

**EDUCATION DEPARTMENT[281]**

**Adopted and Filed**

Pursuant to the authority of Iowa Code section 256.7(5), the State Board of Education hereby amends Chapter 17, “Open Enrollment,” Iowa Administrative Code.

These amendments are necessary to align Chapter 17 with legislative changes made in 2016 Iowa Acts, chapter 1036 (House File 2336). Two internal cross references and outdated terminology for students requiring special education are also corrected.

Notice of Intended Action was published in the April 26, 2017, Iowa Administrative Bulletin as **ARC 3031C**. Public comments were allowed until 4:30 p.m. on May 16, 2017. A public hearing was held on that date. No one attended the public hearing, and no written comments were received. These amendments are identical to those published under Notice of Intended Action.

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

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

These amendments are intended to implement Iowa Code section 282.18(7).

These amendments will become effective August 9, 2017.

The following amendments are adopted.

ITEM 1. Amend subrule 17.10(1) as follows:

**17.10(1) Full-time pupils.** Unless otherwise agreed to in the mediation under paragraph 17.4(6) “b,” for full-time pupils, the resident district shall pay each year to the receiving district an amount equal to the sum of the state cost per pupil for the previous year; plus any moneys received for the pupil as a result of non-English speaking weighting provided by Iowa Code section 280.4 and; plus either the teacher leadership supplemental supplement state cost per pupil for the previous year as provided in Iowa Code section 257.9 257.9(11) or the teacher leadership supplement foundation aid allocation for fiscal year 2017 as provided in Iowa Code section 284.13(1) “e,” whichever the district received, if both the district of residence and the receiving district received either of the supplements. If the pupil participating in open enrollment is also an eligible pupil under Iowa Code section 261E.6 (postsecondary enrollment options program), the receiving district shall pay the tuition reimbursement amount to an eligible postsecondary institution as provided in Iowa Code section 261E.7.

ITEM 2. Amend subrule 17.10(5) as follows:

**17.10(5) Method of payment.** These moneys shall be paid to the receiving district on a quarterly basis by the first resident district according to the timeline in Iowa Code section 282.20(3) (on or before February 15 and July 15 of each year). Payments shall be made to the receiving district in a timely manner. The district cost per pupil for nonspecial education students shall be the cost calculated each year for the school year preceding the school year for which the open enrollment takes place. Costs for special education students shall be as outlined in rule 281—17.11(282).

ITEM 3. Amend rule 281—17.11(282) as follows:

**281—17.11(282) Special education students.** If a parent/guardian requests open enrollment for a pupil requiring special education, as provided by Iowa Code chapter 256B, this request shall receive consideration under the following conditions. The request shall be granted only if the receiving district is able to provide within that district the appropriate special education program for that student in accordance with Iowa rules of special education, ~~281—41.84(256B,273,34CFR300)~~ 281—Chapter 41. This determination shall be made by the receiving district in consultation with the resident district and the appropriate area education agency(ies) before approval of the application. In a situation where the appropriateness of the program is in question, the pupil shall remain enrolled in the program of the resident district until a final determination is made. If the appropriateness of the special education program in the resident district is questioned by the parent, then the parent ~~should~~ may request a due process hearing as provided by ~~281—41.113(1)~~ 281—41.507(256B,34CFR300) or a mediation

conference as provided by 281—41.506(256B,34CFR300). If the appropriateness of the special education program in the receiving district is at issue, the final determination of the appropriateness of a special education instructional program shall be the responsibility of the director of special education of the area education agency in which the receiving district is located, based upon the decision of a ~~diagnostic-education~~ the child's individualized education program team, from the receiving district which shall include a representative from the resident district that has the authority to commit district resources, and which decision is subject to the parent's procedural safeguards.

District transportation requirements, parent/guardian responsibilities and, where applicable, financial assistance for an open enrollment special education pupil shall be as provided by rule 281—17.9(282).

The district of residence shall pay to the receiving district on a ~~quarterly basis~~ the schedule set forth in subrule 17.10(5) the actual costs incurred by the receiving district in providing the appropriate special education program. These costs shall be based on the current year expenditures with needed adjustments made in the ~~fourth quarter~~ final payment. The responsibility for ensuring that an appropriate program is maintained for an open enrollment special education pupil shall rest with the resident district. The receiving district and the receiving area education agency director shall provide, at least on an annual basis, evaluation reports and information to the resident district on each special education open enrollment pupil. The receiving district shall provide notice to the resident district of all staffings scheduled for each open enrollment pupil. For an open enrolled special education pupil where the receiving district is located in an area education agency other than the area education agency within which the resident district is located, the resident district and the receiving district are required to forward a copy of any approved open enrollment request to the director of special education of their respective area education agencies. Any moneys received by the area education agency of the resident district for an approved open enrollment special education pupil shall be forwarded to the receiving district's area education agency.

[Filed 6/9/17, effective 8/9/17]

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/5/17.