

CHAPTER 33
EDUCATING THE HOMELESS

281—33.1(256) Purpose. The purpose of these rules is to facilitate the enrollment of homeless children of school age and, where appropriate, of preschool age in the public school districts of Iowa to enable the children to have access to a free, appropriate public education, and to be free of being stigmatized on the basis of their status as homeless.

281—33.2(256) Definitions.

“District of origin” is defined as the public school district in Iowa in which the child was last enrolled or which the child last attended when permanently housed.

“Guardian” is defined as a person of majority age with whom a homeless child or youth of school age is living or a person of majority age who has accepted responsibility for the homeless child or youth, whether or not the person has legal guardianship over the child or youth.

“Homeless child or youth” is defined as a child or youth from the age of 3 years through 21 years who lacks a fixed, regular, and adequate nighttime residence and includes the following:

1. A child or youth who is sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason; is living in a motel, hotel, trailer park, or camping grounds due to the lack of alternative adequate accommodations; is living in an emergency or transitional shelter; is abandoned in a hospital; or is awaiting foster care placement;
2. A child or youth who has a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings;
3. A child or youth who is living in a car, park, public space, abandoned building, substandard housing, bus or train station, or similar setting; or
4. A migratory child or youth who qualifies as homeless because the child or youth is living in circumstances described in paragraphs “1” through “3” above.

“Preschool child” is defined as a child who is three, four, or five years of age before September 15.

“Unaccompanied youth” is defined as a youth not in the physical custody of a parent or guardian.

281—33.3(256) Responsibilities of the board of directors. The board of directors of a public school district shall do all of the following:

33.3(1) The board shall locate and identify homeless children or youth within the district, whether or not they are enrolled in school.

33.3(2) The board shall post, at community shelters and other locations in the district where services or assistance is provided to the homeless, information regarding the educational rights of homeless children and youth and encouraging homeless children and youth to enroll in the public school.

33.3(3) The board shall examine and revise, if necessary, existing school policies or rules that create barriers to the enrollment of homeless children or youth, consistent with these rules. School districts are encouraged to cooperate with agencies and organizations for the homeless to explore comprehensive, equivalent alternative educational programs and support services for homeless children and youth when necessary to implement the intent of these rules.

33.3(4) The board shall enact a policy prohibiting the segregation of a homeless child or youth from other students enrolled in the public school district.

33.3(5) The board shall immediately enroll a homeless child or youth, pending resolution of any dispute regarding in which school the child or youth should be enrolled.

33.3(6) The board shall determine school placement based on the best interests of a homeless child or youth. The board shall, to the extent feasible, keep a homeless child or youth in the school of origin, except when doing so is contrary to the wishes of the child’s or youth’s parent or guardian. If the child or youth becomes permanently housed during an academic year, enrollment shall continue in the school of origin for the remainder of that academic year unless the parents agree otherwise.

33.3(7) The board shall designate an appropriate staff person as the district’s local educational agency liaison for homeless children and youth to carry out the following duties:

- a.* Ensure that a homeless child or youth is identified by school personnel and through coordination activities with other entities and agencies;
- b.* Ensure that a homeless child or youth is enrolled in, and has a full and equal opportunity to succeed in, schools of the district;
- c.* Ensure that homeless families, children, and youth receive educational services for which such families, children, and youth are eligible, including Head Start and Even Start programs, tuition-free preschool programs administered by the district, and referrals to health care services, dental services, mental health services, and other appropriate services;
- d.* Ensure that the parents or guardians of homeless children and youth are informed of the educational and related opportunities available to their children and are provided with meaningful opportunities to participate in the education of their children;
- e.* Ensure that public notice of the educational rights of homeless children and youth is disseminated where such children and youth receive services under the federal McKinney-Vento Homeless Assistance Act, such as schools, family shelters, and soup kitchens;
- f.* Ensure that enrollment disputes are mediated in accordance with 42 U.S.C. Section 11432(g)(3)(E), which requires the following:
 - (1) The child or youth shall be immediately enrolled in the school in which enrollment is sought, pending resolution of the dispute;
 - (2) The parent or guardian of the child or youth shall be provided with a written explanation of the school's decision regarding school selection or enrollment, including the rights of the parent, guardian, or youth to appeal the decision;
 - (3) The child, youth, parent, or guardian shall be referred to the local educational agency liaison designated under this subrule, who shall carry out the dispute resolution process set forth in rule 33.9(256);
 - (4) In the case of an unaccompanied youth, the local educational agency liaison shall ensure that the youth is immediately enrolled in the school in which enrollment is sought pending resolution of the dispute;
- g.* Ensure that the parent or guardian of a homeless child or youth, or the unaccompanied youth, is fully informed of all transportation services and is assisted in accessing transportation to the school of enrollment;
- h.* Coordinate and collaborate with state coordinators and community and school personnel responsible for the provision of education and related services to homeless children and youth.

281—33.4(256) School records; student transfers. The school records of each homeless child or youth shall be maintained so that the records are available in a timely fashion when a child or youth enters a new school district, and in a manner consistent with federal statutes and regulations related to student records.

Upon notification that a homeless student intends to transfer out of the district, a school district shall immediately provide copies of the student's permanent and cumulative records, or other evidence of placement or special needs, to the homeless child or youth or the parent or guardian of a homeless child or youth who may take the copies with them.

Upon the enrollment of a homeless child or youth, a school district shall accept copies of records, or other evidence of placement provided by the homeless child, youth, or the parent or guardian of the homeless child or youth, for purposes of immediate placement and delivery of education and support services. Thereafter, the receiving school shall request copies of the official records from the sending school. The receiving school shall not dismiss or deny further education to the homeless child or youth solely on the basis that the prior school records are unavailable.

281—33.5(256) Immunization requirements. Consistent with the provisions of Iowa Code section 139A.8 and rules of the department of public health, a public school shall not refuse to enroll or exclude a homeless child or youth for lack of immunization records if any of the following situations exist.

The parent or guardian of a homeless child or youth or a homeless child or youth:

1. Offers a statement signed by a doctor licensed by the state board of medical examiners specifying that in the doctor's opinion the immunizations required would be injurious to the health and well-being of the child or youth or to any member of the child or youth's family or household.

2. Provides an affidavit stating that the immunization conflicts with the tenets and practices of a recognized religious denomination of which the homeless child or youth is a member or adherent, unless the state board of health has determined and the director of health has declared an emergency or epidemic exists.

3. Offers a statement that the child or youth has begun the required immunizations and is continuing to receive the necessary immunizations as rapidly as is medically feasible, or

4. States that the child or youth is a transfer student from any other school, and that school confirms the presence of the immunization record.

The school district shall make every effort to locate or verify the official immunization records of a homeless child or youth based upon information supplied by the child, youth, parent, or guardian. In circumstances where it is admitted that the homeless child or youth has not received some or all of the immunizations required by state law for enrollment and none of the exemptions listed above is applicable, the district shall refer the child, youth, and parent or guardian to the local board of health for the purpose of immunization, and the school shall provisionally enroll the child or youth in accordance with item "3" or "4" above.

281—33.6(256) Waiver of fees and charges encouraged. If a child or youth is determined to be homeless as defined by these rules, a school district is encouraged, subject to state law, to waive any fees or charges that would present a barrier to the enrollment or transfer of the child or youth, such as fees or charges for textbooks, supplies, or activities.

A homeless child or youth, or the parent or guardian of a homeless child or youth, who believes a school district has denied the child or youth entry to or continuance of an education in the district on the basis that mandatory fees cannot be paid may appeal to the department of education using the dispute resolution mechanism in rule 33.9(256).

281—33.7(256) Waiver of enrollment requirements encouraged; placement.

33.7(1) If a homeless child or youth seeks to enroll or to remain enrolled in a public school district, the district is encouraged to waive any requirements, such as mandatory enrollment in a minimum number of courses, which would constitute barriers to the education of the homeless child or youth.

33.7(2) In the event that a school district is unable to determine the appropriate grade or placement for a homeless child or youth because of inadequate, nonexistent, or missing student records, the district shall administer tests or utilize otherwise reasonable means to determine the appropriate grade level for the child or youth.

281—33.8(256) Residency of homeless child or youth.

33.8(1) A child or youth, a preschool child if the school offers tuition-free preschool, or a preschool child with a disability who meets the definition of homeless in these rules is entitled to receive a free, appropriate public education and necessary support services in either of the following:

- a. The district in which the homeless child or youth is actually residing, or
- b. The district of origin.

The deciding factor as to which district has the duty to enroll the homeless child or youth shall be the best interests of the child or youth. In determining the best interests of the child or youth, the district(s) shall, to the extent feasible, keep a homeless child or youth in the district of origin, except when doing so is contrary to the wishes of the parent or guardian of the child or youth. In the case of an unaccompanied youth, the local educational agency liaison shall assist in the placement or enrollment decision, taking into consideration the views of the unaccompanied youth. If the child or youth is placed or enrolled in a school other than within the district of origin or other than a school requested by the parent or guardian or unaccompanied youth, the district shall provide a written explanation, including notice of the right to appeal under rule 33.9(256), to the parent or guardian or unaccompanied youth.

33.8(2) The choice regarding placement shall be made regardless of whether the child or youth is living with a homeless parent or has been temporarily placed elsewhere by the parent(s); or, if the child or youth is a runaway or otherwise without benefit of parent or legal guardian, where the child or youth has elected to reside.

33.8(3) Insofar as possible, a school district shall not require a homeless student to change attendance centers within a school district when a homeless student changes places of residence within the district, unless the change of residence takes the student out of the category of homeless.

33.8(4) If a homeless child or youth is otherwise eligible and has made proper application to utilize the provisions of Iowa Code section 282.18, "Open Enrollment," the child or youth shall not be denied the opportunity for open enrollment on the basis of homelessness.

281—33.9(256) Dispute resolution. If a homeless child or youth is denied access to a free, appropriate public education in either the district of origin or the district in which the child or youth is actually living, or if the child or youth's parent or guardian believes that the child or youth's best interests have not been served by the decision of a school district, an appeal may be made to the department of education as follows:

33.9(1) If the child is identified as a special education student under Iowa Code chapter 256B, the manner of appeal shall be by letter from the homeless child or youth, or the homeless child or youth's parent or guardian, to the department of education as established in Iowa Code section 256B.6 and Iowa Administrative Code 281—41.32(17A,256B,290). The letter shall not be rejected for lack of notarization, however. Representatives of the public school district where the child or youth desires to attend and of the corresponding area education agency, as well as the child, youth, or parent or guardian of the child or youth, shall present themselves at the time and place designated by the department of education for hearing on the issue. The hearing shall be held in accordance with the rules established in 281—41.32(17A,256B,290).

33.9(2) If the child is not eligible for special education services, the manner of appeal shall be by letter from the homeless child or youth or the homeless child or youth's parent or guardian to the director of the department of education. The appeal shall not be refused for lack of notarization, however. Representatives of the public school districts denying access to the homeless child or youth and the child, youth, or parent or guardian of the child or youth shall present themselves at the time and place designated by the department of education for hearing on the issue. The provisions of 281—Chapter 6 shall be applicable insofar as possible; however, the hearing shall take place in the district where the homeless child or youth is located, or at a location convenient to the appealing party.

33.9(3) At any time a school district denies access to a homeless child or youth, the district shall notify in writing the child or youth, and the child or youth's parent or guardian, if any, of the right to appeal and manner of appeal to the department of education for resolution of the dispute, and shall document the notice given. The notice shall contain the name, address, and telephone number of the legal services office in the area.

33.9(4) This chapter shall be considered by the presiding officer or administrative law judge assigned to hear the case.

33.9(5) Nothing in these rules shall operate to prohibit mediation and settlement of the dispute short of hearing.

33.9(6) While dispute resolution is pending, the child or youth shall be enrolled immediately in the school of choice of the child's parent or guardian or the school of choice of the unaccompanied youth. The school of choice must be an attendance center either within the district of residence or the district of origin of the child or youth.

281—33.10(256) Transportation of homeless children and youth.

33.10(1) Intent. A child or youth, a preschool child if the school offers tuition-free preschool, or a preschool child with a disability who meets the definition of homeless in these rules shall not be denied access to a free, appropriate public education solely on the basis of transportation. The necessity for and feasibility of transportation shall be considered, however, in deciding which of two districts would be in

the best interests of the homeless child or youth. The dispute resolution procedures in rule 33.9(256) are applicable to disputes arising over transportation issues.

33.10(2) Entitlement. Following the determination of the homeless child or youth's appropriate school district under rule 33.8(256) or 33.9(256), transportation shall be provided to the child or youth in the following manner:

a. If the appropriate district is determined to be the district in which the child or youth is actually living, transportation for the homeless child or youth shall be provided on the same basis as for any resident child of the district, as established by Iowa Code section 285.1 or local board policy.

b. If the appropriate district is determined to be a district other than the district in which the child or youth is actually living, the district in which the child or youth is actually living (sending district) and the district of origin shall agree upon a method to apportion the responsibility and costs for providing the child with transportation to and from the receiving district. If these districts are unable to agree upon such method, the responsibility and costs for transportation shall be shared equally.

c. Rescinded IAB 7/7/04, effective 8/11/04.

281—33.11(256) School services.

33.11(1) The school district designated for the homeless child's or youth's enrollment shall make available to the child or youth all services and assistance, including but not limited to the following services, on the same basis as those services and assistance are provided to resident pupils:

- a.* Compensatory education;
- b.* Special education;
- c.* English as a Second Language;
- d.* Vocational and technical education courses or programs;
- e.* Programs for gifted and talented pupils;
- f.* Health services;
- g.* Preschool (including Head Start and Even Start);
- h.* Before and after school child care;
- i.* Food and nutrition programs.

33.11(2) A district must include homeless students in its academic assessment and accountability system under the federal No Child Left Behind Act, P.L. 107-110. Assessments should be included in the economically disadvantaged category for reporting purposes. Schools are not required to disaggregate information regarding homeless students as a separate category, but may be asked to do so in accordance with the duties of the United States Secretary of Education and the Office of the State Coordinator.

These rules are intended to implement the provisions of the Stewart B. McKinney Homeless Assistance Act, as reauthorized in January 2002 as the McKinney-Vento Homeless Assistance Act (42 U.S.C. § 11431, et seq.).

[Filed 9/15/89, Notice 7/26/89—published 10/4/89, effective 11/8/89]

[Filed 6/17/04, Notice 5/12/04—published 7/7/04, effective 8/11/04]