

EDUCATION DEPARTMENT[281]

Notice of Intended Action

Proposing rulemaking related to funding for children residing in state institutions or mental health institutes and providing an opportunity for public comment

The State Board of Education hereby proposes to rescind Chapter 34, “Funding for Children Residing in State Institutions or Mental Health Institutes,” Iowa Administrative Code, and to adopt a new chapter with the same title.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code section 256.7.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code section 282.33.

Purpose and Summary

This rulemaking is proposed pursuant to Executive Order 10 review. The Department of Education proposes removing an obsolete rule (current rule 281—34.13(281)), language that merely restates statutory texts, and restrictive terms that do not add value.

Fiscal Impact

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

Jobs Impact

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

Waivers

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

Public Comment

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

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

Public Hearing

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

February 27, 2024
9:30 to 10 a.m.

Room B100
Grimes State Office Building
Des Moines, Iowa

February 27, 2024
1:30 to 2 p.m.

Room B50
Grimes State Office Building
Des Moines, Iowa

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

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

Review by Administrative Rules Review Committee

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

The following rulemaking action is proposed:

ITEM 1. Rescind 281—Chapter 34 and adopt the following **new** chapter in lieu thereof:

CHAPTER 34
FUNDING FOR CHILDREN RESIDING IN STATE INSTITUTIONS
OR MENTAL HEALTH INSTITUTES

281—34.1(282) Scope. These rules apply to the funding and provision of appropriate educational services to children residing in the following institutions under the jurisdiction of the director of the department of health and human services: the Mental Health Institute, Independence, Iowa; and the State Training School, Eldora, Iowa.

281—34.2(282) Definitions. For the purposes of these rules, the following definitions apply:

“*AEA*” means an area education agency.

“*Aggregate days*” means the sum of the number of days of attendance, excluding days absent, for all school-age pupils who are enrolled during the school year. A student is considered enrolled after being placed in the institution and taking part in the educational program. Enrollment begins on the date that the student begins taking part in the educational program and ends on the date that the student leaves the institution or receives a high school diploma or its equivalent, whichever occurs first.

“*Average daily attendance*” or “*ADA*” means the average obtained by dividing the total of the aggregate days of attendance by the total number of student contact days. ADA for purposes of this chapter will be calculated on the regular school year exclusive of summer session.

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

“*District of residence*” means the school district in which the parent or guardian of the child resides or as defined under operation of law. If the student's parental rights have been terminated or if a parent cannot be located in Iowa after a reasonable effort has been made, the school district of the child's residence is considered the district where the institution is physically located.

“*Individualized education program*” or “*IEP*” means the written record of an eligible individual's special education and related services developed in accordance with 281—Chapter 41. The IEP document records the decisions reached at the IEP meeting and sets forth in writing a commitment of resources necessary to enable an eligible individual to receive needed special education and related

services appropriate to the individual's special learning needs. There is one IEP that specifies all the special education and related services for an eligible individual.

"Institution" means the Mental Health Institute, Independence, Iowa; and the State Training School, Eldora, Iowa.

"Proposed educational program" means a written description of the general education program, special education services, transition activities, and summer school programs that are proposed to be implemented in order to provide appropriate educational services for each child residing in an institution.

"Proposed educational program budget" means a document that outlines the costs for providing the proposed educational program as defined in these rules.

"Regular school year" means the number of days that school is in session, not to exceed 180 days. The regular school year for each institution shall begin on the first day of school established by the school district in which each institution is located.

"School-age pupil" means a student who is a resident of the state of Iowa and who is at least 5 years of age but less than 21 years of age on September 15 of the school year, or a younger age if served pursuant to an IEP.

"Student contact days" means the days during which the educational program is provided and students are under the guidance and instruction of the professional instructional staff.

"Transition" means communication between the institution, the child's district of residence, and any other relevant stakeholders to develop a plan for assisting the child to adjust to school in the district of residence upon the child's return. Planning for support and follow-up includes contacts with the child's district of residence, community agencies, and the AEA when needed.

281—34.3(282) General principles.

34.3(1) Availability. All children who reside in state institutions and the mental health institute shall be provided appropriate educational services in accordance with these rules. Special education services to eligible individuals in institutions will be provided in accordance with 281—Chapter 41.

34.3(2) Responsibility of institutions. It is the responsibility of institutions to provide or make provisions for appropriate educational services to children residing in these institutions and to ensure appropriate transition of children back to the school district of residence. The institution may make provisions by contracting with the AEA, the school district in which the institution is located, or an approved charter school.

34.3(3) Basis for funding. Funding for general education programs at the institutions is determined using a formula similar to the formula used for the determination of funding for local school districts while considering the unique setting of the institutions. The amount of special education funding is determined by comparing the structure of the general education program at each institution to the nature and extent of services necessary for students with special education needs beyond what is provided to all students by the general education program.

34.3(4) Responsibility of the AEA. It is the responsibility of the AEA in which the institution is located to provide media services, educational services, and special education support services. The nature and extent of these services will be comparable to those provided to school districts in the AEA.

281—34.4(282) Notification.

34.4(1) Students served at mental health institute. The Mental Health Institute, Independence, Iowa, will notify the district of residence of each child who, on the date specified in Iowa Code section 257.6(1), is residing in this institution. The notification will occur on or before October 10 and be in writing or in a printable electronic medium and include the child's name, birth date, and grade level and the names and addresses of the child's parents or guardians.

34.4(2) Students served at the State Training School at Eldora. The State Training School at Eldora will notify the AEA in which the institution is located and the district of residence of each child who, on the date specified in Iowa Code section 257.6(1), is residing in the institution if the child's release date is known and the release date is within the current school year. The notification will occur on or before October 10. For students served pursuant to an IEP, the State Training School at Eldora will by the last

Friday in October also notify the AEA in which the institution is located and the district of residence of each child residing in the institution if the child's release date is known and the release date is within the current school year. Notifications will be in writing or in a printable electronic medium and include the child's name, birth date, and grade level and the names and addresses of the child's parents or guardians.

281—34.5(218) Program submission and approval. Educational programs will be submitted, reviewed, modified, and approved using the following procedures:

34.5(1) *Submission.* Each institution will submit a proposed educational program in a time and manner specified by Iowa Code section 282.33(1). The proposed program will be submitted in the manner prescribed by the department and include a description of the following:

a. The general education program, including content standards, benchmarks, student learning goals and all other provisions of 281—Chapter 12.

b. Special education services, including instructional, support and other services that ensure the provision of a free appropriate public education in the least restrictive environment for students with disabilities in accordance with 281—Chapter 41.

c. Procedures that will be implemented to ensure the effective transition of each child back to the district of residence.

34.5(2) *Approval.* The department will review and approve or modify the proposed educational program at a time and manner specified in Iowa Code section 282.33(1).

281—34.6(218) Budget submission and approval. Educational program budgets will be submitted, reviewed, modified, and approved using the following procedures:

34.6(1) *Submission.* Each institution will submit a proposed educational program budget in a time and manner specified by Iowa Code section 282.33(1). The proposed budget is to be based on the ADA of the children residing in the institution. The ADA used for the proposed budget is the ADA for the school year that ended the previous June 30.

34.6(2) *Students not served pursuant to an IEP.* The budget will be calculated as the sum of the following:

a. ADA multiplied by the state cost per pupil for the budget year established pursuant to Iowa Code section 257.9.

b. ADA multiplied by the per pupil media services funding for the AEA in which the institution is located as established by Iowa Code section 257.37.

c. ADA multiplied by the per pupil educational services funding for the AEA in which the institution is located as established by Iowa Code section 257.37.

34.6(3) *Students served pursuant to an IEP.* The budget will be calculated as the sum of the following:

a. Costs established pursuant to subrule 34.6(2) for students not served pursuant to an IEP.

b. Additional weighting established by the special education weighting plan pursuant to Iowa Code section 257.31(12) as appropriate to support the nature and extent of special education services provided pursuant to subrule 34.3(3).

c. Special education student count multiplied by the special education support cost per pupil funding established for the AEA in which the institution is located pursuant to Iowa Code section 257.9.

d. The State Training School at Eldora may include in its budget an amount that represents the difference between the amount established pursuant to Iowa Code section 282.28 (2003) and approved by the department for the 2003-2004 fiscal year included in the fiscal year beginning July 1, 2003, and the amount the institution has budgeted under paragraph 34.6(3) "c." The budget amount will increase annually by the allowable growth rate established for that year.

e. In addition to the amount the institution has budgeted as specified in paragraph 34.6(3) "c," the mental health institute at Independence may include annually in its budget an amount not to exceed \$200,000 based on the budget calculation specified in paragraph 34.6(2) "a." This budgeted amount may be adjusted to an amount that exceeds \$200,000 in circumstances when there is a significant increase in

the number of students in attendance. This additional amount will increase annually by the allowable growth rate established for that year.

34.6(4) Approval. The department will review and approve or modify the proposed educational program budget at a time and manner specified in Iowa Code section 282.33(1).

281—34.7(282) Payments.

34.7(1) General. Payments to institutions will be made at a time and manner specified in Iowa Code section 282.33(1).

34.7(2) Payments to the AEA. Within ten days of receiving its payment, the institution shall pay to the AEA in which the institution is located one-tenth of the total funding included in its approved budget for AEA media services, educational services, and special education support services.

281—34.8(282) Accounting for actual program costs. Each institution will submit an accounting for the actual cost of the program to the department at a time and manner specified by Iowa Code section 282.33(1).

34.8(1) Instructional costs. Actual costs include salaries and benefits of instructional staff, instructional supplies and materials, professional development for instructional staff, student transportation, contracted services related to instruction or instructional staff, and instructional equipment.

34.8(2) Administrative costs. Costs for administering the educational program may be included in actual costs based on the ADA of students in the institution. Costs are to be limited to the salary and benefits of the full-time equivalent education administrators and clerical support for the instructional program. However, the full-time equivalent (FTE) positions at any institution will not exceed 1.0 FTE position for education administration and 1.0 FTE position for clerical support.

34.8(3) Unallowed costs. Costs will not include expenditures for debt services or for facilities acquisition and construction services, including remodeling and facility repair. Costs of residential, custodial, treatment, and similar services provided by the institution will not be included in the actual costs. Costs provided for by a grant or other categorical aid shall not be included in the actual cost calculations pursuant to this chapter.

34.8(4) Summer school costs. Costs for providing summer school will be reported separately from regular session costs. Except as approved by the department of education, summer session costs are considered to be included in the state cost per pupil, or as provided in an appropriation through the department of health and human services.

34.8(5) Instruction to nonresident students. Costs for providing instruction to students who are not residents of the state of Iowa are excluded from the actual cost calculations.

34.8(6) Maximum costs for students who are not served pursuant to an IEP. Actual costs for serving students who are not served pursuant to an IEP will not exceed the greater of the actual ADA for the school year multiplied by the state cost per pupil or the ADA from the approved budget multiplied by the state cost per pupil.

34.8(7) Maximum costs for students served pursuant to an IEP. Actual costs for students served pursuant to an IEP will not exceed the amount calculated in subrule 34.6(3).

34.8(8) Approval of expenditures. The department will review and approve or modify all expenditures incurred in compliance with the guidelines adopted pursuant to Iowa Code section 256.7(10) and notify the department of revenue of the approved accounting amount. The approved accounting amount will be compared with any amounts paid by the department of revenue to the department of health and human services and any differences added to or subtracted from the October payment made under these rules for the next school year.

34.8(9) Costs of courses. Costs include the actual expenses, if reasonable and customary, for tuition, textbooks, course materials, and fees directly related to courses taken pursuant to rule 281—34.10(282) by students who are residents of the state of Iowa.

34.8(10) Accounting for ADA. Each institution will keep a daily register that includes the name, birth date, district of residence, attendance, and enrollment status of each student. At the end of the school

year, each institution will calculate the ADA for students served pursuant to an IEP and the ADA for students not served pursuant to an IEP. This information will be reported with the accounting for the actual program costs submitted to the department by August 1.

34.8(11) *Audit.* Each institution will make the records related to providing educational services to students residing within the institution available to independent auditors, state auditors and department of education staff upon request.

281—34.9(282) AEA services. Each institution will purchase from the AEA in which the institution is located support, related and other services necessary to provide appropriate educational programs to students requiring special education, and payment for the purchased services shall be made in accordance with subrule 34.7(2). The nature and extent of such services will be comparable to those provided to school districts in the AEA.

281—34.10(282) Postsecondary credit courses. High school students who attend an institution and are residents of the state of Iowa are eligible to be enrolled in college courses offered by an eligible postsecondary institution as defined in Iowa Code section 261C.3(1) and to receive both secondary and postsecondary credit therefor.

34.10(1) *Noneligible courses.* Postsecondary courses utilized in the attainment of an adult diploma or high school equivalency diploma are not eligible for funding hereunder.

34.10(2) *Eligible courses.* Postsecondary courses eligible for funding hereunder must meet all of the following paragraphs. The course is to be:

- a. Supplementing, not supplanting, courses offered at the institution.
- b. Included in the college catalog or an amendment or addendum to the catalog.
- c. Open to all registered college students, not just secondary students.
- d. Taught by a college-employed instructor.
- e. Taught utilizing the college course syllabus.
- f. Of the same quality as a course offered on a college campus.
- g. Nonsectarian.

34.10(3) *Maximum number of college courses allowed.* A student is allowed to take a maximum of three college courses during a semester, for a maximum of six college courses per regular school year, while the student is in attendance at the institution. College courses taken outside the regular school year will not be funded under this chapter. If the student exceeds the course limit, the costs of the additional courses will not be funded under this chapter.

These rules are intended to implement Iowa Code section 282.33.