IOWA ADMINISTRATIVE BULLETIN

Published Biweekly VOLUME XXX NUMBER 8
October 10, 2007 Pages 649 to 800

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PUBLISHED UNDER AUTHORITY OF IOWA CODE SECTIONS 2B.5 AND 17A.6

PREFACE

The Iowa Administrative Bulletin is published biweekly in pamphlet form pursuant to Iowa Code chapters 2B and 17A and contains Notices of Intended Action and rules adopted by state agencies.

It also contains Proclamations and Executive Orders of the Governor which are general and permanent in nature; Regulatory Analyses; effective date delays and objections filed by the Administrative Rules Review Committee; Agenda for monthly Administrative Rules Review Committee meetings; and other materials deemed fitting and proper by the Administrative Rules Review Committee.

The Bulletin may also contain public funds interest rates [12C.6]; workers' compensation rate filings [515A.6(7)]; usury rates [535.2(3)"a"]; agricultural credit corporation maximum loan rates [535.12]; and regional banking—notice of application and hearing [524.1905(2)].

PLEASE NOTE: *Italics* indicate new material added to existing rules; ~~strike through letters~~ indicate deleted material.

KATHLEEN K. WEST, Administrative Code Editor
STEPHANIE A. HOFF, Deputy Editor

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Dec. 27 '06	Jan. 17 '07	Feb. 6 '07	Feb. 21 '07	Feb. 23 '07	Mar. 14 '07	Apr. 18 '07	July 16 '07
Jan. 12	Jan. 31	Feb. 20	Mar. 7	Mar. 9	Mar. 28	May 2	July 30
Jan. 26	Feb. 14	Mar. 6	Mar. 21	Mar. 23	Apr. 11	May 16	Aug. 13
Feb. 9	Feb. 28	Mar. 20	Apr. 4	Apr. 6	Apr. 25	May 30	Aug. 27
Feb. 23	Mar. 14	Apr. 3	Apr. 18	Apr. 20	May 9	June 13	Sept. 10
Mar. 9	Mar. 28	Apr. 17	May 2	May 4	May 23	June 27	Sept. 24
Mar. 23	Apr. 11	May 1	May 16	*****May 16*****	June 6	July 11	Oct. 8
Apr. 6	Apr. 25	May 15	May 30	June 1	June 20	July 25	Oct. 22
Apr. 20	May 9	May 29	June 13	June 15	July 4	Aug. 8	Nov. 5
May 4	May 23	June 12	June 27	*****June 27*****	July 18	Aug. 22	Nov. 19
*****May 16*****	June 6	June 26	July 11	July 13	Aug. 1	Sept. 5	Dec. 3
June 1	June 20	July 10	July 25	July 27	Aug. 15	Sept. 19	Dec. 17
June 15	July 4	July 24	Aug. 8	Aug. 10	Aug. 29	Oct. 3	Dec. 31
*****June 27*****	July 18	Aug. 7	Aug. 22	*****Aug. 22*****	Sept. 12	Oct. 17	Jan. 14 '08
July 13	Aug. 1	Aug. 21	Sept. 5	Sept. 7	Sept. 26	Oct. 31	Jan. 28 '08
July 27	Aug. 15	Sept. 4	Sept. 19	Sept. 21	Oct. 10	Nov. 14	Feb. 11 '08
Aug. 10	Aug. 29	Sept. 18	Oct. 3	Oct. 5	Oct. 24	Nov. 28	Feb. 25 '08
*****Aug. 22*****	Sept. 12	Oct. 2	Oct. 17	Oct. 19	Nov. 7	Dec. 12	Mar. 10 '08
Sept. 7	Sept. 26	Oct. 16	Oct. 31	Nov. 2	Nov. 21	Dec. 26	Mar. 24 '08
Sept. 21	Oct. 10	Oct. 30	Nov. 14	*****Nov. 14*****	Dec. 5	Jan. 9 '08	Apr. 7 '08
Oct. 5	Oct. 24	Nov. 13	Nov. 28	Nov. 30	Dec. 19	Jan. 23 '08	Apr. 21 '08
Oct. 19	Nov. 7	Nov. 27	Dec. 12	*****Dec. 12*****	Jan. 2 '08	Feb. 6 '08	May 5 '08
Nov. 2	Nov. 21	Dec. 11	Dec. 26	*****Dec. 26*****	Jan. 16 '08	Feb. 20 '08	May 19 '08
*****Nov. 14*****	Dec. 5	Dec. 25	Jan. 9 '08	Jan. 11 '08	Jan. 30 '08	Mar. 5 '08	June 2 '08
Nov. 30	Dec. 19	Jan. 8 '08	Jan. 23 '08	Jan. 25 '08	Feb. 13 '08	Mar. 19 '08	June 16 '08
*****Dec. 12*****	Jan. 2 '08	Jan. 22 '08	Feb. 6 '08	Feb. 8 '08	Feb. 27 '08	Apr. 2 '08	June 30 '08
*****Dec. 26*****	Jan. 16 '08	Feb. 5 '08	Feb. 20 '08	Feb. 22 '08	Mar. 12 '08	Apr. 16 '08	July 14 '08

PRINTING SCHEDULE FOR IAB

ISSUE NUMBER	SUBMISSION DEADLINE	ISSUE DATE
10	**Friday, October 19, 2007**	**November 7, 2007**
11	**Friday, November 2, 2007**	**November 21, 2007**
12	**Wednesday, November 14, 2007**	**December 5, 2007**

PLEASE NOTE:

Rules will not be accepted after **12 o'clock noon** on the Friday filing deadline days unless prior approval has been received from the Administrative Rules Coordinator's office.

If the filing deadline falls on a legal holiday, submissions made on the following Monday will be accepted.

*****Note change of filing deadline*****

SUBSCRIPTION INFORMATION

In 2008, mail subscriptions to the Iowa Administrative Bulletin and the Iowa Administrative Code will be discontinued, and Internet updating and printing options will be instituted through the Iowa General Assembly's Internet home page: www.legis.state.ia.us.

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Iowa Administrative Code Supplement

*July 2007 through December 2007 . . . . . $263

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AGENCY	HEARING LOCATION	DATE AND TIME OF HEARING
CULTURAL AFFAIRS DEPARTMENT[221]		
Iowa community cultural grants program, 6.1 to 6.12 IAB 10/10/07 **ARC 6315B**	Tone Board Room, 3rd Floor West Historical Bldg. Des Moines, Iowa	October 30, 2007 10 a.m.
Cultural leadership partners program, 8.1 to 8.10 IAB 10/10/07 **ARC 6316B**	Tone Board Room, 3rd Floor West Historical Bldg. Des Moines, Iowa	October 30, 2007 10 a.m.
ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]		
Community college equipment and training fund; targeted industries networking, student competition, and career awareness funds, chs 106 to 109 IAB 10/10/07 **ARC 6310B** (See also **ARC 6309B** herein)	Main Conference Room, 2nd Floor 200 East Grand Ave. Des Moines, Iowa	October 30, 2007 1 to 2:30 p.m.
EDUCATION DEPARTMENT[281]		
Accreditation requirements for school nurse/guidance counselor; K-12 school counseling program, 12.2, 12.3(11), 12.4(12) IAB 10/10/07 **ARC 6293B**	State Board Room, 2nd Floor Grimes State Office Bldg. Des Moines, Iowa	November 2, 2007 2 to 3 p.m.
High school graduation requirements, 12.3, 12.4(11), 12.5, 12.8 IAB 10/10/07 **ARC 6291B**	State Board Room, 2nd Floor Grimes State Office Bldg. Des Moines, Iowa	October 30, 2007 1 to 2 p.m.
Supplementary weighting, 97.1, 97.2, 97.4 to 97.7 IAB 10/10/07 **ARC 6290B**	State Board Room, 2nd Floor Grimes State Office Bldg. Des Moines, Iowa	October 30, 2007 2 to 3 p.m.
ENVIRONMENTAL PROTECTION COMMISSION[567]		
Recreational use assessment and attainability analysis protocol, 61.3(8) IAB 9/26/07 **ARC 6251B**	Fourth Floor West Conference Rm. Wallace State Office Bldg. Des Moines, Iowa	October 23, 2007 2 p.m.
Regulatory analysis on **ARC 5636B**, animal feeding operations, 65.17, 65.112 IAB 9/26/07 **ARC 6250B**	Fifth Floor Conference Rm. Wallace State Office Bldg. Des Moines, Iowa	October 16, 2007 11 a.m.
HOMELAND SECURITY AND EMERGENCY MANAGEMENT DIVISION[605]		
Iowa hazard mitigation plan, 9.3 IAB 10/10/07 **ARC 6296B** (See also **ARC 6295B** herein)	Conference Room 7105 NW 70th Ave. Camp Dodge, Bldg. W-4 Johnston, Iowa	October 30, 2007 9 a.m.

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Fees, 8.4, 9.11(3), 9.13, 10.3(3) IAB 10/10/07 **ARC 6297B**	Board Office, Suite C 400 S.W. 8th St. Des Moines, Iowa	October 30, 2007 3 p.m.
Complaints and investigations—processing and confidentiality, 24.1(2), 24.2, 24.4(5) IAB 10/10/07 **ARC 6298B**	Board Office, Suite C 400 S.W. 8th St. Des Moines, Iowa	October 30, 2007 2:30 p.m.

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Physical therapy, amendments to chs 199, 200, 202, 203, 205 to 207, 209 IAB 9/26/07 **ARC 6248B**	Fifth Floor Board Conference Rm. Lucas State Office Bldg. Des Moines, Iowa	October 16, 2007 9 to 9:30 a.m.

PUBLIC SAFETY DEPARTMENT[661]

Sheriff and deputy sheriff uniforms, rescind ch 3; adopt ch 125 IAB 9/12/07 **ARC 6222B**	First Floor Conference Room 125 State Public Safety Headquarters Bldg. 215 E. 7th St. Des Moines, Iowa	October 18, 2007 8:30 a.m.
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Aboveground petroleum storage tanks, 51.204, ch 224 IAB 9/26/07 **ARC 6255B**	First Floor Conference Room 125 State Public Safety Headquarters Bldg. 215 E. 7th St. Des Moines, Iowa	October 17, 2007 9:30 a.m.
Video surveillance and recording at gaming facilities, 141.1, 141.4, 141.5(9), 141.10 IAB 10/10/07 **ARC 6282B**	First Floor Conference Room 125 State Public Safety Headquarters Bldg. 215 E. 7th St. Des Moines, Iowa	November 7, 2007 8:30 a.m.
Liquified petroleum gas piping—damage reporting and repair, 226.5(1), 226.6 IAB 9/12/07 **ARC 6223B**	First Floor Conference Room 125 State Public Safety Headquarters Bldg. 215 E. 7th St. Des Moines, Iowa	October 17, 2007 8:30 a.m.

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Attorney fee contracts, 11.2(2), 11.4, 11.5(8), 11.6 to 11.11 IAB 10/10/07 **ARC 6303B**	Conference Room 422 Lucas State Office Bldg. Des Moines, Iowa	October 30, 2007 9 a.m.

UTILITIES DIVISION[199]

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Due to reorganization of state government by 1986 Iowa Acts, chapter 1245, it was necessary to revise the agency identification numbering system, i.e., the bracketed number following the agency name.

"Umbrella" agencies and elected officials are set out below at the left-hand margin in CAPITAL letters.

Divisions (boards, commissions, etc.) are indented and set out in lowercase type under their statutory "umbrellas."

Other autonomous agencies which were not included in the original reorganization legislation as "umbrella" agencies are included alphabetically in small capitals at the left-hand margin, e.g., BEEF INDUSTRY COUNCIL, IOWA[101].

The following list will be updated as changes occur:

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ARC 6299B

ADMINISTRATIVE SERVICES DEPARTMENT[11]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)*"b."*

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 8A.311, the Department of Administrative Services hereby gives Notice of Intended Action to amend Chapter 105, "Procurement of Goods and Services of General Use," Iowa Administrative Code.

This amendment is proposed to reflect changes to Iowa Code chapter 8A brought about by 2007 Iowa Acts, House File 849, relating to preferences and tied bids.

Any interested person may make written comments on this proposed amendment on or before October 30, 2007. Such written materials should be directed to Marianne Mickelson, DAS Rules Administrator, Hoover State Office Building, Level B, Des Moines, Iowa 50319; or may be sent by E-mail to Marianne.Mickelson@iowa.gov.

This amendment is intended to implement Iowa Code chapter 8A as amended by 2007 Iowa Acts, House File 849.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at http://www.legis.state.ia.us/IAC.html or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendment is proposed.

Amend subrule 105.12(4) as follows:

105.12(4) Tied bids. ~~An award shall be determined by a drawing when responses are received that are equal in all respects and tied in price. Whenever it is practical to do so, the drawing will be held in the presence of the vendors who are tied in price. Otherwise the drawing will be made in front of at least three noninterested parties. All drawings shall be documented.~~

a. Whenever a tie involves an Iowa vendor and a vendor outside the state of Iowa, the Iowa vendor will receive preference. Whenever a tie involves one or more Iowa vendors and one or more vendors outside the state of Iowa, the drawing will be held among the Iowa vendors only. Tied bids involving Iowa-produced or Iowa-manufactured products and items produced or manufactured outside the state of Iowa will be resolved in favor of the Iowa product.

b. In the event of a tied bid between Iowa vendors, the department shall contact the Iowa Employer Support of the Guard and Reserve (ESGR) committee for confirmation and verification as to whether the vendors have complied with ESGR standards. Preference, in the case of a tied bid, shall be given to Iowa vendors complying with ESGR standards.

c. An award shall be determined by a drawing when responses are received that are equal in all respects and tied in price. Whenever it is practical to do so, the drawing will be held in the presence of the vendors who are tied in price. Otherwise the drawing will be made in front of at least three noninterested parties. All drawings shall be documented.

ARC 6326B

COLLEGE STUDENT AID COMMISSION[283]

Notice of Termination and Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)*"b."*

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 261.3, the College Student Aid Commission hereby terminates the rule making initiated by its Notice of Intended Action published in the Iowa Administrative Bulletin as **ARC 6017B** on June 14, 2007, and gives Notice of Intended Action to adopt a new Chapter 8, "All Iowa Opportunity Scholarship Program," Iowa Administrative Code.

The purpose of these rules is to implement the All Iowa Opportunity Scholarship Program as enacted by 2007 Iowa Acts, Senate File 588.

These rules were proposed by the Commission on June 14, 2007, published under Notice of Intended Action in the July 4, 2007, Iowa Administrative Bulletin as **ARC 6017B**, and simultaneously Adopted and Filed Emergency as **ARC 6006B**.

A subsequent Adopted and Filed Emergency rule making was published in the August 15, 2007, Iowa Administrative Bulletin as **ARC 6135B**. Based on comments received from college and university officials following publication of the subsequent emergency rules, changes have been made that require a new Notice of Intended Action to revise Chapter 8. The Notice of Termination and the revision of these rules were proposed at the Commission's September 20, 2007, meeting.

Interested persons may submit comments orally or in writing by 4:30 p.m. on October 30, 2007, to the Executive Director, College Student Aid Commission, 200 Tenth Street, Fourth Floor, Des Moines, Iowa 50309; telephone (515)725-3400.

These rules are intended to implement Iowa Code chapter 261 as amended by 2007 Iowa Acts, Senate File 588.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at http://www.legis.state.ia.us/IAC.html or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendment is proposed.

Rescind **283—Chapter 8** and adopt the following **new** chapter in lieu thereof:

CHAPTER 8
ALL IOWA OPPORTUNITY
SCHOLARSHIP PROGRAM

283—8.1(261) Basis of aid. Tuition assistance available under the all Iowa opportunity scholarship program is based on the financial need of Iowa residents enrolled at eligible Iowa colleges and universities.

COLLEGE STUDENT AID COMMISSION[283](cont'd)

283—8.2(261) Definitions. As used in this chapter:

"Eligible college or university" means an Iowa community college, an institution of higher education governed by the state board of regents, or an accredited private institution located in Iowa that meets all eligibility requirements set forth in Iowa Code section 261.9. All eligible colleges and universities must submit annual reports which include student and faculty information, enrollment and employment information, and other information required by the commission as described in Iowa Code sections 261.9 through 261.16.

"Financial need" means the need of an applicant for financial assistance. Need shall be evaluated annually on the basis of a confidential statement of family finances filed on a form designated by the commission. The commission has adopted the use of the Free Application for Federal Student Aid (FAFSA), a federal form used to calculate a formula developed by the U.S. Department of Education, the results of which are used to determine relative need. Relative need will be ranked based on the applicant's expected family contribution (EFC) provided by the U.S. Department of Education. The FAFSA must be received by the processing agent by the date specified in the application instructions.

"Full-time" means enrollment at an eligible college or university in a course of study including at least 12 semester hours or the trimester or quarter equivalent.

"Iowa resident" means a person who meets the criteria used by the state board of regents to determine residency for tuition purposes as described in 681—1.4(262) or a person who meets the criteria defined by the Iowa department of education's "Iowa community college uniform policy on student residency status."

"Part-time" means enrollment at an eligible college or university in a course of study including at least three semester hours or the trimester or quarter equivalent.

283—8.3(261) Eligibility requirements.

8.3(1) Applicants for the all Iowa opportunity scholarship program must complete the Free Application for Federal Student Aid (FAFSA) by the date specified in the application instructions and any additional applications or documents required by the commission. In addition to completing the FAFSA, an applicant must be:

a. An Iowa resident who begins his or her initial period of postsecondary enrollment within two academic years of graduation from high school;

b. An Iowa high school graduate who graduated from high school with at least a 2.5 cumulative grade point average on a 4.0 grade scale or its equivalent; and

c. Enrolled for at least three semester hours, or the trimester or quarter equivalent, in a program leading to an undergraduate degree from an eligible college or university.

8.3(2) To maintain eligibility, recipients must maintain satisfactory academic progress as defined by the eligible college or university.

8.3(3) Individuals who have military obligations may delay the initial period of enrollment for up to four academic years beyond high school graduation or must begin postsecondary enrollment within two academic years of discharge. Exceptions for health or other personal reasons for delaying the initial period of enrollment will be reviewed by commission staff on a case-by-case basis.

283—8.4(261) Awarding of funds.

8.4(1) Selection criteria. All applicants who submit applications that are received on or before the published deadline will be considered for funding.

8.4(2) Priority for grants. Only applicants with expected family contributions (EFCs) at or below the average tuition and fees for regent university students for the academic year for which awards are being made will be considered for awards.

Priority will be given to students who participated in federal TRIO programs or alternative programs in high school and to students who graduated from alternative high schools. Awards will be made to students in this category based on EFC levels within the parameters defined by the commission, with students in the lowest EFC levels awarded first and at increasing EFC levels until the maximum EFC level is reached.

If sufficient funding is not available to make full awards to all remaining eligible applicants, awards will be made only to those students whose EFCs combined with federal Pell grants, Iowa vocational-technical tuition grants, and Iowa tuition grants total less than the designated EFC level. Students will be awarded by EFC level beginning with the lowest EFC levels until all funds have been expended.

8.4(3) Maximum award. The maximum award for full-time students will be the average tuition and fees for regent university students for the award year or the tuition and fees paid by the student, whichever is less.

8.4(4) Awarding process.

a. College and university officials will provide information about eligible students to the commission in a format specified by the commission.

b. The commission will designate recipients in rank order until all funding has been expended. In the event that all applicants in a specific rank cannot be funded, applicants will be selected in that rank based on expected renewal status (in the case of community college students), expected family contribution, parental adjusted gross income, and application date.

c. The commission will notify recipients and college and university officials of the awards, clearly indicating the award amount and the state program from which funding is being provided and stating that funding is contingent on the availability of state funds.

d. The college or university will apply awards directly to student accounts to cover tuition and fees.

e. The college or university is responsible for completing necessary verification and for coordinating other aid to ensure compliance with student eligibility requirements and allowable award amounts. The college or university will report changes in student eligibility to the commission.

8.4(5) Award transfers and adjustments. Recipients are responsible for promptly notifying the appropriate college or university of any change in enrollment or financial situation. The college or university will make necessary changes and notify the commission.

8.4(6) Academic-year awards. All Iowa opportunity scholarships are provided during the traditional nine-month academic year, which is generally defined as September through May. Students attending eligible community colleges may receive no more than four semesters of full-time all Iowa opportunity scholarships or eight part-time semesters. Students attending eligible regent universities and other eligible colleges and universities may receive no more than two semesters of full-time all Iowa opportunity scholarships or four part-time semesters.

8.4(7) Renewal. Applicants must complete and file annual applications (FAFSAs) for the all Iowa opportunity scholarship program by the deadline established by the commission. If funds remain available after the application deadline,

the commission will continue to accept applications. To be eligible for renewal, a recipient must maintain satisfactory academic progress as defined by the eligible college or university and must not have exceeded the funding limit as described in 8.4(6).

283—8.5(261) Restrictions. A student who is in default on a Stafford Loan, SLS Loan, or a Perkins/National Direct/National Defense Student Loan or who owes a repayment on any Title IV grant assistance or state award shall be ineligible for assistance under the all Iowa opportunity scholarship program. Eligibility for state aid may be reinstated upon payment in full of the delinquent obligation or by commission ruling on the basis of adequate extenuating evidence presented in an appeal under the procedures set forth in 283—Chapters 4 and 5. Credits that a student receives through "life experience credit" and "credit by examination" are not eligible for funding.

These rules are intended to implement Iowa Code chapter 261 as amended by 2007 Iowa Acts, Senate File 588.

ARC 6327B

COLLEGE STUDENT AID COMMISSION[283]

Notice of Termination and Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"*b*."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 261.3, the College Student Aid Commission hereby terminates the rule making initiated by its Notice of Intended Action published in the Iowa Administrative Bulletin as **ARC 6018B** on June 14, 2007, and gives Notice of Intended Action to adopt a new Chapter 9, "All Iowa Opportunity Foster Care Grant Program," Iowa Administrative Code.

The purpose of these rules is to implement the All Iowa Opportunity Foster Care Grant Program as enacted by 2007 Iowa Acts, Senate File 588.

These rules were proposed by the Commission on June 14, 2007, published under Notice of Intended Action in the July 4, 2007, Iowa Administrative Bulletin as **ARC 6018B**, and simultaneously Adopted and Filed Emergency as **ARC 6007B**.

A subsequent Adopted and Filed Emergency rule making was published in the August 15, 2007, Iowa Administrative Bulletin as **ARC 6136B**. Based on comments received from college and university officials following publication of the subsequent emergency rules, changes have been made that require a new Notice of Intended Action to revise Chapter 9. The Notice of Termination and the revision of these rules were proposed at the Commission's September 20, 2007, meeting.

Interested persons may submit comments orally or in writing by 4:30 p.m. on October 30, 2007, to the Executive Director, College Student Aid Commission, 200 Tenth Street, Fourth Floor, Des Moines, Iowa 50309; telephone (515)725-3400.

These rules are intended to implement Iowa Code chapter 261 as amended by 2007 Iowa Acts, Senate File 588.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at http://www.legis.state.ia.us/IAC.html or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendment is proposed.

Rescind **283—Chapter 9** and adopt the following **new** chapter in lieu thereof:

CHAPTER 9
ALL IOWA OPPORTUNITY
FOSTER CARE GRANT PROGRAM

283—9.1(261) Basis of aid. Financial assistance under the all Iowa opportunity foster care grant program is available to students who have been in Iowa foster care, who demonstrate financial need, and who are enrolled at eligible Iowa colleges and universities.

283—9.2(261) Definitions. As used in this chapter:

"Adopted youth" means a youth who was adopted after the age of 16.

"Aged out" means youth who leave foster care at age 18 or older.

"Eligible child" means a child who meets the definition of "aged out" of foster care or who was adopted on or after the child's sixteenth birthday.

"Eligible college or university" means an Iowa community college, an institution of higher education governed by the state board of regents, or an accredited private institution located in Iowa that meets all eligibility requirements set forth in Iowa Code section 261.9. All eligible colleges and universities must submit annual reports which include student and faculty information, enrollment and employment information, and other information required by the commission as described in Iowa Code sections 261.9 through 261.16.

"Financial need" means the need of an applicant for financial assistance. Need shall be evaluated annually on the basis of a confidential statement of family finances filed on a form designated by the commission. For the purposes of determining financial need, the commission has adopted the use of the Free Application for Federal Student Aid (FAFSA), a federal form used to calculate a formula developed by the U.S. Department of Education, the results of which are used to determine relative need. The FAFSA must be received by the processing agent by the date specified in the application instructions.

"Foster care" means substitute care furnished on a 24-hour-a-day basis to an eligible child, in a licensed foster care facility or approved shelter care facility, by a person or agency other than the child's parent or guardian, but does not include care provided in a family home through an informal arrangement for a period of less than 30 days. Child foster care shall include but is not limited to the provision of food, lodging, training, education, supervision, and health care.

"Full-time" means enrollment at an eligible college or university in a course of study including at least 12 semester hours or the trimester or quarter equivalent.

"Iowa resident" means an individual who meets the criteria used by the state board of regents to determine residency for tuition purposes as described in 681—1.4(262).

"Part-time" means enrollment at an eligible college or university in a course of study including at least three semester hours or the trimester or quarter equivalent.

COLLEGE STUDENT AID COMMISSION[283](cont'd)

283—9.3(261) Eligibility requirements.

9.3(1) Applicants for the all Iowa opportunity foster care grant program must complete the Free Application for Federal Student Aid (FAFSA) and an application specific to the program as provided by the commission. The applicant's initial application date must be subsequent to the applicant's reaching the age of 17, and the start date of the education or training program must be subsequent to the applicant's reaching the age of 18 and prior to the applicant's reaching the age of 23. In addition to completing the required applications, a recipient must be:

a. An Iowa resident;

b. A youth who has either a general equivalency diploma (GED) or a high school diploma;

c. A youth who is at least 18 years of age and who has not yet reached 24 years of age and:

(1) Was in a licensed foster care placement under a court order as described in Iowa Code chapter 232 under the care and custody of the department of human services or juvenile court services on the date the youth reached the age of 18 or during the 30 calendar days before or after that date;

(2) Was under court order under Iowa Code chapter 232 to live with a relative or other suitable person on the date the youth reached the age of 18 or during the 30 calendar days before or after that date;

(3) Was in a licensed foster care placement under an order entered under Iowa Code chapter 232 prior to being legally adopted after reaching the age of 16; or

(4) Was in the state training school or the Iowa juvenile home under court order under Iowa Code chapter 232 under the care and custody of the department of human services on the date the youth reached the age of 18 or during the 30 calendar days before or after that date; and

d. A student enrolled for at least three semester hours, or the trimester or quarter equivalent, in a program leading to a degree or certificate from an eligible college or university.

9.3(2) To maintain eligibility, recipients must maintain satisfactory academic progress as defined by the eligible institution.

283—9.4(261) Awarding of funds.

9.4(1) Selection criteria. All applicants who submit FAFSAs and program applications will be considered for funding.

9.4(2) Priority for grants. Awards will first be made to returning students who submit renewal applications by the application deadline. After all on-time renewals have been funded, awards will be made to new students and renewal students based on the application receipt date.

When all funds have been committed, applicants not awarded grants who meet the eligibility requirements will be placed on a waiting list. Applicants on the waiting list will be awarded grants if funds become available based on the date the completed application was received. In the event multiple applications are received on the same date, preference will be given as follows:

a. Applicants who were placed in the state training school or the Iowa juvenile home pursuant to a court order under Iowa Code chapter 232 under the care and custody of the department of human services.

b. Applicants who aged out of foster care.

(1) In the event there are multiple applicants who aged out of care, preference will be given to the applicant closest to the age of 24.

(2) In the event multiple applicants have the same birthday, preference will be given to the applicant with the highest financial need as determined by the FAFSA.

c. Applicants who were adopted.

(1) In the event there are multiple adopted applicants, preference will be given to the applicant closest to the age of 24.

(2) In the event multiple applicants have the same birthday, preference will be given to the applicant with the highest financial need as determined by the FAFSA.

d. Applicants, regardless of foster care placement, who received awards previously but withdrew from school.

(1) In the event there are multiple applicants, preference will be given to the applicant closest to the age of 24.

(2) In the event multiple applicants have the same birthday, preference will be given to the applicant with the highest financial need as determined by the FAFSA.

9.4(3) Award notification. The commission will notify all recipients and the colleges or universities they attend in writing of the amount of their awards. Ineligible applicants, or applicants who are on the waiting list, will be notified in writing of their ineligibility or waiting-list status. The commission will coordinate all financial aid received by recipients to ensure compliance with student eligibility requirements and allowable award amounts.

9.4(4) Award transfers and adjustments. Recipients are responsible for promptly notifying the appropriate college or university of any change in enrollment or financial situation. The college or university will make necessary changes and notify the commission.

9.4(5) Academic-year awards. All Iowa opportunity foster care grants are provided during the traditional nine-month academic year, which is generally defined as September through May. Awards shall not exceed the full cost of attendance as determined by the college or university minus other federal, state, or college or university financial aid provided to the student.

9.4(6) Renewal. Applicants must complete and file annual applications for the all Iowa opportunity foster care grant program by the deadline established by the commission. If funds remain available after the application deadline, the commission will continue to accept applications. To be eligible for renewal, a recipient must maintain satisfactory academic progress as defined by the eligible college or university.

283—9.5(261) Disbursement of grant. The full amount of the grant will be disbursed in multiple installments to the eligible college or university upon receipt of certification from the college or university that the grant recipient is enrolled and in good academic standing. The college or university will first use the funds to pay any outstanding charges of the student. Once the student account balance has been settled, the remaining funds, if any, may be refunded to the student.

If the student withdraws from the university and is entitled to a refund of tuition and fees, the pro-rata share of the refund attributable to the grant shall be refunded to the commission.

283—9.6(261) Award transfers and adjustments. Recipients are responsible for notifying the commission immediately of any change in name, enrollment status, or address.

283—9.7(261) Restrictions. A student who is in default on a Stafford Loan, SLS Loan, or a Perkins/National Direct/National Defense Student Loan or who owes a repayment on any Title IV grant assistance or state award shall be ineligible for assistance under the all Iowa opportunity foster care grant program. Eligibility for state aid may be reinstated upon payment in full of the delinquent obligation or by commission ruling on the basis of adequate extenuating evidence presented in an appeal under the procedures set forth in 283—

COLLEGE STUDENT AID COMMISSION[283](cont'd)

Chapters 4 and 5. Credits that a student receives through "life experience credit" and "credit by examination" are not eligible for grant funding.

These rules are intended to implement Iowa Code chapter 261 as amended by 2007 Iowa Acts, Senate File 588.

ARC 6315B

CULTURAL AFFAIRS DEPARTMENT[221]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)*"b."*

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 303.1A, the Department of Cultural Affairs hereby gives Notice of Intended Action to amend Chapter 6, "Iowa Community Cultural Grants (ICCG) Program," Iowa Administrative Code.

The proposed amendments delete program details that are unnecessarily specific and limiting at the administrative rules level.

Public comments concerning the proposed amendments will be accepted until 4:30 p.m. on October 30, 2007. Interested persons may submit written or oral comments by contacting Kathy Gourley, Department of Cultural Affairs, Historical Building, 600 East Locust Street, Des Moines, Iowa 50319-0290; fax (515)282-0502; E-mail kathy.gourley@iowa.gov. Persons who wish to convey their views orally should contact the Department of Cultural Affairs at (515) 281-6913.

Also, there will be a public hearing on October 30, 2007, at 10 a.m. at the above address in the Tone Board Room, Third Floor West, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments.

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

These amendments are intended to implement Iowa Code chapter 303.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at http://www.legis.state.ia.us/IAC.html or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendments are proposed.

ITEM 1. Amend rule 221—6.3(303) as follows:

221—6.3(303) Definitions. The following definitions shall apply when used in this chapter unless otherwise noted:

~~"Administrative costs" means those reasonable and necessary costs and charges associated with the execution of the funded project which were incurred by a fiscal agent in support of another applicant. Such administrative costs may include record-keeping, telephone, travel, and mailing expenses, and support staff fees, and shall not exceed 5 percent of the total project costs.~~

"Advisory committee" means the committee comprised of ~~a representative of the arts division of the department, a representative of the historical division of the department, and a representative of the Iowa department of economic development~~ *at least three representatives from across the state with expertise in the arts, history, and economic development*. The advisory committee shall review each application and make recommendations to the director for funding of eligible projects.

"Application" means an official ICCG application form as provided by the department ~~which complies with the requirements of rule 221—6.5(303)~~.

"Community group" means an Iowa nonprofit, tax-exempt organization which is open to the general public and established for the promotion and development of one or more of the following disciplines or activities: the arts, history, culture, ethnicity, historic preservation, tourism, economic development, festivals, or municipal libraries. "Community group" shall not include a school, college, university, political party, labor union, state or federal government agency, church, convention, or association of churches~~, or organizations~~ operated primarily for religious purposes~~,~~ or ~~which are~~ operated, supervised, controlled or ~~are~~ principally supported by a church, convention, or association of churches. *"Community group" also shall not include any organization whose primary purpose is to support any excluded type of organization.*

"Department" means the Iowa department of cultural affairs (DCA).

"Director" means the director of the department of cultural affairs, or designee.

"Eligible activity" means a qualified festival; performing, visual, or literary arts project; historic preservation, museum, tourism, or ethnic heritage project which will enhance Iowa's cultural climate, and which will provide jobs for Iowans while serving the general public.

"Eligible applicant" means an incorporated city in Iowa, county government, tribal council, or an Iowa community group which is federally tax-exempt *under United States Internal Revenue Code Section 501(c)(3)* and incorporated under the Iowa nonprofit corporation Act. Iowa nonprofit community groups which have applied for and are awaiting determination of federal tax-exempt status may apply for ICCG funds through a fiscal agent which is federally tax-exempt and otherwise eligible to apply.

"Fiscal agent" means an organization which meets the definition of eligible applicant, and which serves as the legal applicant of record, redistributes the funds to the intended receiver, and is responsible for all published requirements of the ICCG program including contracts, budgets, fiscal records, and reports.

"Grantee" means any applicant receiving grant funds under the ICCG program.

"ICCG" means the Iowa community cultural grants program as administered by the department.

"In-kind contribution" means a noncash contribution provided by a grantee as a part of the grantee's matching share of a project. In-kind contributions shall not exceed 50 percent of the matching funds requirement.

~~"Local matching funds"~~ *"Matching funds"* means those funds which are locally contributed for the specifically funded project and which, when combined with ~~local~~ in-kind contributions, shall equal at least 50 percent or more of the total project cost. ~~Local matching~~ *Matching* funds shall be provided by the eligible applicant ~~which is submitting the application for funding~~ and shall not include any portion of

CULTURAL AFFAIRS DEPARTMENT[221](cont'd)

another ~~state~~ *department of cultural affairs, Iowa arts council, or state historical society of Iowa* grant.

"Proposed project" means an eligible activity for which an eligible applicant has submitted a single application for funding of a single project. ~~Applicants are limited to one submission per each granting cycle and may also serve as a fiscal agent for one additional application in each granting cycle.~~

ITEM 2. Amend rule 221—6.4(303) as follows:

221—6.4(303) Application procedures. All ICCG inquiries and correspondence, including ~~requests for official ICCG application forms, and~~ the submission of completed application forms for consideration of funding, shall be addressed to the Department of Cultural Affairs, ~~Historical Building,~~ 600 E. Locust Street, Des Moines, Iowa 50319, telephone ~~(515) 281-8741~~ *(515)242-6194*. All applications shall be submitted ~~on the original application form prescribed by the department or a legible photocopy of the original form~~ *according to the department's published guidelines*. Handwritten, out-of-date, or telefacsimile applications shall not be accepted. All applications submitted shall be reviewed by the advisory committee, with ~~their~~ *the advisory committee's* recommendations for grantees and grant awards being submitted to the director or designee who shall determine final grantees' awards to the extent funds are available.

ITEM 3. Rescind rules **221—6.5(303)** and **221—6.6(303)**.

ITEM 4. Renumber rule **221—6.7(303)** as **221—6.5(303)** and amend renumbered rule 221—6.5(303) as follows:

221—6.5(303) Review criteria. ~~Applications which meet the preliminary review as defined by rule 221—6.6(303) shall be forwarded to the advisory committee for review and ranking according to the following criteria~~ *Review criteria shall be according to the department's published guidelines and shall include the following minimum criteria*:

1. The historical, ethnic, cultural, and tourism value and quality of the proposed project~~: up to 500 points. Applications requesting continuation funding of a project funded with ICCG support in the previous granting cycle shall be limited to a maximum of 400 points in this category~~;

2. The number and impact of full- and part-time employment for Iowans created by the proposed project~~: up to 300 points~~;

~~3. The percent of local matching funds in cash which are pledged to the proposed project: up to 100 points;~~

~~4~~ *3*. The innovation of the proposed project~~,~~ *and the* degree of collaboration with other interested entities~~, and financial need of the applicant for the proposed project: up to 100 points.~~*;*

4. The financial need of the applicant for the proposed project; and

5. The appropriateness of the project budget, including certification that the eligible organization will supply matching funds that include in-kind contributions of no more than 50 percent.

ITEM 5. Renumber rule **221—6.8(303)** as rule **221—6.6(303)**.

ITEM 6. Renumber rule **221—6.9(303)** as **221—6.7(303)** and amend renumbered rule 221—6.7(303) as follows:

221—6.7(303) Grant deadline. The department may establish one or more grant deadlines for the submission of ICCG applications each year funds are available. ~~Applicants shall be given approximately 45 days to respond to the request for proposals.~~

ITEM 7. Renumber rule **221—6.10(303)** as **221—6.8(303)** and amend renumbered rule 221—6.8(303) as follows:

221—6.8(303) Contractual agreement. The department and each successful grantee shall enter into a contractual agreement prior to the expenditure of project-related funds. ~~The contractual agreement shall include the terms and conditions of the grant award, including the grant amount, matching funds requirements, timetable for completion, a credit line for the department, and other terms and conditions as determined by the department. No requests for reimbursement shall be honored nor local matching funds or in-kind services be credited~~ *No grant or matching funds may be obligated or expended* for the project prior to the execution of the contractual agreement by the department and the grantee. *A grantee must expend all awarded funds within the fiscal year named in the contractual agreement.*

ITEM 8. Renumber rules **221—6.11(303)** and **221—6.12(303)** as **221—6.9(303)** and **221—6.10(303)**.

ITEM 9. Amend **221—Chapter 6**, implementation sentence, as follows:

These rules are intended to implement Iowa Code ~~section~~ *sections* 303.1(1) and 303.3.

ARC 6316B

CULTURAL AFFAIRS DEPARTMENT[221]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)*"b."*

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 303.1A, the Department of Cultural Affairs hereby gives Notice of Intended Action to amend Chapter 8, "Cultural Enrichment Grant (CEG) Program," Iowa Administrative Code.

The proposed amendments rename the grant program, redefine its structure, and delete program details that are unnecessarily specific and limiting at the administrative rules level.

Public comments concerning the proposed amendments will be accepted until 4:30 p.m. on October 30, 2007. Interested persons may submit written or oral comments by contacting Kathy Gourley, Department of Cultural Affairs, Historical Building, 600 East Locust Street, Des Moines, Iowa 50319-0290; fax (515)282-0502; E-mail kathy.gourley@iowa.gov. Persons who wish to convey their views orally should contact the Department of Cultural Affairs at (515) 281-6913.

Also, there will be a public hearing on October 30, 2007, at 10 a.m. at the above address in the Tone Board Room, Third Floor West, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments.

CULTURAL AFFAIRS DEPARTMENT[221](cont'd)

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

These amendments are intended to implement Iowa Code chapter 303.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at http://www.legis.state.ia.us/IAC.html or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendments are proposed.

ITEM 1. Amend **221—Chapter 8**, chapter title, as follows:

CHAPTER 8

~~CULTURAL ENRICHMENT GRANT (CEG) PROGRAM~~

CULTURAL LEADERSHIP PARTNERS (CLP) PROGRAM

ITEM 2. Amend rule 221—8.1(303) as follows:

221—8.1(303) Purpose. The cultural ~~enrichment grant~~ *leadership partners* program provides *multiyear,* general operating budgetary support to major~~, multidisciplinary~~ *arts and* cultural organizations which demonstrate *an exemplary record of* cultural and managerial excellence *and community service* on a continuing basis to the citizens of Iowa.

ITEM 3. Amend rule 221—8.2(303) as follows:

221—8.2(303) Definitions. As used in these rules, unless the context otherwise requires:

~~"Act" means 1990 Iowa Acts, chapter 1272.~~

"Application" means a formal request on prescribed forms for funds available through this program.

"Arts organization" means an eligible organization whose primary mission, purpose, and services are centered in the arts.

~~"CEG"~~ *"CLP"* means the cultural ~~enrichment grant~~ *leadership partners* program ~~as established by the Act~~.

"CLP coordinator" means the department staff member assigned as the primary contact person for the CLP program.

"Cultural organization" means an eligible organization with a primary mission and purpose that is cultural in nature; the cultural organization must operate as a museum, botanical center, zoo, or center for the performing arts.

"Department" means the department of cultural affairs.

"Director" means the director of the department of cultural affairs.

"Eligible ~~applicant~~ *organization*" means ~~any applicant as defined by rule 221—8.3(303)~~ *an Iowa arts or cultural organization that meets the criteria for eligibility described in published guidelines. "Eligible organization" shall not include an organization that uses a fiscal agent or the Iowa nonprofit or federal tax-exempt status of another organization; an organization that receives general operating support through other programs administered by the department of cultural affairs or its divisions; a for-profit corporation or business, religious organization, political party, or national service/professional organization; an agency, department or division of county, state or federal government, including libraries, parks, and recreation departments; an auditorium, convention center or similar venue; or an educational institution, organization or PK-12 school, whose primary orientation, mission and purpose are education and the awarding of academic credits.*

"End-of-year report" means a report submitted to the department following the end of a partner organization's operating year, detailing financial, operational, and programming data of the partner organization.

"Evaluation team" means a team of up to four individuals appointed by the director who have knowledge and expertise relevant to the arts or cultural applicant organization being evaluated for acceptance into the CLP program.

~~"Grantee" means any applicant receiving grant funds from this program.~~

"Matching funds" means nonstate and nonfederal funds equal to or in excess of the grant award.

~~"Multidisciplined cultural organization" means an eligible organization that is not eligible for any other general operating support grant program administered by the department or its divisions and whose mission statement or current programs include the disciplines of botany, zoology, geology, history, science, or the performing or visual arts.~~

"Partner organization" means any eligible applicant that has been accepted by the director into the cultural leadership partners program.

~~"Review committee" means a committee of seven Iowans as defined by rule 221—8.7(303), who shall be appointed by the director for a one-year term to review and recommend approval for funding of applications submitted under this program.~~

~~"Year-round" means an applicant operating with at least one full-time, paid professional staff member for each of the 12 months of the year or an applicant whose facilities and programs are accessible to the public at least 1000 hours per year.~~

ITEM 4. Amend **221—Chapter 8** by striking the subtitle that precedes rule 221—8.3(303) as follows:

~~GRANT PROGRAM~~

ITEM 5. Rescind rule 221—8.3(303) and adopt the following **new** rule in lieu thereof:

221—8.3(303) Eligibility. Eligibility requirements are according to published program guidelines. Eligible organizations must meet all eligibility requirements of this program for the applicant's three previous operating years prior to the application deadline. Organizations receiving funding through this program must continue to meet all eligibility requirements annually to continue to receive funding.

ITEM 6. Amend subrule 8.4(1) as follows:

8.4(1) Procedure. All applications shall be submitted on official ~~cultural enrichment grant~~ application forms available from the department of cultural affairs. *Procedures for review of applications are according to published guidelines.*

ITEM 7. Rescind subrule 8.4(2) and adopt the following **new** subrule in lieu thereof:

8.4(2) Application deadline. Applications will be accepted from eligible organizations every three years according to published guidelines.

ITEM 8. Amend rule 221—8.5(303) as follows:

221—8.5(303) Matching funds. Eligible ~~applicants~~ *organizations* whose cash operating budgets include nonstate and nonfederal funds equal to or in excess of the grant award shall be determined to have met the matching requirements for this program. Grant funds from the department or its divisions shall not be used as matching funds for this program.

CULTURAL AFFAIRS DEPARTMENT[221](cont'd)

ITEM 9. Rescind rule **221—8.6(303)**.

ITEM 10. Renumber rule **221—8.7(303)** as **221—8.6(303)** and amend renumbered rule 221—8.6(303) as follows:

221—8.6(303) ~~**Review committee**~~ ***Evaluation team*****.** The director shall appoint ~~a committee~~ *an evaluation team* of up to ~~seven Iowans who shall~~ *four individuals to* review ~~all~~ *each* eligible ~~applications~~ *organization's application* and recommend approval for funding under the guidelines of this program. The members of the ~~review committee~~ *evaluation team* shall serve ~~at the pleasure of the director for a term of one year~~ *until the review process for the applicant organization is completed*. The ~~review committee~~ *evaluation team* shall consist of representatives with knowledge and expertise pertinent to the types of organizations eligible for the cultural ~~enrichment grant~~ *leadership partners* program. The ~~review committee~~ *evaluation team* shall be comprised of members who are not employed by an applicant and who do not serve on a board, council, or commission of an applicant, with or without compensation.

ITEM 11. Renumber rule 221—8.8(303) as 221—8.7(303) and amend renumbered rule 221—8.7(303) as follows:

221—8.7(303) Application review and selection.

8.7(1) Procedure.

a. Each application shall be ~~reviewed~~ *screened* by the ~~CEG administrator~~ *CLP coordinator* for eligibility~~,~~ *and* completeness~~, and accuracy~~. Incomplete~~, inaccurate,~~ or ineligible applications or applications ~~hand-delivered or postmarked~~ *received* after the deadline ~~date or applications not bearing an official U.S. Postal Service cancellation~~ shall not be considered for funding. ~~Telefacsimile applications for CEG funds shall not be accepted.~~

b. The ~~review committee~~ *evaluation team* shall ~~review~~ *evaluate* all applications eligible for consideration and make recommendations for funding to the director.

c. Final decisions, ~~and~~ certification of grant awards*, and acceptance into the CLP program* shall be ~~made~~ *determined* by the director. ~~All applicants shall be notified of the status of their application within 15 working days of the director's decision.~~

8.7(2) Review criteria. ~~Applications shall be evaluated on the basis of the following criteria~~ *Review criteria shall be according to the department's published guidelines and shall include the following at a minimum*:

a. Programmatic excellence, leadership and cultural impact~~.~~*;*

b. Sound fiscal and managerial practices and administrative stability~~.~~*; and*

c. Community outreach and involvement.

~~d. Audience development.~~

~~e. Quality of long-range planning.~~

~~f. Educational emphasis.~~

~~g. Strength of fundraising effort.~~

~~h. Scope of volunteer participation.~~

~~i. Efforts to meet Imagine Iowa goals.~~

ITEM 12. Renumber rule **221—8.9(303)** as **221—8.8(303)** and amend renumbered rule 221—8.8(303) as follows:

221—8.8(303) Grant administration.

8.8(1) Contracts.

a. Upon certification ~~of a grant award~~ by the director *that an applicant organization is approved to become a CLP partner*, the department shall enter into a contract with the ~~grantee~~ *organization*. The contract shall state the *dates*, terms, and conditions of the grant award, as well as the amount of the award. *When allocating awards to cultural leadership partners, the director shall first ensure that funds are available to meet obligations to existing partners before entering into any contracts with new partner organizations.*

b. All contracts shall be approved by the director and the legally responsible officer of the ~~grantee~~ *partner organization*. ~~An agent of the grantee shall be clearly identified as the sole contact with the department on matters concerning the grant.~~

~~c. The grantee shall give preference to Iowans and Iowa products and services in the expenditure of CEG funds.~~

~~d. The grantee shall agree to refrain from using CEG funds to influence legislation or for any other lobbying function.~~

~~e. The grantee shall agree to include in all printed lists of contributors the following credit line: "Operating support for this organization provided by the Iowa Department of Cultural Affairs, Cultural Enrichment Grant Program."~~

8.8(2) Payments. Payments of the grant award shall be made upon the receipt by the department of a signed ~~cultural enrichment grant~~ contract from the ~~grantee~~ *partner organization*.

8.8(3) Record-keeping and retention requirements.

a. Financial records, supporting documents, and all other records pertinent to the program shall be retained by the ~~grantee~~ *partner organization* for three years beyond the grant period.

b. Representatives of the department and the state auditor's office shall have access to all books, documents, account information, or other property belonging to or in use by the ~~grantee~~ *partner organization* pertaining to the receipt of funds under this program.

8.8(4) Audits. The recipient of any grant of $25,000 or more in any single grant cycle shall have conducted an onsite financial compliance audit. This audit shall not be an eligible grant expense.

8.8(5) Reporting requirements. The ~~grantee~~ *partner organization* shall provide ~~a final~~ *an end-of-year* report of the use of ~~CEG~~ *CLP* funds which shall be submitted according to a schedule as outlined in the contract.

8.8(6) Finding of noncompliance. The department may, for cause, find that a ~~grantee~~ *partner organization* is not in compliance with the requirements of this program or the terms of the contract. At the department's discretion, remedies for noncompliance may include suspension or return of grant funds. Reasons for a finding of noncompliance may include, but are not limited to:

a. The ~~grantee's~~ *partner organization's* use of funds for activities not permitted under the guidelines of this program;

b. ~~The failure~~ *Failure* of the ~~grantee~~ *partner organization* to ~~request payment of grant funds prior to the end of the contract~~ *return the signed contract in a timely manner*;

c. ~~The grantee's failure~~ *Failure of the partner organization* to comply with any applicable state or federal rules, regulations, or laws; or

d. A violation of the terms of the contract.

ITEM 13. Renumber rule **221—8.10(303)** as **221—8.9(303)** and amend renumbered rule 221—8.9(303) as follows:

221—8.9(303) Informal appeals.

CULTURAL AFFAIRS DEPARTMENT[221](cont'd)

8.9(1) Eligible applicants or ~~grantees~~ *partner organizations* may informally appeal a decision of the department not to grant ~~CEG~~ *CLP* funds on any of the following bases:

a. to e. No change.

8.9(2) Informal appeals in writing may be directed to the director within 15 days of the final certification of the incident. All informal appeals shall be directed to the Director, Department of Cultural Affairs, ~~Historical Building, Capitol Complex,~~ *600 E. Locust Street,* Des Moines, Iowa 50319.

8.9(3) and **8.9(4)** No change.

ITEM 14. Amend **221—Chapter 8**, implementation sentence, as follows:

These rules are intended to implement ~~1990 Iowa Acts, chapter 1272~~ *Iowa Code sections 303.3(2) and 303.3(3).*

ARC 6310B

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)*"b."*

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code sections 15.104 and 15.106, the Iowa Department of Economic Development gives Notice of Intended Action to adopt Chapter 106, "Community College Equipment and Training Fund," Chapter 107, "Targeted Industries Networking Fund," Chapter 108, "Targeted Industries Student Competition Fund," and Chapter 109, "Targeted Industries Career Awareness Fund," Iowa Administrative Code.

The rules implement new programs authorized by 2007 Iowa Acts, House File 829. The rules describe the purpose of the programs, the application submission, review and approval procedures, and the contract administration provisions.

Public comments concerning the proposed new chapters will be accepted until 4:30 p.m. on October 30, 2007. Interested persons may submit written or oral comments by contacting Mary Klemesrud, Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309; telephone (515)242-4808.

The Department will hold a public hearing on Tuesday, October 30, 2007, from 1 to 2:30 p.m. to receive comments on these rules. The public hearing will be held in the Main Conference Room, Second Floor, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa.

These rules were also Adopted and Filed Emergency and are published herein as **ARC 6309B**. The content of that submission is incorporated by reference.

These rules are intended to implement 2007 Iowa Acts, House File 829.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at http://www.legis.state.ia.us/IAC.html or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

ARC 6293B

EDUCATION DEPARTMENT[281]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)*"b."*

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 256.7(5), the State Board of Education hereby proposes to amend Chapter 12, "General Accreditation Standards," Iowa Administrative Code.

2007 Iowa Acts, Senate File 277, section 4, creates new accreditation statutes which require that each school district have a school nurse and a qualified (i.e., licensed by the Board of Educational Examiners) guidance counselor. The new legislation also requires that the State Board establish in rule a definition of and standards for an articulated sequential kindergarten through grade 12 school counseling program. The proposed amendments are in compliance with 2007 Iowa Acts, Senate File 277.

An agencywide waiver provision is provided in 281—Chapter 4.

Interested individuals may make written comments on the proposed amendments on or before November 2, 2007, at 4:30 p.m. Comments on the proposed amendments should be directed to Janice Kuhl, Learning Services Consultant, Iowa Department of Education, Third Floor, Grimes State Office Building, Des Moines, Iowa 50319-0146; telephone (515) 281-3552; E-mail janice.kuhl@iowa.gov; or fax (515)242-6025.

A public hearing will be held on November 2, 2007, from 2 to 3 p.m. in the State Board Room, Second Floor, Grimes State Office Building, East 14th Street and Grand Avenue, Des Moines, Iowa, at which time persons may present their views either orally or in writing.

Any persons who intend to attend the public hearing and have special requirements such as those related to hearing or mobility impairments should contact and advise the Department of Education of their specific needs by calling (515)281-5295.

These amendments are intended to implement 2007 Iowa Acts, Senate File 277, section 4.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at http://www.legis.state.ia.us/IAC.html or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendments are proposed.

ITEM 1. Amend rule **281—12.2(256)** by adding the following **new** definition in alphabetical order:

"School counseling program" means an articulated sequential kindergarten through grade 12 program that is comprehensive in scope, preventive in design, developmental in nature, driven by data, and integral to the school district's curricula and instructional program. The program is implemented by at least one school counselor, appropriately licensed by the board of educational examiners, who works collaboratively with the district's administration and instructional staff. The program standards are described in subrule

EDUCATION DEPARTMENT[281](cont'd)

12.3(11). The program's delivery system components shall include the following:

1. School guidance curriculum;
2. Support of the overall school curriculum;
3. Individual student planning;
4. Responsive services; and
5. System support.

ITEM 2. Rescind subrule 12.3(11) and adopt the following **new** subrule in lieu thereof:

12.3(11) Standards for school counseling programs. The board of directors of each school district shall establish a K-12 comprehensive school counseling program, driven by student data and based on standards in academic, career, personal, and social areas, which supports the student achievement goals of the total school curriculum and to which all students have equitable access.

a. A qualified school counselor, licensed by the board of educational examiners, who works collaboratively with students, teachers, support staff and administrators shall direct the program and provide services and instruction in support of the curricular goals of each attendance center. The school counselor shall be the member of the attendance center instructional team with special expertise in identifying resources and technologies to support teaching and learning. The school counselor and classroom teachers shall collaborate to develop, teach, and evaluate attendance center curricular goals with emphasis on the following:

(1) Sequentially presented curriculum, programs, and responsive services that address growth and development of all students; and

(2) Attainment of student competencies in academic, career, personal, and social areas.

b. The program shall be regularly reviewed and revised and shall be designed to provide all of the following:

(1) Curriculum that is embedded throughout the district's overall curriculum and systemically delivered by the school counselor in collaboration with instructional staff through classroom and group activities and that consists of structured lessons to help students achieve desired competencies and to provide all students with the knowledge and skills appropriate for their developmental levels;

(2) Individual student planning through ongoing systemic activities designed to help students establish educational and career goals to develop future plans;

(3) Responsive services through intervention and curriculum that meet students' immediate and future needs as occasioned by events and conditions in students' lives and that may require any of the following: individual or group counseling; consultation with parents, teachers, and other educators; referrals to other school support services or community resources; peer helping; and information; and

(4) Systemic support through management activities that establish, maintain, and enhance the total school counseling program, including professional development, consultation, collaboration, program management, and operations.

ITEM 3. Amend subrule 12.4(12) as follows:

12.4(12) Nurses. ~~Each~~ *The* board ~~that employs~~ *of each school district shall employ* a *school* nurse *and* shall require a current license to be filed with the superintendent or other designated administrator as specified in subrule 12.4(10).

ARC 6291B

EDUCATION DEPARTMENT[281]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)*"b."*

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 256.7(5), the State Board of Education hereby proposes to amend Chapter 12, "General Accreditation Standards," Iowa Administrative Code.

The proposed amendments in Items 1 and 4 implement high school graduation requirements as mandated in 2007 Iowa Acts, Senate File 588, section 16.

The proposed amendments in Items 2 and 3 delete subjects that are not accreditation-related.

The proposed amendments in Items 5 and 6 delete subjects that no longer exist in statute.

The proposed amendments in Item 8 implement core content standards for all kindergarten through twelfth grade students in reading, math, and science as mandated in 2007 Iowa Acts, Senate File 588, section 17. The legislation states that the core content standards shall be identical to those in Iowa's standards and assessment system that was approved by the federal Department of Education.

The proposed amendment in Item 9 implements 2007 Iowa Acts, House File 317, which amends Iowa Code section 256.11, subsection 10, to authorize a phase II accreditation visit upon the recommendation of the school budget review committee for a school district that exceeds its authorized budget or carries a negative unspent balance for two or more consecutive years.

The proposed amendment in Item 7 amends the title of Division VIII of Chapter 12 in which phase II visits are discussed to reflect that districts are accountable for more than student achievement.

An agencywide waiver provision is provided in 281—Chapter 4.

Interested individuals may make written comments on the proposed amendments on or before 4:30 p.m. on October 30, 2007. Comments on the proposed amendments should be directed to Carol Greta, Attorney 3, Iowa Department of Education, Second Floor, Grimes State Office Building, Des Moines, Iowa 50319-0146; telephone (515)281-8661; E-mail carol.greta@iowa.gov; or fax (515)281-4122.

A public hearing will be held on October 30, 2007, from 1 to 2 p.m., at the State Board Room on the second floor of the Grimes State Office Building, East 14th Street and Grand Avenue, Des Moines, Iowa, at which time persons may present their views either orally or in writing.

Any persons who intend to attend the public hearing and have special requirements such as those related to hearing or mobility impairments should advise the Department of Education of specific needs by calling (515)281-5295.

These amendments are intended to implement 2007 Iowa Acts, Senate File 588 and House File 317.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at http://www.legis.state.ia.us/IAC.html or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

EDUCATION DEPARTMENT[281](cont'd)

The following amendments are proposed.

ITEM 1. Amend subrule 12.3(5) as follows:

12.3(5) Requirements for graduation. Each board providing a program through grade 12 shall adopt a policy establishing the requirements students must meet for high school graduation. This policy shall make provision for early graduation and shall be consistent with these requirements, ~~and~~ Iowa Code section 280.14, *and in the requirements in the introductory paragraph of subrule 12.5(5).*

ITEM 2. Rescind and reserve subrules **12.3(7)** and **12.3(10)**.

ITEM 3. Amend subrule 12.4(11) as follows:

12.4(11) Record required regarding teacher and administrative assignments. The board shall require its superintendent or other designated administrator to maintain a file for all regularly employed members of the instructional professional staff, including substitute teachers. The file shall consist of ~~complete official transcripts of the preparation of these staff members and their~~ legal licenses/certificates or copies thereof *for all members of the instructional professional staff, including substitute teachers,* showing that they are eligible for the position in which employed. The official shall also maintain on file a legal license/certificate or statement of professional recognition as defined in subrule 12.4(2) for each member of the noninstructional professional staff. These records shall be on file at the beginning of and throughout each school year and shall be updated annually to reflect all professional growth.

On December 1 of each year, the official shall verify to the department of education the licensure/certification and endorsement status of each member of the instructional and administrative staff. This report shall be on forms provided by the department of education and shall identify all persons holding ~~conditional~~ authorizations and their specific assignment(s) with the ~~conditional~~ authorization(s).

ITEM 4. Amend subrule 12.5(5), introductory paragraph, as follows:

12.5(5) High school program, grades 9-12. In grades 9 through 12, a unit is a course or equivalent related components or partial units taught throughout the academic year as defined in subrule 12.5(14). The following shall be offered and taught as the minimum program: English-language arts, six units; social studies, five units; mathematics, six units as specified in 12.5(5)"c"; science, five units; health, one unit; physical education, one unit; fine arts, three units; foreign language, four units; and vocational education, 12 units as specified in 12.5(5)"i." *Beginning with the 2010-2011 school year graduating class, all students in schools and school districts shall satisfactorily complete at least four units of English-language arts, three units of mathematics, three units of science, three units of social studies, and one full unit of physical education as conditions of graduation. The three units of social studies may include the existing graduation requirements of one-half unit of United States government and one unit of United States history.*

ITEM 5. Amend subrule 12.5(10) as follows:

12.5(10) Technology integration. Each school or school district shall incorporate into its comprehensive school improvement plan demonstrated use of technology to meet its student learning goals. ~~As described in Iowa Code section 295.3, progress with the use of technology shall be included in the school district's annual progress report.~~

ITEM 6. Rescind and reserve subrule **12.5(17)**.

ITEM 7. Amend **281—Chapter 12**, **Division VIII**, title, as follows:

DIVISION VIII
ACCOUNTABILITY ~~FOR STUDENT ACHIEVEMENT~~

ITEM 8. Amend subrule **12.8(1)**, paragraphs **"c"** and **"f,"** as follows:

c. Content standards and benchmarks.

(1) No change.

(2) Content standards and benchmarks. The board shall adopt clear, rigorous, and challenging content standards and benchmarks in reading, mathematics, and science to guide the learning of students from the date of school entrance until high school graduation. *Included in the local standards and benchmarks shall be the core content standards from Iowa's approved standards and assessment system under the applicable provisions of the federal Elementary and Secondary Education Act.* Standards and benchmarks may be adopted for other curriculum areas defined in 281—Chapter 12, Division V. The comprehensive school improvement plan submitted to the department shall contain, at a minimum, *the core* content standards for reading, mathematics, and science. The educational program as defined in 281—Chapter 12, Division II, shall incorporate career education, multicultural and gender fair education, technology integration, global education, higher-order thinking skills, learning skills, and communication skills as outlined in subrules 12.5(7), 12.5(8), 12.5(10), and 12.5(11), and subparagraph 12.8(1)"c"(1).

f. Assessment of student progress. Each school or school district shall include in its comprehensive school improvement plan provisions for districtwide assessment of student progress for all students. The plan shall identify valid and reliable student assessments aligned with local content standards, *which include the core content standards referenced in subparagraph 12.8(1)"c"(2).* These assessments are not limited to commercially developed measures. School districts receiving early intervention funding described in subrule 12.5(18) shall provide for diagnostic reading assessments for kindergarten through grade 3 students ~~as described in 1999 Iowa Acts, House File 743~~.

ITEM 9. Adopt **new** subparagraph **12.8(4)"b"(5)** as follows:

(5) Upon recommendation of the school budget review committee for a district that exceeds its authorized budget or carries a negative unspent balance for at least two consecutive years.

ARC 6292B

EDUCATION DEPARTMENT[281]

Notice of Termination

Pursuant to the authority of Iowa Code section 256.7(5), the State Board of Education hereby terminates the rule making initiated by its Notice of Intended Action published in the August 15, 2007, Iowa Administrative Bulletin as **ARC 6156B**, proposing to amend Chapter 12, "General Accreditation Standards," Iowa Administrative Code.

The Notice proposed to amend Chapter 12 primarily by implementing core content standards for all kindergarten through twelfth grade students in reading, math, and science as mandated in 2007 Iowa Acts, Senate File 588, section 17. As the Notice was being edited for publication, the Depart-

EDUCATION DEPARTMENT[281](cont'd)

ment became aware that another mandate in 2007 Iowa Acts, Senate File 588, section 16, requires the State Board to adopt rules requiring certain high school graduation requirements. The most reasonable course of action is to terminate the existing rule making and renotice the content of **ARC 6156B** but include the additional change to Chapter 12 of adding the graduation requirements.

The State Board of Education is terminating the rule making commenced in **ARC 6156B** and has initiated a new Notice of Intended Action published herein as **ARC 6291B**. **ARC 6291B** renotices the amendments proposed in **ARC 6156B** and incorporates further changes under Chapter 12.

ARC 6290B

EDUCATION DEPARTMENT[281]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"*b*."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 256.7(5), the State Board of Education hereby proposes to amend Chapter 97, "Supplementary Weighting," Iowa Administrative Code.

2007 Iowa Acts, Senate File 447 and Senate File 588, section 20, amending sections of Iowa Code chapter 257, created new opportunities for school districts and area education agencies (AEAs) to request supplementary weighting. Pursuant to the new legislation, proposed revisions to the Chapter 97 administrative rules are as follows: Whole-grade sharing arrangements will be eligible for supplementary weighting for three years under certain circumstances and can be carried forward another three years. Classes taught using the ICN video network will now be eligible for supplementary weighting, and the teacher providing the ICN class will receive a portion of the supplementary weighting funding. Operational function sharing will be eligible for supplementary weighting for up to five years with an annual 20 percent phase-out. AEAs, as well as school districts, will be eligible for supplementary weighting under this plan, and the potential sharing partners are expanded. The last opportunity to request supplementary weighting for a regional academy will be on the certified enrollment due October 15, 2007.

An agencywide waiver provision is provided in 281—Chapter 4.

Interested individuals may make written comments on the proposed amendments on or before October 30, 2007, at 4:30 p.m. Comments on the proposed amendments should be directed to Su McCurdy, Administrative Consultant, Iowa Department of Education, Second Floor, Grimes State Office Building, East 14th Street and Grand Avenue, Des Moines, Iowa 50319-0146; telephone (515)281-4738; E-mail su.mccurdy@iowa.gov; or fax (515)281-7700.

A public hearing will be held on October 30, 2007, from 2 to 3 p.m. at the State Board Room, Second Floor, Grimes State Office Building, East 14th Street and Grand Avenue, Des Moines, Iowa, at which time persons may present their views either orally or in writing.

Any persons who intend to attend the public hearing and have special requirements such as those related to hearing or mobility impairments should contact and advise the Department of Education of their specific needs by calling (515) 281-5295.

These amendments are intended to implement 2007 Iowa Acts, Senate File 447 and Senate File 588, section 20.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at http://www.legis.state.ia.us/IAC.html or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendments are proposed.

ITEM 1. Amend rule **281—97.1(257)** as follows:

Amend the definitions of "class" and "supplementary weighting plan" as follows:

"Class" ~~means~~ *shall mean* a course for academic credit which applies toward a high school or community college diploma.

"Supplementary weighting plan" shall mean a plan as defined in this chapter to add a weighting for each resident student eligible ~~that~~ *who* is enrolled in an eligible class taught by a teacher employed by another school district or taught by a teacher employed jointly with another school district or sent to and enrolled in an eligible class in another school district or sent to and enrolled in an eligible community college class. The supplementary weighting for each eligible class shall be calculated by multiplying the fraction of a school year that class represents times the number of eligible resident students enrolled in that class times the weighting factor ~~of forty-eight hundredths~~.

Adopt the following **new** definitions in alphabetical order:

"Actual enrollment" shall mean the enrollment determined annually on October 1, or the first Monday in October if October 1 falls on a Saturday or Sunday, pursuant to Iowa Code section 257.6.

"Political subdivision" shall mean a political subdivision in the state of Iowa and shall include only a city, a township, a county, a public school district, a community college, an area education agency, or an institution governed by the state board of regents (Malcolm Price Laboratory School, Iowa Braille and Sight Saving School, Iowa School for the Deaf, Iowa State University, University of Iowa, and University of Northern Iowa).

"Superintendent" shall be defined pursuant to Iowa Code section 272.1.

ITEM 2. Amend rule 281—97.2(257) as follows:

281—97.2(257) Supplementary weighting plan.

97.2(1) Eligibility. Except if listed under subrule 97.2(6), a resident student is eligible for supplementary weighting if the student is eligible to be counted as a resident student for certified enrollment and if one of the following conditions is met pursuant to Iowa Code section 257.11:

a. to d. No change.

Other than as listed in paragraphs "a" to "d" above and in rules 281—97.3(257) ~~and~~, 281—97.4(257), *and 281—97.7(257)*, no other sharing arrangement shall be eligible for supplementary weighting.

97.2(2) and **97.2(3)** No change.

97.2(4) Attend class taught by a teacher jointly employed with another school district. All of the following conditions must be met for any student attending class taught by a teacher jointly employed to be eligible for supplementary weighting under paragraph 97.2(1)"c." The school districts jointly employing the teacher must have:

a. A joint teacher evaluation process and instruments.

b. A joint ~~educational excellence phase III~~ *teacher professional development* plan.

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c. One single salary schedule.

Except for joint employment contracts which meet the requirements of paragraphs "a" to "c" above, no two or more school districts shall list each other for the same classes and grade levels.

97.2(5) Attend class in a community college. All of the following conditions must be met for any student attending a community college-offered class to be eligible for supplementary weighting under paragraph 97.2(1)"d."

a. to d. No change.

e. The course must be taught by a teacher ~~meeting community college licensing requirements~~ *for whose services the community college has contracted to specifically teach the class*.

f. and g. No change.

97.2(6) Ineligibility. The following students are ineligible for supplementary weighting:

a. Nonresident students attending the school district under any arrangement *except open enrolled in students, nonpublic shared-time students, or dual enrolled competent private instruction students in grades 9 through 12*.

b. Students taking courses taught via ~~the Iowa Communications Network (ICN) or~~ any ~~other~~ television or electronic medium ~~pursuant to Iowa Code section 257.11~~ *except the Iowa Communications Network (ICN) video services*.

c. No change.

d. Students in whole-grade sharing arrangements *except under sharing pursuant to subrule 97.2(5) or subrule 97.2(7)*.

e. Students open enrolled ~~in or~~ out *except under sharing pursuant to subrule 97.2(5) or subrule 97.6(1), paragraph "c."*

~~f. Students enrolled in nonpublic schools.~~

~~g. Students participating in a home school assistance program or dual enrollment.~~

f. Students open enrolled in except under sharing pursuant to subrule 97.2(5) or subrule 97.6(1), paragraph "c," when the students are under competent private instruction dual enrolled in grades 9 through 12.

~~h~~ *g.* Students participating in shared services rather than shared classes *except under sharing pursuant to rule 97.7(257)*.

~~i~~ *h.* Students taking postsecondary enrollment options (PSEO) courses authorized under Iowa Code chapter 261C are ineligible for supplementary weighting for the PSEO courses.

~~j~~ *i.* Students enrolled in courses or programs offered by their resident school districts unless those courses meet the conditions for attending classes in a community college under subrule 97.2(5) or if the teacher is employed by another school district pursuant to subrule 97.2(3) or if a teacher is jointly employed with another school district pursuant to subrule 97.2(4) or if the courses are included in the curriculum of an in-district regional academy pursuant to subrule 97.4(1) *or if the courses are in-district virtual classes provided via Iowa Communications Network (ICN) video services to other districts pursuant to subrule 97.6(1)*.

~~k~~ *j.* Students enrolled in courses or programs taught by teachers employed by their resident school districts unless the employment meets the criteria of joint employment with another school district under subrule 97.2(4) or if the criteria in subrule 97.2(5) are met for students attending class in a community college or if the courses are included in the curriculum of an in-district regional academy pursuant to subrule 97.4(1) *or if the courses are in-district virtual classes provided via Iowa Communications Network (ICN) video services to other districts pursuant to subrule 97.6(1)*.

~~l~~ *k.* Students enrolled in an at-risk program or alternative school program.

~~m~~ *l.* Students enrolled in summer school courses.

97.2(7) No change.

97.2(8) Due date. Supplementary weighting shall be included with the certified enrollment which is due ~~October 1 following the third Friday in September~~ *October 15 following the October 1, or the first Monday in October if October 1 falls on a Saturday or Sunday,* on which the enrollment was taken.

ITEM 3. Amend rule 281—97.4(257) as follows:

281—97.4(257) Supplementary weighting plan for a regional academy.

97.4(1) No change.

97.4(2) Weighting. Resident students eligible for supplementary weighting pursuant to subrule 97.4(1) shall be eligible for a weighting of one-tenth of the ~~percent of the pupil's school day~~ *fraction of a school year* during which the pupil attends courses at the regional academy in which nonresident students are enrolled pursuant to subrule 97.4(1), paragraph "a." ~~Pursuant to Iowa Code Supplement section 257.11, subsection 6, the portion of time a course utilizes ICN-delivered coursework shall not be eligible for supplementary weighting.~~

97.4(3) and **97.4(4)** No change.

97.4(5) Additional programs. If all of the criteria in subrule 97.4(1) are met, the regional academy may also include in its curriculum vocational-technical courses or a virtual academy. ~~Notwithstanding subrule 97.4(2), if~~ *If* the Internet connection for a qualified virtual academy is provided through the ICN, that Internet connection shall be deemed ~~not to be a violation of~~ *a regional academy class and not an ICN video class pursuant to* Iowa Code ~~Supplement~~ section 257.11, subsection 6, for purposes of this subrule.

97.4(6) No change.

97.4(7) *October 1, 2007, is the final date that any students may be included for supplementary weighting for an in-district regional academy.*

ITEM 4. Amend rule 281—97.5(257) as follows:

281—97.5(257) Supplementary weighting plan for whole-grade sharing.

97.5(1) Whole-grade sharing. A school district which participates in a whole-grade sharing arrangement executed pursuant to Iowa Code sections 282.10 to 282.12 and which has adopted a board resolution to study dissolution or has adopted a board resolution jointly with all other affected boards to study reorganization to take effect on or before July 1, ~~2006~~ *2014*, is eligible to assign a weighting of one-tenth of the ~~percentage of the pupil's day~~ *fraction of the school year* during which resident pupils attend classes pursuant to subrule 97.2(1), paragraph "a," "b," or "c."

~~a. A school district that was participating in a whole-grade sharing arrangement during the budget year beginning July 1, 2000, shall be eligible for supplementary weighting under this subrule for a maximum of two years. Receipt of supplementary weighting for a second year shall be conditioned upon submission of information resulting from the study to the school budget review committee indicating progress toward the objective of dissolution or reorganization on or before July 1, 2006.~~

~~b.~~ A school district ~~that was not~~ participating in a whole-grade sharing arrangement ~~during the budget year beginning July 1, 2000,~~ shall be eligible for supplementary weighting under this subrule for a maximum of three years. Receipt of

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supplementary weighting for the second year and for the third year shall be conditioned upon submission of information resulting from the study to the school budget review committee indicating progress or continued progress toward the objective of dissolution or reorganization on or before July 1, ~~2006~~ *2014*.

97.5(2) No change.

97.5(3) Consecutive years. A school district that is eligible to add a supplementary weighting for resident students attending classes under a whole-grade sharing arrangement pursuant to subrule 97.5(1) is not required to utilize consecutive years. However, the final year in which a supplementary weighting may be added on ~~the third Friday in September~~ *October 1* for this purpose shall not be later than the school year that begins July 1, ~~2005~~ *2013*.

97.5(4) No change.

97.5(5) Filing board resolutions. Each school district that adopts a board resolution to study dissolution or has adopted a board resolution jointly with all other affected boards to study reorganization shall file a copy of the board resolution with the department of education not later than ~~the third Friday in September~~ *October 1* on which date the district intends to request supplementary weighting for whole-grade sharing.

97.5(6) Filing progress reports. Each school district that assigned a supplementary weighting to resident students attending class in a whole-grade sharing arrangement and that intends to assign a supplementary weighting to resident students attending class in a whole-grade sharing arrangement in the following year shall file a ~~progress report~~ *report of progress toward reorganization* with the school budget review committee, on forms developed by the department of education, no later than August 1 preceding ~~the third Friday in September~~ *October 1* on which date the district intends to request supplementary weighting for whole-grade sharing.

a. No change.

b. The report must indicate progress toward a reorganization or dissolution to occur on or before July 1, 2014. Indicators of progress may include, but are not limited to:

(1) Establishing substantially similar salary schedules or a plan by which the sharing districts will be able to develop a single salary schedule upon reorganization.

(2) Establishing a joint teacher evaluation process and instruments.

(3) Developing a substantially similar continuous school improvement plan (CSIP) with aligned goals including a district professional development plan.

(4) Increasing the number of grades involved in the whole-grade sharing arrangement.

(5) Increasing the number of shared teaching or educator positions.

(6) Increasing the number or extent of operational sharing arrangements.

(7) Increasing the number of shared programs such as career, at risk, gifted and talented, curricular, or cocurricular.

(8) Increasing the number of joint board meetings or planning retreats.

(9) Holding regular or frequent public meetings to inform the public of progress toward reorganization and to receive comments from the public regarding the proposed reorganization.

(10) Adopting a reorganization or dissolution proposal.

(11) Setting proposed boundaries.

(12) Setting a date for an election on the reorganization or dissolution proposal.

~~b~~ *c*. The school budget review committee shall consider each progress report at its first regular meeting of the fiscal year and shall accept the progress report or shall reject the progress report with comments. The reports will be evaluated on demonstrated progress within the past year toward reorganization or dissolution.

~~c~~ *d*. A school district whose progress report is not accepted shall be allowed to submit a revised progress report at the second regular meeting of the school budget review committee. The committee shall accept or reject the revised progress report.

~~d~~ *e*. If the school budget review committee rejects the progress report and the district does not submit a revised progress report or if the school budget review committee rejects the revised progress report, the school district shall not be eligible for supplementary weighting for whole-grade sharing.

ITEM 5. Adopt **new** rules 281—97.6(257) and 281—97.7(257) as follows:

281—97.6(257) Supplementary weighting plan for ICN video services.

97.6(1) Eligibility. Except for students listed under subrule 97.2(6), a resident student is eligible for supplementary weighting if the student is eligible to be counted as a resident student for certified enrollment, is not eligible for supplementary weighting for the same course under another supplementary weighting plan, and meets any of the criteria in "a," "b," or "c" below. For purposes of this subrule, the portion of a course offered via ICN video services shall be considered separately from the portion of the course not offered via ICN video services. Eligible students include:

a. Resident students who receive a virtual class provided by another school district via ICN video services.

b. Resident students who attend a virtual class that the resident district is providing to students in one or more other school districts via ICN video services.

c. Resident students who receive a virtual community college class via ICN video services. The community college class must be a course eligible for supplementary weighting under the criteria listed in subrule 97.2(5).

97.6(2) Weighting. Resident students eligible for supplementary weighting pursuant to subrule 97.6(1) shall be eligible for a weighting of one-twentieth of the fraction of the school year during which the pupil attends the virtual class.

97.6(3) Payment to teachers. A school district that includes students in a virtual class for supplementary weighting shall reserve 50 percent of the supplementary weighting funding the district will receive as a result of including the resident students in the virtual class for supplementary weighting as additional pay for the virtual class teacher.

a. The employer of the virtual class teacher will make the payment.

b. The additional pay includes salary and the employer's share of FICA and IPERS.

c. The employer shall pay the virtual class teacher during the same school year in which the virtual class is provided.

d. The employer may pay the virtual class teacher at the conclusion of the virtual class or may pay the teacher periodic payments that represent the portion of the virtual class that has been provided. The employer may not pay the teacher prior to services being rendered.

e. The additional pay shall be calculated as 0.5 multiplied by the supplementary weighting for the virtual class

multiplied by the district cost per pupil in the subsequent budget year.

f. If the teacher's contract includes additional pay for teaching the virtual class, the teacher shall receive the higher amount of the additional pay in the contract or the amount of the additional pay calculated pursuant to paragraphs "b" and "e" above. For purposes of this comparison, the employer shall compare the salary portions only.

g. The contract between the agencies shall provide for the additional pay for the teacher of the virtual class. That 50 percent of the supplementary weighting funding would be paid in addition to the tuition sent to the providing district or community college to be paid as additional pay to its teacher employee.

281—97.7(257) Supplementary weighting plan for operational services.

97.7(1) Eligibility. Except for students listed under subrule 97.2(6), a resident student is eligible for supplementary weighting if the student is eligible to be counted as a resident student for certified enrollment and if all of the following criteria are met:

a. The district shares a discrete operational function with one or more other political subdivisions pursuant to an Iowa Code chapter 28E agreement.

b. The district shares the operational function for at least 20 percent of the contract time period during the fiscal year that is customary for a full-time employee in the operational function being shared, and at least one of the sharing partners also shares the operational function for at least 20 percent of the contract time period during the fiscal year. The 20 percent is measured each fiscal year and for each discrete operational function.

c. Personnel shared as part of the operational function are employees of one of the sharing partners but are not employees of more than one of the sharing partners.

d. If the district shares an operational function with more than one political subdivision, the sharing arrangement is listed only once for purposes of supplementary weighting.

e. If the district shares more than one individual in the same operational function, that operational function shall be listed only once for the purposes of supplementary weighting.

f. No individual personnel shall be included for operational function sharing more than once for supplementary weighting in the same fiscal year.

g. If more than one sharing arrangement is implemented in any one operational function area and the services shared are substantially similar as determined by the department of education, only the sharing arrangement implemented first will be eligible for supplementary weighting.

h. The operational function areas shared include one or more of the areas listed in subrule 97.7(2).

97.7(2) Operational function area eligibility. "Operational function sharing" means sharing of managerial personnel in the discrete operational function areas of superintendent management, business management, human resources management, student transportation management, or facility operation or maintenance management. The operational function sharing arrangement does not need to be a newly implemented sharing arrangement in order to be eligible for supplementary weighting.

a. Superintendent management.

(1) Shared personnel must perform the services of a superintendent, in the case of a school district, or chief administrator, in the case of an area education agency, or executive administrator, in the case of other political subdivisions, for each of the sharing partners. An individual performing the function of a superintendent or chief administrator must be properly licensed for that position.

(2) If the services of a superintendent are shared in any of the five eligible years, the district may not also share an assistant superintendent in any year for purposes of supplementary weighting.

(3) Clerical or other support services personnel in the superintendent function area or executive administrator function area shall not be considered shared superintendent management under this subrule.

(4) Shared superintendent services or executive administrator services shall not include contracting for services from a private provider even if another political subdivision is contracting for services from the same private provider.

b. Business management.

(1) Shared personnel must perform the services of managing the business operations for each of the sharing partners. Managing business operations would include personnel performing the duties of a business manager or personnel performing the duties listed in the Iowa Code for a board secretary including, but not limited to, board secretary duties listed in chapter 291, or personnel performing the duties listed in the Iowa Code for a board treasurer including, but not limited to, board treasurer duties listed in chapter 291, in each of the sharing partners.

(2) Services of clerical personnel, superintendents, principals, teachers, board officers except those listed in subparagraph (1), or any other nonbusiness administration personnel shall not be considered shared business management under this subrule.

(3) Shared business management shall not include contracting for services from a private provider even if another political subdivision is contracting for services from the same private provider.

c. Human resources management.

(1) Shared personnel must perform the services of managing human resources for each of the sharing partners.

(2) Services of clerical personnel, superintendents, principals, teachers, or board officers shall not be considered shared human resources management under this subrule.

(3) Shared human resources management shall not include contracting for services from a private provider even if another political subdivision is contracting for services from the same private provider.

d. Student transportation management.

(1) Shared personnel shall include transportation directors or supervisors and school bus mechanics. Shared personnel must perform services related to transportation for each of the sharing partners, but may perform different transportation services for each of the sharing partners.

(2) Services of clerical or paraprofessional personnel shall not be considered shared student transportation management under this subrule.

(3) Shared transportation shall not include contracting for services from a private provider even if another political subdivision is contracting for services from the same private provider.

e. Facility operations and maintenance.

(1) Shared personnel shall include facility managers and supervisors of buildings or grounds. Shared personnel must perform services related to facility operations and maintenance for each of the sharing partners, but may perform dif-

ferent facility operations and maintenance services for each of the sharing partners.

(2) Services of clerical personnel shall not be considered shared facility operations and maintenance management for supplementary weighting under this subrule.

(3) Shared facility operations and maintenance shall not include contracting for services from a private provider even if another political subdivision is contracting for services from the same private provider.

97.7(3) Years of eligibility. A school district participating in an operational function sharing arrangement shall be eligible for supplementary weighting under this rule for a maximum of five years. The five years of eligibility shall include each year in which any shared operational function is included for supplementary weighting. The supplementary weighting for eligible shared operational functions may be included beginning on October 1, 2007.

a. Receipt of supplementary weighting after the first year shall be conditioned upon the submission of cost information provided in the format prescribed by the department of education as part of the certified annual report documenting cost savings directly attributable to the shared operational functions.

b. The documentation shall be filed no later than September 15 preceding the October 1 on which the second, third, fourth, or fifth year of operational function sharing is included for supplementary weighting.

97.7(4) Contiguous districts. School districts that share operational functions with other school districts must be contiguous school districts. If two or more sharing partner districts are not contiguous to each other, all districts separating those districts must be a party to the operational function sharing arrangement.

97.7(5) Consecutive years. A school district that is eligible to add a supplementary weighting for resident students for a shared operational function is not required to utilize consecutive years. However, the final year in which a supplementary weighting may be added on October 1 for this purpose shall not be later than the school year that begins July 1, 2012, and the total of all years in which a supplementary weighting may be added on October 1 for this purpose shall not exceed five years.

97.7(6) Change in sharing partners. A school district that is eligible to add a supplementary weighting for resident students for a shared operational function may enter into an operational function sharing arrangement with one or more different sharing partners for its second, third, fourth or fifth year of eligible weighting. Establishing a new operational function sharing arrangement in a substantially similar function does not extend the maximum number of years for which a school district is eligible.

97.7(7) Change in shared personnel. A school district that is eligible to add a supplementary weighting for resident students for a shared operational function may enter into an operational function arrangement for a different individual in a substantially similar position. Implementing a change of the individual or individuals shared does not extend the maximum number of years for which a school district is eligible.

97.7(8) Multiple shared operational functions. A school district that implements more than one sharing arrangement within any discrete operational function area shall be eligible for supplementary weighting for only one sharing arrangement in that discrete operational function.

97.7(9) Weighting. Resident students eligible for supplementary weighting pursuant to rule 97.7(257) shall be eligible for a weighting of two-hundredths per pupil included in the actual enrollment in the district. The supplementary weighting shall be assigned to each discrete operational function shared. The maximum number of years for which a supplementary weighting shall be assigned for all operational functions shared is five years.

a. The supplementary weighting for operational functions shared is decreased each year based on the following schedule:

(1) The total supplementary weighting calculated for all operational function sharing in the second year of any operational function sharing, after application of minimum and maximum supplementary weighting, shall be reduced by 20 percent of the total supplementary weighting for all operational function sharing in the first year of any operational function sharing, but not reduced to less than zero.

(2) The total supplementary weighting calculated for all operational function sharing in the third year of any operational function sharing, after application of minimum and maximum supplementary weighting, shall be reduced by 40 percent of the total supplementary weighting for all operational function sharing in the first year of any operational function sharing, but not reduced to less than zero.

(3) The total supplementary weighting calculated for all operational function sharing in the fourth year of any operational function sharing, after application of minimum and maximum supplementary weighting, shall be reduced by 60 percent of the total supplementary weighting for all operational function sharing in the first year of any operational function sharing, but not reduced to less than zero.

(4) The total supplementary weighting calculated for all operational function sharing in the fifth year of any operational function sharing, after application of minimum and maximum supplementary weighting, shall be reduced by 80 percent of the total supplementary weighting for all operational function sharing in the first year of any operational function sharing, but not reduced to less than zero.

b. The department shall reserve the authority to determine if an operational sharing arrangement constitutes a discrete arrangement, new arrangement, or continuing arrangement if the circumstances have not been clearly described in the Iowa Code or the Iowa Administrative Code.

97.7(10) Maximum weighting. The maximum amount of additional weighting for which a school district participating in operational function sharing shall be eligible is an amount corresponding to 40 full-time equivalent pupils prior to any reduction pursuant to subrule 97.7(9). The maximum additional weighting applies to the total of all operational function sharing rather than to each discrete operational function.

97.7(11) Minimum weighting. The minimum amount of additional weighting for which a school district participating in operational function sharing shall be eligible is an amount corresponding to ten additional pupils prior to any reduction pursuant to subrule 97.7(9). The minimum additional weighting applies to the total of all operational function sharing rather than each discrete operational function.

97.7(12) Filing cost-savings documentation. Each school district that receives supplementary weighting for sharing one or more operational functions shall file with the department of education documentation of cost savings directly attributable to the shared operational functions. This documentation shall be submitted in the format prescribed by the department of education as part of the certified annual report. The documentation shall be filed no later than September 15 preceding the October 1 on which the second, third, fourth, or fifth year of operational function sharing is included for supplementary weighting.

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97.7(13) Determining cost savings. The criteria considered by the department of education in determining shared operational function cost savings and increased student opportunities shall include, but not be limited to, the following:

a. The percent of costs calculated as the total of general fund expenditures for all operational functions that could be shared divided by the total of all general fund expenditures, multiplied by 100, in the current year compared to the previous year. The current year is the fiscal year ending on June 30 that includes the October 1 on which the district included any operational function shared for supplementary weighting. The decrease in percent shall be a measurable decrease of at least one-tenth of one percent in the first fiscal year for which cost savings are determined. In a year after the first fiscal year for which cost savings are determined, the percent of costs shall not be greater than the percent in the previous fiscal year.

b. The percent of costs calculated as the total of general fund expenditures for all instruction, student support, and instructional staff support functions divided by the total of all general fund expenditures, multiplied by 100, in the current year compared to the previous year. The current year is the fiscal year ending on June 30 that includes the October 1 on which the district included any operational function shared for supplementary weighting. The increase in percent must be a measurable increase of at least one-tenth of 1 percent in the first fiscal year for which increased student opportunities are determined. In a year after the first fiscal year for which increased student opportunities are determined, the percent of costs shall not be less than the percent in the previous fiscal year.

c. The department of education will adjust the total expenditures to exclude distorting financial transactions such as energy costs, large equipment purchases, or interagency financial transactions.

d. If the district cannot demonstrate cost savings directly attributable to the shared operational function and increased student opportunities, the district will not be eligible for supplementary weighting for operational function sharing for that fiscal year.

97.7(14) Area education agency maximum funding. The provisions of rule 97.7(257) also apply to an area education agency except for per-pupil weightings, minimum weightings, and maximum weightings.

a. In lieu of minimum weightings, an area education agency shall be eligible for a minimum amount of additional funding of $50,000 for the total of all operational function sharing arrangements. The dollar amount calculated in the first year of any operational function sharing will be used to determine the annual reductions.

b. In lieu of maximum weightings, an area education agency shall be eligible for a maximum amount of additional funding of $200,000 for the total of all operational function sharing arrangements. The dollar amount calculated in the first year of any operational function sharing will be used to determine the annual reductions.

c. In lieu of supplementary weighting of students, the department of management shall annually set a weighting for each area education agency to generate the approved operational function sharing dollars using each area education agency's special education cost-per-pupil amount and foundation level.

ITEM 6. Amend **281—Chapter 97**, implementation sentence, as follows:

These rules are intended to implement Iowa Code ~~sections~~ *section* 257.6, *section* 257.11 *as amended by 2007 Iowa Acts, Senate File 447 and Senate File 588, section 20*, and *section* 257.12.

ARC 6296B

HOMELAND SECURITY AND EMERGENCY MANAGEMENT DIVISION[605]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)*"b."*

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code sections 17A.3 and 29C.8, the Homeland Security and Emergency Management Division proposes to amend Chapter 9, "Iowa Comprehensive Plan," Iowa Administrative Code.

Iowa Code section 29C.8(3) requires the Administrator of the Homeland Security and Emergency Management Division to prepare a comprehensive plan for homeland security, disaster response, recovery, mitigation, and emergency resource management for the state. This amendment will formally adopt the updated Part B: Iowa Hazard Mitigation Plan, which is part of the Iowa Comprehensive Plan.

Consideration will be given to all written suggestions or comments on the proposed amendment submitted on or before October 30, 2007. Such written materials should be sent to the Administrator, Iowa Homeland Security and Emergency Management Division, 7105 NW 70th Avenue, Camp Dodge W4, Johnston, Iowa 50131, or by facsimile to (515) 725-3260.

Also, there will be a public hearing on October 30, 2007, at 9 a.m. in the Homeland Security and Emergency Management Division Conference Room, 7105 NW 70th Avenue, Camp Dodge W4, Johnston, Iowa, at which time persons may present their views. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendment.

Any persons who intend to attend the public hearing and have special requirements, such as hearing or mobility impairments, should contact the Homeland Security and Emergency Management Division and advise of specific needs.

This amendment was also Adopted and Filed Emergency and is published herein as **ARC 6295B**. The content of that submission is incorporated by reference.

This amendment is intended to implement Iowa Code chapter 29C.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at http://www.legis.state.ia.us/IAC.html or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

ARC 6301B

HUMAN SERVICES DEPARTMENT[441]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)*"b."*

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services proposes to amend Chapter 78, "Amount, Duration and Scope of Medical and Remedial Services," Iowa Administrative Code.

These proposed amendments expand Medicaid coverage for dental services to include dental sealants on all deciduous and permanent posterior teeth and include root canal retreatments and dental implants with prior authorization.

The Oral Health Bureau in the Iowa Department of Public Health formally petitioned for sealants on deciduous teeth to be included in coverage. Currently, coverage is allowed only for permanent molars. Like permanent molars, other permanent posterior teeth (bicuspids) and deciduous ("baby") posterior teeth also have pits and fissures where bacteria can become trapped and lead to tooth decay. The National Center for Health Statistics reported that dental decay in deciduous teeth increased from 24 percent to 28 percent between 1988 and 2004. If expanded coverage for sealants is approved, expenditures for more costly treatment, such as fillings, crowns, or extractions, should significantly decrease.

Root canal retreatments and dental implants are currently allowed according to specified criteria under the exception-to-policy process. The prior authorization process is a more efficient method to allow for coverage.

These amendments do not provide for waivers in specified situations because they expand coverage. Requests for the waiver of any rule may be submitted under the Department's general rule on exceptions at 441—1.8(17A,217).

Any interested person may make written comments on the proposed amendments on or before October 31, 2007. Comments should be directed to Mary Ellen Imlau, Bureau of Policy Analysis and Appeals, Department of Human Services, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515)281-4980 or by E-mail to policyanalysis@dhs.state.ia.us.

These amendments are intended to implement Iowa Code section 249A.4.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at http://www.legis.state.ia.us/IAC.html or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendments are proposed.

ITEM 1. Amend subrule **78.4(1)**, paragraph **"c,"** as follows:

c. Pit and fissure sealants are payable for placement on ~~first and second~~ *deciduous and* permanent ~~molars~~ *posterior teeth* only. Reimbursement for sealants is restricted to work performed on ~~children~~ *members* through 18 years of age ~~for first and second permanent molars~~ and on ~~people~~ *members* who have a physical or mental disability that impairs their ability to maintain adequate oral hygiene. Replacement sealants are covered when medically necessary, as documented in the patient record.

ITEM 2. Amend subrule **78.4(5)** by adopting **new** paragraph **"d"** as follows:

d. Endodontic retreatment when prior authorization has been received. Authorization for retreatment of a tooth with previous endodontic treatment shall be granted when the conventional treatment has been completed, a reasonable time has elapsed, and failure has been demonstrated with a radiograph and narrative history.

ITEM 3. Amend subrule **78.4(7)** by adopting **new** paragraph **"l"** as follows:

l. Dental implants and related services when prior authorization has been received. Prior authorization shall be granted when the member is missing significant oral structures due to cancer, traumatic injuries, or developmental defects such as cleft palate and cannot use a conventional denture.

ITEM 4. Amend subrule **78.28(2)** as follows:

Amend paragraph **"c"** by adopting **new** subparagraph **(4)** as follows:

(4) Dental implants and related services will be authorized when the member is missing significant oral structures due to cancer, traumatic injuries, or developmental defects such as cleft palate and cannot use a conventional denture.

Adopt **new** paragraph **"f"** as follows:

f. Endodontic retreatment of a tooth will be authorized when the conventional treatment has been completed, a reasonable time has elapsed, and failure has been demonstrated with a radiograph and narrative history.

ARC 6305B

HUMAN SERVICES DEPARTMENT[441]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)*"b."*

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services proposes to amend Chapter 78, "Amount, Duration and Scope of Medical and Remedial Services," and Chapter 79, "Other Policies Relating to Providers of Medical and Remedial Care," Iowa Administrative Code.

The proposed amendments change the Medicaid reimbursement methodology for home health agency services. Provisions of 2006 Iowa Acts, chapter 1184, direct the Department to establish a fixed-fee reimbursement schedule for home health agencies under the Medicaid program beginning July 1, 2007.

Currently, Iowa Medicaid reimburses home health services based on a retrospective cost-related basis, not to exceed established limits. Under these amendments, home health agency services (other than respite and interim medical monitoring and treatment) will be paid on a fee-schedule basis. No additional funding has been appropriated for home

HUMAN SERVICES DEPARTMENT[441](cont'd)

health agency services; thus, the fee schedules have been developed to be budget-neutral.

The administration of vaccines available through the Vaccines for Children program will be paid on a per-vaccination basis, using the Iowa Medicaid physician fee schedule amount for vaccine administration. Private duty nursing and personal care services for members aged 20 or under will be paid on an hourly basis. All other services will be paid on a per-visit basis.

The per-visit and per-hour fee schedules are based on Medicare's national per-visit amounts used to pay low-utilization payment adjustments (LUPAs) that were in effect on July 1, 2007. Medicare's national per-visit LUPA rates are established for each discipline and are split into two components: wage and nonwage costs.

In order to achieve budget neutrality, the following percentages are applied to Medicare's national per-visit LUPA rates to determine the initial per-visit and per-hour fee schedules.

- For services paid on a per-visit basis, the Medicare national per-visit LUPA wage and nonwage component rates for each discipline are multiplied by 0.9075. The resulting wage components for each agency are then adjusted by the Medicare wage index that was in effect on July 1, 2007, for the location where agency services are rendered, to reflect geographical differences in wages.
- For services paid on an hourly basis, the Medicare national per-visit LUPA wage and nonwage component rates for skilled nursing and home health aides are multiplied by 0.45. For services rendered by a licensed practical nurse, the Medicare national per-visit LUPA wage and nonwage component rates for skilled nursing are multiplied by 0.315. The resulting wage components for each agency are then adjusted by the Medicare wage index that was in effect on July 1, 2007, for the location where agency services are rendered, to reflect geographical differences in wages.

The initial per-visit and per-hour fee schedules will be updated annually on July 1, based on the annual home health market basket index published by the Centers for Medicare and Medicaid Services, using the most current calendar year update. Inflation will be applied only to the extent that funding is provided by the Iowa General Assembly.

Changes are made to the table of upper reimbursement limits for interim medical monitoring and treatment provided by a home health agency to clarify that the upper limit is the lower of the maximum Medicare or Medicaid reimbursement amount for the service.

These amendments do not provide for waivers in specified situations because individuals may request a waiver under the Department's general rule on exceptions at rule 441—1.8(17A,217).

Any interested person may make written comments on the proposed amendments on or before October 31, 2007. Comments should be directed to Mary Ellen Imlau, Bureau of Policy Analysis and Appeals, Department of Human Services, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515)281-4980 or by E-mail to policyanalysis@dhs.state.ia.us.

These amendments are intended to implement Iowa Code section 249A.4 and 2006 Iowa Acts, chapter 1184, section 30(1)(e)(2).

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at http://www.legis.state.ia.us/IAC.html or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendments are proposed.

ITEM 1. Amend rule **441—78.9(249A)** as follows:

Strike the fifth unnumbered paragraph as follows:

~~Payment shall be made on an encounter basis. An encounter is defined as separately identifiable hours in which home health agency staff provide continuous service to a recipient.~~

Adopt **new** subrule 78.9(12) as follows:

78.9(12) Unit of service.

a. Skilled nursing, physical therapy, occupational therapy, speech therapy, home health aide, and medical social services, and home health care for maternity patients and children, as defined in subrules 78.9(3) through 78.9(9), shall be paid on a per-visit basis.

b. Private duty nursing and personal care services for a member aged 20 or under, as defined in subrule 78.9(10), shall be paid on an hourly basis.

c. The administration of vaccines available through the vaccines for children program, as defined in subrule 78.9(11), shall be paid on a per-vaccination basis.

ITEM 2. Amend subrule **79.1(2)** as follows:

Amend the "HCBS waiver service providers" provider category, numbered paragraphs **"3," "5," "6,"** and **"24,"** as follows:

Provider category	Basis of reimbursement	Upper limit
3. Home health aides	~~Retrospective cost-related~~ *For AIDS/HIV, elderly, and ill and handicapped waivers: Per-visit fee schedule pursuant to 79.1(26).*	For AIDS/HIV, elderly, and ill and handicapped waivers: ~~Maximum Medicare rate in effect 6/30/06 plus 3%~~ *Fee schedule pursuant to 79.1(26).*
	For mental retardation waiver: Hourly fee schedule pursuant to 79.1(26).	For mental retardation waiver: ~~Maximum Medicare rate in effect 6/30/06 plus 3% converted to an hourly rate~~ *Fee schedule pursuant to 79.1(26).*
5. Nursing care	For ~~elderly and~~ mental retardation ~~waivers~~ *waiver*: ~~Fee~~ *Hourly fee* schedule ~~as determined by Medicare~~ *pursuant to 79.1(26).*	~~For elderly waiver: $82.10 per visit.~~ For mental retardation waiver: ~~Maximum Medicare rate in effect 6/30/06 plus 3% converted to an hourly rate~~ *Fee schedule pursuant to 79.1(26).*
	For AIDS/HIV, *elderly,* and ill and handicapped waivers: ~~Agency's financial and statistical cost report and Medicare percentage rate per visit~~ *Per-visit fee schedule pursuant to 79.1(26).*	For AIDS/HIV, *elderly,* and ill and handicapped waivers: ~~Cannot exceed $82.10 per visit~~ *Fee schedule pursuant to 79.1(26).*

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Provider category	Basis of reimbursement	Upper limit
6. Respite care when provided by:		
Home health agency:		
Specialized respite	~~Rate~~ *Cost-based rate* for nursing services provided by a home health agency ~~(encounter services-intermittent services)~~	~~Maximum~~ *Lesser of maximum* Medicare rate in effect ~~6/30/06 plus 3%~~ *6/30/07 or maximum Medicaid rate in effect 6/30/07,* converted to an hourly rate not to exceed $294 per day.
Basic individual respite:	~~Rate~~ *Cost-based rate* for home health aide services provided by a home health agency ~~(encounter services-intermittent services)~~	~~Maximum~~ *Lesser of maximum* Medicare rate in effect ~~6/30/06 plus 3%~~ *6/30/07 or maximum Medicaid rate in effect 6/30/07,* converted to an hourly rate not to exceed $294 per day.
Group respite:	No change.	No change.
Home care agency:	No change.	No change.
Nonfacility care:	No change.	No change.
Facility care:	No change.	No change.
24. Interim medical monitoring and treatment:		
Home health agency (provided by home health aide)	~~Rate~~ *Cost-based rate* for home health aide services provided by a home health agency ~~(encounter services-intermittent services)~~	~~Maximum~~ *Lesser of maximum* Medicare rate in effect ~~6/30/06 plus 3%~~ *6/30/07 or maximum Medicaid rate in effect 6/30/07,* converted to an hourly rate.
Home health agency (provided by nurse)	~~Rate~~ *Cost-based rate* for nursing services provided by a home health agency ~~(encounter services-intermittent services)~~	~~Maximum~~ *Lesser of maximum* Medicare rate in effect ~~6/30/06 plus 3%~~ *6/30/07 or maximum Medicaid rate in effect 6/30/07,* converted to an hourly rate.
Child development home or center	No change.	No change.

Amend the "home health agencies" provider category as follows:

Provider category	Basis of reimbursement	Upper limit
Home health agencies		
~~(Encounter service-intermittent services)~~ *1. Skilled nursing, physical therapy, occupational therapy, speech therapy, home health aide, and medical social services; home health care for maternity patients and children*	~~Retrospective cost-related~~ *Per-visit fee schedule pursuant to 79.1(26).*	~~Rate in effect 6/30/06 plus 3%~~ *Fee schedule pursuant to 79.1(26).*
2. ~~(~~Private duty nursing ~~or~~ *and* personal care ~~and VFC vaccine administration~~ *services* for persons aged 20 ~~and~~ *or* under~~)~~	~~Interim~~ *Per-hour* fee schedule ~~with retrospective cost settling based on Medicare methodology~~ *pursuant to 79.1(26).*	~~Rate in effect 6/30/06 plus 3%~~ *Fee schedule pursuant to 79.1(26).*
3. Administration of vaccines	*Physician fee schedule*	*Physician fee schedule rate*

ITEM 3. Adopt **new** subrule 79.1(26) as follows:

79.1(26) Reimbursement for home health agencies. Home health agency services other than respite care and interim medical monitoring and treatment are paid on the basis of a fee schedule.

a. Fee schedule methodology.

(1) All services except administration of vaccines are paid on a per-visit or per-hour fee schedule, based on the Medicare national per-visit rates used to pay low utilization payment adjustments (LUPA) in effect on July 1, 2007, adjusted for inflation annually on July 1, in accordance with this subrule.

(2) Administration of vaccines available through the vaccines for children program, as defined in 441—subrule 78.9(11), is paid based on the physician fee schedule for administration of vaccines.

b. Initial per-visit and per-hour fee schedules. The initial per-visit and per-hour fee schedules for services rendered through June 30, 2008, shall be based on the Medicare national per-visit LUPA rates in effect on July 1, 2007, as follows:

(1) For services paid on a per-visit basis (skilled nursing, physical therapy, occupational therapy, speech therapy, home health aide, and medical social services, and home health care for maternity patients and children):

1. The Medicare national per-visit wage and nonwage components for each discipline shall be multiplied by 0.9075; and

HUMAN SERVICES DEPARTMENT[441](cont'd)

2. The resulting wage component shall be adjusted by the wage index that was in effect on July 1, 2007, for the location where services are rendered, to reflect geographical differences in wages.

(2) For services paid on an hourly basis (private duty nursing and personal care services for persons aged 20 or under):

1. The Medicare national per-visit wage and nonwage components for skilled nursing and home health aide disciplines shall be multiplied by 0.45. Because Medicare does not have a per-visit rate for services provided by a licensed practical nurse, the Medicare national per-visit wage and nonwage component for skilled nursing shall be multiplied by 0.315 to determine the rate paid for services rendered by a licensed practical nurse.

2. The resulting wage component shall be adjusted by the wage index that was in effect on July 1, 2007, for the location where services are rendered, to reflect geographical differences in wages.

c. Annual updates. The initial per-visit and per-hour fee schedules established pursuant to paragraph "b" shall be updated annually on July 1 as follows:

(1) The wage and nonwage components of the Iowa fee schedule rates in effect on June 30, before the adjustment of the wage component by the wage index, shall be adjusted based on the annual home health market basket index published by the Centers for Medicare and Medicaid Services, using the most current calendar year update.

(2) The resulting wage component shall be adjusted by the wage index that was in effect on the date of service for the location where services are rendered, to reflect geographical differences in wages.

d. Wage indices. The initial wage indices for services rendered through July 1, 2008, shall be based on the Medicare wage indices in effect July 1, 2007. The wage indices shall be updated annually on July 1 based on the most current published Medicare wage indices.

e. Reporting requirements. All home heath agencies shall submit the Medicaid cost report, Form 470-4485, Apportionment of Patient Service Cost for Home Health Agency. A freestanding agency shall also submit the Medicare cost report, CMS Form 1728-94. A hospital-based agency shall also submit the Medicare cost report, CMS Form 2552-96.

(1) Financial information shall be based on the agency's financial records. When records are not kept on an accrual basis of accounting, the agency shall make the adjustments necessary to convert the information to an accrual basis for reporting. Failure to maintain records to support the cost report may result in termination of the agency's enrollment with the Iowa Medicaid program.

(2) The home heath agency shall submit the completed cost reports to the IME Provider Cost Audit and Rate Setting Unit, P.O. Box 36450, Des Moines, Iowa 50315. The cost report shall be submitted on or before the last day of the fifth month after the end of the agency's fiscal year.

ARC 6275B

INSPECTIONS AND APPEALS DEPARTMENT[481]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"*b*."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code sections l0A.104(5)and 135C.14, the Department of Inspections and Appeals hereby gives Notice of Intended Action to amend Chapter 57, "Residential Care Facilities," Iowa Administrative Code.

Iowa law requires that every rule for which a residential care facility may be cited must be annotated as to the class of violation. During the rewrite of the Department's administrative rules governing service plans, the notations in rule 481—57.22(135C) were inadvertently omitted. The proposed amendment simply reinserts the missing notations.

The Department has determined that the proposed amendment will have no fiscal impact on any regulated entity. Also, as the Code of Iowa requires that all rules for which a facility may be cited must be annotated, there is no waiver provision contained in the proposed amendment.

The proposed amendment was initially reviewed by the State Board of Health at its September 12, 2007, meeting.

Any interested person may make written suggestions or comments on the proposed amendment on or before October 30, 2007. Such written materials should be addressed to the Director, Department of Inspections and Appeals, Lucas State Office Building, 321 East 12th Street, Des Moines, Iowa 50319-0083; or faxed to (515)242-6863. E-mail should be addressed to David.Werning@dia.iowa.gov.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at http://www.legis.state.ia.us/IAC.html or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendment is proposed.

Amend rule 481—57.22(135C) as follows:

481—57.22(135C) Service plan.

57.22(1) Prior to admission of a resident, the administrator or the administrator's designee shall develop a written and organized orientation plan. The plan shall be designed to assist the resident in adapting to the facility and to assist the facility staff in becoming knowledgeable of the resident and the resident's needs. *(III)*

57.22(2) Within 30 days of admission, the administrator or the administrator's designee shall, in conjunction with the resident, other facility staff or any organization that works with or serves the resident, develop a written, individualized, and integrated program of ongoing services for the resident. *(III)*

a. The program shall be planned and implemented to address the resident's priorities and assessed needs, such as living, rehabilitation, activity, behavioral, emotional, mental health and social, and shall take into consideration the resident's personal goals and preferences, including the resident's preferred living situation. *(III)*

INSPECTIONS AND APPEALS DEPARTMENT[481](cont'd)

b. The service plan shall include specific goals and objectives with regular documentation of each. *(III)*

c. The service plan shall be reviewed at least quarterly, or more often as necessary. *(III)*

57.22(3) Communications related to service plan changes or changes in the resident's condition shall occur within five working days of the change, and shall be conveyed to all individuals inside and outside the residential care facility who work with the resident, as well as to the resident's family members or responsible party. *(III)*

ARC 6308B

INSURANCE DIVISION[191]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"*b*."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 502.605(1), the Insurance Division hereby gives Notice of Intended Action to amend Chapter 50, "Regulation of Securities Offerings and Those Who Engage in the Securities Business," Iowa Administrative Code.

Item 1 amends subrule 50.10(1), paragraph "a," in order to eliminate a manual signature requirement so as to allow for electronic filings.

Item 2 amends subrule 50.10(3) to make clear that a broker-dealer only has to file audited financial statements when initially applying for a license or when specifically requested by the administrator.

Item 3 amends subrule 50.12(1) to provide guidance for waiver of the examinations requirements. This amendment restores language that had been found in former 191—Chapter 50 and should have been included in new 191—Chapter 50 (**ARC 5974B**, IAB 6/20/07).

Item 4 amends subrule 50.15(2) to make clear that a broker-dealer only has to file audited financial statements when initially applying for a license or when specifically requested by the administrator.

Item 5 amends subrule 50.39(1), paragraph "e," in order to correct an internal citation.

Item 6 amends subrule 50.40(1) in order to correct internal citations and amends subrule 50.40(2) to clarify that a minimum net worth is always required in the case of discretionary authority.

Item 7 amends subrule 50.41(1), paragraphs "d" and "e," in order to correct internal citations.

Item 8 amends rule 191—50.43(502) in order to add exceptions to the rule that are contained in the national model.

Item 9 amends subrules 50.66(2), 50.66(4) to 50.66(9) and 50.66(19) in order to update certain NASAA guidelines involving direct participation programs that have recently been amended by NASAA. These amendments essentially update all the objective suitability requirements of these guidelines.

Item 10 amends rule 191—50.102(502) by adding new subrule 50.102(3). The new subrule is similar to a recent SEC rule and makes clear that the administrator has fraud authority over hedge funds and similar pooled income vehicles.

Any interested person may make written comments on the proposed amendments on or before October 30, 2007. Written comments may be sent to Craig Goettsch, Insurance Division, 330 Maple, Des Moines, Iowa 50319. Comments may also be submitted by fax to (515)281-3059 or electronically to craig.goettsch@iid.state.ia.us.

These amendments are intended to implement Iowa Code section 502.605(1).

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at http://www.legis.state.ia.us/IAC.html or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendments are proposed.

ITEM 1. Amend subrule **50.10(1)**, paragraph **"a,"** as follows:

a. File a current Form BD. If the applicant is a member of NASD, Form BD shall be filed with CRD. If the applicant is not a member of NASD, Form BD shall be ~~manually~~ signed and notarized and filed with the administrator;

ITEM 2. Amend subrule 50.10(3) as follows:

50.10(3) An applicant that is a member of the NASD and that seeks renewal of a broker-dealer registration shall comply with the renewal time frames established by the NASD for renewal on the CRD system and shall:

a. File with CRD an updated Form BD;

~~b. File with the administrator the renewal applicant's most recent audited financial statements if they were not previously submitted to the administrator pursuant to subrule 50.10(1);~~

~~c~~ *b*. Pay to the CRD a $200 renewal filing fee.

ITEM 3. Amend subrule 50.12(1) as follows:

50.12(1) *Agent registration.*

a. An applicant for registration as an Iowa-registered agent of an NASD or non-NASD member broker-dealer shall:

~~a.~~ *(1)* Pass one of the following NASD examinations: Series 1, 2, 6, 7, 11, 17, 22, 24, 26, 39, 40, 52, 53, or 62. In the event that an applicant for registration as an agent has received a waiver by the NASD of an NASD examination otherwise required by this paragraph, the NASD waiver will be accepted in lieu of the examination requirement;

~~b.~~ *(2)* Pass the NASD Series 63 or Series 66 examination;

~~c.~~ *(3)* File an accurate and complete Form U-4 with CRD; and

~~d.~~ *(4)* Pay a $30 filing fee to NASD if applying for registration as an agent of an NASD member broker-dealer, or to the administrator if applying for registration as an agent of a non-NASD member broker-dealer.

b. An applicant may file with the administrator a written request for waiver of the examination requirement contained in paragraph "a" pursuant to rule 191—4.21(17A), et seq. A waiver will be considered for an applicant with ten years of continuous experience in the securities industry. A waiver of the Series 63 examination will not be granted.

ITEM 4. Amend subrule 50.15(2) as follows:

50.15(2) Each broker-dealer registered or required to be registered under the Act shall comply with SEC Rule 17a-11 (17 CFR 240.17a-11) and shall file with the administrator copies of ~~annual audited financial reports and~~ notices of financial deficiencies, as required under SEC ~~Rules 17a-5(d) (17 CFR 240.17a-5(d)) and~~ *Rule* 17a-11 (17 CFR 240.17a-11).

ITEM 5. Amend subrule **50.39(1)**, paragraph **"e,"** introductory paragraph, as follows:

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e. An investment adviser who has custody as defined by subparagraph 50.39(3)"a"(~~3~~ *4*) and who does not meet the exception provided by paragraph 50.39(2)"c" complies, in addition to compliance with the safeguards set forth in paragraphs 50.39(1)"a" to "c," with the following:

ITEM 6. Amend rule 191—50.40(502) as follows:

Amend subrule **50.40(1)**, paragraphs **"c"** and **"d,"** as follows:

c. An investment adviser having custody solely due to meeting the definition of custody as defined by subparagraph 50.39(3)"a"(~~2~~ *3*) and that is in compliance with the applicable safekeeping requirements of rule 191—50.39(502) is not required to comply with the net worth requirements of this rule;

d. An investment adviser having custody solely by meeting the definition of custody as defined by subparagraph 50.39(3)"a"(~~3~~ *4*) and that is in compliance with the safekeeping requirements of rule 191—50.39(502) is not required to comply with the net worth requirements of this rule; and

Amend subrule 50.40(2) as follows:

50.40(2) An investment adviser registered or required to be registered pursuant to the Act that has discretionary authority over client funds or securities but does not have *minimum net worth requirements due to the* custody ~~of the client funds or securities~~ *exceptions of subrule 50.40(1)* shall maintain a minimum net worth of $10,000 at all times.

ITEM 7. Amend subrule **50.41(1)**, paragraphs **"d"** and **"e,"** as follows:

d. An investment adviser having custody solely due to meeting the definition of "custody" as defined by subparagraph 50.39(3)"a"(~~2~~ *3*) and that is in compliance with the applicable safekeeping requirements of rule 191—50.39(502) is not required to comply with the bonding requirements of this rule;

e. An investment adviser having custody solely by meeting the definition of "custody" as defined by subparagraph 50.39(3)"a"(~~3~~ *4*) and that is in compliance with the safekeeping requirements of rule 191—50.39(502) is not required to comply with the bonding requirements of this rule;

ITEM 8. Amend rule 191—50.43(502) as follows:

191—50.43(502) Financial reporting requirements for investment advisers.

50.43(1) Every registered investment adviser that has custody of client funds or securities or requires payment of advisory fees six months or more in advance and in excess of $500 per client shall file with the administrator an audited balance sheet as of the end of the investment adviser's fiscal year~~. Each balance sheet filed pursuant to this rule must be~~ *except*:

~~a. Examined in accordance with generally accepted auditing standards and prepared in conformity with generally accepted accounting principles;~~

~~b. Audited by an independent certified public accountant; and~~

~~c. Accompanied by an opinion of the accountant as to the report of financial position, and by a note stating the principles used to prepare the audit, the basis of included securities, and any other explanations required for clarity.~~

a. An investment adviser that has custody solely due to direct fee deduction and that is also in compliance with the applicable safekeeping requirements of paragraph 50.39(1)"d" and the record-keeping requirements of rule 191—50.42(502) is not required to comply with the financial reporting requirements of this rule;

b. An investment adviser that has custody solely due to advising pooled investment vehicles and that is in compliance with the applicable safekeeping requirements of paragraph 50.39(1)"e" or 50.39(2)"c" and the record-keeping requirements of rule 191—50.42(502) is not required to comply with the financial reporting requirements of this rule; and

c. An investment adviser that has custody solely due to serving as a trustee and that is in compliance with the applicable safekeeping requirements of paragraph 50.39(1)"f" and the record-keeping requirements of subrule 50.42(4) is not required to comply with the financial reporting requirements of this rule.

50.43(2) Every registered investment adviser that has discretionary authority over, but not custody of, client funds or securities shall file with the administrator a balance sheet, which need not be audited, but which must be prepared in accordance with generally accepted accounting principles and represented by the investment adviser or the person who prepared the statement as true and accurate, as of the end of the investment adviser's fiscal year.

50.43(3) *Each balance sheet filed pursuant to this rule must be:*

a. Examined in accordance with generally accepted auditing standards and prepared in conformity with generally accepted accounting principles;

b. Audited by an independent certified public accountant; and

c. Accompanied by an opinion of the accountant as to the report of financial position, and by a note stating the principles used to prepare the audit, the basis of included securities, and any other explanations required for clarity.

50.43(~~3~~ *4*) The financial statements required by this rule shall be filed with the administrator within 90 days following the end of the investment adviser's fiscal year.

50.43(~~4~~ *5*) Every investment adviser that has its principal place of business in a state other than this state shall file only such reports as required by the state in which the investment adviser maintains its principal place of business, provided the investment adviser is licensed in such state and is in compliance with such state's financial reporting requirements.

This rule is intended to implement Iowa Code section 502.411(2).

ITEM 9. Amend subrules 50.66(2), 50.66(4) to 50.66(9) and 50.66(19) as follows:

50.66(2) Registration of oil and gas programs. All oil and gas programs filing for registration by coordination or qualification shall substantially comply, as determined by the administrator, with the NASAA Guidelines for Registration of Oil and Gas Programs, which were initially adopted by the NASAA membership on September 22, 1976, as amended on October 12, 1977; October 31, 1979; April 23, 1983; July 1, 1984; September 3, 1987; September 14, 1989; ~~and~~ October 24, 1991; *and May 7, 2007;* and published in CCH NASAA Reports at paragraph 2621.

50.66(4) Omnibus guidelines. All registrations of limited or general partnerships, joint ventures, unincorporated associations, or similar organizations, other than a corporation formed and operated for the primary purpose of investment in and the operation of or gain from and interest in the assets to be acquired by such entity for which statements of policy have not been adopted by the NASAA membership, filing for registration by coordination or qualification shall substantially comply, as determined by the administrator, with the NASAA Omnibus Guidelines as adopted by the NASAA membership on March 29, 1992, *as amended on May 7,*

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2007; and published in CCH NASAA Reports at paragraph 2321.

50.66(5) Registration of commodity pool programs. All registrations of securities filing for registration by coordination or qualification shall substantially comply, as determined by the administrator, with the NASAA Guidelines for Registration of Commodity Pool Programs as adopted by the NASAA membership on September 21, 1983, effective January 1, 1984, amended August 30, 1990, *amended May 2007*, and published in CCH NASAA Reports at paragraph 1201.

50.66(6) Registration of equipment programs. All registrations of securities filing for registration by coordination or qualification shall substantially comply, as determined by the administrator, with the NASAA Guidelines for Equipment Programs as adopted by the NASAA membership on November 20, 1986, effective January 1, 1987, amended April 22, 1988, ~~and~~ October 24, 1991, *and May 7, 2007*, and published in CCH NASAA Reports at paragraph 1601.

50.66(7) Registration of real estate programs. All registrations of securities filing for registration by coordination or qualification shall substantially comply, as determined by the administrator, with the NASAA Guidelines for Real Estate Programs as adopted by the NASAA membership on September 29, 1993, *last revised, May 7, 2007*, and published in CCH NASAA Reports at paragraph 3601.

50.66(8) Registration of mortgage programs. All registrations of securities filing for registration by coordination or qualification shall substantially comply, as determined by the administrator, with the NASAA Guidelines for Mortgage Programs as adopted by the NASAA membership on September 10, 1996, *amended May 2007*, and published in CCH NASAA Reports, paragraph 701.

50.66(9) Real estate investment trusts. The registration of a real estate investment trust may be disallowed if it does not substantially comply, as determined by the administrator, with the NASAA Statement of Policy Regarding Real Estate Investment Trusts as revised and adopted by the NASAA membership on September 29, 1993, *as revised on May 7, 2007*, and published in CCH NASAA Reports at paragraph 3401.

50.66(19) Registration of asset-backed securities. All registrations of securities filing for registration by coordination or qualification shall substantially comply, as determined by the administrator, with the NASAA Guidelines for Registration of Asset-Backed Securities as adopted by the NASAA membership on October 25, 1995, *amended May 2007*, and published in CCH NASAA Reports at paragraph 501.

ITEM 10. Amend rule 191—50.102(502) by adopting the following **new** subrule:

50.102(3) Pooled investment vehicles.

a. It shall constitute a fraudulent, deceptive, or manipulative act, practice, or course of business within the meaning of Iowa Code section 502.502(2) for any investment adviser to a pooled investment vehicle to:

(1) Make any untrue statement of a material fact or to omit to state a material fact necessary to make the statements made, in the light of the circumstances under which they were made, not misleading, to any investor or prospective investor in the pooled investment vehicle; or

(2) Otherwise engage in any act, practice, or course of business that is fraudulent, deceptive, or manipulative with respect to any investor or prospective investor in the pooled investment vehicle.

b. For purposes of this subrule, "pooled investment vehicle" means any investment company as defined in Section 3(a) of the Investment Company Act of 1940 (15 U.S.C. 80a-3(a)) or any company that would be an investment company under Section 3(a) of that Act but for the exclusion provided from that definition by either Section 3(c)(1) or Section 3(c)(7) of that Act (15 U.S.C. 80a-3(c)(1) or (7)).

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MEDICINE BOARD[653]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)*"b."*

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code sections 147.76 and 272C.3, the Board of Medicine hereby proposes to amend Chapter 8, "Fees," Chapter 9, "Permanent Physician Licensure," and Chapter 10, "Resident, Special and Temporary Physician Licensure," Iowa Administrative Code.

The proposed amendments raise the fee for license renewal and license reinstatement by $50 and raise the fee for a resident physician license by $50. The fee to process the criminal history background check is raised by $9. The renewal penalty fee will increase by $50 per month.

The Board approved the amendments to Chapters 8, 9 and 10 during a regularly scheduled meeting on September 12, 2007.

Any interested person may present written comments on these proposed amendments not later than 4:30 p.m. on October 30, 2007. Such written materials should be sent to Ann E. Mowery, Executive Director, Board of Medicine, 400 S.W. Eighth Street, Suite C, Des Moines, Iowa 50309-4686; or sent by E-mail to ann.mowery@iowa.gov.

There will be a public hearing on October 30, 2007, at 3 p.m. in the Board office, at which time persons may present their views either orally or in writing. The Board of Medicine office is located at 400 S.W. Eighth Street, Suite C, Des Moines, Iowa.

These amendments are intended to implement Iowa Code chapters 147, 148, and 272C.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at http://www.legis.state.ia.us/IAC.html or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendments are proposed.

ITEM 1. Amend subrule **8.4(1)**, paragraphs **"c," "d," "f,"** and **"g,"** as follows:

c. Renewal of an active license to practice, ~~$500~~ *$550* if renewal is made via paper application or ~~$400~~ *$450* if renewal is made via on-line application, per biennial period or prorated portion thereof if the current license was issued for a period of less than 24 months.

d. Penalty for failure to renew before expiration, ~~$50~~ *$100* per calendar month after the expiration date of the license up to ~~$100~~ *$200*. For example, if the license expired on January 1, a penalty of ~~$50~~ *$100* shall be charged for January and an additional ~~$50~~ *$100*, or a total of ~~$100~~ *$200*, shall be charged for renewal in February.

f. Reinstatement of a license to practice one year or more after becoming inactive, ~~$450~~ *$500* plus the fee for the

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evaluation of the fingerprint packet and the DCI and FBI criminal history background checks.

g. Reinstatement of a license within one year of becoming inactive, ~~$500~~ *$550* except when the license in the most recent license period had been granted for less than 24 months. In that case, the reinstatement fee is prorated according to the date of issuance and the physician's month and year of birth.

ITEM 2. Amend subrule **8.4(2)**, paragraph **"a,"** as follows:

a. Application for a resident physician license, ~~$100~~ *$150* plus the fee for the evaluation of the fingerprint packet and the DCI and FBI criminal history background checks.

ITEM 3. Amend subrule 8.4(7) as follows:

8.4(7) Fee for the evaluation of the fingerprint packet and the DCI and FBI criminal history background checks, ~~$46~~ *$55*. The fee shall be considered a repayment receipt as defined in Iowa Code section 8.2.

ITEM 4. Amend subrule **9.11(3)**, paragraph **"a,"** as follows:

a. The renewal fee is ~~$500~~ *$550* if the renewal is made via paper application or ~~$400~~ *$450* if the renewal is made via on-line application, per biennial period or a prorated portion thereof if the current license was issued for a period of less than 24 months.

ITEM 5. Amend subrule **9.13(1)**, paragraph **"a,"** as follows:

a. Fees for reinstatement within one year of the license's becoming inactive. The reinstatement fee is ~~$500~~ *$550* except when the license in the most recent license period had been granted for less than 24 months; in that case, the reinstatement fee is prorated according to the date of issuance and the physician's month and year of birth.

ITEM 6. Amend subrule **9.13(2)**, paragraph **"b,"** as follows:

b. Pay the reinstatement fee of ~~$450~~ *$500* plus the fee identified in 653—subrule 8.4(7) for the evaluation of the fingerprint packet and the DCI and FBI criminal history background checks. No fee is required for reinstatement for those whose licenses became inactive between December 8, 1999, and July 4, 2001; however, the fee for the evaluation of the fingerprint packet and the DCI and FBI criminal history background checks will be assessed.

ITEM 7. Amend subrule **10.3(3)**, paragraph **"a,"** subparagraph **(1)**, as follows:

(1) Pay a nonrefundable application fee of ~~$100~~ *$150* plus the fee identified in 653—subrule 8.4(7)~~,~~ for the evaluation of the fingerprint packet and the criminal history background checks by the Iowa division of criminal investigation (DCI) and the Federal Bureau of Investigation (FBI); and

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Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)*"b."*

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code sections 147.76 and 148E.7, the Board of Medicine hereby gives Notice of Intended Action to amend Chapter 24, "Complaints and Investigations," Iowa Administrative Code.

The Board approved the proposed amendments during its regularly held meeting on September 12, 2007.

The proposed amendment in Item 1 updates the Board's Web site address. In Item 2, the complaint and investigative processes are amended to clarify how staff of the Board, the complaint review committee, the Board's screening committee and the full Board handle complaints and investigations, including allowing some complaints to be closed without investigation. The Board is required to attempt to contact a licensee at the address of record to give the licensee an opportunity to respond to any allegations; Item 2 includes a proposed amendment which clarifies what additional efforts staff will undertake to find the licensee if the licensee is not available at the address of record. In Item 3, a proposed amendment to confidentiality of orders and reports will allow investigative information to be turned over to the licensee in the event of an objection filed pursuant to 24.4(3) in order to give the licensee the opportunity to prepare for hearing.

Any interested person may present written comments on the proposed amendments not later than 4:30 p.m. on October 30, 2007. Such written materials should be sent to Ann E. Mowery, Executive Director, Board of Medicine, 400 S.W. 8th Street, Suite C, Des Moines, Iowa 50309-4686; or sent by E-mail to ann.mowery@iowa.gov.

There will be a public hearing on October 30, 2007, at 2:30 p.m. in the Board office, at which time persons may present their views either orally or in writing. The Board of Medicine office is located at 400 S.W. 8th Street, Suite C, Des Moines, Iowa.

These amendments are intended to implement Iowa Code chapter 148 and Iowa Code sections 148E.7, 272C.3 and 272C.4.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at http://www.legis.state.ia.us/IAC.html or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendments are proposed.

ITEM 1. Amend subrule 24.1(2) as follows:

24.1(2) Place and time of filing of the complaint. A written complaint may be delivered in person, by mail or electronically to the board office. The office address is Iowa Board of Medicine, 400 S.W. 8th Street, Suite C, Des Moines, Iowa 50309-4686. The board's Web site address is ~~www.docboard.org/ia~~ *www.medicalboard.iowa.gov*.

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ITEM 2. Amend rule 653—24.2(17A,147,148,272C) as follows:

Amend the catchwords as follows:

653—24.2(17A,147,148,272C) ~~Investigations~~ *Processing complaints and investigations*.

Rescind subrules **24.2(1)** to **24.2(6)** and adopt **new** subrules 24.2(1) to 24.2(5) as follows:

24.2(1) Complaint and investigative files. Board staff shall open a complaint file upon receiving a complaint or other appropriate information or upon a motion of the board. A complaint file becomes an investigative file once an investigation is ordered.

a. If the board does not have legal jurisdiction over a matter, staff may close the complaint file administratively without investigation or review by the board. All other complaints shall be sent to the complaint review committee.

b. A complaint file shall be labeled as such and is not a public record. A complaint file shall become part of the licensee's history with the board and shall be shared with another licensing authority, upon request.

c. Anytime an investigation is ordered, a complaint file shall be relabeled as an investigative file. An investigative file is not a public record. The investigative file shall become part of the licensee's history with the board and shall be shared with another licensing authority, upon request.

24.2(2) Complaint review committee.

a. The complaint review committee includes the medical advisor, executive director, director of legal affairs, and chief investigator.

b. The complaint review committee shall review each complaint the board has received and shall take one of the following four actions:

(1) Close a complaint file administratively for any of these reasons:

1. The board does not have legal jurisdiction over the matter;

2. The case involves a matter that the board is already addressing; or

3. The case is appropriate for referral to the board's Iowa physician health program, and investigation is not warranted.

(2) Recommend to the board's screening committee that the board close the complaint file without investigation.

(3) Request an investigation by seeking a letter of explanation from the physician, medical records, or both.

(4) Request a full investigation.

c. The complaint review committee shall use the following to guide its decision making:

(1) The complaint review committee shall assign a case for full investigation if the case involves serious public safety issues, including but not limited to the following:

1. A clear violation of the laws and rules governing the practice of medicine or acupuncture, as applicable;

2. Significant investigative history which raises serious concerns about the licensee's ability to practice medicine in a competent and safe manner;

3. Significant investigative history which raises serious concerns that the licensee has engaged in a pattern of unprofessional conduct or disruptive behavior that interferes with, or has the potential to interfere with, patient care or the effective functioning of health care staff;

4. Serious quality of care cases that include severe patient harm, a pattern of inappropriate treatment, or serious medical errors;

5. Serious criminal conduct;

6. Substance abuse or other impairment that significantly impacts the licensee's ability to practice the licensee's respective practice in a competent and safe manner;

7. Sexual misconduct;

8. Severe unprofessional conduct or disruptive behavior;

9. Disciplinary action by another regulatory authority; or

10. Unlicensed practice of medicine or acupuncture.

(2) If a case involves less serious public safety issues, the complaint review committee shall take one of the following actions:

1. Recommend to the board's screening committee that the complaint file be closed without an investigation.

2. Request an investigation by seeking a letter of explanation from the physician, medical records, or both.

3. Request a full investigation if a pattern of less serious public safety issues appears to exist.

(3) Less serious public safety issues include, but are not limited to, the following:

1. Less serious quality of care cases that do not involve serious patient harm and are isolated occurrences rather than a part of a pattern of inappropriate treatment or serious medical errors;

2. A single incident involving a billing dispute;

3. A single incident involving rude behavior or personality conflicts;

4. A single incident of communication problems; or

5. Poor record-keeping practices that are not repeated or ongoing in nature and do not significantly affect patient care.

d. The board may reopen any complaint or investigative file that has been closed administratively at any time for review and reconsideration.

e. The complaint review committee shall indicate high-priority cases when they are assigned for investigation. The committee may provide recommendations to investigators regarding the nature of investigation to be completed. The medical advisor shall provide medical advice to the investigators as part of the investigative process.

24.2(3) Screening committee. The screening committee shall review the recommendations of the complaint review committee and shall take one of the following actions:

a. Recommend to the board that the complaint file be closed without investigation.

b. Request an investigation by seeking a letter of explanation from the physician, medical records, or both.

c. Review the materials acquired pursuant to paragraph "b" and recommend to the board that the investigative file be closed, with or without issuing an informal letter.

d. Request a full investigation for board review.

24.2(4) Board action.

a. The board shall review the screening committee's recommendations and take one of the following actions:

(1) Close the complaint file without investigation. The board shall notify the complainant and the licensee of the decision by letter.

(2) Close the investigative file that has been partially or fully investigated, with or without issuing an informal letter. The board shall notify the complainant and the licensee of the decision by letter.

(3) Request further investigation.

b. The board may reconsider and reopen a closed complaint or investigative file at a later date should it be deemed appropriate.

24.2(5) Investigations.

a. Complainants. At the time an investigation is opened, the complainant shall be sent a letter with the name of the investigator assigned to the case and the investigator's contact

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information and a statement encouraging the complainant to submit any further information that would assist the investigator with the case.

(1) The complainant may request a meeting with the investigator prior to the completion of the investigation.

(2) The complainant shall be informed of the confidentiality of the investigative information as provided in 24.2(8).

(3) The complainant may contact the chief investigator with questions or concerns about the investigation.

b. Investigative subpoenas.

(1) Issuance of an investigative subpoena. The executive director or a designee may, upon the written request of a board investigator or upon the executive director's own initiative, subpoena books, papers, records, and other real evidence necessary for a board investigation.

(2) Request for subpoena. A written request for a subpoena shall contain the following:

1. The name and address of the person to whom the subpoena will be directed;

2. A specific description of the books, papers, records or other real evidence requested;

3. An explanation of why the evidence sought to be subpoenaed is necessary for the board to determine whether it should institute a contested case proceeding; and

4. In the case of a subpoena request for mental health records, confirmation that the conditions described in subparagraph 24.2(5)"b"(4) have been satisfied.

(3) Contents of subpoena. Each subpoena shall contain the following:

1. The name and address of the person to whom the subpoena is directed;

2. A description of the books, papers, records or other real evidence requested;

3. The date, time and location for production or inspection and copying;

4. The time within which a motion to quash or modify the subpoena must be filed;

5. The signature, address and telephone number of the executive director or designee;

6. The date of issuance; and

7. A return of service attached to the subpoena.

(4) Subpoena for mental health records. A subpoena for mental health records shall meet the requirements of subparagraph (3) above. The board shall document the following prior to the issuance of a subpoena for mental health records:

1. The nature of the complaint reasonably justifies the issuance of a subpoena;

2. Adequate safeguards have been established to prevent unauthorized disclosure;

3. An express statutory mandate, articulated public policy, or other recognizable public interest favors access; and

4. An attempt was made to notify the patient and to secure an authorization from the patient for release of the records at issue.

(5) Motion to quash or modify subpoena.

1. Any person who is aggrieved or adversely affected by compliance with the subpoena and who desires to challenge the subpoena must, within 14 days after service of the subpoena, or before the time specified for compliance if such time is less than 14 days, file with the board a motion to quash or modify the subpoena. The motion shall describe the legal reasons why the subpoena should be quashed or modified and may be accompanied by legal briefs or factual affidavits.

2. Hearing on motion. Upon receipt of a timely motion to quash or modify a subpoena, the board may request an administrative law judge to hold a hearing and issue a decision, or the board may conduct a hearing and issue a decision. Oral argument may be scheduled at the discretion of the administrative law judge or the board. The administrative law judge or the board may quash or modify the subpoena, deny the motion, or issue an appropriate protective order.

3. Appeal of decision on motion. A person who is aggrieved by a ruling of an administrative law judge and who desires to challenge that ruling must appeal the ruling to the board by serving on the board's executive director, either in person or by certified mail, a notice of appeal within 10 days after service of the decision of the administrative law judge.

4. Final agency action. If the person contesting the subpoena is not the person under investigation, the board's decision is final for purposes of judicial review. If the person contesting the subpoena is the person under investigation, the board's decision is not final for purposes of judicial review until either the person is notified that the investigation has been concluded with no formal action or there is a final decision in the contested case.

c. Licensee response. Prior to the commencement of a contested case proceeding, the investigator shall attempt to contact the licensee at the address of record to give the licensee the opportunity to respond to the allegations under investigation. If the licensee cannot be located at the address of record, the investigator shall make reasonable efforts to locate the licensee; but if that licensee cannot be located, the investigation shall be completed and sent to the board without the licensee's response. Contact with the licensee and the licensee's response to the allegations may be made in writing or through a personal interview.

d. Investigative report. Upon completion of an investigation, the investigator shall prepare a report for the board's consideration. The report shall set forth the information obtained in the course of the investigation and the response, if any, of the licensee.

e. Board review. The board shall review the investigative record, discuss the case, and take one of the following actions:

(1) Close the investigative file without action. The board shall notify the complainant and the licensee of the decision by letter. The board may reconsider and reopen a closed complaint or investigative file at a later date should it be deemed appropriate.

(2) Request further investigation, including peer review.

(3) Meet with the licensee. The board or the licensee may request that the licensee appear before the board to discuss a pending investigation. The board has discretion on whether to grant a licensee's request for an appearance. By electing to participate in the appearance, the licensee waives any objection to a board member's both participating in the appearance and later participating as a decision maker in a contested case proceeding on the grounds that:

1. Board members have personally investigated the case, and

2. Board members have combined investigative and adjudicative functions.

If the executive director or director of legal affairs participates in the appearance, the licensee further waives any objection to having the executive director or director of legal affairs assist the board in the contested case proceeding.

(4) Issue an informal letter of warning or education. If the board concludes that there is not probable cause to file disciplinary charges, the board may issue the licensee an informal

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letter of warning or education. A letter of warning or education is an informal communication between the board and the licensee and is not formal disciplinary action or a public document.

(5) File a statement of charges. If the board determines that there is probable cause for taking formal disciplinary action against a licensee, the board shall file a statement of charges, thereby commencing a contested case proceeding.

Prior to the initiation of formal disciplinary charges in a case involving the supervision of a physician assistant, the board shall forward a copy of the investigative report to the board of physician assistants for its advice and recommendation. The board of physician assistants shall respond within six weeks or sooner if requested by the board of medicine. The board of medicine shall consider the advice and recommendation of the board of physician assistants.

(6) Request a combined statement of charges and settlement agreement. At the board's discretion, the board and the licensee may enter into a combined statement of charges and settlement agreement to resolve a contested case proceeding.

Renumber subrules **24.2(7)** to **24.2(9)** as **24.2(6)** to **24.2(8)**.

ITEM 3. Amend subrule 24.4(5) as follows:

24.4(5) Order and reports confidential. An evaluation order and any subsequent evaluation reports issued in the course of a board investigation are confidential investigative information pursuant to Iowa Code section 272C.6(4). *However, investigative information related to the evaluation shall be turned over to the licensee in the event an objection is filed pursuant to 24.4(3), in order to allow the licensee the opportunity to prepare for hearing.*

ARC 6283B

PUBLIC HEALTH DEPARTMENT[641]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"*b*."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 139A.4, the Department of Public Health hereby gives Notice of Intended Action to amend Chapter 1, "Notification and Surveillance of Reportable Communicable and Infectious Diseases, Poisonings and Conditions," Iowa Administrative Code.

In addition to reportable diseases and conditions, Chapter 1 contains rules regarding quarantine. These amendments add information relating to area quarantine. Item 1 adds a new definition and Item 2 amends Chapter 1 by adding a new rule for area quarantine.

Any interested person may make written suggestions or comments on these proposed amendments on or before October 30, 2007. Such written materials should be directed to Pam Deichmann, Department of Public Health, Lucas State Office Building, 321 East 12th Street, Des Moines, Iowa 50319-0075; fax (515)281-5698 or E-mail pdeichma@idph.state.ia.us.

These amendments are intended to implement Iowa Code chapter 139A.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at http://www.legis.state.ia.us/IAC.html or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendments are proposed.

ITEM 1. Amend rule **641—1.1(139A)** by adopting the following **new** definition in alphabetical sequence:

"Area quarantine" means prohibiting ingress and egress to and from a building or buildings, structure or structures, or other definable physical location, or portion thereof, to prevent or contain the spread of a suspected or confirmed quarantinable disease or to prevent or contain exposure to a suspected or known chemical, biological, radioactive, or other hazardous or toxic agent.

ITEM 2. Amend 641—Chapter 1 by adopting **new** rule 641—1.13(135,139A) as follows:

641—1.13(135,139A) Area quarantine.

1.13(1) General provisions. The department and local boards of health are authorized to impose and enforce area quarantine in accordance with this rule. Area quarantine shall rarely be imposed by the department or by local boards of health.

1.13(2) Conditions and principles. The department and local boards of health shall adhere to all of the following conditions and principles when imposing and enforcing area quarantine:

a. Area quarantine shall be imposed by the least restrictive means necessary to prevent or contain the spread of a suspected or confirmed quarantinable disease or suspected or known hazardous or toxic agent.

b. Area quarantine shall be immediately terminated when the department or a local board of health determines that no substantial risk of exposure to a quarantinable disease or hazardous or toxic agent continues to exist.

c. The geographical boundaries of an area quarantine shall be established by risk assessment procedures including medical and scientific analysis of the quarantinable disease or hazardous or toxic agent, the location of the affected area, the risk of spread or contamination, and other relevant information.

1.13(3) Area quarantine sites.

a. Sites of area quarantine shall be prominently identified to restrict ingress and egress to and from the area, to the extent practicable. The department or a local board of health may placard or otherwise identify the site, or may request the assistance of law enforcement in identifying the site.

b. No individual, other than an individual authorized by the department or a local board of health, shall enter a building, structure, or other physical location subject to area quarantine. The department or a local board of health may authorize public health officials, environmental specialists, health care providers, or others access to an area quarantine site as necessary to conduct public health investigations, to decontaminate the site, or for other public health purposes. Notwithstanding any provision in this chapter to the contrary, law enforcement, fire service, and emergency medical service providers may enter an area quarantine site to provide emergency response services or to conduct emergency law enforcement investigations or other emergency activities without authorization by the department or a local board of health. If the department has requested the assistance of law enforcement in enforcing the area quarantine, the department

shall provide law enforcement personnel with a list of individuals authorized to enter the area quarantine site.

c. An individual authorized to enter an area quarantine site may be required to wear personal protective equipment as appropriate.

d. No individual, other than an individual authorized by the department or a local board of health, shall remove any item or object from a building, structure, or other physical location subject to area quarantine.

e. An individual entering an area quarantine site without authorization of the department or a local board of health may be isolated or quarantined pursuant to rule 1.9(135,139A) and may be found guilty of a simple misdemeanor.

1.13(4) Area quarantine by local boards of health or the department of public health.

a. Authority.

(1) The department, through the director, the department's medical director, or the director or medical director's designee, may impose area quarantine through oral or written order. Prior to imposing area quarantine, the department shall attempt to notify the local board or boards of health in the affected geographic area. If attempts to notify the local boards of health are initially unsuccessful, the department shall continue to make regular notification attempts until successful.

(2) A local board of health may impose area quarantine through oral or written order. Prior to imposing area quarantine, a local board of health shall attempt to notify the department by contacting the director, medical director, or department duty officer by telephone. If attempts to notify the department are initially unsuccessful, the local board of health shall continue to make regular notification attempts until successful.

b. Temporary area quarantine without notice. The department or a local board of health may temporarily impose area quarantine through an oral order, without notice, only if delay in imposing area quarantine would significantly jeopardize the department's or local board's ability to prevent or contain the spread of a suspected or confirmed quarantinable disease or to prevent or contain exposure to a suspected or known hazardous or toxic agent. If the department or local board imposes temporary area quarantine through an oral order, a written order shall be issued as soon as is reasonably possible and in all cases within 24 hours of issuance of the oral order if continued area quarantine is necessary.

c. Written order. The department or local board may impose area quarantine through a written order issued pursuant to this rule.

(1) The written order shall include all of the following:

1. The building or buildings, structure or structures, or other definable physical location, or portion thereof, subject to area quarantine.

2. The date and time at which area quarantine commences and the date and time at which the area quarantine shall be terminated, if known.

3. The suspected or confirmed quarantinable disease or the chemical, biological, radioactive, or other hazardous or toxic agent.

4. A statement of compliance with the conditions and principles for area quarantine specified in subrule 1.13(2).

5. The legal authority under which the order is imposed.

6. The medical or scientific basis upon which area quarantine is justified.

7. A statement advising the owner or owners of the building or buildings, structure or structures, or other definable physical location subject to area quarantine of the right to appeal the written order pursuant to subrule 1.13(5) and the rights of owners of sites subject to area quarantine pursuant to subrule 1.13(6).

8. A copy of 641—Chapter 1 and the relevant provisions of this rule.

(2) A copy of the written order shall be provided to the owner or owners of the building or buildings, structure or structures, or other definable physical location subject to area quarantine within 24 hours of issuance of the order in accordance with any applicable process authorized by the Iowa Rules of Civil Procedure; or, if the order applies to a group of owners and it is impractical to provide individual notice to each owner, the written order shall be posted in a conspicuous place at the site of area quarantine.

1.13(5) Appeal from order imposing area quarantine.

a. Contested case. The subject of a department order imposing area quarantine may appeal a written order and has the right to a contested case hearing regarding such appeal. The subject of a department order imposing area quarantine may appeal the order by submitting a written appeal within 10 days of receipt or other notice of the written order. The appeal shall be addressed to the Department of Public Health, Division of Acute Disease Prevention and Emergency Response, Lucas State Office Building, Des Moines, Iowa 50319-0075. Unless stayed by order of the director or a district court, the written order for area quarantine shall remain in force and effect until the appeal is finally determined and disposed of upon its merits.

b. Presiding officer. The presiding officer in a contested case shall be the director or the director's designee. The director or the director's designee may be assisted by an administrative law judge in conducting the contested case hearing. The decision of the director or the director's designee shall be the agency's final decision and is subject to judicial review in accordance with the provisions of Iowa Code chapter 17A.

c. Proceeding. The contested case hearing shall be conducted in accordance with the provisions contained at 641—Chapter 173. The hearing shall be held as soon as is practicable, and in no case later than 10 days from the date of receipt of the appeal. In extraordinary circumstances and for good cause shown, the department may apply to continue the hearing date on a petition filed pursuant to this paragraph for up to 10 days, which continuance the presiding officer may grant in its discretion giving due regard to the rights of the affected individuals, the protection of the public's health, and the availability of necessary witnesses and evidence.

d. Judicial review. The aggrieved party to the final decision of the department may petition for judicial review of that action pursuant to Iowa Code chapter 17A. Petitions for judicial review shall be filed within 30 days after the decision becomes final.

e. Immediate judicial review of department order. The department acknowledges that in certain circumstances the subject or subjects of a department order may desire immediate judicial review of a department order in lieu of proceeding with the contested case process. The department recognizes that the procedural step of pursuing exhaustion of administrative remedies may be inadequate for purposes of Iowa Code section 17A.19, and the department may consent to immediate jurisdiction of the district court when requested by the subject or subjects of a department order and justice so requires. Unless stayed by order of the director or a district court, the written order for area quarantine shall remain in force and effect until the judicial review is finally determined and disposed of upon its merits.

PUBLIC HEALTH DEPARTMENT[641](cont'd)

1.13(6) Rights of owners of sites subject to area quarantine. An owner of a building, structure, or other physical location subject to area quarantine shall have the following rights:

a. The right to be represented by legal counsel.

b. The right to be provided with prior notice of the date, time, and location of any hearing.

c. The right to participate in any hearing.

d. The right to respond and present evidence and argument on the owner's own behalf in any hearing.

e. The right to cross-examine witnesses who testify against the individual.

f. The right to view and copy all records in the possession of the department which relate to the subject of the written order.

1.13(7) Consolidation of claims. In any proceeding brought pursuant to this rule, to promote the fair and efficient operation of justice and having given due regard to the rights of the affected individuals, the protection of the public's health, and the availability of necessary witnesses and evidence, the department or a court may order the consolidation of individual claims into group claims, if all of the following conditions exist:

a. The number of individuals involved or who may be affected is so large that individual participation is impractical.

b. There are questions of law or fact common to the individual claims or rights to be determined.

c. The group claims or rights to be determined are typical of the affected individuals' claims or rights.

d. The entire group will be adequately represented in the consolidation.

1.13(8) Implementation and enforcement of area quarantine.

a. Jurisdictional issues. The department has primary jurisdiction to impose area quarantine if the quarantinable disease or hazardous or toxic agent has affected more than one county and implicates multicounty or statewide public health concerns. If area quarantine is imposed by the department, a local board of health or local health department may not alter, amend, modify, or rescind the area quarantine order.

b. Assistance of local boards of health and local health departments. If area quarantine is imposed by the department, the local boards of health and the local health departments in the affected areas shall assist in the implementation of the area quarantine.

c. Assistance of law enforcement. Pursuant to Iowa Code section 135.35, all peace officers of the state shall enforce and execute a lawful department order for area quarantine within their respective jurisdictions. The department shall take all reasonable measures to minimize the risk of individual exposure of peace officers and others assisting with enforcement of an area quarantine order.

d. Emergency response, investigation, and decontamination—authority of other agencies. Emergency response, investigation, and decontamination activities in and around an area quarantine site shall be conducted by law enforcement, fire service, emergency medical service providers, or other appropriate federal, state, or local officials in accordance with federal and state law and accepted procedures and protocols for emergency response, investigation, and decontamination. This rule shall not be construed to limit the authority of law enforcement, fire service, emergency medical service providers, or other federal, state, or local officials to conduct emergency response, investigation, or decontamination activities to the extent authorized by federal and state law and accepted procedures and protocols.

e. Penalty. Pursuant to Iowa Code section 135.38, any individual who knowingly violates a lawful department order for area quarantine, whether written or oral, shall be guilty of a simple misdemeanor. The court-ordered sentence may include a fine of up to $500 and imprisonment not to exceed 30 days.

f. Enforcement action. The department may file a civil action in Polk County District Court to enforce a department order for area quarantine. Such action shall be filed in accordance with Iowa Rules of Civil Procedure.

ARC 6284B

PUBLIC HEALTH DEPARTMENT[641]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)*"b."*

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code sections 135.19 and 135.20, the Department of Public Health hereby gives Notice of Intended Action to adopt new Chapter 2, "Hepatitis Programs," Iowa Administrative Code.

The rules in Chapter 2 describe two programs related to hepatitis. The Iowa Department of Public Health shall distribute information, offer HCV testing, and offer hepatitis A and B vaccinations to the citizens and veterans of this state who are at an increased risk of viral hepatitis exposure.

Any interested person may make written comments or suggestions on the proposed amendments on or before October 30, 2007. Such written comments should be directed to Shane Scharer, Department of Public Health, Lucas State Office Building, 321 East 12th Street, Des Moines, Iowa 50319. E-mail may be sent to sscharer@idph.state.ia.us.

These rules are intended to implement Iowa Code sections 135.19 and 135.20.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at http://www.legis.state.ia.us/IAC.html or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following **new** chapter is proposed.

CHAPTER 2
HEPATITIS PROGRAMS

VIRAL HEPATITIS PROGRAM—VACCINATIONS AND TESTING

641—2.1(135) Definitions. For the purpose of these rules, the following definitions shall apply:

"Contracted agencies" means local health departments, clinics, and community-based organizations that are funded by the department to provide HCV testing and vaccination services.

"Department" means the Iowa department of public health.

PUBLIC HEALTH DEPARTMENT[641](cont'd)

"HCV" means the hepatitis C virus as defined by the Centers for Disease Control and Prevention of the United States Department of Health and Human Services.

"Viral hepatitis" means inflammation of the liver caused by one of several viruses: hepatitis A, B, C (formerly non-A, non-B), D and E.

641—2.2(135) Purpose. The purpose of the viral hepatitis program shall be to distribute information, offer HCV testing, and offer hepatitis A and B vaccinations to the citizens of this state who are at an increased risk of viral hepatitis exposure.

641—2.3(135) Exposure risks for hepatitis C virus. The following individuals are at increased risk of exposure to HCV as outlined by the Centers for Disease Control and Prevention of the United States Department of Health and Human Services.

2.3(1) The following individuals are at high risk of infection:

a. Injection drug users (IDUs);

b. Recipients of clotting factors made before 1987; and

c. Hemodialysis patients.

2.3(2) The following individuals are at intermediate risk of infection:

a. Recipients of blood or solid organs before 1992;

b. Persons with undiagnosed liver problems; and

c. Infants born to HCV-infected mothers.

2.3(3) The following individuals are at low risk of infection:

a. Health care/public safety workers;

b. Persons having sex with multiple partners; and

c. Persons having sex with an HCV-infected steady partner.

641—2.4(135) Information for public distribution. The department shall make available educational materials to the public on hepatitis C infection, how to avoid transmitting the virus, and where to seek counseling and testing services. The information shall be available on the department's Web site at http://www.idph.state.ia.us/adper/hepatitis.asp and by mail to HIV/AIDS Hepatitis Program, Lucas State Office Building, 321 East 12th Street, Des Moines, Iowa 50319.

641—2.5(135) Hepatitis vaccination and testing program.

2.5(1) When sufficient state and federal funds are available, the department will establish a vaccination and testing program. The program shall offer HCV testing and hepatitis A and B vaccinations through local health departments, clinics, and community-based organizations to high-risk individuals as defined in 2.5(2) and 2.5(3). Contracted agencies offering testing and vaccination services shall be required to provide integrated HIV, viral hepatitis, and sexually transmitted disease education; pretest and posttest counseling; and referral services.

2.5(2) Contracted agencies shall offer HCV testing to the following high-risk individuals:

a. Persons who have ever injected drugs;

b. Injection drug users who share needles or other equipment;

c. Persons who receive blood, blood products, or organ transplants prior to 1992; and

d. Persons ever on long-term hemodialysis.

2.5(3) Contracted agencies shall offer hepatitis A and B vaccinations to the following high-risk individuals:

a. Injection and noninjection drug users;

b. Men who have sex with men;

c. Persons with a diagnosis of a recently acquired sexually transmitted disease (STD);

d. HIV- or HCV-infected persons; and

e. Sexual partners of persons infected with HIV, hepatitis A (HAV), or hepatitis B (HBV).

2.5(4) Contracted agencies shall provide individuals presenting for counseling, testing, and referral services and testing positive for hepatitis C educational brochures explaining their potential risk of exposure.

2.5(5) Contracted agencies shall provide individuals testing positive for HCV a referral list of health care providers to aid in seeking additional follow-up testing and other hepatitis-related services.

641—2.6 to **2.8** Reserved.

HEPATITIS C AWARENESS PROGRAM—VETERANS

641—2.9(135) Definitions. For the purpose of these rules, the following definitions shall apply:

"Department" means the Iowa department of public health.

"HCV" means the hepatitis C virus as defined by the Centers for Disease Control and Prevention of the United States Department of Health and Human Services.

"Veteran" means an individual meeting the definition contained in Iowa Code section 35.1.

641—2.10(135) Purpose. The purpose of the hepatitis C awareness program shall be to distribute information to veterans regarding the higher incidence of hepatitis C exposure and infection among veterans, the dangers presented by the disease, and contact information and referrals.

641—2.11(135) Awareness materials. The department shall provide hepatitis awareness materials to veterans through various educational media.

641—2.12(135) Awareness information. Information distributed by the department shall contain the following statements:

2.12(1) HCV infection rates for veterans are estimated to be at least three times higher than the general population.

2.12(2) Vietnam veterans experience a higher HCV infection rate than other veteran groups.

2.12(3) Exposure to blood during combat and combat-related medical services poses a risk for HCV infection.

2.12(4) Many veterans currently infected with HCV may have been exposed prior to the development of screening tests.

2.12(5) Symptoms and liver complications associated with chronic hepatitis infection may not appear for decades after initial infection.

641—2.13(135) Resources for hepatitis follow−up and treatment. The department shall provide hepatitis resource information to veterans regarding medical follow-up and treatment options.

These rules are intended to implement Iowa Code sections 135.19 and 135.20.

ARC 6282B

PUBLIC SAFETY DEPARTMENT[661]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)*"b."*

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 99F.4, subsection 18, the Department of Public Safety hereby gives Notice of Intended Action to amend Chapter 141, "Closed Circuit Surveillance Systems," Iowa Administrative Code.

Iowa Code section 99F.4, subsection 18, requires that gambling activities on excursion gambling boats be continuously recorded and that the requirements for such recording be established by administrative rules of the Department of Public Safety. The Iowa Racing and Gaming Commission has extended the application of these rules to all gaming facilities (491 Iowa Administrative Code 5.4(7)).

The amendments proposed herein clarify that the video surveillance and recording must occur within the premises of the gaming facility, that video surveillance equipment must be maintained on the premises, and that existing video surveillance systems which are converted to digital prior to January 1, 2011, shall comply with the requirements established in these rules.

A public hearing on these proposed amendments will be held on November 7, 2007, at 8:30 a.m. in the First Floor Conference Room (Room 125) at the State Public Safety Headquarters Building, 215 East 7th Street, Des Moines, Iowa 50319. Persons may present their views orally or in writing at the public hearing. Persons who wish to make oral presentations at the public hearing should contact the Agency Rules Administrator, Department of Public Safety, State Public Safety Headquarters Building, Des Moines, Iowa 50319, by mail; by telephone at (515)725-6185; or by electronic mail to admrule @dps.state.ia.us, at least one day prior to the public hearing.

Any written comments or information regarding these proposed amendments may be directed to the Agency Rules Administrator by mail or electronic mail at the addresses indicated at least one day prior to the public hearing, or submitted at the public hearing. Persons who wish to convey their views orally other than at the public hearing may contact the Agency Rules Administrator by telephone or in person at the Department office by 4:30 p.m. on November 7, 2007.

These amendments are intended to implement Iowa Code section 99F.4.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at http://www.legis.state.ia.us/IAC.html or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendments are proposed.

ITEM 1. Amend rule **661—141.1(99F)** as follows:

Amend the definition of "casino" as follows:

"Casino" means all areas of an excursion gambling boat ~~or~~, racetrack enclosure, *or gambling structure* licensed to conduct gambling games.

Adopt the following **new** definition in alphabetical order:

"Closed network" or "closed circuit" means all digital recording equipment and all other associated surveillance equipment must be designed, configured, and maintained on a separate and exclusive network system located on the same premises as the casino. This closed network system must not be touched by, connected to, or partitioned off of any other network.

ITEM 2. Amend rule 661—141.4(99F) as follows:

Amend subrule 141.4(1) as follows:

141.4(1) Every licensee shall install, maintain and operate, *on the same premises where the casino is located,* a closed circuit surveillance system according to specifications set forth in these rules and shall provide to the commission and the DCI access at all times to the system or its signal.

Amend subrule 141.4(3) as follows:

141.4(3) All licensees shall have in place digital recording systems that meet the requirements of this chapter no later than January 1, 2011. *Any system converted to digital prior to January 1, 2011, must meet the requirements of this chapter upon installation.*

ITEM 3. Amend subrule **141.5(9)**, paragraph **"d,"** as follows:

d. If the licensee chooses to use a network for the digital recording equipment, it must be a closed network with limited access *located on the same premises as the casino. No transmission, images or audio, live or recorded, may leave the premises without the permission of the DCI.* The licensee must submit, for approval by the DCI, written policies governing the administration of the network, which shall include employee access levels.

ITEM 4. Amend rule 661—141.10(99F) as follows:

Amend the introductory paragraph as follows:

661—141.10(99F) Surveillance room. There shall be provided ~~for~~ *in* each gaming facility a room specifically utilized to monitor and record activities on the casino floor, count room, cashier cages, gangplank areas, admission entrances and exits, and slot change booths. This room shall have a trained surveillance person present at all times during casino operation hours. In addition, an excursion gambling boat or racetrack enclosure may have satellite monitoring equipment. The following are requirements for the operation of equipment in the surveillance room and of satellite monitoring equipment:

Amend subrule 141.10(1) as follows:

141.10(1) Surveillance equipment location. All equipment that may be utilized to monitor or record views obtained by a casino surveillance system must remain located in ~~the~~ *a* room *located on the same premises as the casino, and* used exclusively for casino surveillance security purposes. The satellite monitoring equipment must be capable of being disabled from the casino surveillance room when not in use. The entrance to the casino surveillance room must be locked or secured at all times. *For purposes of this subrule, "located on the same premises" means within the same structure or building.*

Amend subrule 141.10(8) as follows:

141.10(8) Security. Entry to the surveillance room and access to satellite monitoring equipment shall be limited to

persons approved by the DCI ~~or the commission~~. A log of personnel entering and exiting the surveillance room and accessing satellite monitoring equipment shall be maintained and submitted to the DCI or the commission upon request.

ARC 6303B

STATE PUBLIC DEFENDER[493]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)*"b."*

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 13B.4(8), the State Public Defender gives Notice of Intended Action to amend Chapter 11, "Attorney Fee Contracts," Iowa Administrative Code.

These proposed amendments revise the manner by which attorney fee contracts are awarded, renewed, and terminated by the State Public Defender.

Interested persons may make written comments or suggestions on the proposed amendments on or before October 30, 2007. Written materials should be addressed to the State Public Defender, Lucas State Office Building, Fourth Floor, 321 East 12th Street, Des Moines, Iowa 50319-0087; faxed to (515)281-7289; or E-mailed to msmith@spd.state.ia.us.

There will be a public hearing on October 30, 2007, at 9 a.m. in Conference Room 422, Lucas State Office Building, Des Moines, Iowa, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments.

Any persons who intend to attend the public hearing and have special requirements such as those related to hearing or mobility impairments should contact the State Public Defender and advise of specific needs.

These amendments are intended to implement Iowa Code chapters 13B, 814 and 815.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at http://www.legis.state.ia.us/IAC.html or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendments are proposed.

ITEM 1. Amend subrule 11.2(2) as follows:

11.2(2) A copy of an original contract is available from the Office of the State Public Defender, Lucas State Office Building, Des Moines, Iowa 50319-0087, by telephoning (515)242-6158, or on the Web at ~~http://spd.state.ia.us~~ *http://spd.iowa.gov*.

ITEM 2. Amend rule 493—11.4(13B) as follows:

493—11.4(13B) Contract approval or ~~rejection~~ *denial*.

11.4(1) The state public defender *or a person designated by the state public defender* may confer with judges, attorneys and others with knowledge of a potential contracting attorney's competence, effectiveness, trustworthiness, and ability to provide services to eligible individuals, *and may conduct such additional investigation as deemed warranted in the sole discretion of the state public defender.* The information received may be taken into consideration in determining whether *it would be in the best interests of the state* to enter into ~~a~~ *an initial or renewal* contract with the potential contracting attorney.

11.4(2) The state public defender *or a person designated by the state public defender* may hold discussions with, or otherwise obtain information from, a potential contracting attorney to determine the attorney's qualifications and ability to perform the conditions of ~~the~~ *an initial or renewal* contract.

11.4(3) The state public defender *or a person designated by the state public defender* may hold discussions with, or otherwise obtain information from, a potential contracting attorney to establish *under an initial or renewal contract* the types of cases the contracting attorney will handle and the geographic area in which the cases will be handled.

11.4(4) The state public defender may decline to award ~~a~~ *an initial or renewal* contract to a proposed contracting attorney if the state public defender ~~receives information from credible sources that the attorney is not competent, effective, or trustworthy, or is not appropriate to provide the services for some other pertinent reason~~ *determines that the contract would not be in the best interests of the state, as described in rule 11.8(13B). The state public defender may limit the contract to specific types of cases, a specified geographic area, or both.* The state public defender shall give written notice of this action to the attorney. The attorney may seek reconsideration of this decision in the manner prescribed in rule ~~11.7(13B)~~ *11.9(13B)*.

11.4(5) Nothing contained in this rule shall obligate the state public defender to enter into ~~any~~ *an initial or renewal* contract if the state public defender determines that it is not in the best interests of the state to enter into such contract.

ITEM 3. Amend rule 493—11.5(13B) by adding the following **new** subrule:

11.5(8) No guarantee of appointments. An attorney under contract with the state public defender is not guaranteed any minimum number of court appointments. The process by which attorneys under contract with the state public defender are appointed to specific cases is governed by Iowa Code chapters 814 and 815. In making appointment decisions, the court may take into consideration any factor it deems appropriate including, but not limited to, the experience of the attorney and the difficulty of the case pursuant to Iowa Code section 815.10(4). The state public defender shall retain sole authority to determine the length of each contract or contract renewal.

ITEM 4. Amend rule 493—11.6(13B) as follows:

493—11.6(13B) Contract renewal. Prior to renewal of any contract, the state public defender may contact judges, attorneys, court personnel, and others to determine if any existing contract is being properly fulfilled *and may conduct such additional investigation as is described in rule 11.4(13B)*. If the state public defender has determined that a contract renewal is in the best interests of the state, the state public defender may offer a new contract to the contracting attorney. The contracting attorney may accept the new contract by signing the contract and returning it to the state public defender within 30 days of the date on which the contract is submitted to the contracting attorney. If a contracting attorney is

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not offered a contract renewal, the state public defender shall give the contracting attorney written notice of this action. The attorney may seek reconsideration of this decision in the manner prescribed in rule ~~11.7(13B)~~ *11.9(13B)*.

ITEM 5. Rescind rule 493—11.7(13B) and adopt the following **new** rules:

493—11.7(13B) Termination.

11.7(1) Termination at will. Either the state public defender or the contracting attorney may terminate a contract upon 30 days' advance written notice to the other party for any reason or no reason. Such termination may affect the entire contract, or may relate solely to a particular county or geographical area, or particular type of case.

11.7(2) Termination for cause.

a. A contract for indigent defense shall automatically terminate without notice upon the suspension or revocation of the attorney's license to practice law in the state of Iowa.

b. The state public defender may issue a notice of default based on any of the grounds described in rule 11.8(13B). A notice of default shall state the grounds of default and, if feasible, request that the contracting attorney remedy the default within 10 days of the date of the notice. If the events triggering the notice of default continue to be evidenced more than 10 days beyond the date of written notice, the state public defender may immediately terminate the contract without further notice by issuing a notice of termination. An attorney may seek reconsideration of the state public defender's decision to terminate a contract based on the attorney's default in the manner described in rule 11.9(13B).

493—11.8(13B) Grounds to deny or terminate a contract. In determining whether the award, renewal, or termination of a contract is in the best interests of the state, the state public defender may take into consideration factors such as, but not limited to, the following:

1. The attorney's compliance with the terms of an existing or prior contract to represent indigent persons;
2. Any form of dishonesty or deception directed to judicial officials, the state public defender, indigent persons, other clients, or any other person in the practice of law;
3. Unprofessional or unethical conduct, or other act or omission that is or may be detrimental or harmful to indigent representation;
4. An attorney's failure to attend, or untimely attendance at, hearings, depositions, or other case-related proceedings;
5. An attorney's failure to abide by a court order, applicable statutes or administrative rules governing indigent representation, or local or state rules of procedure applicable to the cases in which the attorney has been appointed;
6. Repetitive, willful, deceptive, unexplained or uncorrected errors in claims for fees;
7. Disciplinary action against a legal or other professional license or conviction of a crime in any jurisdiction when the disciplinary action or conviction implicates an attorney's honesty, trustworthiness, or competence to practice law, or is otherwise related to the practice of indigent defense;
8. Use of alcohol or controlled substances during court proceedings or in a manner impairing competent performance;
9. Judicial orders or rulings finding that an attorney engaged in untruthful, incompetent, unprofessional, or unethical behavior in the practice of indigent defense, submission of fee claims, or otherwise in the practice of law; or
10. Any other behavior implicating an attorney's competence, effectiveness, or trustworthiness in the practice of indigent defense.

493—11.9(13B,17A) Reconsideration.

11.9(1) Written notice. A request for reconsideration is perfected by giving written notice of the request for reconsideration to the state public defender within ten business days of the date of mailing of the notice of denial of an initial or renewal contract, or notice of termination following issuance of a notice of default. A request for reconsideration must be in writing and must specify the factual or legal errors the attorney contends were made by the state public defender. The attorney may provide such additional information, explanation or documentation as the attorney believes would be relevant to the reconsideration decision. The request for reconsideration is deemed made on the date of the United States Postal Service nonmetered postmark or the date of personal service on the state public defender.

11.9(2) Exhaustion of administrative remedies. A request for reconsideration of the state public defender's decision to deny or terminate a contract for cause is an administrative prerequisite to seeking any form of judicial review pursuant to Iowa Code chapter 17A.

11.9(3) Informal conference. Upon receipt of a request for reconsideration, the state public defender or a person designated by the state public defender may schedule an informal conference with the attorney if in the state public defender's judgment such a conference may foster resolution of the dispute. To the extent that the participation of the state public defender or a person designated by the state public defender in an informal conference could be considered personal investigation as that term is used in Iowa Code section 17A.17, an attorney agreeing to participate in an informal conference waives the right to seek to disqualify the state public defender or a person designated by the state public defender from acting as presiding officer or advising the presiding officer in a subsequent contested case proceeding based solely on the ground of personal investigation during an informal conference. The attorney does not waive the right to raise any other type of disqualification.

11.9(4) Reconsideration decision. The state public defender shall issue a written reconsideration decision which may uphold, reverse, or modify the initial decision to deny or terminate a contract. The reconsideration decision is final agency action, unless an attorney timely requests a contested case hearing pursuant to rule 11.10(13B,17A).

493—11.10(13B,17A) Contested case hearing.

11.10(1) Written request for contested case hearing. An attorney who is aggrieved by a reconsideration decision and who desires to contest the factual basis for the reconsideration decision, shall request a contested case hearing within 10 days of the date the reconsideration decision is mailed. The request for contested case hearing shall identify the fact issues in dispute and any other claimed error, and shall state the manner in which the state public defender is alleged to have relied upon erroneous facts.

11.10(2) Procedures. The request for contested case hearing is deemed made on the date of the United States Postal Service nonmetered postmark or the date of personal service on the state public defender. A contested case hearing shall be conducted pursuant to the procedures set forth in 481 IAC Chapter 10.

STATE PUBLIC DEFENDER[493](cont'd)

11.10(3) A timely request for contested case hearing is an administrative prerequisite to seeking any form of judicial review pursuant to Iowa Code chapter 17A.

11.10(4) Presiding officer. The state public defender or a person designated by the state public defender may preside over the contested case hearing and issue a final decision, or the state public defender may request that the hearing be conducted by an administration law judge from the department of inspections and appeals who shall issue a proposed decision subject to review by or appeal to the state public defender. If the notice of hearing does not identify an administrative law judge as the presiding officer, an attorney may file a written request that an administrative law judge serve as the presiding officer at hearing. Such request must be filed within 20 days after service of the notice of hearing by certified mail, return receipt requested, to the attorney's last-known address. The state public defender may deny the request only upon a finding that one or more of the following apply:

a. There is a compelling need to expedite issuance of a final decision.

b. The case involves significant policy issues of first impression that are inextricably intertwined with the factual issues presented.

c. Funds are unavailable to pay the costs of an administrative law judge and possible resulting interagency appeal.

d. The request was not timely made.

e. The demeanor of the witnesses is likely to be dispositive in resolving the disputed factual issues.

493—11.11(13B,17A) Judicial review.

11.11(1) The final decision by the state public defender to deny an attorney's request to enter into an initial or renewal contract for indigent representation or to terminate such a contract for cause following issuance of a notice of default is reviewable pursuant to Iowa Code chapter 17A.

11.11(2) Nothing in this rule shall prevent the informal resolution of a decision to deny or terminate an initial or renewal contract through mutually agreeable settlement at any stage of the proceeding.

ARC 6317B

UTILITIES DIVISION[199]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)*"b."*

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to Iowa Code sections 17A.4, 476.2, 476.1A, and 476.1B, the Utilities Board (Board) gives notice that on September 20, 2007, the Board issued an order in Docket No. RMU-07-7, In re: Rescission of 199 IAC chapter 28, Iowa Supplemental Energy Conservation Plan, "Order Commencing Rule Making." The Board is proposing to rescind Chapter 28 since it is no longer necessary to establish voluntary requirements for municipal utilities and electric cooperatives to provide energy efficiency plans. The order containing the background and support for this rule making can be found on the Board's Web site, www.state.ia.us/iub.

Pursuant to Iowa Code section 17A.4(1)"a" and "b," any interested person may file a written statement of position pertaining to the proposed amendment. The statement must be filed on or before October 30, 2007, by filing an original and ten copies in a form substantially complying with 199 IAC 2.2(2). All written statements should clearly state the author's name and address and should make specific reference to this docket. All communications should be directed to the Executive Secretary, Iowa Utilities Board, 350 Maple Street, Des Moines, Iowa 50319-0069.

No oral presentation is scheduled at this time. Pursuant to Iowa Code section 17A.4(1)"b," an oral presentation may be requested or the Board on its own motion after reviewing the statements may determine that an oral presentation should be scheduled.

This amendment is intended to implement Iowa Code sections 17A.4, 476.2, 476.1A, and 476.1B.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at http://www.legis.state.ia.us/IAC.html or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendment is proposed.

Rescind **199—Chapter 28**.

ARC 6302B

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]

Adopted and Filed Emergency After Notice

Pursuant to the authority of 2007 Iowa Acts, Senate File 564, section 2, the Iowa Department of Agriculture and Land Stewardship adopts new Chapter 77, "Dangerous Wild Animals," Iowa Administrative Code.

The purpose of these rules is to implement the provisions enacted by 2007 Iowa Acts, Senate Files 564 and 601, regarding dangerous wild animals. These rules do not provide for waivers.

Notice of Intended Action was published in the Iowa Administrative Bulletin on August 15, 2007, as **ARC 6158B**. A public hearing was held on September 5, 2007. Comments received included the request that a definition of "agricultural animal" be added. The addition of that definition is the only change made in the previously published rules.

The Department finds, pursuant to Iowa Code section 17A.5(2)"b"(2), that the normal effective date of these rules shall be waived and these rules shall be made effective upon filing, as they confer a benefit to the public by establishing the requirements and procedure for continued ownership of wild animals and by giving members of the public time to meet those requirements.

These rules are intended to implement 2007 Iowa Acts, Senate Files 564 and 601.

These rules became effective September 19, 2007.

The following **new** chapter is adopted.

CHAPTER 77
DANGEROUS WILD ANIMALS

21—77.1(82GA,SF564,SF601) Definitions.

"Agricultural animal" means any of the following:

1. An animal that is maintained for its parts or products having commercial value, including but not limited to its muscle tissue, organs, fat, blood, manure, bones, milk, wool, hide, pelt, feathers, eggs, semen, embryos, or honey.

2. An animal belonging to the equine species, including horse, pony, mule, jenny, donkey, or hinny.

"Agricultural animal" does not mean a swine which is a member of the species sus scrofa Linnaeus, including but not limited to swine commonly known as Russian boar or European boar of either sex.

"Dangerous wild animal" means any of the following:

1. A member of the family canidae of the order carnivora, including but not limited to wolves, coyotes, and jackals. However, a dangerous wild animal does not include a domestic dog.

2. A member of the family hyaenidae of the order of carnivora, including but not limited to hyenas.

3. A member of the family felidae of the order carnivora, including but not limited to lions, tigers, cougars, leopards, cheetahs, ocelots, and servals. However, a dangerous wild animal does not include a domestic cat.

4. A member of the family ursidae of the order carnivora, including bears and pandas.

5. A member of the family rhinocero tidae of the order perissodactyla, which is a rhinoceros.

6. A member of the order proboscidea, which are any species of elephant.

7. A member of the order of primates other than humans, and including the following families: callitrichiadae, cebidae, cercopithecidae, cheirogaleidae, daubentoniidae, galagonidae, hominidae, hylobatidae, indridae, lemuridae, loridae, megaladapidae, or tarsiidae. A member includes but is not limited to marmosets, tamarins, monkeys, lemurs, galagos, bush babies, great apes, gibbons, lesser apes, indris, sifakas, and tarsiers.

8. A member of the order crocodilia, including but not limited to alligators, caimans, crocodiles, and gharials.

9. A member of the family varanidae of the order squamata, which are limited to water monitors and crocodile monitors.

10. A member of the order squamata which is any of the following:

- A member of the family varanidae, which are limited to water monitors and crocodile monitors.
- A member of the family atractaspidae, including but not limited to mole vipers and burrowing asps.
- A member of the family helodermatidae, including but not limited to beaded lizards and gila monsters.
- A member of the family elapidae, voperidae, crotalidae, atractaspidae, or hydrophidae which are venomous, including but not limited to cobras, mambas, coral snakes, kraits, adders, vipers, rattlesnakes, copperheads, pit vipers, keelbacks, cottonmouths, and sea snakes.
- A member of the superfamily henophidia, which are limited to reticulated pythons, anacondas, and African rock pythons.

11. Swine which is a member of the species sus scrofa Linnaeus, including but not limited to swine commonly known as Russian boar or European boar of either sex.

"Dangerous wild animal" includes an animal which is the offspring of an animal listed in paragraphs "1" to "11" and another animal listed in those paragraphs or any other animal. It also includes animals which are the offspring of each subsequent generation. However, a dangerous wild animal does not include the offspring of a domestic dog and a wolf, or the offspring from each subsequent generation in which at least one parent is a domestic dog.

"Department" means the Iowa department of agriculture and land stewardship.

"Possess" means to own, keep, or control a dangerous wild animal, or supervise or provide for the care and feeding of a dangerous wild animal, including any activity relating to confining, handling, breeding, transporting, or exhibiting the dangerous wild animal.

21—77.2(82GA,SF564,SF601) Prohibitions. Except as otherwise provided in this chapter, a person shall not own or possess a dangerous wild animal, cause or allow a dangerous wild animal owned by a person or in the person's possession to breed, or transport a dangerous wild animal into this state.

21—77.3(82GA,SF564,SF601) Continued ownership—requirements of the individual. A person who owns or possesses a dangerous wild animal on July 1, 2007, may continue to own or possess the dangerous wild animal if the person is 18 years old or older and meets all of the following:

77.3(1) The person must not have been convicted of an offense involving the abuse or neglect of an animal pursuant to a law of this state or another state, including but not limited to the provisions of Iowa Code chapter 717, 717B, 717C, or 717D or an ordinance adopted by a city or county.

77.3(2) The department, another state, or the federal government must not have suspended an application for a permit or license or revoked a permit or license required to operate a

commercial establishment for the care, breeding, or sale of animals, including as provided in Iowa Code chapter 162.

77.3(3) The person must not have been convicted of a felony for an offense committed within the last ten years, as provided by the Code of Iowa, under the laws of another state, or under federal law.

77.3(4) The person must not have been convicted of a misdemeanor or felony for an offense committed within the last ten years involving a controlled substance, as defined in Iowa Code section 124.101, in this state, under the laws of another state, or under federal law.

21—77.4(82GA,SF564,SF601) Continued ownership—insurance required. The person who continues to own or possess a dangerous wild animal must maintain liability insurance coverage in an amount of not less than $100,000, with a deductible of not more than $250, for each occurrence of property damage, bodily injury, or death caused by each dangerous wild animal kept by the person. The contents of the insurance policy must provide for notification to the department if the policy is canceled or reduced.

21—77.5(82GA,SF564,SF601) Continued ownership—electronic identification device. The person who continues to own or possess a dangerous wild animal must have an electronic identification device implanted beneath the skin or hide of the dangerous wild animal, unless a licensed veterinarian states in writing that the implantation would endanger the comfort or health of the animal. In such case, an electronic identification device may be otherwise attached to the dangerous wild animal as required by the department. An electronic identification device means a device which when installed is designed to store information regarding an animal or the animal's owner in a digital format which may be accessed by a computer for purposes of reading or manipulating the information.

21—77.6(82GA,SF564,SF601) Continued ownership—registration form.

77.6(1) The person who continues to own or possess a dangerous wild animal must notify the department using a registration form prepared by the department not later than December 31, 2007.

77.6(2) The registration form shall include all of the following information:

a. The person's name, address, and telephone number.

b. A sworn affidavit that the person meets the requirements necessary to own or possess a dangerous wild animal as provided in this chapter.

c. A complete inventory of each dangerous wild animal which the person owns or possesses. The inventory shall include all of the following information:

(1) The number of dangerous wild animals according to species.

(2) The name of the manufacturer and number of the manufacturer's electronic device implanted in or attached to each dangerous wild animal.

(3) The location where each dangerous wild animal is kept. The person must notify the department in writing within ten days of a change of address or of the location where the dangerous wild animal is kept.

(4) The approximate age, sex, color, weight, scars, and any distinguishing marks of each dangerous wild animal.

(5) The name, business mailing address, and business telephone number of the licensed veterinarian who is responsible for providing care to the dangerous wild animal. The information shall include a statement signed by the licensed veterinarian certifying that the dangerous wild animal is in good health.

(6) A color photograph of the dangerous wild animal.

(7) A copy of a current liability insurance policy as required in rule 77.4(82GA,SF564,SF601). The person shall submit a copy of the current liability policy to the department each year.

21—77.7(82GA,SF564,SF601) Continued ownership—registration fee.

77.7(1) The person who continues to own or possess a dangerous wild animal must pay the department an annual registration fee as follows:

a. $500 for a member of the order proboscidea, which are any species of elephant.

b. $500 for a member of the family rhinocero tidae of the order perissodactyla, which is a rhinoceros.

c. $300 for a member of the family ursidae of the order carnivora, which is limited to bears.

d. For a member of the family felidae of the order carnivora, all of the following:

(1) $300 for a member of the subfamily pantherinae, limited to leopards other than snow leopards, lions, and tigers; and for a member of the subfamily felinae limited to pumas, jaguars, and cougars.

(2) $200 for a member of the subfamily felinae limited to bobcats, clouded leopards, cheetahs, and lynx.

(3) $100 for a member of the subfamily felinae limited to caracals, desert cats, Geoffroy's cats, jungle cats, margays, ocelots, servals, and wild cats.

e. For a member of the order of primates other than humans, all of the following:

(1) $300 for a member commonly referred to as an ape, belonging to the hylobatidae family such as gibbons and siamangs, or to the pongidae family including gorillas, orangutans, or chimpanzees.

(2) $150 for a member commonly referred to as an old world monkey, belonging to the family cercopithecidae, including but not limited to macaques, rhesus, mangabeys, mandrills, guenons, patas monkeys, langurs, and proboscis monkeys.

(3) $50 for a member commonly referred to as a new world monkey belonging to the family cebidae, including but not limited to cebids, including capuchin monkeys, howlers, woolly monkeys, squirrel monkeys, night monkeys, titis, uakaris, or to the family callitrichidae, including but not limited to marmosets and tamarins.

f. $100 for a member of the order crocodilia, including but not limited to alligators, caimans, crocodiles, and gharials.

g. $50 for a member of the family varanidae of the order squamata, which are limited to water monitors and crocodile monitors.

h. $50 for a member of the family atractaspidae, including but not limited to mole vipers and burrowing asps.

i. $50 for a member of the family helodermatidae, including but not limited to beaded lizards and gila monsters.

j. $50 for a member of the family elapidae, voperidae, crotalidae, atractaspidae, or hydrophidae which are venomous, including but not limited to cobras, mambas, coral snakes, kraits, adders, vipers, rattlesnakes, copperheads, pit vipers, keelbacks, cottonmouths, and sea snakes.

k. $100 for a member of the superfamily henophidia, which is limited to reticulated pythons and anacondas.

l. $10 for swine which is a member of the species sus scrofa Linnaeus, including but not limited to swine commonly known as Russian boar or European boar of either sex.

77.7(2) The department shall collect either an original registration fee or a renewal registration fee. The renewal fee is one-half the amount of the original fee.

21—77.8(82GA,SF564,SF601) Continued ownership—records required. The person who continues to own or possess a dangerous wild animal must maintain health and ownership records for the dangerous wild animal for the life of the animal, including: deaths and cause of each death; the complete name, address and telephone number of the person to whom an animal was transferred or sold; the date the animal was transferred or sold; and the current location of each animal's records.

21—77.9(82GA,SF564,SF601) Continued ownership—enclosure required.

77.9(1) The person who continues to own or possess a dangerous wild animal must confine the dangerous wild animal in a primary enclosure on the person's premises. The primary enclosure should be of sound construction and maintained in good repair to protect the animal from injury. Construction materials and maintenance shall allow the animal to be kept clean. The animal should be housed or caged in a manner that allows the animal to perform the normal behavior patterns of its species and prevents disease, liberation, or accidental injury to the animal and the public. The animal should have adequate food, shelter, ventilation, and lighting for its species. Appropriate sanitation measures must be taken. Food supplies and bedding materials must be adequate, appropriate, and sanitary. Equipment must be available for the removal and disposal of waste materials to minimize vermin infestation, odors, and disease hazards.

77.9(2) The person must not allow the dangerous wild animal outside of the primary enclosure unless the dangerous wild animal is moved pursuant to any of the following:

a. To receive veterinary care from a licensed veterinarian.

b. To comply with the directions of the department or an animal warden.

c. To transfer ownership and possession of the dangerous wild animal to a wildlife sanctuary or provide for its destruction by euthanasia according to the American Veterinary Medical Association Panel on Euthanasia Guidelines.

21—77.10(82GA,SF564,SF601) Continued ownership—signs required. The person who continues to own or possess a dangerous wild animal must display at least one visible, readable sign with suitable wording on the person's premises where the dangerous wild animal is kept warning the public that the dangerous wild animal is confined there.

21—77.11(82GA,SF564,SF601) Escape notification required. The person who continues to own or possess a dangerous wild animal must immediately notify an animal warden or other local law enforcement official of any escape of a dangerous wild animal.

21—77.12(82GA,SF564,SF601) Relinquishment. If the person who continues to own or possess a dangerous wild animal is no longer able to care for the animal, both of the following shall apply:

1. The person must so notify the department, stating the planned disposition of the dangerous wild animal.

2. The person must dispose of the dangerous wild animal by transferring ownership and possession to a wildlife sanctuary or providing for its destruction by euthanasia according to the American Veterinary Medical Association Panel on Euthanasia Guidelines.

21—77.13(82GA,SF564,SF601) Seizure, custody and disposal.

77.13(1) Except as provided in subrule 77.13(2), the department shall seize a dangerous wild animal which is in the possession of a person if the person is not in compliance with the requirements of this chapter. An animal warden as defined in Iowa Code section 162.2, or an animal care provider or law enforcement officer as defined in Iowa Code section 717B.1, shall enforce this chapter as directed by the department.

77.13(2) Upon request, the department may provide that the person retain possession of the dangerous wild animal for not more than 14 days, upon conditions required by the department. During that period, the person shall take all necessary actions to comply with this chapter. The premises, housing facilities and records required by 2007 Iowa Acts, Senate Files 564 and 601, shall be open for inspection by authorized personnel of the department during normal business hours.

77.13(3) If the person fails to comply with the conditions of the department at any time or is not in compliance with this chapter following the 14-day period, the department shall seize the dangerous wild animal.

21—77.14(82GA,SF564,SF601) Exemptions. This chapter does not apply to any of the following:

1. An institution accredited or certified by the American Zoo and Aquarium Association.

2. A wildlife sanctuary.

3. A person who keeps falcons, if the person has been issued a falconry license by the department of natural resources pursuant to Iowa Code section 483A.1.

4. A person who owns or possesses a dangerous wild animal as an agricultural animal. The person shall not transfer the dangerous wild animal to another person, unless the person to whom the dangerous wild animal is transferred will own or possess it as an agricultural animal or the person is a wildlife sanctuary.

5. A person who owns or possesses a dangerous wild animal as an assistive animal. The person shall not transfer the dangerous wild animal to another person, unless the person to whom the dangerous wild animal is transferred will own or possess it as an assistive animal or the person is a wildlife sanctuary.

6. A person who harvests the dangerous wild animal as a hunter or trapper pursuant to state law and as regulated by the department of natural resources.

7. A person who has been issued a wildlife rehabilitation permit by the department of natural resources pursuant to Iowa Code section 481A.65.

8. A circus that obtains a permit from a city in which it will be temporarily operating, if the city issues permits.

9. A city.

10. A nonprofit corporation governed under Iowa Code chapter 504 that is an organization described in Section 501(c)(3) of the Internal Revenue Code and that is exempt from taxation under Section 501(a) of the Internal Revenue Code if the nonprofit corporation was a party to a contract executed with a city prior to July 1, 2007, the effective date of 2007 Iowa Acts, Senate Files 564 and 601, to provide for the exhibition of dangerous wild animals at a municipal zoo. The nonprofit corporation shall not transfer the dangerous wild animal to another person, unless the person to whom the dangerous wild animal is transferred is a wildlife sanctuary.

11. The state fair as provided in Iowa Code chapter 173 or any fair as provided in Iowa Code chapter 174.

12. A research facility.

13. A location operated by a person licensed to practice veterinary medicine pursuant to Iowa Code chapter 169. However, this paragraph shall not apply to a swine which is a member of the species sus scrofa Linnaeus, including but not limited to swine commonly known as Russian boar or European boar of either sex.

14. A pound as defined in Iowa Code section 162.2.

15. An animal shelter as defined in Iowa Code section 162.2.

16. A county conservation board as provided in Iowa Code chapter 350.

17. An employee of the department responsible for the administration of this chapter, an animal warden as defined in Iowa Code section 162.2, or an animal care provider or law enforcement officer as defined in Iowa Code section 717B.1.

18. A person temporarily transporting a dangerous wild animal through this state if the transit time is not more than 96 hours and the dangerous wild animal is maintained within a confined area sufficient to prevent its escape or injuring members of the traveling public.

19. A public agency which maintains permanent custody of a dangerous wild animal, if the person to whom the public agency assigns the duty to manage the custody of the dangerous wild animal complies with the provisions of 2007 Iowa Acts, Senate File 564, section 4.

20. A person who keeps a dangerous wild animal pursuant to both of the following conditions:

- The person is licensed by the United States Department of Agriculture as provided in 9 CFR Chapter 1.
- The person is registered by the department of agriculture and land stewardship. Upon a complaint filed with the department of agriculture and land stewardship, the department may inspect the premises or investigate the practices of the registered person and suspend or revoke the registration for the same causes and in the same manner as provided in Iowa Code section 162.12.

These rules are intended to implement 2007 Iowa Acts, Senate Files 564 and 601.

[Filed Emergency After Notice 9/19/07, effective 9/19/07]
[Published 10/10/07]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/10/07.

ARC 6309B

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code sections 15.104 and 15.106, the Iowa Department of Economic Development hereby adopts Chapter 106, "Community College Equipment and Training Fund," Chapter 107, "Targeted Industries Networking Fund," Chapter 108, "Targeted Industries Student Competition Fund," and Chapter 109, "Targeted Industries Career Awareness Fund," Iowa Administrative Code.

The rules implement new programs authorized by 2007 Iowa Acts, House File 829. The rules describe the purpose of the programs; the application submission, review and approval procedures; and the contract administration provisions.

In compliance with Iowa Code section 17A.4(2), the Department finds that notice and public participation are impracticable and contrary to the public interest, because there are a number of applicants with pending projects that want to get started as soon as possible. In addition, the Department is required to provide a report by January 15, 2008, about program activity; and this immediate implementation would allow time to collect more information.

The Department also finds, pursuant to Iowa Code section 17A.5(2)"b"(2), that the normal effective date of the rules should be waived and these rules should be made effective upon filing with the Administrative Rules Coordinator on September 20, 2007. Having administrative rules in effect on this date will allow an application and review process to be in place for pending projects.

These rules are also published herein under Notice of Intended Action as **ARC 6310B** to allow for public comment.

The Iowa Economic Development Board adopted these rules on September 20, 2007.

These rules became effective on September 20, 2007.

These rules are intended to implement 2007 Iowa Acts, House File 829.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at http://www.legis.state.ia.us/IAC.html or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

Adopt the following **new** chapters:

CHAPTER 106
COMMUNITY COLLEGE
EQUIPMENT AND TRAINING FUND

261—106.1(82GA,HF829) Authority. The authority for establishing rules governing the community college equipment and training fund under this chapter is provided in 2007 Iowa Acts, House File 829, section 7(10).

261—106.2(82GA,HF829) Purpose. The purpose of the community college equipment and training fund is to provide financial assistance to support the purchase and licensing of equipment and software that are current and competitive for use in training programs and courses related to the targeted industries.

261—106.3(82GA,HF829) Definitions.

"Board" means the Iowa economic development board established in Iowa Code section 15.103.

"Committee" means the technology commercialization committee created by the board pursuant to Iowa Code section 15.116.

"Community college" means a community college established under Iowa Code chapter 260C.

"Department" means the Iowa department of economic development.

"Equipment" means hard assets that are current and competitive for use in training programs and courses related to the targeted industries.

"Fund" means the community college equipment and training fund.

"Targeted industry" means the industries of advanced manufacturing, biosciences, and information technology.

"Training software" means software for training that is current and competitive for use in training programs and courses related to the targeted industries.

261—106.4(82GA,HF829) Program funding.

106.4(1) The maximum award shall not exceed $1 million for a single project.

106.4(2) Funds may be used for equipment and software for training or for other project expenses deemed reasonable and appropriate by the department.

106.4(3) The forms of financial assistance may consist of, but are not limited to, loans, forgivable loans, grants and such other forms of assistance the board deems appropriate and consistent with the needs of a given project.

261—106.5(82GA,HF829) Eligible applicants.

106.5(1) Eligible applicants must be one or more of the 15 community colleges established under Iowa Code chapter 260C.

106.5(2) Eligible applicants shall include one of the following:

a. Statewide collaboration among all 15 community colleges;

b. Two or more community colleges; or

c. One community college.

261—106.6(82GA,HF829) Application and review process.

106.6(1) A community college or a community college on behalf of a consortium of community colleges must submit an application for financial assistance, in the form specified by the department, to the Iowa Department of Economic Development, Targeted Industries Division, 200 East Grand Avenue, Des Moines, Iowa 50309. Required forms and instructions are available at this address or at the department's Web site at www.iowalifechanging.com.

106.6(2) To apply for financial assistance from the fund, a community college shall submit an application to the department, in the form specified by the department. The application will be reviewed by department staff, the committee and the board. The committee will make a recommendation to the board regarding an application. The board has final decision-making authority on requests for financial assistance from the fund. The board may approve, defer or deny an application.

106.6(3) An application for financial assistance shall include all information required by the department including, but not limited to, the following:

a. Project approach. A description of the project, including how persons from targeted industries and the community college(s) are involved in the project.

b. Work plan. A description of the strategy and key elements to be funded that addresses the goals of the work plan, including project milestones.

c. Resources and budget. A budget that includes a detailed description of the sources and uses of the funds.

d. Project outcomes. A statement of the anticipated project outcomes, including how the new capabilities or new technology will benefit the targeted industries.

261—106.7(82GA,HF829) Application selection criteria. When applications for financial assistance are reviewed, the following criteria will be considered:

106.7(1) Project approach. Whether the proposed approach is beneficial to the targeted industries and builds capacity at the community college.

106.7(2) Innovation. Whether the project improves the use of technology to impact the competitiveness of the targeted industries.

106.7(3) Workforce. Whether the project ensures competitiveness by increasing the skills of youth and adults preparing for employment or currently employed in the targeted industries.

106.7(4) Collaboration. Whether the project demonstrates collaboration among community colleges, business partners, state agencies, and industry associations.

106.7(5) Financial requirement. Whether the funding available is sufficient to complete the project. Criteria for selection of the final award may include the amount of matching funds and in-kind match the proposal brings to the project.

106.7(6) Expected return. Whether the state of Iowa will realize economic benefits as a result of providing assistance for the project.

106.7(7) Estimate for project completion. Whether the required work can be completed in accordance with the time frame for the project.

261—106.8(82GA,HF829) Contract and reporting.

106.8(1) Notice of award. Successful applicants will be notified in writing of an award of financial assistance, including any conditions and terms of the approval.

106.8(2) Contract required. The department shall prepare a contract, which includes, but is not limited to, a description of the project to be completed by the community college(s); conditions for disbursement; required reports; and the repayment requirements imposed in the event the community college(s) does not fulfill its obligations described in the contract and other specific repayment provisions ("clawback" provisions) to be established on a project-by-project basis.

106.8(3) Reporting. An applicant shall submit any information requested by the department in sufficient detail to permit the department to prepare the report required pursuant to 2007 Iowa Acts, House File 829, section 10, and any other reports deemed necessary by the department, the board, the general assembly or the governor's office.

These rules are intended to implement 2007 Iowa Acts, House File 829.

CHAPTER 107
TARGETED INDUSTRIES NETWORKING FUND

261—107.1(82GA,HF829) Authority. The authority for establishing rules governing the targeted industries networking fund under this chapter is provided in 2007 Iowa Acts, House File 829, section 7(7).

261—107.2(82GA,HF829) Purpose. The purpose of the targeted industries networking fund is to provide financial assistance to support sponsorships of networking events for the creation of new deal flow within the targeted industries. Sponsors of networking events will bring together entrepreneurs, start-up businesses, established companies and members of the university research community to discuss new technologies and the innovations which the technologies support.

261—107.3(82GA,HF829) Definitions.

"Board" means the Iowa economic development board established in Iowa Code section 15.103.

"Committee" means the technology commercialization committee created by the board pursuant to Iowa Code section 15.116.

"Deal flow" means the creation and maintenance of a flow of business proposals for evaluation and decisions for financial backing.

"Department" means the Iowa department of economic development.

"Fund" means the targeted industries networking fund.

"Networking event" means a sponsored event that facilitates linkages between businesses and between businesses and university problem solvers to create new deal flow within the targeted industries.

"Targeted industry" means the industries of advanced manufacturing, biosciences, and information technology.

261—107.4(82GA,HF829) Program funding.

107.4(1) The maximum award shall not exceed $3,000 for a single project. However, as deemed appropriate, the committee may review proposals for funding in excess of $3,000 to support the presentation of a nationally recognized speaker in the field of innovation and commercialization.

107.4(2) Funds may be used for speaker fees, event marketing and collateral materials, facility rentals or other project expenses deemed reasonable and appropriate by the department.

107.4(3) The forms of financial assistance may consist of, but are not limited to, loans, forgivable loans, grants and such other forms of assistance the board deems appropriate and consistent with the needs of a given project.

261—107.5(82GA,HF829) Eligible applicants. Eligible applicants must be industry groups, businesses or other sponsors of networking events designed for the creation of new deal flow within the targeted industries.

261—107.6(82GA,HF829) Application and review process.

107.6(1) For events on or after September 1, 2007, an industry group, business or other sponsor of a networking event must submit an application for financial assistance, in the form specified by the department, to the Iowa Department of Economic Development, Targeted Industries Division, 200 East Grand Avenue, Des Moines, Iowa 50309. Required forms and instructions are available at this address or at the department's Web site at www.iowalifechanging.com.

107.6(2) To apply for financial assistance from the fund, an industry group, business or other sponsor of a networking event shall submit an application to the department, in the form specified by the department. The application will be reviewed by department staff, the committee and the board. The committee will make a recommendation to the board regarding an application. The board has final decision-making authority on requests for financial assistance from the fund. The board may approve, defer or deny an application.

107.6(3) An application for financial assistance shall include all information required by the department including, but not limited to, the following:

a. Event plan. A description of the networking event and key strategies to be funded that addresses the goals of the event. Networking events must include a business panel, business executive presentation, intellectual property discussion, critical resources discussion or other format deemed appropriate by the department.

b. Resources and budget. A budget that includes a detailed description of the sources and uses of the funds.

c. Project outcomes. A statement of the anticipated project outcomes including potential industry connections and benefits to the targeted industries.

261—107.7(82GA,HF829) Application selection criteria. When applications for financial assistance are reviewed, the following criteria shall be considered:

107.7(1) Event format. Whether the event follows one of the required formats and is beneficial to the targeted industries.

107.7(2) Event approach. Whether the topic area is innovative and the recommended speakers and attendees are the appropriate targeted industries audience.

107.7(3) Financial requirement. Whether the application includes matching funds and in-kind match and whether the amount available is sufficient to complete the project.

107.7(4) Project outcomes. Whether the project outcomes include potential industry connections and benefits to the targeted industries.

261—107.8(82GA,HF829) Contract and reporting.

107.8(1) Notice of award. Successful applicants will be notified in writing of an award of financial assistance, including any conditions and terms of the approval.

107.8(2) Contract required. The department shall prepare a contract which includes, but is not limited to, a description of the networking event to be completed by the applicant; conditions for disbursement; required reports; and the repayment requirements imposed in the event the applicant does not fulfill its obligations described in the contract and other specific repayment provisions ("clawback" provisions) to be established on a project-by-project basis.

107.8(3) Reporting. An applicant shall submit any information requested by the department in sufficient detail to permit the department to prepare the report required pursuant to 2007 Iowa Acts, House File 829, section 10, and any other reports deemed necessary by the department, the board, the general assembly or the governor's office.

These rules are intended to implement 2007 Iowa Acts, House File 829.

CHAPTER 108
TARGETED INDUSTRIES
STUDENT COMPETITION FUND

261—108.1(82GA,HF829) Authority. The authority for establishing rules governing the targeted industries student competition fund under this chapter is provided in 2007 Iowa Acts, House File 829, section 7(6).

261—108.2(82GA,HF829) Purpose. The purpose of the targeted industries student competition fund is to provide financial assistance to support sponsorships of student competitions in the targeted industries in order to increase the students' knowledge of the targeted industries and job opportunities in the targeted industries and to engage students, educators and parents in exploring careers in those industries. The goals of the sponsorships are to showcase educational and career opportunities in the targeted industries area to students; to increase the number of students enrolled in targeted industries technical programs and majors; and to connect students with business mentors for future career planning, internship and employment opportunities. The long-term goal of the fund is to encourage existing student competitions in the targeted industries to collaborate and implement a single, high-profile statewide student competition that features several student events and that highlights student achievements and career applicability.

261—108.3(82GA,HF829) Definitions.

"Board" means the Iowa economic development board established in Iowa Code section 15.103.

"Committee" means the technology commercialization committee created by the board pursuant to Iowa Code section 15.116.

"Department" means the Iowa department of economic development.

"Fund" means the targeted industries student competition fund.

"Student competition" means a business, industry group or academic institution sponsored event with statewide reach that facilitates linkages between students and career and educational opportunities within the targeted industries through academic competitions or showcase events.

"Targeted industry" means the industries of advanced manufacturing, biosciences, and information technology.

261—108.4(82GA,HF829) Program funding.

108.4(1) Funds may be used for competition marketing and collateral materials, facility rentals or other project expenses deemed reasonable and appropriate by the department, such as technical and logistical support.

108.4(2) The forms of financial assistance may consist of, but are not limited to, loans, forgivable loans, grants and such other forms of assistance the board deems appropriate and consistent with the needs of a given project.

261—108.5(82GA,HF829) Eligible applicants. Eligible applicants must be industry groups, businesses or academic sponsors of a student competition designed for the showcasing of career and educational opportunities to students within the targeted industries.

261—108.6(82GA,HF829) Application and review process.

108.6(1) For student competitions on or after September 1, 2007, an industry group, business or academic sponsor of a student competition must submit an application for financial assistance, in the form specified by the department, to the Iowa Department of Economic Development, Targeted Industries Division, 200 East Grand Avenue, Des Moines, Iowa 50309. Required forms and instructions are available at this address or at the department's Web site at www.iowalifechanging.com.

108.6(2) To apply for financial assistance from the fund, an industry group, business or academic sponsor of a student competition event shall submit an application to the department, in the form specified by the department. The application will be reviewed by department staff, the committee and the board. The committee will make a recommendation to the board regarding an application. The board has final decision-making authority on requests for financial assistance from the fund. The board may approve, defer or deny an application.

108.6(3) An application for financial assistance shall include all information required by the department including, but not limited to, the following:

a. Event plan. A description of the student competition, its statewide reach and key strategies to be funded to address the goals of the event, and plans for sustainability and growth of the event.

b. Resources and budget. A budget that includes a detailed description of the sources and uses of the funds and a projection for future event growth.

c. Project outcomes. A statement of the anticipated project outcomes including statewide reach and potential student-to-career and student-to-industry connections within the targeted industries.

261—108.7(82GA,HF829) Application selection criteria. When applications for financial assistance are reviewed, the following criteria shall be considered:

108.7(1) Event plan. Whether the student competition topic area is hands-on and innovative and showcases career and educational opportunities within the targeted industries.

108.7(2) Event sustainability. Whether the application includes a plan for event sustainability and future growth.

108.7(3) Financial requirement. Whether the application includes matching funds and in-kind match and whether the amount available is sufficient to complete the project.

108.7(4) Collaboration. Whether the student competition demonstrates collaboration among academic institutions, business partners, state agencies and industry groups.

108.7(5) Project outcomes. Whether the student competition outcomes include potential student-to-career and student-to-industry connections within the targeted industries.

261—108.8(82GA,HF829) Contract and reporting.

108.8(1) Notice of award. Successful applicants will be notified in writing of an award of financial assistance, including any conditions and terms of the approval.

108.8(2) Contract required. The department shall prepare a contract, which includes, but is not limited to, a description of the networking event to be completed by the applicant; conditions for disbursement; required reports; and the repayment requirements imposed in the event the applicant does not fulfill its obligations described in the contract and other specific repayment provisions ("clawback" provisions) to be established on a project-by-project basis.

108.8(3) Reporting. An applicant shall submit any information requested by the department in sufficient detail to permit the department to prepare the report required pursuant to 2007 Iowa Acts, House File 829, section 10, and any other reports deemed necessary by the department, the board, the general assembly or the governor's office.

These rules are intended to implement 2007 Iowa Acts, House File 829.

CHAPTER 109
TARGETED INDUSTRIES
CAREER AWARENESS FUND

261—109.1(82GA,HF829) Authority. The authority for establishing rules governing the targeted industries career awareness fund under this chapter is provided in 2007 Iowa Acts, House File 829, section 7(9).

261—109.2(82GA,HF829) Purpose. The purpose of the targeted industries career awareness fund is to provide financial assistance to support a statewide public awareness campaign to educate students, parents and educators about career opportunities within the targeted industries. The goal of the fund is to showcase educational and career opportunities within the targeted industries and to assist students, teachers and parents in the development of educational plans and curriculum to take advantage of these opportunities.

261—109.3(82GA,HF829) Definitions.

"Board" means the Iowa economic development board established in Iowa Code section 15.103.

"Career awareness campaign" means a statewide educational and public awareness campaign to inform students, parents and educators about career opportunities within the targeted industries.

"Committee" means the technology commercialization committee created by the board pursuant to Iowa Code section 15.116.

"Department" means the Iowa department of economic development.

"Fund" means the targeted industries career awareness fund.

"Targeted industry" means the industries of advanced manufacturing, biosciences, and information technology.

261—109.4(82GA,HF829) Program funding.

109.4(1) Funds may be used for marketing and collateral materials, Web site development or other project expenses deemed reasonable and appropriate by the department, such as technical and logistical support.

109.4(2) The forms of financial assistance may consist of, but are not limited to, loans, forgivable loans, grants and such other forms of assistance the board deems appropriate and consistent with the needs of a given project.

261—109.5(82GA,HF829) Matching funds requirement. An eligible applicant shall provide matching funds of at least one dollar of nonstate moneys for every two dollars received from the department.

261—109.6(82GA,HF829) Eligible applicants. Eligible applicants must be industry association groups in the targeted industries with efforts or initiatives for a statewide educational and public awareness campaign to inform students, parents and educators about career opportunities within the targeted industries.

261—109.7(82GA,HF829) Application and review process.

109.7(1) For career awareness campaigns beginning on or after September 1, 2007, an industry association group must submit an application for financial assistance, in the form specified by the department, to the Iowa Department of Economic Development, Targeted Industries Division, 200 East Grand Avenue, Des Moines, Iowa 50309. Required forms and instructions are available at this address or at the department's Web site at www.iowalifechanging.com.

109.7(2) To apply for financial assistance from the fund, an industry association group shall submit an application to the department, in the form specified by the department. The application will be reviewed by department staff, the committee and the board. The committee will make a recommendation to the board regarding an application. The board has final decision-making authority on requests for financial assistance from the fund. The board may approve, defer or deny an application.

109.7(3) An application for financial assistance shall include all information required by the department including, but not limited to, the following:

a. Project scope. A description clearly defining the issue(s) to be addressed through the career awareness campaign.

b. Target audience. A description of distinct groups or segments of the population the campaign will reach.

c. Campaign development. A description of campaign strategies and goals to effectively communicate with the target audience.

d. Campaign management. A description of campaign execution and time frame for meeting project goals and milestones, including any collaborative partnerships for campaign success.

e. Campaign budget. A description of the campaign budget that includes a detailed explanation of the sources and uses of the funds and a description of future campaign sustainability.

f. Campaign measurement. A statement of anticipated campaign outcomes including industry connections and benefits to the targeted industries.

261—109.8(82GA,HF829) Application selection criteria. When applications for financial assistance are reviewed, the following criteria shall be considered:

109.8(1) Project approach. Whether the proposed approach is reaching its intended targeted audience and bringing awareness to the targeted industries.

109.8(2) Campaign development. Whether campaign strategies and goals will be effectively communicated to the target audience and increase awareness of careers within the targeted industries.

109.8(3) Collaboration. Whether the project demonstrates collaboration among business partners, academic institutions, and state agencies.

109.8(4) Campaign sustainability. Whether the application includes a plan for campaign sustainability and future growth.

109.8(5) Financial requirement. Whether the required matching funds have been secured and the total budget is sufficient to complete the campaign.

109.8(6) Estimate for project completion. Whether the required work can be completed in accordance with the time frame for the project.

109.8(7) Project outcomes. Whether the project outcomes include direct industry connections and increased awareness of careers within the targeted industries.

261—109.9(82GA,HF829) Contract and reporting.

109.9(1) Notice of award. Successful applicants will be notified in writing of an award of financial assistance, including any conditions and terms of the approval.

109.9(2) Contract required. The department shall prepare a contract, which includes, but is not limited to, a description of the activities to be completed by the applicant; conditions for disbursement; required reports; and the repayment requirements imposed in the event the applicant does not fulfill its obligations described in the contract and other specific repayment provisions ("clawback" provisions) to be established on a project-by-project basis.

109.9(3) Reporting. An applicant shall submit any information requested by the department in sufficient detail to permit the department to prepare the report required pursuant to 2007 Iowa Acts, House File 829, section 10, and any other reports deemed necessary by the department, the board, the general assembly or the governor's office.

These rules are intended to implement 2007 Iowa Acts, House File 829.

[Filed Emergency 9/20/07, effective 9/20/07]
[Published 10/10/07]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/10/07.

ARC 6295B

HOMELAND SECURITY AND EMERGENCY MANAGEMENT DIVISION[605]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code sections 17A.3 and 29C.8, the Homeland Security and Emergency Management Division hereby amends Chapter 9, "Iowa Comprehensive Plan," Iowa Administrative Code.

The Homeland Security and Emergency Management Division is amending current rules to reflect the adoption date of the updated Iowa Hazard Mitigation Plan.

In compliance with Iowa Code section 17A.4(2), the Homeland Security and Emergency Management Division finds that notice and public participation are impracticable because of the immediate need to formally adopt the Plan so as to be in compliance with federal regulations and funding guidelines.

The Homeland Security and Emergency Management Division also finds, pursuant to Iowa Code section 17A.5(2)"b"(2), that the normal effective date of these rules should be waived and these rules should be made effective on September 17, 2007, as they confer a benefit upon the citizens of Iowa.

This amendment is also published herein under Notice of Intended Action as **ARC 6296B** to allow for public comment.

The Homeland Security and Emergency Management Division adopted this amendment on September 17, 2007.

This amendment is intended to implement Iowa Code chapter 29C.

This amendment became effective September 17, 2007.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at http://www.legis.state.ia.us/IAC.html or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendment is adopted.

Amend rule 605—9.3(29C), introductory paragraph, as follows:

605—9.3(29C) Part B: Iowa Hazard Mitigation Plan. The Part B: Iowa Hazard Mitigation Plan is developed in accordance with Iowa Code section 29C.8, and has been adopted on ~~September 10, 2004~~ *September 17, 2007*, published, and maintained by the division. Part B details the state government goals, objectives, and strategies to mitigate a wide range of natural, technological or human-caused disasters in accordance with Section 322 of the Stafford Act, 42 U.S.C. 5165.

[Filed Emergency 9/17/07, effective 9/17/07]
[Published 10/10/07]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/10/07.

ARC 6270B

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code section 234.6, the Department of Human Services amends Chapter 65, "Food Assistance Program Administration," Iowa Administrative Code.

These amendments restore part of the reduction in Food Assistance standard utility allowances that was scheduled to take place October 1, 2007, because of the implementation of a federal demonstration waiver to offer a standard medical deduction. Adopted and Filed rules for the medical deduction were published in the Iowa Administrative Bulletin on August 1, 2007, as **ARC 6100B**.

When the Department submitted its waiver proposal, it was estimated that the monthly utility allowances would have to be reduced by $5 to make the demonstration waiver cost-neutral. However, the USDA Food and Nutrition Service in approving the waiver determined that the allowances would have to be reduced only by $2 for federal fiscal year 2008 and by $4 for federal fiscal year 2009 and the remainder of the five-year project. These amendments restore the utility allowances in accordance with the federal directive.

The standard utility allowances are changed every year on October 1 based on changes in the consumer price index. With the adoption of these amendments, the standard allowance for households with heating or air-conditioning costs will increase in October 2007 from $356 monthly to $382, instead of $379 as required under the current rules. For households with no heating or air-conditioning costs, the allowance will increase from $152 per month to $164, instead of $161.

These amendments do not provide for waivers in specified situations. The Department is required to abide by the terms of the federal waiver.

The Council on Human Services adopted these amendments September 12, 2007.

The Department finds that notice and public participation are impracticable, in that there is not enough time before the implementation of the waiver to receive comments. It is contrary to the public interest to reduce the allowances to the previously adopted level when the only reason for doing so, the federal cost neutrality requirement, has been mitigated. Therefore, these amendments are filed pursuant to Iowa Code section 17A.4(2).

The Department finds that these amendments confer a benefit by increasing the standard utility allowances for Food Assistance recipients. Therefore, these amendments are filed pursuant to Iowa Code section 17A.5(2)"b"(2), and the normal effective date of these amendments is waived.

These amendments are intended to implement Iowa Code section 234.12.

These amendments became effective October 1, 2007.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at http://www.legis.state.ia.us/IAC.html or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendments are adopted.

ITEM 1. Amend subrule **65.8(1)**, paragraph **"b,"** subparagraph **(4)**, as follows:

(4) ~~Five~~ *Effective October 1, 2007, two* dollars will be subtracted from this amount to allow for cost neutrality necessary for the standard medical expense deduction. *Effective October 1, 2008, an additional two dollars, for a total of four dollars, will be subtracted from this amount to achieve continued cost neutrality.*

ITEM 2. Amend subrule **65.8(5)**, paragraph **"b,"** subparagraph **(4)**, as follows:

(4) ~~Five~~ *Effective October 1, 2007, two* dollars will be subtracted from this amount to allow for cost neutrality necessary for the standard medical expense deduction. *Effective October 1, 2008, an additional two dollars, for a total of four*

dollars, will be subtracted from this amount to achieve continued cost neutrality.

[Filed Emergency 9/12/07, effective 10/1/07]
[Published 10/10/07]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/10/07.

ARC 6272B

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed Emergency After Notice

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services amends Chapter 78, "Amount, Duration and Scope of Medical and Remedial Services," Iowa Administrative Code.

This amendment contains the following changes to Medicaid policy on payment for nonemergency transportation:

- Coverage is added for transportation to obtain prescribed drugs. Costs for transportation to obtain prescribed drugs shall be reimbursed when free prescription delivery is not offered and when a prescription drug is needed immediately, irrespective of whether free delivery is offered.
- The end date to the exception to reimburse transportation by car at 30 cents per mile is removed. (This provision was also Adopted and Filed Emergency as **ARC 6083B** and published in the Iowa Administrative Bulletin on August 1, 2007.)
- The requirement that a Medicaid transportation claim be submitted within 90 days is changed to 365 days. Expanding the number of days to submit claims will not add costs and should reduce the number of exceptions to policy for members who had difficulty submitting claims timely.
- Procedures for payment of claims from public transportation agencies are changed. Most transportation payments are issued directly from the Department's automated benefit calculation (ABC) system. Previously, payment through the ABC system did not allow proper accounting for payments to vendors, which the Department is required to report to the Internal Revenue Service. Changes to the ABC system now allow for proper identification of these payments; thus, the requirement that claims for agency providers be submitted on Form GAX, General Accounting Expenditure, and be processed through the Department's Division of Fiscal Management is removed. Department local offices will be able to issue payments to agencies as well as payments to individual members.
- The term "recipient" is changed to "member."

This amendment does not provide for waivers in specified situations because the changes in this amendment benefit the persons affected. Requests for the waiver of any rule may be submitted under the Department's general rule on exceptions at 441—1.8(17A,217).

Notice of Intended Action on this amendment was published in the Iowa Administrative Bulletin on July 18, 2007, as **ARC 6045B**. The Department received no comments on the Notice of Intended Action. This amendment is identical to that published under Notice of Intended Action.

The Council on Human Services adopted this amendment on September 14, 2007.

The Department finds that this amendment confers a benefit by broadening coverage and removes restrictions by simplifying billing procedures. Therefore, this amendment is filed pursuant to Iowa Code section 17A.5(2)"b"(2), and the normal effective date of this amendment is waived.

This amendment is intended to implement Iowa Code section 249A.4.

This amendment became effective on October 1, 2007.

The following amendment is adopted.

Amend rule 441—78.13(249A) as follows:

441—78.13(249A) Transportation to receive medical care. Payment will be approved for transportation to receive services covered under the program ~~only to the nearest institution or practitioner having appropriate facilities for care of the recipient~~, *including transportation to obtain prescribed drugs,* when *all of* the following conditions are met.

78.13(1) *Transportation costs are reimbursable only when:*

a. The source of the care is located outside the city limits of the community in which the ~~recipient~~ *member* resides; or

~~**78.13(2)** The recipient~~ *b. The member* resides in a rural area and must travel to a city to receive necessary care~~; and~~.

78.13(2) *Transportation costs are reimbursable only when:*

~~**78.13(3)**~~ *a.* The type of care is not available in the community in which the ~~recipient~~ *member* resides~~,~~*;* or

b. ~~the recipient~~ *The member* has been referred by the attending physician to a specialist in another community~~; and~~.

~~**78.13(4)** There~~ ***78.13(3)*** *Transportation costs are reimbursable only when there* is no resource available to the ~~recipient~~ *member* through which necessary transportation might be secured free of charge. *EXCEPTION: Costs of transportation to obtain prescribed drugs may be reimbursed irrespective of whether free delivery is offered when the prescription drug is needed immediately.*

78.13(4) *Transportation is reimbursable only to the nearest institution or practitioner having appropriate facilities for the care of the member.*

78.13(5) Transportation may be of any type and may be provided from any source.

a. ~~When~~ *Effective November 1, 2005, when* transportation is by car, the maximum payment ~~which~~ *that* may be made will be the actual charge made by the provider for transportation to and from the source of medical care, but not in excess of ~~20~~ *30* cents per mile. ~~EXCEPTION: For transportation provided from November 1, 2005, through June 30, 2007, the maximum payment shall be 30 cents per mile.~~

b. No change.

c. In all cases where public transportation is reasonably available to or from the source of care and the ~~recipient's~~ *member's* condition does not preclude its use, ~~it~~ *public transportation* must be utilized. When the ~~recipient's~~ *member's* condition precludes the use of public transportation, a statement to the effect shall be included in the case record.

78.13(6) No change.

78.13(7) No change.

78.13(8) When the services of an escort are required subject to the conditions ~~outlined above~~ *in subrule 78.13(6),* payment may be made for *the escort's* meals and lodging, when required, on the same basis as for the ~~recipient~~ *member.*

78.13(9) Payment will not be made in advance to a ~~recipient~~ *member* or a provider of medical transportation.

78.13(10) Payment for transportation to receive medical care is made to the ~~recipient~~ *member* with the following exceptions:

a. Payment may be made to the agency ~~which~~ *that* provided transportation if the agency is certified by the depart-

ment of transportation and requests direct payment ~~by submitting Form GAX, General Accounting Expenditure, within 90 days after the trip~~. Reimbursement for transportation shall be based on a fee schedule by mile or by trip.

b. In cases where the local office has established that the ~~recipient~~ *member* has persistently failed to reimburse a provider of medical transportation, payment may be made directly to the provider.

c. No change.

78.13(11) *Form 470-0386,* Medical Transportation Claim, ~~MA-3022-1,~~ shall be completed by the ~~recipient~~ *member* and the medical provider and submitted to the local office for each trip for which payment is requested. All trips to the same provider in a calendar month may, at the ~~client's~~ *member's* option, be submitted on the same form.

78.13(12) No claim shall be paid if presented after the lapse of ~~three months~~ *365 days* from its accrual unless it is to correct payment on a claim originally submitted within the required ~~time~~ period. ~~This time limitation is not applicable to claims with the date of service within the three-month period of retroactive Medicaid eligibility on approved applications.~~

This rule is intended to implement Iowa Code section 249A.4.

[Filed Emergency After Notice 9/12/07, effective 10/1/07]
[Published 10/10/07]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/10/07.

ARC 6277B

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed Emergency After Notice

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services amends Chapter 92, "IowaCare," Iowa Administrative Code.

These amendments modify IowaCare policies as follows:

- Remove the requirement of premium payment for IowaCare members whose income is at or below 100 percent of the federal poverty level, as directed in 2007 Iowa Acts, House File 909, section 104. (This policy was also Adopted and Filed Emergency as **ARC 6084B** and published in the Iowa Administrative Bulletin on August 1, 2007.)
- Provide that premiums will not be charged on initial applications for the month of decision or for any previous months, including the retroactive month. For this purpose, the "initial application" is defined as the first application that a member submits for IowaCare or an application that a member submits after a break in assistance of one month or more. Members should not pay a premium for a month when they are not able to access services. Many members do not access services until they receive an approval notice.
- Provide that the mandatory four months of premiums begin with the first month that a premium payment is required. The member is required to pay premiums for the four mandatory months, even if the member requests cancellation before the mandatory months begin.
- Clarify that persons who have catastrophic health insurance will not be considered to have access to health insurance, as the high deductible for this type of health insurance is deemed unaffordable. With this change, a person with catastrophic insurance could be eligible for IowaCare.
- Clarify that a member is terminated from IowaCare when the member begins receiving other Medicaid coverage.
- Remove the reference to requirements for the Health Insurance Premium Payment (HIPP) program. The HIPP program does not pay for health insurance for an IowaCare member.
- Update the mailing address for sending IowaCare premiums to the Iowa Medicaid Enterprise.

These amendments also clarify the following elements of current policy:

- A standard deduction equal to 40 percent of the gross income is allowed for expenses of providing child care, unless the applicant provides proof of higher expenses.
- The first $50 of child support is exempted as unearned income.
- All unearned nonrecurring lump-sum income is disregarded.
- Earned lump-sum income is prorated over the period for which the income is received.
- Premiums are refunded when the person no longer meets the program requirements after the premiums for the four mandatory months have been paid. This situation occurs when members pay premiums in advance.
- Excess premiums that have been paid on inactive accounts are refunded.
- Excess premiums on active accounts are refunded when the member requests the refund.

These amendments do not provide for waivers in specified situations because they benefit the persons affected. Requests for the waiver of any rule may be submitted under the Department's general rule on exceptions at 441—1.8(17A,217).

Notice of Intended Action on these amendments was published in the Iowa Administrative Bulletin on July 18, 2007, as **ARC 6051B**. The Department received no comments on the Notice of Intended Action. These amendments are identical to those published under Notice of Intended Action.

The Council on Human Services adopted these amendments on September 12, 2007.

The Department finds that these amendments confer a benefit on IowaCare members by streamlining premium payment policies and removing unnecessary requirements. Therefore, these amendments are filed pursuant to Iowa Code section 17A.5(2)"b"(2), and the normal effective date of these amendments is waived.

These amendments are intended to implement Iowa Code chapter 249J as amended by 2007 Iowa Acts, House File 909, section 104.

These amendments became effective on October 1, 2007.

The following amendments are adopted.

ITEM 1. Amend rule **441—92.1(249A,249J)** by adopting the following **new** definition in alphabetical order:

"Initial application" means the first application for IowaCare or an application that is filed after a break in assistance of one month or more.

ITEM 2. Amend rule 441—92.2(249A,249J) as follows:

Amend the introductory paragraph as follows:

441—92.2(249A,249J) Eligibility. IowaCare eligibility shall be determined according to the requirements of rules

441—75.2(249A) to 441—75.4(249A), 441—75.7(249A), 441—75.10(249A), *and* 441—75.12(249A)~~, and 441—75.21(249A)~~ and the provisions of this rule.

Amend subrule **92.2(4)**, paragraph **"b,"** as follows:

b. The applicant or member is enrolled in a group health plan but states that:

(1) Exclusions for preexisting conditions apply; or

(2) The needed services are not covered by the plan; or

(3) The limits of benefits under the plan have been reached*; or*

(4) The plan includes only catastrophic health care coverage.

ITEM 3. Amend rule 441—92.5(249A,249J) as follows:

Amend subrule **92.5(3)** by adopting the following **new** paragraph **"c"**:

c. Gross income from providing child care in the applicant's or member's own home shall include the total payments received for the service and any payment received due to the Child Nutrition Amendments of 1978 for the cost of providing meals to children.

(1) In determining the net profit counted as earned income from providing child care services in the applicant's or member's own home, 40 percent of the total gross income received shall be deducted to cover the costs of producing the income, unless the applicant or member requests to have actual expenses in excess of the 40 percent considered.

(2) When the applicant or member verifies expenses in excess of 40 percent of the total gross income received, the net profit counted as earned income shall be determined in the same manner as specified at paragraph 92.5(3)"b."

Amend subrule **92.5(4)**, paragraph **"a,"** as follows:

a. 441—subrule 75.57(6), paragraph "b," "c," "d," "e," "f," "g," "h," "i," "j," "k," "l," "m," "p," "q," "r," "t," "*u*," "v," "w," "x," "y," "z," or "aa"; or

Adopt the following **new** subrules 92.5(7) and 92.5(8):

92.5(7) Unearned nonrecurring lump-sum income. All unearned nonrecurring lump-sum income shall be disregarded.

92.5(8) Earned lump-sum income. Anticipated earned lump-sum income shall be prorated over the period for which the income is received.

ITEM 4. Amend rule 441—92.7(249A,249J) as follows:

Amend the introductory paragraph as follows:

441—92.7(249A,249J) Financial participation. In addition to the copayments required by 441—subrule 79.1(13), IowaCare members, with the exception of newborns eligible pursuant to 92.2(1)"c," shall be assessed a sliding-scale monthly premium. *No premium shall be assessed at the time of initial application for months of eligibility before and including the month of decision, including the retroactive month.* A member shall be responsible for paying the premium for the *first* month ~~of initial enrollment~~ *after the month of decision* and *for* the following three months, regardless of continued enrollment during the four-month period *or during previous months*, and for each month of continued enrollment after the ~~first~~ *required* four months. If there is a break in enrollment of one month or more, a new four-month period of mandatory premiums shall be assessed, beginning with the month ~~of reenrollment~~ *following the month of decision*.

Amend subrule **92.7(1)**, paragraphs **"a"** and **"b,"** as follows:

a. The monthly premium amount is based on the household's countable monthly income as a percentage of the federal poverty level for a household of that size. The premium amounts based on this percentage effective ~~April~~ *July* 1, 2007, are as follows:

When the household's income is at or below:	Each member's premium amount is:
~~10% of federal poverty level~~	~~$ 0~~
~~20% of federal poverty level~~	~~$ 1~~
~~30% of federal poverty level~~	~~$ 3~~
~~40% of federal poverty level~~	~~$ 5~~
~~50% of federal poverty level~~	~~$ 6~~
~~60% of federal poverty level~~	~~$ 8~~
~~70% of federal poverty level~~	~~$10~~
~~80% of federal poverty level~~	~~$11~~
~~90% of federal poverty level~~	~~$13~~
100% of federal poverty level	~~$15~~ *$0*
110% of federal poverty level	$42
120% of federal poverty level	$46
130% of federal poverty level	$51
140% of federal poverty level	$55
150% of federal poverty level	$59
160% of federal poverty level	$63
170% of federal poverty level	$68
180% of federal poverty level	$72
190% of federal poverty level	$76
200% of federal poverty level	$80

b. The listed premium amount is calculated based on the lowest income level in each 10 percent increment for a one-person household. ~~Premiums for households~~ *Households* with income at or below 100 percent of the poverty level are ~~2 percent of the applicable income level; premiums~~ *not subject to a premium. Premiums* for households with income over 100 percent of the poverty level are 5 percent of the applicable income level. The department will update these amounts annually on April 1 using the latest federal poverty level guidelines.

Amend subrule **92.7(2)**, paragraph **"a,"** as follows:

a. Method of payment. Members shall submit premium payments to the following address: Iowa Medicaid Enterprise, ~~Revenue Collection Unit~~ *IowaCare Premiums*, P.O. Box 10391, Des Moines, Iowa 50306-~~0391~~ *9013*. Members may also submit premium payments to the Broadlawns Medical Center or other designated office that makes arrangements for armored delivery of the payments to the department's agent for receiving payments.

Amend subrule **92.7(5)** as follows:

Amend paragraph **"a"** as follows:

a. The premium obligation is reduced to zero when a member's IowaCare coverage is canceled because the member:

(1) Is determined eligible for medical assistance under 441—subrules 75.1(1) through 75.1(40);

(2) Has access to group health insurance coverage as defined in subrule 92.2(4);

(3) Reaches age 65; ~~or~~

(4) Dies*; or*

(5) No longer meets program requirements after the four mandatory premium months.

Adopt **new** paragraphs **"c"** and **"d"** as follows:

c. Any excess premium received for an individual not receiving IowaCare benefits shall be refunded after two calendar months unless an application or reapplication is pending or upon the individual's request.

d. Any excess premium received for an IowaCare member shall be refunded after two calendar months of a zero premium or upon the member's request.

ITEM 5. Amend rule **441—92.12(249A,249J)**, numbered paragraph **"2,"** as follows:

HUMAN SERVICES DEPARTMENT[441](cont'd)

2. The member ~~becomes eligible for a~~ *begins receiving* medical assistance *in a* coverage group under 441—subrules 75.1(1) through 75.1(40).

[Filed Emergency After Notice 9/12/07, effective 10/1/07]
[Published 10/10/07]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/10/07.

ARC 6280B

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code section 234.6, the Department of Human Services amends Chapter 170, "Child Care Services," Iowa Administrative Code.

This amendment restores provisions for review and redetermination of Child Care Assistance eligibility that were inadvertently removed in rules Adopted and Filed and published in the Iowa Administrative Bulletin on May 9, 2007, as **ARC 5854B**.

The restored subrule provides that the Department shall redetermine a family's financial eligibility for Child Care Assistance every six months, using information gathered on Form 470-4377, Child Care Assistance Review. If a family does not return the review form in the time allotted, child care benefits expire and the family must reapply for assistance. The rescinded subrule also included language on suspension of Family Investment Program benefits that was removed because the change to quarterly income reporting in the Family Investment Program eliminated the suspension provision.

This amendment does not provide for waivers in specified situations. Requests for the waiver of any rule may be submitted under the Department's general rule on exceptions at 441—1.8(17A,217).

The Council on Human Services adopted this amendment on September 12, 2007.

The Department finds that notice and public participation are unnecessary because the amendment merely restores previous language and does not change Department policy. Therefore, these amendments are filed pursuant to Iowa Code section 17A.4(2).

The Department finds that this amendment confers a benefit on the public by providing an accurate statement of Child Care Assistance review and redetermination policies. Therefore, this amendment is filed pursuant to Iowa Code section 17A.5(2)"b"(2), and the normal effective date of this amendment is waived.

This amendment is intended to implement Iowa Code sections 237A.13 and 239B.24.

This amendment became effective on September 12, 2007.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at http://www.legis.state.ia.us/IAC.html or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendment is adopted.

Adopt **new** subrule 170.3(5) as follows:

170.3(5) Review and redetermination. The department shall redetermine a family's financial and general eligibility for child care assistance at least every six months. EXCEPTION: The department shall redetermine only general eligibility for recipients of the family investment program (FIP) and for those whose earned income was taken into account in determining the needs of FIP recipients, because these people are deemed financially eligible so long as the FIP eligibility continues.

a. If FIP eligibility ends, the department shall redetermine financial and general eligibility for child care assistance according to the requirements in rule 441—170.2(237A, 239B). The redetermination of eligibility shall be completed within 30 days.

b. The department shall use information gathered on Form 470-4377, Child Care Assistance Review, to redetermine eligibility. The department shall issue a notice of expiration for the child care assistance certification period in Form 470-4377. If the family does not return Form 470-4377 to the department by the end of the certification period, the family must reapply for benefits.

[Filed Emergency 9/12/07, effective 9/12/07]
[Published 10/10/07]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/10/07.

ARC 6320B

ARCHITECTURAL EXAMINING BOARD[193B]

Adopted and Filed

Pursuant to the authority of Iowa Code section 544A.29, the Architectural Examining Board hereby amends Chapter 2, "Registration," Iowa Administrative Code.

The amendments to Chapter 2 reflect statutory changes which came about through enactment of 2007 Iowa Acts, Senate File 360, effective July 1, 2007. These amendments allow the Board more flexibility in establishing guidelines for determining when an applicant's qualifications for registration by reciprocity may be considered substantially equivalent to the requirements for initial registration. Additional amendments provide that applicants for registration by examination can begin taking the national examination upon completion of the educational requirements for registration and after enrolling in the National Council of Architectural Registration Boards (NCARB) Intern Development Program. Other amendments to Chapter 2 clarify that, upon approval of an application for the Authorization to Practice Architecture as a Business Entity, renewal of the authorization is not required and clarify when a new authorization is required.

These amendments are subject to waiver or variance pursuant to 193—Chapter 5.

Notice of Intended Action was published in the Iowa Administrative Bulletin on August 15, 2007, as **ARC 6145B**.

Written comments were in favor of the amendments. As a result of the comments, the amendments published under Notice of Intended Action were changed. Subrule 2.3(2), internal paragraph (1), was changed to include "NCARB" before the word "Handbook" as follows: "(1) the intern architect's supervisor in accordance with the requirements outlined in the NCARB Handbook for Interns and Architects." The last sentence of the subrule was also removed. That sentence read as follows: "To receive credit, training units must have been earned no more than five years prior to the date of an applicant's enrolling in the IDP."

The Board adopted these amendments on September 19, 2007.

These amendments are intended to implement Iowa Code chapters 17A and 544A and section 546.10 as amended by 2007 Iowa Acts, Senate File 360.

These amendments shall become effective February 11, 2008.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [2.2, 2.3, 2.10(1), 2.10(4) to 2.10(8)] is being omitted. With the exception of the changes noted above, these amendments are identical to those published under Notice as **ARC 6145B**, IAB 8/15/07.

[Filed 9/21/07, effective 2/11/08]
[Published 10/10/07]

[For replacement pages for IAC, see IAC Supplement 10/10/07.]

ARC 6328B

COLLEGE STUDENT AID COMMISSION[283]

Adopted and Filed

Pursuant to the authority of Iowa Code section 261.3, the College Student Aid Commission hereby rescinds Chapter 34, "Registered Nurse Recruitment Program," and adopts a new Chapter 34, "Registered Nurse and Nurse Educator Loan Forgiveness Program," Iowa Administrative Code.

The purpose of these rules is to implement the Registered Nurse and Nurse Educator Loan Forgiveness Program as enacted by 2007 Iowa Acts, Senate File 588.

Notice of Intended Action was published in the July 4, 2007, Iowa Administrative Bulletin as **ARC 6020B**.

Comments were received from college and university officials. The only change to these rules further defines loans that are eligible for forgiveness. In 34.4(2)"a"(2) and 34.4(2)"b"(2), the following sentence was added: "Only the outstanding portion of a Federal Consolidation Loan that was used to repay an eligible subsidized or unsubsidized Federal Stafford Loan, an eligible Direct Subsidized Loan, or an eligible Direct Unsubsidized Loan qualifies for loan forgiveness."

These rules were also Adopted and Filed Emergency as **ARC 6008B** on July 4, 2007.

These rules were adopted during the September 20, 2007, meeting of the Iowa College Student Aid Commission.

These rules will become effective on November 14, 2007, at which time the Adopted and Filed Emergency rules are hereby rescinded.

These rules are intended to implement Iowa Code chapter 261 as amended by 2007 Iowa Acts, Senate File 588.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these rules [Ch 34] is being omitted. With the exception of the change noted above, these rules are identical to those published under Notice as **ARC 6020B** and Adopted and Filed Emergency as **ARC 6008B**, IAB 7/4/07.

[Filed 9/21/07, effective 11/14/07]
[Published 10/10/07]

[For replacement pages for IAC, see IAC Supplement 10/10/07.]

ARC 6329B

COLLEGE STUDENT AID COMMISSION[283]

Adopted and Filed

Pursuant to the authority of Iowa Code section 261.3, the College Student Aid Commission hereby rescinds Chapter 35, "Teacher Shortage Forgivable Loan Program," and adopts a new Chapter 35, "Iowa Teacher Shortage Loan Forgiveness Program," Iowa Administrative Code.

The purpose of these rules is to implement the Iowa Teacher Shortage Loan Forgiveness Program as enacted by 2007 Iowa Acts, Senate File 588.

COLLEGE STUDENT AID COMMISSION[283](cont'd)

Notice of Intended Action was published in the July 4, 2007, Iowa Administrative Bulletin as **ARC 6022B**. Comments were received from college and university officials and the following changes were made as a result of comments received.

In 35.4(2)"a," the word "undergraduate" was added to clarify the tuition rate used for this program. In 35.4(2)"b," the following sentence was added to further define loans that are eligible for forgiveness: "Only the outstanding portion of a Federal Consolidation Loan that was used to repay an eligible subsidized or unsubsidized Federal Stafford Loan, an eligible Direct Subsidized Loan, or an eligible Direct Unsubsidized Loan qualifies for loan forgiveness."

These rules were also Adopted and Filed Emergency and published as **ARC 6011B** on July 4, 2007.

These rules were adopted during the September 20, 2007, meeting of the Iowa College Student Aid Commission.

These rules will become effective on November 14, 2007, at which time the Adopted and Filed Emergency rules are hereby rescinded.

These rules are intended to implement Iowa Code chapter 261 as amended by 2007 Iowa Acts, Senate File 588.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these rules [Ch 35] is being omitted. With the exception of the changes noted above, these rules are identical to those published under Notice as **ARC 6022B** and Adopted and Filed Emergency as **ARC 6011B**, IAB 7/4/07.

[Filed 9/21/07, effective 11/14/07]
[Published 10/10/07]

[For replacement pages for IAC, see IAC Supplement 10/10/07.]

ARC 6311B

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 15.104 and 15.106, the Iowa Department of Economic Development hereby adopts new Chapter 38, "Regional Sports Authority Districts," Iowa Administrative Code.

The rules implement a new program authorized by 2007 Iowa Acts, House File 911, section 32. The rules describe the process by which a convention and visitors bureau may apply to be designated a certified Regional Sports Authority District, the funding available to certified Regional Sports Authority Districts, and the contract administration process.

Notice of Intended Action was published in the Iowa Administrative Bulletin on August 15, 2007, as **ARC 6144B**.

A public hearing was held on Wednesday, September 5, 2007, to receive comments about the proposed rules. At the public hearing, there were numerous questions about the new program and the application and evaluation processes, but there were no suggested rule revisions.

Since publication of the Notice of Intended Action, the chapter has been renumbered Chapter 38 to account for existing Chapter 37 within the Department's administrative rules. With the exception of this renumbering, the final rules are identical to the proposed rules.

The Iowa Economic Development Board adopted these rules on September 20, 2007.

These rules will become effective on November 14, 2007.

These rules are intended to implement 2007 Iowa Acts, House File 911, section 32.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these rules [Ch 38] is being omitted. With the exception of the change noted above, these rules are identical to those published under Notice as **ARC 6144B**, IAB 8/15/07.

[Filed 9/20/07, effective 11/14/07]
[Published 10/10/07]

[For replacement pages for IAC, see IAC Supplement 10/10/07.]

ARC 6312B

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 15.104 and 15.106, the Iowa Department of Economic Development hereby amends Chapter 44, "COG Assistance," Iowa Administrative Code.

The amendments define how funds appropriated by the legislature will be allocated to the former area fifteen council of governments which, pursuant to 2007 Iowa Acts, Senate File 444, was split into two councils of governments (COGs) effective July 1, 2007. Additionally, the amendments update references to the Code of Iowa.

Notice of Intended Action was published in the Iowa Administrative Bulletin on July 4, 2007 as **ARC 6028B**.

A public hearing was held on July 26, 2007, to receive comments about the amendment initially proposed. The proposed amendment treated the Area 15 Regional Planning Commission and the Chariton Valley Council of Governments as providers serving the same geographical region, with the two splitting one-sixteenth of the available funding. Comments were received requesting that the funding be divided 17 ways, not 16. The impact of this allocation method would be to treat the Area 15 Regional Planning Commission and the Chariton Valley Council of Governments as two separate COGs, with each receiving a one-seventeenth share of the available funding. After consulting with the other COGs, the Department decided to revise the proposed amendment to allocate the amount available equally among 17 COGs.

Additionally, the following changes were made: (1) Updated the parenthetical implementation references throughout Chapter 44 from "99E" to "28H." (2) Updated the definition of "Act" in rule 261—44.2(28H). (3) Replaced outdated legal citations with current Iowa Code references in rule 261—44.3(28H). (4) Updated the implementation sentence at chapter's end.

The Iowa Economic Development Board adopted these amendments on September 20, 2007.

These amendments will become effective on November 14, 2007.

These amendments are intended to implement Iowa Code section 28H.1 and 2007 Iowa Acts, Senate File 444.

The following amendments are adopted.

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261](cont'd)

ITEM 1. Amend the parenthetical implementation references throughout **281—Chapter 44** by striking "99E" and inserting "28H" in lieu thereof.

ITEM 2. Amend rule **261—44.2(28H)**, definition of "Act," as follows:

"Act" means ~~1989 Iowa Acts, chapter 314, section 4(3)"d"(8)~~ *Iowa Code section 28H.1 as amended by 2007 Iowa Acts, Senate File 444*.

ITEM 3. Amend rule 261—44.3(28H) as follows:

261—44.3(28H) Eligibility. Iowa entities authorized *as a council of government* by Executive Order Number 11, ~~as amended, and organized as metropolitan, regional, or area-wide planning commissions, under Iowa Code chapter 473A or under Iowa Code chapter 28E as a council of government (COG),~~ *1969, by a chapter 28E agreement, or by Iowa Code section 28H.1 as amended by 2007 Iowa Acts, Senate File 444*, are eligible to receive assistance through this chapter.

ITEM 4. Amend rule 261—44.6(28H) as follows:

261—44.6(28H) Grant awards. Grant awards will be made on a noncompetitive basis with each eligible applicant receiving an equal share of the funds available for the purpose of this chapter. *One-seventeenth of the total funds allocated by the legislature for COG assistance shall be awarded to each COG*.

ITEM 5. Amend **261—Chapter 44**, implementation sentence, as follows:

These rules are intended to implement Iowa Code section ~~99E.32, subsection 3, as amended by 1989 Iowa Acts, chapter 314, section 4(3)"d"(3)~~ *28H.1 as amended by 2007 Iowa Acts, Senate File 444*.

[Filed 9/20/07, effective 11/14/07]
[Published 10/10/07]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/10/07.

ARC 6313B

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 15.104 and 15.106, the Iowa Department of Economic Development hereby amends Chapter 54, "Iowa Targeted Small Business Procurement Program," and Chapter 55, "Targeted Small Business Financial Assistance Program," Iowa Administrative Code.

The amendments incorporate recent legislative changes authorized by 2007 Iowa Acts, House File 890. This legislation creates a new Targeted Small Business Financial Assistance Board, revises the definitions of "small business" and "minority person," and makes other changes to these programs.

Notice of Intended Action was published in the Iowa Administrative Bulletin on August 15, 2007, as **ARC 6143B**.

A public hearing was held on Wednesday, September 5, 2007, to receive comments about the proposed amendments. No comments were received.

The adopted amendments are identical to the proposed amendments.

The Iowa Economic Development Board adopted these amendments on September 20, 2007.

These amendments will become effective on November 14, 2007.

These amendments are intended to implement 2007 Iowa Acts, House File 890.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [amendments to Chs 54, 55] is being omitted. These amendments are identical to those published under Notice as **ARC 6143B**, IAB 8/15/07.

[Filed 9/20/07, effective 11/14/07]
[Published 10/10/07]

[For replacement pages for IAC, see IAC Supplement 10/10/07.]

ARC 6314B

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 15.104 and 15.106, the Iowa Department of Economic Development hereby adopts new Chapter 101, "Division Responsibilities," Chapter 102, "Information Technology Joint Venture Fund," Chapter 103, "Information Technology Training Program," and Chapter 104, "Targeted Industries Internship Program," Iowa Administrative Code.

The rules implement new programs authorized by 2007 Iowa Acts, House File 829. The rules describe the purpose of the programs; the application submittal, review and approval procedures; and the contract administration provisions.

Notice of Intended Action was published in the Iowa Administrative Bulletin on August 15, 2007, as **ARC 6138B**. Additionally, Chapters 102 and 103 were simultaneously Adopted and Filed Emergency as **ARC 6137B**.

A public hearing was held on Wednesday, September 5, 2007, to receive comments about the proposed rules. No comments were received at the hearing. The Department received a written comment regarding proposed subrule 102.7(1). The subrule provided that "A business which is engaged in retail sales or which provides health services is ineligible" to receive assistance from the Information Technology Joint Venture Fund. The commenter was concerned that this rule would unintentionally exclude some health-care-related groups that develop software. The Department reviewed this comment and decided to delete from the final rules this restriction. Proposed subrule 102.7(1) was not adopted in the final rules.

The Iowa Economic Development Board adopted these rules on September 20, 2007.

These rules will become effective on November 14, 2007, at which time the Adopted and Filed Emergency rules are hereby rescinded.

These rules are intended to implement 2007 Iowa Acts, House File 829.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the

Iowa Administrative Bulletin, September 10, 1986, the text of these rules [Chs 101, 102, 103, 104] is being omitted. With the exception of the change noted above, these rules are identical to those published under Notice as **ARC 6138B**, IAB 8/15/07.

[Filed 9/20/07, effective 11/14/07]
[Published 10/10/07]

[For replacement pages for IAC, see IAC Supplement 10/10/07.]

ARC 6289B

EDUCATION DEPARTMENT[281]

Adopted and Filed

Pursuant to the authority of Iowa Code section 256.7(5), the State Board of Education adopts Chapter 16, "Statewide Voluntary Preschool Program," Iowa Administrative Code.

These rules implement the statewide voluntary preschool program created in 2007 Iowa Acts, House File 877.

An agencywide waiver provision is provided in 281—Chapter 4.

Notice of Intended Action for these rules was published on June 20, 2007, in the Iowa Administrative Bulletin as **ARC 5968B**. Pursuant to Iowa Code section 17A.4(2), the rules were also Adopted and Filed Emergency and published in the Iowa Administrative Bulletin as **ARC 5969B** on the same date. A public hearing was held on July 10, 2007, and public comments were allowed until 4:30 p.m. on July 10, 2007. Approximately 20 individuals from outside the Department attended the public hearing (which was narrowcast over the ICN to 18 remote sites), and two of those attending provided oral comments. Written comments were received from three entities: the State Empowerment Technical Assistance Team, the Child Care Unit of the Iowa Department of Human Services, and the Iowa Association of School Boards. Many comments were directed at policy reflected within the legislation itself, not at the rules; therefore, the Department took no action on those policy-oriented comments. Other comments assisted the Department in adding clarity to the rules, as reflected below. Since the Notice of Intended Action was published, the following changes have been made:

1. In rule 16.2(82GA,HF877), the definition of "community empowerment areas" was deleted in favor of adding a definition of "community empowerment area board." The latter is the term used in the chapter.

2. The introductory paragraph of rule 16.3(82GA, HF877) was revised to clarify that preschool programs must meet the standards in Chapter 16 as well as those standards set for any one of the following: Head Start Program Performance Standards, Iowa Quality Preschool Program Standards and Criteria, or the National Association for the Education of Young Children Program Standards and Accreditation Criteria.

3. Subrules 16.3(2), 16.3(4), 16.3(12), 16.4(2), and 16.11(4) were reworded for clarity; none of the changes are substantive. All such changes better reflect the original intent of the rules.

These rules are intended to implement the statewide voluntary preschool program created in 2007 Iowa Acts, House File 877.

These rules shall become effective November 14, 2007, at which time the Adopted and Filed Emergency rules are hereby rescinded.

The following **new** chapter is adopted.

CHAPTER 16
STATEWIDE VOLUNTARY PRESCHOOL PROGRAM

281—16.1(82GA,HF877) Purpose. Statewide voluntary preschool programs are established to create high-quality early learning environments for four-year-old children whose families choose to access such programs. The purpose of the program is to provide an opportunity for all young children in the state to enter school ready to learn by expanding voluntary access to quality preschool curricula for all children who are four years old. These rules set forth the procedures and conditions under which state funds shall be made available to assist local school districts in the implementation of voluntary preschool programs.

281—16.2(82GA,HF877) Definitions.

"Applicant" means a school district applying to become an approved local program. Only public school districts in Iowa may apply for state funds under this chapter.

"Approved local program" means a school district's voluntary preschool program approved by the department of education to provide high-quality preschool instruction for eligible children.

"Assessment" means a systematic ongoing procedure for obtaining information from observations, interviews, portfolios, and tests that can be used to make judgments about the strengths and needs of individual children and plan appropriate instruction.

"Base year" means the same as defined in Iowa Code section 257.2.

"Budget year" means the same as defined in Iowa Code section 257.2.

"Community empowerment area board" means a citizen-led board in local communities with broad representation to lead collaborative efforts involving education, health, and human service programs and services for young children and their families in the geographic area.

"Comprehensive services" means the provision of quality, developmentally appropriate early learning experiences consistent with age-relevant abilities or milestones; extended day child care services; developmental screenings, including health, hearing, and vision screenings; transportation; and family education and support services.

"Curriculum" means a research-based or evidence-based written framework that is comprehensive, addresses the needs of the whole child, and provides a guide for decision making about content, instructional methods, and assessment.

"Department" means the department of education.

"Developmentally appropriate" means practices that are based upon knowledge of how children develop and learn and that are responsive to the individual child's learning strengths, interests, and needs.

"Director" means the director of the department of education.

"Early childhood special education" or "ECSE" means special education and related services for those individuals younger than six years of age as described in 281—Chapter 41.

"Eligible child" means a child who is a resident of Iowa and is four years of age on or before September 15 of the school year. If space and funding are available, a school district approved to participate in the preschool program may enroll a child who is younger or older than four years of age

in the preschool program; however, the child shall not be counted for state funding purposes.

"Family education and support" means any developmentally appropriate activity or information, provided either formally or informally to parents, that supports the success of children and their families to reach desired results.

"Include" means that the items named are not all of the possible items that are covered, whether like or unlike the ones named.

"Individuals with Disabilities Education Act" or "IDEA" refers to 20 U.S.C. §1401 et seq., formerly the Education of the Handicapped Act (EHA). The federal regulations implementing IDEA are found at 34 CFR Parts 300 and 303.

"Para-educator" means a certified educational assistant as defined in Iowa Code section 272.1(6) and licensed under 282—Chapter 22.

"Prekindergarten program" means an education program offered by a school district or by an accredited nonpublic school as defined in 281—subrule 12.5(1).

"Preschool budget enrollment" means the figure that is equal to 60 percent of the actual enrollment of eligible students who receive preschool program services provided by a school district approved to participate in the preschool program by the date provided in Iowa Code section 257.6.

"Preschool foundation aid" means the product of the regular program state cost per pupil for the budget year multiplied by the school district's preschool budget enrollment. Preschool foundation aid is based on enrollment of eligible students in the school district's approved program regardless of whether an eligible student is a resident of the school district of enrollment.

"Preschool program" means the statewide voluntary preschool program for four-year-old children created in 2007 Iowa Acts, House File 877.

"Program standards" means the expectations for the characteristics or quality of early childhood settings, centers, and schools approved by the department. Approved program standards include National Association for the Education of Young Children (NAEYC) Program Standards and Accreditation Criteria, Head Start Program Performance Standards, the Iowa Quality Preschool Program Standards (QPPS) and Criteria, or other approved program standards as determined by the department.

"Regular program state cost per pupil" means the same as described in Iowa Code section 257.9.

"School district" means the same as defined in Iowa Code section 257.2.

"Staff member" means an individual who implements preschool activities under the direct supervision of a teacher. Staff members include para-educators, teacher aides and teacher associates. All staff members shall meet the program standards defined herein.

"Teacher" means an individual who holds a valid practitioner's license issued by the board of educational examiners under Iowa Code chapter 272 and holds an endorsement from the board of educational examiners that includes prekindergarten or kindergarten. There is no requirement that the teacher be an employee of the applicant district; the teacher may be employed by a private provider or other public agency with which the district has entered into an agreement or contract under Iowa Code chapter 28E.

281—16.3(82GA,HF877) Preschool program standards. Approved program standards include Head Start Program Performance Standards, Iowa Quality Preschool Program Standards and Criteria, or the National Association for the Education of Young Children Program Standards and Accreditation Criteria. All approved local preschool programs shall adopt preschool program standards and, in addition, shall meet the following requirements:

16.3(1) Personnel. A minimum of one teacher shall be present with eligible children during the voluntary preschool program instructional time.

16.3(2) Ratio of staff to children. There must be at least one teacher present in a classroom during the instructional time described in subrule 16.3(4). A minimum of one staff member and one teacher shall be present when 11 to 20 children are present. Staff members and teachers shall have reasonable line-of-sight supervision of all children.

16.3(3) Maximum class size. There shall be no more than 20 children per classroom.

16.3(4) Instructional time. Eligible children shall receive from the teacher at least ten hours per week of intentional instruction individualized to meet the needs of the child and directly related to the program's curriculum, such time to be exclusive of recess.

16.3(5) Child learning standards. The preschool program shall demonstrate how the curriculum, assessment, staff development, and instructional strategies are aligned to the Iowa Early Learning Standards. The teacher shall provide instruction on the skills and knowledge included in the Iowa Early Learning Standards.

16.3(6) Curriculum. The preschool program shall adopt a research-based or evidence-based curriculum.

16.3(7) Assessment. The preschool program shall adopt a research-based or evidence-based assessment to provide information on children's learning and development.

16.3(8) Staff development. The district shall make available to any teacher of a statewide voluntary preschool program who is not employed by the district staff development that the district offers to the district's personnel to maintain the skills appropriate to the teacher's role. Career development for school district preschool teachers shall be addressed in the school district's career development plan implemented in accordance with Iowa Code section 284.6. The school district shall ensure that staff members for the program are provided appropriate staff development in early childhood education.

16.3(9) Space. The preschool program shall provide adequate and appropriate space and facilities in accordance with program standards.

16.3(10) Materials. The preschool program shall provide instructional materials and supplies consistent with the program standards and Iowa Early Learning Standards.

16.3(11) Meals. The preschool program shall provide adequate and appropriate meals or snacks in accordance with program standards.

16.3(12) Parent involvement. The preschool program shall involve families through at least one home visit by the licensed teacher of the child, one family night, and at least two family-teacher conferences per year. Family involvement may include volunteering in the classroom, orientation to the preschool program, parent education, general communications, or other activities.

16.3(13) Integration of other preschool programs. The preschool program shall make provisions for the integration of children from other state and federally funded preschool programs including Head Start, IDEA, Title I, shared visions, and community empowerment.

16.3(14) Comprehensive services. The preschool program may collaborate with other agencies for the provision of the following:

a. Quality, developmentally appropriate early learning experiences;

b. Extended day child care;

c. Transportation;

d. Developmental screening, including health, hearing, and vision screening;

e. Referral to other agencies providing health insurance, health care, immunizations, nutrition services, and mental health and oral health services; and

f. Family education and support.

281—16.4(82GA,HF877) Collaboration requirements.

16.4(1) Teacher requirements. The teacher shall collaborate with other agencies, organizations, and boards in the community to further the program's capacity to meet the diverse needs of eligible children and their families. The teacher shall assist families in identifying and accessing available resources such as those described in subrule 16.3(14).

16.4(2) Program requirements. Preschool programs shall collaborate with participating families, early care providers, and community partners, including community empowerment area boards, Head Start programs, shared visions, and other programs provided under the auspices of the child development coordinating council; licensed child care centers; registered child development homes; area education agencies; child care resource and referral services provided under Iowa Code section 237A.26; early childhood special education programs; services funded by Title I of the federal Elementary and Secondary Education Act of 1965; and family support programs, to make available resources, including those described in subrule 16.3(14), required to meet the needs of the child. Preschool programs shall collaborate to ensure that children receiving care from other approved child care arrangements can participate in the voluntary preschool program with minimal disruptions to the child.

16.4(3) District requirements. The school district shall submit a collaborative application that demonstrates the involvement of multiple community stakeholders, including, as applicable, parents; other school districts; accredited nonpublic schools and faith-based representatives; the area education agency; the community empowerment area board; representatives of business, Head Start programs, shared visions and other programs provided under the auspices of the child development coordinating council; center-based and home-based providers of child care services, human services, public health, and economic development programs.

The methods by which such collaboration may be demonstrated include providing documentation of the development and maintenance of collaboration with community providers and other community stakeholders, evidence of a public hearing, collaboration agreements addressing operational procedures and other critical measures or assurances. The collaboration agreements between a school district and community-based providers of services may include four-year-old children who are enrolled in a child care center or child development home licensed or registered under Iowa Code chapter 237A, or in an existing public or private preschool program provided by the school district's local preschool program.

281—16.5(82GA,HF877) Applications for funding. All applications shall be submitted on forms provided by the department, and shall address the requirements found in rules 16.3(82GA,HF877), 16.4(82GA,HF877), and 16.13(82GA, HF877). Applicants shall submit a plan describing how they will fully meet the program standards within one year of the funding award. Points shall be awarded based on the applicant's provision of the following information:

1. Preschool program summary;
2. Research documentation;
3. Identification and documentation of local population;
4. Needs assessment of local programs providing services;
5. Evidence of collaboration with local agencies to provide comprehensive services; and
6. Letters of community support.

281—16.6(82GA,HF877) Application process.

16.6(1) Request for applications.

a. The department shall announce the commencement of the application period through public notice on the department's Web site and the department's regular monthly electronic publication.

b. Applications for preschool program funding shall be available on the department's Web site and otherwise distributed by the department upon request.

c. All applications shall be submitted to the department in accordance with instructions accompanying the applications.

16.6(2) Application process.

a. Applications that do not contain the specified information or that are not received by the specified date shall not be considered.

b. The department shall have the final discretion to award funds.

16.6(3) Notification of applicants. The department shall notify all applicants within 45 days following the due date for receipt of applications whether their requests shall be funded. The department shall provide to each successful applicant a contract to be signed by an official with authority to bind the applicant and to be returned to the department prior to the distribution of any funds under this program.

281—16.7(82GA,HF877) Award contracts. Funds for applications approved by the department shall be awarded through a contract entered into by the department and the approved local program.

281—16.8(82GA,HF877) Contract termination.

16.8(1) Termination for convenience. The contract may be terminated in whole or in part when both parties agree that the continuation of the project would not produce beneficial results commensurate with the future expenditure of funds. The parties shall agree upon the termination conditions, including the effective date and, in the case of partial terminations, the portion to be terminated. The applicant shall not incur new obligations for the terminated portion after the effective date and shall cancel as many outstanding obligations as possible.

16.8(2) Termination for cause. The contract may be terminated in whole or in part at any time before the date of completion whenever it is determined by the department that the applicant has failed to comply substantially with the conditions of the contract. The applicant shall be notified in writing by the department of the reasons for the termination and the effective date. The applicant shall not incur new obligations for the terminated portion after the effective date of termination and shall cancel as many outstanding obligations as possible.

The department shall administer preschool program grants contingent upon availability of funding. If there is a lack of funds necessary to fulfill the fiscal responsibility of the preschool program grants, the contracts shall be terminated or renegotiated. The department may terminate or re-

negotiate a contract upon 30 days' notice when there is a reduction of funds by executive order.

The contract may be terminated in whole or in part by June 30 of the current fiscal year in the event that the applicant has not attained the program standards.

16.8(3) Responsibility of applicant at termination. Within 45 days of the termination, the applicant shall supply the department with a financial statement detailing all costs incurred up to the effective date of the termination. If the applicant expends moneys for other than specified budget items approved by the department, the applicant shall return moneys for unapproved expenditures.

281—16.9(82GA,HF877) Criteria for applications for funding. For the fiscal years in the period beginning July 1, 2007, and ending June 30, 2011, if the number of requests from school districts for initial participation in the preschool program exceeds the funding made available for the preschool program, the department shall utilize all of the following selection criteria in selecting the school districts that will be approved to participate in the preschool program:

16.9(1) Priority shall be given to school districts that have a high percentage of children in poverty, and such children shall receive first priority for the programs. Poverty shall be measured by the percentage of the elementary students in the applicant district who qualify for free or reduced price meals.

16.9(2) Priority shall be given to school districts that do not have existing preschool programming within the school district boundaries.

16.9(3) Consideration shall be given to school districts with established, high-quality community partnerships for the delivery of preschool program services that are seeking to expand access.

16.9(4) Consideration shall be given to the size of school districts in large, medium, and small categories in order for there to be equitable statewide distribution of preschool program services.

16.9(5) Only those applicants that certify the following assurances shall be considered for funding:

a. That the applicant has or will have an appropriately licensed teacher available for the program by October 1 of the school year for which funding is sought.

b. That the applicant has or will have sufficient numbers of staff available for the program by October 1 of the school year for which funding is sought.

c. That the applicant's program is or will be operational by October 1 of the school year for which funding is sought.

d. That, during the instructional time described in subrule 16.3(4), instruction shall be delivered in accordance with the applicant's curriculum and with the child learning standards described in subrule 16.3(5).

281—16.10(82GA,HF877) Appeal of application denial or termination. Any applicant may appeal to the director of the department the denial of a properly submitted preschool program funding application or the unilateral termination of an approved application. The jurisdictional criteria and procedures found in 281—Chapter 7 shall be applicable to any appeal of denial or termination.

281—16.11(82GA,HF877) Finance.

16.11(1) Preschool foundation aid amounts to districts.

a. For the initial school year for which a school district approved to participate in the preschool program receives that approval and implements the preschool program, the funding for the preschool foundation aid payable to that school district shall be paid from the appropriation made for that school year in accordance with 2007 Iowa Acts, House File 877, section 6. For that school year, the preschool foundation aid payable to the school district is the product of the regular program state cost per pupil for the school year multiplied by 60 percent of the school district's eligible student enrollment on a specific date in the school year determined by rule. An eligible child is not required to be a resident of the district in which the child is enrolled voluntarily in the approved local program.

b. For budget years subsequent to the initial school year for which a school district approved to participate in the preschool program receives that approval and implements the preschool program, the funding for the preschool foundation aid payable to that school district shall be paid from the appropriation made in accordance with Iowa Code section 257.16 as amended by 2007 Iowa Acts, House File 877, section 8, except that an eligible child is not required to be a resident of the district in which the child is enrolled voluntarily in the approved local program.

16.11(2) Aid payments. Preschool foundation aid shall be paid as part of the state aid payments made to school districts in accordance with Iowa Code section 257.16 as amended by 2007 Iowa Acts, House File 877, section 8, except that an eligible child is not required to be a resident of the district in which the child is enrolled voluntarily in the approved local program.

16.11(3) Commingling prohibited. No state funding received under this program shall be commingled with other state aid payments made under Iowa Code section 257.16 as amended by 2007 Iowa Acts, House File 877, section 8. All state funding received under this program shall be accounted for by the applicant district separately from other state aid payments.

16.11(4) Restriction on supplanting. State funding received under this program shall be used to supplement, not supplant, other public funding received by the applicant district as the result of the participation of any eligible children if the program is funded from another state or federal source such as Head Start, shared visions, state child care assistance, or community empowerment. This restriction is applicable only for costs related to instructional time as described in subrule 16.3(4).

281—16.12(82GA,HF877) Transportation. Children participating in preschool in an approved local program under 2007 Iowa Acts, House File 877, may be provided transportation services. However, transportation services provided to such children are not eligible for reimbursement under this chapter.

281—16.13(82GA,HF877) Accountability requirements. An approved local program shall meet the program requirements for increased school readiness specified in rule 16.3(82GA,HF877). The program requirements are minimum standards. The department encourages approved local programs to exceed the minimum standards as programs work toward ongoing improvement.

16.13(1) Annual reports. Each approved local program shall provide on forms provided by the department an annual report to the department regarding program requirements. Failure to submit an annual report by the date specified therein shall result in suspension of financial payments to the applicant until such time as the report is received by the department.

16.13(2) Performance measures. The approved local program shall collect data on all of the following:

a. The number of eligible children participating in the preschool program.

b. The number of eligible children participating in the program that meets the requirements of NAEYC, Head Start, or Iowa Quality Preschool Program Standards and Criteria.

c. The curriculum.

d. The assessment as defined in rule 16.2(82GA, HF877).

e. The number of teachers.

f. The kindergarten literacy assessment as defined in Iowa Code section 279.60.

281—16.14(82GA,HF877) Monitoring. The department shall develop a monitoring system based on the annual reporting requirements and performance measures described in rule 16.13(82GA,HF877) to be implemented no later than one year after funding is first provided under this chapter. The monitoring system shall ensure that programs meet the provisions herein requiring a properly licensed teacher and adoption of program standards and shall be designed to follow the academic progress of children who voluntarily participate in the statewide preschool program as the children progress through elementary and secondary grade levels. If feasible, it is the intent of the department to include postsecondary monitoring of such children.

281—16.15(82GA,HF877) Open enrollment not applicable. Iowa's open enrollment statute (Iowa Code section 282.18) is not applicable for the parent or guardian of an eligible child who desires to access an approved program in a school district not of the child's residence. Approved programs are open to all eligible Iowa children, regardless of a child's district of residence. Accordingly, it is neither necessary for a parent or guardian to file an open enrollment application, nor will open enrollment applications for approved preschool programs be allowed.

Participation by a child in an approved program under these rules does not provide "good cause," as defined in Iowa Code section 282.18(4)"b," for the child's parent or guardian to file for open enrollment after the deadlines specified in Iowa Code section 282.18, subsections 2 and 4, by claiming continuous enrollment in the receiving district. (See also 281—subrule 17.8(7).)

These rules are intended to implement 2007 Iowa Acts, House File 877.

[Filed 9/13/07, effective 11/14/07]
[Published 10/10/07]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/10/07.

ARC 6288B

EDUCATION DEPARTMENT[281]

Adopted and Filed

Pursuant to the authority of Iowa Code section 256.7(5), the State Board of Education hereby rescinds Chapter 41, "Special Education," Iowa Administrative Code, and adopts a new Chapter 41 with the same title.

The format of new Chapter 41 parallels the federal special education regulations. Federal statutory and regulatory changes require most of the substantive revisions in Chapter 41, including access to instructional materials, state monitoring and general supervision, early intervening services, and services to parentally placed private school students. Other substantive changes include eliminating rules-based instructional delivery systems and specifying that provision of instructional services in homes and hospitals is the responsibility of the district of residence.

No waiver provision is included because the Board of Education has adopted agencywide waiver rules in 281—Chapter 4.

Notice of Intended Action was published in the June 6, 2007, Iowa Administrative Bulletin as **ARC 5920B**. Public hearings were held over the Iowa Communications Network on June 26 and June 28, 2007, and public comments were allowed until 4:30 p.m. on June 28, 2007. No individuals from outside of the Department, aside from volunteer site monitors, attended the public hearings. The Department received five written comments: one from the state's parent training and information center, one from a parent advocate, one from a research and resource center for individuals who are gifted that is housed at an institution of higher education, one from a professor of educational leadership (including education law) at an institution of higher education, and one from the directors of special education from the state's area education agencies. The comments received were detailed, probing, and insightful.

The written comments received commented favorably on the revised format and sequence of the rules of special education, which correspond to the structure and sequence of the federal special education regulations. Two commenters considered this change "a significant improvement." The suggestions made by the commenters are considered below in the order of the proposed rules.

One comment indicated the definition of "area education agency" in proposed 281—41.4(256B,273) was vague. The proposed rule indicates an AEA may be considered an LEA or an ESA, depending on context. This is an accurate reflection of state and federal law, and no change is required. When specific contexts in the rules required clarification, however, such changes have been made.

One comment indicated proposed 281—41.8(256B, 34CFR300), 281—41.50(256B,34CFR300) and 281—41.51(256B,34CFR300), which identify conditions that might cause a need for special education and related services, were confusing when read together. In light of the comment, 281—41.8(256B,34CFR300) was changed to delete the list of conditions. Although the list of conditions was drawn from Iowa Code section 256B.2(1), the plain meaning of this Code language is to provide that an individual is eligible to receive special education because of any condition that causes "a disability in obtaining an education." Deleting the list of conditions, which is retained in 281—41.50(256B, 34CFR300) and 281—41.51(256B,34CFR300), is consistent with the enabling legislation. Further, the cross reference in proposed 41.111(4) has been changed to 34 CFR Section 300.8.

Two comments suggested that proposed 281—41.29(256B,34CFR300), which defines "native language," needed clarification concerning individuals who use sign language. The commenters requested clarification on whether a specific form of sign language selected by the parents (i.e., American Sign Language) is the native language. No clarification to the proposed rule, which parallels the pertinent federal regulation, is required.

Two comments suggested that proposed 41.34(2)"p," concerning transportation, be clarified to indicate transportation is to be provided to "extracurricular and nonacademic settings." In light of 281—41.107(256B,34CFR300) and

281—41.117(256B,34CFR300), no such clarification is necessary.

Two comments requested including a reference to emotional disturbance in proposed 41.50(2), which defines "behavior disorder." In light of these comments, such a change has been made. The same commenters requested including a reference to severe allergy in the definition of "other health impairment," found in proposed 41.50(9). If a severe allergy results in a need for specially designed instruction, it would already be included in the language of proposed 41.50(9). No change is required.

One comment suggested the maximum age in proposed 41.101(1) and 41.102(1) be altered to reflect current practice. The age limits are those specified in the Iowa Code; however, the rules have been changed to eliminate a reference to a specific age, in case the Iowa Code's age limit is amended.

While two comments were complimentary of the Department's proposed 281—41.114(256B,34CFR300) to 281—41.116(256B,34CFR300), one comment suggested the questions concerning least restrictive environment contained in proposed 41.116(4) are confusing. In light of this comment, 41.116(4) is amended to indicate the questions are nonexhaustive. Additionally, the portion of this rule on questions concerning special schools has been rephrased to account for the scenario in which a child receives only a portion of her or his education at a special school. Finally, two of the questions have been rephrased, for matters of rule-writing style, to remove contractions.

One comment suggested proposed 41.137(1) and 41.138(1) create the impression that a FAPE is not available to students with accredited nonpublic schools, contrary to Iowa Code section 256.12. While these two proposed subrules are technically correct statements of federal and state law, the comment is well-founded. The final rules have been rewritten for purposes of clarity.

One comment stated proposed 41.137(3), concerning assurances of invitations to private school representatives to attend IEP meetings, creates an overly burdensome requirement on AEAs. The subrule is rewritten to indicate the responsibilities in the subrule are borne by either the LEA or the AEA. The responsibilities will be allocated on a case-by-case basis, based on the needs of the child and the services identified in the IEP.

Two comments suggested clarifying language in proposed 41.148(4). The commenters suggested clarifying language concerning whether both of the acts listed in 41.148(4)"a" and 41.148(4)"b" are required by parents, or if only "a" or "b" is required. The parallel language in the federal regulation is structured in the alternative. In this matter, the Department intends to impose no greater obligation than the federal regulations require. In light of the comment, punctuation changes are made to align with the federal language.

One comment suggested deleting references to construction from proposed 41.204(4), as such a reference, although drawn from the federal regulations, may give the incorrect impression that weighted dollars may be used for construction. For the reason stated by the commenter, the requested change has been made.

One comment indicated the definition of "director of special education" contained in proposed 41.402(1) is outdated, including the proposed subrule's requirement that the director be a full-time employee with no other administrative responsibilities. The subrule is rewritten in light of this comment. Additionally, the position's functions listed in Iowa Code section 273.5 are set forth in the subrule.

One comment stated listing specific impairments in proposed 41.407(1)"f" was unnecessary. The two impairments listed have been deleted.

One comment requested that delivery plans for instructional services be required to address settings and programs for children aged three to five. Subparagraph 41.408(2)"a"(1) contains this requested change.

One comment requested that proposed 41.408(2)"g," concerning AEA consideration of adjusted program requests concerning caseloads, be removed in light of the AEA's responsibility to monitor caseloads in proposed 281—41.407(256B,273,34CFR300). The Department concludes this rule is necessary to ensure the AEAs are properly equipped to carry out their monitoring functions under 281—41.407(256B,273,34CFR300). The Department, however, revised 41.408(2)"g" to rename adjusted program status to adjusted caseload status, and to clarify that granting this status is in the discretion of the Director upon showing of good cause.

There were several comments on support and related services. One comment indicated the proposed 281—41.409(256B,34CFR300) cross reference to the job titles and responsibilities in 41.402(3) is confusing. The cross reference is obsolete in light of the Act's personnel qualifications requirements (see 34 CFR § 300.156) and is deleted. Additionally, the reference to work experience services in 281—41.409(256B,34CFR300) is deleted, as work experience is a special education instructional service (see 41.39(2)).

One comment, referring to proposed 281—41.411(256B,34CFR300), asked for clarification on which related services are to be provided by local districts and which are to be provided by AEAs. Rule 281—41.411(256B,34CFR300) has been revised to clarify that related services that are also support services are the responsibility of AEAs, while other related services are the responsibility of LEAs. Additionally, the definition of "related services" in 281—41.34(256B,34CFR300) has been augmented by a rule of construction, stating that the specific listing of a service in the definition of "related services" does not indicate that the service is not special education, a support service, or a supplementary aid or service.

One comment requested revision of proposed 41.504(1), to the extent the proposal states written summaries of procedural safeguards shall not be given "apart from" the mandatory procedural safeguards notice. The comment stated this language is impractical and unduly restrictive. After reviewing the entirety of the proposed rule, the Department concludes this language is unnecessary, and it is deleted from the final rule.

Two comments requested clarification about when a resolution meeting agreement is "executed" under proposed 41.510(5). An agreement is "executed" when it is signed by all parties. The term as used in the proposed rule is common in legal usage, and no clarification is necessary.

One comment requested clarification of the respective rules of the AEA and the LEA in the manifestation determination process contained in proposed 41.530(5). The clarifying language requested has been added.

One comment requested clarification concerning 281—41.535(256B,34CFR300), which requires transmission of school records to law enforcement personnel whenever an agency reports a crime, but requires such transmittal to comply with the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g. The language is unchanged from the 1999 IDEA regulations. For clarity and to aid practitioners, the rule is amended to provide specific cross references to FERPA's implementing regulations.

One comment suggested specifying that the "LEA" in proposed 281—41.817(256B,34CFR300) is the AEA. The suggested change has been made. Additionally, in this division of the proposed rules, the phrase "three to five" has been changed to "three through five."

There were extensive comments from two commenters concerning response to intervention and identification of students with learning disabilities. The Department has carefully considered these comments, input received from multiple sources received prior to the Notice of Intended Action discussions in the legal and educational literature, and position statements from state and national advocacy organizations.

The commenters strongly objected to the Department's proposal, in proposed 41.307(1), to forbid the use of the "severe discrepancy" model for determining the existence of a learning disability. One commenter stated the legislative intent of the 2004 IDEA amendments does not permit the Department to do so. Assuming this to be true, solely for the sake of this discussion, "legislative intent" is outweighed by other canons of statutory construction. First, the language and grammar of the IDEA amendments permit the state to forbid the "severe discrepancy" model. Even if the statute were ambiguous on this point, the United States Department of Education's Office of Special Education Programs (OSEP) has interpreted the statute to permit states to do so, both in commentary to the 2006 IDEA regulations and in subsequent guidance documents. The Department notes that OSEP, in the 2006 IDEA regulations, removed a proposed regulation that would allow states to prohibit the "severe discrepancy" model; however, OSEP stated it did so to improve the clarity of the final regulations. OSEP's interpretation of the statute that it is statutorily authorized to interpret, apply, and enforce is entitled to great deference. The statute and OSEP authorize the Department's proposed rule. No change is made.

These commenters expressed concern that rules beginning with proposed 281—41.307(256B,34CFR300) would make it difficult to identify students who are gifted or who have high abilities and who also have learning disabilities. Again, commentary from OSEP answers these objections. In its analysis of the 2006 IDEA regulations, OSEP stated "severe discrepancy" models are not essential for identifying such children. Additionally, assuming a child is identified with a learning disability, that child must also demonstrate a need for special education, designed to "ensure access of the child to the general curriculum, so that the child can meet the educational standards within the jurisdiction of the public agency that apply to all children" (see proposed 41.39(3)"c"). The presence of a learning disability (or any other disability), standing alone, does not make a child an eligible individual. This is reflected in the plain language of the Act, the 2006 IDEA regulations, and OSEP's long-standing interpretations. No change is made in light of these comments.

One commenter stated there are some learning disabilities for which there are few or no scientific, research-based interventions, and prohibiting the severe discrepancy model would be unwise in those cases. For those instances, the federal regulations and proposed state rules allow for the use of "other alternative research-based procedures" (see proposed 41.307(1)"a"). While specific interventions may not yet be "scientific, research-based," the response to intervention process itself has a substantial base in the literature, a fact recognized by OSEP in its commentary to the 2006 IDEA regulations.

Several of the comments relate to the relationship between response to intervention and a full and individual evaluation. The content of and procedures for evaluations are set forth in proposed 281—41.304(256B,34CFR300) to 41.306(256B, 34CFR300). The proposed rules make clear, consistent with OSEP's position, that response to intervention alone is not a full and individual evaluation; however, the proposed rules acknowledge that, in certain cases, a response to intervention process, if it contains all of the elements required by proposed Chapter 41 (such as 281—41.304(256B,34CFR300) to 41.306(256B,34CFR300)), is a full and individual evaluation. No change is necessary.

One comment apparently takes issue with the proposed rule language stating response to intervention could be used for all areas of suspected disability, not just learning disability (see, e.g., proposed 41.307(4)). This proposed language is entirely consistent with the Department's long-standing commitment to general education interventions (proposed 281—41.312(256B,34CFR300)) and systematic problem solving processes (281—41.313(256B,34CFR300)), which have never been limited to specific disabilities. No change is warranted.

One comment suggested that proposed 281—41.307(256B,34CFR300) be rephrased from "a state" to "the state." In the interest of clarity, this change is made, and similar changes are made elsewhere in this chapter where clarity would be improved. No substantive change is intended.

In addition to the changes based on comments, the Department has made other clarifying changes from the Notice of Intended Action. Proposed 41.50(1) has been rewritten to include "autism spectrum disorders" in the definition of autism. Proposed 41.50(6) has been changed from "mental retardation" to "mental disability," and conforming changes have been made elsewhere in the chapter. All references in proposed Chapter 41 to providing Individualized Family Service Plans (IFSPs) to children after the third birthday have been deleted as inconsistent with Iowa practice (see, e.g., proposed 41.101(2), 41.102(1)"d," 41.124(2)). Proposed 281—41.112(256B,34CFR300) has been rephrased so that IFSPs are available for eligible individuals who are under three, consistent with proposed 41.326(1).

The special education advisory panel's duty to provide advice to the Department concerning adult inmates with disabilities has been returned to proposed 41.169(6). Additional language has been added to the definition of "blind persons or other persons with print disabilities" in proposed rule 41.210(4)"a." This language is clarifying in nature and has no substantive change. Proposed 41.322(2)"a"(1) has been rewritten, consistent with current practice, to specify that parents must be notified of the name and position of those who will be attending an IEP team meeting. Proposed 41.404(3) has been rephrased to conform to statutory and regulatory changes on medication administration courses and self-administration of asthma or other airway constriction medications. The rule's reference to dissenting opinions has been deleted as obsolete. The word "along" has been inserted in the second sentence of proposed 281—41.405(256B) for clarity. The last sentence in proposed 41.519(6) is eliminated as unnecessary. Proposed 41.520(2) is clarified by substituting "department" for "state" in the last sentence.

The caption of proposed 41.907(6) is rephrased for clarity. The examples in proposed 41.907(8)"a" and 41.907(8)"b" are deleted as unnecessary. Proposed 41.907(9) is clarified to emphasize the proper relationship between services and

placement decisions made by the relevant teams and the weightedness decisions made by AEAs.

The internal cross reference in proposed 41.1002(3)"b" is corrected. The timeline in proposed 41.1003(3) for forwarding records to the Department after the filing of a due process complaint has been lengthened. This does not lengthen, however, the timeline for providing a response to a parent's due process complaint (see 41.508(5)). The language in proposed 41.1007(9) has been rephrased, although no substantive change is made. A typographical error in proposed 41.1009(3) has been corrected. A rule allowing discovery prior to due process hearings, consistent with the Iowa administrative procedure Act and the Iowa rules of civil procedure, has been added at 41.1007(5) and the remaining portions of 281—41.1007(17A,256B) have been renumbered. Any other change not specifically listed is technical in nature only.

These amendments are intended to implement Iowa Code chapter 256B, the 2004 amendments to the Individuals with Disabilities Education Act, and the 2006 federal regulations implementing those amendments.

These amendments shall become effective November 14, 2007.

The following amendments are adopted.

Rescind **281—Chapter 41** and adopt the following **new** chapter in lieu thereof:

CHAPTER 41
SPECIAL EDUCATION

DIVISION I
PURPOSE AND APPLICABILITY

281—41.1(256B,34CFR300) Purposes. The purposes of this chapter are as follows:

1. To ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living;
2. To ensure that the rights of children with disabilities and their parents are protected;
3. To assist local educational agencies, area education agencies, and state agencies to provide for the education of all children with disabilities and to allocate responsibilities among those agencies; and
4. To assess and ensure the effectiveness of efforts to educate children with disabilities.

281—41.2(256B,34CFR300) Applicability of this chapter. The provisions of this chapter are binding on each public agency in the state that provides special education and related services to children with disabilities, regardless of whether that agency is receiving funds under Part B of the Individuals with Disabilities Education Act (Act).

41.2(1) General. The provisions of this chapter apply to all political subdivisions of the state that are involved in the education of children with disabilities, including:

a. The state educational agency (SEA).

b. Local educational agencies (LEAs), area education agencies (AEAs), and public charter schools that are not otherwise included as LEAs or educational service agencies (ESAs) and are not a school of an LEA or ESA.

c. Other state agencies and schools, including but not limited to the departments of human services and public health and state schools and programs for children with deafness or children with blindness.

d. State and local juvenile and adult correctional facilities.

41.2(2) Private schools and facilities. Each public agency in the state is responsible for ensuring that the rights and protections under Part B of the Act are given to children with disabilities referred to or placed in private schools and facilities by that public agency; or placed in private schools by their parents under the provisions of rule 41.148(256B, 34CFR300).

41.2(3) Age. This chapter applies to all children requiring special education between birth and the twenty-first birthday and to a maximum allowable age under Iowa Code section 256B.8.

DIVISION II
DEFINITIONS

281—41.3(256B,34CFR300) Act. "Act" means the Individuals with Disabilities Education Act as amended through August 14, 2006.

281—41.4(256B,273) Area education agency. "Area education agency" or "AEA" is a political subdivision of the state organized pursuant to Iowa Code chapter 273. An area education agency, depending on context, may be a local educational agency, as defined in rule 41.28(256B,34CFR300), an educational service agency, as defined in rule 41.12(256B, 34CFR300), or both simultaneously.

281—41.5(256B,34CFR300) Assistive technology device. "Assistive technology device" means any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve the functional capabilities of a child with a disability. The term does not include a medical device that is surgically implanted or the replacement of such device.

281—41.6(256B,34CFR300) Assistive technology service. "Assistive technology service" means any service that directly assists a child with a disability in the selection, acquisition, or use of an assistive technology device. The term includes the following:

1. The evaluation of the needs of a child with a disability, including a functional evaluation of the child in the child's customary environment;
2. Purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by children with disabilities;
3. Selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing assistive technology devices;
4. Coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs;
5. Training or technical assistance for a child with a disability or, if appropriate, that child's family; and
6. Training or technical assistance for professionals (including individuals providing education or rehabilitation services), employers, or other individuals who provide services to, employ, or are otherwise substantially involved in the major life functions of that child.

281—41.7(256B,34CFR300) Charter school. "Charter school" has the meaning given the term in Section 5210(1) of the Elementary and Secondary Education Act of 1965 as amended through August 14, 2006, 20 U.S.C. 6301 et seq. (ESEA).

281—41.8(256B,34CFR300) Child with a disability. "Child with a disability" refers to a person under 21 years of age, including a child under 5 years of age, who has a disability in obtaining an education. The term includes an individual who is over 6 and under 16 years of age who, pursuant to the statutes of this state, is required to receive a public education; an individual under 6 or over 16 years of age who, pursuant to the statutes of this state, is entitled to receive a public education; and an individual between the ages of 21 and 24 who, pursuant to the statutes of this state, is entitled to receive special education and related services. In federal usage, this refers to infants, toddlers, children and young adults. In these rules, this term is synonymous with "child requiring special education" and "eligible individual."

281—41.9(256B,34CFR300) Consent.

41.9(1) Obtaining consent. "Consent" is obtained when all of the following conditions are satisfied:

a. The parent has been fully informed of all information relevant to the activity for which consent is sought, in his or her native language, or other mode of communication;

b. The parent understands and agrees in writing to the carrying out of the activity for which parental consent is sought, and the consent describes that activity and lists the records (if any) that will be released and to whom; and

c. The parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time.

41.9(2) When revocation of consent is effective. If a parent revokes consent, that revocation is not retroactive (i.e., it does not negate an action that occurred after the consent was given and before the consent was revoked).

281—41.10(256B,34CFR300) Core academic subjects. "Core academic subjects" means English, reading or language arts, mathematics, science, foreign languages, civics and government, economics, arts, history, and geography.

281—41.11(256B,34CFR300) Day; business day; school day. "Day" means calendar day unless otherwise indicated as business day or school day.

1. "Business day" means Monday through Friday, except for federal and state holidays, unless holidays are specifically included in the designation of business day, as in 41.148(4)"b."

2. "School day" means any day, including a partial day, when children are in attendance at school for instructional purposes. School day has the same meaning for all children in school, including children with and without disabilities. The length of the school day for an eligible individual shall be the same as that determined by the local educational agency's board of directors for all other individuals, unless a shorter day or longer day is prescribed in the eligible individual's individualized education program.

281—41.12(256B,34CFR300) Educational service agency. "Educational service agency" means a regional public multiservice agency that is authorized by state law to develop, manage, and provide services or programs to LEAs; and is recognized as an administrative agency for purposes of the provision of special education and related services provided within public elementary schools and secondary schools of the state. "Educational service agency" includes any other public institution or agency that has administrative control and direction over a public elementary school or secondary school and includes entities that meet the definition of intermediate educational unit in Section 602(23) of the Act as in effect prior to June 4, 1997.

281—41.13(256B,34CFR300) Elementary school. "Elementary school" means a nonprofit institutional day or residential school, including a public elementary charter school, that provides elementary education, as determined under state law.

281—41.14(256B,34CFR300) Equipment. "Equipment" means machinery, utilities, and built-in equipment and any necessary enclosures or structures to house the machinery, utilities, or equipment. "Equipment" includes other items necessary for the functioning of a particular facility as a facility for the provision of educational services, including items such as instructional equipment and necessary furniture; printed, published and audio-visual instructional materials; telecommunications, sensory, and other technological aids and devices; and books, periodicals, documents, and other related materials.

281—41.15(256B,34CFR300) Evaluation. "Evaluation" means procedures used in accordance with rules 41.304(256B,34CFR300) to 41.311(256B,34CFR300) to determine whether a child has a disability and the nature and extent of the special education and related services that the child needs.

281—41.16(256B,34CFR300) Excess costs. "Excess costs" means those costs that are in excess of the average annual per-student expenditure in an LEA during the preceding school year for an elementary school or secondary school student, as may be appropriate, and that must be computed after deducting the following:

41.16(1) Certain federal funds. Amounts received under Part B of the Act; under Part A of Title I of the ESEA; and under Parts A and B of Title III of the ESEA; and

41.16(2) Certain state or local funds. Any state or local funds expended for programs that would qualify for assistance under subrule 41.16(1), but excluding any amounts for capital outlay or debt service.

281—41.17(256B,34CFR300) Free appropriate public education. "Free appropriate public education" or "FAPE" means special education and related services that are provided at public expense, under public supervision and direction, and without charge; that meet the standards of the SEA, including the requirements of this chapter; that include an appropriate preschool, elementary school, or secondary school education; and that are provided in conformity with an individualized education program (IEP) that meets the requirements of rules 41.320(256B,34CFR300) to 41.324(256B,34CFR300).

281—41.18(256B,34CFR300) Highly qualified special education teachers.

41.18(1) Requirements for special education teachers teaching core academic subjects. For any public elementary or secondary school special education teacher teaching core academic subjects, the term "highly qualified" has the meaning given the term in Section 9101 of the ESEA and 34 CFR 200.56, except that the requirements for "highly qualified" also include the following:

a. The requirements described in subrule 41.18(2); and

b. The option for teachers to meet the requirements of Section 9101 of the ESEA by meeting the requirements of subrules 41.18(3) and 41.18(4).

41.18(2) Requirements for special education teachers in general.

a. When used with respect to any public elementary school or secondary school special education teacher, "highly qualified" requires that:

(1) The teacher has obtained full state certification as a special education teacher, including certification obtained through alternative routes to certification, or has passed the state special education teacher licensing examination and holds a license to teach in the state as a special education teacher, except that when used with respect to a teacher teaching in a public charter school, "highly qualified" means that the teacher meets the certification or licensing requirements, if any, set forth in the state's public charter school law;

(2) The teacher has not had special education certification or licensure requirements waived on an emergency, temporary, or provisional basis; and

(3) The teacher holds at least a bachelor's degree.

b. A teacher will be considered to meet the standard in 41.18(2)"a"(1) if that teacher is participating in an alternative route to special education certification program as follows:

(1) The teacher meets the following requirements:

1. Receives high-quality professional development that is sustained, intensive, and classroom-focused in order to have a positive and lasting impact on classroom instruction, before and while teaching;

2. Participates in a program of intensive supervision that consists of structured guidance and regular ongoing support for teachers or a teacher mentoring program;

3. Assumes functions as a teacher only for a specified period of time not to exceed three years; and

4. Demonstrates satisfactory progress toward full certification as prescribed by the state; and

(2) The state ensures, through its certification and licensure process, that the provisions in 41.18(2)"b"(1) are met.

c. Any public elementary school or secondary school special education teacher who is not teaching a core academic subject is "highly qualified" if the teacher meets the requirements in 41.18(2)"a" or the requirements in 41.18(2)"a"(3) and 41.18(2)"b."

41.18(3) Requirements for special education teachers teaching to alternate achievement standards. When used with respect to a special education teacher who teaches core academic subjects exclusively to children who are assessed against alternate achievement standards established under 34 CFR 200.1(d), "highly qualified" means the teacher, whether new or not new to the profession, may either:

a. Meet the applicable requirements of Section 9101 of the ESEA and 34 CFR 200.56 for any elementary, middle, or secondary school teacher who is new or not new to the profession; or

b. Meet the requirements of paragraph (B) or (C) of Section 9101(23) of the ESEA as applied to an elementary school teacher, or, in the case of instruction above the elementary level, meet the requirements of paragraph (B) or (C) of Section 9101(23) of the ESEA as applied to an elementary school teacher and have subject matter knowledge appropriate to the level of instruction being provided and needed to effectively teach to those standards, as determined by the state.

41.18(4) Requirements for special education teachers teaching multiple subjects. When used with respect to a special education teacher who teaches two or more core academic subjects exclusively to children with disabilities, "highly qualified" means that the teacher may either:

a. Meet the applicable requirements of Section 9101 of the ESEA and 34 CFR 200.56(b) or (c);

b. In the case of a teacher who is not new to the profession, demonstrate competence in all the core academic subjects in which the teacher teaches in the same manner as is required for an elementary, middle, or secondary school teacher who is not new to the profession under 34 CFR 200.56(c); or

c. In the case of a new special education teacher who teaches multiple subjects and who is "highly qualified" in mathematics, language arts, or science, demonstrate, not later than two years after the date of employment, competence in the other core academic subjects in which the teacher teaches in the same manner as is required for an elementary, middle, or secondary school teacher under 34 CFR 200.56(c).

41.18(5) Reserved.

41.18(6) Rule of construction. Notwithstanding any other individual right of action that a parent or student may maintain under Part B of the Act or this chapter, nothing in Part B of the Act or this chapter shall be construed to create a right of action on behalf of an individual student or class of students for the failure of a particular SEA or LEA employee to be "highly qualified," or to prevent a parent from filing a complaint under rules 41.151(256B,34CFR300) to 41.153(256B, 34CFR300) about staff qualifications with the SEA as provided for under this chapter.

41.18(7) Applicability of definition to ESEA; clarification of new special education teacher.

a. A teacher who is "highly qualified" under this rule is considered "highly qualified" for purposes of the ESEA.

b. For purposes of 41.18(4)"c," a fully certified regular education teacher who subsequently becomes fully certified or licensed as a special education teacher is a new special education teacher when first hired as a special education teacher.

41.18(8) Private school teachers not covered. The requirements in this rule do not apply to teachers hired by private elementary schools and secondary schools including private school teachers hired or contracted by LEAs to provide equitable services to parentally placed private school children with disabilities under rule 41.138(256,256B, 34CFR300).

281—41.19(256B,34CFR300) Homeless children. "Homeless children" has the meaning given the term "homeless children and youths" in Section 725 (42 U.S.C. 11434a) of the McKinney-Vento Homeless Assistance Act as amended through August 14, 2006, 42 U.S.C. 11431 et seq.

281—41.20(256B,34CFR300) Include. "Include" means that the items named are not all of the possible items that are covered, whether like or unlike the ones named.

281—41.21(256B,34CFR300) Indian and Indian tribe. "Indian" means an individual who is a member of an Indian tribe. "Indian tribe" means any federal or state Indian tribe, settlement, band, rancheria, pueblo, colony, or community, including any Alaska native village or regional village corporation as defined in or established under the Alaska Native Claims Settlement Act, 43 U.S.C. 1601 et seq.

281—41.22(256B,34CFR300) Individualized education program. "Individualized education program" or "IEP" means a written statement for a child with a disability that is developed, reviewed, and revised in accordance with rules 41.320(256B,34CFR300) to 41.324(256B,34CFR300). A single IEP for each eligible individual, which specifies all the special education and related services the eligible individual is to receive, is required.

281—41.23(256B,34CFR300) Individualized education program team. "Individualized education program team" or "IEP team" means a group of individuals described in rule

41.321(256B,34CFR300) that is responsible for developing, reviewing, or revising an IEP for a child with a disability.

281—41.24(256B,34CFR300) Individualized family service plan. "Individualized family service plan" or "IFSP" has the meaning given the term in Section 636 of the Act.

281—41.25(256B,34CFR300) Infant or toddler with a disability. "Infant or toddler with a disability" means an individual under three years of age who needs early intervention services either because the individual has a condition, based on informed clinical opinion, known to have a high probability of resulting in later delays in growth and development if early intervention services are not provided; or the individual has a developmental delay, which is a 25 percent delay as measured by appropriate diagnostic instruments and procedures, based on informed clinical opinion, in one or more of the following developmental areas: cognitive development, physical development including vision and hearing, communication development, social or emotional development, or adaptive development.

281—41.26(256B,34CFR300) Institution of higher education. "Institution of higher education" has the meaning given the term in Section 101 of the Higher Education Act of 1965 as amended through August 14, 2006, 20 U.S.C. 1021 et seq. (HEA); and also includes any community college receiving funds from the Secretary of the Interior under the Tribally Controlled Community College or University Assistance Act of 1978, 25 U.S.C. 1801 et seq.

281—41.27(256B,34CFR300) Limited English proficient. "Limited English proficient" has the meaning given the term in Section 9101(25) of the ESEA.

281—41.28(256B,34CFR300) Local educational agency.

41.28(1) General. "Local educational agency" or "LEA" means a public board of education or other public authority legally constituted within a state for either administrative control or direction of, or to perform a service function for, public elementary or secondary schools in a city, county, township, school district, or other political subdivision of a state, or for a combination of school districts or counties as are recognized in a state as an administrative agency for its public elementary schools or secondary schools.

41.28(2) Educational service agencies and other public institutions or agencies. The term includes an educational service agency, as defined in rule 41.12(256B,34CFR300) and any other public institution or agency having administrative control and direction of a public elementary school or secondary school, including a public nonprofit charter school that is established as an LEA under state law.

41.28(3) BIA-funded schools. The term includes an elementary school or secondary school funded by the Bureau of Indian Affairs, and not subject to the jurisdiction of any SEA other than the Bureau of Indian Affairs, but only to the extent that the inclusion makes the school eligible for programs for which specific eligibility is not provided to the school in another provision of law and the school does not have a student population that is smaller than the student population of the LEA receiving assistance under the Act with the smallest student population.

281—41.29(256B,34CFR300) Native language.

41.29(1) General. "Native language," when used with respect to an individual who is limited English proficient, means the following:

a. The language normally used by that individual or, in the case of a child, the language normally used by the parents of the child; or

b. The language normally used by the child in the home or learning environment; this language shall be considered "native language" in all direct contact with a child, including evaluation of the child.

41.29(2) Special rule. For an individual with deafness or blindness, or for an individual with no written language, the mode of communication is that normally used by the individual, such as sign language, Braille, or oral communication.

281—41.30(256B,34CFR300) Parent.

41.30(1) General. "Parent" means:

a. A biological or adoptive parent of a child;

b. A foster parent, unless state law, regulations, or contractual obligations with a state or local entity prohibit a foster parent from acting as a parent;

c. A guardian generally authorized to act as the child's parent, or authorized to make educational decisions for the child, but not the state if the child is a ward of the state;

d. An individual acting in the place of a biological or adoptive parent including a grandparent, stepparent, or other relative with whom the child lives or an individual who is legally responsible for the child's welfare; or

e. A surrogate parent who has been appointed in accordance with rule 41.519(256B,34CFR300) or 20 U.S.C. 1439(a)(5).

41.30(2) Rules of construction and application. The following rules are to be used to determine whether a party qualifies as a parent:

a. Except as provided in 41.30(2)"b," the biological or adoptive parent, when attempting to act as the parent under this chapter and when more than one party is qualified to act as a parent under this chapter, must be presumed to be the parent for purposes of this rule unless the biological or adoptive parent does not have legal authority to make educational decisions for the child.

b. If a judicial decree or order identifies a specific person or persons under paragraphs "a" to "d" of subrule 41.30(1) to act as the parent of a child or to make educational decisions on behalf of a child, then such person or persons shall be determined to be the parent for purposes of this rule.

c. "Parent" does not include a public or private agency involved in the education or care of a child or an employee or contractor with any public or private agency involved in the education or care of the child in that employee's or contractor's official capacity.

281—41.31(256B,34CFR300) Parent training and information center. "Parent training and information center" means a center assisted under Section 671 or 672 of the Act.

281—41.32(256B,34CFR300) Personally identifiable. "Personally identifiable" means information that contains the name of the child, the child's parent, or other family member; the address of the child; a personal identifier, such as the child's social security number or student number; or a list of personal characteristics or other information that would make it possible to identify the child with reasonable certainty.

281—41.33(256B,34CFR300) Public agency; nonpublic agency; agency. "Public agency" includes the SEA, LEAs, ESAs, nonprofit public charter schools that are not otherwise included as LEAs or ESAs and are not a school of an LEA or ESA, and any other political subdivisions of the state that are responsible for providing education to children with disabilities. "Nonpublic agency" includes any private organization

of whatever form that is responsible for providing education to children with disabilities and that is not a public agency. "Agency" includes public agencies and nonpublic agencies.

281—41.34(256B,34CFR300) Related services.

41.34(1) General. "Related services" means transportation and such developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special education. "Related services" includes speech-language pathology and audiology services; interpreting services; psychological services; physical and occupational therapy; recreation, including therapeutic recreation; early identification and assessment of disabilities in children; counseling services, including rehabilitation counseling; orientation and mobility services; and medical services for diagnostic or evaluation purposes. "Related services" also includes school health services and school nurse services, social work services in schools, and parent counseling and training.

41.34(2) Exception; services that apply to children with surgically implanted devices, including cochlear implants.

a. Related services" does not include a medical device that is surgically implanted, the optimization of that device's functioning (e.g., mapping), maintenance of that device, or the replacement of that device.

b. Nothing in paragraph "a" of this subrule shall:

(1) Limit the right of a child with a surgically implanted device (e.g., cochlear implant) to receive related services as listed in subrule 41.34(1) that are determined by the IEP team to be necessary for the child to receive FAPE;

(2) Limit the responsibility of a public agency to appropriately monitor and maintain medical devices that are needed to maintain the health and safety of the child, including breathing, nutrition, or operation of other bodily functions, while the child is transported to and from school or is at school; or

(3) Prevent the routine checking of an external component of a surgically implanted device to make sure it is functioning properly, as required in rule 41.113(256B, 34CFR300).

41.34(3) Individual related services terms defined. The terms used in this definition are defined as follows:

a. "Audiology" includes:

(1) Identification of children with hearing loss;

(2) Determination of the range, nature, and degree of hearing loss, including referral for medical or other professional attention for the habilitation of hearing;

(3) Provision of habilitative activities, such as language habilitation, auditory training, speech reading (lipreading), hearing evaluation, and speech conservation;

(4) Creation and administration of programs for prevention of hearing loss;

(5) Counseling and guidance of children, parents, and teachers regarding hearing loss; and

(6) Determination of children's needs for group and individual amplification, selecting and fitting an appropriate aid, and evaluating the effectiveness of amplification.

b. "Counseling services" means services provided by qualified social workers, psychologists, guidance counselors, or other qualified personnel.

c. "Early identification and assessment of disabilities in children" means the implementation of a formal plan for identifying a disability as early as possible in a child's life.

d. "Interpreting services" includes the following:

(1) For children who are deaf or hard of hearing, oral transliteration services, cued language transliteration services, sign language transliteration and interpreting services, and transcription services, such as communication access real-time translation (CART), C-Print, and TypeWell; and

(2) For children who are deaf-blind, special interpreting services.

e. "Medical services" means services provided by a licensed physician to determine a child's medically related disability that results in the child's need for special education and related services.

f. "Occupational therapy" means services provided by a qualified occupational therapist, and includes the following:

(1) Improving, developing, or restoring functions impaired or lost through illness, injury, or deprivation;

(2) Improving ability to perform tasks for independent functioning if functions are impaired or lost; and

(3) Preventing, through early intervention, initial or further impairment or loss of function.

g. "Orientation and mobility services" means services provided to blind or visually impaired children by qualified personnel to enable those students to attain systematic orientation to and safe movement within their environments in school, home, and community, and includes teaching children the following, as appropriate:

(1) Spatial and environmental concepts and use of information received by the senses (such as sound, temperature and vibrations) to establish, maintain, or regain orientation and line of travel (e.g., using sound at a traffic light to cross the street);

(2) To use the long cane or a service animal to supplement visual travel skills or as a tool for safely negotiating the environment for children with no available travel vision;

(3) To understand and use remaining vision and distance low vision aids; and

(4) Other concepts, techniques, and tools.

h. "Parent counseling and training" means assisting parents in understanding the special needs of their child; providing parents with information about child development; and helping parents to acquire the necessary skills that will allow them to support the implementation of their child's IEP or IFSP.

i. "Physical therapy" means services provided by a qualified physical therapist.

j. "Psychological services" includes the following:

(1) Administering psychological and educational tests, and other assessment procedures;

(2) Interpreting assessment results;

(3) Obtaining, integrating, and interpreting information about child behavior and conditions relating to learning;

(4) Consulting with other staff members in planning school programs to meet the special educational needs of children as indicated by psychological tests, interviews, direct observation, and behavioral evaluations;

(5) Planning and managing a program of psychological services, including psychological counseling for children and parents; and

(6) Assisting in developing positive behavioral intervention strategies.

k. "Recreation" includes the following:

(1) Assessment of leisure function;

(2) Therapeutic recreation services;

(3) Recreation programs in schools and community agencies; and

(4) Leisure education.

l. "Rehabilitation counseling services" means services provided by qualified personnel in individual or group sessions that focus specifically on career development, employment preparation, achieving independence, and integration

in the workplace and community of a student with a disability. The term also includes vocational rehabilitation services provided to a student with a disability by vocational rehabilitation programs funded under the Rehabilitation Act of 1973 as amended through August 14, 2006, 29 U.S.C. 701 et seq.

m. "School health services and school nurse services" means health services that are designed to enable a child with a disability to receive FAPE as described in the child's IEP. School nurse services are services provided by a qualified school nurse. School health services are services that may be provided by either a qualified school nurse or other qualified person.

n. "Social work services in schools" includes the following:

(1) Preparing a social or developmental history concerning a child with a disability;

(2) Group and individual counseling with the child and family;

(3) Working in partnership with parents and others on those problems in a child's living situation (home, school, and community) that affect the child's adjustment in school;

(4) Mobilizing school and community resources to enable the child to learn as effectively as possible in his or her educational program; and

(5) Assisting in developing positive behavioral intervention strategies.

o. "Speech-language pathology services" includes the following:

(1) Identification of children with speech or language impairments;

(2) Diagnosis and appraisal of specific speech or language impairments;

(3) Referral for medical or other professional attention necessary for the habilitation of speech or language impairments;

(4) Provision of speech and language services for the habilitation or prevention of communicative impairments; and

(5) Counseling and guidance of parents, children, and teachers regarding speech and language impairments.

p. "Transportation" includes the following:

(1) Travel to and from school and between schools;

(2) Travel in and around school buildings; and

(3) Specialized equipment, such as special or adapted buses, lifts, and ramps, if required to provide special transportation for a child with a disability.

41.34(4) Rule of construction. A particular service listed in this rule may also be considered special education under rule 41.39(256B,34CFR300), a supplementary aid and service under rule 41.42(256B,34CFR300), or a support service under rule 41.409(256B,34CFR300).

281—41.35(34CFR300) Scientifically based research. "Scientifically based research" has the meaning given the term in Section 9101(37) of the ESEA.

281—41.36(256B,34CFR300) Secondary school. "Secondary school" means a nonprofit institutional day or residential school, including a public secondary charter school that provides secondary education, as determined under state law, except that it does not include any education beyond grade 12.

281—41.37(34CFR300) Services plan. "Services plan" has the meaning given the term in 34 CFR 300.37.

281—41.38(34CFR300) Secretary. "Secretary" means the Secretary of the United States Department of Education.

281—41.39(256B,34CFR300) Special education.

41.39(1) General. "Special education" means specially designed instruction, at no cost to the parents, to meet the unique needs of a child with a disability, including:

a. Instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings; and

b. Instruction in physical education.

41.39(2) Specific services included in special education. Special education includes each of the following, if the services otherwise meet the requirements of subrule 41.39(1):

a. Any service listed in this chapter, including support services, related services, and supplemental aids and services, that is specially designed instruction under subrule 41.39(1) or state standards or is required to assist an eligible individual in taking advantage of, or responding to, educational programs and opportunities;

b. Travel training; and

c. Vocational education.

41.39(3) Individual special education terms defined. The terms in this definition are defined as follows:

a. "At no cost" means that all specially designed instruction is provided without charge, but does not preclude incidental fees that are normally charged to nondisabled students or their parents as a part of the regular education program. An AEA or LEA may ask, but not require, parents of children with disabilities to use public insurance or benefits or private insurance proceeds to pay for services if they would not incur a financial cost, as described in rule 41.154(256B, 34CFR300).

b. "Physical education" means the development of physical and motor fitness; fundamental motor skills and patterns; and skills in aquatics, dance, and individual and group games and sports, including intramural and lifetime sports; and includes special physical education, adapted physical education, movement education, and motor development.

c. "Specially designed instruction" means adapting, as appropriate to the needs of an eligible child under this chapter, the content, methodology, or delivery of instruction:

(1) To address the unique needs of the child that result from the child's disability; and

(2) To ensure access of the child to the general curriculum, so that the child can meet the educational standards within the jurisdiction of the public agency that apply to all children.

d. "Travel training" means providing instruction, as appropriate, to children with significant cognitive disabilities, and any other children with disabilities who require this instruction, to enable them to:

(1) Develop an awareness of the environment in which they live; and

(2) Learn the skills necessary to move effectively and safely from place to place within that environment (e.g., in school, in the home, at work, and in the community).

e. "Vocational education" means organized educational programs that are directly related to the preparation of individuals for paid or unpaid employment, or for additional preparation for a career not requiring a baccalaureate or advanced degree.

281—41.40(34CFR300) State. "State" means each of the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, and each of the outlying areas.

281—41.41(256B,34CFR300) State educational agency. "State educational agency" or "SEA" means the state board of education or other agency or officer primarily responsible for the state supervision of public elementary schools and secon-

dary schools, or, if there is no such officer or agency, an officer or agency designated by the governor or by state law.

281—41.42(256B,34CFR300) Supplementary aids and services. "Supplementary aids and services" means aids, services, and other supports that are provided in regular education classes, other education-related settings, and in extracurricular and nonacademic settings, to enable children with disabilities to be educated with nondisabled children to the maximum extent appropriate in accordance with rules 41.114(256B,34CFR300) to 41.116(256B,34CFR300).

281—41.43(256B,34CFR300) Transition services.

41.43(1) General. "Transition services" means a coordinated set of activities for a child with a disability and meets the following description:

a. Is designed to be within a results-oriented process, that is focused on improving the academic and functional achievement of the child with a disability to facilitate the child's movement from school to postschool activities, including postsecondary education, vocational education, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation;

b. Is based on the individual child's needs, taking into account the child's strengths, preferences, and interests; and includes the following:

(1) Instruction;

(2) Related services;

(3) Community experiences;

(4) The development of employment and other postschool adult living objectives; and

(5) If appropriate, acquisition of daily living skills and provision of a functional vocational evaluation.

41.43(2) May be special education or a related service. Transition services for children with disabilities may be special education, if provided as specially designed instruction, or a related service if required to assist a child with a disability to benefit from special education.

281—41.44(34CFR300) Universal design. "Universal design" has the meaning given the term in Section 3 of the Assistive Technology Act of 1998 as amended through August 14, 2006, 29 U.S.C. 3002.

281—41.45(256B,34CFR300) Ward of the state.

41.45(1) General. Subject to subrules 41.45(2) and 41.45(3), "ward of the state" means a child who, as determined by the state where the child resides, is:

a. A foster child;

b. In the custody of a public child welfare agency; or

c. A ward of the state.

41.45(2) Exception. "Ward of the state" does not include a foster child who has a foster parent who meets the definition of a parent in rule 41.30(256B,34CFR300).

41.45(3) Interpretive note. "Ward of the state" is a term rarely used in Iowa law. It would be an extremely rare occurrence for a child to be a ward of the state while not being either a foster child or in the custody of a public child welfare agency.

281—41.46 to **41.49** Reserved.

281—41.50(256B,34CFR300) Other definitions associated with identification of eligible individuals. The following terms may be encountered in the identification of children with disabilities.

41.50(1) Autism. "Autism" means a developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before the age of three, which adversely affects a child's educational performance. Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences. Autism does not apply if a child's educational performance is adversely affected primarily because the child has a behavior disorder, as defined in subrule 41.50(2). A child who manifests the characteristics of autism after the age of three could be identified as having autism if the criteria in the first sentence of this subrule are satisfied. This term includes all conditions described by the term "autism spectrum disorder," which adversely affects a child's educational performance.

41.50(2) Behavior disorder. "Behavior disorder" (or emotional disturbance) means any condition that exhibits one or more of the following five characteristics over a long period of time and to a marked degree that adversely affects a child's educational performance.

a. An inability to learn that cannot be explained by intellectual, sensory, or health factors.

b. An inability to build or maintain satisfactory interpersonal relationships with peers and teachers.

c. Inappropriate types of behavior or feelings under normal circumstances.

d. A general pervasive mood of unhappiness or depression.

e. A tendency to develop physical symptoms or fears associated with personal or school problems.

41.50(3) Deaf-blindness. "Deaf-blindness" means concomitant hearing and visual impairments, the combination of which causes such severe communication and other developmental and educational needs that they cannot be accommodated in special education programs solely for children with deafness or children with blindness.

41.50(4) Deafness. "Deafness" means a hearing impairment that is so severe that the child is impaired in processing linguistic information through hearing, with or without amplification, and that adversely affects a child's educational performance.

41.50(5) Hearing impairment. "Hearing impairment" means an impairment in hearing, whether permanent or fluctuating, that adversely affects a child's educational performance but that is not included under the definition of deafness in 41.50(4).

41.50(6) Mental disability. "Mental disability" means significantly subaverage general intellectual functioning, that exists concurrently with deficits in adaptive behavior and is manifested during the developmental period, and which adversely affects a child's educational performance.

41.50(7) Multiple disabilities. "Multiple disabilities" means concomitant impairments, such as mental disability-blindness or mental disability-orthopedic impairment, the combination of which causes such severe educational needs that they cannot be accommodated in special education programs solely for one of the impairments. Multiple disabilities does not include deaf-blindness.

41.50(8) Orthopedic impairment. "Orthopedic impairment" means a severe orthopedic impairment that adversely affects a child's educational performance. The term includes impairments caused by a congenital anomaly; impairments caused by disease, e.g., poliomyelitis or bone tuberculosis; and impairments from other causes, e.g., cerebral palsy, amputations, and fractures or burns that cause contractures.

41.50(9) Other health impairment. "Other health impairment" means having limited strength, vitality, or alertness,

including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment, that:

a. Is due to a chronic or acute health problem such as asthma, attention deficit disorder or attention deficit hyperactivity disorder, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, sickle cell anemia, and Tourette syndrome; and

b. Adversely affects a child's educational performance.

41.50(10) Specific learning disability. "Specific learning disability" means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in the imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations, including conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. Specific learning disability does not include learning problems that are primarily the result of visual, hearing, or motor disabilities, of mental disability, of emotional disturbance, or of environmental, cultural, or economic disadvantage.

41.50(11) Speech or language impairment. "Speech or language impairment" means a communication disorder, such as stuttering, impaired articulation, a language impairment, or a voice impairment, that adversely affects a child's educational performance.

41.50(12) Traumatic brain injury. "Traumatic brain injury" means an acquired injury to the brain caused by an external physical force, resulting in total or partial functional disability or psychosocial impairment, or both, that adversely affects a child's educational performance. Traumatic brain injury applies to open or closed head injuries resulting in impairments in one or more areas, such as cognition; language; memory; attention; reasoning; abstract thinking; judgment; problem solving; sensory, perceptual, and motor abilities; psychosocial behavior; physical functions; information processing; and speech. Traumatic brain injury does not apply to brain injuries that are congenital or degenerative, or to brain injuries induced by birth trauma.

41.50(13) Visual impairment. "Visual impairment," including blindness, means an impairment in vision that, even with correction, adversely affects a child's educational performance. The term includes both partial sight and blindness. Individuals who have a medically diagnosed expectation of visual deterioration in adolescence or early adulthood may qualify for instruction in Braille reading and writing.

281—41.51(256B,34CFR300) Other definitions applicable to this chapter. The following additional definitions apply to this chapter.

41.51(1) Appropriate activities. "Appropriate activities" means those activities that are consistent with age-relevant abilities or milestones that typically developing children of the same age would be performing or would have achieved.

41.51(2) Board. "Board" means the Iowa state board of education.

41.51(3) Department. "Department" means the state department of education.

41.51(4) Director. "Director" means the director of special education of the AEA.

41.51(5) Director of education. "Director of education" means the state director of the department of education.

41.51(6) Early childhood special education. "Early childhood special education" or "ECSE" means special education and related services for those individuals below the age of six.

41.51(7) General curriculum. "General curriculum" means the curriculum adopted by an LEA or schools within the LEA for all children from preschool through secondary school.

41.51(8) General education environment. "General education environment" includes, but is not limited to, the classes, classrooms, services, and nonacademic and extracurricular services and activities made available by an agency to all students. For preschool children who require special education, the general education environment is the environment where appropriate activities occur for children of similar age without disabilities.

41.51(9) General education interventions. "General education interventions" means attempts to resolve presenting problems or behaviors of concern in the general education environment prior to conducting a full and individual evaluation as described in rule 41.312(256B,34CFR300).

41.51(10) Head injury. "Head injury" means an acquired injury to the brain caused by an external physical force, resulting in total or partial functional disability or psychosocial impairment, or both, that adversely affects an individual's educational performance. The term applies to open or closed head injuries resulting in impairments in one or more areas such as cognition; language; memory; attention; reasoning; abstract thinking; judgment; problem solving; sensory, perceptual and motor abilities; psychosocial behavior; physical functions; information processing; and speech. The term does not apply to brain injuries that are congenital or degenerative or brain injuries induced by birth trauma.

41.51(11) Multicategorical. "Multicategorical" means special education in which the individuals receiving special education have different types of disabilities.

41.51(12) School district of the child's residence. "School district of the child's residence" or "district of residence of the child" is that school district in which the parent of the individual resides, subject to the following:

a. If an eligible individual is physically present ("lives") in a district other than the district of residence of the individual's parent for a primary purpose other than school attendance, then the district of residence of the individual is the district in which the individual resides, and that district becomes responsible for providing and funding the special education and related services.

b. If an eligible individual is physically present ("lives") in a district other than the district of residence of the individual's parent solely for the purpose of school attendance, the district of residence remains that of the parent; therefore, the parent must pay tuition to the receiving district. The district of residence cannot be held responsible for tuition payment.

c. "Children living in a foster care facility" are individuals requiring special education who are living in a licensed child foster care facility as defined in Iowa Code section 237.1 or in a facility providing residential treatment as defined in Iowa Code section 125.2. District of residence of an individual living in a foster care facility and financial responsibility for special education and related services are determined pursuant to subrule 41.907(5).

d. "Children placed by the district court" are pupils requiring special education for whom parental rights have been terminated and who have been placed in a facility or home by a district court. Financial responsibility for special education and related services of individuals placed by the district court is determined pursuant to subrule 41.907(6).

41.51(13) Severely disabled. "Severely disabled" is an adjective applied to individuals with any severe disability including individuals who are profoundly, multiply disabled.

41.51(14) Signature. "Signature" has the meaning given the term in Iowa Code section 4.1(39).

41.51(15) Systematic progress monitoring. "Systematic progress monitoring" means a systematic procedure for collecting and displaying an individual's performance over time for the purpose of making educational decisions.

281—41.52 to **41.99** Reserved.

DIVISION III
RULES APPLICABLE TO THE STATE AND TO ALL AGENCIES

281—41.100(256B,34CFR300) Eligibility for assistance. To be eligible for assistance under Part B of the Act for a fiscal year, the state shall submit a plan that provides assurances to the Secretary that the state has in effect policies and procedures to ensure that the state meets the conditions in rules 41.101(256B,34CFR300) to 41.176(256B).

281—41.101(256B,34CFR300) Free appropriate public education (FAPE).

41.101(1) General. A free appropriate public education must be available to all children residing in the state for the time period permitted by Iowa Code chapter 256B, including children with disabilities who have been suspended or expelled from school, as provided for in subrule 41.530(4).

41.101(2) FAPE for children beginning at the age of three. The state shall ensure that:

a. The obligation to make FAPE available to each eligible child residing in the state begins no later than the child's third birthday; and

b. An IEP is in effect for the child by that date.

c. If a child's third birthday occurs during the summer, the child's IEP team shall determine the date when services under the IEP will begin.

41.101(3) Children advancing from grade to grade. FAPE shall be available to any individual child with a disability who needs special education and related services, even though the child has not failed or been retained in a course or grade and is advancing from grade to grade. The determination that a child described in the first sentence of this subrule is eligible under this chapter must be made on an individual basis by the group responsible within the child's LEA for making eligibility determinations.

281—41.102(256B,34CFR300) Limitation—exceptions to FAPE for certain ages.

41.102(1) Exceptions. The obligation to make FAPE available to all children with disabilities does not apply with respect to the following:

a. Children over the age provided in Iowa Code chapter 256B, unless otherwise provided in this rule.

b. Certain children incarcerated in adult prisons.

(1) General. A child aged 18 to 21 who, in the last educational placement prior to incarceration in an adult correctional facility:

1. Was not actually identified as being a child with a disability under this chapter; and

2. Did not have an IEP under Part B of the Act.

(2) Inapplicability of exception. The exception in 41.102(1)"b"(1) does not apply to a child with disabilities, aged 18 to 21, who:

1. Had been identified as a child with a disability under this chapter and had received services in accordance with an IEP, but who left school prior to incarceration; or

2. Did not have an IEP in the child's last educational setting, but who had actually been identified as a child with a disability under this chapter.

c. Graduates with a regular high school diploma.

(1) General. Children with disabilities who have graduated from high school with a regular high school diploma.

(2) Inapplicability of exception. The exception in 41.102(1)"c"(1) does not apply to children who have graduated from high school, but have not been awarded a regular high school diploma.

(3) Graduation is a change in placement. Graduation from high school with a regular high school diploma constitutes a change in placement requiring written prior notice in accordance with rule 41.503(256B,34CFR300).

(4) Rule of construction. As used in 41.102(1)"c"(1) to (3), the term "regular high school diploma" does not include an alternative degree that is not fully aligned with the state's academic standards, such as a certificate or a general educational development credential (GED).

d. Reserved.

e. Eligibility beyond period specified in Iowa Code chapter 256B. An agency may continue the special education and related services of an eligible individual beyond the time period specified in the Iowa Code if the person had an accident or prolonged illness that resulted in delays in the initiation of or in the interruption of that individual's special education program. The AEA director of special education must request approval from the department, which may be granted for up to the individual's twenty-fourth birthday.

41.102(2) Documents relating to exceptions. The state must ensure that the information it has provided to the Secretary regarding the exceptions in subrule 41.102(1) is current and accurate.

281—41.103(256B,34CFR300) FAPE—methods and payments.

41.103(1) All means available to meet Part B requirements. The state may use whatever state, local, federal, and private sources of support are available in the state to meet the requirements of Part B of the Act.

41.103(2) Third-party obligations not eliminated. Nothing in this chapter relieves an insurer or similar third party from an otherwise valid obligation to provide or to pay for services provided to a child with a disability.

41.103(3) No delay in implementing an IEP. Consistent with rule 41.323(256B,34CFR300), there shall be no delay in implementing an eligible individual's IEP, including any case in which the payment source for providing or paying for special education and related services to the child is being determined.

281—41.104(256B,34CFR300) Residential placement. If placement in a public or private residential program is necessary to provide special education and related services to an eligible individual, the program, including nonmedical care and room and board, must be at no cost to the parents of the child.

281—41.105(256B,34CFR300) Assistive technology.

41.105(1) General. Each public agency must ensure that assistive technology devices or assistive technology services, or both, as those terms are defined in rules 41.5(256B, 34CFR300) and 41.6(256B,34CFR300), respectively, are made available to a child with a disability if required as a part of the child's:

a. Special education under rule 41.39(256B, 34CFR300);

b. Related services under rule 41.34(256B,34CFR300); or

c. Supplementary aids and services under rule 41.42(256B,34CFR300) and 41.114(2)"b."

41.105(2) Use of assistive technology devices at home or in other settings. On a case-by-case basis, the use of school-purchased assistive technology devices in a child's home or in other settings is required if the child's IEP team determines that the child needs access to those devices in order to receive FAPE.

281—41.106(256B,34CFR300) Extended school year services.

41.106(1) General. Each public agency must ensure that extended school year services are available as necessary to provide FAPE.

a. Extended school year services must be provided only if a child's IEP team determines, on an individual basis, in accordance with rules 41.320(256B,34CFR300) to 41.324(256B,34CFR300), that the services are necessary for the provision of FAPE to the child.

b. In implementing the requirements of this rule, a public agency may not limit extended school year services to particular categories of disability or unilaterally limit the type, amount, or duration of those services.

41.106(2) Definition. As used in this rule, the term "extended school year services" means special education and related services that meet the standards of the SEA and are provided to a child with a disability beyond the normal school year of the public agency, in accordance with the child's IEP and at no cost to the parents of the child.

281—41.107(256B,34CFR300) Nonacademic services.

41.107(1) General. Each public agency must take steps, including the provision of supplementary aids and services determined appropriate and necessary by the child's IEP team, to provide nonacademic and extracurricular services and activities in the manner necessary to afford children with disabilities an equal opportunity for participation in those services and activities.

41.107(2) Definition. Nonacademic and extracurricular services and activities may include counseling services, athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the public agency, referrals to agencies that provide assistance to individuals with disabilities, and employment of students, including both employment by the public agency and assistance in making outside employment available.

281—41.108(256B,34CFR300) Physical education. All public agencies in the state shall comply with the following:

41.108(1) General. Physical education services, specially designed if necessary, must be made available to every child with a disability receiving FAPE, unless the public agency enrolls children without disabilities and does not provide physical education to children without disabilities in the same grades.

41.108(2) Regular physical education. Each child with a disability must be afforded the opportunity to participate in the regular physical education program available to nondisabled children unless the child is enrolled full-time in a separate facility or the child needs specially designed physical education, as prescribed in the child's IEP.

41.108(3) Special physical education. If specially designed physical education is prescribed in a child's IEP, the public agency responsible for the education of that child must provide the services directly or make arrangements for those services to be provided through other public or private programs.

41.108(4) Education in separate facilities. The public agency responsible for the education of a child with a disability who is enrolled in a separate facility must ensure that the child receives appropriate physical education services in compliance with this rule.

281—41.109(256B,34CFR300) Full educational opportunity goal (FEOG). Each public agency shall ensure the provision of full educational opportunity to children requiring special education. Each public agency shall have in effect policies and procedures to demonstrate that the agency has established a goal of providing full educational opportunity to all children with disabilities, aged birth to 21, and a detailed timetable for accomplishing that goal.

281—41.110(256B,34CFR300) Program options. Each public agency shall take steps to ensure that its children with disabilities have available to them the variety of educational programs and services available to nondisabled children in the area served by the agency, including art, music, industrial arts, consumer and homemaking education, and vocational education.

281—41.111(256B,34CFR300) Child find.

41.111(1) General. All children with disabilities residing in the state, including children with disabilities who are homeless children or are wards of the state and children with disabilities who attend private schools, regardless of the severity of their disability, and who are in need of special education and related services, must be identified, located, and evaluated; and a practical method must be developed and implemented to determine which children are currently receiving needed special education and related services.

41.111(2) Reserved.

41.111(3) Other children in child find. Child find also must include the following:

a. A child who is suspected of being a child with a disability and in need of special education, even though the child is advancing from grade to grade; and

b. Highly mobile children, including migrant children.

41.111(4) Classification based on disability not required. Nothing in the Act requires that children be classified by their disability so long as each child who has a disability that is listed in 34 CFR Section 300.8 and who, by reason of that disability, needs special education and related services is regarded as a child with a disability under Part B of the Act.

281—41.112(256B,34CFR300) Individualized education programs (IEPs). An IEP, or an IFSP that meets the requirements of Section 636(d) of the Act (for eligible individuals aged birth to three), is developed, reviewed, and revised for each child with a disability in accordance with rules 41.320(256B,34CFR300) to 41.324(256B,34CFR300), except as provided in 41.300(2)"d"(2).

281—41.113(256B,34CFR300) Routine checking of hearing aids and external components of surgically implanted medical devices.

41.113(1) Hearing aids. Each public agency must ensure that hearing aids worn in school by children with hearing impairments, including deafness, are functioning properly.

41.113(2) External components of surgically implanted medical devices.

a. Subject to 41.113(2)"b," each public agency must ensure that the external components of surgically implanted medical devices are functioning properly.

b. For a child with a surgically implanted medical device who is receiving special education and related services under this chapter, a public agency is not responsible for the post-

surgical maintenance, programming, or replacement of the medical device that has been surgically implanted or of an external component of the surgically implanted medical device.

281—41.114(256B,34CFR300) Least restrictive environment (LRE).

41.114(1) General. Except as provided in 41.324(4)"a" regarding children with disabilities in adult prisons, each public agency in the state shall have policies and procedures in place to meet the LRE requirements of this rule and rules 41.115(256B,34CFR300) to 41.120(256B,34CFR300).

41.114(2) Public agency assurances. Each public agency must ensure and maintain adequate documentation that:

a. To the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are nondisabled; and

b. Special classes, separate schooling, or other removal of children with disabilities from the general education environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

41.114(3) State funding mechanism. A state funding mechanism must not result in placements that violate the requirements of this rule; and the state must not use a funding mechanism by which funds are distributed on the basis of the type of setting in which a child is served or which will result in the failure to provide a child with a disability FAPE according to the unique needs of the child, as described in the child's IEP.

281—41.115(256B,34CFR300) Continuum of alternative services and placements.

41.115(1) General. Each public agency must ensure that a continuum of alternative services and placements is available to meet the needs of children with disabilities for special education and related services.

41.115(2) Requirements. The continuum required in subrule 41.115(1) must meet the following requirements:

a. Include the alternative placements listed in the definition of special education under rule 41.39(256B,34CFR300) (instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions); and

b. Make provision for supplementary services, such as resource room or itinerant instruction, to be provided in conjunction with regular class placement.

281—41.116(256B,34CFR300) Placements.

41.116(1) General. In determining the educational placement of a child with a disability, including a preschool child with a disability, each public agency must ensure the following:

a. The placement decision shall be made:

(1) By a group of persons, including the parents and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options; and

(2) In conformity with the LRE provisions of this chapter, including rules 41.114(256B,34CFR300) to 41.118(256B, 34CFR300);

b. The child's placement shall be:

(1) Determined at least annually;

(2) Based on the child's IEP; and

(3) Located as close as possible to the child's home;

c. Unless the IEP of a child with a disability requires some other arrangement, the child shall be educated in the school that he or she would attend if nondisabled;

d. In selecting the LRE, the agency shall consider any potential harmful effect on the child or on the quality of services that he or she needs; and

e. A child with a disability shall not be removed from education in age-appropriate regular classrooms solely because of needed modifications in the general education curriculum.

41.116(2) Special rule: Iowa Code section 282.9. For eligible individuals subject to Iowa Code section 282.9, any decision of educational setting for such eligible individuals shall be made in accordance with this rule.

41.116(3) Special rule: disciplinary placements. If a child is placed in an interim alternative educational setting pursuant to rules 41.530(256B,34CFR300) and 41.531(256B,34CFR300), that setting shall be determined by the IEP team.

41.116(4) Special considerations. The team establishing the eligible individual's placement must answer the following questions.

a. Questions concerning least restrictive environment. When developing an eligible individual's IEP and placement, the team shall consider the following questions, as well as any other factor appropriate under the circumstances, regarding the provision of special education and related services:

(1) What accommodations, modifications and adaptations does the individual require to be successful in a general education environment?

(2) Why is it not possible for these accommodations, modifications and adaptations to be provided within the general education environment?

(3) What supports are needed to assist the teacher and other personnel in providing these accommodations, modifications and adaptations?

(4) How will receipt of special education services and activities in the general education environment impact this individual?

(5) How will provision of special education services and activities in the general education environment impact other students?

b. Additional questions concerning special school placement. When some or all of an eligible individual's special education is to be provided in a special school, the individual's IEP, or an associated or attached document, shall include specific answers to the following additional four questions:

(1) What are the reasons the eligible individual cannot be provided an education program in an integrated school setting?

(2) What supplementary aids and supports are needed to support the eligible individual in the special education program?

(3) Why is it not possible for these aids and supports to be provided in an integrated setting?

(4) What is the continuum of placements and services available for the eligible individual?

41.116(5) Out-of-state placements. When special education and related services appropriate to an eligible individual's needs are not available within the state, or when appropriate special education and related services in an adjoining state are nearer than the appropriate special education and related services in Iowa, the director may certify an eligible individual for appropriate special education and related services outside the state in accordance with Iowa Code section

273.3 when it has been determined by the department that the special education and related services meet standards set forth in these rules.

41.116(6) Department approval for out-of-state placement. Contracts may be negotiated with out-of-state agencies, in accordance with Iowa Code section 273.3(5), with department approval. The department uses the following procedures to determine if an out-of-state agency meets the rules of the board:

a. When requested to determine an agency's approval status, the department contacts the appropriate state education agency to determine if that state's rules are comparable to those of the board and whether the specified out-of-state agency meets those rules.

b. If the appropriate state education agency's rules are not comparable, the department will contact the out-of-state agency to ascertain if its special education complies with the rules of the board.

41.116(7) Trial placements. Prior to transfer from a special education program or service, an eligible individual may be provided a trial placement in the general education setting of not more than 45 school days. A trial placement shall be incorporated into this individual's IEP.

281—41.117(256B,34CFR300) Nonacademic settings. In providing or arranging for the provision of nonacademic and extracurricular services and activities, including meals, recess periods, and the services and activities set forth in rule 41.107(256B,34CFR300), each public agency must ensure that each child with a disability participates with nondisabled children in the extracurricular services and activities to the maximum extent appropriate to the needs of that child. The public agency must ensure that each child with a disability has the supplementary aids and services determined by the child's IEP team to be appropriate and necessary for the child to participate in nonacademic settings.

281—41.118(256B,34CFR300) Children in public or private institutions. Except as provided in rule 41.149(256B, 34CFR300) regarding agency responsibility for general supervision for some individuals in adult prisons, the department must ensure that rule 41.114(256B,34CFR300) is effectively implemented, including, if necessary, making arrangements with public and private institutions such as a memorandum of agreement or special implementation procedures.

281—41.119(256B,34CFR300) Technical assistance and training activities. The state shall carry out activities to ensure that teachers and administrators in all public agencies are fully informed about their responsibilities for implementing rule 41.114(256B,34CFR300) and are provided with technical assistance and training necessary to assist them in this effort. If a public agency is having difficulty in locating an appropriate placement for an eligible individual, the public agency may contact the department for potential assistance.

281—41.120(256B,34CFR300) Monitoring activities. The state shall carry out activities to ensure that rule 41.114(256B,34CFR300) is implemented by each public agency. If there is evidence that a public agency makes placements that are inconsistent with rule 41.114(256B, 34CFR300), the department must review the public agency's justification for its actions and assist in planning and implementing any necessary corrective action. Failure of the public agency to implement any necessary corrective action may result in adverse determinations under rule 41.603(256B,34CFR300) or any other available enforcement action.

281—41.121(256B,34CFR300) Procedural safeguards. Each public agency in the state shall meet the requirements of rules 41.500(256B,34CFR300) to 41.536(256B,34CFR300), and children with disabilities and their parents must be afforded the procedural safeguards identified in those rules.

281—41.122(256B,34CFR300) Evaluation. Children with disabilities must be evaluated in accordance with rules 41.300(256B,34CFR300) to 41.313(256B,34CFR300), and each AEA shall develop and use procedures to implement those rules.

281—41.123(256B,34CFR300) Confidentiality of personally identifiable information. All public agencies in the state shall comply with rules 41.610(256B,34CFR300) to 41.626(256B,34CFR300) related to protecting the confidentiality of any personally identifiable information collected, used, or maintained under Part B of the Act.

281—41.124(256B,34CFR300) Transition of children from the Part C program to preschool programs. Each public agency shall comply with the state's policies concerning the transition of infants and toddlers from programs under Part C to programs under Part B of the Act and shall ensure the following regarding such transition:

41.124(1) Smooth transition. Children participating in early intervention programs assisted under Part C of the Act, and who will participate in preschool programs assisted under Part B of the Act, experience a smooth and effective transition to those preschool programs in a manner consistent with Section 637(a)(9) of the Act;

41.124(2) IEP developed. By the third birthday of a child described in subrule 41.124(1), an IEP has been developed and is being implemented for the child consistent with subrule 41.101(2); and

41.124(3) Participating agencies. Each affected LEA will participate in transition planning conferences arranged by the designated lead agency under Section 635(a)(10) of the Act.

281—41.125 to **41.128** Reserved.

281—41.129(256B,34CFR300) Responsibility regarding children in private schools. Each public agency shall meet the private school requirements in rules 41.130(256,256B, 34CFR300) to 41.148(256B,34CFR300).

281—41.130(256,256B,34CFR300) Definition of parentally placed private school children with disabilities. "Parentally placed private school children with disabilities" means children with disabilities enrolled by their parents in accredited nonpublic, including religious, schools or facilities that meet the definition of elementary school in rule 41.13(256B,34CFR300) or secondary school in rule 41.36(256B,34CFR300), other than children with disabilities covered under rules 41.145(256B,34CFR300) to 41.147(256B,34CFR300).

281—41.131(256,256B,34CFR300) Child find for parentally placed private school children with disabilities.

41.131(1) General. Each AEA must locate, identify, and evaluate all children with disabilities who are enrolled by their parents in accredited nonpublic, including religious, elementary schools and secondary schools located in the school district served by the AEA, in accordance with subrules 41.131(2) to 41.131(5), and rules 41.111(256B, 34CFR300) and 41.201(256B,34CFR300).

41.131(2) Child find design. The child find process must be designed to ensure:

a. The equitable participation of parentally placed private school children; and

b. An accurate count of those children.

41.131(3) Activities. In carrying out the requirements of this rule, the AEA or, if applicable, the SEA must undertake activities similar to the activities undertaken for the agency's public school children.

41.131(4) Cost. The cost of carrying out the child find requirements in this rule, including individual evaluations, may not be considered in determining if an AEA has met its obligation under rule 41.133(256,256B,34CFR300).

41.131(5) Completion period. The child find process must be completed in a time period comparable to that for students attending public schools in the AEA consistent with rule 41.301(256B,34CFR300).

41.131(6) Out-of-state children. Each AEA in which accredited nonpublic, including religious, elementary schools and secondary schools are located must, in carrying out the child find requirements in this rule, include parentally placed private school children who reside in a state other than the state in which the accredited nonpublic schools that they attend are located.

281—41.132(256,256B,34CFR300) Provision of services for parentally placed private school children with disabilities: basic requirement.

41.132(1) General. To the extent consistent with the number and location of children with disabilities who are enrolled by their parents in accredited nonpublic, including religious, elementary schools and secondary schools located in the area served by the AEA, provision is made for the participation of those children in the program assisted or carried out under Part B of the Act by providing them with special education and related services, including direct services determined in accordance with rule 41.137(256,256B,34CFR300), unless the Secretary has arranged for services to those children under the bypass provisions in 34 CFR Sections 300.190 to 300.198.

41.132(2) IEP for parentally placed private school children with disabilities. In accordance with subrule 41.132(1) and rules 41.137(256,256B,34CFR300) to 41.139(256, 256B,34CFR300), as well as Iowa Code section 256.12, an IEP must be developed and implemented for each private school child with a disability who has been designated by the AEA in which the private school is located to receive special education and related services under this chapter.

41.132(3) Record keeping. Each AEA must maintain in its records, and provide to the state, the following information related to parentally placed private school children covered under rules 41.130(256,256B,34CFR300) to 41.144(256,256B,34CFR300):

a. The number of children evaluated;

b. The number of children determined to be children with disabilities; and

c. The number of children served.

281—41.133(256,256B,34CFR300) Expenditures.

41.133(1) Formula. To meet the requirement of subrule 41.132(1), each AEA must spend the following on providing special education and related services, including direct services, to parentally placed private school children with disabilities:

a. For children aged 3 to 21, an amount that is the same proportion of the AEA's total subgrant under Section 611(f) of the Act as the number of private school children with disabilities aged 3 to 21 who are enrolled by their parents in private, including religious, elementary schools and secondary schools located in the school district served by the AEA, is to the total number of children with disabilities in its jurisdiction aged 3 to 21.

b. Additional calculation for children aged 3 through 5.

(1) For children aged 3 through 5, an amount that is the same proportion of the AEA's total subgrant under Section 619(g) of the Act as the number of parentally placed private school children with disabilities aged 3 through 5 who are enrolled by their parents in a private, including religious, elementary school located in the school district served by the AEA, is to the total number of children with disabilities in its jurisdiction aged 3 through 5.

(2) As described in 41.133(1)"b"(1), children aged 3 through 5 are considered to be parentally placed private school children with disabilities enrolled by their parents in private, including religious, elementary schools, if and only if they are enrolled in a private school that meets the definition of elementary school in rule 41.13(256B,34CFR300).

c. If an AEA has not expended for equitable services all of the funds described in 41.133(1)"a" and "b" by the end of the fiscal year for which Congress appropriated the funds, the AEA must obligate the remaining funds for special education and related services, including direct services, to parentally placed private school children with disabilities during a carry-over period of one additional year.

41.133(2) Calculating proportionate amount. The state shall calculate each AEA's proportionate share from data provided by each AEA after each AEA has completed the consultation described in rule 41.134(256,256B,34CFR300) and the child count described in rule 41.131(256,256B, 34CFR300) and subrule 41.133(3).

41.133(3) Annual count of the number of parentally placed private school children with disabilities.

a. Each AEA must:

(1) After timely and meaningful consultation with representatives of parentally placed private school children with disabilities, consistent with rule 41.134(256,256B, 34CFR300), determine the number of parentally placed private school children with disabilities attending private schools located in the AEA; and

(2) Ensure that the count is conducted on any date between October 1 and December 1, inclusive, of each year.

b. The count must be used to determine the amount that the AEA must spend on providing special education and related services to parentally placed private school children with disabilities in the next subsequent fiscal year.

41.133(4) Supplement, not supplant. State and local funds may supplement, and in no case supplant, the proportionate amount of federal funds required to be expended for parentally placed private school children with disabilities under this chapter.

281—41.134(256,256B,34CFR300) Consultation. To ensure timely and meaningful consultation, an AEA or, if appropriate, an SEA must consult with private school representatives and representatives of parents of parentally placed private school children with disabilities during the design and development of special education and related services for the children regarding the following:

41.134(1) Child find. The child find process shall determine:

a. How parentally placed private school children suspected of having a disability can participate equitably; and

b. How parents, teachers, and private school officials will be informed of the process.

41.134(2) Proportionate share of funds. An explanation that the proportionate share shall be calculated by the state

based on data submitted by the AEA, consistent with rule 41.133(256,256B,34CFR300).

41.134(3) Consultation process. The consultation process among the AEA, private school officials, and representatives of parents of parentally placed private school children with disabilities, including how the process will operate throughout the school year to ensure that parentally placed children with disabilities identified through the child find process can meaningfully participate in special education and related services.

41.134(4) Provision of special education and related services. How, where, and by whom special education and related services funded by Part B of the Act under rules 41.130(256,256B,34CFR300) to 41.147(256B,34CFR300) will be provided for parentally placed private school children with disabilities, including a discussion of the following:

a. The types of services, including direct services and alternate service delivery mechanisms;

b. How special education and related services will be apportioned if funds are insufficient to serve all parentally placed private school children;

c. How and when decisions regarding 41.134(4)"a" and "b" will be made;

d. That the consultation process concerns only funds under Part B of the Act, and does not concern special education and related services provided under Iowa Code section 256.12. The consultation process may, but is not required to, include discussions of special education and related services provided under Iowa Code section 256.12.

41.134(5) Written explanation by AEA regarding services. How, if the AEA disagrees with the views of the private school officials on the provision of services or the types of services, whether provided directly or through a contract, the AEA will provide to the private school officials a written explanation of the reasons why the AEA chose not to provide services directly or through a contract.

281—41.135(256,256B,34CFR300) Written affirmation. When timely and meaningful consultation, as required by rule 41.134(256,256B,34CFR300), has occurred, the AEA must obtain a written affirmation signed by the representatives of participating private schools. If the representatives do not provide the affirmation within a reasonable period of time, the AEA must forward the documentation of the consultation process to the department.

281—41.136(256,256B,34CFR300) Compliance.

41.136(1) General. A private school official has the right to submit a complaint to the department that the AEA:

a. Did not engage in consultation that was meaningful and timely; or

b. Did not give due consideration to the views of the private school official.

41.136(2) Procedure.

a. If the private school official wishes to submit a complaint, the official must provide to the department the basis of the noncompliance by the AEA with the applicable private school provisions in this chapter; and

b. The AEA must forward the appropriate documentation to the department.

c. If the private school official is dissatisfied with the decision of the department, the official may submit a complaint to the Secretary by providing the information on noncompliance described in 41.136(2)"a." The department must forward the appropriate documentation to the Secretary.

281—41.137(256,256B,34CFR300) Equitable services determined.

41.137(1) Nature and scope of individual right to special education and related services. Each parentally placed private school child with a disability has a right to receive any special education or related services permitted by Iowa Code section 256.12. Funding for and accounting for such services shall be determined by the provisions of Part B of the Act, this chapter, and Iowa Code section 256.12.

41.137(2) Decisions. Decisions about the services that will be provided to parentally placed private school children with disabilities funded by Part B of the Act under rules 41.130(256,256B,34CFR300) to 41.144(256,256B, 34CFR300) must be made in accordance with subrules 41.134(3) and 41.137(3). The AEA must make the final decisions with respect to the services to be provided to eligible parentally placed private school children with disabilities and funded by Part B of the Act.

41.137(3) IEP for parentally placed private school children with disabilities. The AEA or LEA must offer to develop an IEP for each child with a disability who is enrolled in a religious or other private school by the child's parents and develop an IEP if one is requested, pursuant to this chapter. An IEP is offered and prepared pursuant to Iowa Code section 256.12. There is no need to prepare a services plan (see rule 41.37(34CFR300)) for such a student. A parent of a child with a disability who is voluntarily enrolled in a private school may not reject an IEP and demand a services plan instead. At any IEP team meeting for a parentally placed private school student with a disability, the AEA or LEA must ensure that a representative of the private school attends each meeting. If the representative cannot attend, the AEA or LEA shall use other methods to ensure participation by the private school, including individual or conference telephone calls.

281—41.138(256,256B,34CFR300) Equitable services provided.

41.138(1) General. The services provided to parentally placed private school children with disabilities must be provided by personnel meeting the same standards as personnel providing services in the public schools, except that private elementary school and secondary school teachers who are providing equitable services to parentally placed private school children with disabilities do not have to meet the highly qualified special education teacher requirements of rule 41.18(256B,34CFR300). Parentally placed private school children with disabilities receive the special education and related services required by Iowa Code section 256.12, although the source of the funding for such education and services may be different than funding for education and services for children with disabilities in public schools.

41.138(2) Services provided in accordance with an IEP. Each parentally placed private school child with a disability who will receive special education and related services pursuant to the Act and Iowa Code section 256.12 must have an IEP developed in accordance with this chapter.

41.138(3) Provision of equitable services. The provision of services pursuant to this rule and rules 41.139(256,256B, 34CFR300) to 41.143(256,256B,34CFR300) must be provided by employees of a public agency or through contract by the public agency with an individual, association, agency, organization, or other entity.

41.138(4) Secular, neutral and nonideological. Special education and related services, including materials and equipment, provided to parentally placed private school chil-

dren with disabilities, including children attending religious schools, must be secular, neutral, and nonideological.

281—41.139(256,256B,34CFR300) Location of services and transportation.

41.139(1) Services on private school premises. Services to parentally placed private school children with disabilities may be provided on the premises of private, including religious, schools to the extent consistent with Iowa Code section 256.12.

41.139(2) Transportation.

a. General.

(1) If necessary for the child to benefit from or participate in the services provided under this chapter, a parentally placed private school child with a disability must be provided transportation from the child's school or the child's home to a site other than the private school and from the service site to the private school or to the child's home, depending on the timing of the services.

(2) AEAs or LEAs are not required to provide transportation from the child's home to the private school.

b. Cost of transportation. The cost of the transportation described in 41.139(2)"a"(1) may be included in calculating whether the AEA has met the requirement of rule 41.133(256,256B,34CFR300).

281—41.140(256,256B,34CFR300) Due process complaints and state complaints.

41.140(1) When due process complaints available. Pursuant to Iowa Code section 256.12, parents of children with disabilities who are voluntarily placed in accredited nonpublic schools may file a due process complaint as provided in rules 41.504(256B,34CFR300) to 41.519(256B, 34CFR300), except as provided in subrule 41.140(2).

41.140(2) When due process complaints unavailable. The procedures in rules 41.504(256B,34CFR300) to 41.519(256B,34CFR300) may not be used to challenge the particular amount of services funded by Part B that a parentally placed private school child with disabilities receives, unless the allegation is made that the child was denied FAPE under Iowa Code section 256.12, but a parent of a child with a disability may file a due process complaint alleging the AEA failed to comply with the child find requirements of rule 41.131(256,256B,34CFR300). A private school official may not file a due process complaint under this chapter.

41.140(3) State complaints. Any complaint that an SEA or AEA has failed to meet the requirements in rules 41.132(256,256B,34CFR300) to 41.135(256,256B, 34CFR300) and 41.137(256,256B,34CFR300) to 41.144(256,256B,34CFR300) must be filed in accordance with the procedures described in rules 41.151(256B, 34CFR300) to 41.153(256B,34CFR300). A complaint filed by a private school official under subrule 41.136(1) must be filed with the SEA in accordance with the procedures in subrule 41.136(2).

281—41.141(256,256B,34CFR300) Requirement that funds not benefit a private school.

41.141(1) Funds may not benefit private school. An AEA may not use funds provided under Section 611 or 619 of the Act to finance the existing level of instruction in a private school or to otherwise benefit the private school.

41.141(2) Funds only for special education. The AEA must use funds provided under Part B of the Act to meet the special education and related services needs of parentally placed private school children with disabilities, but not for meeting either of the following needs:

a. The needs of a private school; or

b. The general needs of the students enrolled in the private school.

281—41.142(256,256B,34CFR300) Use of personnel.

41.142(1) Use of public school personnel. An AEA may use funds available under Sections 611 and 619 of the Act to make public school personnel available in other than public facilities based on the following two criteria:

a. If and to the extent necessary to provide services under rules 41.130(256,256B,34CFR300) to 41.144(256,256B, 34CFR300) for parentally placed private school children with disabilities; and

b. If those services are not normally provided by the private school.

41.142(2) Use of private school personnel. An AEA may use funds available under Sections 611 and 619 of the Act to pay for the services of an employee of a private school to provide services under rules 41.130(256,256B,34CFR300) to 41.144(256,256B,34CFR300) if the following two conditions are met:

a. The employee performs the services outside of the employee's regular hours of duty; and

b. The employee performs the services under public supervision and control.

281—41.143(256,256B,34CFR300) Separate classes prohibited. An AEA may not use funds available under Section 611 or 619 of the Act for classes that are organized separately on the basis of school enrollment or religion of the children if the classes are at the same site; and the classes include both children enrolled in public schools and children enrolled in private schools.

281—41.144(256,256B,34CFR300) Property, equipment, and supplies.

41.144(1) General. A public agency must control and administer the funds used to provide special education and related services under rules 41.137(256,256B,34CFR300) to 41.139(256,256B,34CFR300) and hold title to and administer materials, equipment, and property purchased with those funds for the uses and purposes provided in the Act.

41.144(2) Equipment and supplies on private school premises only while needed. The public agency may place equipment and supplies in a private school for the period of time needed for the Part B program.

41.144(3) Public agency to supervise placement and use of equipment and supplies. The public agency must ensure that the equipment and supplies placed in a private school are used only for Part B purposes and can be removed from the private school without remodeling the private school facility.

41.144(4) Duty to remove equipment and supplies. The public agency must remove equipment and supplies from a private school if the equipment and supplies are no longer needed for Part B purposes or removal is necessary to avoid unauthorized use of the equipment and supplies for other than Part B purposes.

41.144(5) No Part B funds for repair or construction. No funds under Part B of the Act may be used for repairs, minor remodeling, or construction of private school facilities.

281—41.145(256B,34CFR300) Applicability of rules 41.146(256B,34CFR300) to 41.147(256B,34CFR300). Rules 41.146(256B,34CFR300) and 41.147(256B, 34CFR300) apply only to children with disabilities who are or have been placed in or referred to a private school or facility

by a public agency as a means of providing special education and related services.

281—41.146(256B,34CFR300) Responsibility of department. The department must ensure the following for each child with a disability who is placed in or referred to a private school or facility by a public agency.

41.146(1) FAPE. The child is provided special education and related services in conformance with an IEP that meets the requirements of rules 41.320(256B,34CFR300) to 41.325(256B,34CFR300) and at no cost to the parents.

41.146(2) Meet state standards. The child is provided an education that meets the standards that apply to education provided by the SEA and LEAs, including the requirements of this chapter except for rule 41.18(256B,34CFR300) and subrule 41.156(3).

41.146(3) All rights. The child has all of the rights of a child with a disability who is served by a public agency.

281—41.147(256B,34CFR300) Implementation by department. In implementing rule 41.146(256B,34CFR300), the department must monitor compliance through procedures such as written reports, on-site visits, and parent questionnaires; disseminate copies of applicable standards to each private school and facility to which a public agency has referred or placed a child with a disability; and provide an opportunity for those private schools and facilities to participate in the development and revision of state standards that apply to them.

281—41.148(256B,34CFR300) Placement of children by parents when FAPE is at issue.

41.148(1) General. An LEA or AEA is not required to pay for the cost of education, including special education and related services, of a child with a disability at a private school or facility if that agency made FAPE available to the child and the parents elected to place the child in a private school or facility. However, the public agency must include that child in the population whose needs are addressed consistent with rules 41.131(256,256B,34CFR300) to 41.144(256, 256B,34CFR300) and Iowa Code section 256.12.

41.148(2) Disagreements about FAPE. Disagreements between the parents and a public agency regarding the availability of a program appropriate for the child, and the question of financial reimbursement, are subject to the due process procedures in rules 41.504(256B,34CFR300) to 41.520(256B,34CFR300).

41.148(3) Reimbursement for private school placement. If the parents of a child with a disability who previously received special education and related services under the authority of a public agency enroll the child in a private preschool, elementary school, or secondary school without the consent of or referral by the public agency, a court or an administrative law judge may require the agency to reimburse the parents for the cost of that enrollment if the court or administrative law judge finds that the agency had not made FAPE available to the child in a timely manner prior to that enrollment and that the private placement is appropriate. A parental placement may be found to be appropriate by an administrative law judge or a court even if it does not meet the state standards that apply to education provided by the SEA and LEAs.

41.148(4) Limitation on reimbursement. The cost of reimbursement described in subrule 41.148(3) may be reduced or denied in any of the following cases.

a. At the most recent IEP team meeting that the parents attended prior to removal of the child from the public school, the parents did not inform the IEP team that they were rejecting the placement proposed by the public agency to provide FAPE to their child, including stating their concerns and their intent to enroll their child in a private school at public expense;

b. At least ten business days, including any holidays that occur on a business day, prior to the removal of the child from the public school, the parents did not give written notice to the public agency of the information described in 41.148(4)"a";

c. If, prior to the parents' removal of the child from the public school, the public agency informed the parents, through the notice requirements described in 41.503(1)"a," of its intent to evaluate the child, including a statement of the purpose of the evaluation that was appropriate and reasonable, but the parents did not make the child available for the evaluation; or

d. Upon a judicial finding of unreasonableness with respect to actions taken by the parents.

41.148(5) Exceptions. Notwithstanding the notice requirement in 41.148(4)"a" and "b," the cost of reimbursement:

a. Must not be reduced or denied for failure to provide the notice if:

(1) The school prevented the parents from providing the notice;

(2) The parents had not received notice, pursuant to rule 41.504(256B,34CFR300), of the notice requirement in 41.148(4)"a" and "b"; or

(3) Compliance with 41.148(4)"a" and "b" would likely result in physical harm to the child; and

b. May, in the discretion of the court or an administrative law judge, not be reduced or denied for failure to provide this notice if:

(1) The parents are not literate or cannot write in English; or

(2) Compliance with 41.148(4)"a" and "b" would likely result in serious emotional harm to the child.

281—41.149(256B,34CFR300) SEA responsibility for general supervision. The state shall exercise general supervision over the implementation of Part B of the Act and this chapter. Part B of the Act does not limit the responsibility of agencies other than educational agencies for providing or paying for some or all of the costs of FAPE to eligible individuals.

281—41.150 Reserved.

281—41.151(256B,34CFR300) Adoption of state complaint procedures.

41.151(1) General. The state maintains written procedures for the following:

a. Resolving any complaint, including a complaint filed by an organization or individual from another state, that meets the requirements of rule 41.153(256B,34CFR300) by providing for the filing of a complaint with the department.

b. Widely disseminating to parents and other interested individuals, including parent training and information centers, protection and advocacy agencies, independent living centers, and other appropriate entities, the state procedures under rules 41.151(256B,34CFR300) to 41.153(256B, 34CFR300).

41.151(2) Remedies for denial of appropriate services. In resolving a complaint in which the state has found a failure to provide appropriate services, the state, pursuant to its general supervisory authority under Part B of the Act, shall address the following:

a. The failure to provide appropriate services, including corrective action appropriate to address the needs of the

child, such as compensatory services or monetary reimbursement; and

b. Appropriate future provision of services for all children with disabilities.

281—41.152(256B,34CFR300) Minimum state complaint procedures.

41.152(1) Time limit; minimum procedures. The state shall include in its complaint procedures a time limit of 60 days after a complaint is filed under rule 41.153(256B, 34CFR300) to do the following:

a. Carry out an independent on-site investigation, if the state determines that an investigation is necessary;

b. Give the complainant the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint;

c. Provide the public agency with the opportunity to respond to the complaint, including, at a minimum:

(1) At the discretion of the public agency, a proposal to resolve the complaint; and

(2) An opportunity for a parent who has filed a complaint and the public agency to voluntarily engage in mediation consistent with rules 41.506(256B,34CFR300) and 41.1002(256B,34CFR300);

d. Review all relevant information and make an independent determination as to whether the public agency is violating a requirement of Part B of the Act or of this chapter; and

e. Issue a written decision to the complainant that addresses each allegation in the complaint and contains:

(1) Findings of fact and conclusions; and

(2) The reasons for the state's final decision.

41.152(2) Time extension; final decision; implementation. The state's procedures described in subrule 41.152(1) shall do the following:

a. Permit an extension of the time limit under subrule 41.152(1) only if:

(1) Exceptional circumstances exist with respect to a particular complaint; or

(2) The parent or individual or organization and the public agency involved agree to extend the time to engage in mediation pursuant to 41.152(1)"c"(2), or to engage in other alternative means of dispute resolution, if available in the state; and

b. Include procedures for effective implementation of the state's final decision, if needed, including:

(1) Technical assistance activities;

(2) Negotiations; and

(3) Corrective actions to achieve compliance.

41.152(3) Complaints filed under this rule and due process hearings. If a written complaint is received that is also the subject of a due process hearing under rule 41.507(256B, 34CFR300) or 41.530(256B,34CFR300) to 41.532(256B, 34CFR300), or that contains multiple issues of which one or more are part of that hearing, the state must set aside any part of the complaint that is being addressed in the due process hearing until the conclusion of the hearing. However, any issue in the complaint that is not a part of the due process action must be resolved using the time limit and procedures described in subrules 41.152(1) and 41.152(2). If an issue raised in a complaint filed under this rule has previously been decided in a due process hearing involving the same parties, the due process hearing decision is binding on that issue and the state must inform the complainant to that effect. A complaint alleging a public agency's failure to implement a due process hearing decision must be resolved by the state.

281—41.153(256B,34CFR300) Filing a complaint.

41.153(1) Complainant. An organization or individual may file a signed written complaint under the procedures described in rules 41.151(256B,34CFR300) and 41.152(256B, 34CFR300).

41.153(2) Contents of complaint. The complaint must include the following:

a. A statement that a public agency has violated a requirement of Part B of the Act or of this chapter;

b. The facts on which the statement is based;

c. The signature and contact information for the complainant; and

d. If alleging violations with respect to a specific child:

(1) The name and address of the residence of the child;

(2) The name of the school the child is attending;

(3) In the case of a homeless child or youth within the meaning of Section 725(2) of the McKinney-Vento Homeless Assistance Act, 42 U.S.C. 11434a(2), available contact information for the child, and the name of the school the child is attending;

(4) A description of the nature of the problem of the child, including facts relating to the problem; and

(5) A proposed resolution of the problem to the extent known and available to the party at the time the complaint is filed.

41.153(3) Time limit. The complaint must allege a violation that occurred not more than one year prior to the date that the complaint is received in accordance with rule 41.151(256B,34CFR300).

41.153(4) Complainant must provide copy of complaint to AEA and LEA. The party filing the complaint must forward a copy of the complaint to the AEA and LEA or public agency serving the child at the same time the party files the complaint with the state.

41.153(5) Failure to comply with due process hearing decision, mediation agreement, resolution meeting agreement. A complainant may allege a public agency has failed to comply with a due process hearing decision, or a mediation agreement, or a resolution meeting agreement. If the complaint is substantiated, the state will grant appropriate relief.

281—41.154(256B,34CFR300) Methods of ensuring services.

41.154(1) Interagency agreements. An interagency agreement or other mechanism for interagency coordination shall be developed between each noneducational public agency described in subrule 41.154(2) and the SEA, in order to ensure that all services described in 41.154(2)"a" that are needed to ensure FAPE are provided, including the provision of these services during the pendency of any dispute under paragraph "c" of this subrule. The agreement or mechanism must include the following:

a. An identification of, or a method for defining, the financial responsibility of each agency for providing services described in 41.154(2)"a" to ensure FAPE to children with disabilities. The financial responsibility of each noneducational public agency described in subrule 41.154(2), including the state Medicaid agency and other public insurers of children with disabilities, must precede the financial responsibility of the LEA (or the state agency responsible for developing the child's IEP).

b. The conditions, terms, and procedures under which an LEA must be reimbursed by other agencies.

c. Procedures for resolving interagency disputes, including procedures under which LEAs may initiate proceedings, under the agreement or other mechanism to secure reim-

bursement from other agencies or otherwise implement the provisions of the agreement or mechanism.

d. Policies and procedures for agencies to determine and identify the interagency coordination responsibilities of each agency to promote the coordination and timely and appropriate delivery of services described in 41.154(2)"a."

41.154(2) Obligation of noneducational public agencies.

a. General rule.

(1) If any public agency other than an educational agency is otherwise obligated under federal or state law, or assigned responsibility under state policy or pursuant to subrule 41.154(1), to provide or pay for any services that are also considered special education or related services (such as, but not limited to, services described in rule 41.5(256B, 34CFR300) relating to assistive technology devices, rule 41.6(256B,34CFR300) relating to assistive technology services, rule 41.34(256B,34CFR300) relating to related services, rule 41.42(256B,34CFR300) relating to supplementary aids and services, and rule 41.43(256B,34CFR300) relating to transition services) that are necessary for ensuring FAPE to children with disabilities within the state, the public agency must fulfill that obligation or responsibility, either directly or through contract or other arrangement pursuant to subrule 41.154(1) or an agreement pursuant to subrule 41.154(3).

(2) A noneducational public agency described in 41.154(2)"a"(1) may not disqualify an eligible service for Medicaid reimbursement because that service is provided in a school context.

b. Failure to comply with general rule. If a public agency other than an educational agency fails to provide or pay for the special education and related services described in 41.154(2)"a," the LEA (or state agency responsible for developing the child's IEP) must provide or pay for these services to the child in a timely manner. The LEA or state agency is authorized to claim reimbursement for the services from the noneducational public agency that failed to provide or pay for these services, and that agency must reimburse the LEA or state agency in accordance with the terms of the interagency agreement or other mechanism described in subrule 41.154(1).

41.154(3) Special rule. The requirements of subrule 41.154(1) may be met through the following:

a. State statute or regulation;

b. Signed agreements between respective agency officials that clearly identify the responsibilities of each agency relating to the provision of services; or

c. Other appropriate written methods as determined by the chief executive officer of the state or designee of that officer and approved by the Secretary.

41.154(4) Children with disabilities who are covered by public benefits or insurance.

a. General. A public agency may use the Medicaid or other public benefits or insurance programs in which a child participates to provide or pay for services required under this chapter, as permitted under the public benefits or insurance program, except as provided in 41.154(4)"b."

b. Exceptions to ability to use public benefits or insurance. With regard to services required to provide FAPE to an eligible child under this chapter, the public agency:

(1) May not require parents to sign up for or enroll in public benefits or insurance programs in order for their child to receive FAPE under Part B of the Act;

(2) May not require parents to incur an out-of-pocket expense such as the payment of a deductible or copay amount incurred in filing a claim for services provided pursuant to this chapter but, pursuant to 41.154(6)"b," may pay the cost that the parents otherwise would be required to pay;

(3) May not use a child's benefits under a public benefits or insurance program if that use would do any of the following:

1. Decrease available lifetime coverage or any other insured benefit;

2. Result in the family's paying for services that would otherwise be covered by the public benefits or insurance program and that are required for the child outside of the time the child is in school;

3. Increase premiums or lead to the discontinuation of benefits or insurance; or

4. Risk loss of eligibility for home- and community-based waivers, based on aggregate health-related expenditures; and

(4) Must obtain parental consent, consistent with rule 41.9(256B,34CFR300), each time that access to public benefits or insurance is sought and notify parents that the parents' refusal to allow access to their public benefits or insurance does not relieve the public agency of its responsibility to ensure that all required services are provided at no cost to the parents.

41.154(5) Children with disabilities who are covered by private insurance.

a. General. With regard to services required to provide FAPE to an eligible child under this chapter, a public agency may access the parents' private insurance proceeds only if the parents provide consent consistent with rule 41.9(256B, 34CFR300).

b. Obtaining access to private insurance proceeds. Each time the public agency proposes to access the parents' private insurance proceeds, the agency must:

(1) Obtain parental consent in accordance with 41.154(5)"a"; and

(2) Inform the parents that their refusal to permit the public agency to access their private insurance does not relieve the public agency of its responsibility to ensure that all required services are provided at no cost to the parents.

41.154(6) Use of Part B funds.

a. Agency unable to obtain consent. If a public agency is unable to obtain parental consent to use the parents' private insurance, or public benefits or insurance when the parents would incur a cost for a specified service required under this chapter, to ensure FAPE, the public agency may use its Part B funds to pay for the service.

b. Use of Part B funds to avoid cost to parents. To avoid financial cost to parents who otherwise would consent to use private insurance, or public benefits or insurance if the parents would incur a cost, the public agency may use its Part B funds to pay the cost that the parents otherwise would have to pay to use the parents' benefits or insurance (e.g., the deductible or copay amounts).

41.154(7) Proceeds from public benefits or insurance or private insurance. Proceeds from public benefits or insurance or private insurance will not be treated as program income for purposes of 34 CFR 80.25. If a public agency spends reimbursements from federal funds (e.g., Medicaid) for services under this chapter, those funds will not be considered state or local funds for purposes of the maintenance of effort provisions in rules 41.163(256B,34CFR300) and 41.203(256B,34CFR300).

41.154(8) Rule of construction. Nothing in this chapter should be construed to alter the requirements imposed on a state Medicaid agency, or any other agency administering a public benefits or insurance program by federal statute, regu-

lations or policy under Title XIX or Title XXI of the Social Security Act, 42 U.S.C. 1396 through 1396v and 42 U.S.C. 1397aa through 1397jj, or any other public benefits or insurance program.

281—41.155(256B,34CFR300) Hearings relating to AEA or LEA eligibility. The department shall not make any final determination that an AEA or LEA is not eligible for assistance under Part B of the Act without first giving the AEA or LEA reasonable notice and an opportunity for a hearing under 34 CFR 76.401(d).

281—41.156(256B,34CFR300) Personnel qualifications.

41.156(1) General. The SEA must establish and maintain qualifications to ensure that personnel necessary to carry out the purposes of Part B of the Act and of this chapter are appropriately and adequately prepared and trained, including ensuring that those personnel have the content knowledge and skills to serve children with disabilities.

41.156(2) Related services personnel and paraprofessionals. The qualifications under subrule 41.156(1) must include qualifications for related services personnel and paraprofessionals that:

a. Are consistent with any state-approved or state-recognized certification, licensing, registration, or other comparable requirements that apply to the professional discipline in which those personnel are providing special education or related services; and

b. Ensure that related services personnel who deliver services in their discipline or profession:

(1) Meet the requirements of 41.156(2)"a"; and

(2) Have not had certification or licensure requirements waived on an emergency, temporary, or provisional basis; and

(3) Allow paraprofessionals and assistants who are appropriately trained and supervised, in accordance with state law, regulation, or written policy, in meeting the requirements of this chapter to be used to assist in the provision of special education and related services under this chapter to children with disabilities.

41.156(3) Qualifications for special education teachers. The qualifications described in subrule 41.156(1) must ensure that each person employed as a public school special education teacher in the state who teaches in an elementary school, middle school, or secondary school is highly qualified as a special education teacher by the deadline established in Section 1119(a)(2) of the ESEA.

41.156(4) Policy. In implementing this rule, the state must adopt a policy that includes a requirement that AEAs and LEAs in the state take measurable steps to recruit, hire, train, and retain highly qualified personnel to provide special education and related services under Part B of the Act and this chapter to children with disabilities.

41.156(5) Rule of construction. Notwithstanding any other individual right of action that a parent or student may maintain under this chapter, nothing in this chapter shall be construed to create a right of action on behalf of an individual student or a class of students for the failure of a particular SEA, AEA, or LEA employee to be highly qualified, or to prevent a parent from filing a complaint about staff qualifications with the SEA as provided for under this chapter.

281—41.157 to **41.161** Reserved.

281—41.162(256B,34CFR300) Supplementation of state, local, and other federal funds.

41.162(1) Expenditures. Funds paid to a state under this chapter must be expended in accordance with all the provisions of this chapter.

41.162(2) Prohibition against commingling.

a. Funds paid to a state under this chapter must not be commingled with state funds.

b. The requirement in 41.162(2)"a" is satisfied by the use of a separate accounting system that includes an audit trail of the expenditure of funds paid to a state under this chapter. Separate bank accounts are not required. (See 34 CFR 76.702, fiscal control and fund accounting procedures.)

41.162(3) State-level nonsupplanting.

a. Except as provided in rule 41.202(256B,34CFR300), funds paid to a state under Part B of the Act must be used to supplement the level of federal, state, and local funds, including funds that are not under the direct control of the SEA or LEAs, expended for special education and related services provided to children with disabilities under Part B of the Act, and in no case to supplant those federal, state, and local funds.

b. If the state provides clear and convincing evidence that all children with disabilities have available to them FAPE, the Secretary may waive, in whole or in part, the requirements of 41.162(3)"a" if the Secretary concurs with the evidence provided by the state under 34 CFR Section 300.164.

281—41.163(256B,34CFR300) Maintenance of state financial support. The state must not reduce the amount of state financial support for special education and related services for children with disabilities, or otherwise made available because of the excess costs of educating those children, below the amount of that support for the preceding fiscal year.

281—41.164 Reserved.

281—41.165(256B,34CFR300) Public participation.

41.165(1) General. Prior to the adoption of any policies and procedures needed to comply with Part B of the Act, including any amendments to those policies and procedures, the state must ensure that there are public hearings, adequate notice of the hearings, and an opportunity for comment available to the general public, including individuals with disabilities and parents of children with disabilities.

41.165(2) State plan. Before submitting a state plan under this chapter, the state must comply with the public participation requirements in subrule 41.165(1) and those in 20 U.S.C. 1232d(b)(7).

281—41.166(256B,34CFR300) Rule of construction. In complying with rules 41.162(256B,34CFR300) and 41.163(256B,34CFR300), the state may not use funds paid to it under this chapter to satisfy state-mandated funding obligations to LEAs, including funding based on student attendance or enrollment, or inflation.

281—41.167(256B,34CFR300) State advisory panel. An advisory panel is established and maintained for the purpose of providing policy guidance with respect to special education and related services for children with disabilities in the state.

281—41.168(256B,34CFR300) Advisory panel membership.

41.168(1) General. The advisory panel must consist of members appointed by the director of education, be representative of the state population and be composed of individuals involved in or concerned with the education of children with disabilities, including:

a. Parents of children with disabilities aged birth to 26;
b. Individuals with disabilities;
c. Teachers;
d. Representatives of institutions of higher education that prepare special education and related services personnel;
e. State and local education officials, including officials who carry out activities under Subtitle B of Title VII of the McKinney-Vento Homeless Assistance Act, 42 U.S.C. 11431 et seq.;
f. Administrators of programs for children with disabilities;
g. Representatives of other state agencies involved in the financing or delivery of related services to children with disabilities;
h. Representatives of private schools and public charter schools;
i. At least one representative of a vocational, community, or business organization concerned with the provision of transition services to children with disabilities;
j. A representative from the state child welfare agency responsible for foster care; and
k. Representatives from the state juvenile and adult corrections agencies.

41.168(2) Special rule. A majority of the members of the panel must be individuals with disabilities or parents of children with disabilities aged birth to 26.

281—41.169(256B,34CFR300) Advisory panel duties. The advisory panel must:

1. Advise the department of unmet needs within the state in the education of children with disabilities;
2. Comment publicly on any rules or regulations proposed by the state regarding the education of children with disabilities;
3. Advise the department in developing evaluations and reporting on data to the Secretary under Section 618 of the Act;
4. Advise the department in developing corrective action plans to address findings identified in federal monitoring reports under Part B of the Act;
5. Advise the department in developing and implementing policies relating to the coordination of services for children with disabilities; and
6. Advise the department on eligible individuals with disabilities in adult prisons.

281—41.170(256B,34CFR300) Suspension and expulsion rates.

41.170(1) General. The department must examine data, including data disaggregated by race and ethnicity, to determine if significant discrepancies are occurring in the rate of long-term suspensions and expulsions of children with disabilities:

a. Among LEAs in the state; or
b. Compared to the rates for nondisabled children within an LEA.

41.170(2) Review and revision of policies. If the discrepancies described in subrule 41.170(1) are occurring, the department must review and, if appropriate, revise (or require the affected state agency or LEA to revise) its policies, procedures, and practices relating to the development and implementation of IEPs, the use of positive behavioral interventions and supports, and procedural safeguards to ensure that these policies, procedures, and practices comply with the Act.

281—41.171 Reserved.

281—41.172(256B,34CFR300) Access to instructional materials.

41.172(1) General. The state:

a. Adopts the National Instructional Materials Accessibility Standard (NIMAS) published in the Federal Register on July 19, 2006, (71 Fed. Reg. 41084) for the purposes of providing instructional materials to blind persons or other persons with print disabilities in a timely manner; and
b. Establishes the following definition of "timely manner" for purposes of this chapter: Providing instructional materials in accessible formats to children with disabilities in a "timely manner" means delivering those accessible instructional materials at the same time as other children receive instructional materials.

41.172(2) Public agencies. All public agencies must comply with rule 41.210(256B,34CFR300).

41.172(3) Assistive technology. In carrying out this rule, the department, to the maximum extent possible, must work collaboratively with the state agency responsible for assistive technology programs.

281—41.173(256B,34CFR300) Overidentification and disproportionality. Each public agency shall implement policies and procedures developed by the department designed to prevent the inappropriate overidentification or disproportionate representation by race and ethnicity of children as children with disabilities, including children with disabilities with a particular impairment.

281—41.174(256B,34CFR300) Prohibition on mandatory medication.

41.174(1) General. No public agency personnel are permitted to require parents to obtain a prescription for substances identified under Schedule I, II, III, IV, or V in Section 202(c) of the Controlled Substances Act (21 U.S.C. 812(c)) for a child as a condition of attending school, receiving an evaluation or services under Part B or this chapter.

41.174(2) Rule of construction. Nothing in subrule 41.174(1) shall be construed to create a federal prohibition against teachers and other school personnel consulting or sharing classroom-based observations with parents or guardians regarding a student's academic and functional performance, or behavior in the classroom or school, or regarding the need for evaluation for special education or related services under rule 41.111(256B,34CFR300) related to child find.

281—41.175 Reserved.

281—41.176(256B) Special school provisions.

41.176(1) Providers. Special schools for eligible individuals who require special education outside the general education environment may be maintained by individual LEAs, jointly by two or more LEAs, by the AEA, jointly by two or more AEAs, by the state directly, or by approved private providers.

41.176(2) Department recognition. Department recognition of agencies providing special education and related services shall be of two types:

a. Recognition of nonpublic agencies and state-operated programs providing special education and related services in compliance with these rules.
b. Approval for nonpublic agencies to provide special education and related services and to receive special education funds for the special education and related services contracted for by an LEA or an AEA.

281—41.177(256B) Facilities.

41.177(1) Equivalent to general education. Each agency providing special education and related services shall supply facilities which shall be at least equivalent in quality to general education classrooms in the system, located in buildings housing regularly enrolled individuals of comparable ages, and readily accessible to individuals with disabilities.

41.177(2) Personnel space and assistance. Each agency providing special education shall ensure that special education personnel are provided adequate access to telephone service and clerical assistance and sufficient and appropriate work space regularly available for their use that is readily accessible to individuals with disabilities.

281—41.178(256B) Materials, equipment and assistive technology.

41.178(1) Provision for materials, equipment, and assistive technology. Each LEA shall make provision for special education and related services, facility modifications, assistive technology, necessary equipment and materials, including both durable items and expendable supplies; provided that, where an AEA, pursuant to appropriate arrangements authorized by the Iowa Code, furnishes special education and related services, performance by the AEA shall be accepted in lieu of performance by the LEA.

41.178(2) Acquire and maintain equipment. Each agency providing special education and related services shall have a comprehensive program in operation under which equipment for special education is acquired, inventoried, maintained, calibrated and replaced on a planned and regular basis.

281—41.179 to **41.185** Reserved.

281—41.186(256B,34CFR300) Assistance under other federal programs. Part B of the Act may not be construed to permit a state to reduce medical and other assistance available, or to alter eligibility, under Titles V and XIX of the Social Security Act with respect to the provision of FAPE to children with disabilities in the state.

281—41.187(256B) Research, innovation, and improvement.

41.187(1) Evaluation and improvement. Each agency, in conjunction with other agencies, the department, or both, shall implement activities designed to evaluate and improve special education. These activities shall document the individual performance resulting from the provision of special education.

41.187(2) Research. Each agency shall cooperate in research activities designed to evaluate and improve special education when such activities are sponsored by an LEA, an AEA or the department, or another agency, when approved by the department, to assess and ensure the effectiveness of efforts to educate all children with disabilities.

41.187(3) Support and facilitation. State rules, regulations, and policies under Part B of the Act must support and facilitate AEA, LEA and school-level system improvement designed to enable children with disabilities to meet the challenging state student academic achievement standards.

281—41.188 to **41.199** Reserved.

DIVISION IV
LEA AND AEA ELIGIBILITY, IN GENERAL

281—41.200(256B,34CFR300) Condition of assistance. An AEA or an LEA is eligible for assistance under Part B of the Act for a fiscal year if the agency submits a plan that provides assurances to the state that the LEA meets each of the conditions in rules 41.201(256B,34CFR300) to 41.213(256B,34CFR300).

41.200(1) Required descriptions, policies and procedures. Each AEA shall submit to the department the policies and procedures identified in subrules 41.407(1) and 41.407(2) and other descriptions that may be required by the department for approval. Any modifications to an AEA's descriptions, policies or procedures shall be submitted to the department for approval.

41.200(2) AEA application. Each AEA shall submit to the department, 45 calendar days prior to the start of the project year, an application for federal funds under Part B of the Act, implementing federal regulations, and this chapter. An AEA application shall receive department approval only when there is an approved AEA comprehensive plan as described in rule 281—72.9(273) on file at the department and the requirements of subrule 41.200(1) have been met. The application, on forms provided by the department, shall include the following:

a. General information.
b. Utilization of funds.
c. Assurances.

281—41.201(256B,34CFR300) Consistency with state policies. The AEA or LEA, in providing for the education of children with disabilities within its jurisdiction, must have in effect policies, procedures, and programs that are consistent with the state policies and procedures established under 41.101(256B,34CFR300) to 41.163(256B,34CFR300) and 41.165(256B,34CFR300) to 41.187(256B).

281—41.202(256B,34CFR300) Use of amounts.

41.202(1) General. Amounts provided to the AEA or LEA under Part B of the Act must be:

a. Expended in accordance with the applicable provisions of Part B of the Act and this chapter;

b. Used only to pay the excess costs of providing special education and related services to children with disabilities, consistent with subrule 41.202(2); and

c. Used to supplement state, local, and other federal funds, and not to supplant those funds.

41.202(2) Excess cost requirement.

a. General.

(1) The excess cost requirement prevents an AEA or LEA from using funds provided under Part B of the Act to pay for all of the costs directly attributable to the education of a child with a disability, subject to 41.202(2)"a"(2).

(2) The excess cost requirement does not prevent an AEA or LEA from using Part B funds to pay for all of the costs directly attributable to the education of a child with a disability aged 3 to 5 or 18 to 20 if no local or state funds are available for nondisabled children of these ages. However, the AEA or LEA must comply with the nonsupplanting and other requirements of Part B of the Act and of this chapter in providing the education and services for these children.

b. Meeting excess cost requirement.

(1) An AEA or LEA meets the excess cost requirement if it has spent at least a minimum average amount for the education of its children with disabilities before funds under Part B of the Act are used.

(2) The amount described in 41.202(2)"b"(1) is determined in accordance with the definition of excess costs in rule 41.16(256B,34CFR300). That amount may not include capital outlay or debt service.

c. Joint establishment of eligibility. If two or more AEAs or LEAs jointly establish eligibility in accordance with rule 41.223(256B,34CFR300), the minimum average

amount is the average of the combined minimum average amounts determined in accordance with the definition of excess costs in rule 41.16(256B,34CFR300) in those agencies for elementary or secondary school students, as the case may be.

281—41.203(256B,34CFR300) Maintenance of effort.

41.203(1) General. Except as provided in rules 41.204(256B,34CFR300) and 41.205(256B,34CFR300), funds provided to an AEA or LEA under Part B of the Act must not be used to reduce the level of expenditures for the education of children with disabilities made by the AEA or LEA from local funds below the level of those expenditures for the preceding fiscal year.

41.203(2) Standard.

a. Except as provided in 41.203(2)"b," the SEA must determine that an AEA or LEA complies with subrule 41.203(1) for purposes of establishing the LEA's eligibility for an award for a fiscal year if the AEA or LEA budgets, for the education of children with disabilities, at least the same total or per capita amount from either of the following sources as the LEA spent for that purpose from the same source for the most recent prior year for which information is available:

(1) Local funds only.

(2) The combination of state and local funds.

b. An AEA or LEA that relies on 41.203(2)"a"(1) for any fiscal year must ensure that the amount of local funds it budgets for the education of children with disabilities in that year is at least the same, either in total or per capita, as the amount it spent for that purpose in the most recent fiscal year for which information is available and the standard in 41.203(2)"a"(1) was used to establish its compliance with this rule.

c. The SEA may not consider any expenditures made from funds provided by the federal government for which the SEA is required to account to the federal government or for which the AEA or LEA is required to account to the federal government directly or through the SEA in determining an AEA's or LEA's compliance with the requirement in subrule 41.203(1).

281—41.204(256B,34CFR300) Exception to maintenance of effort. Notwithstanding the restriction in subrule 41.203(1), an AEA or LEA may reduce the level of expenditures by the AEA or LEA under Part B of the Act below the level of those expenditures for the preceding fiscal year if the reduction is attributable to any of the following:

41.204(1) Departure of personnel. The voluntary departure, by retirement or otherwise, or departure for just cause, of special education or related services personnel.

41.204(2) Decrease in enrollment. A decrease in the enrollment of children with disabilities.

41.204(3) Termination of obligation to provide an "exceptionally costly" program to a particular child. The termination of the obligation of the agency to provide a program of special education to a particular child with a disability that is an exceptionally costly program, as determined by the SEA, because the child:

a. Has left the jurisdiction of the agency;

b. Has reached the age at which the obligation of the agency to provide FAPE to the child has terminated; or

c. No longer needs the program of special education.

41.204(4) Termination of costly expenditures for long-term purchases. The termination of costly expenditures for long-term purchases, such as the acquisition of equipment.

41.204(5) High-cost fund. The assumption of cost by the high-cost fund operated by the state under this chapter.

281—41.205(256B,34CFR300) Adjustment to local fiscal efforts in certain fiscal years.

41.205(1) Amounts in excess. Notwithstanding 41.202(1)"b," 41.202(2), and 41.203(1), and except as provided in 41.205(4) and 41.230(5)"b," for any fiscal year for which the allocation received by an LEA under rule 41.705(256B,34CFR300) exceeds the amount the LEA received for the previous fiscal year, the LEA may reduce the level of expenditures otherwise required by subrule 41.203(1) by not more than 50 percent of the amount of that excess.

41.205(2) Use of amounts to carry out activities under ESEA. If an LEA exercises the authority under subrule 41.205(1), the LEA must use an amount of local funds equal to the reduction in expenditures under subrule 41.205(1) to carry out activities that could be supported with funds under the ESEA regardless of whether the LEA is using funds under the ESEA for those activities.

41.205(3) State prohibition. Notwithstanding subrule 41.205(1), if the SEA determines that an LEA is unable to establish and maintain programs of FAPE that meet the requirements of Section 613(a) of the Act and of this chapter or the SEA has taken action against the LEA under Section 616 of the Act and rules 41.600(256B,34CFR300) to 41.609(256B, 34CFR300), the SEA must prohibit the LEA from reducing the level of expenditures under subrule 41.205(1) for that fiscal year.

41.205(4) Special rule. The amount of funds expended by an LEA for early intervening services under rule 41.226(256B,34CFR300) shall count toward the maximum amount of expenditures that the LEA may reduce under subrule 41.205(1).

281—41.206(256B,34CFR300) Schoolwide programs under Title I of the ESEA.

41.206(1) General. Notwithstanding the provisions of rules 41.202(256B,34CFR300) and 41.203(256B, 34CFR300) or any other provision of Part B of the Act, an LEA may use funds received under Part B of the Act for any fiscal year to carry out a schoolwide program under Section 1114 of the ESEA, except that the amount used in any schoolwide program may not exceed the amount received by the LEA under Part B of the Act for that fiscal year; divided by the number of children with disabilities in the jurisdiction of the LEA; and multiplied by the number of children with disabilities participating in the schoolwide program.

41.206(2) Funding conditions. The funds described in subrule 41.206(1) are subject to the following conditions:

a. The funds must be considered as federal Part B funds for purposes of the calculations required by 41.202(1)"b" and "c."

b. The funds may be used without regard to the requirements of 41.202(1)"a."

41.206(3) Meeting other Part B requirements. Except as provided in subrule 41.206(2), all other requirements of Part B of the Act must be met by an LEA using Part B funds in accordance with subrule 41.206(1), including ensuring that children with disabilities in schoolwide program schools:

a. Receive services in accordance with a properly developed IEP; and

b. Are afforded all of the rights and services guaranteed to children with disabilities under the Act.

281—41.207(256B,34CFR300) Personnel development. Each public agency must ensure that all personnel necessary

to carry out Part B of the Act are appropriately and adequately prepared, subject to the requirements of rule 41.156(256B,34CFR300) related to personnel qualifications and Section 2122 of the ESEA.

281—41.208(256B,34CFR300) Permissive use of funds.

41.208(1) Uses. Notwithstanding rule 41.202(256B,34CFR300) and subrules 41.203(1) and 41.162(2), funds provided to an LEA under Part B of the Act may be used for the following activities:

a. Services and aids that also benefit nondisabled children. For the costs of special education and related services and supplementary aids and services provided in a regular class or other education-related setting to a child with a disability in accordance with the IEP of the child, even if one or more nondisabled children benefit from these services. This provision may not be construed to apply to rules 41.172(256B,34CFR300) and 41.210(256B,34CFR300).

b. Early intervening services. To develop and implement coordinated, early intervening educational services in accordance with rule 41.226(256B,34CFR300). Such development and implementation may be required by the SEA under subrule 41.646(2).

c. High-cost special education and related services. To establish and implement cost- or risk-sharing funds, consortia, or cooperatives for the LEA itself, or for LEAs working in a consortium of which the LEA is a part, to pay for high-cost special education and related services.

41.208(2) Administrative case management. An LEA may use funds received under Part B of the Act to purchase appropriate technology for record keeping, data collection, and related case management activities of teachers and related services personnel providing services described in the IEP of children with disabilities, that is needed for the implementation of those case management activities.

281—41.209(256B,34CFR300) Treatment of charter schools and their students.

41.209(1) Rights of children with disabilities. Children with disabilities who attend public charter schools and their parents retain all rights under this chapter.

41.209(2) Charter schools that are public schools of the LEA.

a. General. In carrying out Part B of the Act and these rules with respect to charter schools that are public schools of the LEA, the LEA must:

(1) Serve children with disabilities attending those charter schools in the same manner as the LEA serves children with disabilities in its other schools, including providing supplementary and related services on site at the charter school to the same extent to which the LEA has a policy or practice of providing such services on the site to its other public schools; and

(2) Provide funds under Part B of the Act to those charter schools:

1. On the same basis as the LEA provides funds to the LEA's other public schools, including proportional distribution based on relative enrollment of children with disabilities; and

2. At the same time as the LEA distributes other federal funds to the LEA's other public schools, consistent with the state's charter school law.

b. Relationship to rule 41.705(256B,34CFR300). If the public charter school is a school of an LEA that receives funding under rule 41.705(256B,34CFR300) and includes other public schools:

(1) The LEA is responsible for ensuring that the requirements of this chapter are met, unless state law assigns that responsibility to some other entity; and

(2) The LEA must meet the requirements of 41.209(2)"a."

281—41.210(256B,34CFR300) Purchase of instructional materials.

41.210(1) General. An AEA, an LEA, or any other public agency, when purchasing print instructional materials, must acquire those instructional materials for children who are blind or for other persons with print disabilities in a manner consistent with subrule 41.210(3) and ensure delivery of those materials in a timely manner to those children.

41.210(2) Rights and responsibilities of AEA or LEA. Nothing in this rule relieves the LEA or AEA or any other public agency of its responsibility to ensure that children with disabilities who need instructional materials in accessible formats, but who are not included under the definition of blind persons or other persons with print disabilities in 41.210(4)"a" or who need materials that cannot be produced from NIMAS files, receive those instructional materials in a timely manner, as defined in 41.172(1)"b."

41.210(3) Preparation and delivery of files. Because the state chooses to coordinate with the NIMAC, an AEA, an LEA, or any other public agency must:

a. As part of any print instructional materials adoption process, procurement contract, or other practice or instrument used for purchase of print instructional materials, enter into a written contract with the publisher of the print instructional materials to:

(1) Require the publisher to prepare and, on or before delivery of the print instructional materials, provide to NIMAC electronic files containing the contents of the print instructional materials using the NIMAS; or

(2) Purchase instructional materials from the publisher that are produced in, or may be rendered in, specialized formats.

b. Provide instructional materials to blind persons or other persons with print disabilities in a timely manner.

41.210(4) Definitions. The following definitions apply to this rule and rule 41.172(256B,34CFR300), and apply to each state and LEA, regardless of whether the state or LEA chooses to coordinate with the NIMAC:

a. "Blind persons or other persons with print disabilities" means children served under this chapter who may qualify to receive books and other publications produced in specialized formats in accordance with 2 U.S.C. 135a and 36 CFR 701.6. Persons who may receive material in specialized formats include persons who are blind, who have visual disabilities, have certain physical disabilities, or who have reading disabilities resulting from organic dysfunction, as those terms are defined in 36 CFR 701.6(b)(1), and who have obtained certification from a "competent authority," as defined in 36 CFR 701.6(b)(2).

b. "National Instructional Materials Access Center" or "NIMAC" means the center established pursuant to Section 674(e) of the Act.

c. "National Instructional Materials Accessibility Standard" or "NIMAS" has the meaning given the term in Section 674(e)(3)(B) of the Act.

d. "Print instructional materials" has the meaning given the term in Section 674(e)(3)(C) of the Act.

e. "Specialized formats" has the meaning given the term in Section 674(e)(3)(D) of the Act.

281—41.211(256B,34CFR300) Information for department. Each public agency shall provide the department with

information necessary to enable the department to carry out its duties under Part B of the Act and this chapter, including, with respect to 34 CFR Sections 300.157 and 300.160, information relating to the performance of children with disabilities participating in programs carried out under Part B of the Act. This information, including such quantitative and qualitative data as the department may require, shall be submitted in a manner and at a time determined by the department. Failure to submit timely and accurate information may be considered by the department in making the determinations under rule 41.603(256B,34CFR300) or in taking any other action to enforce Part B of the Act or this chapter.

281—41.212(256B,34CFR300) Public information. Each public agency must make available to parents of children with disabilities and to the general public all documents relating to the eligibility of the agency under Part B of the Act.

281—41.213(256B,34CFR300) Records regarding migratory children with disabilities. Each AEA or LEA must cooperate in the Secretary's efforts under Section 1308 of the ESEA to ensure the linkage of records pertaining to migratory children with disabilities for the purpose of electronically exchanging, among the states, health and educational information regarding those children.

281—41.214 to **41.219** Reserved.

281—41.220(256B,34CFR300) Exception for prior local plans.

41.220(1) General. If an AEA or LEA or a state agency described in rule 41.228(256B,34CFR300) has on file with the SEA policies and procedures that demonstrate that the AEA or LEA or state agency meets any requirement of 41.200(256B,34CFR300), including any policies and procedures filed under Part B of the Act as in effect before December 3, 2004, the SEA must consider the AEA or LEA or state agency to have met that requirement for purposes of receiving assistance under Part B of the Act.

41.220(2) Modification made by an AEA or LEA or state agency. Subject to subrule 41.220(3), policies and procedures submitted by an LEA or a state agency remain in effect until the AEA or LEA or state agency submits to the SEA the modifications that the AEA or LEA or state agency determines are necessary.

41.220(3) Modifications required by the SEA. The SEA may require an AEA or LEA or a state agency to modify its policies and procedures, but only to the extent necessary to ensure the LEA's or state agency's compliance with Part B of the Act or state law, if:

a. After December 3, 2004, the effective date of the Individuals with Disabilities Education Improvement Act of 2004, the applicable provisions of the Act, or the regulations developed to carry out the Act, are amended;

b. There is a new interpretation of an applicable provision of the Act by federal or state courts; or

c. There is an official finding of noncompliance with federal or state law or regulations.

281—41.221(256B,34CFR300) Notification of AEA or LEA or state agency in case of ineligibility. If the state determines that an AEA or LEA or state agency is not eligible under Part B of the Act, then the state must notify the AEA or LEA or state agency of that determination and provide the AEA or LEA or state agency with reasonable notice and an opportunity for a hearing. This hearing shall not be considered a contested case under Iowa Code chapter 17A.

281—41.222(256B,34CFR300) AEA or LEA and state agency compliance.

41.222(1) General. If the state, after reasonable notice and an opportunity for a hearing, finds that an AEA or LEA or state agency that has been determined to be eligible under this chapter is failing to comply with any requirement described in rules 41.201(256B,34CFR300) to 41.213(256B, 34CFR300), the state must reduce or must not provide any further payments to the AEA or LEA or state agency until the state is satisfied that the AEA or LEA or state agency is complying with that requirement.

41.222(2) Notice requirement. Any state agency or AEA or LEA in receipt of a notice described in subrule 41.222(1), by means of public notice, must take the measures necessary to bring the pendency of an action pursuant to this rule to the attention of the public within the jurisdiction of the agency.

41.222(3) Consideration. In carrying out its responsibilities under this rule, the state must consider any decision resulting from a hearing held under rules 41.511(256B, 34CFR300) to 41.533(256B,34CFR300) that is adverse to the AEA or LEA or state agency involved in the decision.

281—41.223(256B,34CFR300) Joint establishment of eligibility.

41.223(1) General. The state may require an AEA or LEA to establish its eligibility jointly with another AEA or LEA if the state determines that the AEA or LEA will be ineligible because the agency will not be able to establish and maintain programs of sufficient size and scope to effectively meet the needs of children with disabilities.

41.223(2) Reserved.

41.223(3) Amount of payments. If the state requires the joint establishment of eligibility under subrule 41.223(1), the total amount of funds made available to the affected AEAs or LEAs must be equal to the sum of the payments that each AEA or LEA would have received under rule 41.705(256B, 34CFR300) if the agencies were eligible for those payments.

281—41.224(256B,34CFR300) Requirements for jointly establishing eligibility.

41.224(1) Requirements for AEAs or LEAs in general. AEAs or LEAs that establish joint eligibility under this rule must:

a. Adopt policies and procedures that are consistent with the state's policies and procedures under rules 41.101(256B, 34CFR300) to 41.163(256B,34CFR300) and 41.165(256B, 34CFR300) to 41.187(256B); and

b. Be jointly responsible for implementing programs that receive assistance under Part B of the Act.

41.224(2) Requirements for educational service agencies in general. If an educational service agency is required by state law to carry out programs under Part B of the Act, the joint responsibilities given to AEAs or LEAs under Part B of the Act:

a. Do not apply to the administration and disbursement of any payments received by that educational service agency; and

b. Must be carried out only by that educational service agency.

41.224(3) Additional requirement. Notwithstanding any other provision of rule 41.223(256B,34CFR300) and this rule, an educational service agency must provide for the education of children with disabilities in the least restrictive environment, as required by this chapter.

281—41.225 Reserved.

281—41.226(256B,34CFR300) Early intervening services.

41.226(1) General. An AEA or LEA may not use more than 15 percent of the amount the AEA or LEA receives under Part B of the Act for any fiscal year, less any amount reduced by the AEA or LEA pursuant to rule 41.205(256B, 34CFR300), if any, in combination with other amounts, which may include amounts other than education funds, to develop and implement coordinated, early intervening services, which may include interagency financing structures, for students in kindergarten through grade 12, with a particular emphasis on students in kindergarten through grade 3, who are not currently identified as needing special education or related services, but who need additional academic and behavioral support to succeed in a general education environment.

41.226(2) Activities. In implementing coordinated, early intervening services under this rule, an AEA or LEA may carry out activities that include:

a. Professional development, which may be provided by other entities, for teachers and other school staff to enable such personnel to deliver scientifically based academic and behavioral interventions, including scientifically based literacy instruction and, where appropriate, instruction on the use of adaptive and instructional software; and

b. Providing educational and behavioral evaluations, services, and supports, including scientifically based literacy instruction.

41.226(3) Construction. Nothing in this rule shall be construed to either limit or create a right to FAPE under Part B of the Act or to delay appropriate evaluation of a child suspected of having a disability.

41.226(4) Reporting: in general. Each AEA or LEA that develops and maintains coordinated, early intervening services under this rule must annually report to the SEA on:

a. The number of children served under this rule who received early intervening services; and

b. The number of children served under this rule who received early intervening services and subsequently receive special education and related services under Part B of the Act during the preceding two-year period.

41.226(5) Reporting: disproportionality. If an LEA is required to reserve the maximum amount available under this rule for early intervening services because of a determination of significant disproportionality under rule 41.646(256B, 34CFR300), that LEA must make additional reports on the use of funds under this rule and rule 41.646(256B, 34CFR300), as required by the SEA.

41.226(6) Coordination with ESEA. Funds made available to carry out this rule may be used to carry out coordinated, early intervening services aligned with activities funded by and carried out under the ESEA if those funds are used to supplement, and not supplant, funds made available under the ESEA for the activities and services assisted under this rule.

281—41.227 Reserved.

281—41.228(256B,34CFR300) State agency eligibility. Any state agency that desires to receive a subgrant for any fiscal year under rule 41.705(256B,34CFR300) must demonstrate to the satisfaction of the state that all children with disabilities who are participating in programs and projects funded under Part B of the Act receive FAPE, and that those children and their parents are provided all the rights and procedural safeguards described in this chapter; and the agency meets the other conditions of this chapter that apply to LEAs.

281—41.229(256B,34CFR300) Disciplinary information.

41.229(1) Requirement of transmittal of disciplinary records. Pursuant to Iowa Code section 279.9A, the state requires that a public agency include in the records of a child with a disability a statement of any current or previous disciplinary action that has been taken against the child and transmit the statement to the same extent that the disciplinary information is included in, and transmitted with, the student records of children without disabilities.

41.229(2) Contents of transmittal. The transmittal shall include an accurate record of any suspension or expulsion actions taken and the basis for those actions taken. It may include any other information that is relevant to the safety of the child and other individuals involved with the child, to the extent that information is transmitted for children without disabilities.

41.229(3) Additional contents of transmittal. If the child transfers from one school to another, the transmission of any of the child's records must include both the child's current IEP and any statement of current or previous disciplinary action that has been taken against the child.

41.229(4) When transmittal must occur. Pursuant to Iowa Code section 279.9A, a transmittal of records under this rule shall occur if requested by officials of the school to which the student seeks to transfer or has transferred.

41.229(5) Additional state law requirement. Pursuant to Iowa Code section 279.9A, this rule applies also to accredited nonpublic schools, as well as AEAs.

281—41.230(256B,34CFR300) SEA flexibility. The department reserves to itself the flexibility provided by 34 CFR Section 300.230.

281—41.231 to **41.299** Reserved.

DIVISION V
EVALUATION, ELIGIBILITY, IEPs, AND PLACEMENT DECISIONS

281—41.300(256B,34CFR300) Parental consent and participation.

41.300(1) Parental consent for initial evaluation.

a. General.

(1) The public agency proposing to conduct an initial evaluation to determine if a child qualifies as a child with a disability under this chapter must, after providing notice consistent with rules 41.503(256B,34CFR300) and 41.504(256B,34CFR300), obtain informed consent, consistent with rule 41.9(256B,34CFR300), from the parent of the child before conducting the evaluation.

(2) Parental consent for an initial evaluation must not be construed as consent for initial provision of special education and related services.

(3) The public agency must make reasonable efforts to obtain the informed consent from the parent for an initial evaluation to determine whether the child is a child with a disability.

b. Special rule: initial evaluation for a child who is a ward of the state and not residing with a parent. For initial evaluations only, if the child is a ward of the state and is not residing with the child's parent, the public agency is not required to obtain informed consent from the parent for an initial evaluation to determine whether the child is a child with a disability if:

(1) Despite reasonable efforts to do so, the public agency cannot discover the whereabouts of the parent of the child;

(2) The rights of the parents of the child have been terminated in accordance with state law; or

(3) The rights of the parent to make educational decisions have been subrogated by a judge in accordance with state law and consent for an initial evaluation has been given by an individual appointed by the judge to represent the child.

c. Parental refusal to provide consent for initial evaluation.

(1) If the parent of a child enrolled in public school or seeking to be enrolled in public school does not provide consent for initial evaluation under 41.300(1)"a," or the parent fails to respond to a request to provide consent, the public agency may, but is not required to, pursue the initial evaluation of the child by utilizing the procedural safeguards in this chapter, including the mediation procedures under rule 41.506(256B,34CFR300) or the due process procedures under rules 41.507(256B,34CFR300) to 41.516(256B, 34CFR300), if appropriate, except to the extent inconsistent with state law relating to such parental consent.

(2) The public agency does not violate its obligation under rules 41.111(256B,34CFR300) and 41.301(256B, 34CFR300) to 41.311(256B,34CFR300) if it declines to pursue the evaluation under 41.300(1)"c"(1).

41.300(2) Parental consent for services.

a. A public agency that is responsible for making FAPE available to a child with a disability must obtain informed consent from the parent of the child before the initial provision of special education and related services to the child.

b. The public agency must make reasonable efforts to obtain informed consent from the parent for the initial provision of special education and related services to the child.

c. If the parent of a child fails to respond or refuses to consent to services under 41.300(2)"a," the public agency may not use the procedural safeguards of this chapter, including the mediation procedures or the due process procedures under this chapter, to obtain agreement or a ruling that the services may be provided to the child.

d. If the parent of the child refuses to consent to the initial provision of special education and related services, or the parent fails to respond to a request to provide consent for the initial provision of special education and related services, the public agency:

(1) Will not be considered to be in violation of the requirement to make available FAPE to the child for the failure to provide the child with the special education and related services for which the public agency requests consent; and

(2) Is not required to convene an IEP team meeting or develop an IEP for the child for the special education and related services for which the public agency requests such consent.

41.300(3) Parental consent for reevaluations.

a. General. Subject to 41.300(3)"b":

(1) Each public agency must obtain informed parental consent, in accordance with 41.300(1)"a," prior to conducting any reevaluation of a child with a disability.

(2) If the parent refuses to consent to the reevaluation, the public agency may, but is not required to, pursue the reevaluation by using the consent override procedures described in 41.300(1)"c."

(3) The public agency does not violate its obligation under rules 41.111(256B,34CFR300) and 41.301(256B, 34CFR300) to 41.311(256B,34CFR300) if it declines to pursue the evaluation or reevaluation.

b. Exception. The informed parental consent described in 41.300(3)"a" need not be obtained if the public agency can demonstrate that:

(1) It made reasonable efforts to obtain such consent; and

(2) The child's parent has failed to respond.

41.300(4) Other consent requirements.

a. When parental consent not required. Parental consent is not required before:

(1) A review of existing data as part of an evaluation or a reevaluation; or

(2) Administration of a test or other evaluation that is administered to all children unless, before administration of that test or evaluation, consent is required of parents of all children.

b. Additional consent requirements. In addition to the parental consent requirements described in subrule 41.300(1), the state may require parental consent for other services and activities under Part B of the Act and of this chapter if it ensures that each public agency in the state establishes and implements effective procedures to ensure that a parent's refusal to consent does not result in a failure to provide the child with FAPE.

c. Limitation on public agency's use of failure to give consent. A public agency may not use a parent's refusal to consent to one service or activity under 41.300(1) or 41.300(4)"b" to deny the parent or child any other service, benefit, or activity of the public agency, except as required by this chapter.

d. Children who are home schooled or placed by their parents in private schools.

(1) If a parent of a child who is home schooled or placed in a private school by the parents at their own expense does not provide consent for the initial evaluation or the reevaluation, or the parent fails to respond to a request to provide consent, the public agency may not use the consent override procedures described in 41.300(1)"c" and 41.300(3)"a"; and

(2) The public agency is not required to consider the child as eligible for services under rules 41.132(256B,34CFR300) to 41.144(256B,34CFR300).

e. Documenting reasonable efforts. To meet the reasonable efforts requirement in 41.300(1)"a"(3), 41.300(1)"b"(1), 41.300(2)"b," and 41.300(3)"b"(1), the public agency must document its attempts to obtain parental consent using the procedures in subrule 41.322(4).

41.300(5) Parent participation. The identification process shall include interactions with the individual, the individual's parents, school personnel, and others having specific responsibilities for or knowledge of the individual. AEA and LEA personnel shall seek active parent participation throughout the process, directly communicate with parents, and encourage parents to participate at all decision points.

281—41.301(256B,34CFR300) Full and individual initial evaluations.

41.301(1) General. Each public agency must conduct a full and individual initial evaluation, in accordance with rules 41.305(256B,34CFR300) and 41.306(256B, 34CFR300), before the initial provision of special education and related services to a child with a disability under this chapter.

41.301(2) Request for initial evaluation. Consistent with the consent requirements in rule 41.300(256B,34CFR300), either a parent of a child or a public agency may initiate a request for an initial evaluation to determine if the child is a child with a disability.

41.301(3) Procedures for initial evaluation. The initial evaluation:

a. Must be conducted within 60 calendar days of receiving parental consent for the evaluation;

b. Must consist of procedures:

(1) To determine if the child is a child with a disability under this chapter; and

(2) To determine the educational needs of the child.

41.301(4) Exception. The time frame described in 41.301(3)"a" does not apply to a public agency if:

a. The parent of a child repeatedly fails or refuses to produce the child for the evaluation; or

b. A child enrolls in a school of another public agency after the relevant time frame in 41.301(3)"a" has begun, and prior to a determination by the child's previous public agency as to whether the child is a child with a disability under this chapter.

41.301(5) Applicability of exception in 41.301(4)"b." The exception in 41.301(4)"b" applies only if the subsequent public agency is making sufficient progress to ensure a prompt completion of the evaluation and the parent and the subsequent public agency agree to a specific time when the evaluation will be completed.

41.301(6) Content of full and individual initial evaluation. The purpose of the evaluation is to determine the educational interventions that are required to resolve the presenting problem, behaviors of concern, or suspected disability, including whether the educational interventions are special education. An evaluation shall include:

a. An objective definition of the presenting problem, behaviors of concern, or suspected disability.

b. Analysis of existing information about the individual, as described in 41.305(1)"a."

c. Identification of the individual's strengths or areas of competence relevant to the presenting problem, behaviors of concern, or suspected disability.

d. Collection of additional information needed to design interventions intended to resolve the presenting problem, behaviors of concern, or suspected disability, including, if appropriate, assessment or evaluation of health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, adaptive behavior and motor abilities.

281—41.302(256B,34CFR300) Screening for instructional purposes is not evaluation. The screening of a student by a teacher or specialist to determine appropriate instructional strategies for curriculum implementation shall not be considered to be an evaluation for eligibility for special education and related services.

281—41.303(256B,34CFR300) Reevaluations.

41.303(1) General. A public agency must ensure that a reevaluation of each child with a disability is conducted in accordance with rules 41.304(256B,34CFR300) to 41.311(256B,34CFR300):

a. If the public agency determines that the educational or related services needs, including improved academic achievement and functional performance, of the child warrant a reevaluation; or

b. If the child's parent or teacher requests a reevaluation.

41.303(2) Limitation. A reevaluation conducted under subrule 41.303(1):

a. May occur not more than once a year, unless the parent and the public agency agree otherwise; and

b. Must occur at least once every three years, unless the parent and the public agency agree that a reevaluation is unnecessary.

281—41.304(256B,34CFR300) Evaluation procedures.

41.304(1) Notice. The public agency must provide notice to the parents of a child with a disability, in accordance with rule 41.503(256B,34CFR300), that describes any evaluation procedures the agency proposes to conduct.

41.304(2) Conduct of evaluation. In conducting the evaluation, the public agency must:

a. Use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child, including information provided by the parent, that may assist in determining:

(1) Whether the child is a child with a disability under this chapter; and

(2) The content of the child's IEP, including information related to enabling the child to be involved in and progress in the general education curriculum (or for a preschool child, to participate in appropriate activities);

b. Not use any single measure or assessment as the sole criterion for determining whether a child is a child with a disability and for determining an appropriate educational program for the child; and

c. Use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.

41.304(3) Other evaluation procedures. Each public agency must ensure that:

a. Assessments and other evaluation materials used to assess a child under this chapter:

(1) Are selected and administered so as not to be discriminatory on a racial or cultural basis;

(2) Are provided and administered in the child's native language or other mode of communication and in the form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally, unless it is clearly not feasible to so provide or administer;

(3) Are used for the purposes for which the assessments or measures are valid and reliable;

(4) Are administered by trained and knowledgeable personnel; and

(5) Are administered in accordance with any instructions provided by the producer of the assessments.

b. Assessments and other evaluation materials include those tailored to assess specific areas of educational need and not merely those that are designed to provide a single general intelligence quotient.

c. Assessments are selected and administered so as best to ensure that if an assessment is administered to a child with impaired sensory, manual, or speaking skills, the assessment results accurately reflect the child's aptitude or achievement level or whatever other factors the test purports to measure, rather than reflecting the child's impaired sensory, manual, or speaking skills (unless those skills are the factors that the test purports to measure).

d. The child is assessed in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities.

e. Assessments of children with disabilities who transfer from one public agency to another public agency in the same school year are coordinated with those children's prior and subsequent schools, as necessary and as expeditiously as possible, consistent with 41.301(4)"b" and 41.301(5), to ensure prompt completion of full evaluations.

f. The evaluation of each child with a disability under rules 41.304(256B,34CFR300) to 41.306(256B,34CFR300) is sufficiently comprehensive to identify all of the child's special education and related services needs, whether or not

commonly linked to the disability category in which the child has been classified.

g. Assessment tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the child are provided.

281—41.305(256B,34CFR300) Additional requirements for evaluations and reevaluations.

41.305(1) Review of existing evaluation data. As part of an initial evaluation, if appropriate, and as part of any reevaluation under this chapter, the IEP team and other qualified professionals, as appropriate, must:

a. Review existing evaluation data on the child, including:

(1) Evaluations and information provided by the parents of the child;

(2) Current classroom-based, local, or state assessments, and classroom-based observations; and

(3) Observations by teachers and related services providers; and

b. On the basis of that review, and input from the child's parents, identify what additional data, if any, are needed to determine:

(1) Whether the child is a child with a disability, as defined in this chapter, and the educational needs of the child or, in the case of a reevaluation of a child, whether the child continues to have such a disability, and the educational needs of the child;

(2) The present levels of academic achievement and related developmental needs of the child;

(3) Whether the child needs special education and related services, or in the case of a reevaluation of a child, whether the child continues to need special education and related services; and

(4) Whether any additions or modifications to the special education and related services are needed to enable the child to meet the measurable annual goals set out in the IEP of the child and to participate, as appropriate, in the general education curriculum.

41.305(2) Conduct of review. The group described in subrule 41.305(1) may conduct its review without a meeting.

41.305(3) Source of data. The public agency must administer such assessments and other evaluation measures as may be needed to produce the data identified under subrule 41.305(1).

41.305(4) Requirements if additional data are not needed.

a. If the IEP team and other qualified professionals, as appropriate, determine that no additional data are needed to determine whether the child continues to be a child with a disability or to determine the child's educational needs, the public agency must notify the child's parents of:

(1) The determination and the reasons for the determination; and

(2) The right of the parents to request an assessment to determine whether the child continues to be a child with a disability and to determine the child's educational needs.

b. The public agency is not required to conduct the assessment described in 41.305(4)"a"(2) unless requested to do so by the child's parents.

41.305(5) Evaluations before change in eligibility.

a. Except as provided in 41.305(5)"b," a public agency must evaluate a child with a disability in accordance with these rules before determining that the child is no longer a child with a disability.

b. The evaluation described in 41.305(5)"a" is not required before the termination of a child's eligibility under this chapter due to graduation from secondary school with a regular diploma, or due to exceeding the age eligibility for FAPE under state law.

c. For a child whose eligibility terminates under circumstances described in 41.305(5)"b," a public agency must provide the child with a summary of the child's academic achievement and functional performance, which shall include recommendations on how to assist the child in meeting the child's postsecondary goals.

41.305(6) At no cost to parent. Evaluations or reevaluations under this chapter, including any outside consultations or evaluations, shall be at no cost to the parent. AEAs or LEAs may access a parent's private insurance or public benefits or insurance, however, provided that a parent gives informed consent consistent with rule 41.9(256B,34CFR300) and subrules 41.154(4) and 41.154(5).

281—41.306(256B,34CFR300) Determination of eligibility.

41.306(1) General. Upon completion of the administration of assessments and other evaluation measures:

a. A group of qualified professionals and the parent of the child determine whether the child is a child with a disability, as defined in this chapter, in accordance with subrule 41.306(2) and the educational needs of the child; and

b. The public agency provides a copy of the evaluation report and the documentation of determination of eligibility at no cost to the parent.

41.306(2) Special rule for eligibility determination. A child must not be determined to be a child with a disability under this chapter:

a. If the determinant factor for that determination is:

(1) Lack of appropriate instruction in reading, including the essential components of reading instruction, as defined in Section 1208(3) of the ESEA;

(2) Lack of appropriate instruction in math; or

(3) Limited English proficiency; and

b. If the child does not otherwise meet the eligibility criteria under this chapter.

41.306(3) Procedures for determining eligibility and educational need.

a. In interpreting evaluation data for the purpose of determining if a child is a child with a disability under this chapter, and the educational needs of the child, each public agency must:

(1) Draw upon information from a variety of sources, including aptitude and achievement tests, parent input, and teacher recommendations, as well as information about the child's physical condition, social or cultural background, and adaptive behavior; and

(2) Ensure that information obtained from all of these sources is documented and carefully considered.

b. If a determination is made that a child has a disability and needs special education and related services, an IEP must be developed for the child in accordance with these rules.

c. All determinations of eligibility must be based on the individual's disability (progress and discrepancy) and need for special education.

41.306(4) Director's certification. If a child is determined to be an eligible individual pursuant to these rules, the AEA director of special education shall certify the individual's entitlement for special education. A confidential record, subject to audit by the department, registering the name and required special education and related services of each eligible individual shall be maintained by the AEA, and provision shall be made for its periodic revision.

281—41.307(256B,34CFR300) Specific learning disabilities.

41.307(1) General. The state adopts, consistent with rule 41.309(256B,34CFR300), criteria for determining whether a child is an eligible individual on the basis of a specific learning disability as defined in subrule 41.50(10). In addition, the criteria adopted by the state:

a. Requires the use of a process based on the child's response to scientific, research-based intervention or the use of other alternative research-based procedures for determining whether a child has a specific learning disability, as defined in subrule 41.50(10); and

b. Prohibits the use of a severe discrepancy between intellectual ability and achievement for determining whether a child is an eligible individual on the basis of a specific learning disability.

41.307(2) Consistency with state criteria. A public agency must use the state criteria adopted pursuant to subrule 41.307(1) in determining whether a child is an eligible individual on the basis of a specific learning disability.

41.307(3) Rule of construction: "Labelling." Nothing in this rule or rules 41.308(256B,34CFR300) to 41.311(256B, 34CFR300) shall be construed as requiring children evaluated under these rules to be classified as having a specific learning disability, as long as the child is regarded as a child with a disability or an eligible individual under this chapter.

41.307(4) Rule of construction: Use of rules 41.307(256B,34CFR300) to 41.310(256B,34CFR300). Nothing in this rule or rule 41.308(256B,34CFR300) or 41.311(256B,34CFR300) shall be construed as limiting its applicability solely to determining whether a child is an eligible individual on the basis of a specific learning disability. The procedures, methods, etc. listed in this rule and rules 41.308(256B,34CFR300) and 41.310(256B,34CFR300) may be employed in evaluating any child suspected of being an eligible individual, if appropriate in the child's circumstances.

281—41.308(256B,34CFR300) Additional group members. The determination of whether a child suspected of being an eligible individual due to the presence of a specific learning disability is a child with a disability as defined in this chapter, must be made by the child's parents and a team of qualified professionals, which must include the following persons:

41.308(1) Required teachers.

a. The child's general education teacher; or

b. If the child does not have a general education teacher, a general education teacher qualified to teach a child of his or her age; or

c. For a child of less than school age, an individual qualified by the SEA to teach a child of his or her age.

41.308(2) Individual qualified to conduct diagnostic examinations. At least one person qualified to conduct individual diagnostic examinations of children, such as a school psychologist, speech-language pathologist, or a remedial reading teacher.

281—41.309(256B,34CFR300) Determining the existence of a specific learning disability.

41.309(1) Required determinations. The group described in rule 41.306(256B,34CFR300) may determine that a child has a specific learning disability, as defined in subrule 41.50(10), after considering the following three factors:

a. Lack of adequate achievement. The child does not achieve adequately for the child's age, grade-level expectations or such grade-level standards the SEA may choose to adopt in one or more of the following areas, when provided with learning experiences and instruction appropriate for the child's age or grade-level expectations or such grade-level standards the SEA may choose to adopt:

(1) Oral expression.
(2) Listening comprehension.
(3) Written expression.
(4) Basic reading skill.
(5) Reading fluency skills.
(6) Reading comprehension.
(7) Mathematics calculation.
(8) Mathematics problem solving.

b. Lack of adequate progress.

(1) The child does not make sufficient progress to meet age expectations, grade-level expectations, or such state-approved grade-level standards as the state may choose to adopt in one or more of the areas identified in 41.309(1)"a" when using a process based on the child's response to scientific, research-based intervention; or

(2) The child exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, grade-level expectations, such state-approved grade-level standards as the state may choose to adopt, or intellectual development, that is determined by the group to be relevant to the identification of a specific learning disability, using appropriate assessments, consistent with rules 41.304(256B, 34CFR300) and 41.305(256B,34CFR300).

c. Exclusionary factors. The group determines that its findings under 41.309(1)"a" and 41.309(1)"b" are not primarily the result of:

(1) A visual, hearing, or motor disability;
(2) Mental disability;
(3) Emotional disturbance;
(4) Cultural factors;
(5) Environmental or economic disadvantage; or
(6) Limited English proficiency.

41.309(2) Review of data. To ensure that underachievement in a child suspected of having a specific learning disability is not due to lack of appropriate instruction in reading or math, the group must consider, as part of the evaluation described in rules 41.304(256B,34CFR300) to 41.306(256B, 34CFR300):

a. Data that demonstrate that prior to, or as a part of, the referral process, the child was provided appropriate instruction in regular education settings, delivered by qualified personnel; and

b. Data-based documentation of repeated assessments of achievement at reasonable intervals, reflecting formal assessment of student progress during instruction, which was provided to the child's parents.

41.309(3) When consent required. The public agency must promptly request parental consent to evaluate the child to determine if the child needs special education and related services and must adhere to the time frames described in rules 41.301(256B,34CFR300) and 41.303(256B, 34CFR300):

a. If, prior to a referral, a child has not made adequate progress after an appropriate period of time when provided instruction, as described in 41.309(2)"a" and "b"; and

b. Whenever a child is referred for an evaluation.

41.309(4) Rule of construction. Subparagraph 41.309(1)"b"(2) shall not be construed to require a child with a pattern of strengths and weaknesses in performance, achievement, or both, to be identified as an eligible individual, absent a determination that the child has a disability and needs special education and related services.

41.309(5) Rule of construction. A process by which a child's response to intervention is measured is a component of a full and individual evaluation and is not, considered alone, a full and individual evaluation, unless the response to intervention process contains all required elements of a full and individual evaluation under this chapter.

281—41.310(256B,34CFR300) Observation.

41.310(1) Observation required. The public agency must ensure that the child is observed in the child's learning environment, including the regular classroom setting, to document the child's academic performance and behavior in the areas of difficulty.

41.310(2) Who must observe. The group described in 41.306(1)"a," in determining whether a child has a specific learning disability, must decide to:

a. Use information from an observation in routine classroom instruction and monitoring of the child's performance that was done before the child was referred for an evaluation, consistent with rules 41.306(256B,34CFR300), 41.309(256B,34CFR300), 41.312(256B,34CFR300) and 41.313(256B,34CFR300); or

b. Have at least one member of the group described in 41.306(1)"a" conduct an observation of the child's academic performance in the regular classroom after the child has been referred for an evaluation and parental consent, consistent with subrule 41.300(1), is obtained.

41.310(3) Child less than school age or out of school. In the case of a child of less than school age or out of school, a group member must observe the child in an environment appropriate for a child of that age. This subrule also applies to school-age children who must be evaluated during school breaks.

281—41.311(256B,34CFR300) Specific documentation for the eligibility determination.

41.311(1) Documentation required. For a child suspected of having a specific learning disability, the documentation of the determination that the child is an eligible individual, as required in 41.306(1)"b," must contain a statement of:

a. Whether the child has a specific learning disability;

b. The basis for making the determination, including an assurance that the determination has been made in accordance with 41.306(3)"a";

c. The relevant behavior, if any, noted during the observation of the child and the relationship of that behavior to the child's academic functioning;

d. The educationally relevant medical findings, if any;

e. The determination that:

(1) The child does not achieve adequately for the child's age or to meet grade-level expectations or such grade-level standards the SEA may choose to adopt consistent with 41.309(1)"a"; and

(2) The child does not make sufficient progress for the child's age or to meet grade-level expectations or such grade-level standards the SEA may choose to adopt consistent with 41.309(1)"b"(1); or the child exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to the child's age or to meet grade-level expectations, such grade-level standards the SEA may choose to adopt, or intellectual development consistent with 41.309(1)"b"(2);

f. The determination of the group concerning the effects of a visual, hearing, or motor disability; mental disability; emotional disturbance; cultural factors; environmental or economic disadvantage; or limited English proficiency on the child's achievement level; and

g. If the child has participated in a process that assesses the child's response to scientific, research-based intervention:

(1) The instructional strategies used and the student-centered data collected; and

(2) The documentation that the child's parents were notified about:

1. The state's policies regarding the amount and nature of student performance data that would be collected and the general education services that would be provided;

2. Strategies for increasing the child's rate of learning; and

3. The parents' right to request an evaluation.

41.311(2) Certification required. Each group member must certify in writing whether the report reflects the member's conclusion. If it does not reflect the member's conclusion, the group member must submit a separate statement presenting the member's conclusions.

281—41.312(256B,34CFR300) General education interventions. Each LEA, in conjunction with the AEA, shall attempt to resolve the presenting problem or behaviors of concern in the general education environment prior to conducting a full and individual evaluation. In circumstances when the development and implementation of general education interventions are not appropriate to the needs of the individual, the IEP team and, as appropriate, other qualified professionals, may determine that a full and individual initial evaluation shall be conducted. Documentation of the rationale for such action shall be included in the individual's educational record.

41.312(1) Notice to parents. Each LEA shall provide general notice to parents on an annual basis about the provision of general education interventions that occur as a part of the agency's general program and that may occur at any time throughout the school year.

41.312(2) Nature of general education interventions. General education interventions shall include teacher consultation with special education support and instructional personnel working collaboratively to improve an individual's educational performance. The activities shall be documented and shall include measurable and goal-directed attempts to resolve the presenting problem or behaviors of concern, communication with parents, collection of data related to the presenting problem or behaviors of concern, intervention design and implementation, and systematic progress monitoring to measure the effects of interventions.

41.312(3) Referral for full and individual initial evaluation. If the referring problem or behaviors of concern are shown to be resistant to general education interventions or if interventions are demonstrated to be effective but require continued and substantial effort that may include the provision of special education and related services, the agency shall then conduct a full and individual initial evaluation.

41.312(4) Parent may request evaluation at any time. The parent of a child receiving general education interventions may request that the agency conduct a full and individual initial evaluation at any time during the implementation of such interventions.

281—41.313(256B,34CFR300) Systematic problem-solving process.

41.313(1) Definition. When used by an AEA in its identification process, "systematic problem-solving" means a set of procedures that is used to examine the nature and severity of an educationally related problem. These procedures pri-

marily focus on variables related to developing effective educationally related interventions.

41.313(2) Parent participation in systematic problem-solving process. Active parent participation is an integral aspect of the process and is solicited throughout.

41.313(3) Components. At a minimum, a systematic problem-solving process includes the following components.

a. Description of problem. The presenting problem or behavior of concern shall be described in objective, measurable terms that focus on alterable characteristics of the individual and the environment. The individual and environment shall be examined through systematic data collection. The presenting problem or behaviors of concern shall be defined in a problem statement that describes the degree of discrepancy between the demands of the educational setting and the individual's performance.

b. Data collection and problem analysis. A systematic, data-based process for examining all that is known about the presenting problem or behaviors of concern shall be used to identify interventions that have a high likelihood of success. Data collected on the presenting problem or behaviors of concern shall be used to plan and monitor interventions. Data collected shall be relevant to the presenting problem or behaviors of concern and shall be collected in multiple settings using multiple sources of information and multiple data collection methods. Data collection procedures shall be individually tailored, valid, and reliable, and allow for frequent and repeated measurement of intervention effectiveness.

c. Intervention design and implementation. Interventions shall be designed based on the preceding analysis, the defined problem, parent input, and professional judgments about the potential effectiveness of interventions. The interventions shall be described in an intervention plan that includes goals and strategies, a progress monitoring plan, a decision-making plan for summarizing and analyzing progress monitoring data, and responsible parties. Interventions shall be implemented as developed and modified on the basis of objective data and with the agreement of the responsible parties.

d. Progress monitoring. Systematic progress monitoring shall be conducted which includes regular and frequent data collection, analysis of individual performance across time, and modification of interventions as frequently as necessary based on systematic progress monitoring data.

e. Evaluation of intervention effects. The effectiveness of interventions shall be evaluated through a systematic procedure in which patterns of individual performance are analyzed and summarized. Decisions regarding the effectiveness of interventions focus on comparisons with initial levels of performance.

41.313(4) Rule of construction. A systematic problem-solving process may be used for any child suspected of being an eligible individual, and nothing in this chapter nor in Part B of the Act shall be construed to limit the applicability of a systematic problem-solving process to children suspected of having a certain type of disability.

281—41.314 to **41.319** Reserved.

281—41.320(256B,34CFR300) Definition of individualized education program.

41.320(1) General. As used in this chapter, the term "individualized education program" or "IEP" means a written statement for each child with a disability that is developed, reviewed, and revised in a meeting in accordance with these rules, and that must include:

a. A statement of the child's present levels of academic achievement and functional performance, including:

(1) How the child's disability affects the child's involvement and progress in the general education curriculum (i.e., the same curriculum as for nondisabled children); or

(2) For preschool children, as appropriate, how the disability affects the child's participation in appropriate activities;

b. A statement of measurable annual goals, including academic and functional goals designed to meet:

(1) The child's needs that result from the child's disability to enable the child to be involved in and make progress in the general education curriculum; and

(2) Each of the child's other educational needs that result from the child's disability;

c. For children with disabilities who take alternate assessments aligned to alternate achievement standards, a description of benchmarks or short-term objectives;

d. A description of:

(1) How the child's progress toward meeting the annual goals described in 41.320(1)"b" will be measured; and

(2) When periodic reports on the progress the child is making toward meeting the annual goals, such as through the use of quarterly or other periodic reports, concurrent with the issuance of report cards, will be provided;

e. A statement of the special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided to enable the child:

(1) To advance appropriately toward attaining the annual goals;

(2) To be involved in and make progress in the general education curriculum in accordance with 41.320(1)"a," and to participate in extracurricular and other nonacademic activities; and

(3) To be educated and participate with other children with disabilities and nondisabled children in the activities described in this rule;

f. An explanation of the extent, if any, to which the child will not participate with nondisabled children in the regular class and in the activities described in 41.320(1)"e";

g. A statement of any individual appropriate accommodations that are necessary to measure the academic achievement and functional performance of the child on state and districtwide assessments consistent with Section 612(a)(16) of the Act; and, if the IEP team determines that the child must take an alternate assessment instead of a particular regular state or districtwide assessment of student achievement, a statement of why the child cannot participate in the regular assessment and why the particular alternate assessment selected is appropriate for the child; and

h. The projected date for the beginning of the services and modifications described in 41.320(1)"e" and the anticipated frequency, location, and duration of those services and modifications.

41.320(2) Transition services. Beginning not later than the first IEP to be in effect when the child turns 14, or younger if determined appropriate by the IEP team, and updated annually, thereafter, the IEP must include:

a. Appropriate measurable postsecondary goals based upon age-appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills; and

b. The transition services, including courses of study, needed to assist the child in reaching those goals.

41.320(3) Transfer of rights at age of majority. Beginning not later than one year before the child reaches the age of majority under state law, the IEP must include a statement that the child has been informed of the child's rights under Part B of the Act, if any, that will transfer to the child on reaching the age of majority under rule 41.520(256B,34CFR300).

41.320(4) Construction. Nothing in this rule shall be construed to require:

a. That additional information be included in a child's IEP beyond what is explicitly required in Section 614 of the Act; or

b. The IEP team to include information under one component of a child's IEP that is already contained under another component of the child's IEP.

41.320(5) Special considerations. The IEP, or an associated document, must contain the answers to the questions contained in subrule 41.116(4).

41.320(6) Prohibited practices. An IEP shall not include practices that are precluded by constitution, statute, this chapter, or any other applicable law.

281—41.321(256B,34CFR300) IEP team.

41.321(1) General. The public agency must ensure that the IEP team for each child with a disability includes the following:

a. The parents of the child;

b. At least one regular education teacher of the child if the child is, or may be, participating in the regular education environment;

c. At least one special education teacher of the child or, where appropriate, at least one special education provider of the child;

d. A representative of the public agency who:

(1) Is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities;

(2) Is knowledgeable about the general education curriculum; and

(3) Is knowledgeable about the availability of resources of the public agency.

e. An individual who can interpret the instructional implications of evaluation results, who may be a member of the team described in 41.321(1)"b" to "f";

f. At the discretion of the parent or the agency, other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate; and

g. Whenever appropriate, the child with a disability.

41.321(2) Transition services participants.

a. In accordance with 41.321(1)"g," the public agency must invite a child with a disability to attend the child's IEP team meeting if a purpose of the meeting will be the consideration of the postsecondary goals for the child and the transition services needed to assist the child in reaching those goals under subrule 41.320(2).

b. If the child does not attend the IEP team meeting, the public agency must take other steps to ensure that the child's preferences and interests are considered.

c. To the extent appropriate, with the consent of the parents or a child who has reached the age of majority, in implementing the requirements of 41.321(2)"a," the public agency must invite a representative of any participating agency that is likely to be responsible for providing or paying for transition services.

41.321(3) Determination of knowledge and special expertise. The determination of the knowledge or special expertise of any individual described in 41.321(1)"f" must be made by the party (parents or public agency) who invited the individual to be a member of the IEP team.

41.321(4) Designating a public agency representative. A public agency may designate a public agency member of the IEP team to also serve as the agency representative, if the criteria in 41.321(1)"d" are satisfied.

41.321(5) IEP team attendance.

a. A member of the IEP team described in 41.321(1)"b" to "e" is not required to attend an IEP team meeting, in whole or in part, if the parent of a child with a disability and the public agency agree, in writing, that the attendance of the member is not necessary because the member's area of the curriculum or related services is not being modified or discussed in the meeting.

b. A member of the IEP team described in 41.321(5)"a" may be excused from attending an IEP team meeting, in whole or in part, when the meeting involves a modification to or discussion of the member's area of the curriculum or related services, if:

(1) The parent, in writing, and the public agency consent to the excusal; and

(2) The member submits, in writing to the parent and the IEP team, input into the development of the IEP prior to the meeting.

41.321(6) Initial IEP team meeting for child under Part C. In the case of a child who was previously served under Part C of the Act, an invitation to the initial IEP team meeting must, at the request of the parent, be sent to the Part C service coordinator or other representatives of the Part C system to assist with the smooth transition of services.

281—41.322(256B,34CFR300) Parent participation.

41.322(1) Public agency responsibility—general. Each public agency must take steps to ensure that one or both of the parents of a child with a disability are present at each IEP team meeting or are afforded the opportunity to participate, including:

a. Notifying parents of the meeting early enough to ensure that they will have an opportunity to attend; and

b. Scheduling the meeting at a mutually agreed-upon time and place.

41.322(2) Information provided to parents.

a. The notice required under 41.322(1)"a" must:

(1) Indicate the purpose, time, and location of the meeting and who will be in attendance (name and position); and

(2) Inform the parents of the provisions in 41.321(1)"f" and 41.321(3) relating to the participation of other individuals on the IEP team who have knowledge or special expertise about the child and subrule 41.321(6) relating to the participation of the Part C service coordinator or other representatives of the Part C system at the initial IEP team meeting for a child previously served under Part C of the Act.

b. For a child with a disability, beginning not later than the first IEP to be in effect when the child turns 14, or younger if determined appropriate by the IEP team, the notice also must:

(1) Indicate that a purpose of the meeting will be the consideration of the postsecondary goals and transition services for the child, in accordance with subrule 41.320(2), and that the agency will invite the student; and

(2) Identify any other agency that will be invited to send a representative.

41.322(3) Other methods to ensure parent participation. If neither parent can attend an IEP team meeting, the public

agency must use other methods to ensure parent participation, including individual or conference telephone calls, consistent with rule 41.328(256B,34CFR300) related to alternative means of meeting participation.

41.322(4) Conducting an IEP team meeting without a parent in attendance. A meeting may be conducted without a parent in attendance if the public agency is unable to convince the parents that they should attend. In this case, the public agency must keep a record of its attempts to arrange a mutually agreed-upon time and place, including:

a. Detailed records of telephone calls made or attempted and the results of those calls;

b. Copies of correspondence sent to the parents and any responses received; and

c. Detailed records of visits made to the parent's home or place of employment and the results of those visits.

41.322(5) Use of interpreters or other action, as appropriate. The public agency must take whatever action is necessary to ensure that the parent understands the proceedings of the IEP team meeting, including arranging for an interpreter for parents with deafness or whose native language is other than English.

41.322(6) Parent copy of child's IEP. The public agency must give the parent a copy of the child's IEP at no cost to the parent.

41.322(7) Rule of construction: "final" versus "draft" IEPs. An agency shall not present a completed and finalized IEP to parents before there has been a full discussion with the parents regarding the eligible individual's need for special education and related services and the services the agency will provide to the individual. An agency may come prepared with evaluation findings, proposed statements of present levels of educational performance, proposed recommendations regarding annual goals or instructional objectives, and proposals concerning the nature of special education and related services to be provided. The agency shall inform the parents at the outset of the meeting that the proposals are only recommendations for review and discussion with the parents.

281—41.323(256B,34CFR300) When IEPs must be in effect.

41.323(1) General. An IEP must be in effect before special education and related services are provided to eligible individuals. At the beginning of each school year, each public agency must have in effect, for each child with a disability within its jurisdiction, an IEP, as defined in rule 41.320(256B,34CFR300).

41.323(2) Reserved.

41.323(3) Initial IEPs; provision of services. Each public agency must ensure that:

a. A meeting to develop an IEP for a child is conducted within 30 days of a determination that the child needs special education and related services; and

b. As soon as possible following development of the IEP, special education and related services are made available to the child in accordance with the child's IEP.

41.323(4) Accessibility of child's IEP to teachers and others. Each public agency must ensure that:

a. The child's IEP is accessible to each regular education teacher, special education teacher, related services provider, and any other service provider who is responsible for its implementation; and

b. Each teacher and provider described in 41.323(4)"a" is informed of:

(1) His or her specific responsibilities related to implementing the child's IEP; and

(2) The specific accommodations, modifications, and supports that must be provided for the child in accordance with the IEP.

41.323(5) IEPs for children who transfer public agencies in the same state. If a child with a disability who had an IEP that was in effect in a previous public agency in this state transfers to a new public agency in this state and enrolls in a new school within the same school year, the new public agency, in consultation with the parents, must provide FAPE to the child including services comparable to those described in the child's IEP from the previous public agency until the new public agency either:

a. Adopts the child's IEP from the previous public agency; or

b. Develops, adopts, and implements a new IEP that meets the applicable requirements in these rules.

41.323(6) IEPs for children who transfer from another state. If a child with a disability who had an IEP that was in effect in a previous public agency in another state transfers to a public agency in this state and enrolls in a new school within the same school year, the receiving public agency, in consultation with the parents, must provide the child with FAPE, including services comparable to those described in the child's IEP from the previous public agency, until the receiving public agency:

a. Conducts an evaluation pursuant to these rules if determined to be necessary by the receiving public agency; and

b. Develops, adopts, and implements a new IEP, if appropriate, that meets the applicable requirements in these rules.

41.323(7) Transmittal of records. To facilitate the transition for a child described in subrules 41.323(5) and 41.323(6):

a. The receiving public agency in which the child enrolls must take all reasonable steps to promptly obtain the child's records, including the IEP and supporting documents and any other records relating to the provision of special education or related services to the child, from the previous public agency in which the child was enrolled, pursuant to 34 CFR Section 99.31(a)(2); and

b. The previous public agency in which the child was enrolled must take all reasonable steps to promptly respond to the request from the receiving public agency.

41.323(8) Other. It is expected that an IEP of an eligible individual will be implemented immediately after an IEP team meeting. Exceptions to this would be when the meeting occurs during the summer or vacation period, unless the child requires services during that period, or where there are circumstances requiring a short delay (e.g., making transportation arrangements); however, there can be no undue delay in providing special education and related services to an eligible individual.

281—41.324(256B,34CFR300) Development, review, and revision of IEP.

41.324(1) Development of IEP.

a. General. In developing each child's IEP, the IEP team must consider:

(1) The strengths of the child;

(2) The concerns of the parents for enhancing the education of their child;

(3) The results of the initial or most recent evaluation of the child; and

(4) The academic, developmental, and functional needs of the child.

b. Consideration of special factors. The IEP team must:

(1) In the case of a child whose behavior impedes the child's learning or that of others, consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior;

(2) In the case of a child with limited English proficiency, consider the language needs of the child as those needs relate to the child's IEP;

(3) In the case of a child who is blind or visually impaired, provide for instruction in Braille and the use of Braille unless the IEP team determines, after an evaluation of the child's reading and writing skills, needs, and appropriate reading and writing media, including an evaluation of the child's future needs for instruction in Braille or the use of Braille, that instruction in Braille or the use of Braille is not appropriate for the child;

(4) Consider the communication needs of the child and, in the case of a child who is deaf or hard of hearing, consider the child's language and communication needs, opportunities for direct communications with peers and professional personnel in the child's language and communication mode, academic level, and full range of needs, including opportunities for direct instruction in the child's language and communication mode; and

(5) Consider whether the child needs assistive technology devices and services.

c. Requirement with respect to regular education teacher. A regular education teacher of a child with a disability, as a member of the IEP team, must, to the extent appropriate, participate in the development of the IEP of the child, including the determination of:

(1) Appropriate positive behavioral interventions and supports and other strategies for the child; and

(2) Supplementary aids and services, program modifications, and support for school personnel consistent with 41.320(1)"e."

d. Agreement.

(1) In making changes to a child's IEP after the annual IEP team meeting for a school year, the parent of a child with a disability and the public agency may agree not to convene an IEP team meeting for the purposes of making those changes and instead may develop a written document to amend or modify the child's current IEP.

(2) If changes are made to the child's IEP in accordance with 41.324(1)"d"(1), the public agency must ensure that the child's IEP team is informed of those changes.

(3) A public agency may only agree to make changes pursuant to 41.324(1)"d"(1) concerning resources the public agency has the authority to commit.

e. Consolidation of IEP team meetings. To the extent possible, the public agency must encourage the consolidation of reevaluation meetings for the child and other IEP team meetings for the child.

f. Amendments. Changes to the IEP may be made either by the entire IEP team at an IEP team meeting or as provided in 41.324(1)"d" by amending the IEP rather than by redrafting the entire IEP. Upon request, a parent must be provided with a revised copy of the IEP with the amendments incorporated.

41.324(2) Review and revision of IEPs.

a. General. Each public agency must ensure that, subject to 41.324(2)"b" and "c," the IEP team:

(1) Reviews the child's IEP periodically, but not less frequently than annually, to determine whether the annual goals for the child are being achieved; and

(2) Revises the IEP, as appropriate, to address the following:

1. Any lack of expected progress toward the annual goals described in 41.320(1)"b," and in the general education curriculum, if appropriate;

2. The results of any reevaluation conducted under rule 41.303(256B,34CFR300);

3. Information about the child provided to or by the parents, as described in 41.305(1)"b";

4. The child's anticipated needs; or

5. Other matters.

b. Consideration of special factors. In conducting a review of the child's IEP, the IEP team must consider the special factors described in 41.324(1)"b."

c. Requirement with respect to regular education teacher. A regular education teacher of the child, as a member of the IEP team, must, consistent with 41.324(1)"c," participate in the review and revision of the IEP of the child.

41.324(3) Failure to meet transition objectives.

a. Participating agency failure. If a participating agency, other than the public agency, fails to provide the transition services described in the IEP in accordance with subrule 41.320(2), the public agency must reconvene the IEP team to identify alternative strategies to meet the transition objectives for the child set out in the IEP.

b. Construction. Nothing in this chapter relieves any participating agency, including a state vocational rehabilitation agency, of the responsibility to provide or pay for any transition service that the agency would otherwise provide to children with disabilities who meet the eligibility criteria of that agency.

41.324(4) Children with disabilities in adult prisons.

a. Requirements that do not apply. The following requirements do not apply to children with disabilities who are convicted as adults under state law and incarcerated in adult prisons:

(1) The requirements contained in Section 612(a)(16) of the Act and 41.320(1)"g" relating to participation of children with disabilities in general assessments.

(2) The requirements in subrule 41.320(2) relating to transition planning and transition services do not apply with respect to the children whose eligibility under Part B of the Act will end because of their age before they will be eligible to be released from prison based on consideration of their sentence and eligibility for early release.

b. Modifications of IEP or placement.

(1) Subject to 41.324(4)"b"(2), the IEP team of a child with a disability who is convicted as an adult under state law and incarcerated in an adult prison may modify the child's IEP or placement if the state has demonstrated a bona fide security or compelling penological interest that cannot otherwise be accommodated.

(2) The requirements in rules 41.320(256B,34CFR300) relating to IEPs and 41.114(256B,34CFR300) relating to LRE do not apply with respect to the modifications described in 41.324(4)"b"(1).

41.324(5) Interim IEP. An IEP must be in effect before special education and related services are provided to an eligible individual. This does not preclude the development of an interim IEP which meets all the requirements of rule 41.320(256B,34CFR300) when the IEP team determines that it is necessary to temporarily provide special education and related services to an eligible individual as part of the evaluation process, before the IEP is finalized, to aid in determining the appropriate services for the individual. An interim IEP may also be developed when an eligible individual moves from one LEA to another and a copy of the current IEP is not available, or either the LEA or the parent believes that the

current IEP is not appropriate or that additional information is needed before a final decision can be made regarding the specific special education and related services that are needed. IEP teams cannot use interim IEPs to circumvent the requirements of this division. It is essential that the temporary provision of service not become the final special education for the individual before the IEP is finalized. In order to ensure that this does not happen, IEP teams shall take the following actions:

a. Specific conditions and timelines. Develop an interim IEP for the individual that sets out the specific conditions and timelines for the temporary service. An interim IEP shall not be in place for more than 30 school days.

b. Parent agreement and involvement. Ensure that the parents agree to the interim service before it is carried out and that they are involved throughout the process of developing, reviewing, and revising the individual's IEP.

c. Complete evaluation and make judgments. Set a specific timeline for completing the evaluation and making judgments about the appropriate services for the individual.

d. Conduct meeting. Conduct an IEP meeting at the end of the trial period in order to finalize the individual's IEP.

281—41.325(256B,34CFR300) Private school placements by public agencies.

41.325(1) Developing IEPs.

a. Before a public agency places a child with a disability in, or refers a child to, a private school or facility, the agency must initiate and conduct a meeting to develop an IEP for the child in accordance with these rules.

b. The agency must ensure that a representative of the private school or facility attends the meeting. If the representative cannot attend, the agency must use other methods to ensure participation by the private school or facility, including individual or conference telephone calls.

41.325(2) Reviewing and revising IEPs.

a. After a child with a disability enters a private school or facility, any meetings to review and revise the child's IEP may be initiated and conducted by the private school or facility at the discretion of the public agency.

b. If the private school or facility initiates and conducts these meetings, the public agency must ensure that the parents and an agency representative are involved in any decision about the child's IEP and agree to any proposed changes in the IEP before those changes are implemented.

41.325(3) Responsibility. Even if a private school or facility implements a child's IEP, responsibility for compliance with this chapter remains with the public agency and the SEA.

281—41.326(256B,34CFR300) Other rules concerning IEPs.

41.326(1) Children from birth to the age of three. A fully developed IFSP shall be considered to have met the requirements of an IEP for an eligible individual younger than the age of three.

41.326(2) Support services only. An IEP that satisfies the requirements of this chapter shall be developed for eligible individuals who require only special education support services. The special education support service specialist with knowledge in the area of need shall have primary responsibility for recommending the need for support service, the type or model of service to be provided, and the amount of service to be provided; however, the determination that an individual is eligible for special education shall be based on these rules. Attendance at IEP meetings for students shall be determined in accordance with rule 41.325(256B,34CFR300).

281—41.327(256B,34CFR300) Educational placements. Consistent with subrule 41.501(3), each public agency must ensure that the parents of each child with a disability are members of any group that makes decisions on the educational placement of the child.

281—41.328(256B,34CFR300) Alternative means of meeting participation. When conducting IEP team meetings and placement meetings under this chapter and carrying out administrative matters under Section 615 of the Act, such as scheduling, exchange of witness lists, and status conferences, the parent of a child with a disability and a public agency may agree to use alternative means of meeting participation, such as video conferences and conference calls.

281—41.329 to **41.399** Reserved.

DIVISION VI
ADDITIONAL RULES RELATED TO AEAs, LEAs,
AND SPECIAL EDUCATION

281—41.400(256B,34CFR300) Shared responsibility.

41.400(1) General. It is the responsibility of each eligible individual's resident LEA to provide or make provision for appropriate special education and related services to meet the requirements of state and federal statutes and rules. This responsibility may be met by one or more of the following: by each LEA acting for itself, by action of two or more LEAs through the establishment and maintenance of joint programs, by the AEA, by contract for services from approved public or private agencies offering the appropriate special education and related services, or by any combination of these options. The AEA shall support and assist LEAs in meeting their responsibilities for providing appropriate special education and related services. The requirements of Part B of the Act and of this chapter are binding on each public agency that has direct or delegated authority to provide special education and related services regardless of whether that agency is receiving funds under Part B of the Act.

41.400(2) Shared responsibility between general education and special education. General education and special education personnel share responsibility in providing appropriate educational programs for eligible individuals and in providing intervention and prevention services to individuals who are experiencing learning or adjustment problems.

281—41.401(256B,34CFR300) Licensure (certification). Special education personnel shall meet the board of educational examiners' licensure (certification) and endorsement or recognition requirements for the position for which they are employed. In addition, personnel providing special education and related services who do not hold board of educational examiners' licensure (certification) or other recognition required by its board, and who, by the nature of their work, are required to hold a professional or occupational license, certificate or permit in order to practice or perform the particular duties involved in this state shall be required to hold a license, certificate, or permit.

281—41.402(256B,273,34CFR300) Authorized personnel. An agency is authorized to employ the following types of special education personnel, as appropriate to the special education and related services provided.

41.402(1) Director of special education. The director shall be responsible for the implementation of special education for eligible individuals pursuant to Iowa Code section 273.5 and these rules. The director's powers and duties shall include:

a. Properly identifying children requiring special education,

b. Ensuring that each child requiring special education in the area receives an appropriate special education program or service,

c. Assigning appropriate weights for each child requiring special education programs or services as provided in Iowa Code section 256B.9,

d. Supervising special education support personnel,

e. Providing each school district within the area served and the department with a special education weighted enrollment count, including the additional enrollment because of special education by the date specified in the Iowa Code,

f. Submitting to the department special education instructional and support program plans and applications, subject to the criteria listed in Iowa Code chapters 256B and 273, for approval by the deadline specified in the Iowa Code,

g. Coordinating the special education program within the area served, and

h. Reporting any violation of the Act or this chapter to the department for appropriate action.

41.402(2) Special education instructional personnel. Special education instructional personnel serve as teachers or instructional assistants at the preschool, elementary or secondary levels for eligible individuals.

41.402(3) Special education support personnel. The following positions are those of special education support personnel who provide special education and related services as stated in each definition. These personnel work under the direction of the director and may provide identification, evaluation, remediation, consultation, systematic progress monitoring, continuing education and referral services in accordance with appropriate licensure (certification) and endorsement or approval, or statement of professional recognition. They may also engage in data collection, applied research and program evaluation.

"Assistant director of special education" provides specific areawide administrative, supervisory and coordinating functions as delegated by the director.

"Audiologist" applies principles, methods and procedures for analysis of hearing functioning in order to plan, counsel, coordinate and provide intervention strategies and services for individuals with deafness or hearing impairments.

"Consultant" is the special education instructional specialist who provides ongoing support to special and general education instructional personnel delivering services to eligible individuals. The consultant participates in the identification process and program planning of eligible individuals as well as working to attain the least restrictive environment appropriate for each eligible individual. The consultant demonstrates instructional procedures, strategies, and techniques; assists in the development of curriculum and instructional materials; assists in transition planning; and provides assistance in classroom management and behavioral intervention.

"Educational interpreter" interprets or translates spoken language into sign language commensurate with the receiver's language comprehension and interprets or translates sign language into spoken language.

"Educational strategist" provides assistance to general education classroom teachers in developing intervention strategies for individuals who are disabled in obtaining an education but can be accommodated in the general education classroom environment.

"Itinerant teacher" provides special education on an itinerant basis to eligible individuals.

"Occupational therapist" is a licensed health professional who applies principles, methods and procedures for analysis of, but not limited to, motor or sensorimotor functions to determine the educational significance of identified problem areas including fine motor manipulation, self-help, adaptive work skills, and play or leisure skills in order to provide planning, coordination, and implementation of intervention strategies and services for eligible individuals.

"Physical therapist" is a licensed health professional who applies principles, methods and procedures for analysis of motor or sensorimotor functioning to determine the educational significance of motor or sensorimotor problems within, but not limited to, areas such as mobility and positioning in order to provide planning, coordination, and the implementation of intervention strategies and services for eligible individuals.

"School psychologist" assists in the identification of needs regarding behavioral, social, emotional, educational and vocational functioning of individuals; analyzes and integrates information about behavior and conditions affecting learning; consults with school personnel and parents regarding planning, implementing and evaluating individual and group interventions; provides direct services through counseling with parents, individuals and families; and conducts applied research related to psychological and educational variables affecting learning.

"School social worker" enhances the educational programs of individuals by assisting in identification and assessment of individuals' educational needs including social, emotional, behavioral and adaptive needs; provides intervention services including individual, group, parent and family counseling; provides consultation and planning; and serves as a liaison among home, school and community.

"Special education coordinator" facilitates the provision of special education within a specific geographic area.

"Special education media specialist" is a media specialist who facilitates the provision of media services to eligible individuals; provides consultation regarding media and materials used to support special education and related services for eligible individuals; and aids in the effective use of media by special education personnel.

"Special education nurse" is a professional registered nurse who assesses, identifies and evaluates the health needs of eligible individuals; interprets for the family and educational personnel how health needs relate to individuals' education; implements specific activities commensurate with the practice of professional nursing; and integrates health into the educational program.

"Speech-language pathologist" applies principles, methods and procedures for an analysis of speech and language comprehension and production to determine communicative competencies and provides intervention strategies and services related to speech and language development as well as disorders of language, voice, articulation and fluency.

"Supervisor" is the professional discipline specialist who provides for the development, maintenance, supervision, improvement and evaluation of professional practices and personnel within a specialty area.

"Work experience coordinator" plans and implements sequential secondary programs that provide on- and off-campus work experience for individuals requiring specially designed career exploration and vocational preparation when they are not available through the general education curriculum.

"Others (other special education support personnel)" may be employed as approved by the department and board of educational examiners.

281—41.403(256B) Paraprofessionals.

41.403(1) Responsibilities. Special education personnel may be employed to assist in the provision of special education and related services to children with disabilities and shall:

a. Complete appropriate preservice and ongoing staff development specific to the functions to be performed. The agency shall make provisions for or require such completion prior to the beginning of service wherever practicable and within a reasonable time of the beginning of service where the preentry completion is not practicable.

b. Work under the supervision of professional personnel who are appropriately authorized to provide direct services in the same area where the paraprofessional provides assistive services.

c. Not serve as a substitute for appropriately authorized professional personnel.

41.403(2) Authorized special education paraprofessionals. Authorized special education paraprofessional roles include:

"Audiometrist" provides hearing screening and other specific hearing-related activities as assigned by the audiologist.

"Licensed practical nurse" shall be permitted to provide supportive and restorative care to an eligible individual in the school setting in accordance with the student's health plan when under the supervision of and as delegated by the registered nurse employed by the school district.

"Occupational therapy assistant" is licensed to perform occupational therapy procedures and related tasks that have been selected and delegated by the supervising occupational therapist.

"Para-educator" is a licensed educational assistant as defined in Iowa Code section 272.12.

"Physical therapist assistant" is licensed to perform physical therapy procedures and related tasks that have been selected and delegated by the supervising physical therapist.

"Psychology assistant" collects screening data through records review, systematic behavior observations, standardized interviews, group and individual assessment techniques; implements psychological intervention plans; and maintains psychological records under supervision of the school psychologist.

"Speech-language pathology assistant" provides certain language, articulation, voice and fluency activities as assigned by the supervising speech-language pathologist.

"Vision assistant" provides materials in the appropriate medium for use by individuals with visual impairment including blindness and performs other duties as assigned by the supervising teacher of individuals with visual impairments.

"Others" as approved by the department, such as educational assistants described in the Iowa Administrative Code at 281—subrule 12.4(9).

281—41.404(256B) Policies and procedures required of all public agencies.

41.404(1) Policies. Policies related to the provision of special education and related services shall be developed by each public agency and made available to the department upon request to include the following:

a. Policy to ensure the provision of a free appropriate public education.

b. Policy for the provision of special education and related services.

c. Policies to ensure the provision of special education and related services in the least restrictive environment.

d. Policy concerning the protection of confidentiality of personally identifiable information.

e. Policy concerning graduation requirements for eligible individuals.

f. Policy concerning administration of medications including a written medication administration record.

g. Policy for the provision of special health services.

h. Policy to ensure the participation of eligible individuals in districtwide assessment programs.

41.404(2) Procedures. Each public agency shall develop written procedures concerning the provision of special education and related services and shall make such procedures available to the department upon request and shall, at a minimum, include:

a. Procedures to ensure the provision of special education and related services.

b. Procedures for protecting the confidentiality of personally identifiable information.

c. Procedures for the graduation of eligible individuals.

d. Procedures for administration of medications including a written medication administration record.

e. Procedures for providing special health services.

f. Procedures for providing continuing education opportunities.

g. A procedure for its continued participation in the development of the eligible individual's IEP in out-of-state placements and shall outline a program to prepare for the eligible individual's transition back to the LEA before the eligible individual is placed out of state.

h. Procedures for ensuring procedural safeguards for children with disabilities and their parents.

i. Procedures to ensure the participation of eligible individuals in districtwide assessment programs.

41.404(3) Medication administration. Each agency shall establish medication administration policy and procedures, which include the following:

a. A statement on administration of prescription and nonprescription medication.

b. A statement on an individual health plan when administration requires ongoing professional health judgment.

c. A statement that persons administering medication shall include authorized practitioners, such as licensed registered nurses and physicians, and persons to whom authorized practitioners have delegated the administration of prescription drugs (who shall have successfully completed a medication administration course). Individuals who have demonstrated competency in administering their own medications may self-administer their medication. Individuals shall self-administer asthma or other airway constricting disease medication with parent and physician consent on file, without the necessity of demonstrating competency to self-administer these medications.

d. Provision for a medication administration course and periodic update. A registered nurse or licensed pharmacist shall conduct the course. A record of course completion shall be maintained by the school.

e. A requirement that the individual's parent provide a signed and dated written statement requesting medication administration at school.

f. A statement that medication shall be in the original labeled container either as dispensed or in the manufacturer's container.

g. A written medication administration record shall be on file at the school and shall include:

(1) Date.

(2) Individual's name.

(3) Prescriber or person authorizing administration.

(4) Medication.

(5) Medication dosage.

(6) Administration time.

(7) Administration method.

(8) Signature and title of the person administering medication.

(9) Any unusual circumstances, actions or omissions.

h. A statement that medication shall be stored in a secured area unless an alternate provision is documented.

i. A requirement for a written statement by the individual's parent or guardian requesting the individual's coadministration of medication, when competency is demonstrated.

j. A requirement for emergency protocols for medication-related reactions.

k. A statement regarding confidentiality of information.

41.404(4) Rule of construction. Any public agency is required to adopt any policy and procedure necessary to comply with Part B of the Act and this chapter, even if such a policy or procedure is not listed in this rule.

281—41.405(256B) Special health services. Some eligible individuals need special health services to participate in an educational program. These individuals shall receive special health services along with their educational program.

41.405(1) Definitions. The following definitions shall be used in this rule, unless the context otherwise requires:

"Assignment and delegation" occurs when licensed health personnel, in collaboration with the education team, determine the special health services to be provided and the qualifications of individuals performing the health services. Primary consideration is given to the recommendation of the licensed health personnel. Each designation considers the individual's special health service. The rationale for the designation is documented.

"Coadministration" is the eligible individual's participation in the planning, management and implementation of the individual's special health service and demonstration of proficiency to licensed health personnel.

"Educational program" includes all school curricular programs and activities both on and off school grounds.

"Education team" may include the eligible individual, the individual's parent, administrator, teacher, licensed health personnel, and others involved in the individual's educational program.

"Health assessment" is health data collection, observation, analysis, and interpretation relating to the eligible individual's educational program.

"Health instruction" is education by licensed health personnel to prepare qualified designated personnel to deliver and perform special health services contained in the eligible individual's health plan. Documentation of education and periodic updates shall be on file at school.

"Individual health plan" is the confidential, written, preplanned and ongoing special health service in the educational program. It includes assessment, planning, implementation, documentation, evaluation and a plan for emergencies. The plan is updated as needed and at least annually. Licensed health personnel develop this written plan with the education team.

"Licensed health personnel" includes licensed registered nurse, licensed physician, and other licensed health personnel legally authorized to provide special health services and medications.

"Prescriber" means licensed health personnel legally authorized to prescribe special health services and medications.

"Qualified designated personnel" means a person instructed, supervised and competent in implementing the eligible individual's health plan.

"Special health services" includes, but is not limited to, services for eligible individuals whose health status (stable or unstable) requires:

1. Interpretation or intervention,

2. Administration of health procedures and health care, or

3. Use of a health device to compensate for the reduction or loss of a body function.

"Supervision" is the assessment, delegation, evaluation and documentation of special health services by licensed health personnel. Levels of supervision include situations in which:

1. Licensed health personnel are physically present.

2. Licensed health personnel are available at the same site.

3. Licensed health personnel are available on call.

41.405(2) Special health services policy. Each board of a public school or the authorities in charge of an accredited nonpublic school shall, in consultation with licensed health personnel, establish policy and guidelines for the provision of confidential special health services in conformity with this chapter. Such policy and guidelines shall address and contain:

a. Licensed health personnel shall provide special health services under the auspices of the school. Duties of the licensed health personnel include:

(1) Participating as a member of the education team.

(2) Providing the health assessment.

(3) Planning, implementing and evaluating the written individual health plan.

(4) Planning, implementing and evaluating special emergency health services.

(5) Serving as a liaison and encouraging participation and communication with health service agencies and individuals providing health care.

(6) Providing health consultation, counseling and instruction with the eligible individual, the individual's parent and the staff in cooperation and conjunction with the prescriber.

(7) Maintaining a record of special health services. The documentation shall include the eligible individual's name, special health service, prescriber or person authorizing, date and time, signature and title of the person providing the special health service and any unusual circumstances in the provision of such services.

(8) Reporting unusual circumstances to the parent, school administration, and prescriber.

(9) Assigning and delegating to, instructing, providing technical assistance to and supervising qualified designated personnel.

(10) Updating knowledge and skills to meet special health service needs.

b. Prior to the provision of special health services the following shall be on file:

(1) Written statement by the prescriber detailing the specific method and schedule of the special health service, when indicated.

(2) Written statement by the individual's parent requesting the provision of the special health service.

(3) Written report of the preplanning staffing or meeting of the education team.

(4) Written individual health plan available in the health record and integrated into the IEP.

c. Licensed health personnel, in collaboration with the education team, shall determine the special health services to be provided and the qualifications of the individuals performing the special health services. The documented rationale shall include the following:

(1) Analysis and interpretation of the special health service needs, health status stability, complexity of the service, predictability of the service outcome and risk of improperly performed service.

(2) Determination that the special health service, task, procedure or function is part of the person's job description.

(3) Determination of the assignment and delegation based on the individual's needs.

(4) Review of the designated person's competency.

(5) Determination of initial and ongoing level of supervision required for quality services.

d. Licensed health personnel shall supervise the special health services, define the level of supervision and document the supervision.

e. Licensed health personnel shall instruct qualified designated personnel to deliver and perform special health services contained in the eligible individual health plan. Documentation of instruction and periodic updates shall be on file at the school.

f. Parents shall provide the usual equipment, supplies and necessary maintenance of the equipment. The equipment shall be stored in a secure area. The personnel responsible for the equipment shall be designated in the individual health plan. The individual health plan shall designate the role of the school, parents and others in the provision, supply, storage and maintenance of necessary equipment.

281—41.406(256B) Additional requirements of LEAs. The following provisions are applicable to each LEA that provides special education and related services.

41.406(1) Policies. Each LEA shall develop written policies pertinent to the provision of special education and related services and shall make such policies available to the department upon request. At a minimum, such policies shall include those identified in subrule 41.404(1).

41.406(2) Procedures. Each LEA shall develop written procedures pertinent to the provision of special education and related services and shall make such procedures available to the department upon request. At a minimum, such procedures shall include those identified in subrule 41.404(2).

41.406(3) Plans. Districtwide plans required by the department or federal programs and regulations shall address eligible individuals and describe the relationship to or involvement of special education services.

41.406(4) Nonpublic schools. Each LEA shall provide special education and related services designed to meet the needs of nonpublic school students with disabilities residing in the jurisdiction of the agency in accordance with Iowa Code sections 256.12(2) and 273.2.

281—41.407(256B,273,34CFR300) Additional requirements of AEAs. The following provisions are applicable to each AEA that provides special education and related services.

41.407(1) Policies. Each AEA shall develop written policies pertinent to the provision of special education and related services and shall make such policies available to the department upon request. At a minimum, such policies shall include those identified in 41.404(1)"a" to "g" and the following:

a. Policy regarding appointment of surrogate parents.

b. Policy regarding provision of and payment for independent educational evaluations.

c. Policy to ensure the goal of providing a full educational opportunity to all eligible individuals.

d. Policy addressing the methods of ensuring services to eligible individuals.

e. Child find policy that ensures that individuals with disabilities who are in need of special education and related services are identified, located and evaluated.

f. A policy that meets the requirements of these rules for evaluating and determining eligibility of students who require special education, including a description of the extent to which the AEA system uses categorical designations. While AEAs may identify students as eligible for special education without designating a specific disability category, it is recognized that in certain circumstances the identification of a specific disability may enhance the development and ongoing provision of an appropriate educational program.

g. Policy for the development, review and revision of IEPs.

h. Policy for transition from Part C to Part B.

i. Policy for provision of special education and related services to students in accredited, nonpublic schools.

41.407(2) Procedures. Each AEA shall develop written procedures pertinent to the provision of special education and related services, and shall make such procedures available to the department upon request. At a minimum, such procedures shall include those identified in subrule 41.404(2) and the following:

a. Appointment of surrogate parents.

b. Provision of and payment for independent educational evaluations.

c. Procedures for monitoring the caseloads of LEA and AEA special education personnel to ensure that the IEPs of eligible individuals are able to be fully implemented. The description shall include the procedures for timely and effective resolution of concerns about caseloads and paraprofessional assistance that have not been resolved satisfactorily pursuant to 41.408(2)"b"(3).

d. Procedures for evaluating the effectiveness of services in meeting the needs of eligible individuals in order to receive federal assistance.

e. Child find procedures that ensure that individuals with disabilities who are in need of special education and related services are identified, located and evaluated.

f. Evaluation and determination of eligibility procedures for identifying students who require special education that meet the requirements of these rules, including a description of the extent to which the AEA system uses categorical designations.

g. Procedures for the development, review and revision of IEPs.

h. Procedures to ensure the provision of special education and related services in the least restrictive environment.

i. Procedures for transition from Part C to Part B.

j. Procedures for provision of special education and related services to students in accredited, nonpublic schools.

k. Procedures describing the methods of ensuring services to eligible individuals.

41.407(3) Responsibility for monitoring of compliance. The AEA shall conduct activities in each constituent LEA to

monitor compliance with the provisions of all applicable federal and state statutes and regulations and rules applicable to the education of eligible individuals. A written report describing the monitoring activities, findings, corrective action plans, follow-up activities, and timelines shall be developed and made available for review by the department upon request. Monitoring of compliance activities shall be as directed by the department.

41.407(4) Educate and inform. The AEA shall provide the department with a description of proactive steps to inform and educate parents, AEA and LEA staff regarding eligibility, identification criteria and process, and due process steps to be followed when parents disagree regarding eligibility.

41.407(5) Coordination of services. The AEA shall provide the department with a description of how the AEA identification process and LEA delivery systems for instructional services will be coordinated.

281—41.408(256B,273,34CFR300) Instructional services.

41.408(1) General. Instructional services are the specially designed instruction and accommodations provided by special education instructional personnel to eligible individuals. These services are ordinarily provided by the LEA but, in limited circumstances, may be provided by another LEA, the AEA or another recognized agency through contractual agreement. An agency must use the procedure and criteria described in subrule 41.408(2) for creating a delivery system for instructional services.

41.408(2) Delivery system. An agency shall use the following development process for creating a system for delivering instructional services.

a. The delivery system shall meet this chapter's requirements relating to a continuum of services and placements, shall address the needs of eligible individuals aged 3 to 21, and shall provide for the following:

(1) The provision of accommodations and modifications to the general education environment and program, including settings and programs in which eligible individuals aged 3 through 5 receive specially designed instruction, including modification and adaptation of curriculum, instructional techniques and strategies, and instructional materials.

(2) The provision of specially designed instruction and related activities through cooperative efforts of special education teachers and general education teachers in the general education classroom.

(3) The provision of specially designed instruction on a limited basis by a special education teacher in the general classroom or in an environment other than the general classroom, including consultation with general education teachers.

(4) The provision of specially designed instruction to eligible individuals with similar special education instructional needs organized according to the type of curriculum and instruction to be provided, and the severity of the educational needs of the eligible individuals served.

b. The delivery system shall be described in writing and shall include the following components:

(1) A description of how services will be organized and how services will be provided to eligible individuals consistent with the requirements of this chapter, and the provisions described in 41.408(2)"a."

(2) A description of how the caseloads of special education teachers will be determined and regularly monitored to ensure that the IEPs of eligible individuals are able to be fully implemented.

(3) A description of the procedures a special education teacher can use to resolve concerns about caseload. The procedures shall specify timelines for the resolution of a concern and identify the person to whom a teacher reports a concern. The procedures shall also identify the person or persons who are responsible for reviewing a concern and rendering a decision, including the specification of any corrective actions.

(4) A description of the process used to develop the system, including the composition of the group responsible for its development.

(5) A description of the process that will be used to evaluate the effectiveness of the system.

(6) A description of how the delivery system will meet the targets identified in the state's performance plan, described in this chapter.

(7) A description of how the delivery system will address needs identified by the state in any determination made under this chapter.

c. The following procedures shall be followed by the agency:

(1) Before initiating the development of the delivery system, the LEA board shall approve such action and the LEA personnel and parents who will participate in the development of the alternative.

(2) The delivery system shall be developed by a group of individuals that includes parents of eligible individuals, special education and general education teachers, administrators, and at least one AEA representative. The AEA representative shall be selected by the director.

(3) The director shall verify that the delivery system is in compliance with these rules prior to LEA board adoption.

(4) Prior to presenting the delivery system to the LEA board for adoption, the group responsible for its development shall provide an opportunity for comment on the system by the general public. In presenting the delivery system to the LEA board for adoption, the group shall describe the comment received from the general public and how the comment was considered.

(5) The LEA board shall approve the system prior to implementation.

d. The procedure presented in subrule 41.907(9) shall be followed in applying the weighting plan for special education instructional funds described in Iowa Code section 256B.9 to any delivery system developed under these provisions.

e. An LEA shall review, revise, and readopt its delivery system using the procedures identified in paragraph "c" of this subrule at least every five years, or sooner if required by the state in conjunction with any determination made under this chapter.

f. An LEA shall make the document describing its delivery system readily available to LEA personnel and members of the public.

g. A director may grant an adjusted caseload status for good cause shown, if an LEA submits a request to the AEA for such status because class size, including the size of a class served by a teacher employed less than full-time, exceeds those limits specified in the portion of the plan required by 41.408(2)"b"(2).

281—41.409(256B,34CFR300) Support services. Support services are the specially designed instruction and activities that augment, supplement or support the educational program of eligible individuals. These services include special education consultant services, educational strategist services, audiology, occupational therapy, physical therapy, school psychology, school social work services, special education nursing services, and speech-language services. Support ser-

vices are usually provided by the AEA but may be provided by contractual agreement, subject to the approval of the board, by another qualified agency.

281—41.410(256B,34CFR300) Itinerant services. Special education may be provided to eligible individuals on an itinerant basis.

41.410(1) School based. Special education may be provided on an itinerant basis whenever the number, age, severity, or location of eligible individuals to be served does not justify the provision of professional personnel on a full-time basis to an attendance center. These services are usually provided by the AEA but may be provided by contractual agreement, subject to the approval of the AEA board, by the LEA or another qualified agency.

41.410(2) Home service or hospital service. Special education shall be provided to eligible individuals whose condition precludes their participation in the general and special education provided in schools or related facilities. Home or hospital instructional services shall in ordinary circumstances be provided by the LEA but may be provided by contractual agreement, subject to the approval of the LEA board, by the AEA or another qualified agency. Home or hospital support or related services are usually provided by the AEA but may be provided by contractual agreement, subject to the approval of the AEA board, by the LEA or another qualified agency. The provision of services in a home or hospital setting shall satisfy the following:

a. The service and the location of the service shall be specified in the individual's IEP.

b. The status of these individuals shall be periodically reviewed to substantiate the continuing need for and the appropriateness of the service.

c. Procedural safeguards shall be afforded to individuals receiving special education through itinerant services in a home or hospital setting. A need for itinerant services in a home or hospital setting must be determined at a meeting to develop or revise the individual's IEP, and parents must give consent or be given notice, as appropriate.

281—41.411(256B,34CFR300) Related services, supplementary aids and services. Related services and supplementary aids and services shall be provided to an eligible individual in accordance with an IEP. Such services that are also support services under rule 41.409(256B,34CFR300) are usually provided by the AEA but may be provided by contractual agreement, subject to the approval of the board, by another qualified agency. Other such services are usually provided by the LEA but may be provided by contractual agreement, subject to the approval of the board, by another qualified agency.

281—41.412(256B,34CFR300) Transportation. Transportation of eligible individuals shall generally be provided as for other individuals, when appropriate. Specialized transportation of an eligible individual to and from a special education instructional service is a function of that service and, therefore, an appropriate expenditure of special education instructional funds generated through the weighting plan. Transportation includes travel to and from school and between schools; travel in and around school buildings; and specialized equipment, such as special or adapted buses, lifts, and ramps, if required to provide special transportation for a child with a disability.

41.412(1) Special arrangements. Transportation of an eligible individual to and from a special education support service is a function of that service, shall be specified in the IEP, and be considered an appropriate expenditure of funds generated for special education support services. When, because of an eligible individual's educational needs or because of the location of the program, the IEP team determines that unique transportation arrangements are required and the arrangements are specified in the IEP, the resident LEA shall be required to provide one or more of the following transportation arrangements for instructional services and the AEA for support services:

a. Transportation from the eligible individual's residence to the location of the special education services and back to the individual's residence, or child care placement for eligible individuals below the age of six.

b. Special assistance or adaptations in getting the eligible individual to and from and on and off the vehicle, en route to and from the special education services.

c. Reimbursement of the actual costs of transportation when by mutual agreement the parents provide transportation for the eligible individual to and from the special education services.

d. Agencies are not required to provide reimbursement to parents who elect to provide transportation in lieu of agency-provided transportation.

41.412(2) Responsibility for transportation.

a. The AEA shall provide the cost of transportation of eligible individuals to and from special education support services. The AEA shall provide the cost of transportation necessary for the provision of special education support services to nonpublic school eligible individuals if the cost of that transportation is in addition to the cost of transportation provided for special education instructional services.

b. When individuals enrolled in nonpublic schools are dually enrolled in public schools to receive special education instructional services, transportation provisions between nonpublic and public attendance centers will be the responsibility of the school district of residence.

c. Transportation of individuals, when required for educational diagnostic purposes, is a special education support service and, therefore, an appropriate expenditure of funds generated for special education support services.

41.412(3) Purchase of transportation equipment. When it is necessary for an LEA to purchase equipment to transport eligible individuals to special education instructional services, this equipment shall be purchased from the LEA's general fund. The direct purchase of transportation equipment is not an appropriate expenditure of special education instructional funds generated through the weighting plan. A written schedule of depreciation for this transportation equipment shall be developed by the LEA. An annual charge to special education instructional funds generated through the weighting plan for depreciation of the equipment shall be made and reported as a special education transportation cost in the LEA Certified Annual Report. Annual depreciation charges, except in unusual circumstances, shall be calculated by the LEA according to the directions provided with the Annual Transportation Report and adjusted to reflect the proportion of special education mileage to the total annual mileage.

41.412(4) Lease of transportation equipment. An LEA may elect to lease equipment to transport eligible individuals to special education instructional services. Cost of the lease, or that portion of the lease attributable to special education transportation expense, shall be considered a special education transportation cost and reported in the LEA Certified Annual Report.

41.412(5) Transportation equipment safety standards. All transportation equipment, either purchased or leased by an LEA to transport eligible individuals to special education in-

structional services or provided by an AEA, must conform to the transportation equipment safety and construction standards contained in 281—Chapters 43 and 44.

41.412(6) Transportation for students in interdistrict and intradistrict school choice programs, such as open enrollment. The following provisions apply to the transportation of eligible individuals who participate in school choice programs.

a. A parent who elects to have an eligible individual attend another school within an LEA may be required by the LEA to provide transportation to that eligible individual, even if transportation is listed on the eligible individual's IEP as a service.

b. If a parent elects to have an eligible individual with transportation listed as a service on the individual's IEP attend a school in a different LEA under the open enrollment provisions of Iowa Code section 282.18 and Iowa Administrative Code 281—Chapter 17, and the resident district informs the parent it will not be providing transportation for the eligible individual to the receiving district, a parent who chooses to proceed with open enrollment will be deemed, as a matter of law, to have waived the transportation listed as a service on the IEP.

c. If a parent of an eligible individual with transportation listed as a service on the individual's IEP elects to have the eligible individual attend a school in a different LEA under the open enrollment provisions of Iowa Code section 282.18 and Iowa Administrative Code 281—Chapter 17, and the resident district elects to provide that transportation as a service, such transportation as a related service may be provided by the resident district, regardless of consent granted or refused by the receiving district and notwithstanding any other statute or rule to the contrary.

d. If a parent of an eligible individual with transportation listed as a service on the individual's IEP elects to have the eligible individual attend a school in a different LEA under the open enrollment provisions of Iowa Code section 282.18 and Iowa Administrative Code 281—Chapter 17, and the receiving district elects to provide that transportation as a service, such transportation as a related service may be provided by the receiving district, regardless of consent granted or refused by the resident district and notwithstanding any other statute or rule to the contrary, but the costs of such transportation shall not be paid by the individual's resident district.

e. If an eligible individual's placement team proposes placement in a district other than the district of residence based on a tuition arrangement, regardless of whether the eligible individual's IEP lists transportation as a related service, and the other district agrees to accept the eligible individual as an open enrollment student but not as a tuition student, the receiving district must provide transportation as a related service, regardless of consent granted or refused by the receiving district and notwithstanding any other statute or rule to the contrary.

f. Except as expressly provided in this subrule, nothing in this subrule creates or expands any right, license, or privilege concerning transportation of persons who are not eligible individuals or transportation of eligible individuals who do not have transportation listed as a service on an IEP.

281—41.413(256,256B,34CFR300) Additional rules relating to accredited nonpublic schools.

41.413(1) State and local funds under Iowa Code section 256.12. State and local funds expended to provide special education and related services to eligible individuals who receive special education and related services in accredited nonpublic schools under Iowa Code section 256.12 must be expended on services, including materials and equipment, that are secular, neutral, and nonideological and, unless a provision of section 256.12 specifically requires the contrary, are subject to the restrictions contained in rules 41.138(256,256B,34CFR300) to 41.144(256,256B, 34CFR300).

41.413(2) Placements by public agencies. State and local funds expended to provide special education and related services to eligible individuals who receive special education and related services in accredited nonpublic schools pursuant to a placement made or referred by a public agency pursuant to rules 41.145(256B,34CFR300) to 41.147(256B, 34CFR300) must be expended on services, including materials and equipment, that are secular, neutral, and nonideological and, unless a provision of law specifically requires the contrary, are subject to the restrictions contained in rules 41.138(256,256B,34CFR300) to 41.144(256,256B, 34CFR300).

281—41.414 to **41.499** Reserved.

DIVISION VII
PROCEDURAL SAFEGUARDS

281—41.500(256B,34CFR300) Responsibility of SEA and other public agencies. The department shall ensure that each public agency establishes, maintains, and implements procedural safeguards that meet the requirements of rules 41.500(256B,34CFR300) to 41.536(256B,34CFR300).

281—41.501(256B,34CFR300) Opportunity to examine records; parent participation in meetings.

41.501(1) Opportunity to examine records. The parents of a child with a disability must be afforded, in accordance with the procedures of rules 41.613(256B,34CFR300) to 41.621(256B,34CFR300), an opportunity to inspect and review all education records with respect to:

a. The identification, evaluation, and educational placement of the child; and

b. The provision of FAPE to the child.

41.501(2) Parent participation in meetings.

a. The parents of a child with a disability must be afforded an opportunity to participate in meetings with respect to:

(1) The identification, evaluation, and educational placement of the child; and

(2) The provision of FAPE to the child.

b. Each public agency must provide notice consistent with 41.322(1)"a" and 41.322(2)"b" to ensure that parents of children with disabilities have the opportunity to participate in meetings described in 41.501(2)"a."

c. A meeting does not include informal or unscheduled conversations involving public agency personnel and conversations on issues such as teaching methodology, lesson plans, or coordination of service provision. A meeting also does not include preparatory activities that public agency personnel engage in to develop a proposal or response to a parent proposal that will be discussed at a later meeting.

41.501(3) Parent involvement in placement decisions.

a. Each public agency must ensure that a parent of each child with a disability is a member of any group that makes decisions on the educational placement of the parent's child.

b. In implementing the requirements of 41.501(3)"a," the public agency must use procedures consistent with the procedures described in 41.322(1) to 41.322(2)"a."

c. If neither parent can participate in a meeting in which a decision is to be made relating to the educational placement

of their child, the public agency must use other methods to ensure their participation, including individual or conference telephone calls, or video conferencing.

d. A placement decision may be made by a group without the involvement of a parent, if the public agency is unable to obtain the parent's participation in the decision. In this case, the public agency must have a record of its attempt to ensure parental involvement.

281—41.502(256B,34CFR300) Independent educational evaluation.

41.502(1) General.

a. The parents of a child with a disability have the right to obtain an independent educational evaluation of the child, subject to subrules 41.502(2) to 41.502(5).

b. Each public agency must provide to parents, upon request for an independent educational evaluation, information about where an independent educational evaluation may be obtained and the agency criteria applicable for independent educational evaluations as set forth in subrule 41.502(5).

c. For the purposes of this division:

(1) "Independent educational evaluation" means an evaluation conducted by a qualified examiner who is not employed by the public agency responsible for the education of the child in question; and

(2) "Public expense" means that the AEA either pays for the full cost of the evaluation or ensures that the evaluation is otherwise provided at no cost to the parent.

41.502(2) Parent right to evaluation at public expense.

a. A parent has the right to an independent educational evaluation at public expense if the parent disagrees with an evaluation obtained by the AEA, subject to the conditions in 41.502(2)"b" to "d."

b. If a parent requests an independent educational evaluation at public expense, the AEA must, without unnecessary delay, either:

(1) File a due process complaint to request a hearing to show that its evaluation is appropriate; or

(2) Ensure that an independent educational evaluation is provided at public expense, unless the AEA demonstrates in a hearing pursuant to these rules that the evaluation obtained by the parent did not meet agency criteria.

c. If the AEA files a due process complaint notice to request a hearing and the final decision is that the AEA's evaluation is appropriate, the parent still has the right to an independent educational evaluation, but not at public expense.

d. If a parent requests an independent educational evaluation, the AEA may ask for the parent's reason why the parent objects to the public evaluation. However, the AEA may not require the parent to provide an explanation and may not unreasonably delay either providing the independent educational evaluation at public expense or filing a due process complaint to request a due process hearing to defend the public evaluation.

e. A parent is entitled to only one independent educational evaluation at public expense each time a public agency conducts an evaluation with which the parent disagrees.

41.502(3) Parent-initiated evaluations. If the parent obtains an independent educational evaluation at public expense or shares with a public agency an evaluation obtained at private expense, the results of the evaluation:

a. Must be considered by the public agency, if it meets agency criteria, in any decision made with respect to the provision of FAPE to the child; and

b. May be presented by any party as evidence at a hearing on a due process complaint under this chapter regarding that child.

41.502(4) Requests for evaluations by administrative law judges. If an administrative law judge requests an independent educational evaluation as part of a hearing on a due process complaint, the cost of the evaluation must be at public expense.

41.502(5) Agency criteria.

a. If an independent educational evaluation is at public expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, must be the same as the criteria that the public agency uses when it initiates an evaluation, to the extent those criteria are consistent with the parent's right to an independent educational evaluation.

b. Except for the criteria described in 41.502(5)"a," a public agency may not impose conditions or timelines related to obtaining an independent educational evaluation at public expense.

c. Each AEA shall establish policy and procedures for implementing this rule.

281—41.503(256B,34CFR300) Prior notice by the public agency; content of notice.

41.503(1) Notice. Written notice that meets the requirements of subrule 41.503(2) must be given to the parents of a child with a disability within a reasonable time before the public agency:

a. Proposes to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child; or

b. Refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child.

41.503(2) Content of notice. The notice required under subrule 41.503(1) must include the following:

a. A description of the action proposed or refused by the agency;

b. An explanation of why the agency proposes or refuses to take the action;

c. A description of each evaluation procedure, assessment, record, or report the agency used as a basis for the proposed or refused action;

d. A statement that the parents of a child with a disability have protection under the procedural safeguards of this chapter and, if this notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained;

e. Sources for parents to contact to obtain assistance in understanding the provisions of this chapter;

f. A description of other options that the IEP team considered and the reasons why those options were rejected; and

g. A description of other factors that are relevant to the agency's proposal or refusal.

41.503(3) Notice in understandable language.

a. The notice required under subrule 41.503(1) must be written in language understandable to the general public, and must be provided in the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so.

b. If the native language or other mode of communication of the parent is not a written language, the public agency must take steps to ensure the following:

(1) The notice is translated orally or by other means to the parent in the parent's native language or other mode of communication;

(2) The parent understands the content of the notice; and

(3) There is written evidence that the requirements in 41.503(3)"b"(1) and (2) have been met.

281—41.504(256B,34CFR300) Procedural safeguards notice.

41.504(1) General. A copy of the procedural safeguards available to the parents of a child with a disability must be given to the parents only once a school year, except that a copy also must be given to the parents as follows:

a. Upon initial referral or parent request for evaluation;

b. Upon receipt of the first state complaint under rules 41.151(256B,34CFR300) to 41.153(256B,34CFR300) and upon receipt of the first due process complaint under 41.507(256B,34CFR300) in a school year;

c. In accordance with the discipline procedures in subrule 41.530(8); and

d. Upon request by a parent.

41.504(2) Internet Web site. A public agency may place a current copy of the procedural safeguards notice on its Internet Web site if a Web site exists.

41.504(3) Contents. The procedural safeguards notice must include a full explanation of all the procedural safeguards available under this chapter relating to the following:

a. Independent educational evaluations;

b. Prior written notice;

c. Parental consent;

d. Access to education records;

e. Opportunity to present and resolve complaints through the due process complaint and state complaint procedures, and must explain:

(1) The time period in which to file a complaint;

(2) The opportunity for the agency to resolve the complaint; and

(3) The difference between the due process complaint and the state complaint procedures, including the jurisdiction of each procedure, what issues may be raised, filing and decisional timelines, and relevant procedures;

f. The availability of mediation;

g. The child's placement during the pendency of any due process complaint;

h. Procedures for students who are subject to placement in an interim alternative educational setting;

i. Requirements for unilateral placement by parents of children in private schools at public expense;

j. Hearings on due process complaints, including requirements for disclosure of evaluation results and recommendations;

k. Civil actions, including the time period in which to file those actions; and

l. Attorneys' fees.

41.504(4) Notice in understandable language. The notice required under subrule 41.504(1) must meet the requirements of subrule 41.503(3).

41.504(5) "Summaries" of procedural safeguards limited. An AEA or LEA may only provide a document summarizing the procedural safeguards notice if that document has been approved by the department. Any summary must inform parents that the summary is only provided for the convenience of the reader and is not a replacement for the procedural safeguards notice. Any approved summary of the procedural safeguards notice shall be given along with the procedural safeguards notice and shall not be given in place of the procedural safeguards notice.

281—41.505(256B,34CFR300) Electronic mail. A parent of a child with a disability may elect to receive notices required by these rules by an electronic mail communication, if the public agency makes that option available.

281—41.506(256B,34CFR300) Mediation.

41.506(1) General. Each public agency must ensure that procedures are established and implemented to allow parties involved in disputes relating to any matter under this chapter, including matters arising prior to the filing of a due process complaint, to resolve disputes through a mediation process.

41.506(2) Requirements. The procedures must meet the following requirements:

a. The procedures must ensure that the mediation process:

(1) Is voluntary on the part of the parties;

(2) Is not used to deny or delay a parent's right to a hearing on the parent's due process complaint, or to deny any other rights afforded under Part B of the Act; and

(3) Is conducted by a qualified and impartial mediator who is trained in effective mediation techniques.

b. A public agency may establish procedures to offer to parents and schools that choose not to use the mediation process, an opportunity to meet, at a time and location convenient to the parents, with a disinterested party:

(1) Who is under contract with an appropriate alternative dispute resolution entity, or a parent training and information center or community parent resource center in the state established under Section 671 or 672 of the Act; and

(2) Who would explain the benefits of, and encourage the use of, the mediation process to the parents.

c. State responsibility for mediation.

(1) The state must maintain a list of individuals who are qualified mediators and knowledgeable in laws and regulations relating to the provision of special education and related services.

(2) The SEA must select mediators on a random, rotational, or other impartial basis.

d. The state must bear the cost of the mediation process, including the costs of meetings described in 41.506(2)"b."

e. Each session in the mediation process must be scheduled in a timely manner and must be held in a location that is convenient to the parties to the dispute.

f. If the parties resolve a dispute through the mediation process, the parties must execute a legally binding agreement that sets forth that resolution and that:

(1) States that all discussions that occurred during the mediation process will remain confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding; and

(2) Is signed by both the parent and a representative of the agency who has the authority to bind the agency.

g. A written, signed mediation agreement is enforceable in any state court of competent jurisdiction or in a district court of the United States. Discussions that occur during the mediation process must be confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding of any federal court or state court.

41.506(3) Impartiality of mediator.

a. An individual who serves as a mediator under this chapter:

(1) May not be an employee of the SEA or the LEA that is involved in the education or care of the child; and

(2) Must not have a personal or professional interest that conflicts with the person's objectivity.

b. A person who otherwise qualifies as a mediator is not an employee of an LEA or state agency described under rule 41.228(256B,34CFR300) solely because the person is paid by the agency to serve as a mediator.

41.506(4) Special definition. In this chapter and in Iowa practice, a request for mediation filed before the filing of a due process complaint is referred to as a "request for a special

education preappeal conference," further described in rule 41.1002(256B,34CFR300).

281—41.507(256B,34CFR300) Filing a due process complaint.

41.507(1) General.

a. Subject matter of due process complaint. A parent or a public agency may file a due process complaint on any of the matters described in subrule 41.503(1) relating to the identification, evaluation or educational placement of a child with a disability, or the provision of FAPE to the child.

b. The due process complaint must allege a violation that occurred not more than two years before the date the parent or public agency knew or should have known about the alleged action that forms the basis of the due process complaint, except that the exceptions to the timeline described in subrule 41.511(6) apply to the timeline in this rule.

41.507(2) Information for parents. The public agency must inform the parent of any free or low-cost legal and other relevant services available in the area if the parent requests the information or the parent or the agency files a due process complaint under this rule.

41.507(3) Synonymous term. Whenever the term "request for due process hearing" is used in prior department rules and documents, that term shall be construed to mean "due process complaint."

281—41.508(256B,34CFR300) Due process complaint.

41.508(1) General. A due process complaint shall be provided to the department, and a copy shall be provided to each party to the complaint.

41.508(2) Content of complaint. The due process complaint required in subrule 41.508(1) must include the following information:

a. The name of the child;

b. The address of the residence of the child;

c. The name of the school the child is attending;

d. In the case of a homeless child or youth within the meaning of Section 725(2) of the McKinney-Vento Homeless Assistance Act, 42 U.S.C. 11434a(2), available contact information for the child and the name of the school the child is attending;

e. A description of the nature of the problem of the child relating to the proposed or refused initiation or change, including facts relating to the problem; and

f. A proposed resolution of the problem to the extent known and available to the party at the time.

41.508(3) Notice required before a hearing on a due process complaint. A party may not have a hearing on a due process complaint until the party, or the attorney representing the party, files a due process complaint that meets the requirements of subrule 41.508(2).

41.508(4) Sufficiency of complaint.

a. General. The due process complaint required by this rule must be deemed sufficient unless the party receiving the due process complaint notifies the administrative law judge and the other party in writing, within 15 days of receipt of the due process complaint, that the receiving party believes the due process complaint does not meet the requirements in subrule 41.508(2).

b. Determination. Within five days of receipt of notification under 41.508(4)"a," the administrative law judge must make a determination on the face of the due process complaint of whether the due process complaint meets the requirements of subrule 41.508(2), and must immediately notify the parties in writing of that determination.

c. Amending due process complaint. A party may amend its due process complaint only if:

(1) The other party consents in writing to the amendment and is given the opportunity to resolve the due process complaint through a meeting held pursuant to rule 41.510(256B, 34CFR300); or

(2) The administrative law judge grants permission, except that the administrative law judge may only grant permission to amend at any time not later than five days before the due process hearing begins.

d. Timelines after amendment. If a party files an amended due process complaint, the timelines for the resolution meeting in subrule 41.510(1) and the time period to resolve in 41.510(2) begin again with the filing of the amended due process complaint.

41.508(5) LEA response to a due process complaint.

a. General. If the LEA has not sent a prior written notice to the parent regarding the subject matter contained in the parent's due process complaint, the LEA must, within ten days of receiving the due process complaint, send to the parent a response that includes the following:

(1) An explanation of why the agency proposed or refused to take the action raised in the due process complaint;

(2) A description of other options that the IEP team considered and the reasons why those options were rejected;

(3) A description of each evaluation procedure, assessment, record, or report the agency used as the basis for the proposed or refused action; and

(4) A description of the other factors that are relevant to the agency's proposed or refused action.

b. Rule of construction. A response by an LEA under 41.508(5)"a" shall not be construed to preclude the LEA from asserting that the parent's due process complaint was insufficient, where appropriate.

41.508(6) Other party response to a due process complaint. Except as provided in subrule 41.508(5), the party receiving a due process complaint must, within ten days of receiving the due process complaint, send to the other party a response that specifically addresses the issues raised in the due process complaint.

281—41.509(256B,34CFR300) Model forms.

41.509(1) Forms available. The department shall develop model forms to assist parents and public agencies in filing a due process complaint and to assist parents and other parties in filing a state complaint; however, the department or LEA may not require the use of the model forms.

41.509(2) Use of forms. Parents, public agencies, and other parties may use the appropriate model form described in subrule 41.509(1), or another form or other document, so long as the form or document that is used meets, as appropriate, the content requirements in subrule 41.508(2) for filing a due process complaint, or the requirements in subrule 41.153(2) for filing a state complaint.

281—41.510(256B,34CFR300) Resolution process.

41.510(1) Resolution meeting.

a. General. Within 15 days of receiving notice of the parent's due process complaint, and prior to the initiation of a due process hearing, the LEA must convene a meeting with the parent and the relevant member or members of the IEP team who have specific knowledge of the facts identified in the due process complaint that:

(1) Includes a representative of the public agency who has decision-making authority on behalf of that agency; and

(2) May not include an attorney of the LEA unless the parent is accompanied by an attorney.

b. Purpose of meeting. The purpose of the meeting is for the parent of the child to discuss the due process complaint and the facts that form the basis of the due process complaint

so that the LEA has the opportunity to resolve the dispute that is the basis for the due process complaint.

c. When meeting not necessary. The meeting described in 41.510(1)"a" and "b" need not be held if the parent and the LEA agree in writing to waive the meeting, or the parent and the LEA agree to use the mediation process described in rule 41.506(256B,34CFR300).

d. Determining relevant members of IEP team. The parent and the LEA determine the relevant members of the IEP team to attend the meeting.

41.510(2) Resolution period.

a. General. If the LEA has not resolved the due process complaint to the satisfaction of the parent within 30 days of the receipt of the due process complaint, the due process hearing may occur.

b. Timeline for decision. Except as provided in subrule 41.510(3), the timeline for issuing a final decision under rule 41.515(256B,34CFR300) begins at the expiration of this 30-day period.

c. Failure of parent to participate: delay of timeline. Except where the parties have jointly agreed to waive the resolution process or to use mediation, the failure of the parent filing a due process complaint to participate in the resolution meeting will delay the timelines for the resolution process and due process hearing until the meeting is held.

d. Failure of parent to participate: dismissal of complaint. If the LEA is unable to obtain the participation of the parent in the resolution meeting after reasonable efforts have been made and documented using the procedures in subrule 41.322(4), the LEA may, at the conclusion of the 30-day period, request that the administrative law judge dismiss the parent's due process complaint.

e. Failure of LEA to hold meeting. If the LEA fails to hold the resolution meeting specified in subrule 41.510(1) within 15 days of receiving notice of a parent's due process complaint or fails to participate in the resolution meeting, the parent may seek the intervention of the administrative law judge to begin the due process hearing timeline.

41.510(3) Adjustments to 30-day resolution period. The 45-day timeline for the due process hearing in subrule 41.515(1) starts the day after one of the following events:

a. Both parties agree in writing to waive the resolution meeting;

b. After either the mediation or resolution meeting starts but before the end of the 30-day period, the parties agree in writing that no agreement is possible;

c. If all parties agree in writing to continue the mediation at the end of the 30-day resolution period, but later the parent or public agency withdraws from the mediation process.

41.510(4) Written settlement agreement. If a resolution to the dispute is reached at the meeting described in 41.510(1)"a" and "b," the parties must execute a legally binding agreement that is:

a. Signed by both the parent and a representative of the agency who has the authority to bind the agency; and

b. Enforceable in any state court of competent jurisdiction or in a district court of the United States, or, by the department, including but not limited to through the state complaint process.

41.510(5) Agreement review period. If the parties execute an agreement pursuant to subrule 41.510(4), a party may void the agreement within three business days of the agreement's execution.

281—41.511(256B,34CFR300) Impartial due process hearing.

41.511(1) General. Whenever a due process complaint is received under this division, the parents or the LEA involved in the dispute must have an opportunity for an impartial due process hearing, consistent with the procedures in this chapter.

41.511(2) SEA responsible for conducting the due process hearing. The hearing described in subrule 41.511(1) must be conducted by the department.

41.511(3) Administrative law judge.

a. Minimum qualifications. At a minimum, an administrative law judge:

(1) Must not be an employee of the SEA or the LEA that is involved in the education or care of the child or a person having a personal or professional interest that conflicts with the person's objectivity in the hearing;

(2) Must possess knowledge of, and the ability to understand, the provisions of the Act, federal and state regulations pertaining to the Act, and legal interpretations of the Act by federal and state courts;

(3) Must possess the knowledge and ability to conduct hearings in accordance with appropriate, standard legal practice; and

(4) Must possess the knowledge and ability to render and write decisions in accordance with appropriate, standard legal practice.

b. Rule of construction. A person who otherwise qualifies to conduct a hearing under 41.511(3)"a" is not an employee of the agency solely because the person is paid by the agency to serve as an administrative law judge.

c. SEA to maintain list of administrative law judges. The department shall keep a list of the persons who serve as administrative law judges. The list must include a statement of the qualifications of each of those persons.

41.511(4) Subject matter of due process hearings. The party requesting the due process hearing may not raise issues at the due process hearing that were not raised in the due process complaint filed under subrule 41.508(2), unless each of the other parties agrees otherwise.

41.511(5) Timeline for requesting a hearing. A parent or agency must request an impartial hearing on the due process complaint within two years of the date the parent or agency knew or should have known about the alleged action that forms the basis of the due process complaint.

41.511(6) Exceptions to the timeline. The timeline described in subrule 41.511(5) does not apply to a parent if the parent was prevented from filing a due process complaint due to either of the following:

a. Specific misrepresentations by the LEA that it had resolved the problem forming the basis of the due process complaint; or

b. The LEA's withholding of information from the parent that was required under this chapter to be provided to the parent.

281—41.512(256B,34CFR300) Hearing rights.

41.512(1) General. Any party to a hearing conducted pursuant to the rules of this division and Division XII has the right to:

a. Be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of children with disabilities;

b. Present evidence and confront, cross-examine, and compel the attendance of witnesses;

c. Prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least five business days before the hearing;

d. Obtain a written or, at the option of the parents, electronic, verbatim record of the hearing; and

e. Obtain written or, at the option of the parents, electronic findings of fact and decisions.

41.512(2) Additional disclosure of information.

a. At least five business days prior to a hearing conducted pursuant to subrule 41.511(1), each party must disclose to all other parties all evaluations completed by that date and recommendations based on the offering party's evaluations that the party intends to use at the hearing.

b. An administrative law judge may bar any party that fails to comply with 41.512(2)"a" from introducing the relevant evaluation or recommendation at the hearing without the consent of the other party.

41.512(3) Parental rights at hearings. Parents involved in hearings must be given the right to:

a. Have the child who is the subject of the hearing present;

b. Open the hearing to the public; and

c. Have the record of the hearing and the findings of fact and decisions described in 41.512(1)"d" and "e" provided at no cost to parents.

281—41.513(256B,34CFR300) Hearing decisions.

41.513(1) Decision of administrative law judge on the provision of FAPE.

a. Subject to 41.513(1)"b," an administrative law judge's determination of whether a child received FAPE must be based on substantive grounds.

b. In matters alleging a procedural violation, an administrative law judge may find that a child did not receive FAPE only if the procedural inadequacies:

(1) Impeded the child's right to FAPE;

(2) Significantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of FAPE to the parent's child; or

(3) Caused a deprivation of educational benefit.

c. Nothing in this subrule shall be construed to preclude an administrative law judge from ordering an LEA to comply with procedural requirements under this division.

41.513(2) Reserved.

41.513(3) Separate request for a due process hearing. Nothing in this division shall be construed to preclude a parent from filing a separate due process complaint on an issue separate from a due process complaint already filed.

41.513(4) Findings and decision to advisory panel and general public. The department, after deleting any personally identifiable information, must:

a. Transmit the findings and decisions referred to in 41.512(1)"e" to the state advisory panel established under rule 41.167(256B,34CFR300); and

b. Make those findings and decisions available to the public.

281—41.514(256B,34CFR300) Finality of decision. A decision made in a hearing conducted pursuant to this division is final, except that any party involved in the hearing may appeal the decision by filing a civil action in state or federal court.

281—41.515(256B,34CFR300) Timelines and convenience of hearings.

41.515(1) Timeline. The public agency must ensure that not later than 45 days after the expiration of the 30-day period under subrule 41.510(2), or the adjusted time periods described in subrule 41.510(3):

a. A final decision is reached in the hearing; and

b. A copy of the decision is mailed to each of the parties.

41.515(2) Reserved.

41.515(3) Extensions of time or continuances. An administrative law judge may grant specific extensions of time or continuances beyond the periods set out in subrule 41.515(1) at the request of either party.

41.515(4) Hearing time. Each hearing must be conducted at a time and place that is reasonably convenient to the parents and child involved.

281—41.516(256B,34CFR300) Civil action.

41.516(1) General. Any party aggrieved by the findings and decision made under this division has the right to bring a civil action with respect to the due process complaint notice requesting a due process hearing under this division. The action may be brought in any state court of competent jurisdiction or in a district court of the United States without regard to the amount in controversy.

41.516(2) Time limitation. The party bringing the action shall have 90 days from the date of the decision of the administrative law judge to file a civil action.

41.516(3) Additional requirements. In any action brought under subrule 41.516(1), the court:

a. Receives the records of the administrative proceedings;

b. Hears additional evidence at the request of a party; and

c. Basing its decision on the preponderance of the evidence, grants the relief that the court determines to be appropriate.

41.516(4) Jurisdiction of United States district courts. The district courts of the United States have jurisdiction of actions brought under Section 615 of the Act without regard to the amount in controversy.

41.516(5) Rule of construction. Nothing in Part B of the Act or this chapter restricts or limits the rights, procedures, and remedies available under the Constitution, the Americans with Disabilities Act of 1990, Title V of the Rehabilitation Act of 1973, or other federal laws protecting the rights of children with disabilities, except that before the filing of a civil action under these laws seeking relief that is also available under Section 615 of the Act, the procedures under rules 41.507(256B,34CFR300) and 41.514(256B,34CFR300) must be exhausted to the same extent as would be required had the action been brought under Section 615 of the Act.

281—41.517(256B,34CFR300) Attorneys' fees.

41.517(1) General. In any action or proceeding brought under Section 615 of the Act, the court, in its discretion, may award reasonable attorneys' fees as part of the costs to any of the following:

a. The prevailing party who is the parent of a child with a disability;

b. To a prevailing party who is an SEA or LEA against the attorney of a parent who files a complaint or subsequent cause of action that is frivolous, unreasonable, or without foundation, or against the attorney of a parent who continued to litigate after the litigation clearly became frivolous, unreasonable, or without foundation; or

c. To a prevailing SEA or LEA against the attorney of a parent, or against the parent, if the parent's request for a due process hearing or subsequent cause of action was presented for any improper purpose, such as to harass, to cause unnecessary delay, or to needlessly increase the cost of litigation.

41.517(2) Prohibition on use of funds.

a. Funds under Part B of the Act may not be used to pay attorneys' fees or costs of a party related to any action or proceeding under Section 615 of the Act and this division.

b. Paragraph 41.517(2)"a" does not preclude a public agency from using funds under Part B of the Act for conducting an action or proceeding under Section 615 of the Act.

41.517(3) Award of fees. A court awards reasonable attorneys' fees under Section 615(i)(3) of the Act consistent with the following:

a. Amount of fees. Fees awarded under Section 615(i)(3) of the Act must be based on rates prevailing in the community in which the action or proceeding arose for the kind and quality of services furnished. No bonus or multiplier may be used in calculating the fees awarded under this paragraph.

b. When fees and costs may not be awarded.

(1) Attorneys' fees may not be awarded and related costs may not be reimbursed in any action or proceeding under Section 615 of the Act for services performed subsequent to the time of a written offer of settlement to a parent if:

1. The offer is made within the time prescribed by Rule 68 of the federal Rules of Civil Procedure or, in the case of an administrative proceeding, at any time more than ten days before the proceeding begins;

2. The offer is not accepted within ten days; and

3. The court or administrative law judge finds that the relief finally obtained by the parents is not more favorable to the parents than the offer of settlement.

(2) Attorneys' fees may not be awarded relating to any meeting of the IEP team unless the meeting is convened as a result of an administrative proceeding or judicial action, or at the discretion of the state, for a mediation described in rule 41.506(256B,34CFR300).

(3) A meeting conducted pursuant to rule 41.510(256B, 34CFR300) shall not be considered either of the following:

1. A meeting convened as a result of an administrative hearing or judicial action; or

2. An administrative hearing or judicial action for purposes of this rule.

c. Exception to offer of settlement subrule. Notwithstanding 41.517(3)"b"(1), an award of attorneys' fees and related costs may be made to a parent who is the prevailing party and who was substantially justified in rejecting the settlement offer.

d. Reduction in attorney fees. Except as provided in 41.517(3)"e," the court reduces, accordingly, the amount of the attorneys' fees awarded under Section 615 of the Act, if the court finds that:

(1) The parent, or the parent's attorney, during the course of the action or proceeding, unreasonably protracted the final resolution of the controversy;

(2) The amount of the attorneys' fees otherwise authorized to be awarded unreasonably exceeds the hourly rate prevailing in the community for similar services by attorneys of reasonably comparable skill, reputation, and experience;

(3) The time spent and legal services furnished were excessive considering the nature of the action or proceeding; or

(4) The attorney representing the parent did not provide to the LEA the appropriate information in the due process request notice in accordance with rule 41.508(256B, 34CFR300).

e. Exception to reduction in fees subrule. The provisions of 41.517(3)"d" do not apply in any action or proceeding if the court finds that the state or local agency unreasonably protracted the final resolution of the action or proceeding or there was a violation of Section 615 of the Act.

281—41.518(256B,34CFR300) Child's status during proceedings.

41.518(1) General. Except as provided in rule 41.533(256B,34CFR300), during the pendency of any administrative or judicial proceeding regarding a due process complaint notice requesting a due process hearing under rule 41.507(256B,34CFR300), unless the state or local agency and the parents of the child agree otherwise, the child involved in the complaint must remain in his or her current educational placement.

41.518(2) Initial admission to public school. If the complaint involves an application for initial admission to public school, the child, with the consent of the parents, must be placed in the public school until the completion of all the proceedings.

41.518(3) Transition from Part C to Part B. If the complaint involves an application for initial services under this chapter from a child who is transitioning from Part C of the Act to Part B and is no longer eligible for Part C services because the child has reached the age of three, the public agency is not required to provide the Part C services that the child had been receiving. If the child is found eligible for special education and related services under Part B and the parent consents to the initial provision of special education and related services under subrule 41.300(2), then the public agency must provide those special education and related services that are not in dispute between the parent and the public agency.

41.518(4) Administrative law judge decision. If the administrative law judge in a due process hearing conducted by the SEA agrees with the child's parents that a change of placement is appropriate, that placement must be treated as an agreement between the state and the parents for purposes of subrule 41.518(1).

41.518(5) Preappeal conference. Except as provided in rule 41.533(256B,34CFR300), during the pendency of any preappeal conference under rule 41.506(256B,34CFR300) and for ten days after a preappeal conference at which no agreement is reached, unless the state or local agency and the parents of the child agree otherwise, the child involved in the preappeal conference must remain in his or her current educational placement.

281—41.519(256B,34CFR300) Surrogate parents.

41.519(1) General. Each public agency must ensure that the rights of a child are protected when:

a. No parent as defined in rule 41.30(256B,34CFR300) can be identified;

b. The public agency, after reasonable efforts, cannot locate a parent;

c. The child is a ward of the state under the laws of the state; or

d. The child is an unaccompanied homeless youth as defined in Section 725(6) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(6)).

41.519(2) Duties of public agency. The duties of a public agency under subrule 41.519(1) include the assignment of an individual to act as a surrogate for the parents. This must include a method for determining whether a child needs a surrogate parent and for assigning a surrogate parent to the child.

41.519(3) Wards of the state. In the case of a child who is a ward of the state, the surrogate parent alternatively may be appointed by the judge presiding in the child's case, provided that the surrogate meets the requirements in 41.519(4)"b"(1) and 41.519(5).

41.519(4) Criteria for selection of surrogate parents.

a. The public agency may select a surrogate parent in any way permitted under state law.

b. Public agencies must ensure that a person selected as a surrogate parent:

(1) Is not an employee of the SEA, the LEA, or any other public or private agency that is involved in the education or care of the child;

(2) Has no personal or professional interest that conflicts with the interest of the child the surrogate parent represents; and

(3) Has knowledge and skills that ensure adequate representation of the child.

41.519(5) Nonemployee requirement; compensation. A person otherwise qualified to be a surrogate parent under subrule 41.519(4) is not an employee of the agency solely because the person is paid by the agency to serve as a surrogate parent.

41.519(6) Unaccompanied homeless youth. In the case of a child who is an unaccompanied homeless youth, appropriate staff of emergency shelters, transitional shelters, independent living programs, and street outreach programs may be appointed as temporary surrogate parents without regard to 41.519(4)"b"(1), until a surrogate parent can be appointed that meets all of the requirements of subrule 41.519(4).

41.519(7) Surrogate parent responsibilities. The surrogate parent may represent the child in all matters relating to the identification, evaluation, and educational placement of the child, and the provision of FAPE to the child.

41.519(8) Training of surrogate parents. Training shall be conducted as necessary by each AEA using a training procedure approved by the department, which includes rights and responsibilities of a surrogate parent, sample forms used by LEAs and AEAs, specific needs of individuals with disabilities and resources for legal and instructional technical assistance. The department shall provide continuing education and assistance to AEAs upon request.

41.519(9) SEA responsibility. The department must make reasonable efforts to ensure the assignment of a surrogate parent not more than 30 days after a public agency determines that the child needs a surrogate parent. The department shall provide assistance to, and shall monitor, surrogate parent programs.

281—41.520(256B,34CFR300) Transfer of parental rights at age of majority.

41.520(1) General. The state provides, when a child with a disability (except for a child with a disability who has been determined to be incompetent under state law) reaches the age of majority under Iowa Code section 599.1, all of the following:

a. General rule.

(1) The public agency must provide any notice required by this chapter to both the child and the parents; and

(2) All rights accorded to parents under Part B of the Act transfer to the child.

b. Special rule: incarcerated eligible individuals. All rights accorded to parents under Part B of the Act transfer to children who are incarcerated in an adult or juvenile, state or local correctional institution.

c. Notice requirement. Whenever a state provides for the transfer of rights under Part B of the Act and this chapter pursuant to 41.520(1)"a" or "b," the agency must notify the child and the parents of the transfer of rights.

41.520(2) Special rules. If a court appoints a guardian for an eligible individual who has attained the age of majority under subrule 41.520(1) and the court determines all decisions shall be made by the guardian or specifically determines all educational decisions should be made by the guardian, then rights under subrule 41.520(1) do not transfer but are exercised pursuant to any applicable orders of the court. If a court determines a child who has attained the age of majority under subrule 41.520(1) does not have capacity to make educational decisions under any other applicable statute, then rights under subrule 41.520(1) do not transfer and are exercised by the child's parent or pursuant to court order. If and when state law provides that a competent authority may determine that an eligible individual who has attained the age of majority under subrule 41.520(1) and who has not been found incompetent by any court under this subrule, the department shall establish procedures for appointing the parent of a child with a disability, or, if the parent is not available, another appropriate individual, to represent the educational interests of the child throughout the period of the child's eligibility under Part B of the Act if the child can be determined by the competent authority, by clear and convincing evidence, not to have the ability to provide informed consent with respect to the child's educational program.

281—41.521 to **41.529** Reserved.

281—41.530(256B,34CFR300) Authority of school personnel.

41.530(1) Case-by-case determination. School personnel may consider any unique circumstances on a case-by-case basis when determining whether a change in placement, consistent with the other requirements of this rule, is appropriate for a child with a disability who violates a code of student conduct.

41.530(2) General.

a. School personnel under this rule may remove a child with a disability who violates a code of student conduct from his or her current placement to an appropriate interim alternative educational setting, another setting, or suspension, for not more than ten consecutive school days, to the extent those alternatives are applied to children without disabilities, and for additional removals of not more than ten consecutive school days in that same school year for separate incidents of misconduct, as long as those removals do not constitute a change of placement under rule 41.536(256B,34CFR300).

b. After a child with a disability has been removed from his or her current placement for ten school days in the same school year, during any subsequent days of removal the public agency must provide services to the extent required under subrule 41.530(4).

41.530(3) Additional authority. For disciplinary changes in placement that would exceed ten consecutive school days, if the behavior that gave rise to the violation of the school code is determined not to be a manifestation of the child's disability pursuant to subrule 41.530(5), school personnel may apply the relevant disciplinary procedures to children with disabilities in the same manner and for the same duration as the procedures would be applied to children without disabilities, except as provided in subrule 41.530(4).

41.530(4) Services.

a. A child with a disability who is removed from the child's current placement pursuant to subrule 41.530(3) or 41.530(7) must receive the following:

(1) Educational services, as provided in subrule 41.101(1), so as to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP; and

(2) As appropriate, a functional behavioral assessment, and behavioral intervention services and modifications, that

are designed to address the behavior violation so that it does not recur.

b. The services required by 41.530(4)"a" and "c" to "e" may be provided in an interim alternative educational setting.

c. A public agency is required to provide services during periods of removal to a child with a disability who has been removed from his or her current placement for ten school days or less in that school year, only if it provides services to a child without disabilities who is similarly removed.

d. After a child with a disability has been removed from his or her current placement for ten school days in the same school year, if the current removal is for not more than ten consecutive school days and is not a change of placement under rule 41.536(256B,34CFR300), school personnel, in consultation with at least one of the child's teachers, shall determine the extent to which services are needed, as provided in subrule 41.101(1), so as to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP.

e. If the removal is a change of placement under rule 41.536(256B,34CFR300), the child's IEP team determines appropriate services under 41.530(4)"a."

41.530(5) Manifestation determination.

a. Within ten school days of any decision to change the placement of a child with a disability because of a violation of a code of student conduct, the AEA, the LEA, the parent, and relevant members of the child's IEP team, as determined by the parent and the AEA and LEA, must review all relevant information in the student's file, including the child's IEP, any teacher observations, and any relevant information provided by the parents to determine:

(1) If the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability; or

(2) If the conduct in question was the direct result of the failure by the AEA or LEA to implement the IEP.

b. The conduct must be determined to be a manifestation of the child's disability if the AEA, the LEA, the parent, and relevant members of the child's IEP team determine that a condition in either 41.530(5)"a"(1) or (2) was met.

c. If the AEA, the LEA, the parent, and relevant members of the child's IEP team determine the condition described in 41.530(5)"a"(2) was met, the public agency must take immediate steps to remedy those deficiencies.

41.530(6) Determination that behavior was a manifestation. If the AEA, the LEA, the parent, and relevant members of the IEP team make the determination that the conduct was a manifestation of the child's disability, the IEP team must proceed as follows:

a. Conduct a functional behavioral assessment, unless the AEA or LEA had conducted a functional behavioral assessment before the behavior that resulted in the change of placement occurred, and implement a behavioral intervention plan for the child; or

b. If a behavioral intervention plan already has been developed, review the behavioral intervention plan and modify it, as necessary, to address the behavior; and

c. Except as provided in subrule 41.530(7), return the child to the placement from which the child was removed, unless the parent and the public agency agree to a change of placement as part of the modification of the behavioral intervention plan.

41.530(7) Special circumstances. School personnel may remove a student to an interim alternative educational setting for not more than 45 school days without regard to whether the behavior is determined to be a manifestation of the child's disability, if the child:

a. Carries a weapon to or possesses a weapon at school, on school premises, or to or at a school function under the jurisdiction of an SEA or an LEA;

b. Knowingly possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance, while at school, on school premises, or at a school function under the jurisdiction of an SEA or an LEA; or

c. Has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of an SEA or an LEA.

41.530(8) Notification. On the date on which the decision is made to make a removal that constitutes a change of placement of a child with a disability because of a violation of a code of student conduct, the LEA must notify the parents of that decision and provide the parents the procedural safeguards notice described in rule 41.504(256B,34CFR300).

41.530(9) Definitions. For purposes of this rule, the following definitions apply:

a. Controlled substance. "Controlled substance" means a drug or other substance identified under Schedule I, II, III, IV, or V in Section 202(c) of the Controlled Substances Act (21 U.S.C. 812(c)).

b. Illegal drug. "Illegal drug" means a controlled substance; but does not include a controlled substance that is legally possessed or used under the supervision of a licensed health care professional or that is legally possessed or used under any other authority under that Act or under any other provision of federal law.

c. Serious bodily injury. "Serious bodily injury" has the meaning given the term "serious bodily injury" under paragraph (3) of subsection (h) of Section 1365 of Title 18, United States Code.

d. Weapon. "Weapon" has the meaning given the term "dangerous weapon" under paragraph (2) of the first subsection (g) of Section 930 of Title 18, United States Code. A "weapon" under Iowa law is not necessarily a weapon for purposes of this rule unless it meets this definition of a "dangerous weapon."

281—41.531(256B,34CFR300) Determination of setting. The child's IEP team determines the interim alternative educational setting for services under 41.530(3), 41.530(4)"e," and 41.530(7).

281—41.532(256B,34CFR300) Appeal.

41.532(1) General. The parent of a child with a disability who disagrees with any decision regarding placement under rules 41.530(256B,34CFR300) and 41.531(256B, 34CFR300), or the manifestation determination under subrule 41.530(5), or an LEA that believes that maintaining the current placement of the child is substantially likely to result in injury to the child or others, may appeal the decision by requesting a hearing. The hearing is requested by filing a complaint pursuant to rule 41.507(256B,34CFR300) and subrules 41.508(1) and 41.508(2).

41.532(2) Authority of administrative law judge.

a. An administrative law judge under rule 41.511(256B, 34CFR300) hears and makes a determination regarding an appeal under subrule 41.532(1).

b. In making the determination under subrule 41.532(1), the administrative law judge may do either of the following:

(1) Return the child with a disability to the placement from which the child was removed if the administrative law judge determines that the removal was a violation of rule

41.530(256B,34CFR300) or that the child's behavior was a manifestation of the child's disability; or

(2) Order a change of placement of the child with a disability to an appropriate interim alternative educational setting for not more than 45 school days if the administrative law judge determines that maintaining the current placement of the child is substantially likely to result in injury to the child or to others.

c. The procedures under 41.532(1) and 41.532(2)"a" and "b" may be repeated, if the LEA believes that returning the child to the original placement is substantially likely to result in injury to the child or to others.

41.532(3) Expedited due process hearing.

a. Whenever a hearing is requested under subrule 41.532(1), the parents or the LEA involved in the dispute must have an opportunity for an impartial due process hearing consistent with the requirements of rule 41.507(256B,34CFR300), subrules 41.508(1) to 41.508(3), and rules 41.510(256B,34CFR300) to 41.514(256B, 34CFR300), except as provided in 41.532(3)"b" and "c."

b. The department is responsible for arranging the expedited due process hearing, which must occur within 20 school days of the date the complaint requesting the hearing is filed. The administrative law judge must make a determination within 10 school days after the hearing.

c. Unless the parents and LEA agree in writing to waive the resolution meeting described in this paragraph, or agree to use the mediation process described in rule 41.506(256B, 34CFR300), the procedure is as follows:

(1) A resolution meeting must occur within 7 days of receiving notice of the due process complaint; and

(2) The due process hearing may proceed unless the matter has been resolved to the satisfaction of all parties within 15 days of the receipt of the due process complaint.

d. Reserved.

e. The decisions on expedited due process hearings are appealable consistent with rule 41.514(256B,34CFR300).

281—41.533(256B,34CFR300) Placement during appeals and preappeal mediations. When an appeal under rule 41.532(256B,34CFR300) or a request for a preappeal conference under rules 41.506(256B,34CFR300) and 41.1002(256B,34CFR300) has been made by either the parent or the LEA, the child must remain in the interim alternative educational setting pending the decision of the administrative law judge or until the expiration of the time period specified in subrule 41.530(3) or 41.530(7), whichever occurs first, unless the parent and the SEA or LEA agree otherwise.

281—41.534(256B,34CFR300) Protections for children not determined eligible for special education and related services.

41.534(1) General. A child who has not been determined to be eligible for special education and related services under this chapter and who has engaged in behavior that violated a code of student conduct may assert any of the protections provided for in this chapter if the public agency had knowledge, as determined in accordance with subrule 41.534(2), that the child was a child with a disability before the behavior that precipitated the disciplinary action occurred.

41.534(2) Basis of knowledge. A public agency must be deemed to have knowledge that a child is a child with a disability if before the behavior that precipitated the disciplinary action occurred any of the following occurred:

a. The parent of the child expressed concern in writing to supervisory or administrative personnel of the appropriate educational agency or to a teacher of the child that the child is in need of special education and related services;

b. The parent of the child requested an evaluation of the child pursuant to this chapter; or

c. The teacher of the child, or other personnel of the LEA, expressed specific concerns about a pattern of behavior demonstrated by the child directly to the director of special education of the agency or to other supervisory personnel of the agency.

41.534(3) Exception. A public agency would not be deemed to have knowledge under subrule 41.534(2) under the following conditions:

a. The parent of the child has not allowed an evaluation of the child pursuant to this chapter or has refused services under Part B of the Act or this chapter; or

b. The child has been evaluated in accordance with this chapter and determined not to be a child with a disability under Part B of the Act and this chapter.

41.534(4) Conditions that apply if no basis of knowledge.

a. General. If a public agency does not have knowledge that a child is a child with a disability, in accordance with subrules 41.534(2) and 41.534(3), prior to taking disciplinary measures against the child, the child may be subjected to the disciplinary measures applied to children without disabilities who engage in comparable behaviors consistent with 41.534(4)"b."

b. Request for evaluation.

(1) If a request is made for an evaluation of a child during the time period in which the child is subjected to disciplinary measures under rule 41.530(256B,34CFR300), the evaluation must be conducted in an expedited manner.

(2) Until the evaluation is completed, the child remains in the educational placement determined by school authorities, which can include suspension or expulsion without educational services.

(3) If the child is determined to be a child with a disability, taking into consideration information from the evaluation conducted by the agency and information provided by the parents, the agency must provide special education and related services in accordance with Part B of the Act and this chapter, including the requirements of rules 41.530(256B,34CFR300) to 41.536(256B,34CFR300) and Section 612(a)(1)(A) of the Act.

281—41.535(256B,34CFR300) Referral to and action by law enforcement and judicial authorities.

41.535(1) Rule of construction. Nothing in Part B of the Act or this chapter prohibits an agency from reporting a crime committed by a child with a disability to appropriate authorities or prevents state law enforcement and judicial authorities from exercising their responsibilities with regard to the application of federal and state law to crimes committed by a child with a disability.

41.535(2) Transmittal of records.

a. An agency reporting a crime committed by a child with a disability must ensure that copies of the special education and disciplinary records of the child are transmitted for consideration by the appropriate authorities to whom the agency reports the crime.

b. An agency reporting a crime under this rule may transmit copies of the child's special education and disciplinary records only to the extent that the transmission is permitted by the Family Educational Rights and Privacy Act, such as by obtaining consent (34 CFR Section 99.30) or in instances where disclosure without consent is permitted (34 CFR Section 99.31).

281—41.536(256B,34CFR300) Change of placement because of disciplinary removals.

41.536(1) General. For purposes of removals of a child with a disability from the child's current educational placement under rules 41.530(256B,34CFR300) to 41.535(256B, 34CFR300), a change of placement occurs under the following circumstances:

a. The removal is for more than ten consecutive school days; or

b. The child has been subjected to a series of removals that constitute a pattern based on the following:

(1) The series of removals total more than ten school days in a school year;

(2) The child's behavior is substantially similar to the child's behavior in previous incidents that resulted in the series of removals; and

(3) Additional factors, such as the length of each removal, the total amount of time the child has been removed, and the proximity of the removals to one another.

41.536(2) Rules of construction.

a. The public agency determines on a case-by-case basis whether a pattern of removals constitutes a change of placement.

b. This determination is subject to review through due process and judicial proceedings.

c. Nothing in this rule shall be construed to prohibit LEAs from establishing policies that a change of placement occurs on the eleventh cumulative day of removal, regardless of the factors set forth in 41.536(1)"b."

41.536(3) In-school suspensions and other actions. In determining whether an in-school suspension or other disciplinary action is to be considered a removal for purposes of this rule, an in-school suspension or other disciplinary action will not be considered a removal if all three of the following questions are answered in the affirmative:

a. Will the child be able to appropriately participate in the general education curriculum?

b. Will the child be able to receive the services specified in the child's IEP?

c. Will the child be able to participate with children without disabilities to the extent provided in the child's current placement?

281—41.537(256B,34CFR300) State enforcement mechanisms. Notwithstanding 41.506(2)"g" and 41.510(4)"b," which provide for judicial enforcement of a written agreement reached as a result of mediation or a resolution meeting, there is nothing in Part B of the Act that would prevent the department from using other mechanisms to seek enforcement of that agreement, such as the state complaint procedure, provided that use of those mechanisms is not mandatory and does not delay or deny a party the right to seek enforcement of the written agreement in a state court of competent jurisdiction or in a district court of the United States.

281—41.538 to **41.599** Reserved.

DIVISION VIII
MONITORING, ENFORCEMENT, CONFIDENTIALITY, AND PROGRAM INFORMATION

281—41.600(256B,34CFR300) State monitoring and enforcement.

41.600(1) General. The state must monitor the implementation of Part B of the Act and this chapter, enforce this chapter in accordance with rule 41.604(256B,34CFR300), and annually report on performance under Part B of the Act and this chapter.

41.600(2) Primary focus of monitoring activity. The primary focus of the state's monitoring activities must be on the following:

a. Improving educational results and functional outcomes for all children with disabilities; and

b. Ensuring that public agencies meet the program requirements under Part B of the Act, with a particular emphasis on those requirements that are most closely related to improving educational results for children with disabilities.

41.600(3) Indicators of performance and compliance. As a part of its responsibilities under subrule 41.600(1), the state must use quantifiable indicators and such qualitative indicators as are needed to adequately measure performance in the priority areas identified in subrule 41.600(4) and the indicators established by the Secretary for the state performance plans.

41.600(4) Priority indicators. The state must monitor the LEAs located in the state, using quantifiable indicators in each of the following priority areas and using such qualitative indicators as are needed to adequately measure performance in those areas:

a. Provision of FAPE in the least restrictive environment.

b. State exercise of general supervision, including child find, effective monitoring, the use of resolution meetings, mediation, and a system of transition services as defined in rule 41.43(256B,34CFR300) and in 20 U.S.C. 1437(a)(9).

c. Disproportionate representation of racial and ethnic groups in special education and related services, to the extent the representation is the result of inappropriate identification.

281—41.601(256B,34CFR300) State performance plans and data collection.

41.601(1) General. Each state must have in place a performance plan that evaluates the state's efforts to implement the requirements and purposes of Part B of the Act and describes how the state will improve such implementation.

a. Each state must submit the state's performance plan to the Secretary for approval in accordance with the approval process described in Section 616(c) of the Act.

b. Each state must review its state performance plan at least once every six years and submit any amendments to the Secretary.

c. As part of the state performance plan, each state must establish measurable and rigorous targets for the indicators established by the Secretary under the priority areas described in 34 CFR Section 300.600(d).

41.601(2) Data collection.

a. The state must collect valid and reliable information as needed to report annually to the Secretary on the indicators established by the Secretary for the state performance plans.

b. If the Secretary permits states to collect data on specific indicators through state monitoring or sampling, and the state collects the data through state monitoring or sampling, the state must collect data on those indicators for each LEA at least once during the period of the state performance plan.

281—41.602(256B,34CFR300) State use of targets and reporting.

41.602(1) General. The state shall use the targets established in the state's performance plan under rule 41.601(256B,34CFR300) and the priority areas described in subrule 41.600(4) to analyze the performance of each LEA.

41.602(2) Public reporting and privacy.

a. Public report. The state must:

(1) Report annually to the public on the performance of each LEA located in the state on the targets in the state's performance plan; and

(2) Make the state's performance plan available through public means, including by posting on the Web site of the department, distribution to the media, and distribution through public agencies.

(3) If the state collects performance data through state monitoring or sampling, the state must include in its report under 41.602(2)"a"(1) the most recently available performance data on each LEA, and the date the data were obtained.

b. State performance report. The state shall report annually to the Secretary on the performance of the state under the state's performance plan.

c. Privacy. The state shall not report to the public or the Secretary any information on performance that would result in the disclosure of personally identifiable information about individual children or where the available data are insufficient to yield statistically reliable information.

281—41.603(256B,34CFR300) Department review and determination regarding public agency performance.

41.603(1) Review. The state shall annually review the performance of each LEA and AEA, including but not limited to data on indicators identified in the state's performance plan, information obtained through monitoring visits, and any other public information made available.

41.603(2) Determination. Based on the information obtained and reviewed by the state, the state shall determine whether each LEA and AEA:

a. Meets the requirements and purposes of Part B of the Act and of this chapter;

b. Needs assistance in implementing the requirements of Part B of the Act and of this chapter;

c. Needs intervention in implementing the requirements of Part B of the Act and of this chapter; or

d. Needs substantial intervention in implementing the requirements of Part B of the Act and of this chapter.

41.603(3) Criteria for determination. The department shall develop criteria for making the determinations required by subrule 41.603(2).

41.603(4) Variance of determination. In making the determination required by subrule 41.603(2), the SEA in its discretion may adjust or vary from the criteria described in subrule 41.603(3) based on unusual, unanticipated, or extraordinary aggravating or mitigating factors, on a case-by-case basis.

41.603(5) Notice and opportunity for a hearing. For determinations made under 41.603(2)"a" or "b," the state shall provide reasonable notice of its determination. For determinations made under 41.603(2)"c" or "d," the state shall provide reasonable notice of its determination and may, in its sound discretion, grant an informal hearing to an AEA or LEA; however, if withholding of funds is a remedy associated with a particular determination, the state shall provide a hearing under rule 41.605(256B,34CFR300). Under any hearing granted under this rule or rule 41.605(256B, 34CFR300), the AEA or LEA must demonstrate that the state abused its discretion in making the determination described in subrule 41.603(2).

281—41.604(256B,34CFR300) Enforcement.

41.604(1) Needs assistance. If the state determines for two consecutive years that an LEA or AEA needs assistance under 41.603(2)"b" in implementing the requirements of Part B of the Act, the state may take one or more of the following actions:

a. Advise the LEA or AEA of available sources of technical assistance that may help the LEA or AEA to address the areas in which it needs assistance, which may include assistance from the Iowa department of education, other state agencies, technical assistance providers approved by the Secretary, and other federally funded and state-funded nonprofit agencies, and require it to work with appropriate entities. Such technical assistance may include any of the following:

(1) The provision of advice by experts to address the areas in which the LEA or AEA needs assistance, including explicit plans for addressing the area for concern within a specified period of time;

(2) Assistance in identifying and implementing professional development, instructional strategies, and methods of instruction that are based on scientifically based research;

(3) Designating and using distinguished superintendents, principals, special education administrators, special education teachers and other teachers to provide advice, technical assistance, and support; and

(4) Devising additional approaches to providing technical assistance, such as collaborating with institutions of higher education, educational service agencies, national centers of technical assistance supported under Part D of the Act, and private providers of scientifically based technical assistance.

b. Identify the LEA or AEA as a high-risk grantee and impose special conditions on its grant under Part B of the Act.

41.604(2) Needs intervention. If the state determines for three or more consecutive years that an LEA or AEA needs intervention under 41.603(2)"c" in implementing the requirements of Part B of the Act, the following shall apply:

a. The state may take any of the actions described in subrule 41.604(1).

b. The state may take one or more of the following actions:

(1) Require the LEA or AEA to prepare a corrective action plan or improvement plan if the state determines that the LEA or AEA should be able to correct the problem within one year.

(2) Withhold, in whole or in part, any further payments to the AEA or LEA under Part B of the Act.

41.604(3) Needs substantial intervention. Notwithstanding subrule 41.604(1) or 41.604(2), at any time that the state determines that an LEA or AEA needs substantial intervention in implementing the requirements of Part B of the Act or of this chapter or that there is a substantial failure to comply with any condition of an LEA's eligibility or an AEA's eligibility under Part B of the Act or this chapter, the state may take one or more of the following actions:

a. Withhold, in whole or in part, any further payments to the LEA or AEA under Part B of the Act.

b. Refer the matter for appropriate enforcement action, which may include referral to the Iowa department of justice or the auditor of state.

41.604(4) Rule of construction. The listing of specific enforcement mechanisms in this rule shall not be construed to limit the enforcement mechanisms at the state's disposal in its enforcement of this rule or any other rule in this chapter.

281—41.605(256B,34CFR300) Withholding funds.

41.605(1) General. As a consequence of a determination made under rule 41.603(256B,34CFR300) or enforcement of any provision of Part B of the Act and this chapter, the state may withhold some or all of the funds from an AEA or LEA

or a program or service of an AEA or LEA, or may direct an AEA to withhold all or some funds from an LEA or a program or service of an LEA.

41.605(2) Hearing. If the state intends to withhold funds, the state shall provide notice and an opportunity for a hearing to the AEA or LEA. If a hearing is requested, the state may suspend payments to an AEA or LEA, or suspend the authority of the AEA or LEA to obligate funds, or both, until a decision is made after the hearing. A hearing under this rule, which shall not be a contested case under Iowa Code chapter 17A, shall be requested within 30 days of notice of withholding by requesting a hearing before the director of the Iowa department of education or the director's designee. The presiding officer at the hearing shall consider the purposes of Part B of the Act and of this chapter and shall determine whether the state abused its discretion in its decision under subrule 41.605(1).

41.605(3) Reinstatement. If the LEA or AEA substantially rectifies the condition that prompted the initial withholding under subrule 41.605(1), then the state may reinstate payments to the LEA or AEA. If an LEA or AEA disagrees with the state's decision that it has not substantially rectified the condition that prompted the initial withholding under subrule 41.605(1), the LEA or AEA may request a hearing under subrule 41.605(2).

281—41.606(256B,34CFR300) Public attention. Any LEA or AEA that has received notice under 41.603(2)"b," "c," or "d" must, by means of a public notice, take such measures as may be necessary to notify the public within the LEA or AEA of such notice and of the pendency of an action taken pursuant to rule 41.604(256B,34CFR300).

281—41.607 Reserved.

281—41.608(256B,34CFR300) State enforcement.

41.608(1) Prohibition on reduction of maintenance of effort. If the state determines that an LEA or AEA is not meeting the requirements of Part B of the Act, including the targets in the state's performance plan, the state must prohibit the LEA or AEA from reducing its maintenance of effort under rule 41.203(256B,34CFR300) for any fiscal year.

41.608(2) Rule of construction. Nothing in this chapter shall be construed to restrict the state from utilizing any other authority available to it to monitor and enforce the requirements of Part B of the Act or of this chapter.

281—41.609(256B,34CFR300) State consideration of other state or federal laws. In making the determinations required by rule 41.603(256B,34CFR300), in ordering actions pursuant to rule 41.604(256B,34CFR300), and in taking any other action under this chapter, the department may consider whether any agency has complied with any other applicable state or federal law, including but not limited to education law or disability law, or with any corrective action ordered by any competent authority for violation of any such law.

281—41.610(256B,34CFR300) Confidentiality. The state shall take appropriate action, in accordance with Section 444 of the General Education Provisions Act, to ensure the protection of the confidentiality of any personally identifiable data, information, and records collected or maintained by the state and by LEAs and AEAs pursuant to Part B of the Act and this chapter, and consistent with rules 41.611(256B, 34CFR300) to 41.626(256B,34CFR300).

281—41.611(256B,34CFR300) Definitions. The following definitions apply to rules 41.611(256B,34CFR300) to 41.625(256B,34CFR300).

41.611(1) Destruction. "Destruction" means physical destruction or removal of personal identifiers from information so that the information is no longer personally identifiable.

41.611(2) Education records. "Education records" means the type of records covered under the definition of "education records" in 34 CFR Part 99 (the regulations implementing the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. 1232g (FERPA)).

41.611(3) Participating agency. "Participating agency" means any agency or institution that collects, maintains, or uses personally identifiable information, or from which information is obtained, under Part B of the Act or this chapter.

281—41.612(256B,34CFR300) Notice to parents.

41.612(1) General. The department must give notice that is adequate to fully inform parents about the requirements of rule 41.123(256B,34CFR300), including the following information:

a. A description of the extent that the notice is given in the native languages of the various population groups in the state;

b. A description of the children on whom personally identifiable information is maintained, the types of information sought, the methods the state intends to use in gathering the information, including the sources from whom information is gathered, and the uses to be made of the information;

c. A summary of the policies and procedures that participating agencies must follow regarding storage, disclosure to third parties, retention, and destruction of personally identifiable information; and

d. A description of all of the rights of parents and children regarding this information, including the rights under FERPA and implementing regulations in 34 CFR Part 99.

41.612(2) Media announcements required. Before any major identification, location, or evaluation activity, the notice must be published or announced in newspapers or other media, or both, with circulation adequate to notify parents throughout the state of the activity.

281—41.613(256B,34CFR300) Access rights.

41.613(1) General. Each participating agency must permit parents to inspect and review any education records relating to their children that are collected, maintained, or used by the agency under this chapter. The agency must comply with a request without unnecessary delay and before any meeting regarding an IEP, or any hearing pursuant to rule 41.507(256B,34CFR300) or rules 41.530(256B,34CFR300) to 41.532(256B,34CFR300), or resolution session pursuant to rule 41.510(256B,34CFR300), and in no case more than 45 days after the request has been made.

41.613(2) Extent of right to inspect and review. The right to inspect and review education records under this rule includes the following:

a. The right to a response from the participating agency to reasonable requests for explanations and interpretations of the records;

b. The right to request that the agency provide copies of the records containing the information if failure to provide those copies would effectively prevent the parent from exercising the right to inspect and review the records; and

c. The right to have a representative of the parent inspect and review the records.

41.613(3) Who may inspect and review. An agency may presume that the parent has authority to inspect and review records relating to the parent's child unless the agency has been advised that the parent does not have the authority under

applicable state law governing such matters as guardianship, separation, and divorce.

281—41.614(256B,34CFR300) Record of access. Each participating agency must keep a record of parties that obtain access to education records collected, maintained, or used under Part B of the Act, except access by parents and authorized employees of the participating agency, including the name of the party, the date access was given, and the purpose for which the party is authorized to use the records.

281—41.615(256B,34CFR300) Records on more than one child. If any education record includes information on more than one child, the parents of those children have the right to inspect and review only the information relating to their child or to be informed of that specific information.

281—41.616(256B,34CFR300) List of types and locations of information. Each participating agency must provide parents on request a list of the types and locations of education records collected, maintained, or used by the agency.

281—41.617(256B,34CFR300) Fees.

41.617(1) Fees for copies in certain circumstances. Each participating agency may charge a fee for copies of records that are made for parents under this chapter if the fee does not effectively prevent the parents from exercising their right to inspect and review those records.

41.617(2) No fees permitted for record retrieval. A participating agency may not charge a fee to search for or to retrieve information under this chapter.

281—41.618(256B,34CFR300) Amendment of records at parent's request.

41.618(1) Parent may request amendment. A parent who believes that information in the education records collected, maintained, or used under this chapter is inaccurate or misleading or violates the privacy or other rights of the child may request the participating agency that maintains the information to amend the information.

41.618(2) Agency to act on parent's request. The agency must decide whether to amend the information in accordance with the request within a reasonable period of time of receipt of the request.

41.618(3) Agency to inform parent of hearing rights. If the agency decides to refuse to amend the information in accordance with the request, it must inform the parent of the refusal and advise the parent of the right to a hearing under rule 41.619(256B,34CFR300).

281—41.619(256B,34CFR300) Opportunity for a hearing. The agency must, on request, provide an opportunity for a hearing to challenge information in education records to ensure that it is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child.

281—41.620(256B,34CFR300) Result of hearing.

41.620(1) Information to be amended. If, as a result of the hearing, the agency decides that the information is inaccurate, misleading or otherwise in violation of the privacy or other rights of the child, it must amend the information accordingly and so inform the parent in writing.

41.620(2) Information not to be amended. If, as a result of the hearing, the agency decides that the information is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child, it must inform the parent of the parent's right to place in the records the agency maintains on the child a statement commenting on the information or setting forth any reasons for disagreeing with the decision of the agency.

41.620(3) Explanation placed in student records. Any explanation placed in the records of the child under this rule must be maintained by the agency as part of the records of the child as long as the record or contested portion is maintained by the agency; and, if the records of the child or the contested portion is disclosed by the agency to any party, the explanation must also be disclosed to the party.

281—41.621(256B,34CFR300) Hearing procedures. A hearing held under rule 41.619(256B,34CFR300) must be conducted according to the procedures in 34 CFR 99.22.

281—41.622(256B,34CFR300) Consent.

41.622(1) When parental consent required. Parental consent must be obtained before personally identifiable information is disclosed to parties, other than officials of participating agencies in accordance with subrule 41.622(2), unless the information is contained in education records and the disclosure is authorized without parental consent under 34 CFR Part 99.

41.622(2) When parental consent not required. Except as provided in subrules 41.622(3) and 41.622(4), parental consent is not required before personally identifiable information is released to officials of participating agencies for purposes of meeting a requirement of this chapter.

41.622(3) Parental consent required related to transition. Parental consent, or the consent of an eligible child who has reached the age of majority under state law, must be obtained before personally identifiable information is released to officials of participating agencies providing or paying for transition services in accordance with 41.321(2)"c."

41.622(4) Parental consent required relating to students enrolled in certain private schools. If a child is enrolled or is going to enroll in a private school that is not located in the LEA and AEA of the parent's residence, parental consent must be obtained before any personally identifiable information about the child is released between officials in the LEA and AEA where the private school is located and officials in the LEA and AEA of the parent's residence.

281—41.623(256B,34CFR300) Safeguards. Each participating agency must protect the confidentiality of personally identifiable information at collection, storage, disclosure, and destruction stages. One official at each participating agency must assume responsibility for ensuring the confidentiality of any personally identifiable information. All persons collecting or using personally identifiable information must receive training or instruction regarding the state's policies and procedures under rule 41.123(256B,34CFR300) and 34 CFR Part 99. Each participating agency must maintain, for public inspection, a current listing of the names and positions of those employees within the agency who may have access to personally identifiable information.

281—41.624(256B,34CFR300) Destruction of information.

41.624(1) Parents to be informed when information no longer required. The public agency must inform parents when personally identifiable information collected, maintained, or used under Part B of the Act or this chapter is no longer needed to provide educational services to the child.

41.624(2) Mandatory and permissive destruction of information. The information must be destroyed at the request of the parents. However, a permanent record of a student's name, address, and telephone number, his or her grades, attendance record, classes attended, grade level completed,

and year completed may be maintained without time limitation.

281—41.625(256B,34CFR300) Children's rights.

41.625(1) General. The state must have in effect policies and procedures regarding the extent to which children are afforded rights of privacy similar to those afforded to parents, taking into consideration the age of the child and type or severity of disability.

41.625(2) Transfer of rights under FERPA. Under the regulations for FERPA in 34 CFR 99.5(a), the rights of parents regarding education records are transferred to the student at the age of 18.

41.625(3) Transfer of rights under Part B of the Act. If the rights accorded to parents under Part B of the Act are transferred to a student who reaches the age of majority, consistent with rule 41.520(256B,34CFR300), the rights regarding educational records in rules 41.613(256B,34CFR300) to 41.624(256B,34CFR300) must also be transferred to the student. However, the public agency must provide any notice required under Section 615 of the Act to the student and the parents.

281—41.626(256B,34CFR300) Enforcement. The state must have in effect policies and procedures, including sanctions that the state uses, to ensure that its policies and procedures consistent with rules 41.611(256B,34CFR300) to 41.625(256B,34CFR300) are followed and that the requirements of the Act and the rules in this chapter are met.

281—41.627 to **41.639** Reserved.

281—41.640(256B,34CFR300) Annual report of children served—report requirement. The SEA must annually report to the Secretary on the information required by Section 618 of the Act at the times specified by the Secretary, and on forms provided by the Secretary.

281—41.641(256B,34CFR300) Annual report of children served—information required in the report.

41.641(1) Date of count. For purposes of the annual report required by Section 618 of the Act and rule 41.640(256B,34CFR300), the state and the Secretary of the Interior must count and report the number of children with disabilities receiving special education and related services on any date between October 1 and December 1 of each year.

41.641(2) Child's age. For the purpose of this reporting provision, a child's age is the child's actual age on the date of the child count.

41.641(3) Count each child under only one disability category. The SEA may not report a child under more than one disability category.

41.641(4) Child with more than one disability. If a child with a disability has more than one disability, the SEA must report that child in accordance with the following procedure:

a. If a child has only two disabilities and those disabilities are deafness and blindness, and the child is not reported as having a developmental delay, that child must be reported under the category "deaf-blindness."

b. A child who has more than one disability and is not reported as having deaf-blindness or as having a developmental delay must be reported under the category "multiple disabilities."

281—41.642(256B,34CFR300) Data reporting.

41.642(1) Protection of personally identifiable data. The data described in Section 618(a) of the Act and in rule 41.641(256B,34CFR300) must be publicly reported by each state in a manner that does not result in disclosure of data identifiable to individual children.

41.642(2) Sampling permitted. The Secretary permits the SEA to obtain data in Section 618(a) of the Act through sampling.

281—41.643(256B,34CFR300) Annual report of children served—certification. The SEA must include in its report a certification signed by an authorized official of the agency that the information provided under rule 41.640(256B, 34CFR300) is an accurate and unduplicated count of children with disabilities receiving special education and related services on the dates in question.

281—41.644(256B,34CFR300) Annual report of children served—criteria for counting children. The SEA may include in its report children with disabilities who are enrolled in a school or program that is operated or supported by a public agency, and that provides them with both special education and related services that meet state standards; provides them only with special education, if a related service is not required, that meets state standards; or, in the case of children with disabilities enrolled by their parents in private schools, counts those children who are eligible under the Act and receive special education or related services or both that meet state standards under rules 41.132(256,256B,34CFR300) to 41.144(256,256B,34CFR300).

281—41.645(256B,34CFR300) Annual report of children served—other responsibilities of the SEA. In addition to meeting the other requirements of rules 41.640(256B, 34CFR300) to 41.644(256B,34CFR300), the SEA must establish procedures to be used by LEAs and other educational institutions in counting the number of children with disabilities receiving special education and related services; set dates by which those agencies and institutions must report to the SEA to ensure that the state complies with rule 41.640(256B, 34CFR300); obtain certification from each agency and institution that an unduplicated and accurate count has been made; aggregate the data from the count obtained from each agency and institution, and prepare the reports required under rules 41.640(256B,34CFR300) to 41.644(256B,34CFR300); and ensure that documentation is maintained that enables the state and the Secretary to audit the accuracy of the count.

281—41.646(256B,34CFR300) Disproportionality.

41.646(1) General. The state shall collect and examine data to determine if significant disproportionality based on race and ethnicity is occurring in the state and the LEAs of the state with respect to the following:

a. The identification of children as children with disabilities, including the identification of children as children with disabilities in accordance with a particular impairment described in Section 602(3) of the Act;

b. The placement in particular educational settings of these children; and

c. The incidence, duration, and type of disciplinary actions, including suspensions and expulsions.

41.646(2) Review and revision of policies, practices, and procedures. In the case of a determination of significant disproportionality with respect to the identification of children as children with disabilities, or the placement in particular educational settings of these children, or the incidence, duration, and type of disciplinary actions, in accordance with subrule 41.646(1), the state must proceed as follows:

a. Provide for the review and, if appropriate, revision of the policies, procedures, and practices used in the identifica-

tion or placement to ensure that the policies, procedures, and practices comply with the requirements of the Act;

b. Require any LEA identified under subrule 41.646(1) to reserve the maximum amount of funds under rule 41.226(256B,34CFR300) to provide comprehensive coordinated early intervening services to serve children in the LEA, particularly, but not exclusively, children in those groups that were significantly overidentified under subrule 41.646(1); and

c. Require the LEA to publicly report on the revision of policies, practices, and procedures described under 41.646(2)"a."

281—41.647 to **41.699** Reserved.

DIVISION IX
ALLOCATIONS BY THE SECRETARY TO THE STATE

281—41.700 to **41.703** Reserved.

281—41.704(256B,34CFR300) State-level activities. The state may engage in such activities permitted by 34 CFR Section 300.704, including the establishment of an LEA high-cost fund under 34 CFR Section 300.704(c).

281—41.705(256B,34CFR300) Subgrants to AEAs. The state shall make subgrants to AEAs in a manner consistent with 34 CFR Section 300.705.

281—41.706 to **41.799** Reserved.

DIVISION X
PRESCHOOL GRANTS FOR CHILDREN WITH DISABILITIES

281—41.800(256B,34CFR300) General rule. The Secretary provides grants under Section 619 of the Act to assist states to provide special education and related services in accordance with Part B of the Act to children with disabilities aged three through five years; and, at a state's discretion, to two-year-old children with disabilities who will turn three during the school year.

281—41.801 and **41.802** Reserved.

281—41.803(256B,34CFR300) Definition of state. As used in this division, "state" means each of the 50 states, the District of Columbia, and the Commonwealth of Puerto Rico.

281—41.804(256B,34CFR300) Eligibility. A state is eligible for a grant under Section 619 of the Act if the state is eligible under Section 612 of the Act to receive a grant under Part B of the Act and makes FAPE available to all children with disabilities, aged three through five, residing in the state.

281—41.805 Reserved.

281—41.806(256B,34CFR300) Eligibility for financial assistance. No state or LEA, or other public institution or agency, may receive a grant or enter into a contract or cooperative agreement under Subpart 2 or 3 of Part D of the Act that relates exclusively to programs, projects, and activities pertaining to children aged three through five years, unless the state is eligible to receive a grant under Section 619(b) of the Act.

281—41.807 to **41.811** Reserved.

281—41.812(256B,34CFR300) Reservation for state activities. The state may reserve amounts consistent with 34 CFR Section 300.812 for administration and other state-level activities.

281—41.813(256B,34CFR300) State administration.

41.813(1) General. For the purpose of administering Section 619 of the Act, including the coordination of activities under Part B of the Act with and providing technical assistance to other programs that provide services to children with disabilities, the state may use not more than 20 percent of the maximum amount the state may reserve under rule 41.812(256B,34CFR300) for any fiscal year.

41.813(2) Use for administering Part C. Funds described in subrule 41.813(1) may also be used for the administration of Part C of the Act.

281—41.814(256B,34CFR300) Other state-level activities. The state must use any funds the state reserves under rule 41.812(256B,34CFR300) and does not use for administration under rule 41.813(256B,34CFR300) for other state-level activities, consistent with 34 CFR Section 300.814.

281—41.815(256B,34CFR300) Subgrants to AEAs. Each state that receives a grant under Section 619 of the Act for any fiscal year must distribute all of the grant funds that the state does not reserve under rule 41.812(256B,34CFR300) to AEAs in the state that have established their eligibility under Section 613 of the Act.

281—41.816(256B,34CFR300) Allocations to AEAs. The state must allocate to AEAs the amount described in rule 41.815(256B,34CFR300), consistent with 34 CFR Section 300.816.

281—41.817(256B,34CFR300) Reallocation of AEA funds. If the state determines that an AEA is adequately providing FAPE to all children with disabilities aged three to five residing in the area served by the AEA with state and local funds, the state may reallocate any portion of the funds under Section 619 of the Act that are not needed by that AEA to provide FAPE to other AEAs in the state that are not adequately providing special education and related services to all children with disabilities aged three through five residing in the areas the other AEAs serve.

281—41.818(256B,34CFR300) Part C of the Act inapplicable. Part C of the Act does not apply to any child with a disability receiving FAPE, in accordance with Part B of the Act, with funds received under Section 619 of the Act.

281—41.819 to **41.899** Reserved.

DIVISION XI
ADDITIONAL RULES CONCERNING FINANCE
AND PUBLIC ACCOUNTABILITY

281—41.900(256B,282) Scope. In addition to other rules in this chapter, rules 41.901(256B,282) to 41.908(256B,282) concern finance and accountability for special education and related services.

281—41.901(256B,282) Records and reports. Each agency shall maintain sufficient records and reports for audit by the department. Records and reports shall include at a minimum: licensure (certification) and endorsements or recognition requirements for all special education personnel under rules 41.401(256B,34CFR300) to 41.403(256B); all IEP and IFSP meetings and three-year reevaluations for each eligible individual; and data required for federal and state reporting.

281—41.902(256B,282) Audit. The department reserves the right to audit the records of any agency providing special education for eligible individuals and utilizing funds generated under Iowa Code chapters 256B, 273 and 282.

281—41.903(256B,282) Contractual agreements.

41.903(1) General. Any special education instructional program not provided directly by an LEA or any special education support service not provided by an AEA can only be provided through a contractual agreement. The board shall approve contractual agreements for AEA-operated special education instructional programs and contractual agreements permitting special education support services to be provided by agencies other than the AEA.

41.903(2) Specific requirements. Each agency contracting with other agencies to provide special education and related services for individuals or groups of individuals shall maintain responsibility for individuals receiving such special education and related services by:

a. Ensuring that all the requirements related to the development of each eligible individual's IEP are met.

b. Requiring and reviewing periodic progress reports to ensure the adequacy and appropriateness of the special education and related services provided.

c. Conditioning payments on delivery of special education and related services in accordance with the eligible individual's IEP and in compliance with these rules.

281—41.904(256B) Research and demonstration projects and models for special education program development. Applications for aid, whether provided directly from state or federal funds, for special education research and demonstration projects and models for program development shall be submitted to the department.

281—41.905(256B,273) Additional special education. Additional special education made available through the provisions of Iowa Code section 273.3 shall be furnished in a manner consistent with these rules.

281—41.906(256B,273,282) Extended school year services. Approved extended school year programs for special education support services, when provided by the AEA for eligible individuals, shall be funded through procedures as provided for special education support services. Approved extended school year instructional programs shall be funded through procedures as provided for special education instructional programs.

281—41.907(256B,282,34CFR300,303) Program costs.

41.907(1) Nonresident individual. Subject to subrule 41.131(6), the program costs charged by an LEA or an AEA for an instructional program for a nonresident eligible individual shall be the actual costs incurred in providing that program.

41.907(2) Contracted special education. An AEA or LEA may make provisions for resident eligible individuals through contracts with public or private agencies that provide appropriate and approved special education. The program costs charged by or paid to a public or private agency for special education instructional programs shall be the actual costs incurred in providing that program.

41.907(3) LEA responsibility. The resident LEA shall be liable only for instructional costs incurred by an agency for those individuals certified as eligible in accordance with these rules unless required by 34 CFR Section 300.104.

41.907(4) Support service funds. Support service funds may not be utilized to supplement any special education programs authorized to use special education instructional funds generated through the weighting plan.

41.907(5) Responsibility for special education for children living in a foster care facility. For eligible individuals who are living in a licensed child foster care facility as defined in Iowa Code section 237.1 or in a facility as defined in Iowa Code section 125.2, the LEA in which the facility is located must provide special education if the facility does not maintain a school. The costs of the special education, however, shall be paid by the school district of residence of the eligible individual. If the school district of residence of the eligible individual cannot be determined and this individual is not included in the weighted enrollment of any LEA in the state, the LEA in which the facility is located may certify the costs to the director of education by August 1 of each year for the preceding fiscal year. Payment shall be made from the general fund of the state.

41.907(6) Responsibility for special education for individuals after termination of parental rights. For eligible individuals placed by the district court, and for whom parental rights have been terminated by the district court, the LEA in which the facility or home is located must provide special education. Costs shall be certified to the director of education by August 1 of each year for the preceding fiscal year by the director of the AEA in which this individual has been placed. Payment shall be made from the general fund of the state.

41.907(7) Proper use of special education instructional and support service funds. Special education instructional funds generated through the weighting plan may be utilized to provide special education instructional services both in state and out of state with the exceptions of itinerant instructional services and special education consultant services which shall utilize special education support service funds for both in-state and out-of-state placements.

41.907(8) Funding of ECSE instructional options. Eligible individuals below the age of six may be designated as full-time or part-time students depending on the needs of the child. Funding shall be based on individual needs as determined by the IEP team. Special education instructional funds generated through the weighting plan can be used to pay tuition, transportation, and other necessary special education costs, but shall not be used to provide child care.

a. Full-time ECSE instructional services shall include 20 hours or more of instruction per week. The total hours of participation in special education and general education may be combined to constitute a full-time program.

b. Part-time ECSE instructional services shall include up to 20 hours of instruction per week. The total hours of participation in special education and general education may be combined to constitute a part-time program.

c. Funds under 20 U.S.C. Chapter 33, Part C, may be used to provide FAPE, in accordance with these rules, to eligible individuals from their third birthday to the beginning of the following school year.

41.907(9) Funding for instructional services. After an LEA board approves a delivery system for instructional services as described in subrule 41.408(2), the director, in accordance with Iowa Code sections 256B.9 and 273.5, will assign the appropriate special education weighting to each eligible individual by designating a level of service. The level of service refers to the relationship between the general education program and specially designed instruction for an eligible individual. The level of service is determined based on an eligible individual's educational need and independent of the environment in which the specially designed instruction is provided. The level of service assigned shall not be a factor in a services or placement decision, and shall be made only after those decisions have been made. One of three levels of service shall be assigned by the director:

a. Level I. A level of service that provides specially designed instruction for a limited portion or part of the educational program. A majority of the general education program is appropriate. This level of service includes modifications and adaptations to the general education program. (Reference Iowa Code section 256B.9(1)"b")

b. Level II. A level of service that provides specially designed instruction for a majority of the educational program. This level of service includes substantial modifications, adaptations, and special education accommodations to the general education program. (Reference Iowa Code section 256B.9(1)"c")

c. Level III. A level of service that provides specially designed instruction for most or all of the educational program. This level of service requires extensive redesign of curriculum and substantial modification of instructional techniques, strategies and materials. (Reference Iowa Code section 256B.9(1)"d")

281—41.908(256B,282) Accountability. The responsible agency shall provide special education and related services in accordance with the individual's IEP; but the agency, teacher, or other person is not held accountable if an individual does not achieve the growth projected in the annual goals and objectives of the IEP, so long as the individual's IEP was reasonably calculated to confer education benefit and was implemented. Nothing in this rule or this chapter shall be construed to create a right of action against any individual.

281—41.909 to **41.999** Reserved.

DIVISION XII
PRACTICE BEFORE MEDIATORS AND
ADMINISTRATIVE LAW JUDGES

281—41.1000(17A,256B,290) Applicability. In addition to rules in Division VII, this division applies to matters under this chapter brought before administrative law judges or mediators.

281—41.1001(17A,256B,290) Definitions. As used in this chapter:

41.1001(1) Administrative law judge. "Administrative law judge" means an individual designated by the director of education from the list of approved administrative law judges to hear the presentation of evidence and, if appropriate, oral arguments in the hearing.

41.1001(2) Appeal. In Iowa practice and for purposes of these rules, an "appeal" is synonymous with a "due process complaint."

41.1001(3) Appellant. "Appellant" means a party that files a due process complaint under this chapter.

41.1001(4) Appellee. "Appellee" means a party that opposes the due process complaint filed by the appellant.

41.1001(5) Party. "Party" means the appellant, appellee and third parties named or admitted as a party.

281—41.1002(256B,34CFR300) Special education preappeal conference.

41.1002(1) Procedures. The parent, the LEA or the AEA may request a special education preappeal conference on any decision relating to the identification, evaluation, educational placement, or the provision of FAPE. The preappeal conference shall comply with the requirements of rule 41.506(256B,34CFR300).

a. A request for a special education preappeal conference shall be made in the form of a letter which identifies the student, LEA and AEA, sets forth the facts, the issues of concern, or the reasons for the conference. The letter shall be mailed to the department.

b. Within five business days of receipt of the request for the conference, the department shall contact all pertinent parties to determine whether participation is desired. A checklist shall be sent by the department to the LEA or AEA to receive information about the student.

c. A preappeal conference will be scheduled and held at a time and place reasonably convenient to all parties involved. Written notice will be sent to all parties by the department.

d. The LEA or the AEA shall submit the special education preappeal checklist to the department and shall provide a copy to the parent within ten business days after receiving the request.

e. The student's complete school record shall be made available for review by the parent prior to the conference, if requested in writing at least ten calendar days before the preappeal.

f. The individual's complete school record shall be available to the participants at the preappeal conference.

g. A mediator provided by the department shall preside over the preappeal conference.

h. If an agreement is reached, a document meeting the requirements of 41.506(2)"f" shall be executed.

i. If agreement is not reached at the special education preappeal conference, all parties shall be informed of the procedures for filing a due process complaint.

41.1002(2) Placement during proceedings. Pursuant to rule 41.518(256B,34CFR300), unless the parties agree otherwise, the student involved in the preappeal must remain in the student's present educational placement during the pendency of the proceedings.

41.1002(3) Withdrawals or automatic closures. The initiating party may request a withdrawal of the preappeal prior to the conference. Automatic closure of the department file will occur if any of the following circumstances apply:

a. One of the parties refuses to participate in the voluntary process.

b. The preappeal conference is held but parties are not able to reach an agreement. There will be a ten-calendar-day waiting period after the preappeal to continue the placement as described in subrule 41.1002(2) in the event a party wishes to pursue a hearing.

c. The preappeal conference is held and parties are able to reach an agreement and the agreement does not specify a withdrawal date. If a withdrawal date is part of the agreement, an agency withdrawal will occur on the designated date.

41.1002(4) Confidentiality of discussions. Discussions that occur during the special education preappeal conference must be confidential, except as may be provided in Iowa Code chapter 679C, and may not be used as evidence in any subsequent due process hearings or civil proceedings; however, the parties may stipulate to agreements reached at the conference. Prior to the start of the conference, the parties and the mediator will be required to sign an Agreement to Mediate form containing this confidentiality provision.

281—41.1003(17A,256B) Procedures concerning due process complaints.

41.1003(1) AEA as a party. The appropriate AEA serving the individual shall be deemed to be a party with the LEA whether or not specifically named by the parent or agency filing the appeal.

41.1003(2) Individual served by contract with another agency. In instances where the individual is served through a

contract with another agency, the school district of residence of the individual shall be deemed a party.

41.1003(3) Notice. The director of education or designee shall, within five business days after the receipt of the appeal, notify the proper officials with the LEA and the AEA of the filing of the due process complaint and shall request in writing that the proper school officials file with the department all records relevant to the due process complaint. The officials shall, within 20 business days after receipt of the request, file with the department all records relevant to the decision appealed.

41.1003(4) Free or low-cost legal services. The department shall inform the parent of any free or low-cost legal and other relevant services available in the area if the parent requests the information or the parent or the agency initiates a hearing.

41.1003(5) Written notice. The director of education or designee shall provide notice in writing delivered by fax, personal service as in civil actions, or by certified mail, return receipt requested, to all parties at least ten calendar days prior to the hearing unless the ten-day period is waived by both parties. Such notice shall include the time and the place where the matter of appeal shall be heard. A copy of the appeal hearing rules shall be included with the notice.

41.1003(6) Mediation conference. The department shall contact the parties to determine whether they wish to participate in a mediation conference under rule 41.506(256B, 34CFR300). Discussions that occur during the mediation process must be confidential, except as may be provided in Iowa Code chapter 679C, and may not be used as evidence in any subsequent due process hearings or civil proceedings; however, the parties may stipulate to agreements reached in mediation. Prior to the start of the mediation, the parties to the mediation conference and the mediator will be required to sign an Agreement to Mediate form containing a confidentiality provision.

41.1003(7) Dismissal. The appellant may make a request for dismissal by the administrative law judge at any time. A request or motion to dismiss made by the appellee shall be granted upon a determination by the administrative law judge that any of the following circumstances apply:

a. The appeal relates to an issue that does not reasonably fall under any of the appealable issues of identification, evaluation, placement, or the provision of a free appropriate public education.

b. The issue(s) raised is moot.

c. The individual is no longer a resident of the LEA or AEA against whom the appeal was filed.

d. The relief sought by the appellant is beyond the scope and authority of the administrative law judge to provide.

e. Circumstances are such that no case or controversy exists between the parties.

f. An appeal may be dismissed administratively when an appeal has been in continued status for more than one school year. Prior to an administrative dismissal, the administrative law judge shall notify the appellant at the last known address and give the appellant an opportunity to give good cause as to why an extended continuance shall be granted. An administrative dismissal issued by the administrative law judge shall be without prejudice to the appellant.

281—41.1004(17A,256B) Participants in the hearing.

41.1004(1) Conducting hearing. The administrative law judge shall conduct the hearing.

a. Any person serving or designated to serve as an administrative law judge is subject to disqualification for bias, prejudice, interest, or any other cause for which a judge is or may be disqualified.

b. Any party may timely request the disqualification of an administrative law judge after receipt of notice indicating that the person will preside or upon discovering facts establishing grounds for disqualification whichever is later.

c. A person whose disqualification is requested shall determine whether to grant the request, stating facts and reasons for the determination.

d. If another administrative law judge is required because the appointed administrative law judge is disqualified or becomes unavailable for any other reason, the director of education shall appoint a substitute administrative law judge from the list of other qualified administrative law judges.

41.1004(2) Counsel. Any party to a hearing has a right to be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of individuals with disabilities.

41.1004(3) Opportunity to be heard—appellant. The appellant or representative shall have the opportunity to be heard.

41.1004(4) Opportunity to be heard—appellee. The appellee or representative shall have the opportunity to be heard.

41.1004(5) Opportunity to be heard—director. The director or designee shall have the opportunity to be heard.

41.1004(6) Opportunity to be heard—third party. A person or representative who was neither the appellant nor appellee, but was a party in the original proceeding, may be heard at the discretion of the administrative law judge.

281—41.1005(17A,256B) Convening the hearing.

41.1005(1) Announcements and inquiries by administrative law judge. At the established time, the administrative law judge shall announce the name and nature of the case and inquire whether the respective parties or their representatives are present.

41.1005(2) Proceeding with the hearing. When it is determined that parties or their representatives are present, or that absent parties have been properly notified, the hearing may proceed. When any absent party has been properly notified, the means of notification shall be entered into the record. When notice to an absent party has been sent by certified mail, return receipt requested, the return receipt shall be placed in the record. If the notice was in another manner, sufficient details of the time and manner of notice shall be entered into the record. If it is not determined whether absent parties have been properly notified, the proceedings may be recessed at the discretion of the administrative law judge.

41.1005(3) Types of hearing. The administrative law judge shall establish with the parties that the hearing shall be conducted as one of three types:

a. A hearing based on the stipulated record.

b. An evidentiary hearing.

c. A mixed evidentiary and stipulated record hearing.

41.1005(4) Evidentiary hearing scheduled. An evidentiary hearing shall be held unless both parties agree to a hearing based upon the stipulated record or a mixed evidentiary and stipulated record hearing.

41.1005(5) Educational record part of hearing. The educational record submitted to the department by the educational agency shall, subject to timely objection by the parties, become part of the record of the hearing.

281—41.1006(17A,256B) Stipulated record hearing.

41.1006(1) Record hearing is nonevidentiary. A hearing based on the stipulated record is nonevidentiary in nature.

No witnesses shall be heard nor evidence received. The controversy shall be decided on the basis of the record certified by the proper official and the arguments presented on behalf of the respective parties. The parties shall be so reminded by the administrative law judge at the outset of the proceeding.

41.1006(2) Materials to illustrate an argument. Materials such as charts and maps may be used to illustrate an argument, but may not be used as new evidence to prove a point in controversy.

41.1006(3) One spokesperson per party. Unless the administrative law judge determines otherwise, each party shall have one spokesperson.

41.1006(4) Arguments and rebuttal. The appellant shall present argument first. The appellee then presents argument and rebuttal of the appellant's argument. A third party, at the discretion of the administrative law judge, may be allowed to make remarks. The appellant may then rebut the preceding arguments but may not introduce new arguments.

41.1006(5) Time to present argument. Appellant and appellee shall have equal time to present their arguments and the appellant's total time shall not be increased by the right of rebuttal. The administrative law judge shall set the time limit for argument.

41.1006(6) Written briefs. Any party may submit written briefs. Written briefs by a person who is not a party may be accepted at the discretion of the administrative law judge. A brief shall provide legal authority for an argument, but shall not be considered as evidence. Copies of written briefs shall be delivered to all parties and, if desired, each party may submit reply briefs at the conclusion of the hearing or at a mutually agreeable time. A final decision shall be reached and a copy of the decision shall be mailed to the parties not later than 45 calendar days after the receipt of the request for the hearing unless the administrative law judge granted an extension of time beyond the 45 calendar days. The time for filing briefs may extend the time for final decision.

281—41.1007(17A,256B) Evidentiary hearing.

41.1007(1) Testimony and other evidence. An evidentiary hearing provides for the testimony of witnesses, introduction of records, documents, exhibits or objects.

41.1007(2) Appellant statement. The appellant may begin by giving a short opening statement of a general nature, which may include the basis for the appeal, the type and nature of the evidence to be introduced and the conclusions the appellant believes the evidence shall substantiate.

41.1007(3) Appellee statement. The appellee may present an opening statement of a general nature and may discuss the type and nature of evidence to be introduced and the conclusions the appellee believes the evidence shall substantiate.

41.1007(4) Third-party statement. With the permission of the administrative law judge, a third party may make an opening statement of a general nature.

41.1007(5) Witness testimony and other evidence. The appellant may then call witnesses and present other evidence.

41.1007(6) Witness under oath. Each witness shall be administered an oath by the administrative law judge. The oath may be in the following form: "I do solemnly swear or affirm that the testimony or evidence which I am about to give in the proceeding now in hearing shall be the truth, the whole truth and nothing but the truth."

41.1007(7) Cross-examination by appellee. The appellee may cross-examine all witnesses and may examine and question all other evidence.

41.1007(8) Witness testimony and other evidence. Upon conclusion of the presentation of evidence by the appellant, the appellee may call witnesses and present other evidence. The appellant may cross-examine all witnesses and may examine and question all other evidence.

41.1007(9) Questions by administrative law judge. The administrative law judge may address questions to each witness at the conclusion of questioning by the appellant and the appellee. Said questioning shall be solely to clarify the record or witness testimony and shall be limited to the issues identified by the parties.

41.1007(10) Rebuttal witnesses and additional evidence. At the conclusion of the initial presentation of evidence and at the discretion of the administrative law judge, either party may be permitted to present rebuttal witnesses and additional evidence of matters previously placed in evidence. No new matters of evidence may be raised during this period of rebuttal.

41.1007(11) Appellant final argument. The appellant may make a final argument, not to exceed a length of time established by the administrative law judge, in which the evidence presented may be reviewed, the conclusions which the appellant believes most logically follow from the evidence may be outlined and a recommendation of action may be made to the administrative law judge.

41.1007(12) Appellee final argument. The appellee may make a final argument for a period of time not to exceed that granted to the appellant in which the evidence presented may be reviewed, the conclusions which the appellee believes most logically follow from the evidence may be outlined and a recommendation of action may be made to the administrative law judge.

41.1007(13) Third-party final argument. At the discretion of the administrative law judge, a third party directly involved in the original proceeding may make a final argument.

41.1007(14) Rebuttal of final argument. At the discretion of the administrative law judge, either side may be given an opportunity to rebut the other's final argument. No new arguments may be raised during rebuttal.

41.1007(15) Written briefs. Any party may submit written briefs. Written briefs by a person who is not a party may be accepted at the discretion of the administrative law judge. A brief shall provide legal authority for an argument, but shall not be considered as evidence. Copies of written briefs shall be delivered to all parties and, if desired, each party may submit reply briefs at the conclusion of the hearing or at a mutually agreeable time. A final decision shall be reached and a copy of the decision shall be mailed to the parties within the time period provided by 41.515(1), unless the administrative law judge granted an extension of time or continuance pursuant to 41.515(3). The time for filing briefs may be a ground to extend the time for final decision.

281—41.1008(17A,256B) Mixed evidentiary and stipulated record hearing.

41.1008(1) Written evidence of portions of record may be used. A written presentation of the facts or portions of the certified record that are not contested by the parties may be placed into the hearing record by any party, unless there is timely objection by the other party. No party may later contest such evidence or introduce evidence contrary to that matter which has been stipulated.

41.1008(2) Conducted as evidentiary hearing. All oral arguments, testimony by witnesses and written briefs may refer to evidence contained in the material as any other evidentiary material entered at the hearing. The hearing is conducted as an evidentiary hearing pursuant to rule 41.1007(17A,256B).

281—41.1009(17A,256B) Witnesses.

41.1009(1) Subpoenas. The director of education shall have the power to issue, but not to serve, subpoenas for witnesses and to compel the attendance of those thus served and the giving of evidence by them. The subpoenas shall be given to the requesting parties whose responsibility it is to serve to the designated witnesses. Requests for subpoenas may be denied or delayed if not submitted to the department at least five business days prior to the hearing date.

41.1009(2) Attendance of witness compelled. Any party may compel by subpoena the attendance of witnesses, subject to limitations imposed by state law.

41.1009(3) Cross-examination. Witnesses at the hearing shall be subject to cross-examination. An individual whose testimony has been submitted in written form, if available, shall be subject to cross-examination by any party necessary for a full and true disclosure of the facts. If the individual is not available and cross-examination is necessary for a full and true disclosure of the facts, the administrative law judge may exclude the individual's testimony in written form.

281—41.1010(17A,256B) Rules of evidence.

41.1010(1) Receiving relevant evidence. Because the administrative law judge must decide each case fairly, based on the information presented, it is necessary to allow for the reception of all relevant evidence that will contribute to an informed result. The ultimate test of admissibility is whether the offered evidence is reliable, probative and relevant.

41.1010(2) Acceptable evidence. Irrelevant, immaterial or unduly repetitious evidence shall be excluded. The kind of evidence reasonably prudent persons rely on may be accepted even if it would be inadmissible in a jury trial. The administrative law judge shall give effect to the rules of privilege recognized by law. Objections to evidence may be made and shall be noted in the record. When a hearing is expedited and the interests of the parties are not prejudiced substantially, any part of the evidence may be required to be submitted in verified written form.

41.1010(3) Documentary evidence. Documentary evidence may be received in the form of copies or excerpts, if the original is not readily available. Upon request, parties shall be given an opportunity to compare the copy with the original, if available. Any party has the right to prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least five business days before the hearing.

41.1010(4) Administrative notice and opportunity to contest. The administrative law judge may take official notice of all facts of which judicial notice may be taken and of other facts within the specialized knowledge of the administrative law judge. Parties shall be notified at the earliest practicable time, either before or during the hearing or by reference in preliminary reports, and shall be afforded an opportunity to contest such facts before the decision is announced unless the administrative law judge determines as part of the record or decision that fairness to the parties does not require an opportunity to contest such facts.

41.1010(5) Discovery. Discovery procedures applicable to civil actions are available to all parties in due process hearings under this chapter. Evidence obtained in discovery may be used in the hearing before the agency if that evidence would otherwise be admissible in the agency hearing. The administrative law judge may exercise such control over discovery, including its nature, scope, frequency, duration, or sequence, as permitted by the Iowa rules of civil procedure, and for such grounds as those rules may provide.

41.1010(6) Administrative law judge may evaluate evidence. The administrative law judge's experience, technical competence and specialized knowledge may be utilized in the evaluation of the evidence.

41.1010(7) Decision. A decision shall be made upon consideration of the whole record or such portions that are supported by and in accordance with reliable, probative and substantial evidence.

281—41.1011(17A,256B) Communications.

41.1011(1) Restrictions on communications—administrative law judge. The administrative law judge shall not communicate directly or indirectly in connection with any issue of fact or law in that contested case with any person or party except upon notice and opportunity for all parties to participate.

41.1011(2) Restrictions on communications—parties. Parties or their representatives shall not communicate directly or indirectly in connection with any issue of fact or law with the administrative law judge except upon notice and opportunity for all parties to participate as are provided for by administrative rules. The recipient of any prohibited communication shall submit the communication, if written, or a summary of the communication, if oral, for inclusion in the record of the proceeding.

41.1011(3) Sanctions. Any or all of the following sanctions may be imposed upon a party who violates the rules regarding ex parte communications: censure, suspension or revocation of the privilege to practice before the department, or the rendering of a decision against a party who violates the rules.

281—41.1012(17A,256B) Record.

41.1012(1) Open hearing. Parents involved in hearings shall be given the right to open the hearing to the public. The hearing shall be recorded by mechanized means or by certified court reporters. Any party to a hearing or an appeal has the right to obtain a written or, at the option of the parents, electronic, verbatim record of the hearing and obtain written or, at the option of the parents, electronic findings of fact and decisions. The record of the hearing and the findings of fact and decisions described in this rule must be provided at no cost to parents.

41.1012(2) Transcripts. All recordings or notes by certified court reporters of oral proceedings or the transcripts thereof shall be maintained and preserved by the department for at least five years from the date of decision.

41.1012(3) Hearing record. The record of a hearing shall be maintained and preserved by the department for at least five years from the date of the decision. The record under this division shall include the following:

a. All pleadings, motions and intermediate rulings.

b. All evidence received or considered and all other submissions.

c. A statement of matters officially noted.

d. All questions and offers of proof, objections and rulings thereof.

e. All proposed findings and exceptions.

f. Any decision, opinion or report by the administrative law judge presented at the hearing.

281—41.1013(17A,256B) Decision and review.

41.1013(1) Decision. The administrative law judge, after due consideration of the record and the arguments presented, shall make a decision on the appeal.

41.1013(2) Basis of decision. The decision shall be based on the laws of the United States and the state of Iowa and the rules and policies of the department.

41.1013(3) Time of decision. The administrative law judge's decision shall be reached and mailed to the parties within the time period specified in 41.515(1), unless an extension of time or continuance has been granted pursuant to 41.515(3).

41.1013(4) Impartial decision maker. No individual who participates in the making of any decision shall have advocated in connection with the hearing, the specific controversy underlying the case or other pending factually related matters, nor shall any individual who participates in the making of any decision be subject to the authority, direction or discretion of any person who has advocated in connection with the hearing, the specific controversy underlying the hearing or a pending related matter involving the same parties.

281—41.1014(17A,256B) Finality of decision.

41.1014(1) Decision final. The decision of the administrative law judge is final. The date of postmark of the decision is the date used to compute time for purposes of appeal.

41.1014(2) Notice to department of a civil action. A party initiating a civil action in state or federal court under rule 41.516(256B,34CFR300) shall provide an informational copy of the petition or complaint to the department within 14 days of filing the action.

281—41.1015(256B,34CFR300) Disqualification of mediator. Any party may request an appointment of a new mediator for any reason listed in subrule 41.1004(1). The department shall determine whether such grounds exist and, if so, shall appoint a new mediator.

281—41.1016(17A) Correcting decisions of administrative law judges. An administrative law judge may, on the motion of any party or on the administrative law judge's own motion, correct any error in a decision or order under this chapter that does not substantively alter the administrative law judge's findings of fact, conclusions of law, or ordered relief, including but not limited to clerical errors, errors in grammar or spelling, and errors in the form of legal citation. Any such correction shall be made within 90 days of the date of the order or decision, shall relate back to the date of the order or decision, and shall not extend any applicable statute of limitations.

281—41.1017 to **41.1099** Reserved.

DIVISION XIII
ADDITIONAL RULES NECESSARY TO IMPLEMENT
AND APPLY THIS CHAPTER

281—41.1100(256B,34CFR300) References to Code of Federal Regulations. All references in this chapter to regulations found at Part 300 of Title 34 of the Code of Federal Regulations (34 CFR Part 300) are to those final regulations published in the Federal Register on August 14, 2006 (71 Fed. Reg. 46540). All references to any other regulation found elsewhere in Title 34 of the Code of Federal Regulations shall be to the volume published on July 1, 2006.

281—41.1101(256B,34CFR300) Severability. Should any rule or subrule in this chapter be declared invalid by a court of competent jurisdiction, every other rule and subrule not affected by that declaration of invalidity shall remain valid.

These rules are intended to implement Iowa Code chapter 256B, the 2004 amendments to the Individuals with Disabilities Education Act, and Part 300 of Title 34 of the Code of Federal Regulations published in the Federal Register on August 14, 2006.

[Filed 9/13/07, effective 11/14/07]
[Published 10/10/07]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/10/07.

ARC 6294B

EDUCATION DEPARTMENT[281]

Adopted and Filed

Pursuant to the authority of Iowa Code section 256.7(5), the State Board of Education amends Chapter 79, "Standards for Practitioner and Administrator Preparation Programs," Iowa Administrative Code.

These amendments improve the process by which programs that prepare teachers of elementary and secondary students in Iowa are approved. These amendments increase the accountability of the institutions that offer such programs and improve the standards by which such programs are judged. This is the first substantive amendment of Chapter 79 since it was first implemented in 2001. The nature of PK-12 schools continues to evolve, and practitioner preparation programs must keep pace accordingly and anticipate changes when possible. The Agency also is striving to hold such programs accountable for the quality of their candidates, for the sake of PK-12 students and the candidates themselves.

An agencywide waiver provision is provided in 281—Chapter 4.

Notice of Intended Action was published in the June 6, 2007, Iowa Administrative Bulletin as **ARC 5921B**. A public hearing was held on June 26, 2007, and public comments were allowed until 4:30 p.m. on June 26, 2007. Fourteen individuals from outside the agency attended the public hearing, and many of those attending provided oral comments. Eighteen written comments were received. All but one of the comments, both oral and written, dealt with the "human relations" requirement for teacher candidates. The current rule in Chapter 79 states that teacher candidates must complete "a human relations *course* approved by the board of educational examiners." (See 281—79.14(1)"e.") The amendments adopted herein require teacher candidates to "complete specific, dedicated coursework in human relations and cultural competency." (See 281—79.14(3).) All those who commented were opposed to the removal of the requirement that there be a discrete course. While the adopted amendments do not require a human relations *course*, the new requirement enhances the accountability of providers of teacher preparation programs by requiring providers to report to the agency how six specific and discrete elements listed in new subrule 79.14(3) are addressed and in which course(s) they are addressed.

The one comment that did not address the human relations requirement came from an individual concerned that allowing 40 hours of previous experience to be credited toward the 80 hours of required pre-student teaching field experiences might include less meaningful experiences in a school. No change was made based on this comment; institutions have discretion to set their own criteria and are not required to allow credit for anything believed to be inappropriate.

EDUCATION DEPARTMENT[281](cont'd)

Since the Notice of Intended Action was published, several other items have been changed. Those changes are as follows:

Rule 79.2(256): Definitions of "candidates," "college/university supervisors," "diverse groups," and "students" were added as a result of internal agency discussions. Because this Chapter regulates programs in which postsecondary students seek to become teachers, have teachers as supervisors, and student teach PK-12 students, it makes sense to add more clarity to these terms. The definition of "college/university supervisors" was added at the suggestion of the President of the Iowa Association of College of Teacher Education (IACTE).

Rule 79.3(256): The modifier "Iowa" was stricken because Iowa Code section 256.7(3) was amended to give the State Board of Education authority to make rules for out-of-state providers of practitioner preparation programs that will be offered within Iowa.

As published herein, rule 79.4(256) and subrules 79.10(6), 79.13(4)"b," 79.13(9)"a," 79.14(7)"b," 79.14(10), and 79.15(2)"e": All have minor, nonsubstantive changes made to improve grammar, to add clarity, or to reflect actual practice.

Subrule 79.11(3) (as published in Notice): This has been moved to subrule 79.14(4).

Paragraph 79.13(10)"a" (as published herein): The term "full college/university semester" was removed because some semesters are only 9 to 12 weeks in duration. The student teacher experience is to be a minimum of 14 consecutive weeks.

A new subrule 79.13(8) has been added, and subsequent subrules have been renumbered. This subrule was inadvertently omitted by the Agency when the Notice of Intended Action was published. The concept in this subrule is not new; it appears in current paragraph 79.14(1)"c."

Paragraphs "a," "f," and "i" of subrule 79.14(7) have been changed to conform to similar requirements in administrative rules of the Board of Educational Examiners (282—Chapter 14).

These amendments are intended to implement Iowa Code sections 256.7(3), 256.16, and 272.25.

These amendments shall become effective November 14, 2007.

The following amendments are adopted.

ITEM 1. Amend **281—Chapter 79** by adding the following **new** division title to precede rule 281—79.1(256):

DIVISION I
GENERAL STANDARDS APPLICABLE TO ALL
PRACTITIONER PREPARATION PROGRAMS

ITEM 2. Amend rule **281—79.2(256)** as follows:

Amend the definitions of "cooperating teachers," "institution," "novice," "practitioner preparation programs," and "unit" as follows:

"Cooperating teachers" means *appropriately licensed* classroom teachers *of record* who provide guidance and supervision to teacher candidates *in the cooperating teachers' classrooms* during the candidates' field experiences in the schools.

"Institution" means a college or university in Iowa offering practitioner, ~~or~~ *including* administrator, preparation or an organization offering administrator preparation and seeking state board approval of its practitioner ~~or administrator~~ preparation program(s).

"Novice" means an individual in an educational position who has no previous experience in the role of that position *or who is newly licensed by the board of educational examiners*.

"Practitioner preparation programs" means the programs of practitioner preparation leading to licensure of teachers, *administrators,* and other professional school personnel.

"Unit" means the organizational entity within an institution with the responsibility of administering the practitioner ~~or administrator~~ preparation ~~program, or both~~ *program(s)*.

Adopt the following **new** definitions in alphabetical order:

"Candidates" means individuals who are preparing to become educational practitioners through a practitioner preparation program.

"Clinical experiences" means a candidate's direct experiences in PK-12 schools. "Clinical experiences" includes field experiences prior to student teaching or internship; internships for preparation programs other than teacher preparation; and student teaching, a full-time clinical practice experience in which the teacher preparation program culminates.

"College/university supervisors" means qualified employees or individuals contracted by the college or university offering teacher preparation who provide guidance and supervision to teacher candidates during the candidates' clinical experiences in the schools.

"Diverse groups" means one or more groups of individuals possessing certain traits or characteristics, including but not limited to age, color, creed, national origin, race, religion, marital status, sex, sexual orientation, gender identity, disability, or socioeconomic status.

"Students" means PK-12 pupils.

ITEM 3. Amend rule 281—79.3(256) as follows:

281—79.3(256) Institutions affected. All ~~Iowa~~ colleges and universities ~~or~~ *offering complete practitioner preparation programs in Iowa, as well as other educational* organizations engaged in the preparation of ~~practitioners or~~ administrators, ~~and seeking state board approval of their programs (hereinafter institutions)~~ shall meet the standards contained in this chapter *to gain or maintain state board approval of their programs*.

ITEM 4. Amend rule 281—79.4(256) as follows:

281—79.4(256) Criteria for Iowa practitioner preparation programs. Each institution seeking approval of its programs of practitioner ~~or administrator~~ preparation shall file evidence of the extent to which it meets the standards contained in this chapter by means of a written self-evaluation report and an evaluation conducted by the department. *The program shall demonstrate such evidence by means of a template developed by the department and through a site visit conducted by the department.* After the state board has approved the practitioner ~~or administrator~~ preparation programs ~~filed by~~ *of* an institution, students who complete the programs and are recommended by the authorized official of that institution will be issued the appropriate license and endorsement(s).

ITEM 5. Amend rule 281—79.5(256) as follows:

281—79.5(256) Approval of programs. Approval of institutions' practitioner ~~or administrator~~ preparation programs by the state board shall be based on the recommendation of the director after study of the factual and evaluative evidence on record about each program in terms of the standards contained in this chapter.

Approval, if granted, shall be for a term of five years; however, approval for a lesser term may be granted by the state board if it determines conditions so warrant.

If approval is not granted, the applying institution will be advised concerning the areas in which improvement or changes appear to be essential for approval. In this case, the institution shall be given the opportunity to present factual information concerning its programs at ~~the next~~ *a* regularly scheduled meeting of the state board, *not beyond three months of the board's initial decision*. ~~The~~ *Following a minimum of six months after the board's decision to deny approval, the* institution may ~~also~~ reapply ~~at its discretion~~ when it is ready to show what actions have been taken to address the areas of suggested improvement.

Programs may be granted conditional approval upon review of appropriate documentation. In such an instance, the program shall receive a full review after one year or, in the case of a new program, at the point at which candidates demonstrate mastery of standards for licensure.

ITEM 6. Amend rule 281—79.6(256) as follows:

281—79.6(256) Visiting teams. Upon application or reapplication for approval, a team shall visit each institution for evaluation of its practitioner ~~or administrator~~ preparation ~~program~~ *program(s)*. The membership of the team shall be selected by the ~~practitioner preparation and licensure bureau~~ *department* with the concurrence of the institution being visited. The team may include faculty members of other practitioner ~~or administrator~~ preparation institutions ~~within or outside the state~~; personnel from elementary and secondary schools, to include ~~administrators or classroom~~ *licensed* practitioners; personnel of the state department of education; and representatives from professional education organizations. Each team member should have appropriate competencies, background, and experiences to enable the member to contribute to the evaluation visit. The expenses for the visiting team shall be borne by the institution.

ITEM 7. Amend rule 281—79.7(256) as follows:

281—79.7(256) Periodic reports. ~~Institutions placed on the approved~~ *Approved* programs ~~list may be asked to~~ *shall* make periodic reports upon request of the department which shall provide basic information necessary to keep records of each practitioner ~~or administrator~~ preparation program up to date and to provide information necessary to carry out research studies relating to practitioner ~~or administrator~~ preparation.

ITEM 8. Rescind rules **281—79.10(256)** to **281—79.15(256)** and adopt the following **new** divisions:

DIVISION II
SPECIFIC EDUCATION STANDARDS APPLICABLE TO ALL PRACTITIONER PREPARATION PROGRAMS

281—79.10(256) Governance and resources standard. Governance and resources shall adequately support the preparation of practitioner candidates to meet professional, state and institutional standards in accordance with the following provisions.

79.10(1) A clearly understood governance structure provides guidance and support for the practitioner preparation program(s).

79.10(2) The professional education unit has primary responsibility for all programs offered at the institution for the initial and continuing preparation of teachers, administrators and other professional school personnel.

79.10(3) The unit's conceptual framework establishes the shared vision for the unit and provides the foundation for coherence among curriculum, instruction, field experiences, clinical practice, assessment, and evaluation.

79.10(4) The work climate, policies, and assignments promote intellectual vitality, including best practices in teaching, scholarship and service among faculty.

79.10(5) The unit provides evidence of ongoing collaboration with the professional community, including evidence that there is an active advisory committee that, at a minimum, is solicited semiannually for program input to inform the unit.

79.10(6) When a unit is part of a college or university, the unit provides evidence of ongoing collaboration with the arts and sciences departments of the institution, especially regarding content endorsements.

79.10(7) Procedures for an appeals process for candidates and faculty are clearly communicated and provided to all candidates and faculty.

79.10(8) The unit administers a systematic and comprehensive evaluation system designed to enhance the teaching competence and intellectual vitality of the professional education unit.

79.10(9) The institution provides the commitment and resources necessary to support a quality clinical program for all practitioner candidates.

79.10(10) Institutional commitment to the unit includes financial resources, facilities, appropriate educational materials, library services, and equipment to ensure the fulfillment of the institution's and unit's missions, delivery of quality programs, and preparation of practitioner candidates.

79.10(11) The unit provides sufficient faculty, administrative, clerical, and technical staff to plan and deliver a quality practitioner program(s).

79.10(12) Resources are available to support professional development opportunities for faculty.

79.10(13) Resources are available to support technological and instructional needs to enhance candidate learning.

79.10(14) The use of part-time faculty and graduate students in teaching roles is purposeful and is managed to ensure integrity, quality, and continuity of programs.

281—79.11(256) Diversity standard. The environment and experiences provided practitioner candidates shall support candidate growth in knowledge, skills, and dispositions to help all students learn in accordance with the following provisions.

79.11(1) The institution and unit maintain a climate that supports diversity.

79.11(2) The institution and unit document their efforts in maintaining and increasing a diverse faculty and include teacher education candidates in plans, policies, and practices as required by the Higher Learning Commission.

79.11(3) Practitioner candidates experience clinical practices in settings that include diverse populations and students of different grade levels and of diverse learning needs.

281—79.12(256) Faculty standard. Faculty qualifications and performance shall facilitate the professional development of practitioner candidates in accordance with the following provisions.

79.12(1) Faculty members in professional education are adequately prepared for responsibilities assigned to them and have had experiences in situations similar to those for which the practitioner candidates are being prepared.

79.12(2) Faculty members instruct and model best practices in teaching, including the assessment of their own effectiveness as it relates to candidate performance.

79.12(3) Faculty members are engaged in professional development as well as scholarly and service activities that relate to teaching, learning, and practitioner preparation.

79.12(4) Faculty members collaborate regularly and in significant ways with colleagues in the professional education unit and other college/university units, schools, the department, area education agencies, and professional associations as well as with community representatives.

79.12(5) Part-time faculty members and graduate assistants, when employed, are identified as faculty members and meet the licensure and experience requirements appropriate for their assigned responsibilities.

79.12(6) Faculty members preparing practitioner candidates maintain an ongoing, meaningful involvement in activities in preschools or elementary, middle, or secondary schools. A minimum of 60 hours of such activities shall include team teaching during the period between approval visits. A maximum of 30 hours of the 60-hour requirement may be completed by supervising preservice candidates in PK-12 classroom settings.

DIVISION III
SPECIFIC EDUCATION STANDARDS APPLICABLE ONLY TO
INITIAL PRACTITIONER PREPARATION PROGRAMS
FOR TEACHER CANDIDATES

281—79.13(256) Clinical practice standard. The unit and its school partners shall provide field experiences and student teaching opportunities that assist candidates in becoming successful teachers in accordance with the following provisions.

79.13(1) Candidates admitted to a teacher preparation program participate in field experiences including both observation and participation in teaching activities in a variety of school settings and totaling at least 80 hours' duration, with at least 10 hours occurring prior to acceptance into the program. A maximum of 40 hours of previous experience as a teacher or teaching associate may be credited toward the 80 hours if a program chooses to implement specific criteria for this option.

79.13(2) Clinical practice for teacher and other professional school personnel candidates supports the development of knowledge, dispositions, and skills that are identified in the unit standards.

79.13(3) Programs document clinical expectations at various developmental levels throughout the program. These expectations are shared with candidates, supervisors, and cooperating teachers.

79.13(4) Environments for clinical practice support learning in context, and include all of the following:

a. Scheduling and use of time and resources to allow candidates to participate with teachers and other practitioners and learners in the school setting.

b. Teacher candidate learning that takes place in the context of providing high-quality instructional programs for children in a state-approved school or educational facility.

c. Opportunities for teacher candidates to observe and be observed by others and to engage in discussion and reflection on clinical practice.

d. The involvement of teacher candidates in assessment, planning and instruction as well as in activities directed toward the improvement of teaching and learning.

79.13(5) PK-12 school and college/university personnel share responsibility for the selection of cooperating teachers who demonstrate skills, knowledge, and dispositions of highly accomplished practitioners.

79.13(6) Cooperating teachers and college/university supervisors share responsibility for supervising the candidate's achievement of unit standards.

79.13(7) The unit is responsible for all of the following:

a. Defining qualifications for practitioner candidates entering clinical practice.

b. Providing quality supervision that includes primary responsibility for communication/collaboration with cooperating teachers and candidates.

c. Responding to specific needs of cooperating schools.

d. Implementing an evaluation process that assists in selecting quality cooperating teachers.

79.13(8) Teacher candidates develop and demonstrate the capacity to utilize assessment data in effecting student learning within their classrooms.

79.13(9) Accountability for student teaching experiences is demonstrated through all of the following:

a. Involvement of the cooperating teacher in the continuous formative evaluation and support of practitioner candidates.

b. Involvement of the college or university supervisor in the formative evaluation of practitioner candidates through a minimum of biweekly observations and consultations.

c. Collaboration of the cooperating teacher and the college/university supervisor in determining areas for improvement, developing and implementing plans for improvement, and determining final evaluation of the student teacher.

d. Use of written evaluation procedures, with completed evaluation forms included in practitioner candidates' permanent institutional records.

79.13(10) The student teaching experience for initial licensure meets all of the following:

a. Includes full-time experience for a minimum of 14 consecutive weeks during the student's final year of the practitioner preparation program.

b. Takes place in the classroom of an appropriately licensed cooperating teacher in the subject area and grade level endorsement desired.

c. Consists of interactive experiences that involve college or university personnel, the student teacher, and the cooperating teacher.

d. Includes prescribed minimum expectations and responsibilities, including ethical behavior, for the student teacher.

e. Includes prescribed minimum expectations and responsibilities for cooperating teachers, the school district or accredited nonpublic school, and higher education supervising faculty members.

f. Requires the student teacher to become knowledgeable about the Iowa teaching standards and to experience a mock evaluation performed by the cooperating teacher or a person who holds an Iowa evaluator license (see rule 282—20.51(272) and Iowa Code section 284.10), which shall not be used as an assessment tool by the program.

g. Requires the student teacher to bear primary responsibility for planning and instruction within the classroom for a minimum of two weeks (ten school days).

h. Involves the student teacher in professional meetings and other school-based activities directed toward the improvement of teaching and learning.

i. Involves the student teacher in communication and interaction with parents or guardians of students in the student teacher's classroom.

79.13(11) The institution annually offers one or more workshops for cooperating teachers to define the objectives

of the student teaching experience, review the responsibilities of the cooperating teacher, and provide the cooperating teacher other information and assistance the institution deems necessary. The cumulative instructional time for the workshops shall be one school day or the equivalent hours, and the workshops shall utilize delivery strategies identified as appropriate for staff development and reflect information gathered through feedback from workshop participants.

79.13(12) The institution enters into a written contract with the cooperating school providing clinical experiences, including field experiences and student teaching.

281—79.14(256) Candidate knowledge, skills and dispositions standard. Teacher candidates shall demonstrate the content, pedagogical, and professional knowledge, skills and dispositions necessary to help all students learn in accordance with the following provisions.

79.14(1) Prior to admission to the teacher preparation program, each teacher candidate attains the qualifying score determined by the unit on a basic skills test of reading, writing, and mathematics.

79.14(2) Each teacher candidate demonstrates the acquisition of a core of liberal arts knowledge, including but not limited to English composition, mathematics, natural sciences, social sciences, and humanities.

79.14(3) Each teacher candidate completes specific, dedicated coursework in human relations and cultural competency and thus demonstrates acquisition of knowledge about and skill in interpersonal and intergroup relations that contribute to the development of sensitivity to and understanding of the values, beliefs, life styles, and attitudes of individuals and the diverse groups found in a pluralistic society. The unit shall provide evidence that the human relations and cultural competency coursework is designed to develop the ability of participants to:

a. Be aware of and understand the values, life styles, history, and contributions of various identifiable subgroups in our society.

b. Recognize and deal with dehumanizing biases such as sexism, racism, prejudice, and discrimination and become aware of the impact that such biases have on interpersonal relations.

c. Translate knowledge of human relations into attitudes, skills, and techniques which will result in favorable learning experiences for students.

d. Recognize human diversity and the rights of each individual.

e. Relate effectively to other individuals and various subgroups other than one's own.

f. Have an awareness of federal and state civil rights legislation as it impacts students.

79.14(4) Each teacher candidate demonstrates, within specific coursework dedicated to understanding exceptional learners, in other coursework, and in clinical experiences, the necessary knowledge, skills, and dispositions toward meeting the learning needs of all students, including students from diverse ethnic, racial, and socioeconomic backgrounds, students with disabilities, students who are gifted and talented, English language learners, and students who may be at risk of not succeeding in school.

79.14(5) Each teacher candidate in elementary education demonstrates acquisition of knowledge about and receives preparation in elementary reading programs, including but not limited to reading recovery.

79.14(6) Each teacher candidate in secondary education demonstrates acquisition of knowledge about and receives preparation in the integration of reading strategies into secondary content areas.

79.14(7) Each teacher candidate demonstrates acquisition of the knowledge, skills and dispositions designated by the unit standards and aligned with the INTASC standards embedded in the professional education core for an Iowa teaching license at a level appropriate for a novice teacher. Each candidate exhibits competency in all of the following professional core curricula:

a. Content/subject matter specialization. The candidate demonstrates an understanding of the central concepts, tools of inquiry, and structure of the discipline(s) the candidate teaches and creates learning experiences that make these aspects of the subject matter meaningful for students. This is evidenced by a completion of a 30-semester-hour teaching major which must minimally include the requirements for at least one of the basic endorsement areas, special education teaching endorsements, or secondary level occupational endorsements. Each elementary candidate must also complete a field of specialization in a single discipline or a formal interdisciplinary program of at least 12 semester hours.

b. Student learning. The candidate demonstrates an understanding of human growth and development and of how students learn, and participates in learning opportunities that support intellectual, career, social and personal development.

c. Diverse learners. The candidate demonstrates an understanding of how students differ in their approaches to learning and creates instructional opportunities that are equitable and adaptable to diverse learners.

d. Instructional planning. The candidate plans instruction based upon knowledge of subject matter, students, the community, curriculum goals, and state curriculum models.

e. Instructional strategies. The candidate demonstrates an understanding of and an ability to use a variety of instructional strategies to encourage student development of critical and creative thinking, problem-solving, and performance skills.

f. Learning environment/classroom management. The candidate uses an understanding of individual and group motivation and behavior; creates a learning environment that encourages positive social interaction, active engagement in learning, and self-motivation; maintains effective classroom management; and is prepared to address behaviors related to substance abuse and other high-risk behaviors.

g. Communication. The candidate uses knowledge of effective verbal, nonverbal, and media communication techniques, and other forms of symbolic representation, to foster active inquiry and collaboration and to support interaction in the classroom.

h. Assessment. The candidate understands and uses formal and informal assessment strategies to evaluate the continuous intellectual, social, and physical development of the student, and effectively uses both formative and summative assessment of students, including student achievement data, to determine appropriate instruction.

i. Foundations, reflective practice and professional development. The candidate develops knowledge of the social, historical, and philosophical foundations of education. The candidate continually evaluates the effects of the candidate's choices and actions on students, parents, and other professionals in the learning community; actively seeks out opportunities to grow professionally; and demonstrates an understanding of teachers as consumers of research and as researchers in the classroom.

j. Collaboration, ethics and relationships. The candidate fosters relationships with parents, school colleagues,

and organizations in the larger community to support student learning and development; demonstrates an understanding of educational law and policy, ethics, and the profession of teaching, including the role of boards of education and education agencies; and demonstrates knowledge of and dispositions for cooperation with other educators, especially in collaborative/co-teaching as well as in other educational team situations.

k. Technology. The candidate effectively integrates technology into instruction to support student learning.

l. Methods of teaching. Methods of teaching have an emphasis on the subject and grade level endorsement desired.

79.14(8) Each teacher candidate meets all requirements established by the board of educational examiners for any endorsement for which the candidate is recommended, as well as standards developed by national professional organizations as appropriate for specific endorsement areas. Programs shall submit curriculum exhibit sheets for approval by the board of educational examiners and the department.

79.14(9) Candidates seeking an endorsement in elementary education attain the state's designated criterion score on a content knowledge assessment as a condition precedent to successful program completion and recommendation for licensure.

79.14(10) Candidates seeking an endorsement in elementary education demonstrate competency in content coursework directly related to the curricula commonly taught in Iowa elementary schools.

281—79.15(256) Assessment system and unit evaluation standard. The unit's assessment system shall appropriately monitor individual candidate performance and use that data in concert with other information to evaluate and improve the unit and its programs.

79.15(1) Unit assessment system.

a. The unit utilizes a clearly defined management system for the collection, analysis, and use of assessment data.

b. The unit provides evidence that the assessment system is congruent with the institution's mission and the unit's framework for preparation of effective teachers.

c. The unit demonstrates an alignment of unit standards with INTASC standards, as well as Iowa teaching standards, Iowa preparation core professional standards (79.14(7)), and Iowa board of educational examiners' licensing standards (282—subrules 14.123(4) and 14.123(5)).

d. The unit clearly documents candidates' attainment of the unit standards.

e. The unit demonstrates propriety, utility, accuracy and fairness of both the overall assessment system and the instruments used and provides scoring rubrics or other criteria used in evaluation instruments.

f. The unit documents the quality of programs through the collective presentation of assessment data related to performance of teacher candidates. Documentation shall include:

(1) Data collected throughout the program;

(2) Evidence of evaluative data collected from teachers who work with the unit's candidates; and

(3) Evidence of evaluative data collected by the unit through follow-up studies of graduates and their employers.

g. The unit explains the process for reviewing and revising the assessment system.

h. The unit demonstrates how the information gathered by the unit and from the candidate assessment system is shared with faculty and other stakeholders and used for program improvement.

79.15(2) Performance assessment system for teacher candidates.

a. The system is an integral part of the unit's planning and evaluation system.

b. The system has multiple admission criteria and assessments to identify candidates with the potential to become successful teachers.

c. The system includes the administration of a basic skills test with program admission denied to any applicants failing to achieve the institution's designated criterion score.

d. The system has multiple decision points. (Minimum: admission to professional education program, approval for student teaching, and recommendation for licensure.)

e. The system includes a coherent, sequential assessment system for individual teacher candidates that is shared with faculty with guidance for course and program improvement, as well as assessment criteria (e.g., rubrics) and a process for ongoing feedback to teacher candidates about their achievement of program standards with guidance for reflection and improvement, and is drawn from multiple formative and summative assessments of each of the following, including, but not limited to, institutional assessment of content knowledge, professional knowledge, and pedagogical knowledge and their applications, and teaching performance including the effect on student learning.

79.15(3) The unit annually reports to the department such data as is required by the state and federal governments at dates determined by the department.

79.15(4) The department shall periodically conduct a survey of educational agencies employing licensed graduates of approved programs to ensure that the graduates' needs are adequately met by their programs and by the approval process herein.

ITEM 9. Amend **281—Chapter 79** by adding the following **new** division title to precede rule 281—79.16(256):

DIVISION IV
SPECIFIC EDUCATION STANDARDS APPLICABLE ONLY TO ADMINISTRATOR PREPARATION PROGRAMS

[Filed 9/17/07, effective 11/14/07]
[Published 10/10/07]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/10/07.

ARC 6269B

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 239B.4 and 249A.4, the Department of Human Services amends Chapter 41, "Granting Assistance," and Chapter 75, "Conditions of Eligibility," Iowa Administrative Code.

In 2007 Iowa Acts, Senate File 254, section 6, the General Assembly directed the Department to provide a 58 percent work incentive disregard under the Family Investment Program (FIP). In 2007 Iowa Acts, House File 909, section 98, subsection (1), paragraph "b," the General Assembly also appropriated $9,337,435 to provide the same disregard for parents under the Family Medical Assistance Program (FMAP) and the Child Medical Assistance Program (CMAP). These amendments implement that legislation by changing the way

the Department calculates countable income for FIP, FMAP, and CMAP. The amendments increase the work incentive disregard from 50 percent to 58 percent, in effect raising the income limits for working parents.

These amendments also make technical changes to update the name of the report supporting the average statewide standard deduction for personal care services available to residential care facility residents in the Medically Needy program. The report is currently issued in January based on the averages from December only and is issued again in July based on the averages for the previous state fiscal year. The amendment to 75.1(35) clarifies that the personal care deduction will be based on the report that includes the costs for the entire fiscal year.

These amendments do not provide for waivers in specified situations, since they confer a benefit on the people affected. Requests for the waiver of any rule may be submitted under the Department's general rule on exceptions at 441—1.8(17A,217).

These amendments were previously Adopted and Filed Emergency and published in the Iowa Administrative Bulletin on July 4, 2007, as **ARC 5980B**. Notice of Intended Action to solicit comments on the amendments was published on the same date as **ARC 5981B**. The Department received no comments on the Notice of Intended Action. These amendments are identical to those Adopted and Filed Emergency and published under Notice of Intended Action.

The Council on Human Services adopted these amendments September 12, 2007.

These amendments are intended to implement Iowa Code section 239B.7 as amended by 2007 Iowa Acts, Senate File 254, section 6, and Iowa Code section 249A.4.

These amendments shall become effective November 14, 2007, at which time the amendments Adopted and Filed Emergency are rescinded.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [41.27(1), 41.27(2), 41.27(8), 41.27(9), 75.1(35), 75.57(2), 75.57(8), 75.57(9), 75.59(4)] is being omitted. These amendments are identical to those published under Notice as **ARC 5981B** and Adopted and Filed Emergency as **ARC 5980B**, IAB 7/4/07.

[Filed 9/12/07, effective 11/14/07]
[Published 10/10/07]

[For replacement pages for IAC, see IAC Supplement 10/10/07.]

ARC 6271B

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services amends Chapter 75, "Conditions of Eligibility," Iowa Administrative Code.

This amendment adds exemptions to the federal requirements for verifying citizenship and identity in order to receive Medicaid that were established by the Deficit Reduction Act of 2005. Federal legislation in the Tax Relief and Health Care Act of 2006 (Public Law 109-432, passed in December 2006) exempts children who are receiving federally funded foster care, adoption subsidy, or child welfare services and people receiving Medicare, Social Security disability, or Supplemental Security Income benefits from the verification requirement. This amendment incorporates those exemptions into Iowa rules.

This amendment does not provide for waivers in specified situations because it removes a restriction on the persons affected. Requests for the waiver of any rule may be submitted under the Department's general rule on exceptions at 441—1.8(17A,217).

This amendment was previously Adopted and Filed Emergency and published in the Iowa Administrative Bulletin on July 4, 2007, as **ARC 5988B**. Notice of Intended Action to solicit comments on the amendment was published on the same date as **ARC 5989B**. The Department received no comments on the Notice of Intended Action. This amendment is identical to that Adopted and Filed Emergency and published under Notice of Intended Action.

The Council on Human Services adopted this amendment September 12, 2007.

This amendment is intended to implement Iowa Code section 249A.3.

This amendment shall become effective November 14, 2007, at which time the amendments Adopted and Filed Emergency are rescinded.

The following amendment is adopted.

Amend subrule **75.11(2)** as follows:

Amend paragraph **"c"** as follows:

c. ~~Effective July 1, 2006,~~ *Except as provided in paragraph "f,"* applicants *or members* who attest that they are citizens or nationals of the United States shall present satisfactory documentation of citizenship or nationality ~~upon application for Medicaid~~ as defined in paragraph "d" or "e."

~~(1) Persons receiving Medicaid benefits as of July 1, 2006, shall present this documentation at the next redetermination of their Medicaid eligibility.~~

~~(2)~~ An applicant or ~~recipient~~ *member* shall have a reasonable period to obtain and provide proof of citizenship or nationality.

(1) For the purposes of this requirement, the "reasonable period" begins on the date a written request to obtain and provide proof is issued to an applicant or ~~recipient~~ *member* and continues to the date when the proof is provided or the date when the department establishes that the applicant or ~~recipient~~ *member* is no longer making a good-faith effort to obtain the proof, whichever is earlier.

(2) Medicaid eligibility shall continue for ~~recipients~~ *members* during the reasonable period. Medicaid shall not be approved for applicants until acceptable documentary evidence is provided.

(3) A reference to a form in paragraph "d" or "e" includes any successor form.

Adopt the following **new** paragraph **"f"**:

f. A person who attests to status as a citizen or national of the United States is not required to present documentation of citizenship or nationality for Medicaid eligibility if any of the following circumstances apply:

(1) The person is entitled to or enrolled for benefits under any part of Title XVIII of the federal Social Security Act (Medicare).

(2) The person is receiving federal social security disability insurance (SSDI) benefits under Title II of the federal So-

cial Security Act, Section 223 or 202, based on disability (as defined in Section 223(d)).

(3) The person is receiving supplemental security income (SSI) benefits under Title XVI of the federal Social Security Act.

(4) The person is a child in foster care who is eligible for child welfare services funded under Part B of Title IV of the federal Social Security Act.

(5) The person is eligible for adoption or foster care assistance funded under Part E of Title IV of the federal Social Security Act; or

(6) The person has previously presented satisfactory documentary evidence of citizenship or nationality, as specified by the United States Secretary of Health and Human Services.

[Filed 9/12/07, effective 11/14/07]
[Published 10/10/07]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/10/07.

ARC 6276B

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services amends Chapter 79, "Other Policies Relating to Providers of Medical and Remedial Care," Iowa Administrative Code.

This amendment implements Section 6032 of the Deficit Reduction Act of 2005 (Public Law 109-171), Employee Education About False Claims Recovery, which became effective on January 1, 2007. The amendment requires a provider or provider entity that receives $5 million or more from the Medicaid program in any federal fiscal year to establish and disseminate written policies that include detailed information about the entity's policies and procedures for detecting and preventing waste, fraud, and abuse. It is the responsibility of providers and provider entities to determine whether they meet the $5 million threshold and to provide documentation of the policies to the Department.

This amendment does not provide for waivers in specified situations. Requests for the waiver of any rule may be submitted under the Department's general rule on exceptions at 441—1.8(17A,217).

Notice of Intended Action on this amendment was published in the Iowa Administrative Bulletin on July 4, 2007, as **ARC 5978B**. The Department received one comment on the Notice of Intended Action. The Iowa Medical Society requested that the Department clarify what information must be reported and include in the rule resources that physicians and other providers can consult.

In response to this comment, the Department has revised the language of subparagraph 79.15(2)"a"(1) to read as follows: "The name, address, and national provider identification numbers under which the entity receives payment." Although interpretations of federal statutory language such as the FAQs issued by the Centers for Medicare and Medicaid Services do apply to this rule, those interpretations are subject to change, particularly for a new requirement such as this one. Therefore, the Department has chosen not to incorporate the requested resources into the rule.

The Council on Human Services adopted this amendment on September 12, 2007.

This amendment is intended to implement Iowa Code section 249A.4 and Section 6032 of Public Law 109-171.

This amendment shall become effective on November 14, 2007.

The following amendment is adopted.

Adopt the following **new** rule:

441—79.15(249A) Education about false claims recovery. The provisions in this rule apply to any entity that has received medical assistance payments totaling at least $5 million during a federal fiscal year (ending on September 30). For entities whose payments reach this threshold, compliance with this rule is a condition of receiving payments under the medical assistance program during the following calendar year.

79.15(1) Policy requirements. Any entity whose medical assistance payments meet the threshold shall:

a. Establish written policies for all employees of the entity and for all employees of any contractor or agent of the entity, including management, which provide detailed information about:

(1) The False Claims Act established under Title 31, United States Code, Sections 3729 through 3733;

(2) Administrative remedies for false claims and statements established under Title 31, United States Code, Chapter 38;

(3) Any state laws pertaining to civil or criminal penalties for false claims and statements;

(4) Whistle blower protections under the laws described in subparagraphs (1) to (3) with respect to the role of these laws in preventing and detecting fraud, waste, and abuse in federal health care programs, as defined in Title 42, United States Code, Section 1320a-7b(f); and

(5) The entity's policies and procedures for detecting and preventing fraud, waste, and abuse.

b. Include in any employee handbook a specific discussion of:

(1) The laws described in paragraph 79.15(1)"a";

(2) The rights of employees to be protected as whistle blowers; and

(3) The entity's policies and procedures for detecting and preventing fraud, waste, and abuse.

79.15(2) Reporting requirements.

a. Any entity whose medical assistance payments meet the specified threshold during a federal fiscal year shall provide the following information to the Iowa Medicaid enterprise by the following December 31:

(1) The name, address, and national provider identification numbers under which the entity receives payment;

(2) Copies of written or electronic policies that meet the requirements of subrule 79.15(1); and

(3) A written description of how the policies are made available and disseminated to all employees of the entity and to all employees of any contractor or agent of the entity.

b. The information may be provided by:

(1) Mailing the information to the IME Surveillance and Utilization Review Services Unit, P.O. Box 36390, Des Moines, Iowa 50315; or

(2) Faxing the information to (515)725-1354.

79.15(3) Enforcement. Any entity that fails to comply with the requirements of this rule shall be subject to sanction under rule 441—79.2(249A), including probation, suspension or withholding of payments, and suspension or termination from participation in the medical assistance program.

HUMAN SERVICES DEPARTMENT[441](cont'd)

This rule is intended to implement Iowa Code section 249A.4 and Public Law 109-171, Section 6032.

[Filed 9/12/07, effective 11/14/07]
[Published 10/10/07]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/10/07.

ARC 6278B

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

Pursuant to the authority of Iowa Code section 234.6, the Department of Human Services amends Chapter 108, "Licensing and Regulation of Child-Placing Agencies," Chapter 113, "Licensing and Regulation of Foster Family Homes," and Chapter 200, "Adoption Services," Iowa Administrative Code.

These amendments require a person applying for a foster parent license or for approval for adoption to be fingerprinted for a national criminal history check. The amendments implement the requirements of the Adam Walsh Child Protection and Safety Act of 2006 (Public Law 109-248), which amends Section 471(a)(20)(C)(i) of the Social Security Act.

Public Law 109-248 requires states to conduct fingerprint-based checks with the National Crime Information Database for prospective foster and adoptive parents and adult members of their households as a condition of receiving federal foster care and adoption assistance funds. 2007 Iowa Acts, Senate File 503, section 12, amends Iowa Code section 237.8(2)"a" to require a person applying for a foster parent license to be fingerprinted for a national criminal history check.

The fingerprints will be submitted to the Department of Public Safety for submission to the Federal Bureau of Investigation in the U.S. Department of Justice for a check against national crime information databases. The Department of Human Services is responsible for the cost of the criminal history check.

The fingerprint checks are in addition to the record checks currently completed by the Department. If the criminal and child abuse record checks have been completed and the person does not have a record of crime or founded abuse, or the Department's evaluation of the record has determined that prohibition of the person's approval is not warranted, the person may be provisionally approved pending the outcome of the fingerprint-based criminal history check.

These amendments were previously Adopted and Filed Emergency and published in the Iowa Administrative Bulletin on July 4, 2007, as **ARC 6009B**. Notice of Intended Action to solicit comments on these amendments was published in the Iowa Administrative Bulletin on the same date as **ARC 6012B**. The Department received no comments on the Notice of Intended Action. These amendments are identical to those Adopted and Filed Emergency and published under Notice of Intended Action.

These amendments do not provide for waivers in specified situations. Requests for the waiver of any rule may be submitted under the Department's general rule on exceptions at 441—1.8(17A,217).

The Council on Human Services adopted these amendments September 12, 2007.

These amendments are intended to implement Iowa Code chapters 238 and 600 and Iowa Code section 237.8(2) as amended by 2007 Iowa Acts, Senate File 503, section 12.

These amendments shall become effective November 14, 2007, at which time the Adopted and Filed Emergency amendments are rescinded.

The following amendments are adopted.

ITEM 1. Amend subrule **108.8(1)**, paragraph **"c,"** by rescinding subparagraph **(13)** and adopting the following **new** subparagraph in lieu thereof:

(13) Record checks. The licensed child-placing agency shall submit record checks for each applicant and for anyone who is 14 years of age or older living in the home of the applicant to determine whether they have founded child abuse reports or criminal convictions or have been placed on the sex offender registry. The licensed child-placing agency shall use Form 470-0643, Request for Child Abuse Information, and Form 595-1396, DHS Criminal History Record Check, Form B, for this purpose. Each person subject to record checks shall also be fingerprinted for a national criminal history check. The department's contractor for the recruitment and retention of resource families shall assist applicants in completing required record checks, including fingerprinting. Any criminal or abuse records discovered shall be evaluated according to the procedures in rule 441—113.13(237).

ITEM 2. Amend rule 441—113.13(237), introductory paragraph, as follows:

441—113.13(237) Record checks. The department shall submit record checks for each applicant and for anyone who is 14 years of age or older living in the home of the applicant to determine whether they have any founded child abuse reports or criminal convictions or have been placed on the sex offender registry. The department shall use Form 470-0643, Request for Child Abuse Information, and Form 595-1396, DHS Criminal History Record Check, Form B, for this purpose. *Each person subject to record checks shall also be fingerprinted for a national criminal history check. The department's contractor for the recruitment and retention of resource families shall assist applicants in completing required record checks, including fingerprinting.*

ITEM 3. Amend subrule **200.4(1)**, paragraph **"b,"** introductory paragraph, as follows:

b. Record checks. The department shall submit record checks for each applicant and for anyone who is 14 years of age or older living in the home of the applicant to determine whether they have founded child abuse reports or criminal convictions or have been placed on the sex offender registry. The department shall use Form 470-0643, Request for Child Abuse Information, and Form 595-1396, DHS Criminal History Record Check, Form B, for this purpose. *Each person subject to record checks shall also be fingerprinted for a national criminal history check. The department's contractor for the recruitment and retention of resource families shall assist applicants in completing required record checks, including fingerprinting.*

[Filed 9/12/07, effective 11/14/07]
[Published 10/10/07]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/10/07.

ARC 6279B

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

Pursuant to the authority of Iowa Code section 234.6, the Department of Human Services amends Chapter 150, "Purchase of Service," Chapter 156, "Payments for Foster Care and Foster Parent Training," and Chapter 185, "Rehabilitative Treatment Services," Iowa Administrative Code.

These amendments implement the following changes for service providers:

- A 3 percent across-the-board increase for social service providers is implemented as directed by 2007 Iowa Acts, House File 909, section 31(5). This increase affects adoption services, supervised apartment living services, and shelter care. The increase will be applied to reimbursement rates in effect on June 30, 2007, or to the provider's actual and allowable cost for each service plus inflation, whichever is less. (The amendments eliminate references to adoptive home studies, home study updates, and family planning services, which are no longer available through purchase of service contracts. Notice of Intended Action on the family planning changes was published in the Iowa Administrative Bulletin on May 9, 2007, as **ARC 5875B**.)
- The basic reimbursement rates for foster family care and, by reference, the maximum payments for foster care supervised apartment living, adoption maintenance subsidy, and guardianship subsidy are increased as directed by 2007 Iowa Acts, House File 909, section 31(4). With this increase, the rates are restored to 65 percent of the USDA estimate of the cost to raise a child in 2006, in compliance with Iowa Code section 234.38.
- The rule regarding shelter contracts is revised to maintain the statewide availability of a daily average of 273 guaranteed emergency juvenile shelter care beds during the fiscal year beginning July 1, 2007, as directed by 2007 Iowa Acts, House File 909, section 18(7).
- A 3 percent cost-of-living adjustment to reimbursement rates for family-centered supportive services and foster care services is implemented as directed by 2007 Iowa Acts, House File 909, section 31(6). Most increases will be applied to a provider's negotiated rate in effect on June 30, 2007. For family-centered community resource procurement, the fixed fee is increased by 3 percent. (The amendment eliminates references to the relative home study, as that service is no longer purchased under an RTSS contract, as referenced in **ARC 5937B**, published in the Iowa Administrative Bulletin on June 6, 2007.)

These amendments were previously Adopted and Filed Emergency and published in the Iowa Administrative Bulletin on July 4, 2007, as **ARC 5992B**. Notice of Intended Action to solicit comments on these amendments was published in the Iowa Administrative Bulletin on the same date as **ARC 5993B**. The Department received no comments on the Notice of Intended Action. These amendments are identical to those Adopted and Filed Emergency and published under Notice of Intended Action.

These amendments do not provide for waivers in specified situations, since a rate increase benefits the providers affected. Requests for the waiver of any rule may be submitted under the Department's general rule on exceptions at 441—1.8(17A,217).

The Council on Human Services adopted these amendments September 12, 2007.

These amendments are intended to implement Iowa Code sections 234.6, 234.35, and 234.38 and 2007 Iowa Acts, House File 909, section 31.

These amendments shall become effective November 14, 2007, at which time the Adopted and Filed Emergency amendments are rescinded.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [150.3(5), 156.6(1), 156.11(3), 185.112(1), 185.112(14)] is being omitted. These amendments are identical to those published under Notice as **ARC 5993B** and Adopted and Filed Emergency as **ARC 5992B**, IAB 7/4/07.

[Filed 9/12/07, effective 11/14/07]
[Published 10/10/07]

[For replacement pages for IAC, see IAC Supplement 10/10/07.]

ARC 6281B

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

Pursuant to the authority of Iowa Code section 234.6, the Department of Human Services amends Chapter 170, "Child Care Services," Iowa Administrative Code.

These amendments allow the use of a claim form specifically designed for Child Care Assistance as an alternative to the generic claim form that is used for various Department programs. Legislation found in 2007 Iowa Acts, Senate File 601, section 99, directs the Department to allow child care providers to bill on either a biweekly or a monthly basis, to remit payment within ten business days of receiving a bill, and to notify the provider of any errors in the bill within five business days of its receipt. The Department believes that use of a simplified claim form that is easier for providers to understand and that offers clear directions on how to complete the form will expedite claims processing. Use of the new claim form is optional to allow large child care centers that have automated their billing process using the current form to continue this practice.

The amendments also make technical changes to update the amounts used in the examples illustrating the application of the sliding fee schedule. These changes were inadvertently omitted when the amendments updating the fee schedule were adopted in **ARC 5854B**, which was published in the Iowa Administrative Bulletin on May 9, 2007.

These amendments were previously Adopted and Filed Emergency and published in the Iowa Administrative Bulletin on July 4, 2007, as **ARC 5996B**. Notice of Intended Action to solicit comments on these amendments was published in the Iowa Administrative Bulletin on the same date as **ARC 5998B**. The Department received no comments on the Notice of Intended Action. These amendments are identical to those Adopted and Filed Emergency and published under Notice of Intended Action.

HUMAN SERVICES DEPARTMENT[441](cont'd)

These amendments do not provide for waivers in specified situations. Claims must be submitted on one of the prescribed forms.

The Council on Human Services adopted these amendments on September 12, 2007.

These amendments are intended to implement Iowa Code section 237A.13 as amended by 2007 Iowa Acts, Senate File 601.

These amendments shall become effective November 14, 2007, at which time the Adopted and Filed Emergency amendments are rescinded.

The following amendments are adopted.

ITEM 1. Amend paragraph **170.4(2)"a,"** subparagraph **(5)**, examples **"1," "2,"** and **"3,"** as follows:

EXAMPLES:

1. Family 1 has two members, monthly income of ~~$1,075~~ *$1,100*, and one child in care. Since the income is at or above the Level A amount but less than the Level B amount, Family 1 pays $0.00 for each unit of child care service that the child receives.

2. Family 2 has three members, monthly income of ~~$1,400~~ *$1,450*, and one child in care. Since the income is at or above the Level B amount but less than the Level C amount, Family 2 pays $0.20 for each unit of child care service that the child receives.

3. Family 3 has three members, monthly income of ~~$1,400~~ *$1,450*, and two children in care. The younger child receives ten units of child care service per week. The older child is school-aged and receives only five units of service per week. Since the income is at or above the Level B amount but less than the Level C amount, Family 3 pays $0.45 for each unit of child care service that the younger child receives.

ITEM 2. Amend subrule **170.4(7)**, second unnumbered paragraph, as follows:

The department shall issue payment when the provider submits correctly completed documentation of attendance and charges. Providers shall submit either *(1)* Form 470-0020, Purchase of Services Provider Invoice, *or Form 470-4466, Child Care Provider Claim,* accompanied by Form 470-3872, Child Care Assistance Attendance Sheet, signed by the parent~~,~~*;* or *(2)* Form 470-3896, PROMISE JOBS Child Care Attendance and Invoice.

[Filed 9/12/07, effective 11/14/07]
[Published 10/10/07]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/10/07.

ARC 6273B

INSPECTIONS AND APPEALS DEPARTMENT[481]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 10A.104(5) and 135B.7, the Department of Inspections and Appeals hereby amends Chapter 51, "Hospitals," Iowa Administrative Code.

The adopted amendments clarify that Iowa-licensed hospitals that are not accredited by either The Joint Commission (formerly known as the Joint Commission on the Accreditation of Healthcare Organizations) or the American Osteopathic Association shall be inspected according to the licensing standards set forth in Chapter 51. Only one hospital in Iowa will be impacted by the adopted amendments, which establish administrative rules that reflect the Department's current practice.

In addition, the amendments update the name of the accreditation organization from the Joint Commission on the Accreditation of Healthcare Organizations (JCAHO) to The Joint Commission (JC).

The proposed amendments were presented to the Hospital Licensing Board at its June 28, 2007, meeting, at which time the Board approved the amendments.

The State Board of Health also reviewed the proposed amendments at its July 11, 2007, meeting. The Board approved the amendments at its September 12, 2007, meeting.

Notice of Intended Action was published in the Iowa Administrative Bulletin on August 1, 2007, as **ARC 6078B**.

No public comment was received on the adopted amendments, which are identical to those published under Notice of Intended Action.

These amendments will become effective November 14, 2007.

These amendments are intended to implement Iowa Code section 10A.104(5) and chapter 135B.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [51.2(5), 51.2(6), 51.6, 51.53(7)] is being omitted. These amendments are identical to those published under Notice as **ARC 6078B**, IAB 8/1/07.

[Filed 9/12/07, effective 11/14/07]
[Published 10/10/07]

[For replacement pages for IAC, see IAC Supplement 10/10/07.]

ARC 6274B

INSPECTIONS AND APPEALS DEPARTMENT[481]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 10A.104(5) and 135B.7, the Department of Inspections and Appeals hereby amends Chapter 51, "Hospitals," Iowa Administrative Code.

The adopted amendment implements 2007 Iowa Acts, House File 528, section 1, which requires hospitals to establish procedures for the authentication of all verbal orders by a practitioner. Previously, Iowa Code section 135B.7A stipulated that medication and standing orders be authenticated.

The adopted amendment was presented to the Hospital Licensing Board at its June 28, 2007, meeting, at which time the Board approved it.

The State Board of Health initially reviewed the amendment at its July 11, 2007, meeting. The Board approved the amendment at its September 12, 2007, meeting.

Notice of Intended Action was published in the Iowa Administrative Bulletin on August 1, 2007, as **ARC 6077B**. No public comment was received on the adopted amendment, which is identical to that published under Notice of Intended Action.

INSPECTIONS AND APPEALS DEPARTMENT[481](cont'd)

The amendment will become effective November 14, 2007.

The adopted amendment is intended to implement 2007 Iowa Acts, House File 528, section 1.

The following amendment is adopted.

Amend subrule 51.14(3), introductory paragraph, as follows:

51.14(3) Medication orders. All *verbal* orders ~~for drugs and biologicals~~ must be *authenticated* in writing and signed by the prescribing practitioner within a period not to exceed 30 days following a patient's discharge.

[Filed 9/12/07, effective 11/14/07]
[Published 10/10/07]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/10/07.

ARC 6304B

NURSING BOARD[655]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 17A.3 and 147.76, the Board of Nursing hereby rescinds Chapter 2, "Nursing Education Programs," Iowa Administrative Code, and adopts a new Chapter 2 with the same title.

A summary of the adopted rules is as follows:

1. Revision of existing definitions and the addition of new definitions to reflect current trends in nursing education.
2. Revision of the application procedure for interim approval of a nursing program to follow a step-by-step process for institutions seeking to establish an Iowa-approved nursing program.
3. Revision of the full approval procedure for clarity.
4. Identification of those circumstances under which a program may be given provisional approval and the conditions for provisional approval.
5. Revision of the curriculum of all programs to include the definition of content and learning experiences for the required areas of study: medical, surgical, gerontological, mental health, childbearing families and children, research, and community health.
6. Identification of the method to be used for student criminal history checks in accordance with Iowa Code section 152.5.
7. Clarification of the preceptorship experience to include qualifications of the preceptor and responsibilities of the program.
8. Expansion of the requirements for board notification and approval of program changes to include a proposed increase of student admissions by 20 percent or more.

These rules were published under Notice of Intended Action in the Iowa Administrative Bulletin on July 18, 2007, as **ARC 6040B**. These rules are identical to those published under Notice.

These rules will become effective November 14, 2007.

These rules are intended to implement Iowa Code section 152.5 and chapter 152E.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these rules [Ch 2] is being omitted. These rules are identical to those published under Notice as **ARC 6040B**, IAB 7/18/07.

[Filed 9/20/07, effective 11/14/07
[Published 10/10/07]

[For replacement pages for IAC, see IAC Supplement 10/10/07.]

ARC 6300B

PUBLIC EMPLOYMENT RELATIONS BOARD[621]

Adopted and Filed

Pursuant to the authority of Iowa Code section 20.6(5), the Public Employment Relations Board hereby amends Chapter 1, "General Provisions," and rescinds Chapter 13, "Consent for the Sale of Goods and Services," Iowa Administrative Code.

Item 1 increases the present $650 maximum per diem fee for fact finders, arbitrators and teacher termination adjudicators, in effect since October 2001, to $800 per day of service.

This amendment does not provide for a waiver of its terms but is instead subject to the Board's general waiver provisions, which are found at rule 621—1.9(17A,20).

Item 2 rescinds the Board's rules concerning how an agency official may obtain the agency's consent for the sale of goods or services to individuals or entities subject to the agency's regulatory authority. These rules have been rendered unnecessary by amendments to Iowa Code chapter 68B, which now requires the Iowa Ethics and Campaign Disclosure Board, rather than individual regulatory agencies, to adopt rules concerning this subject.

Notice of Intended Action was published in the Iowa Administrative Bulletin on August 15, 2007, as **ARC 6149B**. No written or oral comments were received. These amendments are identical to those published under Notice of Intended Action.

The Board adopted these amendments on September 19, 2007.

These amendments are intended to implement Iowa Code chapters 20 and 279.

These amendments will become effective November 14, 2007.

The following amendments are adopted.

ITEM 1. Amend rule 621—1.8(20,279) as follows:

621—1.8(20,279) Fees of neutrals. Qualified fact finders, arbitrators and teacher termination adjudicators appointed from a list maintained by the board may be compensated by a sum not to exceed ~~$650~~ *$800* per day of service, plus their necessary expenses incurred.

ITEM 2. Rescind and reserve **621—Chapter 13**.

[Filed 9/19/07, effective 11/14/07]
[Published 10/10/07]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/10/07.

ARC 6285B

PUBLIC HEALTH DEPARTMENT[641]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 135.11 and 136A.8, the Department of Public Health hereby amends Chapter 4, "Center for Congenital and Inherited Disorders," Iowa Administrative Code.

These amendments provide an explanation of the retention, use and disposition of residual maternal serum specimens, to be consistent with the policy for residual dried blood spot specimens. These amendments also include a provision for clarification of the timing of the collection of newborn screening specimens. Finally, technical amendments for due dates of required proposed budgets and annual reports are included.

Notice of Intended Action was published in the August 1, 2007, Iowa Administrative Bulletin as **ARC 6118B**. As a result of public comment and additional internal review, changes were made from the Notice of Intended Action to clarify language regarding timing of newborn specimen collection and to modify required submission dates for proposed budgets to allow for adequate review and approval of screening fees prior to the start of the next fiscal year.

These amendments were adopted by the State Board of Health on September 12, 2007.

These amendments shall become effective November 14, 2007.

These amendments are intended to implement Iowa Code chapter 136A.

The following amendments are adopted.

ITEM 1. Amend the implementation statutes for **641—Chapter 4** by striking "80GA,HF2362" and inserting "136A."

ITEM 2. Amend subrule 4.3(2) as follows:

4.3(2) Neonatal metabolic screening procedure *for facilities and providers*.

a. Educating parent or guardian. Before a specimen from an infant is obtained, a parent or guardian shall be informed of the type of specimen, how it is obtained, the nature of the disorders for which the infant is being screened, ~~and~~ the consequences of treatment and nontreatment, *and the retention, use and disposition of residual specimens*.

b. Waiver. Should a parent or guardian refuse the screening, said refusal shall be documented in writing on the Iowa neonatal metabolic screening program waiver for newborn screening refusal form. The parent or guardian and licensed attending health care provider shall sign the waiver. The birthing hospital, birth center, or attending health care provider shall provide the central laboratory with a copy of the waiver within six days of the refusal. The original copy of the waiver shall become a part of the infant's medical record.

c. Collection of specimens. A filter paper blood specimen shall be collected from the infant ~~at least~~ *between* 24 *to 48* hours after the infant's birth~~, but not later than~~*; however, a specimen collected up to* five days after the infant's birth *is valid. A specimen shall not be collected from an infant less than 24 hours after birth except as follows:*

~~EXCEPTIONS:~~

(1) A blood specimen must be collected before any transfusion, even if the infant is less than 24 hours old.

(2) ~~Every infant shall be screened prior to discharge~~ *A blood specimen must be collected before the infant leaves the hospital, whether by discharge or by transfer to another hospital*, even if the infant is less than 24 hours old.

~~(3) An infant transferred to another hospital must be screened by the receiving hospital unless the infant has already been screened. The transferring hospital is responsible for notifying the receiving hospital of the status of neonatal metabolic screening.~~

~~(4) The blood spot sample of an infant transferred after birth to an out-of-state hospital shall be collected and sent to the central laboratory by the receiving hospital prior to the infant's discharge.~~

d. Submission of specimens. All specimens shall be delivered via courier service or, *if courier service is not available*, forwarded by first-class mail or other appropriate means within 24 hours after collection to the University Hygienic Laboratory, the center's designated central laboratory.

e. and f. No change.

ITEM 3. Amend subrule **4.3(4)**, paragraph **"c,"** subparagraph **(2)**, as follows:

(2) If the infant is transferred out of house *within the state*, the birthing hospital or birth center shall notify the receiving hospital of the status of the neonatal metabolic screening. The receiving hospital shall then be responsible for completion of the neonatal metabolic screening prior to discharge of the infant.

ITEM 4. Amend subrule **4.3(4)**, paragraph **"d,"** subparagraph **(1)**, as follows:

(1) The infant is discharged *or transferred to another hospital* before the infant is 24 hours old.

ITEM 5. Amend subrule **4.3(5)**, paragraph **"h,"** as follows:

h. Submit a written annual report of the previous ~~calendar~~ *fiscal* year to the center by ~~March 31~~ *September 30* of each year. This report shall include:

(1) to (7) No change.

ITEM 6. Amend subrule **4.3(5)**, paragraph **"i,"** as follows:

i. In collaboration with the program consulting physicians, submit a proposed budget and narrative justification for the upcoming state fiscal year by ~~March 31~~ *January 31* of each year.

ITEM 7. Amend subrule **4.3(6)**, paragraph **"b,"** as follows:

b. The follow-up programs shall submit a written annual report of the previous ~~calendar~~ *fiscal* year by ~~March 31~~ *September 30* of each year. The report shall include:

(1) to (5) No change.

ITEM 8. Amend subrule **4.3(6)**, paragraph **"c,"** as follows:

c. In collaboration with the central laboratory, the follow-up programs shall submit a proposed budget and narrative justification for the upcoming fiscal year to the center by ~~March 31~~ *January 31* of each year.

ITEM 9. Amend subrule 4.3(8), introductory paragraph, as follows:

4.3(8) Retention, use and disposition of residual neonatal metabolic screening specimens. ~~Beginning January 1, 2005, the following policy shall be implemented.~~

ITEM 10. Amend subrule **4.3(10)** by adopting **new** paragraph **"e"** as follows:

PUBLIC HEALTH DEPARTMENT[641](cont'd)

e. The University of Iowa Hospitals and Clinics under the control of the state board of regents shall not receive indirect costs from state funds appropriated for this program.

ITEM 11. Amend subrule **4.4(3)**, paragraph **"a,"** as follows:

a. In collaboration with the central laboratory, submit a proposed budget and narrative justification for the upcoming ~~calendar~~ *fiscal* year to the center by ~~March 31~~ *January 31* of each year, and

ITEM 12. Amend subrule **4.4(3)**, paragraph **"b,"** as follows:

b. Submit a written annual report of the previous fiscal year to the center by ~~March 31~~ *September 30* of each year. The report shall include:

(1) to (6) No change.

ITEM 13. Amend rule 641—4.4(136A) by adopting **new** subrules 4.4(6) and 4.4(7) as follows:

4.4(6) Sharing of information and confidentiality. Reports, records, and other information collected by or provided to the Iowa expanded MSAFP/Quad screening program relating to a patient's maternal serum screening results and follow-up information are confidential records pursuant to Iowa Code section 22.7.

a. Personnel of the program shall maintain the confidentiality of all information and records used in the review and analysis of maternal serum screening and follow-up, including information that is confidential under Iowa Code chapter 22 or any other provisions of state law.

b. The program shall not release confidential information except to the following persons and entities, under the following conditions:

(1) The patient for whom the report is made.

(2) A local health care provider, or submitting laboratory.

(3) A representative of a state or federal agency, to the extent that the information is necessary to perform a legally authorized function of that agency or the department. The state or federal agency will be subject to confidentiality regulations which are the same as or more stringent than those in the state of Iowa.

(4) A researcher, upon documentation of parental consent obtained by the researcher, and only to the extent that the information is necessary to perform research authorized by the department and the state board of health.

4.4(7) Retention, use and disposition of residual maternal serum screening specimens.

a. A maternal serum screening specimen collection consists of laboratory tubes with maternal serum screening specimens and attached information about the patient, health care provider, or drawing laboratory.

(1) Maternal serum screening specimens shall be held for a specified period of time in a locked area at the central laboratory in accordance with central laboratory policy and procedures.

(2) Reserved.

b. Research use.

(1) Investigators shall submit to the center proposals to use maternal serum screening specimens. Any intent to utilize information associated with the residual maternal serum screening specimen for the research study must be clearly delineated in the proposal.

(2) Before research can commence, proposals shall be approved by the researcher's institutional review board, the congenital and inherited disorders advisory committee, and the department.

(3) Personally identifiable residual specimens or records shall not be disclosed without documentation of informed patient consent obtained by the researcher.

(4) Research on anonymized or identifiable residual specimens shall be allowed in instances where research would further maternal serum screening activities or general medical knowledge for existing public health surveillance activities.

ITEM 14. Amend subrule 4.5(3) as follows:

4.5(3) Patient fees.

a. A sliding fee scale for specialty genetics provider services shall be established for patients attending the outreach clinics. The parameters for the sliding fee scale shall be based on federally established percent of poverty guidelines and updated annually.

b. Families/clients seen in the regional genetic consultation service clinics shall have bills submitted to third-party payers where applicable. Families/clients shall be billed on a sliding fee scale after third-party payment is received. Payments received from receipts of service based on the sliding fee scale or from the third-party payers shall be used only to support the RGCS.

c. The University of Iowa Hospitals and Clinics under the control of the state board of regents shall not receive indirect costs from state funds appropriated for this program.

ITEM 15. Amend subrule 4.6(3) as follows:

4.6(3) Patient fees.

a. A sliding fee scale for specialty genetic provider services shall be established for patients attending the outreach clinics. The parameters for the sliding fee scale shall be based on federally established percent of poverty guidelines and updated annually.

b. Families/clients seen in neuromuscular outreach clinics shall have bills submitted to third-party payers where applicable. Families/clients shall be billed on a sliding fee scale after third-party payment is received. Payments received from receipts of service based on the sliding fee scale or from the third-party payers shall be used only to support the neuromuscular outreach clinics.

c. The University of Iowa Hospitals and Clinics under the control of the state board of regents shall not receive indirect costs from state funds appropriated for this program.

ITEM 16. Amend **641—Chapter 4**, implementation sentence, as follows:

These rules are intended to implement ~~2004 Iowa Acts, House File 2362~~ *Iowa Code chapter 136A.*

[Filed 9/13/07, effective 11/14/07]
[Published 10/10/07]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/10/07.

ARC 6286B

PUBLIC HEALTH DEPARTMENT[641]

Adopted and Filed

Pursuant to the authority of Iowa Code section 147A.4, the Department of Public Health hereby adopts new Chapter

130, "Emergency Medical Services Advisory Council," Iowa Administrative Code.

The rules in Chapter 130 describe the purpose, membership, appointment process, officers, and meeting procedures for the Emergency Medical Services Advisory Council.

Notice of Intended Action was published in the August 1, 2007, Iowa Administrative Bulletin as **ARC 6111B**. No written comments were received. These rules are identical to those published under Notice.

These rules were adopted by the State Board of Health on September 12, 2007.

These rules shall become effective November 14, 2007.

These rules are intended to implement Iowa Code chapter 147A.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these rules [Ch 130] is being omitted. These rules are identical to those published under Notice as **ARC 6111B**, IAB 8/1/07.

[Filed 9/13/07, effective 11/14/07]
[Published 10/10/07]

[For replacement pages for IAC, see IAC Supplement 10/10/07.]

ARC 6287B

PUBLIC HEALTH DEPARTMENT[641]

Adopted and Filed

Pursuant to the authority of Iowa Code section 147A.27, the Department of Public Health hereby amends Chapter 136, "Trauma Registry," Iowa Administrative Code.

The rules in Chapter 136 describe the trauma registry procedures and policies. This proposed amendment updates the data dictionary for reportable patient data.

Notice of Intended Action was published in the August 1, 2007, Iowa Administrative Bulletin as **ARC 6114B**. No written comments were received. The adopted amendment has been changed from that published under Notice. The change reflects the current "Iowa EMS Patient Registry Data Dictionary" of August 2007 rather than May 2007.

This amendment was adopted by the State Board of Health on September 12, 2007.

This amendment shall become effective November 14, 2007.

This amendment is intended to implement Iowa Code chapter 147A.

The following amendment is adopted.

Amend subrule **136.2(1)**, paragraphs **"a"** and **"c,"** as follows:

a. "Iowa Trauma Patient Data Dictionary" (~~April 2003~~ *July 2005*) is incorporated by reference for inclusion criteria and reportable patient data to be reported to the trauma registry or reported to a trauma care facility. For any differences which may occur between the adopted reference and this chapter, the administrative rules shall prevail.

c. "Iowa EMS Patient Registry Data Dictionary" (~~January 2004~~ *August 2007*) is incorporated by reference for inclusion criteria and reportable patient data to be reported to the department. For any differences which may occur between the adopted reference and this chapter, the administrative rules shall prevail.

[Filed 9/13/07, effective 11/14/07]
[Published 10/10/07]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/10/07.

ARC 6318B

TELECOMMUNICATIONS AND TECHNOLOGY COMMISSION, IOWA[751]

Adopted and Filed

Pursuant to the authority of Iowa Code section 8D.3(3)"b," the Iowa Telecommunications and Technology Commission hereby amends Chapter 1, "Description of Organization," Iowa Administrative Code.

These amendments align the rules with the change made to Iowa Code section 8D.6 and allow for the Commission to dissolve as well as establish advisory committees. These amendments reassign functions to the appropriate divisions/bureaus/offices due to an internal reorganization. These amendments reflect the change of contact information since the Iowa Communications Network has changed the location of its offices.

Notice of Intended Action was published in the June 20, 2007, Iowa Administrative Bulletin as **ARC 5948B**. A public hearing was held on July 10, 2007. No comments were received. The adopted amendments are identical to those published under Notice.

These amendments were approved during the September 20, 2007, meeting of the Iowa Telecommunications and Technology Commission.

These amendments will become effective on November 14, 2007.

These amendments are intended to implement Iowa Code sections 8D.3 and 8D.6.

The following amendments are adopted.

ITEM 1. Amend rule **751—1.3(17A,8D)**, numbered paragraph **"3,"** as follows:

3. The commission may ~~appoint~~ *establish or dissolve* other committees and advisory groups from time to time as necessary.

ITEM 2. Amend subrule 1.5(2) as follows:

1.5(2) Administrative elements. In order to carry out the functions of the commission, the following divisions/bureaus/offices have been established:

a. The office of the deputy director is responsible for agency information systems functions, legislative liaison, public information, ~~facilities management~~ *maintenance of a circuit database*, and administrative support to the commission. The office also provides information and education to the public about the commission and the fiberoptic network and maintains the commission's World Wide Web page on the Internet.

b. The finance division is responsible for maintaining the financial books and records of the commission, accounting, billing, asset inventory and management, personnel transactions, travel vouchers, claims for payments of goods

and services, processing cash receipts, purchasing and contracting activities, *facilities management* and other duties as assigned from time to time.

c. The operations bureau is responsible for provisioning of video services, data/Internet services, and voice services for authorized users. It is responsible for all operational aspects of the fiberoptic network.

d. The engineering bureau is responsible for the technical operation of the fiberoptic network, including research and development, and network systems support. It oversees all physical aspects of the network's equipment and circuits and performs other duties as assigned from time to time.

~~e. The customer service and provisioning bureau is responsible for the delivery of services related to the operation of the network.~~

~~f~~ *e*. The sales and marketing bureau coordinates the activities between the engineers, individual sites, and authorized users. It is responsible for *providing* cost estimates for ~~a site~~ *services*, tracking service requests, executing installation services, ~~maintaining a circuit data base,~~ and assisting authorized users in finding the best structure to meet the users' needs.

ITEM 3. Amend subrule 1.6(1) as follows:

1.6(1) Main office. ~~The main office is located in Building W-4, Railroad Avenue, Camp Dodge, Johnston, Iowa 50131. The mailing address is P.O. Box 587, Johnston, Iowa 50131-0587. The telephone number is (515)725-4692. The toll-free number is 1-800-645-8860. The fax number is (515) 725-4751.~~ *The main office is located in the Grimes State Office Building, 400 E. 14th Street, Des Moines, Iowa 50319. The telephone number is (515)725-4692. The toll-free number is 1-877-426-4692. The fax number is (515)725-4727.* The E-mail address is ~~info@icn.state.ia.us~~ *ICN.info@iowa.gov*. The home page address on the World Wide Web is http://www.icn.state.ia.us.

[Filed 9/21/07, effective 11/14/07]
[Published 10/10/07]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/10/07.

ARC 6319B

TELECOMMUNICATIONS AND TECHNOLOGY COMMISSION, IOWA[751]

Adopted and Filed

Pursuant to the authority of Iowa Code section 8D.3(3)"b," the Iowa Telecommunications and Technology Commission hereby amends Chapter 2, "Public Records and Fair Information Practices," Iowa Administrative Code.

This amendment reflects the change of contact information since the Iowa Communications Network has changed the location of its offices.

Notice of Intended Action was published in the June 20, 2007, Iowa Administrative Bulletin as **ARC 5949B**. A public hearing was held on July 10, 2007. No comments were received. The adopted amendment is identical to that published under Notice.

This amendment was approved during the September 20, 2007, meeting of the Iowa Telecommunications and Technology Commission.

This amendment will become effective on November 14, 2007.

This amendment is intended to implement Iowa Code section 8D.3.

The following amendment is adopted.

Amend subrule 2.3(1) as follows:

2.3(1) Location of record. A request for access to a record should be directed to the executive director or the particular commission office where the record is kept. If the location of the record is not known by the requester, the request shall be directed to the executive director~~, ICN, P.O. Box 587, Johnston, Iowa 50131-0587~~ *at the ICN main office location as listed in 751—subrule 1.6(1)*. If a request for access to a record is misdirected, commission personnel will promptly forward the request to the appropriate person within the commission.

[Filed 9/21/07, effective 11/14/07]
[Published 10/10/07]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/10/07.

ARC 6321B

TELECOMMUNICATIONS AND TECHNOLOGY COMMISSION, IOWA[751]

Adopted and Filed

Pursuant to the authority of Iowa Code section 8D.3(3)"b," the Iowa Telecommunications and Technology Commission hereby amends Chapter 3, "Declaratory Orders," Iowa Administrative Code.

These amendments reflect the change of contact information since the Iowa Communications Network changed the location of its offices.

Notice of Intended Action was published in the June 20, 2007, Iowa Administrative Bulletin as **ARC 5957B**. A public hearing was held on July 10, 2007. No comments were received. The adopted amendments are identical to those published under Notice.

These amendments were approved during the September 20, 2007, meeting of the Iowa Telecommunications and Technology Commission.

These amendments will become effective on November 14, 2007.

These amendments are intended to implement Iowa Code chapter 17A.

The following amendments are adopted.

ITEM 1. Amend rule 751—3.1(17A), introductory paragraph, as follows:

751—3.1(17A) Petition for declaratory order. Any person may file a petition with the Iowa telecommunications and technology commission for a declaratory order as to the applicability to specified circumstances of a statute, rule, or order within the primary jurisdiction of the commission at ~~ICN, Camp Dodge, W4 Railroad Avenue, P.O. Box 587, Johnston, Iowa 50131-0587~~ *the ICN main office location as listed in 751—subrule 1.6(1)*. A petition is deemed filed when it is received by that office. The commission shall provide the petitioner with a file-stamped copy of the petition if the petitioner provides the commission an extra copy for this purpose. The

petition must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

ITEM 2. Amend subrule 3.3(3), introductory paragraph, as follows:

3.3(3) A petition for intervention shall be filed at ~~ICN, Camp Dodge, W4 Railroad Avenue, P.O. Box 587, Johnston, Iowa 50131-0587~~ *the ICN main office location as listed in 751—subrule 1.6(1)*. Such a petition is deemed filed when it is received by that office. The commission will provide the petitioner with a file-stamped copy of the petition for intervention if the petitioner provides an extra copy for this purpose. A petition for intervention must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

ITEM 3. Amend rule 751—3.5(17A) as follows:

751—3.5(17A) Inquiries. Inquiries concerning the status of a declaratory order proceeding may be made to the executive director~~, ICN, Camp Dodge, W4 Railroad Avenue, P.O. Box 587, Johnston, Iowa 50131-0587~~ *at the ICN main office location as listed in 751—subrule 1.6(1)*.

ITEM 4. Amend subrule 3.6(2) as follows:

3.6(2) Filing—when required. All petitions for declaratory orders, petitions for intervention briefs, or other papers in a proceeding for a declaratory order shall be filed with the Iowa telecommunications and technology commission~~, ICN, Camp Dodge, W4 Railroad Avenue, P.O. Box 587, Johnston, Iowa 50131-0587~~ *at the ICN main office location as listed in 751—subrule 1.6(1)*. Petitions, briefs, or other papers that are required to be served upon a party shall be filed simultaneously with the Iowa telecommunications and technology commission.

[Filed 9/21/07, effective 11/14/07]
[Published 10/10/07]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/10/07.

ARC 6322B

TELECOMMUNICATIONS AND TECHNOLOGY COMMISSION, IOWA[751]

Adopted and Filed

Pursuant to the authority of Iowa Code section 8D.3(3)"b," the Iowa Telecommunications and Technology Commission hereby amends Chapter 4, "Contested Cases," Iowa Administrative Code.

These amendments reflect the change of contact information since the Iowa Communications Network has changed the location of its offices.

Notice of Intended Action was published in the June 20, 2007, Iowa Administrative Bulletin as **ARC 5958B**. A public hearing was held on July 10, 2007. No comments were received. The adopted amendments are identical to those published under Notice.

These amendments were approved during the September 20, 2007, meeting of the Iowa Telecommunications and Technology Commission.

These amendments will become effective on November 14, 2007.

These amendments are intended to implement Iowa Code chapters 8D and 17A.

The following amendments are adopted.

ITEM 1. Amend subrule 4.12(3) as follows:

4.12(3) Filing—when required. After the notice of hearing, all pleadings, motions, documents or other papers in a contested case proceeding shall be filed with the executive director of the commission~~, ICN, Camp Dodge, W4 Railroad Avenue, P.O. Box 587, Johnston, Iowa 50131-0587~~ *at the ICN main office location as listed in 751—subrule 1.6(1)*. All pleadings, motions, documents or other papers that are required to be served upon a party shall be filed simultaneously with the commission ~~name~~.

ITEM 2. Amend subrule 4.12(4) as follows:

4.12(4) Filing—when made. Except where otherwise provided by law, a document is deemed filed at the time it is delivered to the ICN~~, Camp Dodge, W4 Railroad Avenue, P.O. Box 587, Johnston, Iowa 50131-0587~~ *main office location as listed in 751—subrule 1.6(1)*, delivered to an established courier service for immediate delivery to that office, or mailed by first-class mail or state interoffice mail to that office, so long as there is proof of mailing.

ITEM 3. Amend subrule 4.12(5) as follows:

4.12(5) Proof of mailing. Proof of mailing includes either: a legible United States Postal Service postmark on the envelope, a certificate of service, a notarized affidavit, or a certification in substantially the following form:

> I certify under penalty of perjury and pursuant to the laws of Iowa that, on (date of mailing), I mailed copies of (describe document) addressed to the Iowa Telecommunications and Technology Commission~~, ICN, Camp Dodge, W4 Railroad Avenue, P.O. Box 587, Johnston, Iowa 50131-0587,~~ *at the ICN main office location as listed in 751—subrule 1.6(1)* and to the names and addresses of the parties listed below by depositing the same in (a United States post office mailbox with correct postage properly affixed or state interoffice mail).
> (Date) (Signature)

[Filed 9/21/07, effective 11/14/07]
[Published 10/10/07]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/10/07.

ARC 6323B

TELECOMMUNICATIONS AND TECHNOLOGY COMMISSION, IOWA[751]

Adopted and Filed

Pursuant to the authority of Iowa Code section 8D.3(3)"b," the Iowa Telecommunications and Technology Commission hereby amends Chapter 5, "Purchasing," Iowa Administrative Code.

These amendments reflect the change of contact information since the Iowa Communications Network has changed the location of its offices and implement the change in the authorized spending limit included in 2007 Iowa Acts, House File 851.

Notice of Intended Action was published in the June 20, 2007, Iowa Administrative Bulletin as **ARC 5959B**. A pub-

lic hearing was held on July 10, 2007. No comments were received. The adopted amendments are identical to those published under Notice.

These amendments were approved during the September 20, 2007, meeting of the Iowa Telecommunications and Technology Commission.

These amendments will become effective on November 14, 2007.

These amendments are intended to implement Iowa Code section 8D.3(3)"b" and section 8D.11 as amended by 2007 Iowa Acts, House File 851, section 2.

The following amendments are adopted.

ITEM 1. Amend paragraph **5.2(4)"a"** as follows:

a. The commission may purchase items at auction when the auction is conducted electronically, digitally or otherwise. For any single item, the commission may spend up to ~~$1 million~~ *the maximum amount permitted by Iowa Code section 8D.11 as amended by 2007 Iowa Acts, House File 851, section 2,* to acquire the item. However, the commission shall not make a bid for any item for which the bid price at the auction exceeds the reasonable market price of an item. The commission shall perform a market analysis prior to the auction to determine the market price for items available by auction. The commission shall retain the market analysis with any other documentation for the purchase of the item at the auction.

ITEM 2. Amend rule 751—5.17(8D), introductory paragraph, as follows:

751—5.17(8D) Vendor appeals. Any vendor whose bid or proposal has been timely filed and that is aggrieved by the commission's notice of intent to award may appeal the decision by filing a written notice of appeal before the Iowa telecommunications and technology commission, within five days of the date of the notice of intent to award, exclusive of Saturdays, Sundays, and legal state holidays. The commission's ~~physical address is Building W-4, Railroad Avenue, Camp Dodge, Johnston, Iowa 50131-0587. The commission's mailing address is P.O. Box 587, Johnston, Iowa 50131-0587~~ *address is listed in 751—subrule 1.6(1)*. The commission must actually receive the notice of appeal at this address within the specified time frame to be considered timely. The notice shall state the following:

ITEM 3. Amend subrule 5.19(3) as follows:

5.19(3) A party appealing a proposed decision shall mail or deliver the notice of appeal to the executive director~~,~~ *of the* Iowa telecommunications and technology commission~~, Building W-4, Railroad Avenue, Camp Dodge, Johnston, Iowa 50131-0587~~ *at the ICN main office location as listed in 751—subrule 1.6(1)*. ~~The mailing address is P.O. Box 587, Johnston, Iowa 50131-0587.~~ Failure to request review will preclude judicial review unless the commission reviews a decision on its own motion. Notice of the review will be sent to all parties participating in the appeal.

[Filed 9/21/07, effective 11/14/07]
[Published 10/10/07]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/10/07.

ARC 6324B

TELECOMMUNICATIONS AND TECHNOLOGY COMMISSION, IOWA[751]

Adopted and Filed

Pursuant to the authority of Iowa Code section 8D.3(3)"b," the Iowa Telecommunications and Technology Commission hereby amends Chapter 7, "Authorized Use and Users," Iowa Administrative Code.

This amendment reflects the name change of the location of the central switching hub of the network.

Notice of Intended Action was published in the June 20, 2007, Iowa Administrative Bulletin as **ARC 5960B**. A public hearing was held on July 10, 2007. No comments were received. The adopted amendment is identical to that published under Notice.

This amendment was approved during the September 20, 2007, meeting of the Iowa Telecommunications and Technology Commission.

This amendment will become effective on November 14, 2007.

This amendment is intended to implement Iowa Code sections 8D.2, 8D.3(1), 8D.3(3)"b," and 8D.13(14) to 8D.13(19).

The following amendment is adopted.

Amend rule **751—7.1(8D)**, definition of "part I," as follows:

"Part I" means the communications connections between *the* central switching hub of the network located at ~~STARC~~ *joint forces headquarters (JFHQ) armory* and the 15 community colleges, the universities governed by the board of regents and Iowa public television and the other regional switching centers for the remainder of the network. These are state-owned facilities.

[Filed 9/21/2007, effective 11/14/07]
[Published 10/10/07]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/10/07.

ARC 6325B

TELECOMMUNICATIONS AND TECHNOLOGY COMMISSION, IOWA[751]

Adopted and Filed

Pursuant to the authority of Iowa Code section 8D.3(3)"b," the Iowa Telecommunications and Technology Commission hereby amends Chapter 9, "Requests for Waiver of Network Use by Certified Users," Iowa Administrative Code.

This amendment clarifies the application process by which certified users may request a waiver.

Notice of Intended Action was published in the June 20, 2007, Iowa Administrative Bulletin as **ARC 5961B**. A public hearing was held on July 10, 2007. No comments were received. The adopted amendment is identical to that published under Notice.

This amendment was approved during the September 20, 2007, meeting of the Iowa Telecommunications and Technology Commission.

This amendment will become effective on November 14, 2007.

This amendment is intended to implement Iowa Code sections 8D.3(3)"b" and 8D.9(2)"b."

The following amendment is adopted.

Rescind rule 751—9.1(8D) and adopt the following **new** rule in lieu thereof:

751—9.1(8D) Request for waiver. A certified user is entitled to file a request for a waiver pursuant to Iowa Code section 8D.9(2). For the purposes of this chapter, "certified user" means an area education agency, community college, regents institution, or private college that has certified with the commission that it is or will be a part of the network.

9.1(1) Conditions.

a. One of the following conditions shall be satisfied in the request:

(1) The costs to the certified user for services provided by the network are not competitive with the same services available from another provider.

(2) The certified user is under contract with another provider for such services, provided the contract was entered into prior to April 1, 1994. The certified user shall use the network for video, data, and voice requirements that are not provided pursuant to such contract.

b. A certified user shall have the burden of proof regarding the question of whether the services provided by the network are not competitive with the same services available from another provider.

9.1(2) Waiver submission. A request for waiver must be received at the ICN main office location as listed in 751—subrule 1.6(1) not less than 15 days prior to the next regularly scheduled commission meeting. A request for waiver renewal must be submitted not less than 15 days prior to the next scheduled commission meeting preceding the expiration of the current waiver. A listing of certified users not meeting this submission requirement shall be included in the commission's annual report related to the network.

[Filed 9/21/07, effective 11/14/07]
[Published 10/10/07]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/10/07.

ARC 6307B

TELECOMMUNICATIONS AND TECHNOLOGY COMMISSION, IOWA[751]

Adopted and Filed

Pursuant to the authority of Iowa Code section 8D.3(3)"b," the Iowa Telecommunications and Technology Commission hereby amends Chapter 16, "Uniform Waiver and Variance Rules," Iowa Administrative Code.

This amendment reflects the change of contact information since the Iowa Communications Network has changed the location of its offices.

Notice of Intended Action was published in the June 20, 2007, Iowa Administrative Bulletin as **ARC 5962B**. A public hearing was held on July 10, 2007. No comments were received. The adopted amendment is identical to that published under Notice.

This amendment was approved during the September 20, 2007, meeting of the Iowa Telecommunications and Technology Commission.

This amendment will become effective on November 14, 2007.

This amendment is intended to implement Iowa Code section 17A.9A and Executive Order Number 11.

The following amendment is adopted.

Amend rule 751—16.6(17A,ExecOrd11) as follows:

751—16.6(17A,ExecOrd11) Public availability. Subject to the provisions of Iowa Code section 17A.3(1)"e," the commission shall maintain a record of all orders granting or denying waivers and variances under this chapter. All final rulings in response to requests for waivers or variances shall be indexed and available to members of the public at the ~~Iowa Communications Network (ICN), Building W-4, Railroad Avenue, Camp Dodge, Johnston, Iowa~~ *ICN main office location as listed in 751—subrule 1.6(1).*

[Filed 9/20/07, effective 11/14/07]
[Published 10/10/07]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/10/07.

ARC 6306B

TELECOMMUNICATIONS AND TECHNOLOGY COMMISSION, IOWA[751]

Adopted and Filed

Pursuant to the authority of Iowa Code section 8D.3(3)"b," the Iowa Telecommunications and Technology Commission hereby amends Chapter 18, "Procedure for Rule Making," Iowa Administrative Code.

These amendments reflect the change of contact information since the Iowa Communications Network has changed the location of its offices.

Notice of Intended Action was published in the June 20, 2007, Iowa Administrative Bulletin as **ARC 5963B**. A public hearing was held on July 10, 2007. No comments were received. The adopted amendments are identical to those published under Notice.

These amendments were approved during the September 20, 2007, meeting of the Iowa Telecommunications and Technology Commission.

These amendments will become effective on November 14, 2007.

These amendments are intended to implement Iowa Code chapter 17A.

The following amendments are adopted.

ITEM 1. Amend subrule 18.5(1) as follows:

18.5(1) Written comments. For at least 20 days after publication of the Notice of Intended Action, persons may submit argument, data, and views, in writing, on the proposed rule. Such written submissions should identify the proposed rule to which they relate and should be submitted to the

executive director~~, ICN, Camp Dodge, W-4 Railroad Avenue, P.O. Box 587, Johnston, Iowa 50131-0587~~ *at the ICN main office location as listed in 751—subrule 1.6(1)*~~,~~ or *to* the person designated in the Notice of Intended Action.

ITEM 2. Amend subrule 18.5(5) as follows:

18.5(5) Accessibility. The commission shall schedule oral proceedings in rooms accessible to and functional for persons with physical disabilities. Persons who have special requirements should contact the executive director~~, ICN, Camp Dodge, W-4 Railroad Avenue, P.O. Box 587, Johnston, Iowa 50131-0587, telephone (515)725-4692,~~ *at the ICN main office location as listed in 751—subrule 1.6(1)* in advance to arrange access or other needed services.

ITEM 3. Amend subrule 18.6(2), introductory paragraph, as follows:

18.6(2) Mailing list. Small businesses or organizations of small businesses may be registered on the commission's small business impact list by making a written application addressed to the executive director~~, ICN, Camp Dodge, W-4 Railroad Avenue, P.O. Box 587, Johnston, Iowa 50131-0587~~ *at the ICN main office location as listed in 751—subrule 1.6(1)*. The application for registration shall state:

ITEM 4. Amend subrule 18.11(1) as follows:

18.11(1) General. When requested by a person, either prior to the adoption of a rule or within 30 days after its publication in the Iowa Administrative Bulletin as an adopted rule, the commission shall issue a concise statement of reasons for the rule. Requests for such a statement must be in writing and be delivered to the executive director of the commission~~, ICN, Camp Dodge, W-4 Railroad Avenue, P.O. Box 587, Johnston, Iowa 50131-0587~~ *at the ICN main office location as listed in 751—subrule 1.6(1)*. The request should indicate whether the statement is sought for all or only a specified part of the rule. Requests will be considered made on the date received.

[Filed 9/20/07, effective 11/14/07]
[Published 10/10/07]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/10/07.

AGENCY	RULE	DELAY
Environmental Protection Commission[567]	rescind 101.13(1)"j"(4); adopt 104.25; rescind chs 111 and 113; adopt ch 113 [IAB 7/4/07, **ARC 5999B**]	Effective date of October 1, 2007, delayed 70 days by the Administrative Rules Review Committee at its meeting held September 11, 2007. [Pursuant to §17A.4(6)]
Insurance Division[191]	39.15(4) [IAB 8/29/07, **ARC 6205B**]	Effective date of October 3, 2007, delayed 70 days by the Administrative Rules Review Committee at its meeting held September 11, 2007. [Pursuant to §17A.4(6)]

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