

**EDUCATION DEPARTMENT[281]**

**Notice of Intended Action**

**Proposing rulemaking related to educational programs and services for pupils in juvenile homes and providing an opportunity for public comment**

The State Board of Education hereby proposes to rescind Chapter 63, “Educational Programs and Services for Pupils in Juvenile Homes,” Iowa Administrative Code, and to adopt a new chapter with the same title.

*Legal Authority for Rulemaking*

This rulemaking is proposed under the authority provided in Iowa Code section 282.34.

*State or Federal Law Implemented*

This rulemaking implements, in whole or in part, Iowa Code sections 280.30 and 280.31.

*Purpose and Summary*

Pursuant to Executive Order 10, this proposed rulemaking removes outdated, unnecessarily restrictive, and unnecessarily repetitive language. Additionally, the Department of Education has revised proposed rule 281—63.11(282) to provide additional staffing flexibility to Area Education Agencies (AEAs).

*Fiscal Impact*

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

*Jobs Impact*

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

*Waivers*

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

*Public Comment*

Any interested person may submit written or oral comments concerning this proposed rulemaking. Written or oral comments in response to this rulemaking must be received by the Department no later than 4:30 p.m. on February 28, 2024. Comments should be directed to:

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

*Public Hearing*

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

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

Room B100  
Grimes State Office Building  
Des Moines, Iowa

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

Room B50  
Grimes State Office Building  
Des Moines, Iowa

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

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

*Review by Administrative Rules Review Committee*

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

The following rulemaking action is proposed:

ITEM 1. Rescind 281—Chapter 63 and adopt the following **new** chapter in lieu thereof:

CHAPTER 63  
EDUCATIONAL PROGRAMS AND SERVICES  
FOR PUPILS IN JUVENILE HOMES

**281—63.1(282) Definitions.**

**63.1(1)** Special programs cited in Iowa Code section 282.30 are referred to as juvenile shelter care homes and juvenile detention homes, and are referred to jointly as juvenile homes.

**63.1(2)** For purposes of this chapter, “school corporation” refers to school districts, state-approved charter schools, area education agencies (AEAs), and community colleges.

**63.1(3)** For purposes of this chapter, “aides” refers to aides and paraeducators as defined in Iowa Code section 272.12.

**281—63.2(282) Forms.**

**63.2(1)** The department of education will provide forms, which may be electronic or web-based, to AEAs for submitting program and budget proposals and for submitting claims, which are due according to Iowa Code section 282.31(1) “a.”

**63.2(2)** The department of education will also provide forms, which may be electronic or web-based, to AEAs for use by the juvenile homes requesting educational services, which are due according to the timelines in Iowa Code section 282.31 “b”(2). An AEA is to file a budget amendment for a newly established juvenile home requesting educational services 90 days prior to the initial delivery of the educational services.

**281—63.3(282) Budget amendments.** An AEA is to amend the budget during the fiscal year in which actual classrooms implemented are different than budgeted or there is a significant decrease or increase in the student membership that would change the number of teachers or aides necessary to support the average daily membership. An amendment is also necessary if actual expenditures vary significantly from expenditures that were budgeted. A significant variance in actual expenditures means that the amount of funding that would be reverted to or due from the state equals or exceeds 10 percent of the advance payments in the subsequent year prior to adjustments.

**281—63.4(282) Area education agency responsibility.** An AEA shall provide or make provision for an appropriate educational program pursuant to Iowa Code section 282.30(1) “a.” The provision of the educational program is to be pursuant to a written agreement that identifies the responsibilities of the AEA, juvenile home, and any other agency with which the AEA contracts to provide the educational program.

**281—63.5(282) Educational program.**

**63.5(1) *Methods of program provision.*** The AEA will provide the educational program by a manner specified by Iowa Code section 282.30(1) “b,” by enrolling the child in the educational program provided in the juvenile home, or by another delivery method with the approval of the department of education.

In accordance with Iowa Code section 273.2, an AEA will contract, whenever practicable, with other school corporations for the use of personnel, buildings, facilities, supplies, equipment, programs, and services.

**63.5(2) *Final determination.*** In the absence of a decision of a court regarding a child’s educational placement, the AEA where the child is living will make the final determination regarding the provision of the appropriate educational program for the child, in consultation with the district of residence of the child and with the juvenile home. In making this determination, consideration will be given to:

*a.* A preference for continuance of the child’s educational program that was in place prior to the child’s placement in the home. For students in custody of the state’s child welfare agency, school stability and the student’s ability to remain in his or her school of origin will be prioritized to the maximum extent appropriate consistent with the child’s best interest.

*b.* Placement into the least restrictive environment.

*c.* Development of a plan for future educational programming.

*d.* The provisions of the court order if the child was placed in the facility by a court.

*e.* Factors including, but not limited to, the child’s emotional or physical state, the child’s safety and the safety of others, the child’s identified or assessed academic abilities, and the projected duration of stay in the home.

**63.5(3) *Cooperation with area education agency.*** The AEA of the child’s district of residence, the school district of residence, the school district in which the home is located, other AEAs, the juvenile home and other appropriate agencies involved with the care or placement of the child will cooperate pursuant to Iowa Code section 282.30(2).

**63.5(4) *Summer school programs.*** Summer school programs, as distinguished from extended year programming, may be operated pursuant to Iowa Code section 282.31(5) and are considered as separate programs in each home. The fiscal year for a juvenile home program is from July 1 through June 30. Program and budget proposals submitted to the department of education prior to January 1, pursuant to Iowa Code section 282.31, may include requests for summer school programs, or portions of summer school programs, commencing July 1 of the subsequent fiscal year and summer school programs, or portions of summer school programs, ending June 30 of the subsequent fiscal year.

**281—63.6(282) Special education.** The AEA will establish policies and procedures for screening and evaluating students living in juvenile homes who may need special education.

**63.6(1) *Assignment.*** A diagnostic-educational team will be assigned by the AEA in which each program is located. This diagnostic-educational team includes individuals who are appropriately qualified to conduct special education evaluations and to assist in planning programs for students who are provided a special education program pursuant to an individualized education program (IEP).

**63.6(2) *Duties.*** The duties of this diagnostic-educational team include the screening of all students for potential special education needs, identifying children in need of special education, providing needed special education support services and assisting in the implementation of needed special education programs.

**63.6(3) *Role of director of special education.*** It is the responsibility of the AEA director of special education to ensure that all procedures related to due process, protection in evaluation, least restrictive environment, development of individual educational programs and other provisions of 281—Chapter

41 are adhered to for students provided a special education program pursuant to an IEP who are served in juvenile homes. In addition, the director is responsible for coordinating the activities of the special education program with other programs and services provided.

**281—63.7(282) Other AEA services.**

**63.7(1) Educational services.** Personnel from the educational services division of the local AEA will be made available to each program. Personnel will assist with curriculum development as well as provide all other services that are made available to local education agencies within the particular AEA.

**63.7(2) Media services.** Personnel from the media services division of the local AEA will be made available to each program. All services that are made available to local education agencies within the particular AEA are to be made available to these programs and students.

**63.7(3) Other responsibilities.** In addition to the above-mentioned responsibilities, AEA personnel will assist with coordination of program curricula with the curricula of the local district in which the home is located and with the transition of students from these programs to subsequent program placement. This coordination includes the establishment of procedures for ensuring that appropriate credit is available to the students while participating in the program.

**281—63.8(282) Curriculum.** Each program will use the minimum curriculum requirements for approved or accredited schools as a guide to developing specific content for each student’s educational program. The content of each student’s program is to be sufficient to enable the student to earn credit while participating in the program.

**281—63.9(282) Disaster procedures.** Each home will maintain a written plan containing emergency and disaster procedures that are clearly communicated to and periodically reviewed with staff.

**281—63.10(282) Maximum class size.**

**63.10(1)** Maximum class size in shelter care homes. The following maximum class size-to-staff ratio will be used in shelter care homes:

<u>Average Daily Membership</u>	<u>Full-Time Teacher</u>	<u>Educational Aide(s)</u>
10 or fewer	1	1 aide
More than 10 through 20	2	1 aide with more than 10 but fewer than 15 students 2 aides with 15 through 20 students
More than 20 through 30	3	2 aides with more than 20 but fewer than 25 students 3 aides with 25 through 30 students

**63.10(2)** Maximum class size in detention homes. The class size-to-staff ratio used in detention homes will be the same as that defined in subrule 63.10(1) unless the needs of the students in the class require a lesser ratio. If the needs of students in the class require a lesser ratio, it will be no greater than the following class size-to-staff ratio:

<u>Average Daily Membership</u>	<u>Full-Time Teacher</u>	<u>Educational Aide(s)</u>
Fewer than 10	1	1 aide with 5 or fewer students 2 aides with more than 5 students
10 through 20	2	2 aides with fewer than 15 students 3 aides with 15 through 20 students
More than 20 through 30	3	3 aides with fewer than 25 students 4 aides with 25 through 30 students

Support for this staffing ratio is to be provided with the juvenile home budget proposals and with the juvenile home claims.

**63.10(3)** When a classroom is located in an off-site facility, a full-time educational aide may be assigned for each off-site classroom in addition to the number allowed in subrule 63.10(1) or 63.10(2).

**63.10(4)** The department of education may waive subrules 63.10(1), 63.10(2), and 63.10(3) if student characteristics such as the age range of students in the home or the percentage of students in the home involved in adult criminal proceedings necessitate a different class size-to-staff ratio. Any variance from the maximum prescribed class size-to-staff ratio must be approved by the department of education on an annual basis. Support for the waiver request is to be provided with the juvenile home budget proposals and with the juvenile home claims.

**63.10(5)** Average daily membership for determining class size in subrules 63.10(1) to 63.10(4) for the juvenile home budget proposals is based on the actual average daily membership from the year previous to the base year, average daily membership to date in the base year, and factors known at the time of the budget proposals that would impact the average daily membership in the budget year.

**63.10(6)** If the number of teachers and aides as determined in subrules 63.10(1), 63.10(2), and 63.10(3) was appropriately estimated for the juvenile home budget proposal and was approved by the department of education, and the actual number of teachers or aides is determined to be in excess of maximum class sizes based on the actual average daily membership of students on the juvenile home claims, the department of education may waive subrule 63.10(1), 63.10(2), or 63.10(3).

**63.10(7)** If the educational program at any one juvenile home is provided in more than one classroom location and using multiple classroom locations results in a different number of teachers and aides than would have been allowed if the students were in one classroom, the department of education may waive subrules 63.10(1) and 63.10(2). Support for the waiver request is to be provided with the juvenile home budget proposals annually.

**63.10(8)** The AEA will develop policies and procedures to monitor and ensure that the educational program is provided sufficient instructional staff.

#### **281—63.11(282) Teacher certification and preparation.**

**63.11(1) Certification.** At least one teacher who is assigned to these programs shall hold Iowa certification for Instructional Strategist I or II, or both, as appropriate to the grade level and needs of the students served.

**63.11(2) In-service.** Each teacher is to be provided appropriate in-service education opportunities annually in areas defined through needs assessments.

**281—63.12(282) Aides.** Educational aides will be provided preservice and in-service opportunities consistent with duties to be performed and work under the direct supervision of the teacher.

**281—63.13(282) Accounting.** Revenues, expenditures, and balances of the juvenile home programs will be accounted for in the manner provided in Uniform Financial Accounting for Iowa LEAs and AEAs, in effect on February 7, 2024, except as otherwise noted in these rules.

**63.13(1) Fund.** Juvenile home instructional programs will be accounted for in a special revenue fund. The fund balances are to be maintained in the special revenue fund at year-end, and the continuance or disposition of positive or negative fund balances will be determined by the department of education.

**63.13(2) Tuition.** Tuition paid or received will be calculated as follows:

a. If juvenile home students not requiring special education attend a local school district, other than the district of residence, tuition is to be calculated in the manner prescribed in Iowa Code section 282.24 for determining tuition costs for any nonresident student attending a local school district. In lieu of paying tuition to the local school district for these students, the AEA may request the local school district to account for these students through the foster care facility claim process.

b. Tuition for students provided a special education program pursuant to an IEP will be paid by the district of residence, in accordance with the rules of special education and pursuant to Iowa Code chapter 282, to the district in which the juvenile home is located or to the AEA, whichever is providing the special education. The district in which the juvenile home is located or the AEA, whichever is providing the special education, will notify the district of residence if the child was being served on the third Friday in September by the district in which the home is located or by the AEA. The district in which the juvenile home is located or the AEA, whichever is providing the special education, will also notify the district of residence if the child was being served on December 1 by the district in which the home is located or by the AEA.

**281—63.14(282) Revenues.** Revenues include:

1. Funding received pursuant to Iowa Code section 282.31,
2. Tuition revenue from the district of residence or agency in another state for educational services provided for out-of-state students,
3. Tuition revenue from the district of residence for educational services for students provided a special education program pursuant to an IEP, and
4. Other miscellaneous funding received or accrued for the purpose of operating the juvenile home instructional programs.

**281—63.15(282) Expenditures.** Expenditures may include actual instructional expenditures, student support services expenditures, instructional staff support services expenditures, administrative support services, operations and maintenance of plant services, student transportation services, and interfund transfers for indirect costs. Supplies and equipment necessary to provide the educational program will be equivalent to those provided to a comparable number of students by the district in which the juvenile home is located. Classroom space is to be adequate for the number and needs of children in the juvenile home instructional program.

**63.15(1) Instructional expenditures.** Instructional expenditures include:

- a. Salaries and employee benefits of employees providing instructional services. Included are teachers, substitutes, other instructional personnel, and aides.
- b. Purchased services, supplies, and equipment, which are customarily considered instructional expenditures.
- c. Intrafund transfers.
- d. The department of education will annually determine the maximum amount that may be expended on instructional expenditures. Total expenditures for instructional services for each continuing classroom, other than salary and employee benefits, which are not provided pursuant to an IEP will not exceed 10 percent of the state average expenditure on instructional salaries and employee benefits in the juvenile home program in the year prior to the base year. New classrooms in the first year of operation will not exceed twice the maximum amount calculated.

**63.15(2) Student and instructional staff support services and student transportation services expenditures.** Among the services included in these categories are guidance services, transportation services, curriculum development, and library and instructional technology. Expenditures may include salaries, employee benefits, purchased services, supplies, equipment, and intrafund transfers.

**63.15(3) Administrative support services, operation and maintenance of plant services, and interfund transfers.** Administrative support services, operation and maintenance of plant services and interfund transfer expenditures may include:

a. Intrafund transfers and actual costs of general administration services provided to the juvenile home program. Expenditures for general administrative costs will correspond to the amount of the administrator's time assigned and provided to the juvenile home program.

b. Intrafund transfers and actual costs of division administrative services provided to the juvenile home program. Expenditures for division administrative costs will correspond to the amount of the administrator's time assigned and provided to the juvenile home program.

c. Expenditures for the administrative services of administrative staff assigned directly to the juvenile home program.

d. Expenditures for business administration services provided to the juvenile home program. The juvenile home program may be charged for costs of providing business administration services. If the juvenile home program is charged for providing business administration services, the amount is to be either actual costs or the amount determined by using the restricted indirect cost rate applied to allowable juvenile home program expenditures.

e. The total of all expenditures for administrative services is to be no greater than the actual cost determined by the AEA's accounting records or 10 percent of the total expenditures in the juvenile home program, whichever is less.

f. Expenditures for operation and maintenance of plant services except as provided in subrule 63.15(4).

g. The total of all expenditures for administrative services and for operation and maintenance of plant services is to be no greater than the actual cost determined by the AEA's cost accounting system or 20 percent of the total expenditures in the juvenile home program, whichever is less.

**63.15(4) Unauthorized expenditures.** Expenditures do not include expenditures for debt services, for facilities acquisition and construction services including remodeling and facility repair, or for rental expenditures for classroom facilities when adequate space is available at the juvenile home or AEA.

**63.15(5) Charges for AEA services.** As provided by rule 281—63.6(282), subrule 63.7(1), or subrule 63.7(2), juvenile home students will have available to them special education support services, educational services, and media services comparable to those services made available to other students in the AEA; however, expenditures for these services are inherent costs to the respective AEA programs and are not to be assessed to the juvenile home educational program.

**281—63.16(282) Claims.** AEAs will submit program and budget proposals and claims consolidating all juvenile home education programs within each AEA. Certain program information may be required for each separate juvenile home.

**63.16(1)** The number of classrooms being provided by each AEA is to be reported on the budget proposals and claims. The number is to be expressed in terms of full-time equivalent (FTE) classrooms. One FTE represents a full-time teacher providing a program during the normal school year. One-tenth FTE will be added for each month of summer school taught on a daily full-time basis. A full school year and three months of summer school is calculated as 1.3 FTE.

**63.16(2)** Each teacher will keep a daily register pursuant to Iowa Code section 294.4.

**63.16(3)** The average daily membership of students of school age living in juvenile homes who are being provided an educational program will be reported on the budget proposals and claims. "Average daily membership (ADM)" means the average obtained by dividing the total of the aggregate days of attendance plus the aggregate days of absence by the total number of student contact days. Student contact days are the days during which the educational program is provided and students are under the guidance and instruction of the instructional professional staff. "Aggregate days" means the sum of the number of days of attendance and days of absence for all pupils who are enrolled during the school year. A student is considered enrolled after being placed in a juvenile home and taking part in the educational program. A student is considered to be in membership from the date of enrollment until the date of leaving the juvenile home or receiving a high school diploma or its equivalent, whichever occurs first. ADM will be calculated on the regular school year exclusive of summer session. School age is defined pursuant to Iowa Code chapter 282.

**281—63.17(282) Audits.** AEA's will make the records related to providing educational services for juvenile homes available to independent auditors, state auditors and department of education staff on request.

**281—63.18(282) Waivers.** A waiver may be requested by an AEA that presents evidence of a need for a different configuration of expenditures under paragraph 63.15(1) "d," 63.15(3) "a," 63.15(3) "b," 63.15(3) "e," or 63.15(3) "g," or subrule 63.15(4) or 63.15(5). The AEA may annually request the waiver and will include the waiver request and the evidence specified by this rule with the program and budget proposal or budget amendment submitted pursuant to rule 281—63.2(282) or 281—63.3(282). An approved waiver related to rent payment to the juvenile home does not necessitate an annual waiver request except in any year that the rental contract terms change from the rental contract terms in the previous year.

**63.18(1)** If the department denies a waiver request, the AEA that was denied may request within ten days of notification of the denial that the director of the department of education review the denial of the waiver request.

**63.18(2)** It is the intent of the department of education to waive provisions of this chapter only when it is determined that they would result in unequal treatment of the AEA's or cause an undue hardship to the requesting AEA and the waiver clearly is in the public interest.

These rules are intended to implement Iowa Code sections 282.30 and 282.31.