

EDUCATION DEPARTMENT[281]

Notice of Intended Action

**Proposing rule making related to virtual instruction
and providing an opportunity for public comment**

The State Board of Education hereby proposes to rescind Chapter 15, “Use of Online Learning and Telecommunications for Instruction by Schools,” and adopt a new Chapter 15, “Online and Virtual Learning,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code section 256.7(5).

State or Federal Law Implemented

This rule making implements, in whole or in part, 2020 Iowa Acts, Senate File 2310.

Purpose and Summary

This proposed revision of Chapter 15 implements the repeal of Iowa Learning Online, expands the use of virtual learning to meet offer-and-teach requirements, and streamlines and modernizes the process for becoming an approved provider for virtual instruction.

Fiscal Impact

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

Jobs Impact

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

Waivers

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

Public Comment

Any interested person may submit written or oral comments concerning this proposed rule making. Written or oral comments in response to this rule making must be received by the Department no later than 4:30 p.m. on May 11, 2021. Comments should be directed to:

Thomas Mayes
Department of Education
Grimes State Office Building, Second Floor
400 East 14th Street
Des Moines, Iowa 50319-0146
Phone: 515.242.5614
Email: thomas.mayes@iowa.gov

Public Hearing

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

May 11, 2021
10 to 11 a.m.

ICN Room, Second Floor
Grimes State Office Building
Des Moines, Iowa
Via videoconference:
[IDOE.zoom.us/j/94718226002?pwd=MENTN0xkcjJZL25HN2hGZkRRVjZndz09](https://doe.zoom.us/j/94718226002?pwd=MENTN0xkcjJZL25HN2hGZkRRVjZndz09)

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

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

Review by Administrative Rules Review Committee

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

The following rule-making action is proposed:

Rescind 281—Chapter 15 and adopt the following **new** chapter in lieu thereof:

CHAPTER 15
ONLINE AND VIRTUAL LEARNING

281—15.1(256) Purpose. It is the purpose of this chapter to give guidance and direction for the use of telecommunications as an instructional tool and online learning in one or more courses as an instructional delivery method. This chapter is applicable in whole or in part to school districts, accredited nonpublic schools, and area education agencies for delivery of instruction and support for students enrolled in kindergarten through grade 12.

281—15.2(256) Definitions.

“Accredited nonpublic school” means a nonpublic school accredited pursuant to Iowa Code section 256.11.

“Appropriately licensed and endorsed” means possession of current and valid licensure by the Iowa board of educational examiners to practice at a prescribed educational level in a specified content area.

“Area education agency” or *“AEA”* refers to a political subdivision organized pursuant to Iowa Code chapter 273.

“Class size” refers to the total group taught during a time period by a teacher or teaching team with students at one or more sites.

“Delivered primarily over the Internet” means more than 50 percent of the course content or instruction or both is delivered using the Internet.

“Department” means the department of education.

“Director” means the director of the department of education.

“Exclusive instruction” means without the use of any other form of instructional delivery.

“Good faith effort” means the same as defined in Iowa Code section 279.19A(9).

“Online learning” and *“online coursework”* mean educational instruction and content which are delivered primarily over the Internet. “Online learning” and “online coursework” do not include print-based correspondence education, broadcast television or radio, videocassettes, or stand-alone educational software programs that do not have a significant Internet-based instructional component.

“Online school” refers to a district or nonpublic school providing educational instruction and course content delivered primarily over the Internet for a group of students for whom this method of delivery is

the primary method of education. “Online school” also refers to a school for which a district accepts open enrollment for the express purpose of attendance at the online school and that has received permission from the department to operate.

“*Participating school district or accredited nonpublic school*” means a school district or accredited nonpublic school that is providing online learning or online coursework.

“*School district*” means a political subdivision organized pursuant to Iowa Code chapter 274.

“*Telecommunications*” means narrowcast communications through systems that are directed toward a narrowly defined audience and includes interactive live communications. “Telecommunications” does not include online learning.

281—15.3(256) Telecommunications for instruction.

15.3(1) *Applicability.* This rule applies to all AEAs, school districts, nonpublic schools, community colleges, and institutes of higher education using telecommunications to serve students in kindergarten through grade 12.

15.3(2) *Course eligibility.* Telecommunications may be employed as a means to deliver any course, including a course required for accreditation by the department, provided it is not the exclusive means of instructional delivery.

15.3(3) *Appropriately licensed and endorsed teachers.* Instruction provided by telecommunications must be taught by an appropriately licensed and endorsed teacher. When the curriculum is taught by an appropriately licensed teacher at the location at which the telecommunications originate, the curriculum received at a remote site shall be under the supervision of a licensed teacher.

a. The licensed teacher at the originating site may provide supervision of students at a remote site, or the school district in which the remote site is located may provide for supervision at the remote site.

b. For the purposes of this subrule, “supervision” means that the curriculum is monitored by a licensed teacher and the teacher is accessible to the students receiving the curriculum by means of telecommunications.

281—15.4 Reserved.

281—15.5(256) Online learning—private providers.

15.5(1) *Online learning model established.* An online learning program model is established by the director, pursuant to Iowa Code section 256.9, that provides districts and nonpublic schools with a list of approved online providers. The online learning program model requires that approved providers meet criteria for approval and further provides for the following:

a. Use of funds available for online learning for program development, implementation, and innovation.

b. Creation and maintenance of a statewide infrastructure that supports online learning.

c. Online administration of online course assessments.

d. Criteria for school districts or schools to use when choosing providers of online learning.

15.5(2) *Use of approved private providers.* At the discretion of the school board or authorities in charge of an accredited nonpublic school, after consideration of circumstances created by necessity, convenience, and cost-effectiveness, courses developed by private providers may be utilized by the school district or school in implementing a high-quality online learning program.

15.5(3) *Approval criteria.* The department shall maintain a list of approved online providers that provide course content through an online learning platform whose content and delivery meets the following requirements:

a. Courses are taught by teachers licensed under Iowa Code chapter 272.

b. Courses are taught by teachers who have specialized training or experience in online learning including but not limited to an online-learning-for-Iowa-educators-professional-development project offered by area education agencies, a teacher preservice program, or comparable coursework.

c. Courses provide access to rigorous, high-quality content and instructional materials aligned with Iowa core content standards and blended learning.

d. Courses provide content and instructional practices aligned with the national standards of quality for online courses issued by an internationally recognized association for kindergarten through grade 12 online learning.

e. The provider supplies coursework customized to the needs of the student.

f. The provider offers a means for a student to demonstrate competency in completed online coursework.

g. Courses provide online content and instruction evaluated on the basis of student learning outcomes.

15.5(4) Approval process. Private providers of online course content or full-time online instruction shall apply for approval to offer such services to Iowa school districts and accredited nonpublic schools a minimum of once every three years on forms provided by the department. Applications to provide services may be received at any time; however, the department will give preference to applications received no later than May 1 during the year prior to the school year in which the provider intends to provide services. Applications received by the deadline of May 1 will be answered no later than June 1. An approved provider shall also apply in each year that any of the following apply:

a. The provider has substantially altered the courses or content offered by either adding or subtracting grade levels or subjects.

b. The provider has substantially altered the delivery of the courses or content offered by altering the learning management system or delivery of assessments.

c. The provider has substantially altered the evaluation of student learning used in the system.

d. The provider has substantially altered the online learning content or delivery in any other way that may reasonably be considered material to a school district considering the use of a private provider.

281—15.6(256) Online learning provided by area education agencies.

15.6(1) Online learning program delivered by area education agencies. Subject to an appropriation of funds by the general assembly for this purpose, AEAs may provide an online learning program to deliver distance education to Iowa's secondary students, including students receiving independent private instruction, competent private instruction, or private instruction by a nonlicensed person under Iowa Code chapter 299A. An AEA may provide an online learning program separately, in collaboration with other AEAs, or in partnership with school districts and accredited nonpublic schools.

15.6(2) Student participation. To participate in an online learning program offered by an AEA, a student must be enrolled in a participating school district or accredited nonpublic school or be receiving private instruction under Iowa Code chapter 299A.

15.6(3) District responsibility. The school district or accredited nonpublic school in which the student is enrolled is responsible for:

a. Recording a student's program coursework grades in the student's permanent record.

b. Awarding high school credit for program coursework.

c. Issuing a high school diploma to a student enrolled in the district or school who participates and completes coursework under the program.

d. Identifying a site coordinator to serve as a student advocate and as a liaison between the program staff and teachers and the school district or accredited nonpublic school.

15.6(4) Cost. School districts and accredited nonpublic schools shall pay to AEAs the actual cost of providing coursework under an online learning program offered in accordance with this rule.

15.6(5) Course content and delivery. Content and delivery provided by an online learning program established pursuant to this rule must meet the following requirements:

a. Courses are taught by teachers licensed under Iowa Code chapter 272.

b. Courses are taught by teachers who have specialized training or experience in online learning including but not limited to an online-learning-for-Iowa-educators-professional-development project offered by area education agencies, a teacher preservice program, or comparable coursework.

c. Courses provide access to rigorous, high-quality content and instructional materials aligned with Iowa core content standards and blended learning.

d. Courses provide content and instructional practices aligned with the national standards of quality for online courses issued by an internationally recognized association for kindergarten through grade 12 online learning.

e. Grades in online courses are based, at a minimum, on whether a student mastered the subject, demonstrated competency, and met the standards established by the school district. Grades may be conferred only by teachers licensed under Iowa Code chapter 272.

15.6(6) Private instruction. This rule applies to students receiving independent private instruction as defined in Iowa Code section 299A.1(2) “b,” competent private instruction under Iowa Code section 299A.2, or private instruction by a nonlicensed person under Iowa Code section 299A.3. To participate in an online learning program offered by an area education agency, a student receiving private instruction under Iowa Code chapter 299A shall take whatever steps are necessary to enroll with the student’s district of residence. The coursework offered by AEAs pursuant to this subrule must be taught and supervised by a teacher licensed under Iowa Code chapter 272 who has online learning experience, and the course content must meet the requirements established by rule pursuant to Iowa Code section 256.7(32) “c.”

281—15.7(256) Online learning program provided by a school district—online schools.

15.7(1) Online learning program provided by a school district. A school district may provide an online learning program delivered primarily over the Internet which operates as an online school. Such a program shall do all of the following with regard to instruction and content:

a. Monitor and verify full-time student enrollment, timely completion of graduation requirements, course credit accrual, and course completion.

b. Monitor and verify student progress and performance in each course through a school-based assessment plan that includes submission of coursework and security and validity of testing components.

c. Conduct parent-teacher conferences.

d. Administer assessments required by the state to all students in a proctored setting and pursuant to state law.

15.7(2) Course content and delivery. Content and delivery provided by an online learning program established pursuant to this rule must meet the following requirements:

a. Courses are taught by teachers licensed under Iowa Code chapter 272.

b. Courses are taught by teachers who have specialized training or experience in online learning including but not limited to an online-learning-for-Iowa-educators-professional-development project offered by area education agencies, a teacher preservice program, or comparable coursework.

c. Courses provide access to rigorous, high-quality content and instructional materials aligned with the Iowa core content standards and blended learning.

d. Courses provide content and instructional practices aligned with the national standards of quality for online courses issued by an internationally recognized association for kindergarten through grade 12 online learning.

e. Grades in online courses are based, at a minimum, on whether a student mastered the subject, demonstrated competency, and met the standards established by the school district. Grades may be conferred only by teachers licensed under Iowa Code chapter 272.

15.7(3) Approval criteria. The department shall maintain a list of approved school districts that provide course content through an online learning platform whose content and delivery meets the requirements of subrule 15.7(2).

15.7(4) Approval process. School district providers of online course content or full-time online instruction shall apply for approval to offer such services to Iowa districts and accredited nonpublic schools a minimum of once every three years on forms provided by the department. Applications must be received by the department no later than January 1 during the year prior to the school year in which the provider intends to provide services. Applications received by the deadline of January 1 will be answered no later than February 1. An approved provider under this rule shall also apply in each year that any of the following apply:

a. The provider has substantially altered the courses or content offered by either adding or subtracting grade levels or subjects.

- b. The provider has substantially altered the delivery of the courses or content offered by altering the learning management system or delivery of assessments.
- c. The provider has substantially altered the evaluation of student learning used in the system.
- d. The provider has substantially altered the online learning content or delivery in any other way that may reasonably be considered material to a district considering the use of a private provider.

281—15.8(256) Online learning provided by a school district or nonpublic school—courses.

15.8(1) *Course content and delivery.* A school district or nonpublic school may provide an online learning program to deliver online learning and online coursework to students attending the district or school. Such a program must meet the following content and delivery requirements:

- a. Courses are taught by teachers licensed under Iowa Code chapter 272.
- b. Courses are taught by teachers who have specialized training or experience in online learning including but not limited to an online-learning-for-Iowa-educators-professional-development project offered by area education agencies, a teacher preservice program, or comparable coursework.
- c. Courses provide access to rigorous, high-quality content and instructional materials aligned with Iowa core content standards and blended learning.
- d. Courses provide content and instructional practices aligned with the national standards of quality for online courses issued by an internationally recognized association for kindergarten through grade 12 online learning.
- e. Grades in online courses are based, at a minimum, on whether a student mastered the subject, demonstrated competency, and met the standards established by the school district. Grades may be conferred only by teachers licensed under Iowa Code chapter 272.

15.8(2) *Use to meet general accreditation standards.* Any course that is not part of the offer-and-teach requirements for grades 9 through 12 may be provided by an area education agency, by the school district or accredited nonpublic school, or through an online learning platform or online exchange offered by the department in collaboration with area education agencies, school districts, or nonpublic schools. Online courses may be used to meet offer-and-teach requirements for grades 9 through 12 under the following circumstances:

- a. Iowa Code sections 256.11(5) “a” through “e” and 256.11(5) “g” through “j” do not apply for up to two specified subjects for any district or accredited nonpublic school if any of the following apply:
 - (1) The school district or accredited nonpublic school makes every reasonable and good faith effort to employ a teacher licensed under Iowa Code chapter 272 for the specified subject and is unable to employ such a teacher.
 - (2) Fewer than ten students typically register for instruction in the specified subject at the school district or accredited nonpublic school.

b. In addition, a school district or nonpublic school may exceed the two-subject limitation for the purpose of providing world language, personal finance literacy, and computer science coursework online if either subparagraph 15.8(2) “a”(1) or 15.8(2) “a”(2) applies.

c. In addition to paragraphs 15.8(2) “a” and “b,” a school district or nonpublic school may apply for an annual waiver of the requirements of Iowa Code section 256.11(5) for up to two specified subjects. The school district or nonpublic school must prove to the satisfaction of the department that the school district or accredited nonpublic school has made every reasonable effort, but is unable to meet requirements to offer and teach the courses for which a waiver is sought. A school district or accredited nonpublic school may apply for a waiver each year. Waiver applications are due no later than January 15 the year prior to the school year during which the waiver is requested.

15.8(3) *Delivery options for general accreditation standards.*

a. If a district or accredited nonpublic school uses any of the options under subrule 15.8(2), the courses may be delivered by the following methods: by an area education agency under Iowa Code section 273.16, or by the school district or accredited nonpublic school.

b. If offered by the school district or accredited nonpublic school, the specified subject or course shall be offered through any of the following means:

(1) An online learning platform if the course is developed by the school district or accredited nonpublic school itself or is developed by a partnership or consortium of schools that have developed the course individually or cooperatively. A partnership or consortium of schools may include two or more school districts or accredited nonpublic schools, or any combination thereof.

(2) A private provider approved under subrule 15.5(4).

(3) An online learning platform or online exchange offered, subject to the initial availability of federal funds, by the department in collaboration with one or more area education agencies or in partnership with school districts and accredited nonpublic schools.

15.8(4) *Private instruction.* The online learning platform may deliver distance education to students, including students receiving independent private instruction as defined in Iowa Code section 299A.1(2) “b,” competent private instruction under Iowa Code section 299A.2, or private instruction by a nonlicensed person under Iowa Code section 299A.3, provided such students register with the school district of residence and the coursework offered by the online learning platform is taught and supervised by a teacher licensed under Iowa Code chapter 272 who has online learning experience, and the course content meets the requirements established by rule pursuant to Iowa Code section 256.7(32) “c.”

15.8(5) *Coordination and costs.* The department and the area education agencies operating online learning programs pursuant to Iowa Code section 273.16 shall coordinate to ensure the most effective use of resources and delivery of services. Federal funds, if available, may be used to offset what would otherwise be costs to school districts for participation in the program.

281—15.9(256) Open enrollment. Content and delivery provided online pursuant to rule 281—15.5(256), 281—15.6(256), 281—15.7(256) or 281—15.8(256) may be provided to pupils who are participating in open enrollment under Iowa Code section 282.18.

15.9(1) *Courses.* A school district may provide courses developed by private providers and delivered primarily over the Internet to pupils who are participating in open enrollment under Iowa Code section 282.18.

15.9(2) *Termination.* If a student’s participation in open enrollment to receive educational instruction and course content delivered primarily over the Internet results in the termination of enrollment in the receiving district, the receiving district shall, within 30 days of the termination, notify the district of residence of the termination and the date of the termination.

281—15.10(256) Online learning—access by students receiving private instruction. Students enrolled in private instruction pursuant to Iowa Code chapter 299A may participate in online instruction pursuant to subrules 15.6(6) and 15.8(4). The individual providing instruction to a student under Iowa Code chapter 299A as described in Iowa Code section 299A.1(1) shall receive the student’s score for completed program coursework.

281—15.11(256,256B) Online learning—students with disabilities.

15.11(1) Children with disabilities may not be categorically excluded from admission to online learning programs or from enrollment in online coursework.

15.11(2) Whether an online course or online learning is appropriate to a child with a disability must be determined by the child’s needs, not by the child’s assigned weighting under Iowa Code section 256B.9. If a child’s individualized education program (IEP) goals cannot be met in online learning, with or without supplementary aids and services or modifications, online learning is not appropriate to the child.

15.11(3) If a child’s IEP team determines that online learning is inappropriate to the child, the child’s parents are entitled to prior written notice pursuant to rule 281—41.503(256B,34CFR300) and to have available to them the procedural safeguards provided under rule 281—41.504(256B,34CFR300).

15.11(4) When a child with an IEP seeks open enrollment into an online learning program, the child’s IEP team shall determine whether the child meets the open enrollment requirements under 281—Chapter 17. In addition, the child’s IEP team, together with representatives of the resident and receiving districts and the relevant area education agencies, shall determine whether the receiving district is able to provide

an appropriate online education to the child, either with or without supplementary aids and services or modifications. Any dispute about whether the receiving district's program is appropriate shall be resolved pursuant to 281—Chapter 17. The child shall remain in the child's resident district while any dispute about the appropriateness of the receiving district's program is pending.

281—15.12(256) Department general supervision of telecommunications and online learning.

15.12(1) *Nature of general supervision.* The department shall exercise general supervision over compliance with this chapter and shall offer advice and technical assistance to foster compliance and improved outcomes. This shall be accomplished by department staff, the state board of education, and the educational telecommunications council.

15.12(2) *Data collection and reporting.*

a. Each school district and accredited nonpublic school shall include in its comprehensive school improvement plan a list and description of the online coursework offered by the school district or accredited nonpublic school to which the student is enrolled.

b. Online schools. A school district providing educational instruction and course content delivered primarily over the Internet shall annually submit to the department, in the manner prescribed by the department, data that includes but is not limited to the following:

- (1) Student achievement and demographic characteristics.
- (2) Retention rates.
- (3) The percentage of enrolled students' active participation in extracurricular activities.
- (4) Academic proficiency levels, consistent with requirements applicable to all school districts and accredited nonpublic schools in this state.
- (5) Academic growth measures, which shall include either of the following:
 1. Entry and exit assessments in, at a minimum, math and English for elementary and middle school students, and additional subjects, including science, for high school students.
 2. State-required assessments that track year-over-year improvements in academic proficiency.
- (6) Academic mobility. To facilitate the tracking of academic mobility, school districts shall request the following information from the parent or guardian of a student enrolled in educational instruction and course content that are delivered primarily over the Internet:
 1. For a student newly enrolling, the reasons for choosing such enrollment.
 2. For a student terminating enrollment, the reasons for terminating such enrollment.
- (7) Student progress toward graduation. Measurement of such progress shall account for specific characteristics of each enrolled student, including but not limited to age and course credit accrued prior to enrollment in educational instruction and course content that are delivered primarily over the Internet, and shall be consistent with evidence-based best practices.

c. *Department responsibilities.* The department shall compile and review the data collected pursuant to this subrule and shall submit its findings and recommendations for the continued delivery by school districts of educational instruction and course content delivered primarily over the Internet in a report to the general assembly by January 15 annually.

15.12(3) *Accreditation criteria.* All online courses and programs shall meet existing accreditation standards.

15.12(4) *Prohibited activities.* A rebate for tuition or fees paid or any other dividend or bonus moneys for enrollment of a child shall not be offered or provided directly or indirectly by a school district, school, or private provider to the parent or guardian of a pupil who enrolls in a school district or school to receive educational instruction and course content delivered primarily over the Internet.

15.12(5) *Rules of construction.*

a. Nothing in this chapter shall be construed to require a school district, accredited nonpublic school, or AEA to use a particular textbook, assessment, provider, or curricular material.

b. Unless otherwise required by a state or federal law protecting students with disabilities, or in accordance with a proclamation of public health disaster emergency issued by the governor pursuant to Iowa Code section 29C.6, nothing in this chapter shall be construed to require a school district or accredited nonpublic school to offer continuous remote learning, to maintain a program of continuous

remote learning, to deliver instruction primarily over the Internet, to continue delivering instruction primarily over the Internet, or to become or remain an approved provider of online learning.

c. Schools may use virtual learning or online learning for days of inclement weather to the extent permitted by the Iowa Code.

d. The Iowa learning online (ILO) initiative was repealed by 2020 Iowa Acts, chapter 1107, section 10. Any remaining references to ILO in any department policy, document, or procedure shall be construed to comply with this chapter until that policy, document, or procedure is amended, corrected, rescinded, or repealed.

These rules are intended to implement Iowa Code sections 256.7(32), 256.9(55), 256.11(17), 256.41, and 256.43.