

TITLE V
NONTRADITIONAL STUDENTS
CHAPTER 31
PRIVATE INSTRUCTION AND DUAL ENROLLMENT
[Prior to 9/7/88, see Public Instruction Department[670] Ch 63]

281—31.1(299,299A) Purpose and definitions.

31.1(1) Purpose. It is the purpose of this chapter to give guidance concerning the provision, assistance, and supervision of private instruction to children of compulsory attendance age outside the traditional school setting. This chapter also establishes responsibilities related to dual enrollment.

31.1(2) Definitions. The following definitions apply to this chapter:

a. "Competent private instruction" means either of the following:

(1) Private instruction provided on a daily basis for at least 148 days during a school year, to be met by attendance for at least 37 days each school quarter, by or under the supervision of a licensed practitioner in the manner provided under Iowa Code section 299A.2 and this chapter, which results in the student about whom a report of private instruction has been filed making adequate progress.

(2) Private instruction provided by a parent, guardian, or legal custodian pursuant to Iowa Code section 299A.3.

b. "Independent private instruction" means private instruction that meets the following criteria:

(1) Is not accredited.

(2) Enrolls not more than four unrelated students.

(3) Does not charge tuition, fees, or other remuneration for instruction.

(4) Provides private or religious-based instruction as its primary purpose.

(5) Provides enrolled students with instruction in mathematics, reading and language arts, science, and social studies.

(6) Provides, upon written request from the superintendent of the school district in which the independent private instruction is provided, or from the director of the department of education, a report identifying the primary instructor, name and location of the authority responsible for the independent private instruction, and the names of the students enrolled.

(7) Is not a nonpublic school and does not provide competent private instruction as defined in Iowa Code section 299A.1 and these rules.

(8) Is exempt from all state statutes and administrative rules applicable to a school, a school board, or a school district, except as otherwise provided in Iowa Code chapters 299 and 299A.

c. "Private instruction" means instruction using a plan and a course of study in a setting other than a public or organized accredited nonpublic school.

[ARC 1246C, IAB 12/11/13, effective 1/15/14; ARC 5868C, IAB 8/25/21, effective 9/29/21]

281—31.2(299) Reports as to competent private instruction.

31.2(1) Reporting. Subject to subrule 31.2(3), the parent, guardian, or legal or actual custodian of a child of compulsory attendance age who does not enroll the child in a public school or Iowa accredited nonpublic school or who is not obtaining independent private instruction for the child shall complete a report in duplicate on forms created by the department of education and provided by the resident public school district, indicating the parent, guardian, or legal or actual custodian's intent to provide or arrange for competent private instruction for the child for each school year. The report shall be filed with the school district by September 1 of the school year in which the child will be under competent private instruction.

a. The report shall include the following information:

(1) The name and address of the parent, guardian, or legal or actual custodian reporting;

(2) The name and birth date of the child;

(3) An indication of the number of days of instruction, which must be a minimum of 148 days per academic year;

(4) The name and address of the person or persons providing competent private instruction to the child and an indication of whether each such person is the holder of a valid Iowa practitioner license or teaching certificate appropriate to the age and grade level of the child being taught;

(5) An outline of the courses of study, including subjects covered, lesson plans, and time spent on the areas of study;

(6) The titles and authors or publishers of the texts to be used;

(7) Evidence of immunization of the child or evidence of exemption, as required by law, if the child is being placed under competent private instruction for the first time and, if the child is younger than ten years of age, a blood lead test in accordance with Iowa Code section 135.105D. NOTE: Noncompliance with the blood lead test requirement shall not be considered a violation of compulsory attendance laws.

b. The report shall also seek the following information, which may be supplied by the person filing the report:

(1) An indication of whether and to what extent dual enrollment of the child in the public school is desired;

(2) An indication of whether the child is currently identified as a child requiring special education pursuant to the rules of special education;

(3) An indication of which form of annual assessment, if applicable, is to be administered to the child and which test, if known, is desired.

31.2(2) *Late reporting.* If a parent, guardian, or legal or actual custodian decides, after enrolling a child of compulsory attendance age in a public or accredited nonpublic school and after the deadline for filing a report under subrule 31.2(1), to provide competent private instruction to the child, the parent, guardian, or legal or actual custodian shall file the required report completed as fully as possible no later than 14 calendar days and a fully completed report within 30 calendar days after removing the child from the public or accredited nonpublic school. Days of the child's attendance in the public or nonpublic school up to the time of removal shall be applied to the 148-day minimum compulsory attendance requirement for the school year affected.

31.2(3) *Reporting requirement option: private instruction exemption.* A parent, guardian, or legal or actual custodian of a child of compulsory attendance age providing competent private instruction to the child under Iowa Code section 299A.3 may meet, but is not required to meet, all of the following requirements:

a. Complete and send, in a timely manner, the report required under Iowa Code section 299.4 and this rule to the school district of residence of the child.

b. Ensure that the child under the parent's, guardian's, or legal or actual custodian's instruction is evaluated annually to determine whether the child is making adequate progress, as defined in Iowa Code section 299A.6 and this chapter.

c. Ensure that the results of the child's annual evaluation are reported to the school district of residence of the child and to the department of education by a date not later than August 1 of the year following the school year in which the child is under competent private instruction, pursuant to this chapter.

31.2(4) *Reporting requirement option not available.*

a. The reporting requirement option provided in subrule 31.2(3) shall not be available to any parent, guardian, or legal or actual custodian who requests services from a school district or area education agency under this chapter, including but not limited to provision of instructional materials under subrule 31.5(4), assistance from a home school assistance program under subrule 31.5(5), dual enrollment under rule 281—31.6(299A), open enrollment under rule 281—31.7(299), or special education services under rule 281—31.10(299A). Parents who elect the reporting requirement option under subrule 31.2(3) and who request testing assistance under subrule 31.5(2) or an approved course in driver education under subrule 31.5(6) need not complete the form required by subrule 31.2(1), but must demonstrate that the child is receiving competent private instruction pursuant to this chapter.

b. Notwithstanding the reporting requirement option described in subrule 31.2(3), a parent, guardian, or legal or actual custodian of a child currently requiring special education must obtain

approval pursuant to rule 281—31.10(299A) before providing competent private instruction, unless that rule provides otherwise.

[ARC 1246C, IAB 12/11/13, effective 1/15/14; ARC 5868C, IAB 8/25/21, effective 9/29/21]

281—31.3(299,299A) Duties of privately retained licensed practitioners.

31.3(1) *Scope of rule.* This rule addresses the duties of a person who is directly retained by the parent, guardian, or legal or actual custodian of a child receiving competent private instruction to provide instruction or instructional supervision for the child. The duties of a person who provides instruction or instructional supervision on behalf of a public school in the form of a home school assistance program are addressed in rule 281—31.4(299,299A).

31.3(2) *Licensing requirements.* A person who provides instruction to or instructional supervision of a student receiving competent private instruction shall be either the student's parent, guardian, or legal or actual custodian or a person who possesses a valid Iowa teaching certificate or practitioner license, including a substitute teacher's license or a substitute authorization, which is appropriate to the grade level of the student.

31.3(3) *Duties.* The duties of a licensed teacher who instructs or provides instructional supervision of a student shall include the following:

a. Contact with the student and the student's parent, guardian, or legal or actual custodian at least twice per 45 days of instruction, during which time the teacher practitioner fulfills the duties described below. One of every two contacts shall be face-to-face with the student.

b. Consulting with and advising the student's parent, guardian, or legal or actual custodian as requested by the student's parent, guardian, or legal or actual custodian or as deemed necessary in the professional judgment of the practitioner.

c. Providing formal and informal assessments of the student's progress to the student and the student's parent, guardian, or legal or actual custodian.

d. Annually maintaining a diary, record, or log of visitations and assistance provided.

e. Referring to the child's district of residence for evaluation a child who the practitioner has reason to believe may need special education.

31.3(4) *Limitations.* A licensed Iowa practitioner who is employed under this rule shall not serve in that capacity on behalf of more than 25 families, or more than 50 children of compulsory attendance age, in an academic year unless the service is provided pursuant to the teacher's employment with a nonaccredited nonpublic entity.

A licensed practitioner may seek exemption from the above limitation by submitting a written request to the director of the department of education. Exemptions shall be granted when the director is satisfied that the limitation will pose a substantial hardship on the person or the school providing instruction or instructional supervision and that the best interests of all children being served by the practitioner will continue to be met.

[ARC 5868C, IAB 8/25/21, effective 9/29/21]

281—31.4(299,299A) Duties of licensed practitioners, home school assistance program.

31.4(1) *Scope of rule.* This rule addresses the duties of a person who provides competent private instruction or instructional supervision for one or more children who receive competent private instruction on behalf of a school district in the form of a home school assistance program as defined in subrule 31.5(5).

31.4(2) *Licensing requirements.* A person who provides direct instruction to a student receiving competent private instruction for which the student receives credit on a transcript provided by the district for the course shall possess a valid Iowa teaching certificate or practitioner license appropriate to the content area taught and to the grade level of the student. A person who provides instructional supervision only of a student receiving competent private instruction shall possess a valid Iowa teaching certificate or practitioner license appropriate to the grade level of the student. A practitioner who possesses only a valid Iowa substitute authorization may neither provide direct instruction nor instructional supervision under this rule.

31.4(3) Duties. The duties of a licensed teacher who instructs or provides instructional supervision of a student shall include the following:

a. Contact with the student and the student's parent, guardian, or legal or actual custodian at least four times per 45 days of instruction. One of every two contacts shall be face-to-face with the student.

b. Consulting with and advising the student's parent, guardian, or legal or actual custodian with respect to any of the following as requested by the student's parent, guardian, or legal or actual custodian or as deemed necessary in the professional judgment of the practitioner:

- (1) Lesson plans;
- (2) Textbook and supplementary materials;
- (3) Educational goals and objectives;
- (4) Teaching and learning techniques;
- (5) Forms of assessment and evaluation of student learning;
- (6) The student's strengths and weaknesses;
- (7) Interpretation of test results;
- (8) Planning; and
- (9) Record keeping.

c. Providing formal and informal assessments of the student's progress to the student and the student's parent, guardian, or legal or actual custodian.

d. Annually maintaining a diary, record, or log of visitations and assistance provided.

e. For purposes of assisting the district to meet its "child find" obligation under the Individuals with Disabilities Education Act, referring to the child's district of residence for evaluation any child who the practitioner has reason to believe may need special education.

31.4(4) Limitations. A licensed Iowa practitioner who is employed by a public or accredited nonpublic school to provide instruction or instructional supervision through a home school assistance program shall not serve in that capacity on behalf of more than 20 families, or more than 40 children of compulsory attendance age, in an academic year. The authorities in charge of a public school may seek exemption from the above limitation by submitting a written request to the director of the department of education. Exemptions shall be granted when the director is satisfied that the limitation will pose a substantial hardship on the person or the school providing instruction or instructional supervision and that the best interests of all children being served by the home school assistance program will continue to be met.

[ARC 5868C, IAB 8/25/21, effective 9/29/21]

281—31.5(299A) School district duties related to competent private instruction.

31.5(1) Reports.

a. The secretary of a public school district shall make available reporting forms developed by the department of education and shall receive reports as to competent private instruction, maintaining one copy in the district and forwarding one copy to the area education agency as required by law.

b. The secretary of the district shall provide forms to any accredited nonpublic school located within the district for the purpose of reporting the nonpublic school's student enrollment data as required by law. The district secretary shall notify the appropriate school districts of nonresident students enrolled in accredited nonpublic schools within the district.

c. The district shall review the completed form to ascertain whether the person filing has complied with the reporting requirements of the law and these rules. Specifically, the district shall determine from the report that the person providing the instruction is either the child's parent, guardian, custodian or a person with a valid Iowa practitioner's license appropriate to the age and grade level of the child; that the designated period of instruction is at least 148 days per academic year; that immunization evidence is provided for children placed under competent private instruction for the first time; and that the report is timely under these rules.

d. The district shall annually report to the department of education by August 1 of the year following the school year in which a child was under competent private instruction the names of all resident children who are subject to an annual assessment and who either failed to make adequate

progress or whose parent, guardian, or legal or actual custodian failed to comply with the assessment requirements of the compulsory attendance law.

e. The district shall report noncompliance with the reporting, immunization, attendance, instructor qualifications, and assessment requirements of the compulsory attendance law and these rules to the county attorney for the county of residence of the child's parent, guardian, or legal or actual custodian.

f. Upon the request of a parent, guardian, or legal or actual custodian of a child of compulsory attendance age who is under competent private instruction, or upon the referral of a licensed practitioner who provides instruction or instructional supervision of a child of compulsory attendance age who is under competent private instruction, or upon any other evidence that the child may require special education, the district shall refer a child who may require special education to the area education agency division of special education for evaluation.

g. The district may request a parent, guardian, or legal or actual custodian of a child of compulsory attendance age providing competent private instruction to the child under Iowa Code section 299A.3 to provide the information required by this subrule; however, the parent, guardian, or legal or actual custodian is not required to do so, pursuant to Iowa Code section 299A.3 and subrule 31.2(3).

31.5(2) *Testing assistance.*

a. If a standardized test has been requested by the child's parent, guardian, or legal or actual custodian, the district shall administer the standardized test to the child, delegate the test administration to the appropriate area education agency, or allow the child's parent, guardian, or legal or actual custodian to procure standardized testing through a correspondence or other school accredited by an accrediting agency approved by the federal Department of Education, or through any testing service authorized by the publisher of any test approved by the state department of education for assessment purposes. No fee is charged to the parent, guardian, or legal or actual custodian for such assessment.

b. If a student has been administered an approved standardized test by a correspondence or other school accredited by an accrediting agency approved by the federal Department of Education, or by any testing service authorized by the publisher of any test approved by the state department of education for assessment purposes during the academic school year for which testing is required and the administration of the test has met the terms or protocol of the test publisher, a copy of the test result report, from which test results not required under law may be redacted, may be submitted to the resident district by the parent, guardian, or legal or actual custodian of the child being tested, in satisfaction of the annual assessment option. The submitted test results shall be accompanied by a certification statement signed by the test administrator to the effect that the publisher's protocol or terms required for test administration have been met.

c. The administration of the annual achievement evaluation shall not constitute a dual enrollment purpose under Iowa Code section 299A.8 and this rule.

31.5(3) *Finance.*

a. A public school district may count a competent private instruction student for purposes of its certified enrollment only under the following circumstances:

(1) A resident student or the student's parent, guardian, or legal or actual custodian has requested dual enrollment, in which case the student is counted as authorized by law. However, if the student is receiving special education services or instruction, the student shall qualify for additional weighting pursuant to the provisions of Iowa Code section 257.6; or

(2) The school district provides an Iowa licensed practitioner to instruct or to assist and supervise parents, guardians, or legal or actual custodians providing competent private instruction and the child has been enrolled in the district's home school assistance program.

b. Dual enrollment of a child is not required solely for purposes of accessing the annual achievement evaluation, and the administration of the annual achievement evaluation shall not constitute a dual enrollment purpose.

31.5(4) *Provision of instructional materials.*

a. A school district shall not make monetary payments, including cash and cash equivalents, or give publicly funded resources, directly or indirectly to the parent, guardian, or legal or actual custodian or to a child receiving competent private instruction. A school district shall not purchase

texts or supplementary materials for or on behalf of a child receiving competent private instruction if such texts or supplementary materials are not appropriate for use by regularly enrolled students of the school district.

b. A district may provide to children receiving competent private instruction available texts or supplementary materials on the same basis as they are provided to enrolled students and shall provide available texts or supplemental instructional materials on the same basis as they are provided to enrolled students when a child is under dual enrollment or in a home school assistance program. If a fee, such as a textbook or towel rental fee, is charged to regularly enrolled students for participation in a class or extracurricular activity, that fee may also be charged to dual-enrolled students on the same basis as it is charged to enrolled students, but only for the specific class or extracurricular activity.

c. The parent, guardian, or legal or actual custodian who provides competent private instruction to a child of compulsory attendance age may access the services and materials available from the area education agency by requesting assistance through the school district of residence. The AEA shall make services and materials available to the child on the same basis as they are available to regularly enrolled students of the district if the child is dual enrolled or enrolled in a home school assistance program. The district of residence shall act as liaison between the parent, guardian, or legal or actual custodian of a child who is receiving competent private instruction and the area education agency.

31.5(5) Home school assistance programs. A school district or accredited nonpublic school may offer an assistance program for parents, guardians, or legal or actual custodians providing private instruction to a child of compulsory attendance age. A district or accredited nonpublic school may impose additional requirements upon children enrolled in its home school assistance program.

A parent, guardian, or legal or actual custodian seeking to enroll a child in a home school assistance program in a school district or accredited nonpublic school must file the report of competent private instruction, items 1, 3, and 5 thereof.

An assistance program offered by a school district or accredited nonpublic school shall, at a minimum, meet state licensure standards for accredited school personnel in designating a practitioner to provide instruction or instructional supervision for a competent private instruction program, including special education instruction, and shall meet the applicable provisions of rule 281—31.4(299,299A). All district personnel who provide or supervise instruction to children enrolled in the district's home school assistance program shall be appropriately licensed to the grade levels of the children instructed. A district shall not employ as a home school assistance program instructor a person who currently holds only a substitute authorization issued pursuant to rule 282—22.2(272).

A home school assistance program is not dual enrollment, but the parent, guardian, or legal or actual custodian of a child enrolled in a home school assistance program may request dual enrollment in addition to enrollment in a home school assistance program.

31.5(6) Driver education. The public school district shall offer or make available to all resident students, including those receiving competent private instruction on an equal basis with students enrolled in the district, an approved course in driver education, as required by Iowa Code section 321.178(1) "c." [ARC 1246C, IAB 12/11/13, effective 1/15/14; ARC 5868C, IAB 8/25/21, effective 9/29/21]

281—31.6(299A) Dual enrollment.

31.6(1) The parent, guardian, or legal or actual custodian of a child who is receiving competent private instruction may enroll the child in the school district of residence of the child under dual enrollment. The parent, guardian, or legal or actual custodian desiring dual enrollment shall notify the district of residence of the child not later than September 15 of the school year for which dual enrollment is sought. If the child is not of compulsory school attendance age, the parent, guardian, or legal or actual custodian is only required to provide the name of the child, age of the child, contact information for the person requesting the dual enrollment, and a listing of the programs or services for which dual enrollment is requested.

31.6(2) A child under dual enrollment may participate in academic or instructional programs of the district on the same basis as any regularly enrolled student. A child under dual enrollment also is eligible to enroll in courses that offer secondary and postsecondary credit on the same basis as any regularly

enrolled student. A child under dual enrollment must receive at least one-quarter of the child's instruction by way of competent private instruction and no more than three-quarters by way of the district's academic programs.

31.6(3) A child under dual enrollment may participate in any extracurricular activity offered by the district on the same basis as regularly enrolled students. If a child under dual enrollment was under competent private instruction the previous semester, the provisions of 281—subrule 36.15(2), paragraph “c,” shall not apply. However, other rules and policies of the state and district related to eligibility for extracurricular activities shall apply to the child. If a student seeking dual enrollment is enrolled in a nonaccredited nonpublic entity that is an “associate member” of the Iowa Girls High School Athletic Union or Iowa High School Athletic Association, the student is eligible and may participate in interscholastic athletic competition only for the associate member or a school with which the associate member is in a cooperative sharing program as outlined in rule 281—36.20(280).

31.6(4) The district shall notify the child's parent, guardian, or legal or actual custodian of the academic and extracurricular activities available to the child.

31.6(5) A child under dual enrollment is eligible to receive the services and assistance of the appropriate area education agency on the same basis as are children otherwise enrolled in the district. The district shall act as liaison between the parent, guardian, or legal or actual custodian of a child who is receiving competent private instruction and the area education agency.

[ARC 1246C, IAB 12/11/13, effective 1/15/14]

281—31.7(299) Open enrollment.

31.7(1) The parent, guardian, or legal or actual custodian of a child receiving competent private instruction may request open enrollment to another school district by following the procedures of the open enrollment law, Iowa Code section 282.18.

31.7(2) A district receiving a nonresident open enrollment student who is under competent private instruction may not bill the resident district for the costs of instructing the student unless the receiving district complies with the applicable provisions of rules 281—31.3(299,299A) and 281—31.4(299,299A).

31.7(3) In the event that the parent, guardian, or legal or actual custodian of an open enrollment student fails to comply with state law and these rules, the receiving district shall notify the secretary of the school district regarding the noncompliance.

281—31.8(299A) Baseline evaluation and annual assessment.

31.8(1) *When required.* When a parent, guardian, or legal or actual custodian of a child who is at least seven years old by September 15 provides private instruction to a child without the assistance or supervision of a validly licensed Iowa practitioner as required by law and these rules and the parent, guardian, or legal or actual custodian does not hold a valid Iowa practitioner license, the child is subject to initial baseline evaluation and an annual assessment every year thereafter.

A child who is at least seven years old by September 15 and who begins a program of competent private instruction and is subject to the annual assessment requirement shall be administered a baseline evaluation for the purposes of obtaining educational data. The baseline evaluation and annual assessment shall be taken by May 31.

The parent, guardian, or legal or actual custodian may select standardized testing, portfolio assessment, or submittal of a report card from an accredited correspondence school for purposes of fulfilling the baseline evaluation and annual assessment requirements of the law.

31.8(2) Standardized testing.

a. A child's parent, guardian, or legal or actual custodian who chooses standardized testing for the purpose of fulfilling the assessment requirements of the law shall select an instrument approved by the department. The department shall publish an approved list of standardized testing instruments each year. In the event that the parent, guardian, or legal or actual custodian of a child subject to the annual assessment requirement wishes to have the child take a standardized test not included on the department's published list, the parent, guardian, or legal or actual custodian shall request permission of the director

of the department of education to use a different test. The decision of the director shall be final. Braille or large print editions of any approved test shall be made available for vision-impaired children. Testing norms are available for children with vision impairments or children who are deaf or hard of hearing.

b. A child subject to the annual assessment requirement who takes a standardized test shall take a grade level form of the test that corresponds most closely to the child's chronological age unless permission is granted by the test administrator to take another grade level form of the test. When a parent, guardian, or legal or actual custodian requests another form of the test, the test administrator shall make a decision based upon the following:

- (1) A review of the instructional materials used by the child in the education program;
- (2) The results of curriculum-based measurement techniques including the administering of probes; and
- (3) A review of current samples of the child's work product.

The decision of the test administrator as to the appropriate grade level form of the standardized test to be taken shall be final.

A child whose educational program and instructional materials are designed for students in grades 1 through 5 shall, at a minimum, be tested in the areas of reading, language, and mathematics. A child whose educational program and instructional materials are designed for students in grades 6 through 12 shall, at a minimum, be tested in the areas of reading or literary materials, language or written expression, mathematics or quantitative thinking, science, and social studies.

If retesting is desired, a different form of the same test or a different test shall be administered to the child sufficiently in advance to allow for processing of the test results prior to the first day of classes of the succeeding school year of the resident school district.

c. Testing times and sites.

(1) Standardized test results are normed against a population taking the same test at approximately the same time of year. Norms for the tests exist for fall, winter, and spring. Because the annual assessment is used, in part, to determine whether the child has made at least six months' progress since the previous test, standardized tests used for determining whether adequate progress has been achieved shall be taken annually at approximately the same time each year.

(2) The school district of residence of the child shall annually, by October 1, send notification of the following to the parent, guardian, or legal or actual custodian who has selected standardized testing:

1. The times and dates when standardized tests will be administered by the school district and the area education agency over the school year, including all testing times, and that a school district or area education agency will administer standardized tests at the child's home when so requested;

2. A data sheet showing the costs associated with the tests offered by the school district and area education agency; and

3. A reply form which the parent, guardian, or legal or actual custodian shall complete to indicate the date, location, and test selected, including the grade level form of the test; whether the parent, guardian, or legal or actual custodian wishes to be present for testing; and any special requests such as Braille or large print forms of the test.

d. Unless the child is under dual enrollment, the parent, guardian, or legal or actual custodian who has selected the standardized testing option shall timely reimburse the school district for the cost of testing the child.

e. This rule shall not be construed to require or prohibit testing on any subject matter at intervals more frequently or at grade levels other than those set forth in Iowa Code section 256.7(21) "b"(2).

31.8(3) Portfolio assessment or evaluation. A parent, guardian, or legal or actual custodian of a child subject to the annual assessment requirement may arrange to have an appropriately licensed Iowa practitioner review a portfolio of evidence of the child's progress annually by May 31, subject to the following requirements:

a. Portfolio evaluator. A single evaluator shall be designated by the parent, guardian, or legal or actual custodian who has selected the portfolio evaluation option for annual assessment. The evaluator so identified shall be approved by the superintendent of the local school district or the superintendent's

designee and shall hold a valid Iowa practitioner license or teacher certificate appropriate to the ages and grade levels of the children whose portfolios are being assessed.

A portfolio evaluator who holds an elementary classroom endorsement may assess children in grades 1 through 6. A portfolio evaluator who holds an elementary content endorsement may assess children in grades 1 through 8. A portfolio evaluator who holds a secondary content endorsement may assess children in grades 5 through 12. A person with a current substitute teacher's license who produces evidence of a previously held Iowa license with classroom or content endorsements may assess children within the same grade level restrictions as that of a person with a current Iowa license with classroom or content endorsements.

A portfolio evaluator shall not evaluate the portfolios of more than 25 students per year without permission of the director of the department of education.

b. Contents of portfolio. The child's portfolio shall contain evidence of academic progress in the minimum curriculum areas of reading, language arts, and mathematics if the child is in grades 1 through 5. For children in grades 6 through 12, the portfolio shall contain evidence in the minimum curriculum areas of reading, language arts, mathematics, science, and social studies.

For each curriculum area, the portfolio shall include a book of lesson plans, a diary, or other written record indicating the subject matter taught and activities in which the child has been engaged, and an outline of the curriculum used by the child. The portfolio may also include a list of, a reference to, or material from the textbooks and resource materials used by the child in each subject area.

The portfolio shall also include copies of any tests or other formal and informal assessment instruments used to measure student progress over the current academic year, a copy of the baseline evaluation, and the most recent assessment report of the student's annual progress.

For each subject area to be evaluated, the portfolio shall include examples of the student's work and may include self-assessments by the student.

c. The parent, guardian, or legal or actual custodian of a child subject to the annual assessment requirement who has a physical or mental disability so significant that the results of a standardized test would be meaningless for assessment purposes may request the department's approval of an alternative evaluation.

31.8(4) Report card from accredited correspondence school. For a child subject to annual assessment who is enrolled as a student of a correspondence school that is a member of an accrediting association recognized by the federal Department of Education and accredited for elementary and secondary education, the district of residence and the department shall accept the annual report of progress (report card) sent by the correspondence school to the child's parent, guardian, or legal or actual custodian if the annual report of progress includes a listing of subjects taken and grades received. A passing grade in all content areas for which annual assessment is required shall be deemed evidence of adequate progress for the purpose of annual assessment.

[ARC 5868C, IAB 8/25/21, effective 9/29/21; ARC 5870C, IAB 8/25/21, effective 9/29/21]

281—31.9(299A) Reporting assessment results.

31.9(1) Baseline evaluations. The baseline evaluation results of each child subject to the baseline evaluation requirement of Iowa Code section 299A.4 and subrule 31.8(1) shall be reported by the child's parent, guardian, or legal or actual custodian to the school district of residence of the child by June 30 of the year in which the evaluation was taken.

The baseline evaluation shall serve only as data from which subsequent progress shall be measured; the baseline evaluation alone is not an indication of educational progress or a lack of progress.

31.9(2) Standardized tests. The results of a standardized test taken by a child subject to the annual assessment requirements shall be reported by the child's parent, guardian, or legal or actual custodian to the district of residence of the child by August 1 of the year following the school year in which the test was taken. The results shall be submitted either in original form or as a true and correct photocopy of the original form as received from the agency responsible for scoring the test, from which any test results not required under law may be redacted.

31.9(3) *Portfolio assessments.* The results of an assessment of a child's educational portfolio made by a qualified Iowa licensed practitioner shall be submitted by the portfolio evaluator to the child's parent, guardian, or legal or actual custodian, who shall send a copy to the district of residence of the child by August 1 of the year following the school year in which the assessment was done.

The report may be in narrative form and shall include assessments of the child's achievement and progress in the curriculum areas including reading, language arts, and mathematics for children whose grade level of study is fifth grade and below, and those subjects plus the additional areas of science and social studies for students whose grade level of study is sixth grade and above. The report shall include a statement as to whether the child has demonstrated adequate progress in each of the areas of study. The report shall be signed by the evaluator.

31.9(4) *Report card from accredited correspondence school.* Report cards from an accredited correspondence school shall be submitted by the child's parent, guardian, or legal or actual custodian to the child's district of residence by August 1 of the year following the school year in which the report cards were issued by the accredited correspondence school.

31.9(5) *Confidentiality of annual assessments.* The district shall maintain as any other confidential education record the standardized testing, portfolio evaluation, and report cards from an accredited correspondence school for each resident child subject to annual assessment.

[ARC 5868C, IAB 8/25/21, effective 9/29/21]

281—31.10(299A) Special education students. Any duty to attempt to find and to offer to evaluate all children who may require special education includes children in private instruction. When there is evidence that a child receiving private instruction may be eligible for special education under 281—Chapter 41, parental consent to evaluate will be sought. Parents may decline consent to evaluate, and public agencies are not required to use the procedural safeguards of 281—Chapter 41 to obtain an evaluation.

When a child has been identified as currently requiring special education, the child is eligible to receive competent private instruction with the written approval of the director of special education of the area education agency of the child's district of residence unless the child's parent declines consent to continued services or refuses consent to a periodic reevaluation.

The director of special education of each area education agency shall issue a written decision, approving provision of competent private instruction, conditioning approval on modification of the proposed program, or denying approval, based upon the appropriateness of the proposed competent private instruction program for the child requiring special education, considering the child's individual disability. Pursuant to 34 CFR Section 300.300, the parent, guardian, or legal or actual custodian of a child with a disability is not required to seek approval from the area education agency to provide competent private instruction for the child if the parent, guardian, or legal or actual custodian does not consent to initial evaluation or to reevaluation of the child for receipt of special education services or programs.

The request for approval for placement under competent private instruction by the parent, guardian, or legal or actual custodian may be presented to the special education director at any time during the calendar year. If the special education director denies approval or if no written decision has been rendered within 30 calendar days, that decision or the absence thereof is subject to review by an impartial administrative law judge under provisions of 20 U.S.C. Section 1401 et seq., federal regulations adopted thereunder, and Iowa Code section 256B.6 and rules adopted thereunder found at 281—41.500(256B,34CFR300) et seq.

If a parent, guardian, or legal or actual custodian of a child requiring special education provides competent private instruction without the approval of the director of special education, the director may either request an impartial hearing before an administrative law judge under the rules of special education, 281—41.500(256B,34CFR300) et seq., or notify the secretary of the child's district of residence for referral of the matter to the county attorney pursuant to Iowa Code section 256B.6, incorporating Iowa Code chapter 299, unless the parent, guardian, or legal or actual custodian does not consent to initial evaluation or to reevaluation of the child for receipt of special education services or programs.

A program of competent private instruction provided to a student requiring special education is not a program of special education for purposes of federal and state law.

The director of special education shall advise the parent, guardian, or legal or actual custodian of a child requiring special education of the probable consequences of placing the child under private instruction and withdrawing the child from specialized instruction and services to which the child is entitled. The director of special education may require the parent, guardian, or legal or actual custodian of a child requiring special education to accept full responsibility for the parent's, guardian's, or legal or actual custodian's decision to reject special education programs and services, forgoing a later request for compensatory education for the period of time when the child was under private instruction.

A parent, as defined in rule 281—41.30(256B,34CFR300), who elects independent private instruction for the parent's child shall be deemed to have waived special education services. Approval from the area education agency's director of special education is not required before a child requiring special education receives independent private instruction.

[ARC 1246C, IAB 12/11/13, effective 1/15/14]

281—31.11(299,299A) Independent private instruction.

31.11(1) *Instructor responsibilities.* The person providing independent private instruction shall meet each of the requirements in paragraph 31.1(2) "b."

31.11(2) *School district responsibilities.*

a. Services.

(1) The public school district shall offer or make available to all resident students receiving independent private instruction an approved course in driver education on an equal basis with students enrolled in the district, as required by Iowa Code section 321.178(1) "c."

(2) The public school district shall make available to all students receiving independent private instruction concurrent enrollment programs, also known as district-to-community college sharing, subject to the terms of Iowa Code section 261E.8 and rule 281—22.11(261E).

b. Information from parents.

(1) A school district shall request information pursuant to subparagraph 31.1(2) "b"(6) whenever services described in paragraph 31.11(2) "a" are requested for a child receiving independent private instruction.

(2) A school district superintendent may request information pursuant to subparagraph 31.1(2) "b"(6) in all other instances. The request must be in writing and must be mailed to the parent, guardian, or legal or actual custodian.

31.11(3) *Services not available.* Unless otherwise specifically required by a provision of this chapter, no service other than those listed in paragraph 31.11(2) "a" shall be provided to children receiving independent private instruction. These restrictions include but are not limited to provision of instructional materials under subrule 31.5(4), assistance from a home school assistance program under subrule 31.5(5), dual enrollment under rule 281—31.6(299A), open enrollment under rule 281—31.7(299), and special education services under rule 281—31.10(299A).

[ARC 1246C, IAB 12/11/13, effective 1/15/14; ARC 5868C, IAB 8/25/21, effective 9/29/21]

281—31.12(299,299A) Miscellaneous provisions.

31.12(1) *Confidentiality of records.* Records maintained by school districts or area education agencies under Iowa Code chapters 299 and 299A and this chapter shall be protected under Iowa Code chapter 22, as well as 20 U.S.C. Section 1232g and 34 CFR Part 99. Personally identifiable information about students, as defined in 34 CFR Part 99, shall be disclosed only as permitted by that Part.

31.12(2) *Compulsory attendance actions.* In taking any action under Iowa Code chapters 299 and 299A, a school district shall consider the requirements of compulsory attendance to be satisfied in the following instances:

a. Enrollment in a public school district and compliance with the district's attendance policy as determined by the district (including the district's policy on excusal of absences).

b. Enrollment in an accredited nonpublic school and compliance with the school's attendance policy as determined by the school (including the school's policy on excusal of absences).

- c. Compliance with this chapter's provisions regarding competent private instruction.
- d. The child is receiving private instruction under subrule 31.2(3) and Iowa Code section 299A.3, unless the subrule and section do not apply.
- e. The child is receiving independent private instruction under rule 281—31.11(299,299A), unless paragraph 31.12(2) "f" applies.
- f. The district received a response to a request for information about independent private instruction pursuant to subparagraph 31.1(2) "b"(6).

31.12(3) Rules of construction. No public school district or area education agency may apply a requirement more stringent than those contained in these rules for participation in private instruction, including instruction under subrule 31.2(3), or independent private instruction.

[ARC 1246C, IAB 12/11/13, effective 1/15/14; ARC 5868C, IAB 8/25/21, effective 9/29/21]

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