

EDUCATION DEPARTMENT[281]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 256.7(5), the State Board of Education hereby proposes to amend Chapter 56, “Iowa Vocational Rehabilitation Services,” Iowa Administrative Code.

Chapter 56 provides for the services leading to employment for eligible Iowans with disabilities in accordance with Iowa Code chapter 259 and relevant federal statutes and regulations.

The primary reason for this rule making is passage of the Workforce Innovation and Opportunity Act of 2014, which necessitates these changes. The proposed amendments of substance are as follows:

Item 1 clarifies the type of employment sought.

Item 3 adds definitions of “Applicant,” “Appropriate modes of communication,” “Assessment for determining eligibility or in the development of an IPE,” “Benefits planning,” “Comparable services and benefits,” “Competitive integrated work setting,” “Community rehabilitation program,” “Designated state unit,” “Extended services,” “Family,” “Institution of higher education,” “Intensive services,” “Job retention eligible candidate,” “Personal assistance services,” “Plan for natural supports,” “Post-employment services,” “Potentially eligible,” “Preemployment transition services,” “Self-employment services,” “Student with a disability,” “Transportation,” “Vocational rehabilitation services,” “Waiting list,” “Workforce investment activities,” and “Youth with a disability.” Other definitions are amended.

Items 6 through 35 rescind and adopt new rules related to vocational rehabilitation services.

Item 36 rescinds rules 281—56.36(259) through 281—56.42(259).

An agencywide waiver provision is provided in 281—Chapter 4.

Interested individuals may make written comments on the proposed amendments until 4:30 p.m. on November 1, 2016. Comments on the proposed amendments should be directed to Kelley Rice, Iowa Vocational Rehabilitation Services, 510 East 12th Street, Des Moines, Iowa 50319; telephone (515)281-4146; e-mail kelley.rice@iowa.gov; or fax (515)281-4703.

A public hearing will be held on November 1, 2016, from 11 a.m. to 12 noon at the State Board Room, Second Floor, Grimes State Office Building, East 14th and Grand Avenue, Des Moines, Iowa, at which time persons may present their views either orally or in writing. Any persons who intend to attend the public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact and advise the Department of Education of their specific needs by calling (515)281-5295.

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

These amendments are intended to implement Iowa Code chapter 259.

The following amendments are proposed.

ITEM 1. Amend rule 281—56.1(259) as follows:

281—56.1(259) Responsibility of division. The division is responsible for providing services leading to competitive integrated employment for eligible Iowans with disabilities in accordance with Iowa Code chapter 259, the federal Rehabilitation Act of 1973 as amended, the federal Social Security Act (42 U.S.C. Section 301, et seq.), and the corresponding federal regulations.

ITEM 2. Amend rule 281—56.2(259) as follows:

281—56.2(259) Nondiscrimination. The division shall not discriminate on the basis of age, race, creed, color, ~~sex~~ 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.

ITEM 3. Amend rule 281—56.3(259) as follows:

281—56.3(259) Definitions. For the purpose of this chapter, the indicated terms are defined as follows:

“Act” means the federal Rehabilitation Act of 1973, as amended and 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 who submits an application for vocational rehabilitation services; has completed a common intake application through a one-stop center requesting vocational rehabilitation services; has otherwise requested services from the designated state unit; or has provided information necessary to initiate an assessment to determine eligibility and priority for services; and is available to complete the assessment process.

“Appropriate modes of communication” means specialized aids and supports that enable an individual with a disability to comprehend and respond to information that is being communicated.

“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 assignment or development of an IPE.

“Assistive technology device” has the meaning given such term in Section 3 of the Assistive Technology Act of 1998 and means any item, piece of equipment or product system, whether acquired commercially or off the shelf, modified, or customized, that is used to increase, maintain, or improve the functional capabilities of an individual with a disability.

“Assistive technology service” has the meaning given such term in Section 3 of the Assistive Technology Act of 1998 and means any service that directly assists an individual with a disability in the selection, acquisition, or use of an assistive technology device. Assistive technology services include:

1. Evaluating the needs of an individual with a disability, including a functional evaluation of the individual in the individual's customary environment;
2. Aiding an individual with a disability in purchasing, leasing, or otherwise providing for the acquisition of an assistive technology device;
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. Providing training or technical assistance for an individual with a disability or, if appropriate, the family members, guardians, advocates, or authorized representatives of the individual; and
6. Providing training or technical assistance for professionals (including individuals providing education and rehabilitation services), employers, or others who provide services to, employ, or are otherwise substantially involved in the major life functions of individuals with disabilities, to the extent that training or technical assistance is necessary to the achievement of an employment outcome by an individual with disabilities.

“Benefits planning” means those counseling and planning services and supports needed for individuals who, due to their disabilities, are beneficiaries of social security or supplemental security income to enhance the financial ability of the individual to participate in work, plan for or avoid an overpayment, and address their unique disability needs on a job producing a product such as an impairment-related work expense (IRWE) or a program for achieving self-support (PASS).

“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 and the Social Security 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” means any program or service, be it private for profit or nonprofit, that is an approved vendor of the Iowa department of human services’ rehabilitation Medicaid providers and that demonstrates certification of quality services from nationally recognized bodies of oversight.

“Comparable services and benefits” means services and benefits that are provided or paid for in whole or in part by other federal, state, or local public agencies, by health insurance or by employee benefits; are available to the individual at the time needed to ensure the individual’s progress toward achieving an employment outcome in accordance with the individual’s IPE; and commensurate to the services that the individual would otherwise receive from the DSU. For purposes of this definition, comparable benefits do not include educational awards and scholarships based on merit.

“Competitive integrated employment” means work in the competitive labor market that is:

1. Is performed on a full-time or part-time basis, including self-employment, in an integrated setting and for which the job candidate is compensated at or above the minimum wage, but not less than the customary wage and level of benefits paid by the employer for the same or similar work performed by individuals who are not disabled. a rate that:

- Shall not be less than the higher of the rate specified in Section 6(a)(1) of the Fair Labor Standards Act of 1938 or the rate specified in the applicable state or local minimum wage law;

- Is not less than the customary rate paid by the employer for the same or similar work performed by other employees who are not individuals with disabilities and who are similarly situated in similar occupations by the same employer and who have similar training, experience, and skills; and

- Is eligible for the level of benefits provided to other employees;

2. Is at a location where the employee interacts with other persons who are not individuals with disabilities (not including supervisory personnel or individuals providing services to such employee) to the same extent that individuals who are not individuals with disabilities and who are in comparable positions interact with other persons; and

3. As appropriate, presents opportunities for advancement that are similar to those for other employees who are not individuals with disabilities who have similar positions.

“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 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” means a flexible process designed to personalize the employment relationship between a job candidate and an employer in a way that meets the needs of both competitive integrated employment, for an individual with a significant disability, that is based on an individualized determination of the strengths, needs, and interests of the individual with a significant disability; is designed to meet the specific abilities of the individual with a disability and the business needs of the employer; and is carried out through flexible strategies. Customized employment is based on an individualized match between the strengths, conditions, and interests of a job candidate and the identified business needs of an employer. Customized employment utilizes an individualized approach to employment planning and job development, one person at a time, one employer at a time.

“Department” means the department of education.

“Designated representative” means anyone the job candidate designates to represent the job candidate’s interests before and within the division. The term does not necessarily mean a legal representative. The designated representative may be a parent, guardian, friend, attorney, or other designated person.

“Designated state unit” or “DSU” means the division of vocational rehabilitation services.

“Division” means the division of vocational rehabilitation services of the department of education.

“Employment outcome” means, with respect to an individual, entering or retaining full-time or, if appropriate, part-time competitive employment in the integrated labor market; supported employment;

or any other type of employment, including self-employment, telecommuting, ~~homemaking, other unpaid work within the individual's family,~~ or business ownership, that is consistent with an individual's strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice, including satisfying the vocational outcome of customized employment.

"Extended services" means ongoing support services and other appropriate services that are needed to support and maintain an individual with a most significant disability in supported employment and that are:

1. Provided singly or in combination and are organized and made available in such a way as to assist an eligible individual in maintaining supported employment;
2. Organized or made available singly or in combination with other services for job maintenance;
3. Based on a determination of the needs of an eligible individual, as specified in the IPE;
4. Provided by an appropriate source after an individual has made the transition from support provided by the DSU; and
5. Provided to a youth with a most significant disability for no more than 48 months by the DSU when no other resource is available and not beyond the graduation date when the agreement with the department of human services applies, and until such time that the long-term funding is available.

"Family" 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 and has a substantial interest in the well-being of the applicant or job candidate.

"Home modification" means the alteration of an already existing living unit to make it accessible or more accessible by a person with a disability who is involved with the independent living program or as necessary to achieve stable employment as part of an individual individualized plan for employment. The structural integrity and maintenance of the home is the responsibility of the owner. Home modifications are not provided to homes that are not structurally sound.

"Impartial hearing officer" or "IHO" means a person who is not an employee of the division; is not a member of the state rehabilitation advisory council; has not been involved previously in the vocational rehabilitation of the applicant or job candidate; has knowledge of the delivery of vocational rehabilitation services, the state plan and the federal and state rules and regulations governing the provision of such services; has received training in the performance of the duties of a hearing officer; and has no personal or financial interest that would be in conflict with the person's objectivity.

"Independent living services" or "IL services" means those items and services provided to individuals who have a significant physical, mental, or cognitive impairment and whose ability to function independently in the family or community or whose ability to obtain, maintain, or advance in employment is substantially limited, and for whom the delivery of IL services will improve their ability to function, continue functioning, or move toward functioning independently in the family or community or to continue in employment.

"~~Individual Individualized plan for employment~~" or "IPE" means a plan that specifies the services needed by an eligible individual and the involvement of responsibilities of the individual with a disability and other payers and must include the financial obligation of the individual with a disability, the progress measurements, the expected employment outcome and the timeline for achievement of the expected employment outcome and all provisions required by federal regulations.

"Individual with a most significant disability" means an individual who is seriously limited in three or more functional capacities (such as mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, or work skills) in terms of an employment outcome and includes an individual who, because of a disability, has been separated from employment or is in danger of becoming separated from employment.

"Individual with a significant disability" means an individual who has a significant physical or mental impairment that seriously limits one or more functional capacities (such as mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, or work skills) in terms of an employment outcome or who is a recipient of SSD/SSI due to the individual's disability.

“Institution of higher education” has the meaning given the term in Section 102(a) of the Higher Education Act of 1965.

“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 individuals.

With respect to an employment outcome, “integrated work setting” 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 individuals, to the same extent that nondisabled individuals in comparable positions interact with other persons.

“Intensive services” means services only available and provided under an IPE. Intensive services do not include ancillary services, such as maintenance, transportation, benefits planning, reader, interpretation taker services, etc.

“Job candidate” means an applicant or eligible individual applying for or receiving benefits or services from any part of the division and shall include former job candidates of the division whose files or records are retained by the division.

“Job retention eligible candidate” means an individual who is at immediate risk of losing the individual’s job and requires vocational rehabilitation services in order to maintain employment and thereby move directly into active status and bypass the waiting list only for those services that will allow the individual to maintain employment. After having received said service(s) or good(s), the job retention eligible individual will return to the waiting list until that point where the individual’s priority of service is being served.

“Maintenance” means monetary support provided to a job candidate for expenses, such as food, shelter, and clothing, that are in excess of the normal expenses of the job candidate and that are necessitated by the job candidate’s participation in the program.

“Mediation” means the act or process of using an independent third party to act as a mediator, intermediary, or conciliator to assist persons or parties in settling differences or disputes prior to pursuing formal administrative or other legal remedies.

“Menu of services” means the services provided by community partners to assist an individual with a disability in achieving an employment outcome. The services are selected and jointly agreed to 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 assessment toward the costs of these purchased services from a community rehabilitation program. ~~and includes~~ The services include the following:

1. Assessment through discovery, community work-site assessment, comprehensive vocational evaluation, ~~facility work-site assessment~~, career exploration, or job shadowing assessment to identify a realistic vocational goal that is compatible with the individual’s needs, preferences, abilities, disability, and informed choice;

2. Placement services selected by the counselor, job candidate and interested partners to prepare for and obtain employment. Placement services include the following:

- Vocational preparation, performed in a competitive integrated work environment, that enhances and improves the job candidate’s ability to perform specific work, learn the necessary skills to do a specific job, minimize negative work habits and behaviors that have impeded job retention, develop skills in finding a job, and learn how to navigate transportation systems to and from work;

- Work adjustment training, performed in a competitive integrated work environment, that remedies negative work habits and behaviors, improves work tolerance, and develops strategies to improve a job candidate’s ability to maintain employment;

- Job-seeking skills training that teaches the job candidate strategies necessary to find employment at the level required by the job candidate’s needs;

- Job development and job follow-up that places the job candidate on a job in the community working for a business, maintains contact with the employer on the job candidate’s progress, is jointly funded through the Medicaid waiver program when appropriate, and is purchased only when used in conjunction with another required service;

- Employer development that, through a job analysis, identifies for businesses the job tasks and customized training plan for the job for which the job candidate will be trained, is authorized only as a stand-alone service when the Medicaid waiver funds the job development and is purchased only when used in conjunction with another required service;
- Supported job coaching that assists the job candidate in learning job-specific skills and work habits and behaviors while employed on the job and that continues as needed after the division file is closed;
- Selected job coaching that assists the job candidate in learning job-specific skills and work habits and behaviors while employed on the job and that is purchased only when approved by the area office supervisor.

“Ongoing support services” means services that are written in the IPE; are needed to support and maintain individuals with the most significant disabilities in supported employment; are provided, at a minimum, twice monthly to make an assessment regarding the employment situation at the worksite and coordinate provision of specific intensive services needed to maintain stability; are provided by skilled job trainers who accompany the individual for intensive job skill training at the work site; include social skills training, assessment and evaluation of progress, job development and retention, placement services, and follow-up services with the business and the individual’s representatives; and facilitate development of natural supports or any other service(s) needed to maintain employment. Such services shall be specified in the IPE and include, at a minimum, twice monthly monitoring at the work site to assess employment stability, unless it is determined in the IPE that off-site monitoring is more appropriate.

“Personal assistance services” means a range of services provided by one or more persons and designed to assist an individual with a disability to perform, on or off the job, daily living activities that the individual would typically perform if the individual did not have a disability. Such services shall be designed to increase the individual’s control in life and ability to perform everyday activities on or off the job.

“Physical or mental impairment” means an impairment for which services are paid according to the department of human services’ Medicaid or Medicare fee schedule and includes:

1. Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genitourinary, hemic and lymphatic, skin, or endocrine; or
2. Any mental or psychological disorder such as an intellectual disability, organic brain syndrome, emotional or mental illness, or specific learning disabilities; or
3. Any impairment for which an individual has a documented history of receiving special education services in both elementary and secondary school.

“Physical or mental restoration services” means:

1. Corrective surgery or therapeutic treatment that is allowed under Medicaid or Medicare and is likely, within a reasonable period of time, to correct or modify substantially a stable or slowly progressive physical or mental impairment that constitutes a substantial impediment to employment;
2. Diagnosis of and treatment for mental or emotional disorders of a physical, mental, or cognitive disorder by qualified personnel in accordance with state licensure laws; and Medicaid requirements to include:
 3. • Dentistry;
 4. • Nursing services;
 5. • Necessary hospitalization (either inpatient or outpatient) in connection with surgery or treatment and clinical services;
 6. • Drugs and supplies;
 7. • Prosthetic and orthotic devices;
 8. • Eyeglasses and visual services, including visual training, and the examination and services necessary for the prescription and provision of eyeglasses, contact lenses, microscopic lenses, telescopic

lenses, and other special visual aids prescribed by personnel that are qualified in accordance with state licensure laws;

9. • Podiatry;
10. • Physical therapy;
11. • Occupational therapy;
12. • Speech and hearing therapy;
13. • Mental health services;
14. ~~Treatment of either acute or chronic medical complications and emergencies that are associated with or arise out of the provision of physical and mental restoration services or that are inherent in the condition under treatment;~~
15. • Special services for the treatment of individuals with end-stage renal disease, including transplantation, dialysis, artificial kidneys, and supplies; and
16. • Other medical or medically related rehabilitation services.

“Plan for natural supports” means a plan, designed 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 to be provided 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 and training program when the need arises.

“Postemployment services” means services that are intended to ensure that the employment outcome remains consistent with the individual’s unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice. These services are available to meet the rehabilitation needs that do not require a complex and comprehensive provision of services and, thus, are limited in scope and duration.

“Potentially eligible” means students who may be in special education served under an individual education plan (IEP) or are considered to have a disability according to Section 504 of the Rehabilitation Act of 1998 and the Americans with Disabilities Act of 1992. These individuals may receive preemployment transition services but are not considered eligible for intensive services nor have they applied for services when they are potentially eligible.

“Preemployment transition services” means services provided in accordance with Section 113 of the Workforce Innovation and Opportunity Act to all students with disabilities who are in need of services and are eligible or potentially eligible for services. Preemployment transition services include the following:

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 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;
5. Instruction in self-advocacy, which may include peer mentoring;
6. Authorized activities to improve transition from secondary to postsecondary activities and employment outcomes; and
7. Coordinated and authorized activities to work with teachers, employers, and others interested in the transition of the student to enhance effective transition of the student with a disability from secondary to postsecondary activities and employment.

“Progressive employment” means a coordinated set of experiences that may begin with volunteering and gradually progress to competitive employment for individuals for whom employment has not otherwise occurred that there is something for every job candidate on the employment services continuum. Progressive employment combines a number of placement strategies (examples include job shadow, informational interviews, short-term training assignments, on-the-job training, volunteer work,

temporary employment, part-time employment) which are used as stepping-stones for the individual with a disability to access competitive integrated employment.

“Rehabilitation engineering” means the systematic application of engineering sciences to design, develop, adapt, test, evaluate, apply, and distribute technological solutions to problems confronted by individuals with disabilities in functional areas, such as mobility, communications, hearing, vision, and cognition, and in activities associated with employment, independent living, education, and integration into the community.

“Rehabilitation technology” means the systematic application of technologies, engineering methodologies, or scientific principles to meet the needs of, and address the barriers confronted by, individuals with disabilities in areas that include education, rehabilitation, employment, transportation, independent living, and recreation. The term includes rehabilitation engineering, assistive technology devices, and assistive technology services. For purposes of the rehabilitation services bureau of the DSU, the purposeful inclusion of rehabilitation technology in an IPE is for the purposes of preparing for, obtaining, maintaining, or advancing in employment.

“Residency requirement” is a condition of eligibility and is met by an individual who resides in the state of Iowa and is present and available for participation in a rehabilitation plan leading to competitive integrated employment.

“Satisfactory employment” means stable employment consistent with an individual’s IPE and acceptable to both the individual and the employer.

“Self-employment services” means services specifically for the eligible individual who has an idea for ownership of a for-profit business, and includes technical assistance in developing proprietary skills and knowledge as well as financial assistance for business start-up that does not exceed \$10,000 and requires a dollar-for-dollar match from the job candidate seeking self-employment.

“Status” means the existing condition or position of a case. The specific case statuses are as follows:

- 02-0 Referral/Applicant (individual requests services and signs the rights and responsibilities form);
- 04-0 Accepted for services (eligible), but does not meet waiting list categories being served;
- ~~06-0 Trial work experiences/extended evaluation (individual’s abilities, capabilities, and capacities are explored);~~
- 08-0 Closed before acceptance (eligibility criteria cannot be met or case is closed for some other reason);
- 10-__ Accepted for services (eligible); substatus:
 - 40-0 10-1 Eligible individuals in secondary education;
 - 12-0 IPE developed, awaiting start of services;
 - 14-0 Counseling and guidance only (counselor works with job candidate directly to reach goals through counseling and placement);
 - 16-0 Physical and mental restoration (when such services are the most significant services called for on the IPE);
 - 18-__ Training (when training is the most significant service called for on the IPE); substatuses are:
 - 18-1 Training in a workshop/facility;
 - 18-2 On-the-job training;
 - 18-3 Vocational-technical training;
 - 18-4 Academic training;
 - 18-5 Correspondence training;
 - 18-6 Supported employment;
 - 18-7 Other types of training not covered above (including nonsupported employment job coaching);
 - 20-0 Ready for employment (IPE has been completed to extent possible);
 - 22-0 Employed;
 - 24-0 Service interrupted (IPE can no longer be continued for some reason, and no new IPE is readily obvious);
 - 26-0 Closed rehabilitated (can only occur from Status 22-0 when job candidate has been employed in the job of closure for a minimum of 90 days);

28-0 Closed after IPE initiated (suitable employment cannot be achieved, or employment resulted without benefit of services from the division);

30-0 Closed before IPE initiated (can only occur from either Status 10-__ or 12-0 when a suitable individual individualized plan for employment cannot be developed or achieved or when employment resulted without benefit of services from the division);

32-0 Postemployment services;

33-__ Closed after postemployment services; substatures are:

33-1 Individual is returned to suitable employment, or employment is otherwise stabilized;

33-2 Case reopened for comprehensive vocational rehabilitation services;

33-3 Situation has deteriorated to the point that further services would be of no benefit to individual;

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 top of waiting list).

"Student with a disability" means an individual with a disability who is not younger than the age of 14 and is not older than the age of 21; and is eligible for, and receiving, special education or related services under the Individuals with Disabilities Education Act; or is an individual with a disability for purposes of Section 504 and meets the age requirements.

"Substantial impediment to employment" means that a physical or mental impairment (in light of attendant medical, psychological, vocational, educational, communication, and other related factors) hinders an individual from preparing for, entering into, engaging in, or retaining competitive integrated employment consistent with the individual's abilities and capacities.

"Supported employment" means:

1. Competitive competitive integrated employment, including customized employment, or employment in an integrated work setting, or employment in integrated work settings in which individuals are working toward competitive employment, in which individuals are working on a short-term basis toward competitive integrated employment. Such employment is individualized and customized consistent with the strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice of the individuals, with individual for whom ongoing support services for individuals with the most significant disabilities: is necessary.

• ~~For whom competitive employment has not traditionally occurred or for whom competitive employment has been interrupted or intermittent as a result of a significant disability; and~~

• ~~Who, because of the nature and severity of their disabilities, need intensive supported employment services from the division and extended services after transition to perform this work; or~~

2. ~~Transitional employment, as defined herein, for individuals with the most significant disabilities due to mental illness.~~

"Supported employment services" means ongoing support services, and other appropriate services including customized employment, that are needed to support and maintain an individual with a most significant disability in supported employment, that are provided by the division and documented: for no more than 24 months, except that period may be extended if necessary in order to achieve the employment outcome as identified in the IPE, are provided singly or in combination with other services, and are organized and made available in such a way as to assist an eligible individual to achieve an employment outcome within a 24-month period of time, which may be extended based on the needs of the individual.

1. ~~For a period of time consistent with federal regulations unless, under special circumstances, the eligible individual and the rehabilitation counselor jointly agree to extend the time to achieve the employment outcome identified in the IPE; and~~

2. ~~Following successful case closure, as postemployment services that are unavailable from an extended service provider and that are necessary for the individual to maintain or regain the job placement or to advance in employment.~~

"Transitional employment," as used in the definition of supported employment, means a series of temporary job placements in competitive work in integrated settings with ongoing support services for individuals with the most significant disabilities due to mental illness. In transitional employment,

the provision of ongoing support services must include continuing sequential job placements until job permanency is achieved.

“Transition services” means a coordinated set of activities provided to a student and designed within an outcome-oriented process that promotes movement from school to postschool activities. Postschool activities include postsecondary education, vocational training, integrated employment (including supported employment), continuing and adult education, adult services, independent living, and community participation. The coordinated set of activities must be based upon the individual student’s needs, taking into account the student’s preferences and interests, and must include instruction, community experiences, the development of employment and other postschool adult living objectives, and, if appropriate, acquisition of daily living skills and functional vocational evaluation. Transition services must promote or facilitate the achievement of the employment outcome identified in the student’s IPE.

“Transportation” means travel and related expenses that are necessary to enable an applicant or eligible individual to participate in a vocational rehabilitation service.

“Trial work experiences” means an exploration of the individual’s abilities, capabilities, and capacity to perform in realistic work situations in an integrated work setting in order to determine whether there is clear and convincing evidence that the individual is too severely disabled to benefit from the division’s services.

“Vocational rehabilitation services” means those services identified under an IPE and provided to individuals who have applied for and been determined eligible for services by the DSU to enable individuals with disabilities, including individuals with the most significant disabilities, to pursue meaningful careers by securing gainful competitive integrated employment commensurate with their abilities and capabilities.

“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.

“Workforce investment activities” means the provision of workforce development activities that creates linkages and systemic improvements so that individuals with disabilities are ensured an effective and meaningful participation in workforce innovation and opportunity activities.

“Youth with a disability” means an individual with a disability who is not younger than 14 years of age and not older than 24 years of age.

ITEM 4. Amend rule 281—56.4(259) as follows:

281—56.4(259) Individuals who are recipients of SSD/SSI. Recipients of social security disability payments or supplemental security income payments are presumed eligible as being significantly disabled and are eligible for vocational rehabilitation services if such recipients demonstrate eligibility under ~~rules~~ subrule 56.6(6) and rule 281—56.8(259) and 281—56.13(259). Recipients who demonstrate eligibility under ~~rules~~ subrule 56.6(6) and rule 281—56.8(259) and 281—56.13(259) must also demonstrate need in the employment plan under ~~rule 281—56.14(259) 281—56.9(259)~~. Nothing in this rule automatically entitles a recipient of social security disability payments or supplemental security income payments to any good or service provided by the division. Qualified division 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.

ITEM 5. Amend rule 281—56.5(259) as follows:

281—56.5(259) Eligibility for vocational rehabilitation services.

56.5(1) Eligibility for vocational rehabilitation services shall be determined upon the basis of the following:

56.5(1) a. A determination by a ~~qualified personnel~~ qualified rehabilitation counselor that the applicant has a physical or mental impairment;

~~56.5(2) b.~~ A determination by a qualified ~~personnel~~ rehabilitation counselor that the applicant's physical or mental impairment constitutes or results in a substantial impediment to employment for the applicant;

~~56.5(3) c.~~ A determination by a qualified vocational rehabilitation counselor that the applicant requires vocational rehabilitation services due to the applicant's disability to prepare for, secure, retain, or regain, or advance in employment consistent with the applicant's unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.

~~56.5(2)~~ A presumption exists that the applicant can benefit, in terms of an employment outcome, from the provision of vocational rehabilitation services. ~~This presumption may be overcome by the division if, based on clear and convincing evidence, the division determines that the applicant is incapable of benefiting, in terms of an employment outcome, from vocational rehabilitation services due to the severity of the applicant's disability;~~

~~56.5(4)~~ A determination that the individual meets the residency requirement at the time of application.

~~56.5(3)~~ Standards for ineligibility. If the DSU determines that an applicant is ineligible for vocational rehabilitation services or determines that an individual receiving services under an IPE is no longer eligible for services, the DSU must:

a. Make the determination only after full consultation with the individual impacted, or as appropriate, the individual's representative;

b. Inform the individual in writing, supplemented with appropriate modes of communication;

c. Provide to the individual the individual's appeal or mediation rights;

d. Provide the individual information on the Iowa client assistance program (ICAP);

e. Refer the individual to other appropriate programs; and

f. Review the decision semiannually the first year, and annually thereafter, when the decision to close the file is based on findings that the individual who received services under an IPE is incapable of achieving an employment outcome at the time of closure.

ITEM 6. Rescind rule 281—56.6(259) and adopt the following **new** rule in lieu thereof:

281—56.6(259) Other eligibility and service determinations.

56.6(1) *Achievement of an employment outcome.* Any eligible individual, including an individual who is presumed eligible, must intend to achieve an employment outcome that is consistent with the applicant's unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice. The DSU is responsible for informing individuals, through the application process for services, that individuals who receive services from the DSU must intend to achieve 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.

56.6(2) *Options for IPE development.*

a. The DSU will provide information on the available options for developing the individualized plan for employment (IPE), including the option that an eligible individual or, as appropriate, the individual's representative may develop all or part of the IPE:

(1) Without assistance from the DSU or any other entity; or

(2) With assistance from:

1. A qualified vocational rehabilitation counselor employed by the DSU;

2. A qualified vocational rehabilitation counselor not employed by the DSU;

3. A representative of DSU under the guidance of a DSU vocational rehabilitation counselor;

4. A disability advocacy organization, such as the Iowa client assistance program (ICAP) or Disability Rights Iowa, or any other advocacy organization of the individual's choosing; or

5. A representative through another source that is already working with the individual, such as the individual's case manager.

b. The IPE is not approved or put into practice until it is discussed and reviewed with, revised if applicable, and approved by the vocational rehabilitation counselor employed by DSU.

c. The IPE implementation date begins on the date of the DSU counselor's signature.

d. There is no compensation for any expenses incurred while the IPE is developed with any entity not employed by the DSU.

e. If the job candidate is not on the DSU waiting list and requires some assessment services to develop the IPE, the job candidate must discuss the needs in advance with the DSU counselor and obtain prior approval if financial assistance is needed from the DSU to pay for the assessment service.

f. If the job candidate requires information from a benefits planner, the DSU can provide or arrange that assistance at any time during the development or implementation of the plan, when the job candidate is off the waiting list.

56.6(3) Scope of services. Vocational services for eligible individuals not on a waiting list are services described in an individualized plan for employment 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. The services include:

a. Assessment for determining eligibility and services needed for an eligible individual to achieve competitive integrated employment including, if necessary, an assessment in rehabilitation technology;

b. Counseling and guidance, which is career counseling to provide information and support services to assist the eligible individual in making informed choices about the individual's future work or career goals;

c. Referral and other services to secure needed services from other agencies and through agreements with other organizations and agencies;

d. 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;

e. Vocational and other training services that assist the eligible individual in preparing for work or an occupation identified on the IPE and include the provision of personal and vocational adjustment services, books, tools, and other training materials, except that no training services may be paid for with funds by the DSU unless maximum efforts have been made by the DSU and the individual to secure grant assistance, in whole or in part, or assistance from other sources to pay for such training;

f. Training and training materials as provided according to the fee schedule:

(1) The training and books and supplies are necessary for the job candidate's satisfactory occupational adjustment.

(2) The job candidate has the mental and physical capacity to acquire a skill that the job candidate can perform in an occupation commensurate with the job candidate's abilities and limitations.

(3) The job candidate is not otherwise precluded by law from employment in the job candidate's field of training.

(4) If the costs exceed the fee schedule established for in-state training, individuals deciding to attend a training program outside the state of Iowa may do so at their own expense;

g. Physical and mental treatment may be provided to the extent that financial support is not readily available from another source, such as health insurance of the individual or a comparable service or benefit, and said treatment is essential to the progression of the individual to achieve the competitive integrated employment outcome:

(1) The service is necessary for the job candidate's satisfactory occupational adjustment.

(2) The condition causing 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.

56.6(4) Specific services requiring financial assessment. Financial need must be established prior to provision of certain services at the division's expense and is evidenced by documents of financial income. Applicants are eligible for physical restoration, occupational licenses, customary occupational tools and equipment, training materials, maintenance and transportation (except transportation for diagnosis, guidance or placement) only on the basis of financial need and when services are not otherwise immediately available or comparable benefits and services are not available. The following services require an establishment of financial need:

- a. Physical restoration.
- b. Training and training materials.
- c. Occupational licenses and occupational tools and equipment. The division may pay for occupational licenses and customary occupational tools and equipment when they are necessary for the job candidate's entrance into, and successful performance in, a selected occupation.
- d. Transportation. A job candidate may be provided transportation in connection with securing medical or psychological examinations, physical restoration, training or placement if such transportation is part of the job candidate's IPE. A companion may be provided transportation at the division's expense if the job candidate cannot travel alone.
- e. Maintenance, which shall be provided in concert with documentation of the expenditure and appropriate receipts. A job candidate is eligible for maintenance when it is necessary to the job candidate's vocational rehabilitation and is an extra expense incurred due to the IPE.
- f. Self-employment services. These services are specifically for the eligible individual who has an idea for ownership of a for-profit-making business and include technical assistance in developing proprietary skills and knowledge as well as financial assistance for business start-up that does not exceed \$10,000 and requires a dollar-for-dollar match from the job candidate seeking self-employment.
- g. Preemployment transition services. These services focus students and youth with disabilities on preparing for, securing, and retaining competitive integrated employment by using a variety of work-based learning strategies and work-readiness strategies combined with counseling and guidance as well as self-advocacy development.

56.6(5) *Areas in which exceptions shall not be granted.* Pursuant to federal law, an exception shall not be granted for any of the following requirements:

- a. The eligibility requirements in rule 281—56.5(259) (i.e., presence of disability, substantial impediment to employment, need for vocational rehabilitation services).
- b. The required contents of the IPE and plan of natural supports.
- c. Identification of a long-term follow-up provider in supported employment cases.
- d. Being in employment and in Status 22-0 consistent with federal regulations prior to Status 26-0 closure.
- e. Time frames, such as the federal requirement that eligibility be determined within 60 days of an individual's application for services unless the individual has agreed to an extension.
- f. Intensive services may be provided only to eligible individuals who are not on a waiting list, except for assessments which will help the division appropriately determine on which waiting list an individual belongs.

56.6(6) *Waiting list.* As required by 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.

- a. The three categories of waiting lists are as follows, listed in order of priority to be served:
 - (1) Individuals with most significant disabilities;
 - (2) Individuals with significant disabilities; and
 - (3) Other individuals.
- b. An individual's order of selection is determined by the waiting list and the date on which the individual applied for services from the division. All waiting lists are statewide in scope; no regional lists are to be maintained.

c. 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.

56.6(7) *Individuals who are blind.* Pursuant to rule 111—10.4(216B), individuals who meet the department for the blind's definition of "blind" are to be served primarily by the department for the blind. Individuals with multiple disabilities who also are blind may receive technical assistance and consultation services while the department for the blind provides their rehabilitation plan. Joint cases are served in the Iowa self-employment program and other contracts developed by the DSU.

56.6(8) *Students in high school.* The division may serve students in high school who may legally work in competitive integrated environments. If an applicant is in high school and is determined to be

eligible for vocational rehabilitation services, such services begin before the student exits the secondary school system. The services shall not supplant services for which the secondary school is responsible and are delivered according to the memorandum of understanding in effect with the department of education.

a. When the DSU determines that a student is eligible for services, the student's place on the waiting list under subrule 56.6(6) shall be determined. If the waiting list category appropriate for the student is a category currently being served, the case record moves to a planning status and the student will work with a counselor, or other DSU representative, to develop an IPE. The student may also work with other representatives of the student's choosing to assist with the development of the IPE; however, said plan is not in effect until approved and signed by the rehabilitation counselor of record. Otherwise, the case is placed in Status 04-0, and the student's name is added to the waiting list for that category, based on the student's date of application. The IPE must be in place as required by federal regulations, unless the student has agreed to an extension or is on a waiting list. The IPE shall be developed in accordance with the standard established by the division and within the time frames established by federal regulations.

b. The counselor assigned by the division to work with the student may participate in the student's individualized education program meetings to provide consultation and technical assistance if the student is on the waiting list for services, as well as preemployment transition services that are not intensive services. Once a student is removed from the waiting list, the counselor may also provide vocational counseling and planning for the student and coordinate services with transition planning teams. When such services do not supplant services for which the secondary school is responsible, the division may begin to provide services specifically related to employment, such as supported employment. As needed for the student's progression toward employment, a student who is in high school or in an alternative high school and has not yet met high school graduation requirements after four years of secondary enrollment may continue to receive services that do not supplant the responsibilities of the high school. A student who is in the student's final year of high school and has made satisfactory progress and has demonstrated job-specific skills to work in the student's trained profession may receive assistance in purchasing tools to be used on the job for which the student studied.

56.6(9) *Establishment of financial need.* The division establishes the job candidate's financial need prior to providing physical restoration, including prostheses; transportation (for other than diagnostic, guidance or placement purposes); maintenance; and occupational licenses, tools and equipment. Recipients of SSD/SSI due to their disability who are independent are not subject to a financial needs test for any services but must demonstrate eligibility under subrule 56.6(6) and rule 281—56.8(259), as well as demonstrate need in the IPE under rule 281—56.9(259).

a. For the determination of financial need, the job candidate or, in the case of a minor, the minor's parent or guardian, or family in which the individual resides, is required to provide documentation regarding all family income from any source that may be applied toward the cost of rehabilitation services, except the rehabilitation services of diagnosis, counseling, training and placement, which are provided without regard to financial need; however, the division shall not pay for more than the balance of the cost of the service minus comparable services and benefits and the individual's documented contribution. A comparable services and benefits search is required for some services. When an individual refuses to supply documentation of family income, the individual assumes 100 percent of the responsibility for the costs of rehabilitation.

b. The division shall observe the following policies in making a determination of 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 job candidate or of those responsible for the job candidate.

(2) A supervisor may grant an exception in cases where the applicant's disability caused or is directly related to financial need and where all other sources of money have been exhausted by the applicant or the parents or guardians of a minor applicant.

(3) Consideration shall be given to the job candidate's responsibility for the immediate needs and maintenance of the job candidate's dependents, and the job candidate shall be expected to reserve

sufficient funds to meet the job candidate'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 beyond the basic support for college is requested. Public grants and institutional grants or scholarships not based on merit are considered a comparable benefit.

ITEM 7. Rescind rule 281—56.7(259) and adopt the following **new** rule in lieu thereof:

DIVISION IV
CASE MANAGEMENT

281—56.7(259) Case finding and intake. The DSU seeks to locate all disabled individuals of employable age who desire to be employed full- or part-time and may be eligible for vocational rehabilitation services. To that end, referrals are accepted from all sources, and the DSU has established working relationships with public and private agencies in the areas of health, welfare, compensation, education, employment, rehabilitation, and other related services.

56.7(1) All new cases, whether referred to a local worker or to the division, are checked for previous information and are acknowledged promptly by letter or a personal call. Individuals with the most significant disabilities who are working at subminimum wage in a non-integrated setting are provided information about competitive integrated employment and support from the DSU, once known to the DSU, by qualified personnel and partners with the goal of assisting said individuals to pursue competitive integrated employment.

56.7(2) Referral for services from other programs. The DSU 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. The DSU will also inform individuals with disabilities concerning the availability of employment options and vocational rehabilitation services to assist the individuals to achieve an appropriate employment outcome. The DSU will inform individuals who are in an extended employment setting that vocational rehabilitation services may be provided to them for purposes of training or to otherwise prepare them for employment using appropriate services to achieve employment in an integrated setting. The DSU 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. The DSU will refer the individual to a benefits planner in order that the individual will learn about work incentives. An appropriate referral is generally to federal or state programs, and to other programs carried out by other workforce development systems, that are best suited to address the specific employment needs. The DSU will provide the individual:

- a. A notice of the referral;
- b. Information identifying a specific point of contact at the agency to which the individual is referred;
- c. Information and advice on the referral regarding the most suitable services to assist the individual.

ITEM 8. Rescind rule 281—56.8(259) and adopt the following **new** rule in lieu thereof:

281—56.8(259) Case diagnosis used in case recording. The diagnosis of an individual with a disability is conducted by qualified personnel under state licensure laws, and the division personnel use that information as part of the eligibility requirements. The eligibility of the individual constitutes a comprehensive study of the individual, including medical as well as a vocational impediment of the individual. Each case diagnosis is based on pertinent information, including the individual's health

and physical status, intelligence, educational background and achievements, vocational aptitudes and interests, employment experience and opportunities, and personal and social adjustments. This information then is used to assess the significant impediments posed by the diagnosis toward employment to determine and identify the comprehensive services needed to prepare for, obtain, maintain, or advance in competitive integrated employment.

56.8(1) *Medical diagnosis.* As a basis for determination of eligibility and formulation of the individual's rehabilitation plan, the division secures competent medical diagnosis. When necessary, the diagnosis is, if at all practicable and appropriate, secured from recognized specialists in specific fields indicated by the general medical diagnosis. Whenever possible, the diagnosis is accompanied by recommendations as to the means and methods of restoration and by a statement of any physical or mental limitations that may exist.

56.8(2) *Current medical reports.* The division accepts a medical report in lieu of securing a new examination when the report can be relied upon to provide a sound basis for diagnosis of the physical or mental condition of the individual; is from providers or sources as listed in the case service manual; and is from an accredited or certified medical or treatment institution recognized by the state of Iowa or licensed by the department of public health or department of human services in any other state.

56.8(3) *Current health assessment.* The division requires that a current health assessment questionnaire is completed and placed in the record at the time of application if the individual with a disability does not have medical records within the last three years.

56.8(4) *Vocational impediment.* The methods of determining vocational impediments include counseling interviews with the job candidate; reports from medical, psychological, or psychiatric providers; and reports from schools, employers, social agencies, and others.

56.8(5) *Recording case data.* The division maintains a record for each case. The case record contains pertinent case information 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. A case record may not be destroyed until four years after the case has been closed. A case record documenting participation in a transitional alliance program shall be maintained until the job candidate reaches age 25 or later.

56.8(6) *Achievement of an employment outcome.* Any eligible individual, including an individual who is presumed eligible, must intend to achieve an employment outcome that is consistent with the individual's unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice. The DSU is responsible for informing individuals, through the application process for services, that individuals who receive services from the DSU must intend to achieve an employment outcome. The individual's completion of the application process for vocational rehabilitation services is sufficient evidence of the individual's intent to achieve an employment outcome.

ITEM 9. Rescind rule 281—56.9(259) and adopt the following new rule in lieu thereof:

281—56.9(259) Individualized plan for employment (IPE).

56.9(1) *Content.* The IPE contains the job candidate's expected competitive integrated employment goal, the specific vocational rehabilitation services needed to reach that goal, the entity or entities that will provide those services, the method by which satisfactory progress will be evaluated, and the methods available for procuring the services. The IPE shall be developed consistent with federal regulations. The IPE must contain the specific employment outcome that is chosen by the eligible individual, consistent with the individual's unique strengths, resources, priorities, concerns, abilities, capabilities, interests and informed choice. In the case of an eligible individual who is a student in transition, the description may be a description of the student's projected postschool employment outcome in the most competitive integrated setting and the vocational rehabilitation services needed to achieve it including, as appropriate, assistive technology, personal assistance services, and the specific transition services and supports needed to achieve the projected postschool employment outcome. The IPE must contain the financial responsibility of the eligible individual as well as the methods used to evaluate progress and all corresponding responsibilities of those involved. The IPE also must contain

information on how the eligible individual may access services from the Iowa client assistance program (ICAP), as well as appeal and mediation rights.

56.9(2) *Job candidate's participation and approval.* The IPE is formulated with the job candidate's participation and approval and provides for all rehabilitation services that are recognized to be necessary to fully accomplish the job candidate's vocational rehabilitation whether or not services are at the expense of the division. The IPE and progress are developed and monitored with the individual and as such must be conducted with the eligible individual. Family members may represent the individual when the individual is hospitalized and the case is interrupted until discharge, at which time the case will resume and participation requirements apply.

56.9(3) *Conditions for development of the IPE.* The basic conditions to be considered during the development of the IPE are:

a. The belief of the division that when concluded the IPE shall satisfactorily aid in the individual's achievement of competitive integrated employment; and

b. That all services are provided, unless amended and determined unnecessary. The division exercises its discretion in relation to the termination or revision of the individual's IPE when, for any reason, it becomes evident that the IPE cannot be completed.

56.9(4) *Cooperation by the job candidate.* The division requires good conduct, regular attendance and cooperation of all individuals engaged in the IPE's implementation. The division makes the following provisions for ensuring trainee cooperation: instruction through communication in the job candidate's preferred method of communication; at the beginning of the program, advising each trainee about what is expected of the trainee and that services shall continue only if the trainee's progress, attitude and conduct are satisfactory; requiring periodic progress, grade and attendance reports from the training agency; calling the trainee's attention to evidence of unsatisfactory progress or attendance before such conditions become serious; providing encouragement to the trainee to promote good work habits; and maintaining good relationships with the training agency; and other methods agreed to and determined appropriate by the qualified rehabilitation counselor, the job candidate, and representative, if applicable.

56.9(5) *Ticket to work.* The job candidate's signature on the IPE verifies the ticket assignment to the division unless otherwise directed by the job candidate.

56.9(6) *Amending the IPE.* Amendment of the IPE may be done by the individual with a disability in collaboration with a representative of the division or a qualified rehabilitation counselor or other options as described in the definition. If there are substantive changes in the employment outcome, the vocational rehabilitation services to be provided, or the service providers of the services, the changes shall not take effect until the amendment is signed by the individual with a disability, or as appropriate the individual's representative, and by a qualified rehabilitation counselor employed by the division.

ITEM 10. Rescind rule 281—56.10(259) and adopt the following **new** rule in lieu thereof:

DIVISION V
SERVICES

281—56.10(259) Scope of services. All necessary vocational rehabilitation services, including counseling, physical restoration, training, and placement, are made available to eligible individuals to the extent necessary to achieve their goal to be competitively employed in an integrated work setting and must be included in the IPE and agreed to by the eligible individual's counselor before the service is delivered. The division cooperates with federal and other state agencies providing vocational rehabilitation or similar services, and written agreements providing for interagency cooperation may be entered into as required by the Act at the discretion of the division. In selected instances, the division assumes responsibility for providing short periods of medical care for acute conditions arising in the course of the job candidate's rehabilitation, which if not cared for would constitute a hazard to the achievement of the rehabilitation objective unless comparable services or benefits are available to the individual. The DSU assumes all medical expenses for adult job candidates that are the direct result of an injury while participating in an unpaid work experience developed by division staff and implemented

under an IPE. Such injuries of students are the responsibility of the local education agency when provided under an individual education plan.

ITEM 11. Rescind rule 281—56.11(259) and adopt the following new rule in lieu thereof:

281—56.11(259) Training.

56.11(1) *Duration of training.* Rehabilitation training is provided according to the actual needs of the individual. It is designed to achieve the specific employment outcome that is selected by the individual consistent with the individual's unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.

56.11(2) *Types of training.* The types of training programs available are as follows:

a. Postsecondary training, which is training in the arts and sciences for which postsecondary credit is given and which is generally considered to be applicable toward an associate's degree, bachelor's degree, or advanced degree.

b. Vocational training, which includes any organized form of instruction that provides the knowledge and skills essential for performing in a vocational-technical area. Such knowledge and skills may be acquired through training in an institution, on the job, by correspondence, by tutors, through a selection from the menu of services, by apprenticeship, or through a combination of any or all of these methods.

c. Work adjustment training, which includes any training given for any one or a combination of the following reasons:

(1) To assist individuals with disabilities, if needed, to acquire personal habits, attitudes and skills that will enable them to function effectively.

(2) To develop or increase work tolerance prior to engaging in vocational training or in employment.

(3) To develop work habits and to orient the individual to the world of work.

(4) To provide skills or techniques for the specific purpose of enabling the individual to compensate, through assistive technology, assistive technology devices, or prosthetics, for the loss of the use of a member of the body or the loss of a functional capacity.

d. Job coaching, which includes, but is not limited to, intensive work site training necessary to teach a job candidate both the job duties and job-related responsibilities.

e. Supported employment, which means competitive work in an integrated work setting with ongoing support services for individuals with the most significant disabilities for whom competitive integrated employment has not traditionally occurred or has been interrupted or intermittent as a result of significant disabilities. Supported employment is limited in accordance with federal regulations.

f. OJT, which means training on the job either as an employee or trainee of the business.

56.11(3) *Scope of training.* The division may provide training services as long as those services are part of a job candidate's IPE. Training facilities shall be selected to meet the job candidate's health, disability, and program needs. Training facilities within the state are preferred when they are comparable; those outside Iowa shall not be used unless approved for use by the vocational rehabilitation agency in the state in which the facility is located. The rate that is paid for a program outside the state remains the same as if the individual studied in the state and is in accordance with the appropriate fee schedule.

56.11(4) *Financial assistance for postsecondary training.* Calculations of financial assistance for postsecondary training are determined annually. In order for the division to continue to assist the greatest practical number of eligible job candidates, assistance shall be no less than 40 percent and no more than 70 percent of the cost of attending the least expensive in-state public institution for a course of instruction leading to an undergraduate degree. In all cases, the postsecondary institution in which the student is enrolled must be accredited by an entity recognized by the federal Department of Education as having authority to accredit postsecondary institutions.

a. Tuition and fee-based general assistance.

(1) Second year or less status. A student is considered to be in second year or less status when the student has earned fewer than 60 semester or 90 quarter credit hours in the student's present area of study or discipline; when the student is enrolled in a community college or other two-year postsecondary

institution; or when the student is enrolled in a program whose terminal degree is an associate's degree but the student has not yet attained the associate's degree. For an eligible student in second year or less status, the division shall develop the fee schedule based on the least expensive per-credit-hour tuition charged by an Iowa community college. An eligible individual who changes the individual's goal after studying more than two years, but the new goal is a technical degree, is considered to be at the less-than-two-year status.

(2) Third or fourth year status. A student is considered to be in third or fourth year status if the student has earned at least 60 semester or 90 quarter credit hours or has achieved an associate's degree in the student's present area of study or discipline but has not yet earned a postsecondary baccalaureate degree. For an eligible student in third or fourth year status, the division will develop the fee schedule based on the least expensive Iowa regents institution. Students in third or fourth year status who take graduate courses are only eligible to receive the established assistance rate for third or fourth year status.

(3) Medical school. Only a student enrolled full-time in a graduate school pursuing a course of studies that will lead to a medical doctor (MD) or doctor of osteopathy (DO) degree is eligible for assistance under this paragraph. For a student who is an MD or DO candidate, the division shall pay according to the fee schedule based on the college of medicine of the University of Iowa. Students pursuing any other graduate degree in a medical arts program may be eligible for assistance under subparagraph 56.11(4)"a"(5). Chiropractic school is covered under subparagraph 56.11(4)"a"(5).

(4) Law school. Only a student enrolled full-time in a graduate school pursuing a course of studies that will lead to a doctor of jurisprudence (JD) degree is eligible for assistance under this paragraph. For a student who is a JD candidate, the division shall pay according to the fee schedule based on the college of law of the University of Iowa. Students pursuing any other graduate degree from a law school may be eligible for assistance under subparagraph 56.11(4)"a"(5).

(5) Graduate or postgraduate school. Notwithstanding subparagraphs 56.11(4)"a"(3) and (4), for a student enrolled in a graduate or postgraduate school, the division shall pay according to the fee schedule established by the division based on the least expensive comparable graduate school at an Iowa regents institution.

(6) Distance learning (online courses). For a student enrolled in a distance learning course, the division shall pay the lesser of one of the following:

1. The actual cost of the course if the cost is less than the two-year rate on the DSU fee schedule;
- or

2. The rate established for a student at the student's academic level.

(7) Continuing education and non-financial aid supported programs and courses. The division shall pay the lesser of one of the following:

1. For continuing education students or a student at the four-year level attending classes at a two-year college, the actual cost of the course if the cost is less than the two-year rate on the DSU fee schedule, or

2. The rate established for a student in second year or less status if the cost of the program or course is more than the two-year rate.

(8) Out-of-state postsecondary institutions. For an eligible student who attends a postsecondary institution located outside Iowa, the division shall pay at the same rates set in this subrule.

b. Support services for postsecondary training. Unless approved as an exception by the supervisor, the amounts authorized for the items listed herein cannot exceed the amounts that would otherwise be spent on tuition and fees.

(1) Transportation shall be provided only when and to the extent that the cost is caused by participation in a program of vocational rehabilitation services.

(2) Maintenance shall be provided only to support participation in a program of vocational rehabilitation services when the job candidate has an extra expense beyond the job candidate's living expenses.

(3) Books, computers, and supplies may be provided in lieu of tuition and fees, but the amount provided therefor shall be based on the established rate on tuition and fees.

(4) Tutoring shall be provided only for courses that are part of the actual degree requirements and only when this service is not available or the legal responsibility of the training institution attended by the job candidate. Tutoring for program entrance examinations, such as the GRE, LSAT, or MCAT, is not allowed without an exception approved by the supervisor and are time limited and must be taught by qualified organizations.

(5) Unless approved as an exception, tools and equipment required for participation in a training program shall be provided in lieu of the tuition and fee amount, not to exceed the established fee rate.

(6) Unless approved as an exception, supplies for a course without which the course cannot be successfully completed shall be provided in lieu of the tuition and fee amount, not to exceed the established fee rate.

(7) Fees for certification tests that are part of a course shall be paid according to the tuition and fees standard. For certifications and licensure fees that are not part of a course, the DSU shall use the financial needs assessment form to determine the level of DSU participation, but the tests must be required by the occupation in which the job candidate plans to work as documented in the IPE.

56.11(5) Guidance for postsecondary training. General guidance regarding postsecondary training is available from the division's policy manual.

ITEM 12. Rescind rule 281—56.12(259) and adopt the following **new** rule in lieu thereof:

281—56.12(259) Maintenance. 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.

ITEM 13. Rescind rule 281—56.13(259) and adopt the following **new** rule in lieu thereof:

281—56.13(259) Transportation. 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. The division shall not purchase a vehicle for a job candidate unless it is needed for self-employment, and there is no other option available to the individual. The division shall not rent a vehicle unless it is necessary for a job candidate's relocation. The division shall not pay for maintenance or repair of vehicles unless written approval of the supervisor allows for an exception.

ITEM 14. Rescind rule 281—56.14(259) and adopt the following **new** rule in lieu thereof:

281—56.14(259) Rehabilitation technology.

56.14(1) Rehabilitation technology services are available at any point in the rehabilitation process, except to those job candidates on the waiting list. Such services include, as appropriate, an evaluation of the ability of the individual to benefit from rehabilitation technology services. Areas in which rehabilitation technology services may be of assistance include seating and positioning, augmentative communication, computer access, environmental controls, mobility equipment, and modification of the job site or home. The rehabilitation technology is that which is required by the disability. It is not considered to be a device, such as a computer, that is required to work by any individual regardless of disability as that is the responsibility of the individual or the business. The software to make the computer accessible is the rehabilitation technology, and the computer is the conduit used in all occupations.

56.14(2) Unless a written exception is approved by a supervisor, the following division contribution limits apply:

- a. The division shall pay for no more than the established rate in division policy.
- b. The division shall not pay anything toward the modification of a second living unit.

ITEM 15. Rescind rule 281—56.15(259) and adopt the following new rule in lieu thereof:

281—56.15(259) Placement. The division not only prepares individuals with disabilities for jobs and trains them in techniques in securing their own jobs, but also accomplishes the actual placement, directly or indirectly through a service from the menu of services, of all eligible individuals with disabilities who receive rehabilitation services. Placement activities are based upon adequate evaluation and preparation of the job candidate and ordinarily include some combination of the following: evaluation of the job candidate's job readiness; development and execution of a plan for job-seeking activities; instruction in making job applications; conduct and appearance during interviews; employer contacts; registration with the state workforce development center; job analysis and modification; job coaching; employer or supervisor consultation, advisement and training; time-limited job coaching; postplacement follow-up; and relocation costs. Satisfactory employment is the objective of all division services of preparation, and placement services are an important, integral part of the overall vocational rehabilitation program. As such, in addition to the services listed herein, placement services may include the need for transportation and subsistence allowances and the purchase and acquisition of appropriate clothing, tools, equipment, and occupational licenses.

ITEM 16. Rescind rule 281—56.16(259) and adopt the following new rule in lieu thereof:

281—56.16(259) Miscellaneous or auxiliary services.

56.16(1) Family member services. If necessary to enable an applicant or job candidate to achieve an employment outcome as defined in these rules, the division may provide any service to a family member that the division is legally able to provide to a job candidate, as long as the purpose of the service is to assess the ability of the job candidate to benefit from a program of vocational rehabilitation, prepare for, enter, and be successful in employment, or participate in a program of independent living services. Excluded are programs designed to prepare a family member to enter employment that will allow the family member to make money to support the applicant or job candidate.

56.16(2) Interpreter and note taker services. If deemed necessary by the division to enable a job candidate to engage in all parts of the vocational rehabilitation or independent living program process, interpreter services or note taker services shall be provided to the job candidate, unless provision of such services is the statutory responsibility of an institution or organization.

a. Interpreter services are those special communications services provided by persons qualified by training and experience to facilitate communication between division personnel and persons who are deaf or hard of hearing. Persons receiving services include deaf and hard-of-hearing persons who communicate using signs and finger spelling, as well as lip reading, writing, gestures, pictures, and other methods. Persons not fluent in the English language who could benefit from having any part of the vocational rehabilitation process translated into their major language are included. The division shall purchase sign language interpreter services, including transliterating services, from appropriately licensed interpreters only.

b. Note taker services are services provided to make written notes and summaries of orally presented material. The notes may be made from a live presentation, such as a classroom lecture, or from materials that have been taped. These services are only purchased when the law states that the presenter or institution is not statutorily responsible.

56.16(3) Other goods and services. Other goods and services include anything that is legal and necessary to the completion of the job candidate's IPE or independent living (IL) services plan. Under no circumstances may real estate be purchased or built with division funds. Services designed to decrease the need for future IL services can only be provided directly to IL job candidates.

ITEM 17. Rescind rule 281—56.17(259) and adopt the following new rule in lieu thereof:

281—56.17(259) Facilities.

56.17(1) Types of facilities. It is the policy of the division to utilize any type of public or private facility that is equipped to render the required services from the menu of services of diagnosis, physical restoration, training, and placement. Facilities include public and private schools; colleges and

universities; correspondence schools; agencies for personal adjustment training; business and industrial establishments for employment training; psychometric service agencies; physicians' and dentists' offices; hospitals; sanatoria and clinics; audiometric service centers; rehabilitation centers; the offices of occupational, physical and work therapists or agencies providing these services; convalescent homes; prosthetic appliance dealerships; and other similar facilities that are adequately equipped to contribute to the rehabilitation of individuals with disabilities.

56.17(2) Standards for facilities providing specialized training or other services. The division selects its training agencies on the basis of their ability to supply the quality of training desired. The general practice of the division is to utilize the facilities of accredited or approved colleges, universities, community rehabilitation programs, and trade and commercial schools for residence and correspondence training. The general practice of the division is to utilize community partners to deliver items from the menu of services based on the partners' ability to supply the quality of training desired and to achieve expected outcomes resulting in job placements for job candidates of the division.

56.17(3) Facilities providing training. Facilities selected as locations for employment training must have personnel qualified with respect to personality, knowledge and skills in the technique of instruction, have adequate equipment and instructional materials, and be willing to make definite provisions for a plan of graduated progress in the job to be learned according to an efficiently organized and supervised instructional schedule.

56.17(4) Facilities providing personal adjustment training. In addition to other standards set for tutorial and customized training, an important basis for selection of facilities for personal adjustment training is a sympathetic understanding of the personal adjustment needs of the individual and their importance to the job candidate's total rehabilitation.

ITEM 18. Rescind rule 281—56.18(259) and adopt the following **new** rule in lieu thereof:

281—56.18(259) Exceptions to payment for services. As required by the Act and 34 CFR Section 361.50(c), the division shall have a method of allowing for exceptions to its rules regarding payment for services.

56.18(1) Prohibitions. Pursuant to federal law, the division is subject to the following prohibitions:

a. The fee schedule shall not be designed in a way that effectively denies an individual a necessary service.

b. An absolute limit on what may be provided to an individual may not be established, whether a dollar limit on specific service categories or on the total services provided to an individual may not be established.

56.18(2) Exception process. A request for an exception shall originate with the job candidate with assistance from qualified personnel of the division, who shall either develop a case note detailing the reason(s) why an exception is believed to be warranted or complete the appropriate form. The case note or form shall be presented to a supervisor for determination. The supervisor's determination shall be documented by the supervisor in a separate case note or in the designated place on the form.

ITEM 19. Rescind rule 281—56.19(259) and adopt the following **new** rule in lieu thereof:

281—56.19(259) Exceptions to duration of services. As required by the Act and 34 CFR Section 361.50(d), the division shall 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.

ITEM 20. Adopt the following **new** rule 281—56.20(259):

281—56.20(259) Maximum rates of payment to training facilities. In no case shall the amount paid a training facility exceed the rate published, and in the case of facilities not having published rates, the amount paid the facility shall not 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.

ITEM 21. Rescind rule 281—56.21(259) and adopt the following **new** rule in lieu thereof:

DIVISION VI
PURCHASING PRINCIPLES

281—56.21(259) Purchasing principles for job candidate-specific purchases.

56.21(1) The division shall follow the administrative rules for purchasing goods and services promulgated by the department of administrative services.

56.21(2) The division shall purchase only those items or models that allow 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.

56.21(3) The division shall seek out and purchase the most economical item or model that meets the job candidate’s vocational needs.

56.21(4) The division shall encourage all job candidates to develop strategies and savings programs to pay for replacement items/models or upgrades.

56.21(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.

56.21(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.

56.21(7) The division will not participate in the modification to property not owned by the job candidate or the job candidate’s family.

56.21(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.

ITEM 22. Rescind rule 281—56.22(259) and adopt the following **new** rule in lieu thereof:

DIVISION VII
SUPERVISOR REVIEW, MEDIATION, HEARINGS, AND APPEALS

281—56.22(259) Review process. At the time of making application for rehabilitation services, and at other times throughout the rehabilitation process, all applicants and job candidates shall be informed of the right to appeal or mediation and the procedures by which to file. If an applicant or job candidate is dissatisfied with any agency decision that directly affects the applicant or job candidate, the applicant, job candidate, or designated representative may appeal that decision or request mediation. The term “appellant” shall be used to indicate the applicant, job candidate, 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 must 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 shall 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).

ITEM 23. Rescind rule 281—56.23(259) and adopt the following new rule in lieu thereof:

281—56.23(259) 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:

56.23(1) 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.

56.23(2) 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.

56.23(3) 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. Also included shall be notice of the Iowa client assistance program (ICAP), a program within the department of human rights, commission of persons with disabilities. If ICAP determines it appropriate, ICAP provides assistance in the preparation and presentation of the appellant's case.

56.23(4) 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.

ITEM 24. Rescind rule 281—56.24(259) and adopt the following new rule in lieu thereof:

281—56.24(259) Mediation. Regardless of whether a supervisor review is requested, an appellant may request resolution of the dispute through the mediation process. Mediation is also available if the appellant is dissatisfied with the supervisor's decision. If mediation is requested by the appellant and agreed to by the division, the following steps shall be observed:

56.24(1) Mediation shall be conducted by a qualified and impartial mediator, as defined in 34 CFR Section 361.5(c)(43), trained in effective mediation techniques and selected randomly by the division from a list maintained by the division.

56.24(2) The mediation shall be conducted in a timely manner at a location convenient to the parties.

56.24(3) Mediation shall not be used to delay the appellant's right to a hearing.

56.24(4) Mediation must be voluntary on the part of the appellant and the division.

56.24(5) Mediation is at no cost to the appellant.

56.24(6) All discussions and other communications that occur during the mediation process are confidential. Any offers of settlement made by either party during the mediation process are inadmissible if further appeal is sought by the appellant.

56.24(7) Existing division services provided to an appellant shall not be suspended, reduced, or terminated pending decision of the mediator, unless so requested by the appellant.

ITEM 25. Rescind rule 281—56.25(259) and adopt the following **new** rule in lieu thereof:

281—56.25(259) Hearing before 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:

56.25(1) 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.

56.25(2) 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.

56.25(3) 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.

56.25(4) Within five working days after appointment, the IHO shall notify both parties in writing of the following:

- a.* The role of the IHO;
- b.* The IHO's understanding of the reasons for the appeal and the requested resolution;
- c.* 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;
- d.* 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 (see also rule 281—56.22(259));
- e.* That the hearing shall be closed to the public unless the appellant specifically requests an open hearing;
- f.* 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;
- g.* The availability to the appellant of the Iowa client assistance program (ICAP) for possible assistance;
- h.* Information about the amount of time it will take to complete the hearing process;
- i.* The possibility of reimbursement of necessary travel and related expenses; and
- j.* The availability of interpreter and reader services for appellants not familiar with the English language and those who are deaf and the availability of transportation or attendant services for those appellants requiring such assistance.

56.25(5) Existing division services provided to an appellant shall not be suspended, reduced, or terminated pending decision of the IHO, unless so requested by the appellant.

56.25(6) 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. The division reserves the right to submit the IHO decision for administrative review whenever the IHO decision places the division in the position of violating federal law. 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 outcome of the judicial review.

ITEM 26. Rescind rule 281—56.26(259) and adopt the following **new** rule in lieu thereof:

DIVISION VIII
PUBLIC RECORDS AND FAIR INFORMATION PRACTICES

281—56.26(259) Collection and maintenance of records. 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. The acceptance of the provisions and benefits of the Rehabilitation Act, under Iowa Code section 259.1, is conditioned on the requirement that the division maintain the confidentiality of personally identifiable information and its release under certain circumstances as provided by applicable federal laws. These laws include, but are not limited to, the following:

1. The Freedom of Information Act (5 U.S.C. 552, added by P.L. 90-23 and amended by P.L. 93-502 and P.L. 94-409).
2. The Privacy Act of 1974 (5 U.S.C. 552a, added by P.L. 93-579).
3. The Drug Abuse Office and Treatment Act (21 U.S.C. 1175, added by P.L. 92-255) as amended by the Comprehensive Alcohol and Alcoholism Prevention, Treatment, and Rehabilitation Act Amendment of 1974 (42 U.S.C. 4582, added by P.L. 93-282).
4. Section 6103 of the Internal Revenue Code (26 U.S.C. 6103) as amended by the Tax Reform Act of 1976 (P.L. 94-455).
5. The Government in the Sunshine Act (P.L. 94-409).
6. The Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. 1232g, added by P.L. 93-568).

Pursuant to Iowa Code section 259.9, 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. The state plan provides that all personally identifiable information is confidential and may be released only with the informed written consent of the job candidate or the job candidate's representative, 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.

ITEM 27. Rescind rule 281—56.27(259) and adopt the following **new** rule in lieu thereof:

281—56.27(259) Personally identifiable information. This rule describes the nature and extent of the personally identifiable information collected, maintained, and retrieved by the agency by personal identifier in record systems as defined herein. The record systems maintained by the division include the following:

56.27(1) Personnel records. These 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. Pursuant to Iowa Code section 22.7(11), some of the information in personnel records may be confidential.

56.27(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. 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.

56.27(3) Job candidate service record computer database. This database contains personal data items about individual job candidates. Data identifying the job candidate is confidential. Data in the aggregate is not personally identifiable and thus is not confidential.

56.27(4) Vendor purchase records. These are records of purchases of goods or services made for the benefit of job candidates. If the 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.

56.27(5) Records and transcripts of hearings or client appeals. These records 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.

56.27(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.

56.27(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 which would allow the identification of an individual client or clients. This material is for internal division use only and is confidential.

ITEM 28. Rescind rule 281—56.28(259) and adopt the following **new** rule in lieu thereof:

281—56.28(259) 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.

56.28(1) Rule making. Rule-making records, including public comments on proposed rules, are not confidential.

56.28(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.

56.28(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.

56.28(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.

56.28(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.

56.28(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.

56.28(7) Policy manuals. Manuals containing the policies and procedures for programs administered by the division are available in every office of the division. Subscriptions to all or some of the manuals are available at the cost of production and handling. Requests for subscription information should be addressed to Vocational Rehabilitation Services Division, 510 E. 12th Street, Des Moines, Iowa 50319.

56.28(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.

56.28(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.

56.28(10) Facility surveys. Records of division reviews of facilities providing services to the division are maintained and used to determine the current acceptable fee schedule. Information about individuals may be included in these records; therefore, parts of the records may be confidential.

56.28(11) All other records that are not exempted from disclosure by law.

ITEM 29. Rescind rule 281—56.29(259) and adopt the following **new** rule in lieu thereof:

DIVISION IX

STATE REHABILITATION COUNCIL

281—56.29(259) State rehabilitation council.

56.29(1) *Composition.* The state rehabilitation council shall be composed of at least 15 members, appointed by the governor. A majority of the council members must be individuals with disabilities

who are not employed by the division. The appointing authority must 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. The council members shall include the following:

- a. At least one representative of the statewide independent living council, who must be the chairperson or other designee of the statewide independent living council;
- b. At least one representative of a parent training and information center established pursuant to Section 682(a) of the Individuals with Disabilities Education Act;
- c. At least one representative of the client assistance program established under 34 CFR Part 370, who must be the director or other individual recommended by the client assistance program;
- d. At least one qualified vocational rehabilitation counselor with knowledge of and experience with vocational rehabilitation programs who serves as an ex officio, nonvoting member of the council if employed by the division;
- e. At least one representative of community rehabilitation program service providers;
- f. Four representatives of business, industry, and labor;
- g. Representatives of disability groups that include a cross section of:
 - (1) Individuals with physical, cognitive, sensory, and mental disabilities; and
 - (2) Representatives of individuals with disabilities who have difficulty representing themselves or are unable, due to their disabilities, to represent themselves;
- h. Current or former applicants for, or recipients of, vocational rehabilitation services;
- i. At least one representative of the state educational agency responsible for the public education of students with disabilities who are eligible to receive services under the Rehabilitation Act of 1973, as amended, and Part B of the Individuals with Disabilities Education Act;
- j. At least one representative of the Iowa workforce development board; and
- k. The director of the division, who serves as an ex officio, nonvoting member of the council.

56.29(2) Chairperson. The chairperson must be selected by the members of the council from among the voting members of the council.

56.29(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 must be for a varied number of years to ensure that terms expire on a staggered basis.

56.29(4) Vacancies. The governor shall fill a vacancy in council membership.

56.29(5) Functions. The council must, after consulting with the state workforce development board:

- a. Review, analyze, and advise the designated state unit regarding the designated state unit's responsibilities, particularly responsibilities related to:
 - (1) Eligibility, including order of selection;
 - (2) The extent, scope, and effectiveness of services provided; and
 - (3) Functions performed by state agencies that affect or potentially affect the ability of individuals with disabilities in achieving employment outcomes;
- b. In partnership with the designated state unit:
 - (1) Develop, agree to, and review state goals and priorities in accordance with 34 CFR Section 361.29(c); and
 - (2) Evaluate the effectiveness of the vocational rehabilitation program and submit reports of progress to the Secretary of Education in accordance with 34 CFR Section 361.29(e);
- c. Advise the designated state agency and the designated state unit regarding activities carried out under this part and assist in the preparation of the vocational rehabilitation services portion of the

unified or combined state plan and amendments to the plan, applications, reports, needs assessments, and evaluations;

d. To the extent feasible, conduct a review and analysis of the effectiveness of, and consumer satisfaction with:

(1) The functions performed by the designated state agency;

(2) The vocational rehabilitation services provided by state agencies and other public and private entities responsible for providing vocational rehabilitation services to individuals with disabilities under the Rehabilitation Act of 1973, as amended; and

(3) The employment outcomes achieved by eligible individuals receiving services under 34 CFR Part 361, including the availability of health and other employment benefits in connection with those employment outcomes;

e. Prepare and submit to the governor and to the Secretary of Education no later than 90 days after the end of the federal fiscal year an annual report on the status of vocational rehabilitation programs operated within the state and make the report available to the public through appropriate modes of communication;

f. To avoid duplication of efforts and enhance the number of individuals served, coordinate activities with the activities of other councils within the state, including the statewide independent living council, the advisory panel established under Section 612(a)(21) of the Individuals with Disabilities Education Act, the state developmental disabilities planning council, the state mental health planning council, and the state workforce development board, and with the activities of entities carrying out programs under the Assistive Technology Act of 1998;

g. Provide for coordination and the establishment of working relationships between the designated state agency and the statewide independent living council and centers for independent living within the state; and

h. Perform other comparable functions, consistent with the purpose of 34 CFR Part 361, as the council determines to be appropriate, that are comparable to the other functions performed by the council.

56.29(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.

56.29(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.

56.29(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.

Rule 281—56.29(259) is intended to implement 34 CFR Sections 361.16 and 361.17.

ITEM 30. Rescind rule 281—56.30(259) and adopt the following **new** rule in lieu thereof:

DIVISION X

IOWA SELF-EMPLOYMENT PROGRAM

(A/K/A ENTREPRENEURS WITH DISABILITIES PROGRAM)

281—56.30(259) Purpose. The division of vocational rehabilitation services works in collaboration with the Iowa 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.

ITEM 31. Rescind rule 281—56.31(259) and adopt the following **new** rule in lieu thereof:

281—56.31(259) Program requirements. Clients of the division or the department for the blind may apply for the program. All of the following conditions are also applicable:

1. 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.

2. 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.

3. 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.

4. Recommendation for and approval of financial assistance 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.

5. In order to receive financial support from the ISE program, the applicant's business plan feasibility study must result in self-sufficiency for the applicant as measured by earnings that equal or exceed 80 percent of substantial gainful activity.

6. The division cannot support the purchase of real estate or improvements to real estate.

7. 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.

8. The division may deny ISE assistance to an applicant who desires to start, expand, or acquire any of the following types of businesses:

- A hobby or similar activity that does not produce income at the level required for self-sufficiency;
- A business venture that is speculative in nature or considered high risk by the Better Business Bureau or similar organization;
- 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;
- A business that is not fully compliant with all local, state, and federal zoning requirements and all other applicable local, state, and federal requirements;
- A multitiered marketing business.

ITEM 32. Rescind rule 281—56.32(259) and adopt the following **new** rule in lieu thereof:

281—56.32(259) Application procedure.

56.32(1) Application. Application materials for the program are available from the division and the department for the blind.

56.32(2) Submittal. Completed applications shall be submitted to a counselor employed by the division or the department for the blind.

56.32(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.

56.32(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 must demonstrate that the business is feasible.

56.32(5) Appeal. If an application is denied, an applicant may appeal the decision to the division or the department for the blind. An appeal shall be consistent with the appeal processes of the division or the department for the blind.

ITEM 33. Rescind rule 281—56.33(259) and adopt the following **new** rule in lieu thereof:

281—56.33(259) Award of technical assistance funds.

56.33(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.

56.33(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.

56.33(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 shall 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 shall be filed with the division.

56.33(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) shall be the responsibility of the applicant.

56.33(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.

ITEM 34. Rescind rule 281—56.34(259) and adopt the following **new** rule in lieu thereof:

281—56.34(259) Business plan feasibility study procedure. Information and materials are available from the division and the department for the blind. The job candidate shall 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.

ITEM 35. Rescind rule 281—56.35(259) and adopt the following **new** rule in lieu thereof:

281—56.35(259) Award of financial assistance funds.

56.35(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 shall 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.

56.35(2) *Award process.* The amount that may be recommended by the business development specialist and approved by the counselor shall be provided when there is a need. Recipients of financial assistance must demonstrate ongoing cooperation by providing the business development specialist with financial information needed to assess business progress before additional funds are expended.

56.35(3) *Financial assistance contracts.* Contracts for financial assistance funds shall be the responsibility of the division and will be consistent with the authorized use of Title I vocational rehabilitation funds and policy.

56.35(4) *Vendors.* Procurement of goods or services shall 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, shall 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 shall be filed with the division. Approval for payment of authorized goods or services shall be made by authorized division personnel.

ITEM 36. Rescind rules **281—56.36(259)** to **281—56.42(259)**.