ACCESS; and
- l. Monitoring use of funds.

120.801(2) Signatory agencies. The department of education, the department of health and human services, and the child health specialty clinics shall enter into an interagency agreement to formalize their joint commitments to the establishment and ongoing implementation and evaluation of a comprehensive, integrated, interagency Early ACCESS system. The Iowa department of education is responsible for

EDUCATION DEPARTMENT[281](cont'd)

providing education programs and services for preschool and school-age students, including children with disabilities, from birth through 21 years of age. The Iowa department of health and human services administers social service programs in order to help and empower individuals and families to become increasingly self-sufficient and productive and administers public health programs in order to promote and protect the health of Iowans. The child health specialty clinics are the statewide public health program for children with special health care needs, as designated by the legislature.

120.801(3) *Interagency agreement.* In addition to the requirements set forth elsewhere in this chapter, the agreement between signatory agencies shall outline the commitment of these agencies to the implementation of an interagency, integrated system of Early ACCESS and:

- a. Reflect the interagency vision and guiding principles of Early ACCESS;
- b. Define the population to be served;
- c. Identify roles, responsibilities and expectations of the signatory agencies;
- d. Outline financial responsibilities of the signatory agencies;
- e. Describe parameters for policy development and management decisions;
- f. Describe procedures for resolving disputes;
- g. Identify transition activities from Part C services;
- h. Describe child find efforts; and
- i. Describe the roles and responsibilities of the signatory agencies and assigned staff.

281—120.802(34CFR303) *Interagency service planning.* An IFSP process shall be developed by the lead agency and shall be reviewed and approved by the signatory agencies. The process shall be used by all signatory agencies to document the ongoing work between families and providers across all agencies that are providing a service or resource to meet identified needs.

281—120.803(34CFR303) *System-level disputes.* System-level disputes involve conflicts over the roles or responsibilities of an agency partner within the Early ACCESS system. System-level disputes may involve financial matters, the implementation of Early ACCESS system aspects that are not law or rules, such as interagency agreements and policies and procedures, or the implementation of provisions of the interagency agreement. The interagency agreement shall detail the resolution of informal and formal intra-agency and interagency system-level disputes.

281—120.804(34CFR303) *Early ACCESS system—regional and community levels.*

120.804(1) *Early ACCESS grantees.* Early ACCESS grantees shall have the fiscal and legal obligation for ensuring that the Early ACCESS system is carried out regionally. Early ACCESS grantees shall be designated by the department and shall exist, at a minimum, in geographic areas that ensure statewide coverage as determined by the department.

a. *Policies.* Each grantee shall establish in accordance with this chapter the policies pertinent to a regional Early ACCESS system and shall make such policies available to the department upon request. At a minimum, such policies shall include the following:

(1) Policy to ensure that appropriate early intervention services are available to all eligible children in the state and their families, including Indian infants and toddlers and their families residing on a reservation or settlement geographically located in the state;

(2) Policy to ensure that all infants and toddlers in the state who are eligible for services under this chapter are identified, located, and evaluated and that an effective method to determine which children are receiving needed early intervention services is developed and implemented;

(3) Policy regarding the development and implementation of individualized family service plans;

(4) Policy for the establishment and maintenance of standards to ensure that personnel necessary to carry out the requirements of this chapter are appropriately and adequately prepared and trained;

(5) Policy pertaining to contracting or making other arrangements with public or private service providers to provide early intervention services and service coordination;

(6) Policy to ensure a smooth transition to preschool or other appropriate services for children receiving early intervention services under this chapter; and

EDUCATION DEPARTMENT[281](cont'd)

(7) Any other policy required to carry out the purposes of this chapter.

b. Procedures. Each grantee shall develop, in accordance with this chapter, written procedures pertinent to the implementation of a regional Early ACCESS system, and shall make such procedures available to the department upon request. At a minimum, such procedures shall include the following:

(1) Procedures to ensure that all infants and toddlers who are eligible for services under this chapter are identified, located, and evaluated and that an effective method to determine which children are receiving needed early intervention services is developed and implemented;

(2) Procedures for use by primary referral sources for referring a child to the appropriate public agency within the system for evaluation and assessment or, as appropriate, the provision of services;

(3) Procedures to ensure provision of early intervention services and service coordination, including the appointment of service coordinators;

(4) Procedures to ensure documentation and the development and implementation of an interim IFSP, when circumstances warrant under this chapter;

(5) Procedures for conducting nondiscriminatory evaluation and assessment;

(6) Procedures for the development and implementation of individualized family service plans;

(7) Procedures for the establishment and maintenance of standards to ensure that personnel necessary to carry out the purposes of this chapter are appropriately and adequately prepared and trained;

(8) Procedures for ensuring procedural safeguards that meet the requirements of this chapter;

(9) Procedures for ensuring maintenance and confidentiality of records;

(10) Procedures to allow parties to disputes to resolve the disputes through a mediation process;

(11) Procedures for providing mediation for the timely administrative resolution of complaints by parents regarding an individual child;

(12) Procedures for resolving a complaint that any public agency is violating a requirement of Part C of the Act;

(13) Procedures related to how services to eligible children and their families will be paid for under the state's Early ACCESS program;

(14) Procedures for the timely provision of services, ensuring that no service to which a child is entitled is delayed or denied because of disputes between agencies regarding financial or other responsibilities;

(15) Procedures for resolving intra-agency and interagency disputes about payments for a given service or about other matters related to the state's Early ACCESS program in accordance with any applicable interagency agreement and with this chapter;

(16) Procedures to ensure that services are provided to eligible children and their families in a timely manner pending the resolution of disputes among public agencies or service providers;

(17) Procedures for securing the timely reimbursement of funds; and

(18) Any other procedures required to carry out the purposes of this chapter.

c. Collaboration. Early ACCESS grantees shall collaborate with local representatives of signatory agencies, community partners, and families in the development, implementation and monitoring of policies and procedures described in this rule. Early ACCESS grantees shall designate an individual who has primary responsibility for coordinating regional implementation and serving as a liaison to the department.

120.804(2) Community partners. Community partners include state and local representatives of signatory agencies, as well as other regional and community agencies and providers, public and private, including physicians, Early Head Start, child care providers, early childhood Iowa areas, and health programs, that work with Early ACCESS when providing early intervention services or other supports such as supporting family participation in improving the Early ACCESS system, early identification of eligible children, service coordination, provision of other needed services or resources, and other efforts to improve the Early ACCESS system.

EDUCATION DEPARTMENT[281](cont'd)

281—120.805(34CFR303) Provision of year-round services. Each Early ACCESS grantee shall ensure that Early ACCESS components and services are available 12 months a year to meet the needs of eligible children and their families.

281—120.806(34CFR303) Evaluation and improvement. Each grantee, in conjunction with signatory agencies or the department, or both, will implement activities designed to evaluate and improve the Early ACCESS system. These activities are to document the performance of eligible children who receive early intervention services.

281—120.807(34CFR303) Research. Each grantee will cooperate in research activities designed to evaluate and improve the Early ACCESS system when such activities are sponsored by the department, or a signatory agency when approved by the department, to assess and ensure the effectiveness of efforts to serve eligible children.

281—120.808(34CFR303) Records and reports. Each signatory agency or grantee will maintain sufficient records and reports for audit by the department. Records and reports shall include at a minimum:

1. State-approved or state-recognized certification, licensing, registration, or other comparable requirements for all personnel providing early intervention services.
2. All IFSP meetings and annual or periodic reviews for each eligible child.
3. Data required for federal and state reporting.

281—120.809(34CFR303) Information for department. Each signatory agency or grantee will provide the department with information necessary to enable the department to carry out its duties under Part C of the Act and this chapter. This information, including such quantitative and qualitative data as the department may require, will be submitted in a manner and at a time determined by the department. Failure to submit timely and accurate information may be considered by the department in making the determinations under rule 281—120.703(34CFR303) or in taking any other action to enforce Part C of the Act or this chapter.

281—120.810(34CFR303) Public information. Each agency must make available to parents of children with disabilities and to the general public all documents relating to the eligibility of the agency under Part C of the Act.

281—120.811(34CFR303) Dispute resolution: practice before mediators and administrative law judges. Unless otherwise provided by this chapter, any mediation conference or due process hearing under Division VI of this chapter shall be conducted according to rules 281—41.1000(256B,34CFR300) through 281—41.1016(256B,34CFR300).

281—120.812(34CFR303) References to federal law. All references in this chapter to provisions of the United States Code or the Code of Federal Regulations are to those provisions in effect on September 28, 2011.

281—120.813(34CFR303) Severability. Should any rule or subrule in this chapter be declared invalid by a court of competent jurisdiction, every other rule and subrule not affected by that declaration of invalidity shall remain valid.

EDUCATION DEPARTMENT[281](cont'd)

281—120.814(34CFR303) Rule of construction. Language adopted pursuant to 2020 Iowa Acts, House File 2585, will be construed in a manner consistent with federal law and will not be construed to confer any different or greater right or responsibility under this chapter.

These rules are intended to implement the Individuals with Disabilities Education Act as amended through July 1, 2005, and Part 303 of Title 34 of the Code of Federal Regulations published in the Federal Register on September 28, 2011.

ARC 7572C**INSPECTIONS AND APPEALS DEPARTMENT[481]****Notice of Intended Action****Proposing rulemaking related to hospitals and providing an opportunity for public comment**

The Department of Inspections, Appeals, and Licensing hereby proposes to rescind Chapter 51, “Hospitals,” Iowa Administrative Code, and to adopt a new chapter with the same title.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code section 135B.3A as enacted by 2023 Iowa Acts, Senate File 75, and section 135B.7 as amended by 2023 Iowa Acts, Senate File 75.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code sections 135B.3A and 135B.7; 2023 Iowa Acts, Senate File 75; and Executive Order 10 (January 10, 2023).

Purpose and Summary

This rulemaking proposes the repromulgation of Chapter 51. This rulemaking implements Iowa Code chapter 135B as amended by 2023 Iowa Acts, Senate File 75, in accordance with the goals and directives of Executive Order 10. Iowa Code chapter 135B requires that the Department, with approval by the Council on Health and Human Services, adopt rules setting forth standards for the different types of hospitals to be licensed under Iowa Code chapter 135B. Iowa Code section 135B.7 specifically requires that the rules state that a hospital or rural emergency hospital shall not deny clinical privileges to practitioners solely by reason of the license held by the practitioner or school or institution in which the practitioner received training; requires that a hospital or rural emergency hospital establish and implement written criteria for the granting of clinical privileges, including delineation of specified factors; and requires that the Department adopt rules requiring hospitals and rural emergency hospitals to establish and implement protocols for responding to the needs of patients who are victims of domestic abuse and elder abuse.

Pursuant to Iowa Code section 135B.3A, the Department is also required to adopt rules to establish minimum standards for the licensure of rural emergency hospitals consistent with the federal Consolidated Appropriations Act, Pub. L. No. 116-260, §125, and with regulations issued by the United States Secretary of Health and Human Services for rural emergency hospitals. Iowa Code section 135B.7A also requires the Department to adopt rules that require hospitals and rural emergency hospitals to establish procedures for authentication of all verbal orders by a practitioner within a period not to exceed 30 days following a patient’s discharge.

The proposed rules establish basic standards for patient care, including standards related to medical, nursing, and additional staff who provide services in hospitals; hospital response to abuse; hospital delivery of adequate nursing, surgical, anesthesia, emergency, obstetric, neonatal, and pediatric services; implementation of science-based infection control practices; delivery of services for medication administration, pharmacy, pathology and laboratory, and radiological services; organ and tissue

INSPECTIONS AND APPEALS DEPARTMENT[481](cont'd)

procurement; maintenance of patient records; food protection and nutritional services; maintenance and use of patient equipment; and safe standards of construction.

A Regulatory Analysis related to this rulemaking was published in the Iowa Administrative Bulletin on November 29, 2023, and a public hearing was held on December 20, 2023. The Department received two public comments specifically supportive of the rules, including a comment opining that the rules are “appropriate for the chapter’s purpose and are the most effective and efficient implementation of Iowa Code chapter 135B.” The Department also received public comments identifying the need for rural emergency hospitals in the commenters’ communities but without substantive comment on the rules. In response to comments from the Administrative Rules Review Committee at its hearing on the Regulatory Analysis, a minor and nonsubstantive change was made to proposed rule 481—51.24(135B) to make that rule easier for laypersons to read.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa in an amount requiring a fiscal impact statement pursuant to Iowa Code section 17A.4(4).

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to 481—Chapter 6.

Public Comment

Any interested person may submit written comments concerning this proposed rulemaking. Written comments in response to this rulemaking must be received by the Department no later than 4:30 p.m. on February 28, 2024. Comments should be directed to:

Ashleigh Hackel
Iowa Department of Inspections, Appeals, and Licensing
6200 Park Avenue, Suite 100
Des Moines, Iowa 50321
Email: ashleigh.hackel@dia.iowa.gov

Public Hearing

Public hearings at which persons may present their views orally or in writing will be held as follows:

February 27, 2024
10:30 a.m.

6200 Park Avenue, Suite 100
Des Moines, Iowa
Video call link: meet.google.com/omy-errx-ppx
Or dial: 1.570.915.0075
PIN: 255 876 356#
More phone numbers:
[tel.meet/omy-errx-ppx?pin=1328955137110](tel:meet/omy-errx-ppx?pin=1328955137110)

February 28, 2024
10:30 a.m.

6200 Park Avenue, Suite 100
Des Moines, Iowa
Video call link: meet.google.com/omy-errx-ppx
Or dial: 1.570.915.0075
PIN: 255 876 356#
More phone numbers:
[tel.meet/omy-errx-ppx?pin=1328955137110](tel:meet/omy-errx-ppx?pin=1328955137110)

INSPECTIONS AND APPEALS DEPARTMENT[481](cont'd)

Persons who wish to make oral comments at a public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rulemaking.

Any persons who intend to attend a public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department and advise of specific needs.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking 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).

Emergency Rulemaking Adopted by Reference

This proposed rulemaking is also published herein as an Adopted and Filed Emergency rulemaking (see **ARC 7573C**). The purpose of this Notice of Intended Action is to solicit public comment on that emergency rulemaking, whose subject matter is hereby adopted by reference.

ARC 7577C

UTILITIES DIVISION[199]

Notice of Intended Action

**Proposing rulemaking related to rulemaking
and providing an opportunity for public comment**

The Utilities Board hereby proposes to rescind Chapter 3, "Rule Making," and to adopt a new Chapter 3, "Rulemaking," Iowa Administrative Code.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code sections 17A.4, 474.5 and 476.2.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code sections 17A.4, 17A.5, 17A.6 and 17A.7 and Executive Order 10.

Purpose and Summary

The Board commenced this rulemaking under the provisions of Executive Order 10. Chapter 3 is intended to assist members of the public who wish to initiate or participate in a Board rulemaking proceeding by describing and detailing the rules governing such participation. The Board is proposing to rescind the existing Chapter 3 and repromulgate a new version of Chapter 3 with the removal of unnecessary and unneeded language and the reduction of restrictive terms.

Prior to submission of the Notice of Intended Action, the Board held a technical conference with stakeholders, which included a discussion regarding the proposed Chapter 3. The technical conference was attended by the Office of Consumer Advocate (OCA), a division of the Iowa Department of Justice; Black Hills/Iowa Gas Utility Company, LLC, d/b/a Black Hills Energy (Black Hills); MidAmerican Energy Company (MidAmerican); and Iowa-American Water (IAW). The Board also accepted written comments, which were filed by the Iowa Communications Alliance, OCA, Black Hills, MidAmerican, IAW, and ITC Midwest, LLC.

Based on the written and oral comments received, the Board modified proposed Chapter 3 to produce the version of the chapter in this Notice.

UTILITIES DIVISION[199](cont'd)

The Board issued an order on August 1, 2023, commencing this rulemaking. The order is available on the Board's electronic filing system, efs.iowa.gov, under RMU-2023-0003.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

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

Waivers

No waiver provision is included in the proposed amendments because the Board has a general waiver provision in rule 199—1.3(17A,474,476) that provides procedures for requesting a waiver of the rules in Chapter 3.

Public Comment

Any interested person may submit written comments concerning this proposed rulemaking. Written comments in response to this rulemaking must be received by the Board no later than 4:30 p.m. on February 27, 2024. Comments should be directed to:

IT Support
Iowa Utilities Board
Phone: 515.725.7300
Email: ITSupport@iub.iowa.gov

Public Hearing

Public hearings at which persons may present their views orally or in writing will be held as follows:

February 27, 2024 10 to 11 a.m.	Board Hearing Room 1375 East Court Avenue Des Moines, Iowa
March 5, 2024 10 to 11 a.m.	Board Hearing Room 1375 East Court Avenue Des Moines, Iowa

Persons who wish to make oral comments at a public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rulemaking.

Persons who intend to attend a public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Board and advise of specific needs.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking 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 rulemaking action is proposed:

ITEM 1. Rescind 199—Chapter 3 and adopt the following **new** chapter in lieu thereof:

CHAPTER 3
RULEMAKING

UTILITIES DIVISION[199](cont'd)

199—3.1(17A,474,476) Purpose and scope.

3.1(1) Scope. These rules govern the practice and procedure in all rulemaking proceedings of the board.

3.1(2) Rules of construction. If any provision of a rule or the application of a rule to any person or circumstance is itself or through its enabling statute held invalid, the invalidity does not affect other provisions or applications of the rule that can be given effect without the invalid provision or application, and to this end the provisions of the rule are severable.

199—3.2(17A,474,476) Initial stakeholder input. In addition to seeking information by other methods, the board may solicit comments from the public on the subject matter of possible rulemaking by issuing an order through its electronic filing system or by causing notice of the subject matter to be published in the Iowa Administrative Bulletin, indicating where, when, and how persons may comment.

199—3.3(17A,474,476) Petition for adoption of rules.

3.3(1) Petitions. Any interested person may petition the board for the adoption, amendment, or repeal of a rule pursuant to Iowa Code section 17A.7.

3.3(2) Stakeholder comments. Other interested persons may file written comments containing data, views, or arguments concerning the petition within 20 days of the filing of the petition. Reply comments may be filed within 27 days of the filing of the petition. The board may allow additional time for filing comments and reply comments at its discretion.

199—3.4(17A,474,476) Commencement of proceedings. Rulemaking proceedings are commenced upon written order of the board.

199—3.5(17A,474,476) Rulemaking oral presentation.

3.5(1) Requests. If an oral presentation is not scheduled by the board, any interested person may file a request for an oral presentation.

3.5(2) Written appearance. Any interested person may participate in rulemaking oral presentations in person or by counsel.

3.5(3) Oral presentations. Participants in rulemaking oral presentations may submit exhibits and present oral statements of position, which may include data, views, comments, or arguments concerning the proposed adoption, amendment, or repeal of the rule. Oral statements are not made under oath and are not subject to cross-examination.

3.5(4) Comments and limitations. The board may, in its discretion, permit reply comments and request the filing of written comments subsequent to the adjournment of the oral presentation. The board may limit the time of any oral presentation and the length of any written presentation.

199—3.6(17A,474) Review of rules. To facilitate the five-year review provisions of Iowa Code section 17A.7(1), the board will review a portion of its chapters each fiscal year over each five-year period under the following schedule:

3.6(1) In fiscal year 2018 and every fifth year thereafter, the board will review Chapters 1 through 9 of its rules.

3.6(2) In fiscal year 2019 and every fifth year thereafter, the board will review Chapters 10 through 18 of its rules.

3.6(3) In fiscal year 2020 and every fifth year thereafter, the board will review Chapters 19 through 27 of its rules.

3.6(4) In fiscal year 2021 and every fifth year thereafter, the board will review Chapters 28 through 36 of its rules.

3.6(5) In fiscal year 2022 and every fifth year thereafter, the board will review Chapters 37 through 45 of its rules.

UTILITIES DIVISION[199](cont'd)

3.6(6) If the board adopts additional chapters in its rules, such chapters will be reviewed every fifth fiscal year from the fiscal year in which they are made effective.

These rules are intended to implement Iowa Code sections 17A.4 through 17A.7, 474.5, and 476.2.

ARC 7578C**UTILITIES DIVISION[199]****Notice of Intended Action****Proposing rulemaking related to declaratory orders
and providing an opportunity for public comment**

The Utilities Board hereby proposes to rescind Chapter 4, “Declaratory Orders,” Iowa Administrative Code, and to adopt a new chapter with the same title.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code sections 17A.9 and 476.2.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code section 17A.9 and Executive Order 10.

Purpose and Summary

The Board commenced this rulemaking under the provisions of Executive Order 10. Chapter 4 is intended to inform members of the public of their right to file a petition for declaratory order under Iowa Code section 17A.9 and to describe the Board’s declaratory order practice as required by Iowa Code section 17A.3(1)“b.” The Board is proposing to rescind the existing Chapter 4 and repropulgate a new version of Chapter 4 with the removal of unnecessary and unneeded language and the reduction of restrictive terms.

Prior to submission of the Notice of Intended Action, the Board held a technical conference with stakeholders, which included a discussion regarding the proposed Chapter 4. The technical conference was attended by the Office of Consumer Advocate (OCA), a division of the Iowa Department of Justice; Black Hills/Iowa Gas Utility Company, LLC, d/b/a Black Hills Energy (Black Hills); MidAmerican Energy Company (MidAmerican); Iowa-American Water; ITC Midwest, LLC (ITC Midwest); the Iowa Association of Electric Cooperatives; and CenturyLink. The Board also accepted written comments, which were filed by OCA, Black Hills, MidAmerican, and ITC Midwest.

Based on the written and oral comments received, the Board modified Chapter 4 to produce the version of the chapter in this Notice.

The Board issued an order on July 28, 2023, commencing this rulemaking. The order is available on the Board’s electronic filing system, efs.iowa.gov, under RMU-2023-0004.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

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

Waivers

No waiver provision is included in the proposed amendments because the Board has a general waiver provision in rule 199—1.3(17A,474,476) that provides procedures for requesting a waiver of the rules in Chapter 4.

Public Comment

UTILITIES DIVISION[199](cont'd)

Any interested person may submit written comments concerning this proposed rulemaking. Written comments in response to this rulemaking must be received by the Board no later than 4:30 p.m. on February 27, 2024. Comments should be directed to:

IT Support
Iowa Utilities Board
Phone: 515.725.7300
Email: ITSupport@iub.iowa.gov

Public Hearing

Public hearings at which persons may present their views orally or in writing will be held as follows:

February 27, 2024 9 to 10 a.m.	Board Hearing Room 1375 East Court Avenue Des Moines, Iowa
March 5, 2024 9 to 10 a.m.	Board Hearing Room 1375 East Court Avenue Des Moines, Iowa

Persons who wish to make oral comments at a public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rulemaking.

Any persons who intend to attend a public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Board and advise of specific needs.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking 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 rulemaking action is proposed:

ITEM 1. Rescind 199—Chapter 4 and adopt the following **new** chapter in lieu thereof:

CHAPTER 4
DECLARATORY ORDERS

199—4.1(17A) Petition for declaratory order. Any person may file a petition with the Iowa utilities board for a declaratory order as to the applicability to specified circumstances of a statute, rule, or order within the primary jurisdiction of the board. The petition shall conform with this chapter and with Iowa Code section 17A.9. A petition shall be dated and signed by the petitioner, include the petitioner's appropriate contact information, and include all of the following information (a sample form of a petition for a declaratory order is available on the board's website at iub.iowa.gov):

4.1(1) The question or questions that petitioner wishes the board to determine, stated clearly and concisely;

4.1(2) A clear and concise statement of all relevant facts on which the ruling is requested, including the petitioner's interest in the issue;

4.1(3) A citation to and the relevant language of the statutes, rules, policies, decisions, or orders that are applicable or whose applicability is in question and any other relevant law;

4.1(4) The petitioner's proposed answers to the questions raised and a summary of the reasons urged by the petitioner in support of those answers, including a statement of the legal support for the petitioner's position;

UTILITIES DIVISION[199](cont'd)

4.1(5) A statement indicating whether the petitioner is currently a party to another proceeding involving the questions at issue and whether, to the petitioner's knowledge, those questions have been decided by, are pending determination by, or are under investigation by any governmental entity;

4.1(6) The names and addresses of other persons, or a description of any class of persons, known by the petitioner to be affected by or interested in the questions presented in the petition; and

4.1(7) A statement indicating whether the petitioner requests a meeting as provided for by rule 199—4.5(17A).

199—4.2(17A) Intervention. A person having an interest in the subject matter of a petition for a declaratory order may file with the board a petition for intervention pursuant to the "Intervention" rule contained in 199—Chapter 7 within 20 days of the filing of a petition for a declaratory order. The board may at its discretion entertain a late-filed petition for intervention. A petition for intervention in a proceeding on a petition for declaratory order shall be dated, be signed by the prospective intervenor with that person's appropriate contact information, include the information set forth in the "Intervention" rule contained in 199—Chapter 7, and include all of the following:

4.2(1) The answers urged by the intervenor to the question or questions presented and a summary of the reasons urged in support of those answers, including a statement of the legal support for the intervenor's position;

4.2(2) A statement indicating whether the intervenor is currently a party to another proceeding involving the questions at issue and whether, to the intervenor's knowledge, those questions have been decided by, are pending determination by, or are under investigation by any government entity;

4.2(3) The names and addresses of other persons, or a description of any class of persons, known by the intervenor to be affected by or interested in the questions presented in the petition; and

4.2(4) Whether the intervenor consents to be bound by the determination of the matters presented in the declaratory order proceeding.

199—4.3(17A) Briefs. The petitioner or any intervenor may file a brief in support of that party's position, and the board may order additional briefing.

199—4.4(17A) Service and filing of petitions. At the same time a petition for a declaratory order is filed, the petitioner shall serve the petition, in accordance with the "Service of documents" subrule in 199—Chapter 7 and the "Electronic service" rule in 199—Chapter 14, upon any person who, based upon a reasonable investigation, would be a necessary party to the proceeding under applicable substantive law. The petitioner is to file with the board a list of all persons served.

199—4.5(17A) Informal meeting. Upon request by petitioner, the board will schedule an informal meeting between the petitioner, all intervenors, and the board, a member of the board, or a designated member of the staff of the board to discuss the questions identified in the petition. The board may solicit comments from any person on the questions raised.

199—4.6(17A) Refusal to issue order.

4.6(1) Grounds. The board will not issue a declaratory order that would substantially prejudice the rights of a person who would be a necessary party and who does not consent in writing to determination of the matter in a declaratory order proceeding. The board may refuse to issue a declaratory order on some or all of the questions raised for any of the following reasons:

a. The petitioner requests that the board determines whether a statute is unconstitutional on its face.

b. The petition does not contain facts sufficient to demonstrate that the petitioner will be aggrieved or adversely affected by the failure of the board to issue an order.

c. The board does not have jurisdiction over the questions presented in the petition.

d. The questions presented by the petition are also presented in a current rulemaking, contested case, or other agency or judicial proceeding that may definitively resolve them.

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e. The questions presented by the petition would more properly be resolved in a different type of proceeding or by another body with jurisdiction over the matter.

f. The facts or questions presented in the petition are unclear, overbroad, insufficient, or otherwise inappropriate as a basis upon which to issue an order.

g. There is no need to issue an order because the questions raised in the petition have been settled due to a change in circumstances.

h. The petition is not based upon facts calculated to aid in the planning of future conduct but is, instead, based solely upon prior conduct in an effort to establish the effect of that conduct or to challenge an agency decision already made.

i. The petition requests a declaratory order that would necessarily determine the legal rights, duties, or responsibilities of other persons who have not joined in the petition, intervened separately, or filed a similar petition and whose position on the questions presented may fairly be presumed to be adverse to that of the petitioner.

4.6(2) Content and effect of refusal.

a. The board's refusal to issue a declaratory order will include a statement of the specific grounds for the refusal and constitutes final board action on the petition.

b. Refusal to issue a declaratory order pursuant to this rule does not preclude the filing of a new petition that seeks to remedy the grounds for the refusal to issue an order.

199—4.7(17A) Effect of a declaratory order.

4.7(1) The issuance of a declaratory order constitutes final agency action on the petition. A declaratory order is binding on the board, on the petitioner, on any intervenors who consent to be bound, and on any persons who would be necessary parties, who are served pursuant to rule 199—4.4(17A), and who consent to be bound, in cases in which the relevant facts and the law involved are substantially indistinguishable from those on which the order was based. As to all other persons, a declaratory order serves only as precedent and is not binding on the board.

4.7(2) A declaratory order is effective upon the date of issuance.

These rules are intended to implement Iowa Code sections 17A.3(1) "b," 17A.9 and 476.2.

ARC 7579C

UTILITIES DIVISION[199]

Notice of Intended Action

**Proposing rulemaking related to annual report
and providing an opportunity for public comment**

The Utilities Board hereby proposes to rescind Chapter 23, "Annual Report," Iowa Administrative Code, and to adopt a new chapter with the same title.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code sections 476.2, 476.9, 476.10, 476.22, 476.31 and 546.7.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code sections 476.1, 476.2, 476.9, 476.22, 476.31 and 546.7.

Purpose and Summary

The Board commenced this rulemaking under the provisions of Executive Order 10. Chapter 23 is intended to inform the public and public utilities of Board requirements related to the filing of annual reports. With respect to rate-regulated public utilities, annual reports serve the essential function of

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facilitating the continuous review of the operation of these utilities with respect to all matters that affect rates or charges for utility services. The Board is proposing to rescind the existing Chapter 23 and to repromulgate a new version of Chapter 23 with the removal of unnecessary and unneeded language and the reduction of restrictive terms.

Prior to submission of the Notice of Intended Action, the Board held a technical conference with stakeholders, which included a discussion regarding the proposed version of Chapter 23. The technical conference was attended by the Office of Consumer Advocate (OCA), a division of the Iowa Department of Justice; Black Hills/Iowa Gas Utility Company, LLC, d/b/a Black Hills Energy (Black Hills); and MidAmerican Energy Company (MidAmerican). The Board also accepted written comments, which were filed by OCA, MidAmerican, and Iowa-American Water Company.

Based on the written and oral comments received, the Board modified proposed Chapter 23 to produce the version of the chapter in this Notice.

The Board issued an order on January 17, 2024, commencing this rulemaking. The order is available on the Board's electronic filing system, efs.iowa.gov, under RMU-2023-0023.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

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

Waivers

No waiver provision is included in the proposed amendments because the Board has a general waiver provision in rule 199—1.3(17A,474,476) that provides procedures for requesting a waiver of the rules in Chapter 23.

Public Comment

Any interested person may submit written comments concerning this proposed rulemaking. Written comments in response to this rulemaking must be received by the Board no later than 4:30 p.m. on February 27, 2024. Comments should be directed to:

IT Support
Iowa Utilities Board
Phone: 515.725.7300
Email: ITSupport@iub.iowa.gov

Public Hearing

Public hearings at which persons may present their views orally or in writing will be held as follows:

February 27, 2024
11 a.m. to 12 noon

Board Hearing Room
1375 East Court Avenue
Des Moines, Iowa

March 5, 2024
11 a.m. to 12 noon

Board Hearing Room
1375 East Court Avenue
Des Moines, Iowa

Persons who wish to make oral comments at a public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rulemaking.

Any persons who intend to attend a public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Board and advise of specific needs.

Review by Administrative Rules Review Committee

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The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking 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 rulemaking action is proposed:

ITEM 1. Rescind 199—Chapter 23 and adopt the following **new** chapter in lieu thereof:

CHAPTER 23
ANNUAL REPORT

199—23.1(476) General information.

23.1(1) Every public utility shall keep and render its books, accounts, papers, and records accurately and faithfully in the manner and form prescribed by the board and comply with all directions of the board relating to such books, accounts, papers, and records.

23.1(2) Each public utility subject to Iowa Code chapter 476 shall file an annual report with this board on or before April 1 of each year covering operations during the immediately preceding calendar year. This information will be used for a number of purposes, including to apportion the costs of the utilities board pursuant to Iowa Code section 476.10 and to determine whether rate-regulated utilities' earnings are excessive pursuant to Iowa Code section 476.32.

23.1(3) The forms that are to be completed by each utility will be made publicly available on the board's website or by other means readily accessible. The board may direct the utilities to file the completed forms through a portal on the board's website or the board's electronic filing system.

199—23.2(476) Annual report requirements.

23.2(1) Forms. The following annual report forms shall be filed by the following utilities:

- a. Investor-owned, rate-regulated electric utilities file Form IE-1 with a copy of that utility's Federal Energy Regulatory Commission (FERC) Annual Report Form No. 1 or 1A as applicable.
- b. Investor-owned, non-rate-regulated electric utilities file Form EC-1.
- c. Investor-owned gas utilities file Form IG-1 with a copy of that utility's FERC Annual Report Form No. 2 or 2A as applicable.
- d. Regulated water utilities file Form WA-1.
- e. Cooperative electric utilities file Form EC-1.
- f. Municipally owned electric utilities file Form ME-1.
- g. Municipally owned gas utilities file Form MG-1.
- h. Providers of telecommunications service file Form TC-1.
- i. Competitive natural gas providers and aggregators file Form CNGP-1.
- j. Generation and transmission cooperatives file Form EC-1N.
- k. Storm water drainage and sanitary sewage utilities file Form SW-1.

23.2(2) Additional requirements for rate-regulated utilities. A rate-regulated utility is to include information concerning its Iowa operations in its report as requested on the forms and file as part of its annual report the following:

- a. A list (by title, author and date) of any financial, statistical, technical or operational reviews or reports that a company may prepare for distribution to stockholders, bondholders, utility organizations or associations or other interested parties.
- b. A list (by form number and title) of all financial, statistical, technical and operational review-related documents filed with an agency of the federal government.

These rules are intended to implement Iowa Code sections 476.2, 476.9, 476.10, 476.22, 476.31, and 546.7.

ARC 7580C**UTILITIES DIVISION[199]****Notice of Intended Action****Proposing rulemaking related to regulation of electric cooperatives and municipal electric utilities and providing an opportunity for public comment**

The Utilities Board hereby proposes to rescind Chapter 27, “Regulation of Electric Cooperatives and Municipal Electric Utilities Under Iowa Code Chapter 476,” Iowa Administrative Code, and to adopt a new chapter with the same title.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code chapter 476.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code section 476.2 and Executive Order 10.

Purpose and Summary

Proposed Chapter 27 contains the Board’s procedure for electric cooperatives and municipal electric utilities operating in Iowa.

The Board issued an order on July 27, 2023, commencing this rulemaking. The order is available on the Board’s electronic filing system, efs.iowa.gov, under Docket No. RMU-2023-0027.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

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

Waivers

No waiver provision is included in the proposed amendments because the Board has a general waiver provision in rule 199—1.3(17A,474,476) that provides procedures for requesting a waiver of the rules in Chapter 27.

Public Comment

Any interested person may submit written comments concerning this proposed rulemaking. Written comments in response to this rulemaking must be received by the Board no later than 4:30 p.m. on February 27, 2024. Comments should be directed to:

IT Support
Iowa Utilities Board
Phone: 515.725.7300
Email: ITSupport@iub.iowa.gov

Public Hearing

Public hearings at which persons may present their views orally or in writing will be held as follows:

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February 27, 2024
2 to 3 p.m.

Board Hearing Room
1375 East Court Avenue
Des Moines, Iowa

March 5, 2024
2 to 3 p.m.

Board Hearing Room
1375 East Court Avenue
Des Moines, Iowa

Persons who wish to make oral comments at a public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rulemaking.

Any persons who intend to attend a public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Board and advise of specific needs.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking 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 rulemaking action is proposed:

ITEM 1. Rescind 199—Chapter 27 and adopt the following **new** chapter in lieu thereof:

CHAPTER 27

REGULATION OF ELECTRIC COOPERATIVES AND MUNICIPAL ELECTRIC UTILITIES
UNDER IOWA CODE CHAPTER 476

199—27.1(476) General information. Iowa Code section 476.2(1) provides that the Iowa utilities board has authority to establish all needful, just and reasonable rules, not inconsistent with law, to govern the exercise of its powers and duties; the practice and procedure before it; and to the form, content and filing of reports, documents and other papers provided for in Iowa Code chapter 476 or in the board's rules.

27.1(1) Application of rules. The rules apply to electric cooperatives and municipal electric utilities operating within the state of Iowa subject to Iowa Code sections 476.1A and 476.1B, and to the construction, operation and maintenance of electric transmission lines to the extent provided in Iowa Code chapter 478, and supersede all tariffs on file with the board that are in conflict with these rules.

27.1(2) Regulation of electric cooperatives. Iowa Code section 476.1A provides that electric cooperatives are not subject to the regulation of the board, except for regulatory action pertaining to the following:

- a. Assessment of fees for the support of the board and the office of consumer advocate pursuant to Iowa Code section 476.10.
- b. Safety standards and engineering standards.
- c. Assigned service areas, as set forth in Iowa Code sections 476.22 through 476.25.
- d. Public utility railroad crossings, as set forth in Iowa Code section 476.27.
- e. Filing of alternative energy purchase program plans with the board, and offering such programs to customers, pursuant to Iowa Code section 476.47.
- f. Iowa Code sections 476.20(1) through 476.20(4), 476.21, 476.51, 476.56, 476.58, 476.62, and 476.66 and chapters 476A and 478, to the extent applicable.

27.1(3) Regulation of municipal electric utilities. Iowa Code section 476.1B provides that municipal electric utilities are not subject to regulation by the board under Iowa Code chapter 476, except for regulatory action pertaining to the following:

- a. Assessment of fees for the support of the board and the office of consumer advocate.
- b. Safety standards.
- c. Assigned areas of service as set forth in Iowa Code sections 476.22 through 476.26.

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- d. Public utility railroad crossings, as set forth in Iowa Code section 476.27.
- e. An electric power agency as defined in Iowa Code chapter 28F and section 390.9 that includes as a member a city- or municipality-owned utility that builds transmission facilities after July 1, 2001, is subject to applicable transmission reliability rules or standards adopted by the board for these facilities.
- f. Filing alternate energy purchase program plans with the board, and offering such programs to customers, pursuant to Iowa Code section 476.47.
- g. Iowa Code sections 476.20(1) through 476.20(4), 476.51, 476.56, 476.58, 476.62, and 476.66, as applicable.
- h. An electric utility subject to regulatory action pursuant to Iowa Code section 476.1A is subject to complaints and investigations as set forth in Iowa Code section 476.3, but only with regard to matters within the regulatory authority of the board as set forth in Iowa Code sections 476.3(1) and 476.3(2).

27.1(4) Definitions. The following words and terms, when used in these rules, have the meanings indicated below:

“*Capacity*” means the instantaneous rate at which energy can be delivered, received, or transferred, measured in kilowatts.

“*Complaint*” means a statement or question by any person, whether a utility customer or not, alleging a wrong, grievance, injury, dissatisfaction, illegal action or procedure, dangerous condition or action, or obligation of an electric cooperative or municipal electric utility.

“*Customer*” means any person, firm, association, or corporation; any agency of the federal, state or local government; or any legal entity responsible by law for payment for the electric service or heat from the electric cooperative or municipal electric utility.

“*Delinquent*” or “*delinquency*” means an account for which a service bill or service payment agreement bill has not been paid in full on or before the last day for timely payment.

“*Distribution line*” means any single or multiphase electric power line operating at nominal voltage in either of the following ranges: 2,000 to 26,000 volts between ungrounded conductors or 1,155 to 15,000 volts between grounded and ungrounded conductors, regardless of the functional service provided by the line.

“*Electric plant*” includes all real estate, fixtures, and property owned, controlled, operated, or managed in connection with or to facilitate production, generation, transmission, or distribution in providing electric service or heat by an electric utility.

“*Electric service*” means furnishing electricity to the public for compensation for use as heat, light, power, or energy.

“*Energy*” means electric energy measured in kilowatt hours.

“*Engineering standards*” means standards adopted by the American National Standards Institute (ANSI), or the Institute of Electrical and Electronics Engineers (IEEE) or Rural Utilities Service (RUS), or comparable engineering organization or engineering standards adopted by the board.

“*Major event*” means when an event results in extensive physical damage to transmission or distribution facilities within an electric cooperative or municipal electric utility’s operating area due to unusually severe and abnormal weather or event and:

1. Wind speed exceeds 90 mph for the affected area, or
2. One-half inch of ice is present and wind speed exceeds 40 mph for the affected area, or
3. 10 percent of the affected area total customer count is incurring a loss of service for a length of time to exceed five hours, or
4. 20,000 customers in a metropolitan area are incurring a loss of service for a length of time to exceed five hours, or
5. A regional transmission organization or independent system operator declares an energy emergency alert that the organization can no longer provide expected energy requirements or has lower than established reserves, implements procedures up to shedding load, declares a maximum generation warning, declares conservative operations, or calls a maximum generation alert event in compliance with North American Electric Reliability Corporation requirements.

“*Meter*” means, unless otherwise qualified, a device that measures and registers the integral of an electrical quantity with respect to time.

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“*Power*” means electric power measured in kilowatts.

“*Rates*” means the same as defined in Iowa Code section 384.80 and includes all charges or fees imposed or collected for the provision of or incidental to utility service.

“*Safety standard*” means applicable regulations promulgated by the United States Occupational Safety and Health Administration. Safety standards for electric utilities subject to Iowa Code section 476.1A also include outage notifications, safety standards contained in the National Electrical Safety Code, as published by the Institute of Electrical and Electronic Engineers, Inc., and electric safety standards approved by the American National Standards Institute.

“*Secondary line*” means any single or multiphase electric power line operating at nominal voltage less than either 2,000 volts between ungrounded conductors or 1,155 volts between grounded and ungrounded conductors, regardless of the functional service provided by the line.

“*Service limitation*” means the establishment of a limit on the amount of power that may be consumed by a residential customer through the installation of a service limiter device on the customer’s meter.

“*Tariff*” means the service classifications, rules, procedures, and policies filed with and approved by the board.

“*Timely payment*” means a payment on a customer’s account made on or before the date shown on a current bill for service, or on a form that records an agreement between the customer and a utility for a series of partial payments to settle a delinquent account, as the date which determines application of a late payment charge to the current bill or future collection efforts.

“*Transmission line*” means any single or multiphase electric power line operating at nominal voltages at or in excess of either 69,000 volts between ungrounded conductors or 40,000 volts between grounded and ungrounded conductors, regardless of the functional service provided by the line.

27.1(5) Abbreviations. The following abbreviations are used in this chapter where appropriate:

ANSI—American National Standards Institute, www.ansi.org.

IEEE—Institute of Electrical and Electronics Engineers, www.ieee.org.

NESC—National Electrical Safety Code.

NFPA—National Fire Protection Association, www.nfpa.org.

RUS—United States Department of Agriculture Rural Utilities Service, www.rd.usda.gov/about-rd/agencies/rural-utilities-service.

27.1(6) Electric cooperative service rules tariffs. Electric cooperatives subject to the board’s jurisdiction under Iowa Code section 476.1A shall maintain tariffs in the board’s electronic filing system that are consistent with the rules in this chapter and that are approved by the board.

a. Those portions of their tariff or tariff pages regarding matters over which the board has jurisdiction are to be filed with strikethroughs for the language deleted and underlining of the language that is added.

b. Portions of electric cooperative tariffs that are nonjurisdictional are to be identified in the tariff.

c. An electric cooperative association may file a model tariff for board approval that may be adopted by an electric cooperative with any revisions the electric cooperative proposes to the model tariff.

d. Any electric cooperative may concur with an approved model tariff on file with the board. For any electric cooperative that chooses to concur, the board shall acknowledge the electric cooperative’s tariff as being in compliance.

e. Tariffs approved by the board are to be made available to all customers.

27.1(7) Municipal electric utilities service rules. Municipal utilities service rules or other legally enforceable provisions are to be consistent with the provisions in this chapter and must be available to all customers.

199—27.2(476) Assigned area of service and maps.

27.2(1) Service areas. Service areas are defined by the boundaries on service area maps. Electronic maps are available for viewing during regular business hours at the board’s offices. Maps are also

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available for viewing on the board's website. These service area maps are the official electric service territory maps pursuant to Iowa Code section 476.24.

27.2(2) Modification of service area and answers.

a. An exclusive service area is subject to modification through a contested case proceeding, which may be commenced by filing a petition for modification of service area with the board. The board may commence a service area modification proceeding on its own motion. The board may grant a modification if the modification promotes the public interest. In determining whether the modification is in the public interest, the board will consider the factors described in Iowa Code section 476.25(1) and any other relevant factors.

b. Any electric cooperative or municipal electric utility may file a petition for modification of service area, which includes:

- (1) A legal description of the service area desired,
- (2) A designation of the utilities involved in each boundary section,
- (3) A justification for the proposed service area modification, including addressing the public interest,
- (4) A PDF (Portable Document Format) map, an electronic file of the proposed service area boundaries, in a format designated by the board, as described on the electronic filing system (EFS) homepage under EFS filing standards, and
- (5) A map showing the affected areas that complies with the map paragraph contained within this chapter are to be attached to the petition as an exhibit.

c. Electric cooperatives and municipal electric utilities may agree with other electric utilities to service territory modifications by contract pursuant to Iowa Code section 476.25(2). Contracts to be enforceable are to be approved by the board.

27.2(3) Certificate of authority. A request for a service territory modification filed by an electric cooperative or municipal electric utility pursuant to this rule that would result in service to a customer by a public utility other than the public utility currently serving the customer will need a certificate of authority under Iowa Code section 476.23. Unless voluntarily agreed otherwise, the party currently serving the customer is to be paid a reasonable price for the facilities serving the customer.

27.2(4) Maps.

a. Each electric cooperative and municipal electric utility is to maintain a current map or set of maps showing the physical location of electric lines, stations, and electric transmission facilities for its service areas. The maps are to include the exact location of the following:

- (1) Generating stations, with capacity designation.
- (2) Purchased power supply points, with maximum contracted capacity designation.
- (3) Purchased power metering points if located at other than power delivery points.
- (4) Transmission lines, with size and type of conductor designation and operating voltage designation.
- (5) Transmission-to-transmission voltage transformation substations, with transformer voltage and capacity designation.
- (6) Transmission-to-distribution voltage transformation substations, with transformer voltage and capacity designation.
- (7) Distribution lines, with size and type of conductor designation, phase designation and voltage designation.
- (8) All points at which transmission, distribution or secondary lines of the utility cross Iowa state boundaries.
- (9) All current information required in Iowa Code section 476.24(1).
- (10) All county boundaries and county names.
- (11) Natural and artificial lakes that cover more than 50 acres and all rivers.
- (12) Any additional information required by the board.

b. All maps, except those deemed confidential by the board, are to:

- (1) Be available for examination at the designated offices of the electric cooperative or municipal electric utility during regular office hours,

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- (2) Include maps drawn with clean, uniform lines to a scale of one inch per mile,
- (3) Include a large scale where it is necessary to clarify areas where there is a heavy concentration of facilities, and
- (4) Ensure that cartographic details are clean cut, and the background contains little or no coloration or shading.

199—27.3(476) Customer relations.

27.3(1) Notification to customers by bill insert at least annually. Each utility shall notify its customers, by bill insert or notice on the bill form, of the address and telephone number where a utility representative qualified to assist in resolving the complaint can be reached, and include the following statement: “If (utility name) does not resolve your complaint, you may request assistance from the Iowa Utilities Board by calling 515-725-7300 or toll-free 877-565-4450; by writing to 1375 E. Court Ave., Des Moines, IA 50319-0069; or by email to customer@iub.iowa.gov.” The utility may use different language with board approval. A utility that bills by postcard may place an advertisement in a local newspaper of general circulation or a customer newsletter instead of a mailing. The advertisement must be of a type size that is easily legible and conspicuous and must contain the information required in this subrule.

27.3(2) Payment agreements.

a. Availability of a first payment agreement. When a residential customer cannot pay in full a delinquent bill for utility service or has an outstanding debt to the electric cooperative or municipal electric utility for residential utility service and is not in default of a payment agreement with the electric cooperative or municipal electric utility, an electric cooperative or municipal electric utility shall offer the customer an opportunity to enter into a reasonable payment agreement. The offer of a payment agreement is to be made prior to disconnection. The electric cooperative or municipal electric utility is not required to offer a customer who has been disconnected from service a payment agreement consistent with these rules, unless the utility did not comply with these rules prior to disconnection.

b. Reasonableness. Whether a payment agreement is reasonable will be determined by considering the current household income, ability to pay, payment history including prior defaults on similar agreements, the size of the bill, the amount of time and the reasons why the bill has been outstanding, and any special circumstances creating extreme hardships within the household. The electric cooperative or municipal electric utility may require the person to confirm financial difficulty with an acknowledgment from the department of health and human services or another agency.

c. Terms of payment agreements.

(1) First payment agreement. The following conditions are to be offered to customers who have received a disconnection notice and are not in default of a payment agreement:

1. For customers who received a disconnection notice in conformance with these rules, an agreement with at least 12 even monthly payments is to be offered. A customer may pay off the delinquency early without incurring any prepayment penalties. A customer will not be charged interest, or a late payment charge, on a payment agreement where the customer is making payments consistent with the terms of the payment agreement, and the customer will not be required to pay a portion of the delinquent amount to enter into a payment agreement.

2. A provision for payment of the current amount owed by the customer is to be offered.

3. The electric cooperative or municipal electric utility may also require the customer to enter into a budget billing plan to pay the current bill.

4. When the customer makes the agreement in person, a signed copy of the agreement is to be provided to the customer.

5. The electric cooperative or municipal electric utility may offer the customer the option of making the agreement over the telephone or through electronic transmission.

6. When a payment agreement is made over the telephone or through electronic transmission, a written agreement is to be provided to the customer within three days of the date the oral or electronic agreement is entered into.

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7. The document will be considered provided to the customer when addressed to the customer's last-known address and deposited in the U.S. mail with postage paid. If delivery is by other than U.S. mail, the document will be considered provided to the customer when delivered to the last-known address of the person responsible for payment for the service.

8. The payment agreement is deemed accepted by the customer unless the customer notifies the utility otherwise within ten days from the date the document is provided. The address and toll-free telephone number where a qualified representative can be reached is to be included in the payment agreement.

9. Once the first payment required by the agreement is made by the customer or on behalf of the customer, the oral or electronic agreement is deemed accepted by the customer.

10. Each customer entering into a first payment agreement is allowed at least one late payment that is four days or less beyond the due date for payment, and the first payment agreement remains in effect.

11. The initial payment is due on the due date for the next regular bill.

(2) Second payment agreement. A second payment agreement is to be offered to a customer who is in default of a first payment agreement if the customer has made at least two consecutive full payments under the first payment agreement.

1. The second payment agreement will be for a term at least as long as the term of the first payment agreement.

2. The customer is to pay for current service in addition to the monthly payments.

3. The customer may be required to make the first payment up front as a condition of entering into the second payment agreement.

4. The electric cooperative or municipal electric utility may also require the customer to enter into a budget billing plan to pay the current bill.

(3) Additional payment agreements. The electric cooperative or municipal electric utility may offer additional payment agreements to the customer.

d. Refusal by electric cooperative or municipal electric utility. A customer may offer the electric cooperative or municipal electric utility a proposed payment agreement. If the electric cooperative or municipal electric utility and the customer do not reach an agreement, the electric cooperative or municipal electric utility may refuse the offer orally, but the electric cooperative or municipal electric utility will provide a written refusal to the customer, stating the reason for the refusal, within three days of the oral notification. The written refusal is considered provided to the customer when addressed to the customer's last-known address and deposited in the U.S. mail with postage prepaid. If delivery is by other than U.S. mail, the written refusal is considered provided to the customer when handed to the customer or when delivered to the last-known address of the person responsible for the payment for the service.

e. Customer request for assistance. A customer may ask the board for assistance in working out a reasonable payment agreement. The request for assistance is to be made to the board within ten days after the written refusal is provided and disconnection will not take place during the board's review.

27.3(3) Bill payment terms. The bill is to be considered provided to the customer when deposited in the U.S. mail with postage prepaid or sent by electronic mail to the customer, if agreed to by the customer. If delivery is by other than U.S. mail, the bill is to be considered provided when delivered to the last-known address of the party responsible for payment, or to the last-known email address of the customer. A bill becomes delinquent not less than 20 days from the date the bill is provided to the customer. For customers on more frequent billing intervals, bills may not be considered delinquent less than five days from the date the bill is provided, and a late payment charge may not be assessed if payment is received within 20 days of the date the bill is provided.

a. The date of delinquency for all residential customers or other customers whose consumption is less than 3,000 kWh per month is changeable for cause; such as, but not limited to, 15 days from the approximate date each month upon which income is received by the person responsible for payment. Thirty days beyond the date of delinquency is the maximum delay allowed.

b. In any case where net and gross amounts are billed to customers, the difference between net and gross is a late payment charge and is valid only when part of a delinquent bill payment. A utility's

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late payment charge is limited to 1.5 percent per month of the past due amount. No collection fee may be levied in addition to this late payment charge.

c. If the customer makes partial payment in a timely manner, and does not designate the service or product for which payment is made, the payment is to be credited pro rata between the bill for utility services and related taxes.

d. Each account is allowed not less than one complete forgiveness of a late payment charge each calendar year. The utility's rules are to include that on one monthly bill in each period of eligibility, the utility will accept the net amount of such bill as full payment for such month after expiration of the net payment period. The utility's rules are to state how the customer is notified that the eligibility has been used. Complete forgiveness has no effect upon the credit rating of the customer or collection of late payment charges.

27.3(4) Meter testing standards. Electric cooperatives and municipal electric utilities are to establish meter testing standards and procedures for customers who have complaints about the accuracy of the customer's meter. The meter testing standards are to be made available to a customer upon request.

199—27.4(476) Disconnection of service.

27.4(1) Disconnection procedures and notice. Electric cooperatives and municipal electric utilities may only disconnect service to customers in compliance with the following procedure and requirements:

a. Service may be disconnected without notice:

(1) In the event of a condition on the customer's premises determined by the utility to be hazardous.
(2) In the event of customer use of equipment in a manner that adversely affects the utility's equipment or the utility's service to others.

(3) In the event of tampering with the equipment furnished and owned by the utility. A broken or absent meter seal alone does not constitute tampering.

(4) In the event of unauthorized use.

b. The electric cooperative or municipal electric utility shall give written notice of pending disconnection, except as specified in paragraph 27.4(1) "a." The notice includes the reason for the notice and the final date by which the account is to be settled or specific action taken. The notice is to be addressed to the customer's last-known address and deposited in the U.S. mail with postage prepaid. If delivery is by other than U.S. mail, the notice is to be delivered to the last-known address of the person responsible for payment for the service. The date for disconnection of service is not to be less than 12 days after the notice is provided. The date for disconnection of service for customers on shorter billing intervals is not to be less than 24 hours after the notice is posted at the service premises.

c. Where more than one cause of disconnection exists, one written notice is to be given that includes all reasons for the notice. In determining the final date by which the account is to be settled or other specific action taken, the days of notice for the causes run concurrently.

d. Service may be disconnected after proper notice:

(1) For violation of or noncompliance with the utility's rules.

(2) For failure of the customer to furnish the service equipment, permits, certificates, or rights-of-way which are specified to be furnished, in the utility's rules filed with the board, as conditions of obtaining service, or for the withdrawal of that same equipment, or for the termination of those same permissions or rights, or for the failure of the customer to fulfill the contractual obligations imposed as conditions of obtaining service by any contract filed with and subject to the regulatory authority of the board.

(3) For failure of the customer to permit the utility reasonable access to the utility's equipment.

e. Service may be disconnected after proper notice for nonpayment of a bill or deposit, provided that the electric cooperative or municipal electric utility has complied with the following provisions:

(1) Given the customer a reasonable opportunity to dispute the reason for the disconnection or refusal.

(2) Given the customer, and any other person or agency designated by the customer, written notice that the customer has at least 12 days in which to make settlement of the account to avoid disconnection and a written summary of the rights and responsibilities set out in subrule 27.4(2). Customers billed more

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frequently than monthly are to be given posted written notice that they have 24 hours to make settlement of the account to avoid disconnection and a written summary of the rights and responsibilities. All written notices include a toll-free or collect telephone number where a utility representative qualified to provide additional information about the disconnection can be reached. Each electric cooperative or municipal electric utility representative provides the representative's name and has immediate access to current, detailed information concerning the customer's account and previous contacts with the utility.

(3) A service limitation policy shall include the following sentence: "Service limitation: We have adopted a limitation of service policy for customers who otherwise could be disconnected. Contact our business office for more information or to learn if you qualify."

(4) When disconnecting service to a residence, a diligent attempt is to be made to contact, by telephone or in person, the customer responsible for payment for service to the residence to inform the customer of the pending disconnection and the customer's rights and responsibilities. Between November 1 and April 1, if the attempt at customer contact fails, the premises are to be posted at least one day prior to disconnection with a notice informing the customer of the pending disconnection and a copy of the rights and responsibilities available to avoid disconnection.

1. If an attempt at personal or telephone contact of a customer occupying a rental unit has been unsuccessful, the electric cooperative or municipal electric utility is to make a diligent attempt to contact the landlord of the rental unit, if known, to determine if the customer is still in occupancy and, if so, the customer's present location. The landlord is to be informed of the date when service may be disconnected. The electric cooperative or municipal electric utility will make a diligent attempt to inform the landlord at least 48 hours prior to disconnection of service to a tenant.

2. If the disconnection will affect occupants of residential units leased from the customer, the premises of any building known by the electric cooperative or municipal electric utility to contain residential units affected by disconnection are to be posted at least two days prior to disconnection, with a notice informing any occupants of the date when service will be disconnected and the reasons for the disconnection.

3. If the customer has received notice of disconnection and has a dispute concerning a bill for electric service, the electric cooperative or municipal electric utility may require the customer to pay a sum of money equal to the amount of the undisputed portion of the bill pending settlement and thereby avoid disconnection of service. Disconnection for nonpayment of the disputed bill is delayed for up to 45 days after the providing of the bill if the customer pays the undisputed amount. The 45 days may be extended by up to 60 days if requested of the utility by the board in the event the customer files a written complaint with the board in compliance with 199—Chapter 6.

f. Disconnection of a residential customer may take place only between the hours of 6 a.m. and 2 p.m. on a weekday and not on weekends or holidays. If a disconnected customer makes payment or other arrangements during normal business hours, or by 7 p.m. for utilities permitting such payment or other arrangements after normal business hours, all reasonable efforts are to be made to reconnect the customer that day. If a disconnected customer makes payment or other arrangements after 7 p.m., all reasonable efforts are to be made to reconnect the customer not later than 11 a.m. the next day.

g. A disconnection is not to take place where electricity is used as the only source of space heating or to control or operate the only space heating equipment at a residence when the actual temperature or the 24-hour forecast of the National Weather Service for the residence's area is predicted to be 20 degrees Fahrenheit or colder. If the electric cooperative or municipal electric utility has properly posted a disconnect notice but is precluded from disconnecting service because of severe cold weather, the utility may immediately proceed with appropriate disconnection procedures, without further notice, when the temperature in the residence's area rises above 20 degrees Fahrenheit and is forecasted to remain above 20 degrees Fahrenheit for at least 24 hours, unless the customer has paid in full the past due amount or is otherwise entitled to postponement of disconnection.

h. Disconnection of a residential customer will be postponed if the disconnection of service would present an especial danger to the health of any permanent resident of the premises.

(1) An especial danger to health is indicated if a person appears to be seriously impaired and may, because of mental or physical problems, be unable to manage the person's own resources, to carry out

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activities of daily living or to be protected from neglect or hazardous situations without assistance from others. Indicators of an especial danger to health include but are not limited to age, infirmity, or mental incapacitation; serious illness; physical disability, including blindness and limited mobility; and any other factual circumstances that indicate a severe or hazardous health situation.

(2) The electric cooperative or municipal electric utility may require written verification of the especial danger to health by a physician or a public health official, including the name of the person endangered; a statement that the person is a resident of the premises in question; the name, business address, and telephone number of the certifying party; the nature of the health danger; and approximately how long the danger will continue. Initial verification by the verifying party may be by telephone if written verification is forwarded to the utility within five days.

(3) Verification will postpone disconnection for 30 days. In the event service is terminated within 14 days prior to verification of illness by or for a qualifying resident, service is to be restored to that residence if a proper verification is thereafter made in accordance with the foregoing provisions. If the customer does not enter into a reasonable payment agreement for the retirement of the unpaid balance of the account within the first 30 days and does not keep the current account paid during the period that the unpaid balance is to be retired, the customer is subject to disconnection.

i. Winter energy assistance (November 1 through April 1). If the electric cooperative or municipal electric utility is informed that the customer's household may qualify for winter energy assistance or weatherization funds, service is not to be disconnected for 30 days from the date the electric cooperative or municipal electric utility is notified to allow the customer time to obtain assistance. Disconnection of service is not allowed from November 1 through April 1 for a resident who is a head of household and who has been certified to the electric cooperative or municipal electric utility by the community action agency as eligible for either the low-income home energy assistance program or the weatherization assistance program.

j. Military service deployment. If the electric cooperative or municipal electric utility is informed that one of the heads of household as defined in Iowa Code section 476.20 is a service member deployed for military service, as defined in Iowa Code section 29A.90, disconnection cannot take place at the residence during the deployment or prior to 90 days after the end of the deployment.

k. Abnormal electric consumption. A customer who is subject to disconnection for nonpayment of bill, and who has electric consumption that appears to the customer to be abnormally high, may request the utility provide assistance in identifying the factors contributing to this usage pattern and to suggest remedial measures. Assistance will be provided by the electric cooperative or municipal electric utility by discussing patterns of electric usage that may be readily identifiable, suggesting that an energy audit be conducted, and identifying sources of energy conservation information and financial assistance available to the customer.

l. An electric cooperative or municipal electric utility may disconnect electric service after 24-hour notice (and without the written 12-day notice) for failure of the customer to comply with the terms of a payment agreement.

m. Prior to November 1, a notice describing the availability of winter energy assistance funds and the application process is to be mailed to customers. The notice is to be of a type size that is easily legible and conspicuous and contain the information set out by the state agency administering the assistance program. A utility serving fewer than 25,000 customers may publish the notice in a customer newsletter in lieu of mailing. An electric cooperative or municipal electric utility serving fewer than 6,000 customers may publish the notice in an advertisement in a local newspaper of general circulation or shopper's guide.

27.4(2) Notice of customer rights and responsibilities. The standard form of the summary of the rights and responsibilities to be provided to customers is set out below, and will be provided by an electric cooperative or municipal electric utility with all disconnection notices. A nonstandard rights and responsibilities notice may be used with board approval. The standard customer rights and responsibilities notice is as follows:

CUSTOMER RIGHTS AND RESPONSIBILITIES TO AVOID SHUTOFF OF ELECTRIC SERVICE FOR NONPAYMENT

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1. What can I do if I receive a notice from the utility that says my service will be shut off because I have a past due bill?

- a. Pay the bill in full;
- b. Enter into a reasonable payment plan with the utility (see #2 below);
- c. Apply for and become eligible for low-income energy assistance (see #3 below);
- d. Give the electric cooperative or municipal electric utility a written statement from a doctor or public health official stating that shutting off your electric service would pose an especial health danger for a person living at the residence (see #4 below); or
- e. Tell the utility if you think part of the amount shown on the bill is wrong. However, you must still pay the part of the bill you agree you owe the utility (see #5 below).

2. How do I go about making a reasonable payment plan? (Residential customers only)

- a. Contact the electric cooperative or municipal electric utility as soon as you know you cannot pay the amount you owe. If you cannot pay all the money you owe at one time, you are to be offered a payment plan that spreads payments evenly over at least 12 months. The plan may be longer depending on your financial situation.
- b. If you have not made the payments you promised in a previous payment plan with the utility and still owe money, you may qualify for a second payment agreement under certain conditions.
- c. If you do not make the payments you promise, the utility may shut off your electric service on one day's notice, unless all the money you owe the utility is paid or you enter into another payment agreement.

3. How do I apply for low-income energy assistance? (Residential customers only)

- a. Applications are taken at your local community action agency. If you are unsure where to apply, call 211 or 800-244-7431, or visit hhs.iowa.gov/programs/programs-and-services/liheap. To prevent disconnection, contact the utility prior to disconnection of your service.
- b. To avoid disconnection, apply for energy assistance or weatherization before your service is shut off. Notify your utility that you may be eligible and have applied for energy assistance. Once your service has been disconnected, it will not be reconnected based on approval for energy assistance.
- c. Being certified eligible for energy assistance will prevent your service from being disconnected from November 1 through April 1.

4. What if someone living at the residence has a serious health condition? (Residential customers only)

Contact the electric cooperative or municipal electric utility if you believe this is the case. Contact your doctor or a public health official and ask the doctor or health official to contact the utility and state that shutting off your electric service would pose an especial health danger for a person living at your residence. The doctor or public health official must provide a written statement to the electric cooperative's or municipal electric utility's office within five days of when your doctor or public health official notifies the utility of the health condition; otherwise, your electric service may be shut off. If the utility receives this written statement, your service will not be shut off for 30 days. This 30-day delay is to allow you time to arrange payment of your utility bill or find other living arrangements. After 30 days, your service may be shut off if payment arrangements have not been made.

5. What should I do if I believe my bill is not correct?

You may dispute your bill by telling the electric cooperative or municipal electric utility that you dispute the bill and paying the part of the bill you think is correct. If you do this, the utility will not shut off your service for 45 days from the date the bill was mailed while you and the electric cooperative or municipal electric utility work out the dispute over the part of the bill you think is incorrect. You may ask the Iowa Utilities Board for assistance in resolving the dispute (see #9 below).

6. When can the electric cooperative or municipal electric utility shut off my electric service because I have not paid my bill?

- a. Your electric cooperative or municipal electric utility can shut off service between the hours of 6 a.m. and 2 p.m. Monday through Friday.
- b. The electric cooperative or municipal electric utility will not shut off your service on nights, weekends, or holidays for nonpayment of a bill.

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c. The electric cooperative or municipal electric utility will not shut off your service if you enter into a reasonable payment plan to pay the overdue amount (see #2 above).

d. The electric cooperative or municipal electric utility will not shut off your service if the temperature is forecasted to be 20 degrees Fahrenheit or colder during the following 24-hour period, including the day your service is scheduled to be shut off.

e. If you have qualified for low-income energy assistance, the electric cooperative or municipal electric utility cannot shut off your service from November 1 through April 1. However, you will still owe the electric cooperative or municipal electric utility for the service used during this time.

f. The electric cooperative or municipal electric utility will not shut off your service if you have notified the electric cooperative or municipal electric utility that you dispute a portion of your bill and you pay the part of the bill that you agree is correct.

g. If one of the heads of household is a service member deployed for military service, electric service cannot be shut off during the deployment or within 90 days after the end of deployment. In order for this exception to disconnection to apply, the electric cooperative or municipal electric utility will need to be informed of the deployment prior to disconnection. However, you will still owe the electric cooperative or municipal electric utility for service used during this time.

7. How will I be told the electric cooperative or municipal electric utility is going to shut off my service?

a. You must be given a written notice at least 12 days before the electric service can be shut off for nonpayment. This notice will include the reason for shutting off your service.

b. If you have not made payments required by an agreed-upon payment plan, your service may be disconnected with only one day's notice.

c. The electric cooperative or municipal electric utility must try to reach you by telephone or in person before it shuts off your service. From November 1 through April 1, if the electric cooperative or municipal electric utility cannot reach you by telephone or in person, the electric cooperative or municipal electric utility will put a written notice on the door of or another conspicuous place at your residence to tell you that your electric service will be shut off.

8. If service is shut off, when will it be turned back on?

a. The electric cooperative or municipal electric utility will turn your service back on if you pay the whole amount you owe.

b. If you make your payment during regular business hours, or by 7 p.m. for electric cooperatives or municipal electric utilities permitting such payment or other arrangements after regular business hours, the electric cooperative or municipal electric utility must make a reasonable effort to turn your service back on that day. If service cannot reasonably be turned on that same day, the utility is to do it by 11 a.m. the next day.

c. The electric cooperative or municipal electric utility may charge you a fee to turn your service back on. That fee may be higher in the evening or on weekends, so you may ask that your service be turned on during normal utility business hours.

9. Is there any other help available besides my electric cooperative or municipal electric utility?

If the electric cooperative or municipal electric utility has not been able to help you with your problem, you may contact the Iowa Utilities Board toll-free at 877-565-4450. You may also write the Iowa Utilities Board at 1375 E. Court Ave., Des Moines, IA 50319-0069, or email customer@iub.iowa.gov. Low-income customers may also be eligible for free legal assistance from Iowa Legal Aid and may contact Iowa Legal Aid at 800-532-1275.

27.4(3) When disconnection is not allowed.

a. No disconnection may take place from November 1 through April 1 for a resident who has been certified to the public utility by the local community action agency as being eligible for either the low-income home energy assistance program or weatherization assistance program.

b. If the electric cooperative or municipal electric utility is informed that one of the heads of household as defined in Iowa Code section 476.20 is a service member deployed for military service,

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as defined in Iowa Code section 29A.90, disconnection cannot take place at the residence during the deployment or prior to 90 days after the end of the deployment.

27.4(4) *Servicing of utilization control equipment.* Each electric cooperative or municipal electric utility is to service and maintain any equipment it uses on a customer's premises and correctly set and keep in proper adjustment any utility-owned thermostats, clocks, relays, time switches or other devices that control the customer's service in accordance with the provisions in the utility's schedules.

27.4(5) *Customer complaints.* Complaints concerning the practices, facilities or service of the electric cooperative or municipal electric utility are to be investigated promptly and thoroughly. The electric cooperative or municipal electric utility is to keep such records of customer complaints as will enable it to review and analyze its procedures and actions.

a. Each electric cooperative and municipal electric utility are to develop a fully informative procedure for the resolution of customer complaints.

b. The utility is to take reasonable steps to ensure that customers unable to travel are not denied the right to be heard.

c. The final step in a complaint review procedure, if the utility and customer are not able to agree on a resolution of the complaint, is a filing for board resolution of the issues if the board determines it has jurisdiction.

27.4(6) *Limitation of service.* The electric cooperative or municipal electric utility may adopt a policy for service limitation at a customer's residence as a measure to be taken in lieu of disconnection of service to the customer. The service limiter policy is to contain the following:

a. No activation without the customer's agreement.

b. A requirement for default on all payment agreements.

c. Usage of a minimum of 3,600 watts. If the service limiter policy provides for different usage levels for different customers, specific nondiscriminatory criteria for determining the usage levels are set out. Electric-heating residential customers may have their service limited if otherwise eligible, but consumption limits are to be set at a level that allows customers to continue to heat their residences. For purposes of this rule, "electric heating" means heating by means of a fixed-installation electric appliance that serves as the primary source of heat and not, for example, one or more space heaters.

d. A provision that, if the minimum usage limit is exceeded such that the limiter function interrupts service, the service limiter function is to be capable of being reset manually by the customer, or the service limiter function will reset itself automatically within 15 minutes after the interruption. In addition, the service limiter function may also be capable of being reset remotely. If the option of resetting the meter remotely is available, the utility is to provide a 24-hour toll-free number for the customer to notify the electric cooperative or municipal electric utility that the limiter needs to be reset and the meter is to be reset immediately following notification by the customer. If the remote reset option is used, the meter is to be capable of being reset manually by the customer or the service limiter function will reset itself automatically within 15 minutes after the interruption.

e. There may be no disconnect, reconnect, or other charges associated with service limiter interruptions or restorations.

f. A provision that, upon installation of a service limiter or activation of a service limiter function on the meter, the electric cooperative or municipal electric utility is to provide the customer with information on the operation of the limiter, including how it can be reset, and information on what appliances or combination of appliances can generally be operated to stay within the limits imposed by the limiter.

g. A provision that the service limiter function of the meter is to be disabled no later than the next working day after the residential customer has paid the delinquent balance in full.

h. A service limiter customer that defaults on the payment agreement is subject to disconnection after a 24-hour notice.

199—27.5(476) Engineering practice.

27.5(1) *Requirement for good engineering practice.* The electric plant of the electric cooperative or municipal electric utility shall be constructed, installed, maintained, and operated in accordance with

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accepted good engineering practice in the electric industry to ensure, as far as reasonably possible, continuity of service, uniformity in the quality of service furnished, and the safety of persons and property.

27.5(2) Standards incorporated by reference. Applicable provisions in the publications listed below as standards of accepted good practice unless otherwise ordered by the board. The standards listed below are recommended for use by municipal electric utilities.

- a. Iowa Electrical Safety Code, as defined in 199—Chapter 25.
- b. National Electrical Code, ANSI/NFPA 70-2023.
- c. American National Standard Requirements for Instrument Transformers, ANSI/IEEE C57.13.1-2016; and C57.13.3-2016.
- d. American National Standard for Electric Power Systems and Equipment Voltage Ratings (60 Hertz), ANSI C84.1-2020.
- e. Grounding of Industrial and Commercial Power Systems, IEEE 142-2007.
- f. IEEE Standard 1159-2019, IEEE Recommended Practice for Monitoring Electric Power Quality, or any successor standard.
- g. IEEE Standard 519-2022, IEEE Recommended Practices and Requirements for Harmonic Control in Electrical Power Systems, or its successor standard.
- h. At railroad crossings, 199—Chapter 42, “Engineering Standards for Electric and Communications Lines.”
- i. Iowa Stray Voltage Guide, located at www.iowastrayvoltageguide.com, published July 2014.

199—27.6(476) Safety.

27.6(1) Interconnection compliance. Each electric cooperative and municipal electric utility shall comply with board rules for standards for interconnection, safety, and operating reliability under this subrule.

27.6(2) Protective measures. Each electric cooperative and municipal electric utility shall exercise reasonable care to reduce those hazards inherent in connection with its electric service and to which its employees, its customers, and the general public may be subjected and shall adopt and execute a safety program designed to protect the public and fitted to the size and type of its operations.

27.6(3) Accident investigation and prevention. Electric cooperatives and municipal electric utilities are to give reasonable assistance to the board in the investigation of the cause of accidents and in the determination of suitable means of preventing accidents.

27.6(4) Reportable accidents. Electric cooperatives and municipal electric utilities are to maintain a summary of all reportable accidents, as defined in board rules in 199—Chapter 25, arising from operations.

27.6(5) Grounding of secondary distribution system. Unless otherwise specified by the board, each electric cooperative and municipal electric utility is to comply with, and encourage customers to comply with, the applicable provisions of the acceptable standards for the grounding of secondary circuits and equipment.

a. Ground connections should be tested for resistance at the time of installation. Each electric cooperative and municipal electric utility are to keep a record of all ground resistance measurements.

b. Each electric cooperative and municipal electric utility is to establish a program of inspection so that all artificial grounds installed are inspected within reasonable periods of time.

199—27.7(476) Customer contribution fund.

27.7(1) Applicability and purpose. This rule applies to each electric cooperative and municipal electric utility, as defined in Iowa Code sections 476.1A and 476.1B. Pursuant to Iowa Code section 476.66, each electric cooperative or municipal electric utility is to maintain a program plan to assist the electric cooperative’s or municipal electric utility’s low-income customers with weatherization and to supplement assistance received under the federal low-income home energy assistance program for the payment of winter heating bills.

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27.7(2) Notification. Notice of the customer contribution fund is to be given to all customers at least twice a year. Upon commencement of service and at least once a year, the notice is to be mailed or personally delivered to all customers, or provided by electronic means to those customers who have consented to receiving electronic notices. The other notice may be published in a local newspaper(s) of general circulation within the service territory of the electric cooperative or municipal electric utility. A utility serving fewer than 6,000 customers may publish its semiannual notices locally in a free newspaper, utility newsletter or shopper's guide instead of a newspaper. At a minimum, the notice is to include:

- a. A description of the availability and the purpose of the fund.
- b. A customer authorization form that includes methods of contribution.

27.7(3) Methods of contribution. Contribution methods may include monthly pledges, as well as one-time or periodic contributions. A pledge by a customer or other party is not a binding contract between the electric cooperative or municipal electric utility and the pledger. Delayed contributions are not subject to late payment charges. Each electric cooperative or municipal electric utility may allow persons or organizations to contribute matching funds.

27.7(4) Annual report. On or before September 30 of each year, each electric cooperative or municipal electric utility is to file with the board a report of all the customer contribution fund activity for the previous fiscal year from July 1 through June 30, on a form provided by the board that contains an accounting of the total revenues collected and all distributions of the fund.

199—27.8(476,478) Service reliability requirements for electric utilities.

27.8(1) Reliability plan. Each electric cooperative and municipal electric utility is to adopt and have approved by its board of directors or governing authority a reliability plan. The reliability plan is to be updated not less than annually. A copy of the annual report is to be filed with the board for informational purposes.

27.8(2) Engineering reliability standards. Electric cooperatives need to have reliability standards that comply with the engineering practice standards in board rules within this chapter.

199—27.9(476,478) Notification of outages.

27.9(1) Notification. The notification requirements in this rule are for the timely collection of electric outage information that may be useful to emergency management agencies in providing for the safety and welfare of individual Iowa citizens. Each electric cooperative and municipal electric utility shall notify the board when it is projected that an outage may result in a loss of service for more than six hours and the outage meets one of the following criteria:

- a. Loss of service for more than six hours to substantially all of a municipality, including the surrounding area served by the same electric cooperative or municipal electric utility. An electric cooperative or municipal electric utility may use loss of service within the utility's service territory to 75 percent or more of customers within a municipality, including the surrounding area served by the utility, to meet this criterion;
- b. A major event as defined in this chapter, except for notifications of emergency alerts from regional transmission organizations or independent system operators; or
- c. Any other outage considered significant by the electric cooperative or municipal electric utility. This includes loss of service for more than six hours to significant public health and safety facilities known to the electric cooperative or municipal electric utility at the time of the notification.

27.9(2) Information about outages.

a. Notification shall be provided regarding outages that meet the requirements of subrule 27.9(1) by notifying the board duty officer by email at dutyofficer@iub.iowa.gov or, in appropriate circumstances, by telephone at 515.745.2332. Notification shall be made at the earliest possible time after it is determined the event may be reportable and should include the following information, as available:

- (1) The general nature or cause of the outage;
- (2) The area affected;

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(3) The approximate number of customers that have experienced a loss of electric service as a result of the outage;

(4) The time when service is estimated to be restored; and

(5) The name of the electric cooperative or municipal electric utility, the name and telephone number of the person making the report, and the name and telephone number of a contact person knowledgeable about the outage. The notice should be supplemented as more complete or accurate information is available.

b. The electric cooperative or municipal electric utility is to provide to the board updates of the estimated time when service will be restored to all customers able to receive service or of significantly changed circumstances, unless service is restored within one hour of the time initially estimated.

c. The electric cooperative or municipal electric utility is to notify the board once service is fully restored to all customers after an outage meeting the requirements of subrule 27.9(1).

199—27.10(476) Electric vehicle charging service. The requirements in 199—Chapter 20 regarding electric vehicle charging stations apply to electric cooperatives and municipal electric utilities.

199—27.11(476) Exterior flood lighting.

27.11(1) *Newly installed lighting.* All newly installed exterior flood lighting owned by an electric cooperative or municipal electric utility are to be solid-state lighting or lighting with equivalent or better energy efficiency.

27.11(2) *In-service lighting replacement schedule.* In-service lighting is to be replaced with solid-state lighting or lighting with equivalent or better energy efficiency when worn out due to ballast, lamp, or fixture failure or for any other reason, such as vandalism or storm damage. Electric cooperatives and municipal electric utilities are to include in their annual report to be filed pursuant to 199—Chapter 23, as part of the IUB 24/7 filing requirements, a report stating the progress in converting to higher pressure sodium lighting or lighting with equivalent or higher energy efficiency.

27.11(3) *Efficacy standards.* Lighting other than solid-state has equivalent or better efficacy if one or more of the following can be established:

a. For fixtures, the mean lumens-per-watt lamp rating is greater than 100;

b. The new lighting uses no more energy per installation than comparable, suitably sized solid-state; or

c. The new lighting luminaires have a mean efficacy rating equal to or greater than 100 lumens per watt according to a Department of Energy (DOE) Lighting Facts label, testing under the DOE Commercially Available LED Product Evaluation and Reporting Program (CALiPER), Design Lights Consortium (DLC) or any other testing agency that follows Illuminating Engineering Society of North America LM-79-08 test procedures.

These rules are intended to implement Iowa Code sections 476.1A, 476.1B, 476.2, and 476.20.

ARC 7581C

UTILITIES DIVISION[199]

Notice of Intended Action

Proposing rulemaking related to access to affiliate records, requirements for annual filings, and service and asset transfer costing standards and providing an opportunity for public comment

The Utilities Board hereby proposes to rescind Chapter 31, “Access to Affiliate Records, Requirements for Annual Filings, and Asset and Service Transfers,” and to adopt a new Chapter 31, “Access to Affiliate Records, Requirements for Annual Filings, and Service and Asset Transfer Costing Standards,” Iowa Administrative Code.

UTILITIES DIVISION[199](cont'd)

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code chapter 476.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code sections 476.73 and 476.74.

Purpose and Summary

Chapter 31 is intended to identify the records and filings that need to be filed with the Board when a rate-regulated utility has affiliates. These filings allow interested persons to verify whether a rate-regulated utility is charging and paying reasonable prices when compared to affiliate and nonaffiliate companies.

The Board issued an order on January 17, 2024, commencing this rulemaking. The order is available on the Board's electronic filing system, efs.iowa.gov, under Docket No. RMU-2023-0031.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

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

Waivers

No waiver provision is included in the proposed amendments because the Board has a general waiver provision in rule 199—1.3(17A,474,476) that provides procedures for requesting a waiver of the rules in Chapter 31.

Public Comment

Any interested person may submit written comments concerning this proposed rulemaking. Written comments in response to this rulemaking must be received by the Board no later than 4:30 p.m. on February 27, 2024. Comments should be directed to:

IT Support
Iowa Utilities Board
Phone: 515.725.7300
Email: ITSupport@iub.iowa.gov

Public Hearing

Public hearings at which persons may present their views orally or in writing will be held as follows:

February 27, 2024
1 to 2 p.m.

Board Hearing Room
1375 East Court Avenue
Des Moines, Iowa

March 5, 2024
1 to 2 p.m.

Board Hearing Room
1375 East Court Avenue
Des Moines, Iowa

Persons who wish to make oral comments at a public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rulemaking.

Any persons who intend to attend a public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Board and advise of specific needs.

Review by Administrative Rules Review Committee

UTILITIES DIVISION[199](cont'd)

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking 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 rulemaking action is proposed:

ITEM 1. Rescind 199—Chapter 31 and adopt the following **new** chapter in lieu thereof:

CHAPTER 31

ACCESS TO AFFILIATE RECORDS, REQUIREMENTS FOR ANNUAL FILINGS,
AND SERVICE AND ASSET TRANSFER COSTING STANDARDS

199—31.1(476) Applicability and definition of terms. This chapter applies to all rate-regulated gas, electric, water, sanitary sewage, or storm water drainage service public utilities. All terms used in this chapter are defined in Iowa Code section 476.72 unless further defined in this chapter.

“Fully distributed cost” is a costing approach that fully allocates all current and embedded costs to determine the revenue contribution of regulated and nonregulated affiliate operations.

“Net book value” means the original purchase price minus depreciation.

199—31.2(476) Availability of records.

31.2(1) Separate records. All affiliates of a public utility shall maintain records that are separate from the records of the public utility.

31.2(2) Records to be maintained. The records maintained by each affiliate and made available for inspection through the public utility include, but are not limited to, ledgers; balance sheets; income statements, both consolidated and consolidating; documents depicting accounts payable and vouchers; purchase orders; time sheets; journal entries; source and supporting documents for all transactions; supporting documents and models for all forecasts of affiliates used by the public utility; all contracts, including summaries of unwritten contracts or agreements; a description of methods used to allocate revenues, expenses, and investments among affiliates or jurisdictions, including supporting detail; and copies of all filings required by other state and federal agencies.

31.2(3) Method of inspection. The records of each affiliate are to be made available to the board. Upon receipt of a formal request in writing from the board for information, the public utility shall produce the requested information within seven days. Upon a showing of good cause, the board may approve additional time for response.

199—31.3(476) Annual filing.

31.3(1) On or before June 30 of each year, all public utilities shall file with the board the following information:

a. An executive summary of each contract, arrangement, or other similar transaction between the public utility and an affiliate. The executive summary includes the start and end date of the contract, the providing affiliate, the receiving affiliate, the total estimated dollar value, the dollar amount reported for the calendar year, and a description of the service or goods covered.

b. Verified copies of contracts, arrangements, or other similar transactions between the public utility and an affiliate are to be provided to the board upon request. This includes all contracts, arrangements, or other similar transactions as required by Iowa Code sections 476.74(1) through 476.74(4).

31.3(2) Contracts, arrangements, or other similar transactions with an affiliate where the consideration is not in excess of \$250,000 or 5 percent of the capital equity of the utility, whichever is smaller, are exempt from this filing requirement. In lieu of the filing requirement, the public utility shall file on or before June 30 of each year a report of the total amount of each contract, arrangement,

UTILITIES DIVISION[199](cont'd)

or other similar transactions with affiliates qualifying under this exemption. Each affiliate is to be identified separately.

31.3(3) After an initial filing under this rule, only new contracts, arrangements, or other similar transactions and modifications or amendments to existing contracts, arrangements, or other similar transactions need to be reported on an annual basis. If there have been no new contracts, arrangements, or other similar transactions, the public utility may file a statement to that effect.

31.3(4) If a new affiliate is created, if an existing affiliate is dissolved or merged, if a contractual arrangement or other similar transactional relationship between the public utility and an affiliate is created, or if a contractual arrangement or other similar transactional relationship is terminated between the public utility and an affiliate, the public utility shall notify the board in writing within 60 days of the date of the event. This subrule does not apply if a proposal for reorganization pursuant to 199—Chapter 32 is to be filed with the board or the affiliate does not conduct business with the public utility.

199—31.4(476) Verified copies. For purposes of this chapter, a copy is verified if it is accompanied by an affidavit signed by a corporate officer with personal knowledge of the veracity of the copy. Only one affidavit signed by a corporate officer with personal knowledge of the veracity of the copy needs to be included in an individual filing in order to verify all contracts, arrangements, or other similar transactions included in the filing.

199—31.5(476) Comparable information. For the purpose of satisfying the filing requirements of this chapter, the public utility may request approval to file alternative but comparable information that the public utility files with other state or federal regulatory agencies. If the proposal is approved by the board, the public utility may file the information as a partial substitute for, or in lieu of, the information stipulated in rule 199—31.3(476) and the board may provide that the public utility continue to file the approved alternative information in future filings. The public utility is to file the same information, whether it is the alternative information filed with other agencies or the information stipulated in rule 199—31.3(476), for at least five consecutive years. Proposals to file alternative information may be filed by the public utility on or before December 1 of the year preceding the year for which approval is sought.

199—31.6(476) Standards for costing services between regulated operations and nonregulated affiliates.

31.6(1) *Nonregulated affiliate provides service to a regulated affiliate.* The service shall be priced to the regulated affiliate's operations at the price charged to nonaffiliates. If no such price is available, the service may be priced at the lower of fully distributed cost, the lowest price actually charged to other affiliates, or a market price of comparable services. If a market price of comparable services is not reasonably determinable, the service may be priced at the lower of fully distributed cost or the lowest price actually charged to other affiliates. Under no circumstances is the service to be priced to a regulated affiliate's operations at a higher cost than what the regulated affiliate actually paid the unregulated affiliate for the service.

31.6(2) *Service provided by the utility to a nonregulated affiliate.* Utility service shall be provided at the tariffed price. If it is not a tariffed service, the service is to be recorded at fully distributed cost.

199—31.7(476) Standards for costing asset transfers between regulated operations and nonregulated affiliates valued at less than \$2 million.

31.7(1) *Asset of a nonregulated affiliate transferred to a regulated affiliate.* The asset transfer is to be recorded at the lesser of net book value, the price actually charged to affiliates or nonaffiliates, or the market price of comparable assets. Under no circumstances is the asset to be recorded at a cost higher than what the regulated affiliate actually paid for the asset.

UTILITIES DIVISION[199](cont'd)

31.7(2) *Asset of a regulated affiliate transferred to a nonregulated affiliate.* The asset transfer to the nonregulated affiliate is to be recorded at the greater of net book value, a price actually charged to other affiliates or nonaffiliates, or the market price of comparable assets.

These rules are intended to implement Iowa Code sections 476.73 and 476.74.

ARC 7574C

WORKFORCE DEVELOPMENT BOARD AND WORKFORCE DEVELOPMENT CENTER ADMINISTRATION DIVISION[877]

Notice of Intended Action

Proposing rulemaking related to adult education and literacy programs and providing an opportunity for public comment

The Workforce Development Board and Workforce Development Center Administration Division hereby proposes to rescind Chapter 32, “Adult Education and Literacy Programs,” Iowa Administrative Code, and to adopt a new chapter with the same title.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code chapter 17A and section 84A.19.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code chapter 17A and section 84A.19.

Purpose and Summary

As part of the Workforce Development Department’s review of rules under Executive Order 10 (January 10, 2023), the Department identified several instances where the current chapter text duplicates statutory language and uses restrictive terms. Such text has been removed from the proposed chapter.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any.

Public Comment

Any interested person may submit written or oral comments concerning this proposed rulemaking. Written or oral comments in response to this rulemaking must be received by the Department no later than 4:30 p.m. on February 27, 2024. Comments should be directed to:

WORKFORCE DEVELOPMENT BOARD AND WORKFORCE DEVELOPMENT CENTER
ADMINISTRATION DIVISION[877](cont'd)

Brooke Axiotis
Iowa Workforce Development
1000 East Grand Avenue
Des Moines, Iowa 50319
Phone: 515.802.9425
Email: brooke.axiotis@iwd.iowa.gov

Public Hearing

Public hearings at which persons may present their views orally or in writing will be held as follows:

February 27, 2024 9 to 10 a.m.	Capitol View Room 1000 East Grand Avenue Des Moines, Iowa
February 27, 2024 1 p.m.	Capitol View Room 1000 East Grand Avenue Des Moines, Iowa

Persons who wish to make oral comments at a public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rulemaking.

Any persons who intend to attend a hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department and advise of specific needs by calling 515.414.6800 or via email at april.stotz@iowa.gov at least 48 hours prior to the hearing date.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking 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 rulemaking action is proposed:

ITEM 1. Rescind 877—Chapter 32 and adopt the following **new** chapter in lieu thereof:

CHAPTER 32
ADULT EDUCATION AND LITERACY PROGRAMS

877—32.1(84A) Definitions.

“*Act*” means the Adult Education and Family Literacy Act, 29 U.S.C. Sections 3101 et seq.

“*Adult education and literacy program*” means the same as “adult education and literacy programs” defined in Iowa Code section 84A.19, as well as other activities specified in the Act.

“*Career pathways*” means the same as defined in 29 U.S.C. Section 3102, subsection 7, with the exception of item (F).

“*Coordinator*” means the person(s) responsible for making decisions for the adult education and literacy program at the local level.

“*Department*” means the Iowa department of workforce development.

“*English as a second language*” means a structured language acquisition program designed to teach English to students whose native language is other than English.

“*Intake*” means admittance and enrollment in an adult education and literacy program operated by an eligible provider.

“*Professional staff*” means all staff that are engaged in providing services, including instruction and data entry, for individuals who are eligible for adult education and literacy programs.

WORKFORCE DEVELOPMENT BOARD AND WORKFORCE DEVELOPMENT CENTER
ADMINISTRATION DIVISION[877](cont'd)

“*State assessment policy*” means a federally approved policy that stipulates the use of a standardized assessment, scoring and reporting protocols, certification requirements for test administrators, and the protocol for tracking test and attendance data.

“*State plan*” means the compliance document that outlines Iowa’s workforce development system four-year strategy for providing workforce services, including adult education and literacy, to Iowans and employers. State planning shall be developed in accordance with applicable federal legislation.

“*Volunteer staff*” means all non-paid persons who perform services, including individualized instruction and data entry, for individuals who are eligible for adult education and literacy programs.

877—32.2(84A) Program administration. The department is designated as the agency for administration of state and federally funded adult basic education programs and for supervision of the administration of adult basic education programs. The department is responsible for the allocation and distribution of state and federal funds awarded to eligible providers for adult basic education programs through a grant application in accordance with this chapter and with the state plan.

32.2(1) Eligible providers. Eligible providers are eligible entities as defined by the Adult Education and Family Literacy Act, 20 U.S.C. Ch. 73, and subsequent federal workforce training and adult education legislation, and approved by the department.

32.2(2) Program components.

a. The eligible provider will maintain the ability to provide the following adult education and literacy services as deemed appropriate by the community or needs of the students:

- (1) Adult basic education;
- (2) Programs for adults who are English learners;
- (3) Adult secondary education, including programs leading to the achievement of a high school equivalency certificate or high school diploma;
- (4) Instructional services provided by qualified instructors as defined in subrule 32.6(1) to improve student proficiencies necessary to function effectively in adult life, including accessing further education, employment-related training, or employment;

(5) Assessment and guidance services adhering to the state’s assessment policy; and

(6) Programs and services stipulated by current and subsequent federal and state adult education legislation.

b. Providers effectively use technology, services, and delivery systems, including distance education, in a manner sufficient to increase the amount and quality of student learning and performance.

c. Providers ensure a student acquires the skills needed to transition to and complete postsecondary education and training programs and obtain and advance in employment leading to economic self-sufficiency.

32.2(3) Local planning.

a. Adult education and literacy programs are to collaborate and enter into agreements with multiple partners in the community for the purpose of establishing a local plan. Such plans are to expand the services available to adult learners, align with the strategies and goals established by the state plan, and prevent duplication of services.

b. An adult education and literacy program’s agreement will not be formalized until the local plan is approved by the department. A plan will be approved if the plan complies with the standards and criteria outlined in this chapter, federal adult education and family literacy legislation, and the strategies and goals of the state plan as defined in the local plan application.

c. Local plans may be approved by the state for single or multiple years.

32.2(4) Federal funding. Federal funds received by an adult education and literacy program are not to be expended for any purpose other than authorized activities pursuant to the Act.

32.2(5) State funding. Moneys received from state funding sources for adult education and literacy programs are to be used in the manner described in this subrule. All funds are to be used to expand services and improve the quality of adult education and literacy programs.

a. Use of funds. State funding may only be expended on:

- (1) Allowable uses pursuant to the Act.

WORKFORCE DEVELOPMENT BOARD AND WORKFORCE DEVELOPMENT CENTER
ADMINISTRATION DIVISION[877](cont'd)

(2) High school equivalency testing and associated costs.

b. Restrictions. In expending state funding, adult education and literacy programs shall adhere to the allowable use provisions of the Act, except for administrative cost provisions.

c. Reporting. All reporting for state funding will adhere to a summary of financial transactions related to the adult education and literacy program's resources and expenses in a format prescribed by the department. Adult education and literacy programs will submit quarterly reports to the department on dates to be set by the department. A year-end report will be submitted to the department no later than October 1.

32.2(6) *English as a second language.* In addition to meeting subrules 32.2(1) through 32.2(5), English as a second language programs are to adhere to the following provisions.

a. Distribution and allocation. The department will prescribe the distribution and allocation of funding, based on need for instruction in English as a second language in the region served by each community college, as measured by census data, survey data, and local outreach efforts and results.

b. Midyear reporting. English as a second language programs will include a narrative describing the progress and attainment of benchmarks established by the department. The report is to be provided to the department midway through the academic year.

32.2(7) *Funding allocation.* The department will be responsible for the allocation and distribution of state and federal funds for adult basic education programs in accordance with these rules and with the state plan. The state has the right under federal legislation to establish the funding formula and to issue a competitive bidding process.

877—32.3(84A) References. All references to the United States Code (U.S.C.) and Iowa Adult Education Professional Development Standards in this chapter are as amended to November 1, 2023.

877—32.4(84A) Career pathways. Adult education and literacy programs may use state adult education and literacy education funding for activities related to the development and implementation of the basic skills component of a career pathways system.

32.4(1) *Collaboration.* Adult education and literacy programs are to coordinate with other available education, training, and social service resources in the community for the development of career pathways, such as by establishing strong links with elementary schools and secondary schools, postsecondary educational institutions, institutions of higher education, local workforce boards, one-stop centers, job training programs, social service agencies, business and industry, labor organizations, community-based organizations, nonprofit organizations, and intermediaries.

32.4(2) *Use of state funds.* Only activities directly linked to adult education and literacy programs and instruction shall be funded with moneys received from state adult education and literacy funds. Consideration will be given to entities providing adult education and literacy activities concurrently with workforce preparation activities and workforce training for the purpose of educational and career advancement.

877—32.5(84A) Student eligibility. A person seeking to enroll in an adult education and literacy program is eligible if the person meets the criteria in 29 U.S.C. Section 3272(4).

877—32.6(84A) Qualification of staff. This rule applies to all staff hired after July 1, 2015. All staff hired prior to July 1, 2015, are exempt from this rule.

32.6(1) *Professional staff.* Professional staff providing instruction in an adult education and literacy program to students possess at minimum a bachelor's degree.

32.6(2) *Volunteer staff.* Volunteer staff possess at minimum a high school diploma or high school equivalency diploma.

877—32.7(84A) High-quality professional development.

32.7(1) *Responsibility of program.* Adult education and literacy programs are responsible for providing professional development opportunities for professional and volunteer staff pursuant to this rule, including:

WORKFORCE DEVELOPMENT BOARD AND WORKFORCE DEVELOPMENT CENTER
ADMINISTRATION DIVISION[877](cont'd)

- a. Proper procedures for the administration and reporting of data;
- b. The development and dissemination of instructional and programmatic practices based on the most rigorous and scientifically valid research available; and
- c. Appropriate reading, writing, speaking, mathematics, English language acquisition, distance education, and staff training practices aligned with content standards for adult education.

32.7(2) Professional development. Professional development is to include formal and informal means of assisting professional and volunteer staff to:

- a. Acquire knowledge, skills, approaches, and dispositions;
- b. Explore new or advanced understandings of content, theory, and resources; and
- c. Develop new insights into theory and its application to improve the effectiveness of current practice and lead to professional growth.

32.7(3) Professional development standards. The department and entities providing adult education and literacy programs are to promote effective professional development and foster continuous instructional improvement. Professional development is to incorporate the following standards:

- a. Strengthens professional and volunteer staff knowledge and application of content areas, instructional strategies, and assessment strategies based on research;
- b. Prepares and supports professional and volunteer staff in creating supportive environments that help adult learners reach realistic goals;
- c. Uses data to drive professional development priorities, analyze effectiveness, and help sustain continuous improvement for adult education and literacy programs and learners;
- d. Uses a variety of strategies to guide adult education and literacy program improvement and initiatives;
- e. Enhances abilities of professional and volunteer staff to evaluate and apply current research, theory, evidence-based practices, and professional wisdom;
- f. Models or incorporates theories of adult learning and development; and
- g. Fosters adult education and literacy program, community, and state-level collaboration.

32.7(4) Provision of professional development. Adult education and literacy program staff are to participate in professional development activities that are related to their job duties and improve the quality of the adult education and literacy program with which the staff is associated. All professional development activities will be in accordance with the published Iowa Adult Education Professional Development Standards.

a. All professional staff are to receive at least 12 clock hours of professional development annually. Professional staff who possess a valid Iowa teacher certificate are exempt from this paragraph.

b. All professional staff new to adult education are to receive six clock hours of preservice professional development prior to, but no later than, one month after starting employment with an adult education program. Preservice professional development may apply toward the professional development described in paragraph 32.7(4) "a."

c. Volunteer staff are to receive 50 percent of the professional development in paragraphs 32.7(4) "a" and "b."

32.7(5) Individual professional development plan. Adult education and literacy programs are to develop and maintain a plan for hiring and developing quality professional staff that includes all of the following:

- a. An implementation schedule for the plan.
- b. Orientation for new professional staff.
- c. Continuing professional development for professional staff.
- d. Procedures for accurate record keeping and documentation for plan monitoring.
- e. Specific activities to ensure that professional staff attain and demonstrate instructional competencies and knowledge in related adult education and literacy fields.
- f. Procedures for collection and maintenance of records demonstrating that each staff member has attained or documented progress toward attaining minimal competencies.
- g. Provision that all professional staff will be included in the plan. The plan may be differentiated for each type of employee.

WORKFORCE DEVELOPMENT BOARD AND WORKFORCE DEVELOPMENT CENTER
ADMINISTRATION DIVISION[877](cont'd)

32.7(6) Waiver. The time for professional development may be reduced by local adult education and literacy programs in individual cases where exceptional circumstances prevent staff from completing the specified hours of professional development. Documentation is to be kept that justifies the granting of a waiver. Requests for exemption from staff qualification requirements in individual cases will be kept on record and available to the department for review upon request.

32.7(7) Monitoring. Each program will maintain records of staff qualifications and professional development for five years, which will be available to department staff for monitoring upon request.

877—32.8(84A) Performance and accountability.

32.8(1) Accountability system. Adult education and literacy programs shall adhere to the standards established by the Act in the use and administration of the accountability system, as well as this rule. The accountability system will be a statewide system to include enrollment reports, progress indicators and core measures.

32.8(2) Performance indicators.

a. Compliance. Adult education and literacy programs will adhere to the policies and procedures outlined in the state assessment policy. Data will be submitted by the tenth day of each month or, should that day fall outside of standard business hours, the first Monday following the tenth day of the month. All adult education and literacy programs will comply with data quality reviews and complete quality data checks to ensure federal compliance with reporting.

b. Determination of progress. Upon administration of a standardized assessment, within the first 12 hours of attendance, adult education and literacy programs will place eligible students at an appropriate level of instruction. Progress assessments will be administered after the recommended hours of instruction as published in the state assessment policy.

c. Core measures. Federal and state adult education and literacy legislation has established data for reporting core measures, including percentage of participants in unsubsidized employment during the second and fourth quarter after exit from the program; median earnings; percentage of participants who obtain a postsecondary credential or diploma during participation or within one year after exit from the program; participants achieving measurable skill gains; and effectiveness in serving employers.

These rules are intended to implement Iowa Code section 84A.19.

ARC 7575C

**WORKFORCE DEVELOPMENT BOARD AND WORKFORCE
DEVELOPMENT CENTER ADMINISTRATION DIVISION[877]**

Notice of Intended Action

**Proposing rulemaking related to Iowa vocational rehabilitation services
and providing an opportunity for public comment**

The Workforce Development Board and Workforce Development Center Administration Division hereby proposes to rescind Chapter 33, "Iowa Vocational Rehabilitation Services," Iowa Administrative Code, and to adopt a new chapter with the same title.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code chapters 17A and 84H.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code chapters 17A and 84H.

Purpose and Summary

WORKFORCE DEVELOPMENT BOARD AND WORKFORCE DEVELOPMENT CENTER
ADMINISTRATION DIVISION[877](cont'd)

As part of the Workforce Development Department's review of rules under Executive Order 10 (January 10, 2023), the Department identified several instances where the current chapter text duplicated statutory language and uses restrictive terms. Such text has been removed from the proposed chapter.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any.

Public Comment

Any interested person may submit written or oral comments concerning this proposed rulemaking. Written or oral comments in response to this rulemaking must be received by the Department no later than 4:30 p.m. on February 27, 2024. Comments should be directed to:

Brooke Axiotis
Iowa Workforce Development
1000 East Grand Avenue
Des Moines, Iowa 50319
Phone: 515.802.9425
Email: brooke.axiotis@iwd.iowa.gov

Public Hearing

Public hearings at which persons may present their views orally or in writing will be held as follows:

February 27, 2024 10 to 11 a.m.	Capitol View Room 1000 East Grand Avenue Des Moines, Iowa
February 27, 2024 1 p.m.	Capitol View Room 1000 East Grand Avenue Des Moines, Iowa

Persons who wish to make oral comments at a public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rulemaking.

Any persons who intend to attend a hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department and advise of specific needs by calling 515.414.6800 or via email at april.stotz@iowa.gov at least 48 hours prior to the hearing date.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking 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 rulemaking action is proposed:

WORKFORCE DEVELOPMENT BOARD AND WORKFORCE DEVELOPMENT CENTER
ADMINISTRATION DIVISION[877](cont'd)

ITEM 1. Rescind 877—Chapter 33 and adopt the following **new** chapter in lieu thereof:

CHAPTER 33
IOWA VOCATIONAL REHABILITATION SERVICES

877—33.1(84H) Nature and responsibility of division. The division of vocational rehabilitation services is established in the department of workforce development and is responsible for providing services to potentially eligible and eligible individuals with disabilities leading to competitive integrated employment in accordance with Iowa Code chapter 84H, the federal Rehabilitation Act of 1973, the federal Social Security Act (42 U.S.C. Section 301, et seq.), and the corresponding federal regulations.

877—33.2(84H) Nondiscrimination. The division shall not discriminate on the basis of age, race, creed, color, gender, sexual orientation, gender identity, national origin, religion, duration of residency, or disability in the determination of a person's eligibility for rehabilitation services and in the provision of necessary rehabilitation services.

877—33.3(84H) References. All references to the Code of Federal Regulations (CFR) and United States Code (U.S.C.) in this chapter are as amended to November 1, 2023.

877—33.4(84H) Definitions. For the purpose of this chapter, the indicated terms are defined as follows:

“Act” means the federal Rehabilitation Act of 1973 as codified at 29 U.S.C. Section 701, et seq.

“Aggregate data” means information about one or more aspects of division job candidates, or from some specific subgroup of division job candidates, but from which personally identifiable information on any individual cannot be discerned.

“Applicant” means an individual or the individual's representative, as appropriate, who has completed the IVRS Application for Services (R-412), a common intake application form through a one-stop center requesting IVRS services, or has otherwise requested services from IVRS; has provided to IVRS information necessary to initiate an assessment to determine eligibility and priority for services; is available to complete the assessment process; and has reviewed and signed the Rights and Responsibilities (IPE-1).

“Appropriate modes of communication” has the meaning given in 34 CFR Section 361.5(4).

“Assessment for determining eligibility or in the development of an IPE” means a review of existing data and, to the extent necessary, the provision of appropriate assessment activities to obtain additional information to make a determination and to assign the priority for services or development of an IPE.

“Assistive technology device” means the same as defined in Section 3 of the Assistive Technology Act of 1998.

“Assistive technology service” means the same as defined in Section 3 of the Assistive Technology Act of 1998.

“Benefits planning” means assistance provided to an individual who is interested in becoming employed, but is uncertain of the impact work income may have on any disability benefits and entitlements being received, and is or is not aware of benefits, such as access to health care, that might be available to support employment efforts.

“Case record” means the file of personally identifiable information, whether written or electronic in form, on an individual that is collected to carry out the purposes of the division as defined in the Act. This information remains a part of the case record and is subject to these rules even when temporarily physically removed, either in whole or in part, from the file folder in which it is normally kept.

“Community rehabilitation program” or *“CRP”* has the meaning given in 34 CFR Section 361.5(7).

“Comparable services and benefits” has the meaning given in 34 CFR Section 361.5(8).

“Competitive integrated employment” has the meaning given in 34 CFR Section 361.5(8).

“Competitive integrated work setting,” with respect to the provision of services, means a setting, typically found in the community, in which applicants or eligible individuals interact with nondisabled individuals, other than nondisabled individuals who are providing services to those applicants or eligible

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individuals, and said interaction is consistent with the quality of interaction that would normally occur in the performance of work by the nondisabled coworkers.

“Customized employment” has the meaning given in 34 CFR Section 361.5(11).

“Department” means the department of workforce development.

“Designated representative” means any representative chosen by an applicant or eligible individual, as appropriate, including a parent, guardian, other family member, or advocate, unless a representative has been appointed by a court to represent the individual, in which case the court-appointed representative is the designated representative.

“Designated state unit” or *“DSU”* means Iowa vocational rehabilitation services.

“Division” or *“IVRS”* means Iowa vocational rehabilitation services.

“Eligible individual” means an applicant for services from the division who meets the eligibility requirements.

“Employment outcome” has the meaning given in 34 CFR Section 361.5(15).

“Extended employment” has the meaning given in 34 CFR Section 361.5(18).

“Extended services” has the meaning given in 34 CFR Section 361.5(19).

“Family income,” for purposes of calculating the financial participation rate for services, means those who are financially responsible for the support of the job candidate and may involve individuals who live in the same or separate households including partners and spouses.

“Family member,” for purposes of vocational rehabilitation services, means any individual who lives with the individual with a disability and has a vested interest in the welfare of that individual whether by marriage, birth, or choice. A family member is an individual who either (1) is a relative or guardian of an applicant or job candidate, or (2) lives in the same household as an applicant or job candidate, who has a substantial interest in the well-being of the applicant or job candidate, and whose receipt of vocational rehabilitation services is necessary to enable the applicant or job candidate to achieve an employment outcome.

“IDEA” means the Individuals with Disabilities Education Act (20 U.S.C. Section 1400 et seq.).

“Impartial hearing officer” or *“IHO”* has the meaning given in 34 CFR Section 361.5(24).

“Independent living services” or *“IL services”* means services authorized under Title VII, Chapter 1, Part B of the Rehabilitation Act of 1973.

“Individualized plan for employment” or *“IPE”* means a plan that specifies the services needed by an eligible individual and the responsibilities of the individual with a disability and other payers. An IPE contains the matter set forth in or permitted by 34 CFR Section 361.46.

“Individual with a disability” has the meaning given in 34 CFR Section 361.5(28).

“Individual with a most significant disability” has the meaning given in 34 CFR Section 361.5(29).

“Individual with a significant disability” has the meaning given in 34 CFR Section 361.5(30).

“Institution of higher education” or *“IHE”* means the same as defined in Section 102(a) of the Higher Education Act of 1965.

“Job candidate” means an applicant or eligible individual applying for or receiving benefits or services from any part of the division and includes former job candidates of the division whose files or records are retained by the division.

“Job retention waiting list release” means the mechanism used to remove a job candidate from the division waiting list when the individual is at immediate risk of losing the job and requires vocational rehabilitation service(s) or good(s) in order to maintain employment. This applies only for those service(s) or good(s) that will allow the individual to maintain employment. After the individual receives said service(s) or good(s), the individual’s file will be closed if the individual is satisfied with the services provided and requires no further services. If there are additional services needed, the individual will return to the waiting list, if necessary, until that point where the individual’s priority of service is being served.

“Maintenance” has the meaning given in 34 CFR Section 361.5(34).

“Mediation” has the meaning given in 34 CFR Section 361.5(35).

“Menu of services” means the services provided by community partners to assist an individual with a disability in achieving an employment outcome. Menu of services refers to various services that

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the division is able to purchase from an approved CRP or other approved provider on behalf of a job candidate. The services are selected and jointly agreed upon by the counselor and job candidate of the division. Payments for services are made based on a fee structure that is published and updated annually, and there is no financial needs assessment applied toward the costs of these purchased services from the community partner.

“Ongoing support services” has the meaning given in 34 CFR Section 361.5(37).

“Personal assistance services” has the meaning given in 34 CFR Section 361.5(38).

“Physical or mental impairment” has the meaning given in 34 CFR Section 361.5(40).

“Physical or mental restoration services” has the meaning given in 34 CFR Section 361.5(39).

“Plan for natural supports” means a plan initiated prior to the implementation of the supported employment program that describes the natural supports to be used on the job; the training provided to the supervisor and mentor on the job site; the technology used in the performance of the work; the rehabilitation strategies and trainings that will be taught to the mentor in order to support and direct the job candidate on the job; the supports needed outside of work for the job candidate to be successful; and the methods by which the employer can connect with the job candidate’s job coach/IVRS staff member, or the training program when the need arises.

“Postemployment services” has the meaning given in 34 CFR Section 361.5(41).

“Potentially eligible” for the purposes of preemployment transition services means all students with disabilities. A student is considered potentially eligible until the student has applied for services and an eligibility decision has been determined.

“Preemployment transition services” or *“pre-ETS”* means those services specified in 34 CFR Section 361.48(a).

“Recognized educational program” includes secondary education programs, nontraditional or alternative secondary education programs (including homeschooling), postsecondary education programs, and other recognized educational programs such as those offered through the juvenile justice system.

“Rehabilitation technology” has the meaning given in 34 CFR Section 361.5(45).

“Satisfactory employment” means stable employment in a competitive integrated employment setting that is consistent with the individual’s IPE and acceptable to both the individual and the employer.

“Self-employment services” means services to assist individuals with disabilities to achieve a self-employment outcome consistent with the individual’s abilities, preferences and needs. Self-employment is a vocational option through the division that is available only to for-profit businesses intended for operation within the state of Iowa. The division provides two options within the program, which include the full self-employment program and micro-enterprise development. These services provide information, strategies and resources to help the business become self-sustaining while assisting the individual in assuring all necessary supports are in place for long-term success.

“Status” means the existing condition or position of a case. The specific case statuses are as follows:

1. 00-0 Referral for services.
2. 01-0 Potentially eligible student.
3. 01-1 Closed from potentially eligible.
4. 02-0 Applicant.
5. 04-0 Waiting list.
6. 08-0 Closed before acceptance (from Status 02-0).
7. 10-0 Accepted for services (plan development) adults.
8. 10-1 Accepted for services (plan development) high school students.
9. 14-0 Counseling and guidance.
10. 16-0 Physical and mental restoration.
11. 18-__ Training.
 - 18-1 Work adjustment training/assessment.
 - 18-2 On-the-job training.
 - 18-3 Vocational-technical training.

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- 18-4 Academic training.
- 18-5 Secondary education.
- 18-6 Supported employment.
- 18-7 Other types of training (including nonsupported employment job coaching, job development, ISE).
- 12. 20-0 Ready for employment.
- 13. 22-0 Employed.
- 14. 24-0 Services interrupted.
- 15. 26-0 Closed rehabilitated.
- 16. 28-0 Closed after IPE initiated (from Status 14-0 through 24-0).
- 17. 30-0 Closed before IPE initiated (from Status 10-__).
- 18. 32-0 Postemployment services (from Status 26-0).
- 19. 33-__ Closed after postemployment services (from Status 32-0).
- 33-1 Individual is returned to suitable employment or the employment situation is stabilized.
- 33-2 The case has been reopened for comprehensive vocational rehabilitation services.
- 33-3 The postemployment services are no longer assisting the individual and further services would be of no assistance.

20. 38-0 Closed from Status 04-0 (individual does not meet one of the waiting list categories, and the individual no longer wants to remain on the waiting list or fails to respond when contacted because individual's name is at the top of the waiting list).

"Student with a disability" means an individual with a disability in a secondary, postsecondary, or other recognized education program who is not younger than 14 years of age and not older than 21 years of age; and is eligible for, and receiving, special education or related services under Part B of the Individuals with Disabilities Education Act or is a student who is an individual with a disability, for purposes of Section 504.

"Substantial impediment to employment" has the meaning given in 34 CFR Section 361.5(52).

"Supported employment" has the meaning given in 34 CFR Section 361.5(53).

"Supported employment services" has the meaning given in 34 CFR Section 361.5(54).

"Transition services" has the meaning given in 34 CFR Section 361.5(55).

"Transportation" has the meaning given in 34 CFR Section 361.5(56).

"Vocational rehabilitation services" has the meaning given in 34 CFR Section 361.5(57).

"Waiting list" means the listings of eligible individuals for vocational rehabilitation services who are not in a category being served, otherwise known as "order of selection" under the Workforce Innovation and Opportunity Act of 2014.

"Youth with a disability" has the meaning given in 34 CFR Section 361.5(58).

877—33.5(84H) Referral and application for services.

33.5(1) General.

a. The division has established and implemented standards for the prompt and equitable handling of referrals of individuals for vocational rehabilitation services, including referrals of individuals made through the one-stop service delivery systems under Section 121 of the Workforce Innovation and Opportunity Act. The standards include timelines for making good faith efforts to inform these individuals of application requirements and to gather information necessary to initiate an assessment for determining eligibility and priority for services.

b. A referral for a student with a disability requesting preemployment transition services (pre-ETS) includes completion of the pre-ETS agreement.

c. Once an individual has submitted an application for vocational rehabilitation services, including applications made through common intake procedures in one-stop centers under Section 121 of the Workforce Innovation and Opportunity Act, an eligibility determination is to be made within 60 days, unless exceptional and unforeseen circumstances beyond the control of the division preclude making an eligibility determination within 60 days and the division and the individual agree to a specific extension of time.

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d. An individual is considered to have submitted an application when the individual or the individual's representative, as appropriate, has completed an agency application form including written consent; has completed a common intake application form in a one-stop center requesting vocational rehabilitation services or has otherwise requested services from the division; has provided to the division information necessary to initiate an assessment to determine eligibility and priority for services; and is available to complete the assessment process. The division ensures that its application forms are widely available throughout the state, particularly in the one-stop centers under Section 121 of the Workforce Innovation and Opportunity Act.

e. The division will refer applicants or eligible individuals to appropriate programs and service providers best suited to address the specific rehabilitation, independent living and employment needs of the individual with a disability. Individuals with the most significant disabilities who are working at subminimum wage in a nonintegrated setting are provided information about competitive integrated employment and support from the division, once known to the division, by qualified personnel and partners with the goal of assisting said individuals to pursue competitive integrated employment.

f. The division will inform those who decide against pursuit of employment that services may be requested at a later date if, at that time, they choose to pursue an employment outcome.

33.5(2) *Individuals who are blind.* Pursuant to rule 111—10.4(216B), individuals who meet the department for the blind (IDB) definition of "blind" are to be served primarily by IDB. Joint cases are served pursuant to any applicable memorandum of agreement executed between the division and IDB.

877—33.6(84H) Eligibility for vocational rehabilitation services.

33.6(1) *General.*

a. Eligibility for vocational rehabilitation services will be determined upon the basis of the following:

- (1) A determination by a qualified rehabilitation counselor that the applicant has a physical or mental impairment documented by a qualified provider;
- (2) A determination by a qualified rehabilitation counselor that the applicant's physical or mental impairment constitutes or results in a substantial impediment to employment for the applicant; and
- (3) A determination by a qualified vocational rehabilitation counselor that the applicant requires vocational rehabilitation services to prepare for, secure, retain, advance in, or regain employment that is consistent with the applicant's unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.

b. For purposes of an assessment for determining eligibility and vocational rehabilitation needs, an individual is presumed to have a goal of an employment outcome. The applicant's completion of the application process for vocational rehabilitation services is sufficient evidence of the individual's intent to achieve an employment outcome. If at any time the individual decides to no longer pursue competitive integrated employment, the individual is no longer eligible for division services.

33.6(2) *Presumptions.* A presumption exists that the applicant who meets the eligibility provisions in subparagraphs 33.6(1) "a"(1) and 33.6(1) "a"(2) can benefit in terms of an employment outcome from the provision of vocational rehabilitation services. Any applicant who has been determined eligible for social security benefits under Title II or Title XVI of the Social Security Act based on the applicant's own disability is presumed eligible for vocational rehabilitation services and is considered an individual with a significant disability. IVRS staff are to verify the applicant's eligibility. Recipients who demonstrate eligibility under subrule 33.6(1) are to also demonstrate need in the individualized plan for employment (IPE) under subrule 33.6(3). Nothing in this rule automatically entitles a recipient of social security disability insurance or supplemental security income payments to any good or service provided by the division. Qualified IVRS personnel will identify and document the individual as a recipient of social security benefits based on disability, and the determination of impediments to employment and need for services will be documented by the qualified rehabilitation counselor.

33.6(3) *Standards for ineligibility.* If the division determines that an applicant is ineligible for vocational rehabilitation services or determines that an individual receiving services under an IPE is no

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longer eligible for services, including preemployment transition services (pre-ETS), the division will comply with 34 CFR Section 361.43.

33.6(4) Residency. There is no duration of residency requirement; however, an individual seeking services from the agency must be present and available for participation in services.

877—33.7(84H) Other eligibility and service determinations.

33.7(1) Waiting list.

a. As set forth in the Act and 34 CFR Section 361.36, if the division cannot serve all eligible individuals who apply, the division shall develop and maintain a waiting list for services based on significance of disability. The three categories of waiting lists are as follows, listed in order of priority to be served:

- (1) Most significantly disabled;
- (2) Significantly disabled; and
- (3) Others eligible.

b. An individual's order of selection is determined by the waiting list and the date on which the individual applied for services from IVRS. All waiting lists are statewide in scope; no regional lists are to be maintained. Assessment of the significance of an applicant's disability is done during the process of determining eligibility but may continue after the individual has been placed on a waiting list. Individuals who do not meet the order of selection criteria will have access to services provided through information and referral. The division will provide the individual:

- (1) A notice of the referral;
- (2) Information identifying a specific point of contact at the agency to which the individual is referred; and
- (3) Information and advice on the referral regarding the most suitable services to assist the individual.

c. Job retention services are available for those individuals who meet the requirements for those services.

33.7(2) Options for individualized plan for employment (IPE) development.

a. The division provides information on the available options for developing the IPE, including the option that an eligible individual, or as appropriate, the individual's representative, may develop all or part of the IPE without assistance from the division or other entity; or with assistance from:

- (1) A qualified vocational rehabilitation counselor employed by IVRS;
- (2) A qualified vocational rehabilitation counselor not employed by IVRS;
- (3) A disability advocacy organization, such as the CAP or Disability Rights Iowa (DRI), or any other advocacy organization of the individual's choosing; or
- (4) Resources other than those mentioned above, such as the individual's case manager or a representative of the division under the guidance of a division vocational rehabilitation counselor.

b. The IPE is not approved or put into practice until it is discussed and reviewed; amended, if applicable; and approved by the job candidate and the vocational rehabilitation counselor employed by the division.

c. There is no compensation for any expenses incurred while the IPE is developed with any entity not employed by the division.

d. If the job candidate is not on the division waiting list and needs some assessment services to develop the IPE, the job candidate is to discuss the needs in advance with the division counselor and obtain prior approval if financial assistance is needed from the division to pay for the assessment service.

e. For individuals entitled to benefits under Title II or XVI of the Social Security Act on the basis of a disability or blindness, the division must provide to the individual general information on additional supports and assistance for individuals with disabilities desiring to enter the workforce, including assistance with benefits planning.

f. The job candidate's signature on the IPE verifies the ticket assignment to the division unless otherwise directed by the job candidate.

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g. The IPE implementation date begins on the date of the division counselor's signature.

33.7(3) *Content of the individualized plan for employment (IPE).* Each IPE will contain the content specified in 34 CFR Section 361.46.

No expenditures associated with the job candidate-developed plan are the responsibility of IVRS, unless agreed to and approved by the IVRS counselor. Written approval for services must be obtained prior to any IVRS financial obligation.

All IPE services are provided, unless amended and determined unnecessary. The division exercises its discretion in relation to the termination or amendment of the individual's IPE when, for any reason, it becomes evident that the IPE cannot be completed.

33.7(4) *Scope of services.*

a. Preemployment transition services (pre-ETS). In collaboration with the local educational agencies involved, the division ensures that pre-ETS are arranged and available to all students with disabilities, regardless of whether the student has applied or been determined eligible for vocational rehabilitation services, as defined in 34 CFR Section 361.5(c)(51). Pre-ETS include:

(1) Required activities. The division is to provide the following activities:

1. Job exploration counseling;
2. Work-based learning experiences, which may include in-school or after school opportunities, or experience outside the traditional school setting (including internships), that is provided in an integrated environment in the community to the maximum extent possible;
3. Counseling on opportunities for enrollment in comprehensive transition or postsecondary educational programs at institutions of higher education;
4. Workplace readiness training to develop social skills and independent living; and
5. Instruction in self-advocacy (including instruction in person-centered planning), which may include peer mentoring (including peer mentoring from individuals with disabilities working in competitive integrated employment).

(2) Authorized activities. Funds available and remaining after the provision of the required activities may be used to improve the transition of students with disabilities from school to postsecondary education or an employment outcome by:

1. Implementing effective strategies to increase the likelihood of independent living and inclusion in communities and competitive integrated workplaces;
2. Developing and improving strategies for individuals with intellectual disabilities and individuals with significant disabilities to live independently; participate in postsecondary education experiences; and obtain, advance in and retain competitive integrated employment;
3. Providing instruction to vocational rehabilitation counselors, school transition personnel, and other persons supporting students with disabilities;
4. Disseminating information about innovative, effective, and efficient approaches to achieve the goals of this rule;
5. Coordinating activities with transition services provided by local educational agencies under the IDEA;
6. Applying evidence-based findings to improve policy, procedure, practice, and the preparation of personnel in order to better achieve the goals of this rule;
7. Developing model transition demonstration projects;
8. Establishing or supporting multistate or regional partnerships involving states, local educational agencies, designated state units, developmental disability agencies, private businesses, or other participants to achieve the goals of this rule; and
9. Disseminating information and strategies to improve the transition to postsecondary activities of individuals who are members of traditionally unserved and underserved populations.

(3) Preemployment transition coordination. Each local office of a designated state unit must carry out responsibilities consisting of:

1. Attending individualized education program meetings for students with disabilities, when invited;

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2. Working with the local workforce development boards, one-stop centers, and employers to develop work opportunities for students with disabilities, including internships, summer employment and other employment opportunities available throughout the school year, and apprenticeships;

3. Working with schools, including those carrying out activities under Section 614(d) of the IDEA, to coordinate and ensure the provision of preemployment transition services under this rule;

4. When invited, attending person-centered planning meetings for individuals receiving services under Title XIX of the Social Security Act (42 U.S.C. Section 1396 et seq.).

(4) Completion of the pre-ETS agreement outlines the agreed-upon preemployment transition services needed by the student with a disability. When it is necessary to purchase these services, written prior approval must be obtained from the division.

Once an individual applies for services, the division may provide certain services (e.g., assessments for the determination of eligibility and plan development). The preemployment transition services listed above may continue for students with disabilities (as applicable).

b. Vocational services for eligible individuals not on a waiting list are services described in an IPE and are necessary to assist the eligible individual in preparing for, obtaining, retaining, regaining, or advancing in employment if the failure to advance is due to the disability, consistent with informed choice. Funding for such services is provided in accordance with the division policies. The services include:

(1) Assessment for determining services needed to achieve competitive integrated employment;

(2) Counseling and guidance, which means career counseling to provide information and support services to assist the eligible individual in making informed choices;

(3) Referral and other services necessary to assist applicants and eligible individuals to secure needed services from other agencies, including other components of the statewide workforce development system, and through agreements with other organizations and agencies as well as advising individuals about the client assistance program;

(4) Job-related services to facilitate the preparation for, obtaining of, and retaining of employment to include job search, job development, job placement assistance, job retention services, follow-up services and follow-along if necessary and required under the IPE;

(5) Vocational and other training services, including personal and vocational adjustment training; advanced training in, but not limited to, a field of science, technology, engineering, mathematics (including computer science), medicine, law, or business; books, tools, and other training materials, except that no training or training services in an institution of higher education (universities, colleges, community or junior colleges, vocational schools, technical institutes, or hospital schools of nursing or any other postsecondary education institution) may be paid for with IVRS funds unless maximum efforts have been made by the designated state unit and the individual to secure grant assistance in whole or in part from other sources to pay for that training, in accordance with the definition of that term in 34 CFR Section 361.48(b)(6);

(6) Physical and mental treatment may be provided to the extent that financial support is not readily available from another source other than IVRS, such as health insurance of the individual or a comparable service or benefit, as defined in 34 CFR Section 361.5(c)(39), and said treatment is essential to the progression of the individual to achieve the competitive integrated employment outcome according to the following provisions:

1. The service is necessary for the job candidate's satisfactory occupational adjustment;

2. The condition causing the disability is relatively stable or slowly progressive;

3. The condition is of a nature that treatment may be expected to remove, arrest, or substantially reduce the disability within a reasonable length of time;

4. The prognosis for life and employability is favorable.

(7) Maintenance services as defined in 34 CFR Section 361.5(c)(34), to the extent that the costs of maintenance shall not exceed the amount of increased expenses that the rehabilitation causes for the job candidate or the job candidate's family. Maintenance is not intended to provide relief from poverty or abject living conditions. Guidance regarding the financial support of maintenance is available from the division's policy manual;

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(8) Transportation in connection with the provision of any vocational rehabilitation service and as defined in 34 CFR Section 361.5(c)(57), to the extent that when necessary to enable an applicant or a job candidate to participate in or receive the benefits of other vocational rehabilitation services, travel and related expenses, including expenses for training in the use of public transportation vehicles and systems, may be provided by the division. Transportation services may include the use of private or commercial conveyances (such as private automobile or van, public taxi, bus, ambulance, train, or plane) or the use of public transportation and coordination with a regional transit agency;

(9) Vocational rehabilitation services to family members, as defined in 34 CFR Section 361.5(c)(23), of an applicant or eligible individual if necessary to enable the applicant or eligible individual to achieve an employment outcome;

(10) Interpreter services, including sign language and oral interpreter services, for individuals who are deaf or hard of hearing and tactile interpreting services;

(11) Supported employment services as defined in 34 CFR Section 361.5(c)(42);

(12) Occupational licenses, tools, equipment, initial stocks and supplies;

(13) Rehabilitation technology as defined in 34 CFR Section 361.5(c)(45), including vehicular modification, telecommunications, sensory, and other technological aids and devices;

(14) Transition services for a student or youth with a disability that facilitate the transition from school to postsecondary life, such as achievement of an employment outcome in competitive integrated employment, or preemployment transition services for students;

(15) Technical assistance and other consultation services to conduct market analyses, develop business plans, and otherwise provide resources, to the extent those resources are authorized to be provided through the statewide workforce development system, to eligible individuals who are pursuing self-employment or telecommuting or establishing a small business operation as an employment outcome;

(16) Customized employment as defined in 34 CFR Section 361.5(c)(11); and

(17) Other goods and services determined necessary for the individual with a disability to achieve an employment outcome.

33.7(5) *Specific services requiring financial assessment.*

a. Financial need must be established prior to the provision of certain services at the division's expense and is evidenced by use of the financial inventory needs tool utilized by the division. No financial needs test will occur for the following services:

(1) Assessment for eligibility and priority of services and determining vocational rehabilitation needs under 34 CFR Section 361.48(b)(2);

(2) Vocational rehabilitation counseling and guidance under 34 CFR Section 361.48(b)(3);

(3) Referral and other services under 34 CFR Section 361.48(b)(4);

(4) Job-related services under 34 CFR Section 361.48(b)(12);

(5) Personal assistance services under 34 CFR Section 361.48(b)(14); and

(6) Any auxiliary aid or service (e.g., interpreter services under 34 CFR Section 361.48(b)(10) or reader services under 34 CFR Section 361.48(b)(11)) that an individual with a disability requires.

b. Recipients of SSDI/SSI and foster care youth are not subject to a financial needs test but must demonstrate eligibility under subrule 33.6(1) and rule 877—33.5(84H), as well as demonstrate need in the IPE.

(1) For the determination of financial need, the individual and the individual's family (when applicable) are required to provide information regarding all family income from any source that may be applied toward the cost of rehabilitation services, other than those services mentioned above, where the financial needs test does not apply. Family is considered to be any individuals who are financially responsible for the support of the job candidate, regardless of whether they reside in the same or separate households. A comparable services and benefits search is required for some services. The division shall not pay for more than the balance of the cost of services minus comparable services and benefits for the individual's documented contribution. When an individual refuses to supply information for the financial needs test, the individual assumes 100 percent responsibility for the costs of the rehabilitation.

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(2) The division shall observe the following policies in deciding financial need based upon the findings:

1. All services requiring the determination of financial need are provided on the basis of supplementing the resources of the individual or of those responsible for the individual.

2. A division supervisor may grant an exception in cases where the individual's disability caused, or is directly related to, financial need and where all other sources of money have been exhausted by the individual and the guardian of the individual (when applicable).

3. Consideration will be given to the individual's responsibility for the immediate needs and maintenance of the individual's dependents, and the individual is expected to reserve sufficient funds to meet the individual's family obligations and to provide for the family's future care, education and medical expenses.

4. Income up to a reasonable amount should be considered and determined based on the federal poverty guidelines associated with family size, income, and exclusions.

5. General assistance from state or federal sources is disregarded as a resource unless the assistance is a grant award for postsecondary training.

6. Grants and scholarships based on merit, while not required to be searched for as a comparable benefit, may be considered as part of the determination of financial support of a plan when a request is beyond the basic support for college. Public grants and institutional grants or scholarships not based on merit are considered a considerable benefit.

7. The division does not fund services for which another entity is responsible.

8. The division seeks and purchases the most economical goods (items/models) or services that meet the individual's vocational needs.

9. Goods and services are only authorized to those facilities and entities qualified and equipped to provide such goods and services.

33.7(6) *Maximum rates of payment to training facilities.* In no case shall the amount paid to a training facility exceed the rate published, and in the case of facilities not having published rates, the amount paid to the facility is not to exceed the amount paid to the facility by other public agencies for similar services. The division will maintain information necessary to justify the rates of payment made to training facilities.

33.7(7) *Areas in which exceptions are unavailable.* Pursuant to federal law, an exception will not be granted for any requirements that do not allow for such an exception (e.g., eligibility, mandatory contents of the individualized plan for employment).

33.7(8) *Exceptions to duration of services.* As required by the Act and 34 CFR Section 361.50(d), the division will have a method of allowing for exceptions to its rules regarding the duration of services. In order to exceed the duration of service as defined in the IPE, a job candidate must follow through on the agreed-upon IPE and related activities and keep the division informed of the job candidate's progress.

877—33.8(84H) Purchasing principles for individual-specific purposes.

33.8(1) The division will follow the administrative rules for purchasing goods and services promulgated by the department of administrative services.

33.8(2) The division shall purchase only those items or models that allow for a job candidate to meet the job candidate's vocational objective. The division shall not pay for additional features that exceed the requirements to meet a job candidate's vocational objective or that serve primarily to enhance the job candidate's personal life.

33.8(3) The division shall seek out and purchase the most economical item or model that meets the job candidate's vocational needs.

33.8(4) The division shall encourage all job candidates to develop strategies and savings programs to pay for replacement items/models or upgrades.

33.8(5) Items purchased for a job candidate become the property of the job candidate but may be repossessed by the division, subject to reimbursement to the job candidate for the job candidate's share of the purchase price, if the job candidate does not attain employment prior to case closure.

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33.8(6) The division shall inform the job candidate that any change to planned purchases must be discussed and approved jointly before a purchase is made.

33.8(7) The division will not participate in the modification to property not owned by the job candidate or the job candidate's family without a division-approved exception to policy.

33.8(8) When considering what item or model to purchase for a specific job candidate, the division shall in all cases consider the following factors:

a. Whether the item or model is required for the job candidate to be able to perform the essential functions of the job candidate's job.

b. Whether other parties or entities may be responsible for providing or contributing to the costs of an item.

877—33.9(84H) Review, mediation and appeal processes. At all times throughout the rehabilitation process, individuals accessing any IVRS services shall be informed of the right to appeal or mediation and the procedures by which to file. If an individual is dissatisfied with any agency decision that directly affects the individual, the individual or designated representative may appeal that decision or request mediation. The term "appellant" shall be used to indicate the individual or designated representative who initiates an appeal. The appellant may initiate the appeal process either by calling a counselor or supervisor or by filing the appropriate division appeal form, available from any counselor or supervisor of the division. If the appeal process or mediation is initiated by telephone, the counselor or supervisor who received the call is to complete the appeal form to the best of that person's ability with information from the appellant. The division shall accept as an appeal or request for mediation a written letter, facsimile, or electronic mail that indicates that the applicant or job candidate desires to appeal or seek mediation. An appeal or mediation request must be filed within 90 days of notification of the disputed decision. Once the appeal form or request for mediation has been filed with the division administrator, a hearing is to be held before an impartial hearing officer (IHO) or mediator within the next 60 days unless an extension of time is mutually agreed upon or one of the parties shows good cause for an extension or one of the parties declines mediation. The appellant may request that the appeal go directly to impartial hearing, but the appellant shall be offered the opportunity for a supervisor review or mediation. The appellant may request assistance with an appeal or mediation from the Iowa client assistance program (ICAP) at any time in the appeal process.

33.9(1) Supervisor review. As a first step, the appellant shall be advised that a supervisor review of the counselor's decision may be requested by notifying the counselor or supervisor in person, by telephone or by letter of the decision to appeal. If the supervisor has been involved in decisions in the case to the extent that the supervisor cannot render a fair and impartial decision or if the supervisor is not available to complete the review in a timely manner, the appeal and case file shall be forwarded to the bureau chief for review. The appellant is not required to request supervisor review as a prerequisite for appeal before an IHO; however, if a supervisor review is requested, the following steps shall be observed:

a. Upon receipt of a request for supervisor review, the supervisor shall notify all appropriate parties of the date and nature of the appeal; examine case file documentation; discuss the issues and reasons for the decision with the immediate counselor and other counselors who may have been previously involved with the case or issue; and, if necessary, meet with any or all parties to discuss the dispute.

b. The supervisor shall have ten working days from receipt of the request for supervisor review to decide the issue and notify the appellant in writing. A copy of the supervisor's decision shall be sent to all appropriate parties.

c. If the supervisor's decision is adverse to the appellant, the copy of the written decision given to the appellant shall include further appeal procedures, including notification that the appellant has ten days from the date of the letter to file further appeal.

d. As an alternative to, but not to the exclusion of, filing for further appeal, the appellant may request mediation of the supervisor's decision or review by the chief of the rehabilitation services bureau.

33.9(2) Mediation. Regardless of whether a supervisor review is requested, an appellant may use the mediation procedures set forth in 34 CFR Section 361.57(d).

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33.9(3) *Hearing before an impartial hearing officer.* Regardless of whether the appellant has used supervisor review or mediation or both, if the appellant requests a hearing before an IHO, the following provisions apply:

a. The division shall appoint the IHO from the pool of impartial hearing officers with whom the division has contracts. The IHO shall be assigned on a random basis or by agreement between the administrator of the division and the appellant.

b. The hearing shall be held within 20 days of the receipt of the appointment of the IHO. A written decision shall be rendered and given to the parties by the IHO within 30 days after completion of the hearing. Either or both of these time frames may be extended by mutual agreement of the parties or by a showing of good cause by one party.

c. The appellant shall be informed that the filing of an appeal confers consent for the release of the case file information to the IHO. The IHO shall have access to the case file or a copy thereof at any time following acceptance of the appointment to hear the case.

d. Within five working days after appointment, the IHO shall notify both parties in writing of the following:

- (1) The role of the IHO;
- (2) The IHO's understanding of the reasons for the appeal and the requested resolution;
- (3) The date, time, and place for the hearing, which shall be accessible and located as advantageously as possible for both parties but more so for the appellant;
- (4) The availability of the case file for review and copying in a vocational rehabilitation office prior to the hearing and how to arrange for the same;
- (5) That the hearing shall be closed to the public unless the appellant specifically requests an open hearing;
- (6) That the appellant may present evidence and information personally, may call witnesses, may be represented by counsel or other appropriate advocate at the appellant's expense, and may examine all witnesses and other relevant sources of information and evidence;
- (7) The availability to the appellant of the Iowa client assistance program (ICAP) for possible assistance;
- (8) Information about the amount of time it will take to complete the hearing process;
- (9) The possibility of reimbursement of necessary travel and related expenses; and
- (10) The availability of interpreter and reader services for appellants not proficient in the English language and those who are deaf or hard of hearing and the availability of transportation or attendant services for those appellants requiring such assistance.

e. Existing division services provided to an appellant shall not be suspended, reduced, or terminated pending the decision of the IHO, unless so requested by the appellant.

f. The IHO shall provide a full written decision, including the findings of fact and grounds for the decision. The appellant or the division may request administrative review, and the IHO decision is submitted to the administrator of the division. Both parties may provide additional evidence not heard at the hearing for consideration for the administrative review. If no additional evidence is presented, the IHO decision stands. Unless either party chooses to seek judicial review pursuant to Iowa Code chapter 17A, the decision of the IHO is final. If judicial review is sought after administrative review, the IHO's decision shall be implemented pending the outcome of the judicial review.

877—33.10(84H) Case record. The division has the authority to collect and maintain records on individuals under the Act, the state plan for vocational rehabilitation services, and the Social Security Act. Under this authority, the division maintains a record for each case. The case record contains pertinent case information as defined in division policy including, as a minimum, the basis for determination of eligibility, the basis justifying the plan of services and the reason for closing the case, together with a justification of the closure and supporting documents. Case information is contained in the agency's case management system and a hard copy file. A combination of these data collections instruments constitutes the official case record. The hard copy files are retained for a minimum of four years, but there are instances when a case may be stored longer based on the services received.

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877—33.11(84H) Personally identifiable information. This rule describes the nature and extent of the personally identifiable information collected, maintained, and retrieved by the division by personal identifier in record systems as defined herein. The record systems maintained by the division include the following:

33.11(1) *Personnel records.* Personnel records contain information relating to initial application, job performance and evaluation, reprimands, grievances, notes from and reports of investigations of allegations related to improper employee behavior, and reports of hearings and outcomes of reprimands and grievances.

33.11(2) *Job candidate case records.* An individual file is maintained for each person who has been referred to or has applied for the services of the division, as described in rule 877—33.10(84H). The file contains a variety of personal information about the job candidate, which is used in the establishment of eligibility and the provision of agency services. All information is personally identifiable and is confidential.

33.11(3) *Job candidate service record computer database.* The job candidate service record computer database contains personal data items about individual job candidates. Data identifying a job candidate is confidential. Data in the aggregate is not personally identifiable and thus is not confidential.

33.11(4) *Vendor purchase records.* Vendor purchase records are records of purchases of goods or services made for the benefit of job candidates. If a record contains the job candidate's name or other personal identifiers, the record is confidential. Lists of non-job candidate vendors, services purchased, and the costs of those services are not confidential when retrieved from a data processing system without personally identifiable information.

33.11(5) *Records and transcripts of hearings or client appeals.* Records and transcripts of hearings or client appeals contain personally identifiable information about a client's case, appeal from or for some action, and the decision that has been rendered. The personally identifiable information is confidential. Some of the information is maintained in an index provided for in Iowa Code section 17A.3(1) "d." Information is available after confidential personally identifiable information is deleted.

33.11(6) *All computer databases of client and applicant names and other identifiers.* The data processing system contains client status records organized by a variety of personal identifiers. These records are confidential as long as any personally identifiable information is present.

33.11(7) *All computer-generated reports that contain personally identifiable information.* The division may choose to draw or generate from a data processing system reports that contain information or an identifier that would allow the identification of an individual client or clients. This material is for internal division use only and is confidential.

33.11(8) *Personally identifiable information and acceptance of federal requirements.* Pursuant to Iowa Code section 84H.1, the state of Iowa accepts the social security system rules for the disability determination program of the division. Failure to follow the provisions of the Act can result in the loss of federal funds. All personally identifiable information is confidential and may be released only with informed written consent, except as permitted by federal law. Any contrary provision in Iowa Code chapter 22 must be waived in order for the state to receive federal funds, services, and essential information for the administration of vocational rehabilitation services.

877—33.12(84H) Other groups of records routinely available for public inspection. This rule describes groups of records maintained by the division other than record systems. These records are routinely available to the public, with the exception of parts of the records that contain confidential information. This rule generally describes the nature of the records, the type of information contained therein, and whether the records are confidential in whole or in part.

33.12(1) *Rulemaking.* Rulemaking records, including public comments on proposed rules, are not confidential.

33.12(2) *Council and commission records.* Agendas, minutes, and materials presented to any council or commission required under the Act are available to the public with the exception of those records that are exempt from disclosure under Iowa Code section 21.5. Council and commission records are available from the main office of the division at 510 E. 12th Street, Des Moines, Iowa 50319.

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33.12(3) Publications. News releases, annual reports, project reports, agency newsletters, and other publications are available from the main office of the division at 510 E. 12th Street, Des Moines, Iowa 50319. Brochures describing various division programs are also available at local offices of the division.

33.12(4) Statistical reports. Periodic reports of statistical information on expenditures, numbers and types of case closures, and aggregate data on various client characteristics are compiled as needed for agency administration or as required by the federal funding source and are available to the public.

33.12(5) Grants. Records of persons receiving grants from division services are available through the main office of the division. Grant records contain information about grantees and may contain information about employees of a grantee that has been collected pursuant to federal requirements.

33.12(6) Published materials. The division uses many legal and technical publications, which may be inspected by the public upon request. Some of these materials may be protected by copyright law.

33.12(7) Policy manuals. Manuals containing the policies and procedures for programs administered by the division are available on the division website. Printed copies of all or some of the documents are available at the cost of production and handling. Requests should be addressed to Vocational Rehabilitation Services Division, 510 E. 12th Street, Des Moines, Iowa 50319.

33.12(8) Operating expense records. The division maintains records of the expense of operation of the division, including records related to office rent, employee travel expenses, and costs of supplies and postage, all of which are available to the public.

33.12(9) Training records. Lists of training programs, the persons approved to attend, and associated costs are maintained in these records, which are available to the public.

33.12(10) Other records. The division maintains records of various sources not previously mentioned in this rule that are exempted from disclosure by law.

877—33.13(84H) State rehabilitation council.

33.13(1) Composition. The state rehabilitation council's composition is set forth in 34 CFR Section 361.17(b). The appointing authority is to select members of the council after soliciting recommendations from representatives of organizations representing a broad range of individuals with disabilities and organizations interested in individuals with disabilities. In selecting members, the appointing authority must consider, to the greatest extent practicable, the extent to which minority populations are represented on the council. A majority of members must be individuals with disabilities who meet the requirements of 34 CFR Section 361.5(c)(28) and are not employed by the designated state unit.

33.13(2) Chairperson. The chairperson must be selected by the members of the council from among the voting members of the council.

33.13(3) Terms. Each member of the council shall be appointed for a term of no more than three years. Each member of the council, other than the representative of the client assistance program, shall serve for no more than two consecutive full terms. A member appointed to fill a vacancy occurring prior to the end of the term for which the predecessor was appointed must be appointed for the remainder of the predecessor's term and may serve one additional three-year term. The terms of service of the members initially appointed is to be for a varied number of years to ensure that terms expire on a staggered basis.

33.13(4) Vacancies. The governor will fill a vacancy in council membership.

33.13(5) Functions. The council, after consulting with the state workforce development board, performs the functions set forth in 34 CFR Section 361.17(h).

33.13(6) Meetings. The council must convene at least four meetings a year. The meetings must be publicly announced, open, and accessible to the general public, including individuals with disabilities, unless there is a valid reason for an executive session. The council's meetings are subject to Iowa Code chapter 21, the open meetings law.

33.13(7) Forums or hearings. The council shall conduct forums or hearings, as appropriate, that are publicly announced, open, and accessible to the public, including individuals with disabilities.

33.13(8) Conflict of interest. No member of the council may cast a vote on any matter that would provide direct financial benefit to the member or the member's organization or otherwise give the appearance of a conflict of interest under state law.

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33.13(9) *Specific implementation clause.* This rule is intended to implement 34 CFR Sections 361.16 and 361.17.

877—33.14(84H) Iowa self-employment program: purpose. The division of vocational rehabilitation services works in collaboration with the department for the blind to administer the Iowa self-employment (ISE) program. The purpose of the program is to provide business development funds in the form of technical assistance (up to \$10,000) and financial assistance (up to \$10,000) to qualified Iowans with disabilities who start, expand, or acquire a business within the state of Iowa. Actual assistance is based on the requirements of the business, not to exceed the technical assistance and financial assistance limits.

877—33.15(84H) Program requirements.

33.15(1) Clients of the division or the department for the blind may apply for the program.

33.15(2) All of the following conditions are also applicable:

- a. The division may limit or deny ISE assistance to an applicant who has previously received educational or training equipment from the division through another rehabilitation program when such equipment could be used in the applicant's proposed business.
- b. Any equipment purchased for the applicant under this program that is no longer used by the applicant may be returned to the division, at the discretion of the division.
- c. An applicant must demonstrate that the applicant has at least 51 percent ownership in a for-profit business that is actively owned, operated, and managed in Iowa.
- d. Recommendation for and approval of financial assistance are based upon acceptance of a business plan feasibility study and documentation of the applicant's ability to match dollar-for-dollar the amount of funds requested.
- e. To receive financial support from the ISE program, the applicant's business plan feasibility study is to result in self-sufficiency for the applicant as measured by earnings that equal or exceed 80 percent of substantial gainful activity.
- f. The division cannot support the purchase of real estate or improvements to real estate.
- g. The division cannot provide funding to be used as a cash infusion, for personal or business loan repayments, or for personal or business credit card debt.
- h. The division may deny ISE assistance to an applicant who desires to start, expand, or acquire any of the following types of businesses:
 - (1) A hobby or similar activity that does not produce income at the level required for self-sufficiency;
 - (2) A business venture that is speculative in nature or considered high risk by the Better Business Bureau or similar organization;
 - (3) A business registered with the federal Internal Revenue Service as a Section 501(c)(3) entity or other entity set up deliberately to be not for profit;
 - (4) A business that is not fully compliant with all local, state, and federal zoning requirements and all other applicable local, state, and federal requirements;
 - (5) A multitiered marketing business.

877—33.16(84H) Application procedure.

33.16(1) *Application.* Application materials for the program are available from the division and the department for the blind.

33.16(2) *Submittal.* Completed applications will be submitted to a counselor employed by the division or the department for the blind.

33.16(3) *Review.* Applications will be forwarded to a business development specialist employed by the division for review. Approval of technical assistance funding is based upon the results of a business plan feasibility study. If the application is for financial assistance only, a business plan feasibility study will be required at the time of submission of the application. Approval of financial assistance funding is based upon acceptance of a business plan feasibility study and documentation of the applicant's ability to match dollar-for-dollar the amount of funds requested.

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33.16(4) *Funding.* Before the division will provide funding for a small business, the job candidate must complete an in-depth study about the business the job candidate intends to start and demonstrate that the business is feasible.

33.16(5) *Appeal.* If an application is denied, an applicant may appeal the decision to the division or the department for the blind. An appeal is governed by the appeal processes of the division or the department for the blind.

877—33.17(84H) Award of technical assistance funds.

33.17(1) *Awards.* Technical assistance funds may be used for specialized consulting services as determined necessary by the counselor, the business development specialist, and the job candidate. Technical assistance funds may be awarded, based on need, up to a maximum of \$10,000 per applicant. Specialized technical assistance may include, but is not limited to, engineering, legal, accounting, and computer services and other consulting services that require specialized education and training.

33.17(2) *Technical assistance.* When technical assistance is needed for specialized services beyond the expertise of the business development specialist, technical assistance will be provided to assist the job candidate.

33.17(3) *Technical assistance contracts.* The division shall negotiate contracts with qualified consultants for delivery of services to an applicant if specialized services are deemed necessary. The contracts are to state hourly fees for services, the type of service to be provided, and a timeline for delivery of services. Authorization of payment will be made by a counselor employed by the division or the department for the blind based upon the negotiated rate as noted in the contract. A copy of each contract will be filed with the division.

33.17(4) *Consultants.* Applicants will be provided a list of qualified business consultants by the business development specialist if specialized consultation services are necessary. The selection of the consultant(s) is the responsibility of the applicant.

33.17(5) *Case management.* The business development specialist or counselor will be available as needed for direct consultation to each applicant to ensure that quality services for business planning are provided in a timely manner.

877—33.18(84H) Business plan feasibility study procedure. Information and materials are available from the division and the department for the blind. The job candidate is to submit the job candidate's business plan feasibility study to the job candidate's counselor if the study is completed at the time application is made or to the business development specialist if the business plan feasibility study is completed after application approval. The business development specialist is available to guide and assist in the analysis of the feasibility study.

877—33.19(84H) Award of financial assistance funds.

33.19(1) *Awards.* Following the business development specialist's review of the business plan feasibility study, the business development specialist will issue a recommendation to support or not to support the proposed business venture. The counselor is to make a decision regarding approval or denial of the recommendation. If the plan is approved, the job candidate and counselor will review conditions of the financial assistance award and sign the appropriate forms of acknowledgment.

a. Financial assistance funds may be awarded, based on need, up to \$10,000 after approval of a business plan feasibility study and evidence of business need or evidence of business progression. Before receiving financial assistance, the job candidate must demonstrate a dollar-for-dollar match based on the amount of funding needed. The match may be provided through approved existing business assets, cash, conventional financing or other approved sources.

b. Financial assistance funds may be approved for, but are not limited to, equipment, tools, printing of marketing materials, advertising, rent (up to six months), direct-mail postage, raw materials, inventory, insurance (up to six months), and other approved start-up, expansion, or acquisition costs.

33.19(2) *Award process.* The amount that may be recommended by the business development specialist and approved by the counselor will be provided when there is a need. Recipients of financial

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assistance must demonstrate ongoing cooperation by providing the business development specialist with financial information needed to assess business progress before additional funds are expended.

33.19(3) *Financial assistance contracts.* Contracts for financial assistance funds are the responsibility of the division and will be consistent with the authorized use of Title I vocational rehabilitation funds and policy.

33.19(4) *Vendors.* Procurement of goods or services will follow procedures established by the department of administrative services. The type of goods or services to be obtained, as well as a timeline for delivery of such, are to be stated by the vendor and agreed upon by the division. Authorization for goods or services shall be made by a counselor employed by the division or the department for the blind based upon the negotiated rate and terms as noted in the contract. A copy of each contract is to be filed with the division. Approval for payment of authorized goods or services is to be made by authorized division personnel.

These rules are intended to implement Iowa Code chapter 84H, the federal Rehabilitation Act of 1973, and the federal Social Security Act (42 U.S.C. Section 301 et seq.).

ARC 7573C

INSPECTIONS AND APPEALS DEPARTMENT[481]

Adopted and Filed Emergency

Rulemaking related to hospitals

The Department of Inspections, Appeals, and Licensing hereby rescinds Chapter 51, “Hospitals,” Iowa Administrative Code, and adopts a new chapter with the same title.

Legal Authority for Rulemaking

This rulemaking is adopted under the authority provided in Iowa Code section 135B.3A as enacted by 2023 Iowa Acts, Senate File 75, and section 135B.7 as amended by 2023 Iowa Acts, Senate File 75.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code sections 135B.3A and 135B.7; 2023 Iowa Acts, Senate File 75; and Executive Order 10 (January 10, 2023).

Purpose and Summary

This rulemaking repromulgates Chapter 51. This rulemaking implements Iowa Code chapter 135B as amended by 2023 Iowa Acts, Senate File 75, in accordance with the goals and directives of Executive Order 10. Iowa Code chapter 135B requires that the Department, with approval by the Council on Health and Human Services, adopt rules setting forth standards for the different types of hospitals to be licensed under Iowa Code chapter 135B. Iowa Code section 135B.7 specifically requires that the rules state that a hospital or rural emergency hospital shall not deny clinical privileges to practitioners solely by reason of the license held by the practitioner or school or institution in which the practitioner received training; requires that a hospital or rural emergency hospital establish and implement written criteria for the granting of clinical privileges, including delineation of specified factors; and requires that the Department adopt rules requiring hospitals and rural emergency hospitals to establish and implement protocols for responding to the needs of patients who are victims of domestic abuse and elder abuse.

Pursuant to Iowa Code section 135B.3A, the Department is also required to adopt rules to establish minimum standards for the licensure of rural emergency hospitals consistent with the federal Consolidated Appropriations Act, Pub. L. No. 116-260, §125, and with regulations issued by the United States Secretary of Health and Human Services for rural emergency hospitals. Iowa Code section 135B.7A also requires the Department to adopt rules that require hospitals and rural emergency hospitals to establish procedures for authentication of all verbal orders by a practitioner within a period not to exceed 30 days following a patient’s discharge.

The proposed rules establish basic standards for patient care, including standards related to medical, nursing, and additional staff who provide services in hospitals; hospital response to abuse; hospital delivery of adequate nursing, surgical, anesthesia, emergency, obstetric, neonatal, and pediatric services; implementation of science-based infection control practices; delivery of services for medication administration, pharmacy, pathology and laboratory, and radiological services; organ and tissue procurement; maintenance of patient records; food protection and nutritional services; maintenance and use of patient equipment; and safe standards of construction.

A Regulatory Analysis related to this rulemaking was published in the Iowa Administrative Bulletin on November 29, 2023, and a public hearing was held on December 20, 2023. The Department received two public comments specifically supportive of the rules, including a comment opining that the rules are “appropriate for the chapter’s purpose and are the most effective and efficient implementation of Iowa Code chapter 135B.” The Department also received public comments identifying the need for rural emergency hospitals in the commenters’ communities but without substantive comment on the rules. In response to comments from the Administrative Rules Review Committee at its hearing on the Regulatory

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Analysis, a minor and nonsubstantive change was made to proposed rule 481—51.24(135B) to make that rule easier for laypersons to read.

*Reason for Adoption of Rulemaking Without
Prior Notice and Opportunity for Public Participation*

Pursuant to Iowa Code section 17A.4(3), the Department finds that notice and public participation are unnecessary or impractical because statute so provides. 2023 Iowa Acts, Senate File 75, specifically directs the Department to “adopt emergency rules under section 17A.4, subsection 3, and section 17A.5, subsection 2, paragraph ‘b’, to implement the provisions of [Division I] of this Act” related to rural emergency hospitals.

Reason for Waiver of Normal Effective Date

Pursuant to Iowa Code section 17A.5(2)“b”(1)(a), the Department also finds that the normal effective date of this rulemaking, 35 days after publication, should be waived and the rulemaking made effective on January 18, 2024, because 2023 Iowa Acts, Senate File 75, specifically directs the department to “adopt emergency rules under section 17A.4, subsection 3, and section 17A.5, subsection 2, paragraph ‘b’, to implement the provisions of [Division I] of this Act” related to rural emergency hospitals.

Adoption of Rulemaking

This rulemaking was adopted by the Department with the approval of the Council on Health and Human Services on January 11, 2024.

Concurrent Publication of Notice of Intended Action

In addition to its adoption on an emergency basis, this rulemaking has been initiated through the normal rulemaking process and is published herein under Notice of Intended Action as **ARC 7572C** to allow for public comment.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa in an amount requiring a fiscal impact statement pursuant to Iowa Code section 17A.4(4).

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to 481—Chapter 6.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking 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).

Effective Date

This rulemaking became effective on January 18, 2024.

The following rulemaking action is adopted:

INSPECTIONS AND APPEALS DEPARTMENT[481](cont'd)

ITEM 1. Rescind 481—Chapter 51 and adopt the following **new** chapter in lieu thereof:

CHAPTER 51
HOSPITALS

481—51.1(135B) Definitions. As used in this chapter, unless the context otherwise requires, the following definitions apply:

“*Critical access hospital*” means any hospital located in a rural area and certified by the Iowa department of health and human services as being a necessary provider of health care services to residents of the area. A “critical access hospital” makes available 24-hour emergency care, is a designated provider in a rural health network, and meets the criteria specified pursuant to rule 481—51.53(135B).

“*Governing board*” means the board of trustees, the owner, or person(s) designated by the owner as the governing authority. The governing board has supreme authority in the hospital and is responsible for the management, control, and appointment of the medical staff.

“*Hospital*” or “*general hospital*” means an institution, place, building, or agency represented and held out to the general public as ready, willing and able to furnish care, accommodations, facilities and equipment for the diagnosis or treatment, over a period exceeding 24 hours, of two or more nonrelated individuals suffering from illness, injury, infirmity or deformity, or other physical or mental condition for which medical, surgical and obstetrical care services are provided.

“*Long-term acute care hospital*” means any hospital that has an average inpatient length of stay greater than 25 days and that provides extended medical and rehabilitative care for patients who are clinically complex and who may suffer from multiple acute or chronic conditions. Services provided by a long-term acute care hospital include but are not limited to comprehensive rehabilitation, respiratory therapy, head trauma treatment, and pain management.

“*Medical staff*” means an organized body that is composed of individuals appointed by the hospital governing board, that operates under bylaws approved by the governing board and that is responsible for the quality of medical care provided to patients by the hospital. All members of the medical staff, one of whom shall be a licensed physician, shall be licensed to practice in the state of Iowa.

“*Premises*” means any or all designated portions of a building or structure, enclosures or places in the building, or real estate when the distinct and clearly identifiable parts provide separate care and services. “Premises” is not to be construed to permit the existence of a separately licensed specialty hospital within the physical structure of a general hospital.

“*Rural emergency hospital*” means the same as defined by Iowa Code section 135B.1.

“*Specialized hospital*” means any hospital devoted primarily to the specialized care and treatment of persons with chronic or long-term illness, injury, or infirmity. “Specialized hospital” does not include a specialty hospital.

“*Specialty hospital*” means the same as defined by 42 CFR Section 411.351 as amended to November 7, 2023.

481—51.2(135B) Classification, compliance and license.

51.2(1) All hospitals subject to licensure under this chapter will be classified as a critical access hospital, general hospital, long-term acute care hospital, rural emergency hospital, or specialized hospital. The license issued by the department will clearly identify the classification of the hospital, and such designation will be set forth on the hospital’s license.

51.2(2) A hospital shall comply with all of the general regulations for hospitals and any rules pertaining to specialized services, if specialized services are provided in the hospital.

51.2(3) A separate license is required for each hospital even though more than one is operated under the same management. A separate license is not required for separate buildings of a hospital located on separate parcels of land, which are not adjoining but provide elements of the hospital’s full range of services for the diagnosis, care, and treatment of human illness, including convalescence and rehabilitation, and which are organized under a single owner or governing board with a single designated administrator and medical staff.

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51.2(4) The license shall be conspicuously posted on the main premises of the hospital.

51.2(5) The department shall recognize, in lieu of its own licensure inspection, the comparable inspections and findings of an accrediting organization approved by the Centers for Medicare and Medicaid Services (CMS) for federal certification if the department is provided with copies of all requested materials relating to the inspection process. In cases of the initial licensure, the department may require its own inspection when needed in addition to comparable accreditations to allow the hospital to begin operations. The department may also initiate its own inspection when it is determined that the inspection findings of the accrediting organization are insufficient to address concerns identified as possible licensure issues.

51.2(6) The department may recognize, in lieu of its own licensure inspection, the comparable inspection and inspection findings of a Medicare conditions of participation survey of a hospital certified by CMS. Hospitals that are not federally certified will be inspected utilizing the requirements of this chapter.

481—51.3(135B) Quality improvement program.

51.3(1) There shall be an ongoing hospitalwide quality improvement program. This program is to be designed to improve, as needed, the quality of patient care by:

- a. Assessing clinical patient care;
- b. Assessing nonclinical and patient-related services within the hospital;
- c. Developing remedial action as needed; and
- d. Ongoing monitoring and evaluating of the progress of remedial action taken.

51.3(2) The governing body shall ensure there is an effective hospitalwide patient-oriented quality improvement program.

51.3(3) The quality improvement program shall involve active participation of physician members of the hospital's medical staff and other health care professionals, as appropriate. Evidence of this participation will include ongoing case review and assessment of other patient care problems, which have been identified through the quality improvement process.

51.3(4) The quality improvement plan may include external, state, local, federal, and regional benchmarking activities designed to improve the quality of patient care. The quality improvement plan shall be written and may address the following:

- a. The program's objectives, organization, scope, and mechanisms for overseeing the effectiveness of monitoring, evaluation, and problem-solving activities;
- b. The participation from all departments, services (including services provided both directly and under contract), and disciplines;
- c. An assessment of participation through a quality improvement committee meeting on an established periodic basis;
- d. The coordination of quality improvement activities;
- e. The communication, reporting and documentation of all quality improvement activities on a regular basis to the governing board, the medical staff, and the hospital administrator;
- f. An annual evaluation by the governing board of the effectiveness of the quality improvement program; and
- g. The accessibility and confidentiality of materials relating to, generated by or part of the quality improvement process.

481—51.4(135B) Long-term acute care hospital located within a general hospital.

51.4(1) A long-term acute care hospital shall meet the requirements for a general hospital, including emergency services, except that obstetrical facilities are not required, and, if the long-term acute care hospital is located within a separately licensed hospital and does not provide its own emergency services, the long-term acute care hospital shall contract for emergency services with the host general hospital.

51.4(2) If a long-term acute care hospital occupies the same premises of a general hospital, all treatment facilities and administrative offices for each hospital shall be clearly marked and separated from each other and located within the licensed premises of each licensee. Treatment facilities shall be

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sufficient to meet the medical needs of the patients. Administrative offices include, but are not limited to, record rooms and personnel offices. Nothing prohibits a long-term acute care hospital that is occupying the same premises as a general hospital from utilizing the entrance, hallway, stairs, elevators or escalators of the general hospital to provide access to the long-term acute care hospital's separate entrance, but there should be clearly identifiable and distinguishable signs for each hospital.

51.4(3) A long-term acute care hospital located within a general hospital shall have sufficient staff to meet the patients' needs. No nursing services staff can be simultaneously assigned patient duties in both licensed hospitals.

51.4(4) Each long-term acute care hospital located within a general hospital and the general hospital shall have a separate and distinct governing board in control of the respective hospital. No more than one board member shall serve in a common capacity on the governing board of each licensed hospital. For the purposes of this rule, control exists if an individual or an organization has the power, directly or indirectly, to significantly influence or direct the actions or policies of an organization or institution.

51.4(5) A long-term acute care hospital located within a general hospital may contract with the host general hospital for the provision of services. All contracts shall clearly delineate the responsibilities of and services provided by the long-term acute care hospital and the general hospital and be executed by the respective governing boards.

481—51.5(135B) Medical staff.

51.5(1) A roster of medical staff members shall be kept.

51.5(2) All hospitals shall have one or more licensed physicians designated for emergency call service at all times.

51.5(3) A hospital shall not deny clinical privileges as set forth in Iowa Code section 135B.7(2).

51.5(4) A hospital shall establish and implement written criteria for the granting of clinical privileges that include but are not limited to consideration of the:

- a. Ability of the applicant to provide patient care services independently or appropriately in the hospital;
- b. License held by the applicant to practice;
- c. Training, experience, and competence of the applicant;
- d. Relationship between the applicant's request for privileges and the hospital's current scope of patient care services;
- e. Applicant's ability to provide comprehensive, appropriate and cost-effective services.

481—51.6(135B) Patient rights and responsibilities. The hospital governing board shall adopt a statement of principles relating to patient rights and responsibilities that is made available to patients of the hospital and addresses, at a minimum:

51.6(1) Access to treatment regardless of age, race, creed, ethnicity, religion, culture, language, physical or mental disability, socioeconomic status, sex, sexual orientation, gender identity or expression, diagnosis, or source of payment for care;

51.6(2) Preservation of individual dignity and protection of personal privacy in receipt of care;

51.6(3) Confidentiality of medical and other appropriate information;

51.6(4) Assurance of reasonable safety within the hospital;

51.6(5) Knowledge of the identity of the physician or other practitioner primarily responsible for the patient's care as well as identity and professional status of others providing services to the patient while in the hospital;

51.6(6) Nature of patient's right to information regarding the patient's medical condition unless medically contraindicated, to consult with a specialist at the patient's request and expense, and to refuse treatment to the extent authorized by law;

51.6(7) Access to and explanation of patient billings;

51.6(8) Process for patient pursuit of grievances; and

51.6(9) Patient responsibilities, including to provide accurate and complete information regarding the patient's health status; to follow recommended treatment plans; to abide by hospital rules and

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regulations affecting patient care and conduct and be considerate of the rights of other patients and hospital personnel; and to fulfill the patient's financial obligations as soon as possible following discharge.

481—51.7(135B) Abuse.**51.7(1) Definitions.**

"Abuse" means the willful infliction of injury, unreasonable confinement, intimidation, or punishment, with resulting physical harm, pain or mental anguish. Neglect is a form of abuse and is defined as the failure to provide goods and services necessary to avoid physical harm, mental anguish, or mental illness.

"Child abuse" means the same as defined in Iowa Code section 232.68.

"Dependent adult abuse" means the same as defined in Iowa Code section 235E.1 and 481—Chapter 52.

"Domestic abuse" means the same as defined in Iowa Code section 236.2.

"Elder abuse" means the same as defined in Iowa Code section 235F.1.

"Family or household members" means the same as defined in Iowa Code section 236.2.

51.7(2) Abuse prohibited. Each patient shall receive kind and considerate care at all times and shall be free from all forms of abuse or harassment.

a. Restraints shall be applied only when they are necessary to prevent injury to the patient or to others and shall be used only when alternative measures are not sufficient to accomplish their purposes.

b. There must be a written order signed by the attending physician approving the use of restraints either at the time they are applied or as soon thereafter as possible.

c. Careful consideration shall be given to the methods by which the restraints can be speedily removed in case of fire or other emergency.

51.7(3) Hospital response to elder abuse.

a. Each hospital shall establish and implement policies and procedures with respect to victims of elder abuse that, at a minimum, provide for:

- (1) An interview with the victim in a place that ensures privacy;
- (2) Confidentiality of the person's treatment and information; and
- (3) Education of appropriate emergency department staff to assist in the identification of victims of elder abuse.

b. The treatment records of victims of elder abuse shall include:

- (1) An assessment of the extent of abuse to the victim specifically describing the location and extent of the injury and reported pain;
- (2) A record of the treatment and intervention by health care provider personnel;
- (3) A record of the need for follow-up care and specification of the follow-up care to be given (e.g., X-rays, surgery, consultation, similar care); and
- (4) The victim's statement of how the injury occurred.

51.7(4) Hospital response to domestic abuse. Each hospital shall establish and implement policies and procedures with respect to victims of domestic abuse that, at a minimum, meet the requirements of paragraph 51.7(3) "a," and also provide for sharing information regarding the domestic abuse hotline and programs. The treatment records of victims of domestic abuse shall meet the requirements of paragraph 51.7(3) "b" and also include evidence that the victim was informed of the telephone numbers for the domestic abuse hotline and domestic abuse programs and the victim's response.

51.7(5) Mandatory reporting of child abuse and dependent adult abuse. Each hospital shall establish and implement policies and procedures with respect to the mandatory reporting of abuse pursuant to the Iowa Code. The treatment records of victims of child abuse or dependent adult abuse shall indicate that the department of health and human services' protective services was contacted.

481—51.8(135B) Organ, tissue and eye procurement. Each hospital shall have written policies and protocols for organ, tissue and eye donation consistent with Iowa Code chapter 142C and 42 CFR 482.45 as amended to November 7, 2023, or 42 CFR 485.643 as amended to November 7, 2023.

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481—51.9(135B) Nursing services.

51.9(1) The hospital shall have an organized nursing service that provides complete and efficient nursing care to each patient. The authority, responsibility and function of each nurse shall be clearly defined.

51.9(2) Registered nurses shall utilize the nursing process in the practice of nursing, consistent with accepted and prevailing practice. The nursing process is ongoing and includes:

- a. Nursing assessments about the health status of an individual or group.
- b. Formulation of a nursing diagnosis based on analysis of the data from the nursing assessment.
- c. Planning of nursing care, which includes determining goals and priorities for actions that are based on the nursing diagnosis.
- d. Nursing interventions implementing the plan of care.
- e. Evaluation of the individual's or group's status in relation to established goals and the plan of care.

51.9(3) A licensed practical nurse(s) may participate in the nursing process as described in subrule 51.9(2) consistent with accepted practice by assisting the registered nurse or physician.

51.9(4) All nurses employed in a hospital who practice nursing as a registered nurse or licensed practical nurse shall hold an active Iowa license or hold an active license in another state and be recognized for licensure in this state pursuant to the nurse licensure compact in Iowa Code section 152E.1.

51.9(5) There shall be a director of nursing service with administrative and executive competency who holds an active Iowa license or holds an active license in another state and is recognized for licensure in this state pursuant to the nurse licensure compact in Iowa Code section 152E.1.

51.9(6) Nursing management shall have had preparation courses and experience in accordance with hospital policy commensurate with the responsibility of the specific assignment.

51.9(7) All unlicensed personnel performing patient-care service shall be under the supervision of a registered nurse, have duties defined in writing by the hospital, and be instructed in all duties assigned to them.

51.9(8) The nursing service shall have adequate numbers of licensed registered nurses, licensed practical nurses, and other personnel to provide nursing care essential for the proper treatment, well-being, and recovery of the patient.

51.9(9) Written policies and procedures shall be established for the administrative and technical guidance of the personnel in the hospital. Each employee shall be familiar with these policies and procedures.

51.9(10) Each hospital shall have a minimum of one registered nurse on duty at all times.

481—51.10(135B) Records and reports.

51.10(1) *Medical records.* Accurate and complete medical records shall be maintained for all patients and signed by the appropriate provider. These records shall be filed and stored in an accessible manner and in accordance with the statute of limitations as specified in Iowa Code chapter 614.

51.10(2) *Hospital records.* A hospital shall maintain the following records:

- a. *Admission records.* A register of all admissions to the hospital.
- b. *Death records.* A record of all deaths in the hospital, including all information on a standard death certificate as specified in Iowa Code chapter 144.
- c. *Birth records.* A record of all births in the hospital, including all information on a standard birth certificate as specified in Iowa Code chapter 144.
- d. *Controlled substance records.* Controlled substance records in accordance with state and federal laws, rules and regulations.

51.10(3) *Electronic records.* In addition to the access provided in 481—subrule 50.10(2), an authorized representative of the department shall be provided unrestricted access to electronic records pertaining to the care provided to the patients of the hospital.

a. If access to an electronic record is requested by the authorized representative of the department, the hospital may provide a tutorial on how to use its particular electronic system or may designate an

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individual who will, when requested, access the system, respond to any questions or assist the authorized representative as needed in accessing electronic information in a timely fashion.

b. The hospital shall provide a terminal where the authorized representative may access records.

c. If the hospital is unable to provide direct print capability to the authorized representative, the hospital shall make available a printout of any record or part of a record on request in a time frame that does not intentionally prevent or interfere with the department's survey or investigation.

481—51.11(135B) Pharmaceutical service.

51.11(1) General requirements. Hospital pharmaceutical services shall be licensed in accordance with Iowa board of pharmacy rules.

51.11(2) Medication administration. All drugs and biologicals must be administered by, or under the supervision of, nursing or other trained personnel in accordance with hospital policies and procedures. The person assigned the responsibility of medication administration must complete the entire procedure by personally preparing the dose from a multiple-dose container or using a prepackaged unit dose, personally administering it to the patient, and observing the act of the medication being taken.

51.11(3) Standing orders. Standing orders for drugs may be used for specified patients when authorized by the prescribing practitioner. These standing orders shall be in accordance with policies and procedures established by the appropriate committee within each hospital. At a minimum, the standing orders shall:

a. Specify the clinical situations under which the drug is to be administered;

b. Specify the types of medical conditions of the patients for whom the standing orders are intended;

c. Be reviewed and revised by the hospital's pharmacy and therapeutics or similar committee on a regular basis as specified by hospital policies and procedures;

d. Be specific as to the drug, dosage, route, and frequency of administration; and

e. Be dated, authorized by signature or other secure electronic method by the prescribing practitioner within a period not to exceed 30 days following a patient's discharge, and included in the patient's medical record.

51.11(4) Self-administration of medications. Patients shall only be permitted to self-administer medications when specifically ordered by the prescribing practitioner and the prescribing practitioner has determined this practice is safe for the specific patient. The hospital shall develop policies and procedures regarding storage and documentation of the administration of drugs.

481—51.12(135B) Verbal orders. All verbal orders must be authenticated by the prescribing or ordering practitioner within a period not to exceed 30 days following a patient's discharge. When verbal or electronic mechanisms are used to transmit orders, the orders must be accepted only by personnel who are authorized to do so by hospital policies and procedures in a manner consistent with federal and state law.

481—51.13(135B) Radiological services.

51.13(1) The hospital must maintain, or have available, radiological services to meet the needs of the patients.

51.13(2) All radiological services shall be furnished in compliance with any applicable state law or state rules, including 641—Chapters 38 through 42.

481—51.14(135B) Laboratory service.

51.14(1) The hospital must maintain, or have available, adequate laboratory and pathology services and facilities to meet the needs of its patients. The medical staff determine which laboratory tests are necessary to be performed on site to meet the needs of the patients.

51.14(2) Emergency laboratory services must be available 24 hours a day.

51.14(3) Laboratory services must be performed in a laboratory certified and operating in accordance with 42 CFR Part 493 as amended to November 7, 2023.

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481—51.15(135B) Food and nutrition service.

51.15(1) Food and nutrition service definition. “Food service” means providing safe, satisfying, and nutritionally adequate food for patients through the provision of appropriate staff, space, equipment, and supplies. “Nutrition service” means providing assessment and education to ensure that the nutritional needs of the patients are met.

51.15(2) General requirements.

a. All food will be handled, prepared, served, and stored in accordance with the Food Code adopted under provisions of Iowa Code section 137F.2.

b. The food and dietetic services shall be of a quality and quantity to meet the patient’s needs in accordance with any qualified health practitioner’s orders and meet the standards set forth in 42 CFR 482.28 as amended to November 7, 2023. Patient food preferences should be respected as much as possible, and substitutes offered through use of appropriate food groups.

c. Policies and procedures shall be developed and maintained.

d. Not less than three meals will be served daily unless contraindicated, and not more than 14 hours will elapse between the evening meal and breakfast of the following day. Nourishment between meals will be available to all patients unless contraindicated by the qualified health care practitioner.

e. The hospital will maintain adequate space, equipment, and staple food supplies to provide patient food service in emergencies.

f. Menus for regular and therapeutic diets will be available and standardized recipes with nutritional analysis adjusted to number of portions will be maintained and used in food preparation.

g. Food shall be prepared by methods that conserve nutritive value, flavor, and appearance. Food shall be served attractively at appropriate and safe temperatures and in a form to meet individual needs.

h. Nutrition screening will be conducted by qualified hospital staff to determine the patient’s need for a comprehensive nutrition assessment by the licensed dietitian. Nutritional care will be integrated in the patient care plan, as appropriate, based upon the patient’s diagnosis and length of stay. The licensed dietitian will record in the patient’s medical record any observations and information pertinent to medical nutrition therapy, and any pertinent dietary records will be included in the patient’s transfer discharge record to ensure continuity of nutritional care. Upon discharge, nutrition counseling and education will be provided to the patient and family as ordered by the qualified health care practitioner, requested by the patient or deemed appropriate by the licensed dietitian.

i. In-service training, in accordance with hospital policies, will be provided for all food and nutrition service personnel.

j. On the nursing units, a separate patient food storage area will be maintained that ensures proper temperature control.

51.15(3) Food and nutrition service staff.

a. A licensed dietitian will be employed on a full-time, part-time or consulting basis, with any part-time or consultant services provided on the premises at appropriate times on a regularly scheduled basis. These services shall be of sufficient duration and frequency to provide continuing liaison with medical and nursing staff, advice to the administrator, patient counseling, guidance to the supervisor and staff of the food and nutrition service, approval of all menus, and participation in the development or revision of departmental policies and procedures and in planning and conducting in-service education programs.

b. If a licensed dietitian is not employed full-time, then one must be employed on a part-time or consultation basis with an additional full-time person who has completed a certified dietary manager course and is employed to be responsible for the operation of the food service.

c. Sufficient food service personnel will be employed, oriented, trained, and their working hours scheduled to provide for the nutritional needs of the patients and to maintain the food service areas.

51.15(4) Food service equipment and supplies. Equipment necessary for preparation and maintenance of menus, records, and references will be provided. At least one week’s supply of staple foods and a reasonable supply of perishable foods shall be maintained on the premises. Supplies will be appropriate to meet the requirements of the menu.

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481—51.16(135B) Equipment for patient care. Hospital equipment shall be selected, maintained and utilized in accordance with the manufacturer's specifications and the needs of the patients.

481—51.17(135B) Infection control. There shall be proper policies and procedures for the prevention and control of communicable diseases, including compliance with the current rules for the control of communicable disease as provided by the Iowa department of health and human services and current Centers for Disease Control and Prevention (CDC) guidelines for isolation precautions.

51.17(1) Segregation. There shall be proper arrangement of areas, rooms and patients' beds to provide for the prevention of cross-infections and the control of communicable diseases. There shall also be proper cleansing of rooms and surgeries immediately following the care of a communicable case and utilization of proper isolation techniques for patients and staff to prevent cross-infection.

51.17(2) Visitors. The hospital shall establish proper policies and procedures for the control of visitors to all services in the hospital.

51.17(3) Health assessments. Health assessments for all contracted or employed personnel who provide direct services shall be required at the commencement of employment and thereafter at least every four years.

a. "Direct services" means services provided through person-to-person contact. "Direct services" excludes services provided by individuals such as building contractors, repair workers, or others who are in the hospital for a very limited purpose, who are not in the hospital on a regular basis, and who do not provide any treatment or services for the patients of the hospital.

b. The health assessment may be performed by the person's primary care provider.

c. The health assessment shall include, at a minimum, vital signs and an assessment for infectious or communicable diseases.

d. Screening and testing for tuberculosis shall be conducted pursuant to 481—Chapter 59.

51.17(4) Notification. Prior to removal of a deceased resident/patient from a facility, the funeral director or person responsible for transporting the body shall be notified by the facility staff of any special precautions that were followed by the facility having to do with the mode of transmission of a known or suspected communicable disease.

481—51.18(135B) Surgical services. All hospitals providing surgical services shall be properly organized and equipped to provide for the safe and aseptic treatment of surgical patients.

51.18(1) Written policies and procedures governing surgical services shall be developed and implemented in consultation with the hospital's medical staff and, at a minimum, provide for:

a. Surgical services under the direction of a qualified doctor of medicine or osteopathy.

b. Delineation of the privileges and qualifications of individuals authorized to provide surgical services as set forth in the hospital's medical staff bylaws and in accordance with subrule 51.5(4), including a periodic review and update of surgical privileges not to exceed every three years or other term permitted by an accrediting organization approved by CMS for federal certification, whichever is longer. The surgical service must maintain a roster of these individuals specifying the surgical privileges of each.

c. Immediate availability of at least one registered nurse for the operating room suites to respond to emergencies.

d. The qualifications and job descriptions of nursing personnel, surgical technicians, and other support personnel and continuing education required.

e. Appropriate staffing for surgical services, including physician and anesthesia coverage and other support personnel.

f. Availability of ancillary services for surgical patients, including but not limited to blood banking, laboratory, radiology, and anesthesia.

g. Infection control and disease prevention, including aseptic surveillance and practice, identification of infected and noninfected cases, sterilization and disinfection procedures, and ongoing monitoring of infections and infection rates.

h. Housekeeping requirements.

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- i.* Safety practices.
- j.* Ongoing quality assessment, performance improvement, and process improvement.
- k.* The pathological examination of tissue specimens either directly or through contractual arrangements.
- l.* Appropriate preoperative teaching and discharge planning.

51.18(2) Policies and procedures may be adjusted as appropriate to reflect the provision of surgical services in inpatient, outpatient or one-day surgical settings.

51.18(3) There must be an appropriate history and physical workup documented and a properly executed consent form in the chart of each patient prior to surgery, except in the event of an emergency.

51.18(4) A full operative report must be written or dictated within 24 hours following surgery and signed by the individual conducting the surgery.

51.18(5) Equipment available in the operating room, recovery room, outpatient surgical areas, and for postsurgical care must be consistent with the needs of the patient.

481—51.19(135B) Anesthesia services.

51.19(1) There shall be written policies and procedures governing anesthesia services that are consistent with the needs and resources of the hospital. Written policies and procedures governing anesthesia services shall be developed and implemented in consultation with the hospital's medical staff and, at a minimum, provide for:

- a.* Anesthesia services under the direction of a qualified doctor of medicine or osteopathy.
- b.* The qualifications of individuals authorized to administer anesthesia as set out in the hospital's medical staff bylaws or medical staff rules and regulations.
- c.* Preanesthesia evaluation, appraisal of a patient's current condition, preparation of an intraoperative anesthesia record, and discharge criteria for patients.
- d.* Equipment functioning and safety, including ensuring that a qualified medical doctor, osteopathic physician and surgeon or anesthesiologist checks, prior to the administration of anesthesia, the readiness, availability, cleanliness, and working condition of all equipment to be used in the administration of anesthetic agents and minimizing electrical hazard in anesthesia areas.
- e.* Quality assurance, including infection control procedures; integration of anesthesia services into various areas of the hospital; and ongoing monitoring, review, and evaluation of anesthesia services, processes, and procedures.

51.19(2) Policies and procedures may be adjusted as appropriate to reflect provision of anesthesia services in inpatient or outpatient settings.

481—51.20(135B) Emergency services.

51.20(1) All hospitals shall provide for emergency services that offers reasonable care within the medical capabilities of the facility in determining whether an emergency exists, renders care appropriate to the facility and, at a minimum, renders lifesaving first aid and makes appropriate referral to a facility that is capable of providing needed services.

51.20(2) The hospital shall have written policies and procedures specifying the scope and conduct of patient care to be provided in the emergency service. The policies shall:

- a.* Provide for training of all personnel providing patient care in the emergency service.
- b.* Require that a medical record be kept on every patient given treatment in the emergency service and establish the medical record documentation. The documentation should include, at a minimum, appropriate information regarding the medical screening provided, except where the person refuses, then notation of patient refusal; physician documentation of the presence or absence of an emergency medical condition or active labor; physician documentation of transfer or discharge, stating the basis for transfer or discharge; and, where transfer occurs, identity of the facility of transfer, acceptance of the patient by the facility of transfer, and means of transfer of the patient.

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481—51.21(135B) Obstetric and neonatal services. All hospitals providing obstetrical care shall be properly organized and equipped to provide accommodations for mothers and newborn infants. The supervision of the maternity area shall be under the direction of a qualified registered nurse.

481—51.22(135B) Pediatric services. All hospitals providing pediatric care shall be properly organized and equipped to provide appropriate accommodations for children. The supervision of the pediatric area shall be under the direction of a qualified registered nurse.

481—51.23(135B) Psychiatric services.

51.23(1) General requirements. Any hospital operating as a psychiatric hospital or operating a psychiatric unit shall:

a. Be a hospital or unit primarily engaged in providing, by or under the supervision of a doctor of medicine or osteopathy, psychiatric services for the diagnosis and treatment of persons with psychiatric illnesses/disorders;

b. Comply with the requirements of this chapter applicable to hospitals. If medical and surgical diagnostic and treatment services are not available within the hospital, the hospital shall have an agreement with an outside source of these services to ensure they are immediately available;

c. Have policies and procedures for informing patients of their rights and responsibilities and for ensuring the availability of a patient advocate; and

d. Have sufficient numbers of qualified professionals and support staff to evaluate patients, formulate written individualized comprehensive treatment plans, provide active treatment measures, and engage in discharge planning.

51.23(2) Personnel.

a. Director of inpatient psychiatric services. The director of inpatient psychiatric services shall be a doctor of medicine or osteopathy qualified to meet the training and experience requirements for examination by the American Board of Psychiatry and Neurology or the American Osteopathic Board of Neurology and Psychiatry.

b. Director of psychiatric nursing services. The director of psychiatric nursing services shall:

(1) Be a registered nurse who has a master's degree in psychiatric or mental health nursing;

(2) Be an advanced registered nurse practitioner certified in psychiatric or mental health nursing;

or

(3) Be qualified by education and two years' experience in the care of persons with mental disorders.

c. Psychological services. Psychological services shall be provided or available that are in compliance with Iowa Code chapter 154B.

d. Social services. Social services shall provide, or have available by contract, at least one staff member who has:

(1) A master's degree from an accredited school of social work; or

(2) A bachelor's degree in social work with two years' experience in the care of persons with mental disorders.

e. Therapeutic services. Therapeutic activities shall be provided by qualified therapists. The activities shall be appropriate to the needs and interests of the patients.

51.23(3) Individual written plan of care. An individual written plan of care shall be developed by an interdisciplinary team of a physician and other personnel who are employed by, or who provide service under contract to patients in, the facility. The plan of care shall:

a. Be based on a diagnostic and psychiatric evaluation that includes examination of the medical, psychological, social, behavioral, and developmental aspects of the patient. The initial diagnostic and psychiatric evaluation shall be completed within 60 hours of admission;

b. Be developed by an interdisciplinary team in consultation with the patient, the patient's legal guardian, and others who are currently providing services or who will provide care upon discharge;

c. State treatment objectives through measurable and obtainable outcomes;

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- d.* Prescribe an integrated program of therapies, activities, and experiences designed to meet those objectives;
- e.* Include an appropriate postdischarge plan with coordination of services to provide continuity of care following discharge; and
- f.* Be reviewed as needed by the interdisciplinary team for the continued appropriateness of the plan and for a determination of needed changes.

481—51.24(135B) Long-term care service.

51.24(1) Long-term care service definition. Long-term care service means any building or distinct part of a building utilized by the hospital for the provision of a service that would fall within the definition of a health care facility in Iowa Code chapter 135C if it was not operating as part of a hospital licensed under Iowa Code chapter 135B.

51.24(2) Long-term care service general requirements. The general requirements for the hospital's long-term care service are the same as required by Iowa Code chapter 135C or rules promulgated thereunder for the category of health care facility involved. Exceptions to those rules requiring distinct parts to be established may be waived where it is found to be in the best interest of the long-term care resident and of no detriment to the patients in the hospital. Requests for waivers to other applicable rules may be made in accordance with the appropriate health care facility rules.

51.24(3) Long-term care service staff. Where a hospital operates a freestanding nursing care facility, it shall be under the administrative authority of a licensed nursing home administrator who will be responsible to the hospital's administrator. Where a hospital operates a distinct part long-term care unit under the hospital license, a licensed nursing home administrator is not required. Other staffing requirements for the hospital's long-term care service are the same as required by Iowa Code chapter 135C or rules promulgated thereunder.

481—51.25(135B) Criminal, dependent adult abuse, and child abuse record checks. The requirements for criminal, dependent adult abuse, and child abuse records checks applicable to health care facilities set forth in rule 481—50.9(135C) are applicable to hospitals.

481—51.26(135B) Minimum standards for construction.

51.26(1) Minimum standards. The following construction standards are applicable to hospitals and off-site premises licensed under this chapter:

- a.* Construction shall be in accordance with the standards set forth in the Guidelines for Design and Construction of Hospitals, 2018 edition, published by the Facility Guidelines Institute.
- b.* Existing hospitals and off-site premises built in compliance with prior editions of the hospital construction guidelines will be deemed in compliance with subsequent regulations, with the exception of any new structural renovations, additions, functional alterations, or changes in utilization to existing facilities, which shall meet the standards specified in this subrule.
- c.* The design and construction of a hospital or off-site premises shall be in conformance with 661—Chapter 205.
- d.* In jurisdictions without a local building code enforcement program, the construction shall be in conformance with the state building code, as authorized by Iowa Code section 103A.7, in effect at the time of plan submittal for review and approval. In jurisdictions with a local building code enforcement program, local building code enforcement must include both the adoption and enforcement of a local building code through plan reviews and inspections.
- e.* If an applicable requirement of 661—Chapter 205 is inconsistent with an applicable requirement of the state building code, the hospital or off-site premises is deemed to be in compliance with the state building code requirement if the requirement of 661—Chapter 205 is met.

51.26(2) Submission of construction documents. Submissions shall comply with rule 661—300.4(103A). The responsible design professional shall certify that the building plans meet the requirements specified in subrule 51.26(1), unless a waiver has been granted pursuant to subrule 51.26(3).

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51.26(3) Waivers. Requests for waiver may be submitted to the department in accordance with 481—Chapter 6. Any waiver granted is limited to the specific project under consideration and does not establish a precedent for similar acceptance in other cases. The request must demonstrate how patient safety and the quality of care offered will not be compromised by the waiver. In determining whether a waiver request will be granted, the director will consider the following:

- a. Whether the design and planning for the specific property offers improved or compensating features to provide equivalent desirability and utility;
- b. Whether alternate or special construction methods, techniques, and mechanical equipment offer equivalent durability, utility, health, and safety;
- c. Whether the health, safety or welfare of any patient is endangered;
- d. Occupancy and function of the building; and
- e. The type of licensing.

481—51.27(135B) Critical access hospitals. Critical access hospitals shall meet the federal conditions of participation as a critical access hospital as described in 42 CFR Part 485, Subpart F, as amended to November 7, 2023, and any federal interpretive guidelines. The requirements of this chapter applicable to hospitals are generally applicable to critical access hospitals unless compliance would be inconsistent with 42 CFR Part 485, Subpart F, as amended to November 7, 2023, and any interpretive guidelines. If swing-bed approval has been granted, all 25 beds may be used interchangeably for acute or skilled nursing facility level of care services.

481—51.28(135B) Rural emergency hospitals. Rural emergency hospitals shall meet the federal conditions of participation for rural emergency hospitals, as set forth in 42 CFR Part 485, Subpart E, as amended to January 1, 2023, and any federal interpretive guidelines. The requirements of this chapter applicable to hospitals are generally applicable to rural emergency hospitals unless compliance would be inconsistent with 42 CFR Part 485, Subpart E, as amended to January 1, 2023, and any federal interpretive guidelines.

481—51.29(135B) Specialized hospitals. A specialized hospital shall meet the requirements for a general hospital. The diagnosis, treatment or care at a specialized hospital shall be administered by or performed under the direction of persons especially qualified in the diagnosis and treatment of the particular illness, injury, or infirmity.

These rules are intended to implement Iowa Code sections 135B.3A, 135B.7 and 135B.7A.

[Filed Emergency 1/18/24, effective 1/18/24]

[Published 2/7/24]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 2/7/24.

ARC 7615C**LABOR SERVICES DIVISION[875]****Adopted and Filed****Rulemaking related to child labor**

The Labor Commissioner hereby amends Chapter 32, "Child Labor," Iowa Administrative Code.

Legal Authority for Rulemaking

This rulemaking is adopted under the authority provided in Iowa Code section 92.21 as enacted by 2023 Iowa Acts, Senate File 542.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, 2023 Iowa Acts, Senate File 542.

Purpose and Summary

This rulemaking amends Chapter 32 to conform the rules with 2023 Iowa Acts, Senate File 542, which was effective July 1, 2023, and codified in Iowa Code chapter 92, and with 2023 Iowa Acts, Senate File 514, which was effective July 1, 2023.

These amendments:

1. Eliminate rules related to work permits.
2. Change work hours allowed.
3. Eliminate rules related to hazardous activities such as motor vehicle driver and helper, industrial laundering, loading balers, working in explosives plants, working in freezers, and preparing meats for sale.
4. Add allowed tasks, including activities that previously did not exist (using hazardous chemicals, loading balers, and selling fireworks) for 15-year-olds.
5. Add a safety provision for new allowed tasks, including conditions for using hazardous chemicals and conditions for doing industrial laundering.
6. Add definitions and waiver procedures for new allowed work for 15-year-olds.
7. Amend the rules to forbid activities rather than occupations.
8. Replace references to the Division of Labor and its Commissioner with references to the Department of Inspections, Appeals, and Licensing and its Director.
9. Eliminate categories that no longer exist, such as street trades.

Public Comment and Changes to Rulemaking

Notice of Intended Action for this rulemaking was published in the Iowa Administrative Bulletin on December 13, 2023, as **ARC 7142C**. The Iowa Federation of Labor, AFL-CIO, objected to the extent that any of the proposed changes are in conflict with federal law. Changes from the Notice have been made to remove references to 2023 Iowa Acts, Senate File 542, since that legislation has been codified in the 2024 Iowa Code.

Adoption of Rulemaking

This rulemaking was adopted by the Commissioner on January 17, 2024.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Department of Inspections, Appeals, and Licensing for a waiver of the discretionary provisions, if any, pursuant to 481—Chapter 6.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking 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).

Effective Date

This rulemaking will become effective on March 13, 2024.

The following rulemaking action is adopted:

ITEM 1. Adopt the following **new** definition of “Director” in rule **875—32.1(92)**:

“*Director*” means the director of the department of inspections, appeals, and licensing or the director’s designee.

ITEM 2. Amend rule **875—32.1(92)**, definitions of “Filing date” and “Occupation or business operated by the child’s parents,” as follows:

“*Filing date*” means the date a document is postmarked by the U.S. Postal Service, if the document is filed by mailing and the U.S. postmark is legible. For a document filed via facsimile transmission, “filing date” means the date the document is transmitted. For any other document, “filing date” means the date the document is received by the ~~labor commissioner~~ director.

“~~Occupation or business operated~~ *Operated by the child’s parents*,” as used in Iowa Code section ~~92.17(4)~~ 92.17(3), means a business operated by the child’s parent ~~where the parent~~ or licensed foster parent who has control of the day-to-day operation of the business and is on the premises during the hours of the child’s employment.

ITEM 3. Rescind the definitions of “Migrant labor permit,” “Other work,” “Part-time,” “Street trade,” “Street trades permit” and “Work permit” in rule **875—32.1(92)**.

ITEM 4. Amend rule **875—32.1(92)**, implementation sentence, as follows:

This rule is intended to implement Iowa Code chapter 92 ~~as amended by 2019 Iowa Acts, Senate File 337~~.

ITEM 5. Rescind and reserve rule **875—32.2(92)**.

ITEM 6. Adopt the following **new** rule 875—32.5(92):

875—32.5(92) Terms. The terms used in Iowa Code section 92.5 are defined and applied as specified in this rule.

32.5(1) *Cleaning products that require personal protective equipment.* Prior to allowing a 14- or 15-year-old to use cleaning products that require personal protective equipment, the employer shall submit to the director the following:

- a. The safety data sheets of all such chemicals the minor will use.
- b. What personal protective equipment the minor will be using with each chemical that requires it.
- c. Proof of training the minor on the use of the required personal protective equipment.

32.5(2) *Definitions.*

“*Car cleaning, washing, and polishing*” as used in Iowa Code section 92.5(9) does not include using chemicals that recommend personal protective equipment.

“*Laundering*” as used in Iowa Code section 92.5(12) includes laundering with residential-style machines and includes laundromats. It includes industrial laundering on the following conditions:

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1. A parent or guardian gives written permission for the minor to do industrial laundering, to be kept on file by the employer.
2. The minor is not exposed to any chemicals that recommend personal protective equipment.
3. The employer shall provide nonslip shoes.
4. The employer shall provide training on bloodborne pathogens.
5. The minor shall lift loads of no more than 30 pounds.
“Light tools” as used in Iowa Code section 92.5(11) includes the listed tools that are up to 30 pounds. This rule is intended to implement Iowa Code section 92.5.

ITEM 7. Adopt the following **new** rule 875—32.6(92):

875—32.6(92) Terms. The terms used in Iowa Code section 92.6A are defined and applied as specified in this rule.

“Light assembly work” means assembling with nonpower hand tools and does not include welding.

“Properly licensed” means a minor who holds a current license from the National Pool and Waterpark Lifeguard Training program in one of the following programs:

1. National Pool and Waterpark Pool Lifeguard.
2. National Pool and Waterpark Lifeguard Training.
3. National Pool and Waterpark Deep Water Lifeguard.

If there is a question whether a specific training course meets the requirements of these rules, information about the course should be submitted to the director for evaluation.

32.6(1) Waiver of weight limitation. An employer may submit an application for waiver to allow a 15-year-old person to load, unload, or lift up to 50 pounds for work allowed under Iowa Code section 92.6A(1). The application shall include information required by the director in an application form. The application shall be signed by the employer, the minor employee, and a parent or guardian. The application shall include documentation from a physician or physician’s assistant that the minor is physically capable of this work activity.

32.6(2) Waiver to unload lawn machines. An employer may submit an application for waiver to allow a 15-year-old person to unload lawn machines under Iowa Code section 92.6A(3). The application shall include information required by the director in an application form. The application shall be signed by the employer, the minor, and a parent or guardian. The application shall include documentation from a physician or physician’s assistant that the minor is physically capable of this work activity.

This rule is intended to implement Iowa Code section 92.6A.

ITEM 8. Amend subrule 32.8(1) as follows:

32.8(1) *“~~Occupations~~ Work activities in or about plants or establishments manufacturing or storing explosives or articles containing explosive components”* means:

a. All ~~occupations~~ activities in or about any plant or establishment (other than retail establishments or plants or establishments of the type described in subrule paragraph “b.”) manufacturing or storing explosives or articles containing explosive components except where the ~~occupation is~~ activities are performed in a “nonexplosive area.”

b. The following ~~occupations~~ activities in or about any plant or establishment manufacturing or storing small-arms ammunition not exceeding .60 caliber in size, shotgun shells, or blasting caps when manufactured or stored in conjunction with the manufacture of small-arms ammunition:

(1) All ~~occupations~~ activities involved in the manufacturing, mixing, transporting, or handling of explosive compounds in the manufacture of small-arms ammunition and all other ~~occupations~~ activities requiring the performance of any duties in the explosives area in which explosive compounds are manufactured or mixed.

(2) All ~~occupations~~ activities involved in the manufacturing, transporting, or handling of primers and all other ~~occupations~~ activities requiring the performance of any duties in the same building in which primers are manufactured.

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(3) All ~~occupations~~ activities involved in the priming of cartridges and all other ~~occupations~~ activities requiring the performance of any duties in the same workroom in which rim-fire cartridges are primed.

(4) All ~~occupations~~ activities involved in the plate loading of cartridges and in the operation of automatic loading machines.

(5) All ~~occupations~~ activities involved in the loading, inspecting, packing, shipping and storage of blasting caps.

c. No change.

Nothing in this subrule shall be construed to prohibit light assembly work that is away from machines, and nothing in this subrule shall be construed to prohibit selling or assisting in the sale of consumer fireworks in accordance with Iowa Code section 10A.519.

ITEM 9. Rescind subrule **32.8(2)**.

ITEM 10. Renumber subrules **32.8(3)** to **32.8(21)** as **32.8(2)** to **32.8(20)**.

ITEM 11. Amend renumbered subrule 32.8(2) as follows:

32.8(2) "~~Occupations involved in logging occupations and occupations in Logging and the operation of any sawmill, lath mill, shingle mill, or cooperage-stock mill~~" means all ~~occupations~~ related activities with the following exceptions:

a. Exceptions applying to logging:

(1) to (3) No change.

(4) Peeling of fence posts, pulpwood, chemical wood, excelsior wood, cordwood, or similar products, when not done in conjunction with and at the same time and place as other logging ~~occupations~~ activities prohibited by this subrule.

(5) No change.

b. Exceptions applying to the operation of any permanent sawmill or the operation of any lath mill, shingle mill, or cooperage-stock mill:

(1) to (9) No change.

(10) Manual loading of bundles of shingles or shakes into trucks or railroad cars, provided that the employer has on file a statement from a licensed doctor of medicine or osteopathy certifying the minor capable of performing this work without injury. The exceptions in paragraph "b," subparagraphs (1) to (10), do not apply to a portable sawmill the lumberyard of which is used only for the temporary storage of green lumber and in connection with which no office or repair or maintenance shop is ordinarily maintained and work which entails entering the sawmill building.

Definitions.

"~~All occupations in logging~~ Logging" means all work performed in connection with the felling of timbers; the bucking or converting of timber into logs, poles, piles, ties, bolts, pulpwood, chemical wood, excelsior wood, cordwood, fence posts, or similar products; the collecting, skidding, yarding, loading, transporting and unloading of these products in connection with logging; the constructing, repairing and maintaining of roads, railroads, flumes, or camps used in connection with logging; the moving, installing, rigging, and maintenance of machinery or equipment used in logging; and other work performed in connection with logging. The term shall not apply to work performed in timber culture, timber-stand improvement, or in emergency firefighting.

"~~All occupations activities in the operation of any sawmill, lath mill, shingle mill, or cooperage-stock mill~~" means all work performed in or about any mill in connection with storing of logs and bolts; converting logs or bolts into sawn lumber, laths, shingles, or cooperage stock; storing, drying, and shipping lumber, laths, shingles, cooperage stock, or other products of the mills and other work performed in connection with the operation of any sawmill, lath mill, shingle mill, or cooperage-stock mill. The term shall not include work performed in the planing-mill department or other remanufacturing departments of any sawmill, or in any planing mill or remanufacturing plant not a part of a sawmill.

This subrule is intended to implement Iowa Code section ~~92.8(3)~~ 92.8(2).

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ITEM 12. Amend renumbered subrule 32.8(3), introductory paragraph, as follows:

32.8(3) "~~Occupations involved in the operation~~ Operation of power-driven woodworking machines" means operating power-driven woodworking machines including supervision or controlling the operation of the machines, feeding material into the machines, and helping the operator to feed material into the machines, but not including the placing of material on a moving chain or in a hopper or slide for automatic feeding. Also included are ~~occupations~~ activities of setting up, adjusting, repairing, oiling or cleaning power-driven woodworking machines and the operations of off-bearing from circular saws and from guillotine-action veneer clippers.

ITEM 13. Amend renumbered subrule **32.8(3)**, implementation sentence, as follows:

This subrule is intended to implement Iowa Code section ~~92.8(4)~~ 92.8(3).

ITEM 14. Amend renumbered subrule 32.8(4), introductory paragraph, as follows:

32.8(4) "~~Occupations~~ Work activities involving exposure to radioactive substances and to ionizing radiations" means ~~occupation~~ activity in any workroom in which radium is stored or used in the manufacture of self-luminous compound; self-luminous compound is made, processed or packaged; self-luminous compound is stored, used or worked upon; incandescent mantles are made from fabric and solutions containing thorium salts, or are processed or packaged; and other radioactive substances are present in the air in average concentrations exceeding 10 percent of the maximum permissible concentrations in the air recommended for occupational exposure by the National Committee on Radiation Protection, as set forth in the 40-hour week column of Table One of the National Bureau of Standards Handbook No. 69 entitled "Maximum Permissible Body Burdens and Maximum Permissible Concentrations of Radionuclides in Air and in Water for Occupational Exposure," June 5, 1959.

ITEM 15. Amend renumbered subrule **32.8(4)**, implementation sentence, as follows:

This subrule is intended to implement Iowa Code section ~~92.8(5)~~ 92.8(4).

ITEM 16. Amend renumbered subrule 32.8(5) as follows:

32.8(5) "~~Occupations involved in the operation~~ Operation of elevators and other power-driven hoisting apparatus" means:

a. Work of operating an elevator, crane, derrick, hoist, or high-lift truck, except operating an unattended automatic operation passenger elevator or an electric or air-operated hoist not exceeding one-ton capacity.

b. Work which involves riding on a manlift or on a freight elevator, except a freight elevator operated by an assigned operator.

c. Work of assisting in the operation of a crane, derrick or hoist performed by crane hookers, crane chasers, hookers-on, riggers, rigger helpers, and like ~~occupations~~ activities.

d. Exception. Iowa Code section ~~92.8(6)~~ 92.8(5) shall not prohibit the operation of an automatic elevator and an automatic signal operation elevator provided that the exposed portion of the car interior (exclusive of vents and other necessary small openings), the car door and the hoistway doors are constructed of solid surfaces without any opening through which a part of the body may extend; all hoistway openings at floor level have doors which are interlocked with the car door so as to prevent the car from starting until all doors are closed and locked; the elevator (other than hydraulic elevators) is equipped with a device which will stop and hold the car in case of overspeed or if the cable slackens or breaks; and the elevator is equipped with upper and lower travel limit devices which will normally bring the car to rest at either terminal and a final limit switch which will prevent the movement in either direction and will open in case of excessive over-travel by the car.

e. Definitions.

"*Automatic elevator*" means any passenger elevator, a freight elevator or a combination passenger-freight elevator, the operation of which is controlled by push buttons in a manner that the starting, going to the landing selected, leveling and holding, and the opening and closing of the car and hoistway doors are entirely automatic.

"*Automatic signal operation elevator*" means an elevator which is started in response to the operation of a switch (such as a lever or push button) in the car which when operated by the operator

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actuates a starting device that automatically closes the car and hoistway doors—from this point on, the movement of the car to the landing selected, leveling and holding when it gets there, and the opening of the car and hoistway doors are entirely automatic.

“*Crane*” means any power-driven machine for lifting and lowering a load and moving it horizontally, in which the hoisting mechanism is an integral part of the machine. The term shall include all types of cranes, such as cantilever gantry, crawler, gantry, hammerhead, ingot pouring, jib, locomotive, motor truck, overhead traveling, pillar jib, pintle, portal, semigantry, semiportal, storage bridge, tower, walking jib, and wall cranes.

“*Derrick*” means any power-driven apparatus consisting of a mast or equivalent members held at the top by guys or braces, with or without a boom, for use with a hoisting mechanism or operating ropes. The term shall include all types of derricks, such as A-frame, breast, Chicago boom, gin-pole, guy and stiff-leg derrick.

“*Elevator*” means any power-driven hoisting or lowering mechanism equipped with a car or platform which moves in guides in a substantially vertical direction. The term shall include both passenger and freight elevators, (including portable elevators or tiering machines), but shall not include dumbwaiters.

“*High-lift truck*” means any power-driven industrial type of truck used for lateral transportation that is equipped with a power-operated lifting device usually in the form of a fork or platform capable of tiering loaded pallets or skids one above the other. Instead of a fork or platform, the lifting device may consist of a ram, scoop, shovel, crane, revolving fork, or other attachments for handling specific loads. The term shall mean and include high-lift trucks known as fork lifts, fork trucks, fork-lift trucks, tiering trucks, or stacking trucks, but shall not mean low-lift trucks or low-lift platform trucks that are designed for the transportation of, but not the tiering of, material.

“*Hoist*” means any power-driven apparatus for raising or lowering a load by the application of a pulling force that does not include a car or platform running in guides. The term includes all types of hoists, such as base-mounted electric, clevis suspension, hook suspension, monorail, overhead electric, simple drum and trolley suspension hoists.

“*Manlift*” means any device intended for the conveyance of persons which consists of platforms or brackets mounted on, or attached to, an endless belt, cable, chain or similar method of suspension; the belt, cable or chain operating in a substantially vertical direction and being supported by and driven through pulleys, sheaves or sprockets at the top and bottom.

This subrule is intended to implement Iowa Code section ~~92.8(6)~~ 92.8(5).

ITEM 17. Amend renumbered subrule 32.8(6), introductory paragraph, as follows:

32.8(6) “~~Occupations involved in the operation~~ Operation of power-driven metal forming, punching and shearing machines” means ~~occupations of being the~~ operator of or helper on the following power-driven metal forming, punching, and shearing machines.

ITEM 18. Amend renumbered subrule **32.8(6)**, implementation sentence, as follows:

This subrule is intended to implement Iowa Code section ~~92.8(7)~~ 92.8(6).

ITEM 19. Amend renumbered subrule 32.8(7) as follows:

32.8(7) “~~Occupations in connection with mining~~ Mining” means all work performed underground in mines and quarries; underground working, open-pit, or surface part of any coal-mining plant that contribute to the extraction, grading, cleaning, or other handling of coal; on the surface at underground mines and underground quarries; in or about open-cut mines, open quarries, clay pits, and sand and gravel operations; at or about placer mining operations; at or about dredging operations for clay, sand or gravel; at or about bore-hole mining operations; in or about all metal mills, washer plants, or grinding mills reducing the bulk of the extracted minerals; and at or about any other crushing, grinding, screening, sizing, washing or cleaning operations performed upon the extracted minerals except where the operations are performed as a part of a manufacturing process.

The term “~~occupations in connection with~~ mining” shall not include:

a. to h. No change.

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Nothing in this subrule shall be construed to permit any employment of minors in any other ~~occupation~~ activity otherwise prohibited by Iowa Code chapter 92.

This subrule is intended to implement Iowa Code section ~~92.8(8)~~ 92.8(7).

ITEM 20. Amend renumbered subrule 32.8(8) as follows:

32.8(8) "~~Occupations~~ Work activities in or about slaughtering and meat packing establishments and rendering plants" means:

a. All ~~occupations~~ activities on the killing floor, in curing cellars, and in hide cellars, except the work of messengers, runners, hand truckers and similar ~~occupations~~ activities which require entering workrooms or workplaces infrequently and for short periods of time.

b. All ~~occupations~~ activities involved in the recovery of lard and oils, except packaging and shipping of the products and the operation of lard-roll machines.

c. All ~~occupations~~ activities involved in tankage or rendering of dead animals, animal offal, animal fats, scrap meats, blood, and bones into stock feeds, tallow, inedible greases, fertilizer ingredients, and similar products.

d. All ~~occupations~~ activities involved in the operation or feeding of the following power-driven meat processing machines, including ~~the occupations of setting up~~ setting up, adjusting, repairing, oiling, or cleaning the machines regardless of the product being processed by these machines (including, for example, the slicing in a retail delicatessen of meat, poultry, seafood, bread, vegetables, or cheese, etc.):

1. Meat patty forming machines, meat and bone cutting saws, knives (except bacon-slicing machines), head splitters, and guillotine cutters;

2. Snout pullers and jaw pullers;

3. Skinning machines;

4. Horizontal rotary washing machines;

5. Casing-cleaning machines such as crushing, stripping, and finishing machines;

6. Grinding, mixing, chopping, and hashing machines; and

7. Presses (except belly-rolling machines).

e. All boning ~~occupations~~ activities.

f. All ~~occupations~~ activities involving the pushing or dropping of any suspended carcass, half carcass, or quarter carcass.

g. All ~~occupations~~ activities involving hand-lifting or hand-carrying any carcass or half carcass of beef, pork, or horse, or any quarter carcass of beef or horse.

Definitions.

"*Boning occupation*" means the removal of bones from meat cuts. It does not include cutting, scraping or trimming meat from cuts containing bones.

"*Curing cellar*" means the workroom or workplace which is primarily devoted to the preservation and flavoring of meat by curing materials. It does not include the workroom or workplace where meats are smoked.

"*Hide cellar*" means the workroom or workplace where hides are graded, trimmed, salted, and otherwise cured.

"*Killing floor*" means the workroom or workplace where cattle, calves, hogs, sheep, lambs, goats, or horses are immobilized, shackled, or killed, and the carcasses are dressed prior to chilling.

"*Rendering plants*" means establishments engaged in the conversion of dead animals, animal offal, animal fats, scrap meats, blood, and bones into stock feeds, tallow, inedible greases, fertilizer ingredients and similar products.

"*Slaughtering and meat packing establishments*" means places in or about which cattle, calves, hogs, sheep, lambs, goats, or horses, poultry, rabbits or small game are killed, processed or butchered and establishments which manufacture or process meat products or sausage casings from these animals.

This subrule is intended to implement Iowa Code section ~~92.8(9)~~ 92.8(8).

ITEM 21. Amend renumbered subrule 32.8(9) as follows:

32.8(9) "~~Occupations involved in the operation~~ Operation of certain power-driven bakery machines" means ~~the occupations of~~ operating, assisting to operate or setting up, adjusting, repairing,

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oiling, or cleaning any horizontal or vertical dough mixer; batter mixer; bread dividing, rounding, or molding machine; dough brake; dough sheeter; combination bread slicing and wrapping machines; or cake cutting band saw and ~~the occupations~~ of setting up or adjusting a cookie or cracker machine. However, this definition does not apply to the operation of pizza dough rollers that are a type of dough sheeter that have been constructed with safeguards contained in the basic design so as to prevent fingers, hands, or clothing from being caught in the in-running point of the rollers, that have gears that are completely enclosed, and that have microswitches that disengage the machinery if the backs or sides of the rollers are removed, only when all the safeguards detailed in Iowa Code section ~~92.8(10)~~ 92.8(9) are present on the machinery, are operational, and have not been overridden.

This subrule is intended to implement Iowa Code section ~~92.8(10)~~ 92.8(9).

ITEM 22. Amend renumbered subrule 32.8(10) as follows:

32.8(10) "~~Occupations involved in the operations~~ Operation of paper-products machines" means operating or assisting to operate any of the following power-driven paper-products machines and includes:

- a. Arm-type wire stitcher or stapler, circular or band saw, corner cutter or mitering machine, corrugating and single- or double-facing machine, envelope die-cutting press, guillotine paper cutter or shear, horizontal bar scorer, laminating or combining machine, sheeting machine, scrap-paper baler, or vertical slotter.
- b. Platen die-cutting press, platen printing press, or punch press which involves hand feeding of the machine.
- c. ~~The occupations~~ activities of setting up, adjusting, repairing, oiling, or cleaning the machines in paragraphs "a" and "b" of this subrule including those which do not involve hand feeding.
- d. Loading material into paper/cardboard balers except when the machine is powered off and the key is stored in a separate area from the machine.

Definitions.

"*Operating or assisting to operate*" means all work which involves starting or stopping a machine covered by this subrule, placing materials into or removing them from the machine, or any other work directly involved in operating the machine except loading material into balers when the machine is powered off and the key is stored in a separate area from the machine.

"*Paper-products machine*" means power-driven machines used in:

1. The remanufacture or conversion of paper or pulp into a finished product, including the preparation of materials for recycling.
2. The preparation of materials for disposal. The term applies to the machines whether they are used in establishments that manufacture converted paper or pulp products, or in any other type of manufacturing or nonmanufacturing establishments.

This subrule is intended to implement Iowa Code section ~~92.8(11)~~ 92.8(10).

ITEM 23. Amend renumbered subrule 32.8(11) as follows:

32.8(11) "~~Occupations involved in the manufacture of~~ Manufacturing brick, tile and related products" means the manufacture of brick, tile and related products and includes the manufacture of clay construction products and of silica refractory products and includes:

- a. All work in or about establishments in which clay construction products are manufactured, except work in storage and shippings; work in offices, laboratories, and storerooms; and work in the drying departments of plants manufacturing sewer pipe.
- b. All work in or about establishments in which silica brick or other silica refractories are manufactured, except work in offices.
- c. Nothing in this subrule shall be construed to permit any employment of minors in any other ~~occupation~~ activities otherwise prohibited by Iowa Code chapter 92.

Definitions.

"*Clay construction products*" means brick, hollow structural tile, sewer pipe and kindred products, refractories, and other clay products such as architectural terra cotta, glazed structural tile, roofing tile, stove lining, chimney pipes and tops, wall coping, and drain tile. It does not include

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nonstructural-bearing clay products such as ceramic floor and wall tile, mosaic tile, glazed and enameled tile, faience, and similar tile, nor nonclay construction products such as sand-lime brick, glass brick, or nonclay refractories.

“*Silica brick or other silica refractories*” means refractory products produced from raw materials containing free silica as its main constituent.

This subrule is intended to implement Iowa Code section ~~92.8(12)~~ 92.8(11).

ITEM 24. Amend renumbered subrule 32.8(12) as follows:

32.8(12) “~~Occupations involved in the operation~~ Operation of circular saws, band saws, and guillotine shears” means:

a. ~~Occupations of operator~~ Operator of or helper on power-driven fixed or portable circular saws, band saws, and guillotine shears except machines equipped with full automatic feed and ejection.

b. ~~The occupations of setting up~~ Setting up, adjusting, repairing, oiling, or cleaning circular saws, band saws, or guillotine shears.

Definitions.

“*Band saw*” means a machine equipped with an endless steel band having a continuous series of notches or teeth, running over wheels or pulleys, and used for sawing materials.

“*Circular saw*” means a machine equipped with an endless steel disc and having a continuous series of notches or teeth on the periphery, mounted on shafting, and used for sawing materials.

“*Guillotine shear*” means a machine equipped with a movable blade operated vertically and used to shear materials. The term shall not include other types of shearing machines, using a different form of shearing action, such as alligator shears or circular shears.

“*Helper*” means a person who assists in the operation of a machine covered by this subrule by helping place materials into or remove them from the machine.

“*Machines equipped with full automatic feed and ejection*” means machines covered by this subrule which are equipped with devices for full automatic feeding and ejection and with a fixed barrier guard to prevent completely the operator or helper from placing any body part in the point-of-operation area.

“*Operator*” means a person who operates a machine covered by this subrule by performing functions such as starting or stopping the machine, placing materials into or removing them from the machine, or any other function directly involved in the operation of the machine.

This subrule is intended to implement Iowa Code section ~~92.8(13)~~ 92.8(12).

ITEM 25. Amend renumbered subrule 32.8(13) as follows:

32.8(13) “*Wrecking, demolition and shipbreaking operations*” means all work, including cleanup and salvage work, performed at the site of the total or partial razing, demolishing, or dismantling of a building, bridge, steeple, tower, chimney, other structure, ship or other vessel.

This subrule is intended to implement Iowa Code section ~~92.8(14)~~ 92.8(13).

ITEM 26. Amend renumbered subrule **32.8(14)**, implementation sentence, as follows:

This subrule is intended to implement Iowa Code section ~~92.8(15)~~ 92.8(14).

ITEM 27. Amend renumbered subrule 32.8(15) as follows:

32.8(15) “*Excavation ~~occupations~~*” means all ~~occupations~~ activities involved with:

a. to c. No change.

d. Working within shafts prior to the completion of all sinking and shoring operations.

This subrule is intended to implement Iowa Code section ~~92.8(16)~~ 92.8(15).

ITEM 28. Amend renumbered subrule 32.8(20) as follows:

32.8(20) ~~Hazardous occupations~~ Work activities prohibited by the ~~labor commissioner~~ director include the following:

a. ~~Occupations~~ Activities involved in the operation of power cutters on corn detasseling machines.

b. ~~Occupations~~ Activities involved in the driving of power-driven detasseling machines unless the driver has a valid driver’s license or a certificate issued by the Federal Extension Service showing that the driver has completed a 4-H farm and machinery program.

This subrule is intended to implement Iowa Code section 92.8(21).

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ITEM 29. Adopt the following new rule 875—32.9(92):

875—32.9(92) Terms. The terms used in Iowa Code section 92.8A are defined and applied as specified in this rule.

“Incidental” means not a primary activity of the minor.

“Intermittent and for short periods of time” may vary depending on the degree and type of hazard. The frequency and duration of an activity shall make it clear the employee is a learner rather than a production worker. The burden is on the employer to justify more than one hour per day or 20 percent of a shift.

“Written permission” shall include a description of the activity that would otherwise be unlawful under Iowa Code section 92.8, including the expected frequency and duration of that activity.

This rule is intended to implement Iowa Code section 92.8A.

ITEM 30. Amend rule 875—32.11(92), introductory paragraph, as follows:

875—32.11(92) Civil penalty calculation. An employer who violates this chapter or Iowa Code chapter 92 is subject to a civil penalty of not more than \$10,000 per violation as set forth in this rule. ~~The labor commissioner may refer a violation to the appropriate authority for criminal prosecution in addition to assessing a civil penalty.~~

ITEM 31. Amend subrules 32.11(1) and 32.11(2) as follows:

32.11(1) Counting the number of violations.

a. Violations shall be counted as follows: each day that a child works too many hours, works at a prohibited time, or works in a prohibited occupation shall be a separate violation.

~~a.—Each item of inaccurate information on each Iowa Child Labor Application/Work Permit shall be a separate violation.~~

~~b.—Each day that a child works without a permit, works too many hours, works at a prohibited time, or works in a prohibited occupation shall be a separate violation.~~

~~c.—If an employer completes the Iowa Child Labor Application/Work Permit but fails to file it by the deadline, each day that the minor works after the deadline shall be a separate violation.~~

b. The director may waive or reduce the penalty if this method of counting the violations would result in a penalty that is disproportionate to the harm done to the minor(s), the size of the employer, or both.

32.11(2) Determining whether a violation is a repeat violation. The higher penalty amounts outlined in subrules ~~32.11(3) through 32.11(4) and 32.11(5)~~ for repeat instances may be assessed by the ~~labor commissioner~~ director if citations regarding the earlier instance or instances are final action and occurred less than five years before.

ITEM 32. Rescind and reserve subrule **32.11(3)**.

ITEM 33. Amend subrule 32.11(6) as follows:

32.11(6) Penalty reduction factors. Except for violations related to the death of a child while working, the ~~labor commissioner~~ director shall reduce the penalty calculated pursuant to subrules 32.11(1) ~~through, 32.11(2), 32.11(4) and 32.11(5)~~ by the appropriate penalty reduction percentages set forth in this subrule. However, if the ~~labor commissioner~~ director requests information relevant to the penalty assessment and the employer does not provide responsive information, the ~~labor commissioner~~ director shall not reduce the penalty.

a. Penalty reduction for size of business. The ~~labor commissioner~~ director shall reduce a penalty by 25 percent if the employer has 25 or fewer employees. The ~~labor commissioner~~ director shall reduce the penalty amount by 15 percent if the employer has 26 to 100 employees. The ~~labor commissioner~~ director shall reduce the penalty amount by 5 percent if the employer has 101 to 250 employees.

b. Penalty reduction for good faith. The ~~labor commissioner~~ director may reduce a penalty by 15 percent based upon evidence that the employer made a good faith attempt to comply with the requirements. If at any time the ~~labor commissioner~~ director warned an employer in writing about a

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prohibited practice and a civil penalty is being assessed against the same employer for repeating the practice, the ~~labor commissioner~~ director shall not reduce the penalty based on good faith.

c. Penalty reduction for history. The ~~labor commissioner~~ director shall reduce a penalty by 10 percent if the ~~labor commissioner~~ director has not assessed a civil penalty under this chapter within the past five years. If the ~~labor commissioner~~ director has assessed a civil penalty under this chapter in the past five years but the civil penalty has not reached judicial or administrative finality, the civil penalty shall be reduced by 10 percent.

ITEM 34. Amend rule 875—32.12(92) as follows:

875—32.12(92) Civil penalty procedures.

32.12(1) Notice of civil penalty. The ~~commissioner~~ director shall serve a notice of proposed civil penalty by certified mail or in a manner consistent with service of original notice under the Iowa Rules of Civil Procedure. There shall be a 15-day grace period before issuing the notice. The notice shall include the following:

- a.* A statement that the notice proposes a civil penalty assessment for violation of child labor laws.
- b.* Descriptions of the alleged violations including the provisions allegedly violated, the number of violations, and the proposed penalties.
- c.* A statement that the employer has the right to request a hearing by filing a notice of contest with the ~~labor commissioner~~ director within 15 working days from the receipt of the notice of proposed civil penalty and that if a notice of contest is not timely filed, the proposed civil penalty will become final agency action.
- d.* A reference to the applicable procedural provisions.

32.12(2) Notice of contest. The civil penalty proposed by the ~~labor commissioner~~ director shall become final agency action if the employer does not timely file a notice of contest. The filing date for a timely notice of contest shall be within 15 working days of the date the notice of proposed civil penalty was received by the employer. The notice of contest shall include the name, address, and telephone number of the employer's representative. If a notice of contest is filed by fax, the original shall be mailed to the ~~labor commissioner~~ director.

32.12(3) No change.

This rule is intended to implement Iowa Code section 92.22.

[Filed 1/17/24, effective 3/13/24]

[Published 2/7/24]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 2/7/24.

ARC 7616C

LABOR SERVICES DIVISION[875]

Adopted and Filed

Rulemaking related to requests for extended inspection interval

The Labor Commissioner hereby amends Chapter 90, "Administration of the Boiler and Pressure Vessel Program," Iowa Administrative Code.

Legal Authority for Rulemaking

This rulemaking is adopted under the authority provided in Iowa Code section 89.14(11) as enacted by 2023 Iowa Acts, House File 461.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, 2023 Iowa Acts, House File 461.

LABOR SERVICES DIVISION[875](cont'd)

Purpose and Summary

This rulemaking implements House File 461 regarding extensions of internal boiler and pressure vessel internal inspections. The newly adopted subrule clarifies what qualifies for an extension and how to get approval for the extension. The subrule facilitates granting the extension along with safety assurances.

Public Comment and Changes to Rulemaking

Notice of Intended Action for this rulemaking was published in the Iowa Administrative Bulletin on December 13, 2023, as **ARC 7143C**. No public comments were received. No changes from the Notice have been made.

Adoption of Rulemaking

This rulemaking was adopted by the Commissioner on January 17, 2024.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Department of Inspections, Appeals, and Licensing for a waiver of the discretionary provisions, if any, pursuant to 481—Chapter 6.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking 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).

Effective Date

This rulemaking will become effective on March 13, 2024.

The following rulemaking action is adopted:

ITEM 1. Adopt the following **new** subrule 90.6(10):

90.6(10) Request for extended inspection interval.

a. Owners of objects covered under Iowa Code section 89.3(4)“*a*” may apply for an extended internal inspection interval of up to seven years.

b. The application for an extended internal inspection interval shall include the following information submitted to the director:

- (1) The name and contact information of the requestor.
- (2) The state identification number of the object.
- (3) The interval requested with supporting reasons.
- (4) An affidavit affirming the following:

1. Compliance with the process safety management standard contained in 29 CFR §1910.119.
2. The object is included as process safety management process equipment in the owner's process safety management program.
3. The object meets the requirements contained in the National Board Inspection Code.

LABOR SERVICES DIVISION[875](cont'd)

4. The object is fit for service based on the year of fabrication and the estimated service life of the object as determined by Part 2 of the National Board Inspection Code.

5. Practices have been implemented for managing consumable items and ancillary equipment of the object.

(5) The following supporting records:

1. Inspection records of the boiler and ancillary equipment for the prior five years.

2. The most recent Report of Fitness for Service Assessment.

3. Every Form R-1 Report of Repair and Form R-2 Report of Alterations for the prior five years.

(6) A request for an informal conference, if desired.

c. The director will consider, among other things, whether the object meets the requirements contained in the National Board Inspection Code, whether the object is fit for service based on the year of fabrication, the estimated service life of the object as determined by Part 2 of the National Board Inspection Code, and whether the owner has implemented practices for managing consumable items and ancillary equipment of the object.

d. The director may grant an extended inspection interval.

(1) An extended inspection interval lasts until the next inspection, at which time the owner of the object may again apply for an extension.

(2) The owner shall promptly report to the department's boiler and pressure vessel unit any unscheduled shutdowns, significant incidents, near misses, and any other occurrences that might reasonably require reinspection before the extended date. Should the occurrence reasonably require it, or if any such event is not reported within ten days of occurrence, the director may revoke the extended inspection interval.

e. If the director does not intend to grant the extension, the director will give the applicant a Notice of Intent to Deny Extended Inspection Interval, granting ten days for the applicant to provide additional reasons and evidence why the interval should be extended.

[Filed 1/17/24, effective 3/13/24]

[Published 2/7/24]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 2/7/24.

ARC 7617C

PHARMACY BOARD[657]

Adopted and Filed

Rulemaking related to controlled substances

The Board of Pharmacy hereby amends Chapter 10, "Controlled Substances," Iowa Administrative Code.

Legal Authority for Rulemaking

This rulemaking is adopted under the authority provided in Iowa Code section 124.201.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code section 124.201.

Purpose and Summary

This rulemaking temporarily adds five substances (novel psychoactive substances (NPS) of the benzodiazepine class, also known as "designer benzodiazepines") to Schedule I of the Controlled Substances Act in response to similar action taken by the federal Drug Enforcement Administration.

Public Comment and Changes to Rulemaking

PHARMACY BOARD[657](cont'd)

Notice of Intended Action for this rulemaking was published in the Iowa Administrative Bulletin on November 1, 2023, as **ARC 7104C**. No public comments were received. No changes from the Notice have been made.

Adoption of Rulemaking

This rulemaking was adopted by the Board on January 9, 2024.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Board for a waiver of the discretionary provisions, if any, pursuant to 657—Chapter 34.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking 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).

Effective Date

This rulemaking will become effective on March 13, 2024.

The following rulemaking action is adopted:

- ITEM 1. Rescind subrule 10.39(2) and adopt the following **new** subrule in lieu thereof:
10.39(2) Amend Iowa Code section 124.204(9) by adding the following new paragraphs:
- j.* 4-(2-chlorophenyl)-2-ethyl-9-methyl-6H-thienol[3,2-f][1,2,4]triazolo[4,3-alpha][1,4]diazepine, its salts, isomers, and salts of isomers. Other name: etizolam.
 - k.* 8-chloro-6-(2-fluorophenyl)-1-methyl-4H-benzo[f][1,2,4]triazolo[4,3-alpha][1,4]diazepine, its salts, isomers, and salts of isomers. Other name: flualprazolam.
 - l.* 6-(2-chlorophenyl)-1-methyl-8-nitro-4H-benzo[f][1,2,4]triazolo[4,3-alpha][1,4]diazepine, its salts, isomers, and salts of isomers. Other name: clonazolam.
 - m.* 8-bromo-6-(2-fluorophenyl)-1-methyl-4H-benzo[f][1,2,4]triazolo[4,3-alpha][1,4]diazepine, its salts, isomers, and salts of isomers. Other name: flubromazolam.
 - n.* 7-chloro-5-(2-chlorophenyl)-1-methyl-1,3-dihydro-2H-benzo[e][1,4]diazepin-2-one, its salts, isomers, and salts of isomers. Other name: diclazepam.

[Filed 1/11/24, effective 3/13/24]

[Published 2/7/24]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 2/7/24.

ARC 7618C**REVENUE DEPARTMENT[701]****Adopted and Filed****Rulemaking related to definitions**

The Revenue Department hereby rescinds Chapter 200, “Definitions,” Iowa Administrative Code, and adopts a new chapter with the same title.

Legal Authority for Rulemaking

This rulemaking is adopted under the authority provided in Iowa Code sections 421.14, 422.68 and 423.42.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code sections 423.1, 423.2, 423.3, 423.6 and 423.45.

Purpose and Summary

The purpose of this rulemaking is to readopt Chapter 200, which consists solely of rule 701—200.1(423) and provides definitions that apply across other sales tax rules chapters. These terms are used throughout other Iowa Administrative Code chapters, but are not defined in statute. The Department amended the rule to remove portions that the Department determined are unnecessary and duplicative of statutory language.

Public Comment and Changes to Rulemaking

Notice of Intended Action for this rulemaking was published in the Iowa Administrative Bulletin on December 13, 2023, as **ARC 7144C**. Public hearings were held on January 3, 2024, at 9 a.m. via video/conference call and at 1 p.m. via video/conference call. No one attended the public hearings. No public comments were received. No changes from the Notice have been made.

Adoption of Rulemaking

This rulemaking was adopted by the Department on January 18, 2024.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to rule 701—7.28(17A).

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking 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).

REVENUE DEPARTMENT[701](cont'd)

Effective Date

This rulemaking will become effective on March 13, 2024.

The following rulemaking action is adopted:

ITEM 1. Rescind 701—Chapter 200 and adopt the following new chapter in lieu thereof:

TITLE III
SALES, USE, AND EXCISE TAX
CHAPTER 200
DEFINITIONS

701—200.1(423) Definitions. The definitions set out in this chapter are applicable wherever the terms they define appear in this title unless the context indicates otherwise.

“Agricultural production” is limited to what would ordinarily be considered a farming operation undertaken for profit. The term “agricultural production” refers to the raising of crops or livestock for market on an acreage. Included within the meaning of the phrase “agricultural production” is any feedlot operation whether or not the land upon which a feedlot operation is located is used to grow crops to feed the livestock in the feedlot and regardless of whether or not the livestock fed are owned by persons conducting the feedlot operation, and operations growing and raising hybrid seed corn or other seed for sale to nurseries, ranches, orchards, and dairies. “Agricultural production” includes the raising of flowering, ornamental, or vegetable plants in commercial greenhouses or elsewhere for sale in the ordinary course of business. “Agricultural production” also includes any kind of aquaculture, silviculture, commercial greenhouses, and raising catfish. Beekeeping and the raising of mink, other nondomesticated furbearing animals, and nondomesticated fowl (other than ostriches, rheas, and emus) continue to be excluded from the term “agricultural production.” The above list of exclusions and inclusions within the term “agricultural production” is not exhaustive. “Agricultural products” includes flowering, ornamental, or vegetable plants and those products of aquaculture and silviculture.

“Aquaculture” means the cultivation of aquatic animals and plants, including fish, shellfish, and seaweed, in natural or controlled marine or freshwater environments.

“Chemical” means a substance that is primarily used for producing a chemical effect. A chemical effect results from a chemical process wherein the number and kind of atoms in a molecule are changed in form (e.g., where oxygen and hydrogen are combined to make water). A chemical process is distinct from a physical process wherein only the state of matter changes (e.g., where water is frozen into ice or heated into steam).

“Domesticated fowl” means any domesticated bird raised as a source of food, either eggs or meat. “Domesticated fowl” includes, but is not limited to, chickens, ducks, turkeys, pigeons, ostriches, rheas, and emus that are raised for meat rather than for racing or as pets. Excluded from the meaning of “domesticated fowl” are nondomesticated birds, such as pheasants, raised for meat or any other purpose.

“Livestock” means domestic animals that are raised on a farm as a source of food or clothing. “Livestock” includes cattle, sheep, hogs, goats, chickens, ducks, turkeys, ostriches, rheas, emus, bison, and farm deer. “Farm deer” means the same as defined in Iowa Code section 170.1 and commonly includes animals belonging to the Cervidae family, such as fallow deer, red deer or elk and sika. However, “farm deer” does not include unmarked free-ranging elk. Fish and any other animals that are products of aquaculture are considered to be “livestock” as well.

Excluded from the term “livestock” are horses, mules, other draft animals, dogs, cats, and other pets. Also excluded from the term “livestock” are mink, bees, or other nondomesticated animals even if raised in captivity and even if raised as a source of food or clothing. Also excluded from “livestock” is any animal raised for racing.

“Plants” means fungi such as mushrooms and crops commonly grown in this state such as corn, soybeans, oats, hay, alfalfa hay, wheat, sorghum, and rye. Also included within the meaning of the term “plants” are flowers, shrubs, and fruit trees. Excluded from the meaning of the term “plants” are products of silviculture, such as trees raised for Christmas trees and any trees raised to be harvested for wood.

REVENUE DEPARTMENT[701](cont'd)

“*Reagent*” means a substance used for various purposes (i.e., in detecting, examining, or measuring other substances; in preparing materials; in developing photographs) because it takes part in one or more chemical reactions or biological processes. A reagent is also a substance used to convert one substance into another by means of the reaction that it causes. To be a reagent for purposes of the exemption, a substance must be primarily used as a reagent.

“*Silviculture*” means the establishment, growth, care, and cultivation of trees. “Silvicultural activities” includes logging. “Silvicultural products” includes trees raised and offered for sale for Christmas trees and any trees raised to be harvested for wood.

“*Solvent*” means a substance in which another substance can be dissolved and that is primarily used for that purpose.

“*Sorbent*” means a solid material, often in a powder or granular form, that acts to retain another substance, usually on the sorbent’s surface, thereby removing the other substance from the gas or liquid phase. The sorbent and the second material bond together at the molecular or atomic scale via physiochemical interactions. A substance is not a sorbent based on an ability to absorb heat or thermal energy.

“*Tax*” means the tax imposed upon retail sales or use of tangible personal property, specified digital products, or taxable services.

This rule is intended to implement Iowa Code chapter 423.

[Filed 1/18/24, effective 3/13/24]

[Published 2/7/24]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 2/7/24.

ARC 7619C

REVENUE DEPARTMENT[701]

Adopted and Filed

Rulemaking related to the streamlined sales and use tax agreement

The Revenue Department hereby rescinds Chapter 204, “Rules Necessary to Implement the Streamlined Sales and Use Tax Agreement,” Iowa Administrative Code, and adopts a new chapter with the same title.

Legal Authority for Rulemaking

This rulemaking is adopted under the authority provided in Iowa Code sections 421.14, 422.68 and 423.42.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code chapter 423, subchapter IV.

Purpose and Summary

The purpose of this rulemaking is to readopt Chapter 204. The Department removed portions of the rules that the Department determined are obsolete or unnecessary or that duplicate statutory language. Iowa has been a member of the Streamlined Sales Tax Governing Board and a party to the Streamlined Sales and Use Tax Agreement (SSUTA) since October 1, 2005. The goal of the SSUTA is to maintain uniformity of definitions of certain sales and use tax-related terms, state and local tax bases, sourcing rules, and administration, among other features. In order to maintain compliance with the SSUTA, Iowa statutes, rules, and policies must comply with each provision of the SSUTA. Iowa Code chapter 423, subchapter IV, is the Uniform Sales and Use Tax Administration Act, which outlines Iowa’s intent to enter into the SSUTA to simplify and modernize sales and use tax administration in order to substantially reduce the burden of tax compliance for sellers. Chapter 204 contains rules interpreting the Uniform

REVENUE DEPARTMENT[701](cont'd)

Sales and Use Tax Administration Act and additional rules necessary to maintain compliance with the SSUTA and help the public understand tax policies that Iowa has adopted as part of implementing the SSUTA.

Public Comment and Changes to Rulemaking

Notice of Intended Action for this rulemaking was published in the Iowa Administrative Bulletin on December 13, 2023, as **ARC 7146C**. Public hearings were held on January 3, 2024, at 9 a.m. via video/conference call and at 1 p.m. via video/conference call. No one attended the public hearings. No public comments were received. No changes from the Notice have been made.

Adoption of Rulemaking

This rulemaking was adopted by the Department on January 17, 2024.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to rule 701—7.28(17A).

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking 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).

Effective Date

This rulemaking will become effective on March 13, 2024.

The following rulemaking action is adopted:

ITEM 1. Rescind 701—Chapter 204 and adopt the following **new** chapter in lieu thereof:

CHAPTER 204
RULES NECESSARY TO IMPLEMENT THE STREAMLINED SALES
AND USE TAX AGREEMENT

701—204.1(423) Allowing use of the lowest tax rate within a database area and use of the tax rate for a five-digit area when a nine-digit zip code cannot be used. Any database maintained by the department that displays tax rates and tax jurisdictional boundaries based on either a five-digit or nine-digit zip code system shall, if an area encompassing one zip code has two or more rates of tax, provide to retailers a means of identifying and applying the lowest rate within the area for use in computing tax due. If a nine-digit zip code designation is not available for a street address or if a seller is unable to determine the nine-digit zip code designation of a purchaser after exercising due diligence to determine the designation, the seller may apply the lowest rate for the five-digit zip code area.

This rule is intended to implement Iowa Code section 423.55.

REVENUE DEPARTMENT[701](cont'd)

701—204.2(423) Permissible categories of exemptions.

204.2(1) Definitions.

“Entity-based exemption” means an exemption based on who purchases the product or who sells the product.

“Product-based exemption” means an exemption based on the description of the product and not based on who purchases the product or how the purchaser intends to use the product.

“Use-based exemption” means an exemption based on the purchaser’s use of the product.

204.2(2) Product-based exemptions. Iowa will enact a product-based exemption without restriction only if the agreement does not have a definition for the product or for a term that includes the product. If the agreement has a definition for the product or for a term that includes the product, Iowa will exempt all items included within the definition but will not exempt only part of the items included within the definition unless the agreement sets out the exemption for part of the items as an acceptable variation.

204.2(3) Entity-based and use-based exemptions. Iowa will enact an entity-based or a use-based exemption without restriction only if the agreement has no definition for the product whose use or purchase by a specific entity is exempt or for a term that includes the product. If the agreement has a definition for the product whose use or specific purchase is exempt, Iowa will enact an entity-based or a use-based exemption that applies to that product only if the exemption utilizes the agreement’s definition of the product. If the agreement does not have a definition for the product whose use or specific purchase is exempt but has a definition for a term that includes the product, Iowa has the power to enact an entity-based or a use-based exemption for the product without restriction.

This rule is intended to implement Iowa Code chapter 423, subchapter IV.

701—204.3(423) Requirement of uniformity in the filing of returns and remittance of funds. Any model 1, 2, or 3 seller may submit its sales or use tax returns in a simplified format that does not include more data fields than permitted by the governing board. The department will require only one remittance for each return except as otherwise allowed by the agreement. If any additional remittance is required, it will only be required from sellers that have collected more than \$30,000 in sales and use taxes in Iowa during the preceding calendar year. The amount of the additional remittance shall be determined through a calculation method rather than actual collections and shall not require the filing of an additional return.

This rule is intended to implement Iowa Code chapter 423, subchapter IV.

701—204.4(423) Allocation of bad debts. If a seller is entitled under Iowa Code section 423.21 to deduct bad debts owed to the seller and those bad debts consist of any sales price or purchase price upon which tax has been paid to the state of Iowa as well as a state or states other than Iowa, then allocation of the bad debt is allowed. The seller must support an allocation of the bad debts between Iowa and the other state or states through the proper accounting of its books and records.

This rule is intended to implement Iowa Code chapter 423, subchapter IV.

701—204.5(423) Purchaser refund procedures. Iowa law allows a purchaser to seek a return of overcollected sales or use taxes from the seller who collected them. More information is contained in Iowa Code section 423.45(2). In connection with any purchaser’s request of a seller that the seller return sales or use tax alleged to have been overcollected, the seller to whom the request is directed shall be rebuttably presumed to have a reasonable business practice if, in the collection of such sales or use tax, the seller uses either a provider or a system, including a proprietary system, which is certified by this state and has remitted all taxes collected by the use of that provider system to the department, less any deductions, credits, or collection allowances.

This rule is intended to implement Iowa Code chapter 423, subchapter IV.

701—204.6(423) Relief from liability for reliance on taxability matrix. Iowa provides and maintains a taxability matrix in a database that is in a downloadable format approved by the governing board. All sellers and certified service providers are relieved from liability to Iowa and any jurisdiction imposing a local option tax under Iowa Code chapter 423B or 423E for having charged and collected the incorrect

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amount of sales or use tax resulting from the seller's or certified service provider's reliance on erroneous data provided by that taxability matrix.

This rule is intended to implement Iowa Code chapter 423, subchapter IV.

701—204.7(423) Effective dates of taxation rate increases or decreases when certain services are furnished. Certain taxable services are usually furnished over an extended period of time (e.g., utilities, janitorial, and ministorage services), and the user of such a service is billed at regular intervals (e.g., monthly or quarterly). The beginning date when a rate change is imposed on the sales price of this type of service differs, depending upon whether a rate increase or rate decrease is involved. If the rate of taxation has been increased, the beginning date of the rate change shall be the first day of the first billing period occurring on or after the effective date of the rate increase. If the rate of taxation has been decreased, the new rate shall apply to bills rendered on or after the effective date of the rate decrease.

This rule is intended to implement Iowa Code chapter 423, subchapter IV.

[Filed 1/18/24, effective 3/13/24]

[Published 2/7/24]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 2/7/24.

ARC 7620C

REVENUE DEPARTMENT[701]

Adopted and Filed

Rulemaking related to sourcing of taxable services, tangible personal property, and specified digital products

The Revenue Department hereby rescinds Chapter 205, "Sourcing of Taxable Services, Tangible Personal Property, and Specified Digital Products," Iowa Administrative Code, and adopts a new chapter with the same title.

Legal Authority for Rulemaking

This rulemaking is adopted under the authority provided in Iowa Code sections 421.14, 422.68 and 423.42.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code sections 423.2, 423.15 and 423B.5.

Purpose and Summary

The purpose of this rulemaking is to readopt Chapter 205. The Department revised the chapter to remove portions of the rules that the Department determined are obsolete, are unnecessary, or are duplicative of statutory language. The chapter describes the Department's interpretation of the underlying statute to help the public understand the sourcing of taxable services, tangible personal property, and specified digital products. These rules provide clarification about where a sale takes place in order to determine when and where Iowa sales or use tax applies.

Public Comment and Changes to Rulemaking

Notice of Intended Action for this rulemaking was published in the Iowa Administrative Bulletin on December 13, 2023, as **ARC 7147C**. Public hearings were held on January 3, 2024, at 9 a.m. via video/conference call and at 1 p.m. via video/conference call. No one attended the public hearings. No public comments were received. No changes from the Notice have been made.

Adoption of Rulemaking

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This rulemaking was adopted by the Department on January 19, 2024.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to rule 701—7.28(17A).

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking 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).

Effective Date

This rulemaking will become effective on March 13, 2024.

The following rulemaking action is adopted:

ITEM 1. Rescind 701—Chapter 205 and adopt the following **new** chapter in lieu thereof:

CHAPTER 205
SOURCING OF TAXABLE SERVICES, TANGIBLE PERSONAL PROPERTY, AND SPECIFIED
DIGITAL PRODUCTS

701—205.1(423) Definitions. For purposes of this chapter, the following terms shall have the same definition as in Iowa Code section 423.1:

“*Agreement*” means the same as defined in Iowa Code section 423.1.

“*Department*” means the same as defined in Iowa Code section 423.1.

“*First use of a service*” means the same as defined in Iowa Code section 423.1.

“*First use of a service performed on tangible personal property*” means receiving, with the ability to use, whether or not actually used, the tangible personal property on which the taxable service was performed.

“*Governing board*” means the same as defined in Iowa Code section 423.1.

“*Receive*” or “*receipt,*” with regard to sales of services, means making “first use of services” pursuant to this chapter. For purposes of receipt of services performed on tangible personal property under rule 701—205.3(423), the location (or locations) where the purchaser (or the purchaser's donee) regains possession or can potentially make first use of the tangible personal property on which the seller performed the service is the location (or locations) of the receipt of the service. The location where the seller performs the service is not determinative of the location where the purchaser receives the service. The terms “receive” and “receipt” do not include possession by a shipping company on behalf of the purchaser; this is treated as though the retailer delivered to the purchaser the tangible personal property on which the service was performed. When a shipping company delivers tangible personal property on which the service was performed, the service is deemed “received” where the shipping company delivers the tangible personal property to the purchaser. For the purposes of sales of personal care

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services, the location (or locations) where the service is performed on the purchaser (or the purchaser's donee) is the location where the purchaser receives the service.

“Retailer” means the same as defined in Iowa Code section 423.1.

“Seller” means the same as defined in Iowa Code section 423.1.

701—205.2(423) General sourcing rules for taxable services. Except as otherwise provided in the agreement, retailers providing taxable services in Iowa shall source the sales of those services using the destination sourcing requirements described in Iowa Code section 423.15. In determining whether to apply the provisions of Iowa Code section 423.15 to the sale of a taxable service, it is necessary to determine the location where the result of the service is received, is first used, or could potentially be first used by the purchaser or the purchaser's donee. The provisions of these rules do not affect the obligation of a purchaser or lessee to remit additional tax, if any, to another taxing jurisdiction based on the use of the service at another location.

205.2(1) Determining the result of a service. Determining the location where the result of a service is received by a purchaser requires a fact-based inquiry on a case-by-case basis.

EXAMPLE 1: Company Z is a photography business located in Mason City, Iowa. Company Z enters into an agreement with Customer Y, a resident of the state of Illinois, to take a photoshoot in Okoboji, Iowa. Company Z charges Customer Y \$2,000 for the photoshoot itself and \$1,000 for printed photos once they are finalized. Customer Y pays Company Z \$3,000 in advance for the photoshoot and photographs. The photoshoot takes place as planned in Okoboji, and three weeks later Company Z sends Customer Y a package containing the photographs to Customer Y's Illinois address.

The photoshoot is the result of Company Z's service, which occurs in Okoboji, Iowa—the location where the performance of the photoshoot begins. Company Z must therefore charge Iowa sales tax and any applicable local option tax on the \$2,000 charge for the photoshoot. The \$1,000 charge for the photographs is a sale of tangible personal property and is sourced to Illinois—the location where the photographs are delivered. Company Z therefore does not need to charge Iowa sales tax on the \$1,000 but may be responsible for collecting and remitting Illinois tax.

EXAMPLE 2: Same facts as in Example 1, except that Company Z charges Customer Y a one-time, flat \$3,000 charge without any itemization or breakdown of the cost. This \$3,000 charge represents the sale of tangible personal property and is sourced to Illinois—the location where the photographs are delivered. Company Z therefore does not need to charge Iowa sales tax on the \$3,000 but may be responsible for collecting and remitting Illinois tax.

205.2(2) Subsequent use in Iowa. If an Iowa purchaser is determined to owe sales tax in another state based on first use, Iowa use tax may still apply. If, subsequent to the first use in another state, the product or result of a service is used in Iowa, Iowa use tax applies. (More information can be found in Iowa Code section 423.5.)

205.2(3) Measurement of use tax due. If tax has been imposed on the sales price of services performed on tangible personal property in another state at a rate that is less than the Iowa use tax rate, the purchaser will have to pay Iowa use tax at a rate measured by the difference between the Iowa use tax rate and the tax rate imposed in the state where the service was first used. (More information can be found in Iowa Code section 423.22.) There is no local option use tax.

EXAMPLE: An Iowa resident first uses the results of services performed on tangible personal property in another state and pays that state's 5 percent sales tax to that state. The Iowa resident returns to Iowa to use the tangible personal property on which the service was performed. Iowa's use tax rate on the services performed on the tangible personal property is 6 percent. The resident must remit to the department 1 percent use tax; no local option use tax is due. If, on the other hand, the other state's sales tax rate is equal to or greater than Iowa's use tax rate, the Iowa resident does not have to remit use tax to the department on the services performed on tangible personal property.

701—205.3(423) First use of services performed on tangible personal property.

205.3(1) First use of services performed on tangible personal property defined. A service performed on tangible personal property is a service that changes some aspect of the property, such as its appearance

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or function. Services with respect to tangible personal property, but not necessarily performed on tangible personal property, such as inspection and appraisal, are not addressed in this rule. Except as otherwise provided in the agreement or the rules adopted by the governing board, a service performed on tangible personal property is first used at, and sourced to, the location where the customer receives, regains possession of, or can potentially make first use of, whether or not actually used, the tangible personal property on which the seller performed the service. In general, this is the location where the tangible personal property is returned to the purchaser or the purchaser's donee.

205.3(2) *Sourcing of taxable services performed on tangible personal property as applied to local option sales and services tax.* A local option sales and services tax shall be imposed on the same basis as the state sales and services tax. With respect to sourcing of taxable services performed on tangible personal property, the local option sales and services tax sourcing rules shall be the same as the destination sourcing requirements described in Iowa Code section 423.15 and as set forth in rules 701—205.1(423) and 701—205.2(423) and subrule 205.3(1). However, the location of the taxable service performed on tangible personal property shall be sourced to the taxing jurisdiction, rather than to the state, where the customer regains possession or can potentially make first use of the tangible personal property on which the seller performed the service. Iowa does not impose a local option use tax.

205.3(3) *Specific examples of taxable enumerated services.* Specific examples of services performed on tangible personal property taxable in Iowa under Iowa Code section 423.2 include, but are not limited to:

- a. Alteration and garment repair;
- b. Vehicle repair and vehicle wash and wax;
- c. Boat repair;
- d. Carpentry;
- e. Roof, shingle, and glass repair;
- f. Dry cleaning, pressing, dyeing, and laundering;
- g. Electrical and electronic repair and installation;
- h. Farm implement repair of all kinds;
- i. Furniture, rug, carpet, and upholstery repair and cleaning;
- j. Gun and camera repair;
- k. Household appliance, television, and radio repair;
- l. Jewelry and watch repair;
- m. Machine repair of all kinds, including office and business machine repair;
- n. Motor repair;
- o. Motorcycle, scooter, and bicycle repair;
- p. Pet grooming;
- q. Wood preparation;
- r. Sewing and stitching;
- s. Shoe repair and shoeshine; and
- t. Taxidermy services.

205.3(4) *Examples of sourcing rules for motor and machine repair.* The following examples are intended to clarify when motor and machine repair services are deemed “received.”

EXAMPLE 1: Ms. Brown of Muscatine, Iowa, takes her lawnmower to a repair shop in Moline, Illinois, to have its engine repaired. When the lawnmower is repaired, she picks it up at the Illinois repair shop and returns to Muscatine. The repair service is received at the repair shop location in Illinois since Ms. Brown has the potential first use of the repaired item at that location. The repair transaction is sourced to Illinois. Ms. Brown's subsequent use of the repair services performed on the lawnmower obliges her to remit use tax to the department to the extent Iowa's use tax rate exceeds Illinois's tax rate on lawnmower repair services. That is, Ms. Brown must remit Iowa use tax at a rate measured by the difference between Iowa's use tax rate and the tax rate imposed in Illinois on lawnmower repair services. If Illinois does not tax motor and machine repair, Ms. Brown must remit use tax to the Department at a rate equal to Iowa's entire use tax rate.

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EXAMPLE 2: Same facts as in subrule 205.3(4), Example 1, except that the Illinois repair shop delivers the repaired lawnmower to the owner's residence in Iowa. In this case, the potential first use is at Ms. Brown's residence. Thus, Ms. Brown receives the repair service at, and the repair service is sourced to, her residence in Iowa; Iowa sales tax is due.

EXAMPLE 3: Mr. Cho, a homeowner in Iowa, contacts an appliance repair service provider located in Missouri to have a clothes dryer repaired. The repair service provider dispatches a technician to Mr. Cho's home in Iowa to make the needed repairs. Mr. Cho received the repair service in Iowa because the potential first use of the repaired clothes dryer was in Iowa. This transaction is sourced to Iowa. Iowa sales tax is due.

EXAMPLE 4: A manufacturer in Iowa uses gauges in its production process to ensure that its product meets specifications. Periodically, the manufacturer ships the gauges to a test laboratory in Minnesota to verify that they are producing proper measurements. The test laboratory tests the gauges and adjusts the calibration on the gauges. The test laboratory ships the gauges back to the manufacturer's location in Iowa. The manufacturer regained possession and had potential first use of the gauges in Iowa so the transaction is sourced to the location of the manufacturer in Iowa. Iowa sales tax is due.

EXAMPLE 5: Same facts as in subrule 205.3(4), Example 4, except that the manufacturer picks up the calibrated gauges from the test laboratory in Minnesota. The potential first use of the calibrated gauges (the result of the test laboratory services) is in Minnesota, and the transaction is sourced to the test laboratory's location in Minnesota. The manufacturer must remit use tax to the department to the extent Iowa's use tax rate exceeds Minnesota's tax rate on test laboratory services. That is, the manufacturer is obliged to pay Iowa use tax at a rate measured by the difference between Iowa's use tax rate and the tax rate imposed in Minnesota on test laboratory services. If Minnesota does not tax test laboratory services, the manufacturer must remit use tax to the department at a rate equal to Iowa's entire use tax rate.

EXAMPLE 6: Same facts as in subrule 205.3(4), Example 4, except that the manufacturer hires a shipping company, such as a common or contract carrier, to pick up the tested and recalibrated gauges from the test laboratory and deliver them to the manufacturer's location in Iowa. Since the terms "receive" and "receipt" do not include possession by a shipping company on behalf of the purchaser, the transaction is sourced to the manufacturer's location in Iowa where the manufacturer regains possession and has potential first use of the gauges. Iowa sales tax is due.

205.3(5) *Examples of sourcing rules for the painting of tangible personal property.* The following examples are intended to clarify when the service of painting of tangible personal property is deemed "received."

EXAMPLE 1: A law office in Iowa has antique bookcases it wishes to have painted. The bookcases are picked up by a painter and taken to and painted in the painter's shop in Illinois. The painter then delivers the painted bookcases to the law office. The transaction is sourced to the location of the law office in Iowa. Iowa sales tax is due. If, instead, the law office sends one of its employees to the painter's shop in Illinois to pick up the painted bookcases, the transaction is sourced to the painter's location in Illinois where possession or potential first use occurs. The law office must remit use tax to the department to the extent Iowa's use tax rate exceeds Illinois's tax rate on painting services. If Illinois does not tax painting services, the law office must remit use tax to the department at a rate equal to Iowa's entire use tax rate.

EXAMPLE 2: A business in Davenport, Iowa, hires a painter from Rock Island, Illinois, to paint several file cabinets. The painter does the painting on site at the purchaser's office location. Because the file cabinets remain at the same location and the purchaser's potential first use of the cabinets is in Iowa, the transaction is sourced to the purchaser's office location in Davenport. Iowa sales tax is due.

205.3(6) *Example of sourcing rules for dry cleaning services.* The following example is intended to clarify when dry cleaning services are deemed "received."

EXAMPLE: Mr. Riley, a Council Bluffs, Iowa, resident, takes laundry to an Omaha, Nebraska, dry cleaner's store. After his clothing is dry-cleaned, Mr. Riley returns to the dry cleaner in Omaha to pick up the clothing. The dry cleaner returns the clothes to Mr. Riley at the dry cleaner's store. Mr. Riley regains possession of his dry-cleaned clothes at the store in Omaha, so the transaction is sourced to Nebraska. Mr. Riley must remit use tax to the department to the extent Iowa's use tax rate exceeds Nebraska's tax

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rate on dry-cleaning services. If Nebraska does not tax dry-cleaning services, then Mr. Riley must remit use tax to the department at a rate equal to Iowa's entire use tax rate.

205.3(7) *Example of sourcing rules for vehicle wash and wax services.* The following example is intended to clarify when vehicle wash and wax services are deemed "received."

EXAMPLE: Mr. Moyle lives in Sioux City, Iowa, but he drives his vehicle to a car wash in Dakota Dunes, South Dakota, for a vehicle wash and wax service. The car wash operator washes and waxes the vehicle in Dakota Dunes. When the car wash operator completes the vehicle wash and wax service, Mr. Moyle pays the car wash operator and drives back to Sioux City, Iowa. Since the owner regains possession of the car at the car wash, the transaction is sourced to South Dakota. Mr. Moyle must remit use tax to the department to the extent that Iowa's use tax rate exceeds South Dakota's tax rate on vehicle wash and wax services. If South Dakota does not tax vehicle wash and wax services, then Mr. Moyle must remit use tax to the department at a rate equal to Iowa's entire use tax rate.

205.3(8) *Examples of sourcing rules for animal grooming services.* The following examples are intended to clarify when animal grooming services are deemed "received."

EXAMPLE 1: Ms. Decker of Lake Mills, Iowa, hires a mobile pet washing and grooming service based in Albert Lea, Minnesota, to come to her home and bathe and groom her dog Sascha. The grooming service is performed on Sascha at Ms. Decker's home in Lake Mills. Therefore, the pet washing service transaction is sourced to Ms. Decker's home in Iowa. Iowa sales tax is due.

EXAMPLE 2: Mr. Marx, who resides in Bettendorf, Iowa, takes his cat Fluffy to a Milan, Illinois, grooming shop. The cat groomer cuts and washes Fluffy's fur. Once Fluffy is groomed, Mr. Marx returns to the grooming shop, pays for the service, and drives Fluffy home to Bettendorf. Since Mr. Marx picks up Fluffy at the shop in Illinois, the first use of the grooming services is in Illinois and the transaction is sourced to Illinois. Mr. Marx must remit use tax to the department to the extent Iowa's use tax rate exceeds Illinois's tax rate on animal grooming services. If Illinois does not tax animal grooming services, then Mr. Marx must remit use tax to the department at a rate equal to Iowa's entire use tax rate.

205.3(9) *Example of local option sales and service tax sourcing rules for camera repair services.* The following example is intended to clarify when camera repair services are deemed "received."

EXAMPLE: Mr. Pagano, a photographer in Promise City, Iowa, contacts Bob's Camera Shop, which is located in Appanoose County, Iowa, to arrange for one of his cameras to be repaired. Promise City has imposed local option sales and service tax. Bob's Camera Shop dispatches a repairperson to Mr. Pagano's studio in Promise City to repair the camera. Mr. Pagano receives the repair service in Promise City since he can potentially make first use of his repaired camera at that location. The repair service is sourced to Promise City even though the camera shop is located in Appanoose County. Local option sales and service tax imposed by Promise City and Iowa sales tax are due on the sales price of the camera repair service.

205.3(10) *Examples of local option sales and service tax sourcing rules for bicycle repair services.* The following examples are intended to clarify when bicycle repair services are deemed "received."

EXAMPLE 1: Mr. Edwards, a resident of Slater, Iowa, contacts Bike-o-rama Repair Shop in Ankeny, Iowa, to arrange for his bicycle to be repaired. Slater has imposed local option sales and service tax; Ankeny has not. Mr. Edwards delivers his bicycle to Bike-o-rama and leaves it there to be repaired. Because he is a preferred customer, Bike-o-rama has one of its employees deliver Mr. Edwards' bicycle to his home in Slater when the bicycle repair service is completed. Mr. Edwards' potential first use of his bicycle is in Slater; therefore, the transaction is sourced to Slater. Local option sales and service tax imposed by Slater is due even though Bike-o-rama is located in Ankeny. Iowa sales tax is also due.

EXAMPLE 2: Same facts as in subrule 205.3(10), Example 1, but Mr. Edwards picks up his repaired bicycle at Bike-o-rama in Ankeny. Because Mr. Edwards regains possession and can make potential first use of the repaired bicycle in Ankeny, the repair transaction is sourced to Ankeny and Bike-o-rama must collect state sales tax and any local option sales tax imposed by Ankeny.

EXAMPLE 3: Same facts as in subrule 205.3(10), Example 1, but Bike-o-rama is located in Willow Glen, California, and Bike-o-rama ships Mr. Edwards' bike to his home in Slater, Iowa. Since the terms

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“receive” and “receipt” do not include possession by a shipping company on behalf of the purchaser, the transaction is sourced to Slater. Slater’s local option sales and service tax is due even though Bike-o-rama is located in Willow Glen, California. Iowa sales tax is also due.

701—205.4(423) Sourcing rules for personal care services.

205.4(1) Definition. “Personal care services” means services that are performed on the physical human body. Examples of personal care services governed by this rule include, but are not limited to:

- a. Barber and beauty services;
- b. Massage, excluding services provided by massage therapists licensed under Iowa Code chapter 152C;
- c. Reflexology;
- d. Reducing salons; and
- e. Tanning beds and salons.

205.4(2) Sourcing of personal care services. Except as otherwise provided in the agreement or the rules adopted by the governing board, a purchaser receives a personal care service within the meaning of subrule 205.4(1) at the location where the services are performed, which is the same location where the services are received by the purchaser (or the purchaser’s donee). The services will be received by the purchaser (or the purchaser’s donee) either at the seller’s location, pursuant to Iowa Code section 423.15(1) “a,” or at the purchaser’s (or the purchaser’s donee) location, pursuant to Iowa Code section 423.15(1) “b.”

205.4(3) Examples of sourcing of personal care services. The following examples are intended to clarify sourcing rules for personal care services.

EXAMPLE 1: Mr. Fernandez, a resident of Illinois, goes to a barber shop to have his hair cut. The barber is located within Iowa. The barber is providing personal care services, and the sale of these services must be sourced to the location where the services are received (place of first use). Mr. Fernandez makes first use of the services in Iowa where his hair is cut. The sale is sourced to Iowa. Iowa sales tax is due.

EXAMPLE 2: Ms. Jackson, a resident of Council Bluffs, Iowa, goes to a tanning salon in Omaha, Nebraska, and pays for use of a tanning bed. The tanning salon is providing personal care services, and the sale of these services must be sourced to the location of the tanning salon since this is where the services are received (place of first use). Since the tanning salon is located in Nebraska, the sale is sourced to Nebraska. If Nebraska taxes tanning salon services and that rate is lower than Iowa’s use tax rate, Ms. Jackson is obliged to pay Iowa use tax to the department at a rate measured by the difference between Iowa’s use tax rate and the tax rate imposed on tanning salon services in Nebraska. If Nebraska does not tax tanning salon services, then Ms. Jackson must remit use tax to the department at a rate equal to Iowa’s entire use tax rate.

EXAMPLE 3: Ms. Zastrow, a resident of Iowa, contacts a massage therapist (who is not licensed under Iowa Code chapter 152C) located in Nebraska for a therapeutic massage. Ms. Zastrow requests that the therapist perform the massage at Ms. Zastrow’s residence in Iowa. The therapist travels to Ms. Zastrow’s residence and performs the massage. The therapist is providing personal care services, and the sale of these services must be sourced to the location where the services are received (place of first use). Ms. Zastrow makes first use of the services in Iowa where the massage is performed. The sale is sourced to Iowa. Iowa sales tax is due.

701—205.5(423) Sourcing of tickets or admissions to places of amusement, fairs, and athletic events. Sales of tickets or admissions to places of amusement, fairs, and athletic events are sourced in the same manner as services, using the destination sourcing requirements described in Iowa Code section 423.15 and as set forth in rule 701—205.2(423). Generally, the sale of a service is sourced to the location where the purchaser makes first use of the service. In the case of an event that the purchaser attends at a physical location, first use would occur at the location of the event.

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EXAMPLE: X makes retail sales of tickets to music concerts in Iowa. X is a retailer maintaining a place of business in this state under Iowa Code section 423.1(48) and therefore is required to collect Iowa sales tax and local option sales tax on retail sales of these tickets. More information can be found in Iowa Code section 423.2(3). Y is a resident of Marshalltown, Iowa. Y purchases two tickets to attend a concert in Ames, Iowa. The sale is sourced to Ames, the location of the event. The result is the same regardless of how or where Y's tickets are delivered. X must charge Iowa sales tax and any local option sales tax that applies to sales sourced to Ames, Iowa.

205.5(1) *Sales of admissions to virtual events.* First use of a ticket of admission to a virtual event occurs at the location where the attendee first participates in or accesses the event, if known to the seller. If this location is unknown, the sale is sourced pursuant to Iowa Code section 423.15(1).

EXAMPLE: X is hosting a virtual video game tournament. X is a retailer maintaining a place of business in this state under Iowa Code section 423.1(48). Y purchases admission to participate in the virtual video game tournament from a residence in Council Bluffs, Iowa. Y's access to the tournament begins immediately upon purchase, and Y's location is known to X. Therefore, X must source the admission to Council Bluffs, Iowa. X must charge Iowa sales tax and any local option sales tax that applies to sales sourced to Council Bluffs, Iowa.

205.5(2) *Sales of admissions that can be used at multiple locations.* Admissions that may be used at multiple locations should be sourced to the location where the admission is purchased if the purchaser picks it up in person and it can be used at that location. If the service cannot be used at that location or the sale is made online, the sale should be sourced using the provisions of Iowa Code section 423.15 and these rules that apply when the location of first use is unknown.

EXAMPLE 1: X is a movie theater located in West Des Moines, Iowa. X sells movie passes that can be used at its location and other locations across Iowa. Y purchases a movie pass at X's location in West Des Moines. Y's purchase is sourced to West Des Moines. X must collect Iowa sales tax and any local option sales tax that applies to sales sourced to West Des Moines, Iowa.

EXAMPLE 2: X is a health club with locations across Iowa. X has a website where memberships can be purchased. Memberships can be used at any of X's locations. Y purchases a membership through X's website. Y is required to provide an address when the membership purchase information is filled out. Y provides an address in Clive, Iowa. Therefore, the sale is sourced to Clive. More information can be found in Iowa Code section 423.15(1) "c." X must therefore collect Iowa sales tax and any local option sales tax imposed in the city of Clive.

701—205.6(423) Sourcing rules for tangible personal property and specified digital products. All sales of tangible personal property and specified digital products by sellers obligated to collect sales and use tax, except those enumerated in Iowa Code section 423.16, shall be sourced using the destination sourcing requirements described in Iowa Code section 423.15. Products received by a purchaser at a seller's business location shall be sourced to that business location. When the retailer has the address to which the retailer or a shipping company will deliver a product to the purchaser, Iowa Code section 423.15(1) "b" applies and the sale is sourced to the delivery address. The sale of a product delivered to a shipping company is not sourced to the location of the shipping company. The terms of a sale as F.O.B. (origin) are irrelevant for purposes of sourcing a sale. More information can be found in Iowa Code section 423.1(43) "b."

205.6(1) *General examples of sourcing of tangible personal property.* The following examples illustrate the sourcing principles of Iowa Code section 423.15(1) as applied to sales, but not leases or rentals, of tangible personal property.

EXAMPLE 1: Item received at retail store of the seller. X purchases a product at a retail store in Waterloo, Iowa. X takes the product home from the retail store that day. The sale is sourced to the retail store in Waterloo, Iowa, because that is the business location where X receives the product. More information can be found in Iowa Code section 423.15(1) "a." The retailer must therefore collect state sales tax and any local option sales tax imposed in the city of Waterloo.

EXAMPLE 2: Item received at warehouse of the seller. X purchases a product at a retail store in Waterloo, Iowa, but X has to pick up the product at a warehouse in Cedar Falls, Iowa. The sale is sourced

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to the warehouse in Cedar Falls because that is the business location where X receives the product. More information can be found in Iowa Code section 423.15(1)“a.” The retailer must therefore collect state sales tax and any local option sales tax imposed in the city of Cedar Falls.

EXAMPLE 3: Item received at alternate location. X purchases a product at a retail store in Waterloo, Iowa. While purchasing the product, X provides the retail store with X’s home address as the location where X would like to have the product delivered. The retail store’s delivery truck delivers the product to X’s home in Waverly, Iowa. The sale is sourced to X’s home in Waverly, Iowa, because that is the location where X receives the product and the location is known to the seller. More information can be found in Iowa Code section 423.15(1)“b.” The retailer must therefore collect state sales tax and any local option sales tax imposed in the city of Waverly. The outcome in this example is the same regardless of whether the retail store delivered the product with its own truck or by common carrier.

EXAMPLE 4: Sale by Iowa seller, product received by buyer in Iowa, but product delivered from outside of Iowa. X lives in Maxwell, Iowa. X purchases a product online from an Iowa seller with a retail location in Des Moines, Iowa. While purchasing the product, X provides the retail store with X’s home address as the location where X would like to have the product delivered. The seller sends the product to X via a common carrier from its shipping facility in Lincoln, Nebraska, and X receives the product at X’s home in Maxwell. The sale is sourced to Maxwell because the product is received at that location and that location is known to the seller. More information can be found in Iowa Code section 423.15(1)“b.” The outcome in this example is the same regardless of the fact that the product was delivered by a third party and regardless of the fact that the product was delivered from out of state. More information can be found in Iowa Code section 423.15(1)“b.” The retailer must therefore collect state sales tax and any local option sales tax imposed in the city of Maxwell.

EXAMPLE 5: Sale by remote seller, product delivered into Iowa. X lives in Maxwell, Iowa. X purchases a product online from a remote seller (a seller who has no physical presence in Iowa) located in Kansas City, Missouri, who is required to collect Iowa sales and local option taxes on Iowa sales pursuant to Iowa Code section 423.14A(3). While purchasing the product, X inputs X’s home address as the delivery address. The product is shipped via common carrier. The sale is sourced to Maxwell, Iowa, because the product is received at that location and that location is known to the seller. More information can be found in Iowa Code section 423.15(1)“b.” It is irrelevant that the product was delivered by a third-party common carrier. More information can be found in Iowa Code section 423.15(1)“b.” The retailer must therefore collect state sales tax and any local option sales tax imposed in the city of Maxwell.

EXAMPLE 6: Location of receipt by a purchaser’s donee. X lives in Omaha, Nebraska. X purchases a birthday gift for Y, who lives in Davenport, Iowa. X purchases the gift from a remote seller (a seller who has no physical presence in Iowa) located in Chicago, Illinois, who is required to collect Iowa sales and local option taxes on Iowa sales pursuant to Iowa Code section 423.14A(3). While purchasing the gift, X inputs Y’s Davenport, Iowa, address as the delivery address. The sale is sourced to Davenport, Iowa. Y is the purchaser’s donee. The gift is received by Y in Davenport, Iowa, and that location is known to the seller. More information can be found in Iowa Code section 423.15(1)“b.” The retailer must therefore collect state sales tax and any local option sales tax imposed in the city of Davenport.

EXAMPLE 7: Location of receipt unknown to the seller, but purchaser’s address available from seller’s business records. X purchases a product at a retail store in Waterloo, Iowa. X provides a billing address located in Fort Dodge, Iowa, with X’s payment information. X indicates to the retail store that X will arrange for a third-party shipping company to pick up the product. X does not provide the retailer a shipping address. Even though the retailer does not know the delivery address, the retailer’s business records indicate that the purchaser’s address is in Fort Dodge. Therefore, the sale is sourced to Fort Dodge. More information can be found in Iowa Code section 423.15(1)“c.” The retailer must therefore collect state sales tax and any local option sales tax imposed in the city of Fort Dodge.

EXAMPLE 8: Location of receipt unknown to the seller, but purchaser’s address only indicated on a payment instrument used in the transaction. X purchases a product at a retail store in Waterloo, Iowa. X pays with a check that lists a Fort Dodge, Iowa, address for X. X indicates to the retail store that X will arrange for a third-party shipping company to pick up the product. X does not provide a shipping address to the retail store. Even though the retail store does not have a shipping address or other address

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for X on file, the check lists an address for the purchaser in Fort Dodge. Therefore, the sale is sourced to Fort Dodge. More information can be found in Iowa Code section 423.15(1) "d." The retailer must therefore collect state sales tax and any local option sales tax imposed in the city of Fort Dodge.

EXAMPLE 9: Location from which the item was shipped, if location of receipt is unknown to the seller and the seller has no other record or indication of buyer's address. X orders a product at a retail store in Adel, Iowa. X pays in cash and indicates to the retail store that X will arrange for a third-party shipping company to pick up the product. X does not provide a shipping address or a billing address, and the retail store does not have an address on file for X. Because X paid in cash, X's address is not indicated on a payment instrument. The retail store may source the sale to its location in Adel, Iowa. More information can be found in Iowa Code section 423.15(1) "e." The retailer must therefore collect state sales tax and any local option sales tax imposed in the city of Adel.

205.6(2) *General examples of sourcing of specified digital products.* The following examples illustrate the sourcing principles of Iowa Code section 423.15(1) as applied to specified digital products.

EXAMPLE 1: Specified digital product purchased at seller's business location. Y owns and operates a restaurant in Sioux City, Iowa. Y provides guests access to an on-site electronic device on which guests may purchase access to video games to play while they wait to receive their food. Guests' access to the games ends once they pay their bill, and the charge for the access is included on the final bill. All sales of video games from Y's on-site electronic devices are sourced to Sioux City, the location at which guests receive access to the video games. More information can be found in Iowa Code section 423.15(1) "a." Y must therefore collect state sales tax and any local option sales tax imposed in the city of Sioux City.

EXAMPLE 2: Location of receipt by purchaser known to seller. X purchases and receives a specified digital product on X's smart phone through an online application marketplace. The marketplace knows X is in Ames, Iowa, when X purchases and downloads the specified digital product. The sale is sourced to Ames because the product is received at that location (more information can be found in Iowa Code section 423.1(43)) and that location is known to the seller. More information can be found in Iowa Code section 423.15(1) "b." If the marketplace meets the thresholds described in Iowa Code section 423.14A(3), the marketplace must collect state sales tax and any local option sales tax imposed in the city of Ames.

EXAMPLE 3: Location of receipt by purchaser unknown, but purchaser's address is available from seller's business records. X purchases a specified digital product from C's website. Prior to purchasing the specified digital product, X creates a user account through C's website and lists X's home address in Jefferson, Iowa. When X purchases the specified digital product, C does not know where X received the specified digital product. Even though C does not know where the specified digital product is received by X, C's business records that are maintained in the ordinary course of business indicate that X's address is in Jefferson, Iowa. More information can be found in Iowa Code section 423.15(1) "c." If C meets the thresholds described in Iowa Code section 423.14A(3), C must collect state sales tax and any local option sales tax imposed in the city of Jefferson.

EXAMPLE 4: Location of receipt by purchaser unknown, but purchaser's address only indicated on a payment instrument used in the transaction. X downloads a mobile video game application on X's phone through an online application marketplace. X pays for the video game with X's credit card. The marketplace saves the Ames, Iowa, home address associated with X's credit card. However, the marketplace does not know X's location when X downloads and purchases the video game. The marketplace may rely on the Ames address associated with X's payment information to source the sale. More information can be found in Iowa Code section 423.15(1) "d." If the marketplace meets the thresholds described in Iowa Code section 423.14A(3), the marketplace must collect state sales tax and any local option sales tax imposed in the city of Ames.

205.6(3) *Examples of sourcing of leases and rentals of tangible personal property other than transportation equipment or products described in Iowa Code section 423.16.* The following examples illustrate the sourcing principles of Iowa Code section 423.15(2) as applied to leases or rentals of tangible personal property, other than transportation equipment as defined in Iowa Code section 423.15(3). This rule does not cover products described in Iowa Code section 423.16.

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EXAMPLE 1A: Lease that requires recurring periodic payments. X resides in Indianola, Iowa. X enters into a rental agreement with Y, a furniture rental company located in Des Moines, Iowa, for the rental of a couch. The agreement specifies that X will pay to Y a \$50 down payment and \$20 each month thereafter until the rental is terminated.

In exchange for possession of the couch, X makes the required \$50 down payment to Y at Y's office in Des Moines, Iowa. X receives the couch at Y's office in Des Moines, and X takes the couch to X's home in Indianola, Iowa. While purchasing the couch, X provides Y with X's Indianola address, which Y keeps on file. For the remainder of the rental period, X's primary address remains the same.

The first periodic payment—the down payment—is sourced the same as sales under Iowa Code section 423.15(1). More information can be found in Iowa Code section 423.15(2)“a.” In this case, the down payment was made and the product was received at the seller's business location. Iowa Code section 423.15(1)“a” governs the sourcing of the down payment. More information can be found in subrule 205.5(1). Therefore, in this case, the down payment is sourced to Des Moines. Y must collect state sales tax and any local option sales tax imposed in the city of Des Moines on the down payment.

Because X's home address is on file with Y for the remainder of the rental period, X's address is the “primary property location” of the couch during those periods. More information can be found in Iowa Code section 423.15(2)“a.” Therefore, the subsequent monthly payments are sourced to X's Indianola address that is contained in the records maintained by Y in the ordinary course of business. More information can be found in Iowa Code section 423.15(2)“a.” Y must collect state sales tax and any local option sales tax imposed in the city of Indianola on the monthly payments.

EXAMPLE 1B: Assume the same facts as Example 1A. In this example, however, X provides the \$50 down payment, gives Y X's home address in Indianola, Iowa, and arranges to have Y deliver the couch to X's home in Indianola, Iowa. The \$50 down payment constitutes the “first periodic payment” and is therefore sourced to Indianola in accordance with Iowa Code section 423.15(1)“b.” More information can be found in Iowa Code section 423.15(2)“a.” Because Y knows the location where the product will be received by the purchaser, Y must collect Iowa sales and any local option sales tax applicable in the city of Indianola on the down payment. More information can be found in subrule 205.6(1). The result is the same regardless of whether Y or a third-party shipping agent delivers the product and regardless of whether the product is shipped from outside of Iowa. More information can be found in subrule 205.6(1), Examples 3 and 4.

All other facts and results from Example 1A remain the same.

EXAMPLE 1C: Same facts as in Example 1A. In this example, however, partway through the rental period, X moves to Clinton, Iowa, for the remainder of the rental period. X informs Y of the change in address and that X is bringing the couch to Clinton as part of the move. Y updates Y's business records to reflect X's new address and the location of the couch.

Every payment that occurs after X informed Y of X's new address is sourced to Clinton, Iowa, because the “primary property location” as indicated by an address for the property provided by the lessee was updated to Clinton, Iowa. More information can be found in Iowa Code section 423.15(2)“a.”

EXAMPLE 1D: Same facts as Example 1A. X makes the first several monthly payments while residing in Indianola. However, partway through the rental period, X moves to Ames and brings the couch. X does not update Y about the new address and location of the couch. Y does not receive any record from X indicating X's new address.

Even though the couch is actually located in Ames, the “primary property location” indicated by an address for the property provided by X that is available to Y from records maintained in the ordinary course of business is the Indianola address. More information can be found in Iowa Code section 423.15(2)“a.” Therefore, Y is correct in sourcing each lease payment to Indianola.

EXAMPLE 2: Rental that does not require recurring periodic payments. B rents a woodchipper from C for a week in exchange for a single, up-front payment. C delivers the woodchipper to B at a location in Sioux Center, Iowa. The rental payment is sourced to Sioux Center, Iowa, because that is the location where B receives the woodchipper and the location is known to C, the seller. More information can be found in Iowa Code section 423.15(1)“b.” C must therefore collect state sales tax and any local option sales tax imposed in the city of Sioux Center. A rental that does not require recurring period

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payment is sourced the same as retail sales under Iowa Code section 423.15(1) and subrule 205.6(1). More information can be found in Iowa Code section 423.15(2)“b.”

205.6(4) Sales of items from vending machines. Sales from vending machines are sourced to the location of the individual vending machine at which the purchaser receives the item.

205.6(5) Sales of items by an itinerant merchant, peddler, or salesperson having a route. When an itinerant merchant, peddler, or mobile salesperson meets with a customer and solicits an order or completes a contract for sale and the customer receives the item at that location, the sale is sourced to that location pursuant to Iowa Code section 423.15(1)“b,” regardless of whether the location is the customer’s home, a business establishment, or elsewhere. This rule applies to all other sales by itinerant merchants, peddlers, and mobile salespersons in the same manner as they apply to any other seller.

205.6(6) Items purchased for resale but withdrawn from inventory. If a person purchases items for resale or processing but withdraws and uses any of those items from inventory or from a stock of materials held for processing, the gross receipts from the sales of the items withdrawn and used are sourced to the county in which they are withdrawn regardless of where the items were purchased for resale.

EXAMPLE: X owns and operates a home and furniture store located in Black Hawk County, Iowa. In Johnson County, Iowa, X purchases five rocking chairs. X provides the Johnson County retailer with sales tax exemption certificates stating that the rocking chairs are purchased for resale; the retailer accepts the certificates and does not charge Iowa sales tax on the sale of the rocking chairs. After returning to Black Hawk County, X decides to use one rocking chair in X’s home instead of selling it. Because the rocking chair was withdrawn from inventory in Black Hawk County, sales tax and the applicable local option tax in Black Hawk County are due.

205.6(7) Items withdrawn from inventory by a manufacturer. Where a manufacturer manufactures tangible personal property and uses the property it manufactures for any purpose except for resale or processing, such use by the manufacturer is subject to sales tax and sourced to the county in which the manufacturer first used the property. Taxable use includes using such property as building materials, supplies, or equipment in the performance of a construction contract. Tax is computed upon the cost to fabricate the property. More information can be found in rule 701—219.6(423).

EXAMPLE: X manufactures steel beams in Madison County, Iowa. X withdraws a beam from inventory to use on a construction project at its facility. X’s withdrawal of the beam for use in the construction project is sourced to Madison County, Iowa, and sales tax and the applicable local option tax are due.

These rules are intended to implement Iowa Code sections 423.2, 423.15, and 423B.5.

[Filed 1/19/24, effective 3/13/24]

[Published 2/7/24]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 2/7/24.

ARC 7621C

REVENUE DEPARTMENT[701]

Adopted and Filed

Rulemaking related to remote sales and marketplace sales

The Revenue Department hereby rescinds Chapter 207, “Remote Sales and Marketplace Sales,” Iowa Administrative Code, and adopts a new chapter with the same title.

Legal Authority for Rulemaking

This rulemaking is adopted under the authority provided in Iowa Code sections 421.14, 422.68 and 423.42.

State or Federal Law Implemented

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This rulemaking implements, in whole or in part, Iowa Code section 423.14A.

Purpose and Summary

The purpose of this rulemaking is to rescind Chapter 207 and adopt a new Chapter 207 with revisions to remove unnecessary restrictive terms and provide additional clarity. These rules describe the Department's interpretation of the underlying statute to help the public understand requirements for remote and marketplace sellers. These rules reduce uncertainty about who must collect and remit Iowa sales tax. Citations to rule 701—213.10(423) in rule 701—207.11(423) refer to a rule that will be adopted in a future rulemaking.

Public Comment and Changes to Rulemaking

Notice of Intended Action for this rulemaking was published in the Iowa Administrative Bulletin on December 13, 2023, as **ARC 7172C**. Public hearings were held on January 3, 2024, at 9 a.m. via video/conference call and at 1 p.m. via video/conference call. No one attended the public hearings. No public comments were received. No changes from the Notice have been made.

Adoption of Rulemaking

This rulemaking was adopted by the Department on January 18, 2024.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to rule 701—7.28(17A).

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking 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).

Effective Date

This rulemaking will become effective on March 13, 2024.

The following rulemaking action is adopted:

ITEM 1. Rescind 701—Chapter 207 and adopt the following **new** chapter in lieu thereof:

CHAPTER 207
REMOTE SALES AND MARKETPLACE SALES

701—207.1(423) Definitions.

207.1(1) Incorporation of definitions. To the extent they are consistent with Iowa Code chapter 423 and this chapter, all other words and phrases used in this chapter mean the same as defined in Iowa Code sections 423.1 and 423.14A and rule 701—200.1(423).

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207.1(2) Chapter-specific definitions. For purposes of this chapter, unless the context otherwise requires:

“*Gross revenue from sales*” means all revenue from Iowa sales.

“*Iowa sales*” means the same as defined in Iowa Code section 423.14A(1) “a” and includes all retail sales, whether taxable or exempt, and other sales of tangible personal property, specified digital products, or services otherwise sold into Iowa or for delivery into Iowa, including wholesale or sale for resale. “Iowa sales” includes sales made through a marketplace.

“*Marketplace*” means any physical or electronic place, including but not limited to a store, booth, Internet website, catalog, television or radio broadcast, or dedicated sales software application, where a marketplace seller sells or offers for sale tangible personal property, or specified digital products, or where services are offered for sale into Iowa regardless of whether the tangible personal property, specified digital product, marketplace seller, or marketplace has a physical presence in Iowa.

“*Physical presence in Iowa*” means the activities described in Iowa Code section 423.1(48) “a”(1).

“*Remote seller*” means a retailer that does not have a physical presence in Iowa but that makes sales of tangible personal property, specified digital products, or services that are sourced to Iowa.

“*Retailer*” means the same as defined in Iowa Code section 423.1(47). “Retailer” includes a marketplace facilitator that meets or exceeds the sales threshold and includes a remote seller.

“*Sales threshold*” means the revenue level that triggers collection and remittance obligations for Iowa sales tax and local option tax as described in Iowa Code section 423.14A(3): \$100,000 or more in gross revenue from Iowa sales into Iowa in either the current or immediately prior calendar year.

701—207.2(423) Administration; incorporation of 701—Chapter 11. Except as otherwise stated in this chapter, the requirements of 701—Chapter 11 apply to all retailers, including remote sellers and marketplace facilitators, required to collect and remit sales tax under this chapter.

701—207.3(423) Filing returns; payment of tax; penalty and interest; incorporation of 701—Chapter 202. Except as otherwise stated in this chapter, the filing requirements of 701—Chapter 202 apply to all retailers, including remote sellers and marketplace facilitators, required to collect and remit sales tax under this chapter.

701—207.4(423) Permits; incorporation of 701—Chapter 201. Except as otherwise stated in this chapter, the permit requirements of 701—Chapter 201 apply to all retailers, including remote sellers and marketplace facilitators, required to collect and remit Iowa sales tax and applicable local option sales tax under this chapter.

701—207.5(423) Retailers with physical presence in Iowa.

207.5(1) Sales threshold inapplicable. The sales threshold does not apply to any seller, marketplace facilitator, or other retailer that has physical presence in Iowa. A seller, marketplace facilitator, or other retailer with physical presence in Iowa must collect and remit Iowa sales tax and any applicable local option sales tax pursuant to Iowa Code section 423.14 even if the sales threshold is not met.

207.5(2) Mixed marketplace and nonmarketplace sales. A retailer with physical presence in Iowa who makes both marketplace and nonmarketplace sales must do the following:

a. Collect Iowa sales tax and any applicable local option tax on any taxable sales on which the marketplace does not collect tax.

b. Report on its Iowa sales tax return its gross revenue from all Iowa sales, including any marketplace sales on which the marketplace facilitator collected Iowa sales tax and applicable local option tax, regardless of whether the sales threshold is met.

EXAMPLE: Seller X is an Iowa-based business, with property and personnel located in Iowa. Seller X has \$80,000 in gross revenue from Iowa sales. Seller X makes \$10,000 of gross revenue from Iowa sales through a marketplace facilitator that collects Iowa sales tax and applicable local option sales tax. The remaining \$70,000 in gross revenue comes from Iowa sales made at Seller X’s storefront in Iowa. Seller X must collect and remit Iowa sales tax and applicable local option sales tax on the \$70,000 in

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nonmarketplace sales. On its Iowa sales tax return, Seller X should report \$80,000 in gross revenue from sales. Seller X may take a deduction on its Iowa sales tax return of \$10,000 for sales on which the marketplace collected Iowa sales tax and applicable local option sales tax.

701—207.6(423) Remote sellers—registration and collection obligations.

207.6(1) Combined Iowa sales from all sources. The sum of the total amount of Iowa sales through marketplace and nonmarketplace Iowa sales determines whether remote sellers meet the sales threshold.

207.6(2) Remote sellers with Iowa sales solely through marketplaces. If a remote seller meets the sales threshold but only makes retail sales in Iowa through marketplaces, the remote seller's registration and collection obligations depend on whether all of the marketplace facilitators through which the remote seller makes Iowa sales are registered to collect Iowa sales tax and applicable local option tax.

a. Registered marketplace facilitators. If all the marketplace facilitators used by the remote seller to make taxable Iowa sales collect Iowa sales tax and applicable local option sales tax, the remote seller does not have to collect the tax. The marketplace facilitator will report and pay Iowa sales tax and applicable local option sales tax on a sales tax return filed by the marketplace facilitator.

EXAMPLE: Seller X has \$200,000 in gross revenue from Iowa sales. Seller X makes all of its Iowa sales through a marketplace facilitator that collects Iowa sales tax and applicable local option sales tax on sales. Seller X does not need to register for an Iowa sales tax permit or file an Iowa sales tax return. The marketplace facilitator will report the Iowa sales tax and applicable local option sales tax on the marketplace facilitator's Iowa sales tax return.

b. Nonregistered marketplace facilitators. If a marketplace facilitator is not required to or fails to register and collect tax in Iowa, remote sellers who exceed the sales threshold must obtain an Iowa sales tax permit, collect Iowa sales tax and applicable local option sales tax, and file Iowa sales tax returns for sales made on that marketplace.

EXAMPLE: Seller X has \$200,000 in gross revenue from Iowa sales. Seller X has \$2,000 in gross revenue from sales on Marketplace Y and \$198,000 in gross revenue from sales on Marketplace Z. Marketplace Y meets the sales threshold and is registered to collect and remit Iowa sales tax and applicable local option sales tax in Iowa. Marketplace Z, however, has very few low-cost Iowa sales, meets neither the gross revenue nor volume of sales threshold, and is therefore not required to and does not collect tax on Iowa sales. Seller X must collect Iowa sales tax and applicable local option sales tax on retail sales sourced to Iowa that are made on Marketplace Z.

207.6(3) Remote sellers making both marketplace and nonmarketplace sales. A remote seller that exceeds the sales threshold and makes nonmarketplace Iowa sales, such as through the remote seller's own website, must obtain an Iowa sales tax permit. The remote seller must report on its Iowa sales tax return its gross revenue from all Iowa sales. The remote seller would be able to deduct the amount of gross sales made through any marketplaces registered to collect tax in Iowa on the remote seller's sales tax return. A remote seller making Iowa sales through a marketplace operated by an unregistered marketplace facilitator must collect and remit Iowa sales tax and applicable local option sales tax on those sales.

701—207.7(423) Marketplace facilitators—registration and collection obligations. A marketplace facilitator that meets the sales threshold must collect and remit Iowa sales tax and applicable local option sales tax on all taxable sales made through the marketplace facilitator's marketplace that are sourced to Iowa. A marketplace facilitator must collect Iowa sales tax on all taxable Iowa sales, regardless of the location or sales volume of a marketplace seller that makes sales on a marketplace facilitator's marketplace.

EXAMPLE: M is a marketplace facilitator that meets the sales threshold and therefore collects Iowa sales tax and applicable local option sales tax on Iowa sales facilitated through M's marketplace. Seller S lists soccer balls for sale on M's marketplace. A purchaser in Iowa buys a soccer ball listed by S on M's marketplace. The soccer ball is delivered to the purchaser's home address in Iowa. M must collect Iowa sales tax and applicable local option sales tax on the sale of the soccer ball. The outcome is the same regardless of whether S is located in Iowa and regardless of S's Iowa sales volume.

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701—207.8(423) Advertising on a marketplace. A marketplace seller does not sell or offer to sell tangible personal property, a specified digital product, or a service on a marketplace when merely advertising that product on a marketplace.

701—207.9(423) Commencement of collection obligation and sales tax liability.

207.9(1) Commencement of collection obligation. If a remote seller or marketplace facilitator without physical presence in Iowa did not exceed the sales threshold for the prior year and therefore does not collect sales tax in the current year, and exceeds the sales threshold in the current year, the remote seller or marketplace facilitator must collect Iowa sales tax and applicable local option sales tax starting on the first day of the next calendar month that starts at least 30 days from the day the remote seller or marketplace facilitator first exceeded the sales threshold. The remote seller or marketplace facilitator must collect tax through the end of the calendar year in which the sales threshold was met or exceeded as well as the entire next calendar year.

EXAMPLE: Company S, a remote seller, did not exceed the sales threshold in 2018. On September 15, 2019, S exceeds the sales threshold for the first time. S must register to collect Iowa sales tax and must begin collecting Iowa sales tax and applicable local option sales tax on November 1, 2019. S must continue to collect through at least December 31, 2020. S's sales volume in 2020 and later years will determine whether S must collect Iowa sales tax and applicable local option sales tax after December 31, 2020.

207.9(2) Commencement of sales tax liability. If a remote seller or marketplace facilitator without physical presence in Iowa exceeds the sales threshold as described in subrule 207.9(1), the remote seller or marketplace facilitator without physical presence in Iowa is not liable for any Iowa sales tax and applicable local option sales tax not collected beginning on January 1 of the current year through the day prior to the date the remote seller or marketplace facilitator without physical presence in Iowa is obligated to collect the tax as described in subrule 207.9(1). A purchaser will be liable for any use tax that accrues prior to the date the remote seller or marketplace facilitator without physical presence in Iowa is obligated to collect Iowa sales tax and applicable local option sales tax as described in subrule 207.9(1).

207.9(3) Permit registration. If a remote seller or marketplace facilitator without physical presence in Iowa that makes taxable sales exceeds the sales threshold, the remote seller or marketplace facilitator without physical presence in Iowa must register for a sales and use tax permit under 701—Chapter 201 prior to the date the remote seller or marketplace facilitator without physical presence in Iowa is obligated to collect Iowa sales tax and applicable local option sales tax as described in subrule 207.9(1).

701—207.10(423) Retailers registered and collecting who fail to meet or exceed sales threshold. If a retailer is registered to collect Iowa sales tax and applicable local option sales tax and collects in year 1 and fails to meet or exceed the sales threshold in year 2, the retailer must still collect all applicable sales taxes in year 2. If the retailer does not meet or exceed the sales threshold at any point in year 2, the retailer is not required to collect and remit Iowa sales tax or applicable local option sales tax in year 3. However, if a retailer is registered to collect, the retailer must continue collecting regardless of the impact of the sales threshold. A retailer that falls under the sales threshold may either submit sales tax returns demonstrating it did not collect tax until a time in the future when the retailer meets or exceeds the sales threshold or cancel its sales tax permit if it wishes to cease collecting. If the retailer meets or exceeds the sales threshold at any point thereafter, the retailer would need to register again in accordance with 701—Chapter 201 and begin collecting in accordance with this chapter.

EXAMPLE: Company S, a remote seller, exceeds the sales threshold on June 25, 2019. S must collect Iowa sales tax and applicable local option sales tax beginning August 1, 2019, and must collect for all of 2020. S does not meet or exceed the sales threshold in 2020; therefore, S is not obligated to collect sales tax on January 1, 2021. S may cease collection and cancel its sales tax permit effective January 1, 2021.

701—207.11(423) Coupons; incorporation of rule 701—213.10(423). Coupons and other discounts offered by marketplace facilitators and remote sellers are retailers' discounts, which reduce the sales price

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and thus the taxable amount of a sale. The requirements of rule 701—213.10(423) apply to marketplace facilitators and remote sellers in the same manner that those requirements apply to retailers.

701—207.12(423) Customer returns marketplace purchase directly to marketplace seller.

207.12(1) If a marketplace facilitator collects Iowa sales tax and applicable local option sales tax on the sale and the customer returns the item directly to the marketplace seller, either the marketplace facilitator or marketplace seller shall refund the full price paid by the customer, including all tax collected by the marketplace facilitator, upon acknowledgement of receipt of the item by the marketplace seller.

207.12(2) If the marketplace facilitator does not refund the amount paid and instead requires or permits the marketplace seller to do so, the marketplace seller shall refund the full price paid by the customer, including all tax collected by the marketplace facilitator. The marketplace seller shall seek reimbursement of Iowa sales tax and applicable local option sales tax from the marketplace facilitator. The marketplace facilitator shall reimburse the returned Iowa sales tax and applicable local option sales tax to the marketplace seller once the marketplace seller has adequately demonstrated that the marketplace seller returned the tax in conjunction with a return made directly to the marketplace seller. The marketplace facilitator may claim a credit for the return of Iowa sales tax and local option sales tax on its Iowa sales tax return.

207.12(3) Nothing in this rule requires a marketplace seller to accept a return as described in this rule. Nothing in this rule requires a marketplace facilitator to allow returns to be made directly to a marketplace seller.

701—207.13(423) Exempt and nontaxable sales.

207.13(1) *Exempt sales.* A retailer required to collect and remit Iowa sales tax and applicable local option sales tax in accordance with Iowa Code section 423.14A and this chapter is responsible for correctly applying exemptions for tangible personal property, specified digital products, and services. As a member of the streamlined sales tax governing board, the department maintains a taxability matrix to describe whether various items are taxable or exempt. See rule 701—204.6(423) for an explanation of the liability relief provided to retailers that rely on the taxability matrix in determining whether to collect tax on an item.

207.13(2) *Nontaxable sales.* A retailer, including an Iowa retailer with a physical presence in Iowa, a remote seller, or a marketplace facilitator, that makes or facilitates only nontaxable sales, such as sale for resale or wholesale transactions, is not required to register for a sales tax permit.

207.13(3) *Exemption certificates submitted to a marketplace facilitator.* An exemption certificate as described in rule 701—288.3(423) that identifies the marketplace facilitator as the seller may be used by the purchaser for sales made or facilitated by the marketplace facilitator.

701—207.14(423) Other taxes for marketplace sales and items not subject to sales/use tax. A marketplace facilitator is not obligated to collect tax on a product sold through a marketplace it operates that is not subject to Iowa sales and use tax.

EXAMPLE: A marketplace facilitator allows marketplace sellers to list for sale vehicles subject to registration under Iowa Code chapter 321, including the fee for new registration imposed in accordance with Iowa Code section 321.105A. Because the fee for new registration is not imposed under Iowa Code chapter 423, the marketplace facilitator is not obligated to collect the fee for new registration.

These rules are intended to implement Iowa Code section 423.14A.

[Filed 1/18/24, effective 3/13/24]

[Published 2/7/24]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 2/7/24.

ARC 7622C**REVENUE DEPARTMENT[701]****Adopted and Filed****Rulemaking related to telecommunication services**

The Revenue Department hereby rescinds Chapter 217, “Telecommunication Services,” Iowa Administrative Code, and adopts a new chapter with the same title.

Legal Authority for Rulemaking

This rulemaking is adopted under the authority provided in Iowa Code sections 421.14, 422.68 and 423.42.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code sections 34A.7B and 423.3(47A).

Purpose and Summary

The purpose of the rulemaking is to rescind Chapter 217 and adopt a new Chapter 217. The Department revised the chapter to remove portions of the rules that the Department determined are obsolete, unnecessary, or duplicative of statutory language. The chapter describes the Department’s interpretation of the underlying statute to help the public understand the taxability of telecommunication services. The chapter also contains definitions necessary for the State to maintain compliance with the Streamlined Sales and Use Tax Agreement.

Public Comment and Changes to Rulemaking

Notice of Intended Action for this rulemaking was published in the Iowa Administrative Bulletin on December 13, 2023, as **ARC 7183C**. Public hearings were held on January 3, 2024, at 9 a.m. via video/conference call and at 1 p.m. via video/conference call. No one attended the public hearings. No public comments were received. No changes from the Notice have been made.

Adoption of Rulemaking

This rulemaking was adopted by the Department on January 17, 2024.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to rule 701—7.28(17A).

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking 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).

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Effective Date

This rulemaking will become effective on March 13, 2024.

The following rulemaking action is adopted:

ITEM 1. Rescind 701—Chapter 217 and adopt the following new chapter in lieu thereof:

CHAPTER 217
TELECOMMUNICATION SERVICES

701—217.1(423) Taxable telecommunication service and ancillary service. The sales price of all telecommunication service and ancillary service are subject to the sales or use tax.

701—217.2(423) Definitions.

217.2(1) Incorporation of definitions. To the extent they are consistent with Iowa Code chapter 423 and this chapter, all other words and phrases used in this chapter mean the same as defined in Iowa Code section 423.1.

217.2(2) Chapter-specific definitions. For purposes of this chapter, unless the context otherwise requires:

“*800 service*” means a telecommunication service that allows a caller to dial a toll-free number without incurring a charge for the call. The service is typically marketed under the name “800,” “855,” “866,” “877,” and “888” toll-free calling and any subsequent numbers designated by the Federal Communications Commission.

“*900 service*” means an inbound toll telecommunication service purchased by a subscriber that allows the subscriber’s customers to call in to the subscriber’s prerecorded announcement or live service. A 900 service does not include the charge for collection services provided by the seller of the telecommunication service to the subscriber or to services or products sold by the subscriber to the subscriber’s customer. The service is typically marketed under the name “900 service” and any subsequent numbers designated by the Federal Communications Commission.

“*Ancillary services*” means services that are associated with or incidental to the provision of a telecommunication service. “Ancillary services” includes, but is not limited to, detailed telecommunication billing, directory assistance, vertical service, and voice mail services.

“*Conference bridging service*” means an ancillary service that links two or more participants of an audio or video conference call and may include the provision of a telephone number. “Conference bridging service” does not include telecommunication services used to reach the conference bridge.

“*Detailed telecommunication billing service*” means an ancillary service of separately stating information pertaining to individual calls on a customer’s billing statement.

“*Directory assistance*” means an ancillary service of providing telephone number information and address information.

“*Fixed wireless service*” means a telecommunication service that provides radio communication between fixed points.

“*Home service provider*” means the same as defined in Section 124(5) of Public Law 106-252, 4 U.S.C. §124(5) (Mobile Telecommunications Sourcing Act). The home service provider is the facilities-based carrier or reseller with which the customer contracts for the provision of mobile telecommunication services.

“*International*” means a telecommunication service that originates or terminates in the United States and terminates or originates outside the United States, respectively. United States includes the District of Columbia or a U.S. territory or possession.

“*Interstate*” means a telecommunication service that originates in one United States state or a United States territory or possession and terminates in a different United States state or a United States territory or possession.

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“In this state” means that telecommunication service is provided “in this state” only if both the points of origination and termination of the communication are within the borders of Iowa. Telecommunication service between any other points is “interstate” in nature and not subject to tax.

“Intrastate” means a telecommunication service that originates in one United States state or a United States territory or possession and terminates in the same United States state or a United States territory or possession.

“Mobile telecommunication service” means the same as that term is defined in Section 124(7) of Public Law 106-252, 4 U.S.C. §124(7) (Mobile Telecommunications Sourcing Act) and is a radio communication service carried on between mobile stations or receivers and land stations and by mobile stations communicating among themselves. More information is contained in Iowa Code section 423.2(9).

“Mobile wireless service” means a telecommunication service that is transmitted, conveyed, or routed regardless of the technology used, whereby the origination or termination point or both of the transmission, conveyance, or routing are not fixed, including, by example only, telecommunication services that are provided by a commercial mobile radio service provider.

“Paging service” means a telecommunication service that provides transmission of coded radio signals for the purpose of activating specific pagers. This transmission may include messages and sounds.

“Pay telephone service” means a telecommunication service provided through any pay telephone. “Pay telephone service” also includes coin-operated telephone service paid for by inserting money into a telephone accepting direct deposits of money to operate.

“Private communication service” means a telecommunication service that entitles the customer to exclusive or priority use of a communications channel or group of channels between or among termination points, regardless of the manner in which such channel or channels are connected, and includes switching capacity, extension lines, stations, and any other associated services that are provided in connection with the use of such channel or channels.

“Residential telecommunication service” means telecommunication services or ancillary services provided to an individual for personal use at a residential address, including an individual dwelling unit, such as an apartment. In the case of institutions where individuals reside, such as schools or nursing homes, telecommunication services are considered residential if they are provided to and paid for by an individual resident rather than the institution.

“Sales price from the sale of telecommunication service” or *“sales price”* means all charges to any person that are necessary for the end user to secure the service, except those charges that are in the nature of a sale for resale (more information is contained in subrule 217.4(9)). Such charges shall be taxable if the charges are necessary to secure telecommunication service in this state, even though payment of the charge may also be necessary to secure other services.

“Telecommunication service” means the electronic transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals to a point, or between or among points. The term includes any transmission, conveyance, or routing in which computer processing applications are used to act on the form, code, or protocol of the content for purposes of transmission, conveyance, or routing without regard to whether such service is referred to as voice-over Internet protocol services or is classified by the Federal Communications Commission as enhanced or value-added. “Telecommunication service” does not include the following:

1. Data processing and information services that allow data to be generated, acquired, stored, processed, or retrieved and delivered by an electronic transmission to a purchaser where the purchaser’s primary purpose for the underlying transaction is the processed data or information;
2. Installation or maintenance of wiring or equipment on a customer’s premises;
3. Tangible personal property;
4. Advertising, including but not limited to directory advertising;
5. Billing and collection services provided to third parties;
6. Internet access service;
7. Radio and television audio and video programming services, regardless of the medium, including the furnishing of transmission, conveyance, or routing of the service by the programming

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service provider. Radio and television audio and video programming services shall include but not be limited to cable service as defined in 47 U.S.C. §522.6 and audio and video programming services delivered by a commercial mobile radio service provider as defined in 47 CFR §20.3;

8. Ancillary services;

9. Digital products delivered electronically, including but not limited to software, music, video, reading materials or ring tones.

“Value-added non-voice data service” means a service that otherwise meets the definition of telecommunication service in which computer processing applications are used to act on the form, content, code, or protocol of the information or data primarily for a purpose other than transmission, conveyance, or routing.

“Vertical service” means an ancillary service that is offered in connection with one or more telecommunication services, which offers advanced calling features that allow customers to identify callers and to manage multiple calls and call connections. Nonexclusive examples of vertical service include call forwarding, caller ID, three-way calling, and conference bridging services.

“Voice mail service” means an ancillary service that enables the customer to store, send, or receive recorded messages. Voice mail service does not include any vertical services that the customer may be required to have in order to utilize the voice mail service.

This rule is intended to implement Iowa Code section 423.2(9).

701—217.3(423) Imposition of tax.

217.3(1) Taxable telecommunication service and ancillary service. The sales price of the sale of telecommunication service and ancillary service are subject to Iowa sales or use tax. The following is a nonexclusive list of taxable telecommunication services:

- a. Air-to-ground radio telephone service;
- b. Ancillary services except detailed communications billing service;
- c. Conference bridging service;
- d. Fixed wireless service;
- e. Mobile wireless service;
- f. Pay telephone service;
- g. Postpaid calling service;
- h. Prepaid calling service;
- i. Prepaid wireless calling service;
- j. Private communication service;
- k. Residential telecommunication service.

217.3(2) Other taxable services and circumstances. The following is a description of services and circumstances under which certain charges associated with telecommunication service are subject to tax:

a. *Long distance charges.* Charges imposed or approved by the utilities division of the department of commerce that are necessary to secure long distance service in this state, for example, “end user intrastate access charges,” are taxable. These charges are taxable whether they result from an expense incurred from operations or are imposed by the mandate of the utilities division and unrelated to any expense actually incurred in providing the service.

b. *Sales price of services performed by another company.* The sales price collected by a company (selling company) from the end users of telecommunication services and ancillary services performed in this state by another company (providing company) are considered to be the taxable sales price of the selling company. The situation is similar to a consignment sale of tangible personal property. Tax must be remitted by the selling company.

c. *Directory assistance.* Charges for directory assistance service rendered in this state are subject to tax.

d. *Electrical and electronic installation and repair.* The sales price of the installation or repair of any inside wire that provides electrical current that allows an electronic device to function is subject to tax. The sales price is from the enumerated service of electrical and electronic repair and installation. The sales price of inside wire maintenance charges for services performed under a service or warranty

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contract is also subject to tax. Depending upon the circumstances, the sales price is for the enumerated service of electrical and electronic repair and installation or is incurred under an optional service or warranty contract for an enumerated service. In either event, the receipts are subject to tax.

e. Electrical and electronic installation and repair: billing methodology. The sales price of the repair or installation of inside wire or the repair or installation of any electronic device, including a telephone or telephone switching equipment, is subject to tax regardless of the method used to bill the customer for the service. These methods include but are not limited to:

- (1) A flat fee or a flat hourly charge that covers all costs, including labor and materials;
- (2) A premises visit or trip charge;
- (3) A single charge covering and not distinguishing between charges for labor and materials;
- (4) A charge with labor and material segregated; or
- (5) A charge for labor only.

f. Nonitemized taxes and charges. Any federal taxes or charges that are not separately stated or billed are subject to Iowa sales tax.

g. Rental of tangible personal property. The sales price of the rental of any device for home or office use or to provide a telecommunication service to others is taxable as the rental of tangible personal property. The sales price of rental includes rents, royalties, and copyright and license fees. Any periodic fee for maintenance of the device that is included in the sales price of the rental of the device is also subject to tax.

h. Sales of tangible personal property. The sale of any device, new or used, is subject to tax both when the device is in place on the customer's premises at the time of the sale and if the device is sold to the customer elsewhere. The sale of an entire inventory of devices may or may not be subject to tax, depending upon whether it qualifies for the casual sales exemption. More information is contained in Iowa Code section 423.3. Other exemptions may be applicable, as well.

i. Mandatory charges or fees. Any mandatory handling or other charges billed to a customer for sending the customer an electronic device by mail or by a delivery service are subject to tax. Charges for a mandatory service rendered in connection with the sale of tangible personal property are considered by the department to be a part of the sales price of the sale of the property itself and therefore subject to tax.

j. Deposits. Any portion of a deposit utilized by a company as payment for the sale of tangible personal property or a taxable service is subject to tax as part of the sales price.

k. Municipal utilities. Sales of telecommunication service and ancillary service to any tax-levying body used by or in connection with the operation of any municipally owned utility engaged in selling gas, electricity or heat to the general public are subject to tax. These sales are an exception to the exemption for federal and state government. More information is contained in subrule 217.4(5).

l. Fax. The service of sending or receiving any document commonly referred to as a "fax" from one point to another within this state is subject to sales tax.

EXAMPLE A: Company A is located in Des Moines, Iowa. Company A charges a customer \$2 to transmit a fax to Dubuque, Iowa. The \$2 is a taxable sales price. Midwest Telephone Company charges Company A \$500 per month for the intrastate communication service on the company's dedicated fax line. The \$500 is also a sales price from a taxable communication service.

EXAMPLE B: The XYZ Law Firm is located in Des Moines, Iowa. The firm owns a fax machine and uses the fax machine in the performance of its legal work to transmit and receive various documents. The firm does not perform faxing services but will, on billings for legal services to clients, separately state the amount of a billing that is attributable to expenses for faxing. For example, "bill to John Smith for \$1,000 for legal services performed, fax expenses that are part of this billing—\$30." The \$30 is not a sales price for the performance of any taxable service because the faxing service is only incidental to the performance of the nontaxable legal services.

This rule is intended to implement Iowa Code section 423.2(9).

701—217.4(423) Exempt from the tax. This rule provides various specific circumstances involving nontaxable telecommunication service and ancillary service. The following is a nonexclusive list of services that are not subject to the Iowa sales and use tax:

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217.4(1) Detailed communications billing service.

217.4(2) Internet access fees or charges.

217.4(3) Value-added non-voice data service.

217.4(4) Separately stated and separately billed charges. Fees and charges that are separately stated and billed are exempt from the sales and use tax. This exemption includes the following items when separately stated and billed:

a. Fees and charges for securing only interstate telecommunication services.

b. Federal taxes.

c. Fees and charges for only interstate directory assistance.

217.4(5) Government entities. Sales of telecommunication service and ancillary service to the United States government or its agencies or to the state of Iowa or its agencies are not subject to sales or use tax. This exemption includes sales made to all divisions, boards, commissions, agencies or instrumentalities of federal, Iowa, county or municipal government. In order to be a sale to the United States government or to the state of Iowa, the government or agency involved must make the purchase of the services and pay the purchase price of the services directly to the vendor. Telecommunication service providers should obtain an exemption certificate from each agency for their records. An exception to this exemption is sales to any tax-levying body used by or in connection with the operation of any municipally owned utility engaged in selling gas, electricity or heat to the general public; such sales are subject to tax.

217.4(6) Private nonprofit educational institutions. Sales of telecommunication service and ancillary service to private, nonprofit educational institutions in this state for educational purposes are exempt from tax.

217.4(7) 911 surcharge. A 911 emergency telephone service surcharge is a surcharge for a service that routes a 911 call to the appropriate public safety answering point and automatically displays a name, address, and telephone number of an incoming 911 call at that answering point. A surcharge for 911 emergency telephone service is not subject to sales tax if:

a. The amount is no more than \$1 per month per telephone access line; and

b. The surcharge is separately identified and separately billed.

217.4(8) Return of deposit. The return to the customer of any portion of a deposit amount paid by that customer to a company providing telecommunication service is not subject to tax.

217.4(9) Resale exemption. A service or facility furnished by one telecommunication company to another commercial telecommunication company that the second telecommunication company then furnishes to its customers qualifies for the resale exemption under Iowa Code section 423.3(2), including any carrier access charges.

217.4(10) Online services. Any contracted online service is exempt from tax if the information is made available through a computer server. The exemption applies to all contracted online services, as long as they provide access to information through a computer server.

217.4(11) New construction. The repair or installation of inside wire or the repair or installation of any electronic device, including a telephone or telephone switching equipment, that is performed as part of or in connection with new construction, reconstruction, alteration, expansion or remodeling of a building or structure is exempt from Iowa tax. More information is contained in 701—Chapter 219.

This rule is intended to implement Iowa Code section 423.3.

701—217.5(423) Bundled transactions in telecommunication service. More information on general rules on bundled transactions is contained in 701—Chapter 206. In the case of a bundled transaction that includes telecommunication service, ancillary service, Internet access, or audio or video programming service, either separately or in combination:

217.5(1) If the price is attributable to products that are taxable and products that are nontaxable, the portion of the price attributable to the nontaxable products will be subject to tax unless the provider can identify by reasonable and verifiable standards the portion from the provider's books and records that are kept in the regular course of business for other purposes, including but not limited to nontax purposes.

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217.5(2) If the price is attributable to products that are subject to tax at different tax rates, the total price may be treated as attributable to the products subject to tax at the highest tax rate, unless the provider can identify by reasonable and verifiable standards the portion of the price attributable to the products subject to tax at the lower rate from the provider's books and records that are kept in the regular course of business for other purposes, including but not limited to nontax purposes.

This rule is intended to implement Iowa Code section 423.2(8).

701—217.6(423) Sourcing telecommunication service.

217.6(1) The general sourcing principles found in Iowa Code section 423.15 apply to telecommunication services and ancillary services, unless the service falls under one of the exceptions set forth in subrule 217.6(2).

217.6(2) Exceptions. The following telecommunication services and products are sourced as follows:

a. Mobile telecommunication service is sourced to the place of primary use, unless the service is prepaid wireless calling service.

b. The sale of prepaid calling service or prepaid wireless calling service is sourced as provided under Iowa Code section 423.15. However, in the case of prepaid wireless calling service, Iowa Code section 423.15(1) "e" shall include as an option the location associated with the mobile telephone number.

EXAMPLE 1: An Iowa seller sells a prepaid wireless service airtime card to a consumer at an Iowa retail location. The sale of the prepaid wireless service will be sourced to Iowa.

EXAMPLE 2: An Iowa resident purchases a prepaid wireless service airtime card at a Nebraska retail location. The sale of the prepaid wireless service will be sourced to Nebraska.

EXAMPLE 3: An Iowa consumer with an Iowa billing and mailing address purchases prepaid wireless service through a retailer's website. No items are delivered. The sale would be sourced to the consumer's Iowa billing address.

EXAMPLE 4: A seller based in California uses a website to sell prepaid wireless services to consumers in a number of states. A consumer with an Iowa billing address and a Nebraska mailing address purchases prepaid wireless service from the seller's website. The consumer already owns a prepaid wireless phone; therefore, no item is delivered. Since there is no in-person transaction, and no item delivered, the sale would be sourced to the consumer's billing address in Iowa.

EXAMPLE 5: A seller based in California uses a website to sell prepaid wireless services to consumers in a number of states. A consumer with an Iowa mailing address and a Florida billing address purchases a prepaid wireless phone and 100 minutes of prepaid wireless service from the California seller. The prepaid wireless phone is shipped to the Iowa mailing address. The sale would be sourced to Iowa.

EXAMPLE 6: A consumer who is currently living in Iowa to attend a local university orders prepaid wireless service from a California seller through the seller's website. No items are delivered. The consumer uses a Nebraska billing address. The sale would be sourced to Nebraska.

c. A sale of a private telecommunication service is sourced as follows:

(1) Service for a separate charge related to a customer channel termination point is sourced to each level of jurisdiction in which the customer channel termination point is located.

(2) Service where all customer termination points are located entirely within one jurisdiction or levels of jurisdiction is sourced in the jurisdiction in which the customer channel termination points are located.

(3) Service for segments of a channel between two customer channel termination points located in different jurisdictions and which segments of channel are separately charged is sourced 50 percent in each level of jurisdiction in which the customer channel termination points are located.

(4) Service for segments of a channel located in more than one jurisdiction or levels of jurisdiction and which segments are not separately billed is sourced in each jurisdiction based on the percentage determined by dividing the number of customer channel termination points in the jurisdiction by the total number of customer channel termination points.

d. The sale of Internet access service is sourced to the customer's place of primary use.

e. The sale of an ancillary service is sourced to the customer's place of primary use.

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f. A postpaid calling service is sourced to the origination point of the telecommunication signal as first identified by either:

- (1) The seller's telecommunication system; or
- (2) Information received by the seller from its service provider, where the system used to transport the signals is not that of the seller.

g. The sale of telecommunication service sold on a call-by-call basis is sourced to:

- (1) Each level of taxing jurisdiction where the call originates and terminates in that jurisdiction; or
- (2) Each level of taxing jurisdiction where the call either originates or terminates and in which the service address is also located.

h. The sale of telecommunication service sold on a basis other than a call-by-call basis is sourced to the customer's place of primary use.

i. The sale of the following telecommunication services is sourced to each level of taxing jurisdiction as follows:

(1) A sale of mobile telecommunication service, other than prepaid calling service, is sourced to the customer's place of primary use as required by the federal Mobile Telecommunications Sourcing Act.

(2) A sale of postpaid calling service is sourced to the origination point of the telecommunication signal as first identified by either the seller's telecommunication system or information received by the seller from its service provider, where the system used to transport such signals is not that of the seller.

This rule is intended to implement Iowa Code section 423.20.

701—217.7(423) General billing issues. This rule is specifically applicable to companies and other persons providing telecommunication service and ancillary service in this state.

217.7(1) Retailers liable for collecting and remitting tax. A retailer that sells taxable telecommunication service and ancillary service is liable for collecting and remitting the state sales or use tax and any applicable local sales tax on the amounts of the sales.

217.7(2) Billing date and tax period. A company that bills the company's subscribers for telecommunication service on a quarterly, semiannual, annual, or any other periodic basis must include the amount of those billings in the company's sales price. The date of the billing determines the period for which sales tax is remitted. For example, if the date of a billing is March 31, and the due date for payment of the bill without penalty is April 20, tax upon the sales price stated in the bill must be included in the sales tax return for the first quarter of the year. The same principle must be used to determine when tax will be included in payment of a sales tax deposit to the department.

217.7(3) Permitting business offices. A company must have a permit for each business office that provides telecommunication service in this state. The company must collect and remit tax upon the sales price of the operation of each office.

217.7(4) Credit. A taxpayer subject to sales or use tax on telecommunication service and ancillary service who has paid any legally imposed sales or use tax on such service to another jurisdiction outside the state of Iowa is allowed a credit against the sales or use tax imposed by the state of Iowa equal to the sales or use tax paid to the other taxing jurisdiction(s).

217.7(5) Direct pay permit not applicable to telecommunication services. The department may issue a direct pay permit that allows the holder to purchase tangible personal property or taxable services without payment of the tax to the seller. However, a direct pay permit holder cannot use the direct pay permit for the purchase of telecommunication services and ancillary services. The seller must charge and collect the sales or use tax from the purchaser on the taxable sales of telecommunication services and ancillary services.

217.7(6) Guaranteed amounts for coin-operated telephones. If a minimum amount is guaranteed to a company from the operation of any coin-operated telephone, tax is computed on the greater of the minimum amount guaranteed or the actual taxable sales price collected.

This rule is intended to implement Iowa Code section 423.36.

701—217.8(34A) Prepaid wireless 911 surcharge.

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217.8(1) Definitions. The definitions in rule 701—217.2(423) apply to this rule. The following definitions are also applicable to this rule:

“*Consumer*” means a person who purchases prepaid wireless telecommunications service in a retail transaction.

“*Department*” means the department of revenue.

“*Prepaid wireless 911 surcharge*” means the surcharge that is required to be collected by a seller from a consumer in the amount established under this rule.

“*Provider*” means a person who provides prepaid wireless telecommunications service pursuant to a license issued by the Federal Communications Commission.

“*Retail transaction*” means the purchase of prepaid wireless telecommunications service from a seller for any purpose other than resale. If more than one separately priced item of prepaid wireless calling service is purchased by an end user, each item purchased shall be deemed to be a separate retail transaction.

Items of prepaid wireless calling service include but are not limited to prepaid wireless phones, prepaid wireless phone calling cards, rechargeable prepaid wireless phones, rechargeable prepaid wireless phone calling cards, and prepaid wireless service plans.

EXAMPLE 1: If a seller sells two prepaid wireless phone calling cards, two retail transactions have occurred.

EXAMPLE 2: If a seller sells additional minutes for a rechargeable prepaid wireless phone calling card that was purchased at an earlier date, a retail transaction has occurred.

EXAMPLE 3: If a seller sells three separate one-month service plans to a consumer during one sale, three retail transactions have occurred.

EXAMPLE 4: If the consumer has the ability to purchase additional minutes directly from a prepaid wireless phone, each time minutes are purchased, a retail transaction occurs.

“*Seller*” means a person who sells prepaid wireless telecommunications service to another person.

217.8(2) Registration. Each seller that sells prepaid wireless service must register according to the procedures established by the department. The department will make information regarding the procedures available to the public.

217.8(3) Collecting, filing, and remitting.

a. Each seller is responsible for collecting the applicable 911 surcharge from the consumer with respect to each retail transaction occurring in this state. A seller may determine whether the transaction occurs in this state by referring to the department rules on the sourcing of sales of prepaid wireless telecommunications service in paragraph 217.6(2) “*b.*” More information is also contained in Iowa Code sections 34A.7B(4), 423.15 and 423.20.

b. The surcharge must be separately itemized on the invoice, receipt or other similar document, or otherwise disclosed to the consumer.

c. The prepaid wireless 911 surcharge is the liability of the consumer and not of the seller or any provider, except that the seller shall be liable to remit all prepaid wireless 911 surcharges that the seller collects from consumers as provided in paragraph 217.8(3) “*a.*” including all such surcharges that the seller is deemed to collect where the amount of the surcharge has not been separately stated on an invoice, receipt, or similar document provided to the consumer by the seller.

d. The amount of the prepaid wireless 911 surcharge that is collected by a seller from a consumer, if such amount is separately stated on an invoice, receipt, or other similar document provided to the consumer by the seller, shall not be included in the base for measuring any tax, fee, other surcharge, or other charge that is imposed by this state, any political subdivision of this state, or any intergovernmental agency.

e. The seller must complete a 911 Surcharge Schedule and the surcharge portion of the Iowa Sales Tax and Surcharge Return or Iowa Retailer’s Use Tax and Surcharge Return and file the information with the department.

f. The schedule, return and the collected surcharge are due at the times provided by Iowa Code chapter 423 with respect to the sales and use tax.

REVENUE DEPARTMENT[701](cont'd)

g. The seller may deduct and retain 3 percent of prepaid wireless 911 surcharges that are collected by the seller from consumers.

h. The seller is not required to collect the surcharge if a minimal amount of prepaid wireless telecommunications service is sold in conjunction with a prepaid wireless device for a single, nonitemized price. A minimal amount of service is any service denominated as \$5 or less or ten minutes or less.

EXAMPLE: If a seller sells a prepaid wireless phone that comes with 10 minutes of service, and the price of the service is not itemized, the seller is not required to collect the surcharge. But if the seller sells a prepaid wireless phone with 15 minutes of service, the seller must collect the surcharge, regardless of whether the price of the service is itemized.

217.8(4) *Audit, appeal, and enforcement.*

a. The audit and appeal procedures applicable to sales and use tax under Iowa Code chapter 423 shall apply to the prepaid wireless 911 surcharge. More information is contained in Iowa Code sections 421.10 and 421.60.

b. Pursuant to the authority established in Iowa Code chapter 423, the department shall have the power to assess the seller for penalty and interest on any past due surcharge and exercise any other enforcement powers established in Iowa Code chapter 423. More information is contained in Iowa Code sections 421.7 and 421.27.

c. The seller shall maintain, and shall make available to the department for inspection for three years, its books and records in a manner that will permit the department to determine whether the seller has complied with or is complying with the provisions of Iowa Code section 34A.7B.

217.8(5) *Procedures for documenting that a sale is not a retail transaction.* The procedures for establishing that a sale of prepaid wireless telecommunications service is not a sale is similar to the procedure for documenting sale for resale transactions under Iowa Code chapter 423.

217.8(6) *Procedures for remitting the surcharge to the treasurer.* The department shall transfer all remitted prepaid wireless 911 surcharges to the treasurer of state for deposit in the 911 emergency communications fund created under Iowa Code section 34A.7A(2) within 30 days of receipt of the 911 surcharge from sellers. Prior to remitting the surcharges to the treasurer, the department shall deduct and retain an amount, not to exceed 2 percent of collected surcharges, to reimburse the department's direct costs of administering the collection and remittance of prepaid wireless 911 surcharges.

This rule is intended to implement Iowa Code section 34A.7B.

701—217.9(423) State sales tax exemption for central office equipment and transmission equipment. Central office equipment and transmission equipment primarily used in the furnishing of telecommunications services on a commercial basis are exempt when used by certain providers enumerated in Iowa Code section 423.3(47A) "a."

217.9(1) *Definitions.* The following definitions are applicable to this rule:

"Central office equipment" means the same as defined in Iowa Code section 423.3(47A) "b"(1).

"Transmission equipment" means the same as defined in Iowa Code section 423.3(47A) "b"(4).

217.9(2) *Central office equipment or transmission equipment.* The following are central office equipment or transmission equipment:

a. Stored program control digital switches and their associated equipment used to switch or route communication signals with a system from the origination point to the appropriate destination.

b. Peripheral equipment used to support the transmission of communications over the network, such as emergency power equipment, lightning arrestors, fault alarm equipment, multiplex equipment, digital cross connects, terminating equipment, fiber optic electronics, communication hardware equipment, and test equipment.

c. Circuit equipment that utilizes the message path to carry signaling information or that utilizes separate channels between switching offices to transmit signaling information independent of the subscribers' communication paths or transmission channels.

REVENUE DEPARTMENT[701](cont'd)

d. Radio equipment, including radio-transmitters and receivers utilized to transmit communication signals through the air from one location to another. Radio equipment also includes repeaters, which are located every 20 to 30 miles; at these points, radio signals are received, amplified and retransmitted.

217.9(3) *Not central office equipment or transmission equipment.* The following are not central office equipment or transmission equipment:

a. Telecommunications towers. These towers are structures and, as such, constitute real property. Real property is outside the scope of “equipment.”

b. Equipment shelters or enclosures erected on concrete or other foundations. These shelters or enclosures are structures and, as such, constitute real property. Real property is outside the scope of “equipment.”

c. Fencing erected around the telecommunications towers and equipment shelters or enclosures. This rule is intended to implement Iowa Code section 423.3(47A).

[Filed 1/18/24, effective 3/13/24]

[Published 2/7/24]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 2/7/24.

ARC 7623C

REVENUE DEPARTMENT[701]

Adopted and Filed

Rulemaking related to local option sales and services tax

The Revenue Department hereby rescinds Chapter 270, “Local Option Sales and Services Tax,” Iowa Administrative Code, and adopts a new chapter with the same title.

Legal Authority for Rulemaking

This rulemaking is adopted under the authority provided in Iowa Code sections 421.14, 422.68 and 423.42.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code sections 99F.10(6) and 423B.5.

Purpose and Summary

The purpose of this rulemaking is to readopt Chapter 270. The Department revised the chapter to remove portions of the rules that the Department determined are obsolete, unnecessary, or duplicative of statutory language. The chapter describes the Department’s interpretation of the underlying statute to help the public understand local option taxes. These rules reduce uncertainty about when tax applies.

Public Comment and Changes to Rulemaking

Notice of Intended Action for this rulemaking was published in the Iowa Administrative Bulletin on December 13, 2023, as **ARC 7150C**. Public hearings were held on January 3, 2024, at 9 a.m. via video/conference call and at 1 p.m. via video/conference call. No one attended the public hearings. No public comments were received. No changes from the Notice have been made.

Adoption of Rulemaking

This rulemaking was adopted by the Department on January 19, 2024.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

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Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to rule 701—7.28(17A).

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking 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).

Effective Date

This rulemaking will become effective on March 13, 2024.

The following rulemaking action is adopted:

ITEM 1. Rescind 701—Chapter 270 and adopt the following **new** chapter in lieu thereof:

CHAPTER 270
LOCAL OPTION SALES AND SERVICES TAX

701—270.1(423B) Definitions.

270.1(1) Incorporation of definitions. To the extent it is consistent with Iowa Code chapter 423B and this chapter, all other words and phrases used in this chapter shall mean the same as defined in Iowa Code section 423.1 and chapter 423B and rule 701—200.1(423).

270.1(2) Chapter-specific definitions. For purposes of this chapter, unless the context otherwise requires:

“City” means the same as defined in Iowa Code section 362.2(4).

“Local option tax” or “local option taxes” means the taxes imposed by Iowa Code chapter 423B.

“Most recent certified federal census” means the final count from the most recent decennial census conducted by the United States Department of Commerce, Bureau of the Census, as modified by subsequent certifications from the Bureau of the Census. If a subsequent certified census occurs that modifies the “most recent certified federal census” for a participating jurisdiction, then the formula set forth in this rule for computations for distribution of the tax shall reflect any population adjustments reported by the subsequent certified census.

“Unincorporated area of the county” means all areas of a county that are outside the corporate limits of all cities that are located within the geographical area of the county.

This rule is intended to implement Iowa Code section 423B.7.

701—270.2(423B) Imposition of local option taxes and notification to the department. This rule describes notification and other requirements as related to the department. More information on election forms and instructions can be found in 721—Chapter 21.

270.2(1) Notice to the department. Within ten days of the election at which a majority of those voting on the question of imposition, repeal, or change in the rate of tax vote in favor, the county auditor must give notice of the election results to the director by sending a copy of the abstract of votes and a copy of the sample ballot from the election.

270.2(2) Avoiding a lapse in tax due to expiration of a former local option tax. A jurisdiction that has a local option tax that is set to expire may vote to impose another local option tax. However, due to

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the required imposition dates previously set forth, there may be a lapse in the tax because of an expiration of the former local option tax and the required imposition dates for imposition of a local option tax. A local option jurisdiction may avoid a lapse in local option tax. To avoid a lapse in the tax, a jurisdiction may place on the ballot that the new local option tax will continue without repeal of the prior tax. If the required vote is in favor of imposition of the local option tax, the continued local option tax can be imposed so there is no lapse in the tax.

This rule is intended to implement Iowa Code section 423B.6.

701—270.3(423B) Administration.

270.3(1) Generally. The department is charged with the administration of the tax, once imposed, and must administer the tax as nearly as possible in conjunction with the administration of the state sales tax.

270.3(2) Incorporation of 701—Chapter 11. Except as otherwise stated in this chapter, the requirements of 701—Chapter 11 apply to retailers required to collect local option taxes in the same manner that those requirements apply to all sellers and retailers making sales subject to state sales tax.

This rule is intended to implement Iowa Code section 423B.6.

701—270.4(423B) Filing returns; payment of tax; penalty and interest.

270.4(1) Incorporation of 701—Chapter 202. Except as otherwise stated in this chapter, the requirements of 701—Chapter 202 apply to retailers required to collect local option tax in the same manner as those requirements apply to all sellers and retailers making sales subject to state sales tax.

270.4(2) Local tax collections not included to determine filing frequency. Local option tax collections are included in computation of the total tax to determine frequency of filing under Iowa Code section 423.31.

This rule is intended to implement Iowa Code section 423B.6.

701—270.5(423B) Permits. Except as otherwise stated in this chapter, the requirements of 701—Chapter 201 apply to retailers required to collect local option tax in the same manner that those requirements apply to all sellers and retailers making sales subject to state sales tax.

This rule is intended to implement Iowa Code section 423B.6.

701—270.6(423B) Sales subject to local option sales and services tax. All sales subject to sales tax under Iowa Code chapter 423 are subject to local option sales and services tax. There is no local option use tax.

270.6(1) Sourcing. The general sourcing rules described in Iowa Code section 423.15 and 701—Chapter 205 are used to determine whether a sale is subject to local option taxes and, if so, in what jurisdiction. A local sales and services tax is not applicable to transactions sourced to a place of business, as defined in Iowa Code section 423.1, of a retailer if such place of business is located in part within a city or unincorporated area of the county where the tax is not imposed.

270.6(2) Sellers responsible for collecting local option sales and services tax. Sales sourced to Iowa and made by sellers subject to Iowa Code section 423.1(48) or 423.14A are subject to local option sales and services tax.

This rule is intended to implement Iowa Code section 423B.5(1).

701—270.7(423B,423E) Sales not subject to local option tax, including transactions subject to Iowa use tax. The local option sales and services tax is imposed upon the same basis as the Iowa state sales and services tax, with the following exceptions:

1. Local option tax is not imposed on the sales price from the sale of tangible personal property and services that are excluded from local option tax as described in Iowa Code section 423B.5(1).
2. A local taxing jurisdiction is prohibited from taxing the sales price from a pay television service consisting of a direct-to-home satellite service to the extent precluded by Section 602 of the Telecommunications Act of 1996. A “local taxing jurisdiction” is any municipality, city, county, township, parish, transportation district, or assessment jurisdiction, or any other local jurisdiction in

REVENUE DEPARTMENT[701](cont'd)

the territorial jurisdiction of the United States, with the authority to impose a tax or fee, but does not include a state.

3. Sales subject to Iowa use tax. Since the local option tax is imposed only on the same basis and not on any greater basis than the Iowa sales and services tax, local option tax is not imposed on any transactions subject to Iowa use tax, including the one-time registration fee applicable to vehicles subject to registration or subject only to the issuance of a certificate of title. Also, exemptions that are applicable only to Iowa use tax cannot be claimed to exempt any transaction subject to local option sales tax.

This rule is intended to implement Iowa Code section 423B.5.

701—270.8(423B) Local option sales and services tax payments to local governments.

270.8(1) *County-imposed local sales and services tax; division of funds from accounts.* Division of the amount from each county's account to be distributed is done with these steps.

a. The total amount in the county's account to be distributed is first divided into two parts. One part is equal to 75 percent of the total amount to be distributed. The second part is the remainder to be distributed.

b. The part comprised of 75 percent of the total receipts to be distributed is further divided into an amount for each participating city or unincorporated area. This division is based upon the most recent certified federal census population and any subsequent certified census. Population for each participating city and unincorporated area is determined separately and totaled. The population for each sales tax-imposing city or unincorporated area is divided by the total population to produce a percentage for each city or the unincorporated area. The percentages are rounded to the nearest one-hundredth of a percent with the total of all percentages equal to 100 percent. Each government's percentage is multiplied by 75 percent of the sales tax receipts to be distributed. Distributions are to be rounded to the nearest cent.

There are two types of certified federal censuses. The first is the usual decennial census that is always conducted throughout the entire area of any county imposing a local option sales tax.

The second type of certified federal census is the "interim" or "subsequent" census that is conducted between decennial censuses. An interim or subsequent census is not necessarily conducted within an entire county but may be used to count increases or decreases in only one or some of the jurisdictions within that county, for instance, one particular municipality. If an interim census is conducted within only certain participating jurisdictions of a county where a local option sales tax is imposed, the changes in population which that census reflects must be included within both the numerator and the denominator of the fraction that is used to compute the participating jurisdiction's share of the revenue from the county's account that is based on county population. Example 3 of this rule contains a demonstration of how an interim census can affect a population distribution formula.

c. The remaining 25 percent of the amount to be distributed is further divided based upon property taxes levied. The sum of property tax dollars to be used is the amount levied for the three years from July 1, 1982, through June 30, 1985, as obtained by using data from county tax rate reports and city tax rate reports compiled by the department of management. Property taxes levied by participating cities or the board of supervisors, if the local sales tax is imposed in unincorporated areas, are to be determined separately, then totaled. The property tax amount for each sales tax-imposing city and the board of supervisors, if the sales tax is imposed in unincorporated areas, is divided by the totaled property tax to produce a percentage. The percentages are rounded to the nearest one-hundredth of a percent with the total of all percentages equal to 100 percent. Each percentage is multiplied by 25 percent of the sales tax receipts to be distributed. Distributions are to be rounded to the nearest cent.

d. For each participating city, or the board of supervisors if unincorporated areas of the county participate, the amount determined in paragraph 270.8(1) "c" is added to the amount found in paragraph 270.8(1) "b." This amount is then to be remitted to the appropriate local government.

In order to illustrate the division of local option sales and services tax receipts, the following examples are provided. The numbers are shown in an attempt to reflect reality but are hypothetical.

EXAMPLE 1: If a local option sales tax is approved for all of Pottawattamie County, the distribution of \$100,000 in countywide receipts would be made in this manner:

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Step 1:

Distribution Basis	Amount
Population	\$ 75,000.00
Property Taxes Levied	25,000.00
Total	<u>\$100,000.00</u>

Step 2:

Jurisdiction	Certified Population		Receipts to be
	Number	Percentage	Distributed
Avoca	1,650	1.91%	\$ 1,432.50
Carson	716	0.83%	622.50
Carter Lake	3,438	3.98%	2,985.00
Council Bluffs	56,449	65.30%	48,975.00
Crescent	547	0.63%	472.50
Hancock	254	0.29%	217.50
Macedonia	279	0.32%	240.00
McClelland	177	0.20%	150.00
Minden	419	0.49%	367.50
Neola	839	0.97%	727.50
Oakland	1,552	1.80%	1,350.00
Treynor	981	1.13%	847.50
Underwood	448	0.52%	390.00
Walnut	897	1.04%	780.00
Unincorporated	17,796	20.59%	15,442.50
Total	<u>86,442</u>	<u>100.00%</u>	<u>\$75,000.00</u>

NOTE: The portion of the city of Shelby in Pottawattamie County is excluded.

Step 3:

Jurisdiction	Three-Year Total Taxes Levied		Receipts to be
	Amount	Percentage	Distributed
Avoca	\$ 454,556	0.82%	\$ 205.00
Carson	202,882	0.37%	92.50
Carter Lake	946,026	1.71%	427.50
Council Bluffs	30,290,732	54.81%	13,702.50
Crescent	7,732	0.01%	2.50
Hancock	56,705	0.10%	25.00
Macedonia	64,504	0.12%	30.00
McClelland	24,300	0.04%	10.00
Minden	155,112	0.28%	70.00
Neola	206,560	0.38%	95.00

REVENUE DEPARTMENT[701](cont'd)

Jurisdiction	Three-Year Total Taxes Levied		Receipts to be
	Amount	Percentage	Distributed
Oakland	319,153	0.58%	145.00
Treynor	346,849	0.63%	157.50
Underwood	139,571	0.25%	62.50
Walnut	264,145	0.48%	120.00
Unincorporated	21,782,457	39.42%	9,855.00
Total	<u>\$55,262,284</u>	<u>100.00%</u>	<u>\$25,000.00</u>

Step 4:

Jurisdiction	Amount to be Distributed		Total
	By Population	By Taxes	Distribution
Avoca	\$ 1,432.50	\$ 205.00	\$ 1,637.50
Carson	622.50	92.50	715.00
Carter Lake	2,985.00	427.50	3,412.50
Council Bluffs	48,975.00	13,702.50	62,677.50
Crescent	472.50	2.50	475.00
Hancock	217.50	25.00	242.50
Macedonia	240.00	30.00	270.00
McClelland	150.00	10.00	160.00
Minden	367.50	70.00	437.50
Neola	727.50	95.00	822.50
Oakland	1,350.00	145.00	1,495.00
Treynor	847.50	157.50	1,005.00
Underwood	390.00	62.50	452.50
Walnut	780.00	120.00	900.00
Unincorporated	15,442.50	9,855.00	25,297.50
Total	<u>\$75,000.00</u>	<u>\$25,000.00</u>	<u>\$100,000.00</u>

EXAMPLE 2: If a local option sales tax is approved for Avoca, Oakland and Treynor in Pottawattamie County and \$10,000 is to be distributed, the distribution would be made in this manner:

Step 1:

Distribution Basis	Amount
Population	\$ 7,500.00
Property Taxes Levied	2,500.00
Total	<u>\$10,000.00</u>

Step 2:

Jurisdiction	Certified Population		Receipts to be
	Number	Percentage	Distributed
Avoca	1,650	39.45%	\$2,958.75
Oakland	1,552	37.10%	2,782.50
Treynor	981	23.45%	1,758.75
Total	<u>4,183</u>	<u>100.00%</u>	<u>\$7,500.00</u>

REVENUE DEPARTMENT[701](cont'd)

Step 3:

Jurisdiction	Three-Year Total Taxes Levied		Receipts to be
	Amount	Percentage	Distributed
Avoca	\$ 454,556	40.56%	\$1,014.00
Oakland	319,153	28.48%	712.00
Treynor	346,849	30.96%	774.50
Total	<u>\$1,120,558</u>	<u>100.00%</u>	<u>\$2,500.00</u>

Step 4:

Jurisdiction	Amount to be Distributed		Total
	By Population	By Taxes	Distribution
Avoca	\$2,958.75	\$1,014.00	\$ 3,972.75
Oakland	2,782.50	712.00	3,494.50
Treynor	1,758.75	774.00	2,532.75
Total	<u>\$7,500.00</u>	<u>\$2,500.00</u>	<u>\$10,000.00</u>

EXAMPLE 3: For the purposes of understanding this example, assume that the numbers for “certified population” from Step 2 of Example 2 immediately above are derived from the 1990 decennial census. Assume further that in 1993 an interim census is conducted by the Bureau of the Census in Avoca and Oakland only, and nowhere else in Pottawattamie County. As a result of that interim census, the Bureau of the Census certifies the population of Avoca to be 1,752 and the population of Oakland to be 1,493. The cities’ percentages of receipts to be distributed are recomputed in the following manner:

$$\text{Avoca's Percentage Equals } \frac{1,752}{1,752 + 1,493 + 981} = 41.45\%$$

$$\text{Oakland's Percentage Equals } \frac{1,493}{1,493 + 1,752 + 981} = 35.32\%$$

Amounts in Step 2 are then revised as follows:

Jurisdiction	Certified Population		Receipts to be
	Number	Percentage	Distributed
Avoca	1,752	41.46%	\$3,109.50
Oakland	1,493	35.33%	2,649.75
Treynor	981	23.21%	1,740.75
Total	<u>4,226</u>	<u>100.00%</u>	<u>\$7,500.00</u>

The “amount to be distributed by population” found in Step 4 of Example 2 would then be recomputed based on the new figures.

270.8(2) City-imposed local option sales and services tax. More information on the distribution of city-imposed local sales and services tax can be found in Iowa Code section 423B.7(1).

This rule is intended to implement Iowa Code section 423B.7.

701—270.9(423B) Allocation procedure when sourcing of local option sales tax remitted to the department is unknown. If the director is unable to determine from which county local option sales tax was collected, that local option sales tax shall be allocated among the various counties in which local option sales and services tax is imposed according to the following procedure:

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1. The calculations performed under this procedure shall be performed at least quarterly, but in no event less often than the treasurer of the state is obligated to distribute shares of each county's account in the local sales and services tax fund.
2. The total amount of receipts for which the director is unable to determine a county of collection that have accumulated since the last allocation of these receipts shall be added together to form one lump sum.
3. The amount of population (according to the most recent certified federal census) within the areas of each individual county in which a local option sales and services tax is imposed shall be determined.
4. The amount of population so determined in numbered paragraph "3" above for each county shall be added to the amount for every other county in Iowa in which the local option sales and services tax is imposed, until the figure for the amount of population of all areas of Iowa in which the local option sales and services tax is imposed is determined.
5. The sum determined to exist in numbered paragraph "2" above shall be multiplied by a fraction, the numerator of which is the population of any one county determined in numbered paragraph "3" above and the denominator of which is the number calculated by the method described in numbered paragraph "4." The procedure described herein in numbered paragraph "5" shall be used until the amount of tax due to every county imposing local option sales and services tax is calculated. After calculations are complete, the treasurer of the state must distribute shares of each county's account in the local sales and services tax fund. Characterization of the term "most recent certified federal census" can be found in rule 701—270.1(423B), and methods of rounding off percentages and monetary sums can be found in rule 701—270.8(423B).

This rule is intended to implement Iowa Code section 423B.7(1).

701—270.10(423B) Application of payments. Since a combined state sales and local option return is utilized by the department, all payments received will be applied to satisfy state sales tax and local option sales and services tax, which include tax, penalty and interest. Application of payments received with the tax return and any subsequent payments received will be applied based on a ratio formula, unless properly designated by the taxpayer as provided in Iowa Code section 421.60(2) "d." The ratio for applying all payments received with the return and all subsequent payments for the given tax period will be based upon the calculated total of state sales and local option sales and services tax due for the given tax period in relation to combined total payment of sales and local option sales and services tax actually received for that tax period.

This rule is intended to implement Iowa Code section 423B.7.

701—270.11(423B) Computation of local option tax due from mixed sales on excursion boats. Particular difficulties exist in calculating the amount of local option sales tax due for sales occurring on an excursion gambling boat sailing into and out of jurisdictions imposing the local option sales tax. Ordinarily, whether local option sales tax is payable to a particular jurisdiction is based on destination sourcing. More information can be found in Iowa Code section 423.15 and 701—Chapter 205. However, it can be quite difficult to determine if a moving excursion gambling boat is at any one point in time within or outside of a jurisdiction imposing the local option tax. Thus, it is difficult to determine if a delivery of property or provision of a service on the boat has occurred inside or outside of a local option tax jurisdiction. Because of this, the department will accept the use of any formula that rationally apportions the progress of an excursion gambling boat among jurisdictions that impose a local option tax and those that do not.

Below are four examples setting out two possible formulas for apportionment. Examples 1 and 3 utilize a "distance" formula for apportionment. Examples 2 and 4 utilize a "time" formula for apportionment. In Examples 1 and 2, state sales tax is included in the sales price of the taxable items. In Examples 3 and 4, state sales tax is added to taxable gross receipts. In all examples, local option sales tax is included in the sales price; also, for every example, it is assumed that the local option sales tax rate is 1 percent in every jurisdiction where it is imposed.

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EXAMPLE 1: The excursion gambling boat "Auric" is based in Clinton. Assume that during a particular cruise there occurs \$10,000 worth of vending machine and nongambling game sales. State sales tax and local option tax must be included in the amounts charged for these vending machine and nongambling game sales. Assume that the Auric, on an ordinary cruise, travels round trip for 50 miles on the Mississippi River, 25 of those miles through waters that are part of a local option sales tax jurisdiction and 25 of those miles that are not. The amount of state sales tax due and the amount of local option sales tax (LOST) due using a "distance" apportionment formula are determined as follows:

1. $(25 \div 50) \times 0.01 = 0.005$
(miles in LOST jurisdiction \div total miles) \times LOST rate = effective LOST rate
2. $1 + 0.06 + 0.005 = 1.065$
1 + state sales tax rate + effective LOST rate = (1 + effective total tax rate)
3. $\$10,000.00 \div 1.065 = \$9,389.67$
Gross receipts \div (1 + effective total tax rate) = total sales
4. $\$9,389.67 \times 0.06 = \563.38
Total sales \times state tax rate = state tax amount
5. $\$9,389.67 \times 0.005 = \46.95
Total sales \times effective LOST rate = LOST amount
6. $\$563.38 + \$46.95 = \$610.33$
State tax amount + LOST amount = total tax amount

EXAMPLE 2: The excursion gambling boat "Blue Diamond" is based in Davenport. Assume that, as in Example 1, during a particular cruise there occurs \$10,000 worth of vending machine and nongambling game sales. Again, state sales tax and local option tax are included in the amounts charged for these vending machine and nongambling game sales. The Blue Diamond spends three hours on the water during an ordinary cruise. One hour is spent sailing in waters where no local option sales tax is imposed; two hours are spent in waters where the local option tax is imposed. In this case, the Blue Diamond's operator can use a formula based on time spent sailing inside and outside of a local option tax-imposing jurisdiction rather than distance traveled within and without such a jurisdiction as in Example 1, so long as there is a reasonable amount of evidence to indicate that the formula reflects with some accuracy the ratio of nontaxable and taxable sales. The calculation is performed as follows:

1. $(2 \div 3) \times 0.01 = 0.00666$
(hours in LOST jurisdiction \div total hours) \times LOST rate = effective LOST rate
2. $1 + 0.06 + 0.00666 = 1.06666$
1 + state sales tax rate + effective LOST rate = (1 + effective total tax rate)
3. $\$10,000.00 \div 1.06666 = \$9,375.06$
Gross receipts \div (1 + effective total tax rate) = total sales
4. $\$9,375.06 \times 0.06 = \562.50
Total sales \times state tax rate = state tax amount
5. $\$9,375.06 \times 0.00666 = \62.44
Total sales \times effective LOST rate = LOST amount
6. $\$562.50 + \$62.44 = \$624.94$
State tax due + LOST due = total tax amount

EXAMPLE 3: The excursion gambling boat "Golconda" is based in Dubuque. On an ordinary cruise, it will travel a round trip of 50 miles on the Mississippi River. During 25 of those 50 miles, the Golconda is passing through waters that are part of a local option sales tax jurisdiction. Assume that on one particular cruise, \$100,000 in taxable gross receipts is collected on the boat. Local option sales tax is included in the \$100,000 amount but not state sales tax. Thus, the total amount collected is \$106,000; \$100,000 in gross receipts, \$6,000 in state sales tax. Local option tax is calculated as follows:

1. $(25 \div 50) \times 0.01 = 0.005$
(miles in LOST jurisdiction \div total miles) \times LOST rate = effective LOST rate
2. $1 + 0.005 = 1.005$
1 + effective LOST rate
3. $\$100,000.00 \div 1.005 = \$99,502.49$

REVENUE DEPARTMENT[701](cont'd)

Gross receipts including LOST \div (1+ effective LOST rate) = total sales

$$4. \quad \$99,502.49 \times 0.06 = \$5,970.15$$

Total sales \times state tax rate = state tax amount

$$5. \quad \$100,000.00 - 99,502.49 = \$497.51$$

Gross receipts including LOST – total sales = LOST amount

$$6. \quad \$5,970.15 + \$497.51 = \$6,467.66$$

State tax due + LOST due = total tax amount

$$7. \quad \$99,502.49 + \$497.51 + \$5,970.15 = \$105,970.15$$

Total sales + LOST amount + state tax amount = total amount collected by vendor

EXAMPLE 4: The excursion gambling boat “Black Jack” is based in Davenport. Assume that during a particular cruise there is \$150,000 in taxable gross receipts collected on the Black Jack. The full amount collected is \$159,000; \$9,000 in state sales tax and \$150,000 in gross receipts. The Black Jack spends three hours on the water during an ordinary cruise. One hour is spent sailing in waters where no local option sales tax is imposed; two hours are spent in waters where the local option tax is imposed. In this case, as in Example 2, the Black Jack’s operator can use a formula based on time spent sailing inside and outside of a local option tax-imposing jurisdiction rather than distance traveled within and without such a jurisdiction so long as there is a reasonable amount of evidence to indicate that the formula reflects with some accuracy the ratio of nontaxable and taxable sales. In this example, tax is computed as follows:

$$1. \quad (2 \div 3) \times 0.01 = 0.00666 \text{ effective LOST rate}$$

(hours in LOST jurisdiction \div total hours) \times LOST rate = effective LOST rate

$$2. \quad 1 + 0.00666 = 1.00666$$

1 + effective LOST rate

$$3. \quad \$150,000.00 \div 1.00666 = \$149,007.61$$

Gross receipts including LOST but not state tax \div (1 + effective LOST rate) = total sales

$$4. \quad \$149,007.61 \times 0.06 = \$8,940.46$$

Total sales \times state tax rate = state tax amount

$$5. \quad \$150,000.00 - 149,007.61 = \$992.39$$

Gross receipts including LOST but not state tax – total sales = LOST amount

$$6. \quad \$8,940.46 + \$992.39 = \$9,932.85$$

State tax amount + LOST amount = total tax amount

$$7. \quad \$149,007.61 + \$992.39 + \$8,940.46 = \$158,940.46$$

Total sales + LOST amount + state tax amount = total amount collected by vendor

Upon beginning operation, a licensee may choose to employ either the “distance” method of apportionment set out in Examples 1 and 3 or the “time” method set out in 2 and 4 above without informing the department in advance of filing a sales tax return of the licensee’s choice. A licensee cannot use both methods of apportionment. If a licensee commencing operation wishes to use another method of apportionment, the licensee must petition the department for permission to use this alternative method and present whatever evidence the department shall rationally require that the alternative method better reflects the ratio of taxable to nontaxable sales before using the alternative method. Any licensee wishing to change from any existing method of apportionment to another method must also petition the department and receive permission to change its method of apportionment.

This rule is intended to implement Iowa Code sections 99F.10(6) and 423B.5.

[Filed 1/19/24, effective 3/13/24]

[Published 2/7/24]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 2/7/24.

ARC 7624C**REVENUE DEPARTMENT[701]****Adopted and Filed****Rulemaking related to new school infrastructure local option sales and services tax**

The Revenue Department hereby rescinds Chapter 271, “New School Infrastructure Local Option Sales and Services Tax— Effective On or After April 1, 2003, Through Fiscal Years Ending December 31, 2022,” Iowa Administrative Code.

Legal Authority for Rulemaking

This rulemaking is adopted under the authority provided in Iowa Code sections 421.14, 422.68 and 423.42.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code sections 423E.1 to 423E.6.

Purpose and Summary

Pursuant to Part IV of Executive Order 10, the Department was directed on September 22, 2023, to adopt this rulemaking to rescind and reserve Chapter 271. The Department determined the chapter is unnecessary or obsolete because the underlying statutes it implemented have been repealed. This chapter implemented rules related to the School Infrastructure Local Option (SILO) Tax Fund, which has since been replaced by the Secure an Advanced Vision for Education (SAVE) Fund.

Public Comment and Changes to Rulemaking

Notice of Intended Action for this rulemaking was published in the Iowa Administrative Bulletin on December 13, 2023, as **ARC 7151C**. Public hearings were held on January 3, 2024, at 9 a.m. via video/conference call and at 1 p.m. via video/conference call. No one attended the public hearings. No public comments were received. No changes from the Notice have been made.

Adoption of Rulemaking

This rulemaking was adopted by the Department on January 19, 2024.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to rule 701—7.28(17A).

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking 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).

REVENUE DEPARTMENT[701](cont'd)

Effective Date

This rulemaking will become effective on March 13, 2024.

The following rulemaking action is adopted:

ITEM 1. Rescind and reserve **701—Chapter 271**.

[Filed 1/19/24, effective 3/13/24]

[Published 2/7/24]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 2/7/24.

ARC 7625C**REVENUE DEPARTMENT[701]****Adopted and Filed****Rulemaking related to rebate of Iowa sales tax paid**

The Revenue Department hereby rescinds Chapter 275, "Rebate of Iowa Sales Tax Paid," Iowa Administrative Code, and adopts a new chapter with the same title.

Legal Authority for Rulemaking

This rulemaking is adopted under the authority provided in Iowa Code section 423.4.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code sections 423.2A and 423.4.

Purpose and Summary

The purpose of this rulemaking is to rescind Chapter 275 and adopt a new Chapter 275, which consists of rules relating to and interpreting sales and use tax rebates granted to sanctioned automobile racetrack facilities, baseball and softball complexes, and raceway facilities. The rules provide the rebate's scope and applicability and the methods for obtaining a rebate by the eligible entities. The Department revised the rules for clarification and removed portions of the rules the Department determined are unnecessary and duplicative of statutory language. The Department also renumbered some rules due to other edits and for organizational reasons.

Public Comment and Changes to Rulemaking

Notice of Intended Action for this rulemaking was published in the Iowa Administrative Bulletin on December 13, 2023, as **ARC 7186C**. Public hearings were held on January 3, 2024, at 9 a.m. via video/conference call and at 1 p.m. via video/conference call. No one attended the public hearings. No public comments were received. No changes from the Notice have been made.

Adoption of Rulemaking

This rulemaking was adopted by the Department on January 18, 2024.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

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

Waivers

REVENUE DEPARTMENT[701](cont'd)

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to rule 701—7.28(17A).

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking 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).

Effective Date

This rulemaking will become effective on March 13, 2024.

The following rulemaking action is adopted:

ITEM 1. Rescind 701—Chapter 275 and adopt the following **new** chapter in lieu thereof:

CHAPTER 275
REBATE OF IOWA SALES TAX PAID

701—275.1(423) Sanctioned automobile racetrack facilities. Iowa Code section 423.4(5) provides for rebates of qualifying sales made at sanctioned automobile racetrack facilities. Definitions of key terms may be found in Iowa Code section 423.4(5) "a."

275.1(1) Affidavit by owner or operator. The owner or operator of an automobile racetrack facility seeking a rebate allowed under Iowa Code section 423.4(5) of the sales tax imposed and collected by retailers upon sales of tangible personal property or services furnished to purchasers at the automobile racetrack facility must file with the department the following affidavit certifying that qualifications for the rebate have been met:

Iowa Department of Revenue
Sales Tax Rebate Affidavit

NAME OF AFFIANT	*	AFFIDAVIT FOR SANCTIONED
ADDRESS OF AFFIANT	*	AUTOMOBILE RACETRACK
	*	FACILITY

The undersigned duly swears that the named Automobile Racetrack Facility complies with criteria to be entitled to rebate of sales tax as required in Iowa Code section 423.4 as follows:

- a. The facility is sanctioned as an automobile racetrack facility;
- b. The sanctioned automobile racetrack facility is located as part of a racetrack and entertainment complex, including any museum attached to or included in the sanctioned automobile racetrack facility, but excluding any restaurant;
- c. The sanctioned automobile racetrack facility has not and will not receive any grants under the community attraction and tourism program pursuant to Iowa Code chapter 15F, subchapter II, or the vision Iowa program pursuant to Iowa Code chapter 15F, subchapter III;
- d. The sanctioned automobile racetrack facility is located on a maximum of 232 acres of Iowa land;
- e. The sanctioned automobile racetrack facility is located in a city with a population, as defined by this rule, of at least 14,500, but not more than 16,500;
- f. The city in which the sanctioned automobile racetrack facility is located is in a county with a population, as defined by this rule, of at least 35,000, but no more than 40,000;

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- g. Construction of the sanctioned automobile racetrack facility was commenced on or before July 1, 2006;
- h. Cost of construction of the automobile racetrack facility upon completion is at least \$35 million; and
- i. There has not been a “change of control” as defined in the rules governing this program regarding the legal ownership or operation of the automobile racetrack facility.

The undersigned duly swears that he or she is the owner or operator of the sanctioned automobile racetrack facility or that the undersigned is the authorized representative of the sanctioned automobile racetrack facility and has the authority to sign this document. The undersigned swears that he or she has personal knowledge regarding the facts contained in this affidavit and that the statements set forth in this affidavit are true and accurate and that the sanctioned automobile racetrack facility has met all of the requirements as contained herein.

 Name of Affiant
 Position of Affiant

 Date

275.1(2) Notification to the department of revenue. The owner or operator of the automobile racetrack facility will provide the department with the identity of all retailers at the automobile racetrack facility that will be collecting sales tax and is required to keep the information current. The owner or operator of the automobile racetrack facility will notify the department within ten days of the termination of a retailer from collecting sales tax at the racetrack facility. In addition, the owner or operator of the automobile racetrack facility will notify the department within ten days of the start-up of a retailer collecting sales tax at the automobile racetrack facility.

275.1(3) Limitations. The automobile racetrack facility rebate program applies only to transactions that occur on or after January 1, 2006, but before the end date provided in Iowa Code section 423.4(5), and for which sales tax was collected. Only the state sales tax is subject to rebate. Local option taxes paid and collected are not subject to rebate. Rebates of sales taxes to an automobile racetrack facility are not authorized for transactions that occur on or after the date of the change of control of the automobile racetrack facility. The rebate is limited to 5 percent.

275.1(4) Termination of rebate program. The rebate program for automobile racetrack facilities terminates on the earliest of the dates listed in Iowa Code section 423.4(5) “g.”

275.1(5) Sourcing of sales. Advance ticket and admissions sales shall be considered occurring at the automobile racetrack facility regardless of where the transactions actually occur. Consequently, the state sales tax and any applicable local option tax in effect for the jurisdiction in which the automobile racetrack facility is located must be imposed.

Other types of sales eligible for rebate under this program include but are not limited to sales by vendors and sales at concessions, gift shops, and museums. However, sales by a restaurant on facility land are not subject to rebate.

275.1(6) Requirements to obtain a rebate of state sales tax by the racetrack facility. In order to obtain a rebate, a request is considered timely and complete when the authorized form containing all requested information is filed quarterly with the department.

This rule is intended to implement Iowa Code section 423.4(5).

701—275.2(423) Baseball and softball complex sales tax rebate.

275.2(1) Generally.

a. Rebate approval. An entity whose project pursuant to Iowa Code section 15F.207 is reviewed and recommended by the economic development authority and approved by the enhance Iowa board is entitled to rebates of qualifying sales tax in accordance with Iowa Code section 423.4(10) and this rule, not to exceed the amount awarded by the economic development authority.

b. Qualifying rebates. Qualifying rebates of Iowa state sales tax may be made to the owner or operator of a complex as defined in this rule for sales occurring on or after the project completion date

REVENUE DEPARTMENT[701](cont'd)

for a period of ten years or the date the award was made, whichever is later. Qualifying rebates are for state sales tax only. Local option taxes are not subject to rebate under this program.

275.2(2) Definitions. For the purpose of this program, the definitions found in Iowa Code section 423.4(10) apply. In addition, the following definitions apply:

“*Department*” means the department of revenue.

“*Eligible baseball and softball complex*” or “*complex*” means a facility located in this state that has a project completion date that is after July 1, 2016, is designed and built to host baseball and softball games and has a cost of construction upon completion that is at least \$10 million. The boundaries of a “*complex*” may be a portion or the entirety of a premises. After granting an award to a complex, the enhance Iowa board shall describe in writing to the department the physical boundaries of the complex and provide the department a map illustrating the approved boundaries of the complex.

“*Placed into service*” means the first day a complex is able to host a baseball or softball game.

275.2(3) Notification to the department of revenue. The owner or operator of the complex shall provide the department with a copy of the award notice from the enhance Iowa board.

275.2(4) Retailer identification.

a. Identification of retailers. The owner or operator shall provide the department with the identity of all retailers at the complex that will be collecting sales tax, provide sales tax permit numbers for each retailer, and keep the information current.

b. Notification to department. The owner or operator of the complex shall notify the department within ten days of the start-up or termination of a retailer collecting sales tax at the complex. For purposes of this subrule, termination occurs when the retailer provides notice to the owner or operator that the retailer will no longer collect sales tax at the complex or after one calendar year expires since the retailer collected sales tax at the complex.

c. Verification by department. The department shall verify the identity of a retailer collecting sales tax at the complex before rebates are paid for sales made by that retailer.

275.2(5) Baseball and softball complex rebate request form and filing requirements. To obtain the rebate, the owner or operator must submit a rebate request to the department on the authorized form furnished by the department. A properly completed form shall adhere to the following rules:

a. Who may file the claim. The claim must be filed by the owner or operator. Claims filed under the name of an affiliated entity will be denied.

b. Information regarding retailers making sales at the complex. The following information shall be provided:

- (1) Business name,
- (2) Responsible party,
- (3) Federal employer identification number (FEIN), and
- (4) Sales tax permit number, which must be associated with an address at the complex.

c. Sales at the complex. Information on sales at the complex and sales tax collected on those sales must be reported. Only sales by retailers meeting the requirements of paragraph 275.2(5) “*b*” and Iowa Code section 423.4(10) are eligible for rebate.

d. Additional information. The department may request any other additional information, from any person, necessary to verify the rebate.

e. Sworn statement. The department may require a sworn statement regarding the truthfulness and eligibility of the claim.

f. Filing frequency. The forms are due quarterly, on or before the last day of the month following the quarter in which the sales at the complex took place.

275.2(6) Fund transfers. The amount of sales tax revenues transferred from the general fund to the complex fund is that portion of sales tax receipts remaining in the general fund after other department transfers, as described in Iowa Code section 423.4(10) “*e*.”

275.2(7) Termination of rebate program. The rebate program terminates 30 days following the date on which \$5 million in total rebates has been provided. The rebate award for each complex terminates on the earliest of the following dates:

- a.* Ten years after the project completion date; or

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b. The date on which total rebates equal to the amount of the rebate award have been provided to the complex; or

c. The date of the change of control of the facility.

275.2(8) Sourcing of sales.

a. *Generally.* In general, sales are considered to occur “at the complex” if they occur within the boundaries identified in the physical description provided by the enhance Iowa board and are sourced to a location within those boundaries under Iowa Code section 423.15.

b. *Advance ticket and admissions sales.* Advance ticket and admissions sales shall be considered occurring at the baseball and softball complex regardless of where the transactions actually occur. Consequently, the state sales tax and any applicable local option tax in effect for the jurisdiction in which the facility is located must be imposed on the purchase price of advance ticket and admissions sales.

This rule is intended to implement Iowa Code section 423.4(10).

701—275.3(423) Raceway facility sales tax rebate. Qualifying rebates of Iowa state sales and use tax may be made to the owner or operator of a raceway facility that meets the requirements of Iowa Code section 423.4(11).

275.3(1) Definitions. For purposes of this rebate, unless further defined below, the terms used in this rule mean the same as defined in Iowa Code section 423.4(11). Additionally, “incurred date” means the date on which the payment for the project cost was made or the performance of the work that gave rise to the payment occurred, whichever is later.

275.3(2) Retailer identification.

a. *Identification of retailers.* The owner or operator shall provide the identity of all retailers at the raceway facility that will be collecting sales tax and provide the department with the sales tax permit number for each retailer. During the period in which rebates may be claimed, the owner or operator shall keep the information current.

b. *Notification to department.* The owner or operator shall notify the department within ten days of the termination or start-up of a retailer collecting sales tax at the raceway facility. For purposes of this subrule, termination occurs when the retailer provides notice to the owner or operator that the retailer will no longer collect sales tax at the raceway facility or after one calendar year expires since the retailer collected sales tax at the raceway facility.

c. *Verification by department.* The department shall verify the identity of a retailer collecting sales tax at the raceway facility before rebates are paid for sales made by that retailer.

275.3(3) Project cost report and rebate form and filing requirements. To request a rebate, the owner or operator must timely submit a project cost report and rebate request to the department on the authorized form, furnished by the department, in addition to the retailer sales report, as described in subrule 275.3(4). A properly completed rebate form shall contain the following:

a. *Documentation and information required.*

- (1) Invoices for project costs.
- (2) An explanation of how each cost meets the definition of “project costs.”
- (3) The date each cost was incurred and the date each cost was paid.

b. *Additional information.* The department may request any other additional information, from any person, necessary to verify the rebate.

c. *Sworn statement.* The department may require a sworn statement regarding the truthfulness and eligibility of the report.

d. *Filing frequency.* To be considered timely, the form and supporting documentation must be provided to the department within 90 days of the date the project cost was paid. Generally, this report is filed quarterly with the rebate request form; however, the project cost report may be filed more frequently if necessary to meet the 90-day filing requirement. Project cost reports and rebate forms will not be accepted on or after the earliest date provided in Iowa Code section 423.4(11) “g.”

275.3(4) Raceway facility retailer sales report and filing requirements. The owner or operator must submit a retailer sales report to the department on the authorized form furnished by the department. A properly completed form shall contain the following.

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a. Who may file the claim. Rebate claims shall only be filed by the owner or operator. Claims filed under the name of an affiliated entity will be denied.

b. Information regarding retailers making sales at the raceway facility. Retailer information must include:

- (1) Business name,
- (2) Responsible party,
- (3) Federal employer identification number (FEIN), and
- (4) Sales tax permit number.

c. Sales at the raceway facility. Sales occurring at the raceway facility and sales tax collected on those sales must be reported. Only sales by retailers meeting the requirements of paragraph 275.3(4) “b” and Iowa Code section 423.4(11) that occur during the time period specified in Iowa Code section 423.4(11) “c”(3) are eligible for the rebate.

d. Additional information. The department may request any other additional information, from any person, necessary to verify the rebate.

e. Sworn statement. The department may require a sworn statement by the retailer and the owner or operator regarding the truthfulness and eligibility of the claim.

f. Filing frequency. The forms are due quarterly, on or before the last day of the month following the quarter in which the sales at the raceway facility took place.

275.3(5) Sourcing of sales.

a. Generally. In general, sales are considered to occur at the raceway facility if they occur within the boundaries of the raceway facility portion of the fairgrounds and are sourced to that raceway facility under Iowa Code section 423.15.

b. Advance ticket and admissions sales. Advance ticket and admissions sales shall be considered occurring at the raceway facility regardless of where the transactions actually occur. Consequently, the state sales tax and any applicable local option tax in effect for the jurisdiction in which the raceway facility is located must be imposed on the sales price of advance ticket and admissions sales.

275.3(6) Local option sales tax. Local option taxes imposed under Iowa Code chapter 423B are not eligible for rebate under this program.

This rule is intended to implement Iowa Code section 423.4(11).

[Filed 1/18/24, effective 3/13/24]

[Published 2/7/24]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 2/7/24.

ARC 7626C

REVENUE DEPARTMENT[701]

Adopted and Filed

Rulemaking related to facilitating business rapid response to state-declared disasters

The Revenue Department hereby rescinds Chapter 276, “Facilitating Business Rapid Response to State-Declared Disasters,” Iowa Administrative Code, and adopts a new chapter with the same title.

Legal Authority for Rulemaking

This rulemaking is adopted under the authority provided in Iowa Code section 29C.24.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code section 29C.24.

Purpose and Summary

REVENUE DEPARTMENT[701](cont'd)

The purpose of this rulemaking is to readopt Chapter 276, which provides the Department's rules for administering Iowa Code section 29C.24. Iowa Code section 29C.24 helps facilitate the rapid response of businesses and workers to a disaster by providing that out-of-state businesses and employees that perform disaster and emergency-related work on critical infrastructure during a disaster response period due to a state-declared disaster are not subject to income, corporate income, use, equipment; or property tax or tax filing, permit, or return requirements. The Department revised the rules to remove portions of the chapter that the Department determined are unnecessary and duplicative of statutory language. In its Red Tape Review Report, the Department recommended amending the statute to make rulemaking on this topic permissive rather than mandatory because there is little need for additional information in rules.

Public Comment and Changes to Rulemaking

Notice of Intended Action for this rulemaking was published in the Iowa Administrative Bulletin on December 13, 2023, as **ARC 7153C**. Public hearings were held on January 3, 2024, at 9 a.m. via video/conference call and at 1 p.m. via video/conference call. No one attended the public hearings. No public comments were received. No changes from the Notice have been made.

Adoption of Rulemaking

This rulemaking was adopted by the Department on January 19, 2024.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to rule 701—7.28(17A).

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking 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).

Effective Date

This rulemaking will become effective on March 13, 2024.

The following rulemaking action is adopted:

ITEM 1. Rescind 701—Chapter 276 and adopt the following **new** chapter in lieu thereof:

CHAPTER 276

FACILITATING BUSINESS RAPID RESPONSE TO STATE-DECLARED DISASTERS

701—276.1(29C) Purpose. The Iowa department of revenue, the Iowa department of homeland security and emergency management and the secretary of state are authorized and tasked by the legislature to jointly administer and oversee mutual aid among the political subdivisions of Iowa, other states and the

REVENUE DEPARTMENT[701](cont'd)

federal government and to ensure the state government and its departments and agencies facilitate the rapid response of businesses and workers in the state and other states to a disaster.

701—276.2(29C) Definitions. For purposes of this chapter, the definitions from Iowa Code section 29C.24 are adopted by reference.

701—276.3(29C) Disaster or emergency-related work.

276.3(1) Out-of-state business. An out-of-state business conducting operations within the state solely for the purpose of performing disaster or emergency-related work during a disaster response period does not establish a level of presence that would subject the out-of-state business to any of the requirements and responsibilities listed in Iowa Code section 29C.24(3) “a.”

276.3(2) Out-of-state employee. The performance of disaster or emergency-related work during a disaster response period by an out-of-state employee is not a basis to determine that the out-of-state employee has established residency or a level of presence in Iowa that would subject the out-of-state employee to any of the requirements or responsibilities listed in Iowa Code section 29C.24(3) “b.”

276.3(3) After the disaster response period ends. An out-of-state business or out-of-state employee remaining in Iowa after the disaster response period for which the disaster or emergency-related work was performed is responsible for all taxes, fees, registration, filing or other requirements the out-of-state business or out-of-state employee would have been subject to but for Iowa Code section 29C.24.

These rules are intended to implement Iowa Code section 29C.24.

[Filed 1/19/24, effective 3/13/24]

[Published 2/7/24]

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ARC 7627C

REVENUE DEPARTMENT[701]

Adopted and Filed

Rulemaking related to sales and use tax refund for biodiesel production

The Revenue Department hereby rescinds Chapter 277, “Sales and Use Tax Refund for Biodiesel Production,” Iowa Administrative Code, and adopts a new chapter with the same title.

Legal Authority for Rulemaking

This rulemaking is adopted under the authority provided in Iowa Code sections 421.14, 422.68 and 423.4(9).

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code section 423.4(9).

Purpose and Summary

The purpose of this rulemaking is to readopt Chapter 277, which consists solely of rule 701—277.1(423), which provides and describes the process for taxpayers to obtain a refund of sales or use tax paid by biodiesel producers. The Department has revised this chapter to remove portions of the rule that the Department determined were unnecessary and duplicative of statutory language.

Public Comment and Changes to Rulemaking

Notice of Intended Action for this rulemaking was published in the Iowa Administrative Bulletin on December 13, 2023, as **ARC 7154C**. Public hearings were held on January 3, 2024, at 9 a.m. via

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video/conference call and at 1 p.m. via video/conference call. No one attended the public hearings. No public comments were received. No changes from the Notice have been made.

Adoption of Rulemaking

This rulemaking was adopted by the Department on January 17, 2024.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to rule 701—7.28(17A).

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking 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).

Effective Date

This rulemaking will become effective on March 13, 2024.

The following rulemaking action is adopted:

ITEM 1. Rescind 701—Chapter 277 and adopt the following **new** chapter in lieu thereof:

CHAPTER 277

SALES AND USE TAX REFUND FOR BIODIESEL PRODUCTION

701—277.1(423) Biodiesel production refund. A refund of sales or use tax is available for certain producers of biodiesel for calendar year 2012 to the ending year specified in Iowa Code section 423.4(9)“e.”

277.1(1) Qualifications for the refund. To be eligible for the refund, a biodiesel producer that produces biodiesel in Iowa must meet the criteria listed in Iowa Code section 423.4(9)“a.”

277.1(2) Calculation of the refund. The amount of refund is calculated as described in Iowa Code section 423.4(9)“b” and up to the number of gallons identified in Iowa Code section 423.4(9)“c.” No refund will be allowed for gallons produced at a facility on or after the date identified in Iowa Code section 423.4(9)“e.”

277.1(3) Claiming the refund. In order to claim a refund for each calendar quarter, a biodiesel producer must file Form IA 843, Refund Return, on which the biodiesel producer will include the number of biodiesel gallons produced during the quarter, the calculation of the biodiesel production refund, and the amount of biodiesel production refund claimed. The biodiesel producer must also timely file all sales and use tax returns due and timely pay all sales and use taxes owed on the biodiesel producer's purchases, even when the amount of the biodiesel production refund due exceeds the amount of sales and use taxes owed for the quarter. The department will reduce the amount of the refund issued by the amount of any sales and use taxes owed by the biodiesel producer.

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EXAMPLE: A biodiesel producer produced 5 million gallons during the first quarter of 2023. The producer also owes \$10,000 of Iowa use tax based on purchases made during the first quarter of 2023. In order to claim a refund, the producer must timely file an Iowa sales and use tax return and pay \$10,000 of use tax with the return and file Form IA 843, Refund Return, to request a refund of \$200,000 (5 million gallons multiplied by 4 cents per gallon) for the first quarter of 2023.

This rule is intended to implement Iowa Code section 423.4(9).

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[Published 2/7/24]

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ARC 7628C

REVENUE DEPARTMENT[701]

Adopted and Filed

Rulemaking related to refunds for eligible businesses under economic development authority programs

The Revenue Department hereby rescinds Chapter 278, “Refunds for Eligible Businesses Under Economic Development Authority Programs,” Iowa Administrative Code, and adopts a new chapter with the same title.

Legal Authority for Rulemaking

This rulemaking is adopted under the authority provided in Iowa Code sections 421.14, 422.68 and 423.42.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code chapter 15.

Purpose and Summary

The purpose of this rulemaking is to readopt Chapter 278, which consists solely of rule 701—278.1(15). This rule interprets the underlying statutes and provides the scope and methods for obtaining a refund of sales and use tax paid for eligible businesses approved under programs by the Iowa Economic Development Authority. The Department amended the rule for clarification and removed portions the Department determined were unnecessary and duplicative of statutory language.

Public Comment and Changes to Rulemaking

Notice of Intended Action for this rulemaking was published in the Iowa Administrative Bulletin on December 13, 2023, as **ARC 7155C**. Public hearings were held on January 3, 2024, at 9 a.m. via video/conference call and at 1 p.m. via video/conference call. No one attended the public hearings. No public comments were received. No changes from the Notice have been made.

Adoption of Rulemaking

This rulemaking was adopted by the Department on January 17, 2024.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

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

REVENUE DEPARTMENT[701](cont'd)

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to rule 701—7.28(17A).

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking 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).

Effective Date

This rulemaking will become effective on March 13, 2024.

The following rulemaking action is adopted:

ITEM 1. Rescind 701—Chapter 278 and adopt the following **new** chapter in lieu thereof:

CHAPTER 278
REFUNDS FOR ELIGIBLE BUSINESSES UNDER ECONOMIC DEVELOPMENT
AUTHORITY PROGRAMS

701—278.1(15) Sales and use tax refund for eligible businesses. For eligible businesses approved under the high quality jobs program or workforce housing tax incentives program by the economic development authority, a refund of sales and use tax is available.

278.1(1) Sales and use tax eligible for refund. Eligible businesses can receive a refund of the sales and use tax paid for those items listed in Iowa Code section 15.331A to the extent applicable for purposes of the particular program.

278.1(2) Sales and use tax ineligible for refund. The sales and use tax for which the eligible business cannot receive a refund consists of the following:

a. Any local option sales tax paid is not eligible for the refund. The refund is limited to the state sales and use tax paid.

b. Any sales and use tax attributable to intangible property, furniture, or furnishings is not eligible for the refund. “Furnishings” means any furniture, appliances, equipment, and accessories that are movable and with which a room or building is furnished for comfort, convenience, or aesthetic value. Examples include rugs, décor, and window coverings. “Furnishings” does not include installed flooring such as hardwood, carpet, ceramic, stone, laminate, or vinyl.

278.1(3) When to claim the refund. To receive a refund, the eligible business must file a claim for refund within the following period of time:

a. *High quality jobs program.* The first date the eligible business may file a claim for refund is after the contract completion as defined in Iowa Code section 15.331A. The last date the eligible business may file a claim for refund is one year after the project completion date as defined in Iowa Code section 15.329.

b. *Workforce housing tax incentives program.* The first date the eligible business may file a claim for refund is after the agreement completion date as defined in Iowa Code section 15.355. The last date the eligible business may file a claim for refund is one year after the agreement completion date as defined in Iowa Code section 15.355.

278.1(4) How to claim the refund.

a. *Gas, electric, water, or sewer utility services.* To request a refund of the sales and use tax paid for gas, electric, water, or sewer utility services used during construction, the eligible business must file Form IA 843, Refund Return, with the department of revenue. The claim shall include the tax credit

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certificate number given by the Iowa economic development authority, along with copies of invoices or a schedule to support the refund amount.

b. Contractor or subcontractor. To request a refund of the sales and use tax paid on tangible personal property, or on services rendered to, furnished to, or performed for a contractor or subcontractor relating to the construction or equipping of a facility, the eligible business must file the Construction Contract Claim for Refund form, along with the Iowa Contractor's Statement, with the department of revenue. The Construction Contract Claim for Refund form shall include the tax credit certificate number given by the Iowa economic development authority. It is not necessary to attach invoices to the Construction Contract Claim for Refund form, but the department of revenue reserves the right to request invoices when reviewing the refund claim.

c. Racks, shelving, and conveyor equipment. To request a refund of the sales and use tax attributable to racks, shelving, and conveyor equipment, the eligible business must file Form IA 843, Refund Return, with the department of revenue. The claim shall include the tax credit certificate number given by the Iowa economic development authority, along with copies of invoices or a schedule to support the refund amount.

This rule is intended to implement Iowa Code chapter 15.

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ARC 7629C

UTILITIES DIVISION[199]

Adopted and Filed

Rulemaking related to procedure for determining the competitiveness of a communications service or facility

The Utilities Board hereby rescinds Chapter 5, "Procedure for Determining the Competitiveness of a Communications Service or Facility," Iowa Administrative Code.

Legal Authority for Rulemaking

This rulemaking is adopted under the authority provided in Iowa Code chapter 476.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code section 476.1D.

Purpose and Summary

Chapter 5 contained the Board's procedure for determining the competitiveness of a communications service or facility. The Board rescinded and reserved this chapter because its provisions are duplicative of language contained in Iowa Code section 476.1D.

On January 11, 2024, the Board issued an order adopting amendments. The order is available on the Board's electronic filing system, efs.iowa.gov, under Docket No. RMU-2023-0005.

Public Comment and Changes to Rulemaking

Notice of Intended Action for this rulemaking was published in the Iowa Administrative Bulletin on November 29, 2023, as **ARC 7125C**. Public hearings were held on December 19, 2023, at 9 a.m. and December 20, 2023, at 9 a.m. in the Board Hearing Room, 1375 East Court Avenue, Des Moines, Iowa.

The public hearings were attended by the Office of Consumer Advocate (OCA), a division of the Iowa Department of Justice; Interstate Power and Light Company; Black Hills/Iowa Gas Utility Company, LLC, d/b/a Black Hills Energy; Iowa-American Water Company; ITC Midwest; and the

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Iowa Communications Alliance (ICA). All oral comments received were supportive of the proposed amendment set forth in the Notice.

The Board received written comments from OCA and ICA, and each expressed their support for the rescission of Chapter 5.

No changes from the Notice have been made.

Adoption of Rulemaking

This rulemaking was adopted by the Board on January 11, 2024.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

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

Waivers

No waiver provision is included in the amendment because the Board has a general waiver provision in rule 199—1.3(17A,474,476) that provides procedures for requesting a waiver of the Board's rules.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking 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).

Effective Date

This rulemaking will become effective on March 13, 2024.

The following rulemaking action is adopted:

ITEM 1. Rescind and reserve **199—Chapter 5**.

[Filed 1/18/24, effective 3/13/24]

[Published 2/7/24]

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ARC 7630C

**WORKFORCE DEVELOPMENT BOARD AND WORKFORCE
DEVELOPMENT CENTER ADMINISTRATION DIVISION[877]**

Adopted and Filed

Rulemaking related to regional industry sector partnerships

The Workforce Development Board and Workforce Development Center Administration Division hereby amends Chapter 7, "Iowa Workforce Investment Act Program," Iowa Administrative Code.

Legal Authority for Rulemaking

This rulemaking is adopted under the authority provided in Iowa Code chapter 17A and section 84A.15 as transferred by 2023 Iowa Acts, Senate File 514.

State or Federal Law Implemented

WORKFORCE DEVELOPMENT BOARD AND WORKFORCE DEVELOPMENT CENTER
ADMINISTRATION DIVISION[877](cont'd)

This rulemaking implements, in whole or in part, Iowa Code chapter 17A and section 84A.15 as transferred by 2023 Iowa Acts, Senate File 514.

Purpose and Summary

As part of the Workforce Development Department's review of rules under Executive Order 10, the Department identified several instances where previous rule 877—7.25(260H) duplicated statutory language and used restrictive terms. Therefore, this rule has been rescinded.

Public Comment and Changes to Rulemaking

Notice of Intended Action for this rulemaking was published in the Iowa Administrative Bulletin on November 1, 2023, as **ARC 7107C**. A public hearing was held on November 21, 2023, at 10 a.m. in the Capitol View Room, 1000 East Grand Avenue, Des Moines, Iowa. No one attended the public hearing. No public comments were received. No changes from the Notice have been made.

Adoption of Rulemaking

This rulemaking was adopted by the Workforce Development Board and Workforce Development Center Administration Division on January 9, 2024.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking 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).

Effective Date

This rulemaking will become effective on March 13, 2024.

The following rulemaking action is adopted:

ITEM 1. Rescind and reserve rule **877—7.25(260H)**.

[Filed 1/9/24, effective 3/13/24]

[Published 2/7/24]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 2/7/24.

ARC 7631C

**WORKFORCE DEVELOPMENT BOARD AND WORKFORCE
DEVELOPMENT CENTER ADMINISTRATION DIVISION[877]**

Adopted and Filed

Rulemaking related to work-based learning

The Workforce Development Board and Workforce Development Center Administration Division hereby rescinds Chapter 31, “Statewide Work-Based Learning Intermediary Network,” Iowa Administrative Code.

Legal Authority for Rulemaking

This rulemaking is adopted under the authority provided in Iowa Code chapter 17A and section 84A.16 as transferred by 2023 Iowa Acts, Senate File 514.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code chapter 17A and section 84A.16 as transferred by 2023 Iowa Acts, Senate File 514.

Purpose and Summary

As part of the Workforce Development Department’s review of rules under Executive Order 10, the Department identified several instances where this chapter duplicated statutory language and used restrictive terms. Therefore, Chapter 31 has been rescinded.

Public Comment and Changes to Rulemaking

Notice of Intended Action for this rulemaking was published in the Iowa Administrative Bulletin on November 1, 2023, as **ARC 7108C**. A public hearing was held on November 21, 2023, at 9 a.m. in the Capitol View Room, 1000 East Grand Avenue, Des Moines, Iowa. No one attended the public hearing. No public comments were received. No changes from the Notice have been made.

Adoption of Rulemaking

This rulemaking was adopted by the Workforce Development Board and Workforce Development Center Administration Division on January 9, 2024.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking 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).

WORKFORCE DEVELOPMENT BOARD AND WORKFORCE DEVELOPMENT CENTER
ADMINISTRATION DIVISION[877](cont'd)

Effective Date

This rulemaking will become effective on March 13, 2024.

The following rulemaking action is adopted:

ITEM 1. Rescind and reserve **877—Chapter 31**.

[Filed 1/9/24, effective 3/13/24]

[Published 2/7/24]

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