

EDUCATION DEPARTMENT[281]

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 281—Chapter 15
“Online and Virtual Learning”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 256.7(32)
State or federal law(s) implemented by the rulemaking: Iowa Code sections 256.7(32), 256.9(55), 256.11(17), 256.41 and 256.43

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 proposed chapter is intended to benefit students and teachers who participate in online, remote, or virtual learning.

The Department proposes removing restrictive terms that do not add value, removing rule text that may be addressed by a cross-reference to statutory provisions, and providing additional flexibility for approved schools and providers (e.g., a five-year cycle versus a three-year cycle).

Analysis of Impact

1. Persons affected by the proposed rulemaking:

- Classes of persons that will bear the costs of the proposed rulemaking:

Schools and providers of online and virtual education services will bear the costs of this proposed chapter.

- Classes of persons that will benefit from the proposed rulemaking:

Iowa students who participate in remote learning, as well as their teachers and 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 281—Chapter 15 and adopt the following **new** chapter in lieu thereof:

CHAPTER 15 ONLINE AND VIRTUAL LEARNING

281—15.1(256) Definitions.

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

“Appropriately licensed and endorsed” or *“appropriately licensed”* 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.

“Board of educational examiners” or *“BOEE”* refers to the body with the statutory responsibility to license Iowa educators.

“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.

“Online learning” and *“online coursework”* mean educational instruction and content that 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 learning platform*” means a set of services by which students access course content and by which students and teachers connect and communicate.

“*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.

“*Private provider*” means, for purposes of this chapter, any public or private entity that is not a school district, an accredited nonpublic school, or an AEA.

“*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—15.2(256) Telecommunications for instruction.

15.2(1) *Applicability.* This rule applies to all AEAs, school districts, accredited nonpublic schools, community colleges, and institutes of higher education using telecommunications to serve students in kindergarten through grade 12.

15.2(2) *Course eligibility.* Telecommunications may be employed as a means to deliver any course, including a course necessary for accreditation by the department, provided it is not the exclusive means of instructional delivery.

15.2(3) *Appropriately licensed and endorsed teachers.* Instruction provided by telecommunications is to be taught by an appropriately licensed and endorsed teacher, in a manner provided by Iowa Code section 256.7(7) “a.”

281—15.3(256) Online learning—private providers.

15.3(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 accredited nonpublic schools with a list of approved online providers. Approved providers will meet criteria for approval in accordance with Iowa Code section 256.43(1) “a.”

15.3(2) *Use of approved private providers.* Courses developed by private providers may be utilized by a school district or school in implementing a high-quality online learning program in circumstances described in Iowa Code section 256.43(2) “a.”

15.3(3) *Approval criteria.* The department will maintain a list of approved online providers that provide course content through an online learning platform whose content and delivery meet the following provisions:

- a. Courses meet the standards of Iowa Code section 256.7(32) “c.”
- b. The provider supplies coursework customized to the needs of the student.
- c. The provider offers a means for a student to demonstrate competency in completed online coursework.
- d. Courses provide online content and instruction evaluated on the basis of student learning outcomes.

15.3(4) *Approval process.* Private providers of online course content or full-time online instruction will apply for approval to offer such services to Iowa school districts and accredited nonpublic schools a minimum of once every five 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 will also apply in each year that any of these alterations take place, which are substantial in nature:

- a. The provider altered the courses or content offered by either adding or subtracting grade levels or subjects.
- b. The provider altered the delivery of the courses or content offered by altering the learning management system or delivery of assessments.
- c. The provider altered the evaluation of student learning used in the system.
- d. The provider 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—15.4(256) Online learning provided by area education agencies.

15.4(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 competent private instruction 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.

15.4(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 competent private instruction under Iowa Code chapter 299A.

15.4(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.

15.4(4) Cost. School districts and accredited nonpublic schools will pay to AEAs the actual cost of providing coursework under an online learning program offered in accordance with this rule.

15.4(5) Course content and delivery. Content and delivery provided by an online learning program established pursuant to this rule must meet the provisions of Iowa Code section 256.7(32) "c." Grades in online courses are awarded based on Iowa Code section 256.43(3).

15.4(6) Competent private instruction. This rule applies to students receiving competent private instruction under Iowa Code chapter 299A. To participate in an online learning program offered by an area education agency, a student receiving competent private instruction under Iowa Code chapter 299A will 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 appropriately licensed by the BOEE who has online learning experience, and the course content must meet the provisions of Iowa Code section 256.7(32) "c."

281—15.5(256) Online learning program provided by a school district—online schools.

15.5(1) Online learning program provided by a school district. A school district may provide an online learning program delivered primarily over the Internet that operates as an online school. Such a program is governed by Iowa Code section 256.41.

15.5(2) Course content and delivery. Content and delivery provided by an online learning program established pursuant to this rule must meet the provisions of Iowa Code section 256.7(32) "c." Grades in online courses are awarded based on Iowa Code section 256.43(3).

15.5(3) Approval criteria. The department will maintain a list of approved school districts that provide course content through an online learning platform whose content and delivery meet the provisions of subrule 15.5(2).

15.5(4) Approval process. School district providers of online course content or full-time online instruction will apply for approval to offer such services to Iowa districts and accredited nonpublic schools a minimum of once every five years on forms provided by the department. If a school district is providing full-time online instruction only to its resident students and not to any other students, the school district need not seek approval; however, the school district must ensure it meets the provisions of subrules 15.5(1) and 15.5(2). Applications 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 district provider under this rule will also apply in each year that any of these alterations take place, which are substantial in nature:

- a. The provider altered the courses or content offered by either adding or subtracting grade levels or subjects.
- b. The provider altered the delivery of the courses or content offered by altering the learning management system or delivery of assessments.
- c. The provider altered the evaluation of student learning used in the system.
- d. The provider 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 a school district or accredited nonpublic school—courses.

15.6(1) Course content and delivery. A school district or accredited nonpublic school may provide an online learning program to deliver online learning and online coursework to students attending the district or school. Content and delivery provided by an online learning program established pursuant to this rule must meet the provisions of Iowa Code section 256.7(32) “c.” Grades in online courses are awarded based on Iowa Code section 256.43(3).

15.6(2) Use to meet general accreditation standards. Any course that is not part of the offer-and-teach standards 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 accredited nonpublic schools. Online courses may be used to meet offer-and-teach standards for grades 9 through 12 in the circumstances described in Iowa Code section 256.11(17) “a.” Additionally, a school district or accredited nonpublic school may apply for an annual waiver of the standards for up to two specified subjects in the circumstances described in Iowa Code section 256.11(17) “b.”

15.6(3) Delivery options for general accreditation standards. Delivery of coursework used to meet general accreditation standards is governed by Iowa Code section 256.11(17) “c.”

15.6(4) Competent private instruction. The online learning platform described in subparagraph 15.8(3) “b”(3) may deliver distance education to students receiving competent private instruction under Iowa Code chapter 299A, 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 appropriately licensed by the BOEE who has online learning experience, and the course content meets the provisions of Iowa Code section 256.7(32) “c.”

15.6(5) Coordination and costs. The department and the area education agencies operating online learning programs pursuant to Iowa Code section 273.16 will coordinate to ensure the most effective use of resources and delivery of services. Federal or other funds, if available, may be used to offset what would otherwise be costs to school districts for participation in the program.

281—15.7(256) Open enrollment. Content and delivery provided online pursuant to rule 281—15.3(256), 281—15.4(256), 281—15.5(256) or 281—15.6(256) may be provided to pupils who are participating in open enrollment under Iowa Code section 282.18.

15.7(1) Courses. A school district may provide individual courses it developed, or any other courses developed pursuant to this chapter (including courses developed by private providers), delivered primarily over the Internet to pupils who are participating in open enrollment under Iowa Code section 282.18.

15.7(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 will, within 30 days of the termination, notify the district of residence of the termination and the date of the termination.

281—15.8(256) Online learning—access by students receiving competent private instruction. Students enrolled in competent private instruction pursuant to Iowa Code chapter 299A may participate in online instruction pursuant to subrules 15.4(6) and 15.6(4). The individual providing instruction to a student under Iowa Code chapter 299A as described in Iowa Code section 299A.1(1) will receive the student’s score for completed program coursework.

281—15.9(256,256B) Online learning—students with disabilities.

15.9(1) Children with disabilities are not to be categorically excluded from admission to online learning programs or from enrollment in online coursework.

15.9(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.

15.9(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).

15.9(4) When a child with an IEP seeks open enrollment into an online learning program, the child’s IEP team will determine whether the child meets the open enrollment provisions of 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, will 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 will be resolved pursuant to 281—Chapter 17. The child is to remain in the child's resident district while any dispute about the appropriateness of the receiving district's program is pending.

281—15.10(256) Department general supervision of telecommunications and online learning.

15.10(1) *Nature of general supervision.* The department will exercise general supervision over compliance with this chapter and offer advice and technical assistance to foster compliance and improved outcomes. This will be accomplished by department staff.

15.10(2) *Data collection and reporting.*

a. Each school district and accredited nonpublic school will list and describe the online coursework offered by the school district or accredited nonpublic school in which the student is enrolled.

b. A school district providing educational instruction and course content delivered primarily over the Internet that is required to seek approval under subrule 15.5(4) will annually submit to the department, in the manner prescribed by the department, data sought by the department, including data specified in Iowa Code section 256.7(32) "b"(1).

c. The department will comply with the responsibilities set out in Iowa Code section 256.7(32) "b."

15.10(3) *Accreditation criteria.* All online courses and programs shall meet existing accreditation standards.

15.10(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.

15.10(5) *Rules of construction.*

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

b. Unless otherwise prescribed 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 will 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 count toward the minimum school calendar 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 will be construed to comply with this chapter until that policy, document, or procedure is amended, corrected, rescinded, or repealed.

e. This chapter will be broadly construed to allow school districts, accredited nonpublic schools, and AEAs to meet the needs of individual students and the local community.

15.10(6) *Prohibition on offering a completely online educational program.* Unless specifically authorized by statute or by a governor's proclamation on a temporary basis, no school district, accredited nonpublic school, or AEA is authorized to provide a completely online educational program, including completely online instruction for a particular grade. All school districts, accredited nonpublic schools, and AEAs will maintain a physical presence for their educational programs.

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