

EDUCATION DEPARTMENT[281]

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 281—Chapters 11 and 17
“Open Enrollment and Other Enrollment Options”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 282.18

State or federal law(s) implemented by the rulemaking: Iowa Code sections 279.82 and 282.18 and 20 U.S.C. §7912

Public Hearing

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

January 2, 2024
9 to 9:30 a.m.

Room B50
Grimes State Office Building
Des Moines, Iowa

Public Comment

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

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Purpose and Summary

This chapter is intended to benefit Iowa students who choose to attend school outside of their resident districts or buildings and their families.

The Department proposes removing obsolete language (including language remaining from when there was an open enrollment deadline), removing language that merely restates statutory requirements, removing restrictive terms that do not add value, and consolidating a similar chapter on intra-district choice concerning persistently dangerous schools. The Department has also included a division implementing the intra-district choice provisions of 2023 Iowa Acts, Senate File 496. Even with that division, the proposed chapter provides regulatory relief.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:
School districts will bear the costs of the proposed rulemaking.
 - Classes of persons that will benefit from the proposed rulemaking:
Students who choose to attend another public school district or building and their families will benefit from this proposed rulemaking.

2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:
 - Quantitative description of impact:
There is no known quantitative impact from this proposed rulemaking.
 - Qualitative description of impact:
Removing unnecessary language is a qualitative benefit of this rulemaking.

3. Costs to the State:

- Implementation and enforcement costs borne by the agency or any other agency:
The Department enforces this chapter, with costs offset by its general state appropriation.

- Anticipated effect on state revenues:
There is no anticipated effect on state revenues.

4. Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:
Inaction would retain obsolete, inflexible, and unnecessary rule language.

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

The statute requires rules. The Department seeks to ensure any rules adopted are as limited as possible.

6. Alternative methods considered by the agency:

- Description of any alternative methods that were seriously considered by the agency:
None.

- Reasons why alternative methods were rejected in favor of the proposed rulemaking:
The statute requires rules.

Small Business Impact

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

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

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

There is no known impact on small business.

Text of Proposed Rulemaking

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

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

CHAPTER 17
OPEN ENROLLMENT AND OTHER ENROLLMENT OPTIONS

DIVISION I
OPEN ENROLLMENT

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

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

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

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

“*Department*” means the department of education.

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

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

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

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

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

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

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

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

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

17.2(3) School district responsibilities.

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

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

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

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

e. Notification to parents.

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

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

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

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

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

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

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

281—17.4(282) Open enrollment for kindergarten or certain prekindergarten programs. A parent/guardian of a kindergarten pupil or a parent/guardian of a prekindergarten student enrolled in a special education program and eligible to be included in the resident school district's basic enrollment under Iowa Code section 257.6(1) "a"(1) may request to enroll the pupil or student in a district other than the district of residence. In considering an application under this rule, the resident and the receiving district are not precluded from administering board-adopted policies related to insufficient classroom space, the provisions of rule 281—17.11(282), or the provisions of a desegregation order. As an alternative procedure, the receiving board may, by policy, authorize the superintendent to approve, but not deny, applications filed under this rule.

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

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

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

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

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

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

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

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

17.6(5) Participation in interscholastic athletic contests and competitions. A student in grades 9 through 12 whose transfer of schools had occurred due to a request for open enrollment by the student's parent or guardian is ineligible

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

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

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

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

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

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

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

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

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

b. This rule applies to the following children:

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

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

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

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

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

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

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

281—17.8(282) Transportation.

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

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

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

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

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

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

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

17.9(5) Method of payment. These moneys will be paid to the receiving district by the resident district during the period of open enrollment according to the timeline in Iowa Code section 282.20(3). The district cost per pupil for nonspecial education students will be the cost calculated each year for the school year preceding the school year for which the open enrollment takes place. Costs for special education students are outlined in rule 281—17.10(282).

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

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

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

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

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

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

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

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

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

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

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

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

17.10(4) *Finance.* The district of residence, as determined on the date specified in Iowa Code section 257.6(1), will pay according to the timeline in Iowa Code section 282.20(3) to the receiving district the actual costs incurred by the receiving district in providing the appropriate special education program. These costs will be based on the current year expenditures with needed adjustments made in the final payment. The responsibility for ensuring that an appropriate program is maintained for an open enrollment special education pupil rests with the resident district. The receiving district and the receiving area education agency director will provide, at least on an annual basis, evaluation reports and information to the

resident district on each special education open enrollment pupil. The receiving district will provide notice to the resident district of all staffings scheduled for each open enrollment pupil. For an open enrolled special education pupil where the receiving district is located in an area education agency other than the area education agency within which the resident district is located, the resident district and the receiving district are to forward a copy of any approved open enrollment request to the director of special education of their respective area education agencies. Any moneys received by the area education agency of the resident district for an approved open enrollment special education pupil will be forwarded to the receiving district's area education agency. For children requiring special education, the receiving district will complete and provide to the district of residence the documentation necessary to seek Medicaid reimbursement for eligible services.

This division is intended to implement Iowa Code section 282.18.

DIVISION II
INTRA-DISTRICT SCHOOL CHOICE UNDER IOWA LAW

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

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

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

DIVISION III
UNSAFE SCHOOL CHOICE OPTION UNDER FEDERAL LAW

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

"Department" means the Iowa department of education.

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

"School" means an attendance center within a school district.

"School district" means a public school district in Iowa.

"School year" means from July 1 until June 30 of the following year.

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

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

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

a. The school has violence-related, long-term suspensions or expulsions for more than 1 percent of the student population. Long-term suspensions or expulsions are more than ten days in length and require the action of the local school board. For purposes of this subrule, a violence-related, long-term suspension or expulsion occurs as a result of physical injury or the threat of physical injury to a student while the student is in the school building or on the grounds of

the attendance center during the hours of the regular school day or while the student is in attendance at school-sponsored activities that occur during the hours before or after the regular school day under one of the following:

- (1) A forcible felony as defined in rule 281—17.13(20USC7912);
 - (2) Offenses, excluding simple misdemeanors, involving physical assault under Iowa Code chapter 708;
 - (3) Offenses, excluding simple misdemeanors, involving sexual assault under Iowa Code chapter 709;
 - (4) Extortion under Iowa Code section 711.4;
 - (5) Use of incendiary or explosive devices such as bombs under Iowa Code section 712.5;
 - (6) Criminal gang activity under Iowa Code chapter 723A;
 - (7) Carrying or using a weapon under Iowa Code sections 724.3 and 724.4.
- b.* The school has two or more students expelled for violating the federal gun-free school laws.
- c.* The school has 1 percent of the enrolled student population or five students, whichever is greater, who exercised the individual student option defined in rule 281—17.15(20USC7912).

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

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

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

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

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

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

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

281—17.15(20USC7912) Individual student option.

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

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

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

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

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