EDUCATION DEPARTMENT[281]

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TITLE I
GENERAL INFORMATION—
DEPARTMENT OPERATIONS

CHAPTER 1
ORGANIZATION AND OPERATION

1.1(17A,256) State board of education
1.2(17A,256) Student member of state board of education
1.3(17A,256) Director of education
1.4(17A,256) Department of education

CHAPTER 2
AGENCY PROCEDURE FOR RULE MAKING AND PETITIONS FOR RULE MAKING
(Uniform Rules)

2.1(17A) Applicability
2.2(17A) Advice on possible rules before notice of proposed rule adoption
2.3(17A) Public rule-making docket
2.4(17A) Notice of proposed rule making
2.5(17A) Public participation
2.6(17A) Regulatory analysis
2.7(17A,25B) Fiscal impact statement
2.8(17A) Time and manner of rule adoption
2.9(17A) Variance between adopted rule and published notice of proposed rule adoption
2.10(17A) Exemptions from public rule-making procedures
2.11(17A) Concise statement of reasons
2.12(17A) Contents, style, and form of rule
2.13(17A) Agency rule-making record
2.14(17A) Filing of rules
2.15(17A) Effectiveness of rules prior to publication
2.16(17A) General statements of policy
2.17(17A) Review by agency of rules
2.18(17A) Petition for rule making
2.19(17A) Inquiries

CHAPTER 3
DECLARATORY ORDERS
(Uniform Rules)

3.1(17A) Petition for declaratory order
3.2(17A) Notice of petition
3.3(17A) Intervention
3.4(17A) Briefs
3.5(17A) Inquiries
3.6(17A) Service and filing of petitions and other papers
3.7(17A) Consideration
3.8(17A) Action on petition
3.9(17A) Refusal to issue order
3.10(17A) Contents of declaratory order—effective date
3.11(17A) Copies of orders
3.12(17A) Effect of a declaratory order

CHAPTER 4
WAIVERS OR VARIANCES FROM ADMINISTRATIVE RULES

4.1(17A,ExecOrd11) Definitions
4.2(17A,ExecOrd11) Scope of chapter
4.3(17A,ExecOrd11) Applicability of chapter
4.4(17A,ExecOrd11) Criteria for waiver
4.5(17A,ExecOrd11) Filing of petition
4.6(17A,ExecOrd11) Content of petition
4.7(17A,ExecOrd11) Additional information
4.8(17A,ExecOrd 11) Notice
4.9(17A,ExecOrd11) Hearing procedures
4.10(17A,ExecOrd11) Ruling
4.11(17A,ExecOrd11) Public availability
4.12(17A,ExecOrd11) Summary reports
4.13(17A,ExecOrd11) Cancellation
4.14(17A,ExecOrd11) Violations
4.15(17A,ExecOrd11) Defense
4.16(17A,ExecOrd11) Judicial review
4.17(17A,ExecOrd11) Exception

CHAPTER 5
PUBLIC RECORDS AND FAIR INFORMATION PRACTICES
(Uniform Rules)

5.1(256) Definitions
5.3(256) Requests for access to records
5.6(256) Procedure by which additions, dissents, or objections may be entered into certain records
5.9(256) Disclosures without the consent of the subject
5.10(256) Routine use
5.11(256) Consensual disclosure of confidential records
5.12(256) Release to a subject
5.13(256) Availability of records
5.14(256) Personally identifiable information
5.15(256) Other groups of records
5.16(256) Applicability

CHAPTER 6
APPEAL PROCEDURES

6.1(290) Scope of appeal
6.2(256,290,17A) Definitions
6.3(290,17A) Manner of appeal
6.4(17A) Continuances
6.5(17A) Intervention
6.6(17A) Motions
6.7(17A) Disqualification
6.8(290) Subpoena of witnesses and costs
6.9(17A) Discovery
6.10(17A) Consolidation—severance
6.11(17A) Waiver of procedures
6.12(17A) Appeal hearing
6.13 Reserved
6.14(17A) Ex parte communication
6.15(17A) Record

6.16(17A) Recording costs
6.17(290,17A) Decision and review
6.18(290) Finality of decision
6.19(17A) Default
6.20(17A) Application for rehearing of final decision
6.21(17A) Rehearing
6.22(17A) Emergency adjudicative proceedings
6.23(256,17A) Additional requirements for specific programs

CHAPTER 7
CRITERIA FOR GRANTS

7.1(256,17A) Purpose
7.2(256,17A) Definitions
7.3(256,17A) Requirements
7.4(256,17A) Review process
7.5(290,17A) Appeal of grant denial or termination

CHAPTERS 8 to 10
Reserved

TITLE II
ACCREDITED SCHOOLS AND SCHOOL DISTRICTS

CHAPTER 11
UNSAFE SCHOOL CHOICE OPTION

11.1(PL107-110) Purpose
11.2(PL107-110) Definitions
11.3(PL107-110) Whole school option
11.4(PL107-110) Individual student option
11.5(PL107-110) District reporting

CHAPTER 12
GENERAL ACCREDITATION STANDARDS

DIVISION I
GENERAL STANDARDS

12.1(256) General standards

DIVISION II
DEFINITIONS

12.2(256) Definitions

DIVISION III
ADMINISTRATION

12.3(256) Administration

DIVISION IV
SCHOOL PERSONNEL

12.4(256) School personnel

DIVISION V
EDUCATION PROGRAM

12.5(256) Education program

DIVISION VI
ACTIVITY PROGRAM

12.6(256) Activity program

DIVISION VII
STAFF DEVELOPMENT

12.7(256,284,284A) Professional development

DIVISION VIII
ACCOUNTABILITY

12.8(256) Accountability for student achievement

DIVISION IX
EXEMPTION REQUEST PROCESS

12.9(256) General accreditation standards exemption request

DIVISION X
INDEPENDENT ACCREDITING AGENCIES

12.10(256) Independent accrediting agencies

CHAPTERS 13 and 14
Reserved

CHAPTER 15
USE OF ONLINE LEARNING AND TELECOMMUNICATIONS FOR INSTRUCTION BY SCHOOLS

15.1(256) Purpose
15.2(256) Definitions

DIVISION I
USE OF TELECOMMUNICATIONS FOR INSTRUCTION BY SCHOOLS

15.3(256) Interactivity
15.4(256) Course eligibility
15.5(256) Teacher preparation and accessibility
15.6(256) School responsibilities

DIVISION II
ONLINE LEARNING OFFERED BY A SCHOOL DISTRICT

15.7(256) School district responsibilities
15.8(256) Prohibition regarding open enrollment

15.9(256) Special education services

DIVISION III
IOWA LEARNING ONLINE (ILO)

15.10(256) Appropriate applications of ILO coursework
15.11(256) Inappropriate applications of ILO coursework; criteria for waiver
15.12(256) School and school district responsibilities
15.13(256) Department responsibilities
15.14(256) Enrollment in an ILO course

CHAPTER 16
STATEWIDE VOLUNTARY PRESCHOOL PROGRAM

16.1(256C) Purpose
16.2(256C) Definitions
16.3(256C) Preschool program standards
16.4(256C) Collaboration requirements
16.5(256C) Applications for funding
16.6(256C) Application process
16.7(256C) Award contracts
16.8(256C) Contract termination
16.9(256C) Criteria for applications for funding
16.10(256C) Appeal of application denial or termination
16.11(256C) Finance
16.12(256C) Transportation
16.13(256C) Accountability requirements
16.14(256C) Monitoring
16.15(256C) Open enrollment not applicable

CHAPTER 17
OPEN ENROLLMENT

17.1(282) Intent and purpose
17.2(282) Definitions
17.3(282) Application process
17.4(282) Filing after the March 1 deadline—good cause
17.5(282) Filing after the March 1 deadline—harassment or serious health condition
17.6(282) Restrictions to open enrollment requests
17.7(282) Open enrollment for kindergarten
17.8(282) Requirements applicable to parents/guardians and students
17.9(282) Transportation
17.10(282) Method of finance
17.11(282) Special education students
17.12(282) Laboratory school provisions
17.13(282) Applicability
17.14(282) Voluntary diversity plans or court-ordered desegregation plans

CHAPTER 18
SCHOOL FEES

18.1(256) Policy
18.2(256) Fee policy
18.3(256) Eligibility for waiver, partial waiver or temporary waiver of student fees
18.4(256) Fees covered
18.5(256) Effective date

CHAPTERS 19 and 20
Reserved

TITLE III
COMMUNITY COLLEGES

CHAPTER 21
COMMUNITY COLLEGES

DIVISION I
APPROVAL STANDARDS

21.1(260C)	Definitions
21.2(260C)	Administration
21.3	Reserved
21.4(260C)	Curriculum and evaluation
21.5(260C)	Library or learning resource center
21.6(260C)	Student services
21.7(260C)	Laboratories, equipment and supplies
21.8(260C)	Physical plant
21.9(260C)	Nonreimbursable facilities
21.10 to 21.19	Reserved

DIVISION II
COMMUNITY COLLEGE ENERGY APPROPRIATIONS

21.20 to 21.29	Reserved

DIVISION III
INSTRUCTIONAL COURSE FOR DRINKING DRIVERS

21.30(321J)	Purpose
21.31(321J)	Course
21.32(321J)	Tuition fee established
21.33(321J)	Administrative fee established
21.34(321J)	Advisory committee

DIVISION IV
JOBS NOW CAPITALS ACCOUNT

21.35 to 21.44	Reserved

DIVISION V
STATE COMMUNITY COLLEGE FUNDING PLAN

21.45(260C)	Purpose

DIVISION VI
INTERCOLLEGIATE ATHLETIC COMPETITION

21.46 to 21.56	Reserved

DIVISION VII
QUALITY INSTRUCTIONAL CENTER INITIATIVE

21.57 to 21.63	Reserved

DIVISION VIII
PROGRAM AND ADMINISTRATIVE SHARING INITIATIVE

21.64 to 21.71	Reserved

DIVISION IX
APPRENTICESHIP PROGRAM

21.72(260C)	Purpose
21.73(260C)	Definitions
21.74(260C)	Apprenticeship programs

DIVISION X
MISCELLANEOUS PROVISIONS

21.75(260C,82GA,SF358) Used motor vehicle dealer education program

CHAPTER 22
SENIOR YEAR PLUS PROGRAM

DIVISION I
GENERAL PROVISIONS

22.1(261E) Scope
22.2(261E) Student eligibility
22.3(261E) Teacher eligibility, responsibilities
22.4(261E) Institutional eligibility, responsibilities
22.5 Reserved

DIVISION II
DEFINITIONS

22.6(261E) Definitions

DIVISION III
ADVANCED PLACEMENT PROGRAM

22.7(261E) School district obligations
22.8(261E) Obligations regarding registration for advanced placement examinations
22.9 and 22.10 Reserved

DIVISION IV
CONCURRENT ENROLLMENT PROGRAM

22.11(261E) Applicability
22.12 and 22.13 Reserved

DIVISION V
POSTSECONDARY ENROLLMENT OPTIONS PROGRAM

22.14(261E) Availability
22.15(261E) Notification
22.16(261E) Student eligibility
22.17(261E) Eligible postsecondary courses
22.18(261E) Application process
22.19(261E) Credits
22.20(261E) Transportation
22.21(261E) Tuition payments
22.22(261E) Tuition reimbursements and adjustments
22.23 Reserved

DIVISION VI
CAREER ACADEMIES

22.24(261E) Career academies
22.25 Reserved

DIVISION VII
REGIONAL ACADEMIES

22.26(261E) Regional academies
22.27(261E) Waivers for certain regional academies

DIVISION VIII
INTERNET-BASED AND ICN COURSEWORK

22.28(261E) Internet-based coursework
22.29(261E) ICN-based coursework
22.30 and 22.31 Reserved

DIVISION IX
PROJECT LEAD THE WAY

22.32(261E) Project lead the way

CHAPTER 23
ADULT EDUCATION

23.1(260C) Planning process
23.2(260C) Final plan

CHAPTER 24
COMMUNITY COLLEGE ACCREDITATION

24.1(260C) Purpose
24.2(260C) Scope
24.3(260C) Definitions
24.4(260C) Accreditation components and criteria—Higher Learning Commission
24.5(260C) Accreditation components and criteria—additional state standards
24.6(260C) Accreditation process

CHAPTER 25
PATHWAYS FOR ACADEMIC CAREER AND EMPLOYMENT PROGRAM;
GAP TUITION ASSISTANCE PROGRAM

DIVISION I
GENERAL PROVISIONS

25.1(260H,260I) Scope
25.2(260H,260I) Definitions
25.3 to 25.10 Reserved

DIVISION II
PATHWAYS FOR ACADEMIC CAREER AND EMPLOYMENT (PACE) PROGRAM

25.11(260H) Purpose
25.12(260H) Target populations
25.13(260H) Eligibility criteria for projects
25.14(260H) Program component requirements
25.15(260H) Pipeline program
25.16(260H) Career pathways and bridge curriculum development program
25.17 to 25.19 Reserved

DIVISION III
GAP TUITION ASSISTANCE PROGRAM

25.20(260I) Purpose
25.21(260I) Applicants for tuition assistance—eligibility criteria
25.22(260I) Applicants for tuition assistance—additional provisions
25.23(260I) Eligible costs
25.24(260I) Eligible certificate programs
25.25(260I) Initial assessment
25.26(260I) Program interview
25.27(260I) Participation requirements
25.28(260I) Oversight

TITLE IV
DRIVER AND SAFETY EDUCATION

CHAPTER 26
Reserved

CHAPTER 27
WORKFORCE TRAINING AND ECONOMIC DEVELOPMENT FUNDS

27.1(260C) Purpose
27.2(260C) Definitions
27.3(260C) Funds allocation
27.4(260C) Community college workforce and economic development fund plans and progress reports
27.5(260C) Use of funds
27.6(260C) Prior approval
27.7(260C) Annual plan and progress report approval
27.8(260C) Options upon default or noncompliance

CHAPTERS 28 to 30
Reserved

TITLE V
NONTRADITIONAL STUDENTS

CHAPTER 31
PRIVATE INSTRUCTION AND DUAL ENROLLMENT

31.1(299,299A) Purpose and definitions
31.2(299) Reports as to competent private instruction
31.3(299,299A) Duties of privately retained licensed practitioners
31.4(299,299A) Duties of licensed practitioners, home school assistance program
31.5(299A) School district duties related to competent private instruction
31.6(299A) Dual enrollment
31.7(299) Open enrollment
31.8(299A) Baseline evaluation and annual assessment
31.9(299A) Reporting assessment results
31.10(299A) Special education students
31.11(299,299A) Independent private instruction
31.12(299,299A) Miscellaneous provisions

CHAPTER 32
HIGH SCHOOL EQUIVALENCY DIPLOMA

32.1(259A) Test
32.2(259A) By whom administered
32.3(259A) Minimum score
32.4(259A) Effectiveness of test scores
32.5(259A) Retest
32.6(259A) Application fee
32.7(259A) Diploma, transcript, verification fees
32.8(259A) Admission to testing

CHAPTER 33
EDUCATING THE HOMELESS

33.1(256) Purpose
33.2(256) Definitions
33.3(256) Responsibilities of the board of directors
33.4(256) School records; student transfers
33.5(256) Immunization requirements
33.6(256) Waiver of fees and charges encouraged
33.7(256) Waiver of enrollment requirements encouraged; placement
33.8(256) Residency of homeless child or youth

33.9(256) Dispute resolution
33.10(256) Transportation of homeless children and youth
33.11(256) School services

CHAPTER 34
FUNDING FOR CHILDREN RESIDING IN STATE INSTITUTIONS
OR MENTAL HEALTH INSTITUTES

34.1(218) Scope
34.2(218) Definitions
34.3(218) General principles
34.4(218) Notification
34.5(218) Program submission and approval
34.6(218) Budget submission and approval
34.7(218) Payments
34.8(218) Payments to the AEA
34.9(218) Contracting for services
34.10(218) Accounting for average daily attendance
34.11(218) Accounting for actual program costs
34.12(218) Audit
34.13(218) Hold-harmless provision
34.14(218,256B,34CFR300) AEA services
34.15(218,233A,261C) Postsecondary credit courses

CHAPTER 35
Reserved

TITLE VI
INTERSCHOLASTIC COMPETITION

CHAPTER 36
EXTRACURRICULAR INTERSCHOLASTIC COMPETITION

36.1(280) Definitions
36.2(280) Registered organizations
36.3(280) Filings by organizations
36.4(280) Executive board
36.5(280) Federation membership
36.6(280) Salaries
36.7(280) Expenses
36.8(280) Financial report
36.9(280) Bond
36.10(280) Audit
36.11(280) Examinations by auditors
36.12(280) Access to records
36.13(280) Appearance before state board
36.14(280) Interscholastic athletics
36.15(280) Eligibility requirements
36.16(280) Executive board review
36.17(280) Appeals to director
36.18(280) Organization policies
36.19(280) Eligibility in situations of district organization change
36.20(280) Cooperative student participation

CHAPTER 37
EXTRACURRICULAR ATHLETIC ACTIVITY CONFERENCE FOR MEMBER SCHOOLS

37.1(280) Policy and purpose
37.2(280) Initial responsibility
37.3(280) Complaint to the director, department of education
37.4(280) Mediation
37.5(280) Resolution or recommendation of the mediation team
37.6(280) Decision
37.7(280) Effective date of the decision

CHAPTERS 38 to 40
Reserved

TITLE VII
SPECIAL EDUCATION

CHAPTER 41
SPECIAL EDUCATION

DIVISION I
PURPOSE AND APPLICABILITY

41.1(256B,34CFR300) Purposes
41.2(256B,34CFR300) Applicability of this chapter

DIVISION II
DEFINITIONS

41.3(256B,34CFR300) Act
41.4(256B,273) Area education agency
41.5(256B,34CFR300) Assistive technology device
41.6(256B,34CFR300) Assistive technology service
41.7(256B,34CFR300) Charter school
41.8(256B,34CFR300) Child with a disability
41.9(256B,34CFR300) Consent
41.10(256B,34CFR300) Core academic subjects
41.11(256B,34CFR300) Day; business day; school day
41.12(256B,34CFR300) Educational service agency
41.13(256B,34CFR300) Elementary school
41.14(256B,34CFR300) Equipment
41.15(256B,34CFR300) Evaluation
41.16(256B,34CFR300) Excess costs
41.17(256B,34CFR300) Free appropriate public education
41.18(256B,34CFR300) Highly qualified special education teachers
41.19(256B,34CFR300) Homeless children
41.20(256B,34CFR300) Include
41.21(256B,34CFR300) Indian and Indian tribe
41.22(256B,34CFR300) Individualized education program
41.23(256B,34CFR300) Individualized education program team
41.24(256B,34CFR300) Individualized family service plan
41.25(256B,34CFR300) Infant or toddler with a disability
41.26(256B,34CFR300) Institution of higher education
41.27(256B,34CFR300) Limited English proficient
41.28(256B,34CFR300) Local educational agency
41.29(256B,34CFR300) Native language
41.30(256B,34CFR300) Parent

41.31(256B,34CFR300) Parent training and information center
41.32(256B,34CFR300) Personally identifiable
41.33(256B,34CFR300) Public agency; nonpublic agency; agency
41.34(256B,34CFR300) Related services
41.35(34CFR300) Scientifically based research
41.36(256B,34CFR300) Secondary school
41.37(34CFR300) Services plan
41.38(34CFR300) Secretary
41.39(256B,34CFR300) Special education
41.40(34CFR300) State
41.41(256B,34CFR300) State educational agency
41.42(256B,34CFR300) Supplementary aids and services
41.43(256B,34CFR300) Transition services
41.44(34CFR300) Universal design
41.45(256B,34CFR300) Ward of the state
41.46 to 41.49 Reserved
41.50(256B,34CFR300) Other definitions associated with identification of eligible individuals
41.51(256B,34CFR300) Other definitions applicable to this chapter
41.52 to 41.99 Reserved

DIVISION III
RULES APPLICABLE TO THE STATE AND TO ALL AGENCIES

41.100(256B,34CFR300) Eligibility for assistance
41.101(256B,34CFR300) Free appropriate public education (FAPE)
41.102(256B,34CFR300) Limitation—exceptions to FAPE for certain ages
41.103(256B,34CFR300) FAPE—methods and payments
41.104(256B,34CFR300) Residential placement
41.105(256B,34CFR300) Assistive technology
41.106(256B,34CFR300) Extended school year services
41.107(256B,34CFR300) Nonacademic services
41.108(256B,34CFR300) Physical education
41.109(256B,34CFR300) Full educational opportunity goal (FEOG)
41.110(256B,34CFR300) Program options
41.111(256B,34CFR300) Child find
41.112(256B,34CFR300) Individualized education programs (IEPs)
41.113(256B,34CFR300) Routine checking of hearing aids and external components of surgically implanted medical devices
41.114(256B,34CFR300) Least restrictive environment (LRE)
41.115(256B,34CFR300) Continuum of alternative services and placements
41.116(256B,34CFR300) Placements
41.117(256B,34CFR300) Nonacademic settings
41.118(256B,34CFR300) Children in public or private institutions
41.119(256B,34CFR300) Technical assistance and training activities
41.120(256B,34CFR300) Monitoring activities
41.121(256B,34CFR300) Procedural safeguards
41.122(256B,34CFR300) Evaluation
41.123(256B,34CFR300) Confidentiality of personally identifiable information
41.124(256B,34CFR300) Transition of children from the Part C program to preschool programs
41.125 to 41.128 Reserved
41.129(256B,34CFR300) Responsibility regarding children in private schools
41.130(256,256B,34CFR300) Definition of parentally placed private school children with disabilities
41.131(256,256B,34CFR300) Child find for parentally placed private school children with disabilities

41.132(256,256B,34CFR300) Provision of services for parentally placed private school children with disabilities: basic requirement
41.133(256,256B,34CFR300) Expenditures
41.134(256,256B,34CFR300) Consultation
41.135(256,256B,34CFR300) Written affirmation
41.136(256,256B,34CFR300) Compliance
41.137(256,256B,34CFR300) Equitable services determined
41.138(256,256B,34CFR300) Equitable services provided
41.139(256,256B,34CFR300) Location of services and transportation
41.140(256,256B,34CFR300) Due process complaints and state complaints
41.141(256,256B,34CFR300) Requirement that funds not benefit a private school
41.142(256,256B,34CFR300) Use of personnel
41.143(256,256B,34CFR300) Separate classes prohibited
41.144(256,256B,34CFR300) Property, equipment, and supplies
41.145(256B,34CFR300) Applicability of rules 281—41.146(256B,34CFR300) to 281—41.147(256B,34CFR300)
41.146(256B,34CFR300) Responsibility of department
41.147(256B,34CFR300) Implementation by department
41.148(256B,34CFR300) Placement of children by parents when FAPE is at issue
41.149(256B,34CFR300) SEA responsibility for general supervision
41.150 Reserved
41.151(256B,34CFR300) Adoption of state complaint procedures
41.152(256B,34CFR300) Minimum state complaint procedures
41.153(256B,34CFR300) Filing a complaint
41.154(256B,34CFR300) Methods of ensuring services
41.155(256B,34CFR300) Hearings relating to AEA or LEA eligibility
41.156(256B,34CFR300) Personnel qualifications
41.157 to 41.161 Reserved
41.162(256B,34CFR300) Supplementation of state, local, and other federal funds
41.163(256B,34CFR300) Maintenance of state financial support
41.164 Reserved
41.165(256B,34CFR300) Public participation
41.166(256B,34CFR300) Rule of construction
41.167(256B,34CFR300) State advisory panel
41.168(256B,34CFR300) Advisory panel membership
41.169(256B,34CFR300) Advisory panel duties
41.170(256B,34CFR300) Suspension and expulsion rates
41.171 Reserved
41.172(256B,34CFR300) Access to instructional materials
41.173(256B,34CFR300) Overidentification and disproportionality
41.174(256B,34CFR300) Prohibition on mandatory medication
41.175 Reserved
41.176(256B) Special school provisions
41.177(256B) Facilities
41.178(256B) Materials, equipment and assistive technology
41.179 to 41.185 Reserved
41.186(256B,34CFR300) Assistance under other federal programs
41.187(256B) Research, innovation, and improvement
41.188 to 41.199 Reserved

DIVISION IV
LEA AND AEA ELIGIBILITY, IN GENERAL

41.200(256B,34CFR300) Condition of assistance
41.201(256B,34CFR300) Consistency with state policies
41.202(256B,34CFR300) Use of amounts
41.203(256B,34CFR300) Maintenance of effort
41.204(256B,34CFR300) Exception to maintenance of effort
41.205(256B,34CFR300) Adjustment to local fiscal efforts in certain fiscal years
41.206(256B,34CFR300) Schoolwide programs under Title I of the ESEA
41.207(256B,34CFR300) Personnel development
41.208(256B,34CFR300) Permissive use of funds
41.209(256B,34CFR300) Treatment of charter schools and their students
41.210(256B,34CFR300) Purchase of instructional materials
41.211(256B,34CFR300) Information for department
41.212(256B,34CFR300) Public information
41.213(256B,34CFR300) Records regarding migratory children with disabilities
41.214 to 41.219 Reserved
41.220(256B,34CFR300) Exception for prior local plans
41.221(256B,34CFR300) Notification of AEA or LEA or state agency in case of ineligibility
41.222(256B,34CFR300) AEA or LEA and state agency compliance
41.223(256B,34CFR300) Joint establishment of eligibility
41.224(256B,34CFR300) Requirements for jointly establishing eligibility
41.225 Reserved
41.226(256B,34CFR300) Early intervening services
41.227 Reserved
41.228(256B,34CFR300) State agency eligibility
41.229(256B,34CFR300) Disciplinary information
41.230(256B,34CFR300) SEA flexibility
41.231 to 41.299 Reserved

DIVISION V
EVALUATION, ELIGIBILITY, IEPs, AND PLACEMENT DECISIONS

41.300(256B,34CFR300) Parental consent and participation
41.301(256B,34CFR300) Full and individual initial evaluations
41.302(256B,34CFR300) Screening for instructional purposes is not evaluation
41.303(256B,34CFR300) Reevaluations
41.304(256B,34CFR300) Evaluation procedures
41.305(256B,34CFR300) Additional requirements for evaluations and reevaluations
41.306(256B,34CFR300) Determination of eligibility
41.307(256B,34CFR300) Specific learning disabilities
41.308(256B,34CFR300) Additional group members
41.309(256B,34CFR300) Determining the existence of a specific learning disability
41.310(256B,34CFR300) Observation
41.311(256B,34CFR300) Specific documentation for the eligibility determination
41.312(256B,34CFR300) General education interventions
41.313(256B,34CFR300) Systematic problem-solving process
41.314(256B,34CFR300) Progress monitoring and data collection
41.315 to 41.319 Reserved
41.320(256B,34CFR300) Definition of individualized education program
41.321(256B,34CFR300) IEP team
41.322(256B,34CFR300) Parent participation
41.323(256B,34CFR300) When IEPs must be in effect
41.324(256B,34CFR300) Development, review, and revision of IEP

41.325(256B,34CFR300) Private school placements by public agencies
41.326(256B,34CFR300) Other rules concerning IEPs
41.327(256B,34CFR300) Educational placements
41.328(256B,34CFR300) Alternative means of meeting participation
41.329 to 41.399 Reserved

DIVISION VI
ADDITIONAL RULES RELATED TO AEAs, LEAs, AND SPECIAL EDUCATION

41.400(256B,34CFR300) Shared responsibility
41.401(256B,34CFR300) Licensure (certification)
41.402(256B,273,34CFR300) Authorized personnel
41.403(256B) Paraprofessionals
41.404(256B) Policies and procedures required of all public agencies
41.405(256B) Special health services
41.406(256B) Additional requirements of LEAs
41.407(256B,273,34CFR300) Additional requirements of AEAs
41.408(256B,273,34CFR300) Instructional services
41.409(256B,34CFR300) Support services
41.410(256B,34CFR300) Itinerant services
41.411(256B,34CFR300) Related services, supplementary aids and services
41.412(256B,34CFR300) Transportation
41.413(256,256B,34CFR300) Additional rules relating to accredited nonpublic schools
41.414 to 41.499 Reserved

DIVISION VII
PROCEDURAL SAFEGUARDS

41.500(256B,34CFR300) Responsibility of SEA and other public agencies
41.501(256B,34CFR300) Opportunity to examine records; parent participation in meetings
41.502(256B,34CFR300) Independent educational evaluation
41.503(256B,34CFR300) Prior notice by the public agency; content of notice
41.504(256B,34CFR300) Procedural safeguards notice
41.505(256B,34CFR300) Electronic mail
41.506(256B,34CFR300) Mediation
41.507(256B,34CFR300) Filing a due process complaint
41.508(256B,34CFR300) Due process complaint
41.509(256B,34CFR300) Model forms
41.510(256B,34CFR300) Resolution process
41.511(256B,34CFR300) Impartial due process hearing
41.512(256B,34CFR300) Hearing rights
41.513(256B,34CFR300) Hearing decisions
41.514(256B,34CFR300) Finality of decision
41.515(256B,34CFR300) Timelines and convenience of hearings
41.516(256B,34CFR300) Civil action
41.517(256B,34CFR300) Attorneys' fees
41.518(256B,34CFR300) Child's status during proceedings
41.519(256B,34CFR300) Surrogate parents
41.520(256B,34CFR300) Transfer of parental rights at age of majority
41.521 to 41.529 Reserved
41.530(256B,34CFR300) Authority of school personnel
41.531(256B,34CFR300) Determination of setting
41.532(256B,34CFR300) Appeal
41.533(256B,34CFR300) Placement during appeals and mediations
41.534(256B,34CFR300) Protections for children not determined eligible for special education and related services

41.535(256B,34CFR300) Referral to and action by law enforcement and judicial authorities
41.536(256B,34CFR300) Change of placement because of disciplinary removals
41.537(256B,34CFR300) State enforcement mechanisms
41.538 to 41.599 Reserved

DIVISION VIII
MONITORING, ENFORCEMENT, CONFIDENTIALITY, AND PROGRAM INFORMATION

41.600(256B,34CFR300) State monitoring and enforcement
41.601(256B,34CFR300) State performance plans and data collection
41.602(256B,34CFR300) State use of targets and reporting
41.603(256B,34CFR300) Department review and determination regarding public agency performance
41.604(256B,34CFR300) Enforcement
41.605(256B,34CFR300) Withholding funds
41.606(256B,34CFR300) Public attention
41.607 Reserved
41.608(256B,34CFR300) State enforcement
41.609(256B,34CFR300) State consideration of other state or federal laws
41.610(256B,34CFR300) Confidentiality
41.611(256B,34CFR300) Definitions
41.612(256B,34CFR300) Notice to parents
41.613(256B,34CFR300) Access rights
41.614(256B,34CFR300) Record of access
41.615(256B,34CFR300) Records on more than one child
41.616(256B,34CFR300) List of types and locations of information
41.617(256B,34CFR300) Fees
41.618(256B,34CFR300) Amendment of records at parent's request
41.619(256B,34CFR300) Opportunity for a hearing
41.620(256B,34CFR300) Result of hearing
41.621(256B,34CFR300) Hearing procedures
41.622(256B,34CFR300) Consent
41.623(256B,34CFR300) Safeguards
41.624(256B,34CFR300) Destruction of information
41.625(256B,34CFR300) Children's rights
41.626(256B,34CFR300) Enforcement
41.627 to 41.639 Reserved
41.640(256B,34CFR300) Annual report of children served—report requirement
41.641(256B,34CFR300) Annual report of children served—information required in the report
41.642(256B,34CFR300) Data reporting
41.643(256B,34CFR300) Annual report of children served—certification
41.644(256B,34CFR300) Annual report of children served—criteria for counting children
41.645(256B,34CFR300) Annual report of children served—other responsibilities of the SEA
41.646(256B,34CFR300) Disproportionality
41.647 to 41.699 Reserved

DIVISION IX
ALLOCATIONS BY THE SECRETARY TO THE STATE

41.700 to 41.703 Reserved
41.704(256B,34CFR300) State-level activities
41.705(256B,34CFR300) Subgrants to AEAs
41.706 to 41.799 Reserved

DIVISION X
PRESCHOOL GRANTS FOR CHILDREN WITH DISABILITIES

41.800(256B,34CFR300) General rule
41.801 and 41.802 Reserved
41.803(256B,34CFR300) Definition of state
41.804(256B,34CFR300) Eligibility
41.805 Reserved
41.806(256B,34CFR300) Eligibility for financial assistance
41.807 to 41.811 Reserved
41.812(256B,34CFR300) Reservation for state activities
41.813(256B,34CFR300) State administration
41.814(256B,34CFR300) Other state-level activities
41.815(256B,34CFR300) Subgrants to AEAs
41.816(256B,34CFR300) Allocations to AEAs
41.817(256B,34CFR300) Reallocation of AEA funds
41.818(256B,34CFR300) Part C of the Act inapplicable
41.819 to 41.899 Reserved

DIVISION XI
ADDITIONAL RULES CONCERNING FINANCE AND PUBLIC ACCOUNTABILITY

41.900(256B,282) Scope
41.901(256B,282) Records and reports
41.902(256B,282) Audit
41.903(256B,282) Contractual agreements
41.904(256B) Research and demonstration projects and models for special education program development
41.905(256B,273) Additional special education
41.906(256B,273,282) Extended school year services
41.907(256B,282,34CFR300,303) Program costs
41.908(256B,282) Accountability
41.909 to 41.999 Reserved

DIVISION XII
PRACTICE BEFORE MEDIATORS AND ADMINISTRATIVE LAW JUDGES

41.1000(17A,256B,290) Applicability
41.1001(17A,256B,290) Definitions
41.1002(256B,34CFR300) Special education mediation conference
41.1003(17A,256B) Procedures concerning due process complaints
41.1004(17A,256B) Participants in the hearing
41.1005(17A,256B) Convening the hearing
41.1006(17A,256B) Stipulated record hearing
41.1007(17A,256B) Evidentiary hearing
41.1008(17A,256B) Mixed evidentiary and stipulated record hearing
41.1009(17A,256B) Witnesses
41.1010(17A,256B) Rules of evidence
41.1011(17A,256B) Communications
41.1012(17A,256B) Record
41.1013(17A,256B) Decision and review
41.1014(17A,256B) Finality of decision
41.1015(256B,34CFR300) Disqualification of mediator
41.1016(17A) Correcting decisions of administrative law judges
41.1017 to 41.1099 Reserved

DIVISION XIII
ADDITIONAL RULES NECESSARY TO IMPLEMENT AND APPLY THIS CHAPTER

41.1100(256B,34CFR300) References to Code of Federal Regulations
41.1101(256B,34CFR300) Severability

CHAPTER 42
Reserved

TITLE VIII
SCHOOL TRANSPORTATION

CHAPTER 43
PUPIL TRANSPORTATION

DIVISION I
TRANSPORTATION ROUTES

43.1(285) Intra-area education agency routes
43.2(285) Interarea education agency routes

DIVISION II
PRIVATE CONTRACTORS

43.3(285) Contract required
43.4(285) Uniform charge
43.5(285) Board must be party
43.6(285) Contract with parents
43.7(285) Vehicle requirements

DIVISION III
FINANCIAL RECORDS AND REPORTS

43.8(285) Required charges
43.9(285) Activity trips deducted

DIVISION IV
USE OF SCHOOL BUSES

43.10(285) Permitted uses listed
43.11(285) Teacher transportation

DIVISION V
THE BUS DRIVER

43.12(285) Driver qualifications
43.13(285) Stability factors
43.14(285) Driver age
43.15(285) Physical fitness
43.16 Reserved
43.17(285) Insulin-dependent diabetics
43.18(285) Authorization to be carried by driver
43.19 and 43.20 Reserved
43.21(285) Experience, traffic law knowledge and driving record
43.22(321) Fee collection and distribution of funds
43.23(285) Application form
43.24(321) Authorization denials and revocations

DIVISION VI
PURCHASE OF BUSES

43.25(285) Local board procedure
43.26(285) Financing
43.27 to 43.29 Reserved

DIVISION VII
MISCELLANEOUS REQUIREMENTS

43.30(285) Semiannual inspection
43.31(285) Maintenance record
43.32(285) Drivers' schools
43.33(285) Insurance
43.34(285) Contract—privately owned buses
43.35(285) Contract—district-owned buses
43.36(285) Accident reports
43.37(285) Railroad crossings
43.38(285) Driver restrictions
43.39(285) Civil defense projects
43.40(285) Pupil instruction
43.41(285) Trip inspections
43.42(285) Loading and unloading areas
43.43(285) Communication equipment

DIVISION VIII
COMMON CARRIERS

43.44(285) Standards for common carriers

CHAPTER 44
SCHOOL BUSES

44.1(285) Requirements for manufacturers
44.2(285) School bus—type classifications
44.3(285) School bus body and chassis specifications
44.4(285) Construction of vehicles for children with mobility challenges
44.5(285) Type III vehicles
44.6(285) Repair, replacement of school bus body and chassis components following original equipment manufacture

CHAPTER 45
Reserved

TITLE IX
VOCATIONAL EDUCATION

CHAPTER 46
VOCATIONAL EDUCATION PROGRAMS

46.1(258) Standards for vocational education
46.2(258) Planning process
46.3(258) Public involvement and participation
46.4(258) Final plan and accountability report
46.5(258) Geographic area
46.6(258) Revised standards for vocational education
46.7(258) Definitions and descriptions of procedures

CHAPTER 47
CAREER ACADEMIES

47.1(260C) Definitions
47.2(260C) Career academy program of study

CHAPTERS 48 to 50
Reserved

TITLE X
VETERANS' TRAINING

CHAPTER 51
APPROVAL OF ON-THE-JOB TRAINING ESTABLISHMENTS
UNDER THE MONTGOMERY G.I. BILL

51.1(256) Application
51.2(256) Content and approval of application
51.3(256) Wage schedules

CHAPTER 52
APPROVAL OF EDUCATIONAL INSTITUTIONS
FOR THE EDUCATION AND TRAINING OF ELIGIBLE VETERANS
UNDER THE MONTGOMERY G.I. BILL

52.1(256) Colleges
52.2(256) High schools
52.3 Reserved
52.4(256) Schools of Bible or theology
52.5(256) Schools of nursing
52.6(256) Hospitals
52.7(256) Schools of cosmetology
52.8(256) Schools of barbering
52.9 Reserved
52.10(256) Schools of business
52.11(256) Trade schools
52.12(256) Correspondence schools
52.13(256) Successful operation on a continuous basis
52.14(256) Nonaccredited schools
52.15(256) Evaluation standards

CHAPTERS 53 to 55
Reserved

TITLE XI
VOCATIONAL REHABILITATION EDUCATION

CHAPTER 56
IOWA VOCATIONAL REHABILITATION SERVICES

DIVISION I
SCOPE AND GENERAL PRINCIPLES

56.1(259) Responsibility of division
56.2(259) Nondiscrimination

DIVISION II
DEFINITIONS

56.3(259) Definitions

DIVISION III
ELIGIBILITY

56.4(259) Individuals who are recipients of SSD/SSI
56.5(259) Eligibility for vocational rehabilitation services
56.6(259) Eligibility for specific services
56.7(259) Areas in which exceptions shall not be granted
56.8(259) Waiting list
56.9(259) Individuals who are blind
56.10(259) Students in high school

56.11(259) Establishment of financial need

DIVISION IV
CASE MANAGEMENT

56.12(259) Case finding and intake
56.13(259) Case diagnosis
56.14(259) Individual plan for employment (IPE)

DIVISION V
SERVICES

56.15(259) Scope of services
56.16(259) Training
56.17(259) Maintenance
56.18(259) Transportation
56.19(259) Rehabilitation technology
56.20 Reserved
56.21(259) Placement
56.22(259) Supported employment and transitional employment
56.23(259) Miscellaneous or auxiliary services
56.24(259) Facilities
56.25(259) Exceptions to payment for services
56.26(259) Exceptions to duration of services
56.27(259) Maximum rates of payment to training facilities

DIVISION VI
PURCHASING PRINCIPLES

56.28(259) Purchasing

DIVISION VII
SUPERVISOR REVIEW, MEDIATION, HEARINGS, AND APPEALS

56.29(259) Review process
56.30(259) Supervisor review
56.31(259) Mediation
56.32(259) Hearing before impartial hearing officer

DIVISION VIII
PUBLIC RECORDS AND FAIR INFORMATION PRACTICES

56.33(259) Collection and maintenance of records
56.34(259) Personally identifiable information
56.35(259) Other groups of records routinely available for public inspection

DIVISION IX
STATE REHABILITATION COUNCIL

56.36(259) State rehabilitation council

DIVISION X
IOWA SELF-EMPLOYMENT PROGRAM
(a/k/a ENTREPRENEURS WITH DISABILITIES PROGRAM)

56.37(259) Purpose
56.38(259) Eligibility requirements
56.39(259) Application procedure
56.40(259) Award of technical assistance funds
56.41(259) Business plan feasibility study procedure
56.42(259) Award of financial assistance funds

CHAPTER 57
Reserved

TITLE XII
PROGRAMS ADMINISTRATION

CHAPTER 58
SCHOOL BREAKFAST AND LUNCH PROGRAM; NUTRITIONAL CONTENT STANDARDS FOR OTHER FOODS AND BEVERAGES

58.1(283A,256) Authority

DIVISION I
SCHOOL BREAKFAST AND LUNCH PROGRAM

58.2(283A) Definitions
58.3(283A) Agreement required
58.4(283A) State plan
58.5(283A) Service area defined
58.6(283A) School breakfast program
58.7(283A) School lunch program
58.8(283A) Procurement

DIVISION II
NUTRITIONAL CONTENT STANDARDS FOR OTHER FOODS AND BEVERAGES

58.9(256) Definitions
58.10(256) Scope
58.11(256) Nutritional content standards

CHAPTER 59
GIFTED AND TALENTED PROGRAMS

59.1(257) Scope and general principles
59.2(257) Definitions
59.3 Reserved
59.4(257) Program plan
59.5(257) Responsibilities of school districts
59.6(257) Responsibilities of area education agencies
59.7(257) Responsibilities of the department

CHAPTER 60
PROGRAMS FOR STUDENTS OF LIMITED ENGLISH PROFICIENCY

60.1(280) Scope
60.2(280) Definitions
60.3(280) School district responsibilities
60.4(280) Department responsibility
60.5(280) Nonpublic school participation
60.6(280) Funding

CHAPTER 61
IOWA READING RESEARCH CENTER

61.1(256) Establishment
61.2(256) Purpose
61.3(256) Intensive summer literacy program
61.4(256) First efforts of the center
61.5(256) Nature of the center's operation
61.6(256) Nature of the center's products
61.7(256) Governance and leadership of the center
61.8(256) Financing of the center
61.9(256) Annual report

CHAPTER 62
STATE STANDARDS FOR PROGRESSION IN READING

62.1(256,279) Purpose
62.2(256,279) Assessment of reading proficiency
62.3(256,279) Tools for evaluating and reevaluating reading proficiency
62.4(256,279) Identification of a student as having a substantial deficiency in reading
62.5(256,279) Intensive summer reading program
62.6(256,279) Successful progression for early readers
62.7(256,279) Promotion to grade four
62.8(256,279) Good-cause exemption
62.9(256,279) Ensuring continuous improvement in reading proficiency
62.10(256,279) Miscellaneous provisions

CHAPTER 63
EDUCATIONAL PROGRAMS AND SERVICES
FOR PUPILS IN JUVENILE HOMES

63.1(282) Scope
63.2(282) Definitions
63.3(282) Forms
63.4(282) Budget amendments
63.5(282) Area education agency responsibility
63.6(282) Educational program
63.7(282) Special education
63.8(282) Educational services
63.9(282) Media services
63.10(282) Other responsibilities
63.11(282) Curriculum
63.12(282) Disaster procedures
63.13(282) Maximum class size
63.14(282) Teacher certification and preparation
63.15(282) Aides
63.16(282) Accounting
63.17(282) Revenues
63.18(282) Expenditures
63.19(282) Claims
63.20(282) Audits
63.21(282) Waivers

CHAPTER 64
CHILD DEVELOPMENT COORDINATING COUNCIL

64.1(256A,279) Purpose
64.2(256A,279) Definitions
64.3(256A,279) Child development coordinating council
64.4(256A,279) Procedures
64.5(256A,279) Duties
64.6(256A,279) Eligibility identification procedures
64.7(256A,279) Primary eligibility
64.8(256A,279) Secondary eligibility
64.9(256A,279) Grant awards criteria
64.10(256A,279) Application process
64.11(256A,279) Request for proposals
64.12(256A,279) Grant process

64.13(256A,279) Award contracts
64.14(256A,279) Notification of applicants
64.15(256A,279) Grantee responsibilities
64.16(256A,279) Withdrawal of contract offer
64.17(256A,279) Evaluation
64.18(256A,279) Contract revisions and budget reversions
64.19(256A,279) Termination for convenience
64.20(256A,279) Termination for cause
64.21(256A,279) Responsibility of grantee at termination
64.22(256A,279) Appeal from terminations
64.23(256A,279) Refusal to issue ruling
64.24(256A,279) Request for Reconsideration
64.25(256A,279) Refusal to issue decision on request
64.26(256A,279) Granting a Request for Reconsideration

CHAPTER 65
INNOVATIVE PROGRAMS FOR AT-RISK EARLY ELEMENTARY STUDENTS

65.1(279) Purpose
65.2(279) Definitions
65.3(279) Eligibility identification procedures
65.4(279) Primary risk factor
65.5(279) Secondary risk factors
65.6(279) Grant awards criteria
65.7(279) Application process
65.8(279) Request for proposals
65.9(279) Grant process
65.10 Reserved
65.11(279) Notification of applicants
65.12(279) Grantee responsibilities
65.13(279) Withdrawal of contract offer
65.14(279) Evaluation
65.15(279) Contract revisions
65.16(279) Termination for convenience
65.17(279) Termination for cause
65.18(279) Responsibility of grantee at termination
65.19(279) Appeals from terminations
65.20(279) Refusal to issue ruling
65.21(279) Requests for Reconsideration
65.22(279) Refusal to issue decision on request
65.23(279) Granting a Request for Reconsideration

CHAPTER 66
SCHOOL-BASED YOUTH SERVICES PROGRAMS

66.1(279) Scope, purpose and general principles
66.2(279) Definitions
66.3(279) Development of a program plan
66.4(279) Program plan
66.5(279) Evaluation of financial support
66.6(279) Responsibilities of area education agencies
66.7(279) Responsibilities of the department of education

CHAPTER 67
EDUCATIONAL SUPPORT PROGRAMS FOR PARENTS OF AT-RISK CHILDREN AGED BIRTH THROUGH FIVE YEARS

67.1(279) Purpose
67.2(279) Definitions
67.3(279) Eligibility identification procedures
67.4(279) Eligibility
67.5(279) Secondary eligibility
67.6(279) Grant awards criteria
67.7(279) Application process
67.8(279) Request for proposals
67.9(279) Award contracts
67.10(279) Notification of applicants
67.11(279) Grantee responsibilities
67.12(279) Withdrawal of contract offer
67.13(279) Evaluation
67.14(279) Contract revisions
67.15(279) Termination for convenience
67.16(279) Termination for cause
67.17(279) Responsibility of grantee at termination
67.18(279) Appeal from terminations
67.19(279) Refusal to issue ruling
67.20(279) Request for Reconsideration
67.21(279) Refusal to issue decision on request
67.22(279) Granting a Request for Reconsideration

CHAPTER 68
IOWA PUBLIC CHARTER AND INNOVATION ZONE SCHOOLS

DIVISION I
GENERAL PROVISIONS

68.1(256F,83GA,SF2033) Purpose
68.2(256F,83GA,SF2033) Definitions

DIVISION II
CHARTER SCHOOLS

68.3(256F,83GA,SF2033) Application to a school board
68.4(256F,83GA,SF2033) Review process
68.5(256F,83GA,SF2033) Ongoing review by department
68.6(256F,83GA,SF2033) Renewal of charter
68.7(256F,83GA,SF2033) Revocation of charter
68.8 to 68.10 Reserved

DIVISION III
INNOVATION ZONE SCHOOLS

68.11(256F,83GA,SF2033) Application process
68.12(256F,83GA,SF2033) Review process
68.13(256F,83GA,SF2033) Ongoing review by department
68.14(256F,83GA,SF2033) Renewal of contract
68.15(256F,83GA,SF2033) Revocation of contract

CHAPTER 69
Reserved

TITLE XIII
AREA EDUCATION AGENCIES

CHAPTERS 70 and 71
Reserved

CHAPTER 72
ACCREDITATION OF AREA EDUCATION AGENCIES

72.1(273)	Scope
72.2(273)	Definitions
72.3(273)	Accreditation components
72.4(273)	Standards for services
72.5 to 72.8	Reserved
72.9(273)	Comprehensive improvement plan
72.10(273)	Annual budget and annual progress report
72.11(273)	Comprehensive site visit

TITLE XIV
TEACHERS AND PROFESSIONAL LICENSING

CHAPTERS 73 to 76
Reserved

CHAPTER 77
STANDARDS FOR TEACHER INTERN PREPARATION PROGRAMS

77.1(256)	General statement
77.2(256)	Definitions
77.3(256)	Institutions affected
77.4(256)	Criteria for Iowa teacher intern preparation programs
77.5(256)	Approval of programs
77.6(256)	Periodic reports
77.7(256)	Approval of program changes
77.8(256)	Governance and resources
77.9(256)	Diversity
77.10(256)	Faculty
77.11(256)	Teacher intern selection
77.12(256)	Curriculum and instruction
77.13(256)	Candidate support
77.14(256)	Candidate assessment
77.15(256)	Program evaluation

CHAPTER 78
Reserved

CHAPTER 79
STANDARDS FOR PRACTITIONER AND ADMINISTRATOR PREPARATION PROGRAMS

DIVISION I
GENERAL STANDARDS APPLICABLE TO ALL PRACTITIONER PREPARATION PROGRAMS

79.1(256)	General statement
79.2(256)	Definitions
79.3(256)	Institutions affected
79.4(256)	Criteria for practitioner preparation programs
79.5(256)	Approval of programs
79.6(256)	Visiting teams

79.7(256) Periodic reports
79.8(256) Reevaluation of practitioner preparation programs
79.9(256) Approval of program changes

DIVISION II
SPECIFIC EDUCATION STANDARDS APPLICABLE TO ALL PRACTITIONER PREPARATION PROGRAMS
79.10(256) Governance and resources standard
79.11(256) Diversity standard
79.12(256) Faculty standard
79.13(256) Assessment system and unit evaluation standard

DIVISION III
SPECIFIC EDUCATION STANDARDS APPLICABLE ONLY TO INITIAL PRACTITIONER PREPARATION PROGRAMS FOR TEACHER CANDIDATES
79.14(256) Teacher preparation clinical practice standard
79.15(256) Teacher preparation candidate knowledge, skills and dispositions standard

DIVISION IV
SPECIFIC EDUCATION STANDARDS APPLICABLE ONLY TO ADMINISTRATOR PREPARATION PROGRAMS
79.16(256) Administrator preparation clinical practice standard
79.17(256) Administrator candidate knowledge, skills and dispositions standard
79.18 Reserved

DIVISION V
SPECIFIC EDUCATION STANDARDS APPLICABLE ONLY TO PRACTITIONER PREPARATION PROGRAMS OTHER THAN TEACHER OR ADMINISTRATOR PREPARATION PROGRAMS
79.19(256) Purpose
79.20(256) Clinical practice standard
79.21(256) Candidate knowledge, skills and dispositions standard

CHAPTER 80
STANDARDS FOR PARAEDUCATOR PREPARATION PROGRAMS
80.1(272) General statement
80.2(272) Definitions
80.3(272) Institutions affected
80.4(272) Criteria for Iowa paraeducator preparation programs
80.5(272) Approval of programs
80.6(272) Periodic reports
80.7(272) Reevaluation of paraeducator preparation programs
80.8(272) Approval of program changes
80.9(272) Organizational and resources standards
80.10(272) Diversity
80.11(272) Paraeducator candidate performance standards

CHAPTER 81
STANDARDS FOR SCHOOL BUSINESS OFFICIAL PREPARATION PROGRAMS
81.1(256) Definitions
81.2(256) Institutions eligible to provide a school business official preparation program
81.3(256) Approval of programs
81.4(256) Governance and resources standard
81.5(256) Instructor standard
81.6(256) Assessment system and institution evaluation standard
81.7(256) School business official candidate knowledge and skills standards and criteria
81.8(256) School business official mentoring program
81.9(256) Periodic reports
81.10(256) Reevaluation of school business official preparation programs
81.11(256) Approval of program changes

CHAPTER 82
STANDARDS FOR SCHOOL ADMINISTRATION MANAGER PROGRAMS

82.1(272) Definitions
82.2(272) Organizations eligible to provide a school administration manager training program
82.3(272) Approval of training programs
82.4(272) Governance and resources standard
82.5(272) Trainer and coach standard
82.6(272) Assessment system and organization evaluation standard
82.7(272) School administration manager knowledge and skills standards and criteria
82.8(272) Periodic reports
82.9(272) Reevaluation of school administration manager programs
82.10(272) Approval of program changes and flexibility of programs
82.11(272) Fees

CHAPTER 83
TEACHER AND ADMINISTRATOR QUALITY PROGRAMS

DIVISION I
GENERAL STANDARDS APPLICABLE TO BOTH ADMINISTRATOR AND TEACHER QUALITY PROGRAMS

83.1(284,284A) Purposes
83.2(284,284A) Definitions

DIVISION II
SPECIFIC STANDARDS APPLICABLE TO TEACHER QUALITY PROGRAMS

83.3(284) Mentoring and induction program for beginning teachers
83.4(284) Iowa teaching standards and criteria
83.5(284) Evaluator approval training
83.6(284) Professional development for teachers
83.7(284) Teacher quality committees

DIVISION III
SPECIFIC STANDARDS APPLICABLE TO ADMINISTRATOR QUALITY PROGRAMS

83.8(284A) Administrator quality program
83.9(284A) Mentoring and induction program for administrators
83.10(284A) Iowa school leadership standards and criteria for administrators
83.11(284A) Evaluation
83.12(284A) Professional development of administrators

CHAPTER 84
FINANCIAL INCENTIVES FOR NATIONAL BOARD CERTIFICATION

84.1(256) Purpose
84.2(256) Definitions
84.3(256) Registration fee reimbursement program
84.4(256) NBC annual award
84.5(256) Appeal of denial of a registration fee reimbursement award or an NBC annual award

CHAPTERS 85 to 93
Reserved

TITLE XV
EDUCATIONAL EXCELLENCE

CHAPTER 94
ADMINISTRATIVE ADVANCEMENT AND RECRUITMENT PROGRAM

94.1(256) Purpose
94.2(256) Eligibility identification procedures
94.3(256) Grant award procedure
94.4(256) Application process
94.5(256) Request for proposals
94.6(256) Grant process
94.7(256) Awards contract
94.8(256) Notification of applicants
94.9(256) Grantee responsibility

CHAPTER 95
EQUAL EMPLOYMENT OPPORTUNITY
AND AFFIRMATIVE ACTION IN EDUCATIONAL AGENCIES

95.1(256) Purpose
95.2(256) Definitions
95.3(256) Equal employment opportunity standards
95.4(256) Duties of boards of directors
95.5(256) Plan components
95.6(256) Dissemination
95.7(256) Reports

TITLE XVI
SCHOOL FACILITIES

CHAPTER 96
STATEWIDE/LOCAL OPTION SALES AND
SERVICES TAX FOR SCHOOL INFRASTRUCTURE

96.1(423E,423F) Definitions
96.2(423E,423F) Reports to the department
96.3(423E,423F) Combined actual enrollment
96.4(423E,423F) Application and certificate of need process
96.5(423E,423F) Review process
96.6(423E,423F) Award process
96.7(423E,423F) Applicant responsibilities
96.8(423E,423F) Appeal of certificate denial

CHAPTER 97
SUPPLEMENTARY WEIGHTING

97.1(257) Definitions
97.2(257) Supplementary weighting plan
97.3(257) Supplementary weighting plan for at-risk students
97.4(257) Supplementary weighting plan for a regional academy
97.5(257) Supplementary weighting plan for whole-grade sharing
97.6(257) Supplementary weighting plan for ICN video services
97.7(257) Supplementary weighting plan for operational services

CHAPTER 98
FINANCIAL MANAGEMENT OF CATEGORICAL FUNDING

DIVISION I
GENERAL PROVISIONS

98.1(256,257) Definitions
98.2(256,257) General finance
98.3 to 98.10 Reserved

DIVISION II
APPROPRIATE USE OF BUDGETARY ALLOCATIONS

98.11(257) Categorical and noncategorical student counts
98.12(257,299A) Home school assistance program
98.13(256C,257) Statewide voluntary four-year-old preschool program
98.14(257) Supplementary weighting
98.15(257) Operational function sharing supplementary weighting
98.16(257,280) Limited English proficiency (LEP) weighting
98.17(256B,257) Special education weighting
98.18(257) At-risk formula supplementary weighting
98.19(257) Reorganization incentive weighting
98.20(257) Gifted and talented program
98.21(257) Returning dropout and dropout prevention program
98.22(257) Use of the unexpended general fund balance
98.23(256D,257) Iowa early intervention block grant, also known as early intervention supplement
98.24(257,284) Teacher salary supplement
98.25 Reserved
98.26(257,284) Educator quality professional development, also known as professional development supplement
98.27 to 98.39 Reserved

DIVISION III
APPROPRIATE USE OF GRANTS IN AID

98.40(256,257,298A) Grants in aid
98.41 Reserved
98.42(257,284) Beginning teacher mentoring and induction program
98.43(257,284A) Beginning administrator mentoring and induction program
98.44(257,301) Nonpublic textbook services
98.45 to 98.59 Reserved

DIVISION IV
APPROPRIATE USE OF SPECIAL TAX LEVIES AND FUNDS

98.60(24,29C,76,143,256,257,274,275,276,279,280,282,283A,285,291,296,298,298A,300,301,423E,423F,565,670) Levies and funds
98.61(24,143,257,275,279,280,285,297,298,298A,301,473,670) General fund
98.62(279,296,298,670) Management fund
98.63(298) Library levy fund
98.64(279,283,297,298) Physical plant and equipment levy (PPEL) fund
98.65(276,300) Public educational and recreational levy (PERL) fund
98.66(257,279,298A,565) District support trust fund
98.67(257,279,298A,565) Permanent funds
98.68(76,274,296,298,298A) Debt service fund
98.69(76,273,298,298A,423E,423F) Capital projects fund
98.70(279,280,298A) Student activity fund
98.71(256B,257,298A) Special education instruction fund
98.72(282,298A) Juvenile home program instruction fund

98.73(283A,298A) School nutrition fund
98.74(279,298A) Child care and before- and after-school programs fund
98.75(298A) Regular education preschool fund
98.76(298A) Student construction fund
98.77(298A) Other enterprise funds
98.78 to 98.81 Reserved
98.82(298A) Internal service funds
98.83 to 98.91 Reserved
98.92(257,279,298A,565) Private purpose trust funds
98.93(298A) Other trust funds
98.94 to 98.100 Reserved
98.101(298A) Agency funds
98.102 to 98.110 Reserved
98.111(24,29C,257,298A) Emergency levy fund
98.112(275) Equalization levy fund

CHAPTER 99
BUSINESS PROCEDURES AND DEADLINES
99.1(257) Definitions
99.2(256,257,285,291) Submission deadlines
99.3(257) Good cause for late submission
99.4(24,256,257,291) Budgets, accounting and reporting

CHAPTER 100
Reserved

TITLE XVII
PROTECTION OF CHILDREN

CHAPTER 101
Reserved

CHAPTER 102
PROCEDURES FOR CHARGING AND
INVESTIGATING INCIDENTS OF ABUSE
OF STUDENTS BY SCHOOL EMPLOYEES
102.1(280) Statement of intent and purpose
102.2(280) Definitions
102.3(280) Jurisdiction
102.4(280) Exceptions
102.5(280) Duties of school authorities
102.6(280) Filing of a report
102.7(280) Receipt of report
102.8(280) Duties of designated investigator—physical abuse allegations
102.9(280) Duties of designated investigator—sexual abuse allegations
102.10(280) Content of investigative report
102.11(280) Founded reports—designated investigator's duties
102.12(280) Level-two investigator's duties
102.13(280) Retention of records
102.14(280) Substantial compliance
102.15(280) Effective date

CHAPTER 103
CORPORAL PUNISHMENT BAN; RESTRAINT; PHYSICAL CONFINEMENT AND DETENTION

103.1(256B,280) Purpose
103.2(256B,280) Ban on corporal punishment
103.3(256B,280) Exclusions
103.4(256B,280) Exceptions and privileges
103.5(256B,280) Reasonable force
103.6(256B,280) Physical confinement and detention
103.7(256B,280) Additional minimum mandatory procedures
103.8(256B,280) Additional provisions concerning physical restraint

CHAPTERS 104 to 119
Reserved

TITLE XVIII
EARLY CHILDHOOD

CHAPTER 120
EARLY ACCESS INTEGRATED SYSTEM OF EARLY INTERVENTION SERVICES

DIVISION I
PURPOSE AND APPLICABILITY

120.1(34CFR303) Purposes and outcomes of the Early ACCESS Integrated System of Early Intervention Services
120.2(34CFR303) Applicability of this chapter
120.3(34CFR303) Applicable federal regulations

DIVISION II
DEFINITIONS

120.4(34CFR303) Act
120.5(34CFR303) At-risk infant or toddler
120.6(34CFR303) Child
120.7(34CFR303) Consent
120.8(34CFR303) Council
120.9(34CFR303) Day
120.10(34CFR303) Developmental delay
120.11(34CFR303) Early intervention service program
120.12(34CFR303) Early intervention service provider
120.13(34CFR303) Early intervention services
120.14(34CFR303) Elementary school
120.15(34CFR303) Free appropriate public education
120.16(34CFR303) Health services
120.17(34CFR303) Homeless children
120.18(34CFR303) Include; including
120.19(34CFR303) Indian; Indian tribe
120.20(34CFR303) Individualized family service plan
120.21(34CFR303) Infant or toddler with a disability
120.22(34CFR303) Lead agency
120.23(34CFR303) Local educational agency
120.24(34CFR303) Multidisciplinary
120.25(34CFR303) Native language
120.26(34CFR303) Natural environments
120.27(34CFR303) Parent

120.28(34CFR303) Parent training and information center
120.29(34CFR303) Personally identifiable information
120.30(34CFR303) Public agency
120.31(34CFR303) Qualified personnel
120.32(34CFR303) Scientifically based research
120.33(34CFR303) Secretary
120.34(34CFR303) Service coordination services (case management)
120.35(34CFR303) State
120.36(34CFR303) State educational agency
120.37(34CFR303) Ward of the state
120.38(34CFR303) Other definitions used in this chapter
120.39 to 120.99 Reserved

DIVISION III
STATE ELIGIBILITY FOR A GRANT AND REQUIREMENTS
FOR A STATEWIDE SYSTEM: GENERAL AUTHORITY AND ELIGIBILITY

120.100(34CFR303) General authority
120.101(34CFR303) State eligibility—requirements for a grant under Part C of the Act
120.102(34CFR303) State conformity with Part C of the Act
120.103 and 120.104 Reserved
120.105(34CFR303) Positive efforts to employ and advance qualified individuals with disabilities
120.106 to 120.109 Reserved
120.110(34CFR303) Minimum components of a statewide system
120.111(34CFR303) State definition of developmental delay
120.112(34CFR303) Availability of early intervention services
120.113(34CFR303) Evaluation, assessment, and nondiscriminatory procedures
120.114(34CFR303) Individualized family service plan (IFSP)
120.115(34CFR303) Comprehensive child find system
120.116(34CFR303) Public awareness program
120.117(34CFR303) Central directory
120.118(34CFR303) Comprehensive system of personnel development (CSPD)
120.119(34CFR303) Personnel standards
120.120(34CFR303) Lead agency role in supervision, monitoring, funding, interagency coordination, and other responsibilities
120.121(34CFR303) Policy for contracting or otherwise arranging for services
120.122(34CFR303) Reimbursement procedures
120.123(34CFR303) Procedural safeguards
120.124(34CFR303) Data collection
120.125(34CFR303) State interagency coordinating council
120.126(34CFR303) Early intervention services in natural environments
120.127 to 120.199 Reserved

DIVISION IV
STATE APPLICATION AND ASSURANCES

120.200(34CFR303) State application and assurances
120.201(34CFR303) Designation of lead agency
120.202(34CFR303) Certification regarding financial responsibility
120.203(34CFR303) Statewide system and description of services
120.204 Reserved
120.205(34CFR303) Description of use of funds
120.206(34CFR303) Referral policies for specific children
120.207(34CFR303) Availability of resources
120.208(34CFR303) Public participation policies and procedures
120.209(34CFR303) Transition to preschool and other programs

120.210(34CFR303) Coordination with Head Start and Early Head Start, early education, and child care programs
120.211 Reserved
120.212(34CFR303) Additional information and assurances
120.213 to 120.219 Reserved
120.220(34CFR303) Assurances satisfactory to the Secretary
120.221(34CFR303) Expenditure of funds
120.222(34CFR303) Payor of last resort
120.223(34CFR303) Control of funds and property
120.224(34CFR303) Reports and records
120.225(34CFR303) Prohibition against supplanting; indirect costs
120.226(34CFR303) Fiscal control
120.227(34CFR303) Traditionally underserved groups
120.228(34CFR303) Subsequent state application and modifications of application
120.229 to 120.299 Reserved

DIVISION V
CHILD FIND; EVALUATIONS AND ASSESSMENTS; INDIVIDUALIZED FAMILY SERVICE PLANS

120.300(34CFR303) General
120.301(34CFR303) Public awareness program—information for parents
120.302(34CFR303) Comprehensive child find system
120.303(34CFR303) Referral procedures
120.304 to 120.309 Reserved
120.310(34CFR303) Post-referral timeline (45 calendar days)
120.311 to 120.319 Reserved
120.320(34CFR303) Screening procedures
120.321(34CFR303) Evaluation of the child and assessment of the child and family
120.322(34CFR303) Determination that a child is not eligible
120.323 to 120.339 Reserved
120.340(34CFR303) Individualized family service plan—general
120.341 Reserved
120.342(34CFR303) Procedures for IFSP development, review, and evaluation
120.343(34CFR303) IFSP team meeting and periodic review
120.344(34CFR303) Content of an IFSP
120.345(34CFR303) Interim IFSPs—provision of services before evaluations and assessments are completed
120.346(34CFR303) Responsibility and accountability
120.347 to 120.399 Reserved

DIVISION VI
PROCEDURAL SAFEGUARDS

120.400(34CFR303) General responsibility of lead agency for procedural safeguards
120.401(34CFR303) Confidentiality and opportunity to examine records
120.402(34CFR303) Confidentiality
120.403(34CFR303) Definitions
120.404(34CFR303) Notice to parents
120.405(34CFR303) Access rights
120.406(34CFR303) Record of access
120.407(34CFR303) Records on more than one child
120.408(34CFR303) List of types and locations of information
120.409(34CFR303) Fees for records
120.410(34CFR303) Amendment of records at a parent's request
120.411(34CFR303) Opportunity for a hearing
120.412(34CFR303) Result of hearing

120.413(34CFR303)	Hearing procedures
120.414(34CFR303)	Consent prior to disclosure or use
120.415(34CFR303)	Safeguards
120.416(34CFR303)	Destruction of information
120.417(34CFR303)	Enforcement
120.418 and 120.419	Reserved
120.420(34CFR303)	Parental consent and ability to decline services
120.421(34CFR303)	Prior written notice and procedural safeguards notice
120.422(34CFR303)	Surrogate parents
120.423 to 120.429	Reserved
120.430(34CFR303)	State dispute resolution options
120.431(34CFR303)	Mediation
120.432(34CFR303)	Adoption of state complaint procedures
120.433(34CFR303)	Minimum state complaint procedures
120.434(34CFR303)	Filing a complaint
120.435(34CFR303)	Appointment of an administrative law judge
120.436(34CFR303)	Parental rights in due process hearing proceedings
120.437(34CFR303)	Convenience of hearings and timelines
120.438(34CFR303)	Civil action
120.439(34CFR303)	Limitation of actions
120.440(34CFR303)	Rule of construction
120.441(34CFR303)	Attorney fees
120.442 to 120.448	Reserved
120.449(34CFR303)	State enforcement mechanisms
120.450 to 120.499	Reserved

DIVISION VII
USE OF FUNDS; PAYOR OF LAST RESORT

120.500(34CFR303)	Use of funds, payor of last resort, and system of payments
120.501(34CFR303)	Permissive use of funds by the department
120.502 to 120.509	Reserved
120.510(34CFR303)	Payor of last resort
120.511(34CFR303)	Methods to ensure the provision of, and financial responsibility for, Early ACCESS services
120.512 to 120.519	Reserved
120.520(34CFR303)	Policies related to use of public benefits or insurance or private insurance to pay for Early ACCESS services
120.521(34CFR303)	System of payments and fees
120.522 to 120.599	Reserved

DIVISION VIII
STATE INTERAGENCY COORDINATING COUNCIL

120.600(34CFR303)	Establishment of council
120.601(34CFR303)	Composition
120.602(34CFR303)	Meetings
120.603(34CFR303)	Use of funds by the council
120.604(34CFR303)	Functions of the council; required duties
120.605(34CFR303)	Authorized activities by the council
120.606 to 120.699	Reserved

DIVISION IX
FEDERAL AND STATE MONITORING AND ENFORCEMENT;
REPORTING; AND ALLOCATION OF FUNDS

120.700(34CFR303)	State monitoring and enforcement
120.701(34CFR303)	State performance plans and data collection

120.702(34CFR303) State use of targets and reporting
120.703(34CFR303) Department review and determination regarding EIS program performance
120.704(34CFR303) Enforcement
120.705(34CFR303) Withholding funds
120.706(34CFR303) Public attention
120.707 Reserved
120.708(34CFR303) State enforcement
120.709(34CFR303) State consideration of other state or federal laws
120.710 to 120.719 Reserved
120.720(34CFR303) Data requirements—general
120.721(34CFR303) Annual report of children served—report requirement
120.722(34CFR303) Data reporting
120.723(34CFR303) Annual report of children served—certification
120.724(34CFR303) Annual report of children served—other responsibilities of the department
120.725 to 120.800 Reserved

DIVISION X
OTHER PROVISIONS

120.801(34CFR303) Early ACCESS system—state level
120.802(34CFR303) Interagency service planning
120.803(34CFR303) System-level disputes
120.804(34CFR303) Early ACCESS system—regional and community levels
120.805(34CFR303) Provision of year-round services
120.806(34CFR303) Evaluation and improvement
120.807(34CFR303) Research
120.808(34CFR303) Records and reports
120.809(34CFR303) Information for department
120.810(34CFR303) Public information
120.811(34CFR303) Dispute resolution: practice before mediators and administrative law judges
120.812(34CFR303) References to federal law
120.813(34CFR303) Severability

TITLE I
GENERAL INFORMATION—
DEPARTMENT OPERATIONS

CHAPTER 1
ORGANIZATION AND OPERATION

[Prior to 9/7/88, see Public Instruction Department[670] Ch 49]

281—1.1(17A,256) State board of education. The state board of education, authorized by Iowa Code chapter 256, is the governing and policy-forming body for the department of education.

1.1(1) *Membership.* The board consists of nine voting members appointed by the governor, with approval of two-thirds of the members of the senate, with not more than five members from the same political party, and not more than five members of the same gender. Effective May 1, 2003, the board shall also consist of one nonvoting student member as outlined in rule 281—1.2(17A,256). The nonvoting student member shall be appointed without regard to political affiliation. The nonvoting student member shall not be considered for purposes of constituting the necessary quorum.

1.1(2) *Officers.* The board shall elect from its voting members a president and a vice president, each to serve a term of two years.

1.1(3) *Terms.* The voting members of the board are appointed for six-year terms, from May 1 to April 30, with the terms of three members expiring every two years. There is no statutory limitation to the number of terms a voting member may serve. The nonvoting student member shall serve a one-year term, from May 1 to April 30, as described in subrule 1.2(1).

1.1(4) *Meetings.* The board is required to hold no fewer than six meetings each year. The majority of the meetings are held in the state board room at the department of education in Des Moines, which is located on the second floor of the Grimes State Office Building on the corner of East 14th Street and Grand Avenue. By notice of the regularly published meeting agenda, the board may hold meetings in other areas of the state.

1.1(5) *Compensation.* All voting board members and the nonvoting student member are entitled to receive their necessary expenses while engaged in official duties. In addition, they shall be paid a per diem at the rate specified in Iowa Code section 7E.6. If the student member's parent or guardian provides supervision pursuant to subrule 1.2(4), the parent or guardian shall receive necessary expenses but not the per diem. Per diem and expense payments shall be made from appropriations to the department of education.

1.1(6) *Additional board functions.* In addition to its functions as the state board of education, the board constitutes:

a. The state board for vocational education, Iowa Code section 256.7(2).

b. The state board for vocational rehabilitation, Iowa Code section 259.3.

c. The state board for community colleges, Iowa Code section 260C.3.

1.1(7) *Advisory groups.* The following advisory groups have been established by statute to provide advice to the state board in the indicated areas:

a. Nonpublic schools advisory committee, Iowa Code section 256.15, to advise the board on matters affecting nonpublic schools.

b. Community college council, Iowa Code section 256.31, to assist the state board of education with substantial issues which are directly related to the community college system.

281—1.2(17A,256) Student member of state board of education. The governor shall appoint a public high school student to serve as a nonvoting member of the state board of education.

1.2(1) *Term.* The nonvoting student member shall serve a term from May 1 to April 30. The student member may serve a second year as the nonvoting student member without having to reapply for the position if the student has another year of high school eligibility remaining before graduation. A vacancy in the membership of the nonvoting student member shall not be filled until the expiration of the term.

1.2(2) *Qualifications.* At the time of making application, the nonvoting student member shall meet all of the following qualifications:

a. The student must be a full-time, regularly enrolled tenth or eleventh grade student in an Iowa school district.

b. The student must have been regularly enrolled as a full-time student in the district of present enrollment for at least two consecutive semesters or the equivalent thereof.

c. The student must have a minimum cumulative grade point average in high school of 3.0 on a 4.0 scale (3.75 on a 5.0 scale).

d. The student must demonstrate participation in extracurricular and community activities, as well as an interest in serving on the state board.

e. The student must have the consent of the student's parent or guardian, as well as the approval of the student's district.

1.2(3) *Application process.* The application process for the nonvoting student member is as follows:

a. The department shall, on behalf of the state board, prepare and disseminate application forms to all school districts in Iowa. In addition to the application itself, the student shall submit all of the following:

(1) A consent form signed by the student's parent or guardian.

(2) An approval of the application signed by the superintendent of the student's district of enrollment or the superintendent's designee.

(3) A letter of recommendation from a high school teacher from whom the student received instruction.

(4) A letter of recommendation from a person in the community familiar with the student's community activities.

b. The number of applicants in a year from any one district is limited as follows:

(1) If district enrollment for grades 10 through 12 is less than 400 students, there may be no more than one applicant from the district.

(2) If district enrollment for grades 10 through 12 is from 400 to 1199 students, there may be no more than two applicants from the district.

(3) If district enrollment for grades 10 through 12 is 1200 students or more, there may be no more than three applicants from the district.

c. All applications shall be submitted on or before February 1 of the year in which the term is to begin. Applications may be hand-delivered or postmarked on or before February 1 to the Iowa Department of Education, Office of the Director, Grimes State Office Building, Des Moines, Iowa 50319-0146.

d. All applications shall be initially screened by a committee to be appointed by the director of the department. The initial screening committee shall select not more than 20 semifinalists. If fewer than a total of 20 applications are received, the initial screening process may be omitted, at the discretion of the director of the department.

e. The applications of the semifinalists shall be reviewed by a committee appointed by the president of the state board. The committee shall submit a list of two to five finalists to the governor, who shall appoint the student member from the list submitted by the committee on behalf of the state board of education.

1.2(4) *Participation of student member in official board activities.* Upon appointment to the board, the student member shall, at minimum, fulfill the following requirements to remain eligible to serve:

a. The student shall maintain enrollment as a full-time student in an Iowa public school district. If the student moves or transfers from the district of application, the student must obtain the approval of the superintendent or the superintendent's designee in the student's new district of enrollment.

b. The student shall maintain a minimum cumulative grade point average in high school of 3.0 on a 4.0 scale or 3.75 on a 5.0 scale.

c. The student shall attend regularly scheduled board meetings as required of voting board members. As a nonvoting member, the student may not participate in any closed session of the board.

d. The student member's absences from school to participate in official state board activities shall not be shown by the student's district as unexcused absences. The student member's participation in

board activities outside the regularly scheduled meetings of the state board shall be approved by the president of the board and the student's superintendent or the superintendent's designee.

e. If the student member is a minor, the student's parent or guardian must accompany the student while the student is participating in official state board activities at a location other than the student's resident community, unless the parent or guardian submits to the state board a signed release indicating that the parent or guardian has determined that such supervision is unnecessary.

[**ARC 1330C**, IAB 2/19/14, effective 3/26/14]

281—1.3(17A,256) Director of education. The director is responsible for exercising general supervision over the state system of public education and nonpublic schools to the extent that is necessary to ascertain compliance with provisions of the Iowa school laws. The director performs the function of executive officer of the state board of education.

1.3(1) *Appointment, term, and salary.* The director is appointed by the governor, appointment subject to approval of two-thirds of the members of the senate. The director serves at the pleasure of the governor. A salary range for this position is established by the general assembly with the governor setting the specific salary from within this range.

1.3(2) *Qualifications.* The director shall possess a background in education and administrative experience.

281—1.4(17A,256) Department of education. The department of education is established by the general assembly to act in a policy-making and advisory capacity and to exercise general supervision over the state system of education including (1) public elementary and secondary schools, (2) community colleges, (3) area education agencies, (4) vocational rehabilitation, (5) educational supervision over the elementary and secondary schools under the control of the department of human services, and (6) nonpublic schools to the extent necessary for compliance with the Iowa school laws.

The department shall also:

1. Stimulate and encourage educational radio and television and other educational communications services as necessary to aid in accomplishing the educational objectives of the state;
2. Meet the informational needs of the three branches of state government; and
3. Provide for the improvement of library services to all Iowa citizens and foster development and cooperation among libraries.

The department of education shall act as an administrative, supervisory, and consultative agency.

1.4(1) *Organization.*

a. *Office of the director.* The director is the chief administrator of the department and serves as chief executive officer of the state board of education.

b. *Division of community colleges and workforce preparation.* The division oversees career and technical education as well as the community colleges.

c. *Division of financial and information services.* The division provides internal operations and information technology to the agency as well as planning, research and evaluation services.

d. *Division of early childhood, elementary and secondary education.* The division consists of bureaus that oversee instructional services, practitioner preparation, administration and school improvement services, and food and nutrition services.

e. *Division of library and information services.* The division is responsible for the state library, library development, and audio-visual services.

f. *Iowa public television.* This is the division of public broadcasting and related services.

g. *Division of vocational rehabilitation services.* This division provides disability determination services and related services for clients with disabilities.

1.4(2) *Organizational responsibility.* Each division is under the direction of an administrator. Each bureau is under the direction of a chief for administrative purposes.

1.4(3) *Employees.* It is the responsibility of the director to appoint all employees of the department excluding the state librarian and the employees of Iowa public television with due regard to their qualifications for the duties to be performed, designate their titles and prescribe their duties.

1.4(4) *Mailing addresses.* The mailing address for the state board of education and all divisions of the department, with the exception of the division of library services, the division of public broadcasting, and vocational rehabilitation services, is Grimes State Office Building, Des Moines, Iowa 50319-0146. The mailing address for the division of library services is East 12th and Grand Avenue, Des Moines, Iowa 50319. The mailing address for Iowa public television is P.O. Box 6450, Johnston, Iowa 50131. The mailing address for the vocational rehabilitation services division is 510 East 12th Street, Des Moines, Iowa 50319-0146.

1.4(5) *Information or submissions.* Information inquiries should be addressed to the appropriate administrator of the desired organizational unit shown in subrule 1.4(1). Requests for hearings, declaratory rulings, participation in rule-making procedures of the board, and scheduling of presentations to the board should be addressed to the director of education.

These rules are intended to implement Iowa Code section 17A.3.

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CHAPTER 2
AGENCY PROCEDURE FOR RULE MAKING AND PETITIONS FOR RULE MAKING

281—2.1(17A) Applicability. Except to the extent otherwise expressly provided by statute, all rules adopted by the agency are subject to the provisions of Iowa Code chapter 17A, the Iowa administrative procedure Act, and the provisions of this chapter.

281—2.2(17A) Advice on possible rules before notice of proposed rule adoption. In addition to seeking information by other methods, the agency may, before publication of a Notice of Intended Action under Iowa Code section 17A.4(1)*"a,"* solicit comments from the public on a subject matter of possible rule making by the agency by causing notice to be published in the Iowa Administrative Bulletin of the subject matter and indicating where, when, and how persons may comment.

281—2.3(17A) Public rule-making docket.

2.3(1) *Docket maintained.* The agency shall maintain a current public rule-making docket.

2.3(2) *Anticipated rule making.* The rule-making docket shall list each anticipated rule-making proceeding. A rule-making proceeding is deemed "anticipated" from the time a draft of proposed rules is distributed for internal discussion within the agency. For each anticipated rule-making proceeding, the docket shall contain a listing of the precise subject matter which may be submitted for consideration by the director for subsequent proposal under the provisions of Iowa Code section 17A.4(1)*"a,"* the name and address of agency personnel with whom persons may communicate with respect to the matter, and an indication of the present status within the agency of that possible rule. The agency may also include in the docket other subjects upon which public comment is desired.

2.3(3) *Pending rule-making proceedings.* The rule-making docket shall list each pending rule-making proceeding. A rule-making proceeding is pending from the time it is commenced, by publication in the Iowa Administrative Bulletin of a Notice of Intended Action pursuant to Iowa Code section 17A.4(1)*"a,"* to the time it is terminated, by publication of a Notice of Termination in the Iowa Administrative Bulletin or the rule becoming effective. For each rule-making proceeding, the docket shall indicate:

a. The subject matter of the proposed rule;

b. A citation to all published notices relating to the proceeding;

c. Where written submissions on the proposed rule may be inspected;

d. The time during which written submissions may be made;

e. The names of persons who have made written requests for an opportunity to make oral presentations on the proposed rule, where those requests may be inspected, and where and when oral presentations may be made;

f. Whether a written request for the issuance of a regulatory analysis, or a concise statement of reasons, has been filed, whether such an analysis or statement or a fiscal impact statement has been issued, and where any such written request, analysis, or statement may be inspected;

g. The current status of the proposed rule and any agency determinations with respect thereto;

h. Any known timetable for agency decisions or other action in the proceeding;

i. The date of the rule's adoption;

j. The date of the rule's filing, indexing, and publication;

k. The date on which the rule will become effective; and

l. Where the rule-making record may be inspected.

281—2.4(17A) Notice of proposed rule making.

2.4(1) *Contents.* At least 35 days before the adoption of a rule the agency shall cause Notice of Intended Action to be published in the Iowa Administrative Bulletin. The Notice of Intended Action shall include:

a. A brief explanation of the purpose of the proposed rule;

b. The specific legal authority for the proposed rule;

c. Except to the extent impracticable, the text of the proposed rule;

d. Where, when, and how persons may present their views on the proposed rule; and

e. Where, when, and how persons may demand an oral proceeding on the proposed rule if the notice does not already provide for one.

Where inclusion of the complete text of a proposed rule in the Notice of Intended Action is impracticable, the agency shall include in the notice a statement fully describing the specific subject matter of the omitted portion of the text of the proposed rule, the specific issues to be addressed by that omitted text of the proposed rule, and the range of possible choices being considered by the agency for the resolution of each of those issues.

2.4(2) *Incorporation by reference.* A proposed rule may incorporate other materials by reference only if it complies with all of the requirements applicable to the incorporation by reference of other materials in an adopted rule that are contained in subrule 2.12(2) of this chapter.

2.4(3) *Copies of notices.* Persons desiring to receive copies of future Notices of Intended Action by subscription must file with the agency a written request indicating the name and address to which such notices should be sent. Within seven days after submission of a Notice of Intended Action to the administrative rules coordinator for publication in the Iowa Administrative Bulletin, the agency shall mail or electronically transmit a copy of that notice to subscribers who have filed a written request for either mailing or electronic transmittal with the agency for Notices of Intended Action. The written request shall be accompanied by payment of the subscription price which may cover the full cost of the subscription service, including its administrative overhead and the cost of copying and mailing the Notices of Intended Action for a period of ten days.

281—2.5(17A) Public participation.

2.5(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 Department of Education, Legal Consultant's Office, Grimes State Office Building, Des Moines, Iowa 50319-0146, or the person designated in the Notice of Intended Action.

2.5(2) *Oral proceedings.* The agency may, at any time, schedule an oral proceeding on a proposed rule. The agency shall schedule an oral proceeding on a proposed rule if, within 20 days after the published Notice of Intended Action, a written request for an opportunity to make oral presentations is submitted to the agency by the administrative rules review committee, a governmental subdivision, an agency, an association having not less than 25 members, or at least 25 persons. That request must also contain the following additional information:

1. A request by one or more individual persons must be signed by each of them and include the address and telephone number of each of them.

2. A request by an association must be signed by an officer or designee of the association and must contain a statement that the association has at least 25 members and the address and telephone number of the person signing that request.

3. A request by an agency or governmental subdivision must be signed by an official having authority to act on behalf of the entity and must contain the address and telephone number of the person signing that request.

2.5(3) *Conduct of oral proceedings.*

a. Applicability. This subrule applies only to those oral rule-making proceedings in which an opportunity to make oral presentations is authorized or required by Iowa Code section 17A.4(1)*"b"* as amended by 1998 Iowa Acts, chapter 1202, section 8, or this chapter.

b. Scheduling and notice. An oral proceeding on a proposed rule may be held in one or more locations and shall not be held earlier than 20 days after notice of its location and time is published in the Iowa Administrative Bulletin. That notice shall also identify the proposed rule by ARC number and citation to the Iowa Administrative Bulletin.

c. Presiding officer. The agency, a member of the agency, or another person designated by the agency who will be familiar with the substance of the proposed rule, shall preside at the oral proceeding on a proposed rule. If the agency does not preside, the presiding officer shall prepare a memorandum for consideration by the agency summarizing the contents of the presentations made at the oral proceeding unless the agency determines that such a memorandum is unnecessary because the agency will personally listen to or read the entire transcript of the oral proceeding.

d. Conduct of proceeding. At an oral proceeding on a proposed rule, persons may make oral statements and make documentary and physical submissions, which may include data, views, comments or arguments concerning the proposed rule. Persons wishing to make oral presentations at such a proceeding are encouraged to notify the agency at least one business day prior to the proceeding and indicate the general subject of their presentations. At the proceeding, those who participate shall indicate their names and addresses, identify any persons or organizations they may represent, and provide any other information relating to their participation deemed appropriate by the presiding officer. Oral proceedings shall be open to the public and shall be recorded by stenographic or electronic means.

(1) At the beginning of the oral proceeding, the presiding officer shall give a brief synopsis of the proposed rule, a statement of the statutory authority for the proposed rule, and the reasons for the agency decision to propose the rule. The presiding officer may place time limitations on individual oral presentations when necessary to ensure the orderly and expeditious conduct of the oral proceeding. To encourage joint oral presentations and to avoid repetition, additional time may be provided for persons whose presentations represent the views of other individuals as well as their own views.

(2) Persons making oral presentations are encouraged to avoid restating matters which have already been submitted in writing.

(3) To facilitate the exchange of information, the presiding officer may, where time permits, open the floor to questions or general discussion.

(4) The presiding officer shall have the authority to take any reasonable action necessary for the orderly conduct of the meeting.

(5) Physical and documentary submissions presented by participants in the oral proceeding shall be submitted to the presiding officer. Such submissions become the property of the agency.

(6) The oral proceeding may be continued by the presiding officer to a later time without notice other than by announcement at the hearing.

(7) Participants in an oral proceeding shall not be required to take an oath or to submit to cross-examination. However, the presiding officer in an oral proceeding may question participants and permit the questioning of participants by other participants about any matter relating to that rule-making proceeding, including any prior written submissions made by those participants in that proceeding; but no participant shall be required to answer any question.

(8) The presiding officer in an oral proceeding may permit rebuttal statements and request the filing of written statements subsequent to the adjournment of the oral presentations.

2.5(4) *Additional information.* In addition to receiving written comments and oral presentations on a proposed rule according to the provisions of this rule, the agency may obtain information concerning a proposed rule through any other lawful means deemed appropriate under the circumstances.

2.5(5) *Accessibility.* The agency shall schedule oral proceedings in rooms accessible to and functional for persons with physical disabilities. Persons who have special requirements should contact the Legal Consultant's Office, Department of Education, Grimes State Office Building, Des Moines, Iowa 50319-0146, or telephone (515)281-5295 in advance to arrange access or other needed services.

281—2.6(17A) Regulatory analysis.

2.6(1) *Definition of small business.* A "small business" is defined in 1998 Iowa Acts, chapter 1202, section 10(7).

2.6(2) *Mailing list.* Small businesses or organizations of small businesses may be registered on the agency's small business impact list by making a written application addressed to Legal Consultant's Office, Department of Education, Grimes State Office Building, Des Moines, Iowa 50319-0146. The application for registration shall state:

a. The name of the small business or organization of small businesses;

b. Its address;

c. The name of a person authorized to transact business for the applicant;

d. A description of the applicant's business or organization. An organization representing 25 or more persons who qualify as a small business shall indicate that fact.

e. Whether the registrant desires copies of Notices of Intended Action at cost, or desires advance notice of the subject of all or some specific category of proposed rule making affecting small business.

The agency may at any time request additional information from the applicant to determine whether the applicant is qualified as a small business or as an organization of 25 or more small businesses. The agency may periodically send a letter to each registered small business or organization of small businesses asking whether that business or organization wishes to remain on the registration list. The name of a small business or organization of small businesses will be removed from the list if a negative response is received, or if no response is received within 30 days after the letter is sent.

2.6(3) *Time of mailing.* Within seven days after submission of a Notice of Intended Action to the administrative rules coordinator for publication in the Iowa Administrative Bulletin, the agency shall mail to all registered small businesses or organizations of small businesses, in accordance with their request, either a copy of the Notice of Intended Action or notice of the subject of that proposed rule making. In the case of a rule that may have an impact on small business adopted in reliance upon Iowa Code section 17A.4(2), the agency shall mail notice of the adopted rule to registered businesses or organizations prior to the time the adopted rule is published in the Iowa Administrative Bulletin.

2.6(4) *Qualified requesters for regulatory analysis—economic impact.* The agency shall issue a regulatory analysis of a proposed rule that conforms to the requirements of 1998 Iowa Acts, chapter 1202, section 10(2a), after a proper request from:

a. The administrative rules coordinator;

b. The administrative rules review committee.

2.6(5) *Qualified requesters for regulatory analysis—business impact.* The agency shall issue a regulatory analysis of a proposed rule that conforms to the requirements of 1998 Iowa Acts, chapter 1202, section 10(2b), after a proper request from:

a. The administrative rules review committee;

b. The administrative rules coordinator;

c. At least 25 or more persons who sign the request provided that each represents a different small business;

d. An organization representing at least 25 small businesses. That organization shall list the name, address and telephone number of not less than 25 small businesses it represents.

2.6(6) *Time period for analysis.* Upon receipt of a timely request for a regulatory analysis, the agency shall adhere to the time lines described in 1998 Iowa Acts, chapter 1202, section 10(4).

2.6(7) *Contents of request.* A request for a regulatory analysis is made when it is mailed or delivered to the agency. The request shall be in writing and satisfy the requirements of 1998 Iowa Acts, chapter 1202, section 10(1).

2.6(8) *Contents of concise summary.* The contents of the concise summary shall conform to the requirements of 1998 Iowa Acts, chapter 1202, section 10(4,5).

2.6(9) *Publication of a concise summary.* The agency shall make available, to the maximum extent feasible, copies of the published summary in conformance with 1998 Iowa Acts, chapter 1202, section 10(5).

2.6(10) *Regulatory analysis contents—rules review committee or rules coordinator.* When a regulatory analysis is issued in response to a written request from the administrative rules review committee, or the administrative rules coordinator, the regulatory analysis shall conform to the requirements of 1998 Iowa Acts, chapter 1202, section 10(2a), unless a written request expressly waives one or more of the items listed in the section.

2.6(11) *Regulatory analysis contents—substantial impact on small business.* When a regulatory analysis is issued in response to a written request from the administrative rules review committee, the administrative rules coordinator, at least 25 persons signing that request who each qualify as a small

business or by an organization representing at least 25 small businesses, the regulatory analysis shall conform to the requirements of 1998 Iowa Acts, chapter 1202, section 10(2b).

281—2.7(17A,25B) Fiscal impact statement.

2.7(1) A proposed rule that necessitates additional combined annual expenditures of at least $100,000, or additional combined expenditures of at least $500,000 within five years, by all affected persons, political subdivisions, or agencies and entities which contract with political subdivisions to provide services must be accompanied by a fiscal impact statement outlining the costs associated with the rule. A fiscal impact statement must satisfy the requirements of Iowa Code section 25B.6.

2.7(2) If the agency determines at the time it adopts a rule that the fiscal impact statement upon which the rule is based contains errors, the agency shall, at the same time, issue a corrected fiscal impact statement and publish the corrected fiscal impact statement in the Iowa Administrative Bulletin.

281—2.8(17A) Time and manner of rule adoption.

2.8(1) *Time of adoption.* The agency shall not adopt a rule until the period for making written submissions and oral presentations has expired. Within 180 days after the later of the publication of the Notice of Intended Action, or the end of oral proceedings thereon, the agency shall adopt a rule pursuant to the rule-making proceeding or terminate the proceeding by publication of a notice to that effect in the Iowa Administrative Bulletin.

2.8(2) *Consideration of public comment.* Before the adoption of a rule, the agency shall consider fully all of the written submissions and oral submissions received in that rule-making proceeding or any memorandum summarizing such oral submissions, and any regulatory analysis or fiscal impact statement issued in that rule-making proceeding.

2.8(3) *Reliance on agency expertise.* Except as otherwise provided by law, the agency may use its own experience, technical competence, specialized knowledge, and judgment in the adoption of a rule.

281—2.9(17A) Variance between adopted rule and published notice of proposed rule adoption.

2.9(1) The agency shall not adopt a rule that differs from the rule proposed in the Notice of Intended Action on which the rule is based unless:

a. The differences are within the scope of the subject matter announced in the Notice of Intended Action and are in character with the issues raised in that notice; and

b. The differences are a logical outgrowth of the contents of that Notice of Intended Action and the comments submitted in response thereto; and

c. The Notice of Intended Action provided fair warning that the outcome of that rule-making proceeding could be the rule in question.

2.9(2) In determining whether the Notice of Intended Action provided fair warning that the outcome of that rule-making proceeding could be the rule in question, the agency shall consider the following factors:

a. The extent to which persons who will be affected by the rule should have understood that the rule-making proceeding on which it is based could affect their interests;

b. The extent to which the subject matter of the rule or the issues determined by the rule are different from the subject matter or issues contained in the Notice of Intended Action; and

c. The extent to which the effects of the rule differ from the effects of the proposed rule contained in the Notice of Intended Action.

2.9(3) The agency shall commence a rule-making proceeding within 60 days of its receipt of a petition for rule making seeking the amendment or repeal of a rule that differs from the proposed rule contained in the Notice of Intended Action upon which the rule is based, unless the agency finds that the differences between the adopted rule and the proposed rule are so insubstantial as to make such a rule-making proceeding wholly unnecessary. A copy of any such finding and the petition to which it responds shall be sent to petitioner, the administrative rules coordinator, and the administrative rules review committee, within three days of its issuance.

2.9(4) Concurrent rule-making proceedings. Nothing in this rule disturbs the discretion of the agency to initiate, concurrently, several different rule-making proceedings on the same subject with several different published Notices of Intended Action.

281—2.10(17A) Exemptions from public rule-making procedures.

2.10(1) *Omission of notice and comment.* To the extent the agency for good cause finds that public notice and participation are unnecessary, impracticable, or contrary to the public interest in the process of adopting a particular rule, the agency may adopt that rule without publishing advance Notice of Intended Action in the Iowa Administrative Bulletin and without providing for written or oral public submissions prior to its adoption. The agency shall incorporate the required finding and a brief statement of its supporting reasons in each rule adopted in reliance upon this subrule.

2.10(2) *Public proceedings on rules adopted without them.* The agency may, at any time, commence a standard rule-making proceeding for the adoption of a rule that is identical or similar to a rule it adopts in reliance upon subrule 2.10(1). Upon written petition by a governmental subdivision, the administrative rules review committee, an agency, the administrative rules coordinator, an association having not less than 25 members, or at least 25 persons, the agency shall commence a standard rule-making proceeding for any rule specified in the petition that was adopted in reliance upon subrule 2.10(1). Such a petition must be filed within one year of the publication of the specified rule in the Iowa Administrative Bulletin as an adopted rule. The rule-making proceeding on that rule must be commenced within 60 days of the receipt of such a petition. After a standard rule-making proceeding commenced pursuant to this subrule, the agency may either readopt the rule it adopted without benefit of all usual procedures on the basis of subrule 2.10(1), or may take any other lawful action, including the amendment or repeal of the rule in question, with whatever further proceedings are appropriate.

281—2.11(17A) Concise statement of reasons.

2.11(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 agency shall issue a concise statement of reasons for the rule. Requests for such a statement must be in writing and be delivered to Legal Consultant's Office, Department of Education, Grimes State Office Building, Des Moines, Iowa 50319-0146. 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.

2.11(2) *Contents.* The concise statement of reasons shall contain:

a. The reasons for adopting the rule;

b. An indication of any change between the text of the proposed rule contained in the published Notice of Intended Action and the text of the rule as finally adopted, with the reasons for any such change;

c. The principal reasons urged in the rule-making proceeding for and against the rule, and the agency's reasons for overruling the arguments made against the rule.

2.11(3) *Time of issuance.* After a proper request, the agency shall issue a concise statement of reasons by the later of the time the rule is adopted or 35 days after receipt of the request.

281—2.12(17A) Contents, style, and form of rule.

2.12(1) *Contents.* Each rule adopted by the agency shall contain the text of the rule and, in addition:

a. The date the agency adopted the rule;

b. A brief explanation of the principal reasons for the rule-making action if such reasons are required by 1998 Iowa Acts, chapter 1202, section 8, or the agency in its discretion decides to include such reasons;

c. A reference to all rules repealed, amended, or suspended by the rule;

d. A reference to the specific statutory or other authority authorizing adoption of the rule;

e. Any findings required by any provision of law as a prerequisite to adoption or effectiveness of the rule;

f. A brief explanation of the principal reasons for the failure to provide for waivers to the rule if no waiver provision is included and a brief explanation of any waiver or special exceptions provided in

the rule if such reasons are required by 1998 Iowa Acts, chapter 1202, section 8, or the agency in its discretion decides to include such reasons; and

g. The effective date of the rule.

2.12(2) *Incorporation by reference.* The agency may incorporate by reference in a proposed or adopted rule, and without causing publication of the incorporated matter in full, all or any part of a code, standard, rule, or other matter if the agency finds that the incorporation of its text in the agency proposed or adopted rule would be unduly cumbersome, expensive, or otherwise inexpedient. The reference in the agency proposed or adopted rule shall fully and precisely identify the incorporated matter by location, title, citation, date, and edition, if any; shall briefly indicate the precise subject and the general contents of the incorporated matter; and shall state that the proposed or adopted rule does not include any later amendments or editions of the incorporated matter. The agency may incorporate such matter by reference in a proposed or adopted rule only if the agency makes copies of it readily available to the public. The rule shall state how and where copies of the incorporated matter may be obtained at cost from this agency, and how and where copies may be obtained from the agency of the United States, this state, another state, or the organization, association, or persons, originally issuing that matter. The agency shall retain permanently a copy of any materials incorporated by reference in a rule of the agency.

If the agency adopts standards by reference to another publication, it shall provide a copy of the publication containing the standards to the administrative rules coordinator for deposit in the state law library and may make the standards available electronically.

2.12(3) *References to materials not published in full.* When the administrative code editor decides to omit the full text of a proposed or adopted rule because publication of the full text would be unduly cumbersome, expensive, or otherwise inexpedient, the agency shall prepare and submit to the administrative code editor for inclusion in the Iowa Administrative Bulletin and Iowa Administrative Code a summary statement describing the specific subject matter of the omitted material. This summary statement shall include the title and a brief description sufficient to inform the public of the specific nature and subject matter of the proposed or adopted rules, and of significant issues involved in these rules. The summary statement shall also describe how a copy of the full text of the proposed or adopted rule, including any unpublished matter and any matter incorporated by reference, may be obtained from the agency. The agency will provide a copy of that full text at actual cost upon request and shall make copies of the full text available for review at the state law library and may make the standards available electronically.

At the request of the administrative code editor, the agency shall provide a proposed statement explaining why publication of the full text would be unduly cumbersome, expensive, or otherwise inexpedient.

2.12(4) *Style and form.* In preparing its rules, the agency shall follow the uniform numbering system, form, and style prescribed by the administrative rules coordinator.

281—2.13(17A) Agency rule-making record.

2.13(1) *Requirement.* The agency shall maintain an official rule-making record for each rule it proposes by publication in the Iowa Administrative Bulletin of a Notice of Intended Action, or adopts. The rule-making record and materials incorporated by reference must be available for public inspection.

2.13(2) *Contents.* The agency rule-making record shall contain:

a. Copies of all publications in the Iowa Administrative Bulletin with respect to the rule or the proceeding upon which the rule is based and any file-stamped copies of agency submissions to the administrative rules coordinator concerning that rule or the proceeding upon which it is based;

b. Copies of any portions of the agency's public rule-making docket containing entries relating to the rule or the proceeding upon which the rule is based;

c. All written petitions, requests, and submissions received by the agency, and all other written materials of a factual nature as distinguished from opinion that are relevant to the merits of the rule and that were created or compiled by the agency and considered by the director, in connection with the formulation, proposal, or adoption of the rule or the proceeding upon which the rule is based, except to

the extent the agency is authorized by law to keep them confidential; provided, however, that when any such materials are deleted because they are authorized by law to be kept confidential, the agency shall identify in the record the particular materials deleted and state the reasons for that deletion;

d. Any official transcript of oral presentations made in the proceeding upon which the rule is based or, if not transcribed, the stenographic record or electronic recording of those presentations, and any memorandum prepared by a presiding officer summarizing the contents of those presentations;

e. A copy of any regulatory analysis or fiscal impact statement prepared for the proceeding upon which the rule is based;

f. A copy of the rule and any concise statement of reasons prepared for that rule;

g. All petitions for amendment or repeal or suspension of the rule;

h. A copy of any objection to the issuance of that rule without public notice and participation that was filed pursuant to Iowa Code section 17A.4(2) by the administrative rules review committee, the governor, or the attorney general;

i. A copy of any objection to the rule filed by the administrative rules review committee, the governor, or the attorney general pursuant to Iowa Code section 17A.4(4), and any agency response to that objection;

j. A copy of any significant written criticism of the rule, including a summary of any petitions for waiver of the rule; and

k. A copy of any executive order concerning the rule.

2.13(3) *Effect of record.* Except as otherwise required by a provision of law, the agency rule-making record required by this rule need not constitute the exclusive basis for agency action on that rule.

2.13(4) *Maintenance of record.* The agency shall maintain the rule-making record for a period of not less than five years from the later of the date the rule to which it pertains became effective, the date of the Notice of Intended Action, or the date of any written criticism as described in 2.13(2)*"g," "h," "i," or "j."*

281—2.14(17A) Filing of rules. The agency shall file each rule it adopts in the office of the administrative rules coordinator. The filing must be executed as soon after adoption of the rule as is practicable. At the time of filing, each rule must have attached to it any fiscal impact statement and any concise statement of reasons that was issued with respect to that rule. If a fiscal impact statement or statement of reasons for that rule was not issued until a time subsequent to the filing of that rule, the note or statement must be attached to the filed rule within five working days after the note or statement is issued. In filing a rule, the agency shall use the standard form prescribed by the administrative rules coordinator.

281—2.15(17A) Effectiveness of rules prior to publication.

2.15(1) *Grounds.* The agency may make a rule effective after its filing at any stated time prior to 35 days after its indexing and publication in the Iowa Administrative Bulletin if it finds that a statute so provides, the rule confers a benefit or removes a restriction on some segment of the public, or that the effective date of the rule is necessary to avoid imminent peril to the public health, safety, or welfare. The agency shall incorporate the required finding and a brief statement of its supporting reasons in each rule adopted in reliance upon this subrule.

2.15(2) *Special notice.* When the agency makes a rule effective prior to its indexing and publication in reliance upon the provisions of Iowa Code section 17A.5(2)*"b"*(3), the agency shall employ all reasonable efforts to make its contents known to the persons who may be affected by that rule prior to the rule's indexing and publication. The term "all reasonable efforts" requires the agency to employ the most effective and prompt means of notice rationally calculated to inform potentially affected parties of the effectiveness of the rule that is justified and practical under the circumstances considering the various alternatives available for this purpose, the comparative costs to the agency of utilizing each of those alternatives, and the harm suffered by affected persons from any lack of notice concerning the contents of the rule prior to its indexing and publication. The means that may be used for providing notice of such rules prior to their indexing and publication include, but are not limited to, any one or

more of the following means: radio, newspaper, television, signs, mail, telephone, personal notice or electronic means.

A rule made effective prior to its indexing and publication in reliance upon the provisions of Iowa Code section 17A.5(2)*"b"*(3), shall include in that rule a statement describing the reasonable efforts that will be used to comply with the requirements of subrule 2.15(2).

281—2.16(17A) General statements of policy.

2.16(1) *Compilation, indexing, public inspection.* The agency shall maintain an official, current, and dated compilation that is indexed by subject, containing all of its general statements of policy within the scope of Iowa Code section 17A.2(10)*"a," "c," "f," "g," "h," "k."* Each addition to, change in, or deletion from the official compilation must also be dated, indexed, and a record thereof kept. Except for those portions containing rules governed by Iowa Code section 17A.2(7)*"f,"* or otherwise authorized by law to be kept confidential, the compilation must be made available for public inspection and copying.

2.16(2) *Enforcement of requirements.* A general statement of policy subject to the requirements of this subsection shall not be relied on by the agency to the detriment of any person who does not have actual, timely knowledge of the contents of the statement until the requirements of subrule 2.16(1) are satisfied. This provision is inapplicable to the extent necessary to avoid imminent peril to the public health, safety, or welfare.

281—2.17(17A) Review by agency of rules.

2.17(1) Any interested person, association, agency, or political subdivision may submit a written request to the administrative rules coordinator requesting the agency to conduct a formal review of a specified rule. Upon approval of that request by the administrative rules coordinator, the agency shall conduct a formal review of a specified rule to determine whether a new rule should be adopted instead or the rule should be amended or repealed. The agency may refuse to conduct a review if it has conducted such a review of the specified rule within five years prior to the filing of the written request.

2.17(2) In conducting the formal review, the agency shall prepare within a reasonable time a written report summarizing its findings, its supporting reasons, and any proposed course of action. The report must include a concise statement of the agency's findings regarding the rule's effectiveness in achieving its objectives, including a summary of any available supporting data. The report shall also concisely describe significant written criticisms of the rule received during the previous five years, including a summary of any petitions for waiver of the rule received by the agency or granted by the agency. The report shall describe alternative solutions to resolve the criticisms of the rule, the reasons any were rejected, and any changes made in the rule in response to the criticisms as well as the reasons for the changes. A copy of the agency's report shall be sent to the administrative rules review committee and the administrative rules coordinator. The report must also be available for public inspection.

281—2.18(17A) Petition for rule making. A petition requesting the adoption, amendment, or repeal of a rule shall be filed with the department of education at the Grimes State Office Building, Second Floor, Des Moines, Iowa 50319-0146. A petition is deemed filed when it is received by that office. The department of education shall provide the petitioner with a file-stamped copy of the petition if the petitioner provides the department an extra copy for this purpose. The petition must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

DEPARTMENT OF EDUCATION

Petition by (Name of Petitioner) for the Adoption/Amendment/Repeal of (Cite rule involved). }	PETITION FOR RULE MAKING

The petition must provide the following information:

1. A clear and concise statement of all relevant facts on which the petition is based.
2. The precise citation to the present rule if the petition is for the amendment or repeal of the same.

3. A citation and the relevant language of the specific statutes, rules, policies, decisions, or orders, and any other relevant law.

4. A summary of the reasons for requesting the adoption, amendment or repeal of a rule.

5. Full disclosure of the petitioner's interest in the outcome of the petition.

6. A statement indicating whether the petitioner is currently a party to another proceeding involving the issue(s) raised by the petition and whether, to the petitioner's knowledge, those issues have been decided by, are pending determination by, or are under investigation by, any other governmental entity.

7. The names and addresses of other persons, or a description of any class of persons, known by petitioner to be affected by, or interested in, the issue(s) presented in the petition.

The petition must be dated and signed by the petitioner or the petitioner's representative. It must also include the name, mailing address, and telephone number of the petitioner and petitioner's representative and a statement indicating the person to whom communications concerning the petition should be directed.

281—2.19(17A) Inquiries. Inquiries concerning the status of a petition for rule making may be made to the Legal Consultant, Grimes State Office Building, Des Moines, Iowa 50319-0146.

These rules are intended to implement Iowa Code section 256.7(3) and chapter 17A as amended by 1998 Iowa Acts, chapter 1202.

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CHAPTER 3
DECLARATORY ORDERS

[Prior to 9/7/88, see Public Instruction Department[670] Ch 53]

281—3.1(17A) Petition for declaratory order. Any person may file a petition with the department of education for a declaratory order as to the applicability to specified circumstances of a statute, rule, or order within the primary jurisdiction of the Department of Education, at the Grimes State Office Building, Second Floor, Des Moines, Iowa 50319-0146. A petition is deemed filed when it is received by that office. The department of education shall provide the petitioner with a file-stamped copy of the petition if the petitioner provides the agency an extra copy for this purpose. The petition must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

DEPARTMENT OF EDUCATION

Petition by (Name of Petitioner) for a Declaratory Order on (Cite provisions of law involved).	}	PETITION FOR DECLARATORY ORDER

The petition must provide the following information:

1. A clear and concise statement of all relevant facts on which the order is requested.
2. A citation and the relevant language of the specific statutes, rules, policies, decisions, or orders, whose applicability is questioned, and any other relevant law.
3. The questions petitioner wants answered, stated clearly and concisely.
4. The answers to the questions desired by the petitioner and a summary of the reasons urged by the petitioner in support of those answers.
5. The reasons for requesting the declaratory order and disclosure of the petitioner's interest in the outcome.
6. A statement indicating whether the petitioner is currently a party to another proceeding involving the questions at issue and whether, to the petitioner's knowledge, those questions have been decided by, are pending determination by, or are under investigation by, any governmental entity.
7. The names and addresses of other persons, or a description of any class of persons, known by petitioner to be affected by, or interested in, the questions presented in the petition.
8. Any request by petitioner for a meeting provided for by 3.7(17A).

The petition must be dated and signed by the petitioner or the petitioner's representative. It must also include the name, mailing address, and telephone number of the petitioner and petitioner's representative and a statement indicating the person to whom communications concerning the petition should be directed.

281—3.2(17A) Notice of petition. Within 15 days after receipt of a petition for a declaratory order, the department of education shall give notice of the petition to all persons not served by the petitioner pursuant to 3.6(17A) to whom notice is required by any provision of law. The department of education may also give notice to any other persons.

281—3.3(17A) Intervention.

3.3(1) Persons who qualify under any applicable provision of law as an intervenor and who file a petition for intervention within 15 days of the filing of a petition for declaratory order (after time for notice under 3.2(17A) and before 30-day time for agency action under 3.8(17A)) shall be allowed to intervene in a proceeding for a declaratory order.

3.3(2) Any person who files a petition for intervention at any time prior to the issuance of an order may be allowed to intervene in a proceeding for a declaratory order at the discretion of the department of education.

3.3(3) A petition for intervention shall be filed at the Office of the Director, Grimes State Office Building, Des Moines, Iowa 50319-0146. Such a petition is deemed filed when it is received by that

office. The department of education 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:

DEPARTMENT OF EDUCATION

Petition by (Name of Original Petitioner) for a Declaratory Order on (Cite provisions of law cited in original petition).	PETITION FOR INTERVENTION

The petition for intervention must provide the following information:

1. Facts supporting the intervenor's standing and qualifications for intervention.

2. The answers urged by the intervenor to the question or questions presented and a summary of the reasons urged in support of those answers.

3. Reasons for requesting intervention and disclosure of the intervenor's interest in the outcome.

4. A statement indicating whether the intervenor is currently a party to any proceeding involving the questions at issue and whether, to the intervenor's knowledge, those questions have been decided by, are pending determination by, or are under investigation by, any governmental entity.

5. The names and addresses of any additional persons, or a description of any additional class of persons, known by the intervenor to be affected by, or interested in, the questions presented.

6. Whether the intervenor consents to be bound by the determination of the matters presented in the declaratory order proceeding.

The petition must be dated and signed by the intervenor or the intervenor's representative. It must also include the name, mailing address, and telephone number of the intervenor and intervenor's representative, and a statement indicating the person to whom communications should be directed.

281—3.4(17A) Briefs. The petitioner or any intervenor may file a brief in support of the position urged. The department of education may request a brief from the petitioner, any intervenor, or any other person concerning the questions raised.

281—3.5(17A) Inquiries. Inquiries concerning the status of a declaratory order proceeding may be made to the Legal Consultant, Department of Education, Grimes State Office Building, Des Moines, Iowa 50139-0146.

281—3.6(17A) Service and filing of petitions and other papers.

3.6(1) *When service required.* Except where otherwise provided by law, every petition for declaratory order, petition for intervention, brief, or other paper filed in a proceeding for a declaratory order shall be served upon each of the parties of record to the proceeding, and on all other persons identified in the petition for declaratory order or petition for intervention as affected by or interested in the questions presented, simultaneously with their filing. The party filing a document is responsible for service on all parties and other affected or interested persons.

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 Legal Consultant, Department of Education, Grimes State Office Building, Des Moines, Iowa 50319-0146. All petitions, briefs, or other papers that are required to be served upon a party shall be filed simultaneously with the department of education.

3.6(3) *Method of service, time of filing, and proof of mailing.* Method of service, time of filing, and proof of mailing shall be as provided by 281—6.17(17A).

281—3.7(17A) Consideration. Upon request by petitioner, the department of education must schedule a brief and informal meeting between the original petitioner, all intervenors, and the department of education, a member of the department, or a member of the staff of the department, to discuss the

questions raised. The department of education may solicit comments from any person on the questions raised. Also, comments on the questions raised may be submitted to the department by any person.

281—3.8(17A) Action on petition.

3.8(1) Within the time allowed by 1998 Iowa Acts, chapter 1202, section 13(5), after receipt of a petition for a declaratory order, the director of the department of education or designee shall take action on the petition as required by 1998 Iowa Acts, chapter 1202, section 13(5).

3.8(2) The date of issuance of an order or of a refusal to issue an order is as defined in 281—6.2(290,17A).

281—3.9(17A) Refusal to issue order.

3.9(1) The department of education shall not issue a declaratory order where prohibited by 1998 Iowa Acts, chapter 1202, section 13(1), and may refuse to issue a declaratory order on some or all questions raised for the following reasons:

1. The petition does not substantially comply with the required form.
2. The petition does not contain facts sufficient to demonstrate that the petitioner will be aggrieved or adversely affected by the failure of the department of education to issue an order.
3. The department of education does not have jurisdiction over the questions presented in the petition.
4. The questions presented by the petition are also presented in a current rule making, contested case, or other agency or judicial proceeding that may definitively resolve them.
5. The questions presented by the petition would more properly be resolved in a different type of proceeding or by another body with jurisdiction over the matter.
6. The facts or questions presented in the petition are unclear, overbroad, insufficient, or otherwise inappropriate as a basis upon which to issue an order.
7. There is no need to issue an order because the questions raised in the petition have been settled due to a change in circumstances.
8. The petition is not based upon facts calculated to aid in the planning of future conduct but is, instead, based solely upon prior conduct in an effort to establish the effect of that conduct or to challenge an agency decision already made.
9. The petition requests a declaratory order that would necessarily determine the legal rights, duties, or responsibilities of other persons who have not joined in the petition, intervened separately, or filed a similar petition and whose position on the questions presented may fairly be presumed to be adverse to that of petitioner.
10. The petitioner requests the department of education to determine whether a statute is unconstitutional on its face.

3.9(2) A refusal to issue a declaratory order must indicate the specific grounds for the refusal and constitutes final agency action on the petition.

3.9(3) Refusal to issue a declaratory order pursuant to this provision does not preclude the filing of a new petition that seeks to eliminate the grounds for the refusal to issue a ruling.

281—3.10(17A) Contents of declaratory order—effective date. In addition to the order itself, a declaratory order must contain the date of its issuance, the name of petitioner and all intervenors, the specific statutes, rules, policies, decisions, or orders involved, the particular facts upon which it is based, and the reasons for its conclusion.

A declaratory order is effective on the date of issuance.

281—3.11(17A) Copies of orders. A copy of all orders issued in response to a petition for a declaratory order shall be mailed promptly to the original petitioner and all intervenors.

281—3.12(17A) Effect of a declaratory order. A declaratory order has the same status and binding effect as a final order issued in a contested case proceeding. It is binding on the department of education, the petitioner, and any intervenors who consent to be bound and is applicable only in circumstances where

the relevant facts and the law involved are indistinguishable from those on which the order was based. As to all other persons, a declaratory order serves only as precedent and is not binding on the department of education. The issuance of a declaratory order constitutes final agency action on the petition.

These rules are intended to implement Iowa Code section 256.7(3) and chapter 17A as amended by 1998 Iowa Acts, chapter 1202.

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CHAPTER 4
WAIVERS OR VARIANCES FROM ADMINISTRATIVE RULES

281—4.1(17A,ExecOrd11) Definitions. For purposes of this chapter:

"Board" means the state board of education.

"Department" means the department of education.

"Director" means the director of the department of education.

"Person" means an individual, school corporation, government or governmental subdivision or agency, nonpublic school, partnership or association, or any legal entity.

"Waiver or variance" means action by the director which suspends in whole or in part the requirements or provisions of a rule as applied to an identified person on the basis of the particular circumstances of that person. For simplicity, the term "waiver" shall include both a "waiver" and a "variance."

281—4.2(17A,ExecOrd11) Scope of chapter. This chapter outlines generally applicable standards and a uniform process for the granting of individual waivers from rules in situations where no other more specifically applicable law provides for waivers. To the extent another more specific provision of law governs the issuance of a waiver from a particular rule, the more specific provision shall supersede this chapter with respect to any waiver from that rule.

281—4.3(17A,ExecOrd11) Applicability of chapter. A waiver from a rule may be granted only if the department has jurisdiction over the rule and the requested waiver is consistent with applicable statutes, constitutional provisions, or other provisions of law. Statutory duties or requirements created by statute may not be waived.

281—4.4(17A,ExecOrd11) Criteria for waiver. In response to a petition completed pursuant to rule 281—4.6(17A,ExecOrd11), the director may in the director's sole discretion issue an order waiving in whole or in part the requirements of a rule if the director finds, based on clear and convincing evidence, all of the following:

1. The application of the rule to the person at issue would result in an undue hardship on the person for whom the waiver is requested;
2. The waiver from the requirement of the rule in the specific case would not prejudice the substantial legal rights of any person;
3. The provisions of the rule subject to the petition for a waiver are not specifically mandated by statute or another provision of law;
4. Substantially equal protection of public health, safety, and welfare will be afforded by a means other than that prescribed in the particular rule for which the waiver is requested; and
5. The waiver from the requirements of the rule in the specific case would not have a negative impact on the student achievement of any person affected by the waiver.

281—4.5(17A,ExecOrd11) Filing of petition. All petitions for waiver must be submitted in writing to the Director, Department of Education, Grimes State Office Building, Des Moines, Iowa 50319-0146. If the petition relates to a pending contested case, the petition shall be filed in the contested case proceeding, using the caption of the contested case.

281—4.6(17A,ExecOrd11) Content of petition. A petition for waiver shall include the following information where applicable and known to the requester:

1. The name, address, and telephone number of the person for whom a waiver is being requested, and the case number of any related contested case.
2. A description and citation of the specific rule from which a waiver is requested.
3. The specific waiver or variance requested, including the precise scope and duration.
4. The relevant facts that the petitioner believes would justify a waiver under each of the five criteria described in rule 281—4.4(17A,ExecOrd11). This statement shall include a signed statement

from the petitioner attesting to the accuracy of the facts provided in the petition and a statement of reasons that the petitioner believes will justify a waiver.

5. A history of any prior contacts between the board, the department and the petitioner relating to the regulated activity, license, or grant affected by the proposed waiver, including a description of each affected item held by the requester, any notices of violation, contested case hearings, or investigative reports relating to the regulated activity, license, or grant within the last five years.

6. A detailed statement of the impact on student achievement for any person affected by the granting of a waiver.

7. Any information known to the requester regarding the board's or department's treatment of similar cases.

8. The name, address, and telephone number of any person or entity that would be adversely affected by the granting of a petition.

9. The name, address, and telephone number of any person with knowledge of the relevant facts relating to the proposed waiver.

10. Signed releases of information authorizing persons with knowledge regarding the request to furnish the department with information relevant to the waiver.

281—4.7(17A,ExecOrd11) Additional information. Prior to issuing an order granting or denying a waiver, the department may request additional information from the petitioner relative to the petition and surrounding circumstances. If the petition was not filed in a contested case, the department may on its own motion or at the petitioner's request, schedule a telephonic or in-person meeting between the petitioner and the department.

281—4.8(17A,ExecOrd 11) Notice. The department shall acknowledge a petition upon receipt. The department shall ensure that, within 30 days of the receipt of the petition, notice of the pendency of the petition and a concise summary of its contents have been provided to all persons to whom notice is required by any provision of law. In addition, the department may give notice to other persons. To accomplish this notice provision, the department may require the petitioner to serve the notice on all persons to whom notice is required by any provision of law and provide a written statement to the department attesting that notice has been provided.

281—4.9(17A,ExecOrd11) Hearing procedures. The provisions of Iowa Code sections 17A.10 to 17A.18A regarding contested case hearings shall apply in three situations: (1) to any petition for a waiver filed within a contested case; (2) when provided by rule or order; or (3) when required to do so by statute.

281—4.10(17A,ExecOrd11) Ruling. An order granting or denying a waiver shall be in writing and shall contain a reference to the particular person and rule or portion thereof to which the order pertains, a statement of the relevant facts and the reasons upon which the action is based, and a description of the precise scope and operative period of the waiver if one is issued.

4.10(1) *Discretion.* The final decision on whether the circumstances justify the granting of a waiver shall be made at the sole discretion of the director, upon consideration of all relevant factors. Each petition for a waiver shall be evaluated by the director based on the unique, individual circumstances set out in the petition.

4.10(2) *Burden of persuasion.* The burden of persuasion rests with the petitioner to demonstrate by clear and convincing evidence that the director should exercise the director's discretion to grant a waiver from a rule.

4.10(3) *Narrowly tailored.* A waiver, if granted, shall provide the narrowest exception possible to the provisions of a rule.

4.10(4) *Administrative deadlines.* When the rule from which a waiver is sought establishes administrative deadlines, the director shall balance the special individual circumstances of the petitioner with the overall goal of uniform treatment of all similarly situated persons.

4.10(5) *Conditions.* The director may place any condition on a waiver that the director finds desirable to protect the public health, safety, and welfare.

4.10(6) *Time period of waiver.* A waiver shall not be permanent unless the petitioner can show that a temporary waiver would be impracticable. If a temporary waiver is granted, there is no automatic right to renewal. At the sole discretion of the director, a waiver may be renewed if the director finds that grounds for a waiver continue to exist.

4.10(7) *Time for ruling.* The director shall grant or deny a petition for a waiver as soon as practicable but, in any event, shall do so within 120 days of its receipt, unless the petitioner agrees to a later date. However, if a petition is filed in a contested case, the director shall grant or deny the petition no later than the time at which the final decision in that contested case is issued.

4.10(8) *When deemed denied.* Failure of the director to grant or deny a petition within the required time period shall be deemed a denial of that petition by the director. However, the director shall remain responsible for issuing an order denying a waiver.

4.10(9) *Service of order.* Within seven days of its issuance, any order issued under this chapter shall be transmitted to the petitioner or the person to whom the order pertains, and to any other person entitled to such notice by any provision of law.

281—4.11(17A,ExecOrd11) Public availability. All orders granting a waiver petition shall be indexed, filed and available for public inspection as provided in Iowa Code section 17A.3. Petitions for a waiver and orders granting or denying a waiver petition are public records under Iowa Code chapter 22. The director may accordingly redact confidential information from petitions or orders prior to public inspection.

281—4.12(17A,ExecOrd11) Summary reports. Semiannually, the department shall prepare a summary report identifying the rules for which a waiver has been granted or denied, the number of times a waiver was granted or denied for each rule, a citation to the statutory provisions implemented by these rules, and a general summary of the reasons justifying the board's actions on waiver requests. If practicable, the report shall detail the extent to which the granting of a waiver has affected the general applicability of the rule itself. Copies of the report shall be available for public inspection and shall be provided semiannually to the administrative rules coordinator and the administrative rules review committee.

281—4.13(17A,ExecOrd11) Cancellation. A waiver issued pursuant to this chapter may be withdrawn, canceled or modified if, after appropriate notice and hearing, the director issues an order finding any of the following:

1. The petitioner or the person who was the subject of the waiver order withheld or misrepresented material facts relevant to the propriety or desirability of the waiver; or
2. The alternative means for ensuring that the public health, safety and welfare will be adequately protected after issuance of the waiver order have been demonstrated to be insufficient; or
3. The subject of the waiver order has failed to comply with all conditions contained in the order.

281—4.14(17A,ExecOrd11) Violations. Violation of conditions in the waiver approval is the equivalent of violation of the particular rule for which the waiver is granted. As a result, the recipient of a waiver under this chapter who violates a condition of the waiver may be subject to the same remedies or penalties as a person who violates the rule at issue.

281—4.15(17A,ExecOrd11) Defense. After the director issues an order granting a waiver, the order is a defense within its terms and the specific facts indicated therein for the person to whom the order pertains in any proceeding in which the rule in question is sought to be invoked.

281—4.16(17A,ExecOrd11) Judicial review. Judicial review of the director's decision to grant or deny a waiver petition may be taken in accordance with Iowa Code chapter 17A.

281—4.17(17A,ExecOrd11) Exception. This rule does not apply to 281—Chapters 36 and 37 or to specific waiver provisions adopted in other chapters.

These rules are intended to implement Iowa Code section 17A.9A.

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CHAPTER 5
PUBLIC RECORDS AND FAIR INFORMATION PRACTICES

[Prior to 9/7/88, see Public Instruction Department[670] Ch 83]

The department of education hereby adopts, with the following exceptions and amendments, rules of the Governor's Task Force on Uniform Rules of Agency Procedure relating to public records and fair information practices which are printed in the first volume of the Iowa Administrative Code.

281—5.1(256) Definitions. As used in this chapter:

"Agency." In lieu of the words "(official or body issuing these rules)", insert "department of education".

281—5.3(256) Requests for access to records.

5.3(1) *Location of record.* All records of the department of education are located at the Grimes State Office Building, Des Moines, Iowa 50319-0146, with the exception of records belonging to the division of vocational rehabilitation services, which are located at the Jessie Parker State Office Building, 510 East 12th Street, Des Moines, Iowa 50319.

5.3(2) *Office hours.* In lieu of the words "(insert customary office hours and, if agency does not have customary office hours of at least thirty hours per week, insert hours specified in Iowa Code section 22.4)", insert "8 a.m. to 4:30 p.m. daily, excluding Saturdays, Sundays, and legal holidays".

5.3(7) *Fees.*

c. *Supervisory fee.* In lieu of the words "(specify time period)", insert "one-half hour". In lieu of the words "(An agency wishing to deal with search fees authorized by law should do so here.)", insert "The agency will give advance notice to the requester if it will be necessary to use an employee with a higher hourly wage in order to find or supervise the particular records in question, and shall indicate the amount of that higher hourly wage to the requester."

281—5.6(256) Procedure by which additions, dissents, or objections may be entered into certain records. In lieu of the words "(designate office)", insert "the office of the director of the agency".

281—5.9(256) Disclosures without the consent of the subject.

5.9(1) Open records are routinely disclosed without the consent of the subject.

5.9(2) To the extent allowed by law, disclosure of confidential or exempt records may occur without the consent of the subject. Following are instances where disclosure, if lawful, will generally occur without notice to the subject:

a. For a routine use as defined in rule 5.10(256) or in the notice for a particular record system.

b. To a recipient who has provided the agency with advance written assurance that the record will be used solely as a statistical research or reporting record, provided that the record is transferred in a form that does not identify the subject.

c. To another government agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if an authorized representative of the government agency or instrumentality has submitted a written request to the agency specifying the record desired and the law enforcement activity for which the record is sought.

d. To an individual pursuant to a showing of compelling circumstances affecting the health or safety of an individual if a notice of the disclosure is transmitted to the last-known address of the subject.

e. To the legislative services agency.

f. Disclosures in the course of employee disciplinary proceedings.

g. In response to a court order or subpoena.

281—5.10(256) Routine use.

5.10(1) "Routine use" means the disclosure of a record without the consent of the subject or subjects, for a purpose which is compatible with the purpose for which the record was collected. It includes disclosures required to be made by statute other than the public records law, Iowa Code chapter 22.

5.10(2) To the extent allowed by law, the following uses are considered routine uses of all agency records:

a. Disclosure to those officers, employees, and agents of the agency who have a need for the record in the performance of their duties. The custodian of the record may, upon request of any officer or employee, or on the custodian's own initiative, determine what constitutes legitimate need to use confidential records.

b. Disclosure of information indicating an apparent violation of the law to appropriate law enforcement authorities for investigation and possible criminal prosecution, civil court action, or regulatory order.

c. Disclosure to the department of inspections and appeals regarding matters in which it performs services or functions on behalf of the agency.

d. Transfers of information within the agency, to other state agencies, or to local units of government, as appropriate, to administer the program for which the information is collected.

e. Information released to staff of federal and state entities for audit purposes or to determine whether the agency is operating a program lawfully.

f. Any disclosure specifically authorized by the statute under which the record is collected or maintained.

281—5.11(256) Consensual disclosure of confidential records.

5.11(1) *Consent to disclosure by a subject individual.* To the extent permitted by law, the subject may consent in writing to agency disclosure of confidential records as provided in rule 5.7(256).

5.11(2) *Complaints to public officials.* A letter from a subject of a confidential record to a public official which seeks the official's intervention on behalf of the subject in a matter that involves the agency may to the extent permitted by law be treated as an authorization to release sufficient information about the subject to the official to resolve the matter.

281—5.12(256) Release to a subject.

5.12(1) The subject of a confidential record may file a written request to review confidential records about that person as provided in rule 5.6(256). However, the agency need not release the following records to the subject:

a. The identity of a person providing information to the agency need not be disclosed directly or indirectly to the subject of the information when the information is authorized to be held confidential pursuant to Iowa Code section 22.7(18) or other provision of law.

b. Records need not be disclosed to the subject when they are the work product of an attorney or are otherwise privileged.

c. Peace officers' investigative reports may be withheld from the subject, except as required by the Iowa Code. (See Iowa Code section 22.7(5))

d. As otherwise authorized by law.

5.12(2) Where a record has multiple subjects with interest in the confidentiality of the record, the agency may take reasonable steps to protect confidential information relating to another subject.

281—5.13(256) Availability of records.

5.13(1) *Open records.* Agency records are open for public inspection and copying unless otherwise provided by rule or law.

5.13(2) *Confidential records.* The following records may be withheld from public inspection. Records are listed by category, according to the legal basis for withholding them from public inspection.

a. Sealed bids received prior to the time set for public opening of bids under Iowa Code section 72.3.

b. Tax records made available to the agency. (Iowa Code sections 422.20 and 422.72)

c. Records which are exempt from disclosure under Iowa Code section 22.7.

d. Minutes of closed meetings of a government body. (Iowa Code section 21.5(4))

e. Identifying details in final orders, decisions and opinions to the extent required to prevent a clearly unwarranted invasion of personal privacy or trade secrets under Iowa Code section 17A.3(1)*"d."*

f. Those portions of agency staff manuals, instructions or other statements issued which set forth criteria or guidelines to be used by agency staff in auditing, in making inspections, in settling commercial disputes or negotiating commercial arrangements, or in the selection or handling of cases, such as operational tactics or allowable tolerances or criteria for the defense, prosecution or settlement of cases, when disclosure of these statements would:

(1) Enable law violators to avoid detection;

(2) Facilitate disregard of requirements imposed by law; or

(3) Give a clearly improper advantage to persons who are in an adverse position to the agency. (See Iowa Code sections 17A.2 and 17A.3)

g. Records which constitute attorney work product, attorney-client communications, or which are otherwise privileged. Attorney work product is confidential under Iowa Code sections 22.7(4), 622.10 and 622.11, Iowa R.C.P. 122(c), Fed. R. Civ. P. 26(b)(3), and case law. Attorney-client communications are confidential under Iowa Code sections 622.10 and 622.11, the rules of evidence, the Code of Professional Responsibility, and case law.

h. Any other records made confidential by law.

5.13(3) *Authority to release confidential records.* The agency may have discretion to disclose some confidential records which are exempt from disclosure under Iowa Code section 22.7 or other law. Any person may request permission to inspect records withheld from inspection under a statute which authorizes limited or discretionary disclosure as provided in rule 5.4(17A,22). If the agency initially determines that it will release these records, the agency may, where appropriate, notify interested parties and withhold the records from inspection as provided in subrule 5.4(3).

281—5.14(256) Personally identifiable information. This rule describes the nature and extent of personally identifiable information which is collected, maintained, and retrieved by the agency by personal identifier in record systems as defined in rule 5.1(256). For each record system, this rule describes the legal authority for the collection of that information, the means of storage of that information and indicates whether a data processing system matches, collates, or permits the comparison of personally identifiable information in one record system with that in another record system. The record systems maintained by the agency are:

5.14(1) *Staff records of the basic educational data survey.* Records of employees of area educational agencies, merged area schools, and approved public and private schools, whose positions require an Iowa teacher's certificate and contain such personally identifiable information as name, Iowa teacher's certificate number, and social security number. Other data collected are date of birth, teaching experience, sex, current position and assignments. This information is collected pursuant to Iowa Code subsection 256.9(18) and 281—subrule 11.1(4), and is stored on paper and in an automated data processing system. Data processing systems match, collate, and compare the personally identifiable information of the staff records with that of teacher certification records.

5.14(2) *Driver education records.* Driver education records contain personally identifiable information such as name, driver's license number, and Iowa teacher's certificate number collected pursuant to Iowa Code section 321.178 and 281—Chapter 26, and are stored on paper and in an automated data processing system. Data processing systems match, collate, and compare the personally identifiable information of the driver education records with that of the teacher certification records and BEDS staff records.

5.14(3) *Bus driver permit records.* Bus driver permit records contain personally identifiable information such as name, social security number, driver's license number, and bus driver's permit number collected pursuant to Iowa Code sections 321.376 and 285.11(10) and 281—Chapter 43, and are stored on paper and in an automated data processing system. Data processing systems match, collate, and compare the personally identifiable information of the bus driver permit numbers with that of bus accident records.

5.14(4) *Bus accident records.* Bus accident records contain one item of personally identifiable information: the driver's social security number collected pursuant to Iowa Code section 321.376 and 281—Chapter 43 and are stored on paper and in an automated data processing system. Data processing systems match, collate, and compare the personally identifiable information of the bus accident records with that of bus driver permit records.

5.14(5) *Teacher certification records.* Teacher certification records contain information about each individual issued an Iowa teacher's certificate. These records contain such personally identifiable information as name, teacher's certificate number and social security number. Other data collected are date of birth, type and source of degree, completion of mandatory postgraduation coursework, experience, and the subjects and grade level authorized to teach. This information is collected pursuant to Iowa Code sections 256.7(3) and 256.7(5), Iowa Code chapter 260, and 281—Chapters 84 to 88 and 73 to 75, and is stored on paper and in an automated data processing system. Data processing systems match, collate, and compare the personally identifiable information of the teacher certification records with that of BEDS staff records, driver education records, and career education records.

5.14(6) *Exceptional child survey.* These records are exempt from disclosure under Iowa Code subsection 22.7(1). The information gathered by this system relates to children and youth identified as handicapped and in need of special education. Each student record contains a code derived from the child's name and birth date. The coded identifier is the personally identifiable information. Information in each record pertains to the child's handicapping condition and the special education instructional and support-related services provided to the child. Each record may also contain the child's teacher's name and teaching certificate number. This information is collected pursuant to Iowa Code chapter 256B and 34 CFR, Parts 300 and 301 (1986). Procedures for protection of and access to this information are set forth in this state's plan under the Education of All the Handicapped Act, 20 U.S.C. §1401 et seq. These policies and procedures are in compliance with the Family Educational Rights and Privacy Act of 1974 (34 CFR, Part 90) and 34 CFR sections 300.129, 300.560-576, Confidentiality of Information, Part B, EHA, as amended (1986).

This information is stored in an automated data processing system that does not match, collate, or compare the personally identifiable information of the exceptional child survey records with the personally identifiable information of other records systems.

5.14(7) *Rule exception requests and adjusted program reports.* Information gathered by this form relates to excepting the rules of special education in certain circumstances in order to provide a program of educational services to an identified handicapped child or children. These rule exception requests and adjusted program reports could contain personally identifiable information on pupils involved in the special circumstance.

This information is collected pursuant to Iowa Code chapters 256B and 273 and IAC 281—subrules 41.30(1) and 41.30(2). This information is stored on paper and is not on any automated data processing system. All personally identifiable information gathered through this effort is confidential under the provisions of 34 CFR, Parts 90 and 300 (1986) and Iowa Code section 22.7(1).

5.14(8) *Department approval—special education placements.* These are requests for approval to place a handicapped pupil in an out-of-state educational program and would contain personally identifiable information such as the pupil's name, birth date, residence, handicapping condition and other information relative to the identified special education needs of the pupil. Response to these requests for department approval would contain similar information.

This information is collected pursuant to Iowa Code subsection 273.3(5) and is stored on paper. Data processing systems do not match, collate, or compare the personally identifiable information with other records. All personally identifiable information gathered through this effort is confidential under the provisions of 34 CFR, Parts 90 and 300 (1986).

5.14(9) *Chapter I, ECIA, state-operated programs for the handicapped.* Local education agency student transfers. Information gathered by this system is related to handicapped children who were served in the state-operated program for the handicapped, counted under the provisions of 34 CFR 302 (1986), and who have subsequently exited that program and enrolled in a special education program in a local education agency within the state. The personally identifiable information consists of the

child's name, birth date, disability, and the local education agency to which the child has exited. This data is collected pursuant to 34 CFR, Part 302 (1986), State-Operated Programs for the Handicapped. This data is collected and stored on paper and is not automated. Data processing systems do not match, collate, or compare the personally identifiable information of other record systems. This data is utilized to determine if an LEA is eligible to apply for Chapter I funds under the provisions of 34 CFR, Part 302 (1986).

5.14(10) *Special education complaint management system.* Information gathered in this record system is utilized as documentation of concerns or complaints related to special education programs and services to handicapped children as required under the provisions of 34 CFR, Part 300 (1986). Personally identifiable information includes the student's name, handicapping condition, parent's name, and the nature of the concern or complaint being registered. The information is gathered and stored on paper and is not in an automated data processing system. Data processing systems do not match, collate, or compare personally identifiable information from these records with personally identifiable information of other records systems. Personally identifiable information gathered by this system is confidential under the provisions of 34 CFR, Parts 90 and 300 (1986).

5.14(11) *Deaf-blind student registry.* This data collection system gathers information related to deaf-blind children and youth in Iowa. Personally identifiable information items would include the child's name, birth date, location, and services being provided to the child. Information is utilized to plan programs and services for all deaf-blind children and their families in the state. This information is gathered pursuant to the provisions of 34 CFR, Part 307 (1986). The system is stored on paper and is not on any state automated data processing system. Data processing systems do not compare, collate or match personally identifiable information in this system with personally identifiable information in other data systems. Personally identifiable information gathered and maintained by this system is confidential under the provisions of 34 CFR, Parts 90 and 300 (1986).

5.14(12) *Career education records.* Career education records contain personally identifiable information such as the names and certificate numbers of staff members employed to conduct career education programs. Other data collected concern approvals, reimbursements, enrollments, expenditures, and student characteristics, and completion status relating to career education programs. This information is collected pursuant to Iowa Code chapter 258 and is stored on paper and in an automated data processing system. Data processing systems match, collate, and compare the personally identifiable information of career education records with that of teacher certification records.

5.14(13) *Job Training Partnership Act (JTPA) records.* Job Training Partnership Act (JTPA) records contain personally identifiable information such as the name and social security number of each JTPA client. Other data collected include training progress, profits, and expenditures. This information is collected pursuant to 29 U.S.C. 1603 §203 and 20 CFR, Part 630 (1986), and is stored on paper and in an automated data processing system. Data processing systems do not match, collate, or compare the personally identifiable information of JTPA records with that of other record systems.

5.14(14) *Drinking driver course records.* These records contain such personally identifiable information as name, address, birth date and social security number. Other data collected are the driver's pre- and post-test scores. This information is collected pursuant to Iowa Code section 321J.12 and is stored on paper and in an automated data processing system. Data processing systems in this agency do not match, collate, or compare the personally identifiable information of drinking driver records with other record systems.

5.14(15) *Robert C. Byrd honors scholarships.* Records contain personally identifiable information about applicants for these scholarships including name, social security number, home address, and telephone number. Other data are parents' names and applicant's scholastic achievements, including grades. Information is collected in order to determine eligibility for the Byrd scholarships, funded under 20 U.S.C. 1070d-31, et seq. Information is stored on paper and in an automated data processing system. Data processing systems do not match, collate, or compare personally identifiable information of these records with that of other record systems. These records or portions may be declared confidential under Iowa Code section 22.7(1).

5.14(16) *Personnel records.* The agency has records concerning individual agency employees, some of which may contain confidential information under Iowa Code section 22.7(11) and other legal provisions. Personnel records may be subject to the rules of the department of personnel.

5.14(17) *Special project applications.* Applications from public school districts may contain personally identifiable information about qualifications of project staff members. No personally identifiable student data are collected. Information is stored on paper and in an automated data processing system. This information is collected pursuant to Iowa Code sections 442.31 to 442.35.

5.14(18) *Grants/awards/projects.* Records of persons or agencies applying for grants, awards, or funds for projects may contain information about individuals collected pursuant to specific federal or state statutes or regulations. This information may be stored in an automated data processing system.

5.14(19) *Phase I, II, and III records.* These records contain the names, social security numbers, and salaries of teachers in districts applying for phase funding. This information is collected pursuant to Iowa Code chapter 294A and is stored on paper and in an automated data processing system which may match, collate, or compare personally identifiable information in these records with records in another record system.

5.14(20) *Appeal records.* These records contain data supplied by persons or entities appealing to the agency and may contain personally identifiable information such as student name, age, scholastic and disciplinary record, and status as regular or special education pupil. This information is collected pursuant to Iowa Code chapters 256B, 260, 275, 280, 282, 285, and 290 and is stored on paper and is not in an automated data processing system. The personally identifiable information is not matched, collated, or compared with data in other record systems.

5.14(21) *Teacher certification decisions.* These licensing decisions contain data such as teacher's name and facts surrounding disciplinary action (suspension or revocation) taken by the state board of education. This information is collected pursuant to Iowa Code chapters 272A and 260 and 281—Chapter 7.

5.14(22) *Litigation files.* These files or records contain information regarding litigation or anticipated litigation, which includes judicial and administrative proceedings. The records include briefs, depositions, docket sheets, documents, correspondence, attorneys notes, memoranda, research materials, witness information, investigation materials, information compiled under the direction of the attorney, and case management records. The files contain materials which are confidential as attorney work product and attorney-client communications. Some materials are confidential under other applicable provisions of law or because of a court order. Persons wishing copies of pleadings and other documents filed in litigation should obtain these from the clerk of the appropriate court which maintains the official copy.

281—5.15(256) Other groups of records. This rule describes groups of records maintained by the agency other than record systems as defined in rule 5.1(256). These records are routinely available to the public. However, the agency's files of these records may contain confidential information as discussed in rule 5.13(256). The records listed may contain information about individuals.

5.15(1) *Rule making.* Rule-making records may contain information about individuals making written or oral comments on proposed rules or proposing rules or rule amendments. This information is collected pursuant to Iowa Code sections 17A.3, 17A.4, and 17A.7. These records are stored on paper and not in an automated data processing system.

5.15(2) *State board records.* Records contain agendas, minutes, and materials presented to the board. Records concerning closed sessions are exempt from disclosure under Iowa Code subsection 21.5(4). State board records contain information about people who participate in meetings. This information is collected under the authority of Iowa Code section 21.3. State board records are not stored in an automated data processing system.

5.15(3) *Publications.* Publications include news releases, annual reports, project reports, agency newsletters, etc., which describe various agency programs. Agency news releases, project reports, and newsletters may contain information about individuals, including agency staff or members of agency councils or committees. This information is not stored in an automated data processing system.

5.15(4) *Statistical reports.* Periodic reports of various agency programs are available from the department of education. Statistical reports are not stored in an automated data processing system.

5.15(5) *Address lists/directories.* The names and mailing addresses of members of councils, working groups, program participants and members of the general public evidencing interest in particular programs/events of the agency are maintained in order to provide mailing labels for mass distribution of literature. This information is collected under the provisions of Iowa Code chapter 256.

5.15(6) *Appeal decisions and declaratory rulings.* All final orders, decisions and rulings are available for public inspection in accordance with Iowa Code section 17A.3. These records may contain personally identifiable information regarding individuals who are the subjects of the appeals or rulings. This information is collected pursuant to Iowa Code chapters 17A, 256B, 280, 282, 282A, 285, 290 and 281—Chapters 6, 7 and 41 and is not stored in an automated data processing system.

5.15(7) *Published materials.* The agency uses many legal and technical publications in its work. The public may inspect these publications upon request. Some of these materials may be protected by copyright law.

5.15(8) *Basic educational data survey system records.* Curriculum, address, policy and procedures, and enrollment records of the basic educational data survey system contain data concerning the curriculum, building, policy and procedures, and enrollment of merged area schools, area education agencies, and approved public and private K-12 educational agencies.

Address records contain the addresses of buildings in which educational agencies are located and the names of the chief administrators of those agencies collected pursuant to Iowa Code sections 256.7 and 256.9.

5.15(9) *Secretary's annual report.* This record contains information related to public school districts' attendance figures, revenues and expenditures.

5.15(10) *Certified enrollment records.* Public school district records with enrollments of resident students in district schools; resident students enrolled in another district; nonresident and out-of-state students enrolled in district schools; and full-time equivalent (FTE) enrollment of shared time, part-time and area school students of high school age. These records do not contain student names or other personally identifiable information.

5.15(11) *School lunch program records.* Records of public and private schools participating in the national school lunch program. Records contain information relating to funds available for reimbursements, advance payments, claims, and reimbursements made to schools; dates that participating schools were inspected; and individual employees of school food services of agencies participating in child nutrition programs. The personally identifiable information is collected pursuant to 7 CFR, Subpart C, 210.9 (1986).

5.15(12) *Commodity distribution records.* Records of the allocation and delivery of federally provided commodities to participating schools.

5.15(13) *Transportation records.* Transportation records contain operational data for school buses.

5.15(14) *Facilities' records.* Records of buildings and additions to buildings owned by public and private K-12 educational agencies.

5.15(15) *Minority records.* Records consist of curriculum records, staff records and enrollment records. There is one curriculum record for each course offered by a school. It enumerates the number of handicapped students and the number of minority pupils by sex by race enrolled for the course. In the same manner, the staff record for a school enumerates the number of handicapped noncertificated staff and the number of minority certificated staff by sex by race. Enrollment records enumerate the number of minority and handicapped pupils by grade by sex by race; handicapping condition. These records do not contain personal information.

5.15(16) *Child care food program records.* Records contain information concerning advance payments made to institutions participating in the federal child care food program, agreements between institutions and their sites with program administrators, claims and reimbursements for meals served, and inspections of programs. The name of each program administrator is included in agreement records collected pursuant to 7 CFR, Part 226.6(e)(1)(1986).

5.15(17) *Guidance dropout records.* These records consist of the number of dropouts in a school district for a particular school year in terms of race. No personally identifiable information is contained in dropout records.

5.15(18) *Career information system of Iowa (CISI) records.* Records of a state-directed project which stores and utilizes occupational and educational data for student use in career decision making.

5.15(19) *Chapter I records.* Records contain data concerning costs; enrollments; number of classes; teachers; aides; pre- and post-test scores; staff training; and parental activity. No personally identifiable information is contained in the records stored in an automated data processing system, although applications stored on paper may contain personally identifiable information such as teacher name.

5.15(20) *Merged area school records.* These records contain data concerning equipment (inventory), enrollment (by sex and residence), and the number of pupils completing programs.

5.15(21) *Merged area schools inventory records.* Records describe all equipment in merged area schools.

5.15(22) *Merged area schools enrollment and completer records.* Records contain enrollment by sex and residence for each program offered by each merged area school.

5.15(23) *General equivalency diploma (GED) records.* General equivalency diploma (GED) records contain the names, addresses, social security numbers, and test scores of individuals granted an Iowa high school equivalency diploma. This information is collected pursuant to Iowa Code chapter 259A.

5.15(24) *Area education agency budget records.* These records contain data used by the state board of education to approve AEA annual budgets. These records are stored on hard copy only.

5.15(25) *Area education agency annual financial report records.* These records contain data relating to revenue, expenditures, and balances as well as the number of AEA employees in each program. These records are stored on hard copy only.

5.15(26) *Juvenile home records.* The juvenile home educational program budget and claim documents collect financial, employee, and student operation data. Budget records are used by the agency for program approval. Claim records are used for approving reimbursements and program results. These records are stored on hard copy only.

5.15(27) *Chapter II records.* These records contain federal Chapter II allocations, enrollments, project descriptions, budgets, and assurances. These records are stored on hard copy only.

5.15(28) *Educational improvement projects records.* These records contain basic planning data, project descriptions, budgets, and assurances. These records are stored on hard copy only.

5.15(29) *Nonpublic school pupil textbook services records.* These records contain data on public school per pupil textbook expenditures, number of resident nonpublic school pupils requesting textbook services and the cost of providing textbook services for nonpublic school pupils. These records are stored on hard copy only.

5.15(30) *Nonpublic school pupils transportation services claims.* These records contain data on expenditures for providing transportation to pupils attending approved nonpublic schools and requests for reimbursement. These records are stored on hard copy only.

5.15(31) *Minutes and reports of state vocational education council.* These records contain the discussion, actions, and recommendations of the council and include biennial reports to the governor. They are stored on hard copy only.

281—5.16(256) Applicability. This chapter does not:

1. Require the agency to index or retrieve records which contain information about individuals by that person's name or other personal identifier.

2. Make available to the general public records which would otherwise not be available under the public records law, Iowa Code chapter 22.

3. Govern the maintenance or disclosure of, notification of or access to, records in the possession of the agency which are governed by the rules of another agency. This chapter applies to all records of the department of education. Additional rules regarding records of the department's division of vocational rehabilitation services are also set forth in 281—Chapter 56, division VIII. This chapter does not apply to the records of the following agencies under the department's "umbrella" that have their own rule-making

authority: college aid commission, Iowa advance funding authority, educational examiners board, and the school budget review committee.

4. Apply to grantees, including local governments or subdivisions thereof, administering state-funded programs, unless otherwise provided by law or agreement.

5. Make available records compiled by the agency in reasonable anticipation of court litigation or formal administrative proceedings. The availability of such records to the general public or to any subject individual or party to such litigation or proceedings shall be governed by applicable legal and constitutional principles, statutes, rules of discovery, evidentiary privileges, and applicable rules of the agency.

These rules are intended to implement Iowa Code section 22.11.

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CHAPTER 6
APPEAL PROCEDURES

[Prior to 9/7/88, see Public Instruction Department[670] Ch 51]

281—6.1(290) Scope of appeal. The rules of this chapter are applicable to all hearing requests seeking appellate review by the state board of education, the director of education, or the department of education.

281—6.2(256,290,17A) Definitions.

"Appellant," as used in this chapter, shall refer to a party bringing an appeal to the state board of education, the director of education or the department of education.

"Appellee," as used in this chapter, shall refer to the party in a matter against whom an appeal is taken, or the party whose interest is adverse to the reversal of a prior decision now on appeal to the state board of education, the director of education or the department of education.

"Board," as used in this chapter, shall refer to the state board of education.

"Contested case" means a proceeding defined by Iowa Code section 17A.2(5) and includes any matter defined as a no factual dispute contested case under 1998 Iowa Acts, chapter 1202, section 14.

"Default" means a dismissal of the appeal due to nonappearance at the hearing, either telephonically or in person, or for failure to request a continuance of the appeal hearing. Exceptions may be granted at the discretion of the presiding officer.

"Department" means the department of education.

"Director," as used in this chapter, shall refer to the director of education.

"Hearing panel," as used in this chapter, shall refer to the director of education, or the director's designee, sitting as the administrative law judge and two members of the department of education staff designated by the administrative law judge to hear the presentation of evidence or oral arguments concerning appeals which are unusual or which present issues of first impression.

"Issuance" means the date of mailing of a decision or order or date of delivery if service is by other means unless another date is specified in the order.

"Party" means each person or agency named or admitted as a party or properly seeking and entitled as of right to be admitted as a party.

"Presiding officer" means the director of the department of education or the designated administrative law judge.

281—6.3(290,17A) Manner of appeal.

6.3(1) An appeal shall be made in the form of an affidavit, unless an affidavit is not required by the statute establishing the right of appeal, which shall set forth the facts, any error complained of, or the reasons for the appeal in a plain and concise manner, and which shall be signed by the appellant and delivered to the office of the director by United States Postal Service, facsimile (fax), or personal service. The affidavit shall be considered as filed with the agency on the date of the United States Postal Service postmark, the date of arrival of the facsimile, or the date personal service is made. Time shall be computed as provided in Iowa Code subsection 4.1(34).

6.3(2) The director or designee shall, within five days after the filing of such affidavit, notify the proper officer in writing of the taking of an appeal, and the officer shall, within ten days, file with the board a complete certified transcript of the record and proceedings related to the decision appealed. A certified copy of the minutes of the meeting of the governmental body making the decision appealed shall satisfy this requirement.

6.3(3) The director or designee shall send written notice by certified mail, return receipt requested, at least ten days prior to the hearing, unless the ten-day period is waived by all parties, to all persons known to be interested. Such notice shall include the time, place, and nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing is to be held; a reference to the particular sections of the statutes and rules involved; and a short and plain statement of the matters asserted. A copy of the appeal hearing rules shall be included with the notice.

The notice of hearing shall contain the following information: identification of all parties including the name, address and telephone number of the person who will act as advocate for the agency or the state and of parties' counsel where known; reference to the procedural rules governing conduct of the contested case proceeding; reference to the procedural rules governing informal settlement; and identification of the presiding officer, if known. If not known, a description of who will serve as presiding officer (e.g., director of the department or administrative law judge from the department of inspections and appeals).

6.3(4) and **6.3(5)** Rescinded IAB 5/5/99, effective 6/9/99.

6.3(6) An amendment to the affidavit of appeal may be made by the appellant up to ten working days prior to the hearing. With the agreement of all parties, an amendment may be made until the hearing is closed to the receipt of evidence.

281—6.4(17A) Continuances. Unless otherwise provided, applications for continuances shall be made to the presiding officer.

6.4(1) A written application for a continuance shall:

a. Be made at the earliest possible time and no less than seven days before the hearing except in case of unanticipated emergencies;

b. State the specific reasons for the request; and

c. Be signed by the requesting party or the party's representative.

An oral application for a continuance may be made if the presiding officer waives the requirement for a written motion. However, a party making such an oral application for a continuance must confirm that request by written application within five days after the oral request unless that requirement is waived by the presiding officer. No application for continuance shall be made or granted without notice to all parties except in an emergency where notice is not feasible. The agency may waive notice of such requests for a particular case or an entire class of cases.

6.4(2) In determining whether to grant a continuance, the presiding officer may consider:

a. Prior continuances;

b. The interests of all parties;

c. The likelihood of informal settlement;

d. The existence of an emergency;

e. Any objection;

f. Any applicable time requirements;

g. The existence of a conflict in the schedules of counsel, parties, or witnesses;

h. The timeliness of the request; and

i. Other relevant factors.

The presiding officer may require documentation of any grounds for continuance.

281—6.5(17A) Intervention.

6.5(1) *Motion.* A motion for leave to intervene in a contested case proceeding shall state the grounds for the proposed intervention, the position and interest of the proposed intervenor, and the possible impact of intervention on the proceeding. A proposed answer or petition in intervention shall be attached to the motion. Any party may file a response within 14 days of service of the motion to intervene unless the time period is extended or shortened by the presiding officer.

6.5(2) *When filed.* Motion for leave to intervene shall be filed as early in the proceeding as possible to avoid adverse impact on existing parties or the conduct of the proceeding. Unless otherwise ordered, a motion for leave to intervene shall be filed before the prehearing conference, if any, or at least 20 days before the date scheduled for hearing. Any later motion must contain a statement of good cause for the failure to file in a timely manner. Unless inequitable or unjust, an intervenor shall be bound by any agreement, arrangement, or other matter previously raised in the case. Requests by untimely intervenors for continuances which would delay the proceeding will ordinarily be denied.

6.5(3) *Grounds for intervention.* The movant shall demonstrate that: (a) intervention would not unduly prolong the proceedings or otherwise prejudice the rights of existing parties; (b) the movant

is likely to be aggrieved or adversely affected by a final order in the proceeding; and (c) the interests of the movant are not adequately represented by existing parties.

6.5(4) *Effect of intervention.* If appropriate, the presiding officer may order consolidation of the petitions and briefs of different parties whose interests are aligned with each other and limit the number of representatives allowed to participate actively in the proceedings. A person granted leave to intervene is a party to the proceeding. The order granting intervention may restrict the issues that may be raised by the intervenor or otherwise condition the intervenor's participation in the proceeding.

281—6.6(17A) Motions.

6.6(1) No technical form for motions is required. However, prehearing motions must be in writing, state the grounds for relief, and state the relief sought.

6.6(2) Any party may file a written response to a motion within ten days after the motion is served, unless the time period is extended or shortened by rules of the agency or the presiding officer. The presiding officer may consider a failure to respond within the required time period in ruling on a motion.

6.6(3) The presiding officer may schedule oral argument on any motion.

6.6(4) Motions pertaining to the hearing, except motions for summary judgment, must be filed and served at least ten days prior to the date of hearing unless there is good cause for permitting later action or the time for such action is lengthened or shortened by rule of the agency or an order of the presiding officer.

6.6(5) Motions for summary judgment. Motions for summary judgment shall comply with the requirements of Iowa Rule of Civil Procedure 1.981 and shall be subject to disposition according to the requirements of that rule to the extent such requirements are not inconsistent with the provisions of this rule or any other provision of law governing the procedure in contested cases.

Motions for summary judgment must be filed and served at least 45 days prior to the scheduled hearing date, or other time period determined by the presiding officer. Any party resisting the motion shall file and serve a resistance within 15 days, unless otherwise ordered by the presiding officer, from the date a copy of the motion was served. The time fixed for hearing or nonoral submission shall be not less than 20 days after the filing of the motion, unless a shorter time is ordered by the presiding officer. A summary judgment order rendered on all issues in a contested case is subject to rehearing pursuant to rule 281—6.20(17A) and appeal pursuant to rule 281—6.21(17A).

281—6.7(17A) Disqualification.

6.7(1) A presiding officer or other person shall withdraw from participation in the making of any proposed or final decision in a contested case if that person:

a. Has a personal bias or prejudice concerning a party or a representative of a party;

b. Has personally investigated, prosecuted or advocated in connection with that case, the specific controversy underlying that case, another pending factually related contested case, or a pending factually related controversy that may culminate in a contested case involving the same parties;

c. Is subject to the authority, direction or discretion of any person who has personally investigated, prosecuted or advocated in connection with that contested case, the specific controversy underlying that contested case, or a pending factually related contested case or controversy involving the same parties;

d. Has acted as counsel to any person who is a private party to that proceeding within the past two years;

e. Has a personal financial interest in the outcome of the case or any other significant personal interest that could be substantially affected by the outcome of the case;

f. Has a spouse or relative within the third degree of relationship that: (1) is a party to the case, or an officer, director or trustee of a party; (2) is a lawyer in the case; (3) is known to have an interest that could be substantially affected by the outcome of the case; or (4) is likely to be a material witness in the case; or

g. Has any other legally sufficient cause to withdraw from participation in the decision making in that case.

6.7(2) The term "personally investigated" means taking affirmative steps to interview witnesses directly or to obtain documents or other information directly. The term "personally investigated" does not include general direction and supervision of assigned investigators, unsolicited receipt of information which is relayed to assigned investigators, review of another person's investigative work product in the course of determining whether there is probable cause to initiate a proceeding, or exposure to factual information while performing other agency functions, including fact gathering for purposes other than investigation of the matter which culminates in a contested case. Factual information relevant to the merits of a contested case received by a person who later serves as presiding officer in that case shall be disclosed if required by Iowa Code section 17A.17(3) and subrules 6.7(3) and 6.14(9).

6.7(3) In a situation where a presiding officer or other person knows of information which might reasonably be deemed to be a basis for disqualification and decides voluntary withdrawal is unnecessary, that person shall submit the relevant information for the record by affidavit and shall provide for the record a statement of the reasons for the determination that withdrawal is unnecessary.

6.7(4) If a party asserts disqualification on any appropriate ground, including those listed in subrule 6.7(1), the party shall file a motion supported by an affidavit pursuant to Iowa Code section 17A.11(3). The motion must be filed as soon as practicable after the reason alleged in the motion becomes known to the party.

If, during the course of the hearing, a party first becomes aware of evidence of bias or other grounds for disqualification, the party may move for disqualification but must establish the grounds by the introduction of evidence into the record.

If the presiding officer determines that disqualification is appropriate, the presiding officer or other person shall withdraw. If the presiding officer determines that withdrawal is not required, the presiding officer shall enter an order to that effect.

281—6.8(290) Subpoena of witnesses and costs.

6.8(1) The director, on behalf of the board, has the power to issue subpoenas for witnesses, to compel the attendance of those witnesses, and the giving of evidence by them, in the same manner and to the same extent as the district court may do. An agency subpoena shall be issued to a party on written request made at least ten days prior to the hearing. Parties are responsible for obtaining service of their own subpoenas.

6.8(2) Witnesses and serving officers may be allowed the same compensation as is paid for like attendance or service in district court. The witness's fees and mileage are considered costs of the appeal under Iowa Code section 290.4; costs are assigned to the nonprevailing party. The witness's fees and expenses for hearings brought under other statutes and rules are the responsibility of the party requesting or subpoenaing the witness.

6.8(3) Motion to quash or modify. The presiding officer may quash or modify a subpoena for any lawful reason upon motion in accordance with the Iowa Rules of Civil Procedure. A motion to quash or modify a subpoena shall be set for argument promptly.

6.8(4) Telephone proceedings. The presiding officer may resolve preliminary procedural motions by telephone conference in which all parties have an opportunity to participate. Other telephone proceedings may be held with the consent of all parties. The presiding officer will determine the location of the parties and witnesses for telephone hearings. The convenience of the witnesses or parties, as well as the nature of the case, will be considered when location is chosen.

281—6.9(17A) Discovery. Discovery procedures applicable to civil actions are available to all parties in contested cases before the department. Evidence obtained in discovery may be used in the hearing before the department if that evidence would otherwise be admissible in the hearing.

Any deviations from the time periods established for compliance with discovery in the Iowa Rules of Civil Procedure shall be determined by the administrative law judge upon opportunity for all parties to be heard.

281—6.10(17A) Consolidation—severance.

6.10(1) *Consolidation.* The administrative law judge may consolidate any or all matters at issue in two or more appeals where: (a) the matters at issue involve common parties or common questions of fact or law; (b) consolidation would expedite and simplify consideration of the issues involved; and (c) consolidation would not adversely affect the rights of any of the parties of those proceedings.

6.10(2) *Severance.* The administrative law judge may, for good cause shown, order any contested case proceedings or portions thereof severed.

281—6.11(17A) Waiver of procedures. Unless otherwise precluded by law, the parties in a contested case proceeding may waive any provision of this chapter. However, the agency in its discretion may refuse to give effect to such a waiver when it deems the waiver to be inconsistent with the public interest.

281—6.12(17A) Appeal hearing.

6.12(1) *On stipulated record.* Upon the written agreement of the parties, the transcript of the record and proceedings as certified by the proper official and any other documents mutually stipulated may become the evidentiary basis for the hearing on appeal. In the event that the hearing is to be conducted on the stipulated record, the following procedures shall be followed:

a. At the established time, the name and nature of the case are announced by the administrative law judge. Inquiries shall be made as to whether the respective parties or their representatives are present.

b. 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, this fact shall be entered into the record. When notice to an absent party has been sent by certified mail, return requested, the return shall be placed in the record. If the notice was sent 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.

c. The appeal hearing on stipulated record is nonevidentiary in nature. No witnesses will be heard nor evidence received. The controversy will be decided on the basis of the stipulated record 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 proceedings.

d. Illustrative 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.

e. Unless the administrative law judge determines otherwise, each party shall have one spokesperson.

f. The appellant shall present the first argument. The appellee shall follow with argument and rebuttal of the appellant's argument. A third party who was a party in the initial proceeding but not either appellant or appellee may, at the discretion of the administrative law judge, be allowed to make remarks. The appellant may then rebut the proceeding arguments but may not introduce new arguments.

g. Appellant and appellee shall have equal time to present their arguments and appellant's total time shall not be increased by the right of rebuttal. The time limit for argument shall be established by the administrative law judge and shall in most instances be limited to 30 minutes for each party.

h. At the conclusion of arguments, each party shall have the opportunity to submit written briefs or arguments, or additional written briefs if they have already done so. Any party submitting a written brief or argument must deliver a copy to all other parties, preferably in advance of the appeal hearing. In the event that all parties have not been furnished a copy of another party's brief at least two days in advance of the appeal hearing, each party shall be afforded the opportunity to submit reply briefs within ten days of the conclusion of the appeal hearing. The opportunity to submit reply briefs may be waived by any party and shall be entered into the record.

i. The appeal hearing is then closed upon order of the administrative law judge.

6.12(2) *Evidentiary hearing.* When the parties do not agree to a stipulated record, the following procedure shall be followed:

a. The appellant may begin by giving an opening statement of a general nature which may include the basis for the appeal, the type and nature of the evidence the appellant proposes to introduce and the conclusions which the appellant believes the evidence will substantiate.

b. With the permission of the administrative law judge, a third party directly involved in the original proceeding but neither appellant nor appellee may make an opening statement of a general nature.

c. The appellee may present an opening statement of a general nature which may include the type and nature of evidence proposed to be introduced and the conclusions which the appellee believes the evidence will substantiate. The appellee may present an opening statement following the appellant's opening statement, if any, or may reserve opening for immediately prior to its case-in-chief.

d. The appellant may then call witnesses and present other evidence.

e. Each witness shall be administered an oath by the administrative law judge. The oath shall be in the following form: "Do you solemnly swear or affirm that the testimony or evidence which you are about to give in the proceeding now in hearing shall be the truth, the whole truth, and nothing but the truth?"

f. The appellee may cross-examine all witnesses and may examine and question all other evidence.

g. 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.

h. The hearing panel members may address questions to each witness at the conclusion of questioning by the appellant and the appellee.

i. 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.

j. The appellant shall make a final argument for a length of time established by the administrative law judge, in which the appellant may review the evidence presented, the conclusions which the appellant believes most logically follow from the evidence and a recommendation of action to the hearing panel.

k. The appellee may make a final argument for a period of time equal to that granted to the appellant in which the appellee may review the evidence presented, the conclusions which the appellee believes most logically follow from the evidence and a recommendation of action to the hearing panel.

l. At the discretion of the administrative law judge, a third party directly involved in the original proceeding but neither the appellant nor appellee may make a final argument.

m. 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.

n. Any party may submit written briefs. Written briefs by nonparties may be accepted at the discretion of the administrative law judge. Any party submitting a written brief or argument shall deliver a copy to all other parties, preferably in advance of the appeal hearing. In the event that all parties have not been furnished a copy of another party's brief or argument at least two days in advance of the appeal hearing, each party shall be afforded the opportunity to submit reply briefs within ten days of the conclusion of the appeal hearing. The opportunity to submit reply briefs may be waived by a party and the waiver shall be entered into the record.

o. Rules of evidence.

(1) Because the administrative law judge must decide each case correctly as to the parties before the panel and the administrative law judge must also decide what is in the public's best interest, it is necessary to allow for the reception of all relevant evidence which will contribute to an informed result. The ultimate test of admissibility is whether the offered evidence is reliable, probative, and relevant.

(2) Irrelevant, immaterial, or unduly repetitious evidence should be excluded. A finding shall be based upon the kind of evidence on which reasonably prudent persons are accustomed to rely for the conduct of their serious affairs, and may be based upon such evidence even if it would be inadmissible in a jury trial. The hearing panel shall give effect to the rules of privilege recognized by law. Objections to evidentiary offers may be made and shall be noted in the record. Subject to these requirements, when a hearing will be expedited and the interests of the parties will not be prejudiced substantially, any part of the evidence may be required to be submitted in verified written form.

(3) 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.

(4) Witnesses at the hearing, or persons whose testimony has been submitted in written form, if available, shall be subject to cross-examination by any party as necessary for a full and true disclosure of the facts.

(5) Official notice may be taken of all facts of which judicial notice may be taken and of other facts within the specialized knowledge of the hearing panel. 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.

(6) The hearing panel's experience, technical competence, and specialized knowledge may be utilized in the evaluation of the evidence.

(7) No decision shall be made except upon consideration of the whole record or portions that may be cited by any party and as supported by and in accordance with the reliable, probative and substantial evidence.

6.12(3) *Telephone hearings.* Upon agreement of the parties, a hearing may take place by telephone conference call.

281—6.13 Reserved.

281—6.14(17A) Ex parte communication.

6.14(1) Prohibited communications. Unless required for the disposition of ex parte matters specifically authorized by statute, following issuance of the notice of hearing, there shall be no communication, directly or indirectly, between the presiding officer and any party or representative of any party or any other person with a direct or indirect interest in such case in connection with any issue of fact or law in the case except upon notice and opportunity for all parties to participate. This does not prohibit persons jointly assigned such tasks from communicating with each other. Nothing in this provision is intended to preclude the presiding officer from communicating with members of the agency or seeking the advice or help of persons other than those with a personal interest in, or those engaged in personally investigating as defined in subrule 6.7(2), prosecuting, or advocating in, either the case under consideration or a pending factually related case involving the same parties as long as those persons do not directly or indirectly communicate to the presiding officer any ex parte communications they have received of a type that the presiding officer would be prohibited from receiving or that furnish, augment, diminish, or modify the evidence in the record.

6.14(2) Prohibitions on ex parte communications commence with the issuance of the notice of hearing in a contested case and continue for as long as the case is pending.

6.14(3) Written, oral or other forms of communication are "ex parte" if made without notice and opportunity for all parties to participate.

6.14(4) To avoid prohibited ex parte communications notice must be given in a manner reasonably calculated to give all parties a fair opportunity to participate. Where permitted, oral communications may be initiated through conference telephone call including all parties or their representatives.

6.14(5) Persons who jointly act as presiding officer in a pending contested case may communicate with each other without notice or opportunity for parties to participate.

6.14(6) The executive director or other persons may be present in deliberations or otherwise advise the presiding officer without notice or opportunity for parties to participate as long as they are not disqualified from participating in the making of a proposed or final decision under any provision of law and they comply with subrule 6.14(1).

6.14(7) Communications with the presiding officer involving uncontested scheduling or procedural matters do not require notice or opportunity for parties to participate. Parties should notify other parties prior to initiating such contact with the presiding officer when feasible, and shall notify other parties when seeking to continue hearings or other deadlines pursuant to rule 281—6.4(17A).

6.14(8) Disclosure of prohibited communications. A presiding officer who receives a prohibited ex parte communication during the pendency of a contested case must initially determine if the effect of the communication is so prejudicial that the presiding officer should be disqualified. If the presiding officer determines that disqualification is warranted, a copy of any prohibited written communication, all written responses to the communication, a written summary stating the substance of any prohibited oral or other communication not available in written form for disclosure, all responses made, and the identity of each person from whom the presiding officer received a prohibited ex parte communication shall be submitted for inclusion in the record under seal by protective order or disclosed. If the presiding officer determines that disqualification is not warranted, such documents shall be submitted for inclusion in the record and served on all parties. Any party desiring to rebut the prohibited communication must be allowed the opportunity to do so upon written request filed within ten days after notice of the communication.

6.14(9) Promptly after being assigned to serve as presiding officer at any stage in a contested case proceeding, a presiding officer shall disclose to all parties material factual information received through ex parte communication prior to such assignment unless the factual information has already been or shortly will be disclosed pursuant to Iowa Code section 17A.13(2) or through discovery. Factual information contained in an investigative report or similar document need not be separately disclosed by the presiding officer as long as such documents have been or will shortly be provided to the parties.

6.14(10) The presiding officer may render a proposed or final decision imposing appropriate sanctions for violations of this rule including default, a decision against the offending party, censure, or suspension or revocation of the privilege to practice before the agency. Violation of ex parte communication prohibitions by agency personnel shall be reported to the legal consultant for the department of education for possible sanctions including censure, suspension, dismissal, or other disciplinary action.

281—6.15(17A) Record.

6.15(1) Upon the request of any party, oral proceedings in whole or in part shall be either transcribed, if recorded by certified shorthand reporters, or copied if recorded by mechanical means, with the expense for the transcription of copies charged to the requesting party.

6.15(2) All recordings, stenographic notes or transcriptions of oral proceedings shall be maintained and preserved by the department for at least five years from the date of a decision.

6.15(3) The record of a hearing under these rules shall include:

a. All pleadings, motions and intermediate rulings.

b. All evidence received or considered and all other submissions.

c. A statement of matters officially noticed.

d. All questions and offers of proof, objections, and rulings thereon.

e. All proposed findings of fact and conclusions of law.

f. Any decision, opinion or report by the administrative law judge presented at the hearing.

281—6.16(17A) Recording costs. Upon request, the department of education shall provide a copy of the whole or any portion of the record at cost. The cost of preparing a copy of the record or of transcribing the hearing record shall be paid by the requesting party.

Parties who request that a hearing be recorded by certified shorthand reporters rather than by electronic means shall bear the cost of that recordation, unless otherwise provided by law.

281—6.17(290,17A) Decision and review.

6.17(1) The presiding officer, after due consideration of the record and the arguments presented, and with the advice and counsel of the staff members, shall make a decision on the appeal. The proposed decision shall be mailed to the parties or their representatives by regular mail.

6.17(2) The decision shall be based on the laws of the United States, the state of Iowa and the regulations and policies of the department of education and shall be in the best interest of education.

6.17(3) The decision of the presiding officer shall be placed on the agenda of the next regular board meeting for review of the record and decision unless the decision is within the province of the director to make.

6.17(4) Any adversely affected party may appeal a proposed decision to the state board within 20 days after issuance of the proposed decision.

6.17(5) An appeal of a proposed decision is initiated by filing a timely notice of appeal with the office of the director. The notice of appeal must be signed by the appealing party or a representative of that party and contain a certificate of service. The notice shall specify:

a. The names and addresses of the parties initiating the appeal;

b. The proposed decision to be appealed;

c. The specific findings or conclusions to which exception is taken and any other exceptions to the decision;

d. The relief sought; and

e. The grounds for relief.

6.17(6) Appeal procedures.

a. Unless otherwise ordered, within 15 days of a party's filing of the notice of appeal, each appealing party may file exceptions and briefs. Within 10 days after the filing of exceptions and briefs by the appealing party, any party may file a responsive brief;

b. Briefs shall cite any applicable legal authority and specify relevant portions of the record in the proceeding below;

c. Briefs shall be limited to a maximum length of 25 pages; and

d. An opportunity for oral arguments may be given with the consent of the board. Written requests to present oral arguments shall be filed with the briefs.

6.17(7) The board may affirm, modify, or vacate the decision, or may direct a rehearing before the director or the director's designee.

6.17(8) Copies of the final decision shall be sent to the parties or their representatives by regular mail within five days after state board action, if required, on the proposed decision.

6.17(9) 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 proposed 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.

6.17(10) Rescinded IAB 8/21/02, effective 9/25/02.

281—6.18(290) Finality of decision. The decision is final upon board approval of the presiding officer's decision.

281—6.19(17A) Default.

6.19(1) If a party fails to appear or participate in a contested case proceeding after proper service of notice, the presiding officer may, if no adjournment is granted, enter a default decision or proceed with the hearing and render a decision in the absence of the party.

6.19(2) Where appropriate and not contrary to law, any party may move for default against a party who has requested the contested case proceeding and has failed to file a required pleading or has failed to appear after proper service.

6.19(3) Default decisions or decisions rendered on the merits after a party has failed to appear or participate in a contested case proceeding become final agency action unless, within 15 days after the date of notification or mailing of the decision, a motion to vacate is filed and served on all parties or an appeal of a decision on the merits is timely initiated within the time provided. A motion to vacate must state all facts relied upon by the moving party which establish that good cause existed for that party's failure to appear or participate at the contested case proceeding. Each fact so stated must be substantiated

by at least one sworn affidavit of a person with personal knowledge of each such fact, which affidavit(s) must be attached to the motion.

6.19(4) The time for further appeal of a decision for which a timely motion to vacate has been filed is stayed pending a decision on the motion to vacate.

6.19(5) Properly substantiated and timely filed motions to vacate shall be granted only for good cause shown. The burden of proof as to good cause is on the moving party. Adverse parties shall have ten days to respond to a motion to vacate. Adverse parties shall be allowed to conduct discovery as to the issue of good cause and to present evidence on the issue prior to a decision on the motion, if a request to do so is included in that party's response.

6.19(6) "Good cause" for purposes of this rule shall have the same meaning as "good cause" for setting aside a default judgment under Iowa Rule of Civil Procedure 1.977.

6.19(7) A decision denying a motion to vacate is subject to further appeal within the time limit allowed for further appeal of a decision on the merits in the contested case proceeding.

6.19(8) If a motion to vacate is granted and no timely interlocutory appeal has been taken, the presiding officer shall issue another notice of hearing and the contested case shall proceed accordingly.

6.19(9) A default decision may award any relief consistent with the request for relief made in the petition and embraced in its issues but, unless the defaulting party has appeared, it cannot exceed the relief demanded.

6.19(10) A default decision may provide either that the default decision is to be stayed pending a timely motion to vacate or that the default decision is to take effect immediately.

281—6.20(17A) Application for rehearing of final decision. Any party may file an application for rehearing with the presiding officer stating the specific grounds therefor, and the relief sought, within 20 days after the issuance of any final decision by the board. A copy of the application shall be timely mailed by the department to all parties of record not joining therein. Such application for rehearing shall be deemed to have been denied unless the board or the presiding officer grants the application within 20 days of the filing. A rehearing shall not be granted unless it is necessary to correct a mistake of law or fact, or for other good cause.

281—6.21(17A) Rehearing.

6.21(1) In the event a rehearing is granted, the presiding officer, in arriving at a subsequent decision, may either review the record and arguments or may proceed with either a full or partial hearing under the appeal hearing provisions of this chapter.

6.21(2) Following the rehearing, the presiding officer shall place the proposed decision on the agenda of the next regular board meeting for review of the record and decision as provided for in rule 281—6.17(290,17A).

281—6.22(17A) Emergency adjudicative proceedings.

6.22(1) *Necessary emergency action.* To the extent necessary to prevent or avoid immediate danger to the public health, safety, or welfare and, consistent with the Constitution and other provisions of law, the department may issue a written order in compliance with Iowa Code section 17A.18 to suspend a license in whole or in part, order the cessation of any continuing activity, order affirmative action, or take other action within the jurisdiction of the department by emergency adjudicative order. Before issuing an emergency adjudicative order the department shall consider factors including, but not limited to, the following:

a. Whether there has been a sufficient factual investigation to ensure that the department is proceeding on the basis of reliable information;

b. Whether the specific circumstances which pose immediate danger to the public health, safety or welfare have been identified and determined to be continuing;

c. Whether the person required to comply with the emergency adjudicative order may continue to engage in other activities without posing immediate danger to the public health, safety or welfare;

d. Whether imposition of monitoring requirements or other interim safeguards would be sufficient to protect the public health, safety or welfare; and

e. Whether the specific action contemplated by the department is necessary to avoid the immediate danger.

6.22(2) *Issuance of order.*

a. An emergency adjudicative order shall contain findings of fact, conclusions of law, and policy reasons to justify the determination of an immediate danger in the department's decision to take immediate action.

b. The written emergency adjudicative order shall be immediately delivered to persons who are required to comply with the order by utilizing one or more of the following procedures:

(1) Personal delivery;

(2) Certified mail, return receipt requested, to the last address on file with the department;

(3) Certified mail to the last address on file with the department;

(4) First-class mail to the last address on file with the department; or

(5) Fax. Fax may be used as the sole method of delivery if the person required to comply with the order has filed a written request that department orders be sent by fax and has provided a fax number for that purpose.

c. To the degree practicable, the department shall select the procedure for providing written notice that best ensures prompt, reliable delivery.

6.22(3) *Oral notice.* Unless the written emergency adjudicative order is provided by personal delivery on the same day that the order issues, the department shall make reasonable immediate efforts to contact by telephone the persons who are required to comply with the order.

6.22(4) *Completion of proceedings.* After the issuance of an emergency adjudicative order, the department shall proceed as quickly as feasible to complete any proceedings that would be required if the matter did not involve an immediate danger.

Issuance of a written emergency adjudicative order shall include notification of the date on which departmental proceedings are scheduled for completion. After issuance of an emergency adjudicative order, continuance of further agency proceedings to a later date will be granted only in compelling circumstances upon application in writing.

281—6.23(256,17A) Additional requirements for specific programs.

6.23(1) *General rule.* If a specific federal program's statutes or regulations impose requirements on appeals to the state board of education, the director of education, or the department of education, those specific requirements shall be followed and are incorporated by this reference.

6.23(2) *Specific programs.* The following is a nonexhaustive list to which this rule applies.

a. Appeals under the Child and Adult Care Food Program (CACFP) shall be governed by the requirements contained in 7 CFR Section 226.6 as of May 15, 2014.

b. Due process complaints under Part B of the Individuals with Disabilities Education Act and Iowa Code chapter 256B shall be governed by Iowa Administrative Code 281—Chapter 41.

c. Due process complaints under Part C of the Individuals with Disabilities Education Act shall be governed by Iowa Administrative Code 281—Chapter 120.

[**ARC 1597C**, IAB 9/3/14, effective 10/8/14]

These rules are intended to implement Iowa Code sections 256.7(6), 275.16, 282.18, 282.18(5), 282.32, 285.12, and Iowa Code chapter 290 and chapter 17A.

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CHAPTER 7
CRITERIA FOR GRANTS

281—7.1(256,17A) Purpose. The department provides competitive grant funding to a variety of entities throughout the state for support of educational programs. To ensure equal access and objective evaluation of applicants for these funds, grant application materials shall contain, at minimum, specific content. Competitive program grant application packets shall be developed by the department in accordance with these rules unless prohibited by or in conflict with appropriation language, the Iowa Code, the Iowa Administrative Code, federal regulations or interagency agreements between the department and other state agencies.

281—7.2(256,17A) Definitions. For the purpose of these rules, the following definitions shall apply:

"Competitive program grant" means the collective activities of a competitive grant funded through the department.

"Department" means the Iowa department of education.

"Program period" means the period of time which the department intends to support the program without requiring the recompetition for funds. The program period is specified within the grant application.

"Service delivery area" means the defined geographic area for delivery of program services.

281—7.3(256,17A) Requirements. The following shall be included in all competitive program grant application materials made available by the department:

1. Funding source.
2. Program period.
3. Description of eligible applicants.
4. Services to be delivered.
5. Service delivery area.
6. Target population to be served (if applicable).
7. Funding purpose.
8. Funding restrictions.
9. Funding formula (if any).
10. Matching requirement (if any).
11. Reporting requirements.
12. Performance criteria.
13. Need for letters of support or other materials (if applicable).
14. Application due date.
15. Anticipated date of awarding grant.
16. Required components of submitted grant applications.
17. An explanation of the review process and the review criteria to be used by application evaluators, including the number of points allocated per required component.
18. Appeal process in the event an application is denied.

281—7.4(256,17A) Review process. The review process to be followed in determining the amount of funds to be approved for any competitive program grant shall be described in the application. The review criteria and point allocation for each criterion shall also be described in the grant application material.

The competitive program grant review committee shall be determined by the appropriate division administrator. The review committee members shall allocate points per review criterion when conducting the review.

In the event competitive program grant applications receive an equal number of points that necessitates a further determination of whether an applicant is to receive a grant, a second review shall be conducted by the division administrator or the division administrator's designee.

281—7.5(290,17A) Appeal of grant denial or termination. Any applicant may appeal the denial of a properly submitted competitive program grant application or the unilateral termination of a competitive program grant to the director of the department. Appeals must be in writing and received within ten working days of the date of the notice of decision and must be based on a contention that the process was conducted outside of statutory authority; violated state or federal law, policy, or rule; did not provide adequate public notice; was altered without adequate public notice; or involved conflict of interest by staff or committee members. The hearing and appeal procedures found in 281—Chapter 6 that govern director's decisions shall be applicable to any appeal of denial or termination.

In the notice of appeal, the grantee shall give a short and plain statement of the reasons for the appeal.

The director shall issue a decision within a reasonable time, not to exceed 60 days from the date of the hearing.

These rules are intended to implement Iowa Code section 256.9(7).

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[Filed 2/13/97, Notice 12/18/96—published 3/12/97, effective 4/16/97]

CHAPTER 8
ICN SUBSIDIZATION REIMBURSEMENT PROCEDURES
Rescinded IAB 12/16/98, effective 1/20/99

CHAPTERS 9 and 10
Reserved

TITLE II
ACCREDITED SCHOOLS AND SCHOOL DISTRICTS

CHAPTER 11
UNSAFE SCHOOL CHOICE OPTION

281—11.1(PL107-110) Purpose. Under the federal No Child Left Behind Act of 2001, Section 9532, each state receiving federal funds is required to establish and implement a statewide policy requiring that a student attending a persistently dangerous public elementary school or secondary school or who becomes a victim of a violent criminal offense while in or on the grounds of a public elementary or secondary school that the student attends be allowed to attend a safe school within the district.

281—11.2(PL107-110) Definitions. For purposes of this chapter, the following definitions apply:

"Department" means the Iowa department of education.

"Forcible felony" means any crime defined in Iowa Code section 702.11. This includes felonious child endangerment, assault, murder, sexual abuse, kidnapping, robbery, arson in the first degree, or burglary in the first degree. Forcible felonies are not willful injury in violation of Iowa Code section 708.4, subsection 2; sexual abuse in the third degree committed between spouses; sexual abuse in violation of Iowa Code section 709.4, subsection 2, paragraph *"c,"* subparagraph (4); or sexual exploitation by a counselor or therapist in violation of Iowa Code section 709.15.

"School" means an attendance center within a school district.

"School district" means a public school district in Iowa.

"School year" means from July 1 until June 30 of the following year.

281—11.3(PL107-110) Whole school option. Any student attending a persistently dangerous school as defined in this rule is eligible to transfer to a different school within the district. Transportation for students electing to transfer shall be provided according to the district's transportation policy. The transfers may be temporary or permanent, but must be in effect as long as the student's original school is identified as persistently dangerous.

In making the determination of whether a transfer should be temporary or permanent, the district shall consider the educational needs of the student, as well as other factors affecting the student's ability to succeed in the student's new school environment. The district is encouraged, but not required, to explore other appropriate options such as an agreement with a contiguous school district to accept students if there is no safe school within the transferring district.

11.3(1) A persistently dangerous school is one that meets the following criteria for three consecutive school years:

a. The school has violence-related, long-term suspensions or expulsions for more than 1 percent of the student population. Long-term suspensions or expulsions are more than ten days in length and require the action of the local school board. For purposes of this subrule, a violence-related, long-term suspension or expulsion occurs as a result of physical injury or the threat of physical injury to a student while the student is in the school building or on the grounds of the attendance center during the hours of the regular school day or while the student is in attendance at school-sponsored activities that occur during the hours before or after the regular school day under one of the following:

(1) A forcible felony as defined in rule 281—11.2(PL107-110);

(2) Offenses, excluding simple misdemeanors, involving physical assault under Iowa Code chapter 708;

(3) Offenses, excluding simple misdemeanors, involving sexual assault under Iowa Code chapter 709;

(4) Extortion under Iowa Code section 711.4;

(5) Use of incendiary or explosive devices such as bombs under Iowa Code section 712.5;

(6) Criminal gang activity under Iowa Code chapter 723A;

(7) Carrying or using a weapon under Iowa Code sections 724.3 and 724.4.

b. The school has two or more students expelled for violating the federal gun-free school laws.

c. The school has 1 percent of the enrolled student population or five students, whichever is greater, who exercised the individual student option defined in rule 281—11.4(PL107-110).

11.3(2) For the school year starting July 1, 2003, and in the years thereafter, a school identified as meeting the criteria in 11.3(1)*"a"* through *"c"* for one year shall be given a warning by the department. The school shall review the school's safety plan and prevention activities.

For the school year starting July 1, 2004, and in the years thereafter, a school identified as meeting the criteria in 11.3(1)*"a"* through *"c"* for two consecutive years shall develop and implement a remedial plan. The plan shall include schoolwide efforts to support positive student behavior and improve student discipline. The department shall conduct a site visit to the school.

For the school year starting July 1, 2005, and in the years thereafter, a school identified as meeting the criteria in 11.3(1)*"a"* through *"c"* for three consecutive years is eligible to be designated as a persistently dangerous school by the department. Prior to the department's assigning the designation, the district may submit information to the department including:

a. The school's safety plan;

b. Local efforts to address the school's safety concerns;

c. The school safety data reported to the state consistent with requirements of the federal Safe and Drug-Free Schools and Communities Program;

d. More current data that the school may have available but has not yet reported; and

e. Any other information deemed relevant.

Within 30 days of receipt and review of the information, the department may determine that the school demonstrates improvement and may delay the designation for one year. By July 31, the department may, upon review of information that demonstrates improvement, delay the designation for one year. The department shall determine whether the district has made sufficient progress to warrant further consideration as a persistently dangerous school.

Upon designation, the district shall adopt a corrective action plan, which shall be approved by the department. The department shall monitor the district's timely completion of the approved plan. The department shall annually assess the school using the criteria listed in 11.3(1)*"a"* through *"c"* by July 31 to determine whether the school shall remain identified as a persistently dangerous school for the following school year.

At minimum, a district that has one or more schools identified as persistently dangerous shall, within 14 days of the designation, notify parents of each student attending the school that the school has been identified by the department as persistently dangerous. The district must offer students the opportunity to transfer to a safe public school within the district; and for those students who accept the offer, the district shall complete the transfer. A district may deny the transfer if space at the requested school is unavailable. A district shall offer the parent other available options within the district, when available.

281—11.4(PL107-110) Individual student option. Any student who becomes a victim of a violent criminal offense shall, to the extent feasible, be permitted to transfer to another school within the district. For purposes of this rule, a victim of a violent criminal offense is a student who is physically injured or threatened with physical injury as a result of the commission of one or more of the following crimes against the student while the student is in the school building or on the grounds of the attendance center.

1. A forcible felony as define in rule 281—11.2(PL107-110);

2. Offenses, excluding simple misdemeanors, involving physical assault under Iowa Code chapter 708;

3. Offenses, excluding simple misdemeanors, involving sexual assault under Iowa Code chapter 709;

4. Extortion under Iowa Code section 711.4.

Within ten calendar days following the date of the request, a local school district shall offer an opportunity to transfer to the parent/guardian of a student who meets the definition of a victim of a violent crime.

281—11.5(PL107-110) District reporting. For purposes of federal compliance, districts shall report data and requested information related to this chapter in a manner prescribed by the department.

These rules are intended to implement Public Law 107-110, 115 Stat. 1425.

[Filed 3/14/03, Notice 12/11/02—published 4/2/03, effective 5/7/03]

[Filed 8/11/05, Notice 4/13/05—published 8/31/05, effective 10/5/05]

CHAPTER 12
GENERAL ACCREDITATION STANDARDS

[Prior to 9/7/88, see Public Instruction Department[670] Ch 4]

PREAMBLE

The goal for the early childhood through twelfth grade educational system in Iowa is to improve the learning, achievement, and performance of all students so they become successful members of a community and workforce. It is expected that each school and school district shall continue to improve its educational system so that more students will increase their learning, achievement, and performance.

Accreditation focuses on an ongoing school improvement process for schools and school districts. However, general accreditation standards are the minimum requirements that must be met by an Iowa public school district to be accredited. A public school district that does not maintain accreditation shall be merged, by the state board of education, with one or more contiguous school districts as required by Iowa Code subsection 256.11(12). A nonpublic school must meet the general accreditation standards if it wishes to be designated as accredited for operation in Iowa.

General accreditation standards are intended to fulfill the state's responsibility for making available an appropriate educational program that has high expectations for all students in Iowa. The accreditation standards ensure that each child has access to an educational program that meets the needs and abilities of the child regardless of race, color, national origin, gender, disability, religion, creed, marital status, geographic location, sexual orientation, gender identity, or socioeconomic status.

With local community input, school districts and accredited nonpublic schools shall incorporate accountability for student achievement into comprehensive school improvement plans designed to increase the learning, achievement, and performance of all students. As applicable, and to the extent possible, comprehensive school improvement plans shall consolidate federal and state program goal setting, planning, and reporting requirements. Provisions for multicultural and gender fair education, technology integration, global education, gifted and talented students, at-risk students, students with disabilities, and the professional development of all staff shall be incorporated, as applicable, into the comprehensive school improvement plan. See subrules 12.5(8) to 12.5(13), 12.7(1), and 12.8(1).

DIVISION I
GENERAL STANDARDS

281—12.1(256) General standards.

12.1(1) *Schools and school districts governed by general accreditation standards.* These standards govern the accreditation of all prekindergarten, if offered, or kindergarten through grade 12 school districts operated by public school corporations and the accreditation, if requested, of prekindergarten or kindergarten through grade 12 schools operated under nonpublic auspices. Each school district shall take affirmative steps to integrate students in attendance centers and courses. Schools and school districts shall collect and annually review district, attendance center, and course enrollment data on the basis of race, national origin, gender, and disability. Equal opportunity in programs shall be provided to all students regardless of race, color, national origin, gender, sexual orientation as defined in Iowa Code section 216.2 as amended by 2007 Iowa Acts, Senate File 427, section 1, gender identity as defined in Iowa Code section 216.2 as amended by 2007 Iowa Acts, Senate File 427, section 1, socioeconomic status, disability, religion, or creed. Nothing in this rule shall be construed as prohibiting any bona fide religious institution from imposing qualifications based upon religion when such qualifications are related to a bona fide religious purpose.

12.1(2) *School board.* Each school or school district shall be governed by an identifiable authority which shall exercise the functions necessary for the effective operation of the school and referred to in these rules as the "board."

12.1(3) *Application for accreditation.* The board of any school or school district that is not accredited on the effective date of these standards and which seeks accreditation shall file an application with the director, department of education, on or before the first day of January of the school year preceding the school year for which accreditation is sought.

12.1(4) *Accredited schools and school districts.* Each school or school district receiving accreditation under the provisions of these standards shall remain accredited except when by action of the state board of education it is removed from the list of accredited schools maintained by the department of education in accordance with Iowa Code subsections 256.11(11) and 256.11(12).

12.1(5) *When nonaccredited.* A school district shall be nonaccredited on the day after the date it is removed from the list of accredited schools by action of the state board of education. A nonpublic school shall be nonaccredited on the date established by the resolution of the state board, which shall be no later than the end of the school year in which the nonpublic school is declared to be nonaccredited.

12.1(6) *Alternative provisions for accreditation.* School districts may meet accreditation requirements through the provisions of Iowa Code sections 256.13, nonresident students; 273.7A, services to school districts; 279.20, superintendent—term; 280.15, joint employment and sharing; 282.7, attending in another corporation—payment; and 282.10, whole grade sharing. Nonpublic schools may meet accreditation requirements through the provisions of Iowa Code section 256.12.

12.1(7) *Minimum school calendar: set by annual hours or days of instruction.* The board of directors of a school district and the authorities in charge of an accredited nonpublic school shall adopt a school calendar that sets the number of days or hours of required attendance for student instruction, staff development and in-service time, and time for parent-teacher conferences. Prior to adopting the school calendar, the board of directors of a school district shall hold a public hearing on any proposed school calendar. The board and authorities in charge of an accredited nonpublic school shall notify the department annually of their decision to have a calendar based on days or based on hours. The length of the school calendar does not dictate the length of contract hours or days of employment for instructional and noninstructional staff. Time recorded under either a days or hours calendar system may include passing time between classes but shall exclude the lunch period. Time spent on parent-teacher conferences shall be considered instructional time. The school calendar may be operated any time during the school year of July 1 to June 30 as defined by Iowa Code section 279.10 as amended by 2013 Iowa Acts, House File 215, section 81. A minimum of 180 days or 1,080 hours of instruction shall be set in the school calendar, for school districts and accredited nonpublic schools beginning no sooner than a day during the calendar week in which the first day of September falls, and shall be used for student instruction. However, if the first day of September falls on a Sunday, school may begin any day during the calendar week preceding September 1. These 180 days shall meet the requirements of "day of school" for those districts or accredited nonpublic schools that are utilizing a schedule based on days, defined in paragraph 12.1(8)*"a,"* "minimum school day" defined in subrule 12.1(9), and "day or hour of attendance" defined in subrule 12.1(10). (Exception: A school or school district may, by board policy, excuse graduating seniors up to five days or 30 hours of instruction after school or school district requirements for graduation have been met.) If additional days are added to the regular school calendar because of inclement weather, a graduating senior who has met the school district's requirements for graduation may be excused from attendance during the extended school calendar. A school district may begin employment of instructional and noninstructional staff, for in-service training and development purposes, earlier than the first day of school. A school or school district choosing a schedule based on hours shall follow the definition of "hour of school" set forth in paragraph 12.1(8)*"b."*

12.1(8) *Day and hour of school.*

a. Day of school. A day of school is a day during which the school or school district is in session and students are under the guidance and instruction of the instructional professional staff. School shall be considered in session during parent-teacher conferences as well as during activities such as field trips if students are engaged in programs or activities under the guidance and direction of the instructional professional staff. All grade levels of the school or school district must be operated and available for attendance by all students. An exception is if either the elementary or secondary grades are closed and provided that the time missed is made up at some other point during the school calendar so as to meet the minimum of 180 days or 1,080 hours of instruction for all grades 1 through 12.

b. Hour of school. For schools or school districts adopting a calendar based on a 1,080-hour minimum schedule, an official hour of school is an hour in which the school or school district is in session and students are under the guidance and instruction of the instructional professional staff. For

purposes of this rule, an "hour" is defined as 60 minutes. The calculation of minimum hours shall exclude the lunch period. Passing time between classes may be counted as part of the hour requirement. School shall be considered in session during parent-teacher conferences as well as during activities such as field trips if students are engaged in programs or activities under the guidance and direction of the instructional professional staff. All grade levels of the school or school district must be operated and available for attendance by all students. Schools or school districts have flexibility on how they can reach the threshold of 1,080 hours of instruction but must keep annual documentation of how they met that standard. The school calendar may include more than or less than or may equal the 180-day schedule. The hours included in an individual day under an hours format may vary.

12.1(9) *Minimum school day.* A school day, for those utilizing a school calendar based on days, shall consist of a minimum of 6 hours of instructional time for all grades 1 through 12. The minimum hours shall exclude the lunch period. Passing time between classes may be counted as part of the 6-hour requirement. School shall be considered in session during parent-teacher conferences as well as during activities such as field trips if students are engaged in programs or activities under the guidance and direction of the instructional professional staff.

12.1(10) *Day or hour of attendance.* A day or hour of attendance shall be a day or hour during which students were present and under the guidance and instruction of the instructional professional staff. When staff development designated by the board or by authorities in charge of an accredited nonpublic school occurs outside of the time required for a "minimum school day," students shall be counted in attendance.

12.1(11) *Kindergarten.* The number of instructional days or hours within the school calendar and the length of the school day for kindergarten shall be defined by the board or by authorities in charge of an accredited nonpublic school that operates a kindergarten program.

[**ARC 1115C**, IAB 10/16/13, effective 11/20/13]

DIVISION II
DEFINITIONS

281—12.2(256) Definitions. For purposes of these rules, the following definitions shall apply:

"Alternative options education programs" means alternative programs or schools as identified in Iowa Code section 280.19A.

"Alternative program" means a class or environment established within the regular educational program and designed to accommodate specific student educational needs such as, but not limited to, work-related training; reading, mathematics or science skills; communication skills; social skills; physical skills; employability skills; study skills; or life skills.

"Alternative school" means an environment established apart from the regular educational program and that includes policies and rules, staff, and resources designed to accommodate student needs and to provide a comprehensive education consistent with the student learning goals and content standards established by the school district or by the school districts participating in a consortium. Students attend by choice.

"Annual improvement goals" means the desired one-year rate of improvement for students. Data from multiple measures may be used to determine the rate of improvement.

"At-risk student" means any identified student who needs additional support and who is not meeting or not expected to meet the established goals of the educational program (academic, personal/social, career/vocational). At-risk students include but are not limited to students in the following groups: homeless children and youth, dropouts, returning dropouts, and potential dropouts.

"Baseline data" means information gathered at a selected point in time and used thereafter as a basis from which to monitor change.

"Benchmarks" means specific knowledge and skills anchored to content standards that a student needs to accomplish by a specific grade or grade span.

"Board" means the board of directors in charge of a public school district or the authorities in charge of an accredited nonpublic school.

"Competency-based education" means that learners advance through content or earn credit based on demonstration of proficiency of competencies. Proficiency for this context is the demonstrated skill or knowledge required to advance to and be successful in higher levels of learning in that content area. Some students may advance through more content or earn more credit than in a traditional school year while others might take more than a traditional school year to advance through the same content and to earn credit. A student must meet the requirements of 12.5(14) to be awarded credit in a competency-based system of education.

"Comprehensive school improvement plan" means a design that shall describe how the school or school district will increase student learning, achievement, and performance. This ongoing improvement design may address more than student learning, achievement, and performance.

"Content standards" means broad statements about what students are expected to know and be able to do.

"Curriculum" means a plan that outlines what students shall be taught. Curriculum refers to all the courses offered, or all the courses offered in a particular area of study.

"Department" means the department of education.

"Districtwide" means all attendance centers within a school district or accredited nonpublic school.

"Districtwide assessments" means large-scale achievement or performance measures. At least one districtwide assessment shall allow for the following: the comparison of the same group of students over time as they progress through the grades or the cross-sectional comparison of students at the same grades over multiple years.

"Districtwide progress" means the quantifiable change in school or school district student achievement and performance.

"Dropout" means a school-age student who is served by a public school district and enrolled in any of grades seven through twelve and who does not attend school or withdraws from school for a reason other than death or transfer to another approved school or school district or has been expelled with no option to return.

"Educational program." The educational program adopted by the board is the entire offering of the school, including out-of-class activities and the sequence of curriculum areas and activities. The educational program shall provide articulated, developmental learning experiences from the date of student entrance until high school graduation.

"Enrolled student" means a person that has officially registered with the school or school district and is taking part in the educational program.

"Incorporate" means integrating career education, multicultural and gender fair education, technology education, global education, higher-order thinking skills, learning skills, and communication skills into the total educational program.

"Indicators" provide information about the general status, quality, or performance of an educational system.

"Library program" means an articulated sequential kindergarten through grade 12 library or media program that enhances student achievement and is integral to the school district's curricula and instructional program. The library program is planned and implemented by a qualified teacher librarian working collaboratively with the district's administration and instructional staff. The library program services provided to students and staff shall include the following:

1. Support of the overall school curricula;
2. Collaborative planning and teaching;
3. Promotion of reading and literacy;
4. Information literacy instruction;
5. Access to a diverse and appropriate school library collection; and
6. Learning enhancement through technologies.

"Long-range goals" means desired targets to be reached over an extended period of time.

"Multiple assessment measures," for reporting to the local community or the state, means more than one valid and reliable instrument that quantifies districtwide student learning, including specific grade-level data.

"Performance levels." The federal Elementary and Secondary Education Act (ESEA) requires that at least three levels of performance be established to assist in determining which students have or have not achieved a satisfactory or proficient level of performance. At least two of those three levels shall describe what all students ought to know or be able to do if their achievement or performance is deemed proficient or advanced. The third level shall describe students who are not yet performing at the proficient level. A school or school district may establish more than three performance levels that include all students for districtwide or other assessments.

"Physical activity" means any movement, manipulation, or exertion of the body that can lead to improved levels of physical fitness and quality of life.

"Potential dropouts" means resident pupils who are enrolled in a public or nonpublic school who demonstrate poor school adjustment as indicated by two or more of the following:

1. High rate of absenteeism, truancy, or frequent tardiness.
2. Limited or no extracurricular participation or lack of identification with school including, but not limited to, expressed feelings of not belonging.
3. Poor grades including, but not limited to, failing in one or more school subjects or grade levels.
4. Low achievement scores in reading or mathematics which reflect achievement at two years or more below grade level.

"Prekindergarten program" includes a school district's implementation of the preschool program established pursuant to 2007 Iowa Acts, House File 877, section 2, and is otherwise described herein in subrule 12.5(1).

"Proficient," as it relates to content standards, characterizes student performance at a level that is acceptable by the school or school district.

"Returning dropouts" means resident pupils who have been enrolled in a public or nonpublic school in any of grades seven through twelve who withdrew from school for a reason other than transfer to another school or school district and who subsequently enrolled in a public school in the district.

"School" means an accredited nonpublic school.

"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 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.

"School district" means a public school district.

"School improvement advisory committee" means a committee, as defined in Iowa Code section 280.12, that is appointed by the board. Committee membership shall include students, parents, teachers, administrators, and representatives from the local community which may include business, industry, labor, community agencies, higher education, or other community constituents. To the extent possible, committee membership shall have balanced representation of the following: race, gender, national origin, and disability. The school improvement advisory committee as defined by Iowa Code section 280.12 and the board are also part of, but not inclusive of, the local community.

"Student learning goals" means general statements of expectations for all graduates.

"Students with disabilities" means students who have individualized education programs regardless of the disability.

"Subgroups" means a subset of the student population that has a common characteristic. Subgroups include, but are not limited to, gender, race, students with disabilities, and socioeconomic status.

"Successful employment in Iowa" may be determined by, but is not limited to, reviewing student achievement and performance based on locally identified indicators such as earnings, educational attainment, reduced unemployment, and the attainment of employability skills.
[**ARC 7783B**, IAB 5/20/09, effective 6/24/09; **ARC 1116C**, IAB 10/16/13, effective 11/20/13]

DIVISION III
ADMINISTRATION

281—12.3(256) Administration. The following standards shall apply to the administration of accredited schools and school districts.

12.3(1) *Board records.* Each board shall adopt by written policy a system for maintaining accurate records. The system shall provide for recording and maintaining the minutes of all board meetings, coding all receipts and expenditures, and recording and filing all reports required by the Iowa Code or requested by the director of the department of education. Financial records of school districts shall be maintained in a manner as to be easily audited according to accepted accounting procedures.

12.3(2) *Policy manual.* The board shall develop and maintain a policy manual which provides a codification of its policies, including the adoption date, the review date, and any revision date for each policy. Policies shall be reviewed at least every five years to ensure relevance to current practices and compliance with the Iowa Code, administrative rules and decisions, and court decisions.

12.3(3) *Personnel evaluation.* Each board shall adopt evaluation criteria and procedures for all contracted staff. The evaluation processes shall conform to Iowa Code sections 279.14 and 279.23A.

12.3(4) *Student records.* Each board shall require its administrative staff to establish and maintain a system of student records. This system shall include for each student a permanent office record and a cumulative record.

The permanent office record shall serve as a historical record of official information concerning the student's education. The permanent office record shall be recorded and maintained under the student's legal name. At a minimum, the permanent office record should contain evidence of attendance and educational progress, serve as an official transcript, contain other data for use in planning to meet student needs, and provide data for official school and school district reports. This record is to be permanently maintained and stored in a fire-resistant safe or vault or can be maintained and stored electronically with a secure backup file.

The cumulative record shall provide a continuous and current record of significant information on progress and growth. It should reflect information such as courses taken, scholastic progress, school attendance, physical and health record, experiences, interests, aptitudes, attitudes, abilities, honors, extracurricular activities, part-time employment, and future plans. It is the "working record" used by the instructional professional staff in understanding the student. At the request of a receiving school or school district, a copy of the cumulative record shall be sent to officials of that school when a student transfers.

For the sole purpose of implementing an interagency agreement with state and local agencies in accordance with Iowa Code section 280.25, a student's permanent record may include information contained in the cumulative record as defined above.

The board shall adopt a policy concerning the accessibility and confidentiality of student records that complies with the provisions of the federal Family Educational Rights and Privacy Act of 1974 and Iowa Code chapter 22.

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, Iowa Code section 280.14, and the requirements in the introductory paragraph of subrule 12.5(5).

12.3(6) *Student responsibility and discipline.* The board shall adopt student responsibility and discipline policies as required by Iowa Code section 279.8. The board shall involve parents, students, instructional and noninstructional professional staff, and community members in the development and revision of those policies where practicable or unless specific policy is mandated by legislation. The policies shall relate to the educational purposes of the school or school district. The policies shall

include, but are not limited to, the following: attendance; use of tobacco; the use or possession of alcoholic beverages or any controlled substance; harassment of or by students and staff as detailed in subrule 12.3(13); violent, destructive, and seriously disruptive behavior; suspension, expulsion, emergency removal, weapons, and physical restraint; out-of-school behavior; participation in extracurricular activities; academic progress; and citizenship.

The policies shall ensure due process rights for students and parents, including consideration for students who have been identified as requiring special education programs and services.

The board shall also consider the potential, disparate impact of the policies on students because of race, color, national origin, gender, sexual orientation as defined in Iowa Code section 216.2 as amended by 2007 Iowa Acts, Senate File 427, section 1, gender identity as defined in Iowa Code section 216.2 as amended by 2007 Iowa Acts, Senate File 427, section 1, disability, religion, creed, or socioeconomic status.

The board shall publicize its support of these policies, its support of the staff in enforcing them, and the staff's accountability for implementing them.

12.3(7) *Health services.* Rescinded IAB 12/5/07, effective 1/9/08.

12.3(8) *Audit of school funds.* This subrule applies to school districts. The results of the annual audit of all school district funds conducted by the state auditor or a private auditing firm shall be made part of the official records of the board as described in Iowa Code section 11.6.

12.3(9) *School or school district building grade-level organization.* The board shall adopt a grade-level organization for the buildings under its jurisdiction as described in Iowa Code section 279.39.

12.3(10) *Report on accredited nonpublic school students.* Rescinded IAB 12/5/07, effective 1/9/08.

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.

12.3(12) *Standards for library programs.* The board of directors of each school district shall establish a K-12 library program to support the student achievement goals of the total school curriculum.

a. A qualified teacher librarian, licensed by the board of educational examiners, who works with students, teachers, support staff and administrators shall direct the library program and provide services and instruction in support of the curricular goals of each attendance center. The teacher librarian shall be a member of the attendance center instructional team with special expertise in identifying resources and technologies to support teaching and learning. The teacher librarian and classroom teachers shall collaborate to develop, teach, and evaluate attendance center curricular goals with emphasis on promoting inquiry and critical thinking; providing information literacy learning experiences to help students access, evaluate, use, create, and communicate information; enhancing learning and teaching through technology; and promoting literacy through reader guidance and activities that develop capable and independent readers.

b. The library program shall be regularly reviewed and revised and shall be designed to meet the following goals:

(1) To provide for methods to improve library collections to meet student and staff needs;

(2) To make connections with parents and the community;

(3) To support the district's school improvement plan;

(4) To provide access to or support for professional development for the teacher librarian;

(5) To provide current technology and electronic resources to ensure that students become skillful and discriminating users of information;

(6) To include a current and diverse collection of fiction and nonfiction materials in a variety of formats to support student and curricular needs; and

(7) To include a plan for annually updating and replacing library materials, supports, and equipment.

c. The board of directors of each school district shall adopt policies to address selection and reconsideration of school library materials; confidentiality of student library records; and legal and ethical use of information resources, including plagiarism and intellectual property rights.

12.3(13) *Policy declaring harassment and bullying against state and school policy.* The policy adopted by the board regarding harassment of or by students and staff shall declare harassment and bullying in schools, on school property, and at any school function or school-sponsored activity regardless of its location to be against state and school policy. The board shall make a copy of the policy available to all school employees, volunteers, students, and parents or guardians and shall take all appropriate steps to bring the policy against harassment and bullying and the responsibilities set forth in the policy to the attention of school employees, volunteers, students, and parents or guardians. Each policy shall, at a minimum, include all of the following components:

a. A statement declaring harassment and bullying to be against state and school policy. The statement shall include but not be limited to the following provisions:

(1) School employees, volunteers, and students in school, on school property, or at any school function or school-sponsored activity shall not engage in harassing and bullying behavior.

(2) School employees, volunteers, and students shall not engage in reprisal, retaliation, or false accusation against a victim, a witness, or an individual who has reliable information about such an act of harassment or bullying.

b. A definition of harassment and bullying consistent with the following: Harassment and bullying shall be construed to mean any electronic, written, verbal, or physical act or conduct toward a student which is based on the student's actual or perceived age, color, creed, national origin, race, religion, marital status, sex, sexual orientation, gender identity, physical attributes, physical or mental ability or disability, ancestry, political party preference, political belief, socioeconomic status, or familial status, and which creates an objectively hostile school environment that meets one or more of the following conditions:

(1) Places the student in reasonable fear of harm to the student's person or property.

(2) Has a substantially detrimental effect on the student's physical or mental health.

(3) Has the effect of substantially interfering with a student's academic performance.

(4) Has the effect of substantially interfering with the student's ability to participate in or benefit from the services, activities, or privileges provided by a school.

The local board policy must set forth all 17 of the above-enumerated traits or characteristics, but does not need to be limited to the 17 enumerated traits or characteristics.

c. A description of the type of behavior expected from school employees, volunteers, parents or guardians, and students relative to prevention, reporting, and investigation of harassment or bullying.

d. The consequences and appropriate remedial action for a person who violates the antiharassment and antibullying policy.

e. A procedure for reporting an act of harassment or bullying, including the identification by job title of the school official responsible for ensuring that the policy is implemented, and the identification of the person or persons responsible for receiving reports of harassment or bullying.

f. A procedure for the prompt investigation of complaints, identifying either the school superintendent or the superintendent's designee as the individual responsible for conducting the investigation, including a statement that investigators will consider the totality of circumstances presented in determining whether conduct objectively constitutes harassment or bullying under this subrule.

g. A statement of the manner in which the policy will be publicized.

The board shall integrate its policy into its comprehensive school improvement plan. The board shall develop and maintain a system to collect harassment and bullying incidence data, and report such data, on forms specified by the department, to the local community and to the department.

[**ARC 0016C**, IAB 2/22/12, effective 3/28/12 (See Delay note at end of chapter)]

DIVISION IV
SCHOOL PERSONNEL

281—12.4(256) School personnel. License/certificate and endorsement standards required in this rule relate to licenses/certificates and endorsements issued by the state board of educational examiners. The following standards shall apply to personnel employed in accredited schools.

12.4(1) *Instructional professional staff.* Each person who holds a license/certificate endorsed for the service for which that person is employed shall be eligible for classification as a member of the instructional professional staff.

12.4(2) *Noninstructional professional staff.* A person who holds a statement of professional recognition, including but not limited to a physician, dentist, nurse, speech therapist, or a person in one of the other noninstructional professional areas designated by the state board of education, shall be eligible for classification as a member of the noninstructional professional staff.

12.4(3) *Basis for approval of professional staff.* Each member of the professional staff shall be classified as either instructional or noninstructional. An instructional professional staff member shall be regarded as approved when holding either an appropriate license/certificate with endorsement or endorsements, or a license/certificate with an endorsement statement, indicating the specific teaching assignments that may be given. A noninstructional professional staff member shall be regarded as approved when holding a statement of professional recognition for the specific type of noninstructional professional school service for which employed.

12.4(4) *Required administrative personnel.* Each board that operates both an elementary school and a secondary school shall employ as its executive officer and chief administrator a person who holds a license/certificate endorsed for service as a superintendent. The board of a school district may meet this requirement by contracting with its area education agency for "superintendency services" as provided by Iowa Code section 273.7A. The individual employed or contracted for as superintendent may serve as an elementary principal or as a high school principal in that school or school district provided that the superintendent holds the proper licensure/certification. For purposes of this subrule, high school means a school which commences with either grade 9 or grade 10, as determined by the board of directors of the school district, or by the governing authority of the nonpublic school in the case of nonpublic schools. Boards of school districts may jointly employ a superintendent, provided such arrangements comply with the provisions of Iowa Code subsection 279.23(4).

12.4(5) *Staffing policies—elementary schools.* The board operating an elementary school shall develop and adopt staffing policies designed to attract, retain, and effectively utilize competent personnel. Each board operating an elementary school shall employ at least one elementary principal. This position may be combined with that of secondary principal or with a teaching assignment at the elementary or secondary level, provided the individual holds the proper licenses/certificates and endorsements.

When grades seven and eight are part of an organized and administered junior high school, the staffing policies adopted by the board for secondary schools shall apply. When grades seven and eight are part of an organized and administered middle school, the staffing policies adopted by the board for elementary schools shall apply.

12.4(6) *Staffing policies—secondary schools.* The board operating a secondary school shall develop and adopt staffing policies designed to attract, retain, and effectively utilize competent personnel. Each board operating a secondary school shall employ at least one secondary principal. This position may be combined with that of elementary principal or with a teaching assignment at the elementary or secondary level, provided the individual holds the proper licenses/certificates and endorsements. This position may be combined with that of superintendent, but one person may not serve as elementary principal, secondary principal, and superintendent.

12.4(7) *Principal.* "Principal" means a licensed/certificated member of a school's instructional staff who serves as an instructional leader, coordinates the process and substance of educational and instructional programs, coordinates the budget of the school, provides formative evaluation for all practitioners and other persons in the school, recommends or has effective authority to appoint, assign, promote, or transfer personnel in a school building, implements the local school board's policy in a manner consistent with professional practice and ethics, and assists in the development and supervision of a school's student activities program.

12.4(8) *Teacher.* A teacher shall be defined as a member of the instructional professional staff who holds a license/certificate endorsed for the type of position in which employed. A teacher diagnoses, prescribes, evaluates, and directs student learnings in terms of the school's objectives, either singly or in concert with other professional staff members; shares responsibility with the total professional staff for developing educational procedures and student activities to be used in achieving the school's objectives; supervises educational aides who assist in serving students for whom the teacher is responsible; and evaluates or assesses student progress during and following instruction in terms of the objectives sought, and uses this information to develop further educational procedures.

12.4(9) *Educational assistant.* An educational assistant shall be defined as an employee who, in the presence or absence of an instructional professional staff member but under the direction, supervision, and control of the instructional professional staff, supervises students or assists in providing instructional and other direct educational services to students and their families. An educational assistant shall not substitute for or replace the functions and duties of a teacher as established in subrule 12.4(8).

During the initial year of employment, an educational assistant shall complete staff development approved by the board as provided in subrule 12.7(1).

12.4(10) *Record of license/certificate or statement of professional recognition.* The board shall require each administrator, teacher, support service staff member, and noninstructional professional staff member on its staff to supply evidence that each holds a license/certificate or statement of professional recognition which is in force and valid for the type of position in which employed.

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 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 authorizations and their specific assignment(s) with the authorization(s).

12.4(12) *Nurses.* The board 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).

12.4(13) *Prekindergarten staff.* Prekindergarten teachers shall hold a license/certificate valid for the prekindergarten level. The board shall employ personnel as necessary to provide effective supervision and instruction in the prekindergarten program.

12.4(14) *Physical examination.* Rescinded IAB 2/22/12, effective 3/28/12.

12.4(15) *Support staff.* The board shall develop and implement procedures for the use of educational support staff to augment classroom instruction and to meet individual student needs. These staff members may be employed by the board or by the area education agency.

12.4(16) *Volunteer.* A volunteer shall be defined as an individual who, without compensation or remuneration, provides a supportive role and performs tasks under the direction, supervision, and control of the school or school district staff. A volunteer shall not work as a substitute for or replace the functions and duties of a teacher as established in subrule 12.4(8).

[**ARC 0016C**, IAB 2/22/12, effective 3/28/12 (See Delay note at end of chapter)]

DIVISION V
EDUCATION PROGRAM

281—12.5(256) Education program. The following education program standards shall be met by schools and school districts for accreditation with the start of the 1989-1990 school year.

12.5(1) *Prekindergarten program.* If a school offers a prekindergarten program, the program shall be designed to help children to work and play with others, to express themselves, to learn to use and manage their bodies, and to extend their interests and understanding of the world about them. The prekindergarten program shall relate the role of the family to the child's developing sense of self and perception of others. Planning and carrying out prekindergarten activities designed to encourage cooperative efforts between home and school shall focus on community resources. A prekindergarten teacher shall hold a license/certificate licensing/certifying that the holder is qualified to teach in prekindergarten. A nonpublic school which offers only a prekindergarten may, but is not required to, seek and obtain accreditation.

12.5(2) *Kindergarten program.* The kindergarten program shall include experiences designed to develop healthy emotional and social habits and growth in the language arts and communication skills, as well as a capacity for the completion of individual tasks, and protect and increase physical well-being with attention given to experiences relating to the development of life skills and human growth and development. A kindergarten teacher shall be licensed/certificated to teach in kindergarten. An accredited nonpublic school must meet the requirements of this subrule only if the nonpublic school offers a kindergarten program.

12.5(3) *Elementary program, grades 1-6.* The following areas shall be taught in grades one through six: English-language arts, social studies, mathematics, science, health, human growth and development, physical education, traffic safety, music, and visual art.

In implementing the elementary program standards, the following general curriculum definitions shall be used.

a. English-language arts. English-language arts instruction shall include the following communication processes: speaking; listening; reading; writing; viewing; and visual expression and nonverbal communication. Instruction shall incorporate language learning and creative, logical, and critical thinking. The following shall be taught: oral and written composition; communication processes and skills, including handwriting and spelling; literature; creative dramatics; and reading.

b. Social studies. Social studies instruction shall include citizenship education, history, and social sciences. Democratic beliefs and values, problem-solving skills, and social and political participation

skills shall be incorporated. Instruction shall encompass geography, history of the United States and Iowa, and cultures of other peoples and nations. American citizenship, including the study of national, state, and local government; and the awareness of the physical, social, emotional and mental self shall be infused in the instructional program.

c. Mathematics. Mathematics instruction shall include number sense and numeration; concepts and computational skills with whole numbers, fractions, mixed numbers and decimals; estimation and mental arithmetic; geometry; measurement; statistics and probability; and patterns and relationships. This content shall be taught through an emphasis on mathematical problem solving, reasoning, and applications; language and symbolism to communicate mathematical ideas; and connections among mathematical topics and between mathematics and other disciplines. Calculators and computers shall be used in concept development and problem solving.

d. Science. Science instruction shall include life, earth, and physical science and shall incorporate hands-on process skills; scientific knowledge; application of the skills and knowledge to students and society; conservation of natural resources; and environmental awareness.

e. Health. Health instruction shall include personal health; food and nutrition; environmental health; safety and survival skills; consumer health; family life; substance abuse and nonuse, encompassing the effects of alcohol, tobacco, drugs, and poisons on the human body; human sexuality, self-esteem, stress management, and interpersonal relationships; emotional and social health; health resources; and prevention and control of disease, and the characteristics of communicable diseases, including acquired immune deficiency syndrome.

f. Physical education. Physical education instruction shall include movement experiences and body mechanics; fitness activities; rhythmic activities; stunts and tumbling; simple games and relays; sports skills and activities; and water safety.

g. Traffic safety. Traffic safety instruction shall include pedestrian safety; bicycle safety; auto passenger safety; school bus passenger safety; seat belt use; substance education; and the application of legal responsibility and risk management to these concepts.

h. Music. Music instruction shall include skills, knowledge, and attitudes and shall include singing and playing music; listening to and using music; reading and writing music; recognizing the value of the world's musical heritage; respecting individual musical aspirations and values; and preparing for consuming, performing, or composing.

i. Visual art. Visual art instruction shall include perceiving, comprehending, and evaluating the visual world; viewing and understanding the visual arts; developing and communicating imaginative and inventive ideas; and making art.

12.5(4) *Junior high program, grades 7 and 8.* The following shall be taught in grades 7 and 8: English-language arts, social studies, mathematics, science, health, human growth and development, physical education, music, visual art, family and consumer education, career education, and technology education. Instruction in the following areas shall include the contributions and perspectives of persons with disabilities, both men and women, and persons from diverse racial and ethnic groups, and shall be designed to eliminate career and employment stereotypes.

In implementing the junior high program standards, the following general curriculum definitions shall be used.

a. English-language arts. Same definition as in 12.5(3)*"a"* with the exclusion of handwriting.

b. Social studies. Social studies instruction shall include citizenship education, history and social sciences. Democratic beliefs and values, problem-solving skills, and social and political participation skills shall be incorporated. Instruction shall encompass history, economics, geography, government including American citizenship, behavioral sciences, and the cultures of other peoples and nations. Strategies for continued development of positive self-perceptions shall be infused.

c. Mathematics. Mathematics instruction shall include number and number relationships including ratio, proportion, and percent; number systems and number theory; estimation and computation; geometry; measurement; statistics and probability; and algebraic concepts of variables, patterns, and functions. This content shall be taught through an emphasis on mathematical problem solving, reasoning, and applications; language and symbolism to communicate mathematical ideas; and

connections among mathematical topics and between mathematics and other disciplines. Calculators and computers shall be used in concept development and problem solving.

d. *Science.* Same definition as in 12.5(3)*"d."*

e. *Health.* Health instruction shall include personal health; food and nutrition; environmental health; safety and survival skills; consumer health; family life; substance abuse and nonuse, encompassing the effects of alcohol, tobacco, drugs, and poisons on the human body; human sexuality, self-esteem, stress management, and interpersonal relationships; emotional and social health; health resources; and prevention and control of disease and the characteristics of communicable diseases, including sexually transmitted diseases and acquired immune deficiency syndrome.

f. *Physical education.* Physical education shall include the physical fitness activities that increase cardiovascular endurance, muscular strength, and flexibility; sports and games; tumbling and gymnastics; rhythms and dance; water safety; leisure and lifetime activities.

g. *Music.* Same definition as in 12.5(3)*"h"* with the addition of using music as an avocation or vocation.

h. *Visual art.* Same definition as in 12.5(3)*"i"* with the addition of using visual arts as an avocation or vocation.

i. *Family and consumer education.* Family and consumer education instruction shall include the development of positive self-concept, understanding personal growth and development and relationships with peers and family members in the home, school and community, including men, women, minorities and persons with disabilities. Subject matter emphasizes the home and family, including parenting, child development, textiles and clothing, consumer and resource management, foods and nutrition, housing, and family and individual health. This subrule shall not apply to nonpublic schools.

j. *Career education.* Career education instruction shall include exploration of employment opportunities, experiences in career decision making, and experiences to help students integrate work values and work skills into their lives. This subrule shall not apply to nonpublic schools. However, nonpublic schools shall comply with subrule 12.5(7).

k. *Technology education.* Technology education instruction shall include awareness of technology and its impact on society and the environment; furthering students' career development by contributing to their scientific principles, technical information and skills to solve problems related to an advanced technological society; and orienting students to technologies which impact occupations in all six of the required service areas. The purpose of this instruction is to help students become technologically literate and become equipped with the necessary skills to cope with, live in, work in, and contribute to a highly technological society. This subrule shall not apply to nonpublic schools.

l. *Secondary credit.*

(1) An individual pupil in a grade that precedes ninth grade may be allowed to take a course for secondary credit if all of the following are true:

1. The pupil satisfactorily completes the course.

2. The course is taught by a teacher licensed by the Iowa board of educational examiners for grades 9-12 and endorsed in the subject area.

3. The course meets all components listed in subrule 12.5(5) for the specific curricular area.

4. The board of the school district or the authorities in charge of the nonpublic school have developed enrollment criteria that a student must meet to be enrolled in the course.

(2) Neither school districts nor accredited nonpublic schools are mandated to offer secondary credit under this paragraph. If credit is offered under this paragraph, the credit must apply toward graduation requirements of the district or accredited nonpublic school.

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.

In implementing the high school program standards, the following curriculum standards shall be used.

a. English-language arts (six units). English-language arts instruction shall include the following communication processes: speaking; listening; reading; writing; viewing; and visual expression and nonverbal communication. Instruction shall incorporate language learning and creative, logical, and critical thinking. The program shall encompass communication processes and skills; written composition; speech; debate; American, English, and world literature; creative dramatics; and journalism.

b. Social studies (five units). Social studies instruction shall include citizenship education, history, and the social sciences. Instruction shall encompass the history of the United States and the history and cultures of other peoples and nations including the analysis of persons, events, issues, and historical evidence reflecting time, change, and cause and effect. Instruction in United States government shall include an overview of American government through the study of the United States Constitution, the bill of rights, the federal system of government, and the structure and relationship between the national, state, county, and local governments; and voter education including instruction in statutes and procedures, voter registration requirements, the use of paper ballots and voting machines in the election process, and the method of acquiring and casting an absentee ballot. Students' knowledge of the Constitution and the bill of rights shall be assessed. Economics shall include comparative and consumer studies in relation to the market and command economic systems. Geography shall include the earth's physical and cultural features, their spatial arrangement and interrelationships, and the forces that affect them. Sociology, psychology, and anthropology shall include the scientific study of the individual and group behavior(s) reflecting the impact of these behaviors on persons, groups, society, and the major institutions in a society. Democratic beliefs and values, problem-solving skills, and social and political skills shall be incorporated. All students in grades nine through twelve must, as a condition of graduation, complete a minimum of one-half unit of United States government and one unit of United States history and receive instruction in the government of Iowa.

c. Mathematics (six units). Mathematics instruction shall include:

(1) Four sequential units which are preparatory to postsecondary educational programs. These units shall include strands in algebra, geometry, trigonometry, statistics, probability, and discrete mathematics. Mathematical concepts, operations, and applications shall be included for each of these strands. These strands shall be taught through an emphasis on mathematical problem solving, reasoning, and structure; language and symbolism to communicate mathematical ideas; and connections among mathematical topics and between mathematics and other disciplines. Calculators and computers shall be used in concept development and problem solving.

(2) Two additional units shall be taught. These additional units may include mathematical content as identified in, but not limited to, paragraphs 12.5(3)*"c,"*12.5(4)*"c,"* and 12.5(5)*"c"*(1). These units are to accommodate the locally identified needs of the students in the school or school district. This content shall be taught through an emphasis on mathematical problem solving, reasoning, and structure; language and symbolism to communicate mathematical ideas; and connections among mathematical topics and between mathematics and other disciplines. Calculators and computers shall be used in concept development and problem solving.

d. Science (five units). Science instruction shall include biological, earth, and physical science, including physics and chemistry. Full units of chemistry and physics shall be taught but may be offered in alternate years. All science instruction shall incorporate hands-on process skills; scientific knowledge; the application of the skills and knowledge to students and society; conservation of natural resources; and environmental awareness.

e. Health (one unit). Health instruction shall include personal health; food and nutrition; environmental health; safety and survival skills; consumer health; family life; human growth and

development; substance abuse and nonuse; emotional and social health; health resources; and prevention and control of disease, including sexually transmitted diseases and acquired immune deficiency syndrome, current crucial health issues, human sexuality, self-esteem, stress management, and interpersonal relationships.

f. *Physical education (one unit).* Physical education shall include the physical fitness activities that increase cardiovascular endurance, muscular strength and flexibility; sports and games; tumbling and gymnastics; rhythms and dance; water safety; leisure and lifetime activities.

All physically able students shall be required to participate in the program for a minimum of one-eighth unit during each semester they are enrolled except as otherwise provided in this paragraph. A twelfth-grade student may be excused from this requirement by the principal of the school in which the student is enrolled under one of the following circumstances:

(1) The student is enrolled in a cooperative, work-study, or other educational program authorized by the school which requires the student's absence from the school premises during the school day.

(2) The student is enrolled in academic courses not otherwise available.

(3) An organized and supervised athletic program which requires at least as much time of participation per week as one-eighth unit of physical education.

Students in grades nine through eleven may be excused from the physical education requirement in order to enroll in academic courses not otherwise available to the student if the board of directors of the school district in which the school is located, or the authorities in charge of the school, if the school is a nonpublic school, determine that students from the school may be permitted to be excused from the physical education requirement.

A student may be excused by the principal of the school in which the student is enrolled, in consultation with the student's counselor, for up to one semester, trimester, or the equivalent of a semester or trimester, per year if the parent or guardian of the student requests in writing that the student be excused from the physical education requirement. The student seeking to be excused from the physical education requirement must, at some time during the period for which the excuse is sought, be a participant in an organized and supervised athletic program which requires at least as much time of participation per week as one-eighth unit of physical education.

The student's parent or guardian must request the excuse in writing. The principal shall inform the superintendent that the student has been excused.

g. *Fine arts (three units).* Fine arts instruction shall include at least two of the following:

(1) Dance. Dance instruction shall encompass developing basic movement skills; elementary movement concepts; study of dance forms and dance heritage; participating in dance; and evaluating dance as a creative art; and using dance as an avocation or vocation.

(2) Music. Music instruction shall include skills, knowledge, and attitudes and the singing and playing of music; listening to and using music; reading and writing music; recognizing the value of the world's musical heritage; respecting individual musical aspirations and values; preparing for consuming, performing, or composing; and using music as an avocation or vocation.

(3) Theatre. Theatre instruction shall encompass developing the internal and external resources used in the theatre process; creating theatre through artistic collaboration; relating theatre to its social context; forming aesthetic judgments; and using theatre as an avocation or vocation.

(4) Visual art. Visual art instruction shall include developing concepts and values about natural and created environments; critiquing works of art; evaluating relationships between art and societies; analyzing, abstracting, and synthesizing visual forms to express ideas; making art; and using visual art as an avocation or vocation.

h. *Foreign language (four units).* The foreign language program shall be a four-unit sequence of uninterrupted study in at least one language. Foreign language instruction shall include listening comprehension appropriate to the level of instruction; rateable oral proficiency; reading comprehension appropriate to the level of instruction; writing proficiency appropriate to the level of instruction and cultural awareness.

All high schools shall offer and teach the first two units of the sequence. The third and fourth units must be offered. However, the department of education may, on an annual basis, waive the

third and fourth unit requirements upon the request of the board. The board must document that a licensed/certificated teacher was employed and assigned a schedule that would have allowed students to enroll, that the class was properly scheduled, that students were aware of the course offerings, and that no students enrolled.

i. Vocational education—school districts (three units each in at least four of the six service areas). A minimum of three sequential units, of which only one may be a core unit, shall be taught in four of the following six service areas: agricultural education, business and office education, health occupations education, home economics education, industrial education, and marketing education. The instruction shall be competency-based; shall provide a base of knowledge which will prepare students for entry level employment, additional on-the-job training, and postsecondary education within their chosen field; shall be articulated with postsecondary programs of study, including apprenticeship programs; shall reinforce basic academic skills; shall include the contributions and perspectives of persons with disabilities, both men and women, and persons from diverse racial and ethnic groups. Vocational core courses may be used in more than one vocational service area. Multioccupations may be used to complete a sequence in more than one vocational service area; however, a core course(s) and multioccupations cannot be used in the same sequence. If a district elects to use multioccupations to meet the requirements in more than one service area, documentation must be provided to indicate that a sufficient variety of quality training stations be available to allow students to develop occupational competencies. A district may apply for a waiver if an innovative plan for meeting the instructional requirement for the standard is submitted to and approved by the director of the department of education.

The instructional programs also shall comply with the provisions of Iowa Code chapter 258 relating to vocational education. Advisory committee/councils designed to assist vocational education planning and evaluation shall be composed of public members with emphasis on persons representing business, agriculture, industry, and labor. The membership of local advisory committees/councils will fairly represent each gender and minority residing in the school district. The accreditation status of a school district failing to comply with the provisions of this subrule shall be governed by 281—subrule 46.7(10), paragraph *"g."*

(1) A service area is the broad category of instruction in the following occupational cluster areas (definitions are those used in these rules):

(2) "Agricultural education programs" prepare individuals for employment in agriculture-related occupations. Such programs encompass the study of applied sciences and business management principles, as they relate to agriculture. Agricultural education focuses on, but is not limited to, study in horticulture, forestry, conservation, natural resources, agricultural products and processing, production of food and fiber, aquaculture and other agricultural products, mechanics, sales and service, economics marketing, and leadership development.

(3) "Business and office education programs" prepare individuals for employment in varied occupations involving such activities as planning, organizing, directing, and controlling all business office systems and procedures. Instruction offered includes such activities as preparing, transcribing, systematizing, preserving communications; analyzing financial records; receiving and disbursing money; gathering, processing and distributing information; and performing other business and office duties.

(4) "Health occupations education programs" prepare individuals for employment in a variety of occupations concerned with providing care in the areas of wellness, prevention of disease, diagnosis, treatment, and rehabilitation. Instruction offered encompasses varied activities in such areas as dental science, medical science, diagnostic services, treatment therapy, patient care areas, rehabilitation services, record keeping, emergency care, and health education. Many occupations in this category require licensing or credentialing to practice, or to use a specific title.

(5) "Home economics education programs" encompass two categories of instructional programs:

1. "Consumer and family science" programs may be taught to prepare individuals for a multiple role of homemaker and wage earner and may include such content areas as food and nutrition; consumer education; family living and parenthood; child development and guidance; family and individual health; housing and home management; and clothing and textiles.

2. "Home economics occupations programs" prepare individuals for paid employment in such home economics-related occupations as child care aide/assistant, food production management and services, and homemaker/home health aide.

(6) "Industrial education programs" encompass two categories of instructional programs—industrial technology and trade and industrial. Industrial technology means an applied discipline designed to promote technological literacy which provides knowledge and understanding of the impact of technology including its organizations, techniques, tools, and skills to solve practical problems and extend human capabilities in areas such as construction, manufacturing, communication, transportation, power and energy. Trade and industrial programs prepare individuals for employment in such areas as protective services, construction trades, mechanics and repairers, precision production, transportation, and graphic communications. Instruction includes regular systematic classroom activities, followed by experiential learning with the most important processes, tools, machines, management ideas, and impacts of technology.

(7) "Marketing education programs" prepare individuals for marketing occupations, including merchandising and management—those activities which make products and services readily available to consumers and business. Instruction stresses the concept that marketing is the bridge between production (including the creation of services and ideas) and consumption. These activities are performed by retailers, wholesalers, and businesses providing services in for-profit and not-for-profit business firms.

(8) "Sequential unit" applies to an integrated offering, directly related to the educational and occupational skills preparation of individuals for jobs and preparation for postsecondary education. Sequential units provide a logical framework for the instruction offered in a related occupational area and do not require prerequisites for enrollment. A unit is defined in subrule 12.5(18).

(9) "Competency" is a learned student performance statement which can be accurately repeated and measured. Instruction is based on incumbent worker-validated statements of learner results (competencies) which clearly describe what skills the students will be able to demonstrate as a result of the instruction. Competencies function as the basis for building the instructional program to be offered. Teacher evaluation of students, based upon their ability to perform the competencies, is an integral part of a competency-based system.

(10) "Minimum competency lists" contain competencies validated by statewide technical committees, composed of representatives from appropriate businesses, industries, agriculture, and organized labor. These lists contain essential competencies which lead to entry level employment and are not intended to be the only competencies learned. Districts will choose one set of competencies per service area upon which to build their program or follow the process detailed in 281—subrule 46.7(2) to develop local competencies.

(11) "Clinical experience" involves direct instructor supervision in the actual workplace, so that the learner has the opportunity to apply theory and to perfect skills taught in the classroom and laboratory.

"Field training" is an applied learning experience in a nonclassroom environment under the supervision of an instructor.

"Lab training" is experimentation, practice or simulation by students under the supervision of an instructor.

"On-the-job training" is a cooperative work experience planned and supervised by a teacher-coordinator and the supervisor in the employment setting.

(12) "Coring" is an instructional design whereby competencies common to two or more different vocational service areas are taught as one course offering. Courses shall be no longer than one unit of instruction. Course(s) may be placed wherever appropriate within the program offered. This offering may be acceptable as a unit or partial unit in more than one vocational program to meet the standard.

(13) "Articulation" is the process of mutually agreeing upon competencies and performance levels transferable between institutions and programs for advanced placement or credit in a vocational program. An articulation agreement is the written document which explains the decisions agreed upon and the process used by the institution to grant advanced placement or credit.

(14) "Multioccupational courses" combine on-the-job training in any of the occupational areas with the related classroom instruction. The instructor provides the related classroom instruction and coordinates the training with the employer at the work site. A multioccupational course may only be used to complete a sequence in more than one vocational service area if competencies from the appropriate set of minimum competencies are a part of the related instruction.

j. *Vocational education/nonpublic schools (five units).* A nonpublic school which provides an educational program that includes grades 9 through 12 shall offer and teach five units of occupational education subjects, which may include, but are not limited to, programs, services, and activities which prepare students for employment in business or office occupations, trade and industrial occupations, consumer and family sciences or home economics occupations, agricultural occupations, marketing occupations, and health occupations. By July 1, 1993, instruction shall be competency-based, articulated with postsecondary programs of study, and may include field, laboratory, or on-the-job training.

12.5(6) *Exemption from physical education course, health course, physical activity requirement, or cardiopulmonary resuscitation course completion.* A pupil shall not be required to enroll in a physical education course if the pupil's parent or guardian files a written statement with the school principal that the course conflicts with the pupil's religious beliefs. A pupil shall not be required to enroll in a health course if the pupil's parent or guardian files a written statement with the school principal that the course conflicts with the pupil's religious beliefs. A pupil shall not be required to meet the requirements of subrule 12.5(19) regarding physical activity if the pupil's parent or guardian files a written statement with the school principal that the requirement conflicts with the pupil's religious beliefs. A pupil shall not be required to meet the requirements of subrule 12.5(20) regarding completion of a cardiopulmonary resuscitation course if the pupil's parent or guardian files a written statement with the school principal that the completion of such a course conflicts with the pupil's religious beliefs.

12.5(7) *Career education.* Each school or school district shall incorporate school-to-career educational programming into its comprehensive school improvement plan. Curricular and cocurricular teaching and learning experiences regarding career education shall be provided from the prekindergarten level through grade 12. Career education shall be incorporated into the total educational program and shall include, but is not limited to, awareness of self in relation to others and the needs of society; exploration of employment opportunities, at a minimum, within Iowa; experiences in personal decision making; experiences that help students connect work values into all aspects of their lives; and the development of employability skills. In the implementation of this subrule, the board shall comply with Iowa Code section 280.9.

12.5(8) *Multicultural and gender fair approaches to the educational program.* The board shall establish a policy to ensure that students are free from discriminatory practices in the educational program as required by Iowa Code section 256.11. In developing or revising the policy, parents, students, instructional and noninstructional staff, and community members shall be involved. Each school or school district shall incorporate multicultural and gender fair goals for the educational program into its comprehensive school improvement plan. Incorporation shall include the following:

a. Multicultural approaches to the educational program. These shall be defined as approaches which foster knowledge of, and respect and appreciation for, the historical and contemporary contributions of diverse cultural groups, including race, color, national origin, gender, disability, religion, creed, and socioeconomic background. The contributions and perspectives of Asian Americans, African Americans, Hispanic Americans, American Indians, European Americans, and persons with disabilities shall be included in the program.

b. Gender fair approaches to the educational program. These shall be defined as approaches which foster knowledge of, and respect and appreciation for, the historical and contemporary contributions of women and men to society. The program shall reflect the wide variety of roles open to both women and men and shall provide equal opportunity to both sexes.

12.5(9) *Special education.* The board of each school district shall provide special education programs and services for its resident children which comply with rules of the state board of education implementing Iowa Code chapters 256, 256B, 273, and 280.

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.

12.5(11) *Global education.* Each school or school district shall incorporate global education into its comprehensive school improvement plan as required by Iowa Code section 256.11. Global education shall be incorporated into all areas and levels of the educational program so students have the opportunity to acquire a realistic perspective on world issues, problems, and the relationship between an individual's self-interest and the concerns of people elsewhere in the world.

12.5(12) *Provisions for gifted and talented students.* Each school district shall incorporate gifted and talented programming into its comprehensive school improvement plan as required by Iowa Code section 257.43. The comprehensive school improvement plan shall include the following gifted and talented program provisions: valid and systematic procedures, including multiple selection criteria for identifying gifted and talented students from the total student population; goals and performance measures; a qualitatively differentiated program to meet the students' cognitive and affective needs; staffing provisions; an in-service design; a budget; and qualifications of personnel administering the program. Each school district shall review and evaluate its gifted and talented programming. This subrule does not apply to accredited nonpublic schools.

12.5(13) *Provisions for at-risk students.* Each school district shall include in its comprehensive school improvement plan the following provisions for meeting the needs of at-risk students: valid and systematic procedures and criteria to identify at-risk students throughout the school district's school-age population, determination of appropriate ongoing educational strategies for alternative options education programs as required in Iowa Code section 280.19A, and review and evaluation of the effectiveness of provisions for at-risk students. This subrule does not apply to accredited nonpublic schools.

Each school district using additional allowable growth for provisions for at-risk students shall incorporate educational program goals for at-risk students into its comprehensive school improvement plan. Provisions for at-risk students shall align with the student learning goals and content standards established by the school district or by school districts participating in a consortium. The comprehensive school improvement plan shall also include objectives, activities, cooperative arrangements with other service agencies and service groups, and strategies for parental involvement to meet the needs of at-risk children. The incorporation of these requirements into a school district's comprehensive school improvement plan shall serve as the annual application for additional allowable growth designated in Iowa Code section 257.38.

12.5(14) *Unit.* A unit is a course which meets one of the following criteria: it is taught for at least 200 minutes per week for 36 weeks; it is taught for the equivalent of 120 hours of instruction; it requires the demonstration of proficiency of formal competencies associated with the course according to the State Guidelines for Competency-Based Education or its successor organization; or it is an equated requirement as a part of an innovative program filed as prescribed in rule 281—12.9(256). A fractional unit shall be calculated in a manner consistent with this subrule. Unless the method of instruction is competency-based, multiple-section courses taught at the same time in a single classroom situation by one teacher do not meet this unit definition for the assignment of a unit of credit. However, the third and fourth years of a foreign language may be taught at the same time by one teacher in a single classroom situation each yielding a unit of credit.

12.5(15) *Credit.* A student shall receive a credit or a partial credit upon successful completion of a course which meets one of the criteria in subrule 12.5(14). The board may award high school credit to a student who demonstrates required competencies for a course or content area in accordance with assessment methods approved by the local board.

12.5(16) *Subject offering.* A subject shall be regarded as offered when the teacher of the subject has met the licensure and endorsement standards of the state board of educational examiners for that subject; instructional materials and facilities for that subject have been provided; and students have been informed, based on their aptitudes, interests, and abilities, about possible value of the subject.

A subject shall be regarded as taught only when students are instructed in it in accordance with all applicable requirements outlined herein. Subjects which the law requires schools and school districts to offer and teach shall be made available during the school day as defined in subrules 12.1(8) to 12.1(10).

12.5(17) *Twenty-first century learning skills.* Twenty-first century learning skills include civic literacy, health literacy, technology literacy, financial literacy, and employability skills. Schools and school districts shall address the curricular needs of students in kindergarten through grade twelve in these areas. In doing so, schools and school districts shall apply to all curricular areas the universal constructs of critical thinking, complex communication, creativity, collaboration, flexibility and adaptability, and productivity and accountability.

a. *Civic literacy.* Components of civic literacy include rights and responsibilities of citizens; principles of democracy and republicanism; purpose and function of the three branches of government; local, state, and national government; inherent, expressed, and implied powers; strategies for effective political action; how law and public policy are established; how various political systems define rights and responsibilities of the individual; the role of the United States in current world affairs.

b. *Health literacy.* Components of health literacy include understanding and using basic health concepts to enhance personal, family and community health; establish and monitor health goals; effectively manage health risk situations and advocate for others; demonstrate a healthy lifestyle that benefits the individual and society.

c. *Technology literacy.* Components of technology literacy include creative thinking; development of innovative products and processes; support of personal learning and the learning of others; gathering, evaluating, and using information; use of appropriate tools and resources; conduct of research; project management; problem solving; informed decision making.

d. *Financial literacy.* Components of financial literacy include developing short- and long-term financial goals; understanding needs versus wants; spending plans and positive cash flow; informed and responsible decision making; repaying debt; risk management options; saving, investing, and asset building; understanding human, cultural, and societal issues; legal and ethical behavior.

e. *Employability skills.* Components of employability skills include different perspectives and cross-cultural understanding; adaptability and flexibility; ambiguity and change; leadership; integrity, ethical behavior, and social responsibility; initiative and self-direction; productivity and accountability.

12.5(18) *Early intervention program.* Each school district receiving early intervention program funds shall make provisions to meet the needs of kindergarten through grade 3 students. The intent of the early intervention program is to reduce class size, to achieve a higher level of student success in the basic skills, and to increase teacher-parent communication and accountability. Each school district shall develop a class size management strategy by September 15, 1999, to work toward, or to maintain, class sizes in basic skills instruction for kindergarten through grade 3 that are at the state goal of 17 students per teacher. Each school district shall incorporate into its comprehensive school improvement plan goals and activities for kindergarten through grade 3 students to achieve a higher level of success in the basic skills, especially reading. A school district shall, at a minimum, biannually inform parents of their individual child's performance on the results of diagnostic assessments in kindergarten through grade 3. If intervention is appropriate, the school district shall inform the parents of the actions the school district intends to take to improve the child's reading skills and provide the parents with strategies to enable the parents to improve their child's skills.

12.5(19) *Physical activity requirement.* Subject to the provisions of subrule 12.5(6), physically able pupils in kindergarten through grade 5 shall engage in physical activity for a minimum of 30 minutes each school day. Subject to the provisions of subrule 12.5(6), physically able pupils in grades 6 through 12 shall engage in physical activity for a minimum of 120 minutes per week in which there are at least five days of school.

a. This requirement may be met by pupils in grades 6 through 12 by participation in the following activities including, but not limited to:

(1) Interscholastic athletics sponsored by the Iowa High School Athletic Association or Iowa Girls High School Athletic Union;

(2) School-sponsored marching band, show choir, dance, drill, cheer, or similar activities;

(3) Nonschool gymnastics, dance, team sports, individual sports; or

(4) Similar endeavors that involve movement, manipulation, or exertion of the body.

b. When the requirement is to be met in full or in part by a pupil using one or more nonschool activities, the school or school district shall enter into a written agreement with the pupil. The agreement shall state the nature of the activity and the starting and ending dates of the activity and shall provide sufficient information about the duration of time of the activity each week. The agreement shall also be signed by the school principal or principal's designee and by at least one parent or guardian of the pupil if the pupil is a minor. The pupil shall sign the agreement, regardless of the age of the pupil. The agreement shall be effective for no longer than one school year. There is no limit to the number of agreements that a school or school district may have with any one pupil during the enrollment of the pupil.

c. In no event may a school or school district reduce the regular instructional time, as defined by "unit" in subrule 12.5(14), for any pupil to enable the pupil to meet the physical activity requirement. However, this requirement may be met by physical education classes, activities at recess or during class time, and before- or after-school activities.

d. Schools and school districts must provide documentation that pupils are being provided with the support to complete the physical activity requirement. This documentation may be provided through printed schedules, district policies, student handbooks, and similar means.

12.5(20) *Cardiopulmonary resuscitation course completion requirement.* Subject to the provisions of subrule 12.5(6), at any time prior to the end of twelfth grade, every pupil physically able to do so shall have completed a psychomotor course that leads to certification in cardiopulmonary resuscitation. A school or school district administrator may waive this requirement for any pupil who is not physically able to complete the course. A course that leads to certification in CPR may be taught during the school day by either a school or school district employee or by a volunteer, as long as the person is certified to teach a course that leads to certification in CPR. In addition, a school or school district shall accept certification from any nationally recognized course in cardiopulmonary resuscitation as evidence that this requirement has been met by a pupil. A school or school district shall not accept auditing of a CPR course, nor a course in infant CPR only. This subrule is effective for the graduating class of 2011-2012.
[**ARC 7783B**, IAB 5/20/09, effective 6/24/09; **ARC 0016C**, IAB 2/22/12, effective 3/28/12 (See Delay note at end of chapter); **ARC 0525C**, IAB 12/12/12, effective 1/16/13; **ARC 1116C**, IAB 10/16/13, effective 11/20/13; **ARC 1663C**, IAB 10/15/14, effective 11/19/14]

DIVISION VI
ACTIVITY PROGRAM

281—12.6(256) Activity program. The following standards shall apply to the activity program of accredited schools and school districts.

12.6(1) *General guidelines.* Each board shall sponsor a pupil activity program sufficiently broad and balanced to offer opportunities for all pupils to participate. The program shall be supervised by qualified professional staff and shall be designed to meet the needs and interests and challenge the abilities of all pupils consistent with their individual stages of development; contribute to the physical, mental, athletic, civic, social, moral, and emotional growth of all pupils; offer opportunities for both individual and group activities; be integrated with the instructional program; and provide balance so a limited number of activities will not be perpetuated at the expense of others.

12.6(2) *Supervised intramural sports.* If the board sponsors a voluntary program of supervised intramural sports for pupils in grades seven through twelve, qualified personnel and adequate facilities, equipment, and supplies shall be provided. Middle school grades below grade seven may also participate.

DIVISION VII
STAFF DEVELOPMENT

281—12.7(256,284,284A) Professional development. The following standards shall apply to staff development for accredited schools and school districts.

12.7(1) *Provisions for school district professional development.*

a. *Provisions for district professional development plans.* Each school district shall incorporate into its comprehensive school improvement plan provisions for the professional development of all staff, including the district professional development plan required in 281—paragraph 83.6(2)*"a."* To meet the professional needs of all staff, professional development activities shall align with district goals; shall be based on student and staff information; shall prepare all employees to work effectively with diverse learners and to implement multicultural, gender fair approaches to the educational program; and shall adhere to the professional development standards in 281—paragraph 83.6(2)*"b"* to realize increased student achievement, learning, and performance as set forth in the comprehensive school improvement plan.

b. *Provisions for attendance center professional development plans.* Each school district shall ensure that every attendance center has an attendance center professional development plan that addresses, at a minimum, the needs of the teachers in that center; the Iowa teaching standards; the district professional development plan; and the student achievement goals of the attendance center and the school district as set forth in the comprehensive school improvement plan.

c. *Provisions for individual teacher professional development plans.* Each school district shall ensure that every teacher as defined in rule 281—83.2(284,284A) has an individual teacher professional development plan that meets the expectations in 281—subrule 83.6(1).

d. *Budget for staff development.* The board shall annually budget specified funds to implement the plan required in paragraph 12.7(1)*"a."*

12.7(2) *Provisions for accredited nonpublic school professional development.*

a. Each accredited nonpublic school shall incorporate into its comprehensive school improvement plan provisions for the professional development of staff. To meet the professional needs of instructional staff, professional development activities shall align with school achievement goals and shall be based on student achievement needs and staff professional development needs. The plan shall deliver research-based instructional practices to realize increased student achievement, learning, and performance as set forth in the comprehensive school improvement plan.

b. Budget for staff development. The board shall annually budget specified funds to implement the plan required in paragraph 12.7(2)*"a."*

DIVISION VIII
ACCOUNTABILITY

281—12.8(256) Accountability for student achievement. Schools and school districts shall meet the following accountability requirements for increased student achievement. Area education agencies shall provide technical assistance as required by 281—subrule 72.4(7).

12.8(1) *Comprehensive school improvement.* The general accreditation standards are minimum, uniform requirements. However, the department encourages schools and school districts to go beyond the minimum with their work toward ongoing improvement. As a means to this end, local comprehensive school improvement plans shall be specific to a school or school district and designed, at a minimum, to increase the learning, achievement, and performance of all students.

As a part of ongoing improvement in its educational system, the board shall adopt a written comprehensive school improvement plan designed for continuous school, parental, and community involvement in the development and monitoring of a plan that is aligned with school or school district determined needs. The plan shall incorporate, to the extent possible, the consolidation of federal and state planning, goal setting, and reporting requirements. The plan shall contain, but is not limited to, the following components:

a. *Community involvement.*

(1) Local community. The school or school district shall involve the local community in decision-making processes as appropriate. The school or school district shall seek input from the local community about, but not limited to, the following elements at least once every five years:

1. Statement of philosophy, beliefs, mission, or vision;

2. Major educational needs; and

3. Student learning goals.

(2) School improvement advisory committee. To meet requirements of Iowa Code section 280.12(2) as amended by 2007 Iowa Acts, Senate File 61, section 1, the board shall appoint and charge a school improvement advisory committee to make recommendations to the board. Based on the committee members' analysis of the needs assessment data, the committee shall make recommendations to the board about the following components:

1. Major educational needs;

2. Student learning goals;

3. Long-range goals that include, but are not limited to, the state indicators that address reading, mathematics, and science achievement; and

4. Harassment or bullying prevention goals, programs, training, and other initiatives.

(3) At least annually, the school improvement advisory committee shall also make recommendations to the board with regard to, but not limited to, the following:

1. Progress achieved with the annual improvement goals for the state indicators that address reading, mathematics, and science in subrule 12.8(3);

2. Progress achieved with other locally determined core indicators; and

3. Annual improvement goals for the state indicators that address reading, mathematics, and science achievement.

b. Data collection, analysis, and goal setting.

(1) Policy. The board shall adopt a policy for conducting ongoing and long-range needs assessment processes. This policy shall ensure involvement of and communication with the local community regarding its expectations for adequate preparation for all students as responsible citizens and successful wage earners. The policy shall include provisions for keeping the local community regularly informed of progress on state indicators as described in subrule 12.8(3), other locally determined indicators within the comprehensive school improvement plan as required by Iowa Code section 280.12, and the methods a school district will use to inform kindergarten through grade 3 parents of their individual child's performance biannually as described in 1999 Iowa Acts, House File 743. The policy shall describe how the school or school district shall provide opportunities for local community feedback on an ongoing basis.

(2) Long-range data collection and analysis. The long-range needs assessment process shall include provisions for collecting, analyzing, and reporting information derived from local, state, and national sources. The process shall include provisions for reviewing information acquired over time on the following:

1. State indicators and other locally determined indicators;

2. Locally established student learning goals; and

3. Specific data collection required by federal and state programs.

Schools and school districts shall also collect information about additional factors influencing student achievement which may include, but are not limited to, demographics, attitudes, health, and other risk factors.

(3) Long-range goals. The board, with input from its school improvement advisory committee, shall adopt long-range goals to improve student achievement in at least the areas of reading, mathematics, and science.

(4) Annual data collection and analysis. The ongoing needs assessment process shall include provisions for collecting and analyzing annual assessment data on the state indicators, other locally determined indicators, and locally established student learning goals.

(5) Annual improvement goals. The board, with input from its school improvement advisory committee, shall adopt annual improvement goals based on data from at least one districtwide assessment. The goals shall describe desired annual increase in the curriculum areas of, but not limited to, mathematics, reading, and science achievement for all students, for particular subgroups of students, or both. Annual improvement goals may be set for the early intervention program as described in subrule

12.5(18), other state indicators, locally determined indicators, locally established student learning goals, other curriculum areas, future student employability, or factors influencing student achievement.

c. Content standards and benchmarks.

(1) Policy. The board shall adopt a policy outlining its procedures for developing, implementing, and evaluating its total curriculum. The policy shall describe a process for establishing content standards, benchmarks, performance levels, and annual improvement goals aligned with needs assessment information.

(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).

d. Determination and implementation of actions to meet the needs. The comprehensive school improvement plan shall include actions the school or school district shall take districtwide in order to accomplish its long-range and annual improvement goals as required in Iowa Code section 280.12(1)*"b."*

(1) Actions shall include, but are not limited to, addressing the improvement of curricular and instructional practices to attain the long-range goals, annual improvement goals, and the early intervention goals as described in subrule 12.5(18).

(2) A school or school district shall document consolidation of state and federal resources and requirements, as appropriate, to implement the actions in its comprehensive school improvement plan. State and federal resources shall be used, as applicable, to support implementation of the plan.

(3) A school or school district may have building-level action plans, aligned with its comprehensive school improvement plan. These may be included in the comprehensive school improvement plan or kept on file at the local level.

e. Evaluation of the comprehensive school improvement plan. A school or school district shall develop strategies to collect data and information to determine if the plan has accomplished the goals for which it was established.

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.

(1) State indicators. Using at least one districtwide assessment, a school or school district shall assess student progress on the state indicators in, but not limited to, reading, mathematics, and science as specified in subrule 12.8(3). At least one districtwide assessment shall allow for, but not be limited to, the comparison of the school or school district's students with students from across the state and in the nation in reading, mathematics, and science. A school or school district shall use additional assessments to measure progress on locally determined content standards in at least reading, mathematics, and science.

(2) Performance levels. A school or school district shall establish at least three performance levels on at least one districtwide valid and reliable assessment in the areas of reading and mathematics for at least grades 4, 8, and 11 and science in grades 8 and 11 or use the achievement levels as established by the Iowa Testing Program to meet the intent of this subparagraph (2).

g. Assurances and support. A school or school district shall provide evidence that its board has approved and supports the five-year comprehensive school improvement plan and any future revisions of that plan. This assurance includes the commitment for ongoing improvement of the educational system.

12.8(2) *Submission of a comprehensive school improvement plan.* A school or school district shall submit to the department and respective area education agency a multiyear comprehensive school improvement plan on or before September 15, 2000. Beginning July 1, 2001, a school or school district shall submit a revised five-year comprehensive school improvement plan by September 15 of the school year following the comprehensive site visit specified in Iowa Code section 256.11 which incorporates, when appropriate, areas of improvement noted by the school improvement visitation team as described in subrule 12.8(4). A school or school district may, at any time, file a revised comprehensive school improvement plan with the department and respective area education agency.

12.8(3) *Annual reporting requirements.* A school or school district shall, at minimum, report annually to its local community about the progress on the state indicators and other locally determined indicators.

a. State indicators. A school or school district shall collect data on the following indicators for reporting purposes:

(1) The percentage of all fourth, eighth, and eleventh grade students achieving proficient or higher reading status using at least three achievement levels and by gender, race, socioeconomic status, students with disabilities, and other subgroups as required by state or federal law.

(2) The percentage of all fourth, eighth, and eleventh grade students achieving proficient or higher mathematics status using at least three achievement levels and for gender, race, socioeconomic status, students with disabilities, and other subgroups as required by state or federal law.

(3) The percentage of all eighth and eleventh grade students achieving proficient or higher science status using at least three achievement levels.

(4) The percentage of students considered as dropouts for grades 7 to 12 by gender, race, students with disabilities, and other subgroups as required by state or federal law.

(5) The percentage of high school seniors who intend to pursue postsecondary education/training.

(6) The percentage of high school students achieving a score or status on a measure indicating probable postsecondary success. This measure should be the measure used by the majority of students in the school, school district, or attendance center who plan to attend a postsecondary institution.

(7) The percentage of high school graduates who complete a core program of four years of English-language arts and three or more years each of mathematics, science, and social studies.

b. Annual progress report. Each school or school district shall submit an annual progress report to its local community, its respective area education agency, and the department. That report shall be submitted to the department by September 15, 2000, and by September 15 every year thereafter. The report shall include, but not be limited to, the following information:

(1) Baseline data on at least one districtwide assessment for the state indicators described in subrule 12.8(3). Every year thereafter the school or school district shall compare the annual data collected with the baseline data. A school or school district is not required to report to the community about subgroup assessment results when a subgroup contains fewer than ten students at a grade level. A school or school district shall report districtwide assessment results for all enrolled and tuitioned-in students.

(2) Locally determined performance levels for at least one districtwide assessment in, at a minimum, the areas of reading, mathematics, and science. Student achievement levels as defined by the Iowa Testing Program may be used to fulfill this requirement.

(3) Long-range goals to improve student achievement in the areas of, but not limited to, reading, mathematics, and science.

(4) Annual improvement goals based on at least one districtwide assessment in, at a minimum, the areas of reading, mathematics, and science. One annual improvement goal may address all areas, or individual annual improvement goals for each area may be identified. When a school or school district does not meet its annual improvement goals for one year, it shall include in its annual progress report the actions it will take to meet annual improvement goals for the next school year.

(5) Data on multiple assessments for reporting achievement for all students in the areas of reading and mathematics by September 15, 2001, and for science by September 15, 2003.

(6) Results by individual attendance centers, as appropriate, on the state indicators as stated in subrule 12.8(3) and any other locally determined factors or indicators. An attendance center, for reporting purposes, is a building that houses students in grade 4 or grade 8 or grade 11.

(7) Progress with the use of technology as required by Iowa Code section 295.3. This requirement does not apply to accredited nonpublic schools.

(8) School districts are encouraged to provide information on the reading proficiency of kindergarten through grade 3 students by grade level. However, all school districts receiving early intervention block grant funds shall report to the department the progress toward achieving their early intervention goals.

(9) Other reports of progress as the director of the department requires and other reporting requirements as the result of federal and state program consolidation.

12.8(4) *Comprehensive school improvement and the accreditation process.* All schools and school districts having accreditation on August 18, 1999, are presumed accredited unless or until the state board takes formal action to remove accreditation. The department shall use a Phase I and a Phase II process for the continued accreditation of schools and school districts as defined in Iowa Code section 256.11(10).

a. *Phase I.* The Phase I process includes ongoing monitoring by the department of each school and school district to determine if it is meeting the goals of its comprehensive school improvement plan and meeting the accreditation standards. Phase I contains the following two components:

(1) Annual comprehensive desk audit. This audit consists of a review by the department of a school or school district's annual progress report. The department shall review the report as required by subrule 12.8(3) and provide feedback regarding the report. The audit shall also include a review by the department of other annual documentation submitted by a school or school district as required for compliance with the educational standards in Iowa Code section 256.11 and other reports required by the director.

When the department determines a school or school district has areas of noncompliance, the department shall consult with the school or school district to determine what appropriate actions shall be taken by the school or school district. The department shall facilitate technical assistance when requested. When the department determines that a school or school district has not met compliance with one or more accreditation standards within a reasonable amount of time, the school or school district shall submit an action plan that is approved by the department. The action plan shall contain reasonable timelines for coming into compliance. If the department determines that the school or school district is not taking the necessary actions, the director of the department may place the school or school district in a Phase II accreditation process.

If a school or school district does not meet its stated annual improvement goals for at least two consecutive years in the areas of mathematics and reading and is not taking corrective steps, the department shall consult with the school or school district and determine whether a self-study shall be required. The department shall facilitate technical assistance when needed. The self-study shall include, but is not limited to, the following:

1. A review of the comprehensive school improvement plan.
2. A review of each attendance center's student achievement data.
3. Identification of factors that influenced the lack of goal attainment.
4. Submission of new annual improvement goals, if necessary.
5. Submission, if necessary, of a revised comprehensive school improvement plan.

Upon completion of a department-required self-study, the department shall collaborate with the school or school district to determine whether one or more attendance centers are to be identified as in need of improvement. For those attendance centers identified as being in need of improvement, the department shall facilitate technical assistance.

When a school or school district has completed a required self-study and has not met its annual improvement goals for at least two or more consecutive years, the department may conduct a site visit.

When a site visit occurs, the department shall determine if appropriate actions were taken. If the site visit findings indicate that appropriate actions were taken, accreditation status shall remain.

(2) Comprehensive site visit. A comprehensive site visit shall occur at least once every five years as required by Iowa Code section 256.11(10) or before, if requested by the school or school district. The purpose of a comprehensive site visit is to assess progress with the comprehensive school improvement plan, to provide a general assessment of educational practices, to make recommendations with regard to the visit findings for the purposes of improving educational practices above the level of minimum compliance, and to determine that a school or school district is in compliance with the accreditation standards. The department and the school district or school may coordinate the accreditation with activities of other accreditation associations. The comprehensive site visit shall include the following components:

1. School improvement site visit team. The department shall determine the size and composition of the school improvement site visit team. The team shall include members of the department staff and may include other members such as, but not limited to, area education agency staff, postsecondary staff, and other school district or school staff.

2. Previsit actions. The school improvement team shall review the five-year comprehensive school improvement plan, annual progress reports, and any other information requested by the department.

3. The site visit report. Upon review of documentation and site visit findings, the department shall provide a written report to the school or school district based on the comprehensive school improvement plan and other general accreditation standards. The report shall state areas of strength, areas in need of improvement, and areas, if any, of noncompliance. For areas of noncompliance, the school or school district shall submit, within a reasonable time frame, an action plan to the department. The department shall determine if the school or school district is implementing the necessary actions to address areas of noncompliance. If the department determines that the school or school district is not taking the necessary actions, the director of the department may place the school or school district in a Phase II accreditation process.

b. Conditions under which a Phase II visit may occur. A Phase II accreditation process shall occur if one or more of the following conditions exist:

(1) When either the annual monitoring or the comprehensive site visit indicates that a school or school district is deficient and fails to be in compliance with accreditation standards;

(2) In response to a petition filed with the director of the department requesting such a committee visitation that is signed by 20 percent or more of the registered voters of a school district;

(3) In response to a petition filed with the director of the department requesting such a committee visitation that is signed by 20 percent or more of the families having enrolled students in a school or school district;

(4) At the direction of the state board of education; or

(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.

c. The Phase II process. The Phase II process shall consist of monitoring by the department. This monitoring shall include the appointment of an accreditation committee to complete a comprehensive review of the school or school district documentation on file with the department. The accreditation committee shall complete one or more site visits. The Phase II process shall include the following components:

(1) Accreditation committee. The director of the department shall determine accreditation committee membership. The chairperson and majority of the committee shall be department staff. The committee may also include at least one representative from another school or school district, AEA staff, postsecondary education staff, board members, or community members. No member of an accreditation committee shall have a direct interest, as determined by the department, in the school or school district involved in the Phase II process. The accreditation committee shall have access to all documentation obtained from the Phase I process.

(2) Site visit. The accreditation committee shall conduct one or more site visits to determine progress made on noncompliance issues.

(3) Accreditation committee actions. The accreditation committee shall make a recommendation to the director of the department regarding accreditation status of the school or school district. This recommendation shall be contained in a report to the school or school district that includes areas of strength, areas in need of improvement, and, if any, the areas still not in compliance. The committee shall provide advice on available resources and technical assistance for meeting the accreditation standards. The school or school district may respond in writing to the director if it does not agree with the findings in the Phase II accreditation committee report.

(4) State board of education actions. The director of the department shall provide a report and a recommendation to the state board as a result of the Phase II accreditation committee visit and findings. The state board shall determine accreditation status. When the state board determines that a school or school district shall not remain accredited, the director of the department shall collaborate with the school or school district board to establish an action plan that includes deadlines by which areas of noncompliance shall be corrected. The action plan is subject to approval by the state board.

(5) Accreditation status. During the period of time the school or school district is implementing the action plan approved by the state board, the school or school district shall remain accredited. The accreditation committee may revisit the school or school district and determine whether the areas of noncompliance have been corrected. The accreditation committee shall report and recommend one of the following actions:

1. The school or school district shall remain accredited.
2. The school or school district shall remain accredited under certain specified conditions.
3. The school or school district shall have its accreditation removed as outlined in Iowa Code section 256.11(12).

The state board shall review the report and recommendation, may request additional information, and shall determine the accreditation status and further actions required by the school or school district as outlined in Iowa Code section 256.11(12).

DIVISION IX
EXEMPTION REQUEST PROCESS

281—12.9(256) General accreditation standards exemption request. A school or school district may seek department approval for an exemption as stated in Iowa Code sections 256.9(43) and 256.11(8). The school or school district shall submit the exemption request to the director of the department with, at a minimum, the following: (1) the written request and (2) the standard exemption plan as described in subrule 12.9(1). For the 1999-2000 school year, the written request and plan shall be submitted before October 1, 1999. For subsequent school years, the written request and plan shall be submitted on or before January 1 preceding the beginning of the school year for which the exemption is sought. The exemption request may be approved for a time period not to exceed five years. The department may approve, on request of the school or school district, an extension of the exemption beyond the initial five-year period. The department shall notify the school or school district of the approval or denial of its exemption request not later than March 1 of the school year in which the request was submitted.

12.9(1) *General accreditation standards exemption plan.* The plan shall contain, but is not limited to, the following components:

a. The standard or standards for which the exemption is requested.

b. A rationale for each general accreditation standard identified in paragraph *"a."* The rationale shall describe how the approval of the request will assist the school or school district to improve student achievement or performance as described in its comprehensive school improvement plan.

c. The sources of supportive research evidence and information, when appropriate, that were analyzed and used to form the basis of each submitted rationale.

d. How the school or school district staff collaborated with the local community or with the school improvement advisory committee about the need for the exemption request.

e. Evidence that the board approved the exemption request.

f. A list of the indicators that will be measured to determine success.

g. How the school or school district will measure the success of the standards exemption plan on improving student achievement or performance.

In its annual progress report as described in paragraph 12.8(3)*"b,"* the school or school district that receives an exemption approval shall include data to support increased student learning, achievement, or performance that has resulted from the approved standards exemption.

12.9(2) *General accreditation standards exemption request and exemption plan review criteria.* The department shall use the information provided in the written request and exemption plan as described in subrule 12.9(1) to determine approval or denial of requests for exemptions from the general accreditation standards. The department will use the following criteria for approval or denial of an exemption plan:

a. Components *"a"* through *"g"* listed in subrule 12.9(1) are addressed.

b. Clarity, thoroughness, and reasonableness are evident, as determined by the department, for each component of the accreditation standards exemption plan.

DIVISION X
INDEPENDENT ACCREDITING AGENCIES

281—12.10(256) Independent accrediting agencies. Notwithstanding subsections 1 through 12 of Iowa Code section 256.11 and this chapter, a nonpublic school may be accredited by an independent accrediting agency that appears on a list maintained by the state board of education instead of being accredited by the state board.

12.10(1) *Compliance required by a nonpublic school.* A nonpublic school that participates in the accreditation process offered by an independent accrediting agency on the approved list published pursuant to this rule shall be deemed to meet the education standards of Iowa Code section 256.11 as amended by 2013 Iowa Acts, House File 215, section 89, and this chapter. However, such a school shall comply with statutory health and safety requirements for school facilities. A nonpublic school accredited under this chapter shall abide by all state and federal laws and regulations. Notwithstanding Iowa Code section 256.11 as amended by 2013 Iowa Acts, House File 215, section 89, the department is not precluded from enforcing compliance with all state and federal laws and regulations.

12.10(2) *Compliance required by accrediting agency.* Agencies approved under subrule 12.10(3) shall abide by all state and federal laws and regulations and shall enforce those laws and regulations on the schools they accredit. Notwithstanding Iowa Code section 256.11 as amended by 2013 Iowa Acts, House File 215, section 89, the department is not precluded from enforcing compliance with all state and federal laws and regulations.

12.10(3) *List maintained by state board.* The state board shall maintain a list of approved independent accrediting agencies comprised of at least six regional or national nonprofit, nongovernmental agencies recognized as reliable authorities concerning the quality of education offered by a school and shall publish the list of independent accrediting agencies on the department's Internet site. The list shall include accrediting agencies that, as of January 1, 2013, accredited a nonpublic school in this state that was concurrently accredited under this rule and shall include any agency that has a formalized partnership agreement with another agency on the list and has member schools in this state as of January 1, 2013. Agencies that met this standard as of November 20, 2013, are the Independent Schools Association of the Central States (ISACS), Christian Schools International (CSI), AdvancEd, the National Lutheran Schools Association (NLSA), and the Association of Christian Schools International (ASCI).

12.10(4) *Criteria for recognizing an agency as a "reliable authority concerning the quality of education offered by a school."* In any decision to add an agency to the list maintained pursuant to subrule 12.10(1) or to remove an agency from the list pursuant to subrule 12.10(3), the following criteria may be applied:

a. Whether the agency's accreditation standards require a school to set high academic and nonacademic standards for all students, including preparation of students for postsecondary success.

b. Whether the agency's accreditation standards require a school to monitor and assess all students' progress toward high academic and nonacademic standards.

c. Whether the agency's accreditation standards require a school to recruit and retain properly licensed quality professional staff, and provide those staff members with ongoing professional development.

d. Whether the agency's accreditation standards set requirements for fiscal, data, and contract management.

e. Whether the agency monitors compliance with its standards and takes appropriate corrective action when standards are not met.

f. Whether the agency itself has appropriate fiscal, data, and contract management policies and procedures.

g. Any uncorrected citation of noncompliance by any governmental or nongovernmental agency or organization with jurisdiction or oversight of an accrediting agency listed pursuant to subrule 12.10(1).

h. Any uncorrected negative audit finding of an accrediting agency listed pursuant to subrule 12.10(1).

i. Any judgments, orders, decrees, consent decrees, settlement agreements, or verdicts concerning the agency listed pursuant to subrule 12.10(1) entered by any state or federal court of competent jurisdiction.

j. Whether the agency listed pursuant to subrule 12.10(1) continues to retain its nonprofit status.

k. Whether the agency listed pursuant to subrule 12.10(1) has received any form of recognition for innovation or excellence concerning its work.

l. Any other criterion used by the agency to determine accreditation.

m. Any other reports or findings sent to the nonpublic school regarding accreditation, including findings related to Iowa Code section 256.11 as amended by 2013 Iowa Acts, House File 215, section 89.

12.10(5) *Removal of agency from approved independent accrediting agencies.* If the state board takes preliminary action to remove an agency from the approved list published on the department's Internet site pursuant to subrule 12.10(1), the department shall, at least one year prior to removing the agency from the approved list, notify the nonpublic schools participating in the accreditation process offered by the agency of the state board's intent to remove the accrediting agency from its approved list of independent accrediting agencies. The department shall give notice to the independent accrediting agency, along with an opportunity to respond. The notice shall also be posted on the department's Internet site and shall contain the proposed date of removal. If a nonpublic school receives notice pursuant to this subrule and it chooses to remain accredited, the nonpublic school shall attain accreditation under this rule or otherwise attain accreditation in a manner provided by this chapter or Iowa Code section 256.11 as amended by 2013 Iowa Acts, House File 215, section 89, not later than one year following the date on which the state board removes the agency from its list of independent accrediting agencies.

12.10(6) *Rule of construction: "at least six."* The obligation to maintain a list of at least six agencies in subrule 12.10(1) shall not be construed to require the list to contain an agency that is not a regional or national nonprofit, nongovernmental agency recognized as a reliable authority concerning the quality of education offered by a school.

12.10(7) *Adoption by the department of standard procedures.* The department shall adopt standard procedures, schedules, and forms for the implementation of this rule, including procedures for adding independent accrediting agencies from the list maintained by the state board pursuant to subrule 12.10(1) and removing agencies from that list pursuant to subrule 12.10(3).

12.10(8) *Automatic repeal.* Pursuant to the repeal clause in 2013 Iowa Acts, House File 215, section 89, this rule is rescinded July 1, 2020.

[**ARC 1118C**, IAB 10/16/13, effective 11/20/13]

These rules are intended to implement Iowa Code sections 256.11, 280.23, and 256.7(21).

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◊ Two or more ARCs

1 Effective date of Chapter 4 delayed 70 days by Administrative Rules Review Committee at its meeting held April 20, 1988.

2 March 28, 2012, effective date of 12.3(3), 12.4(6), 12.4(14), 12.5(4)*"l,"* and 12.5(17) delayed 30 days by the Administrative Rules Review Committee at its meeting held March 12, 2012.

CHAPTER 13
Reserved

CHAPTER 16
STATEWIDE VOLUNTARY PRESCHOOL PROGRAM

281—16.1(256C) 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.
[**ARC 7787B**, IAB 5/20/09, effective 6/24/09]

281—16.2(256C) 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 Iowa Code chapter 256C.

"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.

[**ARC 7787B**, IAB 5/20/09, effective 6/24/09]

281—16.3(256C) 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.

[**ARC 7787B**, IAB 5/20/09, effective 6/24/09]

281—16.4(256C) 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.
[**ARC 7787B**, IAB 5/20/09, effective 6/24/09]

281—16.5(256C) Applications for funding. All applications shall be submitted on forms provided by the department, and shall address the requirements found in rules 281—16.3(256C), 281—16.4(256C), and 281—16.13(256C). 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.

[**ARC 7787B**, IAB 5/20/09, effective 6/24/09]

281—16.6(256C) 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.
[**ARC 7787B**, IAB 5/20/09, effective 6/24/09]

281—16.7(256C) 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.
[**ARC 7787B**, IAB 5/20/09, effective 6/24/09]

281—16.8(256C) 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 renegotiate 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.

[**ARC 7787B**, IAB 5/20/09, effective 6/24/09]

281—16.9(256C) 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).

[**ARC 7787B**, IAB 5/20/09, effective 6/24/09]

281—16.10(256C) 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.

[**ARC 7787B**, IAB 5/20/09, effective 6/24/09]

281—16.11(256C) 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 Iowa Code section 256C.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, 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.

c. Continuation of a school district's participation in the preschool program for a second or subsequent budget year is subject to the approval of the department based upon the school district's compliance with the accountability requirements in rule 281—16.3(256C) and the department's on-site review of the school district's implementation of the preschool program. The department shall follow the procedure set forth in subrule 16.13(3) if a district is found to be noncompliant with one or more of the accountability requirements.

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, 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. 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).

[**ARC 7787B**, IAB 5/20/09, effective 6/24/09]

281—16.12(256C) Transportation. Children participating in preschool in an approved local program under Iowa Code chapter 256C may be provided transportation services. However, transportation services provided to such children are not eligible for reimbursement under this chapter.

[**ARC 7787B**, IAB 5/20/09, effective 6/24/09]

281—16.13(256C) Accountability requirements. An approved local program shall meet the program requirements for increased school readiness specified in rule 281—16.3(256C). 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 a 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 281—16.2(256C).

e. The number of teachers.

f. The kindergarten literacy assessment as defined in Iowa Code section 279.60.

16.13(3) *Noncompliance with program requirements.* If the department determines that a participating district does not meet one or more of the accountability requirements provided in rule 281—16.3(256C), the department shall inform the school district of appropriate actions that shall be taken by the school district. The school district shall submit an action plan that is approved by the department and contains reasonable timelines for coming into compliance. The department shall facilitate technical assistance when requested. If the department determines that the school district is not taking the necessary actions in a timely manner, the director of the department may terminate the school district's contract as provided in subrule 16.8(2), second unnumbered paragraph. Until such time as the school district's contract is terminated, the school district may continue to participate in the statewide voluntary preschool program.
[**ARC 7787B**, IAB 5/20/09, effective 6/24/09]

281—16.14(256C) Monitoring. The department shall develop a monitoring system based on the annual reporting requirements and performance measures described in rule 281—16.13(256C) 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.
[**ARC 7787B**, IAB 5/20/09, effective 6/24/09]

281—16.15(256C) 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).)
[**ARC 7787B**, IAB 5/20/09, effective 6/24/09]

These rules are intended to implement Iowa Code chapter 256C.

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CHAPTER 17
OPEN ENROLLMENT

281—17.1(282) Intent and purpose. It is the intent of Iowa Code section 282.18 to maximize parental choice in providing a wide range of educational opportunities which are not available for pupils because of where they live. It is the purpose of this chapter to give guidance and direction to parents/guardians, public school district administrators and boards in making quality decisions regarding school district choice for the education of pupils.

281—17.2(282) Definitions. For the purpose of this chapter the indicated terms are defined as follows:

"Alternative receiving district" means a district to which a parent/guardian petitions for the open enrollment of a pupil from a receiving district. An alternative receiving district could be the district of residence of the parents/guardians.

"Attendance center" means a public school building that contains classrooms used for instructional purposes for elementary, middle, or secondary school students.

"Court-ordered desegregation plan" means a plan that is under direct court order to avoid racial isolation in the district.

"Department" means the department of education.

"Director" means the director of the department of education or the director's designee.

"Diversity plan" or *"voluntary diversity plan"* means a plan that is voluntarily adopted by a local school board to promote diversity and to avoid minority student isolation in the district.

"Eligible district" means a school district whose board had adopted a voluntary desegregation plan under this chapter prior to June 28, 2007.

"Minority student" shall be defined by a local school board in its diversity plan, and may include consideration of any one characteristic or a combination of any of the following characteristics except that race may not be either the sole or the determinative characteristic: socioeconomic status, ethnicity/national origin, English language learner status, or race.

"Open enrollment" is the procedure allowing a parent/guardian to enroll one or more pupils in a public school district other than the district of residence at no tuition cost.

"Receiving district" is the public school district in which a parent/guardian desires to have the pupil enrolled or the district accepting the application for enrollment of a pupil under the provisions of Iowa Code section 282.18.

"Resident district" is the district of residence for school purposes of the parent/guardian and the district in which an open enrollment pupil shall be counted for the purpose of generating state aid regardless of the district in which the pupil is enrolled.

"Sending district" is synonymous with the term resident district.

"Sibling" means a child residing primarily in the same household as the child for whom an open enrollment request is filed and who is related by adoption, blood or marriage to the child for whom an open enrollment request is filed. "Sibling" also includes a foster child who is placed in the same household as the child for whom an open enrollment request is filed.

"Socioeconomic status" means the income level of a student or the student's family, and shall be measured by whether a student or the student's family meets the financial eligibility criteria for free meals or reduced price meals offered under the Child Nutrition Program.

281—17.3(282) Application process. The following procedure shall be used by parents/guardians and school districts in processing open enrollment applications.

17.3(1) *Parent/guardian responsibilities.* On or before March 1 of the school year preceding the school year for which open enrollment is requested, a parent/guardian shall formally notify both the district of residence and the receiving district of the request for open enrollment. The request for open enrollment shall be made on forms provided by the department of education. The parent/guardian is required to indicate on the form if the request is for a pupil requiring special education, as provided

by Iowa Code chapter 256B. The forms for open enrollment application are available from each public school district, area education agency, and the state department of education.

17.3(2) *School district responsibilities.* The board of the resident district shall take no action on an open enrollment request except for a request made under rule 17.5(282) or 17.14(282). The board of the receiving district shall act on an open enrollment request no later than June 1 of the school year preceding the school year for which the request is made.

The receiving district superintendent shall provide notification of either approval or denial of the request to the parent/guardian and to the resident district within five days of board action.

As an alternative procedure, the receiving board may by policy authorize the superintendent to approve, but not deny, applications filed on or before March 1. The board of directors of a receiving school district may adopt a policy granting the superintendent of the school district authority to approve open enrollment applications submitted after the March 1 deadline, but the board of the receiving district shall take action to approve the request if good cause exists. The board shall have the discretion to determine the scope of the authorization. The authorization may be for regular applications filed on or before March 1, good cause applications, kindergarten applications and continuation applications filed on or before September 1, or any combination that the board determines. The same timelines for approval, forwarding, and notification shall apply.

The parent/guardian may withdraw an open enrollment request anytime prior to the first day of school in the resident district. After the first day of school, an open enrollment request can only be changed during the term of the approval by the procedures of subrules 17.8(3) and 17.8(4).

The board of the receiving district shall comply with the provisions of rule 17.11(282) if the application for open enrollment is for a pupil requiring special education as provided by Iowa Code chapter 256B.

By September 30 of each school year, all districts shall notify parents of the following:

a. Open enrollment deadlines;

b. Transportation assistance;

c. That within 30 days of a denial of an open enrollment request by a district board of education, the parent/guardian may file an appeal with the state board of education only if the open enrollment request was based on repeated acts of harassment or a serious health condition of the student that the district cannot adequately address; and that all other denials must be appealed to the district court in the county in which the primary business office of the district is located; and

d. Possible loss of athletic eligibility for open enrollment pupils.

This notification may be published in a school newsletter, a newspaper of general circulation, or a parent handbook provided to all patrons of the district. This information shall also be provided to any parent/guardian of a pupil who enrolls in the district during the school year.

17.3(3) *Exception to process when resident district is under voluntary or court-ordered desegregation.* If the resident district has a voluntary or court-ordered desegregation plan requiring the district to maintain minority and nonminority student ratios, the request for open enrollment shall be filed solely with the district of residence on or before March 1 of the school year preceding the school year for which open enrollment is requested. The superintendent of the resident district may deny a request under this subrule unless the request is made on behalf of a student whose sibling already actively participates in open enrollment to the same receiving district to which open enrollment is sought for this student. A denial by the superintendent may be appealed to the board of the district in which the request was denied. A decision of the local board to uphold the denial may only be appealed to the district court in the county in which is located the primary business office of the district that upheld the denial of the open enrollment request.

281—17.4(282) Filing after the March 1 deadline—good cause. A parent/guardian may apply for open enrollment after the filing deadline of March 1 of the school year preceding the school year for which open enrollment is requested and before the date specified in Iowa Code section 257.6, subsection 1, of that calendar year if good cause exists for the failure to meet the deadline. Good cause is a change in the status of the pupil's residence or a change in the status of the pupil's resident district taking place

after March 1, or the closing or loss of accreditation of a nonpublic school of attendance after March 1 resulting in the desire of the parent/guardian to obtain open enrollment for the following school year. If good cause can be established, the parent/guardian shall be permitted to apply for open enrollment in the same manner as if the deadline had been met pursuant to rule 17.3(282).

Consideration of an open enrollment request filed under the provision of good cause does not preclude the authority, as appropriate, for the resident or receiving district to administer board policy related to insufficient classroom space or the requirements of a desegregation plan or order in acting to approve or deny the request. (See subrules 17.6(2) and 17.6(3).)

17.4(1) Good cause related to change in the pupil's residence shall include:

a. A change in the family residence due to the family's moving from the district of residence anytime after March 1 of the school year preceding the school year for which open enrollment is requested.

b. A change in the state of residence allowing a parent/guardian moving into an Iowa school district from out of state to obtain open enrollment to a different district from their new district of residence.

c. A change in the marital status of the pupil's parents.

d. A guardianship or custody proceeding.

e. Placement of the child in foster care.

f. Adoption.

g. Participation in a foreign exchange program.

h. Participation in a substance abuse or mental health treatment program.

17.4(2) Good cause related to change in status of the pupil's resident district or nonpublic school of attendance shall include:

a. Reorganization action.

(1) Failure of the area education board to vote in favor of a reorganization proposal,

(2) Failure of the area education board to act on objections to exclude territory from a reorganization proposal,

(3) Failure of a reorganization election,

(4) Rescinded IAB 3/8/00, effective 4/12/00.

b. Dissolution action.

(1) Failure of a dissolution commission to make a recommendation to the board of directors,

(2) Failure of the board to take positive action on objections filed by residents of the district to a dissolution proposal,

(3) Failure of contiguous districts to accept a dissolution proposal,

(4) Failure of an election on a dissolution proposal.

c. Whole grade sharing action.

(1) Failure of the board to pursue negotiations for a whole grade sharing proposal for which it has given public notice by board action of its intent to pursue,

(2) Failure of the board to approve a request by a parent/guardian to send an affected pupil to a contiguous district rather than to the district party to the agreement,

(3) Failure of the board to extend or renew a whole grade sharing agreement,

(4) Unilateral rejection by one board of a whole grade sharing agreement prior to expiration of the term of the agreement.

d. Loss of accreditation.

(1) Removal of accreditation by the state board after March 1.

(2) Surrender of accreditation after March 1.

(3) Permanent closure of a nonpublic school after March 1.

e. Rescinded IAB 8/21/02, effective 9/25/02.

On open enrollment requests for good cause related to a change in status of the pupil's school district of residence, action by a parent/guardian must be taken to file notification within 45 days of the last board action or within 30 days of the certification of an election, whichever circumstance is applicable.

17.4(3) Good cause shall not include:

a. Actions of a board of education in the designation of attendance centers within a school corporation and in the assignment of pupils to such centers as provided by Iowa Code section 279.11.

b. Actions of a board of education in making its own rules of government for the internal organization and operation of the school corporation as provided by Iowa Code section 279.8.

17.4(4) Rescinded IAB 8/21/02, effective 9/25/02.

17.4(5) Timelines for board action on applications filed after March 1 for good cause. The board of the receiving district shall act on the request within 30 days of its receipt. The same timelines for approval, forwarding, and notification shall apply.

The receiving district superintendent shall provide notification of either approval or denial of the request to the parent/guardian and to the resident district within five days of board action.

17.4(6) If the resident district believes that the board of the receiving district approved a late-filed open enrollment request that does not meet the definition of "good cause" under Iowa Code section 282.18(4)*"b,"* the resident district may appeal to the director.

a. Upon affirmative vote of a majority of its board to do so, the resident district shall file a written appeal to the director within 30 days of receipt by the resident district of notification by the board of the receiving district of the approval by the receiving district of a late-filed open enrollment request. The written appeal shall state the name and grade level of the affected student, the name of the receiving district, the date of approval by the board of the receiving district, the date the resident district was notified of the approval, and a brief statement explaining why the resident district board believes there is no good cause for the request to have been filed and approved after March 1. The appeal shall be signed by the president of the board of the resident district and shall have attached to it a copy of the disputed open enrollment request and the minutes of the board meeting at which the resident district board voted to appeal. An appeal is timely filed if it is postmarked or delivered personally or via facsimile transmission to the director within the 30-day time period.

b. The director shall, upon receipt of an appeal, first attempt to mediate the dispute. If mediation is unsuccessful, the director shall schedule a telephonic hearing for the purpose of hearing testimony from both boards.

c. If a hearing is necessary, the boards may stipulate to any or all facts to be considered by the director. At the sole discretion of the director, an in-person hearing may be scheduled. The director shall issue a written decision within ten days of the hearing, upholding or reversing the decision of the board of the receiving district.

d. Within five days of the issuance of the decision of the director, the aggrieved board may appeal the decision to the state board of education under the procedures in Iowa Code chapter 290.

281—17.5(282) Filing after the March 1 deadline—harassment or serious health condition. A parent/guardian may apply for open enrollment after the filing deadline of March 1 of the school year preceding the school year for which open enrollment is requested if the parent's/guardian's child is the victim of repeated acts of harassment or if the child has a serious health condition that the resident district cannot adequately address. If either of these conditions exists, the parent/guardian shall be permitted to apply for open enrollment by sending notification to both the resident and receiving districts.

17.5(1) The board of the resident district shall act on the request within 30 days of its receipt. If the request is denied, the parent/guardian shall be notified by the district superintendent within 3 days following board action. If the request is approved, the district superintendent shall forward the approved application form to the receiving district within 5 days following board action and shall notify the parent/guardian within 3 days of this action. The board of the receiving district shall act to approve or deny an open enrollment request within 30 days following receipt of the notice of approval from the resident district. The receiving district superintendent shall provide notification of either approval or denial of the request to the parent/guardian and to the resident district within 15 days of board action.

17.5(2) A denial by either board of a request made under this rule involving repeated acts of harassment of the student or serious health condition of the student that the resident district cannot adequately address may be appealed by a parent/guardian to the state board of education pursuant to

Iowa Code section 290.1. The state board shall exercise broad discretion to achieve just and equitable results that are in the best interest of the affected child or children.

281—17.6(282) Restrictions to open enrollment requests. A district board may exercise the following restrictions related to open enrollment requests.

17.6(1) *Enrollment loss caps.* Rescinded IAB 12/8/93, effective 1/12/94.

17.6(2) *Voluntary diversity plans or court-ordered desegregation plans.* In districts with court-ordered desegregation or voluntary diversity plans where there is a requirement to maintain minority and nonminority student ratios according to the plan, the superintendent of the district may deny a request for open enrollment if it is found that the enrollment or release of a pupil will adversely affect the district's court-ordered desegregation plan or voluntary diversity plan. Open enrollment requests that would facilitate the court-ordered desegregation plan or voluntary diversity plan shall be given priority over other open enrollment requests received by the district. A parent/guardian whose request for open enrollment is denied by the superintendent of the district on the basis of its adverse effect on the district's court-ordered desegregation plan or voluntary diversity plan may appeal that decision to the district board.

17.6(3) *Policy on insufficient classroom space.* No receiving district shall be required to accept an open enrollment request if it has insufficient classroom space to accommodate the pupil(s). Each district board shall adopt a policy which defines the term "insufficient classroom space" for that district. This policy shall establish a basis for the district to make determinations on the acceptance or denial, as a receiving district, of an open enrollment request. This policy may include, but shall not be limited to, one or more of the following: nature of the educational program, grade level, available instructional staff, instructional method, physical space, pupil-teacher ratio, equipment and materials, facilities either being planned or under construction, facilities planned to be closed, finances available, sharing agreement in force or planned, bargaining agreement in force, law or rules governing special education class size, or board-adopted district educational goals and objectives. This policy shall be reviewed annually by the district board.

17.6(4) *Designation of attendance center.* The right of a parent/guardian to request open enrollment is to a district other than the district of residence, not to an attendance center within the nonresident district. In accepting an open enrollment pupil, the receiving district board has the same authority it has in regard to its resident pupils as provided by Iowa Code section 279.11, to "determine the particular school which each child shall attend." In the application process, however, the parent or guardian may request an attendance center of preference.

281—17.7(282) Open enrollment for kindergarten. While the regular time frame in requesting open enrollment is that an application should be made no later than March 1 of the school year preceding the school year for which the enrollment is requested, a parent/guardian requesting to enroll a kindergarten pupil in a district other than the district of residence may make such application on or before September 1 of that school year. In considering an application for a kindergarten pupil, the resident and the receiving district are not precluded from administering board-adopted policies related to insufficient classroom space or the requirements of a desegregation plan or order.

As an alternative procedure, the receiving board may by policy authorize the superintendent to approve, but not deny, applications filed on or before September 1 under this rule. The timelines established in rule 17.4(282) shall apply to applications for a kindergarten pupil.

281—17.8(282) Requirements applicable to parents/guardians and students.

17.8(1) *Expelled or suspended students.* A pupil who has been suspended or expelled by action of the administration or board of the resident district shall not be permitted to enroll if an open enrollment request is filed until the pupil is reinstated for school attendance in the resident district. Once reinstated, the application for open enrollment shall be considered in the same manner as any other open enrollment request. If a pupil for whom an open enrollment request has been filed is subsequently expelled by action of the resident district board, the pupil may be denied enrollment by the receiving district board until

the pupil is reinstated for school attendance by the resident district. The provisions of this subrule shall also apply to a pupil who has been suspended or expelled in a receiving district and is requesting open enrollment to an alternative receiving district or is seeking to return to the resident district as outlined in subrule 17.8(4).

17.8(2) *Restrictions on participation in interscholastic athletic contests and competitions.* A pupil who changes school districts under open enrollment in any of the grades 9 through 12 shall not be eligible to participate in varsity interscholastic athletic contests and competitions during the first 90 school days of enrollment. This restriction also shall apply to enrollments resulting from an approved petition filed by a parent/guardian to open enroll to an alternative receiving district and when the pupil returns to the district of residence using the process outlined in subrule 17.8(4). This 90-school-day restriction does not prohibit the pupil from practicing with an athletic team during the 90 school days of ineligibility. This 90-school-day restriction is not applicable to a pupil who:

a. Participates in an athletic activity in the receiving district that is not available in the district of residence.

b. Participates in an athletic activity for which the resident district and the receiving district have a "cooperative student participation agreement" in place as provided by rule 281—36.20(280).

c. Has paid tuition for one or more years to the receiving school district prior to making application and being approved for open enrollment.

d. Has attended the receiving district for one or more years, prior to making application and being approved for open enrollment, under a sharing or mutual agreement between the resident district and the receiving district.

e. Has been participating in open enrollment and whose parents/guardians move out of their district of residence but exercise the option of maintaining the open enrollment agreement as provided in subrule 17.8(6) except that the period of 90 school days of ineligibility shall apply to a student who open enrolls to another school district. If the pupil has established athletic eligibility under open enrollment, it is continued despite the parent's or guardian's change in residence.

f. Obtains open enrollment as provided in subrule 17.8(7) except that the period of 90 school days of ineligibility shall apply to a student who open enrolls to another school district.

g. Obtains open enrollment due to the dissolution and merger of the former district of residence under Iowa Code subsection 256.11(12).

h. Obtains open enrollment due to the pupil's district of residence entering into a whole-grade sharing agreement on or after July 1, 1990, including the grade in which the pupil would be enrolled at the start of the whole-grade sharing agreement.

i. Participates in open enrollment and the parent/guardian is an active member of the armed forces and resides in permanent housing on government property provided by a branch of the armed services.

j. Rescinded IAB 5/15/02, effective 6/19/02.

17.8(3) *Term of enrollment.* Rescinded IAB 10/9/96, effective 11/13/96.

17.8(4) *Petition for attendance in an alternative receiving district.* Once the pupil of a parent/guardian has been accepted for open enrollment, attendance in an alternative receiving district under open enrollment can be initiated by filing a petition for change with the receiving district. The petition shall be filed by the parent/guardian with the receiving district on or before March 1 of the year preceding the school year for which the change is requested. The timelines and notification requirements for such a request shall be the same as outlined in subrule 17.3(2). If the request is approved, the alternative district shall send notice of this action to the parent/guardian, to the original receiving district, and to the resident district of the pupil. Petitions for change shall be effectuated at the start of the next school year.

As an alternative procedure, the receiving and alternative receiving district boards by mutual agreement may effectuate the change in enrollment of an open enrollment pupil at any time following receipt of a written request for such change which is approved by the two boards. The parent/guardian and the resident district board shall be notified of the approval and the date for change in open enrollment within 15 days of the mutual agreement action of the receiving and alternative receiving boards.

A pupil in good standing may return to the district of residence at any time following written notice from the parent/guardian to both the resident district and the receiving district.

17.8(5) *Renewal of an open enrollment agreement.* An open enrollment agreement shall remain in place unless canceled by the parent/guardian or terminated as outlined in the provisions of subrule 17.8(10).

17.8(6) *Change in residence when participating in open enrollment.* If the parent/guardian of a pupil who is participating in open enrollment changes the school district of residence during the term of the agreement, the parent/guardian shall have the option to leave the pupil in the receiving district under open enrollment, to open enroll to another school district, or to enroll the pupil in the new district of residence, thus terminating the open enrollment agreement. If the choice is to leave the pupil under open enrollment or to open enroll to another school district, the original district of residence shall be responsible for payment of the cost per pupil plus any applicable weightings or special education costs for the balance of the school year, if any, in which the move took place, providing the move took place on or after the date specified in Iowa Code section 257.6, subsection 1. The new district of residence shall be responsible for these payments during succeeding years of the agreement.

If the move takes place between the end of one school year and the date specified in Iowa Code section 257.6, subsection 1, of the following school year, the new district of residence shall be responsible for that year's payment as well as succeeding years.

If the pupil is to remain under open enrollment or to open enroll to another school district, the parent/guardian shall write a letter, delivered by mail or by hand on or before the date specified in Iowa Code section 257.6, subsection 1, to notify the original resident district, the new resident district, and the receiving district of this decision.

Timely requests under this rule shall not be denied. If the request is for a high school pupil, the pupil shall not be subject to the initial 90-school-day ineligibility period of subrule 17.8(2).

17.8(7) *Change in residence when not participating in open enrollment.* If a parent/guardian moves out of the school district of residence, and the pupil is not currently under open enrollment, the parent/guardian has the option for the pupil to remain in the original district of residence as an open enrollment pupil with no interruption in the education program or to open enroll to another school district. This option is not available to the parent/guardian of a student who is entering kindergarten for the first time. The parent/guardian exercising this option shall file an open enrollment request form with the new district of residence for processing and record purposes. This request shall be made on or before the date specified in Iowa Code section 257.6, subsection 1. Timely requests under this subrule shall not be denied. If the request is for a high school pupil, the pupil shall not be subject to the initial 90-school-day ineligibility period of subrule 17.8(2). If the move is on or after the date specified in Iowa Code section 257.6, subsection 1, the new district of residence is not required to pay per-pupil costs or applicable weighting or special education costs to the receiving district until the first full year of the open enrollment.

17.8(8) *Pupil governance.* An open enrollment pupil, and where applicable the pupil's parent/guardian, shall be governed by the rules and policies established by the board of directors of the receiving district. Any complaint or appeal by the parent/guardian concerning the educational system, its process, or administration in the receiving district shall be initially directed to the board of directors of that district in compliance with the policy of that district.

17.8(9) *Appeal procedure.* A parent/guardian may appeal the decision of the board of directors of a school district (resident or receiving) only on an application for open enrollment under Iowa Code section 282.18(5) as amended by 2002 Iowa Acts, House File 2515. This appeal is to the state board of education and shall comply with the provisions of Iowa Code section 290.1. The appeal shall be filed within 30 days of the decision of the district board and shall be in the form of an affidavit signed by the parent/guardian. It shall state in a plain and concise manner what the parent/guardian feels to be the basis for appeal.

17.8(10) *Open enrollment termination.* Open enrollment ends when:

a. The pupil graduates, moves into the receiving district, moves into a third district and does not elect to continue attending in the receiving district, moves out of state, elects to attend a nonpublic school

instead of the receiving district, or any other circumstance not excepted below that results in the pupil no longer attending the receiving district.

EXCEPTIONS: This rule shall not apply if the pupil is placed temporarily in foster care, a juvenile detention center, mental health or substance abuse treatment facility, or other similar placement. In such cases, the open enrollment status will automatically be reinstated when the pupil returns.

b. The pupil drops out of school. In this instance, if the pupil desires to return to the resident district during the term of the original open enrollment, notice must be given as outlined in the provisions of subrule 17.8(4).

281—17.9(282) Transportation.

17.9(1) *Parent responsibilities.* The parent/guardian of a pupil who has been accepted for open enrollment shall be responsible to transport the pupil without reimbursement, except as provided in subrule 17.9(2), to and from a point on a regular school bus route of the receiving district. This point shall be a designated stop on the bus route of the receiving district. If this point—designated stop— is within the distances established by Iowa Code section 285.1 from the school designated for attendance by the receiving district, that district may, but is not required to, provide transportation for an open enrollment pupil. A receiving district may send buses into a resident district solely for the purpose of transporting an open enrollment pupil if the boards of both the sending and receiving districts agree to this arrangement. Bus routes that are outside the boundary of the receiving district that have been authorized by an area education agency board of directors, as provided by Iowa Code subsection 285.9(3), may be used to transport open enrollment pupils if boards of directors of the resident and receiving districts have both taken action to approve such an arrangement. Bus routes that have been established by the receiving district for the purpose of transporting nonpublic school or special education pupils that operate in the resident district of an open enrollment pupil shall not be utilized for the transportation of such pupil for the portion of the route that is within the resident district unless the boards of directors of the resident and receiving districts have both taken action to approve such an arrangement. Bus routes transporting pupils for the purpose of whole-grade sharing shall not be used to transport open enrollment pupils for the portion of the route that is within the resident district unless the boards of directors of the resident and receiving districts have both taken action to approve such an arrangement.

17.9(2) *Qualifications and provisions for transportation assistance.* Open enrollment pupils that meet the economic eligibility requirements established by the department of education shall receive transportation assistance from their resident district under the following conditions. The resident district is not required to provide any transportation assistance for a pupil involved in open enrollment with a district that is not contiguous with the pupil's resident district. The resident district shall provide transportation for the pupil to a point that is a designated stop on a regular bus route of a contiguous receiving district, or as an alternative, the resident district shall pay the parent/guardian for providing this transportation. In either situation the resident district is not obligated to expend more than the average cost per pupil transported amount established for that district for the previous school year. If the resident district provides the transportation, it shall determine that it is able to perform this function at a cost not in excess of the average cost per pupil transported for the resident district as established the previous year. It shall not assess any additional cost to the parent/guardian for providing transportation. If the district chooses to reimburse the parent/guardian for providing transportation, to determine the amount to be reimbursed, the district shall use the provisions of Iowa Code subsection 285.1(3). This reimbursement shall not exceed the average cost per pupil transported for the resident district as established the previous year. The resident district may withhold from the amount it is required to pay to a receiving district for an open enrollment pupil the actual amount or the average cost per pupil transported amount it pays for transportation assistance, whichever is the lesser amount.

17.9(3) *Economic eligibility requirements for transportation.* A parent/guardian shall be eligible for transportation assistance from the resident district if the household income of the parent/guardian is at or below 160 percent of the federal income poverty guidelines as stated by household size. Since the

federal income poverty guidelines are adjusted each year, the department of education shall provide revised eligibility guidelines to school districts each year.

281—17.10(282) Method of finance. Open enrollment options shall be made available for pupils at no instructional cost to their parents/guardians. Open enrollment pupils shall be considered enrolled resident pupils in the resident district and shall be included in the certified enrollment count of that district for the purposes of generating school foundation aid.

17.10(1) *Full-time pupils.* Unless otherwise agreed to in the mediation under paragraph 17.4(6)*"b,"* for full-time pupils, the resident district shall pay each year to the receiving district an amount equal to the state cost per pupil for the previous year plus any moneys received for the pupil as a result of non-English speaking weighting provided by Iowa Code section 280.4.

17.10(2) *Dual enrolled pupils.* Unless otherwise agreed to in the mediation under paragraph 17.4(6)*"b,"* for pupils who receive competent private instruction and are dual enrolled, the resident district shall pay each year to the receiving district an amount equal to .1 times the state cost per pupil for the previous year plus any moneys received for the pupil as a result of non-English speaking weighting provided by Iowa Code section 280.4. However, a pupil dual enrolled in grades nine through twelve shall be counted by the receiving district in the same manner as a shared-time pupil under Iowa Code section 257.6(1)*"c."*

17.10(3) *Home school assistance program pupils.* Unless otherwise agreed to in the mediation under paragraph 17.4(6)*"b,"* for pupils who receive competent private instruction and are registered for a home school assistance program, the resident district shall pay each year to the receiving district an amount equal to .3 times the state cost per pupil under Iowa Code chapter 257 for the previous year plus any moneys received for the pupil as a result of non-English speaking weighting provided by Iowa Code section 280.4.

17.10(4) *Transportation assistance.* The resident district may deduct any transportation assistance funds for which the pupil is eligible as provided by subrule 17.9(2).

17.10(5) *Method of payment.* These moneys shall be paid to the receiving district on a quarterly basis. The district cost per pupil for nonspecial education students shall be the cost calculated each year for the school year preceding the school year for which the open enrollment takes place. Costs for special education students shall be as outlined in rule 17.11(282).

17.10(6) *Partial-year situations.* In the event that the pupil who is under open enrollment withdraws from school, moves into the district of attendance, moves out of state, moves to another district in the state of Iowa and elects to attend that district, graduates at midyear, is allowed to return to the district of residence during the school year, or other similar set of circumstances that result in the pupil no longer attending in the receiving district, payment of cost per pupil will be prorated.

17.10(7) *Late changes of open enrollment.* The resident district and the receiving district boards by mutual agreement may effectuate the change in enrollment of an open enrollment pupil at any time following receipt of a petition for such change which is approved by the two boards. A change due to good cause is a late change in enrollment. If any change in enrollment is made on or after the date specified in Iowa Code section 257.6, subsection 1, the resident district is not required to pay per-pupil costs or applicable weighting or special education costs to the receiving district until the first full year of the open enrollment.

17.10(8) A student under open enrollment is eligible to be counted for supplementary weighting pursuant to 281—subrule 97.2(5) for qualifying concurrent enrollment classes in which the student is enrolled, including concurrent enrollment classes provided via the ICN, or supplementary weighting for project lead the way (PLTW) enrollment through sharing with a community college pursuant to 281—subrule 97.2(6). An open enrolled student who is under competent private instruction (CPI) shall be weighted in the student's receiving district, and no tuition shall be billed to the resident district. An open enrolled student who is not under CPI shall be weighted in the resident district, and the funding shall be sent to the receiving district in addition to open enrollment tuition.

a. If the open enrolled student is present in the resident district on October 1 of the school year, the resident district shall count the student, excluding a student under CPI, for supplementary weighting.

b. The concurrent enrollment course must qualify for supplementary weighting in the receiving district pursuant to 281—subrule 97.2(5), and the PLTW course must qualify for supplementary weighting in the receiving district pursuant to 281—subrule 97.2(6).

c. The resident district shall forward the weighting generated for the concurrent or PLTW enrollment for that student using the district cost per pupil of the school year. The amount generated is calculated as the supplementary weighting full-time-equivalency for that one student for each qualified concurrent or PLTW enrollment course multiplied by the current school year's district cost per pupil in the resident district.

d. The receiving district shall pay the community college the tuition negotiated for the course. The tuition negotiated may cost the receiving district a different amount than that received from the resident district. No additional amount may be charged to the resident district, the student, or the parent, guardian, or legal custodian.

e. If the student was not present in the resident district on October 1 of the school year and is a late transfer, the receiving district bears all the tuition cost and shall not bill the resident district in the first year pursuant to subrule 17.10(7).

[**ARC 9261B**, IAB 12/15/10, effective 1/19/11; **ARC 0521C**, IAB 12/12/12, effective 1/16/13]

281—17.11(282) Special education students. If a parent/guardian requests open enrollment for a pupil requiring special education, as provided by Iowa Code chapter 256B, this request shall receive consideration under the following conditions. The request shall be granted only if the receiving district is able to provide within that district the appropriate special education program for that student in accordance with Iowa rules of special education, 281—41.84(256B,273,34CFR300). This determination shall be made by the receiving district in consultation with the resident district and the appropriate area education agency(ies) before approval of the application. In a situation where the appropriateness of the program is in question, the pupil shall remain enrolled in the program of the resident district until a final determination is made. If the appropriateness of the special education program in the resident district is questioned by the parent, then the parent should request a due process hearing as provided by 281—41.113(1). If the appropriateness of the special education program in the receiving district is at issue, the final determination of the appropriateness of a special education instructional program shall be the responsibility of the director of special education of the area education agency in which the receiving district is located, based upon the decision of a diagnostic-education team from the receiving district which shall include a representative from the resident district that has the authority to commit district resources.

District transportation requirements, parent/guardian responsibilities and, where applicable, financial assistance for an open enrollment special education pupil shall be as provided by rule 17.9(282).

The district of residence shall pay to the receiving district on a quarterly basis the actual costs incurred by the receiving district in providing the appropriate special education program. These costs shall be based on the current year expenditures with needed adjustments made in the fourth quarter payment. The responsibility for ensuring that an appropriate program is maintained for an open enrollment special education pupil shall rest with the resident district. The receiving district and the receiving area education agency director shall provide, at least on an annual basis, evaluation reports and information to the resident district on each special education open enrollment pupil. The receiving district shall provide notice to the resident district of all staffings scheduled for each open enrollment pupil. For an open enrolled special education pupil where the receiving district is located in an area education agency other than the area education agency within which the resident district is located, the resident district and the receiving district are required to forward a copy of any approved open enrollment request to the director of special education of their respective area education agencies. Any moneys received by the area education agency of the resident district for an approved open enrollment special education pupil shall be forwarded to the receiving district's area education agency.

281—17.12(282) Laboratory school provisions. A parent/guardian may make a request for open enrollment transfer to a laboratory school operated by the state board of regents. The regents institution operating a laboratory school and the board of directors of the public school district in which the laboratory school is located shall develop a transfer policy. This policy shall include:

1. A provision that the total number of pupils enrolled in a laboratory school in any one year shall not exceed 670 pupils.
2. Provisions to protect and promote the quality and integrity of the teacher education program of the laboratory school.
3. Provisions to protect and promote the viability of the education program of the public school district.
4. The order in which and the reasons why requests to transfer to the laboratory school shall be considered.

The denial of a request to transfer to a laboratory school is not subject to appeal by a parent/guardian under Iowa Code section 290.1.

A pupil that is accepted for open enrollment transfer to a laboratory school shall not be included in the basic enrollment of the resident district with the laboratory school reporting the enrollment directly to the department of education with the following exception. If the number of pupils enrolled in the laboratory school from a school district during the current year exceeds the number enrolled from that district during the 1989-1990 school year, the pupils representing the difference between the current and the 1988-1989 school year enrollment for the district shall be included in the basic enrollment of the resident district with the district retaining the money generated through the foundation aid formula.

281—17.13(282) Applicability. For implementing the open enrollment provisions of Iowa Code section 282.18, the provisions of this chapter shall be retroactively applicable to June 5, 1989.

281—17.14(282) Voluntary diversity plans or court-ordered desegregation plans.

17.14(1) *Applicability.* These rules govern only the components of a voluntary diversity plan or court-ordered desegregation plan as the plan affects open enrollments. Nothing herein shall prohibit a district from implementing a lawful voluntary diversity plan or court-ordered desegregation plan or components thereof for transfers other than open enrollment.

17.14(2) *Eligibility to adopt and implement a plan applicable to open enrollments.*

a. Adoption. The board of an eligible school district may adopt a voluntary diversity plan with a component that applies to open enrollments if either of the following conditions exists: (1) The percentage of minority students in the district exceeds the percentage of minority students in the state by at least 20 percentage points; or (2) the percentage of minority students in one or more attendance centers in the district exceeds the percentage of minority students in the district as a whole by at least 20 percentage points.

b. Implementation. The open enrollment component of the plan adopted by the district board shall only be implemented by the district if other components of the diversity plan describe the steps the district is taking internally to avoid or reduce minority student isolation, and the district demonstrates the extent to which it has implemented those steps. For districts with multiple attendance centers at the same grade level, such steps may include intradistrict student transfer policies, pairing of attendance centers, revision of boundaries of attendance centers, selecting school sites, realignment of feeder systems, magnet schools, and the placement of specialized programs and services. In a district without multiple attendance centers at the same grade level, such steps may include pupil assignments to classrooms, classroom pairing, community and family outreach programs, student-to-student mentoring or grouping designed to promote understanding and acceptance of and positive interactions with all groups of minority students, and professional development activities designed to promote understanding and acceptance of and positive interactions with all groups of minority students. The open enrollment component of the plan adopted by the district board may remain in effect for so long as the district's total minority student population exceeds 15 percent, and shall remain in effect for so long as the district demonstrates is necessary to avoid minority student isolation in the district.

17.14(3) *Open enrollment elements of a diversity plan.*

a. All applicable deadlines for the filing and determination of open enrollment requests, including the exceptions for good cause under rule 17.4(282), apply to open enrollment requests filed in a district that has adopted an open enrollment component in its voluntary diversity plan.

b. The plan shall establish a districtwide ratio of minority-to-nonminority students to be maintained, consistent with subrule 17.14(2). All open enrollment requests, both those into and out of the district, shall be acted on according to whether the request will adversely affect or will positively affect the implementation of the plan. Under Iowa Code section 282.18, if an open enrollment request would positively affect the plan, the district shall give priority to granting the request over other requests.

c. A district with multiple attendance centers at the same grade level shall specify in the open enrollment component of its diversity plan which attendance centers are affected by the open enrollment component. For each of those attendance centers, the district shall establish and specify the individual attendance center ratios of minority-to-nonminority students, consistent with subrule 17.14(2). The plan may provide for an initial determination of whether a requested open enrollment will negatively affect the specific attendance center ratio. With respect to a request to open enroll out of the district, if such enrollment will negatively affect the ratio established for the student's current attendance center, the request may be denied by the district with no further determination of the impact of the request on the districtwide ratio. For a request to open enroll either into or out of the district, if the open enrollment will not negatively affect the attendance center ratio, the request shall be denied only if there would be a negative impact on the districtwide ratio. As of July 1, 2003, if a district's plan sets a threshold lower than allowed in paragraph 17.14(2)*"a"* and that plan has not been disapproved by a court of competent jurisdiction, the district may implement its individual attendance center ratios in addition to its districtwide ratio.

d. The plan shall include provision for the formation and operation of a waiting list for those requests that could not be granted immediately. A parent/guardian of a child on the waiting list must be informed by the district of the details of the operation of the list and whether the parent/guardian must refile a timely request for open enrollment in order to remain on the waiting list.

e. The plan shall specify a district contact person to whom questions may be directed from parents/guardians.

f. The plan shall include a provision whereby a parent/guardian has a means to request that the district determine whether a hardship exists for granting a request that may not otherwise be granted under the plan.

17.14(4) *Exceptions.* The following exceptions shall apply:

a. If an open enrollment request is filed on behalf of a student whose sibling is already participating in open enrollment to the same district to which the student desires open enrollment, the request shall be granted.

b. If an open enrollment request is filed on behalf of a student whose parent/guardian moves out of the school district of residence and who wishes to remain in the district of residence as an open enrolled student without interruption in the student's educational program under subrule 17.8(7), the request shall be granted. This option is not available to the parent/guardian of a student who is entering kindergarten for the first time.

c. A request for open enrollment based on repeated acts of harassment of the student shall not be denied on the basis that such request would have an adverse impact on the district's ratio of minority-to-nonminority students.

d. A request for open enrollment based on a serious health condition of the student that the district cannot adequately address shall not be denied on the basis that such request would have an adverse impact on the district's ratio of minority-to-nonminority students.

17.14(5) *Review by department.* All voluntary desegregation plans adopted under this rule prior to June 28, 2007, are no longer valid. An eligible district whose board desires to adopt a voluntary diversity plan for open enrollment must do so by March 1, 2008. The district shall submit a copy of its plan to the department for review within 10 days of the adoption of the plan. Open enrollment requests received

prior to March 1, 2008, by a district that has a voluntary diversity plan may be held by the district for action pursuant to the district's new voluntary diversity plan.

The department shall inform the district within 10 days of receipt of the district's voluntary diversity plan whether the plan complies with this rule. All changes to voluntary diversity plans for open enrollment shall be submitted to the department within 60 days of local board action.

These rules are intended to implement Iowa Code Supplement section 282.18.

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CHAPTER 18
SCHOOL FEES

PREAMBLE

Equal access to course offerings and related activities enables schools to meet the needs and interests of all students; challenge the abilities of all students consistent with their individual stages of development; and contribute to the physical, mental, athletic, civic, social, moral and emotional growth of all students. It is the intent of the department of education that all students be treated equally, regardless of the student's or the student's parent's financial status. The department considers it essential that procedures be adopted which preserve the integrity and self-esteem of any student and the student's family who apply for a waiver.

281—18.1(256) Policy. It is the policy of the department of education that no Iowa student enrolled in a public school be excluded from participation in or denied the benefits of course offerings and related activities due to the student's or the student's parent's or guardian's financial inability to pay a fee associated with the class, program, or activity.

281—18.2(256) Fee policy. The board of directors of a public school shall adopt a policy regarding the charging and collecting of fees for course offerings and related activities, and for transportation provided to resident students who are not entitled to transportation under Iowa Code section 285.1. The policy established by the board of directors shall apply to any fees charged. The board shall require that procedures be developed to implement the policy pursuant to these rules.

281—18.3(256) Eligibility for waiver, partial waiver or temporary waiver of student fees. The policy required by rule 18.2(256) shall include provisions for granting a waiver, partial waiver, or temporary waiver of student fees upon application by the student.

18.3(1) *Waivers.* At minimum, the policy shall include the following provisions relating to eligibility for the waivers:

a. *Waiver.* A student shall be granted a waiver of all fees covered by this chapter if the student or the student's family meets the financial eligibility criteria for free meals offered under the Child Nutrition Program, or the Family Investment Program (FIP), or transportation assistance under open enrollment provided under 281—subrule 17.9(3), or if the student is in foster care.

b. *Partial waiver.* A school district shall grant a student either a waiver of all student fees or a partial waiver of student fees if the student or the student's family meets the financial eligibility criteria for reduced price meals offered under the Child Nutrition Program. A partial waiver shall be based on a sliding scale related to an ability to pay.

c. *Temporary waiver.* At the discretion of the school district, a student may be granted a temporary waiver of a fee or fees in the event of a temporary financial difficulty in the student's immediate family. A temporary waiver may be applied for and granted at any time during a school year. The maximum length of a temporary waiver shall be one year.

d. *Fees waived not collectable.* The policy shall include a provision stating that when an application for any fee waiver is granted, the fee or fees waived under the application are not collectable.

e. *Distribution of policy and applications.* The procedures on charging fees, a written notice of fees charged to each student, the waiver and reduction policy and procedures including income guidelines, and the application for waiver shall be distributed to all registrants for school at the time of registration or enrollment. For students or families whose primary language is other than English, the school shall provide a copy of the materials in the student's native language or arrange for translation of the materials within a reasonable time.

f. *Annual application.* The request for a fee waiver shall be made on application forms provided by the department of education. An application can be received at any time but shall be renewed at the beginning of the school year.

18.3(2) *Applications.* The procedures shall include a description of the confidential application process for the waiver and shall provide that a written decision be issued to the applicant within a reasonable time. If the application is denied, the decision shall include the reason for the denial.

18.3(3) *Appeals.* The procedures shall include a provision for a confidential review of any denial by a person or persons designated by the board of directors upon request and the manner in which an appeal may be taken. If the decision on review is again to deny the application, the decision maker shall notify the applicant in writing that the applicant may appeal the denial to the director of the department of education by filing a notarized statement within 30 days of the applicant's receipt of the final decision of the district.

281—18.4(256) Fees covered. Fines assessed for damage or loss to school property are not fees and need not be waived.

Nothing in this chapter shall be construed to authorize the charging of a fee for which there is no authority in law.

281—18.5(256) Effective date. These rules are effective for the 1996-97 school year, and school years thereafter.

These rules are intended to implement Iowa Code section 256.7(20).

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CHAPTER 19
ATTENDANCE CENTERS
Rescinded IAB 12/16/09, effective 1/20/10

CHAPTER 20
Reserved

TITLE III
COMMUNITY COLLEGES

CHAPTER 21
COMMUNITY COLLEGES

[Prior to 9/7/88, see Public Instruction Department[670] Ch 5]
[Former Ch 21 Rescinded, IAB 9/7/88]

DIVISION I
APPROVAL STANDARDS

281—21.1(260C) Definitions. For purposes of this chapter, the indicated terms are defined as follows:

"Department" means the Iowa department of education.

"Director" means the director of the department.

[**ARC 8646B**, IAB 4/7/10, effective 5/12/10]

281—21.2(260C) Administration.

21.2(1) *Policy manual.* A community college board of directors shall develop and maintain a policy manual which adequately describes the official policies of the institution.

21.2(2) *Administrative staff.* A community college shall develop an administrative staff appropriate to the size and the purpose of the institution and one which permits the institution to function effectively and efficiently. This administrative staff shall provide effective leadership for the major divisions of the institution including administrative services, adult and continuing education, career and technical education, college parallel education, and student services.

21.2(3) *Chief executive officer.* A community college shall have a chief executive officer who shall also be the executive officer of the board of directors. The executive officer shall be responsible for the operation of the community college with respect to its educational program, its faculty and student services programs, and the use of its facilities. The executive officer shall delegate to the staff all necessary administrative and supervisory responsibilities to ensure an efficient operation of the institution.

21.2(4) *Financial records and reports.* The community college shall maintain accurate financial records and make reports in the form and pursuant to the timeline prescribed by the department and other state agencies.

21.2(5) *Enrollment.* A community college shall meet minimum enrollment requirements if it offers instruction as authorized in Iowa Code chapter 260C, and if, to the satisfaction of the state board of education, it is able to provide classes of reasonable economic size as needed by students, meets the needs of the students, and shows by its past and present enrollment and placement record that it meets individual and employment needs.

21.2(6) *Catalog.* The catalog shall be the official publication of the community college. It shall include accurate information on institutional policies, admissions requirements, procedures and fees, refund policies, residency requirements, program enrollment and degree requirements, due process procedures, affirmative action, and other information as recommended by the department. Students' rights and responsibilities may be included in the catalog or in a separate document.

21.2(7) *Admissions and program/course enrollment requirements.* The community college shall maintain an open-door admission policy for students of postsecondary age. This admission policy shall recognize that students should demonstrate a reasonable prospect for success in the program in which they are admitted. Applicants who cannot demonstrate a reasonable prospect for success in the program for which they apply should be assisted to enroll in courses where deficiencies may be remediated or into programs appropriate to the individual's preparation and objectives. The community college may set reasonable requirements for student enrollment in specified programs and courses. Admissions and program enrollment requirements established by each community college shall be published in the community college catalog.

21.2(8) *Academic year.* The academic year of the community college shall consist of semester, trimester, or quarter terms, and shall be a period of time beginning with the first day of the fall term and

continuing through the day preceding the start of the next fall term as indicated in the official college calendar. A community college may offer instruction in units of length (i.e., days and weeks) consistent with the identified scope and depth of the instructional content.

21.2(9) *Award requirements.* The director shall approve all new credit certificate, diploma, and degree award programs in accordance with Iowa Code section 260C.14. Awards from a community college shall be certified by the issuance of appropriate recognition, pursuant to award approval requirement guidelines issued by the department, indicating the type of program the student has completed. The minimum number and maximum number of credit hours required for each award type contained within this subrule may be waived pursuant to paragraph 21.2(13)*"i."* Each award shall meet the expectations of statewide articulation agreements between Iowa community colleges and public universities.

a. Associate of arts (AA). The degree is awarded upon completion of a college parallel (transfer) course of study that provides a strong general education component to satisfy the lower division general education liberal arts and sciences requirements for a baccalaureate degree. An associate of arts degree shall consist of a minimum of 60 semester (90 quarter) credit hours and a maximum of 64 semester (96 quarter) credit hours.

b. Associate of science (AS). The degree is awarded upon completion of a course of study that requires a strong background in mathematics or science. The degree is intended to prepare students to transfer and initiate upperdivision work in baccalaureate programs. An associate of science degree awarded upon completion of an arts and sciences course of study shall consist of a minimum of 60 semester (90 quarter) credit hours and a maximum of 64 semester (96 quarter) credit hours.

c. Associate of general studies (AGS). The degree is awarded upon completion of an individualized course of study that is primarily designed for the acquisition of a broad educational background rather than the pursuit of a specific college major or professional/technical program. The AGS is intended as a flexible course of study and may include specific curriculum in lower division transfer, occupational education, or professional-technical education. It shall not include a marketed course of study. An associate of general studies degree shall consist of a minimum of 60 semester (90 quarter) credit hours and a maximum of 64 semester (96 quarter) credit hours.

d. Associate of applied science (AAS). The degree is awarded upon completion of a state-approved program of study that is intended to prepare students for entry-level career and technical occupations. An associate of applied science degree shall consist of a minimum of 60 semester (90 quarter) credit hours and a maximum of 86 semester (129 quarter) credit hours. The general education component of the associate of applied science degree program shall consist of a minimum of 12 semester (18 quarter) credit hours of general education and shall include at least one course from each of the following areas: communications, social science or humanities, and mathematics or science. The technical specialty component of the associate of applied science degree shall constitute a minimum of 50 percent of the course credits.

e. Associate of applied arts (AAA). The degree is awarded upon completion of a state-approved program of study that is primarily intended for career training in providing students with professional skills for employment in a specific field of work such as arts, humanities, or graphic design. An associate of applied arts degree shall consist of a minimum of 60 semester (90 quarter) credit hours and a maximum of 86 semester (129 quarter) credit hours. The general education component of the associate of applied arts degree program shall consist of a minimum of 12 semester (18 quarter) credit hours of general education and shall include at least one course from each of the following: communications, social science or humanities, and mathematics or science. The technical specialty component of the associate of applied arts degree shall constitute a minimum of 50 percent of the course credits.

f. Associate of professional studies (APS) pilot. The degree is awarded upon completion of a state-approved program of study that is intended to prepare students for transfer and upper division coursework in aligned baccalaureate programs or immediate entry into the workforce.

(1) Pilot awards shall be approved on a limited basis at the director's sole discretion. To be eligible to participate in the pilot, a college shall demonstrate that other award types cannot meet needs and the associate of professional studies award is appropriate. The department shall study the effectiveness of

associate of professional studies programs with regard to transfer and employment success after five years and make recommendations to the state board of education regarding program parameters and continuation.

(2) Each state-approved associate of science-career option (AS-CO) program of study shall be phased out by the end of the 2015-2016 academic year. All existing AS-CO programs shall be modified to meet the parameters of allowable award types or shall be discontinued.

(3) An associate of professional studies degree shall consist of a minimum of 62 semester (93 quarter) credit hours and a maximum of 68 semester (102 quarter) credit hours. The general education component of the associate of professional studies degree shall consist of a minimum of 30 semester (45 quarter) credit hours of general education including 3 semester (4.5 quarter) credit hours of each of the following: speech, mathematics, humanities, social and behavioral sciences, science; 6 semester (9 quarter) credit hours of writing; and 9 semester (13.5 quarter) credit hours distributed among mathematics, social and behavioral sciences, humanities, and science. The technical specialty component of the associate of professional studies degree shall consist of a minimum of 16 semester (24 quarter) credit hours of career and technical coursework accepted by a receiving baccalaureate degree-granting institution with an aligned program as applying toward a specific major or program of study. The technical specialty component of the degree shall also consist of a minimum of 16 additional semester (24 quarter) credit hours of career and technical coursework accepted by the receiving institution as electives.

(4) An associate of professional studies degree program of study shall have a minimum of three program-to-program articulation agreements with baccalaureate degree-granting institutions, at least one of which must be a public institution. A program shall have a minimum of one articulation agreement effective prior to program implementation, provided all three agreements are effective within the program's first year of student enrollment. The agreements shall provide for the application of no fewer than 60 semester (90 quarter) credit hours toward the graduation requirements of each articulated baccalaureate degree program.

g. *Diploma.* The diploma is awarded upon completion of a state-approved program of study that is a coherent sequence of courses consisting of a minimum of 15 semester (22.5 quarter) credit hours and a maximum of 48 semester (72 quarter) credit hours including at least 3 semester (4.5 quarter) credit hours of general education. The general education component shall be from any of the following areas: communications, social science or humanities, and mathematics or science. A diploma may be a component of and apply toward subsequent completion of an associate of applied science or associate of applied arts degree.

h. *Certificate.* The certificate is awarded upon completion of a state-approved program of study that is designed for entry-level employment and shall consist of a maximum of 48 semester (72 quarter) credit hours. A certificate may be a component of and apply toward subsequent completion of a diploma or associate of applied science or associate of applied arts degree and may be developed in rapid response to the needs of business and industry. A certificate may consist of only career and technical courses and no general education course requirements.

21.2(10) *Academic records.* The community college shall maintain in perpetuity for each student the complete academic record including every course attempted and grade received. An official transcript must be created at the time of course enrollment. The credit hour(s) and grade must be recorded on the student's official transcripts upon completion of a community college course. These records shall be kept in disaster-resistant storage, unless other equivalent safeguards are used, such as maintaining duplicate files (electronic or otherwise) in separate facilities. The method of storage shall be consistent with current technology to ensure the ability to retrieve records. The community college shall implement a security plan that ensures the confidentiality of student records.

21.2(11) *Resident policy.* There shall be adopted for all community colleges a uniform policy for the determination of permanent residence for tuition purposes.

21.2(12) *Credit hours.* Credit hours shall be determined consistent with the following procedures.

a. Specifically stated criteria are minimal requirements only, which institutions may exceed at their discretion.

b. Conventional instruction is subdivided into four instructional methods as herein defined.

(1) Classroom work — lecture and formalized classroom instruction under the supervision of an instructor.

(2) Laboratory work — experimentation and practice by students under the supervision of an instructor.

(3) Clinical practice — applied learning experience in a health agency or office under the supervision of an instructor.

(4) Work experience — employment-related experience planned and coordinated by an institutional representative and the employer, with control and supervision of the student on the job being the responsibility of the employer.

c. No registration or orientation hours may be included when determining credit hours.

d. Institutions shall take into account the soundness of the learning environment being created by the scheduling sequence and length of classroom, laboratory, clinical, and work experience sessions. However, the final decision on these matters is left to the institutional administration so long as minimal standards are met.

e. Only minutes for students officially registered for courses or programs, including audit registration, may be included when determining credit hours.

f. Each community college must establish a policy that defines its methods of equating alternative instruction to credit hours and the process for evaluating the effectiveness of the alternative instruction to meet or exceed the expected student outcomes as if the course were taught utilizing conventional methods in paragraph 21.2(12)*"b."* Colleges will be held accountable for evaluating and maintaining high-quality programs, and their evaluations may be subject to department review. Students shall be expected to meet all approved course requirements and shall be expected to demonstrate the acquisition of knowledge and competencies/outcomes at the same level as those obtained in traditional classroom settings, in the time frames set by the institution. Alternative courses or programs of study must be approved by the college's review processes including faculty review and input. Courses shall be listed in the college catalog. Instructional formats for which alternative methods of determining credit hours are applicable include the following:

(1) Accelerated courses (study, programs). Courses or programs of study that allow students to complete courses or programs at a faster pace than if offered by conventional methods. Courses and programs shall be tailored to involve more student participation and self-directed study. Instructors may teach in traditional classroom settings or by alternative methods specified in this subrule.

(2) Distance education. Courses or programs of study taught over the Internet, Iowa Communications Network (ICN), or other electronic means that allow students to receive instruction in the classroom or other sites, over personal computers, television, or other electronic means. Courses may or may not be interactive with direct communication between the teacher and students. Credit hours shall be awarded in accordance with the credit hours that would have been assigned if the course or program were taught by conventional methods.

1. Correspondence courses. Courses offered outside the classroom setting in which the instruction is delivered indirectly to the student. Instruction is provided through another medium, such as written material, computer, television, or electronic means. Course materials are sent to a student who follows a detailed syllabus to complete assignments. Students correspond with and transmit assignments to the instructor by telephone, computer, mail, or electronic means. A third party may administer tests.

2. Television courses. Courses or programs delivered primarily via broadcast television such as Iowa Public Television, digital video disc, or other media allowing students to receive instruction in a classroom or equipped remote location.

3. Video conference courses. Courses or programs delivered via a closed synchronous audio-video conferencing system such as the Iowa Communications Network or similar system which allows students to receive instruction in a classroom or any equipped remote location via an audio-video feed to a television, computer, or other electronic device.

4. Internet courses. Courses or programs delivered via the Internet. Courses may be taken using computers in a classroom setting or using personal computers or other electronic devices from the

student's home or other location using an online content management system or mixed-media methods. Students may be linked at times directly with the instructor or with other students electronically. Interaction may be direct (synchronous) or indirect (asynchronous) allowing students to participate during their own time frames.

5. In-class hybrid courses. Courses or programs that combine traditional classroom and computer-based instruction. In-class sessions are offered with online instructional activities to promote independent learning and reduce seat-time.

(3) Self-paced instruction. Courses or programs that permit a student to enter at variable times or progress at the student's own rate of speed. Start and end dates may or may not correspond to the official college calendar. Contact or credit hours for self-paced programs or courses shall be computed by assigning to each registration the total number of credit or contact hours the student would have received if the student enrolled in a conventional program or course with stipulated beginning and ending dates.

(4) Arranged study. Instruction offered to students at times other than stated or scheduled class times to accommodate specific scheduling or program needs of students. Credit hours shall be awarded in accordance with the credit hours that would have been assigned if the course or program were taught by conventional methods.

(5) Multiformat nontraditional instruction. Instruction utilizing a variety of nontraditional methods that may incorporate self-paced learning, text, video, computer instructional delivery, accelerated training, independent study, Internet delivery, or other methods that do not follow standard classroom work guidelines. Credit hours shall be awarded in accordance with the credit hours that would have been assigned if the course or program were taught by conventional methods.

g. Individualized learning experiences for which an equivalent course is not offered shall have the program length computed from records of attendance using such procedures as a time clock or sign-in records. Individualized learning experiences means independent study courses in which an equivalent course is not offered by the college or listed in the college catalog. Independent study permits in-depth or focused learning on special topics of particular interest to the student.

h. Each course must have a minimum length of one credit hour. A fractional unit of credit may be awarded provided the course exceeds the minimum length of one credit hour.

i. Each credit hour shall consist of a minimum number of contact hours as defined in paragraphs 21.2(12)*"h"* to *"m."* One contact hour equals 50 minutes.

j. Classroom work.

(1) The minimal requirement for one semester hour of credit shall be 800 minutes (16 contact hours) of scheduled instruction.

(2) The minimal requirement for one quarter hour of credit shall be 533 minutes (10.7 contact hours) of scheduled instruction.

k. Laboratory work.

(1) The minimal requirement for one semester hour of credit shall be 1,600 minutes (32 contact hours) of scheduled laboratory work.

(2) The minimal requirement for one quarter hour of credit shall be 1,066 minutes (21.3 contact hours) of scheduled laboratory work.

l. Clinical practice.

(1) The minimal requirement for one semester hour of credit shall be 2,400 minutes (48 contact hours) of scheduled clinical practice.

(2) The minimal requirement for one quarter hour of credit shall be 1,599 minutes (32 contact hours) of scheduled clinical practice.

m. Work experience.

(1) The minimal requirement for one semester hour of credit shall be 3,200 minutes (64 contact hours) of scheduled work experience.

(2) The minimal requirement for one quarter hour of credit shall be 2,132 minutes (42.6 contact hours) of scheduled work experience.

21.2(13) *Career and technical program length.*

a. Program length for the associate of applied science (AAS) degree in career and technical education, for the associate of applied arts (AAA) degree, and for the associate of professional studies (APS) degree shall consist of an academic program not to exceed two academic years. All required course offerings are to be available within two academic years. All required offerings in AAS and AAA degree programs shall not exceed a maximum of 86 semester (129 quarter) credit hours unless the department of education has granted a waiver pursuant to paragraph 21.2(13)*"i."* All required offerings in pilot APS degree programs shall not exceed a maximum of 68 credit hours. Programs shall not exceed an average of 19 credit hours per regular term.

b. All credit-bearing courses required for program admittance or graduation, or both, shall be included in the program length credit hour maximum, with the exception of developmental course credit hours. Prerequisites that provide an option to students for either credit or noncredit shall be counted toward the program parameters. Prerequisite options that are only offered for noncredit shall not be counted toward program length parameters. A high school course prerequisite is permissible and shall not count toward program length parameters, provided the prerequisite is reasonable. A high school course prerequisite is reasonable if a community college demonstrates that students entering the program predominantly meet the requirement without prior college coursework.

c. Associate of applied science (AAS) and associate of applied arts (AAA) programs that receive accreditation from nationally recognized accrediting bodies may appeal maximum credit hour length requirements to the department for consideration of a waiver. All AAS and AAA degree programs over the 86 semester (129 quarter) credit hour maximum must have approved program-length waivers pursuant to paragraph 21.2(13)*"i."*

d. Associate of professional studies pilot programs shall not be eligible for a program-length waiver pursuant to paragraph 21.2(13)*"i."*

e. All credit certificate and diploma programs as defined in subrule 21.2(9) shall not exceed 48 semester (72 quarter) credit hours.

f. Each course offered in the area of career and technical education shall be taught in the shortest practical period of time at a standard consistent with the quality and quantity of work needed to prepare the student for successful employment in the occupation for which instruction is being offered.

g. A full-time student in career and technical education shall be defined as a student enrolling in 12 or more semester credit hours or the equivalent in career and technical education.

h. Curricula in full-time career and technical education programs shall ordinarily be offered on the basis of student workload of 20 to 30 contact hours per week.

i. Waiver process. A college may petition the department to suspend in whole or in part a program-length requirement contained in paragraphs 21.2(13)*"a"* to *"e"* as applied to a specific program on the basis of the particular circumstances of that program.

(1) Waivers shall be issued at the director's sole discretion. Waivers shall be narrowly tailored and granted for a period no longer than two academic years, after which reapplication is required. A waiver may be granted on a long-term basis not to exceed ten years if issuing the waiver for a shorter period is not practical.

(2) All petitions for waiver must be submitted in writing to the department. A petition shall include the following information: specific waiver request including scope and duration, the relevant facts that the petitioner believes would justify a waiver, a detailed statement of the impact on student achievement, any information known regarding the department's treatment of similar cases, and any additional information deemed relevant by the petitioner. The department shall acknowledge a petition upon receipt.

(3) The department shall ensure that, within 30 calendar days, notice of pendency of the petition and a concise summary of its contents have been provided to a committee consisting of the chief academic officers of each community college. In addition, the department may give notice to other persons.

(4) A committee consisting of the chief academic officers of a majority of community colleges shall review the waiver request and provide a recommendation to the department regarding whether approval should be granted. Within 90 calendar days of receiving the recommendation, the department

shall review the petition and issue a ruling. Failure of the department to grant or deny a petition within the required time period shall be deemed a denial of that petition. If a waiver is issued, the department shall provide a description of the precise scope and operative period to all interested parties.

21.2(14) *Faculty organization.* The faculty shall be organized in such a way as to promote communication among administration, faculty and students and to encourage faculty participation in the development of the curriculum, instructional procedures, general policies, and such other matters as are appropriate.

21.2(15) *Faculty salary allocation plan.* Pursuant to the appropriation of funds from the state general fund to the department for the purpose of supplementing community college faculty salaries, the department follows the formula herein when distributing such funds to community colleges.

a. For purposes of this subrule, the following definitions apply.

(1) "Full-time faculty" means those nonadministrative instructors, counselors, and librarians who are classified as full-time employees as defined in the college's collective bargaining agreement or written policy.

(2) "Part-time faculty" means those nonadministrative instructors, counselors, and librarians who are employed less than full-time as defined in the college's collective bargaining agreement and who are covered by the college's collective bargaining agreement. For purposes of the definition of "eligible full-time equivalent instructor," each part-time faculty person shall be counted as a fraction that accurately reflects the person's percentage of employment by the college when compared to a full-time faculty person.

(3) "Temporary/seasonal faculty" means those nonadministrative instructors, counselors, and librarians who are employed, full-time or part-time, by the college for short periods of time for specific purposes.

(4) "Adjunct faculty" means those nonadministrative instructors, counselors, and librarians who are employed without a continuing contract, whose teaching load does not exceed one-half time for two full semesters or three full quarters per calendar year.

(5) "Eligible full-time equivalent instructor" means the total of full-time faculty and part-time faculty where each full-time faculty counts as one, and each part-time faculty counts as a fraction that accurately reflects the person's percentage of employment by the college when compared to a full-time faculty person.

b. The appropriation shall be distributed to the community colleges based on their proportional share of eligible full-time equivalent instructors.

c. Moneys distributed to each community college pursuant to this subrule shall be rolled into the funding allocation for all future years. The use of the funds shall remain as described herein for all future years. The appropriation will be distributed to the community colleges in equal monthly payments made on or about the fifteenth of each month.

d. Moneys appropriated and distributed to community colleges pursuant to this subrule shall be used to supplement and not supplant any approved faculty salary increases or negotiated agreements, excluding the distribution of the funds herein. Eligible expenditures for the moneys appropriated are for salary expenditures and the required college contribution to FICA and IPERS or an alternative retirement benefits system. These moneys shall then be considered as part of the instructor's salary in future years.

e. Moneys distributed to a community college pursuant to this subrule shall be allocated to all full-time faculty and shall include part-time faculty covered by a collective bargaining agreement. The moneys shall be allocated pursuant to any existing negotiated agreements according to Iowa Code chapter 20. If no language exists to specify the method of allocation, the moneys shall be allocated equally to all full-time faculty with part-time faculty who are covered by a collective bargaining agreement receiving a prorated share.

f. A community college receiving funds distributed pursuant to this subrule shall determine the amount to be paid to instructors in accordance with Iowa Code section 260C.18D, subsection 4, and the

amount determined to be paid to an individual instructor shall be divided evenly and paid in each pay period of the fiscal year.

This rule is intended to implement Iowa Code section 260C.33.

[**ARC 8646B**, IAB 4/7/10, effective 5/12/10; **ARC 0687C**, IAB 4/17/13, effective 5/22/13]

281—21.3(260C) Faculty. Rescinded IAB 4/7/10, effective 5/12/10.

281—21.4(260C) Curriculum and evaluation.

21.4(1) *General education.* General education is intended to provide breadth of learning to the community college experience. General education imparts common knowledge, promotes intellectual inquiry, and stimulates the examination of different perspectives, thus enabling people to function effectively in a complex and changing world. General education tends to emphasize oral and written communication, critical analysis of information, knowledge and appreciation of diverse cultures, ways of knowing and human expression, knowledge of mathematical processes and natural sciences investigations, and ethics. General education courses are not intended to be developmental in nature. Each community college is responsible for clarifying, articulating, publicizing, and assessing its general education program.

21.4(2) *College parallel or transfer.*

a. This program shall offer courses that are the equivalent of the first two years of a baccalaureate program and may also include: such courses as may be necessary to develop skills that are prerequisite to other courses and objectives; and specialized courses required to provide career options within the college parallel or transfer program. College parallel or transfer programs are associate of arts and associate of science degree programs. General education courses in college parallel or transfer programs are required to be college transfer courses. A follow-up of students terminating shall be conducted to determine how well students have succeeded and which adjustments in the curriculum, if any, need to be made.

b. Courses of a developmental or remedial nature or prefreshman level shall not bear college transfer credit and shall be clearly identified in the college catalog. Developmental courses on the transcript shall be identifiable through the adoption of the community college common course numbering system.

21.4(3) *Career and technical education.* Instruction shall be offered in career and technical education programs in no less than five different occupational fields as defined by the department. College parallel or transfer courses may be offered as needed in career and technical education programs. Career and technical education programs, including associate of science-career option programs, must meet program approval requirements set by the state board of education. The director shall approve new career and technical education programs. Instruction shall be offered in career and technical education programs, ensuring that they are competency-based, contain all minimum competencies required by the department, articulate with local school districts' career and technical education programs, and comply with any applicable requirements in Iowa Code chapter 258. The occupational fields in which instruction is offered shall be determined by merged area and geographical area needs as identified by surveys in these areas. Occupational advisory committees may be used to assist in developing and maintaining instructional content, including leadership development.

21.4(4) *Adult and continuing education.* Adult education shall be offered and may include adult basic education, adult continuing and general education, college parallel or transfer, high school completion, supplementary and preparatory career education programs, and other programs and experiences as may be required to meet the needs of people in the merged area.

21.4(5) *Community services.* The community colleges shall provide a program of community services designed to meet the needs of persons residing in the merged area. The purpose of the community service program shall be to foster agricultural, business, cultural, industrial, recreational and social development in the area.

[**ARC 8646B**, IAB 4/7/10, effective 5/12/10]

281—21.5(260C) Library or learning resource center.

21.5(1) *Facilities.* Community college libraries or learning resource centers shall provide the facilities and resources needed to support the total educational program of the institution and shall show evidence that the facilities and the resources are being used effectively and efficiently. Adequate consideration shall be given to the seating, comfort, setting, and technology of the facility used to house the collection and learning resources.

21.5(2) *Staffing.* The library or learning resource center shall be adequately staffed with qualified professionals and skilled nonprofessional personnel.

21.5(3) *Collection.* The library and learning resource center materials collection of a community college shall be accessible and adequate in size and scope to serve effectively the number and variety of programs offered and the number of students enrolled, including distance and satellite sites. The library and learning resource center materials collection shall show evidence of having been selected by faculty as well as professional library or learning resource staff and shall be kept up-to-date through a planned program of acquisition and deletion. The library and learning resource center materials collection shall contain a range and number of print and nonprint materials and appropriate electronic information resources.

21.5(4) *Expenditures.* The budget of the library or learning resource center shall be appropriate for the programs and services offered by the institution. New programs and new curricula shall be reflected in library or learning resource center expenditures.

[**ARC 8646B**, IAB 4/7/10, effective 5/12/10]

281—21.6(260C) Student services. A program of student services shall be provided to meet the needs of students in the community college. The program of student services shall include, but not be limited to, the following functional areas:

1. Orientation to college and career opportunities and requirements.
2. Appraisal of individual potential.
3. Consultation with students about their plans, progress and problems.
4. Participation of students in activities that supplement classroom experiences.
5. Regulation to provide an optimal climate for social and academic development.
6. Services that facilitate community college attendance through a program of financial assistance, and facilitate transition to further education or employment.
7. Organization that provides for continuing articulation, evaluation and improvement of the student services program.
8. Campus safety and security as required by Iowa Code chapter 260C and the federal Clery Act, 20 U.S.C. Section 1092(f), 34 CFR Section 668.46.

[**ARC 8646B**, IAB 4/7/10, effective 5/12/10]

281—21.7(260C) Laboratories, equipment and supplies. Laboratories, equipment and supplies shall be comparable with those used in the occupations for which instruction is offered. Similarly, college parallel or transfer courses shall be supported in a manner comparable to those conditions which prevail in standard, regionally accredited colleges and universities in which students may wish to transfer college credits.

[**ARC 8646B**, IAB 4/7/10, effective 5/12/10]

281—21.8(260C) Physical plant. The site, buildings and equipment of the community college shall be well maintained and in good condition. At a minimum, a five-year ongoing, systematic maintenance and facilities plan approved by the local community college board shall be in evidence. The physical plant shall be adequate in size and properly equipped for the program offered. All remodeling of existing facilities shall comply with Iowa Code chapter 104A and the federal Americans With Disabilities Act, 42 U.S.C. Section 12101 et seq.

[**ARC 8646B**, IAB 4/7/10, effective 5/12/10]

281—21.9(260C) Nonreimbursable facilities. No facility intended primarily for events for which admission may be charged nor any facility specially designed for athletic or recreational activities, other than physical education, shall be constructed with state-appropriated funds.
[**ARC 8646B**, IAB 4/7/10, effective 5/12/10]

281—21.10(260C) Accreditation. Rescinded IAB 4/7/10, effective 5/12/10.

281—21.11(260C) Community college accreditation process. Rescinded IAB 4/7/10, effective 5/12/10.

281—21.12(260C) Standards for community colleges. Rescinded IAB 4/7/10, effective 5/12/10.

281—21.13 to **21.19** Reserved.

The rules in this division are intended to implement Iowa Code chapter 260C and 2007 Iowa Acts, Senate File 601.

DIVISION II
COMMUNITY COLLEGE ENERGY APPROPRIATIONS

281—21.20 to **21.29** Reserved.

DIVISION III
INSTRUCTIONAL COURSE FOR DRINKING DRIVERS

281—21.30(321J) Purpose. The instructional course for drinking drivers is designed to inform the offender about drinking and driving and encourage the offender to assess the offender's own drinking and driving behavior in order to select practical alternatives.
[**ARC 1433C**, IAB 4/30/14, effective 6/4/14]

281—21.31(321J) Course.

21.31(1) A course provided in accordance with Division III of this chapter shall be offered on a regular basis at each community college or by a substance abuse treatment program licensed under Iowa Code chapter 125. However, a community college shall not be required to offer the course if a substance abuse treatment program licensed under Iowa Code chapter 125 offers the course within the merged area served by the community college. A course provided in accordance with Division III of this chapter may be offered at a state correctional facility listed in Iowa Code section 904.102.

21.31(2) The department of education shall maintain a listing of all providers of approved courses in the state and publish this listing on the department's Web site.

21.31(3) Individuals who reside outside the state of Iowa and who are required by the state of Iowa to take a course for drinking drivers shall have the opportunity to take the course in another state, provided:

a. The out-of-state course is comparable to those courses approved to be offered in the state of Iowa.

b. The course is delivered in a classroom setting and not online.

21.31(4) Enrollment in the course is not limited to persons ordered to enroll, attend, and successfully complete the course required under Iowa Code sections 321J.1 and 321J.17, subsection 2. Any person under the age of 18 who is required to attend the courses for violation of Iowa Code section 321J.2 or 321J.17 must attend a course offered by a substance abuse treatment program licensed under Iowa Code chapter 125.

21.31(5) An instructional course shall be approved by the department of education in consultation with the community colleges, substance abuse treatment programs licensed under Iowa Code chapter 125, the Iowa department of public health, and the Iowa department of corrections. The course shall be delivered in a classroom setting with at least 12 hours of instructional time delivered over a minimum of a two-day period. The course may be offered in blocks not to exceed 4 hours with a minimum of a 30-minute break between blocks. Each student in the class shall receive an individual workbook, and

workbooks shall not be reused. The course shall be taught by an instructor certified by the curriculum provider to teach the course. Each course of instruction shall establish the following:

a. An understanding that alcohol-related problems could happen to anyone and that a person's drinking choices matter. The course illustrates common views of society that prevent people from taking drinking choices seriously. Research is presented to challenge common views with an understanding that alcohol problems are related to lifestyle choices.

b. An understanding that specific low-risk choices will help reduce the risk of experiencing alcohol-related problems at any point in life. The course presents research-based, low-risk guidelines.

c. Methods of providing support for making low-risk choices.

d. An accurate description of the progression of drinking to the development of alcoholism to help people weigh the risk involved with high-risk drinking and to see how high-risk choices may jeopardize their lives and the lives of others.

e. Opportunities to develop a specific plan of action to follow through with low-risk choices. A list of community resources is provided for ongoing support and treatment as needed.

[**ARC 9901B**, IAB 12/14/11, effective 1/18/12; **ARC 1433C**, IAB 4/30/14, effective 6/4/14]

281—21.32(321J) Tuition fee established.

21.32(1) Each person enrolled in an instructional course for drinking drivers shall pay to the community college or a substance abuse treatment program licensed under Iowa Code chapter 125 a tuition fee of $85 for the approved 12-hour course, plus a reasonable book fee. The court may allow an offender to combine the required course with a program that incorporates jail time. Reasonable fees may be assessed for costs associated with lodging, meals, and security.

21.32(2) A person shall not be denied enrollment in a course by reason of a person's indigency. For court-ordered placement, the court shall determine a person's indigency. In all other instances, the community college, substance abuse treatment program licensed under Iowa Code chapter 125, or state correctional facility shall determine indigence upon application.

[**ARC 1433C**, IAB 4/30/14, effective 6/4/14]

281—21.33(321J) Administrative fee established.

21.33(1) *Students enrolled in Iowa.* Each person enrolled in Iowa in an instructional course for drinking drivers under this chapter shall be charged an administrative fee of $10. This fee is in addition to tuition and shall be collected by the provider of the instructional course in conjunction with the tuition fee established under 281—21.32(321J). The administrative fee shall be forwarded to the department of education on a quarterly basis as prescribed by the department. If a student has been declared by the court as indigent, no administrative fee will be charged to that student.

21.33(2) *Students enrolled in another state.* Each person enrolled outside the state of Iowa in an instructional course for drinking drivers under this chapter shall be charged an administrative fee of $25. This fee is in addition to tuition and shall be paid directly to the department of education by the student. Upon payment of the fee, the department of education shall review the educational component of the course taken by the student and shall inform the department of transportation whether the educational component is approved by the department of education.

[**ARC 1433C**, IAB 4/30/14, effective 6/4/14]

281—21.34(321J) Advisory committee. A drinking driver education advisory committee shall be established by the department of education to serve in an advisory capacity to the department of education in matters relevant to the instructional course for drinking drivers. Membership on this committee shall include representatives from agencies currently offering the instructional course for drinking drivers and may include other stakeholders.

[**ARC 1433C**, IAB 4/30/14, effective 6/4/14]

The rules in this division are intended to implement Iowa Code section 321J.22.

DIVISION IV
JOBS NOW CAPITALS ACCOUNT

281—21.35 to **21.44** Reserved.

DIVISION V
STATE COMMUNITY COLLEGE FUNDING PLAN

281—21.45(260C) Purpose. A distribution plan for general state financial aid to Iowa's community colleges is established for the fiscal year commencing July 1, 1999, and succeeding fiscal years. Funds appropriated by the general assembly to the department of education for general financial aid to community colleges shall be allocated to each community college in the manner defined in this chapter.

21.45(1) Distribution formula. Moneys appropriated by the general assembly from the general fund to the department for community college purposes for general state financial aid for a budget year shall be allocated to each community college by the department according to the provisions of Iowa Code section 260C.18C.

21.45(2) Each community college shall provide student and financial information in the manner and form as determined by the department and before the deadline announced by the department. If the community college fails to provide the student or financial information as required, the department shall estimate the full-time equivalent enrollment (FTEE) of that college that will be used in the state general aid distribution formula.

21.45(3) Each community college shall be required to hire an auditing firm to complete and submit the schedule of credit-hour and contact-hour enrollment and a letter certifying that specified department of education procedures were followed. These schedules will be used in calculating the college's FTEE utilized in the community college state general aid distribution formula.

This rule is intended to implement Iowa Code section 260C.18C.

[**ARC 8646B**, IAB 4/7/10, effective 5/12/10]

DIVISION VI
INTERCOLLEGIATE ATHLETIC COMPETITION

281—21.46 to **21.56** Reserved.

DIVISION VII
QUALITY INSTRUCTIONAL CENTER INITIATIVE

281—21.57(260C) Purpose. Rescinded IAB 4/7/10, effective 5/12/10.

281—21.58(260C) Definitions. Rescinded IAB 4/7/10, effective 5/12/10.

281—21.59(260C) Eligibility requirements. Rescinded IAB 4/7/10, effective 5/12/10.

281—21.60(260C) Timelines. Rescinded IAB 4/7/10, effective 5/12/10.

281—21.61(260C) Evaluation and selection criteria. Rescinded IAB 4/7/10, effective 5/12/10.

281—21.62(260C) Funding. Rescinded IAB 4/7/10, effective 5/12/10.

281—21.63(260C) Annual report. Rescinded IAB 4/7/10, effective 5/12/10.

DIVISION VIII
PROGRAM AND ADMINISTRATIVE SHARING INITIATIVE
Rules 281—21.64(280A) to 21.71(280A), effective 12/20/91 were rescinded IAB 2/5/92, effective 1/7/92; these rules were readopted IAB 4/1/92, effective 5/6/92.

281—21.64(260C) Purpose. Rescinded IAB 4/7/10, effective 5/12/10.

281—21.65(260C) Definitions. Rescinded IAB 4/7/10, effective 5/12/10.

281—21.66(260C) Eligibility requirements. Rescinded IAB 4/7/10, effective 5/12/10.

281—21.67(260C) Timelines. Rescinded IAB 4/7/10, effective 5/12/10.

281—21.68(260C) Evaluation and selection criteria. Rescinded IAB 4/7/10, effective 5/12/10.

281—21.69(260C) Funding. Rescinded IAB 4/7/10, effective 5/12/10.

281—21.70(260C) Annual report. Rescinded IAB 4/7/10, effective 5/12/10.

281—21.71(260C) Combining merged areas—election. Rescinded IAB 4/7/10, effective 5/12/10.

DIVISION IX
APPRENTICESHIP PROGRAM

281—21.72(260C) Purpose. The purpose of the apprenticeship program is to provide individuals, at least 16 years of age, except where a higher minimum age standard is otherwise fixed by law, employment to learn a skilled trade or an occupation; and to authorize each community college to establish or contract for the establishment of apprenticeship programs for apprenticeable occupations.

281—21.73(260C) Definitions. For the purpose of Division IX, the following definitions shall apply:

"Apprentice" shall mean a worker at least 16 years of age, except where a higher minimum age standard is otherwise fixed by law, who is employed to learn a skilled trade or occupation under the standards of apprenticeship.

"Apprenticeable occupation" is a skilled trade which possesses all of the following characteristics:

1. It is customarily learned in a practical way through a structured, systematic program of on-the-job, supervised training.
2. It is clearly identified and commonly recognized throughout an industry.
3. It involves manual, mechanical or technical skills and knowledge which require a minimum of 2,000 hours of on-the-job work experience.
4. It requires related instruction to supplement on-the-job training.

"Apprenticeship agreement" shall mean a written agreement between an apprentice and the apprentice's employer, or an apprenticeship committee acting as the agent for the employer(s). The agreement contains the terms and conditions of the employment and training of the apprentice.

"Apprenticeship committee" shall mean those persons designated by the sponsor to act for it in the administration of the program. A committee may be "joint," i.e., composed of an equal number of representatives of the employer(s) and of the employees represented by a bona fide collective bargaining agent(s), and is established to conduct, operate, or administer an apprenticeship program and enter into apprenticeship agreements with apprentices. A committee may be "unilateral" or "nonjoint" and shall mean a program sponsor in which a bona fide collective bargaining agent is not a participant.

"Apprenticeship instructor" shall mean an instructor who delivers related and technical instruction in apprenticeship programs and who must meet the department's requirements for career and technical instructors or be recognized as a subject matter expert. It is recommended that all apprenticeship instructors have training in teaching techniques and adult learning styles.

"Apprenticeship program" shall mean a plan containing all terms and conditions for the qualification, recruitment, selection, employment and training of apprentices, including such matters as required under 29 CFR Parts 29 and 30, including the requirement for a written apprenticeship agreement.

"Cancellation" shall mean the termination of the registration or approval status of a program at the request of the sponsor or termination of an apprenticeship agreement at the request of the apprentice.

"Certification" or *"certificate"* shall mean documentary evidence that at least one of the following has been met:

1. The Office of Apprenticeship has approved a set of National Guidelines for Apprenticeship Standards developed by a national committee or organization, joint or unilateral, or policy or guideline used by local affiliates, as conforming to the standards of apprenticeship set forth in 29 CFR Section 29.5;

2. A registration agency has established that an individual is eligible for probationary employment as an apprentice under a registered apprenticeship program.

3. A registration agency has registered an apprenticeship program as evidenced by a certificate of registration or other written indicia;

4. A registration agency has determined that an apprenticeship has successfully met the requirements to receive an interim credential; or

5. A registration agency has determined that an individual has successfully completed an apprenticeship.

"Competency" shall mean the attainment of manual or technical skill and knowledge as specified by an occupational standard.

"Employer" shall mean any person or organization employing an apprentice whether or not such person or organization is a party to an apprenticeship agreement with the apprentice.

"Journeyworker" shall mean a worker who has attained a level of skill and competency recognized within an industry as having mastered the skills and competencies required for the occupation.

"Office of Apprenticeship" shall mean the office designated by the Employment and Training Administration to administer the National Apprenticeship System or its successor organization.

"Registration agency" shall mean the Office of Apprenticeship.

"Registration of an apprenticeship agreement" shall mean the acceptance and recording of an apprenticeship agreement by the Office of Apprenticeship as evidence of the apprentice's participation in a particular registered apprenticeship program.

"Related instruction" or *"related technical instruction"* shall mean an organized and systematic form of instruction designed to provide the apprentice with the core knowledge of the theoretical and technical subjects related to the apprentice's occupation. Such instruction may be given in a classroom through occupational or industrial courses, by correspondence courses of equivalent value, by electronic media, or by other forms of self-study approved by the registration agency.

"Sponsor" shall mean any person, association, committee or organization operating an apprenticeship program and in whose name the program is (or is to be) registered or approved.

"Supplemental instruction" shall mean instruction in non-core-related requirements; for example, job site management, leadership, communications, first aid/CPR, field trips, and new technologies.

[**ARC 8646B**, IAB 4/7/10, effective 5/12/10]

281—21.74(260C) Apprenticeship programs. For an apprenticeship program to be offered by a community college or a local educational agency, the program must be approved by the U.S. Department of Labor, Office of Apprenticeship, and meet all requirements outlined in the National Apprenticeship Act, 29 U.S.C. Section 50, 29 CFR Parts 29 and 30.

[**ARC 8646B**, IAB 4/7/10, effective 5/12/10]

The rules in this division are intended to implement Iowa Code section 260C.44 and the National Apprenticeship Act, 29 U.S.C. Section 50, and 29 CFR Parts 29 and 30.

DIVISION X
MISCELLANEOUS PROVISIONS

281—21.75(260C,82GA,SF358) Used motor vehicle dealer education program. An applicant for a license from the department of transportation as a used motor vehicle dealer shall complete a minimum of eight hours of prelicensing education program courses pursuant to 2007 Iowa Acts, Senate File 358, prior to submitting the application. The education program courses are provided by community colleges or by the Iowa Independent Automobile Dealers Association in conjunction with a community college.

The fee for both the prelicensing education program courses and continuing education courses shall not exceed $50 per contact hour of instruction, which shall include course materials and administrative costs.

This rule is intended to implement Iowa Code chapter 260C and 2007 Iowa Acts, Senate File 358.

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◊ Two or more ARCs

CHAPTER 22
SENIOR YEAR PLUS PROGRAM

DIVISION I
GENERAL PROVISIONS

281—22.1(261E) Scope. The senior year plus program provides Iowa high school students access to advanced placement courses and a variety of means by which to concurrently access secondary and postsecondary credit.
[**ARC 8187B**, IAB 10/7/09, effective 11/11/09]

281—22.2(261E) Student eligibility. A student shall meet all of the following criteria as a condition of participation in the programs described in Divisions IV and V of this chapter, except that a student enrolled in a career and technical course under Division IV does not have to meet the proficiency requirements set forth in paragraph 22.2(2)*"b."* To the extent that postsecondary credit is available to a student under the programs described in Divisions III and VI, the student shall meet all of the following criteria. A student who desires to participate in the postsecondary enrollment options program under Division V of these rules also shall meet the eligibility requirements set forth in rule 281—22.16(261E).

22.2(1) *Requirements established by postsecondary institution.*

a. The student shall meet the enrollment requirements established by the eligible postsecondary institution providing the course credit.

b. The student shall meet or exceed the minimum performance measures on any academic assessments that may be required by the eligible postsecondary institution.

c. The student shall have taken the appropriate course prerequisites, if any, prior to enrollment in the eligible postsecondary course, as determined by the eligible postsecondary institution delivering the course.

22.2(2) *Requirements established by school district.*

a. The student shall have attained the approval of the school board or its designee and the eligible postsecondary institution to register for the postsecondary course.

b. The student shall have demonstrated proficiency in all of the content areas of reading, mathematics, and science as evidenced by achievement scores on the most recent administration of the Iowa assessments for which scores are available for the student. If the student was absent for the most recent administration of the Iowa assessments, and such absence was not excused by the student's school of enrollment, the student is deemed not to be proficient in any of the content areas. The school district may determine whether such student is eligible for qualification under an equivalent qualifying performance measure.

(1) If a student is not proficient in one or more of the content areas of reading, mathematics, and science, the school board may establish alternative but equivalent qualifying performance measures. The school board is not required to establish equivalent performance measures, but if it does so, such measures may include but are not limited to additional administrations of the state assessment, portfolios of student work, student performance rubric, or end-of-course assessments. A school board that establishes equivalent performance measures shall also establish criteria by which its district personnel shall determine comparable student proficiency.

(2) A student who attends an accredited nonpublic school and desires to access postsecondary enrollment options shall meet the same eligibility criteria as students in the school district in which the accredited nonpublic school is located.

(3) A student under competent private instruction shall meet the same proficiency standard as students in the school district in which the student is dually enrolled and shall have the approval of the school board in that school district to register for the postsecondary course. In lieu of Iowa assessments scores as the state assessment, a school district shall allow a student under competent private instruction to demonstrate proficiency in reading, mathematics, and science by any one of the following means:

1. By meeting the same alternative but equivalent qualifying performance measures established by the local school board for all students in the school district in which the student is dually enrolled;

2. By submitting the written recommendation of the licensed practitioner providing supervision to the student in accordance with Iowa Code section 299A.2;

3. As evidenced by achievement scores on the annual achievement evaluation required under Iowa Code section 299A.4;

4. As evidenced by a composite score of at least 21 on the college readiness assessment administered by ACT, Inc.;

5. As evidenced by a sum of at least 141 in critical reading, mathematics, and writing skills on the preliminary scholastic aptitude test (PSAT) administered by the College Board; or

6. As evidenced by a sum of at least 990 in critical reading and mathematics on the college readiness assessment (SAT) administered by the College Board.

[**ARC 8187B**, IAB 10/7/09, effective 11/11/09; **ARC 9902B**, IAB 12/14/11, effective 1/18/12; **ARC 0526C**, IAB 12/12/12, effective 1/16/13]

281—22.3(261E) Teacher eligibility, responsibilities. A teacher employed to provide instruction under this chapter shall meet the following criteria:

22.3(1) *Eligibility.* The teacher shall meet the standards and requirements set forth which other full-time instructors teaching within the academic department are required to meet and which are approved by the appropriate postsecondary administration. An individual under suspension or revocation of an educational license or statement of professional recognition issued by the board of educational examiners shall not be allowed to provide instruction for any program authorized by this chapter. If the instruction for any program authorized by this chapter is provided at a school district facility or a neutral site, the teacher or instructor shall have successfully passed a background investigation conducted in accordance with Iowa Code section 272.2(17) prior to providing such instruction. The background investigation also applies to a teacher or instructor who is employed by an eligible postsecondary institution if the teacher or instructor provides instruction under this chapter at a school district facility or a neutral site. For purposes of this rule, "neutral site" means a facility that is not owned or operated by an institution.

22.3(2) *Responsibilities.* A teacher employed to provide instruction under this chapter shall do all of the following:

a. Collaborate, as appropriate, with other secondary or postsecondary faculty of the institution that employs the teacher regarding the subject area;

b. As assisted by the school district, provide ongoing communication about course expectations, teaching strategies, performance measures, resource materials used in the course, and academic progress to the student and, in the case of students of minor age, to the parent or guardian of the student;

c. Provide curriculum and instruction that are accepted as college-level work as determined by the institution;

d. Use valid and reliable student assessment measures, to the extent available.

[**ARC 8187B**, IAB 10/7/09, effective 11/11/09]

281—22.4(261E) Institutional eligibility, responsibilities.

22.4(1) *Requirements of both school district and eligible postsecondary institution.*

a. The institutions shall ensure that students, or in the case of minor students, parents or guardians, receive appropriate course orientation and information, including but not limited to a summary of applicable policies and procedures, the establishment of a permanent transcript, policies on dropping courses, a student handbook, information describing student responsibilities, and institutional procedures for academic credit transfer.

b. The institutions shall ensure that students have access to student support services, including but not limited to tutoring, counseling, advising, library, writing and math labs, and computer labs, and student activities, excluding postsecondary intercollegiate athletics. If a fee is charged to other students of the eligible postsecondary institution for any of the above services, that fee may also be charged to participating secondary students on the same basis as it is charged to postsecondary students.

c. The institutions shall ensure that students are properly enrolled in courses that will carry college credit.

d. The institutions shall ensure that teachers and students receive appropriate orientation and information about the institution's expectations.

e. The institutions shall ensure that the courses provided achieve the same learning outcomes as similar courses offered in the subject area and are accepted as college-level work.

f. The institutions shall review the course on a regular basis for continuous improvement, shall follow up with students in order to use information gained from the students to improve course delivery and content, and shall share data on course progress and outcomes with the collaborative partners involved with the delivery of the programming and with the department, as needed.

g. The institutions shall not require a minimum or a maximum number of postsecondary credits to be earned by a high school student under this chapter. However, no student shall be enrolled as a full-time student in any one postsecondary institution.

h. The institutions shall not place restrictions on participation in senior year plus programming beyond that which is specified in statute or administrative rule.

i. The institutions shall provide the teacher or instructor appropriate orientation and training in secondary and postsecondary professional development related to curriculum, pedagogy, assessment, policy implementation, technology, and discipline issues.

j. The institutions shall provide the teacher or instructor adequate notification of an assignment to teach a course under this chapter, as well as adequate preparation time to ensure that the course is taught at the college level. The specifics of this paragraph shall be locally determined.

22.4(2) *Requirements of school district only.*

a. The school district shall certify annually to the department, as an assurance in the district's basic education data survey, that the course provided to a high school student for postsecondary credit in accordance with this chapter supplements, and does not supplant, a course provided by the school district in which the student is enrolled. For purposes of these rules, to comply with the "supplement, not supplant" requirement, the content of a course provided to a high school student for postsecondary credit shall not consist of substantially the same concepts and skills as the content of a course provided by the school district.

b. The school district shall ensure that the background investigation requirement of subrule 22.3(1) is satisfied. The school district shall pay for the background investigation but may charge the teacher or instructor a fee not to exceed the actual cost charged the school district for the background investigation conducted. If the teacher or instructor is employed by an eligible postsecondary institution, the school district shall pay for the background investigation but may request reimbursement of the actual cost to the eligible postsecondary institution.

22.4(3) *Requirements of eligible postsecondary institution only.*

a. All eligible postsecondary institutions providing programming under this chapter shall include the unique student identifier assigned to students while in the kindergarten through grade 12 system as a part of the institution's student data management system.

(1) Eligible postsecondary institutions providing programming under this chapter shall cooperate with the department on data requests related to the programming.

(2) All eligible postsecondary institutions providing programming under this chapter shall collect data and report to the department on the proportion of females and minorities enrolled in science-, technology-, engineering-, and mathematics-oriented educational opportunities provided in accordance with this chapter.

b. The eligible postsecondary institution shall provide the teacher or instructor with ongoing communication and access to instructional resources and support, and shall encourage the teacher or instructor to participate in the postsecondary institution's academic departmental activities.

[**ARC 8187B**, IAB 10/7/09, effective 11/11/09]

281—22.5(261E) Reserved.

DIVISION II
DEFINITIONS

281—22.6(261E) Definitions. For the purposes of this chapter, the indicated terms are defined as follows:

"Concurrent enrollment" means any course offered to students in grades 9 through 12 during the regular school year approved by the board of directors of a school district through a contractual agreement between a community college and the school district that meets the provisions of Iowa Code section 257.11(3).

"Department" means the department of education.

"Director" means the director of the department of education.

"Dually enrolled" means the status of a student who receives competent private instruction under Iowa Code chapter 299A and whose parent, guardian, or legal custodian has registered the student pursuant to Iowa Code section 299A.8 in a school district for any of the purposes listed therein, including, for purposes of these rules, participation in any part of the senior year plus program on the same basis as public school students.

"Eligible postsecondary institution" means an institution of higher learning under the control of the state board of regents, a community college established under Iowa Code chapter 260C, or an accredited private institution as defined in Iowa Code section 261.9.

"Full time" means enrollment in any one academic year, exclusive of any summer term, of 24 or more postsecondary credit hours.

"ICN" means Iowa communications network, the statewide system of educational telecommunications including narrowcast and broadcast systems under the public broadcasting division of the department of education and live interactive systems which allow, at a minimum, one-way video and two-way audio communication.

"Institution" means a school district or eligible postsecondary institution delivering the instruction in a given program as authorized by this chapter.

"School board" means the board of directors of a school district or a collaboration of boards of directors of school districts.

"State board" means the state board of education.

"Student" means any individual in grades 9 through 12 enrolled or dually enrolled in a school district who meets the criteria in rule 281—22.2(261E). For purposes of Division III (Advanced Placement Program) and Division V (Postsecondary Enrollment Options Program) only, "student" also includes a student enrolled in an accredited nonpublic school or the Iowa School for the Deaf or the Iowa Braille and Sight Saving School.

[**ARC 8187B**, IAB 10/7/09, effective 11/11/09]

DIVISION III
ADVANCED PLACEMENT PROGRAM

281—22.7(261E) School district obligations. All school districts shall comply with the following obligations but may do so through direct instruction, collaboration with another school district, or use of the Iowa online advanced placement academy. An international baccalaureate program is not an advanced placement program.

22.7(1) A school district shall provide descriptions of the advanced placement courses available to students using a course registration handbook.

22.7(2) A school district shall ensure that advanced placement course teachers are appropriately licensed by the board of educational examiners in accordance with Iowa Code chapter 272 and meet the minimum certification requirements of the national organization that administers the advanced placement program.

22.7(3) A school district shall establish prerequisite coursework for each advanced placement course offered and shall describe the prerequisites in the course registration handbook, which shall be provided

to every junior high school or middle school student prior to the development of a core curriculum plan pursuant to Iowa Code section 279.61.

22.7(4) A school district shall make advanced placement coursework available to a dually enrolled student under competent private instruction if the student meets the same criteria as a regularly enrolled student of the district.

22.7(5) A school district shall make advanced placement coursework available to a student enrolled in an accredited nonpublic school located in the district if the student meets the criteria in subparagraph 22.2(2)*"b"*(3).

[**ARC 8187B**, IAB 10/7/09, effective 11/11/09]

281—22.8(261E) Obligations regarding registration for advanced placement examinations. The board of directors of a school district and the authorities in charge of an accredited nonpublic school shall ensure that any student enrolled who is interested in taking an advanced placement examination is properly registered for the examination. An accredited nonpublic school shall provide a list of students registered for advanced placement examinations to the school district in which the accredited nonpublic school is located. The school district and the accredited nonpublic school shall ensure that any student enrolled in the school district or school, as applicable, who is interested in taking an advanced placement examination and qualifies for a reduced fee for the examination is properly registered for the fee reduction.

[**ARC 8187B**, IAB 10/7/09, effective 11/11/09]

281—22.9(261E) and **22.10(261E)** Reserved.

DIVISION IV
CONCURRENT ENROLLMENT PROGRAM

281—22.11(261E) Applicability. The concurrent enrollment program, also known as district-to-community college sharing, promotes rigorous academic or career and technical pursuits by providing opportunities to high school students to enroll part-time in eligible nonsectarian courses at or through community colleges established under Iowa Code chapter 260C.

22.11(1) The program shall be made available to all eligible resident students in grades 9 through 12.

a. Notice of the availability of the program shall be included in a school district's student registration handbook, and the handbook shall identify which courses, if successfully completed, generate college credit under the program.

b. A student and the student's parent or guardian shall also be made aware of this program as a part of the development of the student's core curriculum plan in accordance with Iowa Code section 279.61.

22.11(2) A student enrolled in an accredited nonpublic school may access the program through the school district in which the accredited nonpublic school is located. A student receiving competent private instruction may access the program through the school district in which the student is dually enrolled and may enroll in the same number of concurrent enrollment courses as a regularly enrolled student of the district.

22.11(3) A student may make application to a community college and the school district to allow the student to enroll for college credit in a nonsectarian course offered by the community college. A comparable course, as defined in rules adopted by the board of directors of the school district, must not be offered by the school district or accredited nonpublic school which the student attends. The school board shall annually approve courses to be made available for high school credit using locally developed criteria that establish which courses will provide the student with academic rigor and will prepare the student adequately for transition to a postsecondary institution. A school district may not use concurrent enrollment courses to meet the accreditation requirements in Division V of 281—Chapter 12 other than for career-technical courses.

22.11(4) If an eligible postsecondary institution accepts a student for enrollment under this division, the school district, in collaboration with the community college, shall send written notice to the student,

the student's parent or guardian in the case of a minor child, and the student's school district. The notice shall list the course, the clock hours the student will be attending the course, and the number of hours of college credit that the student will receive from the community college upon successful completion of the course.

22.11(5) A school district shall grant high school credit to a student enrolled in a course under this division if the student successfully completes the course as determined by the community college and the course was previously approved by the school board pursuant to 22.11(3). The board of directors of the school district shall determine the number of high school credits that shall be granted to a student who successfully completes a course. Students shall not "audit" a concurrent enrollment course; the student must take the course for credit.

22.11(6) School districts that participate in district-to-community college sharing agreements or concurrent enrollment programs that meet the requirements of Iowa Code section 257.11(3) are eligible to receive supplementary weighted funding under that provision. Regardless of whether a district receives supplementary weighted funding, the district shall not charge tuition of any of its students who participate in a concurrent enrollment course.

22.11(7) Community colleges shall comply with the data collection requirements of Iowa Code section 260C.14(22). The data elements shall include but not be limited to the following:

a. An unduplicated enrollment count of eligible students participating in the program.

b. The actual costs and revenues generated for concurrent enrollment. An aligned unique student identifier system shall be established by the department for students in kindergarten through grade 12 and community college.

c. Degree, certifications, and other qualifications to meet the minimum hiring standards.

d. Salary information including regular contracted salary and total salary.

e. Credit hours and laboratory contact hours and other data on instructional time.

f. Other information comparable to the data regarding teachers collected in the basic education data survey.

[**ARC 8187B**, IAB 10/7/09, effective 11/11/09]

281—22.12(261E) Transportation. Reserved.

281—22.13(261E) Reserved.

DIVISION V
POSTSECONDARY ENROLLMENT OPTIONS PROGRAM

281—22.14(261E) Availability. The senior year plus programming provided by a school district pursuant to this division may be but is not required to be available to students on a year-round basis.

[**ARC 8187B**, IAB 10/7/09, effective 11/11/09]

281—22.15(261E) Notification. The availability and requirements of this program shall be included in each school district's student registration handbook. Information about the program shall be provided to the student and the student's parent or guardian prior to the development of the student's core curriculum plan under Iowa Code section 279.61. The school district shall establish a process by which students may indicate interest in and apply for enrollment in the program.

[**ARC 8187B**, IAB 10/7/09, effective 11/11/09]

281—22.16(261E) Student eligibility. Persons who have graduated from high school are not eligible for this program. Eligible students shall be residents of Iowa. "Eligible student" includes a student classified by the board of directors of a school district, by the state board of regents for students of the Iowa School for the Deaf and the Iowa Braille and Sight Saving School, or by the authorities in charge of an accredited nonpublic school as a ninth or tenth grade student who is identified according to the school district's gifted and talented criteria and procedures, pursuant to Iowa Code section 257.43, as a gifted and talented child, or an eleventh or twelfth grade student, during the period the student is participating

in the postsecondary enrollment options program. To be eligible to participate in a program under this division, a student must meet all criteria in rule 281—22.2(261E).

22.16(1) A student enrolled in an accredited nonpublic school who meets all eligibility requirements may apply to take courses under this division in the school district where the accredited nonpublic school is located, provided that neither the accredited nonpublic school nor the school district offers a comparable course.

22.16(2) A student under competent private instruction who meets the eligibility requirements in this rule and those in subparagraph 22.2(2)*"b"*(3) may apply to take courses under this division through the public school district in which the student is dually enrolled, provided that the resident school district does not offer a comparable course, and shall be allowed to take such courses on the same basis as a regularly enrolled student of the district.

22.16(3) Postsecondary institutions may require students to meet appropriate standards or requirements for entrance into a course. Such requirements may include prerequisite courses, scores on national academic aptitude and achievement tests, or other evaluation procedures to determine competency. Acceptance of a student into a course by a postsecondary institution is not a guarantee that a student will be enrolled in all requested courses. Priority may be given to postsecondary students before eligible secondary students are enrolled in courses. However, once an eligible secondary student has enrolled in a postsecondary course, the student cannot be displaced by another student for the duration of the course. Students shall not "audit" postsecondary courses. The student must take the course for credit and must meet all of the requirements of the course which are required of postsecondary students.

[**ARC 8187B**, IAB 10/7/09, effective 11/11/09]

281—22.17(261E) Eligible postsecondary courses. These rules are intended to implement the policy of the state to promote rigorous academic pursuits. Therefore, postsecondary courses eligible for students to enroll in under this division shall be limited to: nonsectarian courses; courses that are not comparable to courses offered by the school district where the student attends which are defined in rules adopted by the board of directors of the public school district; credit-bearing courses that lead to an educational degree; courses in the discipline areas of mathematics, science, social sciences, humanities, and vocational-technical education; and also the courses in career option programs offered by area schools established under the authorization provided in Iowa Code chapter 260C. A school district or accredited nonpublic school district shall grant academic or vocational-technical credit to an eligible student enrolled in an eligible postsecondary course.

[**ARC 8187B**, IAB 10/7/09, effective 11/11/09]

281—22.18(261E) Application process. To participate in this program, an eligible student shall make application to an eligible postsecondary institution to allow the eligible student to enroll for college credit in a nonsectarian course offered at the institution. A comparable course must not be offered by the school district or accredited nonpublic school the student attends. For purposes of these rules, "comparable" is not synonymous with identical, but means that the content of a course provided to a high school student for postsecondary credit shall not consist of substantially the same concepts and skills as the content of a course provided by the school district or accredited nonpublic school. If the postsecondary institution accepts an eligible student for enrollment under this division, the institution shall send written notice to the student, the student's parent or guardian in the case of a minor child, and the student's school district or accredited nonpublic school and the school district in the case of a nonpublic school student or student under competent private instruction, or the Iowa School for the Deaf or the Iowa Braille and Sight Saving School. The notice shall list the course, the clock hours the student will be attending the course, and the number of hours of college credit that the eligible student will receive from the eligible postsecondary institution upon successful completion of the course.

[**ARC 8187B**, IAB 10/7/09, effective 11/11/09]

281—22.19(261E) Credits. A school district, the Iowa School for the Deaf, the Iowa Braille and Sight Saving School, or an accredited nonpublic school shall grant high school credit to an eligible student

enrolled in a course under this division if the eligible student successfully completes the course as determined by the eligible postsecondary institution.

22.19(1) The board of directors of the school district, the board of regents for the Iowa School for the Deaf and the Iowa Braille and Sight Saving School, or authorities in charge of an accredited nonpublic school shall determine the number of high school credits that shall be granted to an eligible student who successfully completes a course.

22.19(2) Eligible students may take up to seven semester hours of credit during the summer months when school is not in session and receive credit for that attendance, if the student pays the cost of attendance for those summer credit hours.

22.19(3) The high school credits granted to an eligible student under this division shall count toward the graduation requirements and subject area requirements of the school district of residence, the Iowa School for the Deaf, the Iowa Braille and Sight Saving School, or the accredited nonpublic school of the eligible student. Evidence of successful completion of each course and high school credits and college credits received shall be included in the student's high school transcript.
[**ARC 8187B**, IAB 10/7/09, effective 11/11/09]

281—22.20(261E) Transportation. The parent or guardian of an eligible student who has enrolled in and is attending an eligible postsecondary institution under this division shall furnish transportation to and from the postsecondary institution for the student.
[**ARC 8187B**, IAB 10/7/09, effective 11/11/09]

281—22.21(261E) Tuition payments.

22.21(1) Not later than June 30 of each year, a school district shall pay a tuition reimbursement amount to a postsecondary institution that has enrolled its resident eligible students under this division, unless the eligible student is participating in open enrollment under Iowa Code section 282.18, in which case, the tuition reimbursement amount shall be paid by the receiving district. However, if a child's residency changes during a school year, the tuition shall be paid by the district in which the child was enrolled as of the date specified in Iowa Code section 257.6(1) or the district in which the child was counted under Iowa Code section 257.6(1)*"a"*(6). For students enrolled at the Iowa School for the Deaf and the Iowa Braille and Sight Saving School, the state board of regents shall pay a tuition reimbursement amount by June 30 of each year. The amount of tuition reimbursement for each separate course shall equal the lesser of:

a. The actual and customary costs of tuition, textbooks, materials, and fees directly related to the course taken by the eligible student.

b. Two hundred fifty dollars.

22.21(2) A secondary student is not eligible to enroll on a full-time basis in an eligible postsecondary institution under this program.

22.21(3) An eligible postsecondary institution that enrolls an eligible student under this division shall not charge the student for tuition, textbooks, materials, or fees directly related to the course in which the student is enrolled except that the student may be required to purchase equipment that becomes the property of the student. For the purposes of this subrule, equipment shall not include textbooks.
[**ARC 8187B**, IAB 10/7/09, effective 11/11/09]

281—22.22(261E) Tuition reimbursements and adjustments. The failure of a student to complete or otherwise to receive credit for an enrolled course requires the student, if 18 years of age or older, to reimburse the school district for the cost of the enrolled course. If the student is under 18 years of age, the student's parent or guardian shall sign the student registration form indicating that the parent or guardian assumes all responsibility for the costs directly related to the incomplete or failed coursework. If documentation is submitted to the school district that verifies the student was unable to complete the course for reasons including but not limited to the student's physical incapacity, a death in the student's immediate family, or the student's move to another school district, that verification shall constitute a waiver of the requirement that the student or parent or guardian pay the costs of the course to the school

district. An eligible postsecondary institution shall make pro rata adjustments to tuition reimbursement amounts based upon federal guidelines established pursuant to 20 U.S.C. §1091b.
[**ARC 8187B**, IAB 10/7/09, effective 11/11/09]

281—22.23(261E) Reserved.

DIVISION VI
CAREER ACADEMIES

281—22.24(261E) Career academies. A career academy is a program of study as defined in 281—Chapter 47. A course offered by a career academy shall not qualify as a regional academy course.

22.24(1) A career academy course may qualify as a concurrent enrollment course if it meets the requirements of Iowa Code section 261E.8.

22.24(2) The school district providing secondary education under this division shall be eligible for supplementary weighting under Iowa Code section 257.11(2), and the community college shall be eligible for funds allocated pursuant to Iowa Code section 260C.18A.

22.24(3) Information regarding career academies shall be provided by the school district to a student and the student's parent or guardian prior to the development of the student's core curriculum plan under Iowa Code section 279.61.
[**ARC 8187B**, IAB 10/7/09, effective 11/11/09]

281—22.25(261E) Reserved.

DIVISION VII
REGIONAL ACADEMIES

281—22.26(261E) Regional academies. A regional academy is a program established by a school district to which multiple school districts send students in grades 7 through 12. In addition to partnering with other school districts, the school district establishing a regional academy may enter into a contract or a chapter 28E agreement with one or more accredited nonpublic schools, area education agencies, community colleges, accredited public or nonpublic postsecondary institutions, businesses, and private agencies located within or outside of Iowa.

22.26(1) *Purpose.* A regional academy shall be established to build a culture of innovation for students and community; to diversify educational and economic opportunities by engaging in learning experiences that involve students in complex, real-world projects; and to develop regional or global innovation networks.

22.26(2) *Curriculum.* A regional academy shall include in its curriculum advanced-level courses. A regional academy may include in its curriculum career and technical courses and core curriculum coursework. The coursework may be delivered virtually, or via the ICN, asynchronous learning networks, or Internet-based delivery systems.

22.26(3) *Supplementary weighting.* School districts participating in regional academies are eligible for supplementary weighting as provided in Iowa Code section 257.11(2). The school districts participating in the regional academy shall enter into an agreement on how the funding generated by the supplementary weighting received shall be used and shall submit the agreement, as well as a copy of the minutes of meetings of the local school district boards of directors in which the boards approved the agreement, to the department for approval by October 1 of the year in which the districts intend to request supplementary weighting for the regional academy.

22.26(4) *Student plan.* Information regarding regional academies shall be provided to a student and the student's parent or guardian prior to the development of the student's core curriculum plan under Iowa Code section 279.61.
[**ARC 8187B**, IAB 10/7/09, effective 11/11/09; **ARC 9902B**, IAB 12/14/11, effective 1/18/12]

281—22.27(261E) Waivers for certain regional academies. A school district that establishes a regional academy may, but is not required to, submit to the department a request for waiver from any

statutory or regulatory provision identified by the school district as a barrier to the school district's goal of increasing student achievement or increasing competency-based learning opportunities for students. The school district shall submit a plan to the department demonstrating how the regional academy will increase student achievement or increase competency-based learning opportunities for students, how the regional academy will assess either the increase in student achievement or the increase in competency-based learning opportunities for students, and why the requested waiver or waivers are necessary. The waiver request and plan shall be submitted to the department for approval by January 1 of the school year immediately preceding the school year for which waiver is sought. The department may not waive or modify any statutory or regulatory provision relating to requirements applicable to school districts that pertain to audit requirements, investment of public funds, collective bargaining, open meetings, public records, civil rights, human rights, special education, contracts with and discharge of teachers and administrators, powers and duties of school boards, teacher quality, and school transportation.
[**ARC 9902B**, IAB 12/14/11, effective 1/18/12]

DIVISION VIII
INTERNET-BASED AND ICN COURSEWORK

281—22.28(261E) Internet-based coursework. The programming in this chapter may be delivered via Internet-based technologies including but not limited to the Iowa learning online program. An Internet-based course may qualify for additional supplemental weighting if it meets the requirements of Division IV or Division VI of this chapter. To qualify as a senior year plus course, an Internet-based course must comply with the appropriate provisions of this chapter.
[**ARC 8187B**, IAB 10/7/09, effective 11/11/09]

281—22.29(261E) ICN-based coursework. The ICN may be used to deliver coursework for the programming provided under this chapter subject to an appropriation by the general assembly for that purpose. A school district that provides courses delivered via the ICN shall receive supplemental funding as provided in Iowa Code section 257.11(7). To qualify as a senior year plus course, a course offered through the ICN must comply with the appropriate provisions of this chapter.
[**ARC 8187B**, IAB 10/7/09, effective 11/11/09]

281—22.30 and **22.31** Reserved.

DIVISION IX
PROJECT LEAD THE WAY

281—22.32(261E) Project lead the way.

22.32(1) *Program established.* A project lead the way program is established to be administered by the department to promote rigorous science, technology, engineering, and mathematics pursuits.

22.32(2) *Notification.* A school district shall provide descriptions of the project lead the way courses available to students using a course registration handbook. The handbook shall identify which courses, if successfully completed, generate college credit under the program. Information about available project lead the way courses shall be provided to every junior high school student or middle school student prior to the development of a core curriculum plan pursuant to Iowa Code section 279.61.

22.32(3) *Access.* Students from accredited nonpublic schools and students receiving competent private instruction under Iowa Code chapter 299A may access the program through the school district in which the accredited nonpublic school or private institution is located.

22.32(4) *Curriculum.* A school district offering a project lead the way program must offer the curriculum developed by the national organization that administers the project lead the way program.

22.32(5) *Instructor.* A school district shall ensure that a teacher or instructor employed to provide instruction under this rule meets the following additional criteria:

a. The teacher shall have successfully completed the training required by the national organization that administers the project lead the way program.

b. The teacher shall meet the minimum requirements of the national organization that administers the project lead the way program.

22.32(6) *Accreditation standards.* A project lead the way course may apply toward high school program accreditation standards pursuant to 281—subrule 12.5(5). To meet the requirement, the instructor must be appropriately licensed and endorsed by the board of educational examiners to teach the subject area of the accreditation standard.

22.32(7) *Shared district-to-community college courses.*

a. A district-to-community college sharing program for project lead the way courses is established to be administered by the department to promote rigorous science, technology, engineering, and mathematics pursuits at or through community colleges established under Iowa Code chapter 260C. The program shall be made available to all resident students in grades 9 through 12.

b. A comparable course, as defined in rules adopted by the board of directors of the school district consistent with department administrative rule, must not be offered by the school district or accredited nonpublic school the student attends.

c. A school district shall be certified by the national organization that administers the project lead the way program and have a signed agreement with that organization.

d. To be eligible, institutions, instructors, and students shall meet the requirements of Iowa Code section 261E.3.

e. A school district may set additional eligibility requirements to ensure student readiness to achieve success. All students in the shared course shall meet the expectations of the national organization that administers the project lead the way program and shall be registered for college credit.

f. A student may make application to a community college and the school district to allow the student to enroll for college credit in a project lead the way course offered by the community college.

g. A district-to-community college sharing program for project lead the way courses that meets the requirements of 281—subrule 97.2(6) is eligible for funding under that provision for shared college credit career and technical education courses.

22.32(8) *Credit.*

a. The school district shall grant high school credit to a student enrolled in a project lead the way course not offered by a community college. At a school district's discretion, a project lead the way course may count toward a school district's graduation requirements provided that the teacher is licensed by the board of educational examiners and endorsed within the subject area of the graduation requirement.

b. The school district shall grant high school credit to a student enrolled in a project lead the way course for college credit under this chapter if the student successfully completes the course as determined by the community college and the course was previously approved by the school board pursuant to Iowa Code subsection 261E.8(3) and paragraph 22.2(2)*"a."* If a student is not successful in completing a project lead the way course as determined by the community college, the student's high school transcript shall reflect the failing grade. The board of directors of the school district shall determine the number of high school credits that shall be granted to a student who successfully completes a project lead the way course.

c. The school district may offer a project lead the way course as an articulated course. Articulated courses shall be offered through an agreement between the district and postsecondary institution which allows students to receive college credit at the postsecondary institution upon matriculation based on the demonstrated mastery of concepts in the high school course. An articulated course shall not be delivered by a postsecondary institution or through a sharing agreement with a community college and shall not generate supplementary weighting.

[**ARC 0519C**, IAB 12/12/12, effective 1/16/13]

These rules are intended to implement Iowa Code chapter 261E.

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CHAPTER 23
ADULT EDUCATION

[Prior to 9/7/88, see Public Instruction Department[670] Ch 34]

281—23.1(260C) Planning process.

23.1(1) *Basis.* A state plan for adult education shall be developed as required by federal legislation. The plan shall be in such detail as the state director of education shall prescribe. Current federal rules and regulations shall be followed in developing the state plan.

23.1(2) *Participatory planning committee.* The department of education shall involve a participatory planning committee in the development of the plan. The participatory planning committee shall include representatives of various agencies, groups, and organizations. The state plan shall provide for the selection of representatives and the manner in which the representatives will be involved in the development of the state plan. If the participatory planning committee is not able to agree upon a final plan, the department of education shall make the final decision. The state plan shall include notation of recommendations rejected and the reason for the rejection.

[**ARC 8645B**, IAB 4/7/10, effective 5/12/10]

281—23.2(260C) Final plan. The final plan shall be approved by the state board of education and implemented statewide. A copy of the final plan shall be made available to all individuals in the state upon request to the department of education.

[**ARC 8645B**, IAB 4/7/10, effective 5/12/10]

These rules are intended to implement Iowa Code section 260C.1.

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CHAPTER 24
COMMUNITY COLLEGE ACCREDITATION

281—24.1(260C) Purpose. As set forth in Iowa Code section 260C.1, the purpose of accreditation of Iowa's community colleges is to confirm that each college is offering, to the greatest extent possible, educational opportunities and services, when applicable, but not be limited to:

1. The first two years of college work including preprofessional education.
2. Career and technical training.
3. Programs for in-service training and retraining of workers.
4. Programs for high school completion for students of post-high school age.
5. Programs for all students of high school age, who may best serve themselves by enrolling for career and technical training, while also enrolled in a local high school, public or private.
6. Programs for students of high school age to provide advanced college placement courses not taught at a student's high school while the student is also enrolled in the high school.
7. Student personnel services.
8. Community services.
9. Career and technical education for persons who have academic, socioeconomic, or other disabilities which prevent succeeding in regular career and technical education programs.
10. Training, retraining, and all necessary preparation for productive employment of all citizens.
11. Career and technical training for persons who are not enrolled in a high school and who have not completed high school.
12. Developmental education for persons who are academically or personally underprepared to succeed in their program of study.

[**ARC 8644B**, IAB 4/7/10, effective 5/12/10]

281—24.2(260C) Scope. Each community college is subject to accreditation by the state board of education, as provided in Iowa Code section 260C.47. The state board of education shall grant accreditation if a community college meets the standards established in this chapter.

281—24.3(260C) Definitions. For purposes of interpreting rule 281—24.5(260C), the following definitions shall apply:

"Department." Department refers to the Iowa department of education.

"Director." Director refers to the director of the department.

"Field of instruction." The determination of what constitutes each field of instruction should be based on accepted practices of regionally accredited two- and four-year institutions of higher education.

"Full-time instructor." An instructor is considered to be full-time if the community college board of directors designates the instructor as full-time. Consideration of determining full-time status shall be based on local board-approved contracts.

"Higher Learning Commission." The Higher Learning Commission is the accrediting authority within the North Central Association of Colleges and Schools. Iowa Code sections 260C.47 and 260C.48 require that the state accreditation process be integrated with that of the North Central Association of Colleges and Schools.

"Instructors meeting minimum requirements." A community college instructor meeting the minimum requirements of Iowa Code Supplement section 260C.48(1) as amended by 2008 Iowa Acts, House File 2679, is an instructor under contract for at least half-time or more teaching college credit courses. Beginning July 1, 2011, a community college instructor meeting the minimum requirements is an instructor teaching college credit courses. Credit courses shall meet requirements as specified in rule 281—21.2(260C), and meet program requirements for college parallel, career and technical education, and career-option programs as specified in rule 281—21.4(260C) and Iowa Code chapter 260C.

"Joint enrollment." Joint enrollment refers to any community college credit course offered to students enrolled in a secondary school. Courses offered for joint enrollment include courses delivered through contractual agreements between school districts and community colleges, courses delivered

through the postsecondary enrollment options program, and college credit courses taken independently by tuition-paying secondary school students.

"Minimum of 12 graduate hours." Full-time arts and sciences instructors must possess a master's degree and complete a minimum of 12 graduate hours in their field of instruction. The 12 graduate hours may be within the master's degree requirements or independent of the master's degree, but all hours must be in the instructor's field of instruction.

"Organization." Organization is synonymous with community college and is used in this chapter to align with accreditation terminology used by the Higher Learning Commission.

"Recent and relevant work experience." An hour of recent and relevant work experience is equal to 60 minutes. The community college shall determine what constitutes recent and relevant work experience that relates to the instructor's occupational and teaching area. The college shall maintain documentation of the instructor's educational and work experience.

[**ARC 8644B**, IAB 4/7/10, effective 5/12/10]

281—24.4(260C) Accreditation components and criteria—Higher Learning Commission. In order to be accredited by the state board of education and maintain accreditation status, a community college must meet the accreditation criteria of the Higher Learning Commission and additional state standards. Documents and materials provided in accordance with the accreditation requirements of the Higher Learning Commission shall also be provided to the department for the state accreditation process.

[**ARC 8644B**, IAB 4/7/10, effective 5/12/10; **ARC 0015C**, IAB 2/22/12, effective 3/28/12]

281—24.5(260C) Accreditation components and criteria—additional state standards. To be granted accreditation by the state board of education, an Iowa community college shall also meet additional standards pertaining to minimum or quality assurance standards for faculty (Iowa Code section 260C.48(1)); faculty load (Iowa Code section 260C.48(2)); special needs (Iowa Code section 260C.48(3)); career and technical education program evaluation (Iowa Code section 258.4(7)); quality faculty plan (Iowa Code section 260C.36); and senior year plus programs (Iowa Code chapter 261E).

24.5(1) *Faculty.* Community college-employed instructors who are under contract for at least half-time or more, and by July 1, 2011, all instructors who teach in career and technical education or arts and sciences shall meet minimum standards. In accordance with Iowa Code Supplement section 260C.48(1) as amended by 2008 Iowa Acts, House File 2679, standards shall at a minimum require that community college instructors who are under contract for at least half-time or more, and by July 1, 2011, all instructors meet the following requirements:

a. Instructors in the subject area of career and technical education shall be registered, certified, or licensed in the occupational area in which the state requires registration, certification, or licensure, and shall hold the appropriate registration, certificate, or license for the occupational area in which the instructor is teaching, and shall meet either of the following qualifications:

(1) A baccalaureate or graduate degree in the area or a related area of study or occupational area in which the instructor is teaching classes.

(2) Special training and at least 6,000 hours of recent and relevant work experience in the occupational area or related occupational area in which the instructor teaches classes if the instructor possesses less than a baccalaureate degree.

b. Instructors in the subject area of arts and sciences shall meet either of the following qualifications:

(1) Possess a master's degree from a regionally accredited graduate school, and have successfully completed a minimum of 12 credit hours of graduate level courses in each field of instruction in which the instructor is teaching classes.

(2) Have two or more years of successful experience in a professional field or area in which the instructor is teaching classes and in which postbaccalaureate recognition or professional licensure is necessary for practice, including but not limited to the fields or areas of accounting, engineering, law, law enforcement, and medicine.

c. Developmental education and adult education instructors employed half-time or more may or may not meet minimum requirements depending on their teaching assignments and the relevancy of

standards to the courses they are teaching and the transferability of such courses. If instructors are teaching credit courses reported in arts and sciences or career and technical education, it is recommended that these instructors meet minimum standards set forth in 281—subrule 21.3(1), paragraph *"a"* or *"b."* By July 1, 2011, all instructors teaching credit courses shall meet minimum standards.

24.5(2) *Faculty load.*

a. *Arts and sciences.* The full-time teaching load of an instructor in arts and sciences courses shall be 15 credit hours within a traditional semester or the equivalent and shall not exceed a maximum of 16 credit hours within a traditional semester or the equivalent. An instructor may also have an additional teaching assignment beyond the maximum academic workload, provided the instructor and the community college administration mutually consent to this additional assignment and the total workload does not exceed the equivalent of 22 credit hours within a traditional semester or the equivalent.

b. *Career and technical education.* The full-time teaching load of an instructor in career and technical education programs shall not exceed 6 hours per day, and an aggregate of 30 hours per week or the equivalent. An instructor may also teach the equivalent of an additional 3 credit hours, provided the instructor consents to this additional assignment. When the teaching assignment includes classroom subjects (nonlaboratory), consideration shall be given to establishing the teaching load more in conformity with that of paragraph 24.5(2)*"a."*

24.5(3) *Special needs.* Community colleges shall provide equal access in recruitment, enrollment, and placement activities for students with disabilities. Students with disabilities shall be given access to the full range of course offerings at a college through reasonable accommodations.

24.5(4) *Career and technical education evaluation.* The director of the department shall annually review at least 20 percent of the approved career and technical programs as a basis for continuing approval. The community college career and technical program review and evaluation system must ensure that the programs:

a. Are compatible with educational reform efforts.

b. Are capable of responding to technological change and innovation.

c. Meet educational needs of the students and employment community, including students with disabilities, both male and female students, and students from diverse racial and ethnic groups.

d. Enable students enrolled to perform the minimum competencies independently.

e. Are articulated/integrated with the total school curriculum.

f. Enable students with a secondary career and technical background to pursue other educational interests in a postsecondary setting, if desired.

g. Provide students with support services and eliminate access barriers to education and employment for both traditional and nontraditional students, men and women, persons from diverse racial and ethnic groups, and persons with disabilities.

24.5(5) *Facilities, parking lots and roads.*

a. *Facilities master planning.* Each community college shall present evidence of adequate planning, including a board-approved facilities plan. Planning includes tentative program approval, a master campus plan, written educational specifications, site plot showing location of proposed and existing facilities, elevations and floor plans.

b. *Accessibility and safety.* All new or remodeled facilities (buildings and programs offered in such facilities) and services in such facilities shall be made functional and usable for persons with special needs and shall comply with Iowa Code chapter 104A and the Americans With Disabilities Act, 42 U.S.C. § 12101, and address issues of campus safety and security as required by Iowa Code chapter 260C and by the federal Clery Act, 20 U.S.C. § 1092(f). All parking areas and roads shall comply with all state and federal rules and regulations dealing with roads, parking ramps, and accessibility requirements.

c. *Adequate facilities.* All administrative facilities, classrooms, laboratories, and related facilities shall be educationally adequate for the purpose for which they are designed.

d. *Library or learning resource center.* A library or learning resource center shall be planned as part of the master campus plan and space made for library or learning resource center services within the initial construction. The library or learning resource center shall be adequately staffed with qualified

professionals and skilled nonprofessional personnel. The library or learning resource center materials collection of a community college shall be accessible and adequate in size and scope to serve effectively the number and variety of programs offered and the number of students enrolled, including students enrolled at distance and satellite sites. The library or learning resource center materials shall show evidence of having been selected by faculty as well as professional library or learning resource staff and shall be kept up-to-date. The budget of the library or learning resource center shall be appropriate for the programs and services offered by the community college.

e. *Student center.* An area of the college shall be provided where students may gather informally and where food is available.

24.5(6) *Strategic planning.* The community college shall prepare a strategic plan at least once every five years to guide the college and its decision making.

24.5(7) *Quality faculty plan.* The community college shall establish a quality faculty committee consisting of instructors and administrators to develop and maintain a plan for hiring and developing quality faculty. The committee shall have equal representatives of arts and sciences and career and technical faculty with no more than a simple majority of members of the same gender. Faculty shall be appointed by the certified employee organization representing faculty, if any, and administrators shall be appointed by the college's administration. If no faculty-certified employee organization representing faculty exists, the faculty shall be appointed by administration pursuant to Iowa Code section 260C.48(4). The committee shall submit the plan to the board of directors for consideration, approval and submittal to the department of education.

a. For purposes of this subrule, the following definitions shall apply.

(1) "Counselor" means those who are classified as counselors as defined in the college's collective bargaining agreement or written policy.

(2) "Media specialist" means those who are classified as media specialists as defined in the college's collective bargaining agreement or written policy.

b. The institutional quality faculty plan is applicable to all community college-employed faculty teaching college credit courses, counselors, and media specialists. The plan requirements may be differentiated for each type of employee. The plan shall include, at a minimum, each of the following components:

(1) Plan maintenance. The quality faculty committee shall submit proposed plan modifications to the board of directors for consideration and approval. It is recommended that the plan be updated at least annually.

(2) A determination of the faculty and staff to be included in the plan including, but not limited to, all instructors teaching college credit courses, counselors, and media specialists.

(3) Orientation for new faculty. It is recommended that new faculty orientation be initiated within six months from the hiring date. It is recommended that the orientation of new faculty be flexible to meet current and future needs and provide options other than structured college courses for faculty to improve teaching strategies, curriculum development and evaluation strategies. It is recommended that the college consider developing a faculty mentoring program.

(4) Continuing professional development for faculty. It is recommended that the plan clearly specify required components including time frame for continuing professional development for faculty. It is recommended that the plan include the number of hours, courses, workshops, professional and academic conferences or other experiences such as industry internships, cooperatives and exchange programs that faculty may use for continuing professional development. It is recommended that the plan include prescribed and elective topics such as discipline-specific content and educational trends and research. Examples of topics that may be considered include dealing with the complexities of learners, skills in teaching adults, curriculum development, assessment, evaluation, enhancing students' retention and success, reaching nontraditional and minority students, improving skills in implementing technology and applied learning, leadership development, and issues unique to a particular college. The institutional quality faculty plan shall include professional development components for all instructional staff, counselors, and media specialists and may include reciprocity features that facilitate movement from one college to another.

(5) Procedures for accurate record keeping and documentation for plan monitoring. It is recommended that the plan identify the college officials or administrators responsible for the administration, record keeping and ongoing evaluation and monitoring of the plan. It is recommended the plan monitoring, evidence collected, and records maintained showing implementation of the plan be comprehensive in scope. It is recommended that the plan provide for the documentation that each faculty member appropriately possesses, attains or progresses toward attaining minimum competencies.

(6) Consortium arrangements where appropriate, cost-effective and mutually beneficial. It is recommended that the plan provide an outline of existing and potential consortium arrangements including a description of the benefits, cost-effectiveness, and method of evaluating consortium services.

(7) Specific activities that ensure that faculty attain and demonstrate instructional competencies and knowledge in their subject or technical areas. It is recommended that the plan identify faculty minimum competencies and explain the method or methods of determining and assessing competencies. It is recommended that the plan contain procedures for reporting faculty progress. It is recommended that faculty be notified at least once a year of their progress in attaining competencies.

(8) Procedures for collection and maintenance of records demonstrating that each faculty member has attained or documented progress toward attaining minimum competencies. It is recommended that the plan specify data collection procedures that demonstrate how each full-time faculty member has attained or has documented progress toward attaining minimum competencies. It is recommended that the plan incorporate the current department of education management information system data submission requirements by which each college submits complete human resources data files electronically as a part of the college's year-end reporting.

(9) Compliance with the faculty accreditation standards of the North Central Association of Colleges and Schools and with faculty standards required under specific programs offered by the community college that are accredited by other accrediting agencies. It is recommended that the plan provide for the uniform reports with substantiating data currently required for North Central Association of Colleges and Schools accreditation.

c. The department of education shall notify the community college when the department requires that a modified quality faculty plan be submitted. The department shall review the plan during the state accreditation evaluations to ensure each community college's compliance and progress in implementing a quality faculty plan as approved by the local board of directors. The department shall review the following:

(1) Documents submitted by the college that demonstrate that the plan includes each component required by paragraph *"b"* of this subrule.

(2) Documentation submitted by the college that the board of directors approved the plan.

(3) Documentation submitted by the college that the college is implementing the approved plan, including, but not limited to, evidence of plan monitoring, evaluation and updating; evidence that the faculty has attained, or is progressing toward attaining, minimum competencies and standards contained in Iowa Code section 260C.48 as amended by 2008 Iowa Acts, House File 2679, and 2007 Iowa Acts, Senate File 588; evidence that faculty members have been notified of their progress toward attaining minimum competencies and standards; and evidence that the college meets the minimum accreditation requirements for faculty required by the North Central Association of Colleges and Schools.

(4) Documentation that the college administration encourages the continued development of faculty potential as defined in Iowa Code Supplement section 260C.36 as amended by 2008 Iowa Acts, House File 2679.

(5) Documentation of the human resources report submitted by the college through the department's community college management information system.

24.5(8) *Senior year plus.* The community college shall provide access to joint enrollment opportunities for high school age students. Each college shall comply with the appropriate standards defined in Iowa Code chapter 261E.

[**ARC 8644B**, IAB 4/7/10, effective 5/12/10; **ARC 0015C**, IAB 2/22/12, effective 3/28/12]

281—24.6(260C) Accreditation process.

24.6(1) *Components.* The community college accreditation process shall include the following components:

a. Each community college shall submit information on an annual basis to the department of education to comply with program evaluation requirements adopted by the state board of education.

b. The department of education shall conduct a comprehensive on-site accreditation evaluation of each community college on a ten-year interval. An interim evaluation midway between comprehensive evaluations shall also be conducted. The department shall prepare a staggered evaluation schedule which sets no more than three comprehensive or interim evaluations in any one year. No comprehensive or interim evaluation shall be required for continued accreditation prior to a community college's first evaluation under the schedule. The department shall have the authority to conduct focus evaluation visits as needed.

24.6(2) *Accreditation team.* The size and composition of the accreditation team shall be determined by the director of the department, but the team shall include members of the department of education staff and staff members from community colleges other than the community college being evaluated for accreditation, and any other technical experts as needed.

24.6(3) *Accreditation team action.* After a visit to a community college, the accreditation team shall evaluate whether the accreditation standards have been met and shall make a report to the director of the department and the state board of education, together with a recommendation as to whether the community college shall remain accredited. The accreditation team shall report strengths and opportunities for improvement, if any, for each standard and criterion and shall advise the community college of available resources and technical assistance to further enhance strengths and address areas for improvement. A community college may respond to the accreditation team's report.

24.6(4) *State board of education consideration of accreditation.* The state board of education shall determine whether a community college shall remain accredited. Approval of accreditation for a community college by the state board of education shall be based upon the recommendation of the director of the department after study of the factual and evaluative evidence on record pursuant to the standards and criteria described in this chapter, and based upon the timely submission of information required by the department of education in a format provided by the department of education. With the approval of the director of the department, a focus visit may be conducted if the situation at a particular college warrants such a visit.

a. *Accreditation granted.* Continuation of accreditation, if granted, shall be for a ten-year term; however, approval for a lesser term may be granted by the state board of education if the board determines that conditions so warrant.

b. *Accreditation denied or conditional accreditation.* If the state board of education denies accreditation or grants conditional accreditation, the director of the department of education, in cooperation with the board of directors of the community college, shall establish a plan prescribing the procedures that must be taken to correct deficiencies in meeting the standards and criteria and shall establish a deadline for correction of the deficiencies. The plan shall be submitted to the director within 45 days following the notice of accreditation denial or conditional accreditation. The plan shall include components which address correcting deficiencies, sharing or merger options, discontinuance of specific programs or courses of study, and any other options proposed by the state board of education or the accreditation team to allow the college to meet the accreditation standards and criteria.

c. *Implementation of plan.* During the time specified in the plan for its implementation, the community college remains accredited. The accreditation team shall revisit the community college to evaluate whether the deficiencies in the standards or criteria have been corrected and shall make a report and recommendation to the director and the state board of education. The state board of education shall review the report and recommendation, may request additional information, and shall determine whether the deficiencies have been corrected.

d. *Removal of accreditation.* The director shall give a community college which fails to meet accreditation standards, as determined by the state board of education, at least one year's notice prior to removal of accreditation. The notice shall be sent by certified mail or restricted certified mail addressed

to the chief executive officer of the community college and shall specify the reasons for removal of accreditation. The notice shall also be sent to each member of the board of directors of the community college. If, during the year, the community college remedies the reasons for removal of accreditation and satisfies the director that the community college will comply with the accreditation standards and criteria in the future, the director shall continue the accreditation and shall transmit notice of the action to the community college by certified mail or restricted certified mail.

e. *Failure to correct deficiencies.* If the deficiencies have not been corrected in a program of a community college, the community college board of directors shall take one of the following actions within 60 days from removal of accreditation:

(1) Merge the deficient program or programs with a program or programs from another accredited community college.

(2) Contract with another accredited postsecondary educational institution for purposes of program delivery at the community college.

(3) Discontinue the program or programs which have been identified as deficient.

f. *Appeal process provided.* The action of the director to remove the state accreditation of a community college program may be appealed to the state board of education as provided in Iowa Code section 260C.47, subsection 7.

[**ARC 8644B**, IAB 4/7/10, effective 5/12/10; **ARC 0015C**, IAB 2/22/12, effective 3/28/12]

These rules are intended to implement Iowa Code section 258.4(7) and chapters 260C and 261E.

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CHAPTER 25
PATHWAYS FOR ACADEMIC CAREER AND EMPLOYMENT PROGRAM; GAP TUITION ASSISTANCE PROGRAM

DIVISION I
GENERAL PROVISIONS

281—25.1(260H,260I) Scope. The rules in this chapter implement the pathways for academic career and employment (PACE) program under 2011 Iowa Code Supplement chapter 260H and the gap tuition assistance program under 2011 Iowa Code Supplement chapter 260I.
[**ARC 0102C**, IAB 4/18/12, effective 5/23/12]

281—25.2(260H,260I) Definitions.

"Department" means the Iowa department of education.

"Director" means the director of the Iowa department of education.

"Dislocated worker" means an individual eligible for services and benefits under the federal Trade Adjustment Act of 2002, P.L. 107-210. An individual must meet both criteria 1 and 2, plus any one of criteria 3 through 8:

1. The individual is registered for the selective service, if applicable; and

2. The individual is a citizen or national of the United States, a lawfully admitted permanent resident alien, a lawfully admitted refugee or parolee or an individual authorized by the Attorney General to work in the United States.

3. The individual:

- Has been laid off or terminated, and
- Is eligible for or has exhausted entitlement to unemployment compensation, and
- Is unlikely to return to the individual's previous industry or occupation; or

4. The individual:

- Is in receipt of a notice of layoff or termination from employment, and
- Will be entitled to unemployment compensation at the time of layoff or termination, and
- Is unlikely to return to the individual's previous industry or occupation; or

5. The individual:

- Has been laid off or terminated, or has received a termination notice, and
- Has been employed for a duration of time to sufficiently demonstrate attachment to the workforce, and
- Is not eligible for unemployment compensation due to insufficient earnings, or has performed services for an employer not covered under the unemployment compensation law, and
- Is unlikely to return to the individual's previous industry or occupation; or

6. The individual has been laid off or terminated, or has received notice of layoff or termination, as a result of a permanent closure of or any substantial layoff at a plant, facility or enterprise; or

7. The individual was formerly self-employed and is unemployed from the individual's business; or

8. The individual:

- Is a displaced homemaker who has been providing unpaid services to family members in the home, and
- Has been dependent on the income of another family member, and is no longer supported by that income, and
- Is unemployed or underemployed, and
- Is experiencing difficulty in obtaining or upgrading employment.

"Federal poverty level" means the most recently revised poverty income guidelines published by the federal Department of Health and Human Services.

"IWD" means the Iowa workforce development department.

"Low skilled" means an adult individual who is basic skills deficient, has lower level digital literacy skills, has an education below a high school diploma, or has a low level of educational attainment

that inhibits the individual's ability to compete for skilled occupations that provide opportunity for a self-sufficient wage.

"State board" means the Iowa state board of education.

"Underemployed" means an adult individual who is working less than 30 hours per week, or who is employed any number of hours per week in a job that is substantially below the individual's skill level and that does not lead to self-sufficiency.

"Unemployed" means an adult individual who is involuntarily unemployed and is actively engaged in seeking employment.

[**ARC 0102C**, IAB 4/18/12, effective 5/23/12]

281—25.3 to **25.10** Reserved.

DIVISION II
PATHWAYS FOR ACADEMIC CAREER AND EMPLOYMENT (PACE) PROGRAM

281—25.11(260H) Purpose. The pathways for academic career and employment program is established to provide funding to community colleges for the development of projects that will lead to gainful, quality, in-state employment for members of target populations by providing them with both effective academic and employment training to ensure gainful employment and customized support services.

[**ARC 0102C**, IAB 4/18/12, effective 5/23/12]

281—25.12(260H) Target populations. Individuals included in target populations are those individuals who meet one or more of the following:

1. Are deemed by definition to be low skilled.
2. Earn incomes at or below 200 percent of the federal poverty level.
3. Are unemployed.
4. Are underemployed.
5. Are dislocated workers.

[**ARC 0102C**, IAB 4/18/12, effective 5/23/12]

281—25.13(260H) Eligibility criteria for projects. Projects eligible for funding for PACE shall be projects that further the ability of members of target populations to secure gainful, quality employment; that further partnerships linking community colleges to industry and nonprofit organizations; and that further the following program outcomes:

25.13(1) Enabling members of the target populations to:

a. Acquire and demonstrate competency in basic skills.

b. Acquire and demonstrate competency in a specified technical field.

c. Complete a specified level of postsecondary education.

d. Earn a national career readiness certificate.

e. Obtain employer-validated credentials.

f. Secure gainful employment in high-quality, local jobs.

25.13(2) Meeting economic and employment goals including but not limited to:

a. Economic and workforce development requirements in each region served by the community colleges as defined by regional advisory boards established pursuant to Iowa Code section 84A.4.

b. Needs of industry partners in areas including but not limited to the fields of information technology, health care, advanced manufacturing, transportation and logistics, and any other industry designated as in-demand by a regional advisory board established pursuant to Iowa Code section 84A.4.

[**ARC 0102C**, IAB 4/18/12, effective 5/23/12]

281—25.14(260H) Program component requirements. Program components for a PACE project implemented at a community college shall:

25.14(1) Include measurable and effective recruitment, assessment, and referral activities designed for the target populations.

25.14(2) Integrate basic skills and work-readiness training with occupational skills training.

25.14(3) Combine customized supportive and case management services with training services to help participants overcome barriers to employment.

25.14(4) Provide training services at times, locations, and through multiple, flexible modalities that are easily understood and readily accessible to the target populations. Such modalities shall support open entry, individualized learning, and flexible scheduling, and may include online remediation, learning lab and cohort learning communities, tutoring, and modularization.
[**ARC 0102C**, IAB 4/18/12, effective 5/23/12]

281—25.15(260H) Pipeline program. Each community college receiving funding for PACE shall develop a pipeline program in order to better serve the academic, training, and employment needs of the target populations. A pipeline program shall have the following goals:

25.15(1) To strengthen partnerships with community-based organizations and industry representatives.

25.15(2) To improve and simplify the identification, recruitment, and assessment of qualified participants.

25.15(3) To conduct and manage an outreach, recruitment, and intake process, along with accompanying support services, reflecting sensitivity to the time and financial constraints and remediation needs of the target populations.

25.15(4) To conduct orientations for qualified participants to describe regional labor market opportunities, employer partners, and program requirements and expectations.

25.15(5) To describe the concepts of the project implemented with funds from PACE and the embedded educational and support resources available through such project.

25.15(6) To outline the basic skills participants will learn and describe the credentials participants will earn.

25.15(7) To describe success milestones and ways in which temporal and instructional barriers have been minimized or eliminated.

25.15(8) To review how individualized and customized service strategies for participants will be developed and provided.
[**ARC 0102C**, IAB 4/18/12, effective 5/23/12]

281—25.16(260H) Career pathways and bridge curriculum development program. Each community college receiving funding for PACE shall develop a career pathway and bridge curriculum development program in order to better serve the academic, training, and employment needs of the target populations. A career pathways and bridge curriculum development program shall have the following goals:

25.16(1) The articulation of courses and modules, the mapping of programs within career pathways, and the establishment of bridges between credit and noncredit programs.

25.16(2) The integration and contextualization of basic skills education and skills training. This process shall provide for seamless progressions between adult basic education and general education development programs and continuing education and credit certificate, diploma, and degree programs.

25.16(3) The development of career pathways that support the attainment of industry-recognized credentials, diplomas, and degrees through stackable, modularized program delivery.
[**ARC 0102C**, IAB 4/18/12, effective 5/23/12]

281—25.17 to **25.19** Reserved.

DIVISION III
GAP TUITION ASSISTANCE PROGRAM

281—25.20(260I) Purpose. A gap tuition assistance program is established to provide funding to community colleges for need-based tuition assistance to enable applicants to complete continuing education certificate training programs for in-demand occupations.
[**ARC 0102C**, IAB 4/18/12, effective 5/23/12]

281—25.21(260I) Applicants for tuition assistance—eligibility criteria.

25.21(1) Eligibility for tuition assistance shall be based on financial need. Applicants may be found eligible for partial or total tuition assistance. Tuition assistance shall not be approved when the community college receiving the application determines that funding for an applicant's participation in an eligible certificate program is available from any other public or private funding source. Criteria to determine financial need shall include but not be limited to:

a. The applicant's family income for the 12 months prior to the date of application.

b. The applicant's family size.

c. The applicant's county of residence.

25.21(2) An applicant for tuition assistance under this chapter must have a demonstrated capacity to achieve the following outcomes:

a. The ability to complete an eligible certificate program.

b. The ability to enter a postsecondary certificate, diploma, or degree program for credit.

c. The ability to gain full-time employment.

d. The ability to maintain full-time employment over a period of time.

25.21(3) The community college receiving the application shall only approve an applicant for tuition assistance under this chapter if the community college determines the applicant is likely to succeed in achieving the outcomes described in subrule 25.16(2) after considering factors including but not limited to:

a. Barriers that may prevent an applicant from completing the certificate program.

b. Barriers that may prevent an applicant from gaining employment in an in-demand occupation.

[**ARC 0102C**, IAB 4/18/12, effective 5/23/12]

281—25.22(260I) Applicants for tuition assistance—additional provisions.

25.22(1) An applicant for tuition assistance under this chapter shall provide to the gap tuition assistance coordinator at the community college receiving the application documentation of all sources of income.

25.22(2) Only an applicant eligible to work in the United States shall be approved for tuition assistance under this chapter.

25.22(3) An application shall be valid for six months from the date of signature on the application.

25.22(4) An applicant shall not be approved for tuition assistance under this chapter for more than one eligible certificate program.

25.22(5) Eligibility for tuition assistance under this chapter shall not be construed to guarantee enrollment in any community college certificate program.

25.22(6) Eligibility for tuition assistance under this chapter shall be limited to individuals earning incomes at or below 200 percent of the federal poverty level as defined by the most recently revised poverty income guidelines published by the United States Department of Health and Human Services.

[**ARC 0102C**, IAB 4/18/12, effective 5/23/12]

281—25.23(260I) Eligible costs. Costs of a certificate program eligible for coverage by gap tuition assistance shall include but are not limited to the following:

1. Tuition.
2. Direct training costs.
3. Required books and equipment.
4. Fees, including but not limited to fees for industry testing services and background check testing services.

[**ARC 0102C**, IAB 4/18/12, effective 5/23/12]

281—25.24(260I) Eligible certificate programs. For the purposes of this chapter, "eligible certificate program" means a program meeting all of the following criteria:

25.24(1) The program is not offered for credit, but is aligned with a certificate, diploma, or degree for credit, and does at least one of the following:

a. Offers a nationally, locally, or state-recognized certificate.

b. Offers preparation for a professional examination or licensure.

c. Provides endorsement for an existing credential or license.

d. Represents recognized skill standards defined by an industrial sector.

e. Offers a similar PACE credential or training.

25.24(2) The program offers training or a credential in an in-demand occupation. For the purposes of this chapter, "in-demand occupation" includes occupations in information technology, health care, advanced manufacturing, transportation and logistics, and any other industry designated as in-demand by a regional advisory board established pursuant to Iowa Code section 84A.4.

[**ARC 0102C**, IAB 4/18/12, effective 5/23/12]

281—25.25(260I) Initial assessment. An eligible applicant for tuition assistance under this chapter shall complete an initial assessment administered by the community college receiving the application to determine the applicant's readiness to complete an eligible certificate program. The assessment shall include assessments for completion of a national career readiness certificate, including the areas of reading for information, applied mathematics, and locating information. An applicant must achieve at least a national bronze-level certificate, defined as a minimum level 3 for reading, math, and locating information, in order to be approved for tuition assistance. An applicant shall complete any additional assessments and occupational research required by the PACE program or an eligible certificate program, or both.

[**ARC 0102C**, IAB 4/18/12, effective 5/23/12]

281—25.26(260I) Program interview. An eligible applicant for tuition assistance under this chapter shall meet with the gap tuition assistance coordinator for an eligible certificate program offered by the community college receiving the application. The gap tuition assistance coordinator shall discuss the relevant industry, any applicable occupational research, and any applicable training relating to the eligible certificate program. The discussion shall include an evaluation of the applicant's capabilities, needs, family situation, work history, educational background, attitude and motivation, employment skills, vocational potential, and employment barriers. The discussion shall also include potential start dates, support needs, and other requirements for an eligible certificate program.

[**ARC 0102C**, IAB 4/18/12, effective 5/23/12]

281—25.27(260I) Participation requirements.

25.27(1) A participant in an eligible certificate program who receives tuition assistance pursuant to this chapter shall do all of the following:

a. Maintain regular contact with staff members for the certificate program to document the applicant's progress in the program.

b. Sign a release form to provide relevant information to community college faculty or case managers.

c. Discuss with staff members for the certificate program any issues that may impact the participant's ability to complete the certificate program, obtain employment, and maintain employment over a period of time.

d. Attend all required courses regularly.

e. Meet with staff members for the certificate program to develop a job search plan.

25.27(2) A community college may terminate tuition assistance for a participant who fails to meet the requirements of this rule. The process to appeal a termination will be provided to a participant through the gap tuition assistance coordinator.

[**ARC 0102C**, IAB 4/18/12, effective 5/23/12]

281—25.28(260I) Oversight. Statewide oversight, evaluation, and reporting efforts for the gap tuition assistance program is coordinated by the department.

25.28(1) A steering committee, consisting of the Iowa department of education, the Iowa workforce development department, and community college continuing education deans and directors, is established to determine if the performance measures of the gap tuition assistance program are being

met and to correct any deficiencies. The steering committee shall meet at least quarterly to evaluate and monitor the performance of the gap tuition assistance program.

25.28(2) A common intake tracking system is established to be implemented consistently by each participating community college. The community colleges will work cooperatively in establishing the system and the Iowa department of education will assist in gathering required reporting data elements through the community college Management Information System (MIS).

25.28(3) The steering committee will develop the required program criteria for PACE- and gap tuition assistance-certified programs to be eligible for tuition assistance and program funding. These criteria will be developed based on best practices in the development and delivery of career pathway programs that provide a clear sequence of education coursework and credentials aligned with regional workforce skill needs; clearly articulate from one level of instruction to the next; combine occupational skills and remedial adult education; lead to the attainment of a credential or degree; assist with job placement; and provide wrap-around social and socioeconomic support services with the goal of increasing the individual's skills attainment and employment potential.

[**ARC 0102C**, IAB 4/18/12, effective 5/23/12]

These rules are intended to implement 2011 Iowa Code Supplement chapters 260H and 260I.

[Filed ARC 0102C (Notice ARC 0020C, IAB 2/22/12), IAB 4/18/12, effective 5/23/12]

TITLE IV
DRIVER AND SAFETY EDUCATION

CHAPTER 26
DRIVER EDUCATION

[Prior to 9/7/88, see Public Instruction Department[670] Ch 6]

Rescinded IAB 8/21/02, effective 9/25/02

CHAPTER 27
WORKFORCE TRAINING AND ECONOMIC DEVELOPMENT FUNDS

281—27.1(260C) Purpose. The purpose of the workforce training and economic development funds is to provide revenue for each community college to address the workforce development needs of the state. The primary focus of workforce training and economic development funds is to provide training and retraining of Iowa workers to develop the skills of employees employed in targeted areas or to address a workforce development need of a targeted area. Moneys are appropriated for each community college from the Iowa skilled worker and job creation fund to the workforce training and economic development funds.
[**ARC 1662C**, IAB 10/15/14, effective 11/19/14]

281—27.2(260C) Definitions.

"Community college" or *"college"* means a community college established under Iowa Code chapter 260C.

"Department" means the Iowa department of education.

"Fund" or *"funds"* means the workforce training and economic development funds created by Iowa Code section 260C.18A and allocated to each community college.

"Project" means a training or educational activity funded by a workforce training and economic development fund.

"State board" or *"board"* means the Iowa state board of education.

"Targeted areas" means the areas of advanced manufacturing; information technology and insurance; alternative and renewable energy including the alternative and renewable energy sectors listed in Iowa Code section 476.42(1)*"a"*; and life sciences, which include the areas of biotechnology, health care technology, and nursing care technology.
[**ARC 1662C**, IAB 10/15/14, effective 11/19/14]

281—27.3(260C) Funds allocation. The department shall allocate moneys, appropriated by the general assembly or other moneys accepted by the department, for the workforce training and economic development fund established for each community college by utilizing the most current distribution formula that is used for the allocation of state general aid to the community colleges available on July 1 of the fiscal year for which funds are being allocated. Each community college shall establish a workforce training and economic development fund account within its college accounting system into which the department shall make deposits of the allocated moneys. The deposits shall be made quarterly or on a more frequent basis. Moneys that are not used and that remain in a community college's fund at the end of a fiscal year shall remain available to that college for expenditure in subsequent fiscal years.
[**ARC 1662C**, IAB 10/15/14, effective 11/19/14]

281—27.4(260C) Community college workforce and economic development fund plans and progress reports. For the fiscal year beginning July 1, 2013, and each fiscal year thereafter, each community college, to receive its allocation for the forthcoming fiscal year, shall prepare and submit to the department for state board consideration the following items for the fiscal year.

27.4(1) *Workforce training and economic development fund plan.* Each college shall adopt a workforce training and economic development fund plan for the upcoming year that outlines the community college's proposed use of moneys appropriated to its workforce training and economic development fund. Plans shall be based on fiscal years and must be submitted to the department, in a manner prescribed by the department, by September 30 for the current fiscal year allocation. Plans shall describe how the college proposes to allocate funds to support individual allowable uses pursuant to 281—27.5(260C) and the planned amount to be used to support targeted areas.

27.4(2) *Progress reports.* Each college that receives an allocation of moneys pursuant to 281—27.3(260C) shall prepare an annual progress report detailing the plan's implementation. The report shall be submitted to the department by September 30 of each year in a manner and form as prescribed by the department. The report shall provide information regarding projects supported by the

college's fund including, but not limited to, the number of participants enrolled in each program, the number of participants who complete each program, the dollars spent on each allowable use pursuant to 281—27.5(260C), the dollars spent in targeted areas, and other data necessary to report on state program performance metrics.
[**ARC 1662C**, IAB 10/15/14, effective 11/19/14]

281—27.5(260C) Use of funds. Moneys deposited into each community college fund may be expended for the following permissive uses, provided that 70 percent of the moneys be used on projects in targeted areas and projects are operated in compliance with state and federal law:

27.5(1) Projects in which an agreement between a community college and an employer located within the community college's merged area meets all of the requirements of the accelerated career education program pursuant to Iowa Code chapter 260G and 261—Chapter 20 and which are approved by the Iowa economic development authority, when applicable.

27.5(2) Projects in which an agreement between a community college and a business meets all the requirements of the Iowa jobs training Act under Iowa Code chapter 260F and 261—Chapter 7.

27.5(3) For the development and implementation of career academies meeting all of the requirements of 281—47.1(260C).

27.5(4) Programs and courses that provide vocational and technical training and programs for in-service training and retraining under Iowa Code section 260C.1, subsections 2 and 3. As it pertains to Iowa Code section 260C.1, subsection 2, vocational and technical training shall mean new or expanded career and technical education coursework that has department approval and results in the conferring of a diploma, degree, or certificate. The enhancement of academic core courses within career and technical programs is also eligible. As they pertain to Iowa Code section 260C.1, subsection 3, eligible activities shall mean short-term, noncredit training and retraining projects.

27.5(5) Development and implementation of the pathways for career and employment program meeting all of the requirements of Iowa Code chapter 260H and 281—Chapter 25.

27.5(6) Development and implementation of the GAP tuition assistance program meeting all of the requirements of Iowa Code chapter 260I and 281—Chapter 25.

27.5(7) Programs for entrepreneurship education, small business assistance, and business incubators.

27.5(8) Development and implementation of the National Career Readiness Certificate and the Skills Certification System endorsed by the National Association of Manufacturers.
[**ARC 1662C**, IAB 10/15/14, effective 11/19/14]

281—27.6(260C) Prior approval. Any individual project using over $1 million of moneys from a workforce training and economic development fund shall require prior approval from the state board of education.
[**ARC 1662C**, IAB 10/15/14, effective 11/19/14]

281—27.7(260C) Annual plan and progress report approval.

27.7(1) The state board of education shall review and consider approval of reports and plans submitted pursuant to 281—27.4(260C).

27.7(2) The state board of education may reject a plan or progress report for any of the following reasons, including but not limited to:

a. Incomplete information or data;

b. Seventy percent of fund expenditures not utilized for projects in the areas of advanced manufacturing; information technology and insurance; alternative and renewable energy including the alternative and renewable energy sectors listed in Iowa Code section 476.42(1)*"a"*; and life sciences which include the areas of biotechnology, health care technology, and nursing care technology;

c. Project not operated in compliance with state or federal law.
[**ARC 1662C**, IAB 10/15/14, effective 11/19/14]

281—27.8(260C) Options upon default or noncompliance. If the state board does not accept a college's annual progress report, the college shall be subject to the following actions as prescribed by the board based upon the severity of the noncompliance or default, including but not limited to:

1. The withholding of a portion of new fiscal year moneys based upon amounts awarded deemed to be ineligible;
2. Tighter oversight and control of the college's fund by the department;
3. Loss of funds for one year;
4. Other action deemed appropriate by the board.

[**ARC 1662C**, IAB 10/15/14, effective 11/19/14]

These rules are intended to implement Iowa Code section 260C.18A.

[Filed ARC 1662C (Notice ARC 1529C, IAB 7/9/14), IAB 10/15/14, effective 11/19/14]

CHAPTERS 28 to 30
Reserved

TITLE V
NONTRADITIONAL STUDENTS

CHAPTER 31
PRIVATE INSTRUCTION AND DUAL ENROLLMENT

[Prior to 9/7/88, see Public Instruction Department[670] Ch 63]

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

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

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

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

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

(1) Is not accredited.

(2) Enrolls not more than four unrelated students.

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

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

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

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

(7) Is not a nonpublic school and does not provide competent private instruction as defined in Iowa Code section 299A.1 as amended by 2013 Iowa Acts, House File 215, section 87, and these rules.

(8) Is exempt from all state statutes and administrative rules applicable to a school, a school board, or a school district, except as otherwise provided in Iowa Code chapters 299 and 299A as amended by 2013 Iowa Acts, House Files 215 and 454.

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

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

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

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

a. The report shall include the following information:

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

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

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

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

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

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

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

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

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

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

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

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

31.2(3) *Reporting requirement option: private instruction exemption.* A parent, guardian, or legal or actual custodian of a child of compulsory attendance age providing competent private instruction to the child under Iowa Code section 299A.3 as amended by 2013 Iowa Acts, House File 215, section 88, (private instruction by nonlicensed person) may meet, but is not required to meet, all of the following requirements:

a. Complete and send, in a timely manner, the report required under Iowa Code section 299.4 as amended by 2013 Iowa Acts, House File 215, sections 84 to 86, and this rule to the school district of residence of the child.

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

c. Ensure that the results of the child's annual evaluation are reported to the school district of residence of the child and to the department of education by a date not later than June 30 of each year in which the child is under competent private instruction.

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

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

b. Notwithstanding the reporting requirement option described in subrule 31.2(3), a parent, guardian, or legal or actual custodian of a child currently requiring special education must obtain approval pursuant to rule 281—31.10(299A) before providing competent private instruction, unless that rule provides otherwise.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

31.5(1) *Reports.*

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

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

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

d. The district shall annually report to the department of education by June 30 the names of all resident children who are subject to an annual assessment and who either failed to make adequate progress or whose parent, guardian, or legal or actual custodian failed to comply with the assessment requirements of the compulsory attendance law.

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

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

g. The district may request a parent, guardian, or legal or actual custodian of a child of compulsory attendance age providing competent private instruction to the child under Iowa Code section 299A.3 as amended by 2013 Iowa Acts, House File 215, section 88, (private instruction by nonlicensed person) to provide the information required by this subrule; however, the parent, guardian, or legal or actual custodian is not required to do so, pursuant to Iowa Code section 299A.3 as amended by 2013 Iowa Acts, House File 215, section 88, and subrule 31.2(3).

31.5(2) *Testing assistance.*

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

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

c. The administration of the annual achievement evaluation shall not constitute a dual enrollment purpose under Iowa Code section 299A.8 as amended by 2013 Iowa Acts, House File 215, section 94, and this rule.

31.5(3) *Finance.*

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

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

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

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

31.5(4) *Provision of instructional materials.*

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

such texts or supplementary materials are not appropriate for use by regularly enrolled students of the school district.

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

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

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

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

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

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

31.5(6) *Driver education.* The public school district shall offer or make available to all resident students, including those receiving competent private instruction on an equal basis with students enrolled in the district, an approved course in driver education, as required by Iowa Code section 321.178(1)*"c"* as amended by 2013 Iowa Acts, House File 215, section 99.

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

281—31.6(299A) Dual enrollment.

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

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

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

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

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

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

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

281—31.7(299) Open enrollment.

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

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

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

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

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

A child who is at least seven years old by September 15 and who begins a program of competent private instruction and is subject to the annual assessment requirement shall be administered a baseline evaluation for the purposes of obtaining educational data. The baseline evaluation and annual assessment shall be taken by May 1.

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

31.8(2) *Standardized testing.*

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

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

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

(1) A review of the instructional materials used by the child in the education program;

(2) The results of curriculum-based measurement techniques including the administering of probes; and

(3) A review of current samples of the child's work product.

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

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

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

c. Testing times and sites.

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

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

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

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

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

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

31.8(3) *Portfolio assessment or evaluation.* A parent, guardian, or legal or actual custodian of a child subject to the annual assessment requirement may arrange to have an appropriately licensed Iowa practitioner review a portfolio of evidence of the child's progress annually by May 1, subject to the following requirements:

a. Portfolio evaluator. A single evaluator shall be designated by the parent, guardian, or legal or actual custodian who has selected the portfolio evaluation option for annual assessment. The evaluator so identified shall be approved by the superintendent of the local school district or the superintendent's designee and shall hold a valid Iowa practitioner license or teacher certificate appropriate to the ages and grade levels of the children whose portfolios are being assessed.

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

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

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

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

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

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

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

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

281—31.9(299A) Reporting assessment results.

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

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

31.9(2) *Standardized tests.* The results of a standardized test taken by a child subject to the annual assessment requirements shall be reported by the child's parent, guardian, or legal or actual custodian to the district of residence of the child by June 30 of the year in which the test was taken. The results shall be submitted either in original form or as a true and correct photocopy of the original form as received from the agency responsible for scoring the test, from which any test results not required under law may be redacted.

31.9(3) *Portfolio assessments.* The results of an assessment of a child's educational portfolio made by a qualified Iowa licensed practitioner shall be submitted by the portfolio evaluator to the child's parent, guardian, or legal or actual custodian, who shall send a copy to the district of residence of the child by June 30 of the year in which the assessment was done.

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

31.9(4) *Report card from accredited correspondence school.* Report cards from an accredited correspondence school shall be submitted by the child's parent, guardian, or legal or actual custodian to the child's district of residence by June 30 of the year in which the report cards were issued by the accredited correspondence school.

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

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

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

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

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

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

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

The director of special education shall advise the parent, guardian, or legal or actual custodian of a child requiring special education of the probable consequences of placing the child under private instruction and withdrawing the child from specialized instruction and services to which the child is

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

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

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

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

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

31.11(2) *School district responsibilities.*

a. *Services.*

(1) The public school district shall offer or make available to all resident students receiving independent private instruction an approved course in driver education on an equal basis with students enrolled in the district, as required by Iowa Code section 321.178(1)*"c"* as amended by 2013 Iowa Acts, House File 215, section 99.

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

b. *Information from parents.*

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

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

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

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

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

31.12(1) *Confidentiality of records.* Records maintained by school districts or area education agencies under Iowa Code chapters 299 and 299A as amended by 2013 Iowa Acts, House Files 215 and 454, and this chapter shall be protected under Iowa Code chapter 22, as well as 20 U.S.C. Section 1232g and 34 CFR Part 99. Personally identifiable information about students, as defined in 34 CFR Part 99, shall be disclosed only as permitted by that Part.

31.12(2) *Compulsory attendance actions.* In taking any action under Iowa Code chapters 299 and 299A as amended by 2013 Iowa Acts, House Files 215 and 454, a school district shall consider the requirements of compulsory attendance to be satisfied in the following instances:

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

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

c. Compliance with this chapter's provisions regarding competent private instruction.

d. The child is receiving private instruction under subrule 31.2(3) and Iowa Code section 299A.3 as amended by 2013 Iowa Acts, House File 215, section 88, unless the subrule and section do not apply.

e. The child is receiving independent private instruction under rule 281—31.11(299,299A), unless paragraph 31.12(2)*"f"* applies.

f. The district received a response to a request for information about independent private instruction pursuant to subparagraph 31.1(2)*"b"*(6).

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

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

These rules are intended to implement Iowa Code chapters 299 and 299A as amended by 2013 Iowa Acts, House Files 215 and 454.

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CHAPTER 32
HIGH SCHOOL EQUIVALENCY DIPLOMA

[Prior to 9/7/88, see Public Instruction Department[670] Ch 8]

281—32.1(259A) Test. The Iowa high school equivalency diploma shall indicate the holder thereof has achieved the equivalent of a high school education as measured by scores obtained on the test(s) approved by the Iowa department of education to measure high school completion.

This rule is intended to implement Iowa Code section 259A.1.

[**ARC 0688C**, IAB 4/17/13, effective 5/22/13]

281—32.2(259A) By whom administered. The tests shall be administered in official testing centers authorized by the Iowa department of education. Official testing centers shall be established with an accredited and approved institution.

This rule is intended to implement Iowa Code section 259A.2.

[**ARC 0688C**, IAB 4/17/13, effective 5/22/13]

281—32.3(259A) Minimum score. Applicants must achieve the appropriate minimum standard scores as established by the Iowa department of education and in effect at the time the applicant tested.

[**ARC 9903B**, IAB 12/14/11, effective 1/18/12; **ARC 0688C**, IAB 4/17/13, effective 5/22/13]

281—32.4(259A) Effectiveness of test scores. Test scores shall remain valid for a period of five years from the date of the first test. If the applicant has not received the Iowa high school equivalency diploma by then, the applicant must retake the expired test(s). The only exception is for test series expiring prior to the five years, in which case all prior tests are void.

This rule is intended to implement Iowa Code section 259A.1.

[**ARC 0688C**, IAB 4/17/13, effective 5/22/13]

281—32.5(259A) Retest. Any applicant not achieving the minimum standard test scores as defined in rule 281—32.3(259A), upon payment of a fee to cover only the testing costs, shall be permitted to make application for retest and scoring of the retest, provided that one of the following conditions is met:

32.5(1) A period of three months from the date of original testing has elapsed.

32.5(2) Applicant shall complete instruction in an adult education program, in the area or areas to be retested. This instruction shall be certified by an official of the adult education program to the test administrator (state or local) authorized to release the retest earlier than three months.

This rule is intended to implement Iowa Code sections 259A.2 and 259A.5.

[**ARC 9903B**, IAB 12/14/11, effective 1/18/12; **ARC 0688C**, IAB 4/17/13, effective 5/22/13]

281—32.6(259A) Application fee. The applicant or supporting agency shall pay an application fee to cover only actual testing costs.

This rule is intended to implement Iowa Code sections 259A.2 and 259A.5.

[**ARC 9903B**, IAB 12/14/11, effective 1/18/12; **ARC 0688C**, IAB 4/17/13, effective 5/22/13]

281—32.7(259A) Diploma, transcript, verification fees. Upon payment of $10 to the Iowa department of education, the department shall prepare and issue a high school equivalency diploma to an applicant who has achieved the minimum and average scores established in rule 281—32.3(259A). Upon payment of $10 to the Iowa department of education, the department shall prepare and issue a copy of an applicant's transcript to the applicant or person authorized by the applicant to request the transcript. Upon payment of $10 to the Iowa department of education, the department shall prepare and issue a verification that an applicant has earned a high school equivalency diploma to the applicant or person authorized by the applicant to request the verification.

[**ARC 9903B**, IAB 12/14/11, effective 1/18/12]

281—32.8(259A) Admission to testing. No one under 16 years of age is allowed to test. Testing of 16-year-olds is restricted to these conditions: (a) resident of an Iowa juvenile institution; or (b) under the supervision of a probation office. To take the high school equivalency test, anyone 17 years of age

or older who is not enrolled in a secondary school or who is not a high school graduate may be admitted to testing. The only requirements for admission for testing are proof of age and, for an applicant 17 or 18 years of age, consent of the applicant's parent or guardian and verification of nonenrolled status. The applicant cannot receive a diploma until the applicant has reached 18 years of age and the applicant's class from ninth grade has graduated.

This rule is intended to implement Iowa Code section 259A.2.

[**ARC 0688C**, IAB 4/17/13, effective 5/22/13]

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CHAPTER 33
EDUCATING THE HOMELESS

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

281—33.2(256) Definitions.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

a. Ensure that a homeless child or youth is identified by school personnel and through coordination activities with other entities and agencies;

b. Ensure that a homeless child or youth is enrolled in, and has a full and equal opportunity to succeed in, schools of the district;

c. Ensure that homeless families, children, and youth receive educational services for which such families, children, and youth are eligible, including Head Start and Even Start programs, tuition-free preschool programs administered by the district, and referrals to health care services, dental services, mental health services, and other appropriate services;

d. Ensure that the parents or guardians of homeless children and youth are informed of the educational and related opportunities available to their children and are provided with meaningful opportunities to participate in the education of their children;

e. Ensure that public notice of the educational rights of homeless children and youth is disseminated where such children and youth receive services under the federal McKinney-Vento Homeless Assistance Act, such as schools, family shelters, and soup kitchens;

f. Ensure that enrollment disputes are mediated in accordance with 42 U.S.C. Section 11432(g)(3)(E), which requires the following:

(1) The child or youth shall be immediately enrolled in the school in which enrollment is sought, pending resolution of the dispute;

(2) The parent or guardian of the child or youth shall be provided with a written explanation of the school's decision regarding school selection or enrollment, including the rights of the parent, guardian, or youth to appeal the decision;

(3) The child, youth, parent, or guardian shall be referred to the local educational agency liaison designated under this subrule, who shall carry out the dispute resolution process set forth in rule 33.9(256);

(4) In the case of an unaccompanied youth, the local educational agency liaison shall ensure that the youth is immediately enrolled in the school in which enrollment is sought pending resolution of the dispute;

g. Ensure that the parent or guardian of a homeless child or youth, or the unaccompanied youth, is fully informed of all transportation services and is assisted in accessing transportation to the school of enrollment;

h. Coordinate and collaborate with state coordinators and community and school personnel responsible for the provision of education and related services to homeless children and youth.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

a. The district in which the homeless child or youth is actually residing, or

b. The district of origin.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

281—33.11(256) School services.

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

a. Compensatory education;

b. Special education;

c. English as a Second Language;

d. Vocational and technical education courses or programs;

e. Programs for gifted and talented pupils;

f. Health services;

g. Preschool (including Head Start and Even Start);

h. Before and after school child care;

i. Food and nutrition programs.

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

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

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CHAPTER 34
FUNDING FOR CHILDREN RESIDING IN STATE INSTITUTIONS OR MENTAL HEALTH INSTITUTES

281—34.1(218) Scope. These rules apply to the funding and provision of appropriate educational services to children residing in the following institutions under the jurisdiction of the director of human services: the Mental Health Institute, Cherokee, Iowa; the Mental Health Institute, Independence, Iowa; the State Training School, Eldora, Iowa; and the Iowa Juvenile Home, Toledo, Iowa.

281—34.2(218) Definitions. For the purposes of these rules, the following definitions shall apply:

"AEA" means an area education agency.

"Aggregate days" means the sum of the number of days of attendance, excluding days absent, for all school-age pupils who are enrolled during the school year. A student is considered enrolled after being placed in the institution and taking part in the educational program. Enrollment begins on the date that the student begins taking part in the educational program and ends on the date that the student leaves the institution or receives a high school diploma or its equivalent, whichever occurs first.

"Average daily attendance" or *"ADA"* means the average obtained by dividing the total of the aggregate days of attendance by the total number of student contact days. ADA for purposes of this chapter shall be calculated on the regular school year exclusive of summer session.

"Department" means the state department of education.

"Individualized education program" or *"IEP"* means the written record of an eligible individual's special education and related services developed in accordance with 281—Chapter 41. The IEP document records the decisions reached at the IEP meeting and sets forth in writing a commitment of resources necessary to enable an eligible individual to receive needed special education and related services appropriate to the individual's special learning needs. There is one IEP which specifies all the special education and related services for an eligible individual.

"Institution" means the Mental Health Institute, Cherokee, Iowa; the Mental Health Institute, Independence, Iowa; the State Training School, Eldora, Iowa; and the Iowa Juvenile Home, Toledo, Iowa.

"Proposed educational program" means a written description of the general education program, special education services, transition activities, and summer school programs that are proposed to be implemented in order to provide appropriate educational services for each child residing in an institution.

"Proposed educational program budget" means a document that outlines the costs for providing the proposed educational program as defined in these rules.

"Regular school year" means the number of days that school is in session, not to exceed 180 days. The regular school year for each institution shall begin on the first day of school established by the school district in which each institution is located.

"School-age pupil" means a student who is a resident of the state of Iowa and who is at least 5 years of age but less than 21 years of age on September 15 of the school year, or a younger age if served pursuant to an IEP.

"School district of the child's residence" means the school district in which the parent or guardian of the child resides or as defined under operation of law.

"Student contact days" means the days during which the educational program is provided and students are under the guidance and instruction of the professional instructional staff.

"Transition" means communication between the institution and the child's district of residence to develop a plan for assisting the child to adjust to school in the district of residence upon the child's return. Planning for support and follow-up includes contacts with the child's district of residence, community agencies, and the AEA when needed.

281—34.3(218) General principles.

34.3(1) *Availability.* All children who reside in state institutions and mental health institutes shall be provided appropriate educational services in accordance with these rules. Special education services to eligible individuals in institutions shall be provided in accordance with 281—Chapter 41.

34.3(2) *Responsibility of institutions.* It is the responsibility of institutions to provide or make provision for appropriate educational services to children residing in these institutions and to ensure appropriate transition of children back to the school district of residence. The institution may make provision by contracting with the AEA or the school district in which the institution is located.

34.3(3) *Basis for funding.* Funding for general education programs at the institutions is determined using a formula similar to the formula used for the determination of funding for local school districts while considering the unique setting of the institutions. The amount of special education funding is determined by comparing the structure of the general education program at each institution to the nature and extent of services required for students with special education needs beyond what is provided to all students by the general education program.

34.3(4) *Responsibility of the AEA.* It is the responsibility of the AEA in which the institution is located to provide media services, educational services, and special education support services. The nature and extent of these services shall be comparable to those provided to school districts in the AEA.

281—34.4(218) Notification.

34.4(1) *Students served at mental health institutes.* The Mental Health Institute, Cherokee, Iowa, and the Mental Health Institute, Independence, Iowa, shall notify the district of residence of each child who on the date specified in Iowa Code section 257.6, subsection 1, is residing in these institutions. The notification shall occur on or before October 10 and shall be in writing or in a printable electronic medium. The notification shall include the child's name, birth date, and grade level and the names and addresses of the child's parents or guardians.

34.4(2) *Students served at the State Training School at Eldora and the Iowa Juvenile Home at Toledo.* The State Training School at Eldora and the Iowa Juvenile Home at Toledo shall notify the AEA in which the institution is located and the district of residence of each child who on the date specified in Iowa Code section 257.6, subsection 1, is residing in these institutions if the child's release date is known and the release date is within the current school year. The notification shall occur on or before October 10. For students served pursuant to an IEP, the State Training School at Eldora and the Iowa Juvenile Home at Toledo shall by the last Friday in October also notify the AEA in which the institution is located and the district of residence of each child residing in these institutions if the child's release date is known and the release date is within the current school year. Notifications shall be in writing or in a printable electronic medium and shall include the child's name, birth date, and grade level and the names and addresses of the child's parents or guardians.

281—34.5(218) Program submission and approval. Educational programs shall be submitted, reviewed, modified, and approved using the following procedures:

34.5(1) *Submission.* Each institution shall submit a proposed educational program to the department of education and the department of human services by January 1 for the following school year. The proposed program shall be submitted on forms provided or in the manner prescribed by the department and shall include a description of the following:

a. The general education program including content standards, benchmarks, student learning goals and all other requirements of 281—Chapter 12.

b. Special education services including instructional, support and other services that ensure the provision of a free appropriate public education in the least restrictive environment for students with disabilities in accordance with 281—Chapter 41.

c. Procedures that will be implemented to ensure the effective transition of each child back to the school district of the child's residence.

34.5(2) *Approval.* The department shall review and approve or modify the proposed educational program by February 1 and communicate this action to each institution. The department shall also notify the department of revenue of its action by February 1.

281—34.6(218) Budget submission and approval. Educational program budgets shall be submitted, reviewed, modified, and approved using the following procedures:

34.6(1) *Submission.* Each institution shall submit a proposed educational program budget by January 1 for the following school year. The proposed budget shall be based on the average daily attendance of the children residing in the institution and shall be submitted to the department of education and the department of human services on forms provided by the department. The average daily attendance used for the proposed budget shall be the average daily attendance for the school year that ended the previous June 30.

34.6(2) *Students not served pursuant to an IEP.* The budget shall be calculated as the sum of the following:

a. Average daily attendance multiplied by the state cost per pupil for the budget year established pursuant to Iowa Code section 257.9.

b. Average daily attendance multiplied by the per pupil media services funding for the AEA in which the institution is located as established by Iowa Code section 257.37.

c. Average daily attendance multiplied by the per pupil educational services funding for the AEA in which the institution is located as established by Iowa Code section 257.37.

34.6(3) *Students served pursuant to an IEP.* The budget shall be calculated as the sum of the following:

a. Costs established pursuant to subrule 34.6(2) for students not served pursuant to an IEP.

b. Additional weighting established by the special education weighting plan pursuant to Iowa Code section 257.31, subsection 12, as appropriate to support the nature and extent of special education services provided pursuant to subrule 34.3(3).

c. Special education student count multiplied by the special education support cost per pupil funding established for the AEA in which the institution is located pursuant to Iowa Code section 257.9.

d. The State Training School at Eldora and the Iowa Juvenile Home at Toledo may include in their budgets an amount that represents the difference between the amount established pursuant to Iowa Code (2003) section 282.28 and approved by the department for the 2003-2004 fiscal year included in the fiscal year beginning July 1, 2003, and the amount each institution has budgeted under paragraph 34.6(3)*"c."* The budget amount shall increase annually by the allowable growth rate established for that year.

e. In addition to the amount each institution has budgeted as specified in paragraph 34.6(3)*"c,"* the mental health institutes at Cherokee and Independence may include annually in their budgets an amount not to exceed $200,000 based on the budget calculation specified in paragraph 34.6(2)*"a."* This budgeted amount may be adjusted to an amount that exceeds $200,000 in circumstances when there is a significant increase in the number of students in attendance. This additional amount shall increase annually by the allowable growth rate established for that year.

34.6(4) *Approval.* The department shall review and approve or modify the proposed educational program budget by February 1 and communicate this action to each institution. The department shall also notify the department of revenue of its action by February 1.

281—34.7(218) Payments. The department of revenue shall pay the approved budget amount to the department of human services in monthly installments beginning September 15 and ending June 15 of the next succeeding school year. The installments shall be as nearly equal as possible as determined by the department of revenue, taking into consideration the relative budget and cash position of the state's resources. The department of revenue shall pay the approved budget amount for the department of human services from the moneys appropriated under Iowa Code section 257.16, and the department of human services shall distribute the payment to each institution.

281—34.8(218) Payments to the AEA. Within ten days of receiving its payment, the institution shall pay to the AEA in which the institution is located one-tenth of the total funding included in its approved budget for AEA media services, educational services, and special education support services.

281—34.9(218) Contracting for services. The institution may contract with the AEA or the local school district in which the institution is located to provide services to the students residing in the institution.

281—34.10(218) Accounting for average daily attendance. Each institution shall keep a daily register that shall include the name, birth date, district of residence, attendance, and enrollment status of each student. At the end of the school year, each institution shall calculate the average daily attendance for students served pursuant to an IEP and the average daily attendance for students not served pursuant to an IEP. This information shall be reported with the accounting for the actual program costs submitted to the department by August 1.

281—34.11(218) Accounting for actual program costs. Each institution shall submit an accounting for the actual cost of the program to the department by August 1 of the following school year on forms provided by the department.

34.11(1) *Instructional costs.* Actual costs include salaries and benefits of instructional staff, instructional supplies and materials, professional development for instructional staff, student transportation, contracted services related to instruction or instructional staff, and instructional equipment.

34.11(2) *Administrative costs.* Costs for administering the educational program may be included in actual costs based on the average daily attendance of students in the institution. Costs shall be limited to the salary and benefits of the full-time equivalent education administrators and clerical support for the instructional program. However, the full-time equivalent at any institution shall not exceed 1.0 for education administration and 1.0 for clerical support.

34.11(3) *Unallowed costs.* Costs shall not include expenditures for debt services or for facilities acquisition and construction services including remodeling and facility repair. Costs of residential, custodial, treatment, and similar services provided by the institution shall not be included in the actual costs. Costs provided for by a grant or other categorical aid shall not be included in the actual cost calculations pursuant to this chapter.

34.11(4) *Summer school costs.* Costs for providing summer school shall be reported separately from regular session costs. Except as approved by the department of education, summer session costs are considered to be included in the state cost per pupil, or as provided in an appropriation through the department of human services.

34.11(5) *Instruction to nonresident students.* Costs for providing instruction to students who are not residents of the state of Iowa shall be excluded from the actual cost calculations.

34.11(6) *Maximum costs for students who are not served pursuant to an IEP.* Actual costs for serving students who are not served pursuant to an IEP shall not exceed the greater of the actual average daily attendance for the school year multiplied by the state cost per pupil or the average daily attendance from the approved budget multiplied by the state cost per pupil.

34.11(7) *Maximum costs for students served pursuant to an IEP.* Actual costs for students served pursuant to an IEP shall not exceed the amount calculated in subrule 34.6(3).

34.11(8) *Approval of expenditures.* The department shall review and approve or modify all expenditures incurred in compliance with the guidelines adopted pursuant to Iowa Code section 256.7, subsection 10, and shall notify the department of revenue of the approved accounting amount. The approved accounting amount shall be compared with any amounts paid by the department of revenue to the department of human services and any differences added to or subtracted from the October payment made under these rules for the next school year.

34.11(9) *Costs of courses.* Costs include the actual expenses, if reasonable and customary, for tuition, textbooks, course materials, and fees directly related to courses taken pursuant to rule 281—34.15(218,233A,261C) by students who are residents of the state of Iowa.

281—34.12(218) Audit. Each institution shall make the records related to providing educational services to students residing within the institution available to independent auditors, state auditors and department of education staff upon request.

281—34.13(218) Hold-harmless provision. Notwithstanding rule 281—34.6(218), any institution that would receive less funding in its proposed budget pursuant to these rules for the instructional program for the 2003-2004 school year than it had received in funding for the instructional program for the 2002-2003 school year shall be held harmless. The institution shall receive an amount equal to the amount it was funded in 2002-2003. This provision shall continue until the first year in which the proposed budget pursuant to these rules would equal or exceed the amount it had received for the instructional program for the 2002-2003 school year. The hold-harmless provision shall cease beginning with the first year in which the proposed budget pursuant to these rules equals or exceeds the 2002-2003 funding amount.

281—34.14(218,256B,34CFR300) AEA services. Each institution shall purchase from the AEA in which the institution is located support, related and other services necessary to provide appropriate educational programs to students requiring special education, and payment for the purchased services shall be made in accordance with rule 281—34.8(218). The nature and extent of such services shall be comparable to those provided to school districts in the AEA.

281—34.15(218,233A,261C) Postsecondary credit courses. Eleventh and twelfth grade students who attend an institution and are residents of the state of Iowa are eligible to be enrolled in college courses offered by an eligible postsecondary institution as defined in Iowa Code section 261C.3(1) and to receive both secondary and postsecondary credit therefor.

34.15(1) *Noneligible courses.* Postsecondary courses utilized in the attainment of an adult diploma or general equivalency diploma are not eligible for funding hereunder.

34.15(2) *Eligible courses.* Postsecondary courses eligible for funding hereunder must meet all of the following requirements. The course must be:

a. Supplementing, not supplanting, courses offered at the institution.
b. Included in the college catalog or an amendment or addendum to the catalog.
c. Open to all registered college students, not just secondary students.
d. Taught by a college-employed instructor.
e. Taught utilizing the college course syllabus.
f. Of the same quality as a course offered on a college campus.
g. Nonsectarian.

34.15(3) *Maximum number of college courses allowed.* A student is allowed to take a maximum of three college courses during a semester, for a maximum of six college courses per regular school year, while the student is in attendance at the institution. College courses taken outside the regular school year shall not be funded under this chapter. If the student exceeds the course limit, the costs of the additional courses shall not be funded hereunder.

These rules are intended to implement 2003 Iowa Acts, chapter 178, section 58.

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CHAPTER 35
Reserved

TITLE VI
INTERSCHOLASTIC COMPETITION

CHAPTER 36
EXTRACURRICULAR INTERSCHOLASTIC COMPETITION

[Prior to 9/7/88, see Public Instruction Department[670] Ch 9]

281—36.1(280) Definitions Whenever the following terms are used, they shall refer to the following definitions:

"All-star" means a secondary student from a high school interscholastic athletic team whose outstanding performance is the basis for the student's selection to compete individually in an all-star contest or on an all-star high school team to compete with other all-stars from several other high school teams against another all-star team in an all-star contest. An "all-star" shall not include a twelfth grade student whose interscholastic athletic season for the sport in question has concluded.

NOTE: Bylaw 14.6 of the National Collegiate Athletic Association (NCAA) (as revised 7/30/10) states that a "student-athlete shall be denied the first year of intercollegiate athletics competition if, following completion of high-school eligibility in the student-athlete's sport and prior to the student-athlete's high-school graduation, the student-athlete competes in more than two all-star football contests or two all-star basketball contests."

"All-star contest" means an event for which admission is charged and at which all-stars compete during the school year against other all-stars, either individually or as all-star teams. "All-star contests" shall not include noninvitational events for which students audition or try out or the auditions or try outs themselves.

"Associate member school" means a nonaccredited nonpublic school that has been granted associate member status by any corporation, association, or organization registered with the state department of education pursuant to Iowa Code section 280.13, upon approval by the department based upon proof of compliance with:

1. Iowa Code section 279.19B, and rules adopted by the department of education related to the qualifications of the affected teaching staff, and
2. The student eligibility rules of this chapter.

Associate membership is subject to the requirements, dues, or other obligations established by the organization for which associate membership is sought.

"Coach" means an individual, with coaching endorsement or authorization as required by Iowa law, employed by a school district under the provisions of an extracurricular athletic contract or employed by a nonpublic school in a position responsible for an extracurricular athletic activity. "Coach" also includes an individual who instructs, diagnoses, prescribes, evaluates, assists, or directs student learning of an interscholastic athletic endeavor on a voluntary basis on behalf of a school or school district.

"Compete" means participating in an interscholastic contest or competition and includes dressing in full team uniform for the interscholastic contest or competition as well as participating in pre-game warm-up exercises with team members. "Compete" does not include any managerial, record-keeping, or other non-competitor functions performed by a student on behalf of a member or associate member school.

"Department" means the state department of education.

"Dropout" means a student who quit school because of extenuating circumstances over which the student had no control or who voluntarily withdrew from school. This does not include a student who has been expelled or one who was doing failing work when the student voluntarily dropped from school.

"Executive board" means the governing body authorized under a constitution or bylaws to establish policy for an organization registered under this chapter.

"Executive officer" means the executive director or secretary of each governing organization.

"Member school," for purposes of this chapter, means a public school or accredited nonpublic school that has been granted such status by any corporation, association, or organization registered with the state department of education pursuant to Iowa Code section 280.13.

"Parent" means the natural or adoptive parent having actual bona fide custody of a student.

"Student" means a person under 20 years of age enrolled in grades 9 through 12. For purposes of these rules, ninth grade begins with the summer immediately following eighth grade. The rules contained herein shall apply uniformly to all students.

"Superintendent" means a superintendent of a local school or a duly authorized representative.

[**ARC 9475B**, IAB 4/20/11, effective 5/25/11]

281—36.2(280) Registered organizations. Organizations registered with the department include the following:

36.2(1) Iowa High School Athletic Association (hereinafter association).

36.2(2) Iowa Girls' High School Athletic Union (hereinafter union).

36.2(3) Iowa High School Music Association (hereinafter music association).

36.2(4) Iowa High School Speech Association (hereinafter speech association).

36.2(5) Unified Iowa High School Activities Federation (hereinafter federation).

281—36.3(280) Filings by organizations. Each organization shall maintain a current file with the state department of education of the following items:

36.3(1) Constitution and bylaws which must have the approval of the state board of education.

36.3(2) Current membership and associate membership lists.

36.3(3) Organization policies.

36.3(4) Minutes of all meetings of organization boards.

36.3(5) Proposed constitution and bylaw amendments or revisions.

36.3(6) Audit reports.

36.3(7) General bulletins.

36.3(8) Other information pertinent to clarifying organization administration.

281—36.4(280) Executive board. Each organization shall have some representation from school administrators, teachers, and elective school officers on its executive board; provided, however, that the membership shall include the following:

36.4(1) *School board member.* One member who shall be a member of a school board in Iowa, appointed by the Iowa association of school boards to represent the lay public.

36.4(2) *Activity member.* One member, who is either a coach, sponsor or director, of an activity sponsored by the organization to which the member is elected and who works directly with the students or the program: This member is to be elected by ballot of the member schools, the vote to be cast by the school's designated representative of the organization involved.

36.4(3) *Organization elections.* The election procedure for each organization shall be conducted as provided by the organization's constitution. All criteria for protecting the voter's anonymity and ensuring adequate notice of elections shall be maintained in the election procedures. In addition, there shall be one representative designated by the department director present at the counting of all ballots. That representative shall also validate election results.

281—36.5(280) Federation membership. The federation, in addition to conforming to other requirements in this section, shall have in its membership the executive board of the association, union, music association, speech association, and the school administrators of Iowa.

281—36.6(280) Salaries. No remuneration, salary, or remittance shall be made to any member of an executive board, representative council or advisory committee, of an organization for the member's service.

281—36.7(280) Expenses. Travel and actual expenses of executive board members, representative council members, advisory committee members, and officers shall be paid from organizational funds only when on official business for the organization. Actual expenses shall be paid for travel for transportation outside the state, along with necessary and reasonable expenses which shall be itemized.

Itemized accounting of the travel and business expenses of employees shall be furnished to the department in an annual report on a form prescribed by the department.

281—36.8(280) Financial report. Full and detailed reports of all receipts and expenditures shall be filed annually with the department of education.

281—36.9(280) Bond. The executive board of each activity organization shall purchase a blanket fidelity bond from a corporate surety approved by it, conditioned upon the faithful performance of the duties of the executive officer, the members of the executive board, and all other employees of the activity organization. Such blanket bond shall be in a penal amount set by the executive board and shall be the sum of 50 percent of the largest amount of moneys on hand in any 30-day period during the preceding fiscal year, and 20 percent of the net valuation of all assets of the activity organization as of the close of the last fiscal year, but such bond shall in no case be in an amount less than $10,000.

281—36.10(280) Audit. The financial condition and transaction of all organizations shall be examined once each year, or more often if directed by the director of education, by either a certified public accountant chosen by the organization or by a committee chosen by the organization and approved by the director of education.

281—36.11(280) Examinations by auditors. Auditors shall have the right while making the examination to examine all organization papers, books, records, tickets, and documents of any of the officers and employees of the organizations, and shall have the right in the presence of the custodian or deputy, to have access to the cash drawers and cash in the official custody of the officer and to the records of any depository which has funds of the organization in its custody.

281—36.12(280) Access to records. Upon request, organizations shall make available to the state department of education or its delegated representative all records, data, written policies, books, accounts, and other materials relating to any or all aspects of their operations.

281—36.13(280) Appearance before state board. At the request of the state board of education or its executive officer, members of the governing boards and employees of the organizations shall appear before and give full accounting and details on the aforesaid matters to the state board of education.

281—36.14(280) Interscholastic athletics. In addition to the requirements of rule 36.15(280), organizations shall prescribe and implement the rules described below for participants in interscholastic athletic competition.

36.14(1) *Physical examination.* Every year each student shall present to the student's superintendent a certificate signed by a licensed physician and surgeon, osteopathic physician and surgeon, osteopath, qualified doctor of chiropractic, licensed physician assistant, or advanced registered nurse practitioner, to the effect that the student has been examined and may safely engage in athletic competition.

Each doctor of chiropractic licensed as of July 1, 1974, shall affirm on each certificate of physical examination completed that the affidavit required by Iowa Code section 151.8 is on file with the Iowa board of chiropractic.

The certificate of physical examination is valid for the purpose of this rule for one calendar year. A grace period not to exceed 30 calendar days is allowed for expired physical certifications.

36.14(2) *Sportsmanship.* It is the clear obligation of member and associate member schools to ensure that their contestants, coaches, and spectators in all interscholastic competitions practice the highest principles of sportsmanship, conduct, and ethics of competition. The governing organization shall have authority to penalize any member school, associate member school, contestant, or coach in violation of this obligation.

36.14(3) *Awards.*

a. Awards from a secondary school or registered organization. For participation in an interscholastic athletic contest or program, a student will be permitted to receive from the student's

school, another secondary school, a registered organization, or the host of an event sanctioned by a registered organization an award whose value cannot exceed $50.

b. Awards for participation in school programs from an individual or organization other than a secondary school or registered organization. No student shall receive any award from an individual or outside organization for high school participation while enrolled in high school, except that nothing in this subrule shall preclude the giving of a complimentary dinner by local individuals, organizations, or groups, with approval of the superintendent, to members of the local high school athletic squad. No student shall accept any trip or excursion of any kind by any individual, organization, or group outside the student's own school or the governing organization, with the exception of bona fide recruiting trips that meet NCAA requirements. Nothing in this subrule shall preclude or prevent the awarding and the acceptance of an inexpensive, unmounted, unframed paper certificate of recognition as an award, or an inexpensive table favor which is given to everyone attending a banquet.

c. Awards for participation in nonschool programs. If a student participates in an outside school activity, the student may receive any award provided that the award does not violate the amateur award rule of the amateur sanctioning body for that sport. In the absence of an applicable amateur award rule, the student shall not receive any award the value of which exceeds $50.

d. Absolute prohibition on cash. At no time may any student accept an award of cash.

e. Compliance. The superintendent or designee shall be held responsible for compliance with this subrule. Questions or interpretation regarding medals or awards shall be referred to the executive board.

36.14(4) *Interstate competition.* Every student participating in interstate athletic competition on behalf of the student's school must meet the eligibility rules.

36.14(5) *Competition seasons.* The length of training periods and competition seasons shall be determined solely by the governing organization.

36.14(6) *Tournaments.* The number and type of state tournaments for the various sports shall be determined by the organization. In scheduling and conducting these tournaments, the organization shall have the final authority for determining the tournament eligibility of all participants. Organization bylaws shall provide for a timely method of seeking an internal review of initial decisions regarding tournament eligibility.

36.14(7) *Ineligible player competition.* Member or associate member schools that permit or allow a student to compete in an interscholastic competition in violation of the eligibility rules or that permit or allow a student who has been suspended to so compete shall be subject to penalties imposed by the executive board. The penalties may include, but are not limited to, the following: forfeiture of contests or events or both, involving any ineligible student(s); adjustment or relinquishment of conference/district/tournament standings; and return of team awards or individual awards or both.

If a student who has been declared ineligible or who has been suspended is permitted to compete in an interscholastic competition because of a current restraining order or injunction against the school, registered organization, or department of education, and if such restraining order or injunction subsequently is voluntarily vacated, stayed, reversed, or finally determined by the courts not to justify injunctive relief, the penalties listed above may be imposed.

This rule is intended to implement Iowa Code section 280.13.

[**ARC 9475B**, IAB 4/20/11, effective 5/25/11; **ARC 9477B**, IAB 4/20/11, effective 5/25/11]

281—36.15(280) Eligibility requirements.

36.15(1) *Local eligibility and student conduct rules.* Local boards of education may impose additional eligibility requirements not in conflict with these rules. Nothing herein shall be construed to prevent a local school board from declaring a student ineligible to participate in interscholastic competition by reason of the student's violation of rules adopted by the school pursuant to Iowa Code sections 279.8 and 279.9. A member or associate member school shall not allow any student, including any transfer student, to compete until such time as the school has reasonably reliable proof that the student is eligible to compete for the member or associate member school under these rules.

36.15(2) *Scholarship rules.*

a. All contestants must be enrolled and in good standing in a school that is a member or associate member in good standing of the organization sponsoring the event.

b. All contestants must be under 20 years of age.

c. All contestants shall be enrolled students of the school in good standing. They shall receive credit in at least four subjects, each of one period or "hour" or the equivalent thereof, at all times. To qualify under this rule, a "subject" must meet the requirements of 281—Chapter 12. Coursework taken from a postsecondary institution and for which a school district or accredited nonpublic school grants academic credit toward high school graduation shall be used in determining eligibility. No student shall be denied eligibility if the student's school program deviates from the traditional two-semester school year.

(1) Each contestant shall be passing all coursework for which credit is given and shall be making adequate progress toward graduation requirements at the end of each grading period. Grading period, graduation requirements, and any interim periods of ineligibility are determined by local policy. For purposes of this subrule, "grading period" shall mean the period of time at the end of which a student in grades 9 through 12 receives a final grade and course credit is awarded for passing grades.

(2) If at the end of any grading period a contestant is given a failing grade in any course for which credit is awarded, the contestant is ineligible to dress for and compete in the next occurring interscholastic athletic contests and competitions in which the contestant is a contestant for 30 consecutive calendar days.

d. A student with a disability who has an individualized education program shall not be denied eligibility on the basis of scholarship if the student is making adequate progress, as determined by school officials, towards the goals and objectives on the student's individualized education program.

e. A student who meets all other qualifications may be eligible to participate in interscholastic athletics for a maximum of eight consecutive semesters upon entering the ninth grade for the first time. However, a student who engages in athletics during the summer following eighth grade is also eligible to compete during the summer following twelfth grade. Extenuating circumstances, such as health, may be the basis for an appeal to the executive board which may extend the eligibility of a student when the executive board finds that the interests of the student and interscholastic athletics will be benefited.

f. All member schools shall provide appropriate interventions and necessary academic supports for students who fail or who are at risk to fail, and shall report to the department regarding those interventions on the comprehensive school improvement plan.

g. A student is academically eligible upon entering the ninth grade.

h. A student is not eligible to participate in an interscholastic sport if the student has, in that same sport, participated in a contest with or against, or trained with, a National Collegiate Athletic Association (NCAA), National Junior College Athletic Association (NJCAA), National Association of Intercollegiate Athletics (NAIA), or other collegiate governing organization's sanctioned team. A student may not participate with or against high school graduates if the graduates represent a collegiate institution or if the event is sanctioned or sponsored by a collegiate institution. Nothing in this subrule shall preclude a student from participating in a one-time tryout with or against members of a college team with permission from the member school's administration and the respective collegiate institution's athletic administration.

i. No student shall be eligible to participate in any given interscholastic sport if the student has engaged in that sport professionally.

j. The local superintendent of schools, with the approval of the local board of education, may give permission to a dropout student to participate in athletics upon return to school if the student is otherwise eligible under these rules.

k. Remediation of a failing grade by way of summer school or other means shall not affect the student's ineligibility. All failing grades shall be reported to any school to which the student transfers.

36.15(3) *General transfer rule.* A student who transfers from a school in another state or country or from one member or associate member school to another member or associate member school shall be ineligible to compete in interscholastic athletics for a period of 90 consecutive school days, as defined in rule 281—12.1(256), exclusive of summer enrollment, unless one of the exceptions listed

in paragraph 36.15(3)*"a"* applies. The period of ineligibility applies only to varsity level contests and competitions. ("Varsity" means the highest level of competition offered by one school or school district against the highest level of competition offered by an opposing school or school district.) In ruling upon the eligibility of transfer students, the executive board shall consider the factors motivating student changes in residency. Unless otherwise provided in these rules, a student intending to establish residency must show that the student is physically present in the district for the purpose of making a home and not solely for school or athletic purposes.

a. Exceptions. The executive officer or executive board shall consider and apply the following exceptions in formally or informally ruling upon the eligibility of a transfer student and may make eligibility contingent upon proof that the student has been in attendance in the new school for at least ten school days:

(1) Upon a contemporaneous change in parental residence, a student is immediately eligible if the student transfers to the new district of residence or to an accredited nonpublic member or associate member school located in the new school district of residence. In addition, if with a contemporaneous change in parental residence, the student had attended an accredited nonpublic member or associate member school immediately prior to the change in parental residence, the student may have immediate eligibility if the student transfers to another accredited nonpublic member or associate member school.

(2) If the student is attending in a school district as a result of a whole-grade sharing agreement between the student's resident district and the new school district of attendance, the student is immediately eligible.

(3) A student who has attended high school in a district other than where the student's parent(s) resides, and who subsequently returns to live with the student's parent(s), becomes immediately eligible in the parent's resident district.

(4) Pursuant to Iowa Code section 256.46, a student whose residence changes due to any of the following circumstances is immediately eligible provided the student meets all other eligibility requirements in these rules and those set by the school of attendance:

1. Adoption.
2. Placement in foster or shelter care.
3. Participation in a foreign exchange program, as evidenced by a J-1 visa issued by the United States government, unless the student attends the school primarily for athletic purposes.
4. Placement in a juvenile correction facility.
5. Participation in a substance abuse program.
6. Participation in a mental health program.
7. Court decree that the student is a ward of the state or of the court.
8. The child is living with one of the child's parents as a result of divorce, separation, death, or other change in the child's parents' marital relationship, or pursuant to other court-ordered decree or order of custody.

(5) A transfer student who attends in a member or associate member school that is a party to a cooperative student participation agreement, as defined in rule 36.20(280), with the member or associate member school the student previously attended is immediately eligible in the new district to compete in those interscholastic athletic activities covered by the cooperative agreement.

(6) Any student whose parents change district of residence but who remains in the original district without interruption in attendance continues to be eligible in the member or associate member school of attendance.

(7) A special education student whose attendance center changes due to a change in placement agreed to by the district of residence is eligible in either the resident district or the district of attendance, but not both.

(8) In any transfer situation not provided for elsewhere in this chapter, the executive board shall exercise its administrative authority to make any eligibility ruling which it deems to be fair and reasonable. The executive board shall consider the motivating factors for the student transfer. The determination shall be made in writing with the reasons for the determination clearly delineated.

b. In ruling upon the transfer of students who have been emancipated by marriage or have reached the age of majority, the executive board shall consider all circumstances with regard to the transfer to determine if it is principally for school or athletic purposes, in which case participation shall not be approved.

c. A student who participates in the name of a member or associate member school during the summer following eighth grade is ineligible to participate in the name of another member or associate member school in the first 90 consecutive school days of ninth grade unless a change of residence has occurred after the student began participating in the summer.

d. A school district that has more than one high school in its district shall set its own eligibility policies regarding intradistrict transfers.

36.15(4) *Open enrollment transfer rule.* A student in grades 9 through 12 whose transfer of schools had occurred due to a request for open enrollment by the student's parent or guardian is ineligible to compete in interscholastic athletics during the first 90 school days of transfer except that a student may participate immediately if the student is entering grade 9 for the first time and did not participate in an interscholastic athletic competition for another school during the summer immediately following eighth grade. The period of ineligibility applies only to varsity level contests and competitions. ("Varsity" means the highest level of competition offered by one school or school district against the highest level of competition offered by an opposing school or school district.) This period of ineligibility does not apply if the student:

a. Participates in an athletic activity in the receiving district that is not available in the district of residence; or

b. Participates in an athletic activity for which the resident and receiving districts have a cooperative student participation agreement pursuant to rule 36.20(280); or

c. Has paid tuition for one or more years to the receiving school district prior to making application for and being granted open enrollment; or

d. Has attended in the receiving district for one or more years prior to making application for and being granted open enrollment under a sharing or mutual agreement between the resident and receiving districts; or

e. Has been participating in open enrollment and whose parents/guardians move out of their district of residence but exercise either the option of remaining in the original open enrollment district or enrolling in the new district of residence. If the pupil has established athletic eligibility under open enrollment, it is continued despite the parent's or guardian's change in residence; or

f. Has not been participating in open enrollment, but utilizes open enrollment to remain in the original district of residence following a change of residence of the student's parent(s). If the pupil has established athletic eligibility, it is continued despite the parent's or guardian's change in residence; or

g. Obtains open enrollment due to the dissolution and merger of the former district of residence under Iowa Code subsection 256.11(12); or

h. Obtains open enrollment due to the pupil's district of residence entering into a whole-grade sharing agreement on or after July 1, 1990, including the grade in which the pupil would be enrolled at the start of the whole-grade sharing agreement; or

i. Participates in open enrollment and the parent/guardian is an active member of the armed forces and resides in permanent housing on government property provided by a branch of the armed services.

36.15(5) *Eligibility for other enrollment options.*

a. *Shared-time students.* A nonpublic school student who is enrolled only part-time in the public school district of the student's residence under a "shared-time" provision or for driver education is not eligible to compete in interscholastic athletics in the public school district.

b. *Dual enrollment.* A student who receives competent private instruction, not in an accredited nonpublic or public school, may seek dual enrollment in the public school of the student's resident district and is eligible to compete in interscholastic athletic competition in the resident school district provided the student meets the eligibility requirements of these rules and those set by the public school of attendance.

If a student seeking such dual enrollment is enrolled in an associate member school of the Iowa Girls' High School Athletic Union or Iowa High School Athletic Association, the student is eligible for and may participate in interscholastic athletic competition only for the associate member school or a school with which the associate member school is in a cooperative sharing agreement. (Eligibility in such case is governed by 281 IAC 36.1(280).)

Any ineligibility imposed under this chapter shall begin with the first day of participation under dual enrollment. Any period of ineligibility applies only to varsity level contests and competitions. ("Varsity" means the highest level of competition offered by one school or school district against the highest level of competition offered by an opposing school or school district.)

c. *Competent private instruction.* A student who receives competent private instruction, and is not dual-enrolled in a public school, may participate in and be eligible for interscholastic athletics at an accredited nonpublic school if the student is accepted by that school and the student meets the eligibility requirements of this chapter and those set by the accredited nonpublic school where the student participates. Application shall be made to the accredited nonpublic school on a form provided by the department of education.

If a student seeking such participation is enrolled in an associate member school of the Iowa Girls' High School Athletic Union or Iowa High School Athletic Association, the student is eligible for and may participate in interscholastic athletic competition only for the associate member school or a school with which the associate member school is in a cooperative sharing agreement. (Eligibility in such case is governed by 281 IAC 36.1(280).)

Any ineligibility imposed under this chapter shall begin with the first day of participation with the accredited nonpublic school. Any period of ineligibility applies only to varsity level contests and competitions. ("Varsity" means the highest level of competition offered by one school or school district against the highest level of competition offered by an opposing school or school district.)

36.15(6) *Summer camps and clinics and coaching contacts out of season.*

a. School personnel, whether employed or volunteers, of a member or associate member school shall not coach that school's student athletes during the school year in a sport for which the school personnel are currently under contract or are volunteers, outside the period from the official first day of practice through the finals of tournament play. Provided, however, school personnel may coach a senior student from the coach's school in an all-star contest once the senior student's interscholastic athletic season for that sport has concluded. In addition, volunteer or compensated coaching personnel shall not require students to participate in any activities outside the season of that coach's sport as a condition of participation in the coach's sport during its season.

b. A summer team or individual camp or clinic held at a member or associate member school facility shall not conflict with sports in season. Summertime coaching activities shall not conflict with sports in season.

c. Rescinded IAB 4/20/11, effective 5/25/11.

d. Penalty. A school whose volunteer or compensated coaching personnel violate this rule is ineligible to participate in a governing organization-sponsored event in that sport for one year with the violator(s) coaching.

36.15(7) *Nonschool team participation.* The local school board shall by policy determine whether or not participation in nonschool athletic events during the same season is permitted and provide penalties for students who may be in violation of the board's policy.

This rule is intended to implement Iowa Code sections 256.46, 280.13 and 282.18.

[**ARC 9475B**, IAB 4/20/11, effective 5/25/11; **ARC 9476B**, IAB 4/20/11, effective 5/25/11]

281—36.16(280) Executive board review. A student, parent of a minor student, or school contesting the ruling of a student's eligibility based on these rules, other than subrule 36.15(1) or paragraph 36.15(2)*"c," "d," "f,"* or *"k,"* or a school contesting a penalty imposed under paragraph 36.15(6)*"b,"* shall be required to state the basis of the objections in writing, addressed to the executive officer of the board of the governing organization. Upon request of a student, parent of a minor student, or a school, the executive officer shall schedule a hearing before the executive board on or before the next

regularly scheduled meeting of the executive board but not later than 20 calendar days following the receipt of the objections unless a later time is mutually agreeable. The executive board shall give at least 5 business days' written notice of the hearing. The executive board shall consider the evidence presented and issue findings and conclusions in a written decision within 5 business days of the hearing and shall mail a copy to appellant.
[**ARC 9475B**, IAB 4/20/11, effective 5/25/11]

281—36.17(280) Appeals to director. If the claimant is still dissatisfied, an appeal may be made in writing to the director of education by giving written notice of the appeal to the state director of education with a copy by registered mail to the executive officer of the governing organization. An appeal shall be in the form of an affidavit and shall be filed within 10 business days after the date of mailing of the decision of the governing organization. The director of education shall establish a date for hearing within 20 calendar days of receipt of written notice of appeal by giving at least 5 business days' written notice of hearing to the appellant unless another time is mutually agreeable. The procedures for hearing adopted by the state board of education and found at 281—Chapter 6 shall be applicable, except that the decision of the director is final. Appeals to the executive board and the state director are not contested cases under Iowa Code subsection 17A.2(5).
[**ARC 9475B**, IAB 4/20/11, effective 5/25/11]

281—36.18(280) Organization policies. The constitution or bylaws of organizations sponsoring contests for participation by member schools shall reflect the following policies:

36.18(1) *Expenditure policy.* It shall be the expenditure policy of each organization, after payment of costs incurred in 36.6(280) to 36.9(280) and legitimate expenses for housing, equipment and supplies including by agreement with other organizations having a mutual interest in interscholastic activities, to use all receipts to promote and fiscally sponsor those extracurricular interscholastic contests and competitions deemed by it to be most beneficial to all eligible students enrolled in member schools. Organizations with large revenues may provide assistance in staff, space, equipment and the transfer of funds to other organizations whose contests or competitions do not generate sufficient moneys to carry out an adequate program in their areas of service. Each organization shall make an annual payment to the federation to cover the necessary expenditures of the federation. The amount of this payment shall be determined by the federation.

36.18(2) *Federation survey.* A survey shall be made at least biennially, using a sampling procedure selected by the executive committee of the federation to determine in what extracurricular interscholastic contests or competitions students of member secondary schools would like to participate. The organizations shall put high priority on the findings of the survey in the determination of what interscholastic activities are to be sponsored.

36.18(3) *Calendar of events.* The federation shall establish yearly in advance a calendar of events for the interscholastic contests and competitions sponsored by the organizations.

36.18(4) *Information to local member schools.* The federation shall distribute to member schools the yearly calendar of events and other information believed by officers of the federation to be helpful to local school officials in providing a comprehensive program of extracurricular interscholastic contests or competitions.

36.18(5) *"All-star" contests.* A student enrolled in a member or associate member school will be ineligible for 12 calendar months in the sport in which the violation occurred if the student participates in an all-star contest.

36.18(6) *Team participation.* Participation in interscholastic contests or competitions shall be by school teams only and not selected individuals, with the exception of individual sports events such as wrestling, track, cross country, golf, tennis, and music and speech activities.

36.18(7) *Contests outside Iowa.* Out-of-state contest participation by a member school shall be limited to regularly scheduled interscholastic activities.

36.18(8) *Promoting interstate contests.* No activity organization shall sponsor interstate contests or competition between individuals, teams or groups.

36.18(9) *Chaperones.* It is the responsibility of all school districts to see that all teams or contestants are properly chaperoned when engaged in interscholastic activities.

36.18(10) *Membership.* Membership in an organization shall be limited to schools accredited by the department or approved by the department solely for purposes of associate membership in a registered organization.

281—36.19(280) Eligibility in situations of district organization change. Notwithstanding any other provision of this chapter, in the event eligibility of one or more students is jeopardized or in question as a result of actions beyond their control due to pending reorganization of school districts approved by the voters under Iowa Code chapter 275; action of the district boards of directors under Iowa Code section 274.37; or the joint employment of personnel and sharing of facilities under Iowa Code section 280.15 and the result is a complete discontinuance of the high school grades, or discontinuance of the high school grades pursuant to Iowa Code section 282.7, first paragraph, the boards of directors of the school districts involved may, by written agreement, determine the eligibility of students for the time the district of residence does not provide an activity program governed by this chapter. When the respective boards have not provided by written agreement for the eligibility of students whose eligibility is jeopardized or questioned four weeks prior to the normal established time for beginning the activity, students or parents of students involved may request a determination of eligibility from the governing body of the organization involved. All parties directly interested shall be given an opportunity to present their views to the governing board.

A determination of eligibility by the governing board shall be based upon fairness and the best interests of the students.

In the event that one or more parties involved in the request for determination before the governing board are dissatisfied with the decision of the governing board, an appeal may be made by the dissatisfied party to the director of the department under the provisions of 36.17(280). A decision of the director in the matter shall be final.

The above provisions shall apply insofar as applicable to changes of organization entered into between two or more nonpublic schools.

This rule is intended to implement Iowa Code section 280.13.

[1]**281—36.20(280) Cooperative student participation.** Notwithstanding any other provision of this chapter, in the event a member or associate member school does not directly make participation in an interscholastic activity available to its students, the governing board of the member or associate member school may, by formally adopted policy if among its own attendance centers, or by written agreement with the governing board of another member or associate member school, provide for the eligibility of its students in interscholastic activities provided by another member or associate member school. The eligibility of students under a policy, insofar as applicable, or a written agreement is conditioned upon the following:

36.20(1) All terms and conditions of the agreement are in writing;

36.20(2) The attendance boundary of each school that is party to the agreement is contiguous to or contained within the attendance boundary of one of the other schools, unless the activity is not offered at any school contiguous to the party district, or all schools that are contiguous refuse to negotiate an agreement with the party district, in which case the contiguous requirement may be waived by the applicable governing organization. For the purposes of this rule, a nonpublic school member will utilize the attendance boundaries of the public school in which its attendance center is located;

36.20(3) Any interscholastic activity not available to students of the schools participating in the agreement may be included in the agreement. A school's students may be engaged in cooperative activities under the terms of only one agreement;

However, if several schools are in a consortia cooperative agreement for a specific activity, they are not precluded from having a separate agreement with one or more of the same schools for a different activity as long as all schools of the consortia agree to such a separate agreement.

36.20(4) Agreements shall be for a minimum of one school year. Amendments may be made to agreements, including allowing additional member schools to join an existing agreement, without necessarily extending the time of existence of the agreement.

36.20(5) All students participating under the agreement are enrolled in one of the schools, are in good standing and meet all other eligibility requirements of these rules;

36.20(6) A copy of the written agreement between the governing boards of the particular schools involved, and all amendments to the agreement, shall be filed with the appropriate governing organization(s) no later than April 30 for the subsequent year, unless exception is granted by the organization for good cause shown. The agreements and amendments shall be deemed approved unless denied by the governing organization(s) within ten calendar days;

36.20(7) It is the purpose of this rule to allow individual students participation in interscholastic competition in activities not available to them at the school they attend, through local policy or arrangements made between the governing boards of the schools involved, so long as the interscholastic activities of other schools are not substantially prejudiced. Substantial prejudice shall include, but not necessarily be limited to, situations where a cooperative effort may result in an unfair domination of an activity or substantial disruption of activity classifications and management. In the event an activity organization determines, after investigation, that an agreement between schools that was developed under the terms of this rule results in substantial prejudice to other schools engaged in the activity, or the terms of the agreement are not in conformity with the purpose and terms of this rule, the activity organization may give timely notice to the schools involved that the local policy or agreement between them is null and void for the purposes of this rule, insofar as cooperative student participation is concerned with a particular activity. Determinations are appealable to the director of education under the applicable terms of 281—36.17(280). For notice to be timely, it must be given at least 45 calendar days prior to the beginning of the activity season.

This rule shall become effective on January 8, 1986. However, prior written agreements in existence at the time of this rule's adoption shall continue in force and effect until terminated by the parties or by the terms of the existing agreement.

This rule is intended to implement Iowa Code section 280.13.

[**ARC 9475B**, IAB 4/20/11, effective 5/25/11]

[1] See last paragraph of this rule.

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◊ Two or more ARCs

1 See rule 36.20, last paragraph.

2 See Education, Department of[281], IAB.

CHAPTER 37
EXTRACURRICULAR ATHLETIC ACTIVITY CONFERENCE FOR MEMBER SCHOOLS

281—37.1(280) Policy and purpose. It is the purpose of this chapter to provide a procedure ensuring that a school desiring to be a member of a conference providing extracurricular athletic contests and competitions for students is granted this opportunity. Membership shall be with other schools of comparable size and within reasonable geographic proximity. For purposes of this chapter, member school means a school or school district granted such status by any corporation, association, or organization registered with the state department of education pursuant to Iowa Code section 280.13, and includes associate members.

281—37.2(280) Initial responsibility. The initial authority and responsibility for conference development, membership, and alignment rests with the board of directors of each public school district and the authorities in charge of each nonpublic school.

281—37.3(280) Complaint to the director, department of education. A member school that believes it has been unfairly excluded or prevented from obtaining membership in an athletic activity conference that would provide the opportunity for participation of its students in athletic events or contests with students from other member schools of comparable size and within reasonable geographic proximity may file a complaint stating this concern with the director of the department of education. The complaint shall set forth in a plain and concise manner the reasons the member school believes the director should intervene in conference alignment decisions and the specific relief requested by the member school. The complaint shall be signed by the president of the board of directors of a public school district or a representative of the officials in charge of an accredited nonpublic school. The director or the director's designee shall, within ten days, acknowledge to the member school receipt of the complaint in writing.

281—37.4(280) Mediation. The director of the department of education shall require that the executive director of the Iowa High School Athletic Association (hereinafter association) and the executive secretary of the Iowa Girls' High School Athletic Union (hereinafter union) organizations recognized in 281—Chapter 36, or their designees, form a mediation team to meet with the complainant and representatives of other affected member schools. If the complaint involves conference alignment for athletic activities represented by only one of the organizations, only that organization shall be involved in the mediation. A copy of all materials filed with the director by the complainant member school shall be provided to the mediation team.

The mediation team shall meet with administrators or board members of schools potentially affected by changes in conference alignment related to the complaint. Schools shall send representatives who have knowledge of the impact of a conference realignment and full authority to respond on behalf of their member school. Factors to be weighed in reaching resolution will include, but not be limited to, school enrollment figures (current and projected), travel distances, comparability of instructional programs, traditional rivalries, number of existing and proposed schools in the conference, and comparability of athletic programs and other school-sponsored programs.

281—37.5(280) Resolution or recommendation of the mediation team. If mediation results in resolution of the complaint, no further action shall be necessary on the part of the director, and the implementation of the mediation agreement shall be left with the boards of directors of school districts and the authorities in charge of nonpublic schools. If no resolution is reached within 50 days of the start of the mediation process, the mediation team shall make a recommendation to the director as to the best resolution of the complaint. Copies of this recommendation shall be given to all affected member schools. The director shall establish a time for a hearing on this recommendation within 45 days of the receipt of the mediation team's recommendation. The director or director's designee shall conduct the hearing at which time all affected parties shall be given the opportunity to provide oral or

written testimony or submit other evidence. The director or director's designee shall reserve the right to establish time limits on appearances at the hearing.

281—37.6(280) Decision. In reaching a decision on the complaint, the director shall consider information gathered by the mediation team and its recommendation as well as the written and oral testimony from the hearing. In addition, the director or the director's designee may consult with other individuals, organizations, or conference representatives able to provide input on a decision. If a designee of the director conducts the hearing and review process, the findings of the designee shall be reviewed by the director. A final decision on the complaint shall be made by the director. The decision may affect conference realignment or direct other appropriate relief to remedy the complaint. The director shall make a decision within 60 days of the hearing, and copies of the decision shall be provided to all affected parties.

281—37.7(280) Effective date of the decision. If the decision requires conference realignment, the date of this change shall be made with deference given to existing contracts and commitments. Alignment changes shall be made for four-year periods with automatic review by the director after two years so that further necessary changes take effect at the conclusion of the four-year period, unless agreement exists that implementation of the changes can occur at an earlier date.

These rules are intended to implement Iowa Code section 280.13.

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CHAPTERS 38 to 40
Reserved

TITLE VII
SPECIAL EDUCATION

CHAPTER 41
SPECIAL EDUCATION

[Prior to 9/7/88, see Public Instruction Department[670] Ch 12]

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 281—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 281—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." "Disability in obtaining an education" refers to a condition, identified in accordance with this chapter, which, by reason thereof, causes a child to require special education and support and related services.
[**ARC 8387B**, IAB 12/16/09, effective 1/20/10]

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 through another 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).

41.9(3) *Special rule.* If a parent of a child revokes consent, in writing, for the child's receipt of special education services after the child is initially provided special education and related services, the public agency is not required to amend the child's education records to remove any references to the child's receipt of special education and related services because of the revocation of consent.
[**ARC 8387B**, IAB 12/16/09, effective 1/20/10]

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 281—41.304(256B,34CFR300) to 281—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 281—41.320(256B,34CFR300) to 281—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 academic achievement standards.* When used with respect to a special education teacher who teaches core academic subjects exclusively to children who are assessed against alternate academic 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 281—41.151(256B,34CFR300) to 281—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 281—41.138(256,256B,34CFR300).

[**ARC 8387B**, IAB 12/16/09, effective 1/20/10]

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 281—41.320(256B,34CFR300) to 281—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 281—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 281—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 281—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 281—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 281—41.39(256B,34CFR300), a supplementary aid and service under rule 281—41.42(256B,34CFR300), or a support service under rule 281—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 281—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 secondary 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 281—41.114(256B,34CFR300) to 281—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 post-school 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 281—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) *Intellectual disability.* "Intellectual 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 intellectual disability-blindness or intellectual 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 intellectual 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.
[**ARC 9376B**, IAB 2/23/11, effective 3/30/11]

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 281—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. If an individual is physically present ("lives") in an intermediate care facility, residential care facility, or other similar facility, the individual's district of residence is deemed to be that of the individual's parents.

d. "Children living in a foster care facility" are individuals requiring special education who are living in a licensed individual or agency child foster care facility, as defined in Iowa Code section 237.1, or in an unlicensed relative foster care placement. 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 paragraph 41.907(5)*"a."*

e. "Children living in a treatment facility" are individuals requiring special education who are living in a facility providing residential treatment as defined in Iowa Code section 125.2. District of residence of an individual living in a treatment facility and financial responsibility for special education and related services are determined pursuant to paragraph 41.907(5)*"b."*

f. "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.

[**ARC 8387B**, IAB 12/16/09, effective 1/20/10]

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 281—41.101(256B,34CFR300) to 281—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 281—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 that 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 281—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.

[**ARC 8387B**, IAB 12/16/09, effective 1/20/10]

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 281—41.5(256B,34CFR300) and 281—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 281—41.39(256B,34CFR300);

b. Related services under rule 281—41.34(256B,34CFR300); or

c. Supplementary aids and services under rule 281—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 281—41.320(256B,34CFR300) to 281—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) *High-quality general education instruction; general education interventions.*

a. As a component of efficient and effective, high-quality general education instruction, it shall be the responsibility of the general education program of each LEA to provide additional support and assistance to all students who may need such additional support and assistance to attain the educational standards of the LEA applicable to all children. Receipt of such additional support and assistance, when considered alone, does not create a suspicion that a child is an eligible individual under this chapter. Activities under this paragraph shall be provided by general education personnel, with occasional or incidental assistance from special education instructional and support personnel.

b. General education interventions involving activities described in rule 281—41.312(256B,34CFR300) are a recognized component of an AEA's child find policy pursuant to the policies set forth in subrule 41.407(1) and the procedures set forth in subrule 41.407(2).

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.

41.111(5) *Evaluation required when disability is suspected.* At the point when a public agency suspects a child is a child with a disability under this chapter, the public agency must seek parental consent for an initial evaluation of that child, pursuant to subrule 41.300(1).

41.111(6) *Rule of construction—suspicion of a disability.* As a general rule, a public agency suspects a child is a child with a disability when the public agency is aware of facts and circumstances that, when considered as a whole, would cause a reasonably prudent public agency to believe that the child's performance might be explained because the child is an eligible individual under this chapter.
[**ARC 8387B**, IAB 12/16/09, effective 1/20/10]

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 281—41.320(256B,34CFR300) to 281—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 postsurgical 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 281—41.115(256B,34CFR300) to 281—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 281—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 281—41.114(256B,34CFR300) to 281—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 281—41.530(256B,34CFR300) and 281—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 281—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 281—41.149(256B,34CFR300) regarding agency responsibility for general supervision of some individuals in adult prisons, the department must ensure that rule 281—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.
[**ARC 8387B**, IAB 12/16/09, effective 1/20/10]

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 281—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 281—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 281—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 281—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 281—41.500(256B,34CFR300) to 281—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 281—41.300(256B,34CFR300) to 281—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 281—41.610(256B,34CFR300) to 281—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 281—41.130(256,256B,34CFR300) to 281—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 281—41.13(256B,34CFR300) or secondary school in rule 281—41.36(256B,34CFR300), other than children with disabilities covered under rules 281—41.145(256B,34CFR300) to 281—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 281—41.111(256B,34CFR300) and 281—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 281—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 281—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 281—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 281—41.137(256,256B,34CFR300) to 281—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 281—41.130(256,256B,34CFR300) to 281—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 281—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 281—41.134(256,256B,34CFR300) and the child count described in rule 281—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 281—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 281—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 281—41.130(256,256B,34CFR300) to 281—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 281—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 281—41.130(256,256B,34CFR300) to 281—41.144(256,256B,34CFR300) must be made in accordance with subrules 41.134(4) 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 281—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 281—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 281—41.139(256,256B,34CFR300) to 281—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 children 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 281—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 281—41.504(256B,34CFR300) to 281—41.519(256B,34CFR300), except as provided in subrule 41.140(2).

41.140(2) *When due process complaints unavailable.* The procedures in rules 281—41.504(256B,34CFR300) to 281—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 281—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 281—41.132(256,256B,34CFR300) to 281—41.135(256,256B,34CFR300) and 281—41.137(256,256B,34CFR300) to 281—41.144(256,256B,34CFR300) must be filed in accordance with the procedures described in rules 281—41.151(256B,34CFR300) to 281—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 281—41.130(256,256B,34CFR300) to 281—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 281—41.130(256,256B,34CFR300) to 281—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 281—41.137(256,256B,34CFR300) to 281—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 281—41.146(256B,34CFR300) to 281—41.147(256B,34CFR300). Rules 281—41.146(256B,34CFR300) and 281—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 281—41.320(256B,34CFR300) to 281—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 281—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 281—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 281—41.131(256,256B,34CFR300) to 281—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 281—41.504(256B,34CFR300) to 281—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 281—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 281—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 281—41.151(256B,34CFR300) to 281—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 281—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 281—41.506(256B,34CFR300) and 281—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 281—41.507(256B,34CFR300) or 281—41.530(256B,34CFR300) to 281—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 281—41.151(256B,34CFR300) and 281—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 281—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 reimbursement 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 281—41.5(256B,34CFR300) relating to assistive technology devices, rule 281—41.6(256B,34CFR300) relating to assistive technology services, rule 281—41.34(256B,34CFR300) relating to related services, rule 281—41.42(256B,34CFR300) relating to supplementary aids and services, and rule 281—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"* through *"d."*

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; and

(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.

c. Consent requirements. Prior to accessing a child's or parent's public benefits or insurance for the first time, and after providing notification to the child's parents consistent with 41.154(4)*"d,"* the public agency must obtain written parental consent that:

(1) Meets the requirements of 34 CFR Section 99.30 and rule 281—41.622(256B,34CFR300), which consent must specify the personally identifiable information that may be disclosed (e.g., records or information about the services that may be provided to a particular child), the purpose of the disclosure (e.g., billing for services under this chapter), and the agency to which the disclosure may be made (e.g., the state's public benefits or insurance program (e.g., Medicaid)); and

(2) Specifies that the parent understands and agrees that the public agency may access the parent's or child's public benefits or insurance to pay for services under this chapter.

d. Notification requirements. Prior to accessing a child's or parent's public benefits or insurance for the first time, and annually thereafter, the public agency must provide written notification, consistent with 41.503(3), to the child's parents, that includes:

(1) A statement of the parental consent provisions in paragraph 41.154(4)*"c"*;

(2) A statement of the "no cost" provisions in 41.154(4)*"b"*;

(3) A statement that the parents have the right under 34 CFR Part 99 and this chapter to withdraw their consent to disclosure of their child's personally identifiable information to the agency responsible for the administration of the state's public benefits or insurance program (e.g., Medicaid) at any time; and

(4) A statement that the withdrawal of consent or refusal to provide consent under 34 CFR Part 99 and this chapter to disclose personally identifiable information to the agency responsible for the administration of the state's public benefits or insurance program (e.g., Medicaid) 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 281—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 281—41.163(256B,34CFR300) and 281—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, regulations 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.

[**ARC 0814C**, IAB 6/26/13, effective 7/31/13]

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.

41.156(6) *Positive efforts to employ and advance qualified individuals with disabilities.* Each recipient of assistance under Part B of the Act must make positive efforts to employ, and advance in employment, qualified individuals with disabilities in programs assisted under Part B of the Act.

[**ARC 8387B**, IAB 12/16/09, effective 1/20/10]

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 281—41.203(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 281—41.162(256B,34CFR300) and 281—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 Accessiblity 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 281—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 281—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 281—41.201(256B,34CFR300) to 281—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 281—41.101(256B,34CFR300) to 281—41.163(256B,34CFR300) and 281—41.165(256B,34CFR300) to 281—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 281—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 281—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 281—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 281—41.204(256B,34CFR300) and 281—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 34 CFR 300.230(e)(2) 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 281—41.600(256B,34CFR300) to 281—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 281—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 281—41.202(256B,34CFR300) and 281—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 281—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 281—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 281—41.172(256B,34CFR300) and 281—41.210(256B,34CFR300).

b. Early intervening services. To develop and implement coordinated, early intervening educational services in accordance with rule 281—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 281—41.705(256B,34CFR300). If the public charter school is a school of an LEA that receives funding under rule 281—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 281—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 Section 300.157, 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 281—41.603(256B,34CFR300) or in taking any other action to enforce Part B of the Act or this chapter.
[**ARC 8387B**, IAB 12/16/09, effective 1/20/10]

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 281—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 281—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 281—41.201(256B,34CFR300) to 281—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 281—41.511(256B,34CFR300) to 281—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 281—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 281—41.101(256B,34CFR300) to 281—41.163(256B,34CFR300) and 281—41.165(256B,34CFR300) to 281—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 281—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 281—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 281—41.646(256B,34CFR300), that LEA must make additional reports on the use of funds under this rule and rule 281—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 281—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 281—41.503(256B,34CFR300) and 281—41.504(256B,34CFR300), obtain informed consent, consistent with rule 281—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 281—41.506(256B,34CFR300) or the due process procedures under rules 281—41.507(256B,34CFR300) to 281—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 281—41.111(256B,34CFR300) and 281—41.301(256B,34CFR300) to 281—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 to a request for, or refuses to consent to, the initial provision of special education and related services, the public agency:

(1) May not use the procedural safeguards in this chapter, including the mediation procedures rule 281—41.506(256B,34CFR300) or the due process procedures under rules 281—41.507(256B,34CFR300) through 281—41.516(256B,34CFR300) in order to obtain agreement or a ruling that the services may be provided to the child;

(2) Will not be considered to be in violation of the requirement to make FAPE available to the child because of the failure to provide the child with the special education and related services for which the parent refuses to or fails to provide consent; and

(3) Is not required to convene an IEP team meeting or develop an IEP under rules 281—41.320(256B,34CFR300) and 281—41.324(256B,34CFR300) for the child.

d. If, at any time subsequent to the initial provision of special education and related services, the parent of a child revokes consent in writing for the continued provision of special education and related services, the public agency:

(1) May not continue to provide special education and related services to the child, but must provide prior written notice in accordance with rule 281—41.503(256B,34CFR300) before ceasing the provision of special education and related services;

(2) May not use the procedural safeguards in this chapter, including the mediation procedures rule 281—41.506(256B,34CFR300) or the due process procedures under rules 281—41.507(256B,34CFR300) through 281—41.516(256B,34CFR300) in order to obtain agreement or a ruling that the services may be provided to the child;

(3) Will not be considered to be in violation of the requirement to make FAPE available to the child because of the failure to provide the child with further special education and related services; and

(4) Is not required to convene an IEP team meeting or develop an IEP under rules 281—41.320(256B,34CFR300) and 281—41.324(256B,34CFR300) for the child for further provision of special education and related services.

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 281—41.111(256B,34CFR300) and 281—41.301(256B,34CFR300) to 281—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 subrules 41.300(1) through 41.300(3), 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 subrules 41.300(1) through 41.300(3) or paragraph 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 281—41.132(256B,34CFR300) to 281—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.

[**ARC 8387B**, IAB 12/16/09, effective 1/20/10]

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 281—41.304(256B,34CFR300) to 281—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 281—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. A n 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 281—41.304(256B,34CFR300) to 281—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 281—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 281—41.304(256B,34CFR300) to 281—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 281—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(3) 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 281—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 281—41.308(256B,34CFR300) to 281—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 281—41.307(256B,34CFR300) to 281—41.310(256B,34CFR300).* Nothing in this rule or rule 281—41.308(256B,34CFR300) or 281—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 281—41.308(256B,34CFR300) and 281—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 281—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 281—41.304(256B,34CFR300) and 281—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) Intellectual 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 281—41.304(256B,34CFR300) to 281—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 281—41.301(256B,34CFR300) and 281—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.

[**ARC 9376B**, IAB 2/23/11, effective 3/30/11]

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 281—41.306(256B,34CFR300), 281—41.309(256B,34CFR300), 281—41.312(256B,34CFR300) and 281—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; intellectual 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.

[**ARC 9376B**, IAB 2/23/11, effective 3/30/11]

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 there is a suspicion that a child is an eligible individual under this chapter, the AEA or AEA in collaboration with the LEA shall conduct a full and individual initial evaluation. 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 consultation with special education support and instructional personnel. General education intervention 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.

[**ARC 8387B**, IAB 12/16/09, effective 1/20/10]

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 primarily 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(256B,34CFR300) Progress monitoring and data collection.

41.314(1) *Evidence of progress in general education instruction.* Each public agency shall establish standards, consistent with those the department may establish, by which the adequacy of general education instruction, including the quality and quantity of data gathered, is assessed, and whether such data are sufficient in quantity and quality to make decisions under Part B of the Act and this chapter.

41.314(2) *Progress monitoring and determining eligibility.* Each public agency shall engage in progress monitoring of each individual's progress as the department may require during the process of evaluating whether a child is an eligible individual and shall record such progress in any manner that the department may permit or require. If the AEA or LEA serving an individual imposes additional requirements for the monitoring of progress of individuals during the process of evaluation, personnel serving that individual shall comply with those additional requirements. The team determining the child's eligibility may increase the frequency with which the child's progress is monitored.

41.314(3) *Progress monitoring and eligible individuals.* Each public agency shall engage in progress monitoring of each eligible individual's progress as the department may require, and shall record such progress in any manner that the department may permit or require. If the AEA or LEA serving an eligible individual imposes additional requirements for the monitoring of progress of eligible individuals, personnel serving that individual shall comply with those additional requirements. An IEP team may increase the frequency with which an eligible individual's progress is monitored.

[**ARC 8387B**, IAB 12/16/09, effective 1/20/10]

281—41.315 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 academic 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 281—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.

[**ARC 8387B**, IAB 12/16/09, effective 1/20/10]

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 281—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 281—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, including accessible instructional materials.

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 281—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 281—41.320(256B,34CFR300) relating to IEPs and 281—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 281—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.

41.324(6) *Rules of construction—instruction in Braille.* For an eligible individual for whom instruction in Braille is determined to be appropriate, as provided in 41.324(1)*"b"*(3), that eligible individual is entitled to instruction in Braille reading and writing that is sufficient to enable the individual to communicate with the same level of proficiency as an individual of otherwise comparable ability at the same grade level. Braille reading and writing instruction may only be provided by a teacher licensed at the appropriate grade level to teach individuals with visual impairments.

[**ARC 8387B**, IAB 12/16/09, effective 1/20/10]

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 281—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) 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.

(2) The director shall verify that the delivery system is in compliance with these rules prior to LEA board adoption.

(3) 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.

(4) 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.

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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 services 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 281—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 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 instructional

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.

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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 281—41.138(256,256B,34CFR300) to 281—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 281—41.145(256B,34CFR300) to 281—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 281—41.138(256,256B,34CFR300) to 281—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 281—41.500(256B,34CFR300) to 281—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 281—41.613(256B,34CFR300) to 281—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 281—41.151(256B,34CFR300) to 281—41.153(256B,34CFR300) and upon receipt of the first due process complaint under 281—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.

h. 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 281—41.228(256B,34CFR300) solely because the person is paid by the agency to serve as a mediator.

41.506(4) *Mediation procedures.* A request for mediation filed before the filing of a due process complaint shall be conducted according to the procedures described in rule 281—41.1002(256B,34CFR300).

41.506(5) *Rule of construction.* The department shall accept documents captioned as requests for a "preappeal conference" as requests for mediation prior to the filing of a due process complaint.

[**ARC 8387B**, IAB 12/16/09, effective 1/20/10; **ARC 9376B**, IAB 2/23/11, effective 3/30/11]

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 281—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 281—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 281—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 281—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 281—41.507(256B,34CFR300) and 281—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 281—41.506(256B,34CFR300).

(3) A meeting conducted pursuant to rule 281—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 281—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 281—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 281—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) *Mediation requested prior to the filing of a due process complaint.* Except as provided in rule 281—41.533(256B,34CFR300), during the pendency of any request for mediation filed prior to or in lieu of a due process complaint under rule 281—41.506(256B,34CFR300) and for ten days after any such mediation 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 any such mediation conference must remain in his or her current educational placement.

[**ARC 9376B**, IAB 2/23/11, effective 3/30/11]

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 281—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 281—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 281—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 281—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 281—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 281—41.530(256B,34CFR300) and 281—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 281—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 281—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 281—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 281—41.507(256B,34CFR300), subrules 41.508(1) to 41.508(3), and rules 281—41.510(256B,34CFR300) to 281—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 281—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 281—41.514(256B,34CFR300).

281—41.533(256B,34CFR300) Placement during appeals and mediations. When an appeal under rule 281—41.532(256B,34CFR300) or a request for mediation under rules 281—41.506(256B,34CFR300) and 281—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.
[**ARC 9376B**, IAB 2/23/11, effective 3/30/11]

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 281—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 281—41.530(256B,34CFR300) to 281—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 281—41.530(256B,34CFR300) to 281—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 281—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 281—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.

41.600(5) *Correction of noncompliance.* In exercising its monitoring responsibilities under subrule 41.600(4), the state must ensure that when it identifies noncompliance with the requirements of this chapter by an LEA, the noncompliance is corrected as soon as possible, but in no case later than one year after the state's identification of the LEA's noncompliance.

[**ARC 8387B**, IAB 12/16/09, effective 1/20/10]

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 281—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 as soon as practicable but no later than 120 days following the state's submission of its annual performance report under 41.602(2)*"b"*; and

(2) Make the state's performance plan, the state's annual performance reports, and annual reports on the performance of each LEA located in the state available through public means, including, at a minimum, by posting these documents 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.

[**ARC 8387B**, IAB 12/16/09, effective 1/20/10]

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 281—41.605(256B,34CFR300). Under any hearing granted under this rule or rule 281—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 shall 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 shall 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 shall 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.

[**ARC 9375B**, IAB 2/23/11, effective 3/30/11]

281—41.605(256B,34CFR300) Withholding funds.

41.605(1) *General.* As a consequence of a determination made under rule 281—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 281—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 281—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 281—41.603(256B,34CFR300), in ordering actions pursuant to rule 281—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 281—41.611(256B,34CFR300) to 281—41.626(256B,34CFR300).

281—41.611(256B,34CFR300) Definitions. The following definitions apply to rules 281—41.611(256B,34CFR300) to 281—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 281—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 281—41.507(256B,34CFR300) or rules 281—41.530(256B,34CFR300) to 281—41.532(256B,34CFR300), or resolution session pursuant to rule 281—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 281—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 281—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 281—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. This permanent record must contain the information required by rule 281—12.3(256).

41.624(3) *Rule of construction—no longer needed to provide educational services to the child.* For purposes of this rule, "no longer needed to provide educational services" means that a record is no longer relevant to the provision of instructional, support, or related services and it is no longer needed for accountability and audit purposes. At a minimum, a record needed for accountability and audit purposes must be retained for five years after completion of the activity for which funds were used.

[**ARC 8387B**, IAB 12/16/09, effective 1/20/10]

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 281—41.520(256B,34CFR300), the rights regarding educational records in rules 281—41.613(256B,34CFR300) to 281—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 281—41.611(256B,34CFR300) to 281—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 281—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 281—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 281—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 281—41.132(256,256B,34CFR300) to 281—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 281—41.640(256B,34CFR300) to 281—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 281—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 281—41.640(256B,34CFR300) to 281—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 identification 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 281—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 281—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 281—41.812(256B,34CFR300) and does not use for administration under rule 281—41.813(256B,34CFR300) for other state-level activities, consistent with 34 CFR Section 300.814.

281—41.815(256B,34CFR300) Subgrants to AEAs. The state shall make subgrants to AEAs consistent with 34 CFR Section 300.815.
[**ARC 8387B**, IAB 12/16/09, effective 1/20/10]

281—41.816(256B,34CFR300) Allocations to AEAs. The state must allocate to AEAs the amount described in rule 281—41.815(256B,34CFR300), consistent with 34 CFR Section 300.816.

281—41.817(256B,34CFR300) Reallocation of AEA funds. The state shall reallocate AEA funds under conditions listed and in a manner specified by 34 CFR Section 300.817.
[**ARC 8387B**, IAB 12/16/09, effective 1/20/10]

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 281—41.901(256B,282) to 281—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 281—41.401(256B,34CFR300) to 281—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 or treatment facility.*

a. Eligible individuals who are living in a licensed individual or agency child foster care facility, as defined in Iowa Code section 237.1, or in an unlicensed relative foster care placement shall remain enrolled in and attend an accredited school in the school district in which the child resided and is enrolled at the time of placement, unless it is determined by the juvenile court or a public or private agency of this state that has responsibility for the child's placement that remaining in such school is not in the best interests of the child. If such a determination is made, the child may be enrolled in the district in which the child is placed and not in the district in which the child resided prior to receiving foster care. The costs of the special education required by this chapter shall be paid, in either case, by the school district of residence of the eligible individual.

b. For eligible individuals who are living 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 shall be paid by the school district of residence of the eligible individual.

c. 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 under subrule 41.410(1) 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"*)

41.907(10) *Procedures for billing under subrules 41.907(5) and 41.907(6).* The department may establish procedures by which it determines which district initially pays the costs of special education and related services and seeks reimbursement in situations where a parent of a child cannot be located, parental rights have been terminated, or parents are deceased.

[**ARC 8387B**, IAB 12/16/09, effective 1/20/10]

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 mediation conference.

41.1002(1) *Procedures.* The parent, the LEA or the AEA may request a special education mediation conference on any decision relating to the identification, evaluation, educational placement, or the provision of FAPE without the need for filing a due process complaint. The mediation conference shall comply with the requirements of rule 281—41.506(256B,34CFR300).

a. A request for a special education mediation conference may be in the form of a letter or a pleading or on a form provided by the department. The request shall identify the student, LEA and AEA and set forth the facts, the issues of concern, or the reasons for the conference. The letter shall be provided to the department, to the AEA, and to the LEA.

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 mediation 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 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 conference.

f. The individual's complete school record shall be available to the participants at the conference.

g. A mediator provided by the department shall preside over the 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 conference, all parties shall be informed of the procedures for filing a due process complaint.

41.1002(2) *Placement during proceedings.* Pursuant to rule 281—41.518(256B,34CFR300), unless the parties agree otherwise, the student involved in the mediation conference 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 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 conference is held, but parties are not able to reach an agreement. There will be a ten-calendar-day waiting period after the conference to continue the placement as described in subrule 41.1002(2) in the event a party wishes to pursue a hearing.

c. The conference is held, the 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 mediation 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.

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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 281—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 281—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 281—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.

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[1] Effective date of Chapter 12 delayed 70 days by the Administrative Rules Review Committee. Delay lifted by Committee on 7/8/85.

[2] Effective date of 41.2(3); 41.3(256B), definitions of "Autism," "Head injury," "Transition services," "Behaviorally disordered," paragraph "1," "Special education support programs and services"; 41.4(1); 41.18(2)*"d"*; 41.33(4); 41.33(6) delayed 70 days by the Administrative Rules Review Committee at its meeting held August 3, 1993; delay lifted by this Committee on 9/15/93.

CHAPTER 42
Reserved

TITLE VIII
SCHOOL TRANSPORTATION

CHAPTER 43
PUPIL TRANSPORTATION

[Prior to 9/7/88, see Public Instruction Department[670] Ch 22]

DIVISION I
TRANSPORTATION ROUTES

281—43.1(285) Intra-area education agency routes.

43.1(1) Bus routes within the boundaries of transporting districts as well as within designated areas must be as efficient and economical as possible under existing conditions. Duplication of service facilities shall be avoided insofar as possible.

43.1(2) A route shall provide a load of at least 75 percent capacity of the bus.

43.1(3) The riding time, under normal conditions, from the designated stop to the attendance center, or on the return trip, shall not exceed 75 minutes for high school pupils or 60 minutes for elementary pupils. (These limits may be waived upon request of the parents.)

43.1(4) Pupils whose residence is within two miles of an established stop on a bus route are within the area served by the bus and are not eligible for parent or private transportation at public expense to the school served by the bus, except as follows:

a. Bus is fully loaded.

b. Physical handicap makes bus transportation impractical.

All parents or guardians who are required by their school district to furnish transportation for their children up to two miles to an established stop on a bus route shall be reimbursed pursuant to Iowa Code subsection 285.1(4).

43.1(5) Transporting districts shall arrange routes to provide the greatest possible convenience to the pupils. Distance pupils who are required to transport themselves to meet the bus shall be kept to the minimum consistent with road conditions, uniform standards and legal requirements for locating bus routes.

43.1(6) Each bus route shall be reviewed annually for safety hazards.

281—43.2(285) Interarea education agency routes.

43.2(1) Joint consultation shall be held by the area education agency boards involved. The initial steps may be undertaken by the area education agency administrators. If there are no difficulties and agreement is reached, the route is approved and no further action need be taken.

43.2(2) If agreement is not reached in the initial attempt, the administrator of the area education agency in which the applying school is located shall advise the superintendent of reasons for failure to reach agreement and request that the superintendent revise the transportation plan to meet the objection and resubmit same.

43.2(3) If the area education agency boards do not reach agreement on the route, the home area education agency administrator shall forward the complete record of the case together with disapproved transportation plan to the state department of education. Every effort should be made, however, to settle the matter locally.

43.2(4) All legal provisions, standards and regulations applying to approval and operation of bus routes apply equally to interarea education agency bus routes.

43.2(5) All interarea education agency bus routes must be approved each year. If there has been no change in the designations, nor in the proposed route, transportation plan may be made and agreement indicated by letter.

DIVISION II
PRIVATE CONTRACTORS

281—43.3(285) Contract required. All private contractors wishing to transport pupils to and from school in privately owned vehicles must be under contract with the board of education. This requirement will not apply to individuals who transport their own children or other children on a not-for-hire basis.

The contract form used shall be that provided by the department of education. (Form TR-F-4-497)

281—43.4(285) Uniform charge. The contract must provide for a uniform charge for all pupils transported. No differentiations may be made between pupils of different districts except as provided in Iowa Code section 285.1(12).

281—43.5(285) Board must be party. The contractor may not arrange with individual families for transportation. The contractor undertakes to transport only those families indicated by the board of education.

281—43.6(285) Contract with parents. Parents, guardians, or custodians undertaking to transport other children for hire, in addition to their own, are private contractors. These individuals must be under contract, and must obtain an appropriate driver's license and a school bus driver's authorization.

281—43.7(285) Vehicle requirements. Any vehicle used, other than that used by individuals to transport their own children or other children on a not-for-hire basis, is considered to be a school bus and must meet all requirements for the type of vehicle used. (This requirement is not intended to restrict the use of passenger cars during the time the vehicles are not actually engaged in transporting school pupils.)

DIVISION III
FINANCIAL RECORDS AND REPORTS

281—43.8(285) Required charges. Full pro rata costs must be charged and collected for the transportation of all nonresident pupils. No differentiation may be made in charges due to differences in distance or grade in school.

281—43.9(285) Activity trips deducted. Transporting school districts which use their equipment for activity trips, or educational tours, or other types of transportation services as permitted in Iowa Code sections 285.10(9) and 285.10(10), must deduct the cost of trips from the total yearly transportation cost. In other words, costs may not be included in the pro rata costs which determine the charge to sending districts.

Accurate and complete accounting records must be kept so that the cost of transportation to and from school may be ascertained.

DIVISION IV
USE OF SCHOOL BUSES

281—43.10(285) Permitted uses listed. School buses may be used to transport pupils under the following conditions:

43.10(1) The program is a part of the regular or extracurricular program of a public school and has been so adopted and made a matter of record in the minutes of all the boards involved.

43.10(2) The pupils are enrolled in a public school.

43.10(3) The program or activity must be sponsored by a school or group of schools cooperatively and be under the direct control of a qualified teacher or recreational or playground director of a school district.

a. A regularly certificated teacher must be in charge of the program. Several or all schools may engage the same instructor on a cooperative basis.

b. In transporting pupils to Red Cross swimming classes a superintendent of schools may be designated by action of the district board as the supervisor or director of the activity and may use the Red Cross instructor to carry on the actual instruction in swimming.

c. If the Red Cross instructor holds a regular teacher's certificate issued by the board of educational examiners, the instructor can be named as general supervisor of the activity by the several schools.

43.10(4) The bus shall be driven by a regularly approved driver holding an appropriate driver's license and a school bus driver's authorization. In addition, the buses must be accompanied by a member of the faculty or other employee of the school or a parent or other adult volunteer as authorized by a school administrator who will be responsible for the conduct and the general supervision of the pupils on the bus and at the place of the activity. If the faculty member is an approved driver, that person can act both as a driver and faculty sponsor.

43.10(5) School buses may be used by an organization of, or sponsoring activities for, senior citizens, children, handicapped, and other persons and groups, and for transportation of persons other than pupils to activities in which pupils from the school are participants or are attending the activity or for which the school is a sponsor under the following conditions:

a. The "school bus" signs shall be covered and the flashing warning lamps and stop arm made inoperable when the bus is being used in a nonschool-sponsored activity.

b. Transportation outside the state of Iowa shall not be provided without the approval of the Federal Motor Carrier Safety Administration of the United States Department of Transportation.

c. A chaperone shall accompany each bus to assist the passengers in boarding and disembarking from the bus and to aid them in case of illness or injury.

d. The driver of the bus shall be approved by the local board of education and must possess an appropriate driver's license and a school bus driver's authorization.

e. The driver of the bus shall observe the maximum speed limits for school buses at all times.

43.10(6) Seating.

a. Each passenger shall have a comfortable seat.

b. Student passengers shall have a minimum of 13 inches of allowable seating per person.

c. For adult groups, no more than two persons shall occupy a 39-inch seat.

d. Standees are prohibited in all situations, whether the bus is transporting students or adults.

e. The maximum number of passengers shall never exceed the rated capacity of the vehicle as it is equipped.

281—43.11(285) Teacher transportation. Public school teachers who are transported should be included in the average number transported and should be charged the pro rata cost by the transporting district.

DIVISION V
THE BUS DRIVER

281—43.12(285) Driver qualifications. General character and emotional stability are qualities which must be given careful consideration by boards of education in the selection of school bus drivers. Elements that should be considered in setting a character standard are:

1. Reliability or dependability.
2. Initiative, self-reliance, and leadership.
3. Ability to get along with others.
4. Freedom from use of undesirable language.
5. Personal habits of cleanliness.
6. Moral conduct above reproach.
7. Honesty.
8. Freedom from addiction to narcotics or habit-forming drugs.
9. Freedom from addiction to alcoholic beverages or liquors.

281—43.13(285) Stability factors. Factors to be considered in determining emotional stability are:

43.13(1) Patience.
43.13(2) Considerateness.
43.13(3) Even temperament.
43.13(4) Calmness under stress.

281—43.14(285) Driver age. School bus drivers must be at least 18 years of age on or before August 1 preceding the opening of the school year for which a school bus driver's authorization is required.

281—43.15(285) Physical fitness. Except for insulin-dependent diabetics, an applicant for a school bus driver's authorization must undergo a biennial physical examination by a certified medical examiner who is listed on the National Registry of Certified Medical Examiners. The applicant must submit annually to the applicant's employer the signed medical examiner's certificate (pursuant to Federal Motor Carrier Safety Administration regulations 49 CFR Sections 391.41 to 391.49), indicating, among other requirements, sufficient physical capacity to operate the bus effectively and to render assistance to the passengers in case of illness or injury and freedom from any communicable disease. At the discretion of the chief administrator or designee of the employer or prospective employer, the chief administrator or designee shall evaluate the applicant's ability in operating a school bus, including all safety equipment, in providing assistance to passengers in evacuation of the school bus, and in performing other duties required of a school bus driver.
[**ARC 1661C**, IAB 10/15/14, effective 11/19/14]

281—43.16(285) Tests for tuberculosis. Rescinded IAB 8/16/06, effective 9/20/06.

281—43.17(285) Insulin-dependent diabetics. A person who is an insulin-dependent diabetic may qualify to be a school bus driver if the person meets all qualifications of Iowa Code subsection 321.375(3). Such driver is subject to an annual physical examination by a qualified medical examiner as listed in rule 281—43.15(285).

281—43.18(285) Authorization to be carried by driver. Every school bus driver shall carry a copy of the driver's school bus driver's authorization at all times when the driver is acting in that capacity.

281—43.19(285) Vision requirements. Rescinded IAB 12/8/04, effective 1/12/05.

281—43.20(285) Hearing requirements. Rescinded IAB 12/8/04, effective 1/12/05.

281—43.21(285) Experience, traffic law knowledge and driving record. No driver applicant shall be employed or allowed to transport students until the board determines that the applicant has an acceptable driving record, demonstrates the ability to safely operate the vehicle(s) representative of the vehicle(s) required to be operated during employment and is knowledgeable of traffic laws and regulations pertaining to the operation of a school bus. Each local district, or the district's contracted transportation service, must, at a minimum, check the driving record of each applicant or renewing driver on the Iowa court information system available to the general public. The local district shall determine what an acceptable driving record is based upon the district's review and must maintain records of the review of each driver. Nothing in this rule precludes the district from examining other records to determine whether the driver has an acceptable driving record nor does it restrict the district to such examinations only at the time of hiring and renewal.
[**ARC 0517C**, IAB 12/12/12, effective 1/16/13]

281—43.22(321) Fee collection and distribution of funds. The department of education, commencing with the biannual school bus inspections for the 2002-2003 school year and each year thereafter, shall assess a fee for each school bus or allowable alternative vehicle (pursuant to rule 761—911.7(321)) inspected by the department. The department shall present for payment a fee statement to the owner of each school bus or allowable alternative vehicle inspected.

The department of education shall submit an annual budget request for an amount equal to 100 percent of the total projected fees to be collected during the next fiscal year which shall be based on an amount equal to the number of school bus and allowable alternative vehicle inspections completed during the previous school year multiplied by the inspection fee authorized by statute.

One component of the annual budget shall be an annual "school bus driver and passenger safety education plan." The plan shall outline the projects and activities to be included during each year. These projects and activities may include, but not be limited to, curriculum development costs, printing and distribution of safety literature and manuals, purchase of equipment used in conducting school bus safety education programs, and other expenditures deemed appropriate by the department of education.

281—43.23(285) Application form. The school bus driver and the board of education shall submit an application for the school bus driver's authorization annually, and upon a form prescribed by the department of education.

281—43.24(321) Authorization denials and revocations. A person who believes that a school bus driver who holds an authorization issued by the department of education or who seeks a school bus authorization has committed acts in violation of Iowa Code subsection 321.375(2) or rule 281—43.12(285) may file a complaint with the department against the driver or applicant. The department shall notify the driver or applicant that a complaint has been filed and shall provide the driver or applicant with a copy of the complaint. A hearing shall be set for the purpose of determining whether the bus driver's authorization shall be denied, suspended, or revoked, or whether the bus driver should receive a reprimand or warning. Hearing procedures in 281—Chapter 6 shall be applicable to such proceedings. No school bus driver or applicant shall retain or obtain employment if the local district finds that the individual is listed on the sex offender registry under Iowa Code section 692A.121 available to the general public, the central registry for child abuse information established under Iowa Code section 235A.14, or the central registry for dependent adult abuse information established under Iowa Code section 235B.5. A hearing conducted pursuant to Iowa Code section 321.375(3) or 321.376 shall be limited to the question of whether the school bus driver or applicant was incorrectly listed on the registry. The driver or applicant shall not serve in the capacity of a school bus driver while the appeal process is being conducted.

[**ARC 0517C**, IAB 12/12/12, effective 1/16/13]

DIVISION VI
PURCHASE OF BUSES

281—43.25(285) Local board procedure. The board of education shall proceed as follows in purchasing school buses:

43.25(1) Rescinded IAB 12/15/10, effective 1/19/11.

43.25(2) Notify dealers of intent to purchase school transportation equipment and request bids.

43.25(3) Reserve right to reject all bids.

43.25(4) Require all bids to be on comparable equipment which meets all state and federal requirements.

43.25(5) Hold an open meeting for dealers to present merits of their equipment.

43.25(6) Review bids, tabulate all bids, make a record of action taken.

43.25(7) Sign contracts or orders for purchase of school transportation equipment. The purchase agreement must provide that the dealer will deliver equipment which will pass initial state inspection at no further cost to the school and further provide that the school board shall withhold at least $150 until the vehicle passes initial state inspection.

43.25(8) Notify the bureau of nutrition programs and school transportation of the state department of education of purchase and date of delivery so that arrangements can be made for the initial school bus inspection. No school bus can be put into service until it has passed a pre-use inspection conducted pursuant to Form TR-F-27B by the local board of education and the form has been provided to the bureau

of nutrition programs and school transportation. The initial school bus inspection will be conducted at the earliest possible time convenient to the school and the department of education.
[**ARC 9262B**, IAB 12/15/10, effective 1/19/11]

281—43.26(285) Financing. The board of education may finance purchase of transportation equipment as follows:

43.26(1) The board may pay all of the cost of each bus from funds on hand in general fund.

43.26(2) Bonds may be voted to purchase equipment, and funds so derived shall be used for that purpose.

281—43.27 to **43.29** Reserved.

DIVISION VII
MISCELLANEOUS REQUIREMENTS

281—43.30(285) Semiannual inspection. To facilitate the semiannual inspection program, school and school district officials shall send their buses to inspection centers as scheduled. A sufficient number of drivers or other school personnel shall be available at the inspection to operate the equipment for the inspectors. The fee for each vehicle inspected shall be $20 effective July 1, 2005; $25 effective July 1, 2007; and $28 effective July 1, 2009. Effective July 3, 2013, the fee for each vehicle inspected shall be $40.
[**ARC 0767C**, IAB 5/29/13, effective 7/3/13]

281—43.31(285) Maintenance record. School officials shall cause the chassis of all buses and allowable alternative vehicles, whether publicly or privately owned, to be inspected annually and all necessary repairs made before the vehicle is put into service. The inspection and repairs shall be recorded on a form (TR-F-27A) prescribed by the department of education. The completed form (TR-F-27A) shall be signed by the mechanic and carried in the glove compartment of the bus.

281—43.32(285) Drivers' schools. All school bus drivers shall attend classes or schools of instruction as approved by the department of education and provided for in Iowa Code subsection 321.376(2). All new drivers shall, within the first six months of employment, successfully complete the "new driver STOP class" approved by the department. All current school bus drivers shall attend the annual course of instruction. Upon missing a year of instruction, a current driver shall successfully complete the course of instruction for new drivers prior to receiving an authorization. The employer of a school bus driver may impose additional training requirements for any new or current driver.
[**ARC 9472B**, IAB 4/20/11, effective 5/25/11]

281—43.33(285) Insurance. The board of education shall carry insurance on all school-owned buses and see that insurance is carried by all contractors engaged in transporting pupils for the district in the coverages and limits as determined by the board of education.

281—43.34(285) Contract—privately owned buses. The board of education and a contractor who undertakes to transport school pupils for the board, in privately owned vehicles, shall sign a contract substantially similar to that prescribed by the department of education (Form TR-F-4-497). The contract shall contain the following provisions:

43.34(1) To furnish and operate at the contractor's own expense a legally approved vehicle of transportation (or a legally approved chassis on which may be mounted a school bus body supplied and maintained by the board of education) to and from the . . . . . school each day beginning on the date set by the board over route as described, ... transporting only children attending the school designated by the board of education.

43.34(2) To comply with all legal and established uniform standards of operation as required by statute or by legally constituted authorities.

43.34(3) To comply with all uniform standards, established for protection of health and safety for pupils transported.

43.34(4) To comply with all rules and regulations adopted by the board of education for the protection of the children, or to govern the conduct of driver of bus.

43.34(5) To keep bus in good mechanical condition and up to standards required by statutes or by legally constituted authorities.

43.34(6) To take school bus to official inspection when held by state authorities with no additional expense to party of second part.

43.34(7) To see that the bus is swept and the windows cleaned each day and that registration plates and all lights are cleaned before each trip. Further, that the bus is washed and the floor swept and scrubbed with a good disinfectant each week. In case of an epidemic the entire bus shall be washed with a disinfectant.

43.34(8) To use only drivers and substitute drivers who have been approved by the board of education and have received a school bus driver's authorization.

43.34(9) To furnish the board of education an approved certificate of medical examination for each person who is approved by the board of education to drive the bus.

43.34(10) To attend a school of instruction for bus drivers as prescribed by the bureau of nutrition programs and school transportation of the department of education. (If the owner does not drive the bus, the regular approved driver of the bus shall attend.).

43.34(11) To carry insurance on bus and pupils in the coverages and limits as determined by the board of education. Copy of policy to be filed with superintendent of schools.

43.34(12) To make such reports as may be required by state department of education, area education agency board of education, and superintendent of schools.

43.34(13) That the school bus shall be used only for transporting regularly enrolled students to and from public school and to extracurricular activities approved and designated by the board of education and further to comply with all legal restrictions on use of bus.

43.34(14) To obtain, if possible, the registration numbers of all cars violating the school bus passing law, Iowa Code section 321.372 and file information for prosecution.

43.34(15) The board of education hereby reserves the right to change routing of the bus and, if additional mileage is required, it shall be at an extra cost not exceeding $. . . . . per additional mile per month. If shortened. . . . . .

43.34(16) Immoral conduct or the use of alcoholic beverages by the contractor or driver employed by the contractor shall result in appropriate sanctions as provided in Iowa Code section 321.375.

43.34(17) Contract may be terminated on 90-day notice by either party, Iowa Code section 285.5(4).

43.34(18) The contractor agrees that, if the contractor desires to terminate the contract, the school bus will be sold to the board of education at its request as provided in Iowa Code section 285.5(1). (This requirement does not apply to a passenger auto used as a school bus.)

[**ARC 9262B**, IAB 12/15/10, effective 1/19/11]

281—43.35(285) Contract—district-owned buses. The board of education and a private individual undertaking to transport school pupils for the board in school district-owned vehicles shall sign a contract substantially similar to that prescribed by the department of education (Form TR-F-5-497(revised)). The contract shall contain the following provisions:

43.35(1) To conform to all rules of the board of education in and for the district adopted for the protection of the children and to govern the conduct of the person in charge of the conveyance.

43.35(2) To make reports as may be required by the state department of education, area education agency, or superintendent of schools.

43.35(3) To conform to all standards for operation of the school buses as required by statute or by legally constituted authorities.

43.35(4) That the employee shall be entitled to benefits as outlined in the school board policy for the school district.

43.35(5) To attend a school of instruction for bus drivers as prescribed by the bureau of nutrition and school transportation of the department of education.

43.35(6) That the employer can terminate the contract and dismiss the employee for failure to conform to all laws of the state of Iowa and rules promulgated by the Iowa department of education applicable to drivers of school buses.

43.35(7) That this contract shall not be in force until the driver presents an official school bus driver's authorization.

281—43.36(285) Accident reports. The superintendent of schools shall make a report to the bureau of nutrition and school transportation of the department of education on any accident involving any vehicle in use as a school bus. The driver of the bus shall cooperate with the superintendent in making the report. The report shall be made on the department of transportation Iowa Accident Report Form.

281—43.37(285) Railroad crossings. The driver of any school bus shall bring the bus to a complete stop at all railroad crossings, as required in Iowa Code section 321.343, regardless of whether or not there are any pupils in the bus, and regardless of whether or not there is an automatic signal at the crossing. After stopping, the driver shall open the entrance door, look and listen for approaching trains and shall not proceed to cross the tracks until it is safe to do so.

281—43.38(285) Driver restrictions.

43.38(1) The driver of a school bus shall not smoke on the bus or on any school property.

43.38(2) The driver shall not permit firearms to be carried in the bus.

43.38(3) The driver shall not fill the fuel tank while the motor is running or when there are passengers on the bus.

43.38(4) The driver shall ensure that aisles and exits are not blocked.

[**ARC 9262B**, IAB 12/15/10, effective 1/19/11]

281—43.39(285) Civil defense projects. Civil defense projects may be recognized by the board of directors of any school district as an authorized extracurricular activity under the following conditions:

43.39(1) Such activity may take the form of, but need not be restricted to:

a. First-aid classes.

b. Study and distribution of materials relating to community survival, fallout shelters, radiation detection, and other pertinent disaster measures.

c. Exercises and field trips related to the above matters.

d. Cooperation with local, state and national authorities, both civil and military, and interested organizations, in carrying out civil defense exercises and in planning and making preparations for passive defense in time of actual emergency.

43.39(2) The use of school buses for field trips and exercises, and the planned use of school buses in connection with actual emergency procedures to be carried on in cooperation with local, state or national authorities, civil or military, is hereby defined as properly incident to such authorized extracurricular activity.

43.39(3) All such projects, except an actual emergency operation where time is of the essence, shall have prior approval of the state department of education.

43.39(4) The bus shall be driven by an approved driver holding an appropriate driver's license and a regular school bus driver's authorization except that in actual emergency situations, where regular drivers are not available, certain other drivers, including students and teachers, may be used providing the following conditions are met. The driver shall:

a. Be approved by the local board of education.

b. Be at least 18 years of age, be physically and mentally competent, and not possess personal or moral habits which would be detrimental to the best interests of the safety and welfare of the children transported.

43.39(5) Rescinded IAB 12/8/04, effective 1/12/05.

281—43.40(285) Pupil instruction. At least twice during each school year, each pupil who is transported in a school vehicle shall be instructed in safe riding practices and participate in emergency evacuation drills.

281—43.41(285) Trip inspections. A pretrip inspection of each school bus shall be performed and recorded prior to each trip. A written report shall be submitted promptly to the superintendent of schools, transportation supervisor, school bus mechanic, or other person charged with the responsibility for the school transportation program, if any defects or deficiencies are discovered that may affect the safety of the vehicle's operation or result in its mechanical breakdown. A posttrip inspection of the interior of the school bus shall be performed after each trip.

281—43.42(285) Loading and unloading areas. Restricted loading and unloading areas shall be established for school buses at, or near schools.

281—43.43(285) Communication equipment. Each school bus shall have a two-way communications system or cellular telephone capable of emergency communication between the driver of the bus and the school's base of operations for school transportation.

DIVISION VIII
COMMON CARRIERS

281—43.44(285) Standards for common carriers. These standards are intended to apply to any vehicle operated by a common carrier when used exclusively for student transportation to and from school.

43.44(1) *Vehicles.*

a. The vehicles need not be painted yellow and black as required for conventional school buses.

b. The vehicles shall, while transporting children to and from school, be equipped with temporary signs, located conspicuously on the front and back of the vehicle. The sign on the front shall have the words "School Bus" printed in black letters not less than six inches high, on a background of national school bus glossy yellow. The sign on the rear shall be at least ten square feet in size and shall be painted national school bus glossy yellow, and have the words "School Bus" printed in black letters not less than eight inches high. The yellow is to be in accordance with the colorimetric specification of Federal Standard No. 595a, Color 13432; the black matching Federal Standard 595a, Color 17038. Both the six-inch and eight-inch letters shall be Series "D" as specified in the Standard Alphabet—Federal Highway Administration, 1966.

c. Rescinded, effective 8/11/82.

43.44(2) *Drivers.*

a. The driver shall have an appropriate driver's license issued by the Iowa department of transportation.

b. The driver shall possess a school bus driver's authorization issued by the Iowa department of education.

c. The driver shall receive training in accordance with state requirements for school bus drivers.

43.44(3) *Seating.*

a. Each passenger shall have a comfortable seat.

b. Standees are prohibited.

43.44(4) *Loading and unloading procedures.*

a. Vehicle shall pull close enough to curb to prevent another vehicle from passing on right side.

b. If vehicle is not equipped with flashing warning lights or stop arm, or if use of this equipment is prohibited by law, the pupils, on unloading, shall be instructed to remain at the curb until bus has pulled away and it is safe for them to cross the street.

43.44(5) *Inspection of vehicles.*

a. Drivers shall be required to perform daily pretrip inspections of their vehicles and to report promptly and in writing any defects or deficiencies discovered that may affect the safety of the vehicle's operation or result in its mechanical breakdown in accordance with rule 281—43.41(285).

b. Vehicles shall be inspected semiannually by personnel of the department of education in accordance with the provisions of Iowa Code section 285.8(4).

43.44(6) *Other requirements.*

a. Local school officials shall provide the carrier with passenger conduct rules and the driver shall abide by the policies and procedures established by the local district.

b. The carrier shall make a report to the bureau of nutrition and school transportation of the department of education on any accident involving property damage or personal injury while a vehicle is being used as a school bus. The report shall be made on the Iowa Accident Report Form.

c. Student instruction for passenger safety shall be the responsibility of the local school district as specified in rule 281—43.40(285).

These rules are intended to implement Iowa Code chapter 285.

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CHAPTER 44
SCHOOL BUSES

[Prior to 8/10/88, see Public Instruction Department[670] Ch 23]

281—44.1(285) Requirements for manufacturers. In order to protect both the boards of education and manufacturers of school transportation vehicles and equipment from misunderstanding and confusion, all manufacturers shall provide equipment meeting all Iowa vehicle construction requirements described in this chapter as well as all applicable federal motor vehicle safety standards, which include but are not limited to the following:

101—Control location, identification, and illumination.
102—Transmission shift lever sequence, starter interlock, and transmission braking effect.
103—Windshield defrosting and defogging systems.
104—Windshield wiping and washing systems.
105—Hydraulic braking systems.
106—Brake hoses.
107—Reflecting surfaces.
108—Lamps, reflective devices, and associated equipment.
109—New pneumatic tires.
110—Tire selection and rims.
111—Rearview mirrors.
113—Hood latch systems.
116—Motor vehicle brake fluids.
119—New pneumatic tires for vehicles other than passenger cars.
120—Tire selection and rims for motor vehicles other than passenger cars.
121—Air brake systems.
124—Accelerator control systems.
131—School bus pedestrian safety devices.
205—Glazing materials.
206—Door locks and door retention components.
207—Seating systems.
208—Occupant crash protection.
209—Seat belt assemblies.
210—Seat belt assembly anchorages.
217—Bus window retention and release.
219—Windshield zone intrusion for vehicles with a GVWR of 10,000 pounds or less.
220—School bus rollover protection.
221—School bus body joint strength.
222—School bus passenger seating and crash protection.
301—Fuel system integrity.
302—Flammability of interior materials.
303—Fuel system integrity of compressed natural gas vehicles.
304—Compressed natural gas fuel container integrity.

Refer to the Appendix for additional information on certain federal motor vehicle safety standards (FMVSS) requirements.

281—44.2(285) School bus—type classifications. A bus owned, leased, contracted to or operated by a school or school district and regularly used to transport students to and from school or school-related activities, but not including a charter bus or transit bus, meets all applicable FMVSS, and is readily identified by alternately flashing lights, national school bus yellow (NSBY) paint, and the legend "School Bus."

44.2(1) *Type A.* A Type A school bus is a conversion or bus constructed utilizing a cutaway front-section vehicle with a left side driver's door. This definition includes two classifications: Type

A-1, with a gross vehicle weight rating (GVWR) of 14,500 pounds or less; and Type A-2, with a GVWR greater than 14,500 and less than or equal to 21,500 pounds.

44.2(2) *Type B.* A Type B school bus is constructed utilizing a stripped chassis. The entrance door is behind the front wheels. This definition includes two classifications: Type B-1, with a GVWR of 10,000 pounds or less; and Type B-2, with a GVWR greater than 10,000 pounds.

44.2(3) *Type C.* A Type C school bus, also known as a conventional school bus, is constructed utilizing a chassis with a hood and front fender assembly. The entrance door is behind the front wheels. This type of school bus also includes the cutaway truck chassis or truck chassis with cab with or without a left side door and with a GVWR greater than 21,500 pounds.

44.2(4) *Type D.* A Type D school bus, also known as a rear or front engine transit-style school bus, is constructed utilizing a stripped chassis. The entrance door is ahead of the front wheels.

44.2(5) *Type III.* Type III vehicles are not regular school buses but nonetheless are used to transport students in a school-related context and may be marked as a "school bus." A Type III vehicle is a passenger car (including a minivan, SUV, or station wagon) or van. The difference between a family automobile and an equivalent Type III vehicle is not the vehicle itself, but rather its use: Type III vehicles are used by schools for purposes of pupil transportation. To qualify as a Type III vehicle, the vehicle must carry a maximum of nine or fewer people, including the driver, and weigh 10,000 pounds or less.

44.2(6) *Specially equipped.* A specially equipped school bus is a school bus designed, equipped, or modified to accommodate students with special needs.

44.2(7) *Multifunction school activity bus (MFSAB).* A multifunction school activity bus is a school bus whose purposes do not include transporting students to and from home or school bus stops as defined in 49 CFR 571.3. MFSABs meet all FMVSS for school buses except the traffic control requirements (alternately flashing signal and stop arm). MFSABs are not allowed for use by schools or school districts in the state of Iowa.

[**ARC 1489C**, IAB 6/11/14, effective 7/16/14]

281—44.3(285) School bus body and chassis specifications.

44.3(1) *Air cleaner.*

a. The engine air intake cleaning system shall be furnished and properly installed by the chassis manufacturer to meet engine manufacturer's specifications.

b. The intake air system for diesel engines shall have an air cleaner restriction indicator properly installed by the chassis manufacturer to meet engine specifications.

44.3(2) *Aisle.*

a. All emergency doors shall be accessible by a 12-inch minimum aisle. Aisles shall be unobstructed at all times by any type of barrier, seat, wheelchair, tie-down, or other object(s), with the exception of a flip seat that is installed and occupied at a side emergency door position. The track of a track-seating system is exempt from this requirement. A flip seat in the unoccupied (up) position shall not obstruct the 12-inch minimum aisle to any side emergency door.

b. The seat backs shall be slanted sufficiently to give aisle clearance of 15 inches at the top of the seat backs.

44.3(3) *Alternator.*

a. All alternators shall be a minimum of 130 amperes while maintaining a minimum of 50 amperes while at the manufacturer's suggested idle speed.

b. All Type C and Type D buses shall be equipped with a heavy-duty truck or bus-type alternator meeting SAE J180 or incorporating a pad-type mounting.

44.3(4) *Axles.* The front and rear axle and suspension systems shall have gross axle weight rating (GAWR) at ground commensurate with the respective front and rear weight loads that will be imposed by the bus.

44.3(5) *Backup warning alarm.* An automatic audible alarm shall be installed behind the rear axle on every school bus/vehicle and shall comply with the published Backup Alarm Standards (SAE J994B), providing a minimum of 112 dBA. A variable volume feature is not allowed.

44.3(6) *Battery compartment.*

a. Battery(ies) shall be furnished by the manufacturer.

b. Battery(ies) shall be mounted in the body skirt of the vehicle and shall be accessible for convenient servicing from outside the bus. The manufacturer shall securely attach the battery(ies) on a slide-out or swing-out tray with a safety stop to prevent the battery(ies) from dropping to the ground at the outermost extremity of tray travel.

c. The battery compartment door or cover shall be hinged at the top, bottom or forward side of the door. When hinged at the top, a fastening device shall be provided which will secure the door in an open position. The door or cover over the compartment opening shall completely cover and, as completely as practical, seal the opening and shall be secured by an adequate and conveniently operated latch or other type of fastener to prevent free leakage of the battery contents into the passenger compartment should the vehicle overturn. Battery cables installed by the manufacturer shall meet SAE requirements. Battery cables shall be of sufficient length to allow the battery tray to fully extend and to allow some slack in the cables. In Type A buses, if batteries cannot be installed under the hood, a battery compartment is required.

d. The top surface area of the inside of the battery compartment (the area likely to come into contact with battery electrical terminals as the result of a blow to, and upward collapse of, the bottom of the battery box in the event of an accident or other event) shall be covered with a rubber matting or other impact-resistant nonconductive material. The matting shall be a minimum of 1/8-inch thick and cover the entire top inside surface of the battery box. The matting shall be securely installed to maintain its position at all times.

e. The word "BATTERY" in 2-inch black letters shall be placed on the door covering the battery opening.

44.3(7) *Battery system.* A 12-volt battery system tested at 0 degrees Fahrenheit shall be provided which meets or exceeds the following capacity ratings:

a. Gasoline engines (greater than 10,000 pounds GVWR): 150 minutes reserve and 500 cold cranking ampere capacity.

b. Gasoline engines (10,000 pounds GVWR or less): 125 minutes reserve and 450 cold cranking ampere capacity.

c. Diesel engines (all): 200 minutes reserve and 1,000 cold cranking ampere capacity, or a cold cranking ampere capacity not less than the engine manufacturer's minimum requirements, whichever is greater.

44.3(8) *Body sizes.* Type A vehicles may be purchased with manufacturer's recommended seating capacities when the chassis is manufactured with rear dual tires.

44.3(9) *Brakes.*

a. *Brakes, all, general requirements.*

(1) The chassis brake system shall conform to the provisions of FMVSS No. 105, Hydraulic and Electric Brake Systems, No.106, Brake Hoses, and No. 121, Air Brake Systems, as applicable.

(2) The antilock brake system (ABS), provided in accordance with FMVSS No. 105 or No. 121, shall provide wheel speed sensors for each front wheel and for each wheel on at least one rear axle. The system shall provide antilock braking performance for each wheel equipped with sensors (Four Channel System).

(3) All brake systems shall be designed to permit visual inspection of brake lining wear without removal of any chassis component(s).

(4) The brake lines, booster-assist lines, and control cables shall be protected from excessive heat, vibration and corrosion and installed in a manner which prevents chafing.

(5) The parking brake system for either air or hydraulic service brake systems may be of a power-assisted design. The power parking brake actuator should be a device located on the instrument panel within reach of a seated 5th percentile female driver. As an option, the parking brake may be set by placing the automatic transmission shift control mechanism in the "park" position.

(6) The power-operated parking brake system may be interlocked to the engine key switch. Once the parking brake has been set and the ignition switch turned to the "off" position, the parking brake cannot be released until the key switch is turned back to the "on" position.

b. Hydraulic brakes, general requirements. Buses using a hydraulic-assist brake shall be equipped with audible and visible warning signals that provide a continuous warning to the driver indicating a loss of fluid flow from the primary source or a failure of the backup pump system.

c. Air brakes, general requirements.

(1) The air pressure supply system shall include a desiccant-type air dryer installed according to the manufacturer's recommendations. The air pressure storage tank system may incorporate an automatic drain valve.

(2) The manufacturer shall provide an accessory outlet for other air-operated systems installed in or on the bus. This outlet shall include a pressure protection valve to prevent loss of air pressure in the service brake reservoir.

(3) For air brake systems, an air pressure gauge capable of complying with commercial driver's license (CDL) pretrip inspection requirements shall be provided in the instrument panel.

(4) All air brake-equipped buses may be equipped with a service brake interlock. If the bus is equipped with a service brake interlock, the parking brake cannot be released until the brake pedal is depressed.

(5) Air brake systems shall include a system for anticompounding of the service brakes and parking brakes.

(6) Air brakes shall have a warning device that is both visible and audible and that provides warning to the driver whenever the air pressure falls below the level where warnings are required under FMVSS No. 121.

d. Brakes, all, specific requirements.

(1) The braking system shall include the service brake, an emergency brake that is part of the service brake system and controlled by the service brake pedal, and a parking brake meeting FMVSS at date of manufacture.

(2) Buses using air or vacuum in the operation of the brake system shall be equipped with warning signals readily audible and visible to the driver. The signal shall give a continuous warning when the air pressure available in the system for braking is 60 psi (pounds per square inch) or less or the vacuum available in the system for braking is 8 inches of mercury or less. An illuminated gauge shall be provided that will indicate to the driver the air pressure in psi or the inches of mercury available for the operation of the brakes.

(3) Buses using a hydraulic-assist brake system shall be equipped with warning signals readily audible and visible to the driver. The warning signal shall provide continuous warning in the event of a loss of fluid flow from primary source and in the event of discontinuity in that portion of the vehicle electrical system that supplies power to the backup system.

(4) Brake system reservoirs.

1. Every brake system which employs air or vacuum shall include a reservoir of the following capacity, where applicable, for brake operation: Vacuum-assist brake systems shall have a reservoir used exclusively for brakes that shall adequately ensure a full-stroke application so that loss in vacuum shall not exceed 30 percent with the engine off. Brake systems on gas-powered engines shall include suitable and convenient connections for the installation of a separate vacuum reservoir.

2. Any brake system with a dry reservoir shall be equipped with a check valve or equivalent device to ensure that, in the event of failure or leakage in its connection to the source of compressed air or vacuum, the stored dry air or vacuum shall not be depleted by the leakage or failure.

3. Connection for auxiliary accessory reservoir. The brake system shall include a suitable and convenient connection for installation of an auxiliary air or vacuum reservoir by the bus manufacturer.

(5) An air brake system is required on every chassis meeting one or more of the following:

1. Wheelbase equal to or greater than 274 inches.

2. Designed seating capacity rating greater than 66 passengers. Designed seating capacity, also known as manufacturer's seating capacity, is the actual or theoretical passenger capacity of the vehicle if it were constructed with the maximum number of seating positions.

(6) An air brake system shall comply with the following system and component designs:

1. The system cannot be of wedge design.

2. The system shall include an air dryer system having design features equal to or exceeding the Bendix Westinghouse Model AD9. The system shall be self-purging and capable of removing oil, dirt, and moisture. The dryer system shall also be equipped with a heater to prevent the freezing of moisture within the system. All plumbing from air compressor to input of air dryer or after-cooler shall provide soft flow bends not producing sumps in the air compressor line having direct entry into the dryer. An automatic moisture ejector or "spitter valve" does not meet the above requirement.

3. Automatic slack adjusters are required to be installed at all wheel positions.

4. The air compressor shall produce a minimum output of 12.0 cubic feet per minute (CFM).

(7) Vehicles with 10,000 pounds GVWR or less shall be equipped with a hydraulic, dual-braking system of manufacturer's standard, with power assist.

(8) Antilock brake systems for either air or hydraulic brakes shall include control of all axles in compliance with FMVSS 105 or 121.

44.3(10) *Bumper, front.*

a. All school buses shall be equipped with a front bumper painted glossy black.

b. The front bumper on buses of Type A-2 (with GVWR greater than 14,500 pounds), Type B, Type C, and Type D shall be equivalent in strength and durability to pressed steel channel at least 3/16 inches thick and not less than 8 inches wide (high). The front bumper shall extend beyond the forward-most part of the body, grille, hood and fenders and shall extend to the outer edges of the fenders at the bumper's top line. Type A buses having a GVWR of 14,500 pounds or less may be equipped with an original equipment manufacturer (OEM)-supplied front bumper. The front bumper shall be of sufficient strength to permit its being pushed by another vehicle on a smooth surface with a 5 degree (8.7 percent) grade, without permanent distortion to the bumper, chassis or body. The contact point on the front bumper is intended to be between the frame rails, with as wide a contact area as possible. If the front bumper is used for lifting, the contact points shall be under the bumper attachments to the frame rail brackets unless the manufacturer specifies different lifting points in the owner's manual. Contact and lifting pressures should be applied simultaneously at both lifting points.

c. The front bumper, except breakaway bumper ends, shall be of sufficient strength to permit pushing a vehicle of equal gross vehicle weight, per paragraph 44.3(10)*"b,"* without permanent distortion to the bumper, chassis or body.

d. The bumper shall be designed or reinforced so that it will not deform when the bus is lifted by a chain that is passed under the bumper (or through the bumper if holes are provided for this purpose) and attached to both tow hooks/eyes. For the purpose of meeting this specification, the bus shall be empty and positioned on a level, hard surface and both tow hooks/eyes shall share the load equally.

e. Tow eyes or hooks are required on Type B, C, and D buses of 14,501 pounds GVWR or greater. Two tow eyes or hooks shall be installed by the bus manufacturer so as not to project beyond the front bumper.

f. An optional energy-absorbing front bumper may be used, provided its design incorporates a self-restoring, energy-absorbing system of sufficient strength to:

(1) Push another vehicle of similar GVWR without permanent distortion to the bumper, chassis, or body; and

(2) Withstand repeated impacts without damage to the bumper, chassis, or body according to the following performance standards:

1. 7.5 mph fixed-barrier impact (FMVSS cart and barrier test).

2. 4.0 mph corner impact at 30 degrees (Part 581, CFR Title 49).

3. 20.0 mph into parked passenger car (Type B, C, and D buses of 18,000 pounds GVWR or more).

The manufacturer of the energy-absorbing bumper system shall provide evidence of conformance to the above standards from an approved test facility capable of performing the above FMVSS tests.

44.3(11) *Bumper, rear.*

a. All school buses shall be equipped with a rear bumper painted glossy black.

b. The rear bumper shall be pressed steel channel or equivalent material, at least 3/16 inches thick and shall be a minimum of 8 inches wide (high) on Type A-2 vehicles and a minimum of 9½ inches wide (high) on Type A-1, B, C and D buses. The rear bumper shall be of sufficient strength to permit its being pushed by another vehicle without permanent distortion to the bumper, body, or chassis.

c. The rear bumper shall be wrapped around the back corners of the bus. It shall extend forward at least 12 inches, measured from the rear-most point of the body at the floor line and shall be flush-mounted to the body side or protected with an end panel.

d. The rear bumper shall be attached to the chassis frame in such a manner that the bumper may be easily removed. It shall be braced so as to resist deformation of the bumper resulting from a rear or side impact. It shall be designed so as to discourage the hitching of rides.

e. The bumper shall extend at least 1 inch beyond the rear-most part of body surface measured at the floor line.

f. Additions or alterations to the rear bumper, including the installation of trailer hitches, are prohibited.

g. An optional energy-absorbing rear bumper may be used, provided a self-restoring, energy-absorbing bumper system attached to prevent the hitching of rides is of sufficient strength to:

(1) Permit pushing by another vehicle without permanent distortion to the bumper, chassis, or body; and

(2) Withstand repeated impacts without damage to the bumper, chassis, or body according to the following FMVSS performance standards:

1. 2.0 mph fixed barrier impact (FMVSS cart and barrier test).
2. 4.0 mph corner impact at 30 degrees (Part 581, CFR Title 49).
3. 5.0 mph center impact (Part 581, CFR Title 49).

The manufacturer of the energy-absorbing system shall provide evidence of conformance to the above standards from an approved test facility capable of performing the above FMVSS tests.

44.3(12) *Certification.* The manufacturer(s) shall, upon request, certify to the Iowa department of education that the manufacturer's product(s) meets Iowa minimum standards on items not covered by FMVSS certification requirements of 49 CFR Part 567.

44.3(13) *Color.*

a. Chassis shall be black. Body cowl, hood, and fenders shall be national school bus yellow. The flat top surface of the hood may be nonreflective national school bus yellow; black is not acceptable.

b. Wheels and rims shall be gray, black, or national school bus yellow.

c. The grille must be gray, black, or national school bus yellow. Chrome is not acceptable.

d. The school bus body shall be painted national school bus yellow. (See color standard, Appendix B, National School Transportation Specifications and Procedures Manual 2010, available from Missouri Safety Center, Central Missouri State University, Humphreys Suite 201, Warrensburg, Missouri 64093.)

e. The body exterior trim shall be glossy black, including the rear bumper, exterior lettering, numbering, body trim, rub rails, lamp hoods (if any), and emergency door arrow. This may also include the entrance door and window sashes. As an alternative, the rear bumper may be covered with a black retroreflective material as described in subrule 44.3(52). When the bus number is placed on the front or rear bumper, the number shall be national school bus yellow.

f. As an option, the roof of the bus may be painted white extending down to within 6 inches above the drip rails on the sides of the body, except that the vertical portion of the front and rear roof caps shall remain national school bus yellow.

g. Commercial advertising is forbidden on the exterior and in the interior of all school buses.

44.3(14) *Construction.*

a. The school bus body shall be constructed of materials certified to be durable under normal operating conditions and shall meet all applicable FMVSS at the date of manufacture as certified by the bus body manufacturer.

b. Construction shall be reasonably dustproof and watertight.

c. Body joints present in that portion of the Type A school bus body furnished exclusively by the body manufacturer shall conform to the performance requirements of FMVSS 221. This does not include the body joints created when body components are attached to components furnished by the chassis manufacturer.

d. A flat floor system featuring no wheel wells and no step-up at the rear of the passenger compartment may be used in accordance with the following:

(1) The inside height of the body shall remain at least 72 inches, when measured in accordance with subrule 44.3(41) when this option is installed.

(2) If this option utilizes a raised floor that is stepped up behind the driver's area, the forward edge of the aisle shall have a white or yellow stripe and be labeled "Step Up" visible to passengers upon entering the aisle; and a label "Step Down" shall be visible to passengers as they exit the aisle. Minimum headroom of 72 inches shall be maintained at all times.

(3) A flat floor design shall provide for the additional option for a track-mounted seating system using button-type (L track) and a wheelchair securement system meeting Iowa specifications but mounting into the track of the track-seating system. Aisle clearances shall be maintained in accordance with these rules.

44.3(15) *Crossing control arms.*

a. Type A, B, and C school buses shall be equipped with a crossing control arm which is mounted on the right side of the front bumper and which shall not open more than 90 degrees. This requirement does not apply to Type D vehicles having transit-style design features.

b. The crossing control arm shall incorporate a system of quick-disconnect connectors (electrical, vacuum, or air) at the crossing control arm base unit and shall be easily removable to allow for towing of the bus.

c. All components of the crossing control arm and all connections shall be weatherproofed.

d. The crossing control arm shall be constructed of noncorrodible or nonferrous material or treated in accordance with the body sheet metal standard. See subrule 44.3(42).

e. There shall be no sharp edges or projections that could cause hazard or injury to students.

f. The crossing control arm shall extend a minimum of 70 inches from the front bumper when in the extended position. This measurement shall be taken from the arm assembly attachment point on the bumper. However, the crossing control arm shall not extend past the ends of the bumper when in the stowed position.

g. The crossing control arm shall extend simultaneously with the stop arm(s) by means of the stop arm controls.

h. The crossing control arm system shall be designed to operate in extreme weather conditions, including freezing rain, snow and temperatures below 0 degrees Fahrenheit, without malfunctioning. The crossing control arm itself shall be constructed of a material that will prevent the arm from prematurely extending or from failing to retract due to sustained wind or wind gusts of up to 40 miles per hour.

i. To ensure that the unit mounts flush and operates properly, the chassis bumper mounting bracket must be designed for the specific model chassis on which it will be mounted.

j. A single, cycle-interrupt switch with automatic reset shall be installed in the driver's compartment and shall be accessible to the driver from the driver's seat.

k. The assembly may include a device attached to the bumper near the end of the arm to automatically retain the arm while in the stowed position. That device shall not interfere with normal operations of the crossing control arm.

44.3(16) *Daytime running lights (DRL).* See subrule 44.3(33).

44.3(17) *Defrosters.*

a. Defrosting and defogging equipment shall direct a sufficient flow of heated air onto the interior surfaces of the windshield, the window to the left of the driver, and the glass in the viewing area directly to the right of the driver to eliminate frost, fog and snow.

b. The defrosting system shall conform to SAE Standard J381.

c. The defroster and defogging system shall be capable of furnishing heated outside ambient air; however, the part of the system furnishing additional air to the windshield, entrance door and step well may be of the recirculating air type.

d. Auxiliary fans are required; however, they are not considered defrosting or defogging systems. See also subrule 44.3(80).

e. Portable heaters shall not be used.

44.3(18) *Doors and exits.*

a. *Service door.*

(1) The service door shall be heavy-duty power- or manually operated under the control of the driver and shall be designed to afford easy release and prevent accidental opening. When a hand lever is used, no parts shall come together to shear or crush fingers. Manual door controls shall not require more than 25 pounds of force to operate at any point throughout the range of operation. A power-operated door must provide for manual operation in case of power failure.

(2) The service door shall be located on the right side of the bus opposite the driver and within the driver's direct view and shall remain closed anytime the vehicle is in motion.

(3) The service door shall have a minimum horizontal opening of 24 inches and a minimum vertical opening of 68 inches. Type A vehicles shall have a minimum opening of 1,200 square inches.

(4) The service door shall be of split or jackknife type. (Split door includes any sectioned door which divides and opens inward or outward.) If one section of the split door opens inward and the other opens outward, the front section shall open outward.

(5) Lower as well as upper panels shall be of approved safety glass. The bottom of each lower glass panel shall not be more than 10 inches from the top surface of the bottom step. The top of each upper glass panel shall not be more than 3 inches from the top of the door.

(6) The upper window panels of the service door shall be of insulated double glass. This standard applies to all vehicles equipped with a service door as described in paragraph 44.3(18)*"a."*

(7) Vertical closing edges on split or folding entrance doors shall be equipped with flexible material to protect children's fingers.

(8) There shall be no door to the left of the driver on Type B, C or D vehicles. All Type A vehicles may be equipped with the chassis manufacturer's standard left side (driver's side) door.

(9) All doors shall be equipped with padding at the top edge of each door opening. Padding shall be at least 3 inches wide and 1 inch thick and shall extend horizontally the full width of the door opening.

(10) Door hinges shall be secured to the body without the use of metal screws.

(11) There shall be no grab handle installed on the exterior of the service door.

(12) A door-locking mechanism may be installed in accordance with subrule 44.3(79).

(13) On power-operated service doors, the emergency release valve, switch or device to release the service door must be placed above or to the left or right of the service door and be clearly labeled. The emergency release valve, switch or device shall work in the absence of power.

b. *Emergency doors.*

(1) Emergency door(s) and other emergency exits shall comply with the requirements of FMVSS 217 and any of the requirements of these rules that exceed FMVSS 217.

(2) The upper portion of the emergency door shall be equipped with approved safety glazing, the exposed area of which shall be at least 400 square inches. The lower portion of the rear emergency doors on Type A-2, B, C and D vehicles shall be equipped with a minimum of 350 square inches of approved safety glazing.

(3) There shall be no steps leading to an emergency door.

(4) The emergency door(s) shall be equipped with padding at the top edge of each door opening. Padding shall be at least 3 inches wide and 1 inch thick and shall extend the full width of the door opening.

(5) There shall be no obstruction higher than ¼ inch across the bottom of any emergency door opening.

c. *Emergency exit requirements.*

(1) Any installed emergency exit shall comply with the design and performance requirements of FMVSS 217, Bus Emergency Exits and Window Retention and Release, applicable to that type of exit,

whether or not that exit is required by FMVSS 217, and shall comply with any of the requirements of these rules that exceed FMVSS 217.

(2) An emergency exit may include either an emergency door or emergency exit-type windows. Where emergency exit-type windows are used, they shall be installed in pairs, one on each side of the bus. Type A, B, C, and D vehicles shall be equipped with a total number of emergency exits as follows for the designed capacities of vehicles:

1. 0 to 42 passengers = 1 emergency exit per side and 1 roof hatch.
2. 43 to 78 passengers = 2 emergency exits per side and 2 roof hatches.
3. 79 to 90 passengers = 3 emergency exits per side and 2 roof hatches.

These emergency exits are in addition to the rear emergency door or rear pushout window/side emergency door combination required by FMVSS 217. Additional emergency exits installed to meet the capacity-based requirements of FMVSS 217 may be included to comprise the total number of exits specified. All roof hatches shall have design features as specified in subrule 44.3(80).

(3) Side and rear emergency doors and each emergency window exit shall be equipped with an audible warning device.

(4) Roof hatches shall be equipped with an audible warning device.

(5) Rear emergency windows on Type D rear-engine buses shall have a lifting-assistance device that will aid in lifting and holding the rear emergency window open.

(6) Side emergency windows may be either top-hinged or vertically hinged on the forward side of the window. No side emergency exit window will be located above a stop sign.

(7) On the inside surface of each school bus, located directly beneath or above all emergency doors and windows, shall be a "DO NOT BLOCK" label in a color that contrasts with the background of the label. The letters on this label shall be at least 1 inch high.

44.3(19) *Drive shaft.* The drive shaft shall be protected by a metal guard or guards around the circumference of the drive shaft to reduce the possibility of its whipping through the floor or dropping to the ground if broken.

44.3(20) *Driver's compartment.*

a. The driver's seat supplied by the body company shall be a high-back seat with a minimum seat back adjustment of 15 degrees, not requiring the use of tools, and with a head restraint to accommodate a 95th percentile adult male, as defined in FMVSS 208. The driver's seat shall be secured with nuts, bolts, and washers or flange-headed nuts.

b. The driver's seat positioning and range of adjustments shall be designed to accommodate comfortable actuation of the foot control pedals by 95 percent of the male and female adult population.

c. See also subrule 44.3(56).

d. A driver's document compartment or pouch shall be provided. The document compartment or pouch shall measure at least 17 inches × 12 inches × 4 inches. If a document pouch, rather than a covered compartment, is provided, it shall be located on the barrier behind the driver. It shall be constructed of a material of equal durability to that of the covering on the barrier and shall have a lid or cover with a latching device to hold the cover or lid closed.

e. A manual noise suppression switch shall be required and located in the control panel within easy reach of the driver while seated. The switch shall be labeled. This switch shall be an on/off type that deactivates body equipment that produces noise, including, at least, the AM/FM radio, heaters, air conditioners, fans, and defrosters. This switch shall not deactivate safety systems, such as windshield wipers, lighting systems, or two-way radio communication systems.

44.3(21) *Electrical system.* See subrule 44.3(85).

44.3(22) *Emergency equipment.*

a. All Type A, B, C, and D school buses shall be equipped with the following emergency equipment: first-aid kit, fire extinguisher, webbing cutter, body fluid cleanup kit, and triangular warning devices.

b. All emergency equipment shall be securely mounted so that, in the event the bus is overturned, this equipment is held in place. Emergency equipment, with the exception of the webbing cutter mounted

in a location accessible to the driver, may be mounted in an enclosed compartment provided that the compartment is labeled in not less than 1-inch letters, stating the piece(s) of equipment contained therein.

c. Fire extinguishers shall meet the following requirements:

(1) The bus shall be equipped with at least one five-pound capacity, UL-approved, pressurized dry chemical fire extinguisher complete with hose. The extinguisher shall be located in the driver's compartment readily accessible to the driver and passengers and shall be securely mounted in a heavy-duty automotive bracket so as to prevent accidental release in case of a crash or in the event the bus overturns.

(2) A calibrated or marked gauge shall be mounted on the extinguisher to indicate the amount of pressure in the extinguisher and shall be easily read without moving the extinguisher from its mounted position. Plastic discharge heads and related parts are not acceptable.

(3) The fire extinguisher shall have a rating of 2A-10BC or greater. The operating mechanism shall be sealed with a type of seal which will not interfere with the use of the fire extinguisher.

(4) All fire extinguishers shall be inspected and maintained in accordance with the National Fire Protection Association requirements.

(5) Each extinguisher shall have a tag or label securely attached that indicates the month and year the extinguisher received its last maintenance and the identity of the person performing the service.

d. First-aid kit.

(1) The bus shall have a removable moistureproof and dustproof first-aid kit in an accessible place in the driver's compartment. It shall be mounted and secured, and identified as a first-aid kit. The location for the first-aid kit shall be marked.

(2) Type III vehicles used as school buses shall be equipped with a ten-unit first-aid kit containing the following items:

1 1-inch adhesive compress.
1 2-inch bandage compress.
1 4-inch bandage compress.
1 3-inch × 3-inch plain gauze pad.
1 gauze roller bandage (4-inch × 5 yards).
1 plain absorbent gauze compress (2 piece, 18-inch × 36-inch).
1 plain absorbent gauze compress (24-inch × 72-inch).
2 triangular bandages.
1 wire splint (instant splints may be substituted).

(3) A first-aid kit meeting the national standards (National Standards First-Aid Kit) (per NCST – National Congress on School Transportation Specifications and Procedures 2010 – first-aid kit) and containing the following items is required on all Type A, B, C and D school buses:

2 1-inch × 2½-yard adhesive tape rolls.
24 3-inch × 3-inch sterile gauze pads.
100 ¾-inch × 3-inch adhesive bandages.
8 2-inch bandage compresses.
10 3-inch bandage compresses.
2 2-inch × 6-foot sterile gauze roller bandages.
2 39-inch × 35-inch × 54-inch nonsterile triangular bandages with two safety pins.
3 36-inch × 36-inch sterile gauze pads.
3 sterile eye pads.
1 pair medical examination gloves.
1 mouth-to-mouth airway.

e. Body fluid cleanup kit. Each bus shall be equipped with a disposable, removable, and moistureproof body fluid cleanup kit in a disposable container which includes the following items:

(1) An EPA-registered liquid germicide (tuberculocidal) disinfectant;
(2) A fully disposable wiping cloth;
(3) A water-resistant spatula;
(4) Step-by-step directions;

(5) Absorbent material with odor counteractant;

(6) Two pairs of gloves (latex);

(7) One package towelettes;

(8) A discard bag (nonlabeled paper bag with a plastic liner and a twist tie). This bag shall be approximately 4 inches × 6 inches × 14 inches and shall be of a nonsafety color (i.e., the bag shall not be red, orange, or yellow). The kit shall be mounted by a method that will retain the kit in place during normal school bus operation and shall be removable without the use of tools. The kit container shall be sealed with a breakable, nonreusable seal and must be accessible to the driver.

f. Triangular warning devices. Each school bus shall contain at least three reflectorized triangle road warning devices mounted in an accessible place. These devices must meet requirements in FMVSS 125.

g. Each bus shall be equipped with a durable webbing cutter having a full-width handgrip and a protected, replaceable or noncorrodible blade. This device shall be mounted in an easily detachable manner and in a location accessible to the seated driver.

h. Axes are not allowed.

44.3(23) *Exhaust system.*

a. The exhaust pipe, muffler and tailpipe shall be outside the bus body compartment and attached to the chassis so as not to damage any other chassis component.

b. The tailpipe shall be constructed of a corrosion-resistant tubing material at least equal in strength and durability to 16-gauge steel tubing.

c. Chassis manufacturers shall furnish an exhaust system with tailpipe of sufficient length to extend at least 5 inches beyond the end of the chassis frame to the vertical line of the rear end of the body, but not beyond the rear bumper. The exhaust may exit at the left side or rear of the bus body provided that the exit is no more than 18 inches forward of the front edge of the rear wheelhouse opening. If designed to exit to the left side of the bus, the tailpipe shall extend at least 48.5 inches (51.5 inches if the body is to be 102 inches wide) outboard from the chassis centerline. Final positioning shall result in the exhaust system's extending to, but not beyond, the body limits on the left side of the bus.

d. On Type A-1 chassis greater than 15,000 pounds GVWR, Type C and Type D vehicles, the tailpipe shall not exit beneath a fuel fill or emergency door exit.

e. On Type A-2 and Type B chassis of 15,000 pounds GVWR or less, the tailpipe may be furnished with the manufacturer's standard tailpipe configuration.

f. The exhaust system on a chassis shall be adequately insulated from the fuel system.

g. The muffler shall be constructed of corrosion-resistant material.

h. The exhaust system on vehicles equipped with a power lift unit may be routed to the left of the right frame rail to allow for the installation of a power lift unit on the right side of the vehicle.

i. The tailpipe shall not exit beneath the fuel fill, lift door or emergency door.

44.3(24) *Fenders, front and hood.* This subrule does not apply to Type A or D vehicles.

a. The total spread of outer edges of front fenders, measured at the fender line, shall exceed the total spread of front tires when the front wheels are in the straight-ahead position.

b. Front fenders shall be properly braced and free from any body attachment.

c. Chassis sheet metal shall not extend beyond the rear face of the cowl.

d. Front fenders and hood may be of manufacturer's standard material and construction.

e. The hood shall not require more than 20 pounds of force to open and shall include design features to secure the hood in an open position.

44.3(25) *Floor insulation and covering.*

a. The floor structure of Type A, B, C and D school buses shall be covered with an insulating layer of either a 5-ply minimum 5/8-inch-thick plywood, or a material of equal or greater strength and insulation R-value, having properties equal to or exceeding exterior-type softwood plywood, C-D grade as specified in standards issued by the United States Department of Commerce. All edges shall be sealed.

b. Type A buses may be equipped with a minimum ½-inch-thick plywood meeting the above requirements.

c. The floor in the under-seat area of Type B, C, and D buses, including tops of wheelhousings, driver's compartment and toeboard, shall be covered with an elastomer floor covering having a minimum overall thickness of 1/8 inch and a calculated burn rate of 0.1 or less using the test methods, procedures and formulas listed in FMVSS 302. The floor covering of the driver's area and toeboard area on all Type A buses may be the manufacturer's standard flooring and floor covering.

d. The floor covering in aisles of all buses shall be of a ribbed or other raised-pattern elastomer, having a coefficient of friction of 0.85, using ASTM 1894 or 0.65 using ASTM 2047, and a calculated burn rate of 0.1 or less using the test methods, procedures and formulas listed in FMVSS 302. Minimum overall thickness shall be 3/16 inch measured from tops of ribs.

e. Floor covering must be permanently bonded to the floor and must not crack when subjected to sudden changes in temperature. Bonding or adhesive material shall be waterproof and shall be of a type recommended by the manufacturer of the floor-covering material. All seams must be sealed with waterproof sealer.

f. On Type B, C and D buses, access to the fuel tank sending unit shall be provided. The access opening shall be large enough and positioned to allow easy removal of the sending unit. Any access opening in the body shall be capable of being sealed with a screw-down plate from within the body. When in place, the screw-down plate shall seal out dust, moisture and exhaust fumes. This plate shall not be installed under flooring material.

g. Cove molding or watertight sealant shall be used along the sidewalls and rear corners. All joints or seams in the floor covering shall be covered with nonferrous metal stripping or stripping constructed of material exhibiting equal durability and sealing qualities.

44.3(26) *Frame.*

a. The frame or equivalent shall have design and strength characteristics corresponding at least to standard practice for trucks of the same general load characteristics which are used for highway service.

b. Any secondary manufacturer that modifies the original chassis frame shall guarantee the performance of workmanship and materials resulting from such modification.

c. Extensions of frame lengths are permissible only when alterations are behind the rear hanger of the rear spring or in front of the front hanger of front spring and shall not be for the purpose of extending the wheelbase.

d. Holes in top or bottom flanges or side units of the frame and welding to the frame shall not be permitted except as provided or accepted by the chassis manufacturer.

e. Frame lengths shall be established in accordance with the design criteria for the complete vehicle.

44.3(27) *Fuel system.*

a. All fuel tanks, including auxiliary fuel tanks, fuel tank filler pipes, and fuel tank connections shall conform to all applicable FMVSS at the date of manufacture and shall be installed in accordance with SBMTC School Bus Design Objectives, August 1996 edition.

b. On all Type B, C, and D vehicles, the fuel tank shall comply with FMVSS 301, Fuel System Integrity, and with Federal Motor Carrier Safety Regulations, Section 393.67, paragraphs (c) through (f), with reference to material and method of construction, leak testing and certification. On Type A-1 and A-2 vehicles, the fuel tank may be of the manufacturer's standard construction.

c. On chassis with a wheelbase greater than 170 inches, at least one fuel tank of 60-gallon capacity shall be provided and installed by the manufacturer. Chassis with a wheelbase of 170 inches or less shall be equipped with at least one fuel tank of 30-gallon minimum capacity, as provided and installed by the manufacturer.

d. The fuel tank(s) may be mounted between the chassis frame rails or outboard of the frame rails on either the left or right side of the vehicle by the manufacturer. Tanks shall be mounted directly to the chassis frame, filled, and vented outside the body, in a location where accidental fuel spillage will not drip or drain on any part of the exhaust system.

e. Fuel filtration shall be accomplished by means of the following:

(1) Gasoline-powered systems—one in-line fuel filter shall be installed between the fuel tank and the engine.

(2) Diesel-powered systems—one engine-mounted fuel filter with water/fuel separator shall be supplied and installed by the engine manufacturer.

f. The actual draw capacity of each fuel tank shall be 83 percent of the tank capacity.

g. Unless specific agreement has been made between the body and chassis manufacturers, fuel tanks and filler spouts shall not be located in spaces restricted by SBMTC School Bus Design Objectives, August 1996 edition.

44.3(28) *Fuel system, alternative fuels.* An alternative fuel is defined as liquefied petroleum gas (LPG), compressed natural gas (CNG), liquefied natural gas (LNG), electricity, hydrogen, methanol, ethanol, clean diesel, biodiesel, soydiesel, reformulated gasoline, or any type of hybrid system. Vehicles that operate on an alternative fuel shall meet the following requirements:

a. Chassis shall meet all standards of this rule.

b. Chassis shall meet all applicable FMVSS standards including, but not limited to, the fuel system integrity standards of FMVSS 301 or FMVSS 303 and FMVSS 304.

c. Original equipment manufacturers (OEMs) and conversion systems using compressed natural gas (CNG) shall comply with NFPA Standard 52, "Compressed Natural Gas Vehicular Fuel Systems," in effect at the time of installation. Fuel systems using liquefied petroleum gas (LPG) shall comply with the NFPA Standard 58, "Liquefied Petroleum Gases Engine Fuel Systems," in effect at the time of installation.

d. All alternative fuel buses shall travel a loaded range of not less than 200 miles, except those powered by electricity, which shall travel not less than 80 miles.

e. Liquefied natural gas (LNG)-powered buses shall comply with NFPA Standard 57, "Liquefied Natural Gas Vehicular-Fueled Systems," and be equipped with an interior/exterior gas detection system. All natural gas-powered buses shall be equipped with a fire detection and suppression system.

f. All materials and assemblies used to transfer or store alternative fuels shall be installed outside the passenger/driver compartment.

g. The total weight shall not exceed the GVWR when loaded to rated capacity.

h. The manufacturer supplying the alternative fuel equipment must provide the owner and operator with adequate training and certification in fueling procedures, scheduled maintenance, troubleshooting, and repair of alternative fuel equipment.

i. All fueling equipment shall be designed specifically for fueling motor vehicles and shall be certified by the manufacturer as meeting all applicable federal, state and industry standards.

j. All on-board fuel supply containers shall meet all appropriate requirements of the ASME code, the DOT regulations, or applicable FMVSS and NFPA standards.

k. All fuel supply containers shall be securely mounted to withstand a static force of eight times their weight in any direction.

l. All safety devices that may discharge to the atmosphere shall be vented to the outside of the vehicle. The discharge line from the safety relief valve on all school buses shall be located in a manner appropriate to the characteristics of the alternative fuel. Discharge lines shall not pass through the passenger compartment. Discharge lines shall be kept clear with flapper-valve or other device which will allow low-pressure discharge but prevent clogging by foreign matter or insects.

m. A positive, quick-acting (¼ turn), shut-off control valve shall be installed in the gaseous fuel supply lines as close to the fuel supply containers as possible. The controls for this valve shall be placed in a location easily operable from the exterior of the vehicle. The location of the valve control shall be clearly marked on the exterior surface of the bus.

n. A grounding system shall be required for grounding of the fuel system during maintenance-related venting.

o. Automatic engine shut-down systems are not permissible.

p. Storage batteries for hybrid power systems shall be protected from crash impacts and shall be encased in a nonconductive, acid-resistant compartment. This compartment must be well-ventilated to preclude the possibility of hydrogen gas buildup.

44.3(29) *Fuel system, fuel fill opening and cover.* Where an opening in the school bus body skirt is needed for access to the fuel fill cap, the opening shall be large enough to permit filling the fuel tank

without the need for special fuel nozzle adapters, a funnel, or other device. The opening shall be equipped with a forward hinged cover held closed by a spring or other conveniently operated device. The cover may be of a lockable design. Type A buses are exempt from the requirement of a cover.

44.3(30) *Governor.* An electronic engine speed limiter shall be provided and set to limit engine speed, not to exceed the maximum revolutions per minute as recommended by the engine manufacturer.

44.3(31) *Heating and air conditioning.*

a. Each heater shall be hot-water or combustion type.

b. If only one heater is used, it shall be a fresh-air or combination fresh-air and recirculation type.

c. If more than one heater is used, additional heaters may be recirculating air type.

d. The heating system shall be capable of maintaining bus interior temperatures as specified in SAE test procedure J2233.

e. Auxiliary fuel-fired heating systems are permitted, provided that they comply with the following:

(1) The auxiliary heating system shall utilize the same type of fuel as specified for the vehicle engine.

(2) Heater(s) may be direct hot air or connected to the engine's coolant system.

(3) An auxiliary heating system, when connected to the engine's coolant system, may be used to preheat the engine coolant or preheat and add supplementary heat to the bus's heating system.

(4) Auxiliary heating systems must be installed pursuant to the manufacturer's recommendations and shall not direct exhaust in a manner that will endanger bus passengers.

(5) Auxiliary heating systems which operate on diesel fuel shall be capable of operating on #1, #2 or blended diesel fuel without the need for system adjustment.

(6) The auxiliary heating system shall be low voltage.

(7) Auxiliary heating systems shall comply with all applicable FMVSS including FMVSS 301 as well as SAE test procedures.

f. Heater hoses shall be adequately supported to guard against excessive wear due to vibration. The hoses shall not dangle or rub against the chassis or any sharp edges and shall not interfere with or restrict the operation of any engine function. Heater hoses shall conform to SAE Standard J20c. Heater lines on the interior of the bus shall be shielded to prevent scalding of the driver or passengers.

g. Each hot water system installed by a body manufacturer shall include one shut-off valve in the pressure line and one shut-off valve in the return line with both valves at the engine in an accessible location, except that on all Type A and B buses, the valves may be installed in another accessible location.

h. Each hot water heating system shall be equipped with a device that is installed in the hot water pressure line that regulates the water flow to all heaters and that is located for convenient operation by the driver while seated.

i. All combustion heaters shall be in compliance with current Federal Motor Carrier Safety Regulations.

j. Accessible bleeder valves shall be installed in an appropriate place in the return lines of body manufacturer-installed heaters to remove air from the heater lines.

k. Access panels shall be provided to make heater motors, cores, and fans readily accessible for service. An outside access panel may be provided for the driver's heater.

l. Air-conditioning systems may be installed in accordance with the following:

(1) Evaporator cases, lines and ducting (as equipped) shall be designed so that all condensation is effectively drained to the exterior of the bus below floor level under all conditions of vehicle movement without leakage on any interior portion of the bus.

(2) Any evaporator or ducting system shall be designed and installed so as to be free of injury-producing projections or sharp edges. Installation shall not reduce compliance with any FMVSS applicable to the school bus. Ductwork shall be installed so that exposed edges face the front of the bus and do not present sharp edges.

(3) Any evaporators used must be copper-cored (aluminum or copper fins acceptable), except that the front evaporator, if provided by a Type A chassis manufacturer, may be aluminum-cored.

(4) Air intake for any evaporator assembly(ies) except for the front evaporator of a Type A bus shall be equipped with replaceable air filter(s) accessible without disassembly of the evaporator case.

(5) On buses equipped for the transportation of persons with disabilities, the evaporator and ducting shall be placed high enough so that they will not obstruct existing or potential occupant securement shoulder strap upper attachment points. This clearance shall be provided along the entire length of the passenger area on both sides of the bus interior to allow for potential retrofitting of new wheelchair positions and occupant securement devices throughout the bus.

(6) The total air-conditioning system shall be warranted, including parts and labor, for at least two years and shall include, but not be limited to, compressor-mounting bracketry and hardware and any belts which, directly or indirectly, drive the compressor(s). Air-conditioning compressor applications must be approved in writing by the chassis engine manufacturer, stating that the installations will not void or reduce the engine manufacturer's warranty or extended service coverage liabilities in any way.

(7) All components requiring periodic servicing must be readily accessible for servicing.

(8) Parts and service manuals shall be provided for the entire system including, but not limited to, compressor(s), wiring (includes wiring diagram), evaporators, condensers, controls, hoses and lines.

(9) Electrical requirements for the air-conditioning system shall be provided to the customer prior to vehicle purchase or, in the case of an after-purchase installation, prior to installing the air-conditioning system to ensure that adequate electrical demands imposed by the air-conditioning system are capable of being met.

(10) The installed air-conditioning system should cool the interior of the bus down to at least 80 degrees Fahrenheit, measured at a minimum of three points, located 4 feet above the floor at the longitudinal centerline of the bus. The three points shall be: near the driver's location; at the midpoint of the body; and 2 feet forward of the emergency door, or for Type D rear engine buses, 2 feet forward of the end of the aisle. Test conditions will be those as outlined in the National School Transportation Specifications and Procedures Manual 2010, Missouri Safety Center, Central Missouri State University, Humphreys Suite 201, Warrensburg, Missouri 64093.

44.3(32) *Heating system, provisions for.*

a. The chassis engine shall have plugged openings for the purpose of supplying hot water for the bus heating system. The openings shall be suitable for attaching ¾-inch or metric equivalent pipe thread/hose connector.

b. The engine shall be capable of supplying water having a temperature of at least 170 degrees Fahrenheit at a flow rate of 50 pounds per minute at the return end of 30 feet of one-inch inside-diameter automotive hot water heater hose. Engine temperature performance shall be measured in accordance with the School Bus Manufacturer's Technical Council Standard Number 001—Procedures for Testing and Rating Automotive Bus Hot Water Heating and Ventilating Equipment, July 1996.

c. For Type A vehicles with GVWR of 10,000 pounds or less, the chassis manufacturer shall provide a fresh-air front heater and defroster of recirculating hot water type. See also subrules 44.3(17) and 44.3(31).

44.3(33) *Headlamps.*

a. Buses shall be equipped with a minimum of two headlamps meeting FMVSS 108 with circuit protection.

b. The headlamp switch shall be of adequate ampere capacity to carry the load of the clearance and identification lamps in addition to the headlamps and tail lamps since these will be activated by the same switch.

c. There shall be a manually operated switch for selection of high- or low-beam distribution of the headlamps.

d. The headlight system must be wired separately from the body-controlled solenoid.

e. A daytime running lamp (DRL) system shall be provided.

44.3(34) *Hinges.* All exposed metal passenger-door hinges subject to corrosion shall be designed to allow lubrication without disassembly. All passenger-door hinges shall be securely bolted to the bus body. Metal screws are not acceptable.

44.3(35) *Horn.* Chassis shall be equipped with a horn of standard make capable of producing a complex sound in a band of audio frequencies between approximately 250 and 2,000 cycles per second and tested in accordance with Society of Automotive Engineers (SAE) Standard J377.

44.3(36) *Identification.*

a. The body shall bear the words "SCHOOL BUS" in black letters at least 8 inches high on both front and rear of the body or on attached signs. The lettering shall be placed as high as possible without impairment of its visibility. The lettering shall conform to Series B of Standard Alphabets of Highway Signs. "SCHOOL BUS" lettering shall have a reflective background or, as an option, may be illuminated by backlighting.

b. The bus, whether school-owned or contractor-owned, shall have displayed at the beltline on each side of the vehicle the official name of the school in black standard unshaded letters at least 5 inches high, but not more than 7 inches high.

Examples:

(1) Blank community school district.

(2) Blank independent school district.

(3) Blank consolidated school district.

If there is insufficient space due to the length of the name of the school district, the words "community," "independent," "consolidated," and "district" may be abbreviated. If, after these abbreviations, there is still insufficient space available, the words "community school district" may be replaced by the uppercase letters "CSD" upon prior approval by the school transportation consultant of the Iowa department of education.

c. The incorporated names of cities located within an officially reorganized school district may be placed on either side of the bus in a single line situated beneath the official school district name. The lettering shall not exceed 2 inches in height and shall be black. This paragraph shall apply only when the names of the cities are not included in the official school district name on the beltline.

d. Buses privately owned and operated by an individual or individuals and used exclusively for transportation of students shall bear the name of the owner, at the beltline on each side of the vehicle in black standard unshaded letters at least 5 inches high, but not more than 7 inches high.

e. The words "RATED CAPACITY," along with the appropriate number indicating the rated pupil seating capacity of the bus, shall be printed to the left of the entrance door, at least 6 inches below the name of the school district and on the bulkhead of the bus above the right windshield. The letters shall be black in color and at least 2 inches in height. The word "CAPACITY" may be abbreviated and shown as "CAP." where necessary.

f. The number of the bus shall be printed in not less than 5-inch nor more than 8-inch black letters, except as otherwise noted in this subrule, and shall be displayed on both sides, the front and the rear of the bus. The location of the bus number is at the discretion of the vehicle owner except that the number:

(1) Shall be located to the rear of the service door not more than 36 inches from the ground on the right side of the bus and at the same respective position on the left side of the bus.

(2) Shall be yellow if located on either the front or rear bumper.

(3) May be placed on the roof of the bus at a position representing the approximate lateral and longitudinal midpoint of the bus. The bus number shall be black and shall measure not less than 24 inches in length.

(4) Shall not be located on the same line as the name of the school district on either side of the bus, on the emergency door, or in a location that will interfere with the words "SCHOOL BUS."

g. Buses privately owned by individuals, a company, or a contractor shall also bear the name of the owner, followed by the word "OWNER" in not more than 2-inch characters printed approximately 6 inches below the bus capacity on the right side of the bus.

h. Symbols, characters or letters, for the purpose of vehicle or route identification by students, may be displayed in the lower, split-sash, glass portion of the third passenger window from the front on the service entrance side of the bus. Such symbols, characters or lettering, if used, shall not exceed 36 square inches. This requirement applies to all school buses regardless of date of purchase.

i. Symbols identifying the bus as equipped for or transporting students with special needs shall be displayed. See subrule 44.4(2).

j. The words "UNLAWFUL TO PASS WHEN LIGHTS FLASH" shall be displayed on the rear emergency door of the bus between the upper and lower window glass sections. The letters shall be black and not less than 2 inches nor more than 6 inches in height. If there is not sufficient space on the emergency door, letter size may be reduced upon approval of the Iowa department of education.

k. The word "BATTERY" in 2-inch black letters shall be placed on the door covering the battery opening.

l. Pressure-sensitive markings of vinyl material may be used for the lettering mentioned in this subrule in lieu of painting.

m. Any lettering, including the name of the school's athletic team(s), numbers, drawings, bumper stickers, characters, or mascot symbols other than the bus manufacturer's registered trademarks or those specifically noted in paragraphs 44.3(36)*"a"* through *"k"* above are prohibited.

44.3(37) *Instruments and instrument panel.*

a. Chassis shall be equipped with an instrument panel having, as a minimum, the following instrumentation: (Lights in lieu of gauges are not acceptable except as noted.)

(1) Speedometer.

(2) Odometer with accrued mileage including tenths of miles unless tenths of miles are registered on a trip odometer.

(3) Voltmeter with graduated scale.

(4) Oil pressure gauge.

(5) Water temperature gauge.

(6) Fuel gauge.

(7) Upper-beam headlamp indicator.

(8) Air pressure gauge, where air brakes are used. A light indicator in lieu of a gauge is permitted on vehicles equipped with hydraulic-over-hydraulic brake system.

(9) Turn signal indicator.

(10) Glow-plug indicator light, where appropriate.

(11) Tachometer required on vehicles 14,500 pounds GVWR and greater.

b. Gauges shall be displayed as single-gauge installations or as gauges contained in a multifunction instrument display. The multifunction instrument display shall comply, as a minimum, with the following design criteria:

(1) The driver must be able to manually select any displayable function of the gauge on a multifunction display whenever desired.

(2) Whenever an out-of-limits condition occurs, which would be displayed on one or more functions of a multifunction gauge, the multifunction gauge controller should automatically display this condition on the instrument cluster. This should be in the form of an illuminated warning light as well as having the multifunction gauge automatically display the out-of-limits indications. Should two or more functions displayed on the multifunction gauge go out of limits simultaneously, the multifunction gauge should automatically sequence between those functions continuously until the condition(s) is corrected.

(3) The use of a multifunction instrument display does not relieve the requirement of audible warning devices as required in this subrule.

c. All instruments shall be easily accessible for maintenance and repair.

d. Instruments and gauges shall be mounted on the instrument panel so each is clearly visible to the driver in a normal seated position in accordance with SBMTC School Bus Design Objectives, August 1996 edition.

e. The instrument panel shall have rheostatically controlled lamps of sufficient candlepower to illuminate all instruments, gauges, and the shift selector indicator for automatic transmission.

44.3(38) *Insulation.*

a. Thermal insulation in the ceiling and walls shall be fire-resistant, UL-approved, and approximately 1½-inch thick with a minimum R-value of 5.5. Insulation shall be installed in such a way as to prevent it from sagging.

b. Roof bows shall be insulated in accordance with paragraph 44.3(38)*"a."*

44.3(39) *Interior.*

a. The interior of the bus shall be free of all unnecessary projections, including luggage racks and attendant handrails, to minimize the potential for injury. This standard requires inner lining on ceilings and walls. If the ceiling is constructed to contain lapped joints, the forward panel shall be lapped by the rear panel and exposed edges shall be beaded, hemmed, flanged, or otherwise treated to minimize sharp edges. Buses may be equipped with a storage compartment for tools, tire chains, and tow chains. See also subrule 44.3(64).

b. Radio speakers are permitted in the passenger compartment area only. No radio speaker, other than that which is necessary for use with two-way communication equipment, shall be located within the driver's compartment area. All radio speakers shall be flush-mounted with the roof or side panels and shall be free of sharp edges which could cause injury to a child.

c. The driver's area forward of the foremost padded barriers shall permit the mounting of required safety equipment and vehicle operation equipment.

d. Every school bus shall be constructed so that the noise level taken at the ear of the occupant nearest to the primary vehicle noise source shall not exceed 85 dBA when tested according to the procedure found in Appendix B, National School Transportation Specifications and Procedures Manual 2010, Missouri Safety Center, Central Missouri State University, Humphreys Suite 201, Warrensburg, Missouri 64093.

e. An access panel must be provided, front and rear, so lights and wiring for the 8-light warning system may be repaired or serviced without removing ceiling panels.

f. Ceiling material designed to reduce noise within the driver compartment or passenger compartment may be installed by the manufacturer.

g. An electronic "child check" monitor shall be installed. This monitor shall operate in such a way as to require the driver to physically walk to the back of the bus to disengage the monitor system after having first shut off the engine of the bus.

h. Mobile Wi-Fi Internet is allowed, in accordance with other provisions of subrule 44.3(39).

i. On-board interior bus camera heads are allowed within the passenger area of the bus. Camera heads shall not extend more than 1 inch from the ceiling and shall have rounded edges as much as possible. Camera heads shall not be mounted directly above the aisle.

44.3(40) *Lamps and signals.*

a. All lamps and lamp components shall meet or exceed applicable standards established by the Society of Automotive Engineers (SAE), the American Association of Motor Vehicle Administrators (AAMVA), and FMVSS. These lamps shall be of incandescent or LED design.

b. Clearance lamps. The body shall be equipped with two amber clearance lamps at the front and two red clearance lamps at the rear mounted at the highest and widest portion of the body.

c. Identification lamps. The bus shall be equipped with three amber identification lamps on the front and three red identification lamps on the rear. Each group shall be evenly spaced not less than 6 or more than 12 inches apart along a horizontal line near the top of the vehicle.

d. Intermediate side marker lamps. On all buses over 30 feet long, one amber side lamp is required on each side, located midway between the front and rear clearance lamps.

e. Stop/tail (brake) lamps. Buses shall be equipped with four combination, red stop/tail lamps meeting SAE specifications. Each lamp shall have double filament lamp bulbs or LEDs that are connected to the headlamp and brake-operated stop lamp circuits. These should be positioned as follows:

(1) Two combination lamps with a minimum diameter of 7 inches or, if a shape other than round, a minimum of 38 square inches of illuminated area shall be mounted on the rear of the bus just to the inside of the turn signal lamps.

(2) Two combination lamps with a minimum diameter of 4 inches or, if a shape other than round, a minimum of 12 square inches of illuminated area shall be mounted on the rear of the body between the beltline and the floor line. The rear license plate lamp may be combined with one lower tail lamp. Stop lamps shall be activated by the service brakes and shall emit a steady light when illuminated. Type A-2

buses with bodies supplied by the chassis manufacturer may have the manufacturer's standard stop and tail lamps.

f. Items described in paragraphs 44.3(40)*"b," "c," "d,"* and *"e"* shall be connected to the headlamp switch.

g. Backup lamps. The bus body shall be equipped with two white rear backup lamps. All vehicles shall be equipped with lamps at least 4 inches in diameter or, if a shape other than round, a minimum of 13 square inches of illuminated area. All lamps shall have a white or clear lens and shall meet SAE specifications. If backup lamps are placed on the same line as the brake lamps and turn signal lamps, they shall be to the inside.

h. Interior lamps. Interior lamps shall be provided which adequately illuminate the interior aisle and the step well. Step well lights shall be illuminated by a service door-operated switch, to illuminate only when headlights and clearance lights are on and the service door is open. In addition, the following interior lamps shall be provided:

(1) Supervisor's light. The rearmost ceiling light or a separate light may be used as a supervisor's light and shall be activated by a separate switch controlled by the driver.

(2) Driver's area dome light. This light shall have a separate switch controlled by the driver and shall illuminate the driver's compartment area.

(3) Body instrument panel lights shall be controlled by a rheostat switch.

(4) On buses equipped with a monitor for the front and rear lamps of the school bus, the monitor shall be mounted in full view of the driver. If the full circuit current passes through the monitor, each circuit shall be protected by a fuse or circuit breaker against any short circuit or intermittent shorts.

i. License plate lamp. The bus shall be equipped with a rear license plate illuminator. This lamp may be combined with one of the tail lamps.

j. Reflectors. Reflectors shall be securely attached to the body with sheet metal screws or another method having equivalent securement properties and installed in accordance with the requirements of FMVSS 108; however, the vehicle shall, as a minimum, be equipped with the following:

(1) Two amber reflectors, one on each side at the lower front and corner of the body approximately at floor level and back of the door on the right side, and at a similar location on the left side. For all buses over 30 feet long, an additional amber reflector is required on each side at or near the midpoint between the front and rear side reflectors.

(2) Four red reflectors, one at each side at or near the rear and two on the rear, one at each side.

(3) Reflectors are to be mounted at a height not more than 42 inches or less than 30 inches above the ground on which the vehicle stands.

k. Warning signal lamps.

(1) Buses shall be equipped with two red lamps at the rear of the vehicle and two red lamps at the front of the vehicle.

(2) In addition to the four red lamps described above, four amber lamps shall be installed so that one amber lamp is located near each red signal lamp, at the same level, but closer to the vertical centerline of the bus. The system of red and amber signal lamps shall be wired so that amber lamps are energized manually and the red lamps are automatically energized (sequential), with amber lamps being automatically de-energized, when the stop signal arm is extended or when the bus service door is opened. An amber pilot light and a red pilot light shall be installed adjacent to the driver controls for the flashing signal lamp to indicate to the driver which lamp system is activated.

(3) The area immediately around the lens of each alternately flashing signal lamp shall be black. In installations where there is no flat vertical portion of body immediately surrounding the entire lens of the lamp, there shall be a circular or square band of black immediately below and to both sides of the lens, on the body or roof area against which the signal lamp is seen from a distance of 500 feet along the axis of the vehicle. Black visors or hoods, with a minimum depth of 4 inches, may be provided.

(4) Red lamps shall flash at any time the stop signal arm is extended.

(5) All flashers for alternately flashing red and amber signal lamps shall be enclosed in the body in a readily accessible location.

(6) Strobe lights are permissible.

(7) Additional electronic/lighted warning devices mounted on the rear of the bus are allowed. Each design shall be evaluated and approved by Iowa department of education personnel per established criteria.

l. Turn signal lamps.

(1) The bus body shall be equipped with amber rear turn signal lamps that meet SAE specifications and are at least 7 inches in diameter or, if a shape other than round, a minimum of 38 square inches of illuminated area. These signal lamps must be connected to the chassis hazard warning switch to cause simultaneous flashing of turning signal lamps when needed as a vehicular traffic hazard warning. Turn signal lamps are to be placed as far apart as practical and their centerline shall be approximately 8 inches below the rear window. Type A-2 conversion vehicle lamps must be at least 21 square inches in lens area and in the manufacturer's standard color.

(2) Buses shall be equipped with amber side-mounted turn signal lights. The turn signal lamp on the left side shall be mounted rearward of the stop signal arm, and the turn signal lamp on the right side shall be mounted rearward of the service door.

m. A white flashing strobe light rated for outdoor use and weather-sealed shall be installed on the roof of the bus not less than 1 foot or more than 18 inches from the rear center of the bus. The strobe light shall be located to the rear of the rearmost emergency roof hatch to prevent the roof hatch from diminishing the effectiveness of the strobe light. In addition:

(1) The strobe light shall have a single clear lens emitting light 360 degrees around its vertical axis and may not extend above the roof more than the maximum legal height.

(2) The strobe light must be controlled by a separate switch with an indicator light which when lit will indicate that the strobe light is turned on.

(3) The light shall be used only in fog, rain, snow, or at times when visibility is restricted.

(4) Each model strobe shall be approved by the motor vehicle division, Iowa department of transportation.

44.3(41) *Measurements.*

a. Interior body height shall be 72 inches or more, measured metal to metal, at any point on the longitudinal centerline from the front vertical bow to the rear vertical bow. Inside body height of Type A-2 buses shall be 62 inches or more.

b. Overall height, length and width of the bus shall not exceed the maximums allowed by the Iowa department of transportation.

44.3(42) *Metal treatment.*

a. All metal, except high-grade stainless steel or aluminum, used in construction of the bus body shall be zinc-coated or aluminum-coated to prevent corrosion. This requirement applies to, but is not limited to, such items as structural members, inside and outside panels, door panels and floor sills. Excluded are such items as door handles, grab handles, interior decorative parts and other interior plated parts.

b. All metal parts that will be painted shall be, in addition to above requirements, chemically cleaned, etched, zinc-phosphate coated and zinc-chromate or epoxy primed to improve paint adhesion.

c. In providing for these requirements, particular attention shall be given lapped surfaces, welded connections of structural members, cut edges, punched or drilled hole areas in sheet metal, closed or box sections, unvented or undrained areas, and surfaces subjected to abrasion during vehicle operation.

d. As evidence that the above requirements have been met, samples of materials and sections used in construction of the bus body subjected to a 1,000-hour salt spray test as provided for in the latest revision of ASTM Standard B-117 shall not lose more than 10 percent of material by weight.

44.3(43) *Mirrors.*

a. The interior mirror shall be either clear view laminated glass or clear view glass bonded to a backing that retains the glass in the event of breakage. The mirror shall have rounded corners and protected edges. All Type A buses shall have a minimum of a 6-inch × 16-inch mirror; and Type B, C, and D buses shall have a minimum of a 6-inch × 30-inch mirror.

b. Each school bus shall be equipped with exterior mirrors meeting the requirements of FMVSS 111. Mirrors shall be easily adjustable, but shall be rigidly braced so as to reduce vibration.

c. Heated right- and left-side rearview mirrors shall be provided.

d. Systems offering a design feature permitting the driver to remotely adjust rearview mirrors from the driver's compartment shall be utilized.

e. The right-side rearview mirrors must be unobstructed by the unwiped section of the windshield.

f. Heated cross-view mirrors shall be provided.

g. Stainless steel mirror brackets are allowed.

44.3(44) *Mounting.*

a. The chassis frame shall support the rear body cross member. Except where chassis components interfere, the bus body shall be attached to the chassis frame at each main floor sill in such manner as to prevent shifting or separation of the body from the chassis under severe operating conditions.

b. Isolators shall be placed at all contact points between the body and chassis frame and shall be secured by a positive means to the chassis frame or body to prevent shifting, separation, or displacement of the isolators under severe operating conditions.

c. The body front shall be attached and sealed to the chassis cowl to prevent entry of water, dust, and fumes through the joint between the chassis cowl and body.

d. The refurbishing or reconditioning of a body-on-chassis school bus is restricted to the repair and replacement of school bus body or chassis components. The original body and chassis, as certified by the original equipment manufacturers (OEMs), shall be retained as a unit upon completion of repairs. It is not permissible to exchange or interchange school bus bodies and chassis. The refurbisher or reconditioner shall certify that the vehicle meets all state and federal construction standards in effect as of the date of manufacture and shall provide suitable warranty on all work performed. See also subrule 44.6(1).

44.3(45) *Mud flaps.*

a. Mud flaps or guards are required and shall be provided and installed by the body manufacturer or manufacturer's representative for both front and rear wheels.

b. Front mud flaps or guards shall be of adequate size to protect body areas vulnerable to road debris from wheels and shall be mounted so as to be free of wheel movement at all times.

c. Rear mud flaps or guards shall be comparable in size to the width of the rear wheelhousing and shall reach within approximately 9 inches of the ground when the bus is empty. They shall be mounted at a distance from the wheels to permit free access to spring hangers for lubrication and maintenance and to prevent their being damaged by tire chains or being pulled off while the vehicle is in reverse motion.

d. All mud flaps shall be constructed of rubber. Vinyl or plastic is not acceptable.

44.3(46) *Oil filter.* An oil filter with a replaceable element or cartridge shall be of manufacturer's recommended capacity and shall be connected by flexible oil lines if it is not of built-in or engine-mounted design.

44.3(47) *Openings.* All openings in the floorboard or fire wall between the chassis and passenger compartment, such as for gearshift selector and parking brake lever, shall be sealed.

44.3(48) *Passenger load.*

a. Actual gross vehicle weight (GVW) is the sum of the chassis weight, plus the body weight, plus the driver's weight, plus the total seated pupil weight.

(1) For purposes of calculation, the driver's weight is 150 pounds.

(2) For purposes of calculation, the pupil weight is 120 pounds per pupil.

b. Actual gross vehicle weight (GVW) shall not exceed the chassis manufacturer's GVWR for the chassis, nor shall the actual weight carried on any axle exceed the chassis manufacturer's gross axle weight rating.

44.3(49) *Passenger securement seating system.*

a. All vehicles shall conform to all FMVSS at date of manufacture.

b. Unless otherwise required by FMVSS, school bus seats may be equipped with passenger securement systems for passengers with disabilities in accordance with 281—Chapter 41 when the child's individual education program staffing team determines that special seating and positioning are necessary during transportation. When the staffing team determines that a passenger securement system is necessary to safely transport a student with a disability, the need shall be documented in the student's individual education plan (IEP).

c. When a child securement system is required in paragraph 44.3(49)*"b,"* the seat, including seat frame, seat cushion, belt attachment points, belts and hardware, shall comply with all applicable FMVSS at the time of manufacture. When it is determined that the securement system is no longer necessary to provide seating assistance to a child with a disability, the securement system shall be removed from the seat frame.

d. Children transported in child safety seats shall be secured to a school bus seat utilizing a seat belt-ready seat frame, according to the child safety seat manufacturer's instructions.

44.3(50) *Public address system.* A public address system permitting interior, exterior or both interior and exterior communication with passengers may be installed.

44.3(51) *Radio/communication system.* Each school bus shall have a communication system to allow communication between the driver of the bus and the school's base of operations for school transportation. This system shall be a two-way radio, cellular phone, or similar device as allowed by local and state policies regarding use of handheld communication equipment.

44.3(52) *Retroreflective material.*

a. Retroreflective material shall be provided in accordance with the following:

(1) The rear of the bus body shall be marked with strips of reflective NSBY material to outline the perimeter of the back of the bus using material which conforms with the "Retroreflective Sheeting Daytime Color Specification Proposal" of Appendix B, National School Transportation Specifications and Procedures Manual 2010, Central Missouri State University, Humphreys Suite 201, Warrensburg, Missouri 64093. The perimeter marking of rear emergency exits in accordance with FMVSS 217 and the use of reflective "SCHOOL BUS" signs partially accomplish the objective of this requirement. To complete the perimeter marking of the back of the bus, strips of at least 1¾-inch reflective NSBY material shall be applied horizontally above the rear windows and above the rear bumper, extending from the rear emergency exit perimeter marking outward to the left and right rear corners of the bus; and vertical strips shall be applied at the corners connecting these horizontal strips.

(2) "SCHOOL BUS" signs, if not of lighted design, shall be marked with reflective NSBY material comprising background for lettering of the front and rear "SCHOOL BUS" signs.

(3) Sides of the bus body shall be marked with reflective NSBY material at least 1¾ inches in width, extending the length of the bus body and located within 6 inches above or below the floor line or on the beltline.

b. Front and rear bumpers may be marked diagonally 45 degrees down to centerline of pavement with 2-inch +/- ¼ inch wide strips of noncontrasting reflective material. This material shall appear black during daylight hours; however, it will be seen as a reflective material during periods of reduced light conditions when a direct light source strikes the material.

44.3(53) *Road speed control.* When it is desired to accurately control vehicle maximum speed, a road speed control device may be utilized. A vehicle cruise control may also be utilized.

44.3(54) *Rub rails.*

a. One rub rail located on each side of the bus at, or no more than 8 inches above, the seat level shall extend from the rear side of the entrance door completely around the bus body (except for emergency door or any maintenance access door) to the point of curvature near the outside cowl on the left side.

b. One rub rail located at, or no more than 10 inches above, the floor line shall cover the same longitudinal area as the upper rub rail, except at wheelhousings, and shall extend only to radii of the right and left rear corners.

c. Rub rails at or above the floor line shall be attached at each body post and all other upright structural members.

d. Each rub rail shall be 4 inches or more in width in its finished form, shall be of 16-gauge steel or suitable material of equivalent strength, and shall be constructed in corrugated or ribbed fashion.

e. Rub rails shall be applied to outside body or outside body posts. Pressed-in or snap-on rub rails do not satisfy this requirement. For all buses using a rear luggage or rear engine compartment, rub rails need not extend around rear corners.

f. The bottom edge of the body side skirts shall be stiffened by application of a rub rail, or the edge may be stiffened by providing a flange or other stiffeners.

g. Rub rails shall be painted black or shall be covered with black retroreflective material.

44.3(55) *Seating, crash barriers.*

a. All school buses (including Type A) shall be equipped with restraining barriers which conform to FMVSS 222.

b. Crash barriers shall be installed conforming to FMVSS 222; however, all Type A-2 school bus bodies shall be equipped with padded crash barriers, one located immediately to the rear of the driver's seat and one at the service door entrance immediately to the rear of the step well.

c. Crash barriers and passenger seats may be constructed with materials that enable the crash barriers and passenger seats to meet the criteria contained in the School Bus Seat Upholstery Fire Block Test specified in the National School Transportation Specifications and Procedures Manual 2010, Central Missouri State University, Humphreys Suite 201, Warrensburg, Missouri 64093. Fire block material, when used, shall include the covering of seat bottoms.

d. All crash/restraining barriers shall be the same height as the passenger seating height in the bus.

44.3(56) *Seating, driver.*

a. Type A school buses shall be equipped with a driver's seat of manufacturer's standard design meeting FMVSS.

b. All Type B, C, and D school buses shall have a driver's seat equipped with a one-piece high back designed to minimize the potential for head and neck injuries in rear impacts, providing minimum obstruction to the driver's view of passengers and meeting applicable requirements of FMVSS 222. The height of the seat back shall be sufficient to provide the specified protection for a 5th percentile adult female up to a 95th percentile adult male, as defined in FMVSS 208. The seat shall be centered behind the steering wheel with a backrest a minimum distance of 11 inches behind the steering wheel. The seat shall be securely mounted to the floor of the bus with grade 5 or better bolts and shall be secured with locking nuts or lock washers and nuts.

c. All air brake-equipped school buses may be equipped with an air suspension driver's seat meeting the following additional requirements:

(1) The air control for height adjustment shall be within easy reach of the driver in the seated position.

(2) The seat cushion shall be a minimum of 19½ inches wide, shall be fully contoured for maximum comfort, and shall have a minimum of four adjustment positions to allow changes in seat bottom angle.

(3) The backrest shall include adjustable lumbar support.

(4) The seat shall have a minimum of 7 inches of forward and rearward travel, adjustable with the driver in the seated position. This requirement applies to the seat mechanism. Reduction of this requirement to no less than 4 inches due to barrier placement on 89-passenger capacity buses will be acceptable.

(5) The seat shall have a minimum of 4 inches of up and down travel.

(6) Seat back shall include adjustability of tilt angle.

(7) All adjustments shall be by fingertip controls without the use of tools.

(8) The seat shall comply with all applicable FMVSS.

d. Buses shall be equipped with a Type 2 lap belt/shoulder harness seat belt assembly for the driver. This assembly may be integrated into the driver's seat. The seat belt assembly and anchorage shall meet applicable FMVSS. The design shall also meet the following additional requirements:

(1) The design shall incorporate a fixed female push-button-type latch on the right side at seat level, and a male locking-bar tongue on the left retracting side.

(2) The assembly shall be equipped with a single, dual-sensitive emergency locking retractor (ELR) for the lap and shoulder belt. This system shall be designed to minimize "cinching down" on air sprung and standard seats.

(3) The lap portion of the belt shall be anchored or guided at the seat frame by a metal loop or other such device attached to the right side of the seat to prevent the driver from sliding sideways out of the seat.

(4) There shall be a minimum of 7 inches of adjustment of the "D" loop of the driver's shoulder harness on a nonintegrated style of seat belt assembly.

(5) Shoulder belt tension shall be no greater than is necessary to provide reliable retraction of the belt and removal of excess slack.

(6) The driver's seat belt assembly shall incorporate high-visibility material.

44.3(57) *Seating, passenger.*

a. All seats, component parts, and seat anchorage shall comply with applicable federal requirements as of the date of manufacture.

b. All seats shall have a minimum cushion depth of 15 inches and shall comply with all other requirements of FMVSS 222.

c. In determining the rated seating capacity of the bus, allowable average rump width shall be:

(1) Thirteen inches where a three-three seating plan is used.

(2) Fifteen inches where a three-two seating plan is used.

d. The following knee room requirements shall apply to all school bus bodies:

(1) Knee room shall meet the requirements of FMVSS 222 and shall be measured, on Type A-2, B, C and D school buses, at the center of the transverse line of the seat and at seat cushion height. The distance from the front of a seat back (cushion) to the back surface of the cushion on the preceding seat shall be not less than 24 inches. The seat upholstery may be placed against the seat cushion padding, but without compressing the padding, before the measurement is taken.

(2) On Type A-1 school buses, seat spacing shall be of the manufacturer's standard spacing.

e. All seats shall be forward-facing with seat frames attached to the seat rail with two bolts, washers and nuts or flange-headed nuts. Each seat leg shall be secured to the floor by a minimum of two bolts, washers, and nuts. Flange-headed nuts may be used in lieu of nuts and washers, or seats may be track-mounted in conformance with FMVSS 222. This information shall be on a label permanently affixed to the bus.

f. Jump seats or portable seats are prohibited; however, use of a flip seat at any side emergency door location in conformance with FMVSS 222, including required aisle width to side door, is acceptable. Any flip seat shall be free of sharp projections on the underside of the seat bottom. The underside of the flip-up seat bottoms shall be padded or contoured to reduce the possibility of snagged clothing or injury during use. Flip seats shall be constructed to prevent passenger limbs from becoming entrapped between the seat back and the seat cushion when in an upright position. The seat cushion shall be designed to rise to a vertical position automatically when not occupied.

g. Seats and seat back cushions shall be covered with a material having 42-ounce finished weight, 54-inch width, and finished vinyl coating of 1.06 broken twill or other material with equal tensile strength, tear strength, seam strength, adhesion strength, and resistance to abrasion, cold and flex separation.

h. All fabric seams shall be chain- or lock-stitch sewn with two threads, each equal to or exceeding the tensile strength of "F"-rated nylon thread.

i. Passenger seats shall be constructed with materials that enable them to meet the criteria contained in the School Bus Seat Upholstery Fire Block Test specified in the National School Transportation Specifications and Procedures Manual 2010, Central Missouri State University, Humphreys Suite 201, Warrensburg, Missouri 64093. Fire block material, when used, shall include the covering of seat bottoms.

j. Seat cushions shall contain a positive locking mechanism that requires removal of a security device before the seat may be unlatched.

44.3(58) *Seating, passenger restraints.*

a. Lap belts shall not be installed on passenger seats in large school buses (over 10,000 pounds GVWR) except in conjunction with child safety restraint systems that comply with the requirements of FMVSS 213, Child Restraint Systems.

b. Three-point (3-point) lap shoulder belts may be installed in all buses. If installed, the restraint system shall include a flexible design feature, thus allowing three-two seating on the same 39-inch seat, depending on student size.

44.3(59) *Shock absorbers.* Buses shall be equipped with double-action shock absorbers compatible with manufacturer's rated axle capacity at each wheel location.

44.3(60) *Steps.*

a. The first step at the service door shall be not less than 10 inches and not more than 14 inches from the ground when measured from the top surface of the step to the ground, based on standard chassis specifications, except that on Type D vehicles, the first step at the service door shall be 11 inches to 16 inches from the ground. A step well guard/skid plate shall be installed by the manufacturer on all Type D vehicles.

b. Step risers shall not exceed a height of 10 inches. When plywood is used on a steel floor or step, the riser height may be increased by the thickness of the plywood.

c. Steps shall be enclosed to prevent accumulation of ice and snow.

d. Steps shall not protrude beyond the side body line.

e. A suitable device(s) shall be installed within the service entrance door area to assist passengers during entry or egress from the bus. The device(s) shall be designed so as to prevent injury or fatality to passengers from being dragged by the bus after becoming entangled in the device(s).

44.3(61) *Step treads.*

a. All steps, including floor line platform area, shall be covered with an elastomer floor covering having a minimum overall thickness of 3/16 inch.

b. Grooved design step treads shall be such that grooves run at a 90-degree angle to the long dimension of the step tread. The step covering shall be permanently bonded to a durable backing material that is resistant to corrosion.

c. Step treads shall have a 1½-inch white or yellow nosing as an integral piece without any joint.

d. Step treads shall have abrasion resistance, slip resistance, weathering resistance, and flame resistance as outlined in the National School Transportation Specifications and Procedures Manual 2010, Missouri Safety Center, Central Missouri State University, Humphreys Suite 201, Warrensburg, Missouri 64093.

e. A 3-inch white or yellow rubber step edge at floor level, flush with the floor covering, shall be provided.

44.3(62) *Stirrup steps.*

a. There shall be at least one folding stirrup step or recessed foothold and suitably located handles on each side of the front of the body for easy accessibility for cleaning. Handles on the service door are prohibited.

b. Steps or cutouts are permitted in the front bumper only, in lieu of the stirrup steps, if the windshield and lamps are easily accessible for cleaning from that position.

44.3(63) *Stop signal arm.*

a. The stop signal arm shall be a flat 18-inch octagon exclusive of brackets for mounting. All lamps and lamp components shall comply with the requirements of FMVSS 131.

b. Both surfaces of the sign shall be covered with reflectorized material having a reflective capability equal to or exceeding that of 3M Corporation high-intensity sheeting.

c. The application of the reflective sheeting material shall be in accordance with the sheeting manufacturer's suggested application process. All copy shall be sharply defined and clean cut.

d. The stop arm blade shall be mounted in the area below the driver's window on the left side of the bus.

e. A second stop signal arm may be installed on the left side at or near the left rear corner of the school bus and shall meet the requirements of FMVSS 131.

f. Each stop arm blade shall be automatically extended upon activation of the red warning signal lamp system and remain extended until the red signal lamps are deactivated. In addition, each stop arm blade shall be equipped with two double-faced, 4-inch, alternately flashing red lights. The use of strobe lamps in the stop arm blade is acceptable.

g. A wind guard shall be installed which prevents air currents from circulating behind the blades.

h. The stop arm shall be vacuum-, electric-, or air-operated; and the system must positively hold the sign in extended or retracted position to prevent whipping in the wind.

i. If the air for an air-operated stop arm comes from the regular air brake system, the body manufacturer shall provide the necessary check valve and pressure reduction valve to safeguard the air supply for brake application.

j. The two double-faced, 4-inch flashing lights may be replaced with an LED illuminated, high-visibility display, spelling out the word "STOP" visible to the front and rear. This lighting system shall comply with applicable FMVSS prior to installation.

44.3(64) *Storage compartments.*

a. An enclosed space shall be provided in the driver's compartment for storing manuals and bus driver records. See also subrule 44.3(20).

b. A storage container for tools, tire chains, and tow chains may be located either inside or outside the passenger compartment; but, if inside, it shall have a cover (seat cushion may not serve this purpose) capable of being securely latched and fastened to the floor, convenient to either the service or emergency door.

c. Luggage compartments located within the area comprising the wheelbase of the vehicle are allowed. Compartments shall include a door and a means of holding the door in an open position when the compartment is being loaded or unloaded.

44.3(65) *Suspensions.*

a. The capacity of springs or suspension assemblies shall be commensurate with the chassis manufacturer's GVWR rating.

b. Steel leaf rear springs shall be a progressive rate or multistage design. Front leaf springs shall have a stationary eye at one end and shall be protected by a wrapped leaf in addition to the main leaf. Parabolic or taper-leaf springs are acceptable.

c. Air suspension systems are acceptable. Air bags, hoses, hose routing, and all related hardware shall conform to the chassis manufacturer's recommendations.

44.3(66) *Steering gear.*

a. The steering gear shall be approved by the chassis manufacturer and designed to ensure safe and accurate performance when the vehicle is operated with maximum load and at maximum speed.

b. If external adjustments are required, the steering mechanism shall be accessible.

c. No changes shall be made in the steering apparatus including addition of spinners or knobs which are not approved by the chassis manufacturer.

d. There shall be a clearance of at least 2 inches between the steering wheel and cowl, instrument panel, windshield, or any other surface.

e. Power steering is required and shall be of the integral type with integral valves.

f. The steering system shall be designed to provide a means for lubrication of all wear points, if wear points are not permanently lubricated.

g. Tilting and telescopic steering wheels are acceptable.

44.3(67) *Sun shield.*

a. For Type B, C, and D vehicles, an interior adjustable transparent sun shield not less than 6 inches × 30 inches with a finished edge shall be installed in a position convenient for use by the driver.

b. On all Type A buses, the sun shield shall be the manufacturer's standard.

44.3(68) *Tailpipe.* See subrule 44.3(23).

44.3(69) *Throttle.*

a. The force required to operate the throttle shall not exceed 16 pounds throughout the full range of accelerator pedal travel.

b. A driver-operated, mechanical or electronic variable-speed hand throttle, or a fast idle switch, shall be provided on all Type C and D vehicles.

c. OEM adjustable pedals are acceptable as an option.

44.3(70) *Tires and rims.*

a. Tires and rims of the proper size and tires with a load rating commensurate with the chassis manufacturer's gross vehicle weight rating (GVWR) shall be provided.

b. Tires shall be of tubeless, steel-belted, radial (standard or low-profile) construction.

c. "Bud" type, hub-piloted steel rims are required. Multipiece and "Dayton" rims are prohibited.

d. Dual tires shall be provided on all vehicles listed in rule 281—44.2(285), except Type III vehicles.

e. All tires on a vehicle shall be of the same size, and the load range of the tires shall meet or exceed the GVWR as required by FMVSS 120.

f. Spare tires are not required; however, if specified, the spare tire shall be located outside the passenger compartment. The spare tire may not be attached to any part of the rear portion of the body including the emergency door, bumper or roof. If a tire carrier is required, it shall be suitably mounted in an accessible location outside the passenger compartment.

g. Recapped tires are permissible as replacements on equipment now in operation for use on rear wheels only, providing tires are guaranteed by the seller. Recapped tires are not permissible where single rear wheels are used.

h. Tires, when measured on any two or more adjacent tread grooves, shall have a tread groove pattern depth of at least 4/32 of an inch on the front wheels and 2/32 of an inch on the rear wheels. No measurement shall be made where tire bars, humps, or fillets are located. On Type A-1 and Type A-2 buses with single front and rear wheels, the tread groove pattern depth shall be at least 4/32 of an inch. Where specific measurement points are provided by the tire manufacturer, they shall be utilized in determining tires approved for service. This requirement also applies to buses now in service.

i. Tire pressure equalizing systems for dual rear wheels are acceptable.

j. Traction-assisting devices, including hopper-sanders, tire chains or automatic traction chains, may be installed.

k. Wheel check indicators for lug nuts are allowed.

44.3(71) *Tow hooks, front.* Tow eyes or hooks are required on Type B, C and D buses of 14,501 pounds GVWR or greater. Two tow eyes or hooks shall be installed by the manufacturer so as not to project beyond the front bumper

44.3(72) *Tow hooks, rear.* Two rear tow hooks are required on all school buses. Rear tow hooks shall be attached to the chassis frame and located under the rear bumper so the hook portion is under the body.

44.3(73) *Traction-assisting devices.* Traction-assisting devices including hopper-sanders, tire chains or automatic traction chains may be installed.

44.3(74) *Transmission.*

a. Automatic transmissions shall provide for not less than three forward speeds and one reverse speed. The shift lever, if applicable, shall provide a detent between each gear position when the gear selector quadrant and shift lever are not steering column-mounted.

b. Automatic transmissions incorporating a parking pawl shall have a transmission shifter interlock controlled by the application of the service brake to prohibit accidental engagement of the transmission. All non-parking pawl transmissions shall incorporate a park brake interlock that requires the service brake to be applied to allow release of the parking brake.

44.3(75) *Trash container and holding device.*

a. When a trash container is placed on the school bus, it shall comply with the following:

(1) Meet the requirements of FMVSS 302, Flammability of Interior Materials.

(2) Be no greater than 20-quart capacity.

(3) Be secured by a holding device that is designed to prevent movement and to allow easy removal and replacement.

b. The container shall be placed in an accessible location in the driver's compartment of the school bus subject to Iowa department of education approval. The container shall not obstruct the aisle of the bus, access to safety equipment or passenger use of the service entrance door.

44.3(76) *Turning radius.*

a. A chassis with a wheelbase of 264 inches or less shall have a right and left turning radius of not more than 42½ feet, curb-to-curb measurement.

b. A chassis with a wheelbase of 265 inches or more shall have a right and left turning radius of not more than 44½ feet, curb-to-curb measurement.

44.3(77) *Undercoating.*

a. The entire underside of the bus body, including floor sections, cross member and below floor line side panels, and chassis front fenders shall be coated with rustproofing material for which the material manufacturer has issued to the bus body manufacturer a notarized certification that materials meet or exceed all performance requirements of SAE J1959.

b. Undercoating material shall be applied with suitable airless or conventional spray equipment to the undercoating material manufacturer's recommended film thickness and shall show no evidence of voids in cured film.

c. The undercoating material shall not cover any exhaust components of the chassis.

d. If chassis is built as a separate unit, the chassis manufacturer or its agents shall be responsible for providing undercoating to the chassis areas.

44.3(78) *Vacuum check valve.* A vacuum check valve shall be provided and installed on the chassis by the school bus body manufacturer for connecting vacuum accessory items.

44.3(79) *Vandal lock.*

a. The school bus may be equipped with a vandal locking system for securing the service entrance and emergency door(s).

b. The vandal locking system shall include the following design features:

(1) The entrance door is to be locked by an exterior key with a dead bolt, a remote control (cable) device or an electric device. The system must prevent the door from being accidentally locked by any motion the bus may encounter during its normal operation. This requirement does not apply to Type A vehicles with a left-side driver's door.

(2) When the bus is equipped with a rear-mounted engine, the emergency door and rear emergency exit window are to be locked by an interior slide bolt which shall activate a buzzer when the door or emergency exit window is locked and the ignition of the bus is turned on. The locking mechanism must be capable of being locked or unlocked without the use of a separate key or other similar device.

(3) The engine starting system of the bus shall not operate if the rear or side emergency door or rear emergency exit window over the rear engine compartment is locked from either the inside or outside of the bus.

(4) Hasp-type devices may not be attached to the bus for the purpose of securing any door or window.

44.3(80) *Ventilation.*

a. The body ventilation system on Type A, B, C and D buses shall include one static, nonclosing exhaust vent in the low-pressure area of the roof and one or more combination roof ventilation/emergency escape hatches in accordance with 44.3(18). The ventilation system shall be capable of being controlled and shall have sufficient capacity to maintain a proper quantity of air under operating conditions without the opening of windows except in extremely warm weather.

b. Each combination roof ventilation/emergency escape hatch shall be installed by the school bus body manufacturer or the body manufacturer's approved representative and shall have the following design and installation features:

(1) Multiposition fresh air ventilation.

(2) Release handle(s) permitting operation as an emergency exit(s), accessible inside and outside the vehicle.

(3) An audible warning system which sounds an alarm in the driver's compartment area when the emergency roof hatch is unlatched shall be installed as a design feature by the manufacturer.

(4) When more than one ventilation/emergency roof hatch is required, one shall be installed forward of the intersection of the horizontal and longitudinal midpoints of the bus in a low-pressure area of the roof. The second unit shall be installed on the roof in a location behind the rear axle. When only one ventilation/emergency roof hatch is required, it shall be installed in a low-pressure area of the roof at or near the longitudinal midpoint of the bus.

(5) Ventilation/emergency escape hatches may include static-type nonclosable ventilation.

c. Auxiliary fans shall be installed and shall meet the following requirements:

(1) Two adjustable fans shall be installed on Type B, C and D buses. Fans for left and right sides shall be placed in a location where they can be adjusted for maximum effectiveness and do not obstruct vision to any mirror.

(2) Fans shall be a nominal 6-inch diameter except where noted below.

(3) Fan blades shall be covered with a protective cage. Each fan shall be controlled by a separate switch capable of two-speed operation.

(4) Type A buses shall have at least one fan that has a nominal diameter of at least 4 inches and meets the above requirements.

44.3(81) *Wheelhousings.*

a. The wheelhousing opening shall allow for easy tire removal and service.

b. The wheelhousing shall be attached to the floor sheets in such a manner as to prevent any dust, water or fumes from entering the bus body. Wheelhousings shall be constructed of at least 16-gauge steel or other material capable of withstanding passenger or other expected loads applied internally or externally without deformation.

c. The inside height of the wheelhousing above the floor line shall not exceed 12 inches.

d. The wheelhousing shall provide clearance for installation and use of tire chains on single and dual (if so equipped) power-driving wheels.

e. No part of a raised wheelhousing shall extend into the emergency door opening.

44.3(82) *Windshield and windows.*

a. All glass in windshield, windows, and doors shall be of approved safety glass consistent with American National Standard, Safety Code for Safety Glazing Materials for Glazing Motor Vehicles Operating on Land Highways, ANSI/SAE Z-26.1-1990, mounted so the permanent mark is visible, and of sufficient quality to prevent distortion of view in any direction.

b. Glass in windshields may be heat-absorbing and may contain a shaded band across the top. Location of "fade out" shall be above the upper limit for maximum visibility.

c. Each full side window, other than emergency exits designated to comply with FMVSS 217, shall be split-sash type and shall provide an unobstructed emergency opening of at least 9 inches high, but not more than 13 inches high, and 22 inches wide, obtained by lowering the window. When the driver's window consists of two sections, both sections shall be capable of being moved or opened.

d. Insulated double glass is required in both sections of the left-side driver's window and in the upper glass portion(s) of the service entrance door.

e. Window glass forward of the service door and in the driver's direct line of sight for observing exterior rearview mirrors and traffic shall be of insulated double glass. The door glass in Type A-2 vehicles equipped with a manufacturer's standard van-type, right-side service door may be of the manufacturer's standard design.

f. The school bus body manufacturer may design and install a protective device over the inside, lower window glass of a rear emergency door to protect it from being damaged or broken during normal operation. The protective device shall be securely mounted by the manufacturer, shall be free of projections which might harm passengers, and shall permit visibility through the device to the area outside and to the rear of the bus.

g. Tinted glazing capable of reducing the amount of light passing through a window may be installed consistent with rules established by the Iowa department of public safety relating to automotive window transparency standards, except that the following windows shall be of AS-II clear glass rating:

(1) All glass to the immediate left of the driver.

(2) All glass forward of the driver and service door.

(3) All glass in the service entrance door.

h. The entire windshield area shall be of AS-I rating.

44.3(83) *Windshield washer system.*

a. All buses shall be equipped with electric wet-arm windshield washers which conform to the body manufacturer's recommendation as to type and size for the bus on which they are to be used. The windshield washer system on Type A vehicles may be of the manufacturer's standard design. On Type A-2 vehicles, the windshield washer system shall be of the manufacturer's standards.

b. The washer control(s) shall be located within easy reach of the driver.

44.3(84) *Windshield wiper system.*

a. For Type A vehicles, windshield wipers shall be supplied by the chassis manufacturer and shall be of the manufacturer's standard design.

b. Type B, C and D buses shall be equipped with two positive-action, two-speed or variable-speed electric or air windshield wipers. Windshield wipers shall have an intermittent wiping feature and shall be operated by a single switch.

c. The wipers shall be operated by one or more air or electric motors of sufficient power to operate wipers. If one motor is used, the wipers shall work in tandem to give a full sweep of the windshield.

d. Wiper control(s) shall be located within easy reach of the driver and shall be designed to move the blades from the driver's view when the wiper control is in the "off" position.

e. Windshield wipers shall meet the requirements of FMVSS 104.

44.3(85) *Wiring.*

a. All wiring shall conform to current, applicable SAE-recommended practices.

b. All wiring shall use a standard color or number coding system or a combination of color and number. Each chassis shall be delivered with a wiring diagram that illustrates the wiring of the chassis.

c. The chassis manufacturer of an incomplete vehicle shall install a readily accessible terminal strip or plug on the body side of the cowl, or in an accessible location in the engine compartment of vehicles designed without a cowl, that shall contain the following terminals for the body connections:

(1) Main 100-amp body circuit.

(2) Tail lamps.

(3) Right turn signal.

(4) Left turn signal.

(5) Stop lamps.

(6) Backup lamps.

(7) Instrument panel lights (rheostat controlled by headlamp switch).

d. Circuits.

(1) An appropriate identifying diagram (coded by color or number or both) for electrical circuits shall be provided to the body manufacturer for distribution to the end user.

(2) The headlight system must be wired separately from the body-controlled solenoid.

(3) Wiring shall be arranged in circuits, as required, with each circuit protected by a fuse or circuit breaker or circuit protection device.

(4) A master wiring diagram shall be supplied for each vehicle provided by the body manufacturer. Chassis wiring diagrams, including any changes to wiring made by the body manufacturer, shall also be supplied to the end user.

(5) The following body interconnecting circuits shall be color-coded as noted, and the color of cables shall correspond to SAE J1128:

FUNCTION	COLOR
Left rear directional light	Yellow
Right rear directional light	Dark green
Stoplights	Red
Backup lights	Blue
Taillights	Brown
Ground	White
Ignition feed, primary feed	Black

e. Wiring shall be arranged in at least six regular circuits as follows:

(1) Head, tail, stop (brake) and instrument panel lamps.

(2) Clearance and step well lamps, which shall be actuated when the service door is opened.

(3) Dome lamp.

(4) Ignition and emergency door signal.

(5) Turn signal lamps.

(6) Alternately flashing signal lamps.

f. Any of the above combination circuits may be subdivided into additional independent circuits.

g. Whenever heaters and defrosters are used, at least one additional circuit shall be installed.

h. Whenever possible, all other electrical functions, such as sanders and electric-type windshield wipers, shall be provided with independent and properly protected circuits.

i. Each body circuit shall be coded by number or letter on a diagram of circuits which shall be attached to the body in a readily accessible location.

j. The entire electrical system of the body shall be designed for the same voltage as the chassis on which the body is mounted.

k. All wiring shall have an amperage capacity exceeding the design load by at least 25 percent. All wiring splices are to be made at an accessible location and noted as splices on wiring diagram.

l. A body wiring diagram, of a size which can be easily read, shall be furnished with each bus body or affixed in an area convenient to the electrical accessory control panel.

m. The body power wire shall be attached to a special terminal on the chassis.

n. Each wire passing through a metal opening shall be protected by a grommet.

o. Wires not enclosed within the body shall be fastened securely at intervals of not more than 18 inches. All joints shall be soldered or joined by equally effective connectors, which shall be water-resistant and corrosion-resistant.

[**ARC 9263B**, IAB 12/15/10, effective 1/19/11; **ARC 1489C**, IAB 6/11/14, effective 7/16/14]

281—44.4(285) Construction of vehicles for children with mobility challenges. The following shall apply to vehicles constructed for the transportation of children with mobility challenges of such severity that the children are prohibited from utilizing the regular service door entrance. Vehicles constructed for transporting these children shall meet all FMVSS relating to school bus construction and Iowa school bus construction requirements as described in rules 281—44.1(285) and 281—44.3(285). The following standards shall also apply:

44.4(1) *General requirements.*

a. Certification of these vehicles as multipurpose passenger vehicles due to capacity rating shall not relieve the manufacturer of the responsibility to provide a completed vehicle meeting all FMVSS for school buses as well as rules 281—44.1(285) to 281—44.3(285) relating to the construction of a school bus.

b. Alteration of the interior of the vehicle is permissible if all seats and barriers, component parts, anchorages, wheelchair securement devices, and placement of seats and barriers and wheelchair securement devices comply with federal requirements as of date of manufacture. All equipment must be supplied by the original manufacturer and installed per the original manufacturer's specification. Alteration which would return the vehicle to conventional passenger seating shall include removal of all wheelchair securement devices, removal of the power lift, and rendering the special service door inoperable.

c. Any school bus that is used for the transportation of children who are confined to a wheelchair or other restraining devices which prohibit use of the regular service entrance shall be equipped with a power lift located on the right side of the bus body and forward of the rear wheels on a Type B, C, or D bus. Wheelchair lift placement behind the rear wheels is allowed on Type A buses only. See paragraph 44.4(2)*"f."*

d. The actual rated seating capacity following modification of a vehicle shall be placed at locations indicated in paragraph 44.3(36)*"e."*

e. Ramps are not permitted.

44.4(2) *Specific requirements.*

a. *Aisle.*

(1) Aisles leading from wheelchair placement(s) to the special service door and the service door shall at all times be a minimum of 30 inches wide.

(2) Aisles leading to all the emergency doors from wheelchair placement(s) shall at all times be at least 20 inches in width.

b. Barriers.

(1) Barriers shall comply with and be installed as required by federal standards as of date of manufacture.

(2) A heavy-duty padded barrier or stanchion shall be provided immediately to the rear of the step well opening extending from the side wall of the bus to approximately the aisle to prevent a person from accidentally falling into the step well opening from floor level. A barrier or stanchion as mentioned above shall also be placed directly behind the driver.

(3) The power lift mechanism shall be padded and protected to prevent a child from accidentally getting any part of the child's body caught in the power lift mechanism or special service door at any time.

(4) All crash/restraining barriers shall be the same height as the passenger seating height in the bus.

c. Glazing. Tinted glazing may be installed in all doors, windows, and windshield.

d. Heaters. An additional heater(s) may be installed in the rear portion of the bus on or behind wheel wells.

e. Identification. Buses with wheelchair lifts used for transporting physically handicapped children shall display universal handicapped symbols located on the front and rear of the vehicle below the window line. Emblems shall be white on blue, shall not exceed 12 × 12 inches in size, and may be reflectorized.

f. Power lift.

(1) The lifting mechanism shall be able to lift a minimum payload of 800 pounds.

(2) The power lift shall be located on the right side of the body and in no way be attached to the exterior sides of the bus, but should be confined within the perimeter of the school bus body when not extended. The power lift shall be located forward of the rear wheels of the vehicle on Type B, C and D buses. Wheelchair lift placement behind the rear wheels is allowed on Type A buses only.

(3) When the platform is in the fully "up" position, it shall be locked in position mechanically by means other than a support or lug in the door.

(4) All lift controls shall be portable and conveniently located on the inside of the bus near the special service door opening. Controls shall be easily operable from inside or outside the bus by either a platform standee or person seated in a wheelchair when the lift is in any position. A master cut-off switch controlling on/off power to the lift shall be located in the driver's compartment. There shall be a means of preventing the lift platform from falling while in operation due to a power failure.

(5) Power lifts shall be equipped so they may be manually raised or lowered in the event of power failure of the power lift mechanism.

(6) The platform shall accommodate a wheelchair which is 30 inches wide. The platform shall be not less than 44 inches long, including guard panels or rails.

(7) The power lift platform shall be covered with skid-resistant material or be designed to prevent slipping.

(8) The lift platform shall be constructed to permit vision through that portion of the platform covering the window of the special service door when the platform is in the "up" position.

(9) All edges of the platform shall be designed to restrain a wheelchair and to prevent the operator's feet from being entangled during the raising and lowering process.

(10) The platform shall be fitted on both sides with full width shields which extend above the floor line of the lift platform.

(11) An operating safety barrier shall be affixed to the outer edge (curb end) of the platform that will prohibit the wheelchair from rolling off the platform when the lift is in any position other than fully extended to ground level. The barrier shall not be capable of being manually operated.

(12) A self-adjusting, skid-resistant plate shall be installed on the outer edge of the platform to minimize the incline from the lift platform to the ground level. This plate, if so designed, may also suffice as the restraining device described in subparagraph (11) above.

(13) The power lift shall be designed so the lift will not operate unless the special service door(s) is opened and the lift platform is in the "down" or horizontal position.

(14) The lift travel shall allow the lift platform to rest securely on the ground.

(15) A circuit breaker, fuse, or other electrical protection device shall be installed between the power source and the lift motor if electrical power is used.

(16) When hydraulic pressure is used in the lifting process, the system shall be equipped with adjustable limit switches or bypass valves to prevent excessive pressure from building in the hydraulic system when the platform reaches the full "up" position or full "down" position.

(17) All exposed parts of the power lift which are in direct line with the forward or rearward travel of a wheelchair student or attendant shall be padded with energy-absorbing material.

g. *Ramps.* Ramps are not permitted.

h. *Regular service entrance.*

(1) An additional fold-out or slide-out step may be provided which will provide for the step level to be no more than 6 inches from the ground level to assist persons with handicapping conditions that prohibit the use of the standard entrance step. This step, when stored and not in use, shall not impede or in any way block the normal use of the entrance.

(2) On power lift-equipped vehicles, service entrance steps shall be the full width of the step well, excluding the thickness of the doors in the open position.

(3) In addition to the standard handrail required in all buses, an additional handrail may be provided on all specially equipped school buses. If so equipped, this rail shall be located on the opposite side of the entrance door from the required rail and shall meet the same requirements for handrails.

i. *Seating and seating arrangements.*

(1) All seat spacing, seats, and related components shall comply with applicable federal standards as of date of manufacture.

(2) All seats shall be forward facing. Side-facing seats are prohibited.

(3) Seat frames may be equipped by the school bus body manufacturer with rings or other devices to which passenger restraint systems may be attached.

j. *Special light.* Light(s) shall be placed inside the bus to sufficiently illuminate the lift area and shall be activated from the door area.

k. *Special service opening.*

(1) There shall be an enclosed service opening located on the right side (curb side) of the body forward of the rear wheels to accommodate a wheelchair lift on Type B, C and D buses. This service opening may be placed on the right side (curb side) of the body behind the rear wheels on Type A buses only to accommodate a wheelchair lift in that location.

(2) The opening shall be at least 52 inches high and 40 inches wide and with doors open shall be of sufficient width to allow for the installation of various power lifts and related accessories as well as a lifting platform at least 32 inches wide.

(3) The opening shall be positioned far enough to the rear of the regular service door opening to prevent interference of the special service door(s) opening with the regular service doors.

(4) A drip molding shall be installed above the opening to effectively divert water from the entrance.

(5) Doorposts, headers, and all floor sections around this special opening shall be reinforced to provide strength and support equivalent to adjacent side wall and floor construction of an unaltered model.

(6) A header pad at least 3 inches wide, extending the width of special service door, shall be placed above the opening on the inside of the bus.

l. *Special service door(s).*

(1) All doors shall open outwardly.

(2) All doors shall have positive fastening devices to hold doors in the open position.

(3) All doors shall be equipped with heavy-duty hinges and shall be hinged to the side of the bus.

(4) All doors shall be weather sealed; and on buses with double doors, each door shall be of the same size and constructed so a flange on the forward door overlaps the edge of the rear door when closed.

(5) If optional power doors are installed, the design shall permit release of the doors for opening and closing by the attendant from the platform inside the bus.

(6) When manually operated dual doors are provided, the rear door shall have at least a one-point fastening device to the header. The forward-mounted door shall have at least three-point fastening devices: One shall be to the header, one shall be to the floor line of the body, and the other shall be into the rear door. These locking devices shall afford maximum safety when the doors are in the closed position. The door and hinge mechanism shall be of a strength that will provide the same type of use as that of a standard entrance door.

(7) If the door is made of one-piece construction, the door shall be equipped with a slidebar, cam-operated locking device.

(8) Each door shall have installed a safety glass window, set in a waterproof manner, and aligned with the lower line of adjacent sash and as nearly as practical to the same size as other bus windows.

(9) Door materials, panels, and structural strength shall be equivalent to the conventional service and emergency doors. Color, rub rail extensions, lettering, and other exterior features shall match adjacent sections of the body.

(10) The door(s) shall be equipped with a device(s) that will actuate a flashing visible signal located in the driver's compartment when the door(s) is not securely closed. (An audible signal is not permitted.)

m. *Special student restraining devices.*

(1) Each wheelchair station shall be equipped with a lap and torso restraint system that meets applicable FMVSS.

(2) Special restraining devices such as shoulder harnesses, lap belts, and chest restraint systems may be installed to the seats providing that the devices do not require the alteration in any form of the school bus seat, seat cushion, framework, or related seat components. These restraints must be for the sole purpose of restraining passengers.

(3) All child safety restraint systems shall comply with the requirements of FMVSS 213, Child Restraint Systems.

n. *Wheelchair securement systems.*

(1) Securement systems for wheelchairs shall meet or exceed applicable FMVSS.

(2) All wheelchair securement systems or devices shall be placed in the vehicle so that, when secured, both wheelchair and occupant are facing toward the front of the vehicle. Fastening devices resulting in a side-facing wheelchair and occupant are not permissible.

(3) Straps or seat-belt devices running through the wheels of the wheelchair or around the student seated in the wheelchair for the purpose of securing the wheelchair to the floor are not acceptable.

(4) The wheelchair securement system(s) shall be located in a school bus so that when a wheelchair is not secured in place the floor attachment system shall not extend above the floor level more than ½ inch.

[**ARC 1489C**, IAB 6/11/14, effective 7/16/14]

281—44.5(285) Type III vehicles.

44.5(1) *General information.* These vehicles may be used as a school bus in accordance with the following general requirements:

a. The vehicle shall be an original equipment manufacturer's (OEM) product and manufactured as a family-type or multipurpose passenger vehicle (MPV).

(1) Vehicles classified as pickups are not allowed for use as student transportation.

(2) Vehicles used exclusively for driver's education are exempt from these requirements.

b. The manufacturer's rated capacity of this vehicle, which shall be determined only by the original equipment manufacturer (OEM) on the date of manufacture, shall not exceed nine persons including the driver. The capacity rating may not be changed or modified except by the original equipment manufacturer. Secondary stage or vehicle conversion manufacturers shall not establish vehicle capacity.

c. Alteration of this vehicle, following manufacture by the OEM, is prohibited. This includes, but is not limited to, the addition or removal of seats, ramps, wheelchair securement devices and power lifts.

EXCEPTION: OEM options or other manufacturer's accessories not in violation of these standards may be installed.

d. The vehicle shall not carry more passengers than there are seat belts as installed by the manufacturer.

e. The vehicle shall not be painted the color known as national school bus glossy yellow.

f. The vehicle shall not be equipped with a stop arm or flashing warning signal lamps.

g. This vehicle must load and unload students off the traveled portion of the roadway.

44.5(2) *Special equipment.*

a. Interior liner. An interior liner that covers all exposed ceiling girders, sidewall posts, or other structural projections must be provided and installed by the manufacturer.

b. The vehicle, while transporting students to and from school, shall display a sign, visible to the rear, with the words "SCHOOL BUS." The sign shall be national school bus glossy yellow with black letters 6 inches high. The sign shall be a type that can be removed, dismounted, or covered when the vehicle is not transporting pupils to and from school.

c. A sign with the words "THIS VEHICLE STOPS AT ALL RAILROAD CROSSINGS," visible to the rear, may be used where appropriate and not in conflict with current statutes. If used, the words shall be black letters on a yellow background. The sign shall be of a type that can be dismounted, turned down, or covered when the vehicle is not transporting pupils to and from school.

d. Special brake lamps. The vehicle may be equipped with two roof-mounted lights not greater than 4 inches in diameter and positioned horizontally on the roof at least 36 inches apart. The lights shall be connected to the brake lamp circuit of the vehicle's electrical system and shall operate only when the brakes are applied. When lit, the lamps shall be red and shall be visible only to the rear.

e. First-aid kit. The vehicle shall carry a minimum ten-unit first-aid kit. See 44.3(22)"d"(2).

f. Fire extinguisher. The vehicle shall carry a dry chemical fire extinguisher of at least 2½-pound capacity with a rating of 2A-10BC. The extinguisher shall be equipped with a calibrated or marked gauge. Plastic discharge heads and related parts are not acceptable.

g. Each vehicle shall be equipped with a durable webbing cutter having a full-width handgrip and a protected, replaceable or noncorrodible blade. This device shall be mounted in a location accessible to the seated driver in an easily detachable manner.

h. Each vehicle shall be equipped with a body fluid cleanup kit.

i. Each vehicle shall be equipped with a backup alarm beeper capable of a minimum of 112 db. NOTE: This is effective for 2007 model year vehicles and newer.

j. Trailer hitches are allowed on Type III vehicles in accordance with the manufacturer's rated towing capacity. Students are not allowed to be transported in the vehicle when the vehicle is being used to tow.

44.5(3) *Applicability of standards.* The above standards apply to all vehicles (except as noted in 44.5(2)*"i"*) of this type and those currently in service used to transport students to and from school.

[**ARC 1489C**, IAB 6/11/14, effective 7/16/14]

281—44.6(285) Repair, replacement of school bus body and chassis components following original equipment manufacture.

44.6(1) *Body and chassis repair following an accident.*

a. A school bus that has been involved in an accident in which there is damage to the body or chassis components may be repaired to the extent that such repair is possible and that the damaged component can be returned to the original equipment manufacturer's specification and function.

b. The individual or company making the repairs shall certify to the vehicle's owner that all repairs have been made in accordance with the original vehicle or component manufacturer's recommendations using original equipment manufacturer's materials and parts, or their guaranteed equal.

c. Repairs shall not cause the vehicle to no longer comply with any FMVSS in effect and applicable at the time the vehicle or component was manufactured.

44.6(2) *New technology and equipment approval procedure.* It is the intent of these rules to accommodate new technologies and equipment which will better facilitate the transportation of students

to and from school and related activities. A new technology, piece of equipment or component that meets the following criteria may be adopted under the following conditions pending formal rule adoption:

a. The technology, equipment or component shall not compromise the effectiveness or integrity of any major safety system, unless it completely replaces the system.

b. It shall not diminish the safe environment of the interior of the bus.

c. It shall not create additional risk to students who are boarding or exiting the bus or are in or near the school bus loading zone.

d. It shall not create undue additional activity or responsibility for the driver.

e. It shall not generally decrease the safety or efficiency of the bus.

f. It shall generally provide for a safer or more pleasant experience for the occupants and pedestrians in the vicinity of the bus or generally assist the driver or make the driver's many tasks easier to perform.

g. A pilot test for the purpose of evaluating the performance of the new technology, product or vehicle component may be conducted at the direction of the school transportation consultant with the approval of the director of the department of education. The pilot test shall include a minimum of five, but not more than ten, applications of the technology, product or component at locations and over a period of time to be mutually agreed upon by the department and the manufacturer of the product.

h. The cost of the technology, product or vehicle component and its installation shall be the responsibility of the manufacturer unless other arrangements are made prior to testing or evaluation.

i. An evaluation of the product's performance shall be conducted by department staff, and if the product is determined to meet the criteria listed in paragraphs 44.6(2)*"a"* to *"f,"* measures shall be taken as soon as practicable to formally approve the product.

j. A technology, product or component not recommended for approval by the department shall immediately be removed from vehicles upon which pilot tests were being conducted; and its use shall be discontinued by schools or individuals serving as pilot test sites, upon receipt of written notice from the department of education.

[**ARC 1489C**, IAB 6/11/14, effective 7/16/14]

These rules are intended to implement Iowa Code sections 285.8 and 321.373.

APPENDIX:

National Highway Traffic Safety Administration
Federal Motor Vehicle Safety Standards
for School Buses and Transit Buses

FMVSS No.	Title of Standard	Transit Buses	School Buses under 10,000# GVWR	School Buses over 10,000# GVWR
101	Controls and Displays	x	x	x
102	Transmission Shift Lever Sequence, Starter Interlock, and Transmission Braking Effect	x	x	x
103	Windshield Defrosting and Defogging Systems	x	x	x
104	Windshield Wiping and Washing Systems	x	x	x
105	Hydraulic Brake Systems	x	x	x
106	Brake Hoses	x	x	x
108	Lamps, Reflective Devices, and Associated Equipment	x	x	x
111	Rearview Mirrors	x	x	x
113	Hood Latch System	x	x	x
116	Motor Vehicle Brake Fluids	x	x	x
119	New Pneumatic Tires for Vehicles Other Than Passenger Cars	x	x	x
120	Tire Selection and Rims for Motor Vehicles Other Than Passenger Cars	x	x	x
121	Air Brake Systems	x	x	x
124	Accelerator Control Systems	x	x	x
131	School Bus Pedestrian Safety Devices		x	x
201	Occupant Protection in Interior Impact		x	
202	Head Restraints		x	
203	Impact Protection for the Driver from the Steering Control System		x	
204	Steering Control Rearward Displacement		x	
205	Glazing Materials	x	x	x
207	Seating Systems	x	x	x
208	Occupant Crash Protection	x	x	x
209	Seat Belt Assemblies	x	x	x
210	Seat Belt Assembly Anchorages	x	x	x
212	Windshield Mounting		x	
213	Child Restraint Systems		x	x
214	Side Impact Protection		x	
217	Bus Emergency Exits and Window Retention and Release	x	x	x
219	Windshield Zone Intrusion		x	
220	School Bus Rollover Protection		x	x
221	School Bus Body Joint Strength		x	x
222	School Bus Passenger Seating and Crash Protection		x	x
225	Child Restraint Anchorage Systems		x	

FMVSS 105, 106, 121 Hydraulic Brake Systems, Brake Hoses, Air Brake Systems

Subpart C—Brakes

§393.40 Required brake systems.

(a) Each commercial motor vehicle must have brakes adequate to stop and hold the vehicle or combination of motor vehicles. Each commercial motor vehicle must meet the applicable service, parking, and emergency brake system requirements provided in this section.

(b) **Service brakes.** (1) **Hydraulic brake systems.** Motor vehicles equipped with hydraulic brake systems and manufactured on or after September 2, 1983, must, at a minimum, have a service brake system that meets the requirements of FMVSS No. 105 in effect on the date of manufacture. Motor vehicles which were not subject to FMVSS No. 105 on the date of manufacture must have a service brake system that meets the applicable requirements of §§393.42, 393.48, 393.49, 393.51, and 393.52 of this subpart.

(b)(2) **Air brake systems.** Buses, trucks and truck-tractors equipped with air brake systems and manufactured on or after March 1, 1975, and trailers manufactured on or after January 1, 1975, must, at a minimum, have a service brake system that meets the requirements of FMVSS No. 121 in effect on the date of manufacture. Motor vehicles which were not subject to FMVSS No. 121 on the date of manufacture must have a service brake system that meets the applicable requirements of §§393.42, 393.48, 393.49, 393.51, and 393.52 of this subpart.

(b)(3) **Vacuum brake systems.** Motor vehicles equipped with vacuum brake systems must have a service brake system that meets the applicable requirements of §§393.42, 393.48, 393.49, 393.51, and 393.52 of this subpart.

(b)(4) **Electric brake systems.** Motor vehicles equipped with electric brake systems must have a service brake system that meets the applicable requirements of §§393.42, 393.48, 393.49, 393.51, and 393.52 of this subpart.

(c) **Parking brakes.** Each commercial motor vehicle must be equipped with a parking brake system that meets the applicable requirements of §393.41.

(d) **Emergency brakes—partial failure of service brakes.**

(d)(1) **Hydraulic brake systems.** Motor vehicles manufactured on or after September 2, 1983, and equipped with a split service brake system must, at a minimum, meet the partial failure requirements of FMVSS No. 105 in effect on the date of manufacture.

(d)(2) **Air brake systems.** Buses, trucks and truck tractors manufactured on or after March 1, 1975, and trailers manufactured on or after January 1, 1975, must be equipped with an emergency brake system which, at a minimum, meets the requirements of FMVSS No. 121 in effect on the date of manufacture.

(d)(3) **Vehicles not subject to FMVSS Nos. 105 and 121 on the date of manufacture.** Buses, trucks and truck tractors not subject to FMVSS Nos. 105 or 121 on the date of manufacture must meet the requirements of §393.40(e). Trailers not subject to FMVSS No. 121 at the time of manufacture must meet the requirements of §393.43.

(e) **Emergency brakes, vehicles manufactured on or after July 1, 1973.** (1) A bus, truck, truck tractor, or a combination of motor vehicles manufactured on or after July 1, 1973, and not covered under paragraphs (d)(1) or (d)(2) of this section, must have an emergency brake system which consists of emergency features of the service brake system or an emergency system separate from the service brake system. The emergency brake system must meet the applicable requirements of §§393.43 and 393.52.

(e)(2) A control by which the driver applies the emergency brake system must be located so that the driver can operate it from the normal seating position while restrained by any seat belts with which the vehicle is equipped. The emergency brake control may be combined with either the service brake control or the parking brake control. However, all three controls may not be combined.

(f) **Interconnected systems.** (1) If the brake systems required by §393.40(a) are interconnected in any way, they must be designed, constructed, and maintained so that in the event of a failure of any part of the operating mechanism of one or more of the systems (except the service brake actuation pedal or valve), the motor vehicle will have operative brakes and, for vehicles manufactured on or after July 1, 1973, be capable of meeting the requirements of §393.52(b).

(f)(2) A motor vehicle to which the requirements of FMVSS No. 105 (S5.1.2), dealing with partial failure of the service brake, applied at the time of manufacture meets the requirements of §393.40(f)(1) if the motor vehicle is maintained in conformity with FMVSS No. 105 and the motor vehicle is capable of meeting the requirements of §393.52(b), except in the case of a structural failure of the brake master cylinder body.

(f)(3) A bus is considered to meet the requirements of §393.40(f)(1) if it meets the requirements of §393.44 and §393.52(b).

§393.51 Warning signals, air pressure and vacuum gauges.

(a) **General rule.** Every bus, truck and truck tractor, except as provided in paragraph (f), must be equipped with a signal that provides a warning to the driver when a failure occurs in the vehicle's service brake system. The warning signal must meet the applicable requirements of paragraphs (b), (c), (d) or (e) of this section.

(b) **Hydraulic brakes.** Vehicles manufactured on or after September 1, 1975, must meet the brake system indicator lamp requirements of FMVSS No. 571.105 (S5.3) applicable to the vehicle on the date of manufacture. Vehicles manufactured on or after July 1, 1973, but before September 1, 1975, or to which FMVSS No. 571.105 was not applicable on the date of manufacture, must have a warning signal which operates before or upon application of the brakes in the event of a hydraulic-type complete failure of a partial system. The signal must be either visible within the driver's forward field of view or audible. The signal must be continuous. (Note: FMVSS No. 105 was applicable to trucks and buses from September 1, 1975, to October 12, 1976, and from September 1, 1983, to the present. FMVSS No. 105 was not applicable to trucks and buses manufactured between October 12, 1976, and September 1, 1983. Motor carriers have the option of equipping those vehicles to meet either the indicator lamp requirements of FMVSS No. 105, or the indicator lamp requirements specified in this paragraph for vehicles which were not subject to FMVSS No. 105 on the date of manufacture.)

(c) **Air brakes.** A commercial motor vehicle (regardless of the date of manufacture) equipped with service brakes activated by compressed air (air brakes) or a commercial motor vehicle towing a vehicle with service brakes activated by compressed air (air brakes) must be equipped with a pressure gauge and a warning signal. Trucks, truck tractors, and buses manufactured on or after March 1, 1975, must, at a minimum, have a pressure gauge and a warning signal which meets the requirements of FMVSS No. 121 (S5.1.4 for the pressure gauge and S5.1.5 for the warning signal) applicable to the vehicle on the date of manufacture of the vehicle. Power units to which FMVSS No. 571.121 was not applicable on the date of manufacture of the vehicle must be equipped with:

(c)(1) A pressure gauge, visible to a person seated in the normal driving position, which indicates the air pressure (in kilopascals (kPa) or pounds per square inch (psi)) available for braking; and

(c)(2) A warning signal that is audible or visible to a person in the normal driving position and provides a continuous warning to the driver whenever the air pressure in the service reservoir system is at 379 kPa (55 psi) and below, or one-half of the compressor governor cutout pressure, whichever is less.

(d) **Vacuum brakes.** A commercial motor vehicle (regardless of the date it was manufactured) having service brakes activated by vacuum or a vehicle towing a vehicle having service brakes activated by vacuum must be equipped with:

(d)(1) A vacuum gauge, visible to a person seated in the normal driving position, which indicates the vacuum (in millimeters or inches of mercury) available for braking; and

(d)(2) A warning signal that is audible or visible to a person in the normal driving position and provides a continuous warning to the driver whenever the vacuum in the vehicle's supply reservoir is less than 203 mm (8 inches) of mercury.

(e) **Hydraulic brakes applied or assisted by air or vacuum.** Each vehicle equipped with hydraulically activated service brakes which are applied or assisted by compressed air or vacuum, and to which FMVSS No. 105 was not applicable on the date of manufacture, must be equipped with a warning signal that conforms to paragraph (b) of this section for the hydraulic portion of the system; paragraph (c) of this section for the air assist/air applied portion; or paragraph (d) of this section for the vacuum assist/vacuum applied portion. This paragraph shall not be construed as requiring air pressure gauges or vacuum gauges, only warning signals.

(f) **Exceptions.** The rules in paragraphs (c), (d) and (e) of this section do not apply to property carrying commercial motor vehicles which have less than three axles and (1) were manufactured before July 1, 1973, and (2) have a manufacturer's gross vehicle weight rating less than 4,536 kg (10,001 pounds).

§393.55 Antilock brake systems.

(a) **Hydraulic brake systems.** Each truck and bus manufactured on or after March 1, 1999 (except trucks and buses engaged in driveaway-towaway operations), and equipped with a hydraulic brake system, shall be equipped with an antilock brake system that meets the requirements of Federal Motor Vehicle Safety Standard (FMVSS) No. 105 (49 CFR 571.105, S5.5).

(b) **ABS malfunction indicators for hydraulic braked vehicles.** Each hydraulic braked vehicle subject to the requirements of paragraph (a) of this section shall be equipped with an ABS malfunction indicator system that meets the requirements of FMVSS No. 105 (49 CFR 571.105, S5.3).

(c) **Air brake systems.** (1) Each truck tractor manufactured on or after March 1, 1997 (except truck tractors engaged in driveaway-towaway operations), shall be equipped with an antilock brake system that meets the requirements of FMVSS No. 121 (49 CFR 571.121, S5.1.6.1(b)).

(c)(2) Each air braked commercial motor vehicle other than a truck tractor, manufactured on or after March 1, 1998 (except commercial motor vehicles engaged in driveaway-towaway operations), shall be equipped with an antilock brake system that meets the requirements of FMVSS No. 121 (49 CFR 571.121, S5.1.6.1(a) for trucks and buses, S5.2.3 for semitrailers, converter dollies and full trailers).

(d) **ABS malfunction circuits and signals for air braked vehicles.** (1) Each truck tractor manufactured on or after March 1, 1997, and each single-unit air braked vehicle manufactured on or after March 1, 1998, subject to the requirements of paragraph (c) of this section, shall be equipped with an electrical circuit that is capable of signaling a malfunction that affects the generation or transmission of response or control signals to the vehicle's antilock brake system (49 CFR 571.121, S5.1.6.2(a)).

(d)(2) Each truck tractor manufactured on or after March 1, 2001, and each single-unit vehicle that is equipped to tow another air-braked vehicle, subject to the requirements of paragraph (c) of this section, shall be equipped with an electrical circuit that is capable of transmitting a malfunction signal from the antilock brake system(s) on the towed vehicle(s) to the trailer ABS malfunction lamp in the cab of the towing vehicle, and shall have the means for connection of the electrical circuit to the towed vehicle. The ABS malfunction circuit and signal shall meet the requirements of FMVSS No. 121 (49 CFR 571.121, S5.1.6.2(b)).

(d)(3) Each semitrailer, trailer converter dolly, and full trailer manufactured on or after March 1, 2001, and subject to the requirements of paragraph (c)(2) of this section, shall be equipped with an electrical circuit that is capable of signaling a malfunction in the trailer's antilock brake system, and shall have the means for connection of this ABS malfunction circuit to the towing vehicle. In addition, each trailer manufactured on or after March 1, 2001, subject to the requirements of paragraph (c)(2) of this section, that is designed to tow another air-brake equipped trailer shall be capable of transmitting a malfunction signal from the antilock brake system(s) of the trailer(s) it tows to the vehicle in front of the trailer. The ABS malfunction circuit and signal shall meet the requirements of FMVSS No. 121 (49 CFR 571.121, S5.2.3.2).

(e) **Exterior ABS malfunction indicator lamps for trailers.** Each trailer (including a trailer converter dolly) manufactured on or after March 1, 1998, and before March 1, 2009, and subject to the requirements of paragraph (c)(2) of this section, shall be equipped with an ABS malfunction indicator lamp which meets the requirements of FMVSS No. 121 (49 CFR 571.121, S5.2.3.3).

§393.41 Parking brake system.

(a) **Hydraulic-braked vehicles manufactured on or after September 2, 1983**. Each truck and bus (other than a school bus) with a GVWR of 4,536 kg (10,000 pounds) or less which is subject to this part and school buses with a GVWR greater than 4,536 kg (10,000 pounds) shall be equipped with a parking brake system as required by FMVSS No. 571.105 (S5.2) in effect at the time of manufacture. The parking brake shall be capable of holding the vehicle or combination of vehicles stationary under any condition of loading in which it is found on a public road (free of ice and snow). Hydraulic-braked

vehicles which were not subject to the parking brake requirements of FMVSS No. 571.105 (S5.2) must be equipped with a parking brake system that meets the requirements of paragraph (c) of this section.

(b) **Air-braked power units manufactured on or after March 1, 1975, and air-braked trailers manufactured on or after January 1, 1975.** Each air-braked bus, truck and truck tractor manufactured on and after March 1, 1975, and each air-braked trailer except an agricultural commodity trailer, converter dolly, heavy hauler trailer or pulpwood trailer, shall be equipped with a parking brake system as required by FMVSS No. 121 (S5.6) in effect at the time of manufacture. The parking brake shall be capable of holding the vehicle or combination of vehicles stationary under any condition of loading in which it is found on a public road (free of ice and snow). An agricultural commodity trailer, heavy hauler or pulpwood trailer shall carry sufficient chocking blocks to prevent movement when parked.

(c) **Vehicles not subject to FMVSS Nos. 105 and 121 on the date of manufacture.** (1) Each singly driven motor vehicle not subject to parking brake requirements of FMVSS Nos. 105 or 121 at the time of manufacturer, and every combination of motor vehicles must be equipped with a parking brake system adequate to hold the vehicle or combination on any grade on which it is operated, under any condition of loading in which it is found on a public road (free of ice and snow).

(c)(2) The parking brake system shall, at all times, be capable of being applied by either the driver's muscular effort or by spring action. If other energy is used to apply the parking brake, there must be an accumulation of that energy isolated from any common source and used exclusively for the operation of the parking brake.

Exception: This paragraph shall not be applicable to air-applied, mechanically-held parking brake systems which meet the parking brake requirements of FMVSS No. 121 (S5.6).

(c)(3) The parking brake system shall be held in the applied position by energy other than fluid pressure, air pressure, or electric energy. The parking brake system shall not be capable of being released unless adequate energy is available to immediately reapply the parking brake with the required effectiveness.

§393.45 Brake tubing and hoses; hose assemblies and end fittings.

(a) **General construction requirements for tubing and hoses, assemblies, and end fittings.** All brake tubing and hoses, brake hose assemblies, and brake hose end fittings must meet the applicable requirements of FMVSS No. 106 (49 CFR 571.106).

(b) **Brake tubing and hose installation.** Brake tubing and hose must:

(b)(1) Be long and flexible enough to accommodate without damage all normal motions of the parts to which it is attached;

(b)(2) Be secured against chaffing, kinking, or other mechanical damage; and

(b)(3) Be installed in a manner that prevents it from contacting the vehicle's exhaust system or any other source of high temperatures.

(c) **Nonmetallic brake tubing.** Coiled nonmetallic brake tubing may be used for connections between towed and towing motor vehicles or between the frame of a towed vehicle and the unsprung subframe of an adjustable axle of the motor vehicle if:

(c)(1) The coiled tubing has a straight segment (pigtail) at each end that is at least 51 mm (2 inches) in length and is encased in a spring guard or similar device which prevents the tubing from kinking at the fitting at which it is attached to the vehicle; and

(c)(2) The spring guard or similar device has at least 51 mm (2 inches) of closed coils or similar surface at its interface with the fitting and extends at least 38 mm (1½ inches) into the coiled segment of the tubing from its straight segment.

(d) **Brake tubing and hose connections.** All connections for air, vacuum, or hydraulic braking systems shall be installed so as to ensure an attachment free of leaks, constrictions or other conditions which would adversely affect the performance of the brake system.

§393.50 Reservoirs required.

(a) **Reservoir capacity for air-braked power units manufactured on or after March 1, 1975, and air-braked trailers manufactured on or after January 1, 1975.** Buses, trucks, and truck-tractors manufactured on or after March 1, 1975, and air-braked trailers manufactured on or after January 1, 1975, must meet the reservoir requirements of FMVSS No. 121, S5.1.2, in effect on the date of manufacture.

(b) **Reservoir capacity for air-braked vehicles not subject to FMVSS No. 121 on the date of manufacture and all vacuum braked vehicles.** Each motor vehicle using air or vacuum braking must have either reserve capacity, or a reservoir, that would enable the driver to make a full service brake application with the engine stopped without depleting the air pressure or vacuum below 70 percent of that indicated by the air or vacuum gauge immediately before the brake application is made. For the purposes of this paragraph, a full service brake application means depressing the brake pedal or treadle valve to the limit of its travel.

(c) **Safeguarding of air and vacuum.** Each service reservoir system on a motor vehicle shall be protected against a loss of air pressure or vacuum due to a failure or leakage in the system between the service reservoir and the source of air pressure or vacuum, by check valves or equivalent devices whose proper functioning can be checked without disconnecting any air or vacuum line, or fitting.

(d) **Drain valves for air braked vehicles.** Each reservoir must have a condensate drain valve that can be manually operated. Automatic condensate drain valves may be used provided (1) they may be operated manually, or (2) a manual means of draining the reservoirs is retained.

FMVSS 301 Fuel System Integrity

§393.67 Liquid fuel tanks.

(a) **Application of the rules in this section.** The rules in this section apply to tanks containing or supplying fuel for the operation of commercial motor vehicles or for the operation of auxiliary equipment installed on, or used in connection with commercial motor vehicles.

(a)(1) A liquid fuel tank manufactured on or after January 1, 1973, and a side mounted gasoline tank must conform to all the rules in this section.

(a)(2) A diesel fuel tank manufactured before January 1, 1973, and mounted on a bus must conform to the rules in paragraphs (c)(7)(iii) and (d)(2) of this section.

(a)(3) A diesel fuel tank manufactured before January 1, 1973, and mounted on a vehicle other than bus must conform to the rules in paragraph (c)(7)(iii) of this section.

(a)(4) A gasoline tank, other than a side mounted gasoline tank, manufactured before January 1, 1973, and mounted on a bus must conform to the rules in paragraphs (c)(1) through (10) and (d)(2) of this section.

(a)(5) A gasoline tank, other than a side mounted gasoline tank, manufactured before January 1, 1973, and mounted on a vehicle other than a bus must conform to the rules in paragraphs (c)(1) through (10), inclusive, of this section.

(a)(6) **Private motor carrier of passengers.** Motor carriers engaged in the private transportation of passengers may continue to operate a commercial motor vehicle which was not subject to this section or 49 CFR §571.301 at the time of its manufacture, provided the fuel tank of such vehicle is maintained to the original manufacturer's standards.

(a)(7) Motor vehicles that meet the fuel system integrity requirements of 49 CFR 571.301 are exempt from the requirements of this subpart, as they apply to the vehicle's fueling system.

(b) **Definitions.** As used in this section:

(b)(1) The term "liquid fuel tank" means a fuel tank designed to contain a fuel that is liquid at normal atmospheric pressures and temperatures.

(b)(2) A "side-mounted" fuel tank is a liquid fuel tank which:

(b)(2)(i) If mounted on a truck tractor, extends outboard of the vehicle frame and outside of the plan view outline of the cab; or

(b)(2)(ii) If mounted on a truck, extends outboard of a line parallel to the longitudinal centerline of the truck and tangent to the outboard side of a front tire in a straight ahead position. In determining whether a fuel tank on a truck or truck tractor is side mounted, the fill pipe is not considered a part of the tank.

(c) **Construction of liquid fuel tanks.**

(c)(1) **Joints.** Joints of a fuel tank body must be closed by arc, gas, seam, or spot welding, by brazing, by silver soldering, or by techniques which provide heat resistance and mechanical securement at least

equal to those specifically named. Joints must not be closed solely by crimping or by soldering with a lead based or other soft solder.

(c)(2) **Fittings.** The fuel tank body must have flanges or spuds suitable for the installation of all fittings.

(c)(3) **Threads.** The threads of all fittings must be Dryseal American Standard Taper Pipe Thread or Dryseal SAE Short Taper Pipe Thread, specified in Society of Automotive Engineers Standard J476, as contained in the 1971 edition of the "SAE Handbook", except that straight (non tapered) threads may be used on fittings having integral flanges and using gaskets for sealing. At least four full threads must be in engagement in each fitting.

(c)(4) **Drains and bottom fittings.**

(c)(4)(i) Drains or other bottom fittings must not extend more than 3/4 of an inch below the lowest part of the fuel tank or sump.

(c)(4)(ii) Drains or other bottom fittings must be protected against damage from impact.

(c)(4)(iii) If a fuel tank has drains the drain fittings must permit substantially complete drainage of the tank.

(c)(4)(iv) Drains or other bottom fittings must be installed in a flange or spud designed to accommodate it.

(c)(5) **Fuel withdrawal fittings.** Except for diesel fuel tanks, the fittings through which fuel is withdrawn from a fuel tank must be located above the normal level of fuel in the tank when the tank is full.

(c)(6) [Reserved]

(c)(7) **Fill pipe.**

(c)(7)(i) Each fill pipe must be designed and constructed to minimize the risk of fuel spillage during fueling operations and when the vehicle is involved in a crash.

(c)(7)(ii) For diesel-fueled vehicles, the fill pipe and vents of a fuel tank having a capacity of more than 94.75 L (25 gallons) of fuel must permit filling the tank with fuel at a rate of at least 75.8 L/m (20 gallons per minute) without fuel spillage.

(c)(7)(iii) For gasoline- and methanol-fueled vehicles with a GVWR of 3,744 kg (8,500 pounds) or less, the vehicle must permit filling the tank with fuel dispensed at the applicable fill rate required by the regulations of the Environmental Protection Agency under 40 CFR 80.22.

(c)(7)(iv) For gasoline- and methanol-fueled vehicles with a GVWR of 14,000 pounds (6,400 kg) or less, the vehicle must comply with the applicable fuel-spitback prevention and onboard refueling vapor recovery regulations of the Environmental Protection Agency under 40 CFR part 86.

(c)(7)(v) Each fill pipe must be fitted with a cap that can be fastened securely over the opening in the fill pipe. Screw threads or a bayonet-type point are methods of conforming to the requirements of paragraph (c) of this section.

(c)(8) **Safety venting system.** A liquid fuel tank with a capacity of more than 25 gallons of fuel must have a venting system which, in the event the tank is subjected to fire, will prevent internal tank pressure from rupturing the tank's body, seams, or bottom opening (if any).

(c)(9) **Pressure resistance.** The body and fittings of a liquid fuel tank with a capacity of more than 25 gallons of fuel must be capable of withstanding an internal hydrostatic pressure equal to 150% of the maximum internal pressure reached in the tank during the safety venting systems test specified in paragraph (d)(1) of this section.

(c)(10) **Air vent.** Each fuel tank must be equipped with a nonspill air vent (such as a ball check). The air vent may be combined with the fill pipe cap or safety vent, or it may be a separate unit installed on the fuel tank.

(c)(11) **Markings.** If the body of the fuel tank is readily visible when the tank is installed on the vehicle, the tank must be plainly marked with its liquid capacity. The tank must also be plainly marked with a warning against filling it to more than 95% of its liquid capacity.

(c)(12) **Overfill restriction.** A liquid fuel tank manufactured on or after January 1, 1973, must be designed and constructed so that:

(c)(12)(i) The tank cannot be filled, in a normal filling operation, with a quantity of fuel that exceeds 95% of the tank's liquid capacity; and

(c)(12)(ii) When the tank is filled, normal expansion of the fuel will not cause fuel spillage.

(d) **Liquid fuel tank tests.** Each liquid fuel tank must be capable of passing the tests specified in paragraphs (d)(1) and (2) of this section. The specified tests are a measure of performance only. Alternative procedures which assure that equipment meets the required performance standards may be used.

(d)(1) **Safety venting system test.**

(d)(1)(i) **Procedure.** Fill the tank three fourths full with fuel, seal the fuel feed outlet, and invert the tank. When the fuel temperature is between 50°F and 80°F, apply an enveloping flame to the tank so that the temperature of the fuel rises at a rate of not less than 6°F and not more than 8°F per minute.

(d)(1)(ii) **Required performance.** The safety venting system required by paragraph (c)(8) of this section must activate before the internal pressure in the tank exceeds 50 pounds per square inch, gauge, and the internal pressure must not thereafter exceed the pressure at which the system activated by more than five pounds per square inch despite any further increase in the temperature of the fuel.

(d)(2) **Leakage test.**

(d)(2)(i) **Procedure.** Fill the tank to capacity with fuel having a temperature between 50°F and 80°F. With the fill pipe cap installed, turn the tank through an angle of 150° in any direction about any axis from its normal position.

(d)(2)(ii) **Required performance.** Neither the tank nor any fitting may leak more than a total of one ounce by weight of fuel per minute in any position the tank assumes during the test.

(e) **Side-mounted liquid fuel tank tests.** Each side-mounted liquid fuel tank must be capable of passing the tests specified in paragraphs (e)(1) and (2) of this section and the test specified in paragraphs (d)(1) and (2) of this section. The specified tests are a measure of performance only. Alternative procedures which assure that equipment meets the required performance criteria may be used.

(e)(1) **Drop test.**

(e)(1)(i) **Procedure.** Fill the tank with a quantity of water having a weight equal to the weight of the maximum fuel load of the tank and drop the tank 30 feet onto an unyielding surface so that it lands squarely on one corner.

(e)(1)(ii) **Required performance.** Neither the tank nor any fitting may leak more than a total of 1 ounce by weight of water per minute.

(e)(2) **Fill-pipe test.**

(e)(2)(i) **Procedure.** Fill the tank with a quantity of water having a weight equal to the weight of the maximum fuel load of the tank and drop the tank 10 feet onto an unyielding surface so that it lands squarely on its fill-pipe.

(e)(2)(ii) **Required performance.** Neither the tank nor any fitting may leak more than a total of 1 ounce by weight of water per minute.

(f) **Certification and markings.** Each liquid fuel tank shall be legibly and permanently marked by the manufacturer with the following minimum information:

(f)(1) The month and year of manufacture,

(f)(2) The manufacturer's name on tanks manufactured on and after July 1, 1989, and means of identifying the facility at which the tank was manufactured, and

(f)(3) A certificate that it conforms to the rules in this section applicable to the tank. The certificate must be in the form set forth in either of the following:

(f)(3)(i) If a tank conforms to all rules in this section pertaining to side mounted fuel tanks: "Meets all FMCSA sidemounted tank requirements."

(f)(3)(ii) If a tank conforms to all rules in this section pertaining to tanks which are not side mounted fuel tanks: "Meets all FMCSA requirements for non side mounted fuel tanks."

(f)(3)(iii) The form of certificate specified in paragraph (f)(3)(i) or (ii) of this section may be used on a liquid fuel tank manufactured before July 11, 1973, but it is not mandatory for liquid fuel tanks manufactured before March 7, 1989. The form of certification manufactured on or before March 7, 1989, must meet the requirements in effect at the time of manufacture.

(f)(4) **Exception.** The following previously exempted vehicles are not required to carry the certification and marking specified in paragraphs (f)(1) through (3) of this section:

(f)(4)(i) Ford vehicles with GVWR over 10,000 pounds identified as follows: The vehicle identification numbers (VINs) contain A, K, L, M, N, W, or X in the fourth position.

(f)(4)(ii) GM G-Vans (Chevrolet Express and GMC Savanna) and full-sized C/K trucks (Chevrolet Silverado and GMC Sierra) with GVWR over 10,000 pounds identified as follows: The VINs contain either a "J" or a "K" in the fourth position. In addition, the seventh position of the VINs on the G-Van will contain a "1."

[36 FR 15445, Aug. 14, 1971, as amended at 37 FR 4341, Mar. 2, 1972; 37 FR 28753, Dec. 29, 1972; 45 FR 46424, July 10, 1980; 53 FR 49400, Dec. 7, 1988; 59 FR 8753, Feb. 23, 1994; 66 FR 49874, Oct. 1, 2001; 69 FR 31305, June 3, 2004; 70 FR 48053, Aug. 15, 2005]

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CHAPTER 45
Reserved

TITLE IX
VOCATIONAL EDUCATION

CHAPTER 46
VOCATIONAL EDUCATION PROGRAMS

[Prior to 9/7/88, see Public Instruction Department[670] Ch 26]

281—46.1(258) Standards for vocational education. Vocational education programs carried on under the provisions of Iowa Code chapter 258 shall be governed by and administered pursuant to the Acts of Congress accepted by chapter 258 and its provisions, duly-adopted rules of the federal agencies involved and the current federal-state contracts or plans approved pursuant to these statutes and rules.

281—46.2(258) Planning process.

46.2(1) The proposed multiyear state plan for vocational education within career education shall be developed on a multifiscal year basis beginning on July 1 and ending June 30 of the last fiscal year, and shall be updated annually. In addition, an accountability report shall be developed annually for vocational education conducted during the previous fiscal year. This shall be done in accordance with P.L. 98-524 and federal regulations of October 3, 1977.

46.2(2) A public hearing shall be conducted after giving 30 days' public notice through local and statewide newspapers and through notices mailed to all local education agencies to provide opportunity for all segments of the population of the state to give their views on the goals and programs to be included in the plan, allocation of resources to meet these goals, and the allocation of responsibility for programs among the various levels of education and institutions in the state and to comment on the accountability report.

46.2(3) Views expressed at the public hearing(s) or in writing within the publicized time limit shall be reflected in the plan or the accountability report or reasons will be given for rejecting any views not accepted for inclusion in the plan or report as required by P.L. 98-524 and Iowa Code chapter 258.

This rule is intended to implement Iowa Code chapter 258.

281—46.3(258) Public involvement and participation. The previous state plan and accountability report shall be available from the career education division, department of education, for public review and comment 30 days prior to the public hearing(s) for development of the new state plan and accountability report.

This rule is intended to implement Iowa Code chapter 258.

281—46.4(258) Final plan and accountability report.

46.4(1) The final state plan and accountability report will be made available to education agencies upon approval by the state board, and subsequently to other interested parties upon request.

46.4(2) The final multiyear state plan shall be implemented by eligible recipients of vocational education funding for programs, services and activities conducted under P.L. 98-524 and Iowa Code chapter 258, beginning July 1 in the first fiscal year, and ending with June 30 of the last fiscal year.

This rule is intended to implement Iowa Code chapter 258.

281—46.5(258) Geographic area. The geographic area for the vocational education state plan within career education includes the entire state of Iowa. Programs, services and activities shall be available to all eligible recipients as defined and specified in P.L. 98-524, and accepted by Iowa Code chapter 258.

This rule is intended to implement Iowa Code chapter 258.

281—46.6(258) Revised standards for vocational education. Vocational education programs under the provisions of Iowa Code chapter 258 shall be administered by the specific provisions of 281—subrule 12.5(4), as well as the other provisions set forth in 281—Chapter 12.

This rule is intended to implement Iowa Code section 256.11 and chapter 258.

281—46.7(258) Definitions and descriptions of procedures. The strategies for implementing the vocational education standards may be clarified by the following definition and descriptions of procedures which shall be utilized:

Vocational education means organized educational programs offering a sequence of courses which are directly related to the preparation of individuals in paid or unpaid employment in current or emerging occupations requiring other than a baccalaureate or advanced degree. Such programs shall include competency-based applied learning which contributes to an individual's academic knowledge, higher-order reasoning and problem-solving skills, work attitudes, general employability skills, and the occupational-specific skills necessary for economic independence as a productive and contributing member of society. Program content shall include recognition of the contributions of individuals with disabilities, men and women in nontraditional roles and minorities. Such term also includes applied technology education.

46.7(1) *Process for establishing minimum competencies.* The department of education shall develop sets of minimum competencies through a structured group interview process, which involves the use of technical committees of incumbent workers, within an occupational cluster of a service area, who will analyze a researched list of competencies which include new and emerging technologies, job seeking, leadership, entrepreneurial, and occupational competencies. This analysis includes identifying the competencies necessary for the vocational program to offer so that the program participant has access to all instruction which leads to employment and further training.

All competency lists will be analyzed for reinforcement of academic skills. An initial academic skills analysis shall be performed by department staff with verification by committees of academic and vocational instructional staff.

Revalidation for minimum competencies will be completed and authorized for the state board at least every three years, commencing with the 1992-93 school year.

46.7(2) *Competency development by local school districts or community colleges.* Local school districts and community colleges may develop competencies in lieu of the state minimum competencies. The competencies shall be developed by the process described in subrule 46.7(1) and approved by the state department of education.

Local school districts and community colleges are encouraged to develop additional compentencies beyond the minimums identified by the department. The process described in subrule 46.7(1) should also be utilized to develop these competencies.

46.7(3) *Articulation.* Teachers and administrators from both secondary and postsecondary instructional levels shall (when applicable) meet to identify competencies required at each level, and to jointly prepare agreements of articulation between secondary and postsecondary levels for specific occupational areas. Such joint articulation efforts will facilitate the secondary-postsecondary transition and help reduce duplication between the two levels. Articulation agreements shall be signed with at least one postsecondary institution per program offered at the high school level (as appropriate), i.e., community colleges, apprenticeship programs, or private postsecondary institutions.

46.7(4) *Statewide vocational education evaluation.* The department of education shall review at least 20 percent of approved vocational education programs within the state annually, to ensure that the programs are:

a. Compatible with educational reform efforts.

b. Capable of responding to technological change and innovation.

c. Meeting educational needs of the students and employment community including students with disabilities, both male and female students, from diverse racial and ethnic groups.

d. Enabling students enrolled to perform the minimum competencies independently.

e. Articulated/integrated with the total school curriculum.

f. Enabling students with a secondary vocational background to pursue other educational interests in a postsecondary setting, if desired.

g. Availing students with support services and eliminating access barriers to education and employment for both traditional and nontraditional students, men and women, persons from diverse racial and ethnic groups, and persons with disabilities.

Evaluation activities shall include both secondary and postsecondary vocational education instructional programs. A statewide evaluation system utilizing multiple indicators will encompass the requirements of both state and federal vocational education legislation.

46.7(5) *Regional planning process.* A regional planning process shall be implemented by regional planning boards in order to establish a long-range comprehensive plan for vocational education. They shall utilize the services of local school districts, community colleges, and other resources to help local school districts meet vocational education standards, while avoiding unnecessary duplication of services. The regional planning process shall include, but not be limited to, the following components:

a. Needs analysis—labor demand/supply, entrepreneurial opportunities, student needs and interests (including members of special populations), regional geographic data, and student/employer follow-ups for existing programs.

b. Resources identification—vocational programs, staff, equipment, and financial capabilities of the secondary school districts within the region.

c. Establishment of objectives (based on the needs analysis and identification of resources).

d. Development of action steps—activities, responsibilities, and timelines indicated for each objective.

e. Revision of the regional five-year plan.

A model will be developed for the purpose of conducting needs analysis surveys. This model will be developed by the department of education for use by each region to collect minimum, uniform statewide composite data for use in developing the regional five-year plan, and for input into the State Plan for Vocational Education, and various federal and state reports.

46.7(6) *Regional vocational education planning boards.* Regional vocational education planning boards shall be established in each merged area, for the purpose of coordinating the development and implementation of quality vocational education programs. Each regional planning board shall be composed of five members, selected from local school boards of directors, community college boards of directors, area education agency boards of directors, local advisory councils on vocational education, and vocational education instructional personnel. Meetings of the regional planning board shall be held at least once each quarter. By mutual agreement, community colleges, local education agencies, and area education agencies may establish area vocational consortia to assume and exercise the duties and responsibilities established for regional vocational education planning boards, in lieu of regional vocational education planning boards.

46.7(7) *Selection of regional planning board members.*

a. Regional planning board members from the representing groups shall be selected as follows: Community college and area education agency boards of directors shall each appoint one (actively serving) board member to serve on the regional planning board. Currently serving local school board members shall file as candidates for the regional planning board. Elections shall be held and the member elected by one vote from each local board of directors within the region. Members of local advisory councils of vocational education (actively serving) shall file as candidates, and election shall be decided by a vote from each of the local advisory councils on vocational education within the region (one vote per local advisory council per district). Vocational education licensed instructors, (from both secondary and postsecondary institutions) who are actively teaching vocational education courses, shall file as candidates—with election decided by a vote of eligible teachers, listed on the most recent Basic Education Data Systems (BEDS) document obtainable from the department of education. Regional planning board membership shall be limited to five in number, representing the five agencies listed in the legislation, and each member shall have one vote on issues requiring a majority vote.

b. Elections shall be conducted by the regional planning board fiscal agent in each region, in accordance with the guidelines established in paragraph 46.7(7)*"a."*

c. Each regional planning board member shall be limited to two consecutive three-year terms, and a member must have been off the board for one year before running again for a board position.

d. Interim vacancies shall be filled by appointment by the remaining regional planning board members.

e. Terms of secondary and postsecondary licensed instruction personnel and the terms of secondary and postsecondary local advisory councils on vocational education shall be rotated to ensure a continuing secondary-postsecondary balance on the regional planning board.

f. The regional planning board shall stagger terms of office from among the representatives of the five representing groups.

46.7(8) *Duties.* Regional planning boards shall perform such duties as:

a. Supporting local school districts and community colleges in the delivery of quality, diversified vocational education programs within the region, including services to special populations.

b. Involving representatives of business, industry, labor, and other government agencies in the planning for and delivery of vocational education.

c. Providing for the gathering and interpretation of data identifying students' occupational needs (labor market, entrepreneurial, and self-employment opportunities) at the region, state, national and international levels.

d. Developing a five-year regional vocational education plan with annual updates, utilizing the uniform regional planning process described in subrule 46.7(5).

e. Implementing planning procedures and contracting (at the request of the state director of education or the local district) for the delivery of vocational services when a local district is otherwise unable to meet the vocational education standards.

f. Identifying the personnel and resources needed in order to carry out their responsibilities.

46.7(9) *Auxiliary (working) group.* Each regional planning board shall recruit and appoint a regional vocational work group (representing the various constituencies within the region) which may include such groups as educators; representatives from business, industry, and labor; other government agencies (JTPA, private industry councils, job service, etc.); community leaders; and similar groups to perform some of the specific activities necessary to accomplish regional planning activities. Affirmative steps will be taken to include on regional work groups a balance of men and women, persons from diverse racial and ethnic groups and persons with disabilities.

46.7(10) *Accreditation standards not met—procedures.* For school districts not meeting accreditation standards for vocational education instruction listed in 281—subrule 12.5(5), the following procedures apply:

a. Upon notice to the district that the accreditation standards for vocational education instruction listed in 281—subrule 12.5(5) are not met, the district shall be granted one year to meet the standards for approval.

b. If a district chooses to waive the one-year grace period, or has failed to meet the standards after one year, the state director of education shall delegate the authority to the appropriate regional planning board to direct the district to contract with another school district, or with a community college which has a suitable vocational education program—to provide vocational education for students of that district.

c. Districts waiving the grace period or having failed to meet the approval standards shall pay to the receiving district or community college an amount equal to the percent of the school day in which a pupil is receiving vocational education in the approved program—times the district cost per pupil of the district of residence.

d. The regional planning board shall facilitate the development of a contract with an existing education agency (including community colleges or consortia) with an appropriate vocational education program for the delivery of a vocational education program for requesting districts which have not met the accreditation standards for vocational education.

e. Transportation to and from the instructional site shall be provided by the school district waiving the one-year grace period or failing to meet program approval standards.

f. Vocational education programs delivered through a consortia approach must be offered and taught to enable districts contracting for the service to count the program as an approved vocational education offering.

g. The regional planning board shall report to the director of the department of education any school district failing to contract with another school district or community college to make an approved vocational education program available for students of that district. The report shall be a basis for the

director to recommend to the state board of education as provided by Iowa Code section 256.11(11) that the district not remain accredited. The director is not required to use the provisions of Iowa Code section 256.11(10) prior to making this recommendation.

This rule is intended to implement Iowa Code section 256.11 and chapter 258.

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CHAPTER 47
CAREER ACADEMIES

[Formerly Ch 28 under Department of Public Instruction]
[Prior to 9/7/88, see Vocational Education Advisory Council[843] Ch 1]

281—47.1(260C) Definitions. For purposes of these rules, the following definitions shall apply:

"Articulation" means a process of curriculum alignment, linking the secondary and postsecondary levels; the process identifies competencies required at each level, which are consistent with specific occupational levels. The process requires signed agreements between the secondary and postsecondary levels in order to facilitate student transition to the postsecondary level and reduce curricular duplication. Articulation is an ongoing process that requires regular review and renewal.

"Associate degree," "diploma" and *"certificate"* in a vocational, career and technical education program are as defined in 281—subrule 21.2(10).

"Career academy" means a program of study that combines a minimum of two years of secondary education with an associate degree in a career preparatory program. A diploma or certificate may be provided as options within the associate degree program. The career academy is a program of study that is nonduplicative, sequential, and ensures that the course of study is skill standards-based, integrates academic and technical instruction, utilizes work-based and work site learning where appropriate and available, utilizes an individual career planning process with parent involvement, and prepares an individual for entry and advancement in a high-skill and rewarding career field as specified in 2003 Iowa Acts, First Extraordinary Session, chapter 2, section 76. A career academy may include articulation of the community college associate degree to a baccalaureate degree. "Nonduplicative" means that the postsecondary component of the career academy is not currently offered at a participating secondary school.

The career academy should strengthen the academic component of career and technical education through the integration of academic and career and technical education; build student competence in mathematics, science, and communications in a coherent sequence of courses; and lead to an associate degree that prepares an individual for entry and advancement in a high-skill and rewarding career field that may include further education.

"Community college" means a community college established under Iowa Code chapter 260C or a consortium of two or more community colleges.

"Skill standard" means a description of the work to be performed, how well the work must be performed and the level of knowledge and skill required to perform that work. Skill standards are developed by industry, which includes businesses, labor unions, and employee and employer organizations, in cooperation with educators.

"Work-based learning" is defined as planned and supervised connections of classroom, laboratory and work experiences that prepare students for current and future careers in a highly technical workplace. Work-based learning experiences provide students the opportunity to develop and apply knowledge, technical skills, and employability behaviors through structured classroom and laboratory experiences.

"Work site learning" means a planned and supervised work experience for students. Work site learning may include industry tours, "job shadowing," paid and unpaid cooperative work experience programs and apprenticeship programs.

A work site component that is part of a career academy program must be in compliance with workplace laws and regulations, including the minimum wage requirements prescribed by Iowa law or the federal Fair Labor Standards Act. The program of study must also comply with state and federal laws pertaining to the workplace, including equal employment opportunity and accident and liability insurance requirements as described in 261—subrule 11.3(7).

281—47.2(260C) Career academy program of study.

47.2(1) *Minimum requirements.* A career academy must have operational policies related to a defined curriculum, credit provisions, sequence and locations of courses, and enrollment procedures. A career academy shall meet the following minimum requirements:

a. Articulate two years of secondary education with an associate degree program, which may include a diploma or certificate;

b. Ensure that the secondary and postsecondary components of the career preparatory program are nonduplicative;

c. Identify a sequential course of study;

d. Delineate skill standards specific to the industry;

e. Integrate academic and technical instruction;

f. Utilize work-based learning;

g. Utilize work site learning where appropriate and available;

h. Lead to an associate degree in a high-skill and rewarding career field;

i. Provide for an individual career planning process, with parent or guardian involvement; and

j. Include articulation of a community college associate degree or, if possible, a baccalaureate degree.

47.2(2) *Career academy funding.* Funding for a career academy is as specified in 2003 Iowa Acts, First Extraordinary Session, chapter 2, section 76. The individual courses offered by a community college in a career academy may be funded additionally through a variety of state and federal sources. Nothing in these rules relieves secondary and postsecondary institutions of their obligations to meet other funding requirements.

47.2(3) *Vocational, career and technical program approval.* The career academy program of study shall include both secondary and postsecondary curricula. A career academy program must meet requirements of the department of education as specified in Iowa Code sections 256.11(5)*"h,"* 258.3A, 258.4, and 260C.14. The career academy must be an articulated program of study between secondary and postsecondary institutions.

47.2(4) *Contract or agreement.* The career academy program of study must receive school district board and community college board approval. A contract or 28E agreement between the boards of a school district and a community college must be signed by participating parties and be in effect prior to initiation of a career academy. The contract or 28E agreement between the boards of the school district(s) and the community college must set forth the purposes, powers, rights, objectives, and responsibilities of the contracting parties and must specify assurances that the career academy program of study is as defined in 2003 Iowa Acts, First Extraordinary Session, chapter 2, section 76. The contract or 28E agreement shall include, but is not limited to, the following:

a. The duration of the joint or cooperative undertaking;

b. The precise organization, composition and nature of any separate legal or administrative entity created thereby, together with the powers delegated thereto, provided such entity may be legally created. However, if the agreement establishes a separate legal or administrative entity, the entity shall, when investing funds, comply with the provisions of Iowa Code sections 12B.10 through 12B.10C and other applicable law;

c. The purpose or purposes of the joint or cooperative undertaking and the method to assess effectiveness in achieving results;

d. The manner of financing the joint or cooperative undertaking and of establishing and maintaining a budget;

e. The permissible method or methods to be employed in accomplishing the partial or complete termination of the agreement and for disposing of property upon such partial or complete termination;

f. The manner of acquiring, holding, and disposing of real and personal property used in the joint or cooperative undertaking;

g. Provision for an administrator or a joint board responsible for administrating the joint or cooperative undertaking; and

h. Any other necessary and proper matters for the joint or cooperative undertaking.

The school district board and community college board must approve the contract or 28E agreement. An assurance form, as defined by the department of education, which specifies that the career academy includes all the components required under subrule 47.2(1) shall be sent to the director of the department of education.

47.2(5) *Faculty requirements.* Faculty providing college credit instruction in a career academy program of study must meet community college faculty minimum standards as specified in rule 281—21.3(260C) and the requirements of the quality faculty plan as approved by the community college board pursuant to Iowa Code section 260C.36. Faculty teaching courses that provide only secondary level credit must have appropriate secondary licensure pursuant to Iowa Code chapter 272.

47.2(6) *Credit options.* School districts may elect to offer high school credit for college credit courses within a career academy program. The career academy program of study shall be designed so that a student who utilizes the program will graduate from high school with the class in which the student was enrolled.

47.2(7) *Data collection.* Data collection and enrollment reporting must follow specified requirements as determined by the department of education.

These rules are intended to implement 2003 Iowa Acts, First Extraordinary Session, chapter 2, sections 76 to 80.

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CHAPTER 48
CERTIFIED SCHOOL TO CAREER PROGRAM
Rescinded IAB 5/20/09, effective 6/24/09

CHAPTERS 49 and 50
Reserved

TITLE X
VETERANS' TRAINING

CHAPTER 51
APPROVAL OF ON-THE-JOB TRAINING ESTABLISHMENTS UNDER THE MONTGOMERY G.I. BILL

[Prior to 9/7/88, see Public Instruction Department[670] Ch 24]

281—51.1(256) Application. In order to qualify as a training facility, the establishment must submit a written application on a form as prescribed by the department of education. Prior to submission of an application, the department shall conduct a site visit to determine initial eligibility.

281—51.2(256) Content and approval of application. The application shall contain, at minimum, the following:

1. Clearly definable vocational objective or objectives;
2. An outline describing the length of the program that is appropriate to the training;
3. A description of the supervision that will be provided to individuals in the program;
4. The program's progressive wage schedule as outlined in rule 281—51.3(256).

The department shall review the application for accuracy and merit. Upon approval of an application, the department shall forward a copy of the approved application to the applicant and to the U.S. Department of Veterans Affairs.

281—51.3(256) Wage schedules. The employer shall observe the following points in setting forth the wage schedule for the training period:

1. The schedule shall be set up for the entire period of training with provision for increases at regular intervals.
2. The starting wage and the wage paid during training cannot be less than the wage normally paid a nonveteran learner in this trade.
3. The starting wage shall not be less than 50 percent of the stated objective wage.
4. The wage schedule shall increase during each period of training until the employer is paying 85 percent of the objective wage during the last period of training unless covered under the standards required by the Bureau of Apprentice Training, United States Department of Labor.
5. The wages shall be in conformity with state and federal laws and applicable bargaining agreements.
6. Wage schedules contained in applicable bargaining agreements, wages established by law, or other wage schedules established by large businesses which can be shown to be a matter of record will be recognized.
7. The after-training wage shall be the wage that is normally paid to a person who has had training equivalent to that contemplated by the proposed training program and who is beginning employment in the classification. Further raises which have been granted to other employees on the basis of length of service or loyalty to the firm should not be considered in determining the completion wage.
8. Since the employer is required to guarantee definite periodic wage increases, programs shall not be approved which contain a wage schedule set up on a commission basis.

These rules are intended to implement 38 CFR 21.4261 and 21.4262.

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CHAPTER 52
APPROVAL OF EDUCATIONAL INSTITUTIONS FOR THE EDUCATION AND TRAINING OF ELIGIBLE VETERANS UNDER THE MONTGOMERY G.I. BILL

[Prior to 9/7/88, see Public Instruction Department[670] Ch 25]

281—52.1(256) Colleges. All colleges, universities and community colleges accredited by the Higher Learning Commission of the North Central Association of Colleges and Schools may have their programs considered for approval.

281—52.2(256) High schools. All high schools approved by the department of education may be approved without further inspection.

281—52.3 Rescinded IAB 9/7/88, effective 10/12/88.

281—52.4(256) Schools of Bible or theology. Schools of Bible or theology must be accredited by a recognized accrediting agency in the theological field. Programs will be considered for approval subject to inspection following receipt of written application.

281—52.5(256) Schools of nursing. Schools of nursing must be approved by the board of nursing. Programs will be considered for approval subject to inspection following receipt of written application.

281—52.6(256) Hospitals. (Residencies, medical technologists, X-ray technicians and similar programs.) Hospital training programs must be accredited by the Accreditation Council for Graduate Medical Education. Programs will be considered for approval subject to inspection following receipt of written application.

281—52.7(256) Schools of cosmetology. Schools of cosmetology must be in compliance with the Iowa board of cosmetology arts and sciences examiners, department of public health. Programs will be considered for approval subject to inspection following receipt of written application.

281—52.8(256) Schools of barbering. Schools of barbering must be in compliance with the Iowa board of barber examiners, department of public health. Programs will be considered for approval subject to inspection following receipt of written application.

281—52.9(256) Flight schools. Rescinded IAB 4/2/03, effective 5/7/03.

281—52.10(256) Schools of business. Programs will be considered for approval subject to inspection following receipt of written application.

281—52.11(256) Trade schools. Programs will be considered for approval subject to inspection following receipt of written application.

281—52.12(256) Correspondence schools. Correspondence schools must be accredited by a nationally recognized accrediting agency. Programs will be considered for approval subject to inspection following receipt of written application.

281—52.13(256) Successful operation on a continuous basis. All of the above institutions, except public or other tax-supported schools, must operate successfully on a continuous basis in Iowa for at least two years prior to approval.

The two-year requirement may be waived by the U.S. Department of Veterans Affairs when the institution submits positive evidence that the school is essential to meet the educational requirements of veterans in the state of Iowa.

281—52.14(256) Nonaccredited schools. Nonaccredited schools may have their programs considered for approval by filling out a written application, and an on-site inspection visit will be necessary to verify accuracy of submitted applications.

The written application referred to in this rule shall include the following information:

1. Name, address and telephone number of the school.
2. Names and qualifications of owners and managers of the school.
3. Statement concerning the date the school was established, and the period of time the school has been under the present management.
4. Statement as to the financial solvency of the school, and assurance that the school will continue operations for a considerable period of time.
5. Statement concerning the school's accreditation by any recognized accrediting agencies, if any.
6. Statement concerning present enrollment and maximum number of students proposed to be trained in the courses at one time.
7. Description of the physical plant of the school, giving the number and size of classrooms; type of heating, lighting and ventilation, blackboard space; number of toilets and lavatories; number and kinds of desks, tables, chairs and other school furniture; total floor space; and a listing of all available laboratory and classroom equipment.
8. Names and educational and experience qualifications of all instructors.
9. Statement of the educational prerequisite for each course.
10. Statement as to the exact title of the course and a specific description of the objective for which given.
11. Statement as to the length of the course(s) in weeks; number of hours school is in session per week.
12. A detailed curriculum showing subjects taught, type of work or skills to be learned, and approximate length of time to be spent on each.
13. Samples of permanent records kept by schools. Samples should include transcripts, progress, grading, conduct and other records kept by the school.
14. Statement as to tuition costs, and costs for required books, supplies and equipment.
15. Statement that school buildings meet local and state regulations concerning fire, safety, and health.

281—52.15(256) Evaluation standards. The following standards are used in evaluating a school eligible under this chapter:

52.15(1) The curriculum and instruction must be consistent in quality, content and length with similar courses in the public schools or other private schools with recognized and accepted standards.

52.15(2) Each school must have a system for keeping attendance, progress and placement records that is acceptable to this department. Records must be kept up-to-date, and reports must be prepared and submitted as requested. Furthermore, school records must be made available for inspection on request of department representatives.

52.15(3) The school must have clearly stated and enforced standards of attendance, progress and conduct. Such standards must be acceptable to this department.

52.15(4) The school must give appropriate credit for previous training or experience, with the training period shortened proportionately. No course of training will be considered bona fide if a veteran is already qualified by training and experience for that course objective.

52.15(5) The school must provide the student with a copy of the approved curriculum.

52.15(6) Upon completion of the training, the school must give the veteran a certificate indicating the approved course, title, and length and that the training was completed satisfactorily.

52.15(7) The school must have a clear statement as to entrance qualifications and must abide by them.

52.15(8) The school must have sufficient toilet facilities to adequately serve the enrollment.

52.15(9) Each school must provide adequate classroom and laboratory space consistent with the needs of the curriculum.

52.15(10) Heat, light and ventilation shall be adequate for the type of instruction and enrollment in the school.

52.15(11) School buildings must meet local and state regulations concerning fire, safety and health.

52.15(12) Schools must be ethical in their advertising and solicitation. Both are subject to review and approval by this department.

52.15(13) Instructors must be competent in the fields they are teaching and be able to document their background and training. Instructors shall hold appropriate certificates, licenses or degrees.

52.15(14) While schools may not guarantee employment upon graduation, a school should exert every effort to assist its graduates in obtaining employment.

52.15(15) Tuition and other charges made by the school should be clearly set out in publications of the school.

52.15(16) Schools should make use of modern teaching aids and procedures.

These rules are intended to implement 38 CFR 21.4250-21.5259.

[Filed 7/1/52]

[Filed 8/19/88, Notice 6/29/88—published 9/7/88, effective 10/12/88]

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CHAPTERS 53 and 54
Reserved

CHAPTER 55
EDUCATIONAL DATA PROCESSING
Rescinded, IAB 9/7/88

TITLE XI
VOCATIONAL REHABILITATION EDUCATION

CHAPTER 56
IOWA VOCATIONAL REHABILITATION SERVICES

[Prior to 9/7/88, see Public Instruction Department[670] Ch 35]

DIVISION I
SCOPE AND GENERAL PRINCIPLES

281—56.1(259) Responsibility of division. The division is responsible for providing services leading to employment for eligible Iowans with disabilities in accordance with Iowa Code chapter 259, the federal Rehabilitation Act of 1973 as amended, the federal Social Security Act (42 U.S.C. Section 301, et seq.), and the corresponding federal regulations therefor.

281—56.2(259) Nondiscrimination. The division shall not discriminate on the basis of race, creed, color, sex, national origin, religion, duration of residency, or disability in the determination of a person's eligibility for rehabilitation services and in the provision of necessary rehabilitation services.

DIVISION II
DEFINITIONS

281—56.3(259) Definitions. For the purpose of this chapter, the indicated terms are defined as follows:

"Act" means the federal Rehabilitation Act of 1973, as amended and codified at 29 U.S.C. Section 701, et seq.

"Aggregate data" means information about one or more aspects of division clients, or from some specific subgroup of division clients, but from which personally identifiable information on any individual cannot be discerned.

"Assistive technology device" means any item, piece of equipment or product system, whether acquired commercially or off the shelf, modified, or customized, that is used to increase, maintain, or improve the functional capabilities of an individual with a disability.

"Assistive technology service" means any service that directly assists an individual with a disability in the selection, acquisition, or use of an assistive technology device. Assistive technology services include:

1. Evaluating the needs of an individual with a disability, including a functional evaluation of the individual in the individual's customary environment;
2. Aiding an individual with a disability in purchasing, leasing, or otherwise providing for the acquisition of an assistive technology device;
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. Providing training or technical assistance for an individual with a disability or, if appropriate, the family members, guardians, advocates, or authorized representatives of the individual; and
6. Providing training or technical assistance for professionals (including individuals providing education and rehabilitation services), employers, or others who provide services to, employ, or are otherwise substantially involved in the major life functions of individuals with disabilities, to the extent that training or technical assistance is necessary to the achievement of an employment outcome by an individual with disabilities.

"Case record" means the file of personally identifiable information, whether written or electronic in form, on an individual that is collected to carry out the purposes of the division as defined in the Act and the Social Security Act. This information remains a part of the case record and is subject to these rules even when temporarily physically removed, either in whole or in part, from the file folder in which it is normally kept.

"Client" means an eligible individual receiving benefits or services from any part of the division and shall include former clients of the division whose files or records are retained by the division.

"Competitive employment" means work in the competitive labor market that is performed on a full-time or part-time basis in an integrated setting and for which the client is compensated at or above the minimum wage, but not less than the customary wage and level of benefits paid by the employer for the same or similar work performed by individuals who are not disabled.

"Department" means the department of education.

"Designated representative" means anyone the client designates to represent the client's interests before and within the division. The term does not necessarily mean a legal representative. The designated representative may be a parent, guardian, friend, attorney, or other designated person.

"Division" means the division of vocational rehabilitation services of the department of education.

"Employment outcome" means, with respect to an individual, entering or retaining full-time or, if appropriate, part-time competitive employment in the integrated labor market; supported employment; or any other type of employment, including self-employment, telecommuting, homemaking, other unpaid work within the individual's family, or business ownership, that is consistent with an individual's strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.

"Home modification" means the alteration of an already existing living unit to make it usable or more usable by a person with a disability who is involved with the independent living program or as necessary to achieve stable employment as part of an individual plan for employment.

"Impartial hearing officer" or *"IHO"* means a person who is not an employee of the division; is not a member of the state rehabilitation advisory council; has not been involved previously in the vocational rehabilitation of the applicant or client; has knowledge of the delivery of vocational rehabilitation services, the state plan and the federal and state rules and regulations governing the provision of such services; has received training in the performance of the duties of a hearing officer; and has no personal or financial interest that would be in conflict with the person's objectivity.

"Independent living services" or *"IL services"* means those items and services provided to individuals who have a significant physical, mental, or cognitive impairment and whose ability to function independently in the family or community or whose ability to obtain, maintain, or advance in employment is substantially limited, and for whom the delivery of IL services will improve their ability to function, continue functioning, or move toward functioning independently in the family or community or to continue in employment.

"Individual plan for employment" or *"IPE"* means a plan that specifies the services needed by an eligible individual and the involvement of other payers and must include the expected employment outcome and the timeline for achievement of the expected employment outcome.

"Individual with a most significant disability" means an individual who is seriously limited in three or more functional capacities (mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, or work skills) in terms of an employment outcome and includes an individual who, because of a disability, has been separated from employment or is in danger of becoming separated from employment.

"Individual with a significant disability" means an individual who has a significant physical or mental impairment that seriously limits one or more functional capacities (mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, or work skills) in terms of an employment outcome or who is a recipient of SSD/SSI.

"Integrated work setting" means job sites where most of the client's coworkers are not disabled and the client interacts on a regular basis, in the performance of job duties, with employees who are not disabled; or if the client is part of a distinct work group of only individuals with disabilities, the work group consists of no more than eight individuals; or the client has no coworkers; or if the only coworkers are part of a work group of eight or fewer individuals with disabilities, the client has regular contact with nondisabled individuals, other than the persons providing support service, including members of the general public.

"Maintenance" means monetary support provided to a client for expenses, such as food, shelter, and clothing, that are in excess of the normal expenses of the client and that are necessitated by the client's participation in the program.

"Mediation" means the act or process of using an independent third party to act as a mediator, intermediary, or conciliator to assist persons or parties in settling differences or disputes prior to pursuing formal administrative or other legal remedies.

"Menu of services" means the services provided by community partners to assist an individual with a disability in achieving an employment outcome. The services are selected and jointly agreed to by the counselor and client of the division. Payments for services are made based on a fee structure that is published and updated annually and include the following:

1. Referral to the community provider completed by the counselor and client for a desired outcome;

2. Assessment through a community work-site assessment, comprehensive vocational evaluation, facility work-site assessment, career exploration, or job shadowing assessment to identify a realistic vocational goal that is compatible with the individual's needs, preferences, abilities, disability, and informed choice;

3. Enhanced planning requested by the counselor and coordinated with community partners when conflicting and multiple issues are preventing the client from moving forward with employment, so that a comprehensive plan is developed to achieve the employment outcome;

4. Placement services selected by the counselor, client and interested partners to prepare for and obtain employment. Placement services include the following:

- Vocational preparation that enhances and improves the client's ability to perform specific work, learn the necessary skills to do a specific job, minimize negative work habits and behaviors that have impeded job retention, develop skills in finding a job, and learn how to navigate transportation systems to and from work;
- Work adjustment training that remedies negative work habits and behaviors, improves work tolerance, and develops strategies to improve a client's ability to maintain employment;
- Job-seeking skills training that teaches the client strategies necessary to find employment with or without assistance and at the level required by the client's needs;
- Job development and job follow-up that places the client on a job in the community working for a business, maintains contact with the employer on the client's progress, is jointly funded through the Medicaid waiver program when appropriate, and is purchased only when used in conjunction with another required service;
- Employer development that, through a job analysis, identifies for businesses the job tasks and customized training plan for the job for which the client will be trained, is authorized only as a stand-alone service when the Medicaid waiver funds the job development and is purchased only when used in conjunction with another required service;
- Supported job coaching that assists the client in learning job-specific skills and work habits and behaviors while employed on the job and that continues as needed after the division file is closed;
- Selected job coaching that assists the client in learning job-specific skills and work habits and behaviors while employed on the job and that is purchased only when approved by the area office supervisor.

"Ongoing support services" means services that are needed to support and maintain individuals with the most significant disabilities in supported employment. Such services shall be specified in the IPE and include, at a minimum, twice-monthly monitoring at the work site to assess employment stability, unless it is determined in the IPE that off-site monitoring is more appropriate.

"Physical or mental impairment" means:

1. Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genitourinary, hemic and lymphatic, skin, or endocrine; or

2. Any mental or psychological disorder such as mental retardation, organic brain syndrome, emotional or mental illness, or specific learning disabilities.

3. Any impairment for which an individual has a documented history of receiving special education services in both elementary and secondary school.

"Physical or mental restoration services" means:

1. Corrective surgery or therapeutic treatment that is likely, within a reasonable period of time, to correct or modify substantially a stable or slowly progressive physical or mental impairment that constitutes a substantial impediment to employment;

2. Diagnosis of and treatment for mental or emotional disorders by qualified personnel in accordance with state licensure laws;

3. Dentistry;

4. Nursing services;

5. Necessary hospitalization (either inpatient or outpatient) in connection with surgery or treatment and clinical services;

6. Drugs and supplies;

7. Prosthetic and orthotic devices;

8. Eyeglasses and visual services, including visual training, and the examination and services necessary for the prescription and provision of eyeglasses, contact lenses, microscopic lenses, telescopic lenses, and other special visual aids prescribed by personnel that are qualified in accordance with state licensure laws;

9. Podiatry;

10. Physical therapy;

11. Occupational therapy;

12. Speech and hearing therapy;

13. Mental health services;

14. Treatment of either acute or chronic medical complications and emergencies that are associated with or arise out of the provision of physical and mental restoration services or that are inherent in the condition under treatment;

15. Special services for the treatment of individuals with end-stage renal disease, including transplantation, dialysis, artificial kidneys, and supplies; and

16. Other medical or medically related rehabilitation services.

"Rehabilitation engineering" means the systematic application of engineering sciences to design, develop, adapt, test, evaluate, apply, and distribute technological solutions to problems confronted by individuals with disabilities in functional areas, such as mobility, communications, hearing, vision, and cognition, and in activities associated with employment, independent living, education, and integration into the community.

"Rehabilitation technology" means the systematic application of technologies, engineering methodologies, or scientific principles to meet the needs of, and address the barriers confronted by, individuals with disabilities in areas that include education, rehabilitation, employment, transportation, independent living, and recreation. The term includes rehabilitation engineering, assistive technology devices, and assistive technology services.

"Residency requirement" is a condition of eligibility and is met by an individual who resides in the state of Iowa and is present and available for participation in a rehabilitation plan.

"Satisfactory employment" means stable employment consistent with an individual's IPE and acceptable to both the individual and the employer.

"Status" means the existing condition or position of a case. The specific case statuses are as follows:

00-0 Referral (individual has been referred to or personally contacted the division by any means);

02-0 Applicant (individual requests services and signs the rights and responsibilities form);

04-0 Accepted for services (eligible), but does not meet waiting list categories being served;

06-0 Trial work experiences/extended evaluation (individual's abilities, capabilities, and capacities are explored);

08-0 Closed before acceptance (eligibility criteria cannot be met or case is closed for some other reason);

10-__ Accepted for services (eligible); substatuses are:

10-0 Eligible individuals other than high school students;

10-1 Eligible high school students;

12-0 IPE developed, awaiting start of services;

14-0 Counseling and guidance only (counselor works with client directly to reach goals through counseling and placement);

16-0 Physical and mental restoration (when such services are the most significant services called for on the IPE);

18-__ Training (when training is the most significant service called for on the IPE); substatuses are:

18-1 Training in a workshop/facility;

18-2 On-the-job training;

18-3 Vocational-technical training;

18-4 Academic training;

18-5 Correspondence training;

18-6 Supported employment;

18-7 Other types of training not covered above (including nonsupported employment job coaching);

20-0 Ready for employment (IPE has been completed to extent possible);

22-0 Employed;

24-0 Service interrupted (IPE can no longer be continued for some reason and no new IPE is readily obvious);

26-0 Closed rehabilitated (can only occur from Status 22-0 when client has been employed in the job of closure for a minimum of 90 days);

28-0 Closed after IPE initiated (suitable employment cannot be achieved or employment resulted without benefit of services from the division);

30-0 Closed before IPE initiated (can only occur from either Status 10-__ or 12-0 when a suitable individual plan for employment cannot be developed or achieved or when employment resulted without benefit of services from the division);

32-0 Postemployment services;

33-__ Closed after postemployment services; substatuses are:

33-1 Individual is returned to suitable employment or employment is otherwise stabilized;

33-2 Case reopened for comprehensive vocational rehabilitation services;

33-3 Situation has deteriorated to the point that further services would be of no benefit to individual;

38-0 Closed from Status 04-0 (individual does not meet one of the waiting list categories and the individual no longer wants to remain on the waiting list or fails to respond when contacted because individual's name is at top of waiting list).

"Substantial impediment to employment" means that a physical or mental impairment (in light of attendant medical, psychological, vocational, educational, communication, and other related factors) hinders an individual from preparing for, entering into, engaging in, or retaining employment consistent with the individual's abilities and capacities.

"Supported employment" means:

1. Competitive employment in an integrated setting, or employment in integrated work settings in which individuals are working toward competitive employment, consistent with the strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice of the individuals, with ongoing support services for individuals with the most significant disabilities:

- For whom competitive employment has not traditionally occurred or for whom competitive employment has been interrupted or intermittent as a result of a significant disability; and
- Who, because of the nature and severity of their disabilities, need intensive supported employment services from the division and extended services after transition to perform this work; or

2. Transitional employment, as defined herein, for individuals with the most significant disabilities due to mental illness.

"Supported employment services" means ongoing support services and other appropriate services needed to support and maintain an individual with a most significant disability in supported employment that are provided by the division and documented through the employment readiness analysis and placement plan:

1. For a period of time not to exceed 18 months unless, under special circumstances, the eligible individual and the rehabilitation counselor jointly agree to extend the time to achieve the employment outcome identified in the IPE; and

2. Following successful case closure, as postemployment services that are unavailable from an extended service provider and that are necessary for the individual to maintain or regain the job placement or to advance in employment.

"Transitional employment," as used in the definition of supported employment, means a series of temporary job placements in competitive work in integrated settings with ongoing support services for individuals with the most significant disabilities due to mental illness. In transitional employment, the provision of ongoing support services must include continuing sequential job placements until job permanency is achieved.

"Transition services" means a coordinated set of activities provided to a student and designed within an outcome-oriented process that promotes movement from school to postschool activities. Postschool activities include postsecondary education, vocational training, integrated employment (including supported employment), continuing and adult education, adult services, independent living, and community participation. The coordinated set of activities must be based upon the individual student's needs, taking into account the student's preferences and interests, and must include instruction, community experiences, the development of employment and other postschool adult living objectives, and, if appropriate, acquisition of daily living skills and functional vocational evaluation. Transition services must promote or facilitate the achievement of the employment outcome identified in the student's IPE.

"Trial work experiences" means an exploration of the individual's abilities, capabilities, and capacity to perform in realistic work situations in an integrated work setting in order to determine whether there is clear and convincing evidence that the individual is too severely disabled to benefit from the division's services.

[**ARC 8806B**, IAB 6/2/10, effective 7/7/10]

DIVISION III
ELIGIBILITY

281—56.4(259) Individuals who are recipients of SSD/SSI. Recipients of social security disability payments or supplemental security income payments are determined automatically as being significantly disabled and are eligible for vocational rehabilitation services if such recipients demonstrate eligibility under rules 281—56.8(259) and 281—56.13(259). Recipients who demonstrate eligibility under rules 281—56.8(259) and 281—56.13(259) must also demonstrate need in the employment plan under rule 281—56.14(259). Nothing in this rule automatically entitles a recipient of social security disability payments or supplemental security income payments to any good or service provided by the division.

[**ARC 8806B**, IAB 6/2/10, effective 7/7/10]

281—56.5(259) Eligibility for vocational rehabilitation services. Eligibility for vocational rehabilitation services shall be determined upon the basis of the following:

56.5(1) A determination by qualified personnel that the applicant has a physical or mental impairment;

56.5(2) A determination by qualified personnel that the applicant's physical or mental impairment constitutes or results in a substantial impediment to employment for the applicant;

56.5(3) A determination by a qualified vocational rehabilitation counselor that the applicant requires vocational rehabilitation services to prepare for, secure, retain, or regain employment consistent

with the applicant's unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.

A presumption exists that the applicant can benefit, in terms of an employment outcome, from the provision of vocational rehabilitation services. This presumption may be overcome by the division if, based on clear and convincing evidence, the division determines that the applicant is incapable of benefiting, in terms of an employment outcome, from vocational rehabilitation services due to the severity of the applicant's disability;

56.5(4) A determination that the individual meets the residency requirement.

281—56.6(259) Eligibility for specific services. Financial need must be established prior to provision of certain services at the division's expense. Applicants are eligible for physical restoration, occupational licenses, customary occupational tools and equipment, training materials, maintenance and transportation (except transportation for diagnosis, guidance or placement) only on the basis of financial need and when services are not otherwise immediately available. The following criteria are established for determination of eligibility of clients for the following services:

56.6(1) *Physical restoration.*

a. The service is necessary for the client's satisfactory occupational adjustment.

b. The condition causing disability is relatively stable or slowly progressive.

c. The condition is of a nature that treatment may be expected to remove, arrest, or substantially reduce the disability within a reasonable length of time.

d. The prognosis for life and employability are favorable.

56.6(2) *Training and training materials.*

a. The training and books and supplies are necessary for the client's satisfactory occupational adjustment.

b. The client has the mental and physical capacity to acquire a skill that the client can perform in an occupation commensurate with the client's abilities and limitations.

c. The client is not otherwise precluded by law from employment in the client's field of training.

d. The client meets the residency requirement.

56.6(3) *Occupational licenses and occupational tools and equipment.* The division may pay for occupational licenses and customary occupational tools and equipment when necessary for the client's entrance into, and successful performance in, a selected occupation.

56.6(4) *Transportation.* A client may be provided transportation in connection with securing medical or psychological examinations, physical restoration, training or placement, if such transportation is part of the client's IPE. A companion may be provided transportation at the division's expense if the client cannot travel alone.

56.6(5) *Maintenance.* A client is eligible for maintenance when it is necessary to the client's vocational rehabilitation and is an extra expense incurred due to the IPE.

281—56.7(259) Areas in which exceptions shall not be granted. Pursuant to federal law, an exception shall not be granted for any of the following requirements:

1. The eligibility requirements in rule 281—56.5(259) (i.e., presence of disability, substantial impediment to employment, need for vocational rehabilitation services).
2. The required use of trial work experiences prior to closure in Status 08-0 due to severity of disability.
3. The required contents of the IPE.
4. Identification of a long-term follow-up provider in supported employment cases.
5. Being in employment and in Status 22-0 for 90 days prior to Status 26-0 closure.
6. Status progression, restrictions, and time frames, such as the federal requirement that eligibility be determined within 60 days of an individual's application for services unless the individual has agreed to an extension.

7. Services may be provided only to individuals who are not on a waiting list, except for assessments which will help the division appropriately determine on which waiting list an individual belongs.

281—56.8(259) Waiting list. As required by the Act and 34 CFR 361.36, if the division cannot serve all eligible individuals who apply, the division shall develop and maintain a waiting list for services based on significance of disability. The three categories of waiting lists are as follows, listed in order of priority to be served:

1. Individuals with most significant disabilities;
2. Individuals with significant disabilities; and
3. Other individuals.

An individual's order of selection is determined by the waiting list and the date on which the individual was deemed eligible for services from the division. All waiting lists are statewide in scope; no regional lists are to be maintained.

Assessment of the significance of an applicant's disability is done during the process of determining eligibility but may continue after the individual has been placed on a waiting list.

281—56.9(259) Individuals who are blind. Pursuant to 111—10.4(216B), individuals who meet the department for the blind's definition of "blind" are to be served primarily by the department for the blind. Individuals with multiple disabilities who also are blind may receive technical assistance and consultation services while the department for the blind provides their rehabilitation plan.

281—56.10(259) Students in high school. The division may serve students in high school, provided the student demonstrates the maturity level, skills, and learning characteristics required to legally work in competitive environments for nonfamily members. If an applicant is in high school and is determined to be eligible for vocational rehabilitation services, such services may begin before the student exits the secondary school system. The services shall not supplant services for which the secondary school is responsible.

When the division determines that a student is eligible for services, the student's place on the waiting list under rule 281—56.8(259) shall be determined. If the waiting list category appropriate for the student is a category currently being served, the student's case shall be moved to Status 10-1. Otherwise the case is placed in Status 04-0, and the student's name is added to the waiting list for that category, based on the student's date of eligibility. An IPE may be written for a student in Status 10-1 at any time the student's vocational goal and the services necessary to reach that goal have been agreed upon by the student and the student's division counselor. The IPE must be in place when the student exits the secondary school system, unless the student has agreed to an extension or is on a waiting list or applied for services in the last quarter of the student's senior year.

The counselor assigned by the division to work with the student may participate in the student's individualized education program meetings to provide consultation and technical assistance if the student is on the waiting list for services. Once a student is removed from the waiting list, the counselor may also provide vocational counseling and planning for the student and coordinate services with transition planning teams. When such services do not supplant services for which the secondary school is responsible, the division may begin to provide services specifically related to employment, such as supported employment or job coaching services, as early as the student's junior year of secondary school. Students in high school or in an alternative high school who have not yet met high school graduation requirements after four years of secondary enrollment may continue to receive said services that do not supplant the responsibilities of the high school. Students in their final year of high school who have made satisfactory progress and who have demonstrated skills to work in their trained profession may receive assistance in purchasing tools to be used on a job.

281—56.11(259) Establishment of financial need. The division establishes the client's financial need prior to providing physical restoration, including prostheses; transportation (for other than diagnostic,

guidance or placement purposes); maintenance; and occupational licenses, tools and equipment. Recipients of SSD/SSI are not subject to a financial needs test for any services but must demonstrate eligibility under rules 281—56.8(259) and 281—56.13(259), as well as demonstrate need in the employment plan under rule 281—56.14(259).

In determining financial need, the clients or, in the case of minors, the minors' parents or guardians are required to make a specific declaration regarding all family income from any source that may be applied toward the cost of rehabilitation services, except those of diagnosis, counseling, training and placement, which are provided without regard to financial need; however, the division shall not pay for more than the balance of the cost of the service minus comparable services and benefits. The income should be available to the client; that is, actually on hand, free from prior obligations and ready when needed.

The division shall observe the following policies in making a determination of financial need based upon the findings:

56.11(1) All services requiring the determination of financial need are provided on the basis of supplementing the resources of the client or of those responsible for the client.

56.11(2) A supervisor may grant an exception in cases where the applicant's disability caused or is directly related to financial need and where all other sources of money have been exhausted by the applicant or the parents or guardians of a minor applicant.

56.11(3) Consideration shall be given to the client's responsibility for the immediate needs and maintenance of the client's dependents, and the client shall be expected to reserve sufficient funds to meet the client's family obligations and to provide for the family's future care, education and medical expenses.

56.11(4) Consideration shall also be given to factors such as prior obligations as well as to the desirability of conserving the client's own resources for future rehabilitation purposes, such as becoming established in business or providing a business automobile required for transportation or employment.

56.11(5) Income up to a reasonable amount should be considered from the standpoint of its conservation and its maximum utilization to the long-term interest of the client. Small casual earnings and unpredictable gifts of indeterminate value should not be counted as resources.

56.11(6) Financial aid from public assistance is disregarded as a resource.

56.11(7) Grants and scholarships, while not required to be searched for a comparable benefit, may be considered when determining financial support of a plan.

[**ARC 8806B**, IAB 6/2/10, effective 7/7/10]

DIVISION IV
CASE MANAGEMENT

281—56.12(259) Case finding and intake. The division seeks to locate all disabled individuals of employable age who desire to be employed full- or part-time and may be eligible for vocational rehabilitation services. To that end, referrals are accepted from all sources, and the division has established working relationships with public and private agencies in the areas of health, welfare, compensation, education, employment, and other related services. All new cases, whether referred to a local worker or to the division, are checked for previous information and are acknowledged promptly by letter or a personal call.

281—56.13(259) Case diagnosis. The case diagnosis constitutes a comprehensive study of the client, including medical as well as a vocational diagnosis of the individual. Each case diagnosis is based on pertinent information, including the individual's health and physical status, intelligence, educational background and achievements, vocational aptitudes and interests, employment experience and opportunities, and personal and social adjustments.

56.13(1) *Medical diagnosis.*

a. As a basis for determination of eligibility and formulation of the individual's rehabilitation plan, the division secures competent medical diagnosis. When necessary, the diagnosis is, if at all practicable, secured from recognized specialists in specific fields indicated by the general medical

diagnosis. Whenever possible the diagnosis is accompanied by recommendations as to the means and methods of restoration and by a statement of any physical or mental limitations that may exist.

b. The division accepts a medical report in lieu of securing a new examination when the report can be relied upon to provide a sound basis for diagnosis of the physical or mental condition of the individual and is from one of the following providers or sources:

(1) A licensed physician or surgeon;

(2) A licensed osteopathic physician or surgeon;

(3) A licensed doctor of chiropractic;

(4) A licensed psychologist;

(5) A licensed physician assistant;

(6) A licensed advanced registered nurse practitioner;

(7) A native healing practitioner recognized as such by an Indian tribe when services are being provided to American Indians with disabilities and the native healing practitioner services are necessary to achieve the individual's vocational rehabilitation objective;

(8) A licensed dentist;

(9) A licensed ophthalmologist;

(10) A licensed audiologist;

(11) A licensed independent social worker (LISW);

(12) A licensed mental health counselor;

(13) A certified school psychologist;

(14) A recent individualized education program (IEP) as recognized by the Iowa department of education which documents a history of special education programs or services; or

(15) An accredited or certified medical or treatment institution recognized by the state of Iowa or licensed by the department of public health or department of human services in any other state.

56.13(2) *Vocational diagnosis.* The methods of the vocational diagnosis include counseling interviews with the client; reports as may be needed, including when necessary in the individual case, reports from schools, employers, social agencies, and others; and psychological information.

56.13(3) *Recording case data.* The division maintains a record for each case. The case record contains pertinent case information including, as a minimum, the basis for determination of eligibility, the basis justifying the plan of services and the reason for closing the case together with a justification of the closure. A case record may not be destroyed until three years after the case has been closed.

281—56.14(259) Individual plan for employment (IPE).

56.14(1) *Content.* The IPE contains the client's expected employment goal, the specific vocational rehabilitation services needed to reach that goal, the entity or entities that will provide those services, the method by which satisfactory progress will be evaluated, and the methods available for procuring the services.

56.14(2) *Client's participation and approval.* The IPE is formulated with the client's participation and approval and provides for all rehabilitation services that are recognized to be necessary to fully accomplish the client's vocational rehabilitation whether or not services are at the expense of the division.

56.14(3) *Conditions for development of the IPE.* The basic conditions to be considered during the development of the IPE are:

a. The belief of the division that when concluded the IPE shall satisfactorily aid in the individual's achievement of vocational rehabilitation; and

b. That all services are to be carried to completion provided, however, that the division exercises its discretion in relation to the termination or revision of the individual's IPE when, for any reason, it becomes evident that the IPE cannot be completed or when the financial condition of the individual or the division makes termination necessary.

56.14(4) *Cooperation by the client.* The division requires good conduct, regular attendance and cooperation of all individuals engaged in the rehabilitation plan's implementation. The division makes the following provisions for ensuring trainee cooperation: instruction, verbally or by pamphlet, emphasizing the importance of these factors to the success of the IPE; at the beginning of the program,

advising each trainee about what is expected of the trainee and that services shall continue only if the trainee's progress, attitude and conduct are satisfactory; requiring periodic progress, grade and attendance reports from the training agency; promptly calling the trainee's attention to evidence of unsatisfactory progress or attendance before such conditions become serious; providing encouragement to the trainee to promote good work habits, with due commendation for effective effort; and maintaining good relationships with the training agency.

56.14(5) *Ticket to work.* The client's signature on the IPE verifies the ticket assignment to the division unless otherwise directed by the client.

DIVISION V
SERVICES

281—56.15(259) Scope of services. All necessary vocational rehabilitation services, including counseling, physical restoration, training, and placement, are made available to eligible individuals to the extent necessary to achieve their vocational rehabilitation and must be included in the employment plan and agreed to by the eligible individual's counselor before the service is delivered. The division cooperates with federal and other state agencies providing vocational rehabilitation or similar services, and written agreements providing for interagency cooperation may be entered into as required by the Act at the discretion of the division. In selected instances, the division assumes responsibility for providing short periods of medical care for acute conditions arising in the course of the client's rehabilitation, which if not cared for would constitute a hazard to the achievement of the rehabilitation objective because of the client's limited funds and the unavailability of free medical services.
[**ARC 8806B**, IAB 6/2/10, effective 7/7/10]

281—56.16(259) Training.

56.16(1) Duration of training. Rehabilitation training is provided according to the actual needs of the individual. It is designed to achieve the specific employment outcome that is selected by the individual consistent with the individual's unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.

56.16(2) Types of training. The types of training programs available are as follows:

a. Postsecondary training, which is training in the arts and sciences for which postsecondary credit is given and which is generally considered to be applicable toward an associate's degree, bachelor's degree, or advanced degree.

b. Vocational training, which includes any organized form of instruction that provides the knowledge and skills essential for performing in a vocational-technical area. Such knowledge and skills may be acquired through training in an institution, on the job, by correspondence, by tutors, through a selection from the menu of services, or through a combination of any or all of these methods.

c. Prevocational training, which includes any form of basic training given for the acquisition of background knowledge or skills prerequisite or preparatory to vocational training or to employment where the primary occupational knowledge and skills are learned on the job or through a selection from the menu of services.

d. Work adjustment training, which includes any training given for any one or a combination of the following reasons:

(1) To assist individuals with disabilities, if needed, to acquire personal habits, attitudes and skills that will enable them to function effectively.

(2) To develop or increase work tolerance prior to engaging in prevocational or vocational training, or in employment.

(3) To develop work habits and to orient the individual to the world of work.

(4) To provide skills or techniques for the specific purpose of enabling the individual to compensate for the loss of the use of a member of the body or the loss of a functional capacity.

e. Job coaching, which includes, but is not limited to, intensive on-the-job training necessary to teach an employee both the job duties and job-related responsibilities.

f. Supported employment, which means competitive work in an integrated work setting with ongoing support services for individuals with the most significant disabilities for whom competitive employment has not traditionally occurred or has been interrupted or intermittent as a result of significant disabilities. Supported employment also includes transitional employment for individuals with chronic mental illness. Supported employment is limited to a period of 18 months unless a longer period is established in the IPE.

g. Customized training, which is a plan developed by the client's counselor in cooperation with the client and the employer-trainer whereby the employer-trainer accepts the client for training for a specific job or job family, paid or unpaid, that may or may not result in employment with the training employer.

56.16(3) Scope of training. The division may provide training services as long as those services are part of a client's IPE. Training facilities shall be selected to meet the client's health, disability, and program needs. Training facilities within the state are preferred; those outside Iowa shall not be used unless approved for use by the vocational rehabilitation agency in the state in which the facility is located.

56.16(4) Financial assistance for postsecondary training. Calculations of financial assistance for postsecondary training are determined annually. In order for the division to continue to assist the greatest practical number of eligible clients, assistance shall be no less than 40 percent and no more than 60 percent of the cost of attending the least expensive in-state public institution for a course of instruction leading to an undergraduate degree. In all cases, the postsecondary institution in which the student is enrolled must be accredited by an entity recognized by the federal Department of Education as having authority to accredit postsecondary institutions.

a. Tuition and fee-based general assistance.

(1) Second year or less status. A student is considered to be in second year or less status when the student has earned fewer than 60 semester or 90 quarter credit hours in the student's present area of study or discipline; when the student is enrolled in a community college or other two-year postsecondary institution; or when the student is enrolled in a program whose terminal degree is an associate degree but the student has not yet attained the associate degree. For an eligible student in second year or less status, the division shall pay no less than 40 percent and no more than 60 percent of the least expensive per-credit-hour tuition charged by an Iowa community college.

(2) Third or fourth year status. A student is considered to be in third or fourth year status if the student has earned at least 60 semester or 90 quarter credit hours or has achieved an associate degree in the student's present area of study or discipline but has not yet earned a postsecondary baccalaureate degree. For an eligible student in third or fourth year status, the division shall pay no less than 40 percent and no more than 60 percent of the tuition charged by the college or university, limited to the amount charged by the least expensive Iowa regents institution. Students in third or fourth year status who take graduate courses are only eligible to receive the established assistance rate for third or fourth year status.

(3) Medical school. Only a student enrolled full-time in a graduate school pursuing a course of studies that will lead to a medical doctor (MD) or doctor of osteopathy (DO) degree is eligible for assistance under this paragraph. For a student who is an MD or DO candidate, the division shall pay no less than 40 percent and no more than 60 percent of the tuition charged by the college of medicine of the University of Iowa. Students pursuing any other graduate degree in a medical arts program may be eligible for assistance under subparagraph 56.16(4)*"a"*(5).

(4) Law school. Only a student enrolled full-time in a graduate school pursuing a course of studies that will lead to a doctor of jurisprudence (JD) degree is eligible for assistance under this paragraph. For a student who is a JD candidate, the division shall pay no less than 40 percent and no more than 60 percent of the tuition charged by the college of law of the University of Iowa. Students pursuing any other graduate degree from a law school may be eligible for assistance under subparagraph 56.16(4)*"a"*(5).

(5) Graduate or postgraduate school. Notwithstanding subparagraphs 56.16(4)*"a"*(3) and (4), for a student enrolled in a graduate or postgraduate school, the division shall pay no less than 40 percent and no more than 60 percent of the tuition charged by the college or university, limited to the amount charged by the least expensive comparable graduate school at an Iowa regents institution.

(6) Distance learning (on-line courses). For a student enrolled in a distance learning course, the division shall pay the lesser of one of the following:

1. No less than 40 percent and no more than 60 percent of the actual cost of the course, or
2. The rate established for a student in second year or less status.

(7) Continuing education courses. For a student taking a noncredit continuing education course, the division shall pay the lesser of one of the following:

1. No less than 40 percent and no more than 60 percent of the actual cost of the course, or
2. The rate established for a student in second year or less status.

(8) Out-of-state postsecondary institutions. For an eligible student who attends a postsecondary institution located outside Iowa, the division shall pay at the same rates set in this subrule.

b. Support services for postsecondary training. Unless approved as an exception by the supervisor, the amounts authorized for the items listed herein cannot exceed the amounts that would otherwise be spent on tuition and fees.

(1) Transportation shall be provided only when and to the extent that the cost is caused by participation in a program of vocational rehabilitation services.

(2) Maintenance shall be provided only to support participation in a program of vocational rehabilitation services when the client has no resources to address basic living expenses.

(3) Books and supplies may be provided in lieu of tuition and fees, but the amount provided therefor shall be no less than 40 percent and no more than 60 percent of the amount based on tuition and fees.

(4) Tutoring shall be provided only for courses that are part of the actual degree requirements and only when this service is not available for free through the school attended by the client. Tutoring for program entrance examinations, such as the GRE, LSAT, or MCAT, is not allowed without an exception approved by the supervisor.

(5) Unless approved as an exception, tools and equipment required for participation in a training program shall be provided in lieu of the tuition and fee amount.

(6) Unless approved as an exception, supplies for a course without which the course cannot be successfully completed shall be provided in lieu of the tuition and fee amount.

(7) Unless approved as an exception, fees for specialized equipment or computer programs needed to learn a subject or to access a course shall be provided in lieu of the tuition and fee amount.

(8) Fees for certification tests that are part of a course shall be paid pursuant to the 40 percent to 60 percent range established as the tuition and fees standard. For certifications and licensure fees that are not part of a course, the division shall use the financial needs assessment form to determine the level of division participation.

56.16(5) General guidance regarding postsecondary training is available from the division's case services manual.

[**ARC 8806B**, IAB 6/2/10, effective 7/7/10]

281—56.17(259) Maintenance. The costs of maintenance shall not exceed the amount of increased expenses that the rehabilitation causes for the client or the client's family. Maintenance is not intended to provide relief from poverty or abject living conditions. Guidance regarding the financial support of maintenance is available from the division's case service manual.

281—56.18(259) Transportation. When necessary to enable an applicant or a client to participate in or receive the benefits of other vocational rehabilitation services, travel and related expenses, including expenses for training in the use of public transportation vehicles and systems, may be provided by the division. Transportation services may include the use of private or commercial conveyances (such as private automobile or van, public taxi, bus, ambulance, train, or plane) or the use of public transportation and coordination with a regional transit agency. The division shall not purchase or lease vehicles for a client. The division shall not pay for maintenance or repair of vehicles unless written approval of the supervisor allows for an exception.

281—56.19(259) Rehabilitation technology.

56.19(1) Rehabilitation technology services are available at any point in the rehabilitation process, except to those clients on the waiting list. Such services include, as appropriate, an evaluation of the

ability of the individual to benefit from rehabilitation technology services. Areas in which rehabilitation technology services may be of assistance include seating and positioning, augmentative communication, computer access, environmental controls, mobility equipment, and modification of the job site or home.

56.19(2) Unless a written exception is approved by a supervisor, the following division contribution limits apply:

a. The division shall pay for no more than $2,000 for home modifications.

b. The division shall not pay anything toward the modification of a second living unit.

c. Rescinded IAB 8/15/07, effective 9/19/07.

281—56.20(259) Business initiatives. Rescinded IAB 8/27/08, effective 10/1/08.

281—56.21(259) Placement. The division not only prepares individuals with disabilities for jobs and trains them in techniques in securing their own jobs, but also accomplishes the actual placement, directly or indirectly through a service from the menu of services, of all eligible individuals with disabilities who receive rehabilitation services. Placement activities are based upon adequate evaluation and preparation of the client and ordinarily include some combination of the following: evaluation of the client's job readiness; development and execution of a plan for job-seeking activities; instruction in making job applications and in conduct and appearance during interviews; employer contacts; registration with the state workforce development center administration division; job analysis and modification; job coaching; employer or supervisor consultation, advisement and training; time-limited job coaching; postplacement follow-up; and relocation costs. Satisfactory employment is the objective of all division services of preparation, and placement services are an important, integral part of the overall vocational rehabilitation program. As such, in addition to the services listed herein, placement services may include the need for transportation and subsistence allowances and the purchase and acquisition of appropriate clothing, tools, equipment, and occupational licenses.
[**ARC 8806B**, IAB 6/2/10, effective 7/7/10]

281—56.22(259) Supported employment and transitional employment. As defined herein, supported employment is provided to clients with the most significant disabilities for whom competitive employment has not traditionally occurred or has been interrupted or intermittent as a result of significant disabilities. Supported employment also includes transitional employment as defined herein for clients with mental illnesses. Supported employment is provided either directly by division staff or through the selection of an item from the menu of services.
[**ARC 8806B**, IAB 6/2/10, effective 7/7/10]

281—56.23(259) Miscellaneous or auxiliary services.

56.23(1) *Family member services.* If necessary to enable an applicant or client to achieve an employment outcome as defined in these rules, the division may provide any service to a family member that it is legally able to provide to a client, as long as the purpose of the service is to assess the ability of the client to benefit from a program of vocational rehabilitation, prepare for, enter, and be successful in employment, or participate in a program of independent living services. Excluded are programs designed to prepare a family member to enter employment that will allow the family member to make money to support the applicant or client. A family member is an individual who either (a) is a relative or guardian of an applicant or client or (b) lives in the same household as an applicant or client and has a substantial interest in the well-being of the applicant or client.

56.23(2) *Interpreter and note taker.* If deemed necessary by the division to enable a client to engage in all parts of the vocational rehabilitation or independent living program process, interpreter services or note taker services shall be provided to such client, unless provision of such services is the statutory responsibility of an institution or organization.

Interpreter services are those special communications services provided by persons qualified by training and experience to facilitate communication between division personnel and persons unable to communicate verbally in English. Persons receiving services include deaf and hard-of-hearing persons who communicate using signs and finger spelling, as well as lip reading, writing, gestures, pictures,

and other methods. Persons not fluent in the English language who could benefit from having any part of the vocational rehabilitation process translated into their major language are included. The division shall purchase sign language interpreter services, including transliterating services, from appropriately licensed interpreters only.

Note taker services are services provided to make written notes and summaries of orally presented material. The notes may be made from a live presentation, such as a classroom lecture, or from materials that have been taped. These services are only purchased when the law states that the presenter or institution is not statutorily responsible.

56.23(3) *Other goods and services.* Other goods and services include anything that is legal and necessary to the completion of the client's IPE or independent living (IL) services plan. Under no circumstances may real estate be purchased or built with division funds. Services designed to decrease the need for future IL services can only be provided directly to IL clients.

281—56.24(259) Facilities.

56.24(1) *Types of facilities.* It is the policy of the division to utilize any type of public or private facility that is equipped to render the required services from the menu of services of diagnosis, physical restoration, training, and placement. Facilities include public and private schools; colleges and universities; correspondence schools; agencies for personal adjustment training; business and industrial establishments for employment training; psychometric service agencies; physicians' and dentists' offices; hospitals; sanatoria and clinics; audiometric service centers; rehabilitation centers; the offices of occupational, physical and work therapists or agencies providing these services; convalescent homes; prosthetic appliance dealerships; and other similar facilities that are adequately equipped to contribute to the rehabilitation of individuals with disabilities.

56.24(2) *Standards for facilities providing specialized training or other services.* The division selects its training agencies on the basis of their ability to supply the quality of training desired. The general practice of the division is to utilize the facilities of accredited or approved colleges, universities, and trade and commercial schools for residence and correspondence training. The general practice of the division is to utilize community partners to deliver items from the menu of services based on the partners' ability to supply the quality of training desired and to achieve expected outcomes resulting in job placements for clients of the division.

56.24(3) *Facilities providing training.* Facilities selected as locations for employment training must have personnel qualified with respect to personality, knowledge and skills in the technique of instruction, have adequate equipment and instructional materials and be willing to make definite provisions for a plan of graduated progress in the job to be learned according to an efficiently organized and supervised instructional schedule.

56.24(4) *Facilities providing personal adjustment training.* In addition to other standards set for tutorial and customized training, an important basis for selection of facilities for personal adjustment training is a sympathetic understanding of the personal adjustment needs of the individual and their importance to the client's total rehabilitation.

[**ARC 8806B**, IAB 6/2/10, effective 7/7/10]

281—56.25(259) Exceptions to payment for services. As required by the Act and 34 CFR 361.50(c), the division shall have a method of allowing for exceptions to its rules regarding payment for services.

56.25(1) *Reasons for exceptions.* Major reasons that will be considered in determining if an exception should be granted in favor of an applicant include, but are not limited to, the following:

a. The need is disability-related.

b. The applicant has used all sources available, such as applying for and using all available loans in postsecondary training situations.

c. Family issues, such as dissolution of marriage, loss of income, or estrangement, render resources unavailable.

d. Academic performance is poor, but could reasonably be expected to return to the required threshold in one semester.

e. Documented evidence supports that the client is in the process of repaying a previously defaulted student loan.

56.25(2) *Prohibitions.* Pursuant to federal law, the division is subject to the following prohibitions:

a. The fee schedule shall not be designed in a way that effectively denies an individual a necessary service.

b. An absolute dollar limit on specific service categories or on the total services provided to an individual may not be established.

56.25(3) *Exception process.* A request for an exception shall originate with a counselor, who shall either develop a case note detailing the reason(s) why an exception is believed to be warranted or complete the appropriate form. The case note or form shall be presented to a supervisor for determination. The supervisor's determination shall be documented by the supervisor in a separate case note or in the designated place on the form.

281—56.26(259) Exceptions to duration of services. As required by the Act and 34 CFR 361.50(d), the division shall have a method of allowing for exceptions to its rules regarding the duration of services. In order to exceed the duration of service as defined in the employment plan, a client must follow through on the agreed-upon employment plan and related activities and keep the division informed of the client's progress.

56.26(1) *Reasons for exceptions.* Major reasons that will be considered in determining if an exception should be granted in favor of an applicant include, but are not limited to, the following:

a. The need is disability-related.

b. Academic performance is poor, but could reasonably be expected to return to or above the required threshold in one semester.

c. The service is necessary and required in order for the client to attain employment.

56.26(2) *Prohibitions.* Pursuant to federal law, the division is subject to the following prohibitions:

a. The time period established for the provision of services shall not be so short as to effectively deny an individual a necessary service.

b. An absolute time limit on the provision of a specific service or on the total services provided to an individual may not be established. The duration of each service needed by an individual must be determined on an individual basis and reflected in that individual's IPE.

56.26(3) *Exception process.* A request for an exception shall originate with a counselor, who shall either develop a case note detailing the reason(s) why an exception is believed to be warranted or complete the appropriate form. The case note or form shall be presented to a supervisor for determination. The supervisor's determination shall be documented by the supervisor in a separate case note or in the designated place on the form.

[**ARC 8806B**, IAB 6/2/10, effective 7/7/10]

281—56.27(259) Maximum rates of payment to training facilities. In no case shall the amount paid a training facility exceed the rate published, and in the case of facilities not having published rates, the amount paid the facility shall not exceed the amount paid to the facility by other public agencies for similar services. The division will maintain information necessary to justify the rates of payment made to training facilities.

DIVISION VI
PURCHASING PRINCIPLES

281—56.28(259) Purchasing.

56.28(1) *General purchasing principles.*

a. The division shall purchase only those items/models that allow a client to meet the client's vocational objective. The division shall not pay for additional features that exceed the requirements to meet a client's vocational objective or that serve primarily to enhance the client's personal life.

b. The division shall purchase the most economical item/model that meets the client's vocational needs.

c. The division shall seek out the most economical alternatives to meet the client's vocational needs.

d. The division shall encourage all clients to develop strategies and savings programs to pay for replacement items/models or upgrades.

e. Items purchased for a client become the property of the client but may be repossessed by the division, subject to reimbursement to the client for the client's share of the purchase price, if the client does not attain employment prior to case closure.

56.28(2) *Client-specific purchasing principles.* When considering what item/model to purchase for a specific client, the division shall in all cases consider the following factors:

a. Whether the item/model truly is needed for the client to be able to perform the essential functions of the client's job.

b. Whether a more economical item/model is available to permit the client to perform the essential functions of the client's job.

c. Whether other parties or entities may be responsible for providing or contributing to the costs of an item.

[**ARC 8806B**, IAB 6/2/10, effective 7/7/10]

DIVISION VII
SUPERVISOR REVIEW, MEDIATION, HEARINGS, AND APPEALS

281—56.29(259) Review process. At the time of making application for rehabilitation services, and at other times throughout the rehabilitation process, all applicants and clients shall be informed of the right to appeal and the procedures by which to file an appeal. If an applicant or client is dissatisfied with any agency decision that directly affects the applicant or client, the applicant, client, or designated representative may appeal that decision or request mediation. The term "appellant" shall be used to indicate the applicant, client, or designated representative who initiates an appeal. The appellant may initiate the appeal process either by calling a counselor or supervisor or by filing the appropriate division appeal form, available from any counselor or supervisor of the division. If the appeal process is initiated by telephone, the counselor or supervisor who received the call must complete the appeal form to the best of that person's ability with information from the appellant. The division shall accept as an appeal a written letter, facsimile, or electronic mail that indicates that the applicant or client desires to appeal. An appeal must be filed within 90 days of notification of the disputed decision. Once the appeal form has been filed with the division administrator, a hearing shall be held before an impartial hearing officer (IHO) within the next 60 days unless an extension of time is mutually agreed upon or one of the parties shows good cause for an extension. The appellant may request that the appeal go directly to impartial hearing, but the appellant shall be offered the opportunity for a supervisor review or mediation. The appellant may request assistance with an appeal or mediation from the Iowa client assistance program (ICAP).

[**ARC 8806B**, IAB 6/2/10, effective 7/7/10]

281—56.30(259) Supervisor review. As a first step, the appellant shall be advised that a supervisor review of the counselor's decision may be requested by notifying the counselor or supervisor in person, by telephone or by letter of the decision to appeal. If the supervisor has been involved in decisions in the case to the extent that the supervisor cannot render a fair and impartial decision or if the supervisor is not available to complete the review in a timely manner, the appeal and case file shall be forwarded to the assistant bureau chief for review. The appellant is not required to request supervisor review as a prerequisite for appeal before an IHO; however, if a supervisor review is requested, the following steps shall be observed:

56.30(1) Upon receipt of a request for supervisor review, the supervisor shall notify all appropriate parties of the date and nature of the appeal; examine case file documentation; discuss the issues and reasons for the decision with the immediate counselor and other counselors who may have been previously involved with the case/issue; and, if necessary, meet with any or all parties to discuss the dispute.

56.30(2) The supervisor shall have ten working days from receipt of the request for supervisor review to decide the issue and notify the appellant in writing. A copy of the supervisor's decision shall be sent to all appropriate parties.

56.30(3) If the supervisor's decision is adverse to the appellant, the copy of the written decision given to the appellant shall include further appeal procedures, including notification that the appellant has ten days from the date of the letter to file further appeal. Also included shall be notice of the Iowa client assistance program (ICAP), a program within the department of human rights, commission of persons with disabilities. If ICAP determines it appropriate, ICAP provides assistance in the preparation and presentation of the appellant's case.

56.30(4) As an alternative to, but not to the exclusion of, filing for further appeal, the appellant may request mediation of the supervisor's decision.

281—56.31(259) Mediation. Regardless of whether a supervisor review is requested, an appellant may request resolution of the dispute through the mediation process. Mediation is also available if the appellant is dissatisfied with the supervisor's decision. If mediation is requested by the appellant and agreed to by the division, the following steps shall be observed:

56.31(1) Mediation shall be conducted by a qualified and impartial mediator, as defined in 34 CFR 361.5(43), trained in effective mediation techniques and selected randomly by the division from a list maintained by the division.

56.31(2) The mediation shall be conducted in a timely manner at a location convenient to the parties.

56.31(3) Mediation shall not be used to delay the appellant's right to a hearing.

56.31(4) Mediation must be voluntary on the part of the appellant and the division.

56.31(5) Mediation is at no cost to the appellant.

56.31(6) All discussions and other communications that occur during the mediation process are confidential. Any offers of settlement made by either party during the mediation process are inadmissible if further appeal is sought by the appellant.

56.31(7) Existing division services provided to an appellant shall not be suspended, reduced, or terminated pending decision of the mediator, unless so requested by the appellant.

281—56.32(259) Hearing before impartial hearing officer. Regardless of whether the appellant has used supervisor review or mediation or both, if the appellant requests a hearing before an IHO, the following provisions apply:

56.32(1) The division shall appoint the IHO from the pool of hearing officers with whom the division has contracts. The IHO shall be assigned on a random basis or by agreement between the administrator of the division and the appellant.

56.32(2) The hearing shall be held within 20 days of the receipt of the appointment of the IHO. A written decision shall be rendered and given to the parties by the IHO within 30 days after completion of the hearing. Either or both of these time frames may be extended by mutual agreement of the parties or by a showing of good cause by one party.

56.32(3) The appellant shall be informed that the filing of an appeal confers consent for the release of the case file information to the IHO. The IHO shall have access to the case file or a copy thereof at any time following acceptance of the appointment to hear the case.

56.32(4) Within five working days after appointment, the IHO shall notify both parties in writing of the following:

a. The role of the IHO;

b. The IHO's understanding of the reasons for the appeal and the requested resolution;

c. The date, time, and place for the hearing, which shall be accessible and located as advantageously as possible for both parties but more so for the appellant;

d. The availability of the case file for review and copying in a vocational rehabilitation office prior to the hearing and how to arrange for the same (see also rule 281—56.29(259));

e. That the hearing shall be closed to the public unless the appellant specifically requests an open hearing;

f. That the appellant may present evidence and information personally, may call witnesses, may be represented by counsel or other appropriate advocate at the appellant's expense, and may examine all witnesses and other relevant sources of information and evidence;

g. The availability to the appellant of the Iowa client assistance program (ICAP) for possible assistance;

h. Information about the amount of time it will take to complete the hearing process;

i. The possibility of reimbursement of necessary travel and related expenses; and

j. The availability of interpreter and reader services for appellants not familiar with the English language and those who are deaf, as well as transportation or attendant services for those appellants requiring such assistance.

56.32(5) Existing division services provided to an appellant shall not be suspended, reduced, or terminated pending decision of the IHO, unless so requested by the appellant.

56.32(6) The IHO shall provide a full written decision, including the findings of fact and grounds for the decision. Unless either party chooses to seek judicial review pursuant to Iowa Code chapter 17A, the decision of the IHO is final. If judicial review is sought, the IHO's decision shall be implemented pending outcome of the judicial review.

DIVISION VIII
PUBLIC RECORDS AND FAIR INFORMATION PRACTICES

The following rules are implemented in addition to the department's rules in 281—Chapter 5.

281—56.33(259) Collection and maintenance of records. The division has the authority to collect and maintain records on individuals under the Act, the state plan for vocational rehabilitation services, and the Social Security Act. The acceptance of the provisions and benefits of the Rehabilitation Act, under Iowa Code section 259.1, is conditioned on the requirement that the division maintain the confidentiality of personally identifiable information and its release under certain circumstances as provided by applicable federal laws. These laws include, but are not limited to, the following:

1. The Freedom of Information Act (5 U.S.C. 552, added by P.L. 90-23 and amended by P.L. 93-502 and P.L. 94-409).
2. The Privacy Act of 1974 (5 U.S.C. 552a, added by P.L. 93-579).
3. The Drug Abuse Office and Treatment Act (21 U.S.C. 1175, added by P.L. 92-255), as amended by the Comprehensive Alcohol and Alcoholism Prevention, Treatment, and Rehabilitation Act Amendment of 1974 (42 U.S.C. 4582, added by P.L. 93-282).
4. Section 6103 of the Internal Revenue Code (26 U.S.C. 6103) as amended by the Tax Reform Act of 1976 (P.L. 94-455).
5. The Government in the Sunshine Act (P.L. 94-409).
6. The Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. 1232g, added by P.L. 93-568).

Pursuant to Iowa Code section 259.9, the state of Iowa accepts the social security system rules for the disability determination program of the division. Failure to follow the provisions of the Act can result in the loss of federal funds. The state plan provides that all personally identifiable information is confidential and may be released only with the informed written consent of the client or the client's representative, except as permitted by federal law. Any contrary provision in Iowa Code chapter 22 must be waived in order for the state to receive federal funds, services, and essential information for the administration of vocational rehabilitation services.

281—56.34(259) Personally identifiable information. This rule describes the nature and extent of the personally identifiable information collected, maintained, and retrieved by the agency by personal identifier in record systems as defined herein. The record systems maintained by the division include the following:

56.34(1) *Personnel records.* These records contain information relating to initial application, job performance and evaluation, reprimands, grievances, notes from and reports of investigations of allegations related to improper employee behavior, and reports of hearings and outcomes of reprimands and grievances. Pursuant to Iowa Code section 22.7(11), some of the information in personnel records may be confidential.

56.34(2) *Client case records.* An individual file is maintained for each person who has been referred to or has applied for the services of the division. The file contains a variety of personal information about the client, which is used in the establishment of eligibility and the provision of agency services. All information is personally identifiable and is confidential.

56.34(3) *Client service record computer database.* This database contains personal data items about individual clients. Data identifying the client is confidential. Data in the aggregate is not personally identifiable and thus is not confidential.

56.34(4) *Vendor purchase records.* These are records of purchases of goods or services made for the benefit of clients. If the record contains the client's name or other personal identifiers, the record is confidential. Lists of nonclient vendors, services purchased, and the costs of those services are not confidential when retrieved from a data processing system without personally identifiable information.

56.34(5) *Records and transcripts of hearings or client appeals.* These contain personally identifiable information about a client's case, appeal from or for some action, and the decision that has been rendered. The personally identifiable information is confidential. Some of the information is maintained in an index provided for in Iowa Code subsection 17A.3(1)*"d."* Information is available after confidential personally identifiable information is deleted.

56.34(6) *All computer databases of client and applicant names and other identifiers.* The data processing system contains client status records organized by a variety of personal identifiers. These records are confidential as long as any personally identifiable information is present.

56.34(7) *All computer-generated reports that contain personally identifiable information.* The division may choose to draw or generate from a data processing system reports that contain information or an identifier which would allow the identification of an individual client or clients. This material is for internal division use only and is confidential.

281—56.35(259) Other groups of records routinely available for public inspection. This rule describes groups of records maintained by the division other than record systems. These records are routinely available to the public, with the exception of parts of the records that contain confidential information. This rule generally describes the nature of the records, the type of information contained therein, and whether the records are confidential in whole or in part.

56.35(1) Rule making. Rule-making records, including public comments on proposed rules, are not confidential.

56.35(2) Council and commission records. Agendas, minutes, and materials presented to any council or commission required under the Act are available to the public with the exception of those records that are exempt from disclosure under Iowa Code section 21.5. Council and commission records are available from the main office of the division at 510 E. 12th Street, Des Moines, Iowa 50319.

56.35(3) Publications. News releases, annual reports, project reports, agency newsletters, and other publications are available from the main office of the division at 510 E. 12th Street, Des Moines, Iowa 50319. Brochures describing various division programs are also available at local offices of the division.

56.35(4) Statistical reports. Periodic reports of statistical information on expenditures, numbers and types of case closures, and aggregate data on various client characteristics are compiled as needed for agency administration or as required by the federal funding source and are available to the public.

56.35(5) Grants. Records of persons receiving grants from division services are available through the main office of the division. Grant records contain information about grantees and may contain information about employees of a grantee that has been collected pursuant to federal requirements.

56.35(6) Published materials. The division uses many legal and technical publications, which may be inspected by the public upon request. Some of these materials may be protected by copyright law.

56.35(7) Policy manuals. Manuals containing the policies and procedures for programs administered by the division are available in every office of the division. Subscriptions to all or some of the manuals are available at the cost of production and handling. Requests for subscription information should be addressed to Vocational Rehabilitation Services Division, 510 E. 12th Street, Des Moines, Iowa 50319.

56.35(8) Operating expense records. The division maintains records of the expense of operation of the division, including records related to office rent, employee travel expenses, and costs of supplies and postage, all of which are available to the public.

56.35(9) Training records. Lists of training programs, the persons approved to attend, and associated costs are maintained in these records, which are available to the public.

56.35(10) Facility surveys. Records of division reviews of facilities providing services to the division are maintained and used to determine the current acceptable fee schedule. Information about individuals may be included in these records; therefore, parts of the records may be confidential.

56.35(11) All other records that are not exempted from disclosure by law.

DIVISION IX
STATE REHABILITATION COUNCIL

281—56.36(259) State rehabilitation council.

56.36(1) *Composition.* The state rehabilitation council shall be composed of no less than 15 members, appointed by the governor. A majority of the council members must be individuals with disabilities who are not employed by the division. The council members shall include the following:

a. At least one representative of the statewide independent living council, one of whom must be the chairperson or chairperson's designee of that council;

b. At least one representative of a parent training and information center established pursuant to Section 682(a) of the Individuals with Disabilities Education Act;

c. At least one representative of the client assistance program, one of whom must be the director or the director's designee of that program;

d. At least one qualified vocational rehabilitation counselor with knowledge of and experience with vocational rehabilitation programs who serves as an ex officio, nonvoting member of the council if employed by the division;

e. At least one representative of community rehabilitation program service providers;

f. Four representatives of business, industry, and labor;

g. Representatives of disability groups that include a cross section of:

(1) Individuals with physical, cognitive, sensory, and mental disabilities; and

(2) Representatives of individuals with disabilities who have difficulty representing themselves or are unable, due to their disabilities, to represent themselves;

h. Current or former applicants for, or recipients of, vocational rehabilitation services;

i. At least one representative of the department's bureau of children, family, and community services;

j. At least one representative of the Iowa workforce development board; and

k. The director of the division, who serves as an ex officio, nonvoting member of the council.

56.36(2) *Chairperson.* The chairperson must be selected by the members of the council from among the voting members of the council.

56.36(3) *Terms.* Each member of the council shall be appointed for a term of no more than three years. Each member of the council, other than the representative of the client assistance program, shall serve for no more than two consecutive full terms. The terms of service of the members initially appointed must be for a varied number of years to ensure that terms expire on a staggered basis.

56.36(4) *Vacancies.* The governor shall fill a vacancy in council membership, unless the governor has delegated authority to fill that vacancy to the remaining members of the council.

56.36(5) *Functions.* The council shall perform the following functions:

a. Review and advise the division regarding the performance of the division's responsibilities under this chapter and the Act;

b. In partnership with the division, develop, agree to, and review state goals and priorities;

c. In partnership with the division, evaluate the effectiveness of the vocational rehabilitation program and submit reports of progress to the federal Secretary of Education when required;

d. Assist in the preparation of the state plan and amendments thereto, applications, reports, needs assessments, and evaluations required by the Act;

e. To the extent feasible, conduct a review and analysis of the effectiveness of and consumer satisfaction with:

(1) The functions performed by the division;

(2) The vocational rehabilitation services provided by state agencies and other public and private entities responsible for providing vocational rehabilitation services to individuals with disabilities under the Act; and

(3) The employment outcomes achieved by eligible individuals receiving services from the division, including the availability of health and other employment benefits in connection with those employment outcomes;

f. Prepare and submit to the governor and to the Secretary of Education an annual report on the status of vocational rehabilitation programs operated within the state and make the report available to the public through appropriate modes of communication;

g. Coordinate activities with the activities of other councils within the state, including the statewide independent living council, the advisory panel established under Section 612(a)(21) of the Individuals with Disabilities Education Act, the state developmental disabilities planning council, the state mental health planning and advisory council, and the state workforce development board;

h. Provide for the coordination and establishment of working relationships between the division and the statewide independent living council and centers for independent living within the state;

i. Prepare a plan for the provision of resources, including staff and other personnel, that may be necessary and sufficient for the council to carry out its functions under this rule; and

j. Perform other comparable functions, consistent with the purpose of the Act, as the council determines to be appropriate, that are comparable to the other functions performed by the council.

56.36(6) *Meetings.* The council shall convene at least quarterly in locations open and accessible to the general public, including individuals with disabilities. The council's meetings are subject to Iowa Code chapter 21, the open meetings law.

Rule 281—56.36(259) is intended to implement 34 CFR 361.16 and 361.17.

DIVISION X
IOWA SELF-EMPLOYMENT PROGRAM
(a/k/a ENTREPRENEURS WITH DISABILITIES PROGRAM)

281—56.37(259) Purpose. The division of vocational rehabilitation services works in collaboration with the Iowa department for the blind to administer the Iowa self-employment (ISE) program, which is also known as the entrepreneurs with disabilities (EWD) program. The purpose of the program is to provide business development funds in the form of technical assistance (up to $10,000) and financial assistance (up to $10,000) to qualified Iowans with disabilities who start, expand, or acquire a business within the state of Iowa.

[**ARC 8806B**, IAB 6/2/10, effective 7/7/10]

281—56.38(259) Eligibility requirements. Clients of the division or the department for the blind may apply for the program. All of the following conditions are also applicable:

1. The division may limit or deny ISE assistance to an applicant who has previously received educational or training equipment from the division through another rehabilitation program when such equipment could be used in the applicant's proposed business.

2. Any equipment purchased for the applicant under this program that is no longer used by the applicant shall be returned to the division.

3. An applicant must demonstrate that the applicant has at least 51 percent ownership in a for-profit business that is actively owned, operated, and managed in Iowa.

4. Recommendation for and approval of financial assistance is based upon acceptance of a business plan feasibility study and documentation of the applicant's ability to match dollar-for-dollar the amount of funds requested.

5. In order to receive financial support from the ISE program, the applicant's business plan feasibility study must result in self-sufficiency for the applicant as measured by earnings that equal or exceed 80 percent of substantial gainful activity.

6. The division cannot support the purchase of real estate or improvements to real estate.

7. The division cannot provide funding to be used as a cash infusion, for personal or business loan repayments, or for personal or business credit card debt.

8. The division may deny ISE assistance to an applicant who desires to start, expand, or acquire any of the following types of businesses:

- A hobby or similar activity that does not produce income at the level required for self-sufficiency;
- A business venture that is speculative in nature or considered high risk by the Better Business Bureau or similar organization;
- A business registered with the federal Internal Revenue Service as a Section 501(c)(3) entity or other entity set up deliberately to be not-for-profit;
- A business that is not fully compliant with all local, state, and federal zoning requirements and all other applicable local, state, and federal requirements.

[**ARC 8806B**, IAB 6/2/10, effective 7/7/10]

281—56.39(259) Application procedure.

56.39(1) *Application.* Application materials for the program are available from the division and the department for the blind.

56.39(2) *Submittal.* Completed applications shall be submitted to a counselor employed by the division or the department for the blind.

56.39(3) *Review.* Applications will be forwarded to a business development specialist employed by the division for review. Applicants whose applications receive a minimum score of 60 points out of a total of 100 points are eligible to pursue technical assistance funding. Approval of technical assistance funding is based upon the results of a business plan feasibility study. If the application is for financial assistance only, a business plan feasibility study will be required at the time of submission of the application. Applicants whose business plans receive a minimum score of 75 points out of a total of 100 points and a minimum of 15 points per section are eligible to pursue financial assistance funding. Approval of financial assistance funding is based upon acceptance of a business plan feasibility study and documentation of the applicant's ability to match dollar-for-dollar the amount of funds requested. A decision on all applications and forms will generally be issued within 30 days of submission with notification by letter to the applicant.

56.39(4) *Applications for technical assistance—evaluation factors.* Applications for the program will be reviewed and evaluated using a 100-point system, based upon the following criteria:

a. Descriptive and organization information: 0 - 30 points. Does the applicant have education, skills, and work experience relevant to the proposed business venture? Does the applicant document previous management or accounting experience? Does the applicant have a clear understanding of the nature of the business?

b. Market information: 0 - 30 points. Does the application indicate a clear understanding of potential customer groups and how to reach them? Does the application show sufficient knowledge of products/services, competition, and marketing methods? Does the applicant understand the critical issue of location?

c. Financial information: 0 - 30 points. Does the applicant demonstrate an understanding of how to estimate sales potential? Does the applicant indicate knowledge of estimated capital requirements for business start-up, expansion, or acquisition?

d. Creditworthiness: 0 - 10 points. Does the applicant's past credit history demonstrate responsible behavior? Awards will not be made if the applicant has a credit history showing delinquent

credit obligations including, but not limited to, unpaid income tax, delinquent child support obligations, or defaulted student loans.

56.39(5) *Appeal of application evaluation.* If an application is denied based upon the assignment of an inadequate evaluation score, an applicant may appeal the decision to the division or the department for the blind. An appeal shall be consistent with the appeal processes of the division or the department for the blind.

[**ARC 8806B**, IAB 6/2/10, effective 7/7/10]

281—56.40(259) Award of technical assistance funds.

56.40(1) *Awards.* Technical assistance funds may be used for specialized consulting services as determined necessary by the counselor, the business development specialist, and the client. Technical assistance funds may be awarded up to a maximum of $10,000 per applicant. Specialized technical assistance may include, but is not limited to, market analysis; marketing plans; engineering, legal, accounting, and computer services; preliminary business plan feasibility study; financial packaging; and other consulting services that require specialized education and training.

56.40(2) *Award process.* Upon approval of the application by the counselor and the business development specialist, generally within 30 days, an applicant will receive notification of eligibility to pursue technical assistance funding. The applicant must demonstrate the ability to cover any technical assistance costs beyond $10,000 if necessary. The business development specialist will identify whether specialized services are needed and will provide recommendation for approval by the division or departmental staff.

56.40(3) *Technical assistance contracts.* The division shall negotiate contracts with qualified consultants for delivery of services to an applicant if specialized services are deemed necessary. The contracts shall state hourly fees for services, the type of service to be provided, and a timeline for delivery of services. Authorization of payment will be made by a counselor employed by the division or the department for the blind based upon the negotiated rate as noted in the contract. A copy of each contract shall be filed with the division.

56.40(4) *Consultants.* Applicants will be provided a list of qualified business consultants by the business development specialist if specialized consultation services are necessary. The selection of the consultant(s) shall be the responsibility of the applicant.

56.40(5) *Case management.* The business development specialist or counselor will be available as needed for direct consultation to each applicant to ensure that quality services for business planning are provided in a timely manner.

[**ARC 8806B**, IAB 6/2/10, effective 7/7/10]

281—56.41(259) Business plan feasibility study procedure. Information and materials are available from the division and the department for the blind.

56.41(1) *Submittal.* The client shall submit the client's business plan feasibility study to the client's counselor if the study is completed at the time application is made or to the business development specialist if the business plan feasibility study is completed after application approval.

56.41(2) *Review.* The business plan feasibility study will be reviewed, evaluated, and scored by the business development specialist using a 100-point system. A business plan feasibility study receiving a minimum score of 75 points, with at least 15 points per section, will be recommended for financial assistance funding. Generally, the business development specialist will review the client's business plan feasibility study within 30 days of submission and will make recommendation for next steps to all parties involved.

56.41(3) *Evaluation factors.*

a. Personal sense: 0-20 points. Is the personal credit report sufficient to be considered for financial support or loans? If the credit report documents serious delinquencies or derogatory indicators or remarks, or includes adverse data from public or collection information sources, how have these issues been addressed or resolved? Are there other outstanding debt obligations which have been self-reported? Is there evidence that consideration and solutions/accommodations were given to possible barriers that might result due to disability?

b. *Business sense: 0-20 points.* Does the business plan feasibility study contain a well-written executive summary, business description, and operation and management plan?

c. *Market sense: 0-20 points.* Does the business plan feasibility study include details about market research and analysis as well as a market plan?

d. *Financial sense: 0-20 points.* Does the business plan feasibility study include details of capital requests, projected financials, and, where applicable, historical financials?

e. *Other content area: 0-20 points.* Does the business plan have a title page, table of contents, and appendix containing supporting documents?

56.41(4) *Appeal of denial.* If funding is denied based upon a low evaluation score, an applicant may appeal the decision to the division or department for the blind, consistent with the appeal processes of the agencies.

[**ARC 8806B**, IAB 6/2/10, effective 7/7/10]

281—56.42(259) Award of financial assistance funds.

56.42(1) *Awards.* Following the business development specialist's evaluation and scoring of the business plan feasibility study, the business development specialist will issue a recommendation to support or not to support the proposed business venture. The counselor shall make a decision regarding approval or denial of the recommendation. If approved, the client and counselor will review conditions of the financial assistance award and sign the appropriate forms of acknowledgment.

a. Financial assistance funds may be awarded up to $10,000 based upon an approved business plan feasibility study and evidence of business need or evidence of business progression. Before receiving financial assistance, the client must demonstrate a dollar-for-dollar match based on the amount of funding needed. The match may be provided through approved existing business assets, cash, conventional financing or other approved sources.

b. Financial assistance funds may be approved for, but are not limited to: equipment, tools, printing of marketing materials, advertising, rent (up to six months), direct-mail postage, raw materials, inventory, insurance (up to six months), and other approved start-up, expansion, or acquisition costs.

56.42(2) *Award process.* The amount that may be recommended by the business development specialist and approved by the counselor shall be provided in three phases of business operations, when each phase meets specified business results and when the need for additional financial assistance funding is indicated.

a. The timing of each phase and the amount of funds for each phase should be established in the approved business plan feasibility study, as recommended by the business development specialist and approved by the counselor.

b. Recipients of financial assistance must demonstrate ongoing cooperation by providing the business development specialist with financial information needed to assess business progress before additional funds are expended.

56.42(3) *Financial assistance contracts.* Contracts for financial assistance funds shall be the responsibility of the division and will be consistent with the authorized use of Title I vocational rehabilitation funds and policy.

56.42(4) *Vendors.* Procurement of goods or services shall follow procedures established by the department of administrative services. The type of goods or services to be obtained, as well as a timeline for delivery of such, shall be stated by the vendor and agreed upon by the division. Authorization for goods or services shall be made by a counselor employed by the division or the department for the blind based upon the negotiated rate and terms as noted in the contract. A copy of each contract shall be filed with the division. Approval for payment of authorized goods or services shall be made by authorized division personnel.

[**ARC 8806B**, IAB 6/2/10, effective 7/7/10]

These rules are intended to implement Iowa Code chapter 259, the federal Rehabilitation Act of 1973 as amended, the federal Social Security Act (42 U.S.C. Section 301 et seq.), and 2008 Iowa Acts, Senate File 2101.

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CHAPTER 57
Reserved

TITLE XII
PROGRAMS ADMINISTRATION

CHAPTER 58
SCHOOL BREAKFAST AND LUNCH PROGRAM; NUTRITIONAL CONTENT STANDARDS FOR OTHER FOODS AND BEVERAGES

[Prior to 9/7/88, see Public Instruction Department[670] Ch 10]

281—58.1(283A,256) Authority. Iowa Code chapter 283A authorizes the department of education to administer the school breakfast and lunch programs in the public and nonpublic schools of the state. Iowa Code sections 256.7(29), 256.9(59), and 256.9(60) authorize the state board of education to establish nutritional content standards for foods and beverages sold or provided on school grounds during the school day.
[**ARC 7782B**, IAB 5/20/09, effective 7/1/10]

DIVISION I
SCHOOL BREAKFAST AND LUNCH PROGRAM

281—58.2(283A) Definitions. For the purposes of this division, the following definitions apply:

"Attendance center" means a public school of high school grade or under.

"Department" means the Iowa department of education.

"Nutritionally adequate meal" means a breakfast or lunch which meets the minimum criteria for eligibility for federal reimbursement under the federal National School Lunch Act of 1946 and the federal Child Nutrition Act of 1966.

"Other eligible provider" means an institution or organization other than a school district and a nonpublic school that is authorized to provide school breakfast and school lunch programs under the federal National School Lunch Act of 1946 and the federal Child Nutrition Act of 1966.

"School" means a school of high school grade or under.

"School board" means the board of directors regularly elected by the registered voters of a school corporation or district of the state of Iowa.

"School breakfast program or school lunch program" means a program under which breakfasts and lunches or lunches are served by any school in the state of Iowa on a nonprofit basis to children in attendance, including any such program under which a school receives assistance out of funds appropriated by the Congress of the United States.
[**ARC 7782B**, IAB 5/20/09, effective 7/1/10]

281—58.3(283A) Agreement required. All programs operated and approved for federal assistance must operate according to the terms of an agreement or contract executed between the department and the individual school district, the authorities in charge of the nonpublic school or other eligible provider. This agreement or contract is continuous and remains in effect until terminated or canceled by either party. The agreement may be terminated upon ten days' written notice on the part of either party, provided, however, that the department of education may cancel the agreement immediately upon receipt of evidence that the terms and conditions of the agreement or contract have not been met.

281—58.4(283A) State plan. The state plan for the National School Lunch Act of 1946 and the Child Nutrition Act of 1966 shall be reviewed annually according to federal regulations. A copy of such regulations may be obtained at no more than actual cost of reproduction by contacting the department.

Advisory committees shall be established by the director when appropriate. Members shall be appointed by the director. Persons interested in participating in such advisory committees may contact the director. Any advisory committee at the state level shall be established according to federal regulations. Actual costs for lodging and meals for the state level advisory committee shall be paid by the department at current state rates.

Public meetings shall be arranged by the director as desired to assist in reviewing the state plan.

281—58.5(283A) Service area defined. The geographical service area for the National School Lunch Act of 1946 and the Child Nutrition Act of 1966 is the entire state of Iowa. When a service as defined in these two Acts is available in a school or institution, it shall be available to all children in the school or institution.

281—58.6(283A) School breakfast program. A school district, the authorities in charge of a nonpublic school or other eligible provider may operate or provide for the operation of a school breakfast program at all schools in the district or may provide access to a school breakfast program at an alternative site.

281—58.7(283A) School lunch program. A school district shall operate or provide for the operation of lunch programs in all attendance centers in the district. The program shall be provided for all students in each district who attend public school four or more hours each school day and wish to participate.

281—58.8(283A) Procurement. A school board, the authorities in charge of a nonpublic school and each other eligible provider participating in the program shall adopt a policy on the procurement of goods and services used in the administration of the program. If an issue is not covered in the policy, the school district, the authorities in charge of the nonpublic school and each other eligible provider shall follow the appropriate federal regulation.

DIVISION II
NUTRITIONAL CONTENT STANDARDS FOR OTHER FOODS AND BEVERAGES

281—58.9(256) Definitions. For the purposes of this division, the following definitions apply:

"À la carte food sales" means foods or beverages offered for sale by the school as part of the school's food service program during the time the reimbursable school breakfast or lunch is served and that are not part of the reimbursable breakfast or lunch.

"Regulated fundraising" means the sale of foods or beverages on school property targeted primarily to PK-12 students by or through other PK-12 students, student groups, school organizations, or on-campus school stores.

"School" means a school district or accredited nonpublic school.

"School breakfast program or school lunch program" means a program under which breakfasts and lunches or lunches are served by any school in the state of Iowa on a nonprofit basis to children in attendance, including any such program under which a school receives assistance out of funds appropriated by the Congress of the United States.
[**ARC 7782B**, IAB 5/20/09, effective 7/1/10]

281—58.10(256) Scope. The rules in this division regulate the nutritional content of foods and beverages sold or provided on the school grounds of any school during the school day, including foods and beverages sold via vending machines, foods and beverages sold as à la carte items, and foods and beverages sold as part of regulated fundraising. These rules do not regulate the nutritional content of foods or beverages provided through a school breakfast program or school lunch program; sold as a part of other fundraising events; sold at concession stands; provided by parents, other volunteers, or students for class events; or provided by staff for consumption by staff or students. The board of directors of a public school district or the authorities in charge of an accredited nonpublic school may, but are not required to, prescribe reasonable rules for their staff, volunteers, students, and parents, guardians, or custodians of students to adhere to regarding foods and beverages provided on school grounds by staff, volunteers, students, and parents, guardians, or custodians of students.
[**ARC 7782B**, IAB 5/20/09, effective 7/1/10]

281—58.11(256) Nutritional content standards.

Foods Table		
Nutrient	**Allowable à la Carte, Vending, and Regulated Fundraising Items**	**Exemptions**
General Standards for Competitive Food	To be allowable, a competitive food item must meet all of the competitive food nutrient standards AND: 1. Be a grain product that contains 50% or more whole grains by weight or have whole grain as the first ingredient*; OR 2. Have as the first ingredient* one of the non-grain main food groups: fruits, vegetables, dairy, or protein foods (meat, beans, poultry, seafood, eggs, nuts, seeds, etc.); OR 3. Be a combination food that contains at least ¼ cup fruit and/or vegetable; OR 4. Only through July 1, 2016, the food may qualify by containing 10% of the Daily Value (DV) of a nutrient of public health concern (i.e., calcium, potassium, vitamin D, or dietary fiber). *If water is the first ingredient, the second ingredient must be one of the items in 1, 2, or 3 above.	Any entrée item offered as part of the lunch program or the breakfast program is exempt from all competitive food standards if it is sold as a competitive food on the day of service or the day after service. Fresh fruits and vegetables with no added ingredients except water are exempt from all nutrient standards. Canned and frozen fruits with no added ingredients except water or that are packed in 100% juice, extra light syrup, or light syrup are exempt from all nutrient standards. Canned vegetables with no added ingredients except water or that contain a small amount of sugar for processing purposes to maintain the quality and structure of the vegetable are exempt from all nutrient standards.
Calories	Snack items and side dishes sold à la carte: ≤200 calories per item as served, including any added accompaniments Entrée items sold à la carte: ≤350 calories per item as served, including any added accompaniments	Entrée items served are exempt on the day of or day after service in the program meal.
Sodium	Snack items and side dishes sold à la carte: ≤230 mg sodium per item as served Effective July 1, 2016, snack items and side dishes sold à la carte must be ≤200 mg sodium per item as served, including any added accompaniments. Entrée items sold à la carte: ≤480 mg sodium per item as served, including any added accompaniments/condiments	Entrée items served are exempt on the day of or day after service in the program meal.

Foods Table		
Nutrient	**Allowable à la Carte, Vending, and Regulated Fundraising Items**	**Exemptions**
Saturated Fats	<10% calories from saturated fat as served	Entrée items served are exempt on the day of or day after service in the program meal. Reduced fat cheese (including part-skim mozzarella). Nuts and seeds and nut/seed butters. Products consisting of only dried fruit with nuts and/or seeds with no added nutritive sweeteners or fats. Combination products when sold beyond day of service or day after service are not exempt and must meet all the nutrient standards.
Trans Fat	≤0.5 g per portion	
Total Fats	≤35% calories from total fat as served	Entrée items served are exempt on the day of or day after service in the program meal. Reduced fat cheese (including part-skim mozzarella). Nuts and seeds and nut/seed butters. Products consisting of only dried fruit with nuts and/or seeds with no added nutritive sweeteners or fats. Seafood with no added fat. Combination products when sold beyond day of service or day after service are not exempt and must meet all the nutrient standards.
Sugar	≤35% of weight from total sugar as served	Entrée items served are exempt on the day of or day after service in the program meal. Dried whole fruits or vegetables; dried whole fruit or vegetable pieces; and dehydrated fruits or vegetables with no added nutritive sweeteners. Dried whole fruits, or pieces, with nutritive sweeteners that are required for processing and/or palatability purposes (i.e., cranberries, tart cherries or blueberries). Products consisting of only exempt dried fruit with nuts and/or seeds with no added nutritive sweeteners or fats.
Dietary Fiber/Whole Grain	≥50% whole grains by weight or have whole grains as the first ingredient	
Sugar-Free Chewing Gum		Sugar-free chewing gum is exempt from all competitive food standards.
Accompaniments/ Condiments	Must be included in the nutrient profile as part of the food item served and meet all standards	

Beverages Table		
Beverage	**Allowable à la Carte, Vending, and Regulated Fundraising Items**	**Exemptions**
Milk	Lowfat milk, unflavored, or nonfat milk, flavored or unflavored, including nutritionally equivalent milk alternatives as permitted by NSLP*: ● Elementary School ≤8 fl oz ● Middle and High School ≤12 fl oz	
Fruit/Vegetable Juice	100% fruit/vegetable juice, or 100% fruit/vegetable juice diluted with water (with or without carbonation) and no added sweeteners: ● Elementary School ≤8 fl oz ● Middle and High School ≤12 fl oz	
Water	Plain or plain carbonated water in any size	
Caffeine	● Elementary and Middle School: Foods and beverages must be caffeine-free with the exception of trace amounts of naturally occurring caffeine substances. ● High School: Foods and beverages may contain caffeine.	
Other Flavored and/or Carbonated Beverages	● Elementary or Middle School: None allowed. ● High School: -Contain ≤5 calories per 8 fl oz, or ≤10 calories per 20 fl oz in sizes ≤20 fl oz -Contain ≤40 calories per 8 fl oz, or ≤60 calories per 12 fl oz in sizes ≤12 fl oz	

*National School Lunch Program

[**ARC 7782B**, IAB 5/20/09, effective 7/1/10; **ARC 1432C**, IAB 4/30/14, effective 6/4/14]

These rules are intended to implement Iowa Code chapter 283A and sections 256.7(29), 256.9(59), and 256.9(60).

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CHAPTER 59
GIFTED AND TALENTED PROGRAMS

[Prior to 9/7/88, see Public Instruction Department[670] Ch 56]
[Former Ch 59 Rescinded IAB 9/7/88]

281—59.1(257) Scope and general principles.

59.1(1) *Scope.* These rules apply to the provision of gifted and talented programs authorized in Iowa Code sections 257.42 to 257.49, for students who are identified as gifted and talented and who are enrolled in public school districts in this state.

59.1(2) *General principles.* Gifted and talented programs shall be provided by a school district and may be made available to eligible students as a cooperative effort between school districts or through cooperative arrangements between school districts and other educational agencies. It is the responsibility of school districts to ensure that the programs meet the requirements of state statute and these rules.
[**ARC 8382B**, IAB 12/16/09, effective 1/20/10]

281—59.2(257) Definitions. For the purpose of this chapter the following definitions apply.

"Creative thinking" refers to students who have advanced insight, outstanding imagination and innovative reasoning ability. Such students possess outstanding ability to integrate seemingly unrelated information in formulating unique ideas, insights, solutions, or products.

"Department" refers to the department of education.

"General intellectual ability" refers to students who can learn at a faster pace, master higher levels of content and handle abstract concepts at a significantly higher level than expected, given the student's chronological age and experiences.

"Gifted and talented children" refers to those students, distinguished from the total K-12 student population, who are identified as possessing outstanding ability and who are capable of high performance. Gifted and talented children are children who require appropriate instruction and educational services commensurate with their abilities and needs beyond those provided by the regular school program. Gifted and talented children include those children with demonstrated achievement or potential ability, or both, in any of the following areas or in combination: general intellectual ability, creative thinking, leadership ability, visual and performing arts ability, or specific ability aptitude.

"Leadership ability" refers to those students who possess outstanding potential or demonstrated ability to exercise influence on decision making. These students may be consistently recognized by their peers, may demonstrate leadership behavior through school and nonschool activities or may evidence personal skills and abilities that are characteristic of effective leaders.

"Program budget" is a budget consisting of a listing of the estimated direct program expenditures, by function and object, that are necessary to accomplish the goals of the program in meeting the needs of identified students, along with a listing of the sources of revenue and, if necessary, the amounts of fund balance to be applied.

"Specific ability aptitude" refers to those students who have exceptionally high achievement or potential and a high degree of interest in a specific field of study.

"Visual or performing arts ability" refers to students who demonstrate or indicate potential for outstanding aesthetic production or creativity in areas such as art, dance, music, drama, and media production.
[**ARC 8382B**, IAB 12/16/09, effective 1/20/10]

281—59.3(257) Development of plan. Rescinded IAB 12/16/09, effective 1/20/10.

281—59.4(257) Program plan. The program plan submitted by school districts shall be part of the school improvement plan submitted pursuant to Iowa Code section 256.7, subsection 21, paragraph *"a."* The plan shall include all of the following:

1. Program goals, objectives, and activities to meet the needs of gifted and talented children.
2. Student identification criteria and procedures.
3. Staff professional development.

4. Staff utilization plans.
5. Evaluation criteria and procedures and performance measures.
6. Program budget as defined in rule 281—59.2(257).
7. Qualifications required of personnel administering the program.
8. Other factors required by the department.

[**ARC 8382B**, IAB 12/16/09, effective 1/20/10]

281—59.5(257) Responsibilities of school districts.

59.5(1) *Development of goals and objectives.* Gifted and talented program goals and objectives shall be established for the following:

a. Curriculum and instructional strategies.

b. Student outcomes.

c. Program management and administration.

d. Program development.

59.5(2) *Development of curriculum and instructional strategies.* The program of instruction shall consist of content and teaching strategies that reflect the accelerative pace, intellectual processes and creative abilities that characterize gifted and talented students. A linkage between the selection of students, the anticipated student outcomes and the special instructional programs shall be evident. Learning activities shall provide for the development of skills which are beyond the scope of the regular classroom, introduce advanced concepts and contents, and offer students a greater latitude of inquiry than would be possible without the specialized instructional program. Specialized instructional activities shall be those not ordinarily found in the regular school program and may include, but shall not be limited to:

a. A special curriculum supplementing the regular curriculum, using a high level of cognitive and affective concepts and processes.

b. Flexible instructional arrangements such as special classes, seminars, resource rooms, independent study, student internships, mentorships, research field trips, and research centers.

59.5(3) *Student enrollment.* Students shall be involved in a gifted and talented program for a sufficient portion of the regularly scheduled school time to ensure that projected student outcomes are likely to be achieved.

59.5(4) *Personalized education plan.* Best practice dictates that the services provided for each student placed in a gifted and talented program be contained in a written, personalized gifted and talented plan. Personalized education plans should be in writing and reviewed at periodic intervals in accordance with the changing needs of the student. The following items are suggested for inclusion in a student's personalized education plan, but this is neither a mandatory nor an exhaustive list:

a. Relevant background data, assessment of present needs and projections for future needs. Relevant information may include the student's leadership ability, interest inventories, learning characteristics, and learning goals.

b. The nature and extent of the gifted and talented services provided to the student, including indirect services, such as consultative services or other supportive assistance provided to a regular classroom teacher. Other services may include modifications to curriculum and acceleration of the student's curriculum.

c. Personnel responsible for the services provided to the student, as well as those responsible for monitoring and evaluating the student's progress.

59.5(5) *Student identification criteria and procedures.* Students will be placed in a gifted and talented program in accordance with systematic and uniform identification procedures that encompass all grade levels and that are characterized by the following:

a. Identification will be for the purpose of determining the appropriateness of placement in a gifted and talented program rather than for categorically labeling a student.

b. The decision to provide a student with a gifted and talented program will be based on a comprehensive appraisal of the student, consideration of the nature of the available gifted and talented

program and an assessment of actual and potential opportunities within the student's regular school program.

c. Multiple criteria shall be used in identifying a student, with no single criteria eliminating a student from participation. Criteria will combine subjective and objective data, including data with direct relevance to program goals, objectives and activities.

d. In the event that the number of eligible students exceeds the available openings, participants shall be selected according to the extent to which they can benefit from the program.

e. Each identified student's progress shall be reviewed at least annually to consider modifications in program or student placement.

59.5(6) *Evaluation.* The school district shall give attention to the following in its evaluation design:

a. Evaluation of gifted and talented programs shall be for the purpose of measuring program effects and providing information for program improvement.

b. Evaluation should be conducted for each program level where objectives have been established.

c. Both cognitive and affective components of student development should be evaluated.

d. Evaluation findings should report results based on actual accomplishments by the gifted and talented students or their teachers which are a direct result of the project, program, or activity.

59.5(7) *Staff utilization plan.* Staff will be deployed to ensure quality gifted and talented programs by employing the following procedures:

a. A designated staff person shall be responsible for the overall program coordination throughout the school district.

b. The teaching staff of the gifted and talented program should work with the regular classroom teachers to assess, plan, carry out instruction, and evaluate outcomes.

c. Coordination time shall be made available to staff providing gifted and talented programs to allow staff to perform professional responsibilities.

59.5(8) *Staff professional development.* Periodic professional development shall be offered for all classroom teachers to maintain and update understandings and skills about individualizing programs for identified gifted and talented students. A staff development plan for personnel responsible for gifted and talented programs shall be provided. This plan shall be based upon the assessed needs of the gifted and talented instructional and supervisory personnel.

59.5(9) *Qualifications of personnel.* Instructional personnel providing programs for gifted and talented students should have preservice or in-service preparation in gifted and talented education that is commensurate with the extent of their involvement in the gifted and talented program. The gifted and talented program teacher-coordinator shall comply with the endorsement requirements of 282—subrule 13.28(24) (formerly 282—subrule 14.140(13)). The endorsement authorizes the holder to serve as a teacher or a coordinator of programs for the gifted and talented from the prekindergarten level through grade 12.

59.5(10) *Program budget.* When programs are jointly provided by two or more school districts or by a school district in cooperation with another educational agency, the budget shall specify how each cooperating school district or agency will determine the portion of the program costs to be provided by each school district or agency and shall provide a budget that specifies the contribution of each school district or agency.

59.5(11) *Appropriate expenditures.* The purpose of the funding described in Iowa Code section 257.45 is to provide for the needs of identified gifted and talented students beyond those needs that are provided by the regular school program. The funding shall be used only for expenditures directly related to providing the gifted and talented program described in the program plan. Appropriate expenditures are delineated in 281—Chapter 98.

59.5(12) *Inappropriate expenditures.* Inappropriate expenditures are delineated in 281—Chapter 98.

59.5(13) *Financial management.* Gifted and talented funding is categorical funding and follows the general provisions in 281—Chapter 98.

59.5(14) *Annual reporting.* School districts shall include and identify the detail of financial transactions related to gifted and talented resources, expenditures, and carryfoward balances on their certified annual report. School districts shall use the account coding appropriate to the gifted and

talented program as defined by Uniform Financing Accounting for Iowa School Districts and AEAs. Each school district shall certify its certified annual report following the close of the fiscal year but no later than September 15.
[**ARC 8382B**, IAB 12/16/09, effective 1/20/10]

281—59.6(257) Responsibilities of area education agencies.

59.6(1) When a written request is received from one or more local school boards, a gifted and talented advisory council shall be established and operated under provisions of Iowa Code sections 257.48 and 257.49.

59.6(2) Staff of the area education agency shall cooperate with school districts in the identification and placement of gifted and talented students. Cooperation may include, but is not limited to:

a. Assisting local school district personnel in the interpretation of available student data.

b. Assistance in the development of the identification plan.

c. Providing for psychological testing in individual cases when available data contains significant inconsistencies or in other circumstances when additional data may be necessary for determining the appropriateness of the student placement.
[**ARC 8382B**, IAB 12/16/09, effective 1/20/10]

281—59.7(257) Responsibilities of the department.

59.7(1) The department shall review documentation submitted by school districts and area education agencies regarding the school districts' and area education agencies' gifted and talented programs and financial transactions. The department may request that the staff of the auditor of state conduct an independent program audit to verify that the gifted and talented programs conform to a school district's program plans.

59.7(2) The department shall provide technical assistance to school districts and to area education agencies in the development of gifted and talented programs.
[**ARC 8382B**, IAB 12/16/09, effective 1/20/10]

281—59.8(257) Assurances. Rescinded IAB 12/16/09, effective 1/20/10.

These rules are intended to implement Iowa Code sections 257.42 to 257.49.

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CHAPTER 60
PROGRAMS FOR STUDENTS OF LIMITED ENGLISH PROFICIENCY

[Prior to 9/7/88, see Public Instruction Department[670] Ch 57]

281—60.1(280) Scope. These rules apply to the identification of students and provision of programs for limited English proficient students and to the application procedures for securing fiscal support.

281—60.2(280) Definitions. As used in these rules, the following definitions apply:

"English as a second language" refers to a structured language acquisition program designed to teach English to students whose native language is other than English, until the student demonstrates a functional ability to speak, read, write, and listen to English language at the age- and grade-appropriate level.

"Fully English proficient" refers to a student who is able to read, understand, write, and speak the English language and to use English to ask questions, to understand teachers and reading materials, to test ideas, and to challenge what is being asked in the classroom.

"Limited English proficient" refers to a student who has a language background other than English, and the proficiency in English is such that the probability of the student's academic success in an English-only classroom is below that of an academically successful peer with an English language background.

"Transitional bilingual instruction" refers to a program of instruction in English and the native language of the student until the student demonstrates a functional ability to speak, read, write, and listen to the English language at the age- and grade-appropriate level.

[**ARC 8383B**, IAB 12/16/09, effective 1/20/10]

281—60.3(280) School district responsibilities.

60.3(1) *Student identification and assessment.* A school district shall use the following criteria in determining a student's eligibility:

a. In order to determine the necessity of conducting an English language assessment of any student, the district shall, at the time of registration, ascertain the place of birth of each student and whether there is a prominent use of any language(s) other than English in the home. If the student's registration form indicates the prominent use of another language in the student's home, the district shall determine the first language acquired by the student and the languages spoken by the student and by others in the student's home. School district personnel shall be prepared to conduct oral or native language interviews with those adults in the student's home who may not have sufficient skills in English.

b. Students identified as prominently using a language other than English in the home shall be assessed by the district. The assessment shall include (1) an assessment of the student's English proficiency in the areas of speaking, listening, reading, and writing; and (2) an assessment of the student's academic skills in relation to their grade or age level. A consistent plan of evaluation which includes ongoing evaluation of student progress shall be developed and implemented by the district for the above areas for each student so identified.

60.3(2) *Staffing.* Teachers in an English as a second language (ESL) program must possess a valid Iowa teaching license. Individuals who were licensed in Iowa prior to October 1, 1988, and were allowed to teach English as a second language without completing the endorsement requirements must complete the endorsement requirements by July 1, 2012, in order to teach or continue to teach English as a second language. A waiver provision is available through the board of educational examiners for individuals who have been successfully teaching English as a second language.

60.3(3) *Limited English proficient student placement.* Placement of students identified as limited English proficient shall be in accordance with the following:

a. Mainstream classes. Students will be placed in classes with chronological peers or, when absolutely necessary, within two years of the student's age.

b. Limited English proficient program placement.

(1) Students enrolled in a program for limited English proficient students shall receive language instruction with other limited English proficient students with similar language needs.

(2) When students of different age groups or educational levels are combined in the same class, the school shall ensure that the instruction given is appropriate to each student's level of educational attainment.

(3) A program of transitional bilingual instruction may include the participation of students whose native language is English.

(4) Exit from program. An individual student may exit from an ESL or Transitional Bilingual Education (TBE) program after an assessment has shown both that the student can function in English (in speaking, listening, reading, and writing) at a level commensurate with the student's grade or age peers and that the student can function academically at the same level as the English speaking grade level peers. These assessments shall be conducted by utilizing state, local, or nationally recognized tests as well as teacher observations and recommendations.

(5) Staff in-service. The district shall develop a program of in-service activities for all staff involved in the educational process of the limited English proficient student.

60.3(4) *Medium of instruction.* Instruction in all secular subjects taught in both public and nonpublic schools shall be in the English language, except when the use of a foreign language is deemed appropriate because the student is limited English proficient. When the student is limited English proficient, both public and nonpublic schools shall provide special instruction, which shall include but need not be limited to either instruction in English as a second language or transitional bilingual instruction until the student is fully English proficient or demonstrates a functional ability to speak, read, write, and understand the English language.

[**ARC 8383B**, IAB 12/16/09, effective 1/20/10]

281—60.4(280) Department responsibility. The department of education shall provide technical assistance to school districts, including advising and assisting schools in planning, implementation, and evaluation of programs for limited English proficient students.

60.4(1) to **60.4(3)** Rescinded IAB 2/2/94, effective 3/9/94.

281—60.5(280) Nonpublic school participation. English as a second language and transitional bilingual programs offered by a public school district shall be made available to students attending an accredited nonpublic school located within the district. The district obtains funding for such students in accordance with Iowa Code sections 257.31(5)*"j"* and 280.4.

[**ARC 8383B**, IAB 12/16/09, effective 1/20/10]

281—60.6(280) Funding. Additional weighting for students in programs provided under this chapter is available in accordance with Iowa Code sections 257.31(5)*"j"* and 280.4.

60.6(1) *Weighting.* A weighting is included in the weighted enrollment of the school district of residence for a period not exceeding four years to provide funds for the excess costs of instruction of limited English proficient students above the costs of instruction of pupils in a regular curriculum.

a. A student may be included for weighting if the student meets the definition of a limited English proficient student and the student is being provided instruction related to limited English proficiency above the level of instruction provided to pupils in the regular curriculum.

b. A student may be included for weighting up to four consecutive years.

c. If a student was present on the date specified in Iowa Code section 257.6 for counting students in one year, moved out of the district or dropped out of school, but returned to the same district by the date specified for counting students in the subsequent year, the student is considered to be served in consecutive years without regard to the break in instruction from the district.

d. If a student was present on the date specified in Iowa Code section 257.6 for counting students in one year, moved out of the district or dropped out of school, and did not return to the same district by the date specified for counting students in the subsequent year, but did return to the same district in a later year, the student is considered to be a new student eligible to begin in year one if the student meets the requirements in paragraph *"a."*

60.6(2) *Modified allowable growth.* In addition to weighting, the school budget review committee (SBRC) may grant modified allowable growth for an unusual need to continue funding beyond the four years of weighting or for costs in excess of the weighting to provide instruction to limited English proficient students above the costs of regular instruction.

a. A school district of residence may apply for modified allowable growth to the SBRC. The modified allowable growth will be calculated as the total actual budgeted expenditures for the current year, reduced by the limited English proficient funding generated in the current budget year based on the limited English proficient count on the certified enrollment in the previous year, and reduced by any other grants, carryover, or other resources provided to the district for this program.

b. In order to apply for modified allowable growth under this subrule, the district must complete and submit the application form no later than January 15 following the date specified in Iowa Code section 257.6, subsection 1, for the certified enrollment. The SBRC will act on these requests during its March regular meeting. If the SBRC grants the district's request for modified allowable growth, the department of management will increase the district's budget authority by that amount.

c. The SBRC may require the district to appear at a hearing to discuss its request for modified allowable growth.

60.6(3) *Appropriate expenditures.* Appropriate expenditures for the limited English proficiency program are those that are direct costs of providing instruction which supplement, but do not supplant, the costs of the regular curriculum. These expenditures are delineated in 281—Chapter 98.

60.6(4) *Inappropriate expenditures.* Inappropriate expenditures are delineated in 281—Chapter 98.

60.6(5) *Financial management.* Limited English proficient funding is categorical funding and follows the general provisions in 281—Chapter 98.

60.6(6) *Annual reporting.* Districts shall include and identify the detail of financial transactions related to limited English proficient resources, expenditures, and carryfoward balances on their certified annual report. School districts shall use the account coding appropriate to the limited English proficient program as defined by Uniform Financing Accounting for Iowa School Districts and AEAs. Each district shall submit its certified annual report following the close of the fiscal year but no later than September 15.

[**ARC 8383B**, IAB 12/16/09, effective 1/20/10]

These rules are intended to implement Iowa Code sections 257.31(5)*"j"* and 280.4.

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CHAPTER 61
IOWA READING RESEARCH CENTER

281—61.1(256) Establishment. There is established an Iowa reading research center. The director of the department of education shall select a public education entity to serve as the host for the Iowa reading research center. Preference shall be given to a school district, an area education agency, or the joint area education agencies system. The selection of a host shall be for a specified period of time.
[**ARC 0475C**, IAB 11/28/12, effective 1/2/13]

281—61.2(256) Purpose. The purpose of the center shall be to apply current research on literacy to provide for the development and dissemination of all of the following, although each of the following will not necessarily be of equal priority or immediacy:

1. Instructional strategies for prekindergarten through grade 12 to achieve literacy proficiency that includes reading, reading comprehension, and writing for all students.
2. Strategies for identifying and providing evidence-based interventions for students, beginning in kindergarten, who are at risk of not achieving literacy proficiency.
3. Models for effective school, parent, and community partnerships to improve student literacy.
4. Reading assessments.
5. Professional development strategies and materials to support teacher effectiveness in student literacy development.
6. Data reports on attendance center, school district, and statewide progress toward literacy proficiency in the context of student, attendance center, and school district demographic characteristics.
7. An intensive summer literacy program, referred to in rule 281—61.3(256).

[**ARC 0475C**, IAB 11/28/12, effective 1/2/13]

281—61.3(256) Intensive summer literacy program. The center shall establish program criteria and guidelines for implementation of the program by school districts, under rules adopted by the state board of education.

61.3(1) *Program criteria.* Reserved.

61.3(2) *Guidelines for implementation by school districts.* Reserved.
[**ARC 0475C**, IAB 11/28/12, effective 1/2/13]

281—61.4(256) First efforts of the center. The first efforts of the center shall focus on improving reading performance and instruction in kindergarten through grade 3.
[**ARC 0475C**, IAB 11/28/12, effective 1/2/13]

281—61.5(256) Nature of the center's operation. The center shall govern its work according to the following requirements.

61.5(1) *Use of expertise.* The center shall draw upon national and state expertise in the field of literacy proficiency, including experts from Iowa's institutions of higher education and area education agencies with backgrounds in literacy development.

61.5(2) *Data and report development.* The center and its director shall seek support from the Iowa research community in methodologies for the collection of student literacy data and in data report development, the analysis of available information from Iowa education data sources, and the analysis of progress toward literacy proficiency.

61.5(3) *Coordination with the department.* The center and its director shall work with the department of education to identify additional needs for tools and technical assistance for Iowa schools to help schools achieve literacy proficiency goals and seek public and private partnerships in developing and accessing necessary tools and technical assistance.
[**ARC 0475C**, IAB 11/28/12, effective 1/2/13]

281—61.6(256) Nature of the center's products. The center's strategies, models, materials, and assessments, including the products referred to in subrule 61.6(3), shall be judged by and subject to the following requirements:

61.6(1) *Research-based.* To the extent possible, strategies, models, materials, and assessments shall be research-based.

61.6(2) *Replicable.* The strategies, models, materials, and assessments produced by the center shall contain evidence establishing that they are replicable by Iowa school districts, area education agencies, and accredited nonpublic schools.

61.6(3) *Sustainable.* The strategies, models, and materials produced by the center shall contain evidence establishing that they are capable of sustainable implementation.

61.6(4) *Publicly available.* Due to the nature of the center, its products shall be widely and liberally distributed and used.

a. Regardless of any intellectual property right that may accrue to the center, the department of education shall have a perpetual, irrevocable, royalty-free, nonexclusive, nontransferable license to use any of the strategies, models, and materials produced by the center.

b. Regardless of any intellectual property right that may accrue to the center, each school district, area education agency, and accredited nonpublic school shall have a perpetual, irrevocable, royalty-free, nonexclusive, nontransferable license to use any of the strategies, models, and materials produced by the center.

c. Regardless of any intellectual property right that may accrue to the center, each school district, area education agency, accredited nonpublic school, and practitioner preparation program approved by the department of education shall have a perpetual, irrevocable, royalty-free, nonexclusive, nontransferable license to use any of the strategies, models, and materials produced by the center to provide training to current and prospective teachers and administrators.

d. Notwithstanding paragraphs 61.6(4)*"a"* through *"c,"* the center may seek reimbursement from a school district, area education agency, accredited nonpublic school, or practitioner preparation program approved by the department of education for the actual cost of delivering the center's products. For purposes of this paragraph, actual costs may include printing, telecommunications expenses, personnel time, postage, and other costs, but shall not include any amount that represents a royalty or other compensation for the use of the center's intellectual property.

[**ARC 0475C**, IAB 11/28/12, effective 1/2/13]

281—61.7(256) Governance and leadership of the center. The center shall be governed in the following manner.

61.7(1) *Director and other personnel.* The center shall have a director who shall be an employee of the host referred to in rule 281—61.1(256). The director of the department of education or the director's designee, in consultation with the host and the advisory council, shall select, determine the compensation of, and annually evaluate the director of the center.

a. Responsibilities of the director of the center will include the following:

(1) Enacting the priorities of the reading research center, as defined by the department;

(2) Achieving the Iowa reading research center's mission and purpose;

(3) Directing the center's budget;

(4) Managing the center's staff;

(5) Managing and overseeing the request for proposal (RFP) or contracting process or both to enact priorities of the center;

(6) Providing oversight and management of all contracts and projects initiated by the center;

(7) Establishing models for an intensive summer literacy program replicable in Iowa schools;

(8) Disseminating literacy research and its application; and

(9) Submitting required reports to the department and the general assembly.

b. The center may employ such other personnel as may be necessary to fulfill its responsibilities, upon approval of such positions by the director of the department of education.

61.7(2) *Advisory council.* When setting priorities for the center, the department of education shall seek advice and assistance from an advisory council. The advisory council shall establish its bylaws and shall govern itself by the following paragraphs:

a. The advisory council shall consist of representatives of the department, school districts, area education agencies, accredited nonpublic schools, institutions of higher education, organizations representing reading and literacy teachers, community-based nonprofit organizations that are focused on literacy, statewide literacy organizations, and parents. Members who offer other perspectives may be appointed. Members may serve in more than one role. Members shall be appointed by the director of the department of education or the director's designee. Actual expenses for members of the advisory council may be assumed by the reading research center.

b. The advisory council shall recommend and continually review center priorities, which shall be consistent with these rules. The advisory council shall annually submit to the department a recommended set of projects and priorities for the reading research center.

c. The advisory council shall provide input to the director of the department on the desired qualifications for the position of director of the reading research center.

d. The advisory council shall advise and assist the center in preparing the annual report required by rule 281—61.9(256).

e. The advisory council shall foster collaboration across the Iowa reading research and evaluation community and serve as a facilitator in identifying additional research needs and ways to apply research to practice in Iowa schools and communities.

f. The advisory council shall stay abreast of emerging trends, research, and effective literacy practices.

g. The advisory council shall assist the director of the center in reviewing proposals for quality, viability, and statewide impact.

h. Meetings of the advisory council are public meetings subject to statutory open meetings requirements.

61.7(3) *Use of advisory council recommendations.* The department shall consider the priorities established by its advisory council in determining which projects or activities to direct the center to enact, consistent with these rules and with the center's funding.

61.7(4) *Contracts and awards.* In the furtherance of its work, the center may contract with other entities or may make awards by competitive bid. The rules in this chapter shall be a term of any contract or award under this subrule. Any product produced pursuant to a contract or award shall be subject to these rules, including subrule 61.6(4).

[**ARC 0475C**, IAB 11/28/12, effective 1/2/13]

281—61.8(256) Financing of the center. The center will be financed in the following manner:

61.8(1) *Host as fiscal agent.* The host shall be the fiscal agent for the center.

61.8(2) *Public or private funds.* The host and the center may solicit and accept funds from public and private sources for the fulfillment of the mission and purpose of the center.

61.8(3) *Oversight by the department.* The department shall have oversight responsibilities for the financial operations of the center.

[**ARC 0475C**, IAB 11/28/12, effective 1/2/13]

281—61.9(256) Annual report. The center shall submit a report of its activities to the general assembly by January 15 annually.

[**ARC 0475C**, IAB 11/28/12, effective 1/2/13]

These rules are intended to implement Iowa Code sections 256.7(31) and 256.9(53)*"c."*

[Filed ARC 0475C (Notice ARC 0389C, IAB 10/3/12), IAB 11/28/12, effective 1/2/13]

CHAPTER 62
STATE STANDARDS FOR PROGRESSION IN READING

281—62.1(256,279) Purpose. The purpose of this chapter is to implement Iowa Code section 279.68. All rules in this chapter shall be construed and applied to meet the following standard: all actions under this chapter must provide reasonable expectation that a student's progress toward reading proficiency is sufficient to master appropriate grade four level reading skills prior to the student's promotion to grade four.
[**ARC 1331C**, IAB 2/19/14, effective 3/26/14]

281—62.2(256,279) Assessment of reading proficiency. All school districts shall assess reading proficiency of all students, as required by this rule.

62.2(1) *Assessment at beginning of school year.* A school district shall assess all students enrolled in kindergarten through grade three at the beginning of each school year for the students' level of reading or reading readiness.

62.2(2) *Subsequent assessments throughout school year.* A school district shall provide to all students additional, brief assessments of reading achievement in a manner required by the department, using assessments that meet the standards described in subrule 62.2(5).

62.2(3) *Progress-monitoring instruments.* For students identified as having a substantial deficiency in reading, as well as students who are at risk of a substantial deficiency in reading, a school district shall monitor the students' progress in reading with instruments that meet the standards in subrule 62.2(5), in at least a frequency required by the department.

62.2(4) *Statewide or locally determined assessments.* Assessments may be locally determined or statewide, provided that all assessments for purposes of implementing this chapter meet the standards described in subrule 62.2(5).

62.2(5) *Standards for approval for assessments.* Any assessment of reading or reading readiness required by this rule and used to implement this chapter shall meet the following minimum standards before use by a school district.

a. Standards for all assessments. Any assessment used under this chapter, including instruments described in paragraphs 62.2(5)*"b"* and *"c,"* shall meet department-adopted minimum standards for reliability and validity, at the appropriate grade level and for the skills assessed. In addition, all assessments must have information available concerning administration time per student, access to student data after completion, and amount of teacher training required.

b. Standards for universal-screening instruments. Any assessment used for universal-screening purposes under this chapter shall meet department-adopted minimum standards for the following statistical measures: area under the curve and specificity/sensitivity.

c. Standards for progress-monitoring instruments. Any assessment used for progress-monitoring purposes under this chapter shall meet department-adopted standards for number of forms of demonstrated equivalence and for the following statistical measure: reliability of slope.

d. Department publication of approved assessments. The department shall annually publish or update a list of assessments approved pursuant to this subrule. Approved assessments will have a demonstrated ability to predict future reading performance.

62.2(6) *Basic levels of reading proficiency on approved assessments.* The department shall determine benchmarks for basic levels of reading proficiency to be used with approved assessments based on the ability to predict meaningful future outcomes of a student's reading performance that is sufficient to master appropriate grade four reading skills prior to the student's promotion to grade four.

62.2(7) *Assessment measures.* Assessments administered to implement this chapter, when taken as a whole, shall measure phonemic awareness, phonics, fluency, vocabulary, and comprehension.

62.2(8) *Noncompliant assessments.* Assessments that do not meet the requirements of this rule shall not be used by any school district to implement this chapter.
[**ARC 1331C**, IAB 2/19/14, effective 3/26/14]

281—62.3(256,279) Tools for evaluating and reevaluating reading proficiency. The department identifies the following attributes of tools that may be used in evaluating and reevaluating reading proficiency.

62.3(1) *Locally determined or statewide assessments.* In evaluating and reevaluating students who are or may be deficient in reading, school districts shall use assessments that meet the standards referenced in subrule 62.2(5).

62.3(2) *Alternative assessments.* If a school district determines, based on the clear and unique facts of a particular student's case, that a particular student requires an alternative assessment to determine proficiency in reading, in addition to the assessments referred to in rule 281—62.2(256,279) and subrule 62.3(1), the alternative assessment shall be founded on scientifically based research and shall be reasonably calculated to provide equivalent information about the student's reading, in addition to information provided by the assessments referred to in rule 281—62.2(256,279) and subrule 62.3(1).

62.3(3) *Portfolio reviews.* School districts may review a portfolio of a student's work to determine reading proficiency. Portfolio reviews must be conducted using standard review criteria that are founded on scientifically based research. A portfolio review may be used along with assessments required in rule 281—62.2(256,279) and subrule 62.3(1) but shall not be used in lieu of such assessments. The department shall maintain a list of portfolio review criteria that are adequate under this subrule.

62.3(4) *Teacher observation.* A student may initially be identified as having a substantial deficiency in reading proficiency based on teacher observation. A teacher observation under this subrule shall be based on department-approved observation criteria. Teacher observation shall not be used to determine that a student continues to have a substantial deficiency in reading.

62.3(5) *Other tools.* The department may identify additional tools for use in evaluating and reevaluating reading proficiency, so long as those tools are founded on scientifically based research.

62.3(6) *Alternate assessment.* If an individual with a disability has been determined to require an alternate assessment aligned to alternate academic achievement standards in reading, pursuant to rule 281—41.320(256B,34CFR300), that individual shall receive such alternate assessment. The progress monitoring required by the alternate assessment in reading required for such an individual shall be deemed to satisfy the universal screening and progress monitoring requirements of rule 281—62.2(256,279).

62.3(7) *Noncompliant tools.* Tools that do not meet the requirements of this rule shall not be used by any school district to implement this chapter.

[**ARC 1331C**, IAB 2/19/14, effective 3/26/14]

281—62.4(256,279) Identification of a student as having a substantial deficiency in reading. A school district shall follow this rule in determining whether a student in kindergarten through grade three has a substantial deficiency in reading.

62.4(1) *Definition of "substantial deficiency in reading."* A school district shall determine that a student has a "substantial deficiency in reading" if, based on the requirements of this chapter, the student's reading is below a standard set on an approved assessment pursuant to subrule 62.2(6) and the student's progress on a measure that meets the requirements of this chapter is minimal.

62.4(2) *Determination of a substantial deficiency in reading.*

a. In initially determining whether a student has a substantial deficiency in reading as defined in subrule 62.4(1), the school district shall consider assessments referred to in rule 281—62.2(256,279) and subrule 62.3(1) or teacher observations that meet the criteria referenced in subrule 62.3(4).

b. In determining whether a student continues to have a substantial deficiency in reading, a school district shall consider assessments referred to in rule 281—62.2(256,279) and subrule 62.3(1), with specific attention given to progress-monitoring results under subrule 62.2(3).

62.4(3) *Services offered to all students with a substantial deficiency in reading.* A school district shall provide intensive reading instruction to any student who exhibits a substantial deficiency in reading, as defined in subrule 62.4(1). A school district shall continue to provide the student with intensive reading instruction until the reading deficiency is remediated. All services provided under this subrule shall comply with rule 281—62.6(256,279).

62.4(4) *Notice to parents.* The parent or guardian of any student in kindergarten through grade three identified as having a substantial deficiency in reading, as defined in subrule 62.4(1), shall be notified at least annually in writing of the following:

a. That the child has been identified as having a substantial deficiency in reading;

b. A description of the services currently provided to the child;

c. A description of the proposed supplemental instructional services and supports that the school district will provide to the child that are designed to remediate the identified area of reading deficiency; and

d. Strategies for parents and guardians to use in helping the child succeed in reading proficiency, including but not limited to the promotion of parent-guided home reading.

[**ARC 1331C**, IAB 2/19/14, effective 3/26/14]

281—62.5(256,279) Intensive summer reading program.

62.5(1) *General.* Beginning May 1, 2017, unless the school district is granted a waiver pursuant to subrule 62.5(5), if a student's reading deficiency is not remediated by the end of grade three, as demonstrated by scores on a locally determined or statewide assessment as provided in subrule 62.4(2), the school district shall notify the student's parent or guardian that the parent or guardian may enroll the student in an intensive summer reading program offered in accordance with this rule.

62.5(2) *Parent or guardian does not enroll child in intensive summer reading program.* If the parent or guardian does not enroll the student in the intensive summer reading program and the student is ineligible for the good-cause exemption under rule 281—62.8(256,279), the student shall be retained in grade three pursuant to rule 281—62.7(256,279).

62.5(3) *Student exempt from or completes program and is not reading proficient.* If the student is exempt from participating in an intensive summer reading program for good cause pursuant to rule 281—62.8(256,279) or completes the intensive summer reading program but is not reading proficient upon completion of the program as determined under subrule 62.4(2), the student may be promoted to grade four, but the school district shall continue to provide the student with intensive reading instruction pursuant to subrule 62.4(3) until the student is proficient in reading as demonstrated by scores on locally determined or statewide assessments pursuant to subrule 62.4(2).

62.5(4) *Nature of intensive summer reading program.* The intensive summer reading program offered by a school district shall comply with the program criteria and guidelines for implementation contained in 281—Chapter 61.

62.5(5) *Waiver of intensive summer reading program.* The department may grant a school district a waiver of the requirement to offer an intensive summer reading program for the summer of 2017 only. A school district must demonstrate good cause and that the requested waiver is in keeping with the objectives of Iowa Code section 279.68 and these rules.

[**ARC 1331C**, IAB 2/19/14, effective 3/26/14]

281—62.6(256,279) Successful progression for early readers. Each school district shall provide the following.

62.6(1) *Intensive instructional services.* A school district shall provide students who are identified as having a substantial deficiency in reading under subrule 62.4(2) with intensive instructional services and supports, free of charge, to remediate the identified areas of reading deficiency. The intensive instructional services are further described in subrule 62.6(2).

a. Intensive instructional services under this subrule shall include a minimum of 90 minutes daily of scientific research-based reading instruction, which shall be core instruction.

b. In addition to the instruction described in paragraph 62.6(1)*"a,"* a school district shall prescribe other strategies, which may include but are not limited to the following:

(1) Small group instruction.

(2) Reduced teacher-student ratios.

(3) More frequent progress monitoring.

(4) Tutoring or mentoring.

(5) Extended school day, week, or year.

(6) Summer reading programs.

62.6(2) *Reading enhancement and acceleration development initiative.* The intensive instructional services described in subrule 62.6(1) shall be provided to all students in kindergarten through grade three who are identified as having a substantial deficiency in reading, as determined pursuant to subrule 62.4(2). The services shall meet the following requirements:

a. A school district shall provide intensive instructional services during regular school hours, in addition to the regular reading instruction.

b. A school district shall provide a reading curriculum that meets the standards of subrule 62.6(3).

62.6(3) *Reading curriculum for students with substantial deficiencies in reading.* A curriculum that does not meet the standards of this subrule shall not be used to implement this chapter. To implement this subrule, a school district shall provide a curriculum that meets the following guidelines and specifications:

a. Assists students assessed as exhibiting a substantial deficiency in reading to develop the skills to read at grade level.

b. Provides skill development in phonemic awareness, phonics, fluency, vocabulary, and comprehension.

c. Is supported by scientifically based research in reading.

d. Is implemented by certified instructional staff with appropriate training and professional development. Such training and professional development shall meet the requirements of rule 281—83.6(284).

e. Is implemented by certified instructional staff with fidelity, which shall meet such standards for fidelity of implementation that the department may adopt.

f. Includes a scientifically based and reliable assessment, which shall meet the requirements of rule 281—62.1(256,279).

g. Provides initial and ongoing analysis of each student's reading progress, which shall meet the requirements of rule 281—62.1(256,279), with notice provided to parents pursuant to subrule 62.6(4).

h. Is implemented during regular school hours.

i. Provides a curriculum in core academic subjects to assist the student in maintaining or meeting proficiency levels for the appropriate grade in all academic subjects.

62.6(4) *Parent notice, involvement and support.* At a minimum and in addition to other requirements of this chapter, school districts shall provide the following to all parents or guardians of students who have been identified as having a substantial deficiency in reading:

a. At regular intervals, a school district shall apprise the parent or guardian of academic and other progress being made by the student and give the parent or guardian other useful information.

b. In addition to required reading enhancement and acceleration strategies provided to students, a school district shall provide parents or guardians of students who are identified as having a substantial deficiency in reading under subrule 62.4(2) with a plan outlined in a parental contract, including participation in regular parent-guided home reading.

62.6(5) *Report to the department.* Each school district shall report to the department the specific intensive reading interventions and supports implemented by the school district pursuant to this chapter. The department shall annually prescribe the components of required or requested reports.

[**ARC 1331C**, IAB 2/19/14, effective 3/26/14]

281—62.7(256,279) Promotion to grade four.

62.7(1) *General.* In determining whether to promote a student in grade three to grade four, a school district shall place significant weight on any reading deficiency identified pursuant to subrule 62.4(2) that is not yet remediated.

62.7(2) *Mandatory retention.* A student described in subrule 62.5(2) shall be retained pursuant to this rule.

62.7(3) *Additional factors.* In addition to the significant weight required by subrule 62.7(1), the school district shall also weigh the student's progress in other subject areas, as well as the student's overall intellectual, physical, emotional, and social development.

62.7(4) *Consultation with parent or guardian.* A decision to retain a student in grade three shall be made only after direct personal consultation with the student's parent or guardian.

62.7(5) *Plan of action required.* A decision to retain a student in grade three shall be made only after the formulation of a specific plan of action to remedy the student's reading deficiency.

[**ARC 1331C**, IAB 2/19/14, effective 3/26/14]

281—62.8(256,279) Good-cause exemption. A school district shall exempt students from the retention requirements of rule 281—62.7(256,279) and intensive summer reading program requirements of rule 281—62.5(256,279) for good cause.

62.8(1) *"Good cause" defined.* Good-cause exemptions shall be limited to the following:

a. Limited English proficient students who have had less than two years of instruction in an English language learners program.

b. Students requiring special education whose individualized education program indicates that participation in a locally determined or statewide assessment required by this chapter is not appropriate, consistent with the requirements of rules adopted by the state board of education for the administration of Iowa Code chapter 256B.

c. Students who demonstrate an acceptable level of performance on an alternative performance measure approved pursuant to subrule 62.3(2).

d. Students who demonstrate mastery through a student portfolio under alternative performance measures approved pursuant to subrule 62.3(3).

e. Students who have received intensive remediation in reading for two or more years but still demonstrate a deficiency in reading and who were previously retained in kindergarten, grade one, grade two, or grade three. Intensive reading instruction for students so promoted must include an altered instructional day that includes specialized diagnostic information and specific reading strategies for each student. The school district shall assist attendance centers and teachers to implement reading strategies that research has shown to be successful in improving reading among low-performing readers.

62.8(2) *Additional documentation required.* Requests for good-cause exemptions from the retention requirement of subrule 62.5(2) and rule 281—62.7(256,279) for a student described in paragraphs 62.8(1)*"c"* and *"d"* shall include documentation from the student's teacher to the school principal that indicates that the promotion of the student is appropriate and is based upon the student's academic record. Such documentation shall include but not be limited to the individualized education program, if applicable, report card, or student portfolio.

[**ARC 1331C**, IAB 2/19/14, effective 3/26/14]

281—62.9(256,279) Ensuring continuous improvement in reading proficiency.

62.9(1) *Reading proficiency addressed in comprehensive school improvement plan.* To ensure all children are reading proficiently by the end of third grade, each school district shall address reading proficiency as part of its comprehensive school improvement plan, drawing upon information about children from assessments conducted pursuant to this chapter and the prevalence of deficiencies identified by classroom, elementary school, and other student characteristics.

62.9(2) *Review of chronic early absenteeism.* As part of its comprehensive school improvement plan, each school district shall review chronic early elementary absenteeism for its impact on literacy development.

62.9(3) *Attendance centers with lower levels of reading proficiency.* If more than 15 percent of an attendance center's students are not proficient in reading by the end of third grade, the comprehensive school improvement plan shall include strategies to reduce that percentage, including school and community strategies to raise the percentage of students who are proficient in reading. Strategies adopted under this subrule shall meet the requirements of this chapter.

62.9(4) *Professional development.* Each school district, subject to an appropriation of funds by the general assembly, shall provide professional development services to enhance the skills of elementary teachers in responding to children's unique reading issues and needs and to increase the use of evidence-based strategies.

62.9(5) *Relationship between this chapter and the department's general accreditation standards.* In addition to the requirement in subrule 62.9(1), the department shall consider compliance with and performance under this chapter in its enforcement of the general accreditation standards and school improvement process described in 281—Chapter 12.
[**ARC 1331C**, IAB 2/19/14, effective 3/26/14]

281—62.10(256,279) Miscellaneous provisions.

62.10(1) *Services beyond third grade.* Students who are identified as having a substantial deficiency in reading that is not remediated at the end of third grade remain entitled to intensive reading instruction. Nothing in this chapter shall be construed to prevent a school district from offering scientific research-based instruction in reading to students above third grade. Nothing in this chapter shall be construed to prohibit a school district from determining a student above third grade as having a substantial deficiency in reading or from providing services to a student so identified.

62.10(2) *Database.* In implementing subrule 62.6(5), the department may require school districts to enter assessment and progress monitoring data into a statewide database.

62.10(3) *Accredited nonpublic schools.* Nothing in this chapter shall be construed to prevent an accredited nonpublic school from voluntarily complying with this chapter. Nothing in this chapter shall be construed to prevent the department from offering universal screening or progress monitoring instruments to accredited nonpublic school students or to prevent the department from allowing inclusion of those students' data in the database described in subrule 62.10(2).

62.10(4) *Rule of construction.* Nothing in this chapter shall be construed to require a school district to select a particular assessment, instrument, tool, curriculum, or program, so long as the assessment, instrument, tool, curriculum, or program used meets the requirements of this chapter.
[**ARC 1331C**, IAB 2/19/14, effective 3/26/14]

These rules are intended to implement Iowa Code sections 256.7(31) and 279.68.

[Filed ARC 1331C (Notice ARC 1245C, IAB 12/11/13), IAB 2/19/14, effective 3/26/14]

CHAPTER 63
EDUCATIONAL PROGRAMS AND SERVICES FOR PUPILS IN JUVENILE HOMES

[Prior to 9/7/88, see Public Instruction Department[670] Ch 42]

281—63.1(282) Scope. These rules apply to the provision of educational programs in juvenile shelter care homes and juvenile detention homes.

281—63.2(282) Definitions.

63.2(1) Special programs cited in 1999 Iowa Code section 282.30 shall be referred to as juvenile shelter care homes and juvenile detention homes, and shall be referred to jointly as juvenile homes.

63.2(2) For purposes of this chapter, *"school corporation"* shall refer to school districts, area education agencies, and community colleges.

63.2(3) For purposes of this chapter, *"aides"* shall refer to aides and para-educators as defined in Iowa Code section 272.12.

281—63.3(282) Forms.

63.3(1) The department of education shall provide forms to area education agencies (AEAs) for submitting program and budget proposals and for submitting claims. The annual dates for filing forms with the department of education are January 1 of the prior fiscal year for AEAs to submit program and budget proposals, and August 1 of the subsequent fiscal year for AEAs to file claims. The department of education shall review and approve or modify the program and budget proposals and shall notify the AEA by February 1.

63.3(2) The department of education shall also provide forms to AEAs for use by the juvenile homes requesting educational services. These forms must be filed with the AEA annually by December 1 of the fiscal year prior to the school year for which the services are being requested or 90 days prior to the beginning of the time for which the services are being requested if the facility is a newly established facility. An AEA shall file a budget amendment for a newly established juvenile home requesting educational services 90 days prior to the initial delivery of the educational services.

281—63.4(282) Budget amendments. An AEA shall amend the budget during the fiscal year in which actual classrooms implemented are different than budgeted or there is a significant decrease or increase in the student membership that would change the number of teachers or aides necessary to support the average daily membership. An amendment shall also be required if actual expenditures vary significantly from expenditures which were budgeted. A significant variance in actual expenditures means that the amount of funding which would be reverted to or due from the state equals or exceeds 10 percent of the advance payments in the subsequent year prior to adjustments.

281—63.5(282) Area education agency responsibility. An AEA shall provide or make provision for an appropriate educational program for each child living in the following types of facilities located within its boundaries:

1. An approved or licensed shelter care home, as defined in Iowa Code subsection 232.2(34).
2. An approved juvenile detention home, as defined in Iowa Code subsection 232.2(32).

The provision of the educational program shall be pursuant to a written agreement which identifies the responsibilities of the AEA, juvenile home, and any other agency with which the AEA contracts to provide the educational program.

281—63.6(282) Educational program.

63.6(1) *Methods of program provision.* The AEA may provide the educational program by one of the following:

a. Enrolling the child in the child's district of residence.

b. Obtaining the course of study of the child's district of residence for use in the juvenile home where the child is living.

c. Enrolling the child in the district where the child is living.

d. Enrolling the child in the educational program provided in the juvenile home.

e. A delivery method not encompassed by *"a"* through *"d"* immediately preceding, with approval of the department of education.

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

63.6(2) *Final determination.* In the absence of a decision of a court regarding a child's educational placement, the AEA where the child is living shall make the final determination regarding the provision of the appropriate educational program for the child, in consultation with the district of residence of the child and with the juvenile home. In making this determination, consideration shall be given to:

a. A preference for continuance of the child's educational program that was in place prior to the child's placement in the home.

b. Placement into the least restrictive environment.

c. Development of a plan for future educational programming.

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

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

63.6(3) *Cooperation with area education agency.* The AEA of the child's district of residence, the school district of residence, the school district in which the home is located, other AEAs, the juvenile home and other appropriate agencies involved with the care or placement of the child shall cooperate with the AEA where the child is living in sharing educational information, textbooks, curriculum, assignments, and materials in order to plan and to provide for the appropriate education of the child living in the home and to grant academic credit to the child for instructional time earned upon discharge from the home.

63.6(4) *Summer school programs.* Summer school programs, as distinguished from extended year programming, may be operated pursuant to Iowa Code subsection 282.31(5), and shall be considered as separate programs in each home. The fiscal year for a juvenile home program is from July 1 through June 30. Program and budget proposals submitted to the department of education prior to January 1, pursuant to Iowa Code section 282.31, may include requests for summer school programs, or portions of summer school programs, commencing July 1 of the subsequent fiscal year and summer school programs, or portions of summer school programs, ending June 30 of the subsequent fiscal year.

281—63.7(282) Special education. The AEA shall establish policies and procedures for screening and evaluating students living in juvenile homes who may require special education.

63.7(1) *Assignment.* A diagnostic-educational team shall be assigned by the AEA in which each program is located. This diagnostic-educational team shall include individuals who are appropriately qualified to conduct special education evaluations and to assist in planning programs for students who are provided a special education program pursuant to an individualized education program (IEP).

63.7(2) *Duties.* The duties of this diagnostic-educational team shall include the screening of all students for potential special education needs, identifying children in need of special education, providing needed special education support services and assisting in the implementation of needed special education programs.

63.7(3) *Role of director of special education.* It is the responsibility of the AEA director of special education to ensure that all procedures related to due process, protection in evaluation, least restrictive environment, development of individual educational programs and other requirements specified in 281—Chapter 41 are adhered to for students provided a special education program pursuant to an IEP who are served in juvenile homes. In addition, the director is responsible for coordinating the activities of the special education program with other programs and services provided.

281—63.8(282) Educational services.

63.8(1) *Assignment.* Personnel from the educational services division of the local AEA shall be made available to each program.

63.8(2) *Duties.* Personnel from the educational services division shall assist with curriculum development as well as provide all other services that are made available to local education agencies within the particular AEA.

281—63.9(282) Media services.

63.9(1) *Assignment.* Personnel from the media services division of the local AEA shall be made available to each program.

63.9(2) *Duties.* All services that are made available to local education agencies within the particular AEA shall be made available to these programs and students.

281—63.10(282) Other responsibilities. In addition to the above-mentioned responsibilities, AEA personnel shall assist with coordination of program curricula with the curricula of the local district in which the home is located and with the transition of students from these programs to subsequent program placement. This coordination shall include the establishment of procedures for ensuring that appropriate credit is available to the students while participating in the program.

281—63.11(282) Curriculum. Each program shall use the minimum curriculum requirements for approved or accredited schools as a guide to developing specific content for each student's educational program. The content of each student's program shall be sufficient to enable the student to earn credit while participating in the program.

281—63.12(282) Disaster procedures. Each home shall maintain a written plan containing emergency and disaster procedures that are clearly communicated to and periodically reviewed with staff.

281—63.13(282) Maximum class size.

63.13(1) Maximum class size in shelter care homes. The following maximum class size-to-staff ratio shall be used in shelter care homes:

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

63.13(2) Maximum class size in detention homes. The class size-to-staff ratio used in detention homes shall be the same as that defined in subrule 63.13(1) unless the needs of the students in the class require a lesser ratio. If the needs of students in the class require a lesser ratio, it shall be no greater than the following class size-to-staff ratio:

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

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

63.13(3) When a classroom is located in an off-site facility, a full-time educational aide may be assigned for each off-site classroom in addition to the number allowed in subrule 63.13(1) or 63.13(2).

63.13(4) The department of education may waive subrules 63.13(1), 63.13(2), and 63.13(3) if student characteristics such as the age range of students in the home or the percentage of students in the home involved in adult criminal proceedings necessitate a different class size-to-staff ratio. Any variance from the maximum prescribed class size-to-staff ratio must be approved by the department of education on an annual basis. Support for the waiver request must be provided with the juvenile home budget proposals and with the juvenile home claims.

63.13(5) Average daily membership for determining class size in subrules 63.13(1) to 63.13(4) for the juvenile home budget proposals shall be based on the actual average daily membership from the year previous to the base year, average daily membership to date in the base year, and factors known at the time of the budget proposals which would impact the average daily membership in the budget year.

63.13(6) Class size waiver. If the number of teachers and aides as determined in subrules 63.13(1), 63.13(2), and 63.13(3) was appropriately estimated for the juvenile home budget proposal and was approved by the department of education, and the actual number of teachers or aides is determined to be in excess of maximum class sizes based on the actual average daily membership of students on the juvenile home claims, the department of education may waive subrules 63.13(1), 63.13(2), and 63.13(3).

63.13(7) Multiple classrooms. If the educational program at any one juvenile home is provided in more than one classroom location and using multiple classroom locations results in a different number of teachers and aides than would have been allowed if the students were in one classroom, the department of education may waive subrules 63.13(1) and 63.13(2). Support for the waiver request must be provided with the juvenile home budget proposals annually.

63.13(8) Monitoring class size. The AEA shall develop policies and procedures to monitor and ensure that the educational program is provided sufficient instructional staff.

281—63.14(282) Teacher certification and preparation.

63.14(1) *Certification.* Each teacher who is assigned to these programs shall hold Iowa certification either for multicategorical special education or for behavioral disorders, or both, as appropriate to the grade level of the students served.

63.14(2) *In-service.* Each teacher shall be provided appropriate in-service education opportunities annually in areas defined through needs assessments.

281—63.15(282) Aides. Educational aides shall be provided preservice and in-service opportunities consistent with duties to be performed and shall work under the direct supervision of the teacher.

281—63.16(282) Accounting. Revenues, expenditures, and balances of the juvenile home programs shall be accounted for in the manner provided in Uniform Financial Accounting for Iowa LEAs and AEAs, except as otherwise noted in these rules.

63.16(1) *Fund.* Juvenile home instructional programs shall be accounted for in a special revenue fund. The fund balances shall be maintained in the special revenue fund at year end, and the continuance or disposition of positive or negative fund balances shall be determined by the department of education.

63.16(2) *Tuition.* Tuition paid or received shall be calculated as follows:

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

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

281—63.17(282) Revenues. Revenues shall include:

1. Funding received pursuant to Iowa Code section 282.31,
2. Educational excellence funding received pursuant to Iowa Code chapter 294A for teachers in the juvenile home program,
3. Tuition revenue from the district of residence or agency in another state for educational services provided for out-of-state students,
4. Tuition revenue from the district of residence for educational services for students provided a special education program pursuant to an IEP, and
5. Other miscellaneous funding received or accrued for the purpose of operating the juvenile home instructional programs.

281—63.18(282) Expenditures. Expenditures may include actual instructional expenditures, student support services expenditures, instructional staff support services expenditures, administrative support services, operations and maintenance of plant services, student transportation services, and interfund transfers for indirect costs. Supplies and equipment necessary to provide the educational program shall be equivalent to those provided to a comparable number of students by the district in which the juvenile home is located. Classroom space shall be adequate for the number and needs of children in the juvenile home instructional program.

63.18(1) *Instructional expenditures.* Instructional expenditures may include:

a. Salaries and employee benefits of employees providing instructional services. Included are teachers, substitutes, other instructional personnel, and aides.

b. Purchased services, supplies, and equipment, which are customarily considered instructional expenditures.

c. Intrafund transfers.

d. The department of education shall annually determine the maximum amount that may be expended on instructional expenditures. Total expenditures for instructional services for each continuing classroom, other than salary and employee benefits, which are not provided pursuant to an IEP shall not exceed 10 percent of the state average expenditure on instructional salaries and employee benefits in the juvenile home program in the year prior to the base year. New classrooms in the first year of operation shall not exceed twice the maximum amount calculated.

63.18(2) *Student and instructional staff support services and student transportation services expenditures.* Among the services included in these categories are guidance services, transportation services, curriculum development, library and instructional technology. Expenditures may include salaries, employee benefits, purchased services, supplies, equipment, and intrafund transfers.

63.18(3) *Administrative support services, operation and maintenance of plant services, and interfund transfers.* Administrative support services, operation and maintenance of plant services and interfund transfer expenditures may include:

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

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

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

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

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

f. Expenditures for operation and maintenance of plant services except as restricted in subrule 63.18(4).

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

[1]**63.18(4)** *Unauthorized expenditures.* Expenditures shall not include expenditures for debt services, for facilities acquisition and construction services including remodeling and facility repair, or for rental expenditures for classroom facilities when adequate space is available at the juvenile home or AEA.

63.18(5) *Charges for AEA services.* As required by rules 63.7(282), 63.8(282), and 63.9(282), juvenile home students shall have available to them special education support services, educational services, and media services comparable to those services made available to other students in the AEA; however, expenditures for these services are inherent costs to the respective AEA programs and are not to be assessed to the juvenile home educational program.

[1] Effective date of 3/15/00 delayed 70 days by the Administrative Rules Review Committee at its meeting held March 10, 2000; delay lifted by the Committee at its meeting held April 7, 2000, effective April 8, 2000.

281—63.19(282) Claims. AEAs shall submit program and budget proposals and claims consolidating all juvenile home education programs within each AEA. Certain program information may be required for each separate juvenile home.

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

Pursuant to Iowa Code section 294.4, each teacher shall keep a daily register which shall include the name, age, attendance, and enrollment status of each student.

The average daily membership of students of school age living in juvenile homes who are being provided an educational program shall be reported on the budget proposals and claims. *"Average daily membership (ADM)"* shall mean the average obtained by dividing the total of the aggregate days of attendance plus the aggregate days of absence by the total number of student contact days. Student contact days are the days during which the educational program is provided and students are under the

guidance and instruction of the instructional professional staff. *"Aggregate days"* means the sum of the number of days of attendance and days of absence for all pupils who are enrolled during the school year. A student shall be considered enrolled after being placed in a juvenile home and taking part in the educational program. A student is considered to be in membership from the date of enrollment until the date of leaving the juvenile home or receiving a high school diploma or its equivalent, whichever occurs first. ADM shall be calculated on the regular school year exclusive of summer session. School age is defined pursuant to Iowa Code chapter 282.

281—63.20(282) Audits. AEAs must make the records related to providing educational services for juvenile homes available to independent auditors, state auditors and department of education staff on request.

281—63.21(282) Waivers. A waiver may be requested by an AEA which presents evidence of a need for a different configuration of expenditures under paragraph 63.18(1)*"d,"*63.18(3)*"a,"* 63.18(3)*"b,"* 63.18(3)*"e,"* or 63.18(3)*"g,"* or subrule 63.18(4) or 63.18(5). The AEA must annually request the waiver and must include the waiver request and the evidence required by this rule with the program and budget proposal or budget amendment submitted pursuant to rule 63.3(282) or rule 63.4(282). An approved waiver related to rent payment to the juvenile home does not require an annual waiver request except in any year that the rental contract terms change from the rental contract terms in the previous year.

If the department denies a waiver request, the AEA which was denied may request within ten days of notification of the denial that the director of the department of education review the denial of the waiver request.

It is the intent of the department of education to waive requirements only when it is determined that they would result in unequal treatment of the AEAs or cause an undue hardship to the requesting AEA and the waiver clearly is in the public interest.

These rules are intended to implement Iowa Code sections 282.30 as amended by 2000 Iowa Acts, Senate File 2294, and 282.31.

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[1] Effective date of 63.18(4) delayed 70 days by the Administrative Rules Review Committee at its meeting held March 10, 2000; delay lifted by the Committee at its meeting held April 7, 2000, effective April 8, 2000.

CHAPTER 64
CHILD DEVELOPMENT COORDINATING COUNCIL

281—64.1(256A,279) Purpose. These rules structure the child development coordinating council, whose purpose is to promote the provision of services to at-risk three- and four-year-old children and public school child development programs for at-risk three-, four-, and five-year-old children. These rules also set forth the procedures and conditions under which state funds shall be made available to assist local child development programs for at-risk children.

281—64.2(256A,279) Definitions.

"Applicant" means a public or private nonprofit organization, licensed by the department of human services or approved by the department of education, which applies for the state child development funds.

"At-risk student" means a student who meets one or more of the primary and secondary risk factors stated in rules 281—64.7(256A,279) and 281—64.8(256A,279).

"Child development grants" means the funds awarded by the council to assist child development programs.

"Council" means the child development coordinating council.

"Department" means the department of education.

"Grantee" means the applicant designated to receive child development grants.

"Low-income family" means a family who meets the financial eligibility criteria for free meals offered under the child nutrition program.

"Project" means the child development program for which grant funds are requested.

"Public school applicant" means a public school district approved by the department which applies for the state public school child development funds.

"Public school child development grants" means the funds awarded by the council to assist public school child development programs as established in Iowa Code section 279.51.

"Public school grantee" means the applicant designated to receive public school child development grants.

"Public school project" means the public school child development program for which grant funds are requested.

281—64.3(256A,279) Child development coordinating council. The council members shall be as provided in Iowa Code section 256A.2. The Iowa resident parent shall be chosen by the Head Start director's association in consultation with the Head Start parents' association.

281—64.4(256A,279) Procedures.

64.4(1) A quorum shall consist of two-thirds of the members.

64.4(2) When a quorum is present, a position shall pass when approved by a majority of voting members.

64.4(3) The council shall meet at least four times per year and may meet more often at the call of the chair or a majority of voting members.

64.4(4) The chairperson and vice-chair shall be elected by the council for a term of two years.

281—64.5(256A,279) Duties. The duties of the council shall be as provided in Iowa Code sections 256A.3 and 279.51.

281—64.6(256A,279) Eligibility identification procedures. In a year in which funds are made available by the Iowa legislature, the council shall grant awards to child development programs for at-risk three- and four-year-old children and public school child development programs for at-risk three-, four-, and five-year-old children on a competitive basis. Competitive grants will be awarded with a renewal option for up to five years when grantees meet program requirements. If program requirements are not met, the department may discontinue grant funding at the start of the following fiscal year.

[**ARC 1488C**, IAB 6/11/14, effective 7/16/14]

281—64.7(256A,279) Primary eligibility.

64.7(1) *Child development grants.* At least 80 percent of the funded available enrollment slots for at-risk three- and four-year-old children shall be directed to serve children in primary eligibility categories as follows:

a. Children reaching three or four years of age on or before September 15 of the contract year; and

b. Members of a low-income family.

64.7(2) *Public school child development grants.* At least 80 percent of the funded available enrollment for at-risk three-, four-, and five-year-old children in public school child development programs shall be directed to serve children in primary eligibility categories as follows:

a. Children reaching three, four, or five years of age on or before September 15 of the contract year; and

b. Members of a low-income family.

64.7(3) *Enrollment criteria.* Applicants must document the number of children enrolled under primary eligibility and the criteria used for enrollment.

281—64.8(256A,279) Secondary eligibility.

64.8(1) *Criteria.* Up to 20 percent of the available funded child development enrollment slots for at-risk may be filled by children who are three or four years of age on or before September 15 or public school enrollment slots by children who are three, four, or five years of age on or before September 15; are above the income eligibility guidelines provided that they are served on a sliding fee schedule determined at the local level; and are eligible according to one or more of the following criteria if the child:

1. Is functioning below chronological age in two or more developmental areas, one of which may be English proficiency, as determined by an appropriate professional;

2. Was born at biological risk, such as low birth weight (under 1500 grams—approximately three pounds) or with a diagnosed medical disorder, such as spina bifida or Down's syndrome;

3. Was born to a parent who was under the age of 18; or

4. Resides in a household where one or more of the parents or guardian:

Has not completed high school;

Has been identified as a substance abuser;

Has been identified as chronically mentally ill;

Is illiterate;

Is incarcerated; or

Is a child or spouse abuser.

5. Has other special circumstances, such as foster care or being homeless.

The program may include children not at risk, provided they are at full pay and meet other age requirements.

64.8(2) *Enrollment criteria.* Applicants must document the number of children enrolled under secondary eligibility and the criteria used for enrollment.

281—64.9(256A,279) Grant awards criteria.

64.9(1) *Criteria points.* The following information shall be provided and points shall be awarded to applicants based on the following criteria as stated in the request for proposal:

1. Provision of a comprehensive child development program.
2. Limited class size.
3. Child-teacher ratios of not less than one staff member per eight children.
4. Provision of parental involvement.
5. Demonstration of community support.
6. Utilization of services provided by other community agencies.
7. Use of qualified teachers.
8. Existence of a plan for program evaluation including, but not limited to, measurement of student outcomes.

9. Developmentally appropriate practices.

64.9(2) *Additional grant components.* The following information shall be provided and points shall be awarded to applicants based on the following additional components.

1. Program summary.
2. Research documentation.
3. Identification and documentation of local at-risk population.
4. Letters of community support.
5. Program budget (administrative costs not to exceed 10 percent of total award).

[**ARC 1488C**, IAB 6/11/14, effective 7/16/14]

281—64.10(256A,279) Application process. The council shall advise the department to announce through public notice the opening of an application period.
[**ARC 1488C**, IAB 6/11/14, effective 7/16/14]

281—64.11(256A,279) Request for proposals. Applications for the child development grants and public school grants shall be distributed by the department upon request. Proposals not containing the specified information or not received by the specified date may not be considered. All applications shall be submitted in accordance with instructions in the requests for proposals. The proposals shall be submitted to the department.
[**ARC 1488C**, IAB 6/11/14, effective 7/16/14]

281—64.12(256A,279) Grant process.

64.12(1) An applicant shall make formal response using forms issued and procedures established by the council.

64.12(2) A rating team shall review and rank the proposals and shall be composed of persons with expertise in child development programs and fiscal management experience.

64.12(3) The council shall have the final discretion to award funds.

64.12(4) The council shall advise the department to notify successful applicants and to provide to each of them a contract for signature.
[**ARC 1488C**, IAB 6/11/14, effective 7/16/14]

281—64.13(256A,279) Award contracts. Administrative costs under these programs shall be limited to 10 percent of the total award.

281—64.14(256A,279) Notification of applicants. Applicants shall be notified within 45 days following the due date for receipt of proposals as to whether their request shall be funded.
[**ARC 1488C**, IAB 6/11/14, effective 7/16/14]

281—64.15(256A,279) Grantee responsibilities.

64.15(1) The grantee shall maintain records which include but are not limited to:

a. Information on children and families served.
b. Direct services provided to children.
c. Record of expenditures.
d. Other appropriate information specified by the council necessary to the overall evaluation.

Monitoring of such records will be conducted through the submission of annual reports by the grantee and may include on-site review as determined necessary by the department.

64.15(2) New/expansion programs shall participate in the accreditation process of the National Association for the Education of Young Children during the programs' first year of funding. New/expansion programs shall be granted a waiver of accreditation during their first year of funding and must attain accreditation during their second year of funding. Programs not able to attain accreditation during their second year may apply for a waiver of accreditation by March 15 of the current fiscal year. Waivers shall be granted at the discretion of the council. Programs that do not attain accreditation or that do not receive a waiver will not be funded.

64.15(3) Continuation programs shall participate in the renewal process and maintain accreditation with the National Association for the Education of Young Children. Programs unable to maintain accreditation may apply for a waiver of accreditation. Waivers shall be awarded at the discretion of the council. Programs that do not maintain accreditation or that do not receive a waiver will not be funded.

64.15(4) Grantees shall provide annual reports that include information detailing progress toward goals and objectives, expenditures and services provided on forms provided for those reports. Failure to submit reports by the due date shall result in suspension of financial payments to the grantee until the time that the report is received. No new awards shall be made for continuation programs when there are delinquent reports from prior grants.

64.15(5) Grantees may direct the use of moneys received to serve any qualifying child ranging in age from three years old to five years old, regardless of the age of population indicated on the grant request in the grantee's initial year of application. A grantee is encouraged to consider the degree to which the program complements existing local programs and services for three-year-old, four-year-old, and five-year-old at-risk children, including other child care and preschool services, services provided through a school district, and services available through an area education agency.

[**ARC 9904B**, IAB 12/14/11, effective 1/18/12; **ARC 1488C**, IAB 6/11/14, effective 7/16/14]

281—64.16(256A,279) Withdrawal of contract offer. If the applicant and the department are unable to successfully negotiate a contract, the council may withdraw the award offer.

281—64.17(256A,279) Evaluation. The grantee shall cooperate with the council and provide requested information to determine how well the goals and objectives of the project are being met.

281—64.18(256A,279) Contract revisions and budget reversions. The grantee shall immediately inform the department of any revisions in the project budget. The department and the grantee may negotiate a revision to the contract to allow for expansion or modification of services but shall not increase the total amount of the grant. The council may advise the department regarding revised contracts if the revision is in excess of 10 percent of a budget category. Grantees who revert 3 percent or more of their program budget at the end of the budget year will have that dollar amount permanently deducted from all subsequent grant awards.

[**ARC 1488C**, IAB 6/11/14, effective 7/16/14]

281—64.19(256A,279) 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 grantee shall not incur new obligations for the terminated portion after the effective date, and shall cancel as many outstanding obligations as possible.

281—64.20(256A,279) 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 council that the grantee has failed to comply substantially with the conditions of the contract. The grantee shall be notified in writing by the department of the reasons for the termination and the effective date. The grantee 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 the child development grants and public school grants contingent upon their availability. If there is a lack of funds necessary to fulfill the fiscal responsibility of the child development grants and the public school grants, the contracts shall be terminated or renegotiated. The council may terminate or renegotiate 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 grantee has not attained accreditation by the National Association for the Education of Young Children or has not been awarded a waiver of accreditation by the council.
[**ARC 1488C**, IAB 6/11/14, effective 7/16/14]

281—64.21(256A,279) Responsibility of grantee at termination. Within 45 days of the termination, the grantee shall supply the department with a financial statement detailing all costs up to the effective date of the termination. If the grantee expends money for other than specified budget items approved by the council, the grantee shall return moneys for unapproved expenditures.

281—64.22(256A,279) Appeal from terminations. Any agency or public school aggrieved by a unilateral termination of a contract pursuant to 281—64.20(256A,279) may appeal the decision to the director of the department in writing within 30 days of the decision to terminate. The hearing procedures found at 281—Chapter 6 shall be applicable to appeals of terminated grantees, except that 281—subrules 6.10(3) and 6.10(4) and rules 281—6.11(290) and 281—6.12(290) do not apply to decisions of the director.

In the notice of appeal, the grantee shall give a short and plain statement of the reason for the appeal.

The director shall issue a decision within a reasonable time, not to exceed 120 days from the date of the hearing.

281—64.23(256A,279) Refusal to issue ruling. The director may refuse to issue a ruling or decision upon an appeal for good cause. Good cause includes, but is not limited to, the following reasons:

1. The appeal is untimely;
2. The appellant lacks standing to appeal;
3. The appeal is not in the required form or is based upon frivolous grounds;
4. The appeal is moot because the issues raised in the notice of appeal or at the hearing have been settled by the parties;
5. The termination of the grant was beyond the control of the department because it was due to lack of funds available for the contract.

281—64.24(256A,279) Request for Reconsideration. A disappointed applicant who has not been approved for funding may file a Request for Reconsideration with the director of the department in writing within 10 days of the decision to decline to award a grant. In order to be considered by the director, the Request for Reconsideration shall be based upon one of the following grounds:

1. The decision process was conducted in violation of statute or rule;
2. The decision violates state or federal law, policy, or rule (to be cited in the Request);
3. The decision process involved a conflict of interest.

Within 20 days of filing a Request for Reconsideration, the requester shall submit all written documentation, evidence, or argument in support of the request. The director shall notify the child development coordinating council of the request and shall provide the council an opportunity to defend its decision with written documentation, evidence, or argument, which shall be submitted within 20 days of receipt of the request. The council shall provide copies of all documents to the requester at the time the items are submitted to the director.

The director shall issue a decision granting or denying the Request for Reconsideration within 30 days of the receipt of the evidence, or no later than 60 days from the date of Request for Reconsideration, unless a later date is agreeable to the requester and the council.

281—64.25(256A,279) Refusal to issue decision on request. The director may refuse to issue a decision on a Request for Reconsideration upon good cause. Good cause includes, but is not limited to, the following reasons:

1. The request was untimely;
2. The requester lacks standing to seek reconsideration;

3. The request is not based on any of the available grounds in rule 281—64.22(256A,279), or is merely frivolous or vexatious;
4. The requester failed to provide documentation, evidence or argument in support of its request;
5. The request is moot due to negotiation and settlement of the issue(s).

281—64.26(256A,279) Granting a Request for Reconsideration. If the director grants a Request for Reconsideration, the council shall consider the grantee's application in accordance with the director's findings and decision.

These rules are intended to implement Iowa Code chapter 256A and section 279.51.

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CHAPTER 65
INNOVATIVE PROGRAMS FOR AT-RISK EARLY ELEMENTARY STUDENTS

281—65.1(279) Purpose. These rules set forth procedures and conditions under which state funds shall be granted to public schools which provide innovative in-school programming.

281—65.2(279) Definitions.

"Applicant" means a public school that applies for the early elementary at-risk funds.

"At-risk student" means a student who meets one or more of the primary and secondary risk factors stated in rules 65.4(279) and 65.5(279).

"Department" means the department of education.

"Early elementary grades" means kindergarten through grade three.

"Early elementary grants" means the funds awarded by the department to assist at-risk early elementary school programs.

"Grantee" means the applicant designated to receive early elementary school grants.

"Low-income family" means a family who meets the current income eligibility guidelines for free and reduced price meals in a local school as documented in the year in which the application is made.

"Project" means the early education school program for which grant funds are requested.

281—65.3(279) Eligibility identification procedures. In a year in which funds are made available by the Iowa legislature, the department shall grant awards to applicants for early elementary grants on a competitive basis to those schools with a high percentage of low-income families. A priority shall be given to school programs which integrate at-risk children with the rest of the school population.

281—65.4(279) Primary risk factor. In identifying the at-risk population of a school district or building, the applicant shall give primary consideration to students in low-income families.

281—65.5(279) Secondary risk factors. In identifying the at-risk population of a school district or building, the applicant shall also give consideration to students who are:

1. Functioning below chronological age in two or more developmental areas, one of which may be English proficiency, as determined by an appropriate professional;
2. Born at biological risk, such as low birth weight (under 1500 grams—approximately three pounds) or with a diagnosed medical disorder, such as spina bifida or Down's syndrome;
3. Born to a parent who was under the age of 18; or
4. Residing in a household where one or more of the parents or guardian:
   - Has not completed high school;
   - Has been identified as a substance abuser;
   - Has been identified as chronically mentally ill;
   - Is incarcerated;
   - Is illiterate; or
   - Is a child or spouse abuser.
5. Subject to other special circumstances, such as being in foster care or being homeless.

281—65.6(279) Grant awards criteria.

65.6(1) *Criteria points.* The following information shall be provided and points shall be awarded to applicants based on the following criteria as stated in the request for proposal:

1. Integration of at-risk children with the rest of the school population.
2. Limited class size.
3. Limited pupil-teacher ratios.
4. Provision of parental involvement.
5. Demonstration of community support.
6. Utilization of services provided by other community agencies.
7. Provision of appropriate guidance counseling services.

8. Use of teachers with an early childhood endorsement.
9. Innovation and comprehension in program design.
10. Existence of a plan for program evaluation including, but not limited to, measurement of student outcomes.
11. Developmentally appropriate practices.

65.6(2) *Additional grant components.* The following information shall be provided and points shall be awarded to applicants based on the following additional components:

1. Program summary.
2. Research documentation.
3. Identification and documentation of local at-risk population.
4. Letters of community support.
5. Program budget (administrative costs not to exceed 10 percent of total award).

281—65.7(279) Application process. The department shall announce through public notice the opening of an application period.

281—65.8(279) Request for proposals. Applications for the early elementary grants shall be on forms provided by the department upon request.

Proposals not containing the specified information or not received by the specified date may not be considered.

281—65.9(279) Grant process.

65.9(1) An applicant shall make formal response using forms issued and procedures established by the department.

65.9(2) A rating team comprised of persons with expertise in early elementary school programs, understanding of the at-risk population, and fiscal management shall review and rank the proposals.

65.9(3) Additional weighting not to exceed 30 percent of the total grant points shall be given to applicant buildings based on the percentage of low-income families within each district-size category. The weighting points shall be based on the free and reduced price lunch percentage of the individual applicant building or of the district, whichever is higher.

65.9(4) The department shall have the final discretion to award funds. The decision to renew existing grants or instead to reopen the entire grant process rests with the department.

65.9(5) New program requests may be funded up to $200,000 per building or up to $1,000 per K-3 child in buildings with K-3 enrollment of less than 200.

65.9(6) Grants will be funded in each of the following three district-size categories for the innovative grants, if acceptable application is made and the proposed program meets all other criteria:

- small (fewer than 1,199 district enrollment)
- medium (1,200—5,000 district enrollment)
- large (5,001 and more district enrollment)

Additional programs may be funded within each category depending upon available funds and requests.

65.9(7) Rescinded IAB 5/11/94, effective 6/15/94.

281—65.10(279) Award contracts. Rescinded IAB 12/12/90, effective 11/21/90.

281—65.11(279) Notification of applicants. Applicants shall be notified of the department's decision within 45 days of the deadline for applications. Successful applicants will be requested to have an official with vested authority sign a contract with the department.

281—65.12(279) Grantee responsibilities. The grantee shall maintain records which include, but are not limited to:

1. Information on children served,
2. Direct services provided to children,

3. Record of expenditures,
4. Overall program goals, and
5. Other appropriate information specified by the department necessary to the overall evaluation.

Grantees shall complete a year-end report on forms provided by the department documenting the above information. No new awards shall be made for continuation of programs where there are delinquent reports from prior grants.

281—65.13(279) Withdrawal of contract offer. If the applicant and the department are unable to successfully negotiate a contract, the department may withdraw the award offer.

281—65.14(279) Evaluation. The grantee shall cooperate with the department and provide requested information to determine how well the goals and objectives of the project are being met.

281—65.15(279) Contract revisions. The grantee shall obtain the approval of the department for any revisions in the project budget, in excess of 10 percent of a line item provided the revisions do not increase the total amount of the grant.

281—65.16(279) Termination for convenience. The contract may be terminated, in whole or in part, upon agreement of both parties. The parties shall agree upon the termination conditions, including the effective date, and in the case of partial termination, the portion to be terminated. The grantee shall not incur new obligations for the terminated portion after the effective date of termination and shall cancel as many outstanding obligations as possible.

281—65.17(279) 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 grantee has failed to comply substantially with the conditions of the contract. The grantee shall be notified in writing by the department of the reasons for the termination and the effective date. The grantee 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 the early elementary school grants contingent upon their availability. If there is a lack of funds necessary to fulfill the fiscal responsibility of the early elementary school grants, the contracts shall be terminated or renegotiated. The department may terminate or renegotiate a contract upon 30 days' notice when there is a reduction of funds by executive order.

281—65.18(279) Responsibility of grantee at termination. Within 45 days of the effective date of termination, the grantee shall supply the department with a financial statement detailing all program expenditures up to the effective date of the termination. The grantee shall be solely responsible for all expenditures after the effective date of termination.

281—65.19(279) Appeals from terminations. Any grantee aggrieved by a unilateral termination of a contract pursuant to 65.17(279) may appeal the decision to the director of the department in writing within 30 days of the decision to terminate. The hearing procedures found at 281 IAC 6 shall be applicable to appeals of terminated grantees.

In the notice of appeal, the grantee shall give a short and plain statement of the reason for the appeal.

The director shall issue a decision within a reasonable time, not to exceed 120 days from the date of hearing.

281—65.20(279) Refusal to issue ruling. The director may refuse to issue a ruling or decision upon an appeal for good cause. Good cause includes, but is not limited to, the following reasons:

1. The appeal is untimely;
2. The appellant lacks standing to appeal;
3. The appeal is not in the required form or is based upon frivolous grounds;

4. The appeal is moot because the issues raised in the notice of appeal or at the hearing have been settled by the parties;

5. The termination of the grant was beyond the control of the department because it was due to lack of funds available for the contract.

281—65.21(279) Requests for Reconsideration. A disappointed applicant who has not been approved for funding may file a Request for Reconsideration with the director of the department in writing within ten days of the decision to decline to award a grant. In order to be considered by the director, the request shall be based upon one of the following grounds:

1. The decision process was conducted in violation of statute or rule;
2. The decision violated state or federal law, policy, or rule (to be cited in the request);
3. The decision process involved a conflict of interest.

Within 20 days of filing a Request for Reconsideration, the requester shall submit all written documentation, evidence, or argument in support of the request. The director shall notify the department of the request and shall provide the department an opportunity to defend its decision by submitting written documentation, evidence, or argument within 20 days of receipt of the request. The department shall provide copies of all documents to the requester at the time the items are submitted to the director.

The director shall issue a decision granting or denying the Request for Reconsideration within 30 days of the receipt of the evidence, or no later than 60 days from the date of Request for Reconsideration, unless a later date is agreeable to the requester and the department.

281—65.22(279) Refusal to issue decision on request. The director may refuse to issue a decision on a Request for Reconsideration upon good cause. Good cause includes, but is not limited to, the following reasons:

1. The request was untimely;
2. The requester lacks standing to seek reconsideration;
3. The request is not based on any of the available grounds above, or is merely frivolous or vexatious;
4. The requester failed to provide documentation, evidence, or argument in support of its request;
5. The request is moot due to negotiation and settlement of the issue(s).

281—65.23(279) Granting a Request for Reconsideration. If the director grants a Request for Reconsideration, the department shall reconsider the grantee's application in accordance with the director's findings and decision.

These rules are intended to implement Iowa Code section 279.51.

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CHAPTER 66
SCHOOL-BASED YOUTH SERVICES PROGRAMS

281—66.1(279) Scope, purpose and general principles.

66.1(1) *Scope.* These rules apply to the provision of school-based youth services authorized in Iowa Code section 279.51(3) as amended by 1994 Iowa Acts, Senate File 2330, sections 47 to 49 and 60.

66.1(2) *Purpose.* The purpose of the school-based youth services education program is to enable children and youth, especially those with problems, to complete their education and to obtain skills that lead to employment, additional education, and to a mentally and physically healthy life.

66.1(3) *General principles.* School-based youth services programs (SBYSP), at a minimum, may be made available at the elementary school, middle school or high school level, to offer career development services, mental health and family counseling services and preventive and primary health care services in the context of the educational needs of the students. Only school districts or consortiums of districts in cooperation with other service providers may apply for funds to support such programs. The management of the programs may be by a school district or school district consortium or by a nonprofit service organization. All programs must be provided in or near schools to make services accessible to children and youth. Moreover, all programs must be designed for implementation over no less than a four-year period. The inclusion of abortion counseling or the dispensing of contraceptives with these programs is prohibited by Iowa Code section 279.51(3). Budgets for proposed programs will be funded by the state to a maximum of $200,000 per year. Local contributions of at least 20 percent of the total costs of the program are required.

281—66.2(279) Definitions. For the purpose of this chapter the following definitions apply.

"Children" means those enrolled in any of grades kindergarten through five or those aged five through ten.

"Consortium" means an alliance of two or more school districts.

"Contributions" means in-kind services plus gifts and cash donations from private and public sources that are directed at establishing and maintaining the youth services program.

"In-kind services" means existing person-power, equipment, facilities, materials, tools, and other local resources owned or maintained by a school district or consortium of districts, other service providers, nonprofit service organizations or local private organizations that contribute to carrying out the goals of the youth services program.

"In-school support services" means services provided by the district, area education agency or other education agencies in a contractual arrangement with the school district. These services may include, but are not limited to, speech and language, psychology, social work, school nurse, audiology, academic assistance, individual counseling, occupational therapy, physical therapy and food service.

"Job training and employment services" means preparing and assisting students to enter employment on a competitive or noncompetitive basis including, but not limited to, assessment and exploration of skills, abilities and aptitudes for work; support services to access available vocational classes; work experiences; on-the-job training; assistance in locating and securing employment and follow-up services to ensure continuation in employment.

"Mental health and family counseling" means evaluation and diagnostic services, the development of individual treatment plans, individual and group guidance in and outside the home, parent education on parenting skills, and referral to other legitimate services identified through evaluation, guidance services and training.

"Nonprofit service organization" means a public service organization conducted not for profit nor supported by public tax dollars including, but not limited to, recreational services, job services, human services, civic services, juvenile treatment services, and rehabilitation services.

"Other education agencies" means all in-state as well as out-of-state public or private education agencies not covered in the definition of "school district."

"Other service providers" means all public human and health service providers apart from education including, but not limited to, recreational services; employment services; civic services;

juvenile treatment services; mental health services; maternal and child health services; woman, infant and child nutrition services; child health specialty clinic services and substance abuse prevention and treatment services.

"Preventive and primary health care services" means services which include, but are not limited to, physical examinations, immunizations, hearing and vision screening, preventive care, maintenance services, diagnosis, treatment, referral, case management, health supervision, and health teaching. These services shall be delivered by specifically credentialed providers such as licensed physicians, dentists, registered nurses, nutritionists, social workers, psychologists, dental hygienists, physical or occupational therapists, and respiratory therapists. Youth with complex health needs may require referral to specially trained and skilled health care providers.

"School-based youth services" means career development assistance; job training and employment services; human services, including mental health and family counseling; primary health care services; day care; transportation; recreation services; parenting education; rehabilitation services; mentoring; family involvement assistance; and other services designed to assist school-age children to be able to succeed in school and be productive citizens upon leaving school.

"School district" means an Iowa public school district directly supported in whole or in part by tax dollars as defined in Iowa Code section 280.2 and with the power and jurisdiction provided by Iowa Code section 274.1.

"Youth" means adolescents enrolled in school in any of grades 6 to 12 or those aged 11 to 21.

281—66.3(279) Development of a program plan. For the purpose of seeking approval for funding youth service programs, school districts shall submit plans approved by their board of directors to the department of education on a request for proposal (RFP) basis. RFPs will be issued within the limits of available funds during the school year preceding the year for which implementation is planned.

281—66.4(279) Program plan. The following areas shall be included in a program plan developed by a school district in response to an RFP issued by the department of education.

66.4(1) *Identifying the need for the program.* An explanation shall be provided which identifies the significant children and youth concerns that exist in the district. This explanation may include but not be limited to:

a. High rates of child and youth problems, compared to average state rates, including school dropouts; absenteeism; teen pregnancy; teen parents; juvenile offenders; unemployment; teen suicide; mental health problems; substance use and abuse; other health problems; homelessness; and language, gender and disability barriers.

b. Indications of poverty including such areas as the percentage of parents in the district qualifying for the economic eligibility requirements established under the federal National School Lunch and Child Nutrition Act, 42 U.S.C. Sections 1751-1760, for free or reduced price lunches, and census economic data that can be seen as a proxy for other youth concerns.

c. Percentages of school-age children needing additional assistance to succeed in the elementary school, middle school, and high school education program and for whom appropriate services are not being provided.

d. Comparisons of existing resources and demands for services in mental health, employment, child care, health care, in-school instructional support services and school guidance services.

e. Identification of existing staff needs for training to improve services.

f. Description of problems in existing arrangements to coordinate school and other service providers.

66.4(2) *Identifying objectives.* The following objectives shall be included in the program plan.

a. The establishment of a youth services education program located in or near an elementary school, middle school or high school that integrates multiple service providers with children or youth in need of services to assist them to succeed in education programs, to complete high school and be productive workers and contributors to the community.

b. Provisions for no less than the minimum education program as defined in Iowa Code section 256.11 and rule 281—12.5(256).

c. Flexibility of the education program to accommodate other community-based services such as mental health counseling, substance abuse treatment, and health care.

d. Career development activities including job training and employment services at the high school level.

e. Mental health and family counseling.

f. Family involvement activities.

g. Preventive and primary health care services.

h. Recreation services.

i. Mentoring.

j. Access to program including before and after school, weekend, and summer activity.

k. Personal skills development.

l. Other educational and noneducational services considered necessary to achieve the program plan.

66.4(3) *Identification of the components and development of a schedule for the youth services program.* At a minimum, the following shall be included:

a. Description of the career development activities including job training and employment services; mental health and family counseling; family education and involvement services; preventive and primary health care services; recreation; mentoring; and personal skills development in the context of how these services and others will be provided in conjunction with the education program.

b. A schedule or timeline for the operation of the program taking into consideration day and evening accessibility, the number of days per week and the number of months per year the program will operate including 24-hour counseling services.

c. If applicable, descriptions of partnerships between public and private sectors to provide employment and training opportunities.

66.4(4) *In-school support services.* A description of in-school support services as defined in these rules and offered to students in the youth services program must be provided.

66.4(5) *Parent and family involvement.* A complete plan of parent-family involvement must be included and shall, at a minimum, contain:

a. The parent communication system to be used which may include letters, checklists, personal contacts by telephone and home visits.

b. In-service provisions for individual and group participation, which may include parent/family counseling, assistance at home, attendance in school affairs, parent training and volunteer assistance.

c. Involvement in the development of program goals, decision-making processes and the evaluation of program services.

66.4(6) *Evaluation procedures to be used in monitoring program objectives and student outcomes.* A system to monitor and report program implementation and outcomes shall be established to identify:

a. Numbers and characteristics of students served and type and magnitude of services provided.

b. Improved school attendance and performance.

c. Increased potential for placement in employment.

d. Improved health.

e. Improved social interaction and behavior.

f. Increased high school completion rates.

g. Reduced criminal/delinquent behavior.

h. Improved coordination between schools and other service providers.

i. Increased ability of "other service providers" to deliver services.

j. Utilization of economic resources to improve employment and productivity of students leaving school.

Evaluation shall coincide with the objectives of the youth services program. The methods that are used to monitor progress shall be identified. Monitoring and testing instruments shall be kept on file within the school district or managing agency.

66.4(7) *Record keeping.* Each school-based youth services program shall keep records of all requests for assistance from children or youth making use of the program and, where appropriate, maintain a confidential case file for children and youth. Records shall be maintained to enable complete reporting as prescribed by the department of education in cooperation with the departments of human services, employment services, public health, human rights, economic development and institutions of higher learning with applicable programs. Records must yield numbers and characteristics of students served, services provided, indicators of impact/behavior change, indicators of coordination with other service providers, use of economic resources, indicators of parent involvement, and indicators of juvenile crime/delinquent behavior.

66.4(8) *Identification of the roles and responsibilities of staff.* A list of school and other service provider staff involved in the youth services program and their responsibilities related to services, monitoring and reporting, identification of and referral of students to the program, staff development, family involvement and other program objectives shall be provided.

66.4(9) *Qualifications of program personnel.* All staff involved in the youth services program shall have preservice or in-service training that is commensurate with their involvement in providing services.

66.4(10) *Staff utilization plan.* Staff shall be assigned and managed to ensure a quality program by employing the following procedures:

a. A designated school or other service agency person shall be responsible for the overall coordination of the youth services program including coordination between the schools and other service providers.

b. Time shall be made available for youth services program staff and regular school staff to coordinate and carry out professional responsibilities.

c. Time shall be made available to youth services program staff and regular school staff for in-service training.

d. School administration staff and nonprofit agency personnel shall assume some responsibility for coordination, even if another service agency assumes the major responsibility of management of the youth services program.

66.4(11) *Specifying staff development plans.* A training component must be established to update youth services program staff, school staff, other service provider staff, and the community. At a minimum, the following provisions shall be included:

a. Designated number of days (not less than one) for training for youth services program staff.

b. At least one program to orient all school staff or other service provider staff on the youth services program.

c. At least one public relations program to orient community members to the youth services program.

d. A specific budget to support training.

66.4(12) *Specifying provisions for ongoing identification of students.* Students shall be referred and served in accordance with the following:

a. Services shall be available to in-school as well as out-of-school children and youth.

b. All children and youth will be encouraged to utilize services.

c. School personnel and other service providers may refer children to the program by a counseling approach encouraging free choice.

d. Children and youth involved in juvenile court or delinquent behavior will be specifically targeted and encouraged to participate in school-based youth services.

66.4(13) *Facilities.* The following information concerning facilities shall be included in the program plan:

a. Identify facilities and equipment to be used. An accessible and attractive center in or near an elementary school, middle school or high school that is most likely to be used by children or youth shall be identified and provided. Grant funds may not be utilized to build a new facility or renovate an existing facility.

b. Equipment and resources used to provide services and used as an in-kind contribution must be listed and prorated using the most recent available figures for fair market value.

c. Assurances that the facilities are accessible and equipment is appropriate for the population to be served shall be provided.

d. Private entrances and offices to protect confidentiality and personal dignity shall be provided.

66.4(14) *Measures to ensure nondiscrimination in the provision of services.* Specific procedures shall be identified to ensure that children and youth and family members and employees are not discriminated against on the basis of race, religion, national origin, gender, age or disability. At a minimum, the following measures shall be followed:

a. Student data (participation and progress) shall be collected, processed and analyzed with regard to age, disability, gender, and race.

b. Specific steps shall be taken to encourage student involvement when discriminatory patterns become apparent, such as a lack of minority and female or male student involvement.

c. The hiring of staff shall be completed giving consideration to the minority makeup of the community and the need for certain role models to promote cultural understanding.

d. The staff hiring process shall be free of discrimination on the basis of race, religion, national origin, gender, age, or disability.

e. Efforts shall be made and documented to implement public relations activities in all parts of the community including homeless populations and minority neighborhoods.

f. Materials utilized for training and public relations shall be screened to ensure freedom from bias.

g. Staff development and training shall include elements to assist staff to implement nondiscriminatory practices.

66.4(15) *Budget.* School districts shall identify a separate budget for the youth services program and be able to account for all expenditures directly related to the program. The following limits shall apply to the budget:

a. All expenditure items identified in the Uniform Financial Accounting System for Public School Districts and Area Education Agencies are allowable.

b. The maximum grant dollars allowable for a youth services program is $200,000. The total local budget may exceed $200,000.

c. At least 20 percent of the total costs of the program shall be provided locally using in-kind services and cash contributions.

d. Grant funds may not be used to construct a new facility or renovate an existing facility.

e. All grant funds shall be used to develop new services or to supplement existing services.

f. All grant funds and local contributions shall be used to implement the youth services program.

66.4(16) *Advisory council.* An advisory council shall be identified and utilized for the youth services program. At a minimum, the membership of the council shall include persons to represent the following:

a. Private industry council.

b. Parents of children in the school district.

c. Teachers.

d. Health and mental health fields.

e. Job training and employment training.

f. Students enrolled in the youth services program or school housing the SBYSP.

g. Nonprofit service provider.

h. Juvenile court system.

i. Community-based substance abuse counseling or treatment providers.

j. In-school support services providers.

One person may represent more than one of the service areas identified above. A plan of action for the advisory council shall be included in the written application for grant funds. The plan of action shall include the utilization of advisory members on an individual as well as group basis and indicate group meetings no fewer than two times annually.

66.4(17) *Letters of support.* Letters of support for the youth services program must be provided from:

a. The local teachers association or, if no organization exists, from representatives of the teaching staff.

b. Parent-teacher organization.

c. Nonprofit agencies providing human services (mental health and substance abuse) health services and job services.

d. Community organizations.

e. The area private industry council.

f. The juvenile court system.

66.4(18) *Commitment of schools.* A written commitment must be provided from the school principal and the board of directors of the school district that the school will work to cooperate and integrate existing school services and activities with the program. As well, there must be a commitment to work continuously toward identifying resources for continuation of services after grant funds are withdrawn.

281—66.5(279) Evaluation of financial support. A specific evaluation of necessary financial support and how it can be generated must be developed at the conclusion of each four-year period.

281—66.6(279) Responsibilities of area education agencies. Area education agencies shall assist school districts in developing program plans and budgets for school-based youth services programs. Assistance may include, but is not limited to, the following:

66.6(1) Providing person power to coordinate planning between districts and other service providers and in writing grants.

66.6(2) Gathering and providing information for completion of program plans.

66.6(3) Identifying staff development resources and organizing staff training.

66.6(4) Identifying resources for establishing at least a 20 percent local contribution.

66.6(5) Participating in the advisory council.

66.6(6) Helping develop and implement recording procedures for evaluation of data and analysis of results.

66.6(7) Providing in-school support services.

66.6(8) Assisting with implementation of nondiscrimination measures.

281—66.7(279) Responsibilities of the department of education. The department of education shall:

66.7(1) Provide guidelines and forms to school districts for submitting program plans.

66.7(2) Provide technical assistance to school districts, other education agencies and service providers in the development of plans.

66.7(3) Organize reviews and approval of written plans in at least three size categories of school districts including those below an enrollment of 1,200; between 1,200 and 4,999; and 5,000 and above. The process will give priority to need and plans that indicate high degrees of active participation by community-based youth organizations and agencies. Review criteria and a point system are contained in guidelines for school-based youth services programs.

66.7(4) Develop and administer a format for evaluation. An annual evaluation report shall be filed with the department of education by school districts following the close of each school year.

66.7(5) Provide technical assistance to school districts and other service providers in designing preservice and in-service training.

66.7(6) Consult with the departments of human services, human rights (division of criminal and juvenile justice planning), public health, economic development (division of job training and entrepreneurship assistance) and employment services (division of job services) to develop rules, administer programs, and monitor and evaluate programs.

66.7(7) Establish assistance through the F.I.N.E. Foundation and other foundations and public and private agencies in evaluating programs under this chapter and to provide support to school districts in implementing the funded programs.

These rules are intended to implement Iowa Code chapter 256, Iowa Code section 279.51(3) and 1994 Iowa Acts, Senate File 2330, sections 47 to 49 and 60.

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CHAPTER 67
EDUCATIONAL SUPPORT PROGRAMS FOR PARENTS OF AT-RISK CHILDREN AGED BIRTH THROUGH FIVE YEARS

281—67.1(279) Purpose. These rules set forth procedures and conditions under which state funds shall be granted to school districts, area education agencies or other agencies which administer quality educational support services to parents of at-risk children aged birth through five years.
[**ARC 1487C**, IAB 6/11/14, effective 7/16/14]

281—67.2(279) Definitions.

"Applicant" means a public school district, area education agency or an agency which applies for the funds to provide quality educational support programs to parents of at-risk children aged birth through five years, with an emphasis on parents of children aged birth through three years.

"At-risk children" means children birth through age five who are at risk because of physical or environmental influence.

"Council" means the child development coordinating council.

"Department" means the department of education.

"Early intervention interagency council" means the community early intervention interagency councils for infants and toddlers with disabilities and their families formed to assist with the implementation of P.L. 99-457, Part H, which amends P.L. 94-142, Education of the Handicapped Act.

"Educational support services" means individual or group opportunities providing information to parents which focuses on: parenting skills, child growth and development, building of self-concept, nutrition, positive guidance techniques, family resource management, parent literacy, and how to access the array of supportive services from a network of agencies that are available to families with young children who are at risk.

"Grantee" means the applicant designated to receive the grants for educational support services to parents of at-risk children aged birth through five years.

"Parent" means biological, adoptive, surrogate, foster parent, or guardian.

"Quality educational support services" means educational support services that have a qualified or trained staff to provide a program which meets the needs of parents through the use of a validated curriculum or which is based on a model project which has proven successful in another state or location.
[**ARC 1487C**, IAB 6/11/14, effective 7/16/14]

281—67.3(279) Eligibility identification procedures. In a year in which funds are made available by the Iowa legislature, the department shall grant awards to applicants for the provision of educational support services to parents of at-risk children aged birth through five years with priority to applicants that serve parents of at-risk children aged birth through three years. Funds shall be made available on a competitive basis to schools or nonprofit agencies demonstrating an ability to provide quality educational support services to parents of at-risk children aged birth through five years. Competitive grants will be awarded with a renewal option for up to five years contingent upon the awardee's meeting program requirements. If program requirements are not met, the department may discontinue grant funding at the start of the following fiscal year.
[**ARC 1487C**, IAB 6/11/14, effective 7/16/14]

281—67.4(279) Eligibility. The available funds shall be directed to serve parents of at-risk children aged birth through five years in the primary eligibility category as follows:

Parents having one or more children aged birth through five years who meet the current income eligibility guidelines for free and reduced price meals in a local school or whose total income is, or is projected to be, equal to or less than 125 percent of the federally established poverty guidelines.
[**ARC 1487C**, IAB 6/11/14, effective 7/16/14]

281—67.5(279) Secondary eligibility. The available funds shall be directed to serve parents of at-risk children aged birth through five years when children qualify in one or more of the secondary eligibility categories as follows:

1. Children who are abused.
2. Children functioning below chronological age in two or more developmental areas, one of which may be English proficiency, as determined by an appropriate professional.
3. Children born with an established biological risk factor, such as very low birth weight (under 1500 grams—approximately three pounds) or with conditions such as spina bifida, Down's syndrome or other genetic disorders.
4. Children born to a parent who was under the age of 18.
5. Children residing in a household where one or more of the parents or guardian:
- Has not completed high school;
- Has been identified as a substance abuser;
- Has been identified as chronically mentally ill;
- Is incarcerated;
- Is illiterate;
- Is a child abuser or spouse abuser; or
- Has limited English proficiency.

6. Children having other special circumstances, such as foster care or being homeless.

[**ARC 1487C**, IAB 6/11/14, effective 7/16/14]

281—67.6(279) Grant awards criteria.

67.6(1) *Criteria points.* The following information shall be provided and points shall be awarded to applicants based on the following criteria as stated in the request for proposal:

1. Identification of parents of at-risk children.
2. Positive family focus.
3. Educational support programs to provide family services.
4. Community and interagency coordination.
5. Overall program evaluation.
6. Letters of community support.
7. Program budget (administrative) costs not to exceed 10 percent of total award.

67.6(2) *Additional grant components.* The following information shall be provided and points shall be awarded to applicants based on the following additional components.

1. Documentation of a need for this project.
2. Justification of how this project will utilize services from other agencies and how this project will supplement services to the eligible population.
3. Identification of the curriculum to be used or the model to be replicated.
4. Demonstration that persons qualified to administer these educational support services to parents will be employed.

[**ARC 1487C**, IAB 6/11/14, effective 7/16/14]

281—67.7(279) Application process. The department shall announce through public notice the opening of an application period.

281—67.8(279) Request for proposals. Applications for the educational support services to parents of at-risk children aged birth through five years grants shall be distributed by the department upon request.

[**ARC 1487C**, IAB 6/11/14, effective 7/16/14]

281—67.9(279) Award contracts.

67.9(1) Grants for educational support services to parents of at-risk children aged birth through five years shall not supplant other existing funding sources.

67.9(2) Administrative costs shall be limited to 10 percent of the total award.

[**ARC 1487C**, IAB 6/11/14, effective 7/16/14]

281—67.10(279) Notification of applicants. Applicants shall be notified of the department's decision to approve or disapprove the proposal within 45 days of the deadline for applications. Negotiations

may be required. Successful applicants will be requested to have an official with vested authority sign a contract with the department.
[**ARC 1487C**, IAB 6/11/14, effective 7/16/14]

281—67.11(279) Grantee responsibilities. The grantee shall maintain records which include, but are not limited to:

1. Demographic information on parents and children served.
2. Qualifying criteria for those parents receiving educational support services.
3. Documentation of the number of contact hours in either individual or group sessions with parents.
4. Documentation of the type of educational support service provided to parents.
5. Indication of where the services were provided, i.e., home, school or community facility.
6. Evaluation of how each project goal and objective was met, on what timeline, and with what success rate.
7. Record of expenditures and an annual audit.
8. Other information specified by the department necessary to the overall evaluation.

Grantees shall complete a year-end report on forms provided by the department documenting the information outlined in this rule. The final project report is due 30 days after the completion of the project as defined in the contract with the department.
[**ARC 1487C**, IAB 6/11/14, effective 7/16/14]

281—67.12(279) Withdrawal of contract offer. If the applicant and the department are unable to successfully negotiate a contract, the department may withdraw the award offer.

281—67.13(279) Evaluation. The grantee shall cooperate with the department and provide requested information to determine how well the goals and objectives of the project are being met.

281—67.14(279) Contract revisions. The grantee shall immediately inform the department of any revisions in the project budget. The department and the grantee may negotiate a revision to the contract to allow for expansion or modification of services but shall not increase the total amount of the grant. The council may advise the department regarding revised contracts if the revision is in excess of 10 percent of a budget category.
[**ARC 1487C**, IAB 6/11/14, effective 7/16/14]

281—67.15(279) Termination for convenience. The contract may be terminated, in whole or in part, upon agreement of both parties. The parties shall agree upon the termination conditions, including the effective date, and in the case of partial termination, the portion to be terminated. The grantee shall not incur new obligations for the terminated portion after the effective date of termination and shall cancel as many outstanding obligations as possible.

281—67.16(279) 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 grantee has failed to comply substantially with the conditions of the contract. The grantee shall be notified in writing by the department of the reasons for the termination and the effective date. The grantee 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 the educational support services grants contingent upon their availability. If there is a lack of funds necessary to fulfill the fiscal responsibility of these grants, the contracts shall be terminated or renegotiated. The department may terminate or renegotiate a contract upon 30 days' notice when there is a reduction of funds by executive order.

281—67.17(279) Responsibility of grantee at termination. Within 45 days of the effective date of termination, the grantee shall supply the department with a financial statement detailing all program

expenditures up to the effective date of the termination. The grantee shall be solely responsible for all expenditures after the effective date of termination.

281—67.18(279) Appeal from terminations. Any agency or public school aggrieved by a unilateral termination of a contract pursuant to rule 281—67.16(279) may appeal the decision to the director of the department in writing within 30 days of the decision to terminate. The hearing procedures found at 281—Chapter 6 shall be applicable to appeals of terminated grantees.

In the notice of appeal, the grantee shall give a short and plain statement of the reason for the appeal.

281—67.19(279) Refusal to issue ruling. The director may refuse to issue a ruling or decision upon an appeal for good cause. Good cause includes, but is not limited to, the following reasons:

1. The appeal is untimely;
2. The appellant lacks standing to appeal;
3. The appeal is not in the required form or is based upon frivolous grounds;
4. The appeal is moot because the issues raised in the notice of appeal or at the hearing have been settled by the parties;
5. The termination of the grant was beyond the control of the department because it was due to lack of funds available for the contract.

281—67.20(279) Request for Reconsideration. A disappointed applicant who has not been approved for funding may file a Request for Reconsideration with the director of the department in writing within 10 days of the decision to decline to award a grant. In order to be considered by the director, the Request for Reconsideration shall be based upon one of the following grounds:

1. The decision process was conducted in violation of statute or rule;
2. The decision violates state or federal law, policy, or rule (to be cited in the Request);
3. The decision process involved a conflict of interest.

Within 20 days of filing a Request for Reconsideration, the requester shall submit all written documentation, evidence, or argument in support of the request. The director shall notify the child development coordinating council of the request and shall provide the council an opportunity to defend its decision with written documentation, evidence, or argument, which shall be submitted within 20 days of receipt of the request. The council shall provide copies of all documents to the requester at the time the items are submitted to the director.

The director shall issue a decision granting or denying the Request for Reconsideration within 30 days of the receipt of the evidence, or no later than 60 days from the date of Request for Reconsideration, unless a later date is agreeable to the requester and the council.

281—67.21(279) Refusal to issue decision on request. The director may refuse to issue a decision on a Request for Reconsideration upon good cause. Good cause includes, but is not limited to, the following reasons:

1. The request was untimely;
2. The requester lacks standing to seek reconsideration;
3. The request is not based on any of the available grounds in rule 281—67.18(279), or is merely frivolous or vexatious;
4. The requester failed to provide documentation, evidence or argument in support of its request;
5. The request is moot due to negotiation and settlement of the issue(s).

281—67.22(279) Granting a Request for Reconsideration. If the director grants a Request for Reconsideration, the council shall consider the grantee's application in accordance with the director's findings and decision.

These rules are intended to implement Iowa Code section 279.51.

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CHAPTER 68
IOWA PUBLIC CHARTER AND INNOVATION ZONE SCHOOLS

DIVISION I
GENERAL PROVISIONS

281—68.1(256F,83GA,SF2033) Purpose. All charter schools and innovation zone schools in Iowa are public schools whose purpose is established pursuant to Iowa Code chapter 256F as amended by 2010 Iowa Acts, Senate File 2033. A charter school may be established by creating a new school within an existing public school or by converting an existing public school to charter status. This chapter provides the criteria and weighting for those criteria that the state board shall use to determine if an application for a public charter school or innovation zone school shall be approved.
[**ARC 9264B**, IAB 12/15/10, effective 1/19/11]

281—68.2(256F,83GA,SF2033) Definitions.

"Advisory council" means a council appointed by the school board of a charter school or an innovation zone consortium. With respect to a charter school, no more than one member of the council may be a member of the school board; a district's school improvement advisory committee may also serve as its advisory council. With respect to an innovation zone consortium, no more than one member of the council may be a member of any participating school board. All advisory councils are subject to the provisions of Iowa Code chapters 21 and 22.

"Charter school" means a new school designated by the state board and created within an existing attendance center or a new school created by converting an existing attendance center to charter status.

"Charter school authorizers" means the local school board in partnership with the state board of education.

"Department" means the Iowa department of education.

"Family unit" means a household in which reside one or more students enrolled at the existing public school that is the subject of either a charter school application or an innovation zone school application.

"Innovation zone consortium" means a consortium of two or more school districts and an area education agency in which one or more of the school districts are located which receives approval from the state board to establish an innovation zone school.

"Innovation zone school" means a public school established as an innovation zone school pursuant to an innovation zone school contract entered into by an innovation zone consortium to meet one or more of the purposes in Iowa Code section 256F.1 as amended by 2010 Iowa Acts, Senate File 2033.

"School board" means a board of directors regularly elected by the registered voters of a school district.

"State board" means the state board of education.
[**ARC 9264B**, IAB 12/15/10, effective 1/19/11]

DIVISION II
CHARTER SCHOOLS

281—68.3(256F,83GA,SF2033) Application to a school board. A local school board may accept applications from the principal, teachers, or parents or guardians of students at an existing public school for the planning and operation of a charter school within the boundary lines of an existing public school district. An application for a charter school must be approved by the local school board as a prerequisite for submission of the application to the state board. An applicant may appeal the local school board denial of the application to the state board under the procedures set forth in Iowa Code chapter 290.

1. Prior to accepting applications, a local school board shall adopt procedures, criteria, and weighting of the criteria that will determine whether an application is approved or denied. The local school board may adopt the procedures, criteria, and weighting of the criteria as established in this chapter for public charter schools. The procedures shall include a requirement that a majority of family units of the proposed charter school support the approval of the application. In addition, any application that has been submitted and for which subsequent school board action has been taken shall, at minimum,

meet the provisions of Iowa Code chapter 256F. An application that is received by a school board on or before October 1 of a calendar year shall be considered for approval and for the establishment of a charter school at the beginning of the school district's next school year or at a time agreed to by the applicant and the local school board.

2. Subject to the provision in numbered paragraph "3," a local school board may receive and consider applications after October 1 at its discretion. A local school board, by majority vote, must approve or deny the application within 60 calendar days after the application is received. An application approved by the local school board and state board of education shall constitute, at a minimum, an agreement between the local school board and the charter school for the operation of the charter school for no less than four years.

3. All applications approved by school boards shall be submitted to the department no later than December 15 immediately preceding the school year for which the charter school desires to start operations.

[**ARC 9264B**, IAB 12/15/10, effective 1/19/11]

281—68.4(256F,83GA,SF2033) Review process.

68.4(1) *Application to the department.* Upon a local school board's approval of an application for the proposed establishment of a charter school, the local school board must submit the application for such establishment to the department. The department shall appoint, at minimum, five individuals knowledgeable in student achievement and nontraditional learning environments to review each application for charter status. A reviewer shall not participate in the review of any application in which the individual may have an interest, direct or indirect.

68.4(2) *Ranking of applications.* Applications shall be ranked on a point system, and applications shall be recommended in rank order beginning with the application with the highest points. In the event that two or more applications tie, the applications will be reviewed until the tie is broken.

The maximum points for an application shall be 100. The maximum points for each criterion provided in Iowa Code section 256F.5 as amended by 2010 Iowa Acts, Senate File 2033, section 16, shall be as follows:

a. *Overview.* The mission, purpose, innovation, and specialized focus of the charter school. The maximum number of points that can be awarded is 40.

b. *Organization and structure.* The maximum number of points that can be awarded is 10. The description of the organization and structure shall include:

(1) The charter school governance and bylaws.

(2) The method for appointing or forming an advisory council for the charter school. The membership of an advisory council appointed or formed in accordance with this chapter shall not include more than one member of the local school board. The advisory council shall, to the greatest extent possible, reflect the demographics of the student population to be served by the public charter school.

(3) The organization of the school in terms of ages of students or grades to be taught along with an estimate of the total enrollment of the school.

(4) The method for admission to the public charter school. The admission policy shall support the purpose and specialized mission of the public charter school. A lottery process must be described in the application for a public charter school in the event that the number of applicants exceeds the capacity of the public charter school. The admission process shall not discriminate against prospective students on the basis of race, creed, color, sex, sexual orientation, gender identity, national origin, religion, ancestry, or disability, except if a charter school limits enrollment pursuant to Iowa Code section 256F.4(3).

(5) The number and qualifications of teachers and administrators to be employed. Hiring shall, to the greatest extent possible, reflect the demographics of the student population to be served by the public charter school.

(6) Procedures for teacher and administrator evaluation.

(7) Procedures for identification and implementation of professional development for teachers and administrators as required under 281—12.7(256,284,284A) and the Iowa teaching standards, including the opportunity to be responsible for the learning program at the school site.

(8) A plan of operation to be implemented if the public charter school revokes or fails to renew its contract.

(9) The specific statutes, administrative rules, and school board policies with which the public charter school does not intend to comply.

c. *Facilities/financial support.* The maximum number of points that can be awarded is 10. The description of the facilities/financial support shall include:

(1) The provision of school facilities.

(2) The financial plan for the operation of the school including, at minimum, a listing of the support services the school district will provide, and the public charter school's revenues, budgets, and expenditures.

(3) Assurance of the assumption of liability by the public charter school.

(4) The types and amounts of insurance coverage to be obtained by the public charter school.

(5) The means, costs, and plan for providing transportation for students attending the public charter school.

d. *Student achievement.* The maximum number of points that can be awarded is 40. The description shall include:

(1) Performance goals and objectives in addition to those required under Iowa Code section 256.7(21) and 281—Chapter 12, by which the school's student achievement shall be judged, the measures to be used to assess progress, and the current baseline status with respect to the goals.

(2) The educational program and curriculum utilizing different and innovative instructional methodologies that reflect sensitivity to gender, racial, ethnic and socioeconomic backgrounds. Services to be offered to all prospective students, including students with disabilities pursuant to the requirements of 281—Chapter 41, English Language Learners (ELL), and other students considered "at risk," must also reflect the same sensitivities.

(3) A statement that indicates how the public charter school will meet the purpose of a public charter school as outlined in Iowa Code section 256F.1(3), and the minimum state and federal statutory requirements of a public charter school as outlined in Iowa Code section 256F.4(2).

68.4(3) *State board review.* The state board shall review the recommendations provided by the department. The state board shall, by a majority vote, approve or deny an application within 90 calendar days of receipt of the application and shall notify applicants within 5 days of the state board's decision. An approved application shall be a part of the contract for the operation of the charter school. The terms of the contract for the operation of the charter school shall also outline the reasons for revocation or nonrenewal of the charter.

[**ARC 9264B**, IAB 12/15/10, effective 1/19/11]

281—68.5(256F,83GA,SF2033) Ongoing review by department. A charter school shall be reviewed periodically by the department to ensure continuing compliance with the charter school's contract. The department may schedule mandatory meetings with the administrators of all charter schools at the department's sole discretion.

[**ARC 9264B**, IAB 12/15/10, effective 1/19/11]

281—68.6(256F,83GA,SF2033) Renewal of charter. After the initial four-year contract for a charter school and at the end of each renewal period thereafter, the school board that established the charter school shall, in the absence of revoking the charter pursuant to subrules 68.7(1) and 68.7(2), take affirmative action to renew a charter school contract. The school board shall hold a public hearing on the issue of renewal and shall submit to the department a copy of the minutes of the public hearing showing that a majority of the school board members voted in favor of renewal of the charter. Any action to renew a charter must specify the number of years, which shall not be more than four years, for which the charter was renewed by the school board.

A school board must submit a new application to the department if the board modifies any of the terms of the original charter.
[**ARC 9264B**, IAB 12/15/10, effective 1/19/11]

281—68.7(256F,83GA,SF2033) Revocation of charter.

68.7(1) *Reasons for revocation.* A charter may be revoked by the state board or by the school board that established the charter if either board determines that one or more of the following occurred:

a. The charter school has failed to meet the provisions set forth in the contract for the operation of the charter school.

b. The charter school has failed to comply with the provisions in Iowa Code chapter 256F.

c. The charter school has failed to meet generally accepted accounting principles for public entities.

d. The charter school has failed to demonstrate improvement in student progress in reading, mathematics, and science from that which existed prior to the establishment of the charter school to the present as evidenced by achievement scores on the latest administration of the state assessment for which scores are available, or as evidenced by alternative but equivalent locally determined performance measures including but not limited to additional administrations of the state assessment, portfolios of student work, student performance rubrics, or end-of-course assessments.

68.7(2) *Revocation by school board.* A school board considering the revocation of a contract with its charter school shall notify the advisory council, the family units, and the teachers and administrators employed by the charter school at least 60 days prior to the date by which the contract must be renewed but not later than the last day of classes in the school year. The decision of a school board to revoke or fail to renew a charter school contract is subject to appeal under procedures set forth in Iowa Code chapter 290 by an affected student or parent of an affected student who is a minor.

68.7(3) *Revocation by state board.* If the state board determines that reason exists under subrule 68.7(1) to revoke a charter school contract, the state board shall notify the school board and the advisory council of the charter school of the state board's intention to revoke the contract at least 60 days prior to the revocation of the contract, and the school board shall assume oversight authority, operational authority, or both oversight and operational authority. The notice shall state the grounds for the proposed action in writing and in reasonable detail. The school board may request in writing an informal hearing before the state board within 14 days of receiving notice of revocation of the contract. Upon receiving a timely written request for a hearing, the state board shall give reasonable notice to the school board of the hearing date. The state board shall conduct an informal hearing before taking final action. Final action to revoke a contract shall be taken in a manner least disruptive to the students enrolled in the charter school. The state board shall take final action to revoke or approve continuation of a contract by the last day of classes in the school year. If the final action to revoke a contract under Iowa Code section 256F.8 occurs prior to the last day of classes in the school year, a charter school student may enroll in the resident district. The decision of the state board to revoke a contract under Iowa Code section 256F.8 is solely within the discretion of the state board and is final.
[**ARC 9264B**, IAB 12/15/10, effective 1/19/11]

281—68.8 to **68.10** Reserved.

DIVISION III
INNOVATION ZONE SCHOOLS

281—68.11(256F,83GA,SF2033) Application process. An innovation zone consortium shall submit an application to establish an innovation zone school to the state board no later than December 15 immediately preceding the school year for which the innovation zone school desires to start operations. The application shall demonstrate the support, as of approximately the date of submission of the application, of at least 50 percent of the teachers employed at the proposed innovation zone school and at least 50 percent of the affected family units. The application shall set forth the manner in which the

innovation zone school will comply with federal and state laws regarding instruction to students who are English language learners and regarding the National School Lunch Act and Child Nutrition Act.
[**ARC 9264B**, IAB 12/15/10, effective 1/19/11]

281—68.12(256F,83GA,SF2033) Review process. Upon timely receipt of an application from an innovation zone consortium for the proposed establishment of an innovation zone school, the department shall appoint a minimum of five individuals knowledgeable in student achievement and nontraditional learning environments to review each application for an innovation zone school. A reviewer shall not participate in the review of any application in which the individual may have an interest, direct or indirect.

68.12(1) *Cap on number of innovation zone schools.* Pursuant to Iowa Code section 256F.3 as amended by 2010 Iowa Acts, Senate File 2033, section 10, the state board shall approve the establishment of not more than ten innovation zone schools.

68.12(2) *Allocation of points on applications.* Points shall be allocated to applications; the maximum points for any one application shall be 100. The maximum points for each criterion shall be as set forth in paragraphs 68.4(2)*"a"* to *"d."* The department shall make a recommendation to the state board regarding whether an application should be approved or denied by the state board.

68.12(3) *State board review.* The state board shall review the recommendations provided by the department. The state board shall, by a majority vote, approve or deny an application within 90 calendar days of receipt of the application and shall notify applicants within 5 days of the state board's decision. An approved application shall be a part of the contract for the operation of the innovation zone school. The terms of the contract for the operation of the innovation zone school shall also outline the reasons for revocation or nonrenewal of the approval of the innovation zone school.
[**ARC 9264B**, IAB 12/15/10, effective 1/19/11]

281—68.13(256F,83GA,SF2033) Ongoing review by department. An innovation zone school shall be reviewed periodically by the department to ensure continuing compliance with the innovation zone school's contract. At the department's sole discretion, the department may schedule mandatory meetings with the administrators of the innovation zone school and the administrators of the school's innovation zone consortium.
[**ARC 9264B**, IAB 12/15/10, effective 1/19/11]

281—68.14(256F,83GA,SF2033) Renewal of contract. After the initial four-year contract for an innovation zone school and at the end of each renewal period thereafter, the local boards that formed the innovation zone consortium shall take affirmative action either to request renewal from the state board of the approval of the consortium's innovation zone school contract or to dissolve the innovation zone school. If seeking renewal of the contract from the state board, the local boards that formed the innovation zone consortium shall first hold a joint public hearing on the issue of renewal of the contract and shall submit to the department a copy of the minutes of the public hearing showing that a majority of the local board members voted in favor of requesting renewal of the state board's approval of the consortium's innovation zone school contract. Any action to request renewal of the contract must specify the number of years, which shall not be more than four years, for which renewal is requested.

An innovation zone consortium must submit a new application to the department if the consortium modifies any of the terms of the original contract.
[**ARC 9264B**, IAB 12/15/10, effective 1/19/11]

281—68.15(256F,83GA,SF2033) Revocation of contract.

68.15(1) *Reasons for revocation.* An innovation zone school contract may be revoked by the state board or by the innovation zone consortium that established the school if either the board or the consortium determines that one or more of the following occurred:

a. The innovation zone school has failed to meet the provisions set forth in the contract for the operation of the innovation zone school.

b. The innovation zone school has failed to comply with the provisions in Iowa Code chapter 256F as amended by 2010 Iowa Acts, Senate File 2033.

c. The innovation zone school has failed to meet generally accepted accounting principles for public entities.

d. The innovation zone school has failed to demonstrate improvement in student progress in reading, mathematics, and science from that which existed prior to the establishment of the innovation zone school to the present as evidenced by achievement scores on the latest administration of the state assessment for which scores are available, or as evidenced by alternative but equivalent locally determined performance measures including but not limited to additional administrations of the state assessment, portfolios of student work, student performance rubrics, or end-of-course assessments.

68.15(2) *Revocation by innovation zone consortium.* An innovation zone consortium considering the revocation of a contract with its innovation zone school shall notify the advisory council, the family units, and the teachers and administrators employed by the innovation zone school at least 60 days prior to the date by which the contract must be renewed but not later than the last day of classes in the school year. The decision of an innovation zone consortium to revoke or fail to renew an innovation zone school contract is subject to appeal under procedures set forth in Iowa Code chapter 290 by an affected student or parent of an affected student who is a minor.

68.15(3) *Revocation by state board.* If the state board determines that reason exists under subrule 68.15(1) to revoke the contract for an innovation zone school, the state board shall notify the innovation zone consortium and the advisory council of the consortium of the state board's intention to revoke the contract at least 60 days prior to the revocation of the contract, and the consortium shall assume oversight authority, operational authority, or both oversight and operational authority. The notice shall state the grounds for the proposed action in writing and in reasonable detail. The consortium may request in writing an informal hearing before the state board within 14 days of receipt of notice of revocation of the contract. Upon receiving a timely written request for a hearing, the state board shall give reasonable notice to the consortium of the hearing date. The state board shall conduct an informal hearing before taking final action. Final action to revoke a contract shall be taken in a manner least disruptive to the students enrolled in the innovation zone school. The state board shall take final action to revoke or approve continuation of a contract by the last day of classes in the school year. If the final action to revoke a contract under Iowa Code section 256F.8 as amended by 2010 Iowa Acts, Senate File 2033, section 19, occurs prior to the last day of classes in the school year, an innovation zone school student may enroll in the student's resident district. The decision of the state board to revoke a contract under Iowa Code section 256F.8 as amended by 2010 Iowa Acts, Senate File 2033, section 19, is solely within the discretion of the state board and is final.

[**ARC 9264B**, IAB 12/15/10, effective 1/19/11]

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TITLE XIII
AREA EDUCATION AGENCIES

CHAPTER 69
WAIVER OF SCHOOL BREAKFAST PROGRAM REQUIREMENT
Rescinded IAB 8/21/02, effective 9/25/02

CHAPTER 70
AEA MEDIA CENTERS
[Prior to 9/7/88, see Public Instruction Department[670] Ch 40]
Rescinded IAB 6/9/04, effective 7/14/04

CHAPTER 71
AEA EDUCATIONAL SERVICES
[Prior to 9/7/88, see Public Instruction Department[670] Ch 41]
Rescinded IAB 6/9/04, effective 7/14/04

CHAPTER 72
ACCREDITATION OF AREA EDUCATION AGENCIES

281—72.1(273) Scope. The purpose of Iowa's early childhood through twelfth grade educational system is to support learning for all students. Area education agencies, as part of that system, exist to provide leadership and equitable services for school improvement to schools and school districts in order to enable every learner to perform at higher education levels. Area education agencies are subject to accreditation by the state board of education as specified in Iowa Code section 273.10. These rules apply to the accreditation of area education agencies.

281—72.2(273) Definitions.

"AEA" is an acronym for area education agency.

"Agencywide goals" means cross-divisional desired targets to be reached over an extended period of time, derived from agencywide needs assessment and state and local student learning needs, and upon which services are focused.

"Baseline data" means information gathered at a selected point in time and used thereafter as a basis from which to monitor change.

"Board" means the Iowa state board of education.

"Department" means the state department of education.

"Director" means the state director of the department of education.

"Equitable" means that services provided by an AEA are accessible to all schools and school districts within the agency's service region.

"External knowledge base" means what is known, such as research and student achievement data, from the state or the nation about how learners in other settings perform and respond in a content area such as reading, mathematics, or science, as well as what is known about developing a learning environment that will support the desired student performance and response in a content area such as reading, mathematics, or science.

"Indicators of improvement" means internal data the agency uses to determine how well its continuous improvement processes are implemented.

"Indicators of quality" means external data sources which measure the effectiveness of services.

"School" means an accredited nonpublic school.

"School district" means a public school district.

"State indicators" means the school and school district indicators defined in 281—paragraph 12.8(3)*"a."*

281—72.3(273) Accreditation components. To be accredited by the board and maintain accreditation status, an AEA shall: provide services which meet the standards defined in rule 281—72.4(273), establish a comprehensive improvement plan as defined in rule 281—72.9(273), submit a board-approved annual budget as defined in subrule 72.10(1), and annually provide a progress report as defined in subrule 72.10(2).

281—72.4(273) Standards for services. An AEA shall provide services that meet these standards as evidenced by, but not limited to, the descriptors following each standard. These services shall be accessible to all schools and school districts within the agency's service region.

72.4(1) The AEA shall deliver services for school-community planning. The AEA assists schools and school districts in assessing needs of all students, developing collaborative relationships among community agencies, establishing shared direction, implementing actions to meet goals, and reporting progress towards goals.

72.4(2) The AEA shall deliver professional development services for schools, school districts and AEA instructional, administrative, and support personnel. The AEA anticipates and responds to schools' and school districts' needs; supports proven and emerging educational practices; aligns with school and school district comprehensive long-range and annual improvement goals; uses adult learning theory;

supports improved teaching; uses theory, demonstration, practice, feedback, and coaching; and addresses professional development activities as required by the Iowa Code or administrative rules.

72.4(3) The AEA shall deliver curriculum, instruction, and assessment services that address the areas of reading, language arts, mathematics, and science but may also be applied to other curriculum areas. These services support the development, implementation, and assessment of rigorous content standards in, but not limited to, reading, mathematics, and science. The AEA assists schools and school districts in gathering and analyzing student achievement data as well as data about the learning environment, compares those data to the external knowledge base, and uses that information to guide school and school district goal setting and implementation of actions to improve student learning.

72.4(4) The AEA shall address the diverse learning needs of all children and youth, including but not limited to services which address gifted and talented students, and meet the unique needs of students with disabilities who require special education. Services provide support to schools and school districts and include special education compliance with Iowa administrative rules for special education.

72.4(5) The AEA shall provide services that support multicultural, gender-fair approaches to the educational program pursuant to Iowa Code section 256.11. These services assist schools and school districts to take actions that ensure all students are free from discriminatory acts and practices; to establish policies and take actions that ensure all students are free from harassment; to incorporate into the educational program instructional strategies and student activities related to responsibilities, rights, and the respect for diversity which are necessary for successful citizenship in a diverse community and a global economy; and to incorporate on an ongoing basis activities within professional development that prepare and assist all employees to work effectively with diverse learners.

72.4(6) The AEA shall deliver media services. These services align with school and school district needs, support effective instruction, and provide consultation, research and information services, instructional resources, and materials preparation and dissemination to assist schools and school districts to meet the learning needs of all students and support local district media services. These services support the implementation of content standards in, but not limited to, reading, mathematics, and science. These services also support and integrate emerging technology.

72.4(7) The AEA shall supplement and support effective instruction for all students through school technology services. These services provide technology planning, technical assistance, and professional development, and support the incorporation of instructional technologies to improve student achievement. These services support the implementation of content standards in, but not limited to, reading, mathematics, and science. These services support and integrate emerging technology.

72.4(8) The AEA shall deliver services that develop leadership based upon the Iowa Standards for School Administrators as adopted by the board of educational examiners. Leadership services assist with recruitment, induction, retention, and professional development of educational leaders. AEAs develop and deliver leadership programs based on local and state educational needs and best practices.

72.4(9) The AEA shall deliver management services if requested. If the AEA provides management services to school districts, the services shall conform to the provisions of Iowa Code section 273.7A.

281—72.5 to **72.8** Reserved.

281—72.9(273) Comprehensive improvement plan. Each AEA, on a cycle established by the department, shall submit to the department a comprehensive improvement plan. The plan shall be the basis for the improvement actions taken by the agency and shall also serve as a basis for the comprehensive site visit.

72.9(1) *Comprehensive improvement plan contents.* At a minimum, the comprehensive improvement plan for an AEA shall include the following:

a. Needs assessment. The plan shall contain a description of how the AEA conducts ongoing needs assessment.

b. Needs assessment summary. The plan shall contain a summary of the findings from agencywide needs assessment. The summary, at a minimum, shall include the following:

(1) Findings from AEA internal needs assessment which includes, at a minimum, four indicators of improvement:

1. Implementation of a continuous improvement model;
2. Implementation of services that respond to schools' and school districts' needs;
3. Demonstration of proactive leadership;
4. Use of data to implement actions to improve student learning;

(2) Findings from school and school district state indicator data;

(3) Findings from reviews of school and school district comprehensive school improvement plans;

(4) Findings from the department's comprehensive site visit reports to schools and school districts;

(5) Findings from AEA comprehensive site visit reports; and

(6) Findings from the department's statewide customer service survey.

c. *Agencywide goals.* The plan shall contain agencywide goals developed as a result of needs assessment findings. Agencywide goals shall be measurable and, at a minimum, focused on assisting schools and school districts with the school improvement process and improving teaching and learning as evidenced in the indicators of quality as prescribed in subrule 72.10(2).

d. *Services.* The plan shall describe the services developed to meet agencywide goals and to meet the standards defined in this chapter.

e. *Action plans.* The plan shall include agencywide actions to accomplish agencywide goals. Action plans shall include evidence of meeting all standards for services. Action plans shall include provisions for equitable availability of services. The agencywide action plans shall include, at a minimum, the following components:

(1) Agencywide data sources;

(2) Agencywide baseline data;

(3) Services to meet the agencywide goals;

(4) Agencywide resources, which include funding, staff allocation, and time and may be delivered directly, through contractual agreements, and through collaborative arrangements with other educational or community agencies;

(5) Agencywide responsible parties that will monitor the implementation of services in the action plan;

(6) A system for measuring the efficiency and effectiveness of services; and

(7) A process for reporting progress toward agencywide goals.

f. *Provisions for management services.* If the AEA provides management services to school districts, the plan shall include a description of how the agency provides those services as described in Iowa Code section 273.7A.

g. *Professional development plan.* The plan shall contain a summary of the agencywide professional development plan developed pursuant to 281—subrule 83.6(2).

72.9(2) *Plan submission and cycle.* Rescinded IAB 9/5/01, effective 10/10/01.

72.9(3) *Comprehensive improvement plan review process.* The comprehensive improvement plan of an AEA shall be reviewed by the department to determine if the plan meets the requirements of this chapter. An AEA will be provided reasonable time to correct any deficiencies.

281—72.10(273) Annual budget and annual progress report. Each AEA shall submit to the board an annual budget as required by Iowa Code section 273.3 and shall provide an annual progress report on the indicators of quality and the agencywide goals.

72.10(1) *Annual budget.* An annual budget shall be submitted by an AEA accredited by the board or an AEA that has been given conditional accreditation by the board as described in Iowa Code section 273.3(12) and subrule 72.11(4) to the board for approval, on forms provided by the department, no later than March 15 preceding the next fiscal year. The board shall review the proposed budget and shall, before April 1, either grant approval or return the budget without approval with comments of the board included. An unapproved budget shall be resubmitted to the board for final approval no later than April 15.

72.10(2) *Annual progress report.* An AEA shall annually submit a written progress report to its schools and school districts and the department and make the report available to the public. The report shall include, but not be limited to, the following information:

a. *Agencywide goals.* Progress, at a minimum, toward the agencywide goals described in paragraph 72.9(1)*"c"* shall be reported. This progress shall include agencywide baseline data and changes in the baseline data as a result of services provided in each action plan.

b. *Indicators of quality.* Aggregated agencywide data shall include baseline data and trends over time for the following indicators of quality from, at a minimum, the state indicators, the statewide customer service survey, school and school district comprehensive school improvement plans, and school and school district annual progress reports:

(1) Targeted assistance. An AEA assists schools and school districts with specific student, teacher, and school needs evidenced in local school improvement plans by:

1. Addressing teacher, school and school district needs.
2. Responding to student learning needs.

(2) Improved student learning. An AEA assists schools and school districts in:

1. Improving student achievement in mathematics.
2. Improving student achievement in reading.
3. Improving student achievement in science.
4. Reducing student achievement gaps in mathematics.
5. Reducing student achievement gaps in reading.
6. Reducing student achievement gaps in science.
7. Reducing dropout rates.
8. Preparing students for postsecondary success.
9. Planning to ensure that students complete a core program.

(3) Improved teaching. An AEA assists schools and school districts in improving teaching in the following areas:

1. Mathematics.
2. Reading.
3. Science.

(4) Resource management. An AEA assists schools and school districts:

1. By delivering cost-efficient services.
2. By timely delivery of services.

(5) Customer satisfaction with services. An AEA determines customer satisfaction through:

1. High levels of participation.
2. High levels of customer satisfaction with quality of AEA services.

(6) Annual progress report review process. The annual progress report of an AEA shall be reviewed by a team appointed by the director. Following the review of an AEA's report, feedback will be provided to the agency.

281—72.11(273) Comprehensive site visit.

72.11(1) *On-site review.* An accreditation team shall conduct one or more on-site reviews of the AEA's progress toward agencywide goals and shall determine if services meet the standards in this chapter. Prior to an on-site review of an AEA, the accreditation team shall have access to the AEA's comprehensive improvement plan, annual progress report, and annual budget as well as any other information collected by the department relating to the AEA.

72.11(2) *Accreditation team.* The membership of the accreditation team shall be determined by the director. Each team member should have appropriate competencies, background, and experiences to enable the member to contribute to the evaluation visit. The team shall include at least four members, including, but not limited to:

a. Department staff.

b. Representatives from various sizes of schools and school districts served by the AEA being evaluated.

c. AEA staff from other AEAs.

d. Others with expertise as deemed appropriate by the director.

72.11(3) *Accreditation team action.* After an on-site review of an AEA, the accreditation team shall determine whether the requirements of this chapter have been met and shall make a report to the director identifying which standards and other accreditation requirements in this chapter an AEA has or has not met. The accreditation team shall report strengths and weaknesses, if any, for each standard or requirement, and shall advise the AEA of available resources and technical assistance to further enhance the strengths and improve areas of weakness. An AEA may respond to the accreditation team's report by providing to the board factual information concerning its services.

72.11(4) *Accreditation.* All AEAs shall be deemed accredited upon the date of implementation of these rules. Accreditation of an AEA by the board shall be based on the recommendation of the director after study of the factual and evaluative evidence on record about the standards and other requirements as described in this chapter and based upon the timely submission of information required by the department. If, at any time, the board determines that an AEA has not met all standards and other requirements, the board shall require the AEA to address the deficiencies.

a. Accreditation status. After completion of the comprehensive site visit under rule 281—72.11(273), the board shall grant continuation of accreditation if all standards and other requirements are met. If the board determines that an AEA has not met all standards and other requirements, the board shall grant conditional accreditation to the agency.

b. Conditional accreditation. If the board grants conditional accreditation, the department shall notify the administrator of the AEA and each member of the board of directors of the AEA within 15 days. The notice shall contain a description of the accreditation deficiencies.

c. Remediation plan. Upon granting of conditional accreditation by the board, the director, in cooperation with the board of directors of the AEA, shall establish a remediation plan. The remediation plan shall describe how the AEA will correct deficiencies to meet accreditation standards and shall establish a timeline and deadline date for correction of the deficiencies. The remediation plan is subject to the approval of the board. The AEA shall remain conditionally accredited during the implementation of the remediation plan.

d. Implementation of remediation plan. At intervals prescribed in the remediation plan or at the request of the director, the accreditation team shall revisit the AEA and shall determine whether the deficiencies in the accreditation standards are being or have been corrected and shall make a report and recommendation to the director and the board. The board shall review this report and recommendations and shall determine whether the deficiencies have been corrected.

e. Failure to correct deficiencies. If the deficiencies have not been corrected within the time stipulated in the remediation plan, the board shall remove accreditation of the agency. At the hearing before the board, the AEA may be represented by counsel and may present evidence. The board may provide for the hearing to be recorded or reported. If requested by the AEA at least 10 days before the hearing, the board shall provide for the hearing to be recorded or reported at the expense of the AEA. Within 30 days after the hearing, the board shall render a written decision approving or removing the accreditation. Action by the board at this time is final agency action for the purposes of Iowa Code chapter 17A. The department shall notify the administrator of the AEA, each member of the board of directors of the AEA, and the schools and school districts served by the AEA of the decision of the board.

f. Required response to removal of accreditation. After removal of accreditation of the agency, the AEA board of directors shall make provisions for the continuation of services to schools and school districts subject to approval by the state board of education.

These rules are intended to implement Iowa Code section 273.10.

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TITLE XIV
TEACHERS AND PROFESSIONAL LICENSING
[Prior to 9/7/88, see Public Instruction Department[670] Ch 70]
[Transferred to Educational Examiners[282] Ch 14, IAB 10/3/90, effective 9/14/90]

TITLE XIV
TEACHERS AND PROFESSIONAL LICENSING

CHAPTER 73
ISSUANCE OF CERTIFICATES AND ENDORSEMENTS
[Prior to 9/7/88, see Public Instruction Department[670] Ch 70]
[Transferred to Educational Examiners[282] Ch 14, IAB 10/3/90, effective 9/14/90]

CHAPTER 74
RENEWAL OF CERTIFICATES
[Prior to 9/7/88 see Public Instruction Department[670]Ch 71]
[Transferred to Educational Examiners[282]Ch 17, IAB 10/3/90, effective 9/14/90]

CHAPTER 75
CONVERSION INFORMATION
[Prior to 9/7/88, see Public Instruction Department[670]Ch 72]
[Transferred to Educational Examiners[282]Ch 18, IAB 10/3/90, effective 9/14/90]

CHAPTER 76
ADVISORY COMMITTEES
[Prior to 9/7/88, see Public Instruction Department[670]Ch 75]
Rescinded IAB 10/2/91, effective 11/6/91

CHAPTER 77
STANDARDS FOR TEACHER INTERN PREPARATION PROGRAMS

281—77.1(256) General statement. Programs of teacher intern preparation leading to licensure in Iowa are subject to approval by the state board of education, as provided in Iowa Code chapter 256.

281—77.2(256) Definitions. For purposes of clarity, the following definitions are used throughout the chapter:

"AEA" means area education agency.

"BOEE" means the board of educational examiners, the board responsible for establishing licensure requirements and issuing licenses.

"Cooperating teachers" means classroom teachers who provide guidance and supervision to teacher candidates during the candidates' field experiences in the schools.

"Department" means the department of education.

"Director" means the director of education.

"Institution" means a four-year college or university in Iowa offering teacher intern preparation and seeking state board approval of its teacher intern preparation program.

"INTASC" means the Interstate New Teacher Assessment and Support Consortium, the source of national standards for beginning teachers.

"Intern" means an individual who is enrolled in a teacher intern preparation program leading to teacher intern licensure.

"Mentor" means an individual, employed by a school district or area education agency as a classroom teacher, or a retired teacher, who holds a valid license issued under Iowa Code chapter 272. The individual must have a record of four years of successful teaching practice with at least two of the four years on a nonprobationary basis and must demonstrate professional commitment to both the improvement of teaching and learning and the development of beginning teachers or teacher interns.

"Practitioner" means a teacher, administrator, or other school personnel holding a license issued by the board of educational examiners.

"Program" means the program for teacher intern preparation at colleges and universities leading to licensure of teacher interns.

"State board" means the state board of education.

"Teacher intern candidate" means an individual who is enrolled in a teacher intern preparation program leading to teacher intern licensure.

"Teacher intern preparation program" means the program for teacher intern preparation at colleges and universities leading to licensure of teacher interns.

"Unit" means the organizational entity within an institution with the responsibility of administering the teacher intern preparation program.

281—77.3(256) Institutions affected. All Iowa colleges and universities engaged in the preparation of teacher interns and seeking state board approval of their programs shall meet the standards contained in this chapter.

281—77.4(256) Criteria for Iowa teacher intern preparation programs. Each institution seeking approval of its program of teacher intern 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. For institutions not already offering practitioner preparation programs approved by the state board, the evaluation process shall include a site visit by representatives of the department and additional documentation as needed. After the state board has approved the teacher intern preparation program filed by an institution, teacher intern candidates who complete the program and are recommended by the authorized official of that institution will be issued the appropriate license and endorsement(s).

281—77.5(256) Approval of programs. For initial approval, institutions shall submit written documentation of the teacher intern preparation program's compliance with program approval rules 77.10(256) through 77.16(256). For institutions that do not already have practitioner preparation programs approved by the state board, the evaluation process shall include a site visit by representatives of the department and additional documentation as needed. Approval by the state board of the institutions' teacher intern preparation programs 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 cover the period of time between initial approval and the institution's next regularly scheduled state review under rules 281 IAC 79.5(256) and 281 IAC 79.6(256). After the initial approval period, approval of the teacher intern preparation program will be included as part of the institution's reapplication for approval of its entire practitioner preparation program. Approval, if granted to institutions offering only teacher intern preparation programs, shall be for a term of five years; however, approval for a lesser tern 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 regularly scheduled meeting of the state board. The institution may also reapply at its discretion when it is ready to show what actions have been taken to address the areas suggested for improvement.

281—77.6(256) Periodic reports. Institutions with approved teacher intern preparation programs shall make periodic reports upon request of the department. The reports shall provide basic information necessary to keep up-to-date records of each teacher intern preparation program and to carry out research studies relating to teacher intern preparation.

281—77.7(256) Approval of program changes. Upon application for approval of program changes by an institution, the director is authorized to approve minor additions to, or changes within, the curricula of an institution's approved teacher intern preparation program. When an institution proposes a revision that exceeds the primary scope of its programs, the revision shall become operative only after having been approved by the state board.

281—77.8(256) Governance and resources. As a component of the program, the institution shall work collaboratively with the local school district(s) or AEA.

77.8(1) The institution's responsibilities shall include but not be limited to:

a. Organizing and implementing the screening of prospective teacher interns;

b. Submitting a recommendation by the authorized official of the institution to the BOEE for a teacher intern license. The recommendation from the institution must be submitted to the BOEE upon the teacher intern candidate's completion of the coursework and competencies, as outlined in the program content in subrule 77.12(1), and prior to the beginning of the teacher internship year;

c. Supervising the teacher intern during the internship year;

d. Verifying that the teacher intern has successfully completed all required coursework and demonstrated all required competencies in the approved teacher intern program;

e. Submitting a recommendation to the BOEE that the teacher intern candidate is eligible to move from the teacher intern license to the initial license;

f. Preparing data in response to the department's request for information regarding, but not limited to, the selection of teacher interns and the institution's teacher intern preparation program, institutional support, local school district or AEA mentors, and local school district or AEA support.

77.8(2) The local school district's or AEA's responsibilities shall include, but not be limited to:

a. Offering employment to an individual who has been evaluated by a college or university and is eligible for or accepted in the approved teacher intern preparation program;

b. Participating in a mentoring and induction program;

c. Providing a district mentor for the teacher intern;

d. Ensuring that an assignment does not unnecessarily overload the teacher intern with extracurricular duties not related to the teaching assignment;

e. Providing other support and supervision, as needed, to the teacher intern to maximize the opportunity for the teacher intern to succeed;

f. Preparing data in response to the department's request for information regarding, but not limited to, the selection of teacher interns and the district's or AEA's teacher intern preparation program, institutional support, the local school district or AEA mentors, and local school district or AEA support.

Mentors serve the role of coaching, guiding, and providing feedback to the intern. This relationship is not a supervisory situation and evaluation is not part of this model.

77.8(3) A teacher intern committee, with membership including, but not limited to, a program director from the institution, teacher education faculty, and 7-12 school district personnel, shall design the teacher intern preparation program.

The teacher intern committee shall develop program goals, the program of study including field experiences, a system of support for teacher interns including mentoring and supervision by program faculty, an assessment plan for documenting teacher intern candidates' progress during preparation, and other items deemed appropriate to the program design.

Upon implementation of the teacher intern preparation program, a teacher intern committee shall monitor progress of the program toward goals, examine formative and summative data about candidates and the program, and recommend ways to address issues arising during implementation or subsequent to analysis of evaluative data.

77.8(4) Resources shall support quality clinical practice for all teacher intern candidates, professional development for faculty, and technological and instructional needs of faculty to prepare teacher intern candidates with the dispositions, knowledge, and skills necessary to support student learning.

77.8(5) Teacher intern candidates' and faculty's access to books, journals, and electronic information shall support teaching and scholarship.

77.8(6) Sufficient numbers of faculty and administrative, clerical, and technical staff shall be available to ensure the consistent planning, delivery, and quality of the teacher intern program.

77.8(7) The use of part-time faculty and graduate students in teaching roles shall be managed to ensure integrity, quality, and continuity of the teacher intern preparation program.

77.8(8) Institutional commitment shall include financial resources, facilities and equipment to ensure the fulfillment of the institution's and unit's missions, delivery of a quality program, and preparation of teacher intern candidates.

281—77.9(256) Diversity.

77.9(1) Recruitment, admissions, hiring, and retention policies and practices shall support a diverse faculty and teacher intern candidate population in the program.

77.9(2) Efforts toward racial, ethnic, and gender diversity among teacher intern candidates and program faculty shall be documented. In addition, diversity efforts shall include persons with disabilities, persons from different language and socioeconomic backgrounds, and persons from different regions of the country and world.

77.9(3) Unit efforts in increasing or maintaining diversity shall be reflected in plans, monitoring of plans and efforts, and results.

77.9(4) The institution, the program and members of the partnership shall maintain a climate that supports diversity in general as well as supporting teacher intern candidates and faculty from underrepresented groups in the program.

281—77.10(256) Faculty.

77.10(1) Faculty members from the institution and others in the partnership shall have preparation and have had experiences in situations similar to those for which the teacher interns are being prepared.

77.10(2) The collective competence and background of the entire teacher intern preparation program faculty shall reflect a balance of theory, experience, and knowledge appropriate to the teacher intern preparation program being offered.

77.10(3) The program shall administer a systematic and comprehensive evaluation system and professional development activities to enhance the teaching competence and intellectual vitality of the teacher intern preparation program faculty.

77.10(4) Policies and assignments shall allow faculty to be involved effectively in teaching, scholarship, and supervision of teacher intern candidates.

77.10(5) Teacher intern faculty members shall maintain an ongoing, meaningful involvement in activities in schools where teacher interns are employed. Activities of full-time permanent teacher intern faculty members from the institution preparing teacher interns shall include at least 40 hours of team teaching during a period not to exceed five years in duration at the middle or secondary school level. This five-year period shall align with the institution's scheduled cycle of state review.

281—77.11(256) Teacher intern selection.

77.11(1) Representatives from the teacher intern committee shall be actively involved in the identification of criteria for selecting teacher intern candidates. Representatives from the teacher intern committee shall be actively involved in the screening, interviewing and selection of teacher intern candidates.

77.11(2) Rigorous screening shall be used to select teacher intern candidates. The screening shall include, but not be limited to:

a. Verification of the prospective candidate's completion of a baccalaureate degree from a regionally accredited institution. If any candidate's undergraduate grade point average is less than 2.5 on a 4.0 scale, the program admission criteria shall specify the additional criteria that an applicant must satisfy for provisional admittance to the teacher intern preparation program;

b. Evaluation of the prospective candidate's transcripts to determine if the prospective candidate meets the state minimum requirements for at least one of the board of educational examiners' secondary (7-12) endorsement areas listed in 282 IAC 14.141(272);

c. Evaluation of the prospective candidate's minimum of three years of postbaccalaureate work experience;

d. An in-person interview of the prospective candidate designed to generate information related to the attributes identified as essential for candidates by the partnership;

e. Examination of references submitted by the prospective teacher intern;

f. Evaluation of an impromptu writing sample submitted by the prospective teacher intern; and

g. Verification that the prospective candidate has successfully passed a basic skills test at the level approved by the teacher education institution.

281—77.12(256) Curriculum and instruction.

77.12(1) *Content.* Teacher intern candidates shall develop the dispositions, knowledge, and performance expectations of the INTASC standards embedded in the professional education core for an Iowa teaching license at a level appropriate for a novice teacher. The teacher intern preparation program content shall include:

a. Coursework and competencies equivalent to a minimum of 12 semester hours specified by the board of educational examiners to be completed prior to the beginning of the candidate's initial employment as a teacher intern. The coursework and competencies shall include, but not be limited to:

(1) Learning environment/classroom management. The intern shall demonstrate an understanding of individual and group motivation and behavior to create a learning environment that encourages positive social interaction, active engagement in learning, and self-motivation.

(2) Instructional planning. The intern shall plan instruction based upon knowledge of subject matter, students, the community, curriculum goals, and state curriculum models.

(3) Instructional strategies. The intern shall demonstrate an understanding of and shall use a variety of instructional strategies to encourage students' development of critical thinking, problem solving, and performance skills.

(4) Student learning. The intern shall demonstrate an understanding of how students learn and develop and provide learning opportunities that support intellectual, career, social, and personal development.

(5) Diverse learners. The intern shall demonstrate an understanding of how students differ in their approaches to learning and create instructional opportunities that are equitable and are adaptable to diverse learners.

(6) Collaboration, ethics and relationships. The intern shall foster relationships with parents, school colleagues, and organizations in the larger community to support students' learning and development.

(7) Assessment. The intern shall demonstrate an understanding of and shall use formal and informal assessment strategies to evaluate the continuous intellectual, social, and physical development of the learner.

(8) Field experiences that provide opportunities for interaction with students in an environment that supports learning in context. These experiences shall total at least 50 contact hours in the field prior to the beginning of the academic year of the candidate's initial employment as a teacher intern.

b. A minimum of 4 semester hours of a teacher intern seminar during the teacher internship year to include support and extension of coursework from the teacher intern introductory content.

c. Coursework and competencies equivalent to a minimum of 12 semester hours specified by the BOEE to be completed prior to the recommendation for an initial teaching license. The coursework and competencies shall include but not be limited to:

(1) Foundations, reflection, and professional development. The intern shall continually evaluate the effects of practitioners' choices and actions on students, parents, and other professionals in the learning community and actively seek out opportunities to grow professionally.

(2) Communication. The intern shall use 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.

(3) Exceptional learner. The intern shall use knowledge of exceptional learners that contributes to the education of individuals with disabilities and the gifted and talented.

(4) Reading strategies. The intern shall integrate reading strategies into the teaching of the content area.

(5) Computer technology. The intern shall use knowledge of technology, including computers, to enhance instruction.

(6) An advanced study of the items set forth in 77.12(1)*"a"*(1) to (7).

77.12(2) *Instructional practices.* The program faculty shall:

a. Apply adult learning theory and its impact on professional development;

b. Utilize innovative instructional practice supported by research;

c. Reintegrate active engagement of teacher intern candidates and facilitate teacher intern reflection; and

d. Connect professional education studies prior to, during, and following the internship year with teacher intern candidates' field experiences.

281—77.13(256) Candidate support.

77.13(1) The program shall provide an orientation for teacher intern candidates prior to the internship year including but not limited to the program goals and expectations, licensure requirements, support to be provided by the supervisor from the institution and the teacher mentor at the site of the internship, and cohort-building.

77.13(2) Teacher intern faculty shall provide teacher intern candidates with academic advising, monitoring of their performance throughout the program, and consultation opportunities.

77.13(3) Teacher intern faculty shall provide regular supervision in teacher intern candidates' classrooms with additional supervision and assistance as needed.

77.13(4) The program shall coordinate support between the teacher intern candidate's local district mentor and program supervisor. In some cases, the institution may wish to hire its own on-site cooperating teacher to serve as a second mentor who could also provide evaluative feedback to the institution.

77.13(5) The program shall offer the teacher intern candidate access to support services offered by the institution.

281—77.14(256) Candidate assessment.

77.14(1) Performance of teacher intern candidates shall be measured against national professional standards, state licensure standards, and the program's learning outcomes.

77.14(2) The program shall utilize a coherent, sequential assessment system for individual teacher intern candidates. The assessment system shall clearly document candidates' attainment of the unit's and the board of educational examiners' licensure standards by providing evidence via multiple measures of content knowledge, professional and pedagogical knowledge, and effect on student learning and achievement. Whenever possible, this assessment system shall document teacher intern candidates' performance of content specified in 77.12(1)*"a"*(1) to (7) and 77.12(1)*"c"*(1) to (5) in the teacher intern candidates' classrooms and shall document candidates' performance toward meeting the Iowa teaching standards.

77.14(3) The institution shall document teacher intern candidates' completion of licensure requirements, and the authorized official of the institution shall recommend eligible candidates for licensure.

281—77.15(256) Program evaluation. The institution shall:

77.15(1) Demonstrate how the information gathered via the individual teacher intern candidate assessment system is utilized to refine and revise the program's goals, content, delivery strategies, and candidate support.

77.15(2) Document the quality of programs through the collective presentation of assessment data related to performance of teacher intern candidates and demonstrate how the data are used for continuous program improvement.

a. This documentation shall include evidence of evaluative data collected by the teacher intern preparation program through studies of teacher intern candidates while they are in the program and data collected from the district(s) or AEA employing the candidates. This evidence shall include, but is not limited to, candidates' content and pedagogical knowledge and performance, level of support for candidates provided by the institution and the local district or AEA, and perceived quality of preparation throughout the program.

b. This documentation shall include evidence of evaluative data collected by the teacher intern preparation program through follow-up studies of teacher intern preparation program graduates and their employers.

77.15(3) Submit an annual report to the department including, but not limited to, a composite of evaluative data collected by the program.

These rules are intended to implement Iowa Code sections 256.7 and 256.16.

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CHAPTER 78
STANDARDS FOR GRADUATE PRACTITIONER PREPARATION PROGRAMS

[Prior to 9/7/88, see Public Instruction Department[670] Ch 77]

Rescinded IAB 4/3/02, effective 5/8/02

CHAPTER 79
STANDARDS FOR PRACTITIONER AND ADMINISTRATOR PREPARATION PROGRAMS

DIVISION I
GENERAL STANDARDS APPLICABLE TO ALL PRACTITIONER PREPARATION PROGRAMS

281—79.1(256) General statement. Programs of practitioner and administrator preparation leading to licensure in Iowa are subject to approval by the state board of education, as provided in Iowa Code chapter 256. All programs having accreditation on August 31, 2001, are presumed accredited unless or until the state board takes formal action to remove accreditation.
[**ARC 8053B**, IAB 8/26/09, effective 9/30/09]

281—79.2(256) Definitions. For purposes of clarity, the following definitions are used throughout the chapter:

"Administrator candidates" means individuals who are enrolled in practitioner preparation programs leading to administrator licensure.

"Administrator preparation programs" means the programs of practitioner preparation leading to licensure of administrators.

"Area education agency" or *"AEA"* means a regional service agency that provides school improvement services for students, families, teachers, administrators and the community.

"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.

"Cooperating administrators" means school administrators who provide guidance and supervision to administrator candidates during the candidates' clinical experiences in the schools.

"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.

"Delivery model" means the form in which the educator preparation program is delivered to candidates and may include conventional campus-based, face-to-face models, distance learning models, off-campus models, programs delivered through consortia arrangements, and programs or elements delivered by contracted outside providers.

"Department" means department of education.

"Director" means director of the department.

"Distance learning" means a formal education process in which the major portion of the instruction occurs when the learner and the instructor are not in the same place at the same time and occurs through virtually any media including printed materials, videotapes, audio recordings, facsimiles, telephone communications, the ICN, Internet communications through E-mail, and Web-based delivery systems.

"Distance learning program" means a program in which over half of the required courses in the program occur when the learner and the instructor are not in the same place at the same time (see definition of distance learning). These programs include those offered by the professional educational unit through a contract with an outside vendor or in a consortium arrangement with other higher education institutions, area education agencies, or other entities.

"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.

"EPS" means Educational Leadership Policy Standards, national standards for educational administration.

"Facility" means a residential or other setting for a child in which the child receives an appropriate educational program. "Facility" includes a foster care facility as defined in Iowa Code section 237.1, a facility that provides residential treatment pursuant to Iowa Code chapter 125, an approved or licensed shelter care home as defined in Iowa Code section 232.2, subsection 34, an approved juvenile detention home as defined in Iowa Code section 232.2, subsection 32, and a psychiatric medical institution for children as defined in Iowa Code section 135H.1.

"ICN" means the Iowa communications network.

"Institution" means a college or university in Iowa offering practitioner preparation or an educational organization offering administrator preparation and seeking state board approval of its practitioner preparation program(s).

"INTASC" means Interstate New Teacher Assessment and Support Consortium, the source of national standards for beginning teachers.

"Iowa core curriculum" means a legislatively mandated state initiative that provides local school districts and nonpublic schools a guide to delivering instruction to students based on consistent, challenging and meaningful content.

"ISSL" means Iowa Standards for School Leaders.

"Mentor" means an experienced educator who provides guidance to a practitioner, administrator candidate or novice educator.

"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.

"Off-campus program" means a program offered by a unit on sites other than the main campus. Off-campus programs may be offered in the same state, in other states, or in countries other than the United States.

"Practitioner candidates" means individuals who are enrolled in practitioner preparation programs leading to licensure as teachers, as administrators or as other professional school personnel that require a license issued 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.

"Program" means a specific field of specialization leading to a specific endorsement.

"Regional accreditation" means official approval by an agency or organization approved or recognized by the U.S. Department of Education.

"State board" means Iowa state board of education.

"Students" means PK-12 pupils.

"Teacher candidates" means individuals who are enrolled in practitioner preparation programs leading to teacher licensure.

"Unit" means the organizational entity within an institution with the responsibility of administering and delivering the practitioner preparation program(s).

[**ARC 8053B**, IAB 8/26/09, effective 9/30/09]

281—79.3(256) Institutions affected. In order to attain the authority to recommend candidates for Iowa licensure, colleges and universities offering practitioner preparation programs in Iowa, as well as other Iowa educational organizations engaged in the preparation of school administrators, shall meet the standards contained in this chapter to gain or maintain state board approval of their programs.

[**ARC 8053B**, IAB 8/26/09, effective 9/30/09]

281—79.4(256) Criteria for practitioner preparation programs. Each institution seeking approval by the state board of its programs of practitioner preparation, including those programs offered by distance delivery models or at off-campus locations, must be regionally accredited and shall file evidence of the extent to which each program meets the standards contained in this chapter by means of a written self-evaluation report and an evaluation conducted by the department. The institution 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 preparation programs 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).
[**ARC 8053B**, IAB 8/26/09, effective 9/30/09]

281—79.5(256) Approval of programs. Approval of institutions' practitioner 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 seven 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 a regularly scheduled meeting of the state board, not beyond three months of the board's initial decision. Following a minimum of six months after the board's decision to deny approval, the institution may reapply 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.
[**ARC 8053B**, IAB 8/26/09, effective 9/30/09]

281—79.6(256) Visiting teams. Upon application or reapplication for approval, a review team shall visit each institution for evaluation of its practitioner preparation program(s). When an institution offers off-campus practitioner preparation programs, the team may elect to include visits to some or all of the sites of the off-campus programs. The membership of the team shall be selected by the department with the concurrence of the institution being visited. The team may include faculty members of other practitioner preparation institutions; personnel from elementary and secondary schools, to include licensed practitioners; personnel of the state department of education; personnel of the board of educational examiners; 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 review team shall be borne by the institution.
[**ARC 8053B**, IAB 8/26/09, effective 9/30/09]

281—79.7(256) Periodic reports. Upon request of the department, approved programs shall make periodic reports which shall provide basic information necessary to keep records of each practitioner preparation program up to date and to carry out research studies relating to practitioner preparation. The department may request that information be disaggregated by attendance center or delivery model or both.
[**ARC 8053B**, IAB 8/26/09, effective 9/30/09]

281—79.8(256) Reevaluation of practitioner preparation programs. Every seven years or at any time deemed necessary by the director, an institution shall file a written self-evaluation of its practitioner preparation programs to be followed by a review team visit. Any action for continued approval or rescission of approval shall be approved by the state board.
[**ARC 8053B**, IAB 8/26/09, effective 9/30/09]

281—79.9(256) Approval of program changes. Upon application by an institution, the director is authorized to approve minor additions to, or changes within, the curricula of an institution's approved practitioner preparation program. When an institution proposes a revision which exceeds the primary scope of its programs, including revisions which significantly change the delivery model(s), the revisions shall become operative only after having been approved by the state board.
[**ARC 8053B**, IAB 8/26/09, effective 9/30/09]

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. All provisions of this standard shall be demonstrated appropriately and equitably for all programs regardless of delivery model, including programs delivered by distance learning and programs offered on campus, off campus, and through any other model of delivery.

79.10(1) A clearly understood governance structure provides guidance and support for the practitioner preparation program(s). Programs offered by various delivery models, including distance learning and off-campus models, are integrated appropriately into the governance structure of the institution.

79.10(2) The professional education unit has primary responsibility for all programs offered by 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 aligned with appropriate professional standards and best practice in classroom instruction and school leadership.

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 other 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, and the delivery of quality programs, regardless of delivery model.

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 all programs, including those delivered by distance learning, off-campus, and other delivery models.

[**ARC 8053B**, IAB 8/26/09, effective 9/30/09]

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. All provisions of this standard shall be demonstrated appropriately and equitably for all programs regardless of delivery model, including programs delivered by distance learning and programs offered on campus, off campus, and through any other model of delivery.

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.

[**ARC 8053B**, IAB 8/26/09, effective 9/30/09]

281—79.12(256) Faculty standard. Faculty qualifications and performance shall facilitate the professional development of practitioner candidates in accordance with the following provisions. All provisions of this standard shall be demonstrated appropriately and equitably for all programs regardless of delivery model, including programs delivered by distance learning and programs offered on campus, off campus, and through any other model of delivery.

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. Faculty members have experience and adequate preparation in effective methods for any model of program delivery in which they are assigned responsibilities.

79.12(2) Faculty members in all program delivery models 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 in all program delivery models 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 in all program delivery models 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 employed graduate assistants in all program delivery models are identified as faculty members and meet the background and experience requirements appropriate for their assigned responsibilities.

79.12(6) Faculty members preparing in all program delivery models who prepare practitioner candidates maintain an ongoing, meaningful involvement in activities in preschools or elementary, middle, or secondary schools, in AEAs, or in appropriate facilities. A minimum of 60 hours of such activities shall include team teaching or appropriate collaborative experiences during the period between approval visits. A maximum of 30 hours of the 60-hour requirement may be completed by supervising candidates.

[**ARC 8053B**, IAB 8/26/09, effective 9/30/09]

281—79.13(256) Assessment system and unit evaluation standard. The unit's assessment system shall appropriately monitor individual candidate performance and use those data in concert with other information to evaluate and improve the unit and its programs. All provisions of this standard shall be demonstrated appropriately and equitably for all programs regardless of delivery model, including programs delivered by distance learning and programs offered on campus, off campus, and through any other model of delivery.

79.13(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 practitioners.

c. The unit demonstrates an alignment of unit standards with INTASC standards for teacher preparation, ISSL standards for administrator preparation, and appropriate standards for other professional programs, as well as with Iowa teaching standards, Iowa preparation core professional standards in subrule 79.15(7), and the Iowa board of educational examiners' licensing standards in 282—subrules 13.18(4), 13.18(5), 18.4(1), 18.4(2), and 18.9(1) and rule 282—18.10(272).

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 practitioner candidates. Documentation shall include:

(1) Data collected throughout the program, including data from all delivery models;

(2) Evidence of evaluative data collected from practitioners who work with the unit's candidates;

(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.

79.13(2) Performance assessment system for 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 who have the potential to become successful practitioners.

c. For teacher preparation programs, the system includes the administration of a preprofessional skills test offered by a nationally recognized testing service, with program admission denied to any applicant who fails 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, administrative field experience, or other culminating clinical experiences; and recommendation for licensure.)

e. The system includes a coherent, sequential assessment system for individual practitioner candidates. The assessment system is shared with faculty with guidance for course and program improvement, as well as assessment criteria and a process for ongoing feedback to practitioner candidates about their achievement of program standards with guidance for reflection and improvement. Data are 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 or leadership performance including the effect on student learning.

f. Practitioner candidate performance is assessed at the same standard regardless of the place or manner in which the program is delivered.

79.13(3) The unit annually reports to the department such data as are required by the state and federal governments at dates determined by the department.

79.13(4) The department shall periodically conduct a survey of schools, agencies, or facilities that employ licensed graduates of approved programs to ensure that the graduates' needs are adequately met by their programs and by the approval process herein.

[**ARC 8053B**, IAB 8/26/09, effective 9/30/09; **ARC 0476C**, IAB 11/28/12, effective 1/2/13]

DIVISION III
SPECIFIC EDUCATION STANDARDS APPLICABLE ONLY TO INITIAL PRACTITIONER PREPARATION PROGRAMS FOR TEACHER CANDIDATES

281—79.14(256) Teacher preparation 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. All provisions of this standard shall be demonstrated appropriately and equitably for all programs regardless of delivery model, including programs delivered by distance learning and programs offered on campus, off campus, and through any other model of delivery.

79.14(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.

79.14(2) Clinical practice for teacher candidates supports the development of knowledge, dispositions, and skills that are identified in the unit standards. The unit ensures that clinical experiences occurring in all locations are well-sequenced, supervised by appropriately qualified personnel, monitored by the unit, and integrated into the conceptual framework of the program.

79.14(3) Programs document clinical expectations at various developmental levels throughout the program. These expectations are shared with candidates, supervisors, and cooperating teachers.

79.14(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.

79.14(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.

79.14(6) Cooperating teachers and college/university supervisors share responsibility for supervising the candidate's achievement of unit standards.

79.14(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.

79.14(8) Teacher candidates develop and demonstrate the capacity to utilize assessment data in effecting student learning within their classrooms.

79.14(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.

79.14(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.

79.14(11) The institution annually offers one or more workshops for all 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.

79.14(12) The institution shall enter into a written contract with each cooperating school providing clinical experiences, including field experiences and student teaching, as stipulated in Iowa Code section 272.27.

79.14(13) *Teacher preparation clinical practice standard—Teach Iowa student teaching pilot project.* The Iowa department of education shall establish and administer a Teach Iowa year-long student teaching pilot project. The year-long student teaching pilot project must meet all existing student teaching requirements of 281—Chapter 79, in addition to the following:

a. Two Iowa institutions of higher education with state board of education-accredited teacher preparation programs will collaborate with the Iowa department of education to conduct this year-long, co-teaching-based student teaching pilot project. One of the two institutions collaborating on the pilot project will be under the control of the state board of regents; the other, an accredited private institution as defined in Iowa Code section 261.9.

b. The Teach Iowa student teaching pilot project shall provide students in teacher preparation programs with a one-year student teaching experience. A student teaching experience provided under the pilot project must include all of the following requirements:

(1) A participating institution of higher education shall work with one or more accredited schools or school districts (public or private), individually or collaboratively, to place groups of students in a co-teaching student teaching experience for an entire academic year. A participating institution of higher education shall take into consideration geographic diversity in the selection of accredited schools or school districts for participation in the pilot project. A participating institution of higher education will place an emphasis on supporting students in their development as teachers who will raise student achievement.

(2) A participating institution of higher education shall supervise the student teachers in the classroom and shall provide the student teachers with weekly on-site instruction in pedagogy in the participating school districts.

c. The participating institutions of higher education will collaborate with the department of education to develop and administer a monitoring system to evaluate and periodically provide a report on the effectiveness of the Teach Iowa year-long student teaching pilot project.

d. Institutions selected to participate in the pilot project will be chosen by a panel established by the director of the Iowa department of education using a scaled score of application requirements. Interested institutions will apply for the pilot project by describing:

(1) Capacity to carry out the work of the pilot project;

(2) Extent of partnership with local district/school to include documented agreement of district/school administrator(s);

(3) Budget;

(4) Curriculum plans for on-site instruction to include alignment with institutions' current curricula;

(5) Plans for evaluation of the effectiveness of the pilot project on student teacher growth in learning and preparedness for teaching.

e. Selected institutions will develop and administer a year-long student teaching pilot project that will:

(1) Place a cohort of candidates in a PK-12 school in a co-teaching model of student teaching for the duration of an entire academic year.

(2) Provide weekly instruction for student teachers in the same PK-12 school (or schools) in which the student teachers are teaching.

(3) Evaluate the effectiveness of year-long student teaching.

(4) Meet all requirements in subrule 79.14(13).

(5) Meet all other requirements of 281—Chapter 79.

f. This subrule is rescinded at the conclusion of the pilot project.

[**ARC 8053B**, IAB 8/26/09, effective 9/30/09; **ARC 1117C**, IAB 10/16/13, effective 11/20/13]

281—79.15(256) Teacher preparation candidate knowledge, skills and dispositions standard. Teacher candidates shall demonstrate the content knowledge and the pedagogical and professional knowledge, skills and dispositions necessary to help all students learn in accordance with the following provisions. All provisions of this standard shall be demonstrated appropriately and equitably for all programs regardless of delivery model, including programs delivered by distance learning and programs offered on campus, off campus, and through any other model of delivery.

79.15(1) Prior to admission to the teacher preparation program, each teacher candidate attains the qualifying score determined by the unit on a preprofessional skills test administered pursuant to paragraph 79.13(2)*"c."*

79.15(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.

79.15(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.

79.15(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.

79.15(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.

79.15(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.

79.15(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. The candidate must either meet or exceed a score above the 25th percentile nationally on subject assessments designed by a nationally recognized testing service that measure pedagogy and knowledge of at least one subject area as approved by the director of the department of education, or the candidate must meet or exceed the equivalent of a score above the 25th percentile nationally on an alternate assessment also approved by the director. The alternate assessment must be a valid and reliable subject area-specific, performance-based assessment for preservice teacher candidates that is centered on student learning. Additionally, 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.

These requirements shall become effective June 4, 2014.

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.

79.15(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.

79.15(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.

79.15(10) Candidates seeking an initial Iowa teaching license demonstrate competency in coursework directly related to the Iowa core curriculum.

[**ARC 8053B**, IAB 8/26/09, effective 9/30/09; **ARC 0476C**, IAB 11/28/12, effective 1/2/13; **ARC 1434C**, IAB 4/30/14, effective 6/4/14]

DIVISION IV
SPECIFIC EDUCATION STANDARDS APPLICABLE ONLY TO ADMINISTRATOR PREPARATION PROGRAMS

281—79.16(256) Administrator preparation clinical practice standard. The unit and its school partners shall provide clinical experiences that assist candidates in becoming successful school administrators in accordance with the following provisions. All provisions of this standard shall be demonstrated appropriately and equitably for all programs regardless of delivery model, including programs delivered by distance learning and programs offered on campus, off campus, and through any other model of delivery.

79.16(1) Clinical practice for administrator candidates supports the development of knowledge, dispositions, and skills that are identified in the unit standards. The unit ensures that clinical experiences occurring in all locations are well-sequenced, supervised by appropriately qualified personnel, monitored by the unit, and integrated into the conceptual framework of the program.

79.16(2) Each administrator candidate participates in field experiences that include both observation and involvement in management and leadership responsibilities. Programs document clinical expectations at various developmental levels. Clinical expectations are directly linked to coursework throughout the program, reflect collaboration among program faculty, and are shared with candidates, supervisors and cooperating administrators.

79.16(3) 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 administrators and other practitioners and learners in the school setting.

b. Administrator candidate learning that takes place in the context of providing high-quality instructional programs for students in a state-approved school or educational facility.

c. Opportunities for administrator candidates to observe and be observed by others and to engage in discussion and reflection on clinical practice.

d. The involvement of administrator candidates in relevant responsibilities directed toward the improvement of teaching and learning to include demonstration of the capacity to facilitate the use of formative and summative assessment data in effecting student learning within their schools.

79.16(4) The field experience component for initial administrator licensure meets all of the following requirements:

a. Includes experience for a minimum of 400 hours during each candidate's preparation program.

b. Takes place in multiple educational settings that include diverse populations and students of different age groups.

c. Takes place with appropriately licensed cooperating administrators.

d. Includes communication among institution personnel, the candidate, and the cooperating administrator regarding candidate progress.

e. Includes prescribed minimum expectations and responsibilities of the candidate for both leadership and managerial tasks as well as ethical behavior.

f. Includes minimum expectations and responsibilities for the participating entities: cooperating administrators, school districts, accredited nonpublic schools, AEAs, and higher education supervising faculty members.

g. Involves the candidate in professional meetings and other school-based activities directed toward the improvement of teaching and learning.

h. Involves the candidate in communication and interaction with parents or guardians, community members, faculty and staff, and the cooperating administrator in the school.

79.16(5) PK-12 school and institution professionals share responsibility for the selection of cooperating administrators who demonstrate skills, knowledge, and dispositions appropriate for administrator practitioners.

79.16(6) The unit is responsible for all of the following:

a. Defining qualifications for candidates entering clinical practice and for cooperating administrators who mentor candidates in their clinical experiences.

b. Providing quality supervision that includes primary responsibility for communication/collaboration with cooperating administrators and candidates.

c. Responding to specific needs of cooperating schools.

d. Selection, training, evaluation and support of institution faculty members who supervise administrator candidates.

e. Selection, training, evaluation and support of school administrators who mentor administrator candidates.

79.16(7) Each administrator candidate develops and demonstrates the capacity to utilize assessment data in effecting student learning within the candidate's school(s).

79.16(8) Accountability for field experiences is demonstrated through the following:

a. Collaboration between the cooperating administrator and the institution supervisors in formative evaluation of candidates to include identifying areas for improvement, developing and implementing plans for improvement, and determining final evaluation of the candidates.

b. Use of authentic performance measures appropriate to the required assignments in the clinical experiences, with written documentation and completed evaluation forms included in administrator candidates' permanent institutional records.

79.16(9) The institution annually delivers one or more professional development opportunities for cooperating administrators to define the objectives of the field experience, review the responsibilities of cooperating administrators, build skills in coaching and mentoring, and provide cooperating administrators other information and assistance the institution deems necessary. The professional development opportunities shall utilize delivery strategies identified as appropriate for professional development and reflect information gathered through feedback from workshop participants.

79.16(10) The institution shall enter into a written contract with each cooperating school district or AEA that provides field experiences for administrator candidates as stipulated in Iowa Code section 272.27.

[**ARC 8053B**, IAB 8/26/09, effective 9/30/09]

281—79.17(256) Administrator candidate knowledge, skills and dispositions standard. Administrator candidates shall demonstrate the content knowledge and the pedagogical and professional knowledge, skills and dispositions necessary to help all students learn in accordance with the following provisions. All provisions of this standard shall be demonstrated appropriately and

equitably for all programs regardless of delivery model, including programs delivered by distance learning and programs offered on campus, off campus, and through any other model of delivery.

79.17(1) Each administrator candidate shall demonstrate through coursework the knowledge, skills and dispositions necessary to meet the following Iowa Standards for School Leaders (ISSL), at a level appropriate for a novice administrator:

a. Facilitating the development, articulation, implementation, and stewardship of a vision of learning that is shared and supported by the school community (ISSL Standard 1: Shared Vision). Each administrator candidate:

(1) In collaboration with others, uses appropriate data to establish rigorous, concrete goals in the context of student achievement and instructional programs.

(2) Uses research and best practices in improving the educational program.

(3) Articulates and promotes high expectations for teaching and learning.

(4) Aligns and implements the educational programs, plans, actions, and resources with the district's vision and goals.

(5) Provides leadership for major initiatives and change efforts.

(6) Communicates effectively to various stakeholders regarding progress with school improvement plan goals.

b. Advocating, nurturing and sustaining a school culture and instructional program conducive to student learning and staff professional development (ISSL Standard 2: Culture of Learning). Each administrator candidate:

(1) Provides leadership for assessing, developing and improving climate and culture.

(2) Systematically and fairly recognizes and celebrates accomplishments of staff and students.

(3) Provides leadership, encouragement, opportunities and structure for staff to continually design more effective teaching and learning experiences for all students.

(4) Monitors and evaluates the effectiveness of curriculum, instruction and assessment.

(5) Evaluates staff and provides ongoing coaching for improvement.

(6) Ensures that staff members receive professional development that directly enhances their performance and improves student learning.

(7) Uses current research and theory about effective schools and leadership to develop and revise the administrator's professional growth plan.

(8) Promotes collaboration with all stakeholders.

(9) Is easily accessible and approachable to all stakeholders.

(10) Is highly visible and engaged in the school community.

(11) Articulates the desired school culture and shows evidence about how it is reinforced.

c. Ensuring management of the organization, operations and resources for a safe, efficient and effective learning environment (ISSL Standard 3: Management). Each administrator candidate:

(1) Complies with state and federal mandates and local board policies.

(2) Recruits, selects, inducts, and retains staff to support quality instruction.

(3) Addresses current and potential issues in a timely manner.

(4) Manages fiscal and physical resources responsibly, efficiently, and effectively.

(5) Protects instructional time by designing and managing operational procedures to maximize learning.

(6) Communicates effectively with both internal and external audiences about the operations of the school.

d. Collaborating with families and community members, responding to diverse community interests and needs and mobilizing community resources (ISSL Standard 4: Family and Community). Each administrator candidate:

(1) Engages family and community by promoting shared responsibility for student learning and support of the education system.

(2) Promotes and supports a structure for family and community involvement in the education system.

(3) Facilitates the connections of students and families to the health and social services that support a focus on learning.

(4) Collaboratively establishes a culture that welcomes and honors families and community and seeks ways to engage them in student learning.

e. Acting with integrity, fairness and in an ethical manner (ISSL Standard 5: Ethics). Each administrator candidate:

(1) Demonstrates ethical and professional behavior.

(2) Demonstrates values, beliefs, and attitudes that inspire others to higher levels of performance.

(3) Fosters and maintains caring professional relationships with staff.

(4) Demonstrates appreciation for and sensitivity to diversity in the school community.

(5) Is respectful of divergent opinions.

f. Understanding the profile of the community and responding to, and influencing, the larger political, social, economic, legal and cultural context (ISSL Standard 6: Societal Context). Each administrator candidate:

(1) Collaborates with service providers and other decision makers to improve teaching and learning.

(2) Advocates for the welfare of all members of the learning community.

(3) Designs and implements appropriate strategies to reach desired goals.

79.17(2) Each new administrative candidate successfully completes the appropriate evaluator training based on the Iowa teaching standards and ISSL standards provided by a state-approved evaluator trainer.

79.17(3) Each administrator candidate demonstrates the knowledge, skills, and dispositions necessary to support the implementation of the Iowa core curriculum.

79.17(4) Each administrator candidate 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, cultures, and attitudes of individuals and the diverse groups found in a pluralistic society. The program shall provide evidence of candidates' attainment of such knowledge and skills through the integration of these human relations and cultural competency issues within the program's coursework.

79.17(5) Each administrator candidate demonstrates, within specific coursework dedicated to understanding exceptional learners, in other coursework, and in clinical experiences, the knowledge, skills, and dispositions necessary to meet 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.

79.17(6) Each administrator 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.

[**ARC 8053B**, IAB 8/26/09, effective 9/30/09]

281—79.18 Reserved.

DIVISION V
SPECIFIC EDUCATION STANDARDS APPLICABLE ONLY TO PRACTITIONER PREPARATION PROGRAMS
OTHER THAN TEACHER OR ADMINISTRATOR PREPARATION PROGRAMS

281—79.19(256) Purpose. This division addresses preparation of an individual seeking a license based on school-centered preparation for employment as one of the following: school guidance counselor, school audiologist, school psychologist, school social worker, speech-language pathologist, supervisor of special education (support and orientation and mobility specialist). (See also the board of educational examiners' 282—Chapter 27, regarding licenses for service other than as a teacher.)

[**ARC 8053B**, IAB 8/26/09, effective 9/30/09]

281—79.20(256) Clinical practice standard. The unit and its school, AEA, and facility partners shall provide clinical experiences that assist candidates in becoming successful practitioners in accordance with the following provisions. All provisions of this standard shall be demonstrated appropriately and equitably for all programs regardless of delivery model, including programs delivered by distance learning and programs offered on campus, off campus, and through any other model of delivery.

79.20(1) Clinical practice for candidates supports the development of knowledge, dispositions, and skills that are identified in the unit standards. The unit ensures that clinical experiences occurring in all locations are well-sequenced, supervised by appropriately qualified personnel, monitored by the unit, and integrated into the conceptual framework of the program.

79.20(2) Candidates participate in clinical/field experiences that include both observation and involvement in professional responsibilities. Programs document clinical expectations at various developmental levels. Clinical expectations are directly linked to coursework throughout the program, reflect collaboration among program faculty, and are shared with candidates, supervisors and cooperating mentors.

79.20(3) Environments for clinical/field 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 practitioners and learners in the school/agency/facility setting.

b. Learning that takes place in the context of providing high-quality instructional programs for students in a state-approved school, agency, or educational facility.

c. Opportunities for candidates to observe and be observed by others and to engage in discussion and reflection on clinical practice.

d. The involvement of candidates in relevant responsibilities directed toward the work for which they are preparing.

79.20(4) PK-12 school, AEA, or facility professionals share responsibility for the selection of cooperating mentors who demonstrate appropriate skills, knowledge, and dispositions.

79.20(5) The unit is responsible for all of the following:

a. Defining qualifications for candidates entering clinical practice and for cooperating mentors who support candidates in their clinical experiences.

b. Providing quality supervision that includes primary responsibility for communication/collaboration with cooperating mentors and candidates.

c. Responding to specific needs of cooperating schools and agencies.

d. Selection, training, evaluation and support of institution faculty members who supervise candidates.

79.20(6) Accountability for clinical experiences is demonstrated through the following:

a. Collaboration between the cooperating mentor and the college/university supervisors in formative evaluation of candidates to include identifying areas for improvement, developing and implementing plans for improvement, and determining final evaluation of the candidates.

b. Use of authentic performance measures appropriate to the required assignments in the clinical experiences, with written documentation and completed evaluation forms included in candidates' permanent institutional records.

79.20(7) The institution shall enter into a written contract with each cooperating school district, AEA, or facility that provides field experiences for candidates as stipulated in Iowa Code section 272.27.

[**ARC 8053B**, IAB 8/26/09, effective 9/30/09]

281—79.21(256) Candidate knowledge, skills and dispositions standard. Candidates shall demonstrate the content knowledge and the pedagogical and professional knowledge, skills and dispositions necessary to help all students learn in accordance with the provisions of the appropriate professional standards. All provisions of this standard shall be demonstrated appropriately and equitably for all programs regardless of delivery model, including programs delivered by distance learning and programs offered on campus, off campus, and through any other model of delivery.

79.21(1) Each candidate 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, cultures, and attitudes of individuals and the diverse groups found in a pluralistic society. The program shall provide evidence of candidates' attainment of such knowledge and skills through the integration of these human relations and cultural competency issues within the program's coursework.

79.21(2) Each candidate meets all requirements established by the board of educational examiners for any endorsement for which the candidate is recommended, including the professional service license. Programs shall submit curriculum exhibit sheets for approval by the board of educational examiners and the department.

[**ARC 8053B**, IAB 8/26/09, effective 9/30/09]

These rules are intended to implement Iowa Code sections 256.7, 256.16 and 272.25(1).

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CHAPTER 80
STANDARDS FOR PARAEDUCATOR PREPARATION PROGRAMS

281—80.1(272) General statement. Programs of preparation leading to certification of paraeducators in Iowa are subject to approval by the state board of education.

281—80.2(272) Definitions. The following definitions are used throughout this chapter:

"Department" means the department of education.

"Director" means director of the department of education.

"Institution" means a public school district, area education agency, community college, institution of higher education under the state board of regents or an accredited private institution as defined in Iowa Code section 261.9(1) offering paraeducator preparation program(s).

"Paraeducator candidate" means an individual who is enrolled in a paraeducator preparation program leading to certification as a generalist, generalist with area(s) of concentration, or advanced paraeducator.

"Paraeducator preparation program" means the program of paraeducator preparation leading to certification of paraeducators.

"State board" means Iowa state board of education.

"Unit" means the organizational entity within an institution with the responsibility of administering the paraeducator preparation program(s).

281—80.3(272) Institutions affected. All institutions engaged in preparation of paraeducators and seeking state board approval of their paraeducator preparation programs shall meet the standards contained in this chapter.

281—80.4(272) Criteria for Iowa paraeducator preparation programs. Each institution seeking approval of its paraeducator preparation program(s) shall file evidence of the extent to which it meets the standards contained in this chapter. After the state board has approved an institution's paraeducator preparation program(s), students who complete the program(s) may be recommended by the authorized official of that institution for issuance of the appropriate certificate.

281—80.5(272) Approval of programs. Approval of paraeducator 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 applicant 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 regularly scheduled meeting of the state board. The institution may also reapply at its discretion to show what actions have been taken toward suggested improvement.

281—80.6(272) Periodic reports. Institutions placed on the approved programs list may be asked to make periodic reports upon request of the department which shall provide basic information necessary to keep records of each paraeducator preparation program up-to-date, and to provide information necessary to carry out research studies relating to paraeducator preparation.

281—80.7(272) Reevaluation of paraeducator preparation programs. Every five years, or at any time deemed necessary by the director, an institution shall file a self-evaluation of its paraeducator preparation programs.

281—80.8(272) Approval of program changes. Upon application by an institution, the director is authorized to approve minor additions to, or changes within, the institution's approved paraeducator

preparation program. When an institution proposes revisions that exceed the primary scope of its programs, the revisions shall become operative only after having been approved by the state board.

281—80.9(272) Organizational and resources standards.

80.9(1) Unit faculty shall collaborate with members of the professional community, including the unit's advisory committee comprised of practitioners, to design, deliver, and evaluate programs to prepare paraeducators.

80.9(2) Unit faculty shall maintain ongoing actual involvement in settings where paraeducators are employed.

80.9(3) The unit's planning and evaluation system shall support paraeducator candidate performance and shall use assessment data to evaluate the effectiveness of the unit and its program.

281—80.10(272) Diversity.

80.10(1) Efforts toward racial, ethnic, and gender diversity among paraeducator candidates and unit faculty shall be documented. In addition, diversity efforts shall include persons with disabilities, persons from different language and socioeconomic backgrounds, and persons from different regions of the country and world.

80.10(2) Unit efforts in increasing or maintaining diversity shall be reflected in plans, monitoring of plans, and results.

281—80.11(272) Paraeducator candidate performance standards. Paraeducator candidate assessment and unit planning and evaluation shall include the following:

80.11(1) Performance of paraeducator candidates shall be measured against state certification standards adopted by the board of educational examiners under Iowa Code section 272.12 and the unit's learning outcomes.

80.11(2) Information on performance of paraeducator candidates shall be drawn from multiple assessments, including but not limited to unit assessment of content knowledge and its application as candidates work with students, teachers, parents, and other professional colleagues in school settings, and follow-up studies of certified paraeducators.

80.11(3) The unit's assessment system shall:

a. Provide paraeducator candidates with ongoing feedback about what elements of performance are being assessed and how performance is being assessed.

b. Demonstrate how the information gathered via the individual, paraeducator-candidate assessment system is utilized to refine and revise the unit's framework and program goals, content, and delivery strategies.

c. Explain the process for reviewing and revising the assessment system.

80.11(4) An annual report including a composite of evaluative data collected by the unit shall be submitted to the department by September 30 of each year.

These rules are intended to implement Iowa Code section 256.7 as amended by 2000 Iowa Acts, House File 2146, section 1.

[Filed emergency 9/15/00 after Notice 8/23/00—published 10/4/00, effective 9/15/00]

CHAPTER 81
STANDARDS FOR SCHOOL BUSINESS OFFICIAL PREPARATION PROGRAMS

281—81.1(256) Definitions.

"Area education agency" or *"AEA"* means a regional service agency that provides school improvement services for students, families, teachers, administrators, and the community.

"Department" means the department of education.

"Director" means the director of the department of education.

"Institution" means a public or private institution of higher education, an AEA, or a professional organization offering a school business official preparation program(s) and renewal credits.

"Novice" means an individual in a school business official position who has no previous experience in that position or who is newly authorized by the board of educational examiners.

"School business official candidates" means individuals who are enrolled in school business official preparation programs leading to authorization by the board of educational examiners to practice as school business officials.

"School business official preparation programs" means the programs of school business official preparation that lead to authorization to practice as a school business official.

"State board" means the Iowa state board of education.

[**ARC 9474B**, IAB 4/20/11, effective 5/25/11]

281—81.2(256) Institutions eligible to provide a school business official preparation program. Institutions of public and private higher education, AEAs, and professional organizations engaged in the preparation of school business officials shall meet the standards contained in this chapter in order to obtain and maintain state board approval of their programs. Each institution that seeks state board approval of its programs for school business official preparation shall file evidence of the extent to which each program meets the standards contained in this chapter. Such evidence shall be demonstrated by means of a written self-evaluation report and an evaluation conducted by the department and shall be prepared using a template developed by the department. Only approved programs may recommend candidates for school business official authorization.

[**ARC 9474B**, IAB 4/20/11, effective 5/25/11]

281—81.3(256) Approval of programs. Approval by the state board of an institution's school business official preparation program 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.

81.3(1) Approval, if granted, shall be for a term of seven years; however, approval for a lesser term may be granted by the state board if it determines conditions so warrant.

81.3(2) If approval is not granted, the applicant 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 a regularly scheduled meeting of the state board, no later than three months following the board's initial decision.

81.3(3) 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 authorization.

81.3(4) The standards herein apply regardless of delivery mode of instruction.

[**ARC 9474B**, IAB 4/20/11, effective 5/25/11]

281—81.4(256) Governance and resources standard. An institution's governance structure and resources shall adequately support the preparation of school business official candidates to meet professional, state, and institutional standards in accordance with the following provisions.

81.4(1) A clearly understood governance structure provides guidance and support for the school business official preparation program.

81.4(2) Procedures for an appeals process for candidates are clearly communicated and provided to all candidates.

81.4(3) The program administers a comprehensive evaluation system designed to enhance the teaching competence and intellectual vitality of the professional educational institution.

81.4(4) Institutional commitment to the program includes financial resources, facilities, appropriate educational materials, media services including library services, and equipment to ensure the fulfillment of the institution's and program's missions and the delivery of quality programs.

81.4(5) The institution provides sufficient instructors and administrative, clerical, and technical staff to plan and deliver a quality school business official preparation program.

81.4(6) Resources are available to support professional development opportunities for instructors.

81.4(7) Resources are available to support technological and instructional needs to enhance candidate learning.

[**ARC 9474B**, IAB 4/20/11, effective 5/25/11]

281—81.5(256) Instructor standard. Instructor qualifications and performance shall facilitate the professional development of school business official candidates in accordance with the following provisions.

81.5(1) Instructors are adequately prepared for assigned responsibilities and have had experiences relative to the curricula the instructors are teaching and in situations similar to those for which the school business official candidates are being prepared. Instructors have experience and adequate preparation in effective methods for any mode of program delivery in which the instructors are assigned responsibilities.

81.5(2) Instructors instruct and model best practices in teaching, including the assessment of the instructors' own effectiveness as it relates to candidate performance.

81.5(3) Instructors are engaged in professional development that relates to school business official preparation.

81.5(4) Instructors collaborate regularly and in significant ways with colleagues in the institution and other institutions, schools, the department, and professional associations as well as with community representatives.

81.5(5) Part-time instructors and graduate assistants are identified as instructors and meet the background and experience requirements appropriate for the instructors' and assistants' assigned responsibilities.

[**ARC 9474B**, IAB 4/20/11, effective 5/25/11]

281—81.6(256) Assessment system and institution evaluation standard. The institution's assessment system shall appropriately monitor individual candidate performance and use the performance data in concert with other information to evaluate and improve the institution and its programs.

81.6(1) *Program assessment system.*

a. The program utilizes a clearly defined management system for the collection, analysis, and use of assessment data.

b. The institution clearly documents candidates' attainment of the program standards.

c. The institution demonstrates the 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.

d. The institution documents the quality of programs through the collective presentation of assessment data related to performance of school business official candidates. Documentation shall include the following:

(1) Data collected throughout the program, including data from all delivery models;

(2) Evidence of evaluative data collected from school business officials who work with the program's candidates; and

(3) Evidence of evaluative data collected by the institution through follow-up studies of graduates and their employers.

e. The institution explains the process for reviewing and revising the assessment system.

f. The institution demonstrates how the information gathered by the institution and from the performance assessment system for candidates is shared with instructors and other stakeholders and used for program improvement.

81.6(2) *Performance assessment system for candidates.*

a. The performance assessment system for candidates is an integral part of the institution's planning and evaluation system.

b. The performance assessment system for candidates includes a coherent, sequential assessment system for individual school business official candidates. The assessment system is shared with instructors to provide guidance for course and program improvement. The assessment system also provides ongoing feedback to school business official candidates about their achievement of program standards and guidance for reflection and improvement. Data are drawn from multiple formative and summative assessments of institutional evaluation of the candidates' content knowledge and professional knowledge and from application of this knowledge to the necessary skills and attributes appropriate for a novice school business official.

c. School business official candidate performance is assessed at the same standard regardless of the place or manner in which the program is delivered.

81.6(3) *Annual reports.* The institution annually reports to the department such data as are required by the state and federal governments at dates determined by the department.

81.6(4) *Survey of graduates.* The department periodically conducts a survey of schools, agencies, or facilities that employ licensed graduates of approved programs to ensure that the graduates' needs are adequately met by their programs and by the approval process herein.

[**ARC 9474B**, IAB 4/20/11, effective 5/25/11]

281—81.7(256) School business official candidate knowledge and skills standards and criteria. School business officials shall demonstrate content knowledge, professional knowledge, and skills in accordance with the following standards and supporting criteria. In addition, each school business official candidate shall meet all requirements established by the board of educational examiners for an authorization for which the candidate is recommended. Programs shall submit curriculum exhibit sheets for approval by the board of educational examiners and the department.

81.7(1) *Standard 1.* Each school business official shall demonstrate an understanding of Uniform Financial Accounting, governmental GAAP accounting, and statutory concepts. The school business official:

a. Is responsible for understanding and adhering to the Uniform Financial Accounting Manual and the current, accepted chart of accounts.

(1) Codes all salaries and benefits to the appropriate function, program, and project (if applicable) on a monthly basis;

(2) Ensures revenues, expenditures, and expenses are appropriately coded to the correct account on a monthly basis; and

(3) Ensures balance sheet items are properly coded as directed.

b. Understands and ensures implementation of state and federal law related to employment, personnel, and payroll.

c. Has an understanding of all projects and grants for which the district receives funding.

d. Understands the certified budgeting process and the content and purpose of each section of the aid and levy worksheet as well as other certified budget forms.

e. Understands the concept of spending authority.

81.7(2) *Standard 2.* Each school business official shall demonstrate the ability to implement effective internal controls and accounting processes. The school business official:

a. Provides data on a monthly basis in sufficient detail as to be informative and useful for decision makers and stakeholders in providing educational and co- and extracurricular programs.

b. Ensures delivery, on a monthly basis, of a statement of receipts, disbursements, and amount on hand for every fund.

c. Ensures reconciliation of bank statements on a monthly basis.

d. Consistently follows the procedure by which products and services may be purchased (state bidding requirements, purchase orders, and purchasing processes).

e. Ensures that an annual line item budget that aligns with the district-certified budget revenues and expenditures is completed in a timely manner for each fund.

f. Maintains an itemized statement no more than five years old of the appraised value of all buildings and other capital assets and a list of historical costs.

g. Invests moneys not needed as authorized under Iowa Code and district policy.

h. Uses only depositories approved by the local school board.

i. Makes payments only to the person entitled to the payment and only for verified bills.

j. Understands and implements the various mechanisms by which to borrow money as well as the appropriate account coding and repayment processes.

k. Is able to produce budget forecasts and analyses of spending.

l. Is capable of preparing employee collective bargaining costing models and estimates.

81.7(3) *Standard 3.* Each school business official shall demonstrate an understanding of and compliance with federal, state, and local reporting requirements. The school business official:

a. Produces for the local school board periodic reports reflecting a financial statement in relation to spending authority and published budget control lines.

b. Ensures that an accurate and separate account of each fund is maintained.

c. Ensures the filing of all quarterly and annual payroll taxes and reports in a timely fashion, including but not limited to IRS Forms 941, 1099, W-2, and W-3 and OMB Circular A-87.

d. Files with the department of education, the department of management, and the state auditor all required reports in a timely fashion.

e. Understands the local collective bargaining agreement as well as nonemployee contracts.

81.7(4) *Standard 4.* Each school business official shall demonstrate compliance with applicable federal, state, and local laws. The school business official:

a. Understands the district board's policies and procedures and effectively implements applicable policies and procedures.

b. Implements effective records management processes and procedures.

c. Has a working knowledge of laws applicable to school districts and area education agencies.

d. Understands and implements employment laws.

e. Understands and implements bidding and construction laws.

f. Understands and implements pension processes, including but not limited to retirement plans, IPERS, and 403B investments.

g. Ensures that the school board president's and secretary's signatures are on all checks and that the school board president's signature is on all contracts.

h. Ensures that billing for all tuition items is completed on the current prescribed timeline.

i. Manages scheduling and preparation for the local audit, including any request for proposals for audit services as applicable.

81.7(5) *Standard 5.* Each school business official shall demonstrate competence in technology appropriate to the school business official position. The school business official:

a. Effectively manages an integrated accounting system for fund accounting by the district and is able to assess technology needs for fiscal management issues.

b. Maintains all funds in one integrated accounting system.

c. Displays a working knowledge of other software programs if required to be used by the school business official.

d. Is able to use Word, database, and spreadsheet documents effectively to meet the needs of the district.

e. Displays competence in using the department's secured Web site for reporting purposes and has attended applicable training sessions on its use.

f. Is able to upload the chart of accounts and understands the relationship of the chart of accounts to the other reports, including but not limited to the special education supplement, the annual report on use of sales tax revenue, and the annual transportation report. This duty includes testing the functionality

of accounts used for accuracy. The testing is carried out in a manner that allows for identification of issues prior to the actual submission deadline.

81.7(6) *Standard 6.* Each school business official shall demonstrate appropriate personal skills. The school business official:

a. Is an effective communicator with all stakeholders, including but not limited to colleagues, policy makers, community members, and parents.

b. Works effectively with employees and stakeholders.

c. Ensures the timely flow of information.

d. Maintains confidentiality with personal, restricted and embargoed information.

e. Is able to analyze, evaluate, and solve problems.

f. Timely and accurately performs the duties of a school business official.

g. Maintains an environment of mutual respect, rapport, and fairness.

h. Participates in and contributes to a school culture that focuses on improved student learning.

81.7(7) *Standard 7.* Each school business official shall engage in professional growth. The school business official:

a. Stays current with accounting technologies and the department's financial reporting system.

b. Demonstrates habits and skills of continuous inquiry and learning.

c. Works collaboratively to improve professional practice.

d. Applies research, knowledge, and skills acquired from professional development opportunities to improve practice.

e. Engages with administration on an annual review of the effectiveness of district accounting and reporting processes and on an individual performance evaluation consistent with district policy.

f. If the school business official has not earned full authorization as a school business official, participates in the school business official mentoring program.

81.7(8) *Standard 8.* Each school business official shall fulfill professional responsibilities established by the school district. The school business official:

a. Adheres to school board policies, district procedures, and contractual obligations and ensures that applicable district policies are not in conflict with state law.

b. Demonstrates professional and ethical conduct as defined by state law and district policy.

c. Contributes to efforts to achieve district goals.

d. Is able to contribute to cost/benefit analyses.

e. Participates in the board of educational examiners ethics program.

f. Follows the code of professional conduct and ethics and the rights and responsibilities described in 282—Chapters 25 and 26 of the Iowa Administrative Code.

81.7(9) *Standard 9.* If a school business official is also employed as the secretary or treasurer of the school board, the school business official shall:

a. Take the oath of office within ten days following appointment.

b. File a bond and ensure the level of coverage is adequate.

c. Hold office until a successor has been appointed and qualified.

d. Publish minutes, bills, and salaries on a timely basis.

e. Ensure that the department, the county auditor, and the treasurer are informed timely of the names and addresses for board officers as well as any changes therein.

f. File and preserve copies of all required reports and all papers transmitted pertaining to the business of the school corporation, including all certificates, reports, and proofs related to compulsory education.

g. Maintain separate books for minutes and elections and ensure that the records are complete.

h. Deliver all claims to the board for audit and allowance.

[**ARC 9474B**, IAB 4/20/11, effective 5/25/11; **ARC 0479C**, IAB 12/12/12, effective 1/16/13]

281—81.8(256) School business official mentoring program. The one-year mentoring program and its partners shall assist candidates in becoming successful school business officials in accordance with

the following provisions. The candidate must be employed as a school business official to be eligible to participate in the mentoring program.

81.8(1) Candidates admitted to a school business official preparation program shall participate in the mentoring program. All hours spent in the mentoring program are outside of the nine semester hours required in the program.

81.8(2) Each school business official preparation program shall inform all candidates of the following minimum expectations of the candidates as mentees:

a. Participation in weekly conversations with the mentee's mentor, including a review of work assignments.

b. Maintenance of a record of contacts with the mentor and submission of the record to the program. A template will be provided by the program.

c. Completion of surveys to assist with program evaluation.

d. Communication with the program if the relationship with the mentee's mentor is not meeting the needs or expectations of the mentee.

e. Full participation in the mentoring program throughout the one-year period.

81.8(3) Each school business official preparation program shall inform all program candidate mentors of the following minimum expectations:

a. Contacting the mentee on a weekly basis.

b. Completing surveys to assist with program evaluation.

c. Informing the program if the relationship with the mentee is not meeting expectations.

d. Maintaining confidentiality of the interactions between mentor and mentee.

e. Supporting the mentee throughout the one-year period.

81.8(4) The institution shall offer one or more workshops annually for all cooperating mentors to define the objectives of the mentoring program, review the responsibilities of the cooperating mentors, and provide the cooperating mentors other information and assistance the institution deems necessary. The workshops shall utilize delivery strategies identified as appropriate for staff development and reflect information gathered through feedback from workshop participants.
[**ARC 9474B**, IAB 4/20/11, effective 5/25/11]

281—81.9(256) Periodic reports. Upon request by the department, programs shall make periodic reports which shall include, but not be limited to, basic information necessary to maintain up-to-date records of each school business official preparation program and to carry out research studies relating to school business official preparation.
[**ARC 9474B**, IAB 4/20/11, effective 5/25/11]

281—81.10(256) Reevaluation of school business official preparation programs. Every seven years or at any time deemed necessary by the director, an institution shall file a written self-evaluation of its school business official preparation program. Any action for continued approval or rescission of approval shall be approved by the state board.
[**ARC 9474B**, IAB 4/20/11, effective 5/25/11]

281—81.11(256) Approval of program changes. Upon application by an institution, the director is authorized to approve minor additions to or changes within the curriculum of an institution's approved school business official preparation program. When an institution proposes a revision that exceeds the primary scope of its programs, the revision shall become operative only after approval by the state board.
[**ARC 9474B**, IAB 4/20/11, effective 5/25/11]

These rules are intended to implement Iowa Code section 256.7 as amended by 2010 Iowa Acts, chapter 1099.

[Filed ARC 9474B (Notice ARC 9379B, IAB 2/23/11), IAB 4/20/11, effective 5/25/11]
[Filed ARC 0479C (Notice ARC 0112C, IAB 5/2/12), IAB 12/12/12, effective 1/16/13]

CHAPTER 82
STANDARDS FOR SCHOOL ADMINISTRATION MANAGER PROGRAMS

281—82.1(272) Definitions.

"Coach" means a person who provides regularly scheduled coaching visits to SAM/administrator teams.

"Department" means the department of education.

"Director" means the director of the department of education.

"Model 1 SAM" means a person who is hired to be a full-time SAM and who is authorized to assume the responsibilities of a SAM.

"Model 2 SAM" means a person whose position in the school is reconfigured to include the responsibilities of being a SAM and who is authorized as a SAM.

"Model 3 SAM" means a person who is a secretary/administrative assistant and is also authorized as a SAM.

"National SAM Innovation Project" means the National SAM Innovation Project board and its governance of school administration managers.

"Organization" means a professional organization offering an approved training program and support for SAMs.

"SAM" means school administration manager.

"School administration manager" means a person or persons who are authorized to assist a school administrator in performing noninstructional administrative duties.

"School administration manager program" means a program of SAM training and preparation that leads to authorization to practice as a school administration manager.

"State board" means the Iowa state board of education.

"Trainer" means a person with responsibility for providing approved training for school administration managers.

[**ARC 0813C**, IAB 6/26/13, effective 7/31/13]

281—82.2(272) Organizations eligible to provide a school administration manager training program. Approved professional organizations engaged in the preparation and training of SAMs shall meet the standards contained in this chapter in order to obtain and maintain state board approval of the organizations' training programs for SAMs. Any organization that seeks state board approval of its training program for SAMs shall file evidence of the extent to which its training and support meet the standards contained in this chapter. Such evidence shall be demonstrated by means of a written self-evaluation report and an evaluation conducted by the department. The evaluation shall be prepared using a template developed by the department. Only approved programs may recommend candidates for SAM authorization.

[**ARC 0813C**, IAB 6/26/13, effective 7/31/13]

281—82.3(272) Approval of training programs. Approval by the state board of an organization's training program shall be based on the recommendation of the director after study of the evidence about the program in terms of the standards contained in this chapter. The department will seek maximum flexibility in the design of systems allowed to meet the goals of this program. The department has the ability to designate existing school administration manager training programs as eligible to immediately engage in this work, subject to recertification in five years.

82.3(1) Approval, if granted, shall be for a term of seven years; however, approval for a lesser term may be granted by the state board if it determines conditions so warrant.

82.3(2) If approval is not granted, the applicant organization will be advised concerning the areas in which improvement or changes appear to be essential for approval. In this case, the organization shall be given the opportunity to present factual information concerning its program at a regularly scheduled meeting of the state board no later than three months following the board's decision.

82.3(3) 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 authorization.

82.3(4) The standards herein apply regardless of delivery mode of the training.

82.3(5) All programs in existence prior to July 31, 2013, shall be deemed sufficient and to meet program standards without having to submit an application for review. This provision does not preclude the department and state board from further review of any existing program or preclude the state board from terminating programs that do not meet program standards. Absent further review by the department or state board, these preexisting programs will need to be renewed five years after July 31, 2013, with the same seven-year program renewal process after that review.

[**ARC 0813C**, IAB 6/26/13, effective 7/31/13]

281—82.4(272) Governance and resources standard. An organization's governance structure and resources shall adequately support the training of SAMs to meet professional, state, and organizational standards in accordance with the following provisions.

82.4(1) A clearly understood governance structure provides training and support for SAMs.

82.4(2) An organization's commitment to the program includes financial resources, facilities, appropriate educational materials, media services, and equipment to ensure the fulfillment of the organization's and program's missions and the delivery and support of a quality program.

82.4(3) The organization provides sufficient trainers, coaches, and administrative, clerical, and technical staff to plan and deliver a quality school administration manager program.

82.4(4) Resources are available to support professional development opportunities for trainers of SAMs.

82.4(5) Resources are available to support technological and instructional needs to enhance trainer and authorized SAM learning.

[**ARC 0813C**, IAB 6/26/13, effective 7/31/13]

281—82.5(272) Trainer and coach standard. Trainer and coach qualifications and performance shall facilitate the professional development of SAMs in accordance with the following provisions.

82.5(1) Trainers and coaches are adequately prepared for assigned responsibilities and have had experiences relative to the content they are teaching and in situations similar to those for which the SAMs are being prepared. Trainers and coaches have experience and adequate preparation in effective methods for any mode of program delivery in which the trainers and coaches are assigned responsibilities.

82.5(2) Trainers and coaches model best practices in instruction, including the assessment of the trainers' and coaches' own effectiveness as it relates to SAM performance.

82.5(3) Trainers and coaches are engaged in professional development that relates to SAMs.

82.5(4) Trainers and coaches collaborate regularly and in significant ways with colleagues in the organization, schools, the department, and the National SAM Innovation Project.

[**ARC 0813C**, IAB 6/26/13, effective 7/31/13]

281—82.6(272) Assessment system and organization evaluation standard. An organization's assessment system shall monitor individual candidate performance and use the performance data in concert with other information to evaluate and improve the organization and its program. The actual annual evaluation of each SAM shall be performed by the administrator or the administrator's designee, and the evaluation shall be conducted in accordance with the standards set forth in rule 281—82.7(272).

82.6(1) *Program assessment system.*

a. The school administration manager program utilizes a clearly defined software system for the collection, analysis, and use of data.

b. The organization clearly documents SAMs' attainment of the program standards.

c. The organization documents the quality of its program through the collective presentation of data related to the performance of SAMs. Documentation shall include the following:

(1) Data collected throughout the program, including data from all models of SAMs.

(2) Evidence of data collected by the organization through follow-up surveys of schools that have a SAM.

82.6(2) *Annual reports.* The organization annually reports to the department data required by the state, as determined by the department.

82.6(3) *Survey of SAM/administrator teams.* The department periodically conducts a survey of schools or facilities that employ authorized SAMs to ensure that the schools' and facilities' needs are adequately met by the programs and the approval process herein.

[**ARC 0813C**, IAB 6/26/13, effective 7/31/13]

281—82.7(272) School administration manager knowledge and skills standards and criteria. SAMs shall demonstrate the content knowledge and professional knowledge and skills in accordance with the following standards and supporting criteria.

82.7(1) *Standard 1.* Each SAM shall demonstrate an understanding of the instructional and management codes and how to best support the SAM's administrator in instructional leadership. If a SAM is also employed as a secretary or administrative assistant (Model 3 SAM), the SAM's job responsibilities shall be modified as established by the school district. The SAM shall:

a. Code specific times and events as primarily instruction or primarily management.

b. Use a collaborative process of reflective decision making to determine the most appropriate code for specific events within the calendar.

c. Assist in protecting the administrator's instructional time by handling or delegating on a first-responder basis the majority of management issues.

d. Meet a minimum of three times per week with the administrator to pre-calendar and reconcile the administrator's calendar.

e. Regularly and consistently update the administrator on daily decisions, issues, and concerns.

82.7(2) *Standard 2.* SAMs shall attend an approved training program at the onset of their hire as SAMs. The training for SAMs and administrators shall include the following:

a. Background information on SAMs.

b. Understanding of the instructional and management descriptors.

c. Introduction and practice using approved time-tracking software.

d. First responders and delegation responsibilities.

e. Job responsibilities and variations.

f. Daily meeting protocols.

g. Training of office staff on communication with others.

h. Use of reflective questions.

i. Understanding of conflict resolution skills.

j. Action planning for building implementation and timelines.

k. SAM/administrator rubric process.

82.7(3) *Standard 3.* Each SAM shall demonstrate competence in technology appropriate to the SAM's position. The SAM will:

a. Become proficient in the use of the approved time-tracking software tool.

b. Schedule the administrator's time using the approved software, update and reconcile the calendar daily, and attempt to pre-calendar the administrator at or above the administrator's goal.

c. Regularly schedule time with the administrator to review and reflect on the graphs and data provided through the software.

82.7(4) *Standard 4.* Each SAM shall demonstrate appropriate personal skills. The SAM:

a. Is an effective communicator with all stakeholders, including but not limited to colleagues, community members, parents, and students.

b. Works effectively with employees, students, and other stakeholders.

c. Maintains confidentiality when dealing with student, parent, and staff issues.

d. Clearly understands the administrator's philosophy of behavior expectations and consequences.

e. Maintains an environment of mutual respect, rapport, and fairness.

f. Participates in and contributes to a school culture that focuses on change in teacher practices and improved student learning by supporting the administrator in the administrator's instructional leadership role.

82.7(5) *Standard 5.* Each SAM shall fulfill professional responsibilities as established by the SAM's school district. The SAM:

a. Addresses current and potential issues in a timely manner.

b. Manages facility resources responsibly, efficiently, and effectively.

c. Protects instructional time by designing and managing operational procedures to maximize building efficiencies.

d. Communicates effectively with both internal and external audiences.

82.7(6) *Standard 6.* Each SAM shall engage in professional growth that continuously improves the SAM's skills of professional inquiry and learning. The SAM:

a. Works collaboratively with the SAM's administrator to improve professional practice.

b. Applies research, knowledge, and skills acquired from formal and informal professional development opportunities to improve the SAM's skills as a SAM.

c. Participates in the decision-making process with the SAM's administrator, staff, and community.

[**ARC 0813C**, IAB 6/26/13, effective 7/31/13]

281—82.8(272) Periodic reports. Upon request by the department, programs shall make periodic reports which shall include, but not be limited to, basic information necessary to maintain up-to-date data of the school administration manager program and to carry out research studies relating to SAMs.

[**ARC 0813C**, IAB 6/26/13, effective 7/31/13]

281—82.9(272) Reevaluation of school administration manager programs. Every seven years or sooner if deemed necessary by the director, an organization shall file a written self-evaluation of its school administration manager program. Any action for continued approval or denial of approval shall be approved by the state board.

[**ARC 0813C**, IAB 6/26/13, effective 7/31/13]

281—82.10(272) Approval of program changes and flexibility of programs. Upon application by an organization, the director is authorized to approve minor additions to or changes within the organization's approved school administration manager program. When an organization proposes a revision that exceeds the primary scope of the organization's program, the revision shall become operative only after approval by the state board. Districts may have a variety of programs and job descriptions that meet the requirements of a legal school administration management system but must receive permission to make changes to those programs in the manner prescribed. The department will seek maximum flexibility in systems allowed to meet the goals of this program. Essential components of any approved school administration manager program shall include readiness, data collection of administrator time, ongoing training of the program administrator, use of time-tracking software and ongoing coaching for participants in the program.

[**ARC 0813C**, IAB 6/26/13, effective 7/31/13]

281—82.11(272) Fees. The department shall have the ability to set and collect a fee sufficient to cover the costs of the program, pending approval by the state board. All fees collected pursuant to this rule shall only be used by the department for the purposes of this program and must be kept separately from other funds held.

[**ARC 0813C**, IAB 6/26/13, effective 7/31/13]

These rules are intended to implement Iowa Code sections 256.7(30)*"b,"*272.1(12), and 272.31(3).

[Filed ARC 0813C (Notice ARC 0694C, IAB 4/17/13), IAB 6/26/13, effective 7/31/13]

CHAPTER 83
TEACHER AND ADMINISTRATOR QUALITY PROGRAMS

DIVISION I
GENERAL STANDARDS APPLICABLE TO BOTH ADMINISTRATOR AND TEACHER QUALITY PROGRAMS

281—83.1(284,284A) Purposes. The goal of the teacher quality program is to enhance the learning, achievement, and performance of all students through the recruitment, support, and retention of quality Iowa teachers. The program shall contain specific strategies that include a mentoring and induction program for beginning teachers, teacher evaluations, and district and building support for professional development that includes best practice aimed at increasing student achievement.

The goal of the administrator quality program is to promote high student achievement and enhanced educator quality. The program consists of mentoring and induction programs that provide support for administrators, professional development designed to directly support best practice for leadership, and evaluation of administrators against the Iowa standards for school administrators.

281—83.2(284,284A) Definitions. For the purpose of these rules, the following definitions shall apply:

"Administrator" or *"school leader"* means an individual holding a professional administrator license issued under Iowa Code chapter 272, who is employed in a school district administrative position by a school district or area education agency pursuant to a contract issued by a board of directors under Iowa Code section 279.23. An administrator may be employed in both an administrative and a nonadministrative position by a board of directors and shall be considered a part-time administrator for the portion of time that the individual is employed in an administrative position.

"Beginning administrator" means an individual serving under an administrator license, issued by the board of educational examiners under Iowa Code chapter 272, who is assuming a position as a school district principal or superintendent for the first time.

"Beginning teacher" means an individual serving under an initial, Class A, exchange, or intern license, issued by the board of educational examiners under Iowa Code chapter 272, who is assuming a position as a teacher. For purposes of the beginning teacher mentoring and induction program created pursuant to Iowa Code section 284.5, "beginning teacher" also includes preschool teachers who are licensed by the board of educational examiners under Iowa Code chapter 272 and are employed by a school district or area education agency.

"Comprehensive evaluation" means, with respect to a beginning teacher, a summative evaluation of a beginning teacher conducted by an evaluator for purposes of determining a beginning teacher's level of competency relative to the Iowa teaching standards and for recommendation for licensure based upon models developed pursuant to Iowa Code section 256.9, subsection 50, and to determine whether the teacher's practice meets the school district expectations for a career teacher. With respect to a beginning administrator, "comprehensive evaluation" means a summative evaluation of a beginning administrator conducted by an evaluator in accordance with 2007 Iowa Code Supplement section 284A.3 for purposes of determining a beginning administrator's level of competency for recommendation for licensure based on the Iowa standards for school administrators adopted pursuant to 2007 Iowa Code Supplement section 256.7(27).

"Department" means the department of education.

"Director" means the director of the department of education.

"District facilitator" means an individual in Iowa who serves as a coordinator for a district mentoring and induction program.

"Evaluator" means an administrator or other practitioner who successfully completes an evaluator training program pursuant to Iowa Code section 284.10.

"Intensive assistance" means the provision of organizational support and technical assistance to teachers, other than beginning teachers, for the remediation of identified teaching and classroom management concerns for a period not to exceed 12 months.

"Leadership standards" are synonymous with the Iowa standards for school administrators adopted pursuant to 2007 Iowa Code Supplement section 256.7(27).

"Mentor" means, with respect to a beginning teacher, an individual employed by a school district or area education agency as a teacher or a retired teacher who holds a valid license issued under Iowa Code chapter 272. The individual must have a record of four years of successful teaching practice, must be employed on a nonprobationary basis, and must demonstrate professional commitment to both the improvement of teaching and learning and the development of beginning teachers. With respect to a beginning administrator, "mentor" means an individual employed by a school district or area education agency as a school district administrator or a retired administrator who holds a valid license issued under Iowa Code chapter 272. The individual must have a record of four years of successful administrative experience and must demonstrate professional commitment to both the improvement of teaching and learning and the development of beginning administrators.

"Performance review" means a summative evaluation of a teacher other than a beginning teacher and used to determine whether the teacher's practice meets school district expectations and the Iowa teaching standards, and to determine whether the teacher's practice meets school district expectations for career advancement in accordance with Iowa Code section 284.7.

"School board" means the board of directors of a school district, a collaboration of boards of directors of school districts, or the board of directors of an area education agency, as the context requires.

"School district" means a public school district.

"State board" means the state board of education.

"Teacher" means an individual holding a practitioner's license or a statement of professional recognition issued under Iowa Code chapter 272, who is employed in a nonadministrative position by a school district or area education agency pursuant to a contract issued by a board of directors under Iowa Code section 279.13. A teacher may be employed in both an administrative and a nonadministrative position by a board of directors and shall be considered a part-time teacher for the portion of time that the teacher is employed in a nonadministrative position.

[**ARC 7785B**, IAB 5/20/09, effective 6/24/09; **ARC 9265B**, IAB 12/15/10, effective 1/19/11]

DIVISION II
SPECIFIC STANDARDS APPLICABLE TO TEACHER QUALITY PROGRAMS

281—83.3(284) Mentoring and induction program for beginning teachers.

83.3(1) *Purpose.* The beginning teacher mentoring and induction program is created to promote excellence in teaching, enhance student achievement, build a supportive environment within school districts and area education agencies, increase the retention of promising beginning teachers, and promote the personal and professional well-being of teachers.

83.3(2) *Participation.* All school districts and area education agencies shall provide a beginning teacher mentoring and induction program for all beginning teachers. A beginning teacher, as defined in this chapter, shall be informed by the school district or area education agency, prior to the beginning teacher's participation in a mentoring and induction program, of the Iowa teaching standards and criteria upon which the beginning teacher shall be evaluated and of the evaluation process utilized by the school district or area education agency. The beginning teacher shall be comprehensively evaluated by the end of the beginning teacher's second year of teaching to determine whether the teacher meets expectations to move to the career level. The school district or area education agency shall recommend for a standard license a beginning teacher who has successfully met the Iowa teaching standards as determined by a comprehensive evaluation.

If a beginning teacher who is participating in a mentoring and induction program leaves the employ of a school district or area education agency prior to completion of the program, the school district or area education agency subsequently hiring the beginning teacher shall credit the beginning teacher with the time earned in a program prior to the subsequent hiring. If the general assembly appropriates moneys for purposes of Iowa Code section 284.5, a school district or area education agency is eligible to receive state assistance for up to two years for each beginning teacher the school district or area education agency employs who was formerly employed in an accredited nonpublic school or in another state as a

first-year teacher. The school district or area education agency employing the teacher shall determine the conditions and requirements of a teacher participating in a mentoring and induction program.

A school district or area education agency may offer a teacher a third year of participation in the program if, after conducting a comprehensive evaluation, the school district or area education agency determines that the teacher is likely to successfully complete the mentoring and induction program by meeting the Iowa teaching standards by the end of the third year of eligibility. The third year of eligibility is offered at the employing district's or area education agency's expense. A teacher granted a third year of eligibility shall, in cooperation with the teacher's evaluator, develop a plan to meet the Iowa teaching standards and district or area education agency career expectations. This plan will be implemented by the teacher and supported through the district's or area education agency's mentoring and induction program. The school district or area education agency shall notify the board of educational examiners that the teacher will participate in a third year of the school district's program. The teacher shall undergo a comprehensive evaluation at the end of the third year.

For purposes of comprehensive evaluations for beginning teachers, including the comprehensive evaluation required for the beginning teacher to progress to career teacher, the Iowa teaching standards and criteria shall be as described in rule 281—83.4(284). A school district or area education agency shall participate in state program evaluations.

83.3(3) *Plan.* Each school district or area education agency shall develop a sequential two-year beginning teacher mentoring and induction plan based on the Iowa teaching standards. The plan shall be included in the school district's comprehensive school improvement plan submitted pursuant to Iowa Code section 256.7, subsection 21. A school district or area education agency shall have the board adopt a beginning teacher mentoring and induction program plan and written procedures for the program. At the board's discretion, the district or area education agency may choose to use or revise the model plan provided by the area education agency or develop a plan locally. The components of a district's or area education agency's beginning teacher mentoring and induction program shall include, but are not limited to, the following:

a. Goals for the program.

b. A process for the selection of mentors.

c. A mentor training process which shall:

(1) Be consistent with effective staff development practices and adult professional needs to include skills needed for teaching, demonstration, and coaching.

(2) Address mentor needs, indicating a clear understanding of the role of the mentor.

(3) Result in the mentor's understanding of the personal and professional needs of new teachers.

(4) Provide the mentor with an understanding of the district expectations for beginning teacher competencies based on the Iowa teaching standards.

(5) Facilitate the mentor's ability to provide guidance and support to new teachers.

d. A supportive organizational structure for beginning teachers which shall include:

(1) Activities that provide access and opportunities for interaction between mentor and beginning teacher that at a minimum provide:

1. Released time for mentors and beginning teachers to plan;
2. The demonstration of classroom practices;
3. The observation of teaching; and
4. Feedback.

(2) Selection process for who will be in the mentor/beginning teacher partnership.

(3) Roles and responsibilities of the mentor.

e. Evaluation process for the program, which shall include:

(1) An evaluation of the district and area education agency program goals,

(2) An evaluation process that provides for the minor and major program revisions, and

(3) A process for how information about the program will be provided to interested stakeholders.

f. The process for dissolving mentor and beginning teacher partnerships.

g. A plan that reflects the needs of the beginning teacher employed by the district or area education agency.

h. Activities designed to support beginning teachers by:

(1) Developing and enhancing competencies for the Iowa teaching standards, and

(2) Providing research-based instructional strategies.

83.3(4) *Budget.* Funds received by a school district or area education agency from the beginning teacher mentoring and induction program shall be used for any or all of the following purposes:

a. To pay mentors as they implement the plan. A mentor in a beginning teacher induction program approved under this chapter shall be eligible for an award of $500 per semester for full participation in the program. A district or area education agency may use local dollars to increase the mentor award.

b. To pay any applicable costs of the employer's share of contributions to federal social security and the Iowa public employees' retirement system for a pension and annuity retirement system established under Iowa Code chapter 294 for such amounts paid by the district or area education agency.

These funds are miscellaneous funds or are considered encumbered. A school district or area education agency shall maintain a separate listing within its budget for payments received and expenditures made for this program. Funds that remain unencumbered or unobligated at the end of the fiscal year will not revert, but will remain available for expenditure for the purposes of the program until the close of the succeeding fiscal year.

281—83.4(284) Iowa teaching standards and criteria. The Iowa teaching standards and supporting criteria represent a set of knowledge and skills that reflects the best evidence available regarding effective teaching. The purpose of the standards and supporting criteria is to provide Iowa school districts and area education agencies with a consistent representation of the complexity and the possibilities of quality teaching. The standards shall serve as the basis for comprehensive evaluations of teachers and as a basis for professional development plans. Each standard with supporting criteria is outlined as follows:

83.4(1) Demonstrates ability to enhance academic performance and support for and implementation of the school district's student achievement goals.

a. The teacher:

(1) Provides multiple forms of evidence of student learning and growth to students, families, and staff.

(2) Implements strategies supporting student, building, and district goals.

(3) Uses student performance data as a guide for decision making.

(4) Accepts and demonstrates responsibility for creating a classroom culture that supports the learning of every student.

(5) Creates an environment of mutual respect, rapport, and fairness.

(6) Participates in and contributes to a school culture that focuses on improved student learning.

(7) Communicates with students, families, colleagues, and communities effectively and accurately.

b. Alternative criteria for area education agency staff who meet the definition of "teacher" herein. The staff member:

(1) Uses knowledge and understanding of the area education agency's mission, goals, and strategic priorities to provide services that enhance academic performance.

(2) Understands and uses knowledge of area education agency and district goals and data to provide services that enhance academic performance.

(3) Participates in and contributes to a positive learning culture.

(4) Communicates with students, families, colleagues, and communities effectively and accurately.

(5) Uses area education agency, district, and student data as a guide for decision making.

83.4(2) Demonstrates competence in content knowledge appropriate to the teaching position.

a. The teacher:

(1) Understands and uses key concepts, underlying themes, relationships, and different perspectives related to the content area.

(2) Uses knowledge of student development to make learning experiences in the content area meaningful and accessible for every student.

(3) Relates ideas and information within and across content areas.

(4) Understands and uses instructional strategies that are appropriate to the content area.

b. Alternative criteria for area education agency staff who meet the definition of "teacher" herein. The staff member:

(1) Understands, communicates, and uses key concepts and best practice in fulfillment of area education agency roles and responsibilities.

(2) Uses knowledge of child and adolescent development and of adult learning to make interventions and strategies meaningful, relevant, and accessible.

(3) Relates professional knowledge and services within and across multiple content and discipline areas.

(4) Understands and supports strategies and interventions that are best practice across content and discipline areas.

83.4(3) Demonstrates competence in planning and preparing for instruction.

a. The teacher:

(1) Uses student achievement data, local standards, and the district curriculum in planning for instruction.

(2) Sets and communicates high expectations for social, behavioral, and academic success of all students.

(3) Uses students' developmental needs, backgrounds, and interests in planning for instruction.

(4) Selects strategies to engage all students in learning.

(5) Uses available resources, including technologies, in the development and sequencing of instruction.

b. Alternative criteria for area education agency staff who meet the definition of "teacher" herein. The staff member:

(1) Demonstrates the ability to organize and prioritize time, resources, and responsibilities.

(2) Demonstrates the ability to individually and collaboratively plan and prepare professional services that address the range of district, teacher, parent, and student needs.

(3) Uses district and student data to develop goals and interventions.

(4) Demonstrates the flexibility to plan for professional services based on changing conditions of the work context and environment.

(5) Uses available resources, including technology, to plan and develop professional services.

83.4(4) Uses strategies to deliver instruction that meets the multiple learning needs of students.

a. The teacher:

(1) Aligns classroom instruction with local standards and district curriculum.

(2) Uses research-based instructional strategies that address the full range of cognitive levels.

(3) Demonstrates flexibility and responsiveness in adjusting instruction to meet student needs.

(4) Engages students in varied experiences that meet diverse needs and promote social, emotional, and academic growth.

(5) Connects students' prior knowledge, life experiences, and interests in the instructional process.

(6) Uses available resources, including technologies, in the delivery of instruction.

b. Alternative criteria for area education agency staff who meet the definition of "teacher" herein. The staff member:

(1) Aligns service delivery to district, teacher, parent, and student needs.

(2) Provides consultation, instruction, interventions, and strategies that align with learner needs.

(3) Demonstrates flexibility and responsiveness in adjusting services to meet diverse learner needs.

(4) Uses and supports research-based and evidence-based practices to meet learner needs.

(5) Uses available resources, including technology, to provide professional services that meet learner needs.

83.4(5) Uses a variety of methods to monitor student learning.

a. The teacher:

(1) Aligns classroom assessment with instruction.

(2) Communicates assessment criteria and standards to all students and parents.

(3) Understands and uses the results of multiple assessments to guide planning and instruction.

(4) Guides students in goal setting and assessing their own learning.

(5) Provides substantive, timely, and constructive feedback to students and parents.

(6) Works with other staff and building and district leadership in analysis of student progress.

b. Alternative criteria for area education agency staff who meet the definition of "teacher" herein. The staff member:

(1) Uses appropriate assessment, data collection, and data analysis methods that support alignment of services with learner needs.

(2) Works collaboratively within the learning community to establish measurable goals and to identify formative and summative methods to monitor progress and the quality of implementation.

(3) Communicates the rationale and criteria of assessment and monitoring methods.

(4) Elicits and provides timely and quality feedback on assessment and monitoring.

83.4(6) Demonstrates competence in classroom management.

a. The teacher:

(1) Creates a learning community that encourages positive social interaction, active engagement, and self-regulation for every student.

(2) Establishes, communicates, models, and maintains standards of responsible student behavior.

(3) Develops and implements classroom procedures and routines that support high expectations for student learning.

(4) Uses instructional time effectively to maximize student achievement.

(5) Creates a safe and purposeful learning environment.

b. Alternative criteria for area education agency staff who meet the definition of "teacher" herein. The staff member:

(1) Models respectful dialogue and behaviors within and across job responsibilities.

(2) Promotes and maintains a positive, safe, and productive environment.

(3) Works collaboratively and is flexible.

(4) Communicates accurately and effectively.

83.4(7) Engages in professional growth.

a. The teacher:

(1) Demonstrates habits and skills of continuous inquiry and learning.

(2) Works collaboratively to improve professional practice and student learning.

(3) Applies research, knowledge, and skills from professional development opportunities to improve practice.

(4) Establishes and implements professional development plans based upon the teacher's needs aligned to the Iowa teaching standards and district/building student achievement goals.

(5) Provides an analysis of student learning and growth based on teacher-created tests and authentic measures as well as any standardized and districtwide tests.

b. Alternative criteria for area education agency staff who meet the definition of "teacher" herein. The staff member:

(1) Demonstrates habits and skills of continuous inquiry and learning.

(2) Works collaboratively to improve professional practices.

(3) Applies and shares research, knowledge, and skills from professional development.

(4) Establishes and implements professional development plans aligned to area education agency, district, and student learning goals.

83.4(8) Fulfills professional responsibilities established by the school district.

a. The teacher:

(1) Adheres to board policies, district procedures, and contractual obligations.

(2) Demonstrates professional and ethical conduct as defined by state law and district policy.

(3) Contributes to efforts to achieve district and building goals.

(4) Demonstrates an understanding of and respect for all learners and staff.

(5) Collaborates with students, families, colleagues, and communities to enhance student learning.

b. Alternative criteria for area education agency staff who meet the definition of "teacher" herein. The staff member:

(1) Adheres to board policies, area education agency procedures, federal and state rules, and contractual obligations.

(2) Demonstrates professional and ethical conduct as defined by state law and area education agency policies.

(3) Contributes to efforts to achieve area education agency goals.

(4) Demonstrates an understanding of and respect for all learners.

(5) Collaborates with all learners.

83.4(9) The school board shall provide comprehensive evaluations for beginning teachers using the Iowa teaching standards and criteria listed in rule 281—83.4(284). The school board, for the purposes of performance reviews for teachers other than beginning teachers, shall provide evaluations that contain, at a minimum, the Iowa teaching standards and criteria listed in rule 281—83.4(284). A local school board and its certified bargaining representative may negotiate, pursuant to Iowa Code chapter 20, additional teaching standards and criteria for use in a performance review. In any school district or area education agency where there is no certified bargaining unit, additional standards and criteria may be determined by the board.

[**ARC 8808B**, IAB 6/2/10, effective 7/7/10]

281—83.5(284) Evaluator approval training. The department shall approve eligible providers and their programs to conduct evaluator training. Only individuals certified through programs approved by the department shall qualify for evaluator certification by the board of educational examiners. A beginning teacher who has evaluator certification from the board of educational examiners shall not evaluate other teachers until the beginning teacher is no longer a probationary employee. Approved evaluator training programs shall be designed to align with the Iowa teaching standards and criteria, provide evaluators with the skills to conduct comprehensive evaluations and performance reviews as required by Iowa Code chapter 284, and provide for the evaluation of the progress made on individual professional development plans. This training for evaluators shall incorporate components of theory, demonstration, practice, and application of evaluation knowledge and skills.

83.5(1) *Application requirements for providers of evaluator approval training.* Approved applications for the provision of evaluator approval training shall include, but are not limited to, the following components:

a. A curriculum that addresses participant skill development in the areas of:

(1) The identification of quality instruction and practices based on the Iowa teaching standards and criteria;

(2) The use of multiple forms of data collection for identifying and supporting performance and development;

(3) The understanding and development of conferencing and feedback skills; and

(4) The development of skills in data-based decision making.

b. Demonstration that the evaluator approval training process design provides training as specified in this rule.

c. A description of the process used to deliver the training to participants.

d. A description of the procedures developed to certify the skill attainment of the evaluator being trained.

e. A budget.

f. Staff qualifications.

g. Evidence of the provider's expertise in evaluation design and training processes.

h. Provisions for leadership to support and implement ongoing professional development focused on student learning.

i. A process that evaluates the effectiveness of the implementation of the training process and demonstrates that the trainees have attained the knowledge and skills as described in paragraph *"a."* This evaluation shall be conducted on an annual basis and submitted to the department.

83.5(2) *Process used for the approval of evaluator approval training program applications.* Eligible providers shall submit an application on forms prescribed by the department. Applications for new

providers will be accepted and reviewed by the department by July 1 of each year. A review panel shall be convened to review applications for evaluator approval training programs based on the requirements listed in subrule 83.5(1). The panel shall recommend for approval and the department shall approve the evaluator approval training programs that meet the requirements listed in subrule 83.5(1). Applicants shall be notified of their status within 30 days of the application deadline. An approved list of private providers shall be maintained on the department Web site with an annual notification to school districts and area education agencies of the Web site address that contains provider information.

Eligible providers may be public or private entities, including, but not limited to, school districts, consortia, and other public or private entities including professional organizations. Applicants shall meet all applicable federal, state, and local health, safety and civil rights laws. Higher education administrative practitioner preparation institutions shall meet the review process through the state board approval and accreditation process for these institutions.

83.5(3) *Local teacher evaluation plans.* Local districts and area education agencies shall develop and implement a teacher evaluation plan that contains the following components:

a. The use of the Iowa teaching standards and criteria;

b. Provisions for the comprehensive evaluation of beginning teachers that include a review of the teacher's progress on the Iowa teaching standards as set forth in rule 281—83.4(284) and the use of the comprehensive evaluation instrument developed by the department;

c. Provisions for reviews of the performance of teachers other than beginning teachers as follows:

(1) Review once every three years by an evaluator to include, at a minimum, classroom observation of the teacher, a review of the teacher's progress on the Iowa teaching standards as set forth in rule 281—83.4(284) and additional standards and criteria if established under subrule 83.4(9), a review of the implementation of the teacher's individual professional development plan, and supporting documentation from other evaluators, teachers, parents, and students; and

(2) Review annually, other than the third-year review by an evaluator, by a peer group of teachers in accordance with Iowa Code section 284.8(1);

d. Provisions for individual professional development plans for teachers other than beginning teachers;

e. Provisions for an intensive assistance program as provided in Iowa Code section 284.8 that addresses the remediation defined under subrules 83.4(1) through 83.4(8) or any other standards or criteria established by a collective bargaining agreement.

A local school board and its certified bargaining representative shall negotiate, pursuant to Iowa Code chapter 20, evaluation and grievance procedures for beginning teachers and for teachers other than beginning teachers that are not in conflict with Iowa Code chapter 284. If a supervisor or an evaluator determines, at any time, as a result of a teacher's performance that the teacher is not meeting district expectations under subrules 83.4(1) through 83.4(8) or any other standards or criteria established in the collective bargaining agreement, the evaluator shall, at the direction of the teacher's supervisor, recommend to the district that the teacher participate in an intensive assistance program. The intensive assistance program and its implementation are subject to negotiation or grievance procedures established pursuant to Iowa Code chapter 20.

[**ARC 7785B**, IAB 5/20/09, effective 6/24/09; **ARC 0524C**, IAB 12/12/12, effective 1/16/13]

281—83.6(284) Professional development for teachers.

83.6(1) *Professional development for school districts, area education agencies, and attendance centers.* The following requirements shall apply to professional development for school districts, area education agencies, and attendance centers.

a. Professional learning standards. Professional learning within an area education agency or local district shall be aligned with the state standards for teaching and learning and aligned to the following standards for professional development. Professional learning increases educator effectiveness and results for all students when it:

(1) Occurs within learning communities committed to continuous improvement, collective responsibility, and goal alignment.

(2) Requires skillful leaders to develop capacity, advocate, and create support systems for professional learning.

(3) Prioritizes, monitors, and coordinates resources for educator learning.

(4) Uses a variety of sources and types of student, educator, and system data to plan, assess, and evaluate effectiveness of instruction.

(5) Integrates theories, research, and models of human learning to achieve intended outcomes.

(6) Applies research on change and sustains support for implementation of professional learning for long-term change.

(7) Aligns its outcomes with educator performance and student curriculum standards.

b. District or area education agency professional development plan. Each school district shall incorporate the district professional development plan into its comprehensive school improvement plan pursuant to Iowa Code subsection 284.6(3). Each area education agency shall develop a professional development plan for the agency as a whole and shall incorporate the plan into its comprehensive improvement plan pursuant to rule 281—72.9(273). The district or area education agency professional development plan shall be a long-term plan designed and implemented to increase student achievement and shall include all on-site and district or area education agency personnel responsible for instruction. The district or area education agency professional development plan shall contain, but not be limited to, the following:

(1) Implementation of a school district's or area education agency's plan for professional learning.

(2) Documentation that the professional development is based on student data, aligned with district or attendance center student achievement goals, and focused on instruction, curriculum, and assessment.

(3) The study and implementation of research-based instructional strategies that improve teaching and learning.

(4) Collaborative inquiry into the area of greatest student learning need.

(5) Research-based training strategies (e.g., theory, demonstration, observation, practice, coaching, reflection, evaluation) that promote transfer and positive outcomes as needed for learning new practices.

(6) Allocation of time to collectively study content, instruction, and impact so necessary adjustments can be made to ensure student success.

(7) Accountability and an evaluation that documents improvement of practice and the impact on student learning.

c. Attendance center professional development plans. Each attendance center within a school district shall develop an attendance center professional development plan as a means of promoting group professional development. An attendance center professional development plan shall further the needs of personnel responsible for instruction in the attendance center and shall enhance the student achievement goals of the attendance center and the goals of the district.

d. Individual professional development plans. The school district and area education agency shall support the development and implementation of the individual teacher professional development plan for each teacher as outlined in subrule 83.6(2). Each individual teacher professional development plan shall align to the fullest extent possible with the district professional development plan.

e. Beginning teacher mentoring and induction. The school district shall develop and implement a beginning teacher mentoring and induction plan as outlined in subrule 83.3(3). The district beginning teacher mentoring and induction plan shall be included in the comprehensive school improvement plan submitted pursuant to Iowa Code section 256.7(21)*"a"* and shall align with the district professional development plan described in paragraph 83.6(1)*"b."*

f. Organizational support for professional development. The school district shall provide resources and support for the district professional development plan, including opportunities for professional development, time for collaborative work of staff, budgetary support, and policies and procedures that reflect the district's commitment to professional development.

83.6(2) *Individual teacher professional development plan.* Each school district and area education agency shall support the development and implementation of individual teachers' professional development plans for teachers other than beginning teachers. The purpose of the individual plan is to promote individual and collective professional development. At a minimum, the goals for an individual

teacher professional development plan must be based on the needs of the teacher and on the relevant Iowa teaching standards that support the student achievement goals of the teacher's classroom or classrooms, attendance center and school district or area education agency, as appropriate, as outlined in the comprehensive school improvement plan. The goals shall go beyond those required under the attendance center professional development plan described in paragraph 83.6(1)*"c."* The learning opportunities provided to meet the goals of the individual teacher plan include individual study and collaborative study of district-determined or area education agency-determined content to the extent possible. The individual plan shall be developed by the teacher in collaboration with the teacher's evaluator. An annual meeting shall be held between the teacher's evaluator and the teacher to review the goals and refine the plan.

83.6(3) *Professional development provider requirements.*

a. A provider may be a school district; an area education agency; a higher education institution; a public or private entity including a professional organization that provides long-term, ongoing support for the district's or area education agency's professional development plan; or a consortium of any of the foregoing. An educational organization or program with specific professional development accreditation or approval from the department is an approved provider.

b. Providers that are not currently accredited or approved through state accreditation procedures must follow approval procedures identified in the district's or area education agency's professional development plan. The potential provider must submit to the school district or area education agency a written application that provides the following documentation:

(1) How the provider will deliver technical assistance that meets the Iowa professional development standards provided in paragraph 83.6(1)*"a."*

(2) How the provider intends to assist the local district or area education agency in designing, implementing, and evaluating professional development that meets the requirements established in paragraph 83.6(1)*"b."*

(3) A description of the qualifications of the provider.

(4) Evidence of the provider's expertise in professional development.

(5) A budget.

(6) Procedures for evaluating the effectiveness of the technical assistance delivered by the provider.

[**ARC 8808B**, IAB 6/2/10, effective 7/7/10; **ARC 1435C**, IAB 4/30/14, effective 6/4/14]

281—83.7(284) Teacher quality committees. Each school district and area education agency shall create a teacher quality committee pursuant to 2007 Iowa Code Supplement section 284.4. The committee is subject to the requirements of the Iowa open meetings law (Iowa Code chapter 21). To the extent possible, committee membership shall have balanced representation with regard to gender. The committee shall do all of the following:

1. Monitor the implementation of the requirements of statutes and administrative code provisions relating to this chapter, including requirements that affect any agreement negotiated pursuant to Iowa Code chapter 20.

2. Monitor the evaluation requirements of this chapter to ensure evaluations are conducted in a fair and consistent manner throughout the school district or agency. In addition to any negotiated evaluation procedures, develop model evidence for the Iowa teaching standards and criteria. The model evidence will minimize paperwork and focus on teacher improvement. The model evidence will determine which standards and criteria can be met through observation and which evidence meets multiple standards and criteria.

3. Determine, following the adoption of the Iowa professional development model by the state board of education, the use and distribution of the professional development funds distributed to the school district or agency as provided in 2007 Iowa Code Supplement section 284.13, subsection 1, paragraph *"d,"* based upon school district or agency, attendance center, and individual teacher professional development plans.

4. Monitor the professional development in each attendance center to ensure that the professional development meets school district or agency, attendance center, and individual teacher professional development plans.

5. Ensure the agreement negotiated pursuant to Iowa Code chapter 20 determines the compensation for teachers on the committee for work responsibilities required beyond the normal workday.

6. Make recommendations to the school board and the certified bargaining representative regarding the expenditures of market factor incentives.

DIVISION III
SPECIFIC STANDARDS APPLICABLE TO ADMINISTRATOR QUALITY PROGRAMS

281—83.8(284A) Administrator quality program. An administrator quality program is established to promote high student achievement and enhanced educator quality. The program shall consist of the following four major components:

1. Adherence to the Iowa school leadership standards and criteria as the minimum basis for evaluations of administrators and as the basis for professional development plans for administrators.

2. Mentoring and induction programs that provide support for administrators in accordance with 2007 Iowa Code Supplement section 284A.5.

3. Professional development designed to directly support best practice for leadership.

4. Evaluation of administrators against the Iowa standards for school administrators.

281—83.9(284A) Mentoring and induction program for administrators.

83.9(1) *Purpose.* A beginning administrator mentoring and induction program is created to promote excellence in school leadership, improve classroom instruction, enhance student achievement, build a supportive environment within school districts, increase the retention of promising school leaders, and promote the personal and professional well-being of administrators.

83.9(2) *District participation.* Each school board shall establish an administrator mentoring program for all beginning administrators. The school board may adopt the model program developed by the department or develop the program locally. Each school board's beginning administrator mentoring and induction program shall, at a minimum, provide for one year of programming to support the Iowa standards for school administrators adopted pursuant to 2007 Iowa Code Supplement section 256.7(27), and to support beginning administrators' professional and personal needs. Each school board shall include in the program the mentor selection process, supports for beginning administrators, and the organizational and collaborative structures. Each district must also provide the budget, establish a process for sustainability of the program, and establish a process for program evaluation. The school board employing an administrator shall determine the conditions and requirements of an administrator participating in a program established pursuant to this rule. A school board shall include its plan in the school district's comprehensive school improvement plan.

83.9(3) *Recommendation for licensure.* By the end of a beginning administrator's first year of employment, the beginning administrator shall be comprehensively evaluated to determine if the administrator meets expectations to move to a professional administrator license. The school district or area education agency shall recommend the beginning administrator for a professional administrator license to the board of educational examiners upon the administrator's completion of a successful comprehensive evaluation. The evaluation process must include documented evidence of the administrator's competence in meeting the Iowa leadership standards. A school district or area education agency may allow a beginning administrator a second year to demonstrate competence in the Iowa standards for school administrators if, after conducting a comprehensive evaluation, the school district or area education agency determines that the administrator is likely to successfully demonstrate competence in the Iowa standards for school administrators by the end of the second year. Upon notification by the school district or area education agency, the board of educational examiners shall grant a beginning administrator who has been allowed a second year to demonstrate competence a

one-year extension of the beginning administrator's initial license. An administrator granted a second year to demonstrate competence shall undergo a comprehensive evaluation at the end of the second year.

281—83.10(284A) Iowa school leadership standards and criteria for administrators. The Iowa school leadership standards and criteria represent a set of knowledge and skills that reflects the best evidence available regarding effective leadership. The standards and criteria provide school districts with a consistent basis for evaluations of administrators and serve as the basis for professional development plans for administrators. A local school board may establish additional administrator standards and related criteria, but shall at a minimum utilize the following standards, with supporting criteria listed after each, in evaluating its school leaders and adopting individual professional development plans therefor:

83.10(1) *Shared vision.* An educational leader promotes the success of all students by facilitating the development, articulation, implementation, and stewardship of a vision of learning that is shared and supported by the school community. The administrator:

a. In collaboration with others, uses appropriate data to establish rigorous, concrete goals in the context of student achievement and instructional programs.

b. Uses research and best practice in improving the educational program.

c. Articulates and promotes high expectations for teaching and learning.

d. Aligns and implements the educational program, plans, actions, and resources with the district's vision and goals.

e. Provides leadership for major initiatives and efforts to effectuate change.

f. Communicates effectively with various stakeholders regarding progress with school improvement plan goals.

83.10(2) *Culture of learning.* An educational leader promotes the success of all students by advocating, nurturing, and sustaining a school culture and instructional program conducive to student learning and staff professional development. The administrator:

a. Provides leadership for assessing, developing, and improving the climate and culture of learning.

b. Systematically and fairly recognizes and celebrates accomplishments of staff and students.

c. Provides leadership, encouragement, opportunities, and structure for staff to continually design more effective teaching and learning experiences for all students.

d. Monitors and evaluates the effectiveness of curriculum, instruction, and assessment.

e. Evaluates staff and provides ongoing coaching for improvement.

f. Ensures that staff members have professional development that directly enhances their performance and improves student learning.

g. Uses current research and theory about effective schools and leadership to develop and revise the administrator's professional growth plan.

h. Promotes collaboration with all stakeholders.

i. Is easily accessible and approachable to all stakeholders.

j. Is highly visible and engaged in the school community.

k. Articulates the desired school culture and shows evidence about how it is reinforced.

83.10(3) *Management.* An educational leader promotes the success of all students by ensuring management of the organization, operations, and resources for a safe, efficient, and effective learning environment. The administrator:

a. Complies with state and federal mandates and local school board policies.

b. Recruits, selects, inducts, and retains staff to support quality instruction.

c. Addresses current and potential issues in a timely manner.

d. Manages fiscal and physical resources responsibly, efficiently, and effectively.

e. Protects instructional time by designing and managing operational procedures to maximize learning.

f. Communicates effectively with both internal and external audiences about the operations of the school.

83.10(4) *Family and community.* An educational leader promotes the success of all students by collaborating with families and community members, responding to diverse community interests and needs, and mobilizing community resources. The administrator:

a. Engages family and community by promoting shared responsibility for student learning and support of the educational system.

b. Promotes and supports a structure for family and community involvement in the educational system.

c. Facilitates the connections of students and families to the health and social services that support a focus on learning.

d. Collaboratively establishes a culture that welcomes and honors families and community and seeks ways to engage them in student learning.

83.10(5) *Ethics.* An educational leader promotes the success of all students by acting with integrity and fairness and in an ethical manner. The administrator:

a. Demonstrates ethical and professional behavior.

b. Demonstrates values, beliefs, and attitudes that inspire others to higher levels of performance.

c. Fosters and maintains caring professional relationships with staff.

d. Demonstrates appreciation for and sensitivity to diversity in the school community.

e. Is respectful of divergent opinions.

83.10(6) *Societal context.* An educational leader promotes the success of all students by understanding the profile of the community and by responding to and influencing the larger political, social, economic, legal, and cultural context. The administrator:

a. Collaborates with service providers and other decision makers to improve teaching and learning.

b. Advocates for the welfare of all members of the learning community.

c. Designs and implements appropriate strategies to reach desired goals.

281—83.11(284A) Evaluation. The board of directors of a school district shall conduct an annual evaluation of an administrator who holds a professional administrator license issued under Iowa Code chapter 272 for purposes of assisting the administrator in making continuous improvements, documenting continued competence in the Iowa standards for school administrators adopted pursuant to Iowa Code section 256.7(27), and determining whether the administrator's practice meets the board's expectations for the school district. The evaluation shall include, at a minimum, an assessment of the administrator's competence in meeting the Iowa standards for school administrators and the goals of the administrator's individual professional development plan, including supporting documentation or artifacts aligned to the Iowa standards for school administrators and the individual administrator's professional development plan.

[**ARC 0524C**, IAB 12/12/12, effective 1/16/13]

281—83.12(284A) Professional development of administrators.

83.12(1) *Responsibility of district.* Each school district shall be responsible for the provision of professional growth programming for individuals employed in a school district administrative position by the school district or area education agency as deemed appropriate by the board of directors of the school district or area education agency. School districts may collaborate with other educational stakeholders, including other school districts, area education agencies, professional organizations, higher education institutions, and private providers, regarding the provision of professional development for school district administrators. Professional development programming for school district administrators may include support that meets the individual administrator's professional development needs as aligned to the Iowa standards for school administrators adopted pursuant to 2007 Iowa Code Supplement section 256.7(27), and that meets individual administrator professional development plans.

83.12(2) *Individual plans.* In cooperation with the administrator's evaluator, an administrator who has a standard administrator's license issued by the board of educational examiners pursuant to Iowa Code chapter 272 and is employed by a school district or area education agency in a school district administrative position shall develop an individual administrator professional development plan. The

purpose of the plan is to promote individual and group professional development. The individual plan shall be based, at a minimum, on the needs of the administrator. The individual plan shall be aligned, as appropriate, to the Iowa standards for school administrators adopted pursuant to 2007 Iowa Code Supplement section 256.7(27), and the student achievement goals of the attendance center and the school district as set forth in the comprehensive school improvement plan.

83.12(3) *Role of evaluator.* The administrator's evaluator shall meet annually as provided in Iowa Code section 279.23A with the administrator to review progress in meeting the goals in the administrator's individual professional development plan. The purpose of the meeting shall be to review collaborative work with other staff on student achievement goals and to modify as necessary the administrator's individual professional development plan to reflect the individual administrator's and the school district's needs and the administrator's progress in meeting the goals in the plan. The administrator shall provide evidence of progress toward meeting the goals. Modifications to the plan may be made jointly by the administrator and the administrator's supervisor, or the supervisor may adjust the plan. Any changes in the plan made unilaterally by a supervisor must be clearly documented for the administrator.

These rules are intended to implement Iowa Code chapters 284 and 284A as amended by 2007 Iowa Acts, chapter 108.

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CHAPTER 84
FINANCIAL INCENTIVES FOR NATIONAL BOARD CERTIFICATION

281—84.1(256) Purpose. National Board Certification (NBC) is available to teachers nationwide and requires candidates to demonstrate their teaching practice as measured against high and rigorous standards. NBC teachers enhance the educational experience of their students and motivate fellow teachers toward excellence in classroom teaching. These rules implement the two financial incentive pilot programs enacted by the Iowa legislature to increase the number of NBC teachers in Iowa.
[**ARC 0523C**, IAB 12/12/12, effective 1/16/13]

281—84.2(256) Definitions. For the purpose of these rules, the following definitions shall apply:

"A person who receives a salary as a classroom teacher" means a teacher employed by a school district in Iowa who receives any salary compensation from the school district for providing classroom instruction to students in the school district. The term also means a teacher employed by an area education agency in Iowa who receives all salary compensation through pooled school district funds provided to the area education agency to provide classroom instruction to elementary (including prekindergarten) or secondary students in one or more school districts.

"Department" means the state department of education.

"Director" means the director of the state department of education.

"Employed by a school district in Iowa" means a teacher employed in a nonadministrative position in an Iowa school district pursuant to a contract issued by a board of directors of a school district under Iowa Code section 279.13 and any full-time permanent substitute teacher employed under individual contracts not included under Iowa Code section 279.13 but who is receiving retirement and health benefits as part of the substitute teacher's contract.

"National Board Certification (NBC)" is a nationwide certification program administered by the National Board for Professional Teaching Standards. The certification program requires candidates to participate in a rigorous two-part assessment consisting of portfolio entries and assessment center exercises.

"National Board for Professional Teaching Standards (NBPTS)" is a private nonprofit organization whose goal is to develop professional standards for early childhood, elementary and secondary school teaching. NBPTS administers the NBC program.

"School district" means a public school district.

"Teacher" means an Iowa-licensed teacher as defined in Iowa Code section 272.1.

281—84.3(256) Registration fee reimbursement program. If funds are appropriated by the Iowa legislature, the department shall administer a registration fee reimbursement program.

84.3(1) *Eligibility.* Teachers who registered with NBPTS after December 31, 2007, but before July 1, 2012, shall apply to the department by May 1, 2013. All other teachers seeking reimbursement shall apply to the department within one year of registration with NBPTS. Teachers eligible for the registration fee reimbursement program shall meet all of the following qualifications:

a. The individual has all qualifications required by NBPTS for application for certification.

b. The individual is a teacher.

c. The individual is employed by a school district in Iowa.

d. The individual receives a salary as a classroom teacher.

e. The individual completes the department's application process, which includes submitting verification of NBC registration.

f. The individual has not received reimbursement from this program at any previous time.

84.3(2) *Registration fee reimbursement.* If funds are appropriated by the legislature, all teachers who apply to the department shall receive registration fee reimbursement. If, however, in any fiscal year the number of eligible teachers that apply for the reimbursement exceeds the funds available, the department shall prorate the amount of the registration fee reimbursement among all eligible teachers.

84.3(3) *Reimbursement.* Teachers determined eligible shall receive reimbursement in the following manner:

a. Initial registration fee reimbursement. Each eligible teacher shall receive an initial reimbursement of one-half of the reimbursement fee charged by NBPTS or, if necessary, a prorated amount upon submission to the department of the NBC registration confirmation form provided to each teacher by NBPTS.

b. Final registration fee reimbursement. The final registration fee reimbursement of one-half of the reimbursement fee charged by NBPTS or, if necessary, a prorated amount shall be awarded when the eligible teacher notifies the department of the teacher's certification achievement and submits verification of certification. If an eligible teacher fails to receive certification, the teacher can receive the remaining reimbursement if the teacher achieves certification within three years of the initial NBC score notification.

84.3(4) *Withdrawal from NBC process.* A teacher who has received the initial registration fee reimbursement from the department and withdraws from the NBC process shall reimburse the department the amount received from the department within 30 days of receiving any fee reimbursement from NBPTS if the reimbursement from NBPTS is equal to or greater than the amount received from the department. If the reimbursement amount from NBPTS is less than the amount the teacher received from the department, the teacher shall reimburse the department any amount received from NBPTS.

[**ARC 0523C**, IAB 12/12/12, effective 1/16/13]

281—84.4(256) NBC annual award. If funds are appropriated by the legislature, each eligible NBC teacher can qualify for one of the following NBC annual awards. If in any fiscal year the funds appropriated are insufficient to pay the maximum amount of the annual awards to each eligible teacher or the number of teachers eligible to receive annual awards exceed 1,100 individuals, the funds shall be prorated among all eligible teachers.

1. $5,000 annual award. An eligible teacher who receives NBC certification prior to May 1, 2000, will receive an annual award of up to $5,000 per year or a prorated amount for a period of ten years or until the teacher's total state annual award amount reaches $50,000, whichever occurs first.

2. $2,500 annual award. An eligible teacher who receives NBC certification after May 1, 2000, will receive an annual award of up to $2,500 per year or a prorated amount for a maximum period of ten years.

3. An otherwise-eligible teacher who possesses a teaching contract that is less than full-time shall receive an award prorated to reflect the type of contract (i.e., half-time, quarter-time, etc.).

84.4(1) *Eligibility.* In addition to having registered with NBPTS and achieving certification within NBPTS-established timelines and policies, individuals eligible for the NBC annual award shall meet all of the following qualifications:

a. The individual is an NBC teacher.

b. The individual is a teacher.

c. The individual is employed by a school district in Iowa.

d. The individual receives a salary as a classroom teacher.

e. The individual completes the department's annual application process, which includes submitting verification of certification.

f. The individual has not received an NBC annual award for more than ten years.

g. The individual has not received state NBC annual awards totaling more than $50,000.

h. The individual is applying for the award within one year of being eligible for the award.

84.4(2) *Application.* An NBC teacher shall submit an application verifying eligibility for an NBC award to the department by May 1 of each fiscal year the NBC teacher is eligible for the award. NBC awards shall be issued to eligible NBC teachers no later than June 1 of each fiscal year.

84.4(3) *Taxes.* The NBC award is not considered salary for purposes of Iowa Code chapter 97B. The eligible NBC teacher will be responsible to pay the appropriate state and federal taxes. The department

will notify state and federal taxing authorities of the award and the NBC teacher will be issued an IRS Form 1099.
[**ARC 0523C**, IAB 12/12/12, effective 1/16/13]

281—84.5(256) Appeal of denial of a registration fee reimbursement award or an NBC annual award. Any applicant may appeal the denial of a registration fee reimbursement award or an NBC annual award to the director of the department. Appeals must be in writing and received within ten working days of the date of the notice of denial and must be based on a contention that the process was conducted outside statutory authority or violated state or federal law, regulation or rule. The hearing and appeal procedures found in 281—Chapter 6 that govern director's decisions shall be applicable to any appeal of denial.

In the notice of appeal, which shall be notarized, the applicant shall give a short and plain statement of the reasons for the appeal.

The director shall issue a decision within a reasonable time, not to exceed 30 days from the date of the hearing.

These rules are intended to implement Iowa Code section 256.44.

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CHAPTER 85
CLASSIFICATION OF CERTIFICATES (Through 9/30/88)
[Prior to 9/7/88, see Public Instruction Department[670] Ch 14]
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CHAPTER 86
ENDORSEMENTS (Through 9/30/88)
[Prior to 9/7/88, see Public Instruction Department[670] Ch 15]
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CHAPTER 87
APPROVALS (Through 9/30/88)
[Prior to 9/7/88, see Public Instruction Department[670] Ch 16]
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CHAPTER 88
CONVERSION AND RENEWAL OF CERTIFICATES (Through 9/30/88)
[Prior to 9/7/88, see Public Instruction Department[670] Ch 17]
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CHAPTER 89
STANDARDS FOR TEACHER EDUCATION PROGRAMS (Through 9/30/88)
[Prior to 9/7/88, see Public Instruction Department[670] Ch 19]
Rescinded 11/14/90, see IAB 12/12/90

CHAPTER 90
STANDARDS FOR GRADUATE TEACHER EDUCATION PROGRAMS
[Prior to 9/7/88, see Public Instruction Department[670] Ch 20]
Rescinded IAB 12/16/98, effective 1/20/99

CHAPTER 91
PHASE III, EDUCATIONAL EXCELLENCE PROGRAM
[Prior to 9/7/88, see Public Instruction Department[670] Ch 80]
Rescinded IAB 5/20/09, effective 6/24/09

CHAPTERS 92 and 93
Reserved

TITLE XV
EDUCATIONAL EXCELLENCE

CHAPTER 94
ADMINISTRATIVE ADVANCEMENT AND RECRUITMENT PROGRAM

281—94.1(256) Purpose. The purpose of the administrative advancement and recruitment program is to provide grants to school corporations to assist them in preparing plans to encourage the advancement of women and minorities to administrative positions or to recruit and employ minority staff.

281—94.2(256) Eligibility identification procedures. Grants shall be awarded on a competitive basis by the department of education. Priority will be given to school corporations already having an affirmative action plan in place.

281—94.3(256) Grant award procedure. The following information shall be provided and grants shall be awarded to applicants based on the following criteria.

1. The degree to which the project will complement existing programs and services for the advancement of women and minorities to administrative positions;
2. The degree to which the project will complement existing programs and services for the recruitment and employment of minority staff;
3. The provision for staff training and development programs and support systems to address the recruitment, employment and advancement of women and minorities; and
4. The degree to which the project can be monitored and evaluated to determine its ability to meet its goals.

281—94.4(256) Application process. The department of education shall announce through public notice the opening of an application period.

281—94.5(256) Request for proposals. Applications for the administrative advancement and recruitment program grants shall be distributed by the department on request.

281—94.6(256) Grant process.

94.6(1) An applicant shall make formal application using criteria established by the department.

94.6(2) A department rating team shall review and rank the proposals.

94.6(3) The department shall notify successful applicants and shall provide to each of them a contract for signature. This contract shall be signed by an official with authority to bind the applicant and shall be returned to the department prior to the award of any funds under this project.

281—94.7(256) Awards contract. Awards shall not exceed a level of $5000 per any one contract.

281—94.8(256) Notification of applicants. Applicants shall be notified within 45 days following the due date for receipt of proposals as to whether their requests have been approved for funding.

281—94.9(256) Grantee responsibility. Grantees shall provide to the department of education by October 1, 1989, an annual report that includes information detailing progress toward goals, objectives and expenditures of their project.

These rules are intended to implement Iowa Code section 256.23.

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CHAPTER 95
EQUAL EMPLOYMENT OPPORTUNITY AND AFFIRMATIVE ACTION IN EDUCATIONAL AGENCIES

281—95.1(256) Purpose. It is the purpose of this chapter to implement Iowa Code section 19B.11 by requiring specific steps by school districts, area education agencies, and community colleges to accomplish the goals of equal employment opportunity and affirmative action in the recruitment, appointment, assignment and advancement of personnel.

281—95.2(256) Definitions. The following definitions shall be applied to the rules in this chapter:

"Affirmative action" means action appropriate to overcome the effects of past or present practices, policies, or other barriers to equal employment opportunity.

"Agency" means a local school district, an area education agency or a community college.

"Availability" means the extent to which members of a racial/ethnic group, women, men or persons with disabilities are present within the relevant labor market.

"Director of education" means the director of the Iowa department of education.

"Equal employment opportunity" means equal access to employment, training and advancement, or employment benefits regardless of race, creed, color, religion, sex, age, national origin and disability.

"Metropolitan statistic area" means a large population nucleus (over 50,000 people) and nearby communities which have a high degree of economic and social integration with that nucleus. Each area consists of one or more entire counties.

"Person with a disability" means any person who has a physical or mental impairment which substantially limits one or more major life activities, has a record of such impairment or is regarded as having such an impairment, as defined by civil rights commission subrule 161—8.26(1).

"Racial/ethnic minority person" means any person who is African-American, Hispanic, Asian or Pacific Islander, American Indian or Alaskan Native.

"Relevant labor market" means the geographic area in which an agency can reasonably be expected to recruit for a particular job category.

"Underrepresentation" means having fewer members of a racial/ethnic group, women, men or persons with disabilities in a particular job category than would be reasonably expected based on their availability in the relevant labor market.

"Work force" means an agency's full-time and part-time employees.

281—95.3(256) Equal employment opportunity standards. Employment policies and practices shall provide equal employment opportunity to all persons. No person shall be denied equal access to agency employment opportunities because of race, creed, color, religion, national origin, gender, age or disability.

Affirmative action programs. A work force analysis shall be performed and affirmative measures be developed and implemented for any major job categories in which a racial/ethnic group, women, men or persons with disabilities are underrepresented.

281—95.4(256) Duties of boards of directors. Each board of directors shall adopt policy statements and develop plans for implementation of equal employment opportunity standards and affirmative action programs.

95.4(1) *Policy statements.* Each board of directors shall adopt policy statements outlining its commitment to the principles of equal employment opportunity and affirmative action. These policy statements shall prescribe procedures for employees and applicants for employment to redress complaints of discrimination.

95.4(2) *Written plans.* Each board of directors shall prepare and implement written equal employment opportunity and affirmative action plans by July 1, 1990. The plans shall be evaluated and updated on a biennial basis.

95.4(3) *Assignment of responsibility.* Each board of directors shall assign to an employee the responsibility for coordinating the development and ongoing implementation of the plans. This employee may be the same employee who has been assigned to coordinate the agency's efforts to comply with federal laws requiring nondiscrimination in educational programs and employment.

95.4(4) *Input.* Each board of directors shall obtain systematic input from diverse racial/ethnic groups, women, men and persons with disabilities into the development and implementation of the plans. School districts may use existing advisory committees or public hearing procedures developed to receive similar input regarding the development and implementation of multicultural, nonsexist education plans.

95.4(5) *Staff development.* Each board of directors shall provide periodic training for all staff who hire or supervise personnel on the principles of equal employment opportunity and the implementation of its affirmative action plan.

95.4(6) *Record keeping.* Each board of directors shall keep the necessary records to document its affirmative action progress. Employment data shall be reported to the department of education by racial/ethnic category, gender and disability. This report shall be part of the department of education's basic educational data collection system.

281—95.5(256) Plan components. In addition to the board policy statement, each equal employment opportunity and affirmative action plan shall include, but not be limited to, the following components:

95.5(1) *Identification of coordinator.* The name, job title, address and phone number of the employee responsible for coordinating the development and implementation of the equal employment opportunity and affirmative action plans.

95.5(2) *Administrative statement.* An administrative statement on how the agency's equal employment opportunity and affirmative action policies and plans are to be implemented, including the internal system for auditing and reporting progress. The administrative statement shall be signed and dated by the chief executive officer of the agency.

95.5(3) *Work force analysis.* A work force analysis that shall show the numerical and percentage breakdown of the agency's full-time and part-time employees within each major job category by racial/ethnic group, gender, and disability. Major job categories shall be consistent with the E.E.O. 5 and E.E.O. 6 occupational categories reported to the United States Equal Employment Opportunity Commission. For the purpose of confidentiality, disability data may be based on total agency figures, rather than those of major job categories.

95.5(4) *Quantitative analysis.* A quantitative analysis that shall compare work force analysis figures with the availability of qualified or qualifiable members of racial/ethnic groups, women, men and persons with disabilities within the relevant labor market.

95.5(5) *Qualitative analysis.* When underrepresentation is identified in one or more major job category, a qualitative analysis shall be implemented and included in the agency's affirmative action plan. The qualitative analysis is a review of employment policies and practices to determine if and where those policies and practices tend to exclude, disadvantage, restrict or result in adverse impact on the basis of racial/ethnic origin, gender, or disability. The analysis may include, but is not limited to the review of:

a. Recruitment practices and policies;

b. A demographic study of the applicant pool and flow;

c. The rate and composition of turnover in major job categories;

d. Trends in enrollment which will affect the size of the work force;

e. Application and application screening policies and practices;

f. Interview, selection, and placement policies and practices;

g. Transfer and promotion policies and practices;

h. Discipline, demotion, termination and reduction in force policies and practices;

i. Employee assistance, training selection and mentoring policies and practices;

j. The impact of the collective bargaining agreement on equal employment opportunity and the affirmative action process;

k. Law, policies or practices external to the agency that may hinder success in equal employment opportunity and affirmative action.

95.5(6) *Goals.* Numerical goals and timetables for reduction of underrepresentation in each major job category where it has been identified shall be developed. These goals shall not be treated as rigid and inflexible quotas that must be met, but as reasonable aspirations toward correcting imbalance in the agency's work force. The goal shall not cause any group of applicants to be excluded from the hiring process. When setting numerical goals agencies shall take into consideration the following:

a. The numbers and percentages from the work force analysis conducted pursuant to subrule 95.5(3);

b. The number of short- and long-term projected vacancies in the job category, considering turnover, layoffs, lateral transfers, new job openings, and retirements;

c. The availability of qualified or qualifiable persons from underrepresented racial/ethnic, gender and disability categories within the relevant labor market;

d. The makeup of the student population served by racial/ethnic origin, gender and disability;

e. The makeup of the population served by racial/ethnic origin, gender and disability;

f. The makeup of the population of the metropolitan statistic area, when applicable, by racial/ethnic origin, gender, and disability.

95.5(7) *Absence of minority base.* Agencies with no minority students enrolled or no minority employees shall develop goals and timetables for recruiting and hiring persons of minority racial/ethnic origin when those persons are available within the relevant labor market.

95.5(8) *Consolidation.* An agency may consolidate racial/ethnic minorities and job categories into broader groupings in conducting its analysis under subrules 95.5(3), 95.5(4) and 95.5(6) when its size or number of employees makes more specific categories impractical.

95.5(9) *Qualitative goals.* Qualitative goals, activities and timetables which specify the appropriate actions and time frames in which problem areas identified during the qualitative analysis are targeted and remedied. In setting qualitative goals and planning actions the agency may consider, but need not be limited to, the following:

a. Broadening or targeting recruitment efforts;

b. Evaluating and validating criteria and instruments used in selecting applicants for interviews, employment, and promotion;

c. Providing equal employment opportunity, affirmative action, and intergroup relations training for employees of the agency;

d. Developing a system of accountability for implementing the agency's plan;

e. Developing and implementing an employee assistance and mentoring program;

f. Establishing a work climate which is sensitive to diverse racial/ethnic groups, both women and men and persons with disabilities;

g. Negotiating the revision of collective bargaining agreements to facilitate equal employment opportunity and affirmative action;

h. Considering a person's racial/ethnic origin, gender, or disability as a relevant factor when selecting applicants for interview, employment and promotion in job categories where underrepresentation exists.

281—95.6(256) Dissemination. Each agency shall have an internal and external system for disseminating its equal employment opportunity and affirmative action policies and plans.

95.6(1) *Plan distribution.* The policies and plans shall be annually distributed to agency employees involved in the hiring or management of personnel and shall be made available to other agency employees, the public and the director of education upon request.

95.6(2) *Policy statement distribution.* The policy statement shall be distributed to all applicants for employment and shall be disseminated annually to employees, students, parents and recruitment sources.

281—95.7(256) Reports. Each education agency shall submit an annual progress report on equal employment opportunity and affirmative action to its local board of directors. An annual progress

report shall be submitted to the department of education by December 31 of each year. The report shall be part of the basic educational data collection system administered by the department of education.

These rules are intended to implement Iowa Code section 19B.11.

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TITLE XVI
SCHOOL FACILITIES

CHAPTER 96
STATEWIDE/LOCAL OPTION SALES AND SERVICES TAX FOR SCHOOL INFRASTRUCTURE

281—96.1(423E,423F) Definitions. For purposes of these rules, the following definitions shall apply:

"Actual enrollment" means the number of students each school district certifies to the department by October 15 of each year in accordance with Iowa Code section 257.6, subsection 1.

"Base year" means the school year ending during the calendar year in which the budget is certified.

"Certificate of need" means the written department of education approval a school district must obtain if the district has a certified enrollment of fewer than 250 students or a certified enrollment of fewer than 100 students in grades 9-12. The certificate of need must be obtained by the school district before the district may expend the supplemental school infrastructure amount for new construction or for payments for bonds issued for new construction against the supplemental school infrastructure amount or to expend the statewide sales and services amount or remaining unobligated local option sales and services balances for new construction.

"Combined actual enrollment" means the sum of the students in each school district located in whole or in part in a county who are residents of that county as determined by rule 281—96.2(423E,423F).

"Department" means the state department of education.

"Guaranteed school infrastructure amount" means for a school district the statewide tax revenues per student, multiplied by the quotient of the tax rate percent imposed in the county, divided by 1 percent and multiplied by the quotient of the number of quarters the tax is imposed during the fiscal year divided by four quarters.

"New construction" means any erection of a facility or any modification or addition to a facility except for repairing existing schoolhouses or school buildings or for construction necessary for compliance with the federal Americans with Disabilities Act pursuant to 42 U.S.C. Section 12101-12117.

"Nonresident student" means a student enrolled in a school district who does not meet the requirements of a resident as defined in Iowa Code section 282.1.

"Reconstruction" means rebuilding or restoring as an entity a thing that was lost or destroyed.

"Repair" means restoring an existing structure or thing to its original condition, as near as may be, after decay, waste, injury, or partial destruction, but does not include maintenance.

"Resident student" means a student enrolled in a school district who meets the requirements of a resident as defined in Iowa Code section 282.1.

"Revenue purpose statement" means a document prepared by the school district indicating the specific purpose or purposes for which the funding, pursuant to Iowa Code chapters 423E and 423F, will be expended.

"Sales tax" means a local option sales and services tax for school infrastructure imposed in accordance with Iowa Code chapter 423E and the statewide sales and services tax for school infrastructure imposed in accordance with Iowa Code chapter 423F.

"Sales tax capacity per student" means for a school district the estimated amount of revenues that a school district receives or would receive if a local sales and services tax for school infrastructure purposes is imposed at 1 percent in the county, divided by the school district's actual enrollment.

"School budget review committee" or *"SBRC"* means a committee that is established under Iowa Code section 257.30 in the department of education and that consists of the director of the department of education, the director of the department of management, and three members who are knowledgeable in the areas of Iowa school finance or public finance issues and who are appointed by the governor to represent the public.

"School district" means a public school district in Iowa accredited by the state department of education.

"School infrastructure" means those activities for which a school district is authorized to contract indebtedness and issue general obligation bonds under Iowa Code section 296.1, except those activities related to a teacher's or superintendent's home or homes. These activities include the construction, reconstruction, repair, demolition, purchase, or remodeling of schoolhouses, stadiums, gymnasiums, fieldhouses, and bus garages; the procurement of schoolhouse sites and site improvements; and the payment or retirement of general obligation bonds issued for school infrastructure purposes or of sales and services tax for school infrastructure revenue bonds. The definition of school infrastructure also includes activities for which revenues under Iowa Code sections 298.3 and 300.2 may be spent and property tax relief for the debt service property tax levy, regular physical plant and equipment property tax levy, voter-approved physical plant and equipment income surtax and property tax levy, and the public education and recreation property tax levy.

"Site improvement" means grading, landscaping, paving, seeding, and planting of shrubs and trees; constructing sidewalks, roadways, retaining walls, sewers and storm drains, and installing hydrants; surfacing and soil treatment of athletic fields and tennis courts; exterior lighting, including athletic fields and tennis courts; furnishing and installing flagpoles, gateways, fences, and underground storage tanks which are not parts of building service systems; demolition work; and special assessments against the school district for public improvements defined in Iowa Code section 384.37.

"Statewide tax revenues per student" means the amount per student established by Iowa Code subsection 423E.4(2)*"b"*(3).

"Supplemental school infrastructure amount" means the guaranteed school infrastructure amount for the school district less the pro rata share of local sales and services tax for school infrastructure purposes.

[**ARC 8384B**, IAB 12/16/09, effective 1/20/10]

281—96.2(423E,423F) Reports to the department. Each school district shall, by October 15, annually report the school district's actual enrollment on October 1 by the student's county of residency according to the following:

96.2(1) *County of residency.* The county of residency for each of the students shall be the county in which the student lives in accordance with Iowa Code section 282.1.

96.2(2) *Emancipated minor.* The county of residency for an emancipated minor attending the school district shall be the county in which the emancipated minor is living.

96.2(3) *County of residency unknown.* If a school district cannot determine an enrolled student's county of residency or if the county of residency is not a county in which the school district is located, the county of residency shall be the county in which the school district certifies its budget.

[**ARC 8384B**, IAB 12/16/09, effective 1/20/10]

281—96.3(423E,423F) Combined actual enrollment. By March 1, annually, the department shall forward to the department of management the actual enrollment and the actual enrollment by the student's county of residency for each school district located in whole or in part in a county where a sales tax has been imposed and the combined actual enrollment for that county.

[**ARC 8384B**, IAB 12/16/09, effective 1/20/10]

281—96.4(423E,423F) Application and certificate of need process.

96.4(1) *When application needed; application period.* After July 1, 2008, a school district with a certified enrollment of fewer than 250 students in the entire district or a certified enrollment of fewer than 100 students in grades 9 through 12 shall not expend the amount of statewide or local sales and services tax received for new construction without prior application to the department and receipt of a certificate of need. A certificate of need is not required for repair of school facilities; for purchase of equipment, technology, or transportation equipment for transporting students as provided in Iowa Code section 298.3; or for construction necessary to comply with the federal Americans With Disabilities Act, 42 U.S.C. Sections 12101 to 12117. Applications shall be hand-delivered or postmarked no later than eight weeks prior to a regularly scheduled meeting of the SBRC. Delivery of applications by way of

facsimile transmission is not allowed. The SBRC holds regularly scheduled meetings on the second Monday of September, December, March, and May.

96.4(2) *Application form.* The department shall make available an application form to Iowa public school districts. Each applicant school district shall use the form prepared for this purpose and in the manner prescribed by the department. A school district may submit only one application during the application period. The application form shall include, but shall not be limited to, the following information:

a. The total capital investment of the project. If the project is in collaboration with other public or private entities, a school district shall include the following information:

(1) Identification of the collaborating public or private entities;

(2) Total cost of the collaborative project; and

(3) Total cost of the school district's portion of the project.

b. The infrastructure needs of a school district specific to the application, especially the fire and health safety needs, including the extent to which the project would allow the school district to meet its infrastructure needs on a long-term basis. If a school district's needs include fire and health safety needs, the school district shall attach to its application form a copy of the citation from the fire marshal for the safety deficiency or evidence of consultation with the fire marshal or other qualified inspector related to the health safety deficiency. A school district shall include evidence of public involvement in assessing the need for this project.

c. The description of need including documentation of the infeasibility of remodeling, reconstructing, or repairing the existing structure rather than implementing this project and a description of any alternatives considered and the reasons for rejection.

d. Enrollment trends by grade in a school district showing a five-year history and five years of projected enrollment by grade. The school district shall identify the grades that will be served at the new construction site. If a school district uses enrollment projections other than those prepared by the department, the school district must submit a description of the basis for those projections. The school district shall demonstrate that there is sufficient economic activity and stability to support and sustain enrollment projections of the affected attendance center.

e. If a school district's enrollment in the current year or any of the five years of projected enrollments is fewer than 250 students, the school district shall attach a copy of a feasibility study pursuant to Iowa Code subsection 256.9(34) or similar study conducted within the past three years with an explanation of how the study supports the project that is the subject of the application.

f. A description of the nature of the project and its relationship to improving educational opportunities for students including alignment with school district student achievement goals and including the school district's ability to meet or exceed the educational standards. A school district shall provide:

(1) A list of waivers applied for and granted to the school district or any deficiencies from educational standards if no waiver was granted.

(2) A list of courses offered by major curricular area in grades 9 through 12. The list shall include five years of history and three years of projected curricula if the proposed new construction will house any of the grades 9 through 12.

(3) A list of current and projected staffing patterns including assignments and licensure.

g. Description of transportation barriers, if any, to the current site and to the proposed site and the distance in miles and in travel time from the nearest and furthest boundaries of the school district to the current site and the proposed site.

h. Evidence of a healthy financial condition and long-term financial stability. The school district shall provide:

(1) Calculation of unspent balance on the generally accepted accounting principles (GAAP) basis. The calculation shall include five years of history and three years of projected balances. The calculation of budget authority shall show and project the effect of the phaseout of the budget guarantee. Projected allowable growth shall be that known or generally anticipated at the time of the application. If the percent

of allowable growth is not known or anticipated, an allowable growth of no more than 2 percent shall be utilized in the annual projections.

(2) If the unspent balance is negative in any current or projected year on the GAAP basis, the school district shall include a copy of the corrective action plan, if any, submitted to the SBRC.

(3) Calculation of fund balance on the GAAP basis by fund. The calculation shall include five years of history and three years of projected balances.

i. If a school district currently has bonded indebtedness, the voter-approved physical plant and equipment levy, or categorical funding for school infrastructure, the school district shall include a statement identifying the implementation date, final year of the bonded indebtedness or the final year of the levy or categorical funding, and the levy rate. The school district shall list any obligations against those current balances and future revenues or against the local option or statewide sales and services tax for school infrastructure amounts. The school district shall attach a copy of the school district's revenue purpose statement, if any.

j. A comprehensive, districtwide infrastructure plan. The school district shall include the date that the plan was adopted by the board, an executive summary of the plan, and a description of how the project fits within the infrastructure plan.

k. A five-year history of significant infrastructure maintenance and repair.

l. A statement certifying the accuracy of the information contained in the application.

96.4(3) *Board minutes.* A school district that is submitting an application for certificate of need shall submit with its application a copy of the published minutes of the board of director's meeting showing that the board has authorized the application and the project and that the public has been informed. The section of the board minutes containing this information shall be marked in such a way as to make it easily identifiable.

96.4(4) *Number of copies.* A school district that is submitting an application for certificate of need shall submit three complete sets of the application forms and board minutes with original signatures on the application forms.

96.4(5) *Reapplication.* A school district that is not successful in obtaining a certificate of need for the project that is the subject of the application may apply for a certificate of need in succeeding application periods if its circumstances change substantially.

96.4(6) *Application timeline.* A school district shall submit an application for a certificate of need either:

a. When the school district has received amounts that it intends to accumulate for new construction or for payment of debt related to new construction; or

b. When the school district board has accumulated amounts and wants to proceed with the new construction project or debt issuance related to new construction, whichever occurs first.

96.4(7) *Compliance requirement on uses.* All projects included in the application must be consistent with the provisions of the Americans With Disabilities Act and the Rehabilitation Act of 1973, Section 504, and Iowa Code chapter 104A.

[**ARC 8384B**, IAB 12/16/09, effective 1/20/10; **ARC 9473B**, IAB 4/20/11, effective 5/25/11]

281—96.5(423E,423F) Review process.

96.5(1) *Task force.* The department shall form a task force to review applications for certificate of need and to provide recommendations to the SBRC. The department shall invite participants from large, medium, and small school districts, the state fire marshal's office, education and professional organizations, or other individuals knowledgeable in school infrastructure and construction issues. The department, in consultation with the task force, shall establish the parameters and criteria for awarding certificates of need based on information listed in Iowa Code section 423E.4, subsection 5, which includes required consideration of the following:

a. Enrollment trends in the grades that will be served at the new construction site.

b. The infeasibility of remodeling, reconstructing, or repairing existing buildings.

c. The fire and health safety needs of the school district.

d. The distance, convenience, cost of transportation, and accessibility of the new construction site to the students to be served at the new construction site.

e. Unavailability of alternative, less costly, or more effective means of serving the needs of the students.

f. The financial condition of the school district, including the effect of the decline of the budget guarantee and unspent balance.

g. Broad and long-term ability of the school district to support the facility and the quality of the academic program.

h. Cooperation with other educational entities including other school districts, area education agencies, postsecondary institutions, and local communities.

96.5(2) *Task force review.* The task force, or a subcommittee of the task force, and its designees, shall review each application and make recommendations to the school budget review committee regarding approval of certificates of need based on the evidence provided by the applicant pursuant to subrule 96.4(2) and the criteria listed in subrule 96.5(1). More than one member of the task force or subcommittee of the task force and its designees shall review each application. A reviewer shall not review any application in which the reviewer has a conflict of interest.

96.5(3) *Approval process.* Applications shall be reviewed and recommended for approval or denial based on any or all of the following individual or collective criteria. Each applicable criterion shall be scored on a scale of zero to ten. Applicable scores shall be averaged. Nonapplicable criteria shall not be used in determining the average score. An application shall have a minimum average score of five to be eligible to be recommended for approval. If an application receives a score of zero on one or more applicable criteria, the application shall not be recommended for approval. A recommendation for approval by the task force does not constitute final approval of the application. The following categories on the application shall be evaluated and scored:

a. Infrastructure needs the project proposes to alleviate. Special consideration shall be given to infrastructure needs that relate to fire or health safety issues.

b. Evidence that remodeling, reconstructing, or repairing the existing buildings is not feasible.

c. Unavailability of alternative, less costly, or more effective means of serving student needs.

d. Improvement of transportation distance, convenience, cost and accessibility with the new construction.

e. Sustainable financial condition and long-term financial stability of the school district.

f. Evidence that the proposed project will improve educational opportunities for students and enable the school district to meet or exceed educational standards.

g. Current comprehensive, districtwide infrastructure plan and the description of how this project fits within that plan.

h. Description of collaboration with one or more other public or private entities.

96.5(4) *Ineligibility for approval.* If either of the following two descriptions applies to the school district, the school district shall not be eligible for a certificate of need unless a feasibility study conducted within the past three years pursuant to Iowa Code subsection 256.9(34) and the AEA plan pursuant to Iowa Code sections 275.1 to 275.4 determine that sharing, reorganization, or dissolution is not feasible for the school district.

a. If either the current enrollment or any of the five years of projected enrollments for the school district is fewer than 250 students.

b. If either the current enrollment or any of the five years of projected enrollments for the school district for grades 9 through 12 is fewer than a total of 100 students, if a high school building is the subject of the application.

96.5(5) *School budget review committee.* The SBRC shall review the recommendations from the task force for approval of certificates of need. The committee shall make recommendations on approval to the department for final consideration.

[**ARC 8384B**, IAB 12/16/09, effective 1/20/10]

281—96.6(423E,423F) Award process.

96.6(1) *Department determination.* The department shall make the final determination on approval of certificates of need.

96.6(2) *Notification.* The department shall notify applicants no later than two weeks following the date of receipt of the recommendations from the SBRC.

[**ARC 8384B**, IAB 12/16/09, effective 1/20/10]

281—96.7(423E,423F) Applicant responsibilities.

96.7(1) *Change in the project.* If a school district significantly changes the proposed project, the school district shall notify the department within ten working days of the change and shall submit a new application for a certificate of need for the newly changed project.

96.7(2) *Accounting for the funding.* All revenues from the local and statewide school infrastructure amounts and all expenditures from the local and statewide school infrastructure amounts shall be separately identified and accounted for in a capital projects fund established for the local option and statewide sales and services tax for school infrastructure proceeds.

96.7(3) *Withdrawal of application.* If a school district is granted a certificate of need for a project and the school district elects not to continue with the project, the school district shall notify the department within ten working days following the board action to discontinue the project.

96.7(4) *Forfeiture of certificate.* Failure to comply with any of the rules in this chapter or provide information that is included in the certificate of need application or that is requested by the department may result in the forfeiture of the certificate of need or removal from the application cycle.

[**ARC 8384B**, IAB 12/16/09, effective 1/20/10]

281—96.8(423E,423F) Appeal of certificate denial. Any applicant may appeal the denial of a properly submitted application for certificate of need to the director of the department. Appeals must be in writing and received within ten working days of the date of the notice of the decision to deny. Appeals must be based on a contention that the process was conducted outside of statutory authority; violated state or federal law, policy, or rule; did not provide adequate public notice; was altered without adequate public notice; or involved conflict of interest by staff or committee members. The hearing and appeals procedures found in 281—Chapter 6 that govern the director's decisions shall be applicable to any appeal of denial.

[**ARC 8384B**, IAB 12/16/09, effective 1/20/10]

These rules are intended to implement Iowa Code chapters 423E and 423F.

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CHAPTER 97
SUPPLEMENTARY WEIGHTING

281—97.1(257) Definitions. For the purpose of this chapter, the following definitions apply.

"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.

"Career academy" shall mean a program of study as defined in 281—Chapter 47. A course offered by a career academy shall not qualify as a regional academy course. A career academy course may qualify as a concurrent enrollment course if it meets the requirements of Iowa Code section 261E.8.

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

"Enrolled" shall mean that a student has registered with the school district and is taking part in the educational program.

"Fraction of a school year at the elementary level" shall mean the product of the minutes per day of class times the number of days per year the class meets divided by the product of the total number of minutes in a school day times the total number of days in a school year.

"Fraction of a school year at the secondary level" shall mean the product of the minutes per day of class times the number of days per year the class meets divided by the product of the total number of class periods in a school day times the total number of days in a school year. All minutes available in a normal day shall be used in the calculation.

"ICN" shall mean the Iowa Communications Network.

"Political subdivision" shall mean a political subdivision in the state of Iowa and shall include 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 (Iowa School for the Deaf, Iowa State University, University of Iowa, and University of Northern Iowa).

"Project lead the way" means the nonprofit organization with 501(c)(3) tax-exempt status that provides rigorous and innovative science, technology, engineering, and mathematics education curriculum founded in fundamental problem-solving and critical-thinking skills while integrating national academic and technical learning standards.

"Regional academy" shall mean an educational program established by a school district to which multiple school districts send students in grades 7 through 12. The curriculum shall include advanced-level courses and, in addition, may include career-technical courses, Internet-based courses, and coursework delivered via the ICN. Regional academy courses shall not qualify as concurrent enrollment courses and do not generate any postsecondary credit. School districts participating in regional academies are eligible for supplementary weighting as provided in Iowa Code section 257.11, subsection 2.

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

"Supplant" shall mean the community college's offering a course that consists of substantially the same concepts and skills as the content of a course provided by the school district or the community college's offering a course that is required by the school district in order to meet the minimum accreditation standards in Iowa Code section 256.11. If a student is unable to earn credit in both courses, then the two courses would be deemed similar enough in content and skills to be defined as supplanting.

"Supplementary weighting plan" shall mean a plan as defined in this chapter to add a weighting for each resident student eligible 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 by the number of eligible resident students enrolled in that class and then multiplying that figure by the weighting factor established in Iowa Code chapter 257.

"Supplementary weighting plan for at-risk students" shall mean a plan as defined in this chapter to add a weighting for each resident student enrolled in the district and a weighting for each resident student enrolled in grades one through six, as reported by the school district on the basic educational data survey

for the base year, who is eligible for free and reduced price meals under the federal National School Lunch Act and the federal Child Nutrition Act of 1966, 42 U.S.C. Sections 1751-1785, to generate funding to be used to develop or maintain at-risk programs, which may include alternative school programs.

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

[**ARC 8188B**, IAB 10/7/09, effective 11/11/09; **ARC 0014C**, IAB 2/22/12, effective 3/28/12 (See Delay note at end of chapter); **ARC 0520C**, IAB 12/12/12, effective 1/16/13; **ARC 1486C**, IAB 6/11/14, effective 5/15/14; **ARC 1596C**, IAB 9/3/14, effective 10/8/14]

281—97.2(257) Supplementary weighting plan.

97.2(1) *Eligibility.* Except if listed under subrule 97.2(7), 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. Resident student attends class in another school district pursuant to subrule 97.2(2), or

b. Resident student attends class taught by a teacher employed by another school district pursuant to subrule 97.2(3), or

c. Resident student attends class taught by a teacher jointly employed by two or more school districts pursuant to subrule 97.2(4), or

d. Resident student attends class in a community college for college credit pursuant to subrule 97.2(5), or

e. Resident student attends class in a community college for college credit pursuant to subrule 97.2(6).

Other than as listed in paragraphs 97.2(1)*"a"* to *"e"* above and in rules 281—97.3(257), 281—97.4(257), and 281—97.7(257), no other sharing arrangement shall be eligible for supplementary weighting.

97.2(2) *Attend class in another school district.* Students attending class in another school district will be eligible for supplementary weighting under paragraph 97.2(1)*"a"* only if the school district does not have a licensed and endorsed teacher available within the school district to teach the course(s) being provided.

97.2(3) *Attend class taught by a teacher employed by another school district.* Students attending class taught by a teacher employed by another school district will be eligible for supplementary weighting under paragraph 97.2(1)*"b"* only if the school district does not have a licensed and endorsed teacher available within the school district to teach the course(s) being provided.

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 teacher professional development plan.

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. The course must supplement, not supplant, high school courses.

(1) For purposes of these rules, to comply with the "supplement, not supplant" requirement, the content of a course provided to a high school student for postsecondary credit shall not consist of substantially the same concepts and skills as the content of a course provided by the school district.

(2) The course must not be used by the school district in order to meet the minimum accreditation standards in Iowa Code section 256.11.

b. The course must be included in the community college catalog or an amendment or addendum to the catalog.

c. The course must be open to all registered community college students not just high school students.

d. The course must be for college credit and the credit must apply toward an associate of arts or associate of science degree, or toward an associate of applied arts or associate of applied science degree, or toward completion of a college diploma program.

e. The course must be taught by an instructor employed by or under contract with the community college who meets the requirements of Iowa Code section 261E.3.

f. The course must be taught utilizing the community college course syllabus.

g. The course must be taught in such a manner as to result in student work and student assessment which meet college-level expectations.

h. The course must not have been determined as failing to meet the standards established by the postsecondary course audit committee.

97.2(6) *Attend a project lead the way class in a community college.* Students attending a science, technology, engineering, or mathematics class that uses an activities-based, project-based, and problem-based learning approach and that is offered collaboratively by the students' school district and a community college in partnership with a nationally recognized provider of rigorous and innovative science, technology, engineering, and mathematics curriculum are eligible for supplementary weighting under paragraph 97.2(1)*"e"* if the curriculum provider is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code.

97.2(7) *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 eligible for the special education weighting plan provided in Iowa Code section 256B.9 when being served by special education programs or services that carry additional weighting.

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

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

e. 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 and are dual enrolled in grades 9 through 12.

f. Students participating in shared services rather than shared classes except under sharing pursuant to rule 281—97.7(257).

g. Students taking postsecondary enrollment options (PSEO) courses.

h. 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 ICN video services to other districts pursuant to subrule 97.6(1).

i. 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 ICN video services to other districts pursuant to subrule 97.6(1).

j. Students enrolled in an at-risk program or alternative school program when being served by such program.

k. Students enrolled in summer school courses.

97.2(8) *Whole-grade sharing.* If all or a substantial portion of the students in any grade are shared with another one or more school districts for all or a substantial portion of a school day, then no

students in that grade level are eligible for supplementary weighting except as authorized by rule 281—97.5(257). No students in the grade levels who meet the criterion in this subrule are eligible for supplementary weighting even in the absence of an agreement executed pursuant to Iowa Code sections 282.10 through 282.12. A district that discontinues grades pursuant to Iowa Code section 282.7 is deemed to be whole-grade sharing the resident students in those discontinued grades for purposes of these rules.

a. In a one-way whole-grade sharing arrangement, the receiving district may count its resident students in the grade levels that are whole-grade shared if the resident students are shared pursuant to subrule 97.2(2), 97.2(3), or 97.2(5).

b. In a one-way whole-grade sharing arrangement, the receiving district may not count its resident students in the grade levels that are whole-grade shared pursuant to subrule 97.2(3) if the teacher is employed by the same district that is sending students under the whole-grade sharing arrangement.

97.2(9) *Due date.* Supplementary weighting shall be included with the certified enrollment which is due 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.

[**ARC 8188B**, IAB 10/7/09, effective 11/11/09; **ARC 9266B**, IAB 12/15/10, effective 1/19/11; **ARC 0520C**, IAB 12/12/12, effective 1/16/13]

281—97.3(257) Supplementary weighting plan for at-risk students.

97.3(1) *Uses of funds.* Funding generated by the supplementary weighting plan for at-risk students shall be used to develop or maintain at-risk programs, which may include alternative school programs.

97.3(2) *Calculation of funding.* Funding for the supplementary weighting plan for at-risk students is calculated as follows:

a. Adding a weighting for each resident student of one hundred fifty-six one-hundred-thousandths, and

b. Adding a weighting of forty-eight ten-thousandths for each resident student enrolled in grades one through six, as reported by the school district on the basic educational data survey for the base year, who is eligible for free and reduced price meals under the federal National School Lunch Act and the federal Child Nutrition Act of 1966, 42 U.S.C. Sections 1751-1785.

97.3(3) *Guarantee.* Rescinded IAB 8/21/02, effective 9/25/02.

97.3(4) *Recalculation of funding.* Rescinded IAB 8/21/02, effective 9/25/02.

97.3(5) *School-based youth services.* Rescinded IAB 8/21/02, effective 9/25/02.

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

97.4(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 all of the following criteria are met:

a. Two or more Iowa school districts, other than a whole-grade sharing partner district, send students to advanced-level courses that are included in the curriculum of the regional academy, and these students are eligible for supplementary weighting under subrule 97.2(1), paragraph *"a"* or *"c."* In addition, for the host district to qualify for the minimum weighting pursuant to subrule 97.4(4), one or more Iowa school districts, other than a whole-grade sharing partner district, must send students to career-technical classes that are included in the curriculum of the regional academy.

b. The regional academy is located in the district.

c. The grade levels include one or more grades seven through twelve.

d. The curriculum is an organized course of study, adopted by the board, that includes a minimum of two advanced-level courses that are not part of a career-technical program. An advanced-level course is a course that is above the level of the course units required as minimum curriculum in 281—Chapter 12 in the host district.

e. The resident students are not eligible for supplementary weighting under another supplementary weighting plan.

f. No resident or nonresident students are attending the regional academy under a whole-grade sharing arrangement as defined in subrule 97.2(7).

g. Two or more sending districts that are whole-grade sharing partner districts shall be treated as one sending district for purposes of subrule 97.4(1), paragraph *"a."*

h. The school districts participating in a regional academy shall enter into an agreement on how the funding generated by the supplementary weighting received shall be used and shall submit the agreement, as well as a copy of the minutes of meetings of the local school district boards of directors in which the boards approved the agreement, to the department for approval by October 1 of the year in which the districts intend to request supplementary weighting for the regional academy.

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 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."*

97.4(3) *Maximum weighting.* The maximum amount of additional weighting for which a school district establishing a regional academy shall be eligible is an amount corresponding to 30 full-time-equivalent pupils.

97.4(4) *Minimum weighting.* The minimum amount of additional weighting for which a school district establishing a regional academy shall be eligible is an amount corresponding to 15 full-time-equivalent pupils if the academy provides both advanced-level courses and career-technical courses.

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 career-technical courses, Internet-based courses and ICN courses.

97.4(6) *Career academy.* A career academy is not a regional academy for purposes of these rules.

[**ARC 8188B**, IAB 10/7/09, effective 11/11/09; **ARC 0014C**, IAB 2/22/12, effective 3/28/12 (See Delay note at end of chapter)]

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, 2019, is eligible to assign a weighting of one-tenth of the fraction of the school year during which resident pupils attend classes pursuant to subrule 97.2(1), paragraph *"a," "b,"* or *"c."* A school district participating in a whole-grade sharing arrangement shall be eligible for supplementary weighting under this subrule for a maximum of three years. Receipt of 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, 2019.

97.5(2) *Contiguous districts.* School districts that adopt a board resolution jointly with all other affected boards to study reorganization must be contiguous school districts. If two or more of the affected districts are not contiguous to each other, all districts separating those districts must be a party to the whole-grade sharing arrangement and the board resolution adopted jointly to study reorganization.

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 October 1 for this purpose shall not be later than the school year that begins July 1, 2018.

97.5(4) *Change in sharing districts.* 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) may enter into a whole-grade sharing arrangement with one or more different districts for its second or third year of eligible weighting by adopting and filing a new joint board resolution pursuant to this subrule. Establishing a new whole-grade sharing arrangement does not extend the maximum number of years for which a school district is eligible.

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 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 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 October 1 on which date the district intends to request supplementary weighting for whole-grade sharing.

a. The progress report shall include, but not be limited to, the following information:

(1) Names of districts with which the district is studying reorganization.

(2) Descriptive information on the whole-grade sharing arrangement.

(3) If the district is studying dissolution, information on whether public hearings have been held, a proposal has been adopted, and an election date has been set.

(4) If the district is studying reorganization, information on whether public hearings have been held, a plan has been approved by the AEA, and an election date has been set.

(5) Description of joint activities of the boards such as planning retreats and community meetings.

(6) Information showing an increase in sharing activities with the whole-grade sharing partners such as curriculum offerings, program administration, personnel, and facilities.

b. The report must indicate progress toward a reorganization or dissolution to occur on or before July 1, 2019. 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.

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.

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.

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.

[**ARC 8188B**, IAB 10/7/09, effective 11/11/09; **ARC 1486C**, IAB 6/11/14, effective 5/15/14; **ARC 1596C**, IAB 9/3/14, effective 10/8/14]

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.* Supplementary weighting is available 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 a written contract.

b. The district shares an 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 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 an 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, facility operation or maintenance management, curriculum director or school counselor. "Operational function sharing" does not mean sharing of clerical personnel or school principals. 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. 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. Managing business operations would include personnel performing the duties of a business manager or school business official, or personnel performing the duties listed in the Iowa Code for a board secretary including, but not limited to, board secretary duties listed in Iowa Code 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 Iowa Code chapter 291.

(2) Services of clerical personnel, school administration managers, 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.

(2) Services of clerical personnel, superintendents, principals, curriculum directors, 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. Shared personnel must perform services related to transportation.

(2) Services of school business officials, business managers, school administration managers, clerical or paraprofessional personnel, school bus mechanics, and school bus drivers shall not be considered shared student transportation management under this subrule.

(3) Shared transportation 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.

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.

(2) Services of school business officials, business managers, school administration managers, clerical personnel or custodians shall not be considered shared facility operations and maintenance management for supplementary weighting under this subrule.

(3) Shared facility operations and maintenance 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.

f. Curriculum director.

(1) Shared personnel must perform the services of a curriculum director. An individual performing the function of a curriculum director must be properly licensed for that position.

(2) Technology directors and clerical, paraprofessional, or other support services personnel in the improvement of instruction function area shall not be considered a shared curriculum director under this subrule.

(3) Shared curriculum director 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.

g. School counselor.

(1) Shared personnel must perform the services of a school counselor. An individual performing the function of a school counselor must be properly licensed for that position.

(2) Deans of students, social workers, or clerical, paraprofessional, or other support services personnel in the guidance services function area shall not be considered a shared school counselor under this subrule.

(3) Shared school counselor 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.

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, 2013.

a. Receipt of supplementary weighting shall be conditioned upon the submission of information provided in the format prescribed by the department of education as part of the BEDS fall data collection.

b. The documentation on the BEDS fall data collection shall be filed no later than the published deadline for that data collection.

97.7(4) *Contiguous districts.* School districts that share operational functions with other school districts are not required to be contiguous school districts. If the districts are not contiguous, the district(s) separating those districts is not required to be a party to the operational 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, 2018, 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) *Multiple shared individuals in an operational function.* A school district that implements more than one sharing arrangement within any discrete operational function area shall not be eligible for supplementary weighting if more than one shared individual is licensed and qualified for the same position. If the school district had utilized its own employees, the sharing arrangement or arrangements would not have been necessary.

97.7(10) *Weighting.* A school district that shares an operational function in the area of superintendent management shall be assigned a supplementary weighting of eight pupils for the function. A school district that shares an operational function in the area of business management, human resources management, transportation management, or operation and maintenance management shall be assigned a supplementary weighting of five pupils for the function. A school district that shares the operational functions of a curriculum director or a school counselor shall be assigned a supplementary weighting of three pupils for the function. 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. The department shall reserve the authority to determine if an operational sharing arrangement constitutes a discrete arrangement or qualifying operational sharing arrangement if the circumstances have not been clearly described in the Iowa Code or the Iowa Administrative Code.

97.7(11) *Sharing arrangement duties.* A school district may receive the additional weighting for the sharing of services of an individual with a political subdivision even if the type of operational function performed by the individual for the school district and the type of operational function performed by the individual for the political subdivision are not the same operational function, so long as both operational functions are eligible for weighting. In such case, the school district shall be assigned the additional weighting for the type of operational function that the individual performs for the school district, and the school district shall not receive additional weighting for any other function performed by the individual.

97.7(12) *Maximum weighting.* The maximum amount of additional weighting for which a school district participating in operational function sharing shall be eligible in a budget year is an amount corresponding to 21 full-time equivalent pupils. The maximum additional weighting applies to the total of all operational function sharing rather than to each discrete operational function. Each eligible discrete operational function sharing arrangement shall be included in the total of all operational function sharing. If the district's total of all discrete operational function sharing exceeds 21 full-time equivalent pupils, the department shall make a reduction in the total rather than separately adjusting the discrete operational function sharing that made up the total.

97.7(13) *Uses of funding.* Additional funds provided through supplementary weighting for operational function sharing shall be used to increase student opportunities.

97.7(14) *Area education agency maximum funding.* The provisions of rule 281—97.7(257) also apply to an area education agency except for pupil counts for operational function sharing and maximum weightings.

a. An area education agency shall be eligible for a minimum amount of additional funding of $30,000 in a budget year for the total of all operational function sharing arrangements.

b. An area education agency shall be eligible for a maximum amount of additional funding of $200,000 in a budget year for the total of all operational function sharing arrangements.

c. 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.

[**ARC 8188B**, IAB 10/7/09, effective 11/11/09; **ARC 1119C**, IAB 10/16/13, effective 11/20/13; see Delay note at end of chapter; **ARC 1486C**, IAB 6/11/14, effective 5/15/14; **ARC 1596C**, IAB 9/3/14, effective 10/8/14]

These rules are intended to implement Iowa Code sections 257.6, 257.11 as amended by 2014 Iowa Acts, Senate File 2056 and House File 2271, and 257.12 and Iowa Code chapter 261E.

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[1] March 28, 2012, effective date of 97.1, "regional academy," and 97.4(1)*"c,""h"* delayed 30 days by the Administrative Rules Review Committee at its meeting held March 12, 2012.

[2] November 20, 2013, effective date of ARC 1119C [97.7] delayed until the adjournment of the 2014 General Assembly by the Administrative Rules Review Committee at its meeting held November 8, 2013.

CHAPTER 98
FINANCIAL MANAGEMENT OF CATEGORICAL FUNDING

DIVISION I
GENERAL PROVISIONS

281—98.1(256,257) Definitions. For the purposes of this chapter, the following definitions apply:

"Budgetary allocation" means the portion of the funding that is specifically earmarked for a particular purpose or designated program and which, in the case of the general fund, has been rolled into, or added to, the school district cost per pupil or school district regular program cost. Budgetary allocations may include both state aid and property tax. Budgetary allocations increase budget authority on the first day of the fiscal year for which the allocation has been certified or on the date that the school budget review committee approves modified allowable growth for a specific purpose or program; the budget authority remains even if the full amount of revenue is not received or if the local board does not levy a cash reserve. There is no assumption that a school district or area education agency will receive the same amount of revenue as it has received in budget authority due to delinquent property taxes, cuts in state aid, or legislative decisions to fund other instructional programs off the top of state aid. The school district or area education agency must expend the full amount of budget authority for the specific purposes for which it was earmarked. When the school district or state cost per pupil is transferred from one school district to another school district in the form of tuition as required by the Iowa Code, any budgetary allocation that is included in the school district or state cost per pupil shall be considered transferred to the receiving school district and shall be expended for the specific purpose for which it was earmarked.

"Categorical funding" means financial support from state and federal governments that is targeted for particular categories of students, special programs, or special purposes. This support is in addition to school district or area education agency general purpose revenue, is beyond the basic educational program, and most often has restrictions on its use. Where categorical funding requires a local match, that local match also is considered to be categorical funding. Categorical funding includes both grants in aid and budgetary allocations. Although grants in aid and budgetary allocations are both categorical funding, they are defined separately to distinguish unique characteristics of each type of categorical funding.

"Community education" means a life-long education process concerning itself with every facet that affects the well-being of all citizens within a given community. It extends the role of the school from one of teaching children through an elementary and secondary program to one of providing for citizen participation in identifying the wants, needs, and concerns of the neighborhood community and coordinating all educational, recreational, and cultural opportunities within the community with community education being the catalyst for providing for citizen participation in the development and implementation of programs toward the goal of improving the entire community.

Community education energizes people to strive for the achievement of determined goals and stimulates capable persons to assume leadership responsibilities. It welcomes and works with all groups, it draws no lines. It is the one institution in the entire community that has the opportunity to reach all people and groups and to gain their cooperation.

"Grants in aid" means financial support, usually from state or federal appropriations, that is either allocated to the school district or area education agency or for which a school district or area education agency applies. This support is paid separately from state foundation aid. In the general fund, grants in aid become miscellaneous income and increase budget authority when the support is received as revenue.

"Supplement, not supplant" means that the categorical funding shall be in addition to general purpose revenues; that categorical funding shall not be used to provide services required by federal or state law, administrative rule, or local policy; and that general purpose revenues shall not be diverted for other purposes because of the availability of categorical funding. Supplanting is presumed to have occurred if the school district or area education agency uses categorical funding to provide services that it was required to make available under other categorical funding or law, or uses categorical funding to provide

services that it provided in prior years from general purpose revenues, or uses categorical funding to provide services to a particular group of children or programs for which it uses general purpose revenues to provide the same or similar services to other groups of children or programs. These presumptions are rebuttable if the school district or area education agency can demonstrate that it would not have provided the services in question with general purpose revenues if the categorical funding had not been available.
[**ARC 8054B**, IAB 8/26/09, effective 9/30/09; **ARC 9267B**, IAB 12/15/10, effective 1/19/11]

281—98.2(256,257) General finance. The categorical funding provided for various purposes to school districts and area education agencies includes general financial characteristics that are detailed in the following subrules.

98.2(1) *Indirect cost recovery.* Categorical funding provided by the state to school districts or area education agencies is not eligible for indirect cost recovery unless the Iowa Code section authorizing the funding or allocation expressly states that indirect cost recovery is permitted from that source. If the Iowa Code permits indirect cost recovery, the school district or area education agency shall utilize its restricted indirect cost rate developed by the department for federal programs from data submitted by the school district or area education agency on its certified annual report.

98.2(2) *Restriction on supplanting.* Categorical funding shall supplement, but shall not supplant, expenditures in the appropriate fund into which the categorical funding is deposited and accounted for, unless the Iowa Code section authorizing the funding or allocation expressly states that supplanting is permitted from that source.

98.2(3) *Mandatory carryforward.* Any portion of categorical funding provided by the state that is not expended by the end of the fiscal year in which it was received by or for which it was allocated to the school district or area education agency shall be carried forward as a reserved fund balance and added to the subsequent year's budget for that purpose. The funding can only be expended for the purposes permitted for that categorical funding. Where a local match is required for categorical funding, the amount unexpended at the end of the fiscal year that is carried forward shall not be used as part of the required local match.

98.2(4) *Discontinued funding.* In the event that a categorical funding source is discontinued and an unexpended balance remains, the school district or area education agency shall carry forward the unexpended balance and expend the remaining balance within the subsequent 24 months for the purposes which were allowed in the final year that the funding was allocated or granted prior to discontinuation unless a rule in this chapter provides for a longer period. This subrule does not apply to market factor incentive pay funding, which may be carried forward until expended, but any expenditures from the market factor incentive pay funding must be appropriate under Iowa Code section 284.11 (2007 and 2007 Supplement).

98.2(5) *Expenditures.* Expenditures from categorical funding shall be limited to direct costs of providing the program or service for which the funding was intended. Expenditures shall not include costs that are allocated costs or that are considered indirect costs or overhead. Expenditures for the functions of administration, business and central services, operation and maintenance of plant, transportation, enterprise and community service operations, facility acquisition and construction, or debt service generally are not allowed from categorical funding unless expressly allowed by the Iowa Code or if the expenditure represents a direct, allowable cost. In order for costs of administration, business and central services, operation and maintenance of plant, transportation, or enterprise and community service operations to be considered direct costs, the costs must be necessary because of something that is unique to the program that is causing the need for the service, not otherwise needed or not otherwise provided to similar programs; the costs must be in addition to those which are normally incurred; and the costs must be measurable directly without allocating. Where a local match is required for categorical funding, that local match requirement shall not be met by the use of other categorical funding except where expressly allowed by the Iowa Code. Expenditures shall not include reimbursing the school district or area education agency for expenditures it paid in a previous year in excess of the funding available for that year.

98.2(6) *Restriction on duplication.* The school district or area education agency shall not charge the same cost to more than one funding source.

98.2(7) *Excess expenditures.* The school district or area education agency shall not charge to categorical funding more expenditures than the total of the current year's funding or allocation plus any carryforward balance from the previous year.

98.2(8) *Commingling prohibited.* Categorical funding shall not be commingled with other funding. All categorical funding shall be accounted for separately from other funding. School districts and area education agencies shall use a project code and program code as defined by Uniform Financial Accounting for Iowa School Districts and Area Education Agencies, as appropriate or required.
[**ARC 8054B**, IAB 8/26/09, effective 9/30/09; **ARC 9267B**, IAB 12/15/10, effective 1/19/11]

281—98.3 to **98.10** Reserved.

DIVISION II
APPROPRIATE USE OF BUDGETARY ALLOCATIONS

281—98.11(257) Categorical and noncategorical student counts. The certified enrollment data collection includes both student counts related to budgetary allocations for the subsequent budget year that are provided for the purpose of offering a program that is in addition to the basic educational program for a specific category of students and student counts that are general in nature and can be used for any legal general fund purpose. Student counts that are general in nature are used to generate funding through the school aid foundation formula and are not intended to fund a specific program or a specific category of students. General student counts include the basic enrollment of full-time resident students.

Counts for part-time nonpublic students participating in public school classes pursuant to Iowa Code section 257.6(3) and counts for part-time dual enrolled competent private instruction students in grades 9 through 12 are the full-time equivalent enrollment of a regularly enrolled student. Counts for dual enrolled competent private instruction students in grades lower than grade 9 are the legislatively set equivalent of a regularly enrolled full-time student. Counts for part-time nonpublic students and for part-time dual enrolled competent private instruction students in grades 9 through 12 who participate in the postsecondary enrollment option Act classes are the full-time equivalent of a regularly enrolled student based on cost. Because these counts are the full-time equivalent of a regularly enrolled student, and are not in addition to the full-time equivalent, the funding generated within the school aid foundation formula based on these counts is considered general in nature.

Student counts related to categorical budgetary allocations are those that generate funding intended to be used for only that specific category of students being counted or for the specific program for which the additional counts are authorized in the Iowa Code.
[**ARC 8054B**, IAB 8/26/09, effective 9/30/09]

281—98.12(257,299A) Home school assistance program. The home school assistance program (HSAP) is a program for a specific category of students and is provided outside the basic educational program provided to regularly enrolled students by the school district. If a district offers a home school assistance program, the state foundation aid that the district receives pursuant to Iowa Code section 257.6(1)*"a"*(5) shall be expended for purposes of providing the home school assistance program.

98.12(1) *Appropriate uses of categorical funding.* Appropriate uses of the home school assistance program funding include, but are not limited to, the following:

a. Instruction for students and assistance for parents with instruction.

b. Services to support students enrolled in a home school assistance program, to support the parents of the students, and to support home school assistance program staff.

c. Salary and benefits for the supervising teacher of the home school assistance program. If the teacher is a part-time home school assistance program teacher and a part-time regular classroom teacher, then the portion of time that is related to providing the home school assistance program can be charged to the program, but the regular classroom portion cannot.

d. Salary and benefits for clerical and office staff of the home school assistance program. If the staff member's employment supports other programs of the school district, only that portion of the staff member's salary and benefits that is related to providing the home school assistance program can be charged to the program.

e. Staff development for the home school assistance program teacher.

f. Travel for the home school assistance program teacher.

g. Resources, materials, computer software, supplies, and purchased services (1) that are necessary to provide the services of home school assistance and (2) that will remain with the school district for its home school assistance program.

h. A copier and computer hardware that support the home school assistance program.

98.12(2) *Inappropriate uses of categorical funding.* Inappropriate uses of the home school assistance program funding include, but are not limited to, indirect costs or use charges; operational or maintenance costs other than those necessary to operate and maintain the program; capital expenditures other than equipment or facility acquisition, including the lease or rental of space to supplement existing schoolhouse facilities; student transportation except in cases of home school assistance program-approved field trips or other educational activities; administrative costs other than the costs necessary to administer the program; concurrent and dual enrollment costs, including postsecondary enrollment options program costs; or any other expenditures not directly related to providing the home school assistance program. A home school assistance program shall not provide moneys to parents or students utilizing the program.

[**ARC 8054B**, IAB 8/26/09, effective 9/30/09 (See Delay note at end of chapter); **ARC 9267B**, IAB 12/15/10, effective 1/19/11; **ARC 0012C**, IAB 2/22/12, effective 3/28/12 (See Delay note at end of chapter)]

281—98.13(256C,257) Statewide voluntary four-year-old preschool program. The statewide voluntary four-year-old preschool program is a program for a specific category of students. Funding for the program is for the purpose of providing a high-quality early learning environment for four-year-old children whose families choose to access such programs.

98.13(1) *Appropriate uses of categorical funding.* Because the program is specifically instructional, expenditures generally are limited to the functions of instruction, student support services and staff support services, but include expenditures for actual documented costs of program administration up to 5 percent of the allocation.

98.13(2) *Pass-through funding to community-based providers.* The school district shall pass through to a community-based provider for each eligible pupil enrolled in the district's approved local program not less than 95 percent of the per pupil amount.

a. The community-based provider may use up to 5 percent of the 95 percent portion for documented allowable administrative and operational costs of providing the district's approved local program.

b. Any portion of the 95 percent not documented as expended for direct instruction or administrative and operational costs as allowed by this rule shall be refunded to the district annually on or before July 1.

c. Any portion refunded to the district shall be added to the total amount available for the district's approved local program for the subsequent school year.

98.13(3) *Inappropriate uses of categorical funding.* Inappropriate uses of the statewide voluntary four-year-old preschool program funding include, but are not limited to, indirect costs or use charges, capital expenditures other than equipment, facility acquisition, debt service, operational or maintenance costs or administrative costs that supplant or that exceed 5 percent, or any other expenditures not directly related to providing the statewide voluntary four-year-old preschool program or that supplant existing public funding for preschool programming.

[**ARC 8054B**, IAB 8/26/09, effective 9/30/09; **ARC 0518C**, IAB 12/12/12, effective 1/16/13]

281—98.14(257) Supplementary weighting. Supplementary weighting provides funding in addition to the student count that generates general purpose revenues and is for the purpose of incenting sharing of students and staff between school districts and providing postsecondary opportunities for qualified

students. It is assumed that supplementary weighting covers only a portion of the costs of sharing or providing postsecondary opportunities and shall be fully expended within the fiscal year. Therefore, school districts are not required to account for the supplementary weighting funding separate from the general purpose revenues.
[**ARC 8054B**, IAB 8/26/09, effective 9/30/09]

281—98.15(257) Operational function sharing supplementary weighting. Operational function sharing supplementary weighting provides funding in addition to the student count that generates general purpose revenues and is for the purpose of incenting sharing of management-level staff. It is assumed that operational function sharing supplementary weighting covers only a portion of the costs of sharing management-level staff and shall be fully expended within the five-year period of sharing. Therefore, school districts are not required to account for the operational function sharing supplementary weighting funding separate from the general purpose revenues.
[**ARC 8054B**, IAB 8/26/09, effective 9/30/09]

281—98.16(257,280) Limited English proficiency (LEP) weighting. Limited English proficiency weighting provides funding in addition to the student count that generates general purpose revenues and is for the purpose of providing funding for the excess costs of instruction of limited English proficiency students above the costs of instruction of pupils in a regular curriculum. In addition, the school budget review committee may grant modified allowable growth to continue funding of the excess costs beyond the four years of weighting. Funding for the limited English proficiency weighting and the modified allowable growth for limited English proficiency programs are both categorical funding and may have different restrictions than the federal limited English proficiency funding.

98.16(1) *Appropriate uses of categorical funding.* Appropriate uses of funding for the limited English proficiency program are those that are direct costs of providing instruction which supplement, but do not supplant, the costs of the regular curriculum. These expenditures include, but are not limited to, salaries and benefits of teachers and paraeducators; instructional supplies, textbooks, and technology; classroom interpreters; support services to students served in limited English proficiency programs above the services provided to pupils in regular programs; support services to instructional staff such as targeted professional development, curriculum development or academic student assessment; and support services provided to parents of limited English proficiency students and community services specific to limited English proficiency.

98.16(2) *Inappropriate uses of categorical funding.* Inappropriate uses of funding for the limited English proficiency program include, but are not limited to, indirect costs, operational or maintenance costs, capital expenditures other than equipment, student transportation, administrative costs, or any other expenditures not directly related to providing the limited English proficiency program beyond the scope of the regular classroom.
[**ARC 8054B**, IAB 8/26/09, effective 9/30/09]

281—98.17(256B,257) Special education weighting. Special education weighting provides funding in addition to the student count that generates general purpose revenues for the purpose of providing additional instruction and services to an identified group of students. Further information on the special education program is provided in 281—Chapter 41.
[**ARC 8054B**, IAB 8/26/09, effective 9/30/09]

281—98.18(257) At-risk formula supplementary weighting. At-risk formula supplementary weighting provides funding in addition to the student count that generates general purpose revenues for the purpose of providing additional instruction and services to an identified group of at-risk and alternative school secondary students pursuant to Iowa Code section 257.11(4)*"a."*

98.18(1) *Appropriate uses of categorical funding.* Appropriate uses of at-risk formula supplementary weighting funding include costs to develop or maintain at-risk pupils' programs, which may include alternative school programs, and include, but are not limited to:

a. Salary and benefits for the teacher(s) and guidance counselor(s) of students participating in the at-risk or alternative school programs when the teacher (or counselor) is dedicated to working directly and exclusively with identified students beyond the services provided by the school district to students who are not identified as at risk. If the teacher (or counselor) is part-time at-risk and part-time regular classroom teacher (counselor), then the portion of time that is related to the at-risk program may be charged to the program, but the portion of time that is related to the regular classroom shall not.

b. Professional development for all teachers and staff working with at-risk students and programs involving intervention strategies.

c. Research-based resources, materials, software, supplies, and purchased services that meet all of the following criteria:

(1) Meet the needs of K through 12 identified students at risk,

(2) Are beyond those provided by the regular school program,

(3) Are necessary to provide the services listed in the school district's at-risk program plan, and

(4) Will remain with the K through 12 at-risk program.

98.18(2) *Inappropriate uses of categorical funding.* Inappropriate uses of the at-risk formula supplementary weighting funding include, but are not limited to, indirect costs or use charges, operational or maintenance costs, capital expenditures other than equipment, student transportation, administrative costs other than those related to a separate school located off site and where the administrator is assigned exclusively to this program, or any other expenditures not directly related to providing the at-risk or alternative school program beyond the scope of the regular classroom program.
[**ARC 8054B**, IAB 8/26/09, effective 9/30/09; **ARC 9267B**, IAB 12/15/10, effective 1/19/11]

281—98.19(257) Reorganization incentive weighting. Reorganization incentive weighting provides funding in addition to the student count that generates general purpose revenues and is for the purpose of incenting reorganization of school districts to increase student learning opportunities. It is assumed that reorganization incentive weighting covers only a portion of the costs of reorganizing and shall be fully expended within the fiscal year. Therefore, school districts are not required to account for the reorganization incentive weighting funding separate from the general purpose revenues.
[**ARC 8054B**, IAB 8/26/09, effective 9/30/09]

281—98.20(257) Gifted and talented program. Gifted and talented program funding is included in the school district cost per pupil calculated for each school district under the school foundation formula. The per-pupil amount increases each year by the allowable growth percentage. This amount must account for not more than 75 percent of the school district's total gifted and talented program budget. The school district must also provide a local match from the school district's regular program district cost and the local match portion must be a minimum of 25 percent of the total gifted and talented program budget. In addition, school districts may receive donations and grants, and the school district may contribute more local school district resources toward the gifted and talented program. The 75 percent portion, the local match, and all donations and grants shall be accounted for as categorical funding.

The purpose of the gifted and talented funding described in Iowa Code section 257.46 is to provide for identified gifted students' needs beyond those provided by the regular school program pursuant to each gifted student's individualized plan. The funding shall be used only for expenditures that are directly related to providing the gifted and talented program.

98.20(1) *Appropriate uses of categorical funding.* Appropriate uses of the gifted and talented program funding include, but are not limited to:

a. Salary and benefits for the teacher of gifted and talented students. If the teacher is a part-time gifted and talented and a part-time regular classroom teacher, then the portion of time that is related to the gifted and talented program may be charged to the program, but the portion of time that is related to the regular classroom shall not.

b. Staff development for the gifted and talented teacher.

c. Resources, materials, software, supplies, and purchased services that meet all of the following criteria:

(1) Meet the needs of K through 12 identified students,

(2) Are beyond those provided by the regular school program,

(3) Are necessary to provide the services listed on the gifted students' individualized plans, and

(4) Will remain with the K through 12 gifted and talented program.

98.20(2) *Inappropriate uses of categorical funding.* Inappropriate uses of the gifted and talented program funding include, but are not limited to, indirect costs or use charges, operational or maintenance costs, capital expenditures other than equipment, student transportation, administrative costs, or any other expenditures not directly related to providing the gifted and talented program beyond the scope of the regular classroom.

[**ARC 8054B**, IAB 8/26/09, effective 9/30/09]

281—98.21(257) Returning dropout and dropout prevention program. Returning dropout and dropout prevention programs are funded through a school district-initiated request to the school budget review committee for modified allowable growth pursuant to Iowa Code sections 257.38 to 257.41. This amount must account for not more than 75 percent of the school district's total dropout prevention budget. The school district must also provide a local match from the school district's regular program district cost, and the local match portion must be a minimum of 25 percent of the total dropout prevention budget. In addition, school districts may receive donations and grants, and the school district may contribute more local school district resources toward the program. The 75 percent portion, the local match, and all donations and grants shall be accounted for as categorical funding.

98.21(1) *Purpose of categorical funding.* The purpose of the dropout prevention funding is to provide funding to meet the needs of identified students at risk of dropping out of school beyond the instructional program and services provided by the regular school program. The funding shall be used only for expenditures that are directly related to the returning dropout and dropout prevention program.

a. Returning dropouts are resident pupils who have been enrolled in a public or nonpublic school in any of grades 7 through 12 who withdrew from school for a reason other than transfer to another school or school district and who subsequently reenrolled in a public school in the school district.

b. Potential dropouts are resident pupils who are enrolled in a public or nonpublic school who demonstrate poor school adjustment as indicated by two or more of the following:

(1) High rate of absenteeism, truancy, or frequent tardiness.

(2) Limited or no extracurricular participation or lack of identification with school, including but not limited to expressed feelings of not belonging.

(3) Poor grades, including but not limited to failing in one or more school subjects or grade levels.

(4) Low achievement scores in reading or mathematics which reflect achievement at two years or more below grade level.

(5) Children in grades kindergarten through 3 who meet the definition of at-risk children adopted by the department of education.

98.21(2) *Appropriate uses of categorical funding.* Appropriate uses of the returning dropout and dropout prevention program funding include, but are not limited to:

a. Salary and benefits for instructional staff, instructional support staff, and school-based youth services staff who are working with students who are participating in dropout prevention programs, alternative programs, and alternative schools, in a traditional or alternative setting, if the staff person's time is dedicated to working with returning dropouts or students who are deemed, at any time during the school year, to be at risk of dropping out, in order to provide services beyond those which are provided by the school district to students who are not identified as at risk of becoming dropouts. However, if the staff person works part-time with students who are participating in returning dropout and dropout prevention programs, alternative programs, and alternative schools and has another unrelated staff assignment, only the portion of the staff person's time that is related to the returning dropout and dropout prevention program, alternative program, or alternative school may be charged to the program. For purposes of this paragraph, if an alternative setting is necessary to provide for a program which is offered at a location off school grounds and which is intended to serve student needs by improving relationships and connections to school, decreasing truancy and tardiness, providing opportunities for course credit recovery, or helping students identified as at risk of dropping out to accelerate through multiple grade levels of achievement

within a shortened time frame, the tuition costs for a student identified as at risk of dropping out shall be considered an appropriate use of the returning dropout and dropout prevention program funding.

b. Professional development for all teachers and staff working with at-risk students and programs involving dropout prevention strategies.

c. Research-based resources, materials, software, supplies, and purchased services that meet all of the following criteria:

(1) Meet the needs of K through grade 12 students identified as at risk of dropping out and of returning dropouts,

(2) Are beyond those provided by the regular school program,

(3) Are necessary to provide the services listed in the school district's dropout prevention plan, and

(4) Will remain with the K through grade 12 returning dropout and dropout prevention program.

d. Up to 5 percent of the total budgeted amount received pursuant to 2012 Iowa Acts, Senate File 451, section 1(1), may be used for purposes of providing districtwide or buildingwide returning dropout and dropout prevention programming targeted to students who are not deemed at risk of dropping out.

98.21(3) *Inappropriate uses of categorical funding.* Inappropriate uses of the returning dropout and dropout prevention program funding include, but are not limited to, indirect costs or use charges, operational or maintenance costs, capital expenditures other than equipment, student transportation, administrative costs other than those related to a separate school located off site and where the administrator is assigned exclusively to this program, expenses related to the routine duties of a school nurse, general support for a school guidance counselor including any activities performed with qualified students that are also provided to all students, or any other expenditures not directly related to providing the returning dropout and dropout prevention program beyond the scope of the regular classroom.

[**ARC 8054B**, IAB 8/26/09, effective 9/30/09; **ARC 9267B**, IAB 12/15/10, effective 1/19/11; **ARC 0518C**, IAB 12/12/12, effective 1/16/13]

281—98.22(257) Use of the unexpended general fund balance. The unexpended general fund balance is commonly called the secretary's balance and refers to the fund balance remaining in the general fund at the end of the fiscal year.

98.22(1) *Authorization required.* The school budget review committee may authorize a school district to spend a reasonable and specified amount from its unexpended general fund balance for either of the following purposes:

a. Furnishing, equipping, and contributing to the construction of a new building or structure for which the voters of the school district have approved a bond issue as provided by law or the tax levy provided in Iowa Code section 298.2.

b. The costs associated with the demolition of an unused school building, or the conversion of an unused school building for community use, in a school district involved in a dissolution or reorganization under Iowa Code chapter 275, if the costs are incurred within three years of the dissolution or reorganization.

98.22(2) *Appropriate uses of categorical funding.* Appropriate uses of the unexpended general fund balance include a transfer from the general fund to the capital projects fund in the amount approved by the school budget review committee. The moneys in the capital projects fund shall be used exclusively for furnishing, equipping or constructing a new building or for demolishing an unused building.

98.22(3) *Inappropriate uses of categorical funding.* Inappropriate uses of the unexpended general fund balance include, but are not limited to, expenditures for salaries or recurring costs.

98.22(4) *Mandatory reversion of unused funding.* The portion of the unexpended general fund balance which is authorized to be transferred and expended shall increase budget authority. However, any part of the amount not actually spent for the authorized purpose shall revert to its former status as part of the unexpended general fund balance, and budget authority will be reduced by the amount not actually spent.

[**ARC 8054B**, IAB 8/26/09, effective 9/30/09]

281—98.23(256D,257) Iowa early intervention block grant, also known as early intervention supplement. Beginning with the fiscal year 2009-2010, the Iowa early intervention block grant

program is converted from a grants-in-aid categorical funding to a budgetary allocation categorical funding. The program's goals for kindergarten through grade 3 are to provide the resources needed to reduce class sizes in basic skills instruction to the state goal of 17 students for every one teacher; provide direction and resources for early intervention efforts by school districts to achieve a higher level of student success in the basic skills, especially reading skills; and increase communication and accountability regarding student performance.

98.23(1) *Appropriate uses of categorical funding.* Appropriate uses of the Iowa early intervention block grant funding include providing programs, instructional support, and materials at the kindergarten through grade 3 level that include but are not limited to the following:

a. Additional licensed instructional staff;

b. Additional support for students, such as before- and after-school programs, tutoring, and intensive summer programs;

c. The acquisition and administration of diagnostic reading assessments;

d. The implementation of research-based instructional intervention programs for students needing additional support;

e. The implementation of all-day, everyday kindergarten programs; and

f. The provision of intensive training programs to classroom teachers to improve reading instruction and professional development in best practices.

98.23(2) *Inappropriate uses of categorical funding.* Inappropriate uses of the Iowa early intervention block grant program funding include, but are not limited to, indirect costs or use charges, operational or maintenance costs, capital expenditures other than equipment, student transportation, or administrative costs.

[**ARC 8054B**, IAB 8/26/09, effective 9/30/09; **ARC 9267B**, IAB 12/15/10, effective 1/19/11]

281—98.24(257,284) Teacher salary supplement. Beginning with the fiscal year 2009-2010, the educational excellence Phase II program and the educator quality basic salary program were combined and converted from grants-in-aid categorical funding to a budgetary allocation categorical funding. Remaining balances in the educational excellence Phase II program and the educator quality basic salary program shall be expended for the same purposes as the teacher salary supplement. A teacher may be employed in both an administrative and a nonadministrative position by a board of directors of a school district and shall be considered a part-time teacher for the portion of time that the teacher is employed in a nonadministrative position.

98.24(1) *Appropriate use of categorical funding.* Appropriate use of the teacher salary supplement funding is limited to additional salary for teachers, including amounts necessary for the district to comply with statutory teacher salary minimums; the amount required to pay the employers' share of the federal social security and Iowa public employees' retirement system, or a pension and annuity retirement system established under Iowa Code chapter 294; and payments to another school district or districts as negotiated in a whole grade sharing agreement pursuant to Iowa Code section 282.10, subsection 4. Teacher salary supplement funding shall be fully expended in the fiscal year for which it is allocated; however, in the event that a small amount is remaining and it would not be cost-effective to reallocate the remainder to teachers in the fiscal year, the school district or area education agency shall carry forward the remainder and add it to the amount to be allocated to teachers in the subsequent fiscal year.

98.24(2) *Inappropriate uses of categorical funding.* Inappropriate uses of the teacher salary supplement funding include any expenditures other than the appropriate use described in subrule 98.24(1) hereof.

[**ARC 8054B**, IAB 8/26/09, effective 9/30/09; **ARC 9267B**, IAB 12/15/10, effective 1/19/11]

281—98.25(257,284) Educator quality basic salary. Rescinded IAB 12/15/10, effective 1/19/11.

281—98.26(257,284) Educator quality professional development, also known as professional development supplement. Beginning with the fiscal year 2009-2010, the educator quality professional

development program, including core curriculum professional development, is converted from a grants-in-aid categorical funding to a budgetary allocation categorical funding.

98.26(1) *Appropriate uses of categorical funding.* Appropriate uses of the educator quality professional development funding are limited to providing professional development to teachers, including additional salaries for time beyond the normal negotiated agreement; pay for substitute teachers, professional development materials, speakers, and professional development content; costs associated with implementing the individual professional development plans; and payments to a whole grade sharing partner school district as negotiated as part of the new or existing agreement pursuant to Iowa Code subsection 282.10(4). The use of the funds shall be balanced between school district, attendance center, and individual professional development plans, and every reasonable effort to provide equal access to all teachers shall be made.

98.26(2) *Inappropriate uses of categorical funding.* Inappropriate uses of educator quality professional development funding include, but are not limited to, any expenditures that supplant professional development opportunities the school district otherwise makes available.

[**ARC 8054B**, IAB 8/26/09, effective 9/30/09; **ARC 9267B**, IAB 12/15/10, effective 1/19/11]

281—98.27 to **98.39** Reserved.

DIVISION III
APPROPRIATE USE OF GRANTS IN AID

281—98.40(256,257,298A) Grants in aid. The state provides a large amount of categorical funding for various purposes to school districts and area education agencies in the form of grants in aid. Only those grants in aid allocated to a substantial number of the school districts and area education agencies through the department of education are included in these rules.

[**ARC 8054B**, IAB 8/26/09, effective 9/30/09]

281—98.41(257,294A) Educational excellence, Phase I. Rescinded IAB 12/15/10, effective 1/19/11.

281—98.42(257,284) Beginning teacher mentoring and induction program. The purpose of the beginning teacher mentoring and induction program is to promote excellence in teaching, enhance student achievement, build a supportive environment within school districts and area education agencies, increase the retention of promising beginning teachers, and promote the personal and professional well-being of teachers.

98.42(1) *Appropriate uses of categorical funding.* Appropriate uses of the beginning teacher mentoring and induction program funding include costs to provide each mentor of a beginning teacher with the statutory award for participation in the school district's or area education agency's beginning teacher mentoring and induction program; to implement the plan; and to pay any applicable costs of the employer's share of contributions to federal social security and the Iowa public employees' retirement system, or a pension and annuity retirement system established under Iowa Code chapter 294, for such amounts paid by the school district or area education agency.

98.42(2) *Inappropriate uses of categorical funding.* Inappropriate uses of beginning teacher mentoring and induction program funding include any costs not listed in subrule 98.42(1) as appropriate uses.

[**ARC 8054B**, IAB 8/26/09, effective 9/30/09]

281—98.43(257,284A) Beginning administrator mentoring and induction program. The purpose of the beginning administrator mentoring and induction program is to promote excellence in school leadership, improve classroom instruction, enhance student achievement, build a supportive environment within school districts, increase the retention of promising school leaders, and promote the personal and professional well-being of administrators.

98.43(1) *Appropriate uses of categorical funding.* Appropriate uses of the beginning administrator mentoring and induction program funding include costs to provide each mentor with the statutory award for participation in the school district's beginning administrator mentoring and induction program; to

implement the plan; and to pay any applicable costs of the employer's share of contributions to federal social security and the Iowa public employees' retirement system, or a pension and annuity retirement system established under Iowa Code chapter 294, for such amounts paid by the school district.

98.43(2) *Inappropriate uses of categorical funding.* Inappropriate uses of beginning administrator mentoring and induction program funding shall include any costs that are not listed in subrule 98.43(1) as appropriate uses.

[**ARC 8054B**, IAB 8/26/09, effective 9/30/09]

281—98.44(257,301) Nonpublic textbook services. Textbooks adopted and purchased by a school district shall, to the extent funds are appropriated by the general assembly, be made available to pupils attending accredited nonpublic schools upon request of the pupil or the pupil's parent under comparable terms as made available to pupils attending public schools.

98.44(1) *Appropriate uses of categorical funding.* The appropriate use of the nonpublic textbook services funding shall be for the public school district to purchase nonsectarian textbooks for the use of pupils attending accredited nonpublic schools located within the boundaries of the public school district. "Textbook" means books and loose-leaf or bound manuals, systems of reusable instructional materials or combinations of books and supplementary instructional materials which convey information to the student or otherwise contribute to the learning process, or electronic textbooks, including but not limited to computer software, applications using computer-assisted instruction, interactive videodisc, other computer courseware and magnetic media, and laptop computers or other portable personal computing devices which are used for nonreligious instructional use only.

In the event that a participating accredited nonpublic school physically relocates to another school district, textbooks purchased for the nonpublic school with funds appropriated for that purpose in accordance with the Iowa Code shall be transferred to the school district in which the accredited nonpublic school has relocated and may be made available to the accredited nonpublic school by the school district in which the nonpublic school has relocated. Funds distributed to a former school district for purposes of purchasing textbooks and that are unexpended shall also be transferred from the former school district to the school district in which the accredited nonpublic school has relocated.

98.44(2) *Inappropriate uses of categorical funding.* Inappropriate uses of nonpublic textbook services funding include, but are not limited to, reimbursements to accredited nonpublic schools for purchases made by the accredited nonpublic school, sectarian textbooks, computer hardware other than laptop computers or other portable personal computing devices which are used for nonreligious instructional use only, installation of hardware or other purchased services, teacher manuals or any other materials not available to the students attending the accredited nonpublic school, or any other expenditure that does not fit the definition of textbook. Funding provided for one nonpublic school located within the boundaries of the public school district shall not be used for another accredited nonpublic school, even if the accredited nonpublic school is associated with the same parent organization.

[**ARC 8054B**, IAB 8/26/09, effective 9/30/09; **ARC 9267B**, IAB 12/15/10, effective 1/19/11]

281—98.45 to **98.59** Reserved.

DIVISION IV
APPROPRIATE USE OF SPECIAL TAX LEVIES AND FUNDS

281—98.60(24,29C,76,143,256,257,274,275,276,279,280,282,283A,285,291,296,298,298A,300,301,423E,423F,565,670) Levies and funds. Tax levies or funds that are required by law to be expended only for the specific items listed in statute shall be accounted for in a similar way to categorical funding. Each fund is mutually exclusive and completely independent of any other fund. No fund shall be used as a clearing account for another fund, no fund may retire the debt of another fund unless specifically authorized in statute, and transfers between funds shall be accomplished only as authorized in statute.

[**ARC 8054B**, IAB 8/26/09, effective 9/30/09; **ARC 9267B**, IAB 12/15/10, effective 1/19/11]

281—98.61(24,143,257,275,279,280,285,297,298,298A,301,473,670) General fund. All moneys received by a school corporation from taxes and other sources shall be accounted for in the general fund, except moneys required by law to be accounted for in another fund. If another fund specifically lists an expenditure to that other fund, it is assumed not to be appropriate to the general fund unless statute expressly states that it is an appropriate general fund expenditure. Each school district and each area education agency shall have only one general fund.

98.61(1) *Sources of revenue in the general fund.* Sources of revenue in the general fund include all moneys not required by law to be accounted for in another fund and interest on the investment of those moneys. Proceeds from the sale or disposition of property other than real property, proceeds from the lease of real or other property, compensation or rent received for the use of school property, sales of school supplies, and sales or rentals of textbooks shall be accounted for in the general fund. Proceeds for loans for equipment pursuant to Iowa Code section 279.48, federal loans for asbestos projects pursuant to Iowa Code section 279.52, or loans for energy conservation projects pursuant to Iowa Code section 473.20 may be accounted for in the general fund. Any revenue or receipt described in law as "miscellaneous income" or related to modified allowable growth is restricted to the general fund.

98.61(2) *Appropriate uses of the general fund.* Appropriate expenditures in the general fund include, but are not limited to, the following:

a. Providing day-to-day operations to the district or area education agency, such as salaries, employee benefits, purchased services, supplies, and expenditures for instructional equipment.

b. Purchasing school buses from unobligated funds on hand.

c. Establishing and maintaining dental clinics for children and offering courses of instruction on oral hygiene.

d. Employing public health nurses.

e. Funding insurance agreements if the district has not certified a district management levy.

f. Purchasing books and other supplies to be loaned, rented, or sold at cost to students.

g. Purchasing safety eye-protective devices and safety ear-protective devices.

h. Purchasing bonds and premiums for bonds for employees who have custody of funds belonging to the school district or area education agency or funds derived from extracurricular activities and other sources in the conduct of their duties.

i. Paying assessed costs related to changes in boundaries, reorganization, or dissolution.

j. Publishing the notices and estimates and the actual and necessary expenses of preparing the budget.

k. Engraving and printing school bonds, in the case of a school district.

l. Transferring interest and principal to the debt service fund when due for loans to purchase equipment authorized under Iowa Code section 279.48 and loans to be used for energy conservation measures under Iowa Code section 473.20, in the case of a school district, where the original proceeds were accounted for in the general fund.

m. Transferring interest and principal to the debt service fund when due for lease purchase agreements related to capital projects authorized under Iowa Code subsection 273.3(7), in the case of an area education agency.

n. Funding asbestos projects including the costs of inspection and reinspection, sampling, analysis, assessment, response actions, operations and maintenance, training, periodic surveillance, and developing of management plans and record-keeping requirements relating to the presence of asbestos in school buildings and its removal or encapsulation.

o. Funding energy conservation projects entered into with the department of natural resources or its duly authorized agents or representatives pursuant to Iowa Code section 473.20, in the case of a school district.

p. Transferring to a capital projects fund as authorized by the school budget review committee, in the case of a school district.

q. Transferring to a capital projects fund as funds are due to be expended on a capital project authorized under Iowa Code subsection 273.3(7), in the case of an area education agency.

r. Paying any other costs not required to be accounted for in another fund.

98.61(3) *Inappropriate uses of the general fund.* Inappropriate expenditures in the general fund include the following:

a. Purchasing land or improvements other than land for student construction projects.

b. Purchasing or constructing buildings or for capital improvements to real property except under special circumstances authorized by the school budget review committee, in the case of a school district, or except as authorized under Iowa Code subsection 273.3(7), in the case of an area education agency.

c. Modifying or remodeling school buildings or classrooms even if to make them accessible.

d. Paying interest and principal on long-term indebtedness for which the original proceeds were not accounted for in the general fund.

e. Funding lease-purchases.

f. Purchasing portable buildings.

g. Paying individuals or private organizations that are not audited and allowed and related to goods received or services rendered.

h. Paying other costs that are not operating or current expenditures for public education and are not expressly authorized in the Iowa Code.

98.61(4) *Special levies.* The general fund includes two special levy programs available to school districts, but not to area education agencies, that are restricted by the Iowa Code.

a. Instructional support program. The instructional support program is a district-initiated program to provide additional funding to the district's general fund.

(1) Appropriate uses of instructional support program funding. Moneys received by a district for the instructional support program may be used for any general fund purpose except those listed as inappropriate uses in paragraph *"b,"* subparagraph (2).

(2) Inappropriate uses of instructional support program funding. Moneys received by a district for the instructional support program shall not be used as, or in a manner which has the effect of, supplanting funds authorized to be received under Iowa Code sections 257.41 (returning dropouts and dropout prevention programs), 257.46 (gifted and talented programs), 298.4 (management fund levy), and 298.2 (physical plant and equipment fund levy), or to cover any deficiencies in funding for special education instructional services resulting from the application of the special education weighting plan under Iowa Code section 256B.9.

b. Educational improvement program. The educational improvement program is a district-initiated program available to districts in special circumstances to provide additional funding to the district's general fund if the district already has the instructional support program in place.

(1) Appropriate uses of educational improvement program funding. Moneys received by a district for the educational improvement program may be used for any general fund purpose.

(2) Inappropriate uses of educational improvement program funding. Inappropriate uses of educational improvement program funding include any expenditure not appropriate to the general fund.

[**ARC 8054B**, IAB 8/26/09, effective 9/30/09]

281—98.62(279,296,298,670) Management fund. The purpose of this fund is to pay the costs of unemployment benefits; early retirement benefits; insurance agreements; liability insurance to protect the school districts from tort liability, loss of property, and environmental hazards; and judgments or settlements relating to such liability. The authority to establish a management fund is available to school districts but not to area education agencies.

98.62(1) *Sources of revenue in the management fund.* Sources of revenue in the management fund include a property tax and interest on the investment of those moneys.

98.62(2) *Appropriate uses of the management fund.* Appropriate expenditures in the management fund include the following:

a. Costs of unemployment benefits as provided in Iowa Code section 96.31.

b. Costs of liability insurance to protect the school districts from tort liability, loss of property, and environmental hazards.

c. Costs of a final court judgment entered against the district or a settlement made for a tort liability claim including interest accruing on the judgment or settlement to the expected date of payment.

d. Costs, including prepaid costs, of insurance agreements to protect the school districts from tort liability, loss of property, environmental hazards, or other risk associated with operations, but not including employee benefit plans.

e. Costs of early retirement benefits to employees under Iowa Code section 279.46 to pay a monetary bonus, continuation of health or medical insurance coverage, or other incentives for encouraging employees to retire before the normal retirement date for employees within the age range of 55 to 65 who notify the board of directors prior to April 1 of the fiscal year that they intend to retire not later than the start of the next following school calendar.

f. Costs of a physical inventory conducted solely for the purpose of insurance.

g. Transfers to the debt service fund for payment of principal and interest when due on general obligation bonds issued under Iowa Code section 296.7 to protect the school district from tort liability, loss of property, environmental hazards, or other risk associated with operations.

h. Transfers to the appropriate fund for the portion of an insurance claim which was eligible under the insurance agreement but was denied because it was within the deductible limit.

98.62(3) *Inappropriate uses of the management fund.* Inappropriate expenditures in the management fund include the following:

a. Costs for employee health benefit plans.

b. Costs to conduct physical inventories of property for purposes other than insurance.

c. Costs to conduct actuarial studies.

d. Costs for supplies or capital outlay.

e. Transfer to a trust fund for other postemployment benefit (OPEB) cost or estimated cost calculated pursuant to Governmental Accounting Standards Board (GASB) Statement 45.

f. Any other costs not expressly authorized in the Iowa Code.

[**ARC 8054B**, IAB 8/26/09, effective 9/30/09]

281—98.63(298) Library levy fund. The board of directors of a school district in which there is no free public library may contract with any free public library for the free use of such library by the residents of the school district and pay the library the amount agreed upon for the use of the library as provided by law. During the existence of the contract, the board shall certify annually a tax sufficient to pay the library the agreed-upon consideration.

98.63(1) *Sources of revenue in the library levy fund.* Sources of revenue in the library levy fund include a property tax not to exceed $0.20 per $1000 of assessed value of the taxable property of the district and interest on the investment of those moneys.

98.63(2) *Appropriate uses of the library levy fund.* Appropriate expenditures in the library levy fund include expenditures necessary to provide a free public library.

98.63(3) *Inappropriate uses of the library levy fund.* Inappropriate expenditures in the library levy fund include the following:

a. Capital expenditures related to land or buildings.

b. Debt service.

c. Any other costs not necessary to provide a free public library.

[**ARC 8054B**, IAB 8/26/09, effective 9/30/09]

281—98.64(279,283,297,298) Physical plant and equipment levy (PPEL) fund. The physical plant and equipment levy (PPEL) consists of the regular PPEL not to exceed $0.33 per $1000 of assessed valuation and a voter-approved PPEL not to exceed $1.34 per $1000 of assessed valuation, for a total of $1.67. The authority to establish a PPEL fund is available to school districts but not to area education agencies.

98.64(1) *Sources of revenue in the PPEL fund.* Sources of revenue in the PPEL fund include a property tax, income surtax, and interest on the investment of those moneys, and proceeds from loan agreements in anticipation of the collection of the voter-approved property. Proceeds from the condemnation, sale or disposition of real property are revenue to the PPEL fund. Proceeds from loans for equipment pursuant to Iowa Code section 279.48, federal loans for asbestos projects pursuant to Iowa Code section 279.52, or loans for energy conservation projects pursuant to Iowa Code section

473.20 may be accounted for in the PPEL fund. If the school board intends to enter into a rental, lease, or loan agreement, only a property tax shall be levied for those purposes.

98.64(2) *Appropriate uses of the PPEL fund.* Appropriate expenditures in the PPEL fund include the following:

a. Purchase of grounds including the legal costs relating to the property acquisition, costs of surveys of the property, costs of relocation assistance under state and federal law, and other costs incidental in the property acquisition.

b. Improvement of grounds including grading, landscaping, paving, seeding, and planting of shrubs and trees; constructing sidewalks, roadways, retaining walls, sewers and storm drains, and installing hydrants; surfacing and soil treatment of athletic fields and tennis courts; exterior lighting, including athletic fields and tennis courts; furnishing and installing flagpoles, gateways, fences, and underground storage tanks which are not parts of building service systems; demolition work; and special assessments against the school district for public improvements.

c. Construction of schoolhouses or buildings.

d. Construction of roads to schoolhouses or buildings.

e. Purchasing, leasing, or lease-purchasing equipment or technology exceeding $500 in value per purchase, lease, or lease-purchase transaction.

(1) "Equipment" means both equipment and furnishings. The cost limitation for equipment does not apply to recreational equipment pursuant to paragraph 98.64(2)*"n"* or equipment that becomes an integral part of real property such as furnaces, boilers, water heaters, and central air-conditioning units that are included in repairs to a building pursuant to paragraph 98.64(2)*"h."*

(2) "Transaction" means a business deal or agreement between a school district and a provider of goods or services. Technology may be bundled for purposes of exceeding $500 per transaction.

f. Transferring to debt service for payments, when due, of debts contracted for the erection or construction of schoolhouses or buildings, not including interest on bonds.

g. Procuring or acquisition of library facilities.

h. Repairing, remodeling, reconstructing, improving, or expanding the schoolhouses or buildings and the additions to existing schoolhouses. "Repairing" means restoring an existing structure or thing to its original condition, as near as may be, after decay, waste, injury, or partial destruction, but does not include maintenance. "Reconstructing" means rebuilding or restoring as an entity a thing which was lost or destroyed. "Maintenance" means to cause to remain in a state of good repair or to keep equipment in effective working condition and ready for daily use. Maintenance includes cleaning, upkeep, inspecting for needed maintenance, preserving the existing state or condition, preventing a decline in the existing state or condition, and replacing parts, unless otherwise a repair.

i. Energy conservation projects.

j. Transferring interest and principal to the debt service fund when due for loans to purchase equipment authorized under Iowa Code section 279.48, for loans in anticipation of the collection of the voter-approved property under Iowa Code section 297.36, and loans to be used for energy conservation measures under Iowa Code section 473.20, in the case of a school district, when the original proceeds were accounted for in the PPEL fund.

k. The rental of facilities under Iowa Code chapter 28E.

l. Purchase of transportation equipment for transporting students.

m. Purchase of buildings or lease-purchase option agreements for school buildings.

n. Purchase of equipment for recreational purposes.

o. Payments to a municipality or other entity as required under Iowa Code section 403.19, subsection 2.

p. Asbestos projects including costs of inspection and reinspection, sampling, analysis, assessment, response actions, operations and maintenance, training, periodic surveillance, development of management plans and record-keeping requirements relating to the presence of asbestos in school buildings of the district and its removal or encapsulation.

q. Purchase, erect, or acquire a building for use as a school meal facility, and equip a building for that use.

98.64(3) *Inappropriate uses of the PPEL fund.* Inappropriate expenditures in the PPEL fund include the following:

a. Student construction.

b. Salaries and benefits.

c. Travel.

d. Supplies.

e. Facility, vehicle, or equipment maintenance.

f. Printing costs or media services.

g. Any other purpose not expressly authorized in the Iowa Code.

[**ARC 8054B**, IAB 8/26/09, effective 9/30/09; **ARC 0012C**, IAB 2/22/12, effective 3/28/12 (See Delay note at end of chapter)]

281—98.65(276,300) Public educational and recreational levy (PERL) fund. Boards of directors of school districts may establish and maintain for children and adults public recreation places and playgrounds, and necessary accommodations for the recreation places and playgrounds, in the public school buildings and on the grounds of the district. Financial support for the community education program shall be provided from funds raised pursuant to Iowa Code chapter 300 and from any private funds and any federal funds made available for the purpose of implementing community education. The authority to establish a levy for a PERL fund is available to school districts but not to area education agencies.

98.65(1) *Sources of revenue in the PERL fund.* Sources of revenue in the PERL fund include a property tax levy not to exceed $0.135 per $1000 of assessed valuation, any appropriation by the agencies involved in a cooperative effort under Iowa Code chapter 28E, federal grants, donations, and interest on the investment of those moneys.

98.65(2) *Appropriate uses of the PERL fund.* Appropriate expenditures in the PERL fund include the following:

a. Establishing and maintaining free public recreation places and playgrounds, including necessary accommodations.

b. Providing free public educational and recreational activities.

c. Establishing and supervising a free community education program.

d. Providing a community education director if a community education program is established.

98.65(3) *Inappropriate uses of the PERL fund.* Inappropriate expenditures in the PERL fund include the following:

a. Programs for which a fee may be charged such as before- and after-school programs and preschool programs.

b. Any other costs not necessary to provide free programs for community education and for public recreation places, playgrounds, and programs.

[**ARC 8054B**, IAB 8/26/09, effective 9/30/09]

281—98.66(257,279,298A,565) District support trust fund. The district support trust fund is used to account for moneys received in trust where those moneys, both principal and interest, are to benefit the school district. The school district or area education agency shall not transfer its own resources to a district support trust fund. If the school district or area education agency has more than one district support trust, it will use locally assigned project codes pursuant to Uniform Financial Accounting for Iowa School Districts and Area Education Agencies to identify the different trusts in the same fund. The district support trust fund is not an irrevocable trust. The board of directors of the school district must take action to accept or establish each gift, devise, or bequest in the district support trust fund. It is the board's responsibility to ensure that the terms of the gift, devise, or bequest are compatible with the mission of and legal restrictions on the school district. Once accepted, gifts, devises, and bequests become public funding under the stewardship of the school district. If the purpose for which the moneys are to be spent is not in keeping with the overall objectives of the school district or legal authority of the school district, the board shall not assume responsibility as the trustee.

98.66(1) *Sources of revenue in the district support trust fund.* Sources of revenue in the district support trust fund include donations of cash, investment instruments, property, and interest on

investments held. In a district support trust fund, both principal and interest are available to benefit the school district's programs.

98.66(2) *Appropriate uses of the district support trust fund.* Appropriate expenditures in the district support trust fund include those that are consistent with the terms of the agreement, are legal expenditures to a school district, and are for the benefit of the school district.

98.66(3) *Inappropriate uses of the district support trust fund.* Inappropriate expenditures in the district support trust fund include transfers to nonprofit or private organizations or any expenditure which is not consistent with the terms of the agreement, legal to a school district, or for the benefit of the school district.

[**ARC 8054B**, IAB 8/26/09, effective 9/30/09]

281—98.67(257,279,298A,565) Permanent funds. Permanent funds are used to account for resources received that are legally restricted to the extent that only earnings, and not principal, may be used for purposes that support the school district's programs. The school district or area education agency shall not transfer its own resources to a permanent fund. The board of directors of the school district must take action to accept or establish each gift, devise, or bequest in permanent funds. It is the board's responsibility to ensure that the terms of the gift, devise, or bequest are compatible with the mission of and legal restrictions on the school district. Once accepted, gifts, devises, and bequests become public funding under the stewardship of the school district. If the purpose for which the moneys are to be spent is not in keeping with the overall objectives of the school district or legal authority of the school district, the board shall not assume responsibility of the moneys.

98.67(1) *Sources of revenue in the permanent funds.* Sources of revenue in the permanent funds include donations of cash, investment instruments, property, and interest on investments held. In permanent funds, only interest is available to benefit the school district's programs.

98.67(2) *Appropriate uses of the permanent funds.* Appropriate expenditures in the permanent funds include those that are consistent with the terms of the agreement, are legal expenditures to a school district, and are for the benefit of the school district.

98.67(3) *Inappropriate uses of the permanent funds.* Inappropriate expenditures in the permanent funds include transfers to nonprofit or private organizations, expenditure from principal, or any expenditure which is not consistent with the terms of the agreement, or legal to a school district, or for the benefit of the school district, or any expenditure from the principal portion.

[**ARC 8054B**, IAB 8/26/09, effective 9/30/09]

281—98.68(76,274,296,298,298A) Debt service fund. A debt service fund is used to account for the accumulation of resources for, and the payment of, general long-term debt principal and interest. A school district or area education agency shall have only one debt service fund.

98.68(1) *Sources of revenue in the debt service fund.* Sources of revenue in the debt service fund include the levy on taxable property authorized by the voters pursuant to Iowa Code section 298.21 and necessary to service bonds that mature in the current year, transfers from other funds for payments of interest and principal when due that are required under a loan, lease-purchase agreement, or other evidence of indebtedness authorized by the Iowa Code, and earnings from temporary investment of moneys in the debt service fund.

98.68(2) *Appropriate uses of the debt service fund.* Appropriate expenditures in the debt service fund include the following:

a. Payment of principal and interest of the lawful bonded indebtedness maturing in the current year as it becomes due. In determining how much is necessary to service bonds that mature in the current year, the board of directors shall consider the amount of earnings from temporary investments of debt service funds and beginning cash balances.

b. Payment of costs of registration of public bonds or obligations.

c. Payment of additional amounts as the board deems necessary to apply on the principal.

d. Payment of principal and interest when due that are required under a loan agreement, lease-purchase agreement, or other evidence of indebtedness authorized by the Iowa Code other than

bonded indebtedness paid from resources transferred for that purpose to the debt service fund from other funds.

e. Payment of transfers to the PPEL fund by board resolution when funds remain in the debt service fund after payment of the entire balance of outstanding debt in accordance with the original purpose of the bonded indebtedness and after return of any excess amount transferred into the debt service fund from another fund or other indebtedness. The voters in the district may authorize the district to transfer the remaining balance to the general fund instead of the PPEL fund pursuant to Iowa Code subsection 278.1(1)*"e."*

98.68(3) *Inappropriate uses of the debt service fund.* Inappropriate expenditures in the debt service fund include payment of debt issued by one fund from resources transferred from a different fund unless expressly authorized by the Iowa Code and any other expenditure not listed in subrule 98.68(2).
[**ARC 8054B**, IAB 8/26/09, effective 9/30/09]

281—98.69(76,273,298,298A,423E,423F) Capital projects fund. Capital projects funds are used to account for financial resources to acquire or construct major capital facilities and to account for revenues from the previous local option sales and services tax for school infrastructure and the current state sales and services tax for school infrastructure. Boards of directors of school districts are authorized to establish more than one capital projects fund as necessary.

98.69(1) *Sources of revenue in the capital projects fund.* Sources of revenue in a capital projects fund include sale of general obligation bonds, grants and donations for capital facility projects, and transfers from other funds which authorized indebtedness for capital facility projects or which initiated a capital facility project or which received grants or other funding for capital projects, and tax receipts or revenue bonds issued for the state sales and services tax for school infrastructure. In the case of an area education agency, transfers from the general fund to a capital projects fund are limited to payments from proceeds accounted for in the general fund when payments are due on a capital project under a lease-purchase agreement pursuant to Iowa Code subsection 273.3(7).

98.69(2) *Appropriate uses of the capital projects fund.*

a. Appropriate expenditures in a capital projects fund, excluding state/local option sales and services tax for school infrastructure fund, include the following:

(1) Purchasing, constructing, furnishing, equipping, reconstructing, repairing, improving, or remodeling a schoolhouse or schoolhouses and additions thereto, gymnasium, stadium, field house, school bus garage, or teachers' or superintendents' home(s).

(2) Procuring a site, or purchasing land to add to a site already owned, or procuring and improving a site for an athletic field, or improving a site already owned for an athletic field.

(3) Transferring to the PPEL fund or debt service fund by board resolution any balance remaining in a capital projects fund after the capital project is completed and after return of any excess amount transferred into the capital projects fund from another fund. The voters in the district may authorize the district to transfer the remaining balance to the general fund instead of the PPEL fund or debt service fund pursuant to Iowa Code subsection 278.1(1)*"e."*

b. Appropriate expenditures in the state/local option sales and services tax for the school infrastructure capital projects fund shall be expended in accordance with a valid revenue purpose statement if a valid revenue purpose statement exists, otherwise appropriate expenditures include the following in order:

(1) Payment of principal and interest on revenue bonds issued pursuant to Iowa Code sections 423E.5 and 423F.4 for which the revenue has been pledged.

(2) Reduction of debt service levies.

(3) Reduction of regular and voter-approved PPEL levies.

(4) Reduction of the PERL levy.

(5) Reduction of any schoolhouse tax levy under Iowa Code subsection 278.1(1)*"e."*

(6) Any authorized infrastructure purpose of the district pursuant to Iowa Code subsection 423F.3(6), which includes the following:

1. Payment or retirement of outstanding general obligation bonded indebtedness issued for school infrastructure purposes.

2. Payment or retirement of outstanding revenue bonds issued for school infrastructure purposes.

3. Purchasing, constructing, furnishing, equipping, reconstructing, repairing, improving, remodeling, or demolition of a schoolhouse or schoolhouses and additions thereto, gymnasium, stadium, field house, or school bus garage.

4. Procuring a site, or purchasing land to add to a site already owned, or procuring and improving a site for an athletic field, or improving a site already owned for an athletic field.

5. Expenditures listed in Iowa Code section 298.3.

6. Expenditures listed in Iowa Code section 300.2.

98.69(3) *Inappropriate uses of the capital projects fund.* Inappropriate expenditures in a capital projects fund include student construction or any expenditure not expressly authorized in the Iowa Code. Additionally, expenditures from the state/local options sales and services tax supplemental school infrastructure amount for new construction or for payments for bonds issued for new construction in any district that has a certified enrollment of fewer than 250 pupils in the district or a certified enrollment of fewer than 100 pupils in the high school without a certificate of need issued by the department of education. This restriction does not apply to payment of outstanding general obligation bonded indebtedness issued pursuant to Iowa Code section 296.1 before April 1, 2003. This restriction also does not apply to costs to repair school buildings; purchase of equipment, technology or transportation equipment authorized under Iowa Code section 298.3; or for construction necessary to comply with the federal Americans With Disabilities Act. Expenditures from the state/local options sales and services tax revenues have the same restriction as expenditures from the supplemental school infrastructure amount, excluding the restriction on payments for bonds issued for new construction.

[**ARC 8054B**, IAB 8/26/09, effective 9/30/09]

281—98.70(279,280,298A) Student activity fund. The student activity fund must be established in any school district receiving moneys from student-related activities such as admissions, activity fees, student dues, student fund-raising events, or other student-related cocurricular or extracurricular activities. Moneys collected through school activities are public funds that are the property of the school district and are under the financial control of the school board. Upon dissolution of an activity, such as a graduating class or student club, the surplus must be used to support other student activities in the student activity fund. Prudent and proper accounting of all receipts and expenditures in these accounts is the responsibility of the board. School districts may maintain subsidiary records for student activities if those records are reconciled to the official records on a monthly basis; however, all official accounting records of the student activity fund shall be maintained within the school district's chart of account pursuant to Uniform Financial Accounting for Iowa School Districts and Area Education Agencies.

98.70(1) *Sources of revenue in the student activity fund.* Sources of revenue in the student activity fund include income derived from student activities such as gate receipts, ticket sales, admissions, student club dues, donations, fund-raising events, and any other receipts derived from student body cocurricular or extracurricular activities, contests, and exhibitions as well as interest on the investment of those moneys.

98.70(2) *Appropriate uses of the student activity fund.* Appropriate expenditures in the student activity fund include ordinary and necessary expenses of operating school district-sponsored and district-supervised student cocurricular and extracurricular activities, including purchasing services from another school district to provide for the eligibility of enrolled students in interscholastic activities provided by the other school district when that school district does not provide an interscholastic activity for its students.

98.70(3) *Inappropriate uses of the student activity fund.* Inappropriate expenditures in the student activity fund include the following:

a. Maintenance of funds raised by outside organizations.

b. The cost of bonds for employees having custody of funds derived from cocurricular and extracurricular activities in the conduct of their duties. These are costs to the general fund.

c. Expenditures that lack public purpose.

d. Payments to any private organization unless a fundraiser was held expressly for that purpose and the purpose of the fundraiser was specifically identified.

e. Transfers to any other fund of any surplus within the fund.

f. Payments more properly accounted for in another fund such as public tax funds, trust funds, state and federal grants, textbook/library book fines, fees, rents, purchases or sales, sales of school supplies, or curricular activities.

g. Use of the student activity fund as a clearing account for any other fund.

h. Cash payments to student members of activity groups.

i. The cost of optional equipment or customizing uniforms.

j. The cost of uniforms when the following two tests are not met:

(1) The activity is a part of the school's educational program, and

(2) The wearing of the uniform or equipment is necessary in order to participate.

k. Hospital or medical claims for student injuries or procurement of student medical insurance.

l. Optional costs related to activities that are not necessary to the cocurricular and extracurricular program such as promotional costs.

m. Membership fees in student activity-related associations if the fees are optional, i.e., nonmember schools may participate in sponsored events.

n. Costs to participate in or to allow students to participate in any cocurricular and extracurricular interscholastic athletic contest or competition not sponsored or administered by either the Iowa High School Athletic Association or the Iowa Girls High School Athletic Union.

[**ARC 8054B**, IAB 8/26/09, effective 9/30/09]

281—98.71(256B,257,298A) Special education instruction fund. The special education instruction fund is used to account for the revenues and expenditures of the special education instructional program that an area education agency provides for its member districts under Iowa Code subsection 273.9(2). This does not include special education support services as provided by Iowa Code subsection 273.9(3) which are accounted for in the general fund.

98.71(1) *Sources of revenue in the special education instruction fund.* Sources of revenue in the special education instruction fund include tuition charged to districts with students in the special education instruction program and interest on the investment of those moneys.

98.71(2) *Appropriate uses of the special education instruction fund.* Appropriate expenditures in the special education instruction fund include those authorized to a school district pursuant to Iowa Code chapter 256B and 281—Chapter 41.

98.71(3) *Inappropriate uses of the special education instruction fund.* Inappropriate expenditures in the special education instruction fund include expenditures not allowed to school districts pursuant to Iowa Code chapter 256B and 281—Chapter 41.

[**ARC 8054B**, IAB 8/26/09, effective 9/30/09]

281—98.72(282,298A) Juvenile home program instruction fund. The juvenile home program instruction fund is used to account for the revenues and expenditures for the educational program for students residing in juvenile homes as provided by Iowa Code section 282.30. The juvenile home program supplements, but does not supplant expenditures required of an area education agency under Iowa Code chapter 273. Revenues and expenditures related to federal or state grants serving students in the juvenile homes that supplement, rather than supplant the juvenile home program are included in the general fund, rather than the juvenile home fund.

98.72(1) *Sources of revenue in the juvenile home program instruction fund.* Sources of revenue in the juvenile home program instruction fund include an advance paid pursuant to Iowa Code section 282.31, tuition billed to resident districts, grants in aid and interest on the investment of those moneys.

98.72(2) *Appropriate uses of the juvenile home program instruction fund.* Appropriate expenditures in the juvenile home program instruction fund include ordinary and necessary expenditures to provide an instructional program to students residing in juvenile homes.

98.72(3) *Inappropriate uses of the juvenile home program instruction fund.* Inappropriate expenditures in the juvenile home program instruction fund include the following:

a. Costs estimated or allocated that are expenditures of the agency, such as insuring agency property.

b. Costs that are not ordinary and necessary to provide instruction.

c. Debt service.

d. Capital outlay related to facilities.

[**ARC 8054B**, IAB 8/26/09, effective 9/30/09]

281—98.73(283A,298A) School nutrition fund. All school districts shall operate or provide for the operation of lunch programs at all attendance centers in the school district. A school district may operate or provide for the operation of school breakfast programs at all attendance centers in the district, or provide access to a school breakfast program at an alternative site to students who wish to participate in a school breakfast program.

98.73(1) *Sources of revenue in the school nutrition fund.* Sources of revenue in the school nutrition fund include food sales to pupils and adults, ancillary food services, state and federal grants in aid for the operation of a nutrition program, gifts, sales of services to other funds, donated government commodities, and interest on investment of school nutrition fund moneys. Also included are fees charged for providing food services to staff meetings and authorized organizations for meetings on the premises in accordance with the rules of the board. The charges for such services must be no less than the actual costs involved in providing the services including the value of donated government commodities.

98.73(2) *Appropriate uses of the school nutrition fund.* Appropriate expenditures in the school nutrition fund include the following:

a. Expenditures necessary to operate a school breakfast or lunch program such as salaries and benefits for employees necessary to operate the food service program, food, purchased services, supplies, and school nutrition equipment not included in Iowa Code section 283A.9.

b. Costs to provide food service for school staff and ancillary food services to staff meetings and authorized organizations for meetings on the premises in accordance with the rules of the board of directors of the school district if those costs are reimbursed by another fund, organization, or individual.

98.73(3) *Inappropriate uses of the school nutrition fund.* Inappropriate expenditures in the school nutrition fund include the following:

a. Costs to provide food service for school staff and ancillary food services to staff meetings and authorized organizations for meetings on the premises at less than actual costs involved in providing the services including the value of donated government commodities.

b. Operating transfers to any other fund.

c. Costs to purchase, construct, reconstruct, repair, remodel, or otherwise acquire or equip a building for use as a school meal facility. These costs are permitted from the PPEL fund.

d. Costs estimated or allocated that are expenditures of the district.

[**ARC 8054B**, IAB 8/26/09, effective 9/30/09]

281—98.74(279,298A) Child care and before- and after-school programs fund. The board of directors of a school district may operate or contract for the operation of a program to provide child care to children not enrolled in school or to students enrolled in kindergarten through grade 6 before and after school, or to both.

98.74(1) *Sources of revenue in the child care fund.* Sources of revenue in the child care fund include a fee established by the board for the cost of participation in the program. The fee shall be established pursuant to a sliding fee schedule based upon staffing costs and other expenses and a family's ability to pay. If a fee is established, the parent or guardian of a child participating in a program shall be responsible for payment of any agreed-upon fee. The board may require the parent or guardian to furnish transportation of the child. If the board does not establish a fee, it must finance the program through grants or donations. The board may utilize or make application for program subsidies from any existing child care funding streams.

98.74(2) *Appropriate uses of the child care fund.* Appropriate expenditures in the child care fund include salaries and benefits for employees necessary to operate the child care program or before- and after-school program, purchased services, supplies, and equipment.

98.74(3) *Inappropriate uses of the child care fund.* Inappropriate expenditures in the child care fund include debt service, capital outlay related to facilities, or any other expenditure not ordinary and necessary to operate the child care program or before- and after-school program.

[**ARC 8054B**, IAB 8/26/09, effective 9/30/09]

281—98.75(298A) Regular education preschool fund. The board of directors of a school district may establish a preschool for students who are not of school age.

98.75(1) *Sources of revenue in the regular education preschool fund.* Sources of revenue in the regular education preschool fund include a fee established by the board for the cost of participation in the program. If a fee is established, the parent or guardian of a child participating in a program shall be responsible for payment of any agreed-upon fee. If the board does not establish a fee, it must finance the program through grants or donations. The statewide voluntary four-year-old preschool program established under Iowa Code chapter 256C shall not be accounted for in the regular education preschool fund.

98.75(2) *Appropriate uses of the regular education preschool fund.* Appropriate expenditures in the regular education preschool fund include salaries and benefits for employees necessary to operate the regular education preschool program, purchased services, instructional supplies, and instructional equipment.

98.75(3) *Inappropriate uses of the regular education preschool fund.* Inappropriate expenditures in the regular education preschool fund include debt service, capital outlay related to facilities, or any other expenditure not ordinary and necessary to operate the regular education preschool program or before- and after-school program.

[**ARC 8054B**, IAB 8/26/09, effective 9/30/09]

281—98.76(298A) Student construction fund. If the board of directors of a school district establishes a construction program whereby students learn a construction trade and the facility constructed is sold to cover costs of construction, the revenues and expenses will be accounted for in the student construction fund.

[**ARC 8054B**, IAB 8/26/09, effective 9/30/09]

281—98.77(298A) Other enterprise funds. Enterprise funds are used to account for any activity for which a fee is charged to external users for goods and services. Enterprise funds are required to be used to account for any activity whose principal revenue sources are fees and charges to recover the costs of providing goods or services where those fees and charges are permitted by the Iowa Code. Funds discussed in rules 281—98.73(283A,298A) through 281—98.76(298A) are enterprise funds. In addition, enterprise funds include those activities related to community service enterprises or enterprises that support the school curricular program. Community service enterprises are activities provided by the district for a fee to the general community or segment of the community that are not in the PERL or library funds such as public libraries, community pool, community wellness center, and community or adult education. Enterprises that support the school program include activities such as a student farm, greenhouse, cooperative purchasing, school stores, or major resale activities.

[**ARC 8054B**, IAB 8/26/09, effective 9/30/09]

281—98.78 to **98.81** Reserved.

281—98.82(298A) Internal service funds. Internal service funds are used to account for the financing of services provided within the district to provide goods or services to other funds, component units, or other governments on a cost-reimbursement basis. The use of an internal service fund is appropriate only for activities in which the agency, school district or area education agency is the predominant participant in the activity. If the district or area education agency is not the primary user of the goods or services provided by the internal service fund, then the activity should be accounted for in

an enterprise fund rather than an internal service fund. Internal service funds include, but are not limited to, self-insurance funds, flex-benefit (cafeteria) plan funds, print shops, health reimbursement arrangements (HRAs), central warehousing and purchasing, and central data processing.
[**ARC 8054B**, IAB 8/26/09, effective 9/30/09]

281—98.83 to **98.91** Reserved.

281—98.92(257,279,298A,565) Private purpose trust funds. Private purpose trust funds are fiduciary funds established to account for gifts the school district receives to be used for a particular purpose or to account for moneys and property received and administered by the school district as trustee. These trust funds are not irrevocable trusts and are used to account for assets held by a school district in a trustee capacity to benefit individuals, private organizations, or other governments, and therefore cannot be used to support the school district's own programs. These trust funds include both those that allow use of only the interest on the investments and those that allow use of both principal and interest. Scholarship trust funds are an example of private purpose trust funds. If a school district has more than one scholarship trust, the school district shall use project codes in accordance with Uniform Financial Accounting for Iowa School Districts and Area Education Agencies to separately account for the trusts. The district or area education agency shall not transfer its own resources to a private purpose trust fund.

98.92(1) *Sources of revenue in private purpose trust funds.* Sources of revenue in the private purpose trust fund include donations of cash, investment instruments, property, and interest on investments held.

98.92(2) *Appropriate uses of private purpose trust funds.* Appropriate expenditures in the private purpose trust fund include those that are consistent with the terms of the agreement or are for the benefit of a private purpose other than the school district. None of the expenditures will be for the benefit of the school district's programs.

98.92(3) *Inappropriate uses of private purpose trust funds.* Inappropriate expenditures in the private purpose trust fund include any expenditure which is not consistent with the terms of the agreement, not legal to a school district, or that benefits the school district's programs.
[**ARC 8054B**, IAB 8/26/09, effective 9/30/09]

281—98.93(298A) Other trust funds. Trust funds are fiduciary funds established to account for gifts the school district receives to be used for a particular purpose or to account for moneys and property received and administered by the school district as trustee. These trust funds are used to account for assets held by a school district in a trustee capacity to benefit individuals, private organizations, or other governments, and cannot be used to support the school district's own programs. These trust funds include both those that allow use of only the interest on the investments and those that allow use of both principal and interest. The school district or area education agency shall not transfer its own resources to a trust fund. Other trust funds may include but not be limited to pension trust funds and investment trust funds. Pension trust funds are used to account for resources that are required to be held in trust for members and beneficiaries of defined benefit pension plans, defined contribution plans, other postemployment benefit plans, or other benefit plans. Typically, these pension trust funds are used to account for local pension and other employee benefit funds that are provided by a school district in lieu of or in addition to any state retirement system. Investment trust funds are used to account for the external portion (i.e., the portion that does not belong to the school district) of investment pools operated by the school district.
[**ARC 8054B**, IAB 8/26/09, effective 9/30/09]

281—98.94 to **98.100** Reserved.

281—98.101(298A) Agency funds. Agency funds are used to account for funds that are held in a custodial capacity by the school district for individuals, private organizations, or other governments. Agency funds may include moneys collected for another government, a grant consortium when the school district serves as fiscal agent for the other school districts but has no managerial responsibilities, or funds for a teacher or a parent-teacher organization which has its own federal identification number (FIN). In an agency fund, the school district or area education agency merely renders a service as a

custodian of the assets for the organization owning the assets and the school district or area education agency is not an owner. Agency funds typically involve only the receipt, temporary investment and remittance of assets to their rightful owners.

98.101(1) *Sources of receipts in agency funds.* Sources of receipts in the agency funds include temporary receipts of cash, investment instruments, property, and interest on investments held.

98.101(2) *Appropriate uses of agency funds.* Appropriate disbursements from an agency fund depend on the nature of the rightful owners' conditions or the responsibilities of the custodian. Typically, disbursement will involve remittance of assets to their rightful owners or to a third party on behalf and at the request of the rightful owners. The school district cannot disburse more funds at any point in time than it has received from the rightful owner.

98.101(3) *Inappropriate uses of agency funds.* Inappropriate disbursements from agency funds include any disbursement which is not consistent with the terms of the agreement, not legal to a school district, or that exceeds the amount of funds that have been received from the rightful owner or on behalf of the rightful owner.

[**ARC 8054B**, IAB 8/26/09, effective 9/30/09]

281—98.102 to **98.110** Reserved.

281—98.111(24,29C,257,298A) Emergency levy fund. A school district may levy a tax for the emergency fund upon the approval of the state appeals board. Once the levy has been received, the district may request approval of the school budget review committee to transfer the funds to any other fund of the district for the purpose of meeting deficiencies in a fund arising within two years of a disaster as defined in Iowa Code subsection 29C.2(1).

98.111(1) *Sources of revenue in the emergency levy fund.* Sources of revenue for the emergency levy fund include a tax levy not to exceed $0.27 per $1000 of assessed value of taxable property, and interest on those moneys.

98.111(2) *Appropriate uses of emergency levy fund.* Appropriate expenditures in the emergency levy fund include only transfers to other funds for the purpose of meeting deficiencies in a fund arising within two years of a disaster and upon the approval of the school budget review committee.

98.111(3) *Inappropriate uses of emergency levy fund.* Inappropriate expenditures in the emergency levy fund include any expenditures other than a transfer to another fund and any transfer not approved by the school budget review committee.

[**ARC 8054B**, IAB 8/26/09, effective 9/30/09]

281—98.112(275) Equalization levy fund. If necessary to equalize the division of liabilities and distribution of assets in a reorganization, merger, or dissolution, the board of a school district may provide for the levy of additional taxes upon the property of the former district so as to effect equalization pursuant to Iowa Code section 275.31. Once the levy has been received, the district shall transfer the funds before the end of the fiscal year to the funds for which equalization was necessary and for which the taxes were levied.

98.112(1) *Sources of revenue for the equalization levy fund.* Sources of revenue for the equalization levy fund include a tax levy pursuant to Iowa Code section 275.31, and interest on those moneys.

98.112(2) *Appropriate uses of the equalization levy fund.* Appropriate expenditures from the equalization levy fund are limited to transfers to the funds, in the same proportion, for which equalization was necessary and for which the taxes were levied.

98.112(3) *Inappropriate uses of the equalization levy fund.* Inappropriate uses of the equalization levy fund would include transfers to any fund for which equalization was not required or for which the equalization tax was not levied and any uses other than transfers.

[**ARC 8054B**, IAB 8/26/09, effective 9/30/09 (See Delay note at end of chapter)]

These rules are intended to implement Iowa Code chapters 24, 29C, 76, 143, 256, 256B, 257, 274, 275, 276, 279, 280, 282, 283A, 284, 284A, 285, 291, 294A, 296, 298A, 300, 301, 423E, 423F, 565, and 670, Iowa Code sections 11.6(1)*"a"*(1), 256C.4(1)*"c,"*256D.4(3) and 284.13, and 2011 Iowa Code Supplement chapters 298 and 299A.

[Filed ARC 8054B (Notice ARC 7781B, IAB 5/20/09), IAB 8/26/09, effective 9/30/09][1]
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[Editorial change: IAC Supplement 3/21/12]
[Filed ARC 0518C (Notice ARC 0387C, IAB 10/3/12), IAB 12/12/12, effective 1/16/13]

[1] September 30, 2009, effective date of 281—98.12(257,299A) and 281—98.112(275) delayed 70 days by the Administrative Rules Review Committee at its meeting held September 8, 2009. At its meeting held December 8, 2009, the Committee voted to delay the effective date of 281—98.12(257,299A) until the adjournment of the 2010 Session of the General Assembly.

[2] March 28, 2012, effective date of 98.12 and 98.64(2)*"e," "h"* delayed 30 days by the Administrative Rules Review Committee at its meeting held March 12, 2012.

CHAPTER 99
BUSINESS PROCEDURES AND DEADLINES

281—99.1(257) Definitions. For the purposes of this chapter, the following definitions shall be used.

"Area education agency" or *"AEA"* means a school corporation organized under Iowa Code chapter 273.

"Basis of accounting" means the accrual/modified accrual accounting basis under generally accepted accounting principles (GAAP) as defined by the governmental accounting standards board (GASB).

"Basis of budgeting" means the accrual/modified accrual budgeting basis under GAAP as defined by the GASB.

"SBRC" means the school budget review committee appointed pursuant to Iowa Code section 257.30.

"School district" means a school corporation organized under Iowa Code chapter 274.

"Unique" means highly unusual, extraordinary; unparalleled.

"Unusual" means not usual or common; rare; constituting or occurring as an exception; not ordinary or average; affecting very few school districts or AEAs.

"Usual" means that which past experience has shown to be normal or common or is anticipated to become normal or common, hence an expected or predictable event; that which affects more than just a few school districts or AEAs.

[**ARC 0013C**, IAB 2/22/12, effective 3/28/12 (See Delay note at end of chapter)]

281—99.2(256,257,285,291) Submission deadlines. It is the responsibility of the administrative officials and board members to submit information and materials as requested by the department of education, department of management, any other state agency, or any federal agency. Reports shall be filed electronically if an electronic format is available.

99.2(1) All school districts shall submit program plans, reports, or data collections in the manner, by the procedures, and on the dates prescribed by the department of education. Plans, reports, and data collections shall include, but not be limited to, the following:

Vehicle Information System	September 1
Annual Transportation Report	September 15
Certified Annual Report (CAR-COA)	September 15
Special Education Supplement	September 15
Facilities, Elections & Save Report	September 30
Certified Enrollment Report/PEACE	October 15
Certified Supplementary Weighting Report	October 15
School Board Officers Report	November 1
Annual Audit Report	March 31
Certified Budget	April 15

99.2(2) All AEAs shall submit program plans, reports, or data collections in the manner, by the procedures, and on the dates prescribed by the department of education. Plans, reports, and data collections shall include, but not be limited to, the following:

Certified Annual Report (CAR-COA)	September 15
Facilities Report	September 30
Certified Supplementary Weighting Report	October 15
School Board Officers Report	November 1
Proposed Budget	March 15
Annual Audit Report	March 31

99.2(3) If any plan, report, or data collection has not been received by the due date of the form or by the due date of a valid extension granted by the department of education, the following procedure shall be followed:

a. The superintendent of the school district or the administrator of the area education agency, and the president of the applicable board, shall be notified of the unfiled report and the number of days it is past due.

b. The state board of education, the SBRC, or the Iowa board of educational examiners may be notified of the school districts or AEAs which were not timely in filing one or more reports.

c. The SBRC may implement the procedures described in 289—subrule 6.3(5).

[**ARC 0013C**, IAB 2/22/12, effective 3/28/12 (See Delay note at end of chapter)]

281—99.3(257) Good cause for late submission.

99.3(1) The department of education may upon request allow a school district or AEA to submit reports, data collections, or program plans after the due date listed in rule 281—99.2(256,257,285,291) for good cause.

a. Good cause shall include illness or death of a school district or AEA staff member involved in developing the program plan or submitting the report or data collection, acts of God, technological problems at the department lasting at least seven days within the final two weeks prior to the deadline that prevent access necessary for the plan, report, or data collection submission, or unforeseeable unusual or unique circumstances which, in the opinion of the director of the department, constitute sufficient cause for allowing submission of program plans, reports, or data collections after the published due date.

b. Good cause does not include consequences of local time management or administrative decisions or when districts and AEAs have timed out or have encountered system overloads within the final three days before the due date.

99.3(2) A school district or AEA desiring permission to submit a program plan, report, or data collection after the published due date shall notify the department staff member responsible for receiving the plan, report, or data collection as soon as possible upon determining that the district or AEA will not be able to meet the deadline, but no sooner than two weeks prior to the due date and no later than two days prior to the due date. When an extension of the submission deadline is allowed, the department shall establish a date by which the school district or AEA shall submit the plan, report, or data collection. Permission to submit a program plan, report, or data collection after the published due date shall expire upon receipt of the submission by the department and shall not carry over into subsequent application or reporting cycles.

[**ARC 0013C**, IAB 2/22/12, effective 3/28/12 (See Delay note at end of chapter)]

281—99.4(24,256,257,291) Budgets, accounting and reporting. The school district or AEA shall budget on the GAAP basis of budgeting as defined by the GASB. School districts and AEAs shall use the chart of accounts defined in Uniform Financial Accounting for Iowa LEAs and AEAs (UFA). The school district or AEA shall maintain its financial records and prepare financial reports, including the Certified Annual Report, in the manner and by the procedures prescribed by the departments of education and management in the Uniform Financial Accounting for Iowa LEAs and AEAs (UFA) manual and GAAP. School districts and AEAs shall use the chart of accounts defined in Uniform Financial Accounting for Iowa LEAs and AEAs (UFA). The UFA manual shall be based on the most recent version of Financial Accounting for Local and State School Systems published by the United

States Department of Education. If GAAP permits a choice of reporting methods for transactions, or if GAAP is in conflict with UFA, the department of education staff shall determine a uniform method of reporting to be used by all school districts and AEAs.

[**ARC 0013C**, IAB 2/22/12, effective 3/28/12 (See Delay note at end of chapter)]

These rules are intended to implement Iowa Code chapters 24, 256, 257, 285 and 291.

[Filed ARC 0013C (Notice ARC 9916B, IAB 12/14/11), IAB 2/22/12, effective 3/28/12][1]

[Editorial change: IAC Supplement 3/21/12]

[1] March 28, 2012, effective date of Chapter 99 delayed 30 days by the Administrative Rules Review Committee at its meeting held March 12, 2012.

TITLE XVII
PROTECTION OF CHILDREN

CHAPTER 100
VISION IOWA SCHOOL INFRASTRUCTURE PROGRAM
Rescinded IAB 12/16/09, effective 1/20/10

CHAPTER 101
CHILD ABUSE REPORTING
Reserved

CHAPTER 102
PROCEDURES FOR CHARGING AND INVESTIGATING INCIDENTS OF ABUSE OF STUDENTS BY SCHOOL EMPLOYEES

281—102.1(280) Statement of intent and purpose. It is the purpose and intent of these rules to create a uniform procedure for the reporting, investigation, and disposition of allegations of abuse of students directly resulting from the actions of school employees or their agents. The scope of this policy is limited to protecting children in prekindergarten and K-12 educational programs.

281—102.2(280) Definitions.

"Abuse" may fall into either of the following categories:

1. *"Physical abuse"* means nonaccidental physical injury to the student as a result of the actions of a school employee.

2. *"Sexual abuse"* means any sexual offense as defined by Iowa Code chapter 709 or Iowa Code section 728.12(1). The term also encompasses acts of the school employee that encourage the student to engage in prostitution as defined by Iowa law, as well as inappropriate, intentional sexual behavior, or sexual harassment by the school employee toward a student.

"Board of educational examiners" means the state board as created in Iowa Code chapter 272.

"Designated investigator" means the person or persons appointed by the board of directors of a public school district, or the authorities in control of a private school, at level one, to investigate allegations or reports of abuse of students by school employees and shall also refer to the appointed alternate.

"Incident" means an occurrence of behavior that meets the definition of physical or sexual abuse in these rules.

"Injury" occurs when evidence of it is still apparent at least 24 hours after the occurrence.

"Nonpublic school" means any school in which education is provided to a student, other than in a public school or in the home of the student.

"Preponderance of evidence" means reliable, credible evidence that is of greater weight than evidence offered in opposition to it.

"Public school" means any school directly supported in whole or in part by taxation.

"Reasonable force" is that force and no more which a reasonable person, in like circumstances, would judge to be necessary to prevent an injury or loss and can include deadly force if it is reasonable to believe that such force is necessary to avoid injury or risk to one's life or safety or the life or safety of another, or it is reasonable to believe that such force is necessary to resist a like force or threat.

"School employee" means a person who works for pay or as a volunteer under the direction and control of:

1. The board of directors or any administrator of a public school district.

2. The board or authorities in control of a nonpublic school.

3. The board of directors or administrator of an agency called upon by a school official to provide services in an educational capacity to students.

4. A residential institution, not currently covered by Iowa Code chapter 232, providing educational services.

School employees are of two classes: certificated (licensed) and noncertificated (unlicensed). A certificated employee holds an Iowa teacher's certificate issued by the department of education or a license issued by the state board of educational examiners.

"Sexual harassment" means unwelcome sexual advances, requests for sexual favors or other verbal or physical conduct of a sexual nature when:

1. Submission to the conduct is made either implicitly or explicitly a term or condition of the student's education or benefits;

2. Submission to or rejection of the conduct is used as the basis for academic decisions affecting that student; or

3. The conduct has the purpose or effect of substantially interfering with a student's academic performance by creating an objectively intimidating, hostile, or offensive education environment.

"Student" means a person enrolled in a public or nonpublic school or a prekindergarten program in a public or nonpublic school established under Iowa law, a child enrolled in a day care program operated by a public school or merged area school under Iowa Code section 279.49, or is a resident between the ages of 5 and 21 of a state facility providing incidental formal education.
[**ARC 9377B**, IAB 2/23/11, effective 3/30/11]

281—102.3(280) Jurisdiction. To constitute a violation of these rules, acts of the school employee must be alleged to have occurred on school grounds, on school time, on a school-sponsored activity, or in a school-related context. To be investigable, the written report must include basic information showing that the student allegedly abused is or was a student at the time of the incident, that the alleged act of the school employee resulted in injury or otherwise meets the definition of abuse in these rules, and that the person responsible for the act is currently a school employee.

If the report is not investigable due to the absence of any of the jurisdictional facts, the level-one investigator shall dismiss the complaint as lacking jurisdiction and notify the person filing the report of abuse of the options remaining as listed in 102.10"9." The dismissal of a report of abuse for lack of jurisdiction does not bar school officials from further forms of investigation and disciplinary action against an employee.
[**ARC 9377B**, IAB 2/23/11, effective 3/30/11]

281—102.4(280) Exceptions.

102.4(1) The following do not constitute physical abuse, and no school employee is prohibited from:

a. Using reasonable and necessary force, not designed or intended to cause pain:

(1) To quell a disturbance or prevent an act that threatens physical harm to any person.

(2) To obtain possession of a weapon or other dangerous object within a pupil's control.

(3) For the purposes of self-defense or defense of others as provided for in Iowa Code section 704.3.

(4) For the protection of property as provided for in Iowa Code section 704.4 or 704.5.

(5) To remove a disruptive pupil from class, or any area of school premises or from school-sponsored activities off school premises.

(6) To prevent a student from the self-infliction of harm.

(7) To protect the safety of others.

b. Using incidental, minor, or reasonable physical contact to maintain order and control.

102.4(2) In determining the reasonableness of the contact or force used, the following factors shall be considered:

a. The nature of the misconduct of the student, if any, precipitating the physical contact by the school employee.

b. The size and physical condition of the student.

c. The instrumentality used in making the physical contact.

d. The motivation of the school employee in initiating the physical contact.

e. The extent of injury to the student resulting from the physical contact.

281—102.5(280) Duties of school authorities. The board of directors of a public school district and the authorities in control of a nonpublic school shall:

102.5(1) Annually identify at least one designated investigator and alternate investigator at an open public meeting.

102.5(2) Adopt written procedures that establish persons to whom the school authorities will delegate a second level of investigation beyond the level-one procedures specifically described in these rules, including law enforcement authorities or the county attorney's office, personnel of the local office of the department of human services, or private parties experienced and knowledgeable in the area of abuse investigation. The second-level investigator shall not be a school employee and shall be considered an independent contractor if remunerated for services rendered.

The adopted procedures shall conform to these rules and shall include provisions for the safety of a student when, in the opinion of the investigator, the student would be placed in imminent danger if continued contact is permitted between the school employee and the student. These provisions shall include the options of:

a. Temporary removal of the student from contact with the school employee.

b. Temporary removal of the school employee from service.

c. Any other appropriate action permissible under Iowa law to ensure the student's safety.

The adopted written procedures shall include a statement that the investigators appointed and retained under this chapter shall have access to any educational records of the allegedly abused student and access to the student for purposes of interviewing and investigating the allegation.

102.5(3) Annually publish the names or positions and telephone numbers or other contact information of the designated investigator and alternate:

a. In the student handbook,

b. In a local newspaper of general circulation, and

c. Prominently post the same information in all buildings operated by the school authorities.

102.5(4) Arrange for in-service training for the designated investigator and alternate. Initial training should be undertaken within six months of appointing a level-one investigator or alternate. Follow-up training should be undertaken at least once every five years.

102.5(5) Place on administrative leave a school employee who is the subject of an investigation under this chapter of an alleged incident of physical or sexual abuse, once the Level One investigator has determined that the written complaint is investigable under rule 281—102.3(280).

102.5(6) Report to the board of educational examiners the results of an investigation that finds that the school employee's conduct constitutes a crime.

[**ARC 9377B**, IAB 2/23/11, effective 3/30/11; **ARC 9905B**, IAB 12/14/11, effective 1/18/12]

281—102.6(280) Filing of a report.

102.6(1) *Who may file.* Any person who has knowledge of an incident of abuse of a student committed by a school employee may file a report with the designated investigator.

102.6(2) *Content of report.* The report shall be in writing, signed, and, if signed by a minor, witnessed by a person of majority age and shall contain the following information:

a. The full name, address, and telephone number of the person filing.

b. The full name, age, address, telephone number, and attendance center of the student.

c. The name and place of employment of the school employee(s) or agents who allegedly committed the abuse.

d. A concise statement of the facts surrounding the incident, including date, time, and place of occurrence, if known.

e. A list of possible witnesses by name, if known.

f. Names and locations of any and all persons who examined, counseled or treated the student for the alleged abuse, including the dates on which those services were provided, if known.

102.6(3) *Incomplete reports.* The designated investigator shall aid parties requesting assistance in completing the report. An incomplete report shall not be rejected unless a reasonable person would conclude that the missing information which is unable to be provided by the reporter would render investigation futile or impossible. An unsigned (anonymous) or unwitnessed report may be investigated, but the designated investigator then has no duty to report findings and conclusions to the reporter.

[**ARC 9377B**, IAB 2/23/11, effective 3/30/11]

281—102.7(280) Receipt of report. Any school employee receiving a report of alleged abuse of a student by a school employee shall immediately give the report to the designated investigator or alternate and shall not reveal the existence or content of the report to any other person.

281—102.8(280) Duties of designated investigator—physical abuse allegations.

102.8(1) Upon receipt of the report, the designated investigator shall make and provide a copy of the report to the person filing, to the student's parent or guardian if different from the person filing and to the

supervisor of the employee named in the report. The school employee named in the report shall receive a copy of the report at the time the employee is initially interviewed by any investigator. However, if this action would conflict with the terms of a contractual agreement between the employer and employee, the terms of the contract shall control.

102.8(2) Within five school days of receipt of a report of physical abuse, the designated investigator shall conduct and complete an informal investigation after reviewing the report to determine that the allegations, if true, support the exercise of jurisdiction pursuant to rule 281—102.3(280).

102.8(3) If, in the investigator's opinion, the magnitude of the allegations in the report suggests immediate and professional investigation is necessary, the designated investigator may temporarily defer the level-one investigation. In cases of deferred investigation, the investigator shall contact appropriate law enforcement officials, the student's parent or guardian and the person filing the report, if different from the student's parent or guardian, documenting in writing the action taken.

102.8(4) The investigator shall interview the allegedly abused student, any witnesses or persons who may have knowledge of the circumstances contained in the report, and the school employee named in the report. The investigator shall exercise prudent discretion in the investigative process to preserve the privacy interests of the individuals involved. To the maximum extent possible, the investigator shall maintain the confidentiality of the report.

102.8(5) The designated investigator's role is not to determine the guilt or innocence of the school employee, the applicability of the exceptions or reasonableness of the contact or force listed in rule 281—102.4(280). The designated investigator shall determine, by a preponderance of the evidence, whether it is likely that an incident took place between the student and the school employee. However, if the complaint has been withdrawn, the allegation recanted, or the employee has resigned, admitted the violation, or agreed to relinquish the employee's teacher's certificate or license, the designated investigator may conclude the investigation at level one. The designated investigator shall follow the applicable provisions of 102.11(2)*"b"* and 102.11(2)*"c"* when resolution occurs at level one.

The level-two investigator appointed, contracted, requested or retained under subrule 102.5(2), when called upon for further investigation, shall consider the applicability of the exceptions listed in rule 281—102.4(280) and the reasonableness of the contact or force used under subrule 102.4(2) in reaching conclusions as to the occurrence of physical abuse as defined by these rules.

102.8(6) Within 15 calendar days of receipt of the report, the designated investigator shall complete a written investigative report, unless investigation was temporarily deferred.

[**ARC 9377B**, IAB 2/23/11, effective 3/30/11]

281—102.9(280) Duties of designated investigator—sexual abuse allegations.

102.9(1) Upon receipt of the report, the designated investigator shall make and provide a copy of the report to the person filing the report, to the student's parent or guardian if different from the person filing the report, and to the supervisor of the employee named in the report. The school employee named in the report shall receive a copy of the report at the time the employee is initially interviewed by any investigator. However, if this action would conflict with the terms of a contractual agreement between the employer and employee, the terms of the contract shall control. The designated investigator shall not interview the school employee named in a report of sexual abuse until after a determination that jurisdiction exists is made, the allegedly abused student has been interviewed, and a determination is made that the investigation will not be deferred under subrule 102.9(5).

102.9(2) Upon receipt of a report of sexual abuse or other notice of an allegation of sexual abuse, the designated investigator shall review the facts alleged to determine that the allegations, if true, support the exercise of jurisdiction pursuant to 281—102.3(280) of these rules.

102.9(3) The investigator shall notify the parent, guardian, or legal custodian of a child in prekindergarten through grade six of the date and time of the interview and of the right to be present or to see and hear the interview or to send a representative in the parent's, guardian's, or legal custodian's place. The investigator shall interview the allegedly abused student as soon as possible, but in no case later than five days from the receipt of a report or notice of the allegation of sexual abuse. The investigator may record the interview electronically.

The investigator shall exercise prudent discretion in the investigative process to preserve the privacy interests of the individuals involved. To the maximum extent possible, the investigator shall maintain the confidentiality of the report.

102.9(4) The designated investigator's role is not to determine the guilt or innocence of the school employee. The designated investigator shall determine, by a preponderance of the evidence and based upon the investigator's training and experience and the credibility of the student, whether it is likely that an incident took place between the student and the school employee. However, if the complaint has been withdrawn, the allegation recanted, or the employee has resigned, admitted the violation, or agreed to relinquish the employee's teacher's certificate or license, the designated investigator may conclude the investigation at level one. The designated investigator shall follow the applicable provisions of 102.11(2)*"b"* and 102.11(2)*"c"* when resolution occurs at level one.

102.9(5) If, in the investigator's opinion, it is likely that an incident in the nature of sexual abuse as defined by Iowa Code chapter 709 or section 728.12(1) took place, the investigator shall temporarily defer further level-one investigation. In cases of deferred investigation, the investigator shall immediately contact appropriate law enforcement officials, notifying the student's parent or guardian, and the person filing the report, if different from the student's parent or guardian, of the action taken.

If, in the investigator's opinion, an incident occurred that would not constitute sexual abuse as defined in Iowa Code chapter 709 or sexual exploitation as defined by Iowa Code section 728.12(1), but that was in the nature of inappropriate, intentional sexual behavior by the school employee, further investigation is warranted. The investigator may proceed to interview the school employee named in the report. Prior to interviewing any collateral sources who may have knowledge of the circumstance contained in the report, the investigator shall provide notice of the impending interview of student witnesses who are in prekindergarten through grade six, to their parent, guardian, or legal custodian, and may provide notice to the parent or guardian of older students, prior to interviewing those students.

If, in the investigator's opinion, the allegation of sexual abuse is unfounded either because the conduct did not occur or the conduct did not meet the definition of abuse in these rules, further investigation is not warranted. The investigator shall notify the student's parent or guardian, the person filing the report, if different from the student's parent or guardian, and the school employee named in the report of this conclusion in a written investigative report.

102.9(6) Within 15 calendar days of receipt of the report or notice of alleged sexual abuse, the designated investigator shall complete a written investigation report unless the investigation was temporarily deferred.

[**ARC 9377B**, IAB 2/23/11, effective 3/30/11]

281—102.10(280) Content of investigative report. The written investigative report shall include:

1. The name, age, address, and attendance center of the student named in the report.
2. The name and address of the student's parent or guardian and the name and address of the person filing the report, if different from the student's parent or guardian.
3. The name and work address of the school employee named in the report as allegedly responsible for the abuse of the student.
4. An identification of the nature, extent, and cause, if known, of any injuries or abuse to the student named in the report.
5. A general review of the investigation.
6. Any actions taken for the protection and safety of the student.
7. A statement that, in the investigator's opinion, the allegations in the report are either:
   - Unfounded. (It is not likely that an incident, as defined in these rules, took place), or
   - Founded. (It is likely that an incident took place.)
8. The disposition or current status of the investigation.
9. A listing of the options available to the parents or guardian of the student to pursue the allegations. These options include, but are not limited to:
   - Contacting law enforcement.
   - Contacting private counsel for the purpose of filing a civil suit or complaint.

- Filing a complaint with the board of educational examiners if the school employee is certificated.

The investigator shall retain the original and provide a copy of the investigative report to the school employee named in the report, the school employee's supervisor and the named student's parent or guardian. The person filing the report, if not the student's parent or guardian, shall be notified only that the level-one investigation has been concluded and of the disposition or anticipated disposition of the case.

281—102.11(280) Founded reports—designated investigator's duties.

102.11(1) The investigator shall notify law enforcement authorities in founded cases of serious physical abuse and in any founded case of sexual abuse under Iowa Code chapter 709 or sexual exploitation under Iowa Code section 728.12(1). In founded cases of less serious physical incidents or sexual incidents not in the nature of statutory sexual abuse or exploitation as defined by Iowa law, the investigator shall arrange for the level-two investigator to carry out a professional investigation unless the level-one investigation has resulted in a final disposition of the investigation. In addition, the designated investigator shall give a copy of the investigative report to the employee's supervisor and document all action taken.

102.11(2) Upon receipt of the level-two investigator's report under rule 281—102.12(280) or upon resolution of the investigation at level one, the designated investigator shall:

a. Forward copies of the level-two investigator's report to the student's parent or guardian, the school employee named in the complaint, and the school employee's supervisor; notify the person filing the report, if different from the student's parent or guardian, of the disposition of the case or current status of the investigation;

b. File a complaint against the school employee who has been found to have physically or sexually abused a student, if that employee holds a teaching certificate, coaching authorization, or practitioner license, with the board on behalf of the school or district by obtaining the superintendent's signature on the complaint in cases where the level-two investigator or law enforcement officials have concluded abuse occurred as defined in these rules or where the employee has admitted the violation or agreed to surrender the employee's certificate or license. The designated investigator has discretion to file a complaint with the board in situations where the employee has resigned as a result of the allegation or investigation but has not admitted that a violation occurred. In the event an employee holding a school bus driver permit has been found to have physically or sexually abused a student, the designated investigator shall file a written complaint with the school transportation consultant at the department of education; the designated investigator shall file a written complaint with the local school board in founded cases involving other nonlicensed school employees; and

c. Arrange for counseling services for the student on request of the student, or the student's parent or guardian.

[**ARC 9377B**, IAB 2/23/11, effective 3/30/11]

281—102.12(280) Level-two investigator's duties. Upon referral by the designated investigator, the level-two investigator appointed, contracted, requested or retained under subrule 102.5(2) shall review the report of abuse and the designated investigator's report, if any, promptly conduct further investigation and create a written narrative report. The level-two investigator's report shall state:

1. Conclusions as to the occurrence of the alleged incident; and
2. Conclusions as to the applicability of the exceptions to physical abuse listed in rule 281—102.4(280); or
3. Conclusions as to the nature of the sexual abuse, if any; and
4. Recommendations regarding the need for further investigation.

The written report shall be delivered to the designated investigator as soon as practicable.

The level-two investigator shall exercise prudent discretion in the investigative process to preserve the privacy interests of the individuals involved. To the maximum extent possible, the level-two investigator shall maintain the confidentiality of the report.

281—102.13(280) Retention of records. Any record created by an investigation shall be handled according to formally adopted or bargained policies on the maintenance of personnel or other confidential records. Notes, tapes, memoranda, and related materials compiled in the investigation shall be retained by the public or nonpublic school for a minimum of two years.

Unfounded reports shall not be placed in an employee's personnel file. If a report is founded at level one and unfounded at level two, the founded report from the level-one investigator shall be removed immediately upon receipt of an unfounded report from the level-two investigator.

281—102.14(280) Substantial compliance. Because investigative procedures seldom allow for rigid observance of the protocol, substantial compliance with the rules is required with the overriding goal of reaching a fair and unbiased resolution of the complaint.

281—102.15(280) Effective date. These rules are effective on July 1, 1989, for school years 1989-90 and thereafter.

These rules are intended to implement Iowa Code section 280.17.

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[Filed ARC 9905B (Notice ARC 9794B, IAB 10/5/11), IAB 12/14/11, effective 1/18/12]

[1] Effective date of the following delayed seventy days by the Administrative Rules Review Committee at its meeting held January 5, 1993: 102.2(280), definitions of "Abuse," "Board of educational examiners," "Incident," "Injury," "Sexual harassment"; 102.3(280); 102.4(2), introductory paragraph; 102.8(5); 102.9(1), first sentence; 102.9(3), introductory paragraph; 102.9(4); 102.9(5), first and second unnumbered paragraphs; 102.10(280)"7"; 102.10(280), last paragraph; 102.11(280)"2"; 102.12(280), introductory paragraph; new 102.14(280); delay lifted by the Committee on February 8, 1993, effective February 9, 1993.

CHAPTER 103
CORPORAL PUNISHMENT BAN; RESTRAINT; PHYSICAL CONFINEMENT AND DETENTION

281—103.1(256B,280) Purpose. In conjunction with Iowa Code section 280.21, the purpose of this chapter is to define and exemplify generally the limitations placed on employees of public schools, accredited nonpublic schools, and area education agencies in applying physical contact or force to enrolled students, and to require that any such force or contact is reasonable and necessary under the circumstances. These rules also provide requirements for administrators and staff of public schools, accredited nonpublic schools, and area education agencies regarding the use of physical restraints and physical confinement and detention. The applicability of this chapter to physical restraint or physical confinement and detention does not depend on the terminology employed by the organization to describe physical restraint or physical confinement and detention.

281—103.2(256B,280) Ban on corporal punishment. An employee of a public school district, accredited nonpublic school, or area education agency shall not inflict, or cause to be inflicted, corporal punishment upon a student. "Corporal punishment" is defined to mean the intentional physical punishment of a student. It includes the use of unreasonable or unnecessary physical force, or physical contact made with the intent to harm or cause pain.

281—103.3(256B,280) Exclusions. Corporal punishment does not include the following:

1. Verbal recrimination or chastisement directed toward a student;
2. Reasonable requests or requirements of a student engaged in activities associated with physical education class or extracurricular athletics;
3. Actions consistent with and included in an individualized education program developed under the Individuals with Disabilities Education Act, as reauthorized, Iowa Code chapter 256B, and 281—Chapter 41; however, under no circumstance shall an individualized education program violate the provisions of this chapter;
4. Reasonable periods of detention, not in excess of school hours, or brief periods of before- and after-school detention, in a seat, classroom or other part of a school facility, unless the detention is accomplished by the use of material restraints applied to the person. If detention meets this chapter's definition of "physical confinement and detention," the provisions of this chapter on physical confinement and detention must be followed. For purposes of this chapter, material restraints do not include devices, objects, or techniques required or ordered for reasons of safety (e.g., safety harnesses on school buses) or for therapeutic or medical treatment (e.g., devices used for physical or occupational therapy), provided those devices, objects, or techniques are so used, and used for no other purpose;
5. Actions by an employee subject to these rules toward a person who is not a student of the school or receiving the services of an area education agency employing or utilizing the services of the employee.

281—103.4(256B,280) Exceptions and privileges. Notwithstanding rule 103.2(256B,280), no employee subject to these rules is prohibited from:

1. Using reasonable and necessary force, not designed or intended to cause pain, in order to accomplish any of the following:
   - To quell a disturbance or prevent an act that threatens physical harm to any person.
   - To obtain possession of a weapon or other dangerous object within a pupil's control.
   - For the purposes of self-defense or defense of others as provided for in Iowa Code section 704.3.
   - For the protection of property as provided for in Iowa Code section 704.4 or 704.5.
   - To remove a disruptive pupil from class or any area of school premises, or from school-sponsored activities off school premises.
   - To prevent a student from the self-infliction of harm.
   - To protect the safety of others.
2. Using incidental, minor, or reasonable physical contact to maintain order and control.

An employee subject to these rules is not privileged to use unreasonable force to accomplish any of the purposes listed above.

281—103.5(256B,280) Reasonable force. In determining the reasonableness of the physical force used by a school employee, the following factors shall be applied:

1. The size and physical, mental, and psychological condition of the student;
2. The nature of the student's behavior or misconduct provoking the use of physical force;
3. The instrumentality used in applying the physical force;
4. The extent and nature of resulting injury to the student, if any;
5. The motivation of the school employee using physical force.

Reasonable physical force, privileged at its inception, does not lose its privileged status by reasons of an injury to the student, not reasonably foreseeable or otherwise caused by intervening acts of another, including the student.

281—103.6(256B,280) Physical confinement and detention. If a student is physically confined and detained in a portion of a school facility, the following conditions shall be observed. For the purposes of this chapter, "physical confinement and detention" means the confinement of a student in a time-out room or some other enclosure, whether within or outside the classroom, from which the student's egress is restricted.

1. The area of confinement and detention shall be of reasonable dimensions, and shall be free from hazards and dangerous objects or instruments, considering the age, size, and physical and mental condition of the student subject to confinement and detention;
2. There shall be sufficient light and adequate ventilation for human habitation;
3. A comfortable temperature shall be maintained, consistent with the facility that includes the confinement and detention area;
4. Reasonable break periods shall be afforded the student to attend to bodily needs. However, sleep shall not be considered a "bodily need" for purposes of this subrule;
5. The period of detention and confinement is reasonable, considering the age, size, and physical and mental condition of the student subject to confinement and detention, and not in excess of the hours in a school day as defined by local board policy or rule; however, reasonable periods of before- and after-school detention are permissible. If a period of physical confinement and detention exceeds the shorter of 60 minutes or the school's typical class period, staff members shall evaluate the continued need for physical confinement and detention, shall obtain administrator (or designee) approval for any continued confinement and detention, and shall comply with any administrator (or designee) directives concerning any continued confinement and detention;
6. Adequate and continuous adult supervision is provided;
7. Material restraints applied to the person are not used to effect confinement;
8. If a room or enclosure used for physical confinement and detention has a locking mechanism, such room and mechanism shall comply with all applicable building code requirements and the following additional requirements:

- If a locking mechanism is used, it shall be constructed so it will engage only when a handle, knob, or other device is held in position by a person, unless the mechanism is electrically or electronically controlled and automatically releases when the building's fire alarm system is activated, the building's severe weather warning system is activated, or electrical power to the mechanism is interrupted.
- When the locking mechanism is released, the door must be able to be readily opened from the inside.
- If a locking mechanism requires a handle, knob, or other device to be held in position by a person before the mechanism is engaged, no person shall take any action, or cause such action to be taken, or employ any object, device, or instrument, or cause such to be employed, that disables the handle, knob, or other device such that the locking mechanism engages or remains engaged without the handle, knob, or other device being held in position by a person.

[**ARC 9378B**, IAB 2/23/11, effective 3/30/11]

281—103.7(256B,280) Additional minimum mandatory procedures. If a public school, accredited nonpublic school, or area education agency seeks to use physical restraint or physical confinement and detention, or both, it shall do so in compliance with the minimum requirements of this chapter. The board of a public school, accredited nonpublic school, or area education agency may adopt policies and procedures regarding the use of physical restraint or physical confinement and detention, or both, that exceed the minimum requirements contained in this chapter. Additional minimum mandatory procedures are as follows:

1. Physical restraint and physical confinement and detention shall not be used as discipline for minor infractions and may be used only after other disciplinary techniques have been attempted, if reasonable under the circumstances;

2. All school employees, before using physical restraint or physical confinement and detention, shall receive adequate and periodic training, which shall be documented and which shall include training on these rules and the employer's policies and procedures; positive behavior interventions and supports; disciplinary alternatives to seclusion and restraint; crisis prevention, crisis intervention, and crisis de-escalation techniques; student and staff debriefing; and the safe and effective use of physical restraint and physical confinement and detention;

3. Parents and students are notified at least annually of the provisions of this chapter and of any additional policies and procedures of the public school, accredited nonpublic school, or area education agency on physical restraint and physical confinement and detention;

4. Any physical restraint shall be reasonable and necessary in duration, in light of the provisions of this chapter;

5. If a student is subjected to physical restraint or physical confinement and detention, the public school, accredited nonpublic school, or area education agency shall maintain documentation for each such occurrence, which shall contain at least the following information:

- The names of the student and the employees involved in the restraint, confinement, or detention, as well as the administrator who authorizes any additional periods of confinement or detention pursuant to numbered paragraph "5" of rule 103.6(256B,280);
- The date, time, and duration of the occurrence;
- The actions of the student before, during, and after the occurrence;
- The actions of the employees involved in the occurrence before, during, and after the occurrence, including student and staff debriefing;
- The alternatives to physical restraint or physical confinement and detention attempted before the occurrence;
- A description of any injuries (whether to the student or others) and any property damage;
- A description of future approaches to the student's behavior;

6. The public school, accredited nonpublic school, or area education agency shall attempt to notify a child's parent or guardian on the same day the child is subjected to physical restraint or physical confinement and detention; and

7. The student's parent or guardian must be provided a written copy of the documentation required by numbered paragraph "5" of this rule, which shall be postmarked within three school days of the occurrence. The student's parent or guardian may elect, in writing, to receive the communication required by this numbered paragraph via electronic mail or facsimile transmission.

281—103.8(256B,280) Additional provisions concerning physical restraint. If an employee of a public school, accredited nonpublic school, or area education agency employs physical restraint, the following provisions shall apply:

1. No employee shall use any prone restraints. For the purposes of this rule, "prone restraints" means those in which an individual is held face down on the floor. Employees who find themselves involved in the use of a prone restraint as the result of responding to an emergency must take immediate steps to end the prone restraint;

2. No employee shall use any restraint that obstructs the airway of any child;

3. If an employee physically restrains a student who uses sign language or an augmentative mode of communication as the student's primary mode of communication, the student shall be permitted to have the student's hands free of restraint for brief periods, unless an employee determines that such freedom appears likely to result in harm to self or others;

4. Nothing in this rule shall be construed as limiting or eliminating any immunity conferred by Iowa Code section 280.21 or any other provision of law;

5. An agency covered by this chapter shall investigate any complaint or allegation that one or more of its employees violated one or more of the provisions of this chapter. If an agency covered by this chapter determines that one or more of its employees violated one or more of the provisions of this chapter, the agency shall take appropriate corrective action. If any allegation involves a specific student, the agency shall transmit to the parents of the student the results of its investigation, including, to the extent permitted by law, any required corrective action;

6. If any alleged violation of this chapter is also an allegation of "abuse" as defined in rule 281—102.2(280), the procedures in 281—Chapter 102 shall be applicable.

[**ARC 9378B**, IAB 2/23/11, effective 3/30/11]

These rules are intended to implement Iowa Code sections 256B.3 and 280.21.

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[1] Effective date of 281—103.2(280), last 2 sentences, delayed until adjournment of the 1991 Session of the General Assembly by the Administrative Rules Review Committee at its November 13, 1990, meeting. The agency rescinded the last sentence, effective 11/6/91, IAB 10/2/91.

CHAPTERS 104 to 119
Reserved

TITLE XVIII
EARLY CHILDHOOD

CHAPTER 120
EARLY ACCESS INTEGRATED SYSTEM OF EARLY INTERVENTION SERVICES

DIVISION I
PURPOSE AND APPLICABILITY

281—120.1(34CFR303) Purposes and outcomes of the Early ACCESS Integrated System of Early Intervention Services.

120.1(1) *Establishment of Early ACCESS Integrated System of Early Intervention Services.* This chapter establishes Iowa's Early ACCESS Integrated System of Early Intervention Services, which is Iowa's implementation of Part C of the Individuals with Disabilities Education Act.

120.1(2) *Purposes.* The purposes of this chapter are as follows:

a. Develop and implement a statewide, comprehensive, coordinated, multidisciplinary, interagency system that provides early intervention services for infants and toddlers with disabilities and their families;

b. Facilitate the coordination of payment for early intervention services from federal, state, local, and private sources (including public and private insurance coverage);

c. Enhance Iowa's capacity to provide quality early intervention services and expand and improve existing early intervention services being provided to infants and toddlers with disabilities and their families; and

d. Enhance the capacity of state and local agencies and service providers to identify, evaluate, and meet the needs of all children, including historically underrepresented populations, particularly minority, low-income, inner-city, and rural children, and infants and toddlers in foster care.

120.1(3) *Overall outcomes.* The overall intended outcome of Early ACCESS is to provide early intervention resources, supports, and services to eligible children and their families within a coordinated, integrated system. Early ACCESS is aimed at the following four outcomes:

a. Enhancing the development of eligible children;

b. Reducing educational costs to society by minimizing the need for special education and related services after such children reach school age;

c. Preparing eligible children for school entry; and

d. Enhancing the capacity of families to meet the unique needs of their eligible children.

[**ARC 0100C**, IAB 4/18/12, effective 5/23/12]

281—120.2(34CFR303) Applicability of this chapter. The provisions of this chapter apply to the Iowa department of education, as the state lead agency, the signatory agencies identified in subrule 120.39(15), and any early intervention service (EIS) provider that is part of the statewide system of early intervention, regardless of whether that EIS provider receives funds under Part C of the Act. The chapter applies to all children referred to the Part C program, including infants and toddlers with disabilities consistent with the definitions in rules 281—120.6(34CFR303) and 281—120.21(34CFR303), and their families. The provisions of this chapter do not apply to any child with a disability receiving a "free appropriate public education" or "FAPE" under 34 CFR Part 300.

[**ARC 0100C**, IAB 4/18/12, effective 5/23/12]

281—120.3(34CFR303) Applicable federal regulations.

120.3(1) *General.* The following regulations apply to this chapter:

a. The regulations at 34 CFR Part 303.

b. The Education Department General Administrative Regulations (EDGAR), including 34 CFR Parts 76 (except for §76.103), 77, 79, 80, 81, 82, 84, 85, and 86.

120.3(2) *References in EDGAR.* In applying EDGAR regulations cited in subrule 120.3(1), any reference to:

a. "State educational agency" means the Iowa department of education, the lead agency under this chapter; and

b. "Education records" or "records" means early intervention records.

[**ARC 0100C**, IAB 4/18/12, effective 5/23/12]

DIVISION II
DEFINITIONS

281—120.4(34CFR303) Act. "Act" means the Individuals with Disabilities Education Act. Part B of the Act, 34 CFR Part 300, establishes special education for children with disabilities who are age three to the maximum age in Iowa Code section 256B.8. Part B of the Act includes early childhood special education under Section 619 of the Act. Part C of the Act, 34 CFR Part 303, establishes the infants and toddlers program for eligible individuals from birth to age three.

[**ARC 0100C**, IAB 4/18/12, effective 5/23/12]

281—120.5(34CFR303) At-risk infant or toddler. "At-risk infant or toddler" means an individual under three years of age who would be at risk of experiencing a substantial developmental delay if early intervention services were not provided to the individual.

[**ARC 0100C**, IAB 4/18/12, effective 5/23/12]

281—120.6(34CFR303) Child. "Child" means an individual under the age of six and may include an "infant or toddler with a disability," as that term is defined in rule 281—120.21(34CFR303).

[**ARC 0100C**, IAB 4/18/12, effective 5/23/12]

281—120.7(34CFR303) Consent.

120.7(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 the parent's native language, as defined in rule 281—120.25(34CFR303);

b. The parent understands and agrees in writing to the carrying out of the activity for which the parent's consent is sought, and the consent form describes that activity and lists the early intervention records (if any) that will be released and to whom they will be released; 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.

120.7(2) *Revoking consent.* If a parent revokes consent, that revocation is not retroactive (i.e., it does not apply to an action that occurred before the consent was revoked).

[**ARC 0100C**, IAB 4/18/12, effective 5/23/12]

281—120.8(34CFR303) Council. "Council" means the Iowa council for Early ACCESS, which is the state interagency coordinating council that meets the requirements of Division VIII of this chapter.

[**ARC 0100C**, IAB 4/18/12, effective 5/23/12]

281—120.9(34CFR303) Day. "Day" means calendar day, unless otherwise indicated.

[**ARC 0100C**, IAB 4/18/12, effective 5/23/12]

281—120.10(34CFR303) Developmental delay. "Developmental delay," when used with respect to a child residing in a state, has the meaning given that term by the state under rule 281—120.111(34CFR303).

[**ARC 0100C**, IAB 4/18/12, effective 5/23/12]

281—120.11(34CFR303) Early intervention service program. "Early intervention service program" or "EIS program" means an entity designated by the lead agency for reporting under rules 281—120.700(34CFR303) through 281—120.702(34CFR303).

[**ARC 0100C**, IAB 4/18/12, effective 5/23/12]

281—120.12(34CFR303) Early intervention service provider.

120.12(1) *General.* "Early intervention service provider" or "EIS provider" means an entity (whether public, private, or nonprofit) or an individual that provides early intervention services under Part C of the Act, whether or not the entity or individual receives federal funds under Part C of the Act, and may include, where appropriate, the lead agency and a public agency responsible for providing early intervention services to infants and toddlers with disabilities in the state under Part C of the Act.

120.12(2) *Responsibilities.* An EIS provider is responsible for:

a. Participating in the multidisciplinary individualized family service plan (IFSP) team's ongoing assessment of an infant or toddler with a disability and a family-directed assessment of the resources, priorities, and concerns of the infant's or toddler's family, as related to the needs of the infant or toddler, in the development of integrated goals and outcomes for the IFSP;

b. Providing early intervention services in accordance with the IFSP of the infant or toddler with a disability; and

c. Consulting with and training parents and others regarding the provision of the early intervention services described in the IFSP of the infant or toddler with a disability.

120.12(3) *Rule of construction.* "Early ACCESS service provider" is a synonym for "early intervention service provider."

[**ARC 0100C**, IAB 4/18/12, effective 5/23/12]

281—120.13(34CFR303) Early intervention services.

120.13(1) *General.* "Early intervention services" means developmental services that:

a. Are provided under public supervision;

b. Are selected in collaboration with the parents;

c. Are provided at no cost, except, subject to rules 281—120.520(34CFR303) and 281—120.521(34CFR303), where federal or state law provides for a system of payments by families, including, if applicable, a schedule of sliding fees;

d. Are designed to meet the developmental needs of an infant or toddler with a disability and the needs of the family to assist appropriately in the infant's or toddler's development, as identified by the IFSP team, in any one or more of the following areas, including:

(1) Physical development;

(2) Cognitive development;

(3) Communication development;

(4) Social or emotional development; or

(5) Adaptive development;

e. Meet the standards of the state in which the early intervention services are provided, including but not limited to the then-applicable version of Iowa's Early Learning Standards and the requirements of Part C of the Act;

f. Include services identified under subrule 120.13(2);

g. Are provided by qualified personnel (as that term is defined in rule 281—120.31(34CFR303)), including the types of personnel listed in subrule 120.13(3);

h. To the maximum extent appropriate, are provided in natural environments, as defined in rule 281—120.26(34CFR303) and consistent with rule 281—120.126(34CFR303) and subrule 120.344(4); and

i. Are provided in conformity with an IFSP adopted in accordance with Section 636 of the Act and rule 281—120.20(34CFR303).

120.13(2) *Types of early intervention services.* Subject to subrule 120.13(4), early intervention services include the following services defined in this subrule:

a. Assistive technology device and assistive technology service are defined as follows:

(1) "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 an infant or toddler with a disability. "Assistive technology device"

does not include a medical device that is surgically implanted, including a cochlear implant, or the optimization (e.g., mapping), maintenance, or replacement of that device.

(2) "Assistive technology service" means any service that directly assists an infant or toddler with a disability in the selection, acquisition, or use of an assistive technology device. "Assistive technology service" includes:

1. The evaluation of the needs of an infant or toddler with a disability, including a functional evaluation of the infant or toddler with a disability in the child's customary environment;

2. Purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by infants or toddlers 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 an infant or toddler 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) or other individuals who provide services to, or are otherwise substantially involved in the major life functions of, infants and toddlers with disabilities.

b. "Audiology services" includes:

(1) Identification of children with auditory impairments, using at-risk criteria and appropriate audiologic screening techniques;

(2) Determination of the range, nature, and degree of hearing loss and communication functions, by use of audiological evaluation procedures;

(3) Referral for medical and other services necessary for the habilitation or rehabilitation of an infant or toddler with a disability who has an auditory impairment;

(4) Provision of auditory training, aural rehabilitation, speech reading and listening devices, orientation and training, and other services;

(5) Provision of services for prevention of hearing loss; and

(6) Determination of the child's individual amplification, including selecting, fitting, and dispensing appropriate listening and vibrotactile devices, and evaluating the effectiveness of those devices.

c. "Family training, counseling, and home visits" means services provided, as appropriate, by social workers, psychologists, and other qualified personnel to assist the family of an infant or toddler with a disability in understanding the special needs of the child and enhancing the child's development.

d. "Health services" has the meaning given the term in rule 281—120.16(34CFR303).

e. "Medical services" means services provided by a licensed physician for diagnostic or evaluation purposes to determine a child's developmental status and need for early intervention services.

f. "Nursing services" includes:

(1) The assessment of health status for the purpose of providing nursing care, including the identification of patterns of human response to actual or potential health problems;

(2) The provision of nursing care to prevent health problems, restore or improve functioning, and promote optimal health and development; and

(3) The administration of medications, treatments, and regimens prescribed by a licensed physician.

g. "Nutrition services" includes:

(1) Conducting individual assessments in:

1. Nutritional history and dietary intake;

2. Anthropometric, biochemical, and clinical variables;

3. Feeding skills and feeding problems; and

4. Food habits and food preferences;

(2) Developing and monitoring appropriate plans to address the nutritional needs of children eligible under this chapter, based on the findings in subparagraph 120.13(2)*"g"*(1); and

(3) Making referrals to appropriate community resources to carry out nutrition goals.

h. "Occupational therapy" includes services to address the functional needs of an infant or toddler with a disability related to adaptive development, adaptive behavior, and play, and sensory, motor, and postural development. These services are designed to improve the child's functional ability to perform tasks in home, school, and community settings, and include:

(1) Identification, assessment, and intervention;

(2) Adaptation of the environment, and selection, design, and fabrication of assistive and orthotic devices to facilitate development and promote the acquisition of functional skills; and

(3) Prevention or minimization of the impact of initial or future impairment, delay in development, or loss of functional ability.

i. "Physical therapy" includes services to address the promotion of sensorimotor function through enhancement of musculoskeletal status, neurobehavioral organization, perceptual and motor development, cardiopulmonary status, and effective environmental adaptation. These services include:

(1) Screening, evaluation, and assessment of children to identify movement dysfunction;

(2) Obtaining, interpreting, and integrating information appropriate to program planning to prevent, alleviate, or compensate for movement dysfunction and related functional problems; and

(3) Providing individual and group services or treatment to prevent, alleviate, or compensate for movement dysfunction and related functional problems.

j. "Psychological services" includes:

(1) Administering psychological and developmental tests and other assessment procedures;

(2) Interpreting assessment results;

(3) Obtaining, integrating, and interpreting information about child behavior and child and family conditions related to learning, mental health, and development; and

(4) Planning and managing a program of psychological services, including psychological counseling for children and parents, family counseling, consultation on child development, parent training, and education programs.

k. "Service coordination services" has the meaning given the term in rule 281—120.34(34CFR303).

l. "Sign language and cued language services" includes teaching sign language, cued language, and auditory/oral language, providing oral transliteration services (such as amplification), and providing sign and cued language interpretation.

m. "Social work services" includes:

(1) Making home visits to evaluate a child's living conditions and patterns of parent-child interaction;

(2) Preparing a social or emotional developmental assessment of the infant or toddler within the family context;

(3) Providing individual and family-group counseling with parents and other family members, and appropriate social skill-building activities with the infant or toddler and parents;

(4) Working with those problems in the living situation (home, community, and any center where early intervention services are provided) of an infant or toddler with a disability and the family of that child that affect the child's maximum utilization of early intervention services; and

(5) Identifying, mobilizing, and coordinating community resources and services to enable the infant or toddler with a disability and the family to receive maximum benefit from early intervention services.

n. "Special instruction" includes:

(1) The design of learning environments and activities that promote the infant's or toddler's acquisition of skills in a variety of developmental areas, including cognitive processes and social interaction;

(2) Curriculum planning, including the planned interaction of personnel, materials, and time and space, that leads to achieving the outcomes in the IFSP for the infant or toddler with a disability;

(3) Providing families with information, skills, and support related to enhancing the skill development of the child; and

(4) Working with the infant or toddler with a disability to enhance the child's development.

o. "Speech-language pathology services" includes:

(1) Identification of children with communication or language disorders and delays in development of communication skills, including the diagnosis and appraisal of specific disorders and delays in those skills;

(2) Referral for medical or other professional services necessary for the habilitation or rehabilitation of children with communication or language disorders and delays in development of communication skills; and

(3) Provision of services for the habilitation, rehabilitation, or prevention of communication or language disorders and delays in development of communication skills.

p. "Transportation and related costs" includes the cost of travel and other costs that are necessary to enable an infant or toddler with a disability and the child's family to receive early intervention services.

q. "Vision services" means:

(1) Evaluation and assessment of visual functioning, including the diagnosis and appraisal of specific visual disorders, delays, and abilities that affect early childhood development;

(2) Referral for medical or other professional services necessary for the habilitation or rehabilitation of visual functioning disorders, or both; and

(3) Communication skills training, orientation and mobility training for all environments, visual training, and additional training necessary to activate visual motor abilities.

120.13(3) *Qualified personnel.* The following are the types of qualified personnel who provide early intervention services under this chapter:

a. Audiologists.

b. Family therapists.

c. Nurses.

d. Occupational therapists.

e. Orientation and mobility specialists.

f. Pediatricians and other physicians for diagnostic and evaluation purposes.

g. Physical therapists.

h. Psychologists.

i. Registered dieticians.

j. Social workers.

k. Special educators, including teachers of children with hearing impairments (including deafness) and teachers of children with visual impairments (including blindness).

l. Speech and language pathologists.

m. Vision specialists, including ophthalmologists and optometrists.

120.13(4) *Other services.* The services and personnel identified and defined in subrules 120.13(2) and 120.13(3) do not comprise exhaustive lists of the types of services that may constitute early intervention services or the types of qualified personnel that may provide early intervention services. Nothing in rule 281—120.13(34CFR303) prohibits the identification in the IFSP of another type of service as an early intervention service provided that the service meets the criteria identified in subrule 120.13(1) or of another type of personnel that may provide early intervention services in accordance with this chapter, provided such personnel meet the requirements in rule 281—120.31(34CFR303).

120.13(5) *Rule of construction.* "Early ACCESS services" is a synonym for the services described in this rule.

[**ARC 0100C**, IAB 4/18/12, effective 5/23/12]

281—120.14(34CFR303) 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.

[**ARC 0100C**, IAB 4/18/12, effective 5/23/12]

281—120.15(34CFR303) Free appropriate public education. "Free appropriate public education" or "FAPE," as used in rule 281—120.521(34CFR303), 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 state educational agency (SEA), including the requirements of Part B of the Act;

that include an appropriate preschool, elementary school, or secondary school education in the state involved; and that are provided in conformity with an individualized education program (IEP) that meets the requirements of 34 CFR 300.320 through 300.324.
[**ARC 0100C**, IAB 4/18/12, effective 5/23/12]

281—120.16(34CFR303) Health services.

120.16(1) *General.* "Health services" means services necessary to enable an otherwise eligible child to benefit from the other early intervention services under this chapter during the time that the child is eligible to receive early intervention services.

120.16(2) *Examples of health services.* "Health services" includes:

a. Such services as clean intermittent catheterization, tracheostomy care, tube feeding, the changing of dressings or colostomy collection bags, and other health services; and

b. Consultation by physicians with other service providers concerning the special health care needs of infants and toddlers with disabilities that will need to be addressed in the course of providing other early intervention services.

120.16(3) *Services excluded.* "Health services" does not include:

a. Services that are:

(1) Surgical in nature (such as cleft palate surgery, surgery for club foot, or the shunting of hydrocephalus);

(2) Purely medical in nature (such as hospitalization for management of congenital heart ailments, or the prescribing of medicine or drugs for any purpose); or

(3) Related to the implementation, optimization (e.g., mapping), maintenance, or replacement of a medical device that is surgically implanted, including a cochlear implant.

1. Nothing in this chapter limits the right of an infant or toddler with a disability with a surgically implanted device (e.g., cochlear implant) to receive the early intervention services that are identified in the child's IFSP as being needed to meet the child's developmental outcomes.

2. Nothing in this chapter prevents the EIS provider from routinely checking that either the hearing aid or the external components of a surgically implanted device (e.g., cochlear implant) of an infant or toddler with a disability are functioning properly;

b. Devices (such as heart monitors, respirators and oxygen, and gastrointestinal feeding tubes and pumps) necessary to control or treat a medical condition; and

c. Medical-health services (such as immunizations and regular "well-baby" care) that are routinely recommended for all children.
[**ARC 0100C**, IAB 4/18/12, effective 5/23/12]

281—120.17(34CFR303) Homeless children. "Homeless children" means children who meet the definition given the term "homeless children and youths" in Section 725 (42 U.S.C. 11434a) of the McKinney-Vento Homeless Assistance Act, 42 U.S.C. 11431 et seq.
[**ARC 0100C**, IAB 4/18/12, effective 5/23/12]

281—120.18(34CFR303) Include; including. "Include" or "including" means that the items named are not all of the possible items that are covered, whether like or unlike the ones named.
[**ARC 0100C**, IAB 4/18/12, effective 5/23/12]

281—120.19(34CFR303) Indian; Indian tribe. "Indian" means an individual who is a member of an Indian tribe. "Indian tribe" means any federal or state Indian tribe, band, rancheria, pueblo, colony, community, or settlement, 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.). Nothing in this definition is intended to indicate that the Secretary of the Interior is required to provide services or funding to a state Indian tribe that is not listed in the Federal Register list of Indian entities recognized as eligible to receive services from the United States, published pursuant to Section 104 of the Federally Recognized Indian Tribe List Act of 1994, 25 U.S.C. 479a-1.
[**ARC 0100C**, IAB 4/18/12, effective 5/23/12]

281—120.20(34CFR303) Individualized family service plan. "Individualized family service plan" or "IFSP" means a written plan for providing early intervention services to an infant or toddler with a disability under this chapter and the infant's or toddler's family that is based on the evaluation and assessment described in rule 281—120.321(34CFR303); that includes the content specified in rule 281—120.344(34CFR303); that is implemented as soon as possible once parental consent for the early intervention services in the IFSP is obtained (consistent with rule 281—120.420(34CFR303)); and that is developed in accordance with the IFSP procedures in rules 281—120.342(34CFR303), 281—120.343(34CFR303), and 281—120.345(34CFR303).
[**ARC 0100C**, IAB 4/18/12, effective 5/23/12]

281—120.21(34CFR303) 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 because the individual:

120.21(1) Is experiencing a developmental delay, which is a 25 percent delay as measured by appropriate diagnostic instruments and procedures, in one or more of the following areas:

a. Cognitive development;

b. Physical development, including vision and hearing;

c. Communication development;

d. Social or emotional development;

e. Adaptive development; or

120.21(2) Has a diagnosed physical or mental condition that:

a. Has a high probability of resulting in developmental delay; and

b. Includes conditions such as chromosomal abnormalities; genetic or congenital disorders; sensory impairments; inborn errors of metabolism; disorders reflecting disturbance of the development of the nervous system; congenital infections; severe attachment disorders; and disorders secondary to exposure to toxic substances, including fetal alcohol syndrome.
[**ARC 0100C**, IAB 4/18/12, effective 5/23/12]

281—120.22(34CFR303) Lead agency. "Lead agency" is the Iowa department of education, as designated by the governor, to receive funds under Section 643 of the Act and to administer the state's responsibilities under Part C of the Act.
[**ARC 0100C**, IAB 4/18/12, effective 5/23/12]

281—120.23(34CFR303) Local educational agency.

120.23(1) *General.* "Local educational agency" or "LEA" means a public board of education or other public authority legally constituted within the state for either administrative control or direction of, or to perform a service function for, public elementary schools or secondary schools in a city, county, township, school district, or other political subdivision of the state, or for a combination of school districts or counties as are recognized in the state as an administrative agency for its public elementary schools or secondary schools.

120.23(2) *Educational service agencies and other public institutions or agencies.* "Educational service agencies and other public institutions or agencies" includes the following:

a. "Educational service agency," defined as a regional public multiservice agency:

(1) Authorized by state law to develop, manage, and provide services or programs to LEAs; and

(2) 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.

b. Any other public institution or agency having administrative control and direction of a public elementary school or secondary school, including a public charter school that is established as an LEA under state law.

c. Entities that meet the definition of "intermediate educational unit" or "IEU" in Section 602(23) of the Act, as in effect prior to June 4, 1997. Under that definition, an "intermediate educational unit" or "IEU" means any public authority other than an LEA that:

(1) Is under the general supervision of the state educational agency;

(2) Is established by state law for the purpose of providing FAPE on a regional basis; and

(3) Provides special education and related services to children with disabilities within the state.

120.23(3) *BIE-funded schools.* "BIE-funded schools" includes an elementary school or secondary school funded by the Bureau of Indian Education, and not subject to the jurisdiction of any SEA other than the Bureau of Indian Education, 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.

[**ARC 0100C**, IAB 4/18/12, effective 5/23/12]

281—120.24(34CFR303) Multidisciplinary. "Multidisciplinary" means the involvement of two or more separate disciplines or professions and, with respect to:

1. Evaluation of the child in rule 281—120.113(34CFR303) and subrule 120.321(1) and assessments of the child and family in subrule 120.321(1), may include one individual who is qualified in more than one discipline or profession; and

2. The IFSP team in rule 281—120.340(34CFR303) must include the involvement of the parent and two or more individuals from separate disciplines or professions and one of these individuals must be the service coordinator (consistent with subrule 120.343(1)).

[**ARC 0100C**, IAB 4/18/12, effective 5/23/12]

281—120.25(34CFR303) Native language.

120.25(1) *Limited English proficiency.* "Native language," when used with respect to an individual who is limited English proficient or LEP (as that term is defined in Section 602(18) of the Act), means:

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, except as provided in paragraph 120.25(1)*"b"*; and

b. For evaluations and assessments conducted pursuant to subrule 120.321(1), the language normally used by the child, if determined developmentally appropriate for the child by qualified personnel conducting the evaluation or assessment.

120.25(2) *Deaf or hard of hearing; blind or visually impaired; no written language.* "Native language," when used with respect to an individual who is deaf or hard of hearing, blind or visually impaired, or for an individual with no written language, means the mode of communication that is normally used by the individual (such as sign language, braille, or oral communication).

[**ARC 0100C**, IAB 4/18/12, effective 5/23/12]

281—120.26(34CFR303) Natural environments. "Natural environments" means settings that are natural or typical for a same-aged infant or toddler without a disability, may include the home or community settings, and must be consistent with the provisions of rule 281—120.126(34CFR303).

[**ARC 0100C**, IAB 4/18/12, effective 5/23/12]

281—120.27(34CFR303) Parent.

120.27(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 early intervention, educational, health or developmental 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 281—120.422(34CFR303) or Section 639(a)(5) of the Act.

120.27(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 paragraph 120.27(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 under subrule 120.27(1) to act as a parent, must be presumed to be the parent for purposes of rule 281—120.27(34CFR303) unless the biological or adoptive parent does not have legal authority to make educational or early intervention services decisions for the child.

b. If a judicial decree or order identifies a specific person or persons under paragraphs 120.27(1)*"a"* through *"d"* to act as the "parent" of a child or to make educational or early intervention service decisions on behalf of a child, then the person or persons must be determined to be the "parent" for purposes of Part C of the Act, except that if an EIS provider or a public agency provides any services to a child or any family member of that child, that EIS provider or public agency may not act as the parent for that child.
[**ARC 0100C**, IAB 4/18/12, effective 5/23/12]

281—120.28(34CFR303) Parent training and information center. "Parent training and information center" means a center assisted under Section 671 or 672 of the Act.
[**ARC 0100C**, IAB 4/18/12, effective 5/23/12]

281—120.29(34CFR303) Personally identifiable information. "Personally identifiable information" means personally identifiable information as defined in 34 CFR 99.3, except that the term "student" in the definition of "personally identifiable information" in 34 CFR 99.3 means "child" as used in this chapter and any reference to "school" means "EIS provider" as used in this chapter.
[**ARC 0100C**, IAB 4/18/12, effective 5/23/12]

281—120.30(34CFR303) Public agency. As used in this chapter, "public agency" means the lead agency and any other agency or political subdivision of the state. The particular public agency serving each infant or toddler and that infant or toddler's family shall be determined by the particular Early ACCESS needs of each infant and toddler and pursuant to the interagency agreements established under this chapter. Disputes about which agency will serve a particular infant or toddler shall be resolved by the mechanisms that those agreements contain.
[**ARC 0100C**, IAB 4/18/12, effective 5/23/12]

281—120.31(34CFR303) Qualified personnel. "Qualified personnel" means personnel who have met state-approved or state-recognized certification, licensing, registration, or other comparable requirements that apply to the areas in which the individuals are conducting evaluations or assessments or providing early intervention services.
[**ARC 0100C**, IAB 4/18/12, effective 5/23/12]

281—120.32(34CFR303) Scientifically based research. "Scientifically based research" has the meaning given the term in Section 9101(37) of the Elementary and Secondary Education Act of 1965 (ESEA). In applying the ESEA to the regulations under Part C of the Act, any reference to "education activities and programs" refers to "early intervention services."
[**ARC 0100C**, IAB 4/18/12, effective 5/23/12]

281—120.33(34CFR303) Secretary. "Secretary" means the Secretary of the United States Department of Education.
[**ARC 0100C**, IAB 4/18/12, effective 5/23/12]

281—120.34(34CFR303) Service coordination services (case management).

120.34(1) *General.*

a. As used in this chapter, "service coordination services" means services provided by a service coordinator to assist and enable an infant or toddler with a disability and the child's family to receive the services and rights, including procedural safeguards, required under this chapter.

b. Each infant or toddler with a disability and the child's family must be provided with one service coordinator who is responsible for:

(1) Coordinating all services required under this chapter across agency lines; and

(2) Serving as the single point of contact for carrying out the activities described in this subrule and subrule 120.34(2).

c. Service coordination is an active, ongoing process that involves:

(1) Assisting parents of infants and toddlers with disabilities in gaining access to, and coordinating the provision of, the early intervention services required under this chapter;

(2) Using family-centered practices in all contacts with families; and

(3) Coordinating the other services identified in the IFSP under subrule 120.344(5) that are needed by, or are being provided to, the infant or toddler with a disability and that child's family.

120.34(2) *Specific service coordination services.* Service coordination services include:

a. Explaining the system of services and resources called Early ACCESS;

b. Assisting parents of infants and toddlers with disabilities in obtaining access to needed early intervention services and other services identified in the IFSP, including making referrals to providers for needed services and scheduling appointments for infants and toddlers with disabilities and their families;

c. Coordinating the provision of early intervention services and other services (such as educational, social, and medical services that are not provided for diagnostic or evaluative purposes) that the child needs or is being provided;

d. Coordinating evaluations and assessments;

e. Facilitating and participating in the development, review, and evaluation of IFSPs;

f. Conducting referral and other activities to assist families in identifying available EIS providers;

g. Coordinating, facilitating, and monitoring the delivery of services required under this chapter to ensure that the services are provided in a timely manner;

h. Conducting follow-up activities to determine that appropriate Part C services are being provided;

i. Informing families of their rights and procedural safeguards, as set forth in Division VI of this chapter and related resources;

j. Coordinating the funding sources for services required under this chapter; and

k. Facilitating the development of a transition plan to preschool, school, or, if appropriate, to other services.

120.34(3) *Use of the term "service coordination" or "service coordination services."* The lead agency's or an EIS provider's use of the term "service coordination" or "service coordination services" does not preclude characterization of the services as case management or any other service that is covered by another payor of last resort (including Title XIX of the Social Security Act—Medicaid), for purposes of claims in compliance with the requirements of rules 281—120.501(34CFR303) through 281—120.521(34CFR303) (payor of last resort provisions).

120.34(4) *Appointment of service coordinator.* A service coordinator shall be appointed to families as soon as possible after a referral is received. Continuity of services for the child and the child's family shall be a consideration in the determination of whether a change is made in the service coordinator at any time following initial appointment.

120.34(5) *Required service coordinator qualifications.* In addition to the requirements of subrule 120.119(1), a service coordinator must be a person who has completed a competency-based training program with content related to knowledge and understanding of eligible children, these rules, the nature and scope of services in Early ACCESS in the state, and the system of payments for services, as well as service coordination responsibilities and strategies. The competency-based training program, approved by the department, shall include different training formats and differentiated training to reflect the background and knowledge of the trainees, including those persons who are state-licensed professionals whose scope of practice includes service coordination. The department or its designee shall determine whether service coordinators have successfully completed the training.

[**ARC 0100C**, IAB 4/18/12, effective 5/23/12]

281—120.35(34CFR303) State. "State" means each of the 50 states, the Commonwealth of Puerto Rico, the District of Columbia, and the four outlying areas and jurisdictions of Guam, American Samoa, the United States Virgin Islands, and the Commonwealth of the Northern Mariana Islands.
[**ARC 0100C**, IAB 4/18/12, effective 5/23/12]

281—120.36(34CFR303) 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 secondary schools or, if there is no such officer or agency, an officer or agency designated by the governor or by state law. "State educational agency" includes the agency that receives funds under Sections 611 and 619 of the Act to administer the state's responsibilities under Part B of the Act. In Iowa, the SEA is the Iowa department of education.
[**ARC 0100C**, IAB 4/18/12, effective 5/23/12]

281—120.37(34CFR303) Ward of the state.

120.37(1) *General.* Subject to subrules 120.37(2) and 120.37(3), "ward of the state" means a child who, as determined by the state where the child resides, is:

a. A foster child;

b. A ward of the state; or

c. In the custody of a public child welfare agency.

120.37(2) *Exception.* "Ward of the state" does not include a foster child who has a foster parent who meets the definition of "parent" in rule 281—120.27(34CFR303).

120.37(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.
[**ARC 0100C**, IAB 4/18/12, effective 5/23/12]

281—120.38(34CFR303) Other definitions used in this chapter. The following terms apply to this chapter:

120.38(1) *Area education agency.* "Area education agency" or "AEA" is a political subdivision of the state organized pursuant to Iowa Code chapter 273.

120.38(2) *Board.* "Board" means the Iowa state board of education.

120.38(3) *Community partners.* "Community partners" means local providers of signatory agencies, as well as other public or private community programs or agencies, including Early Head Start, child care providers, early childhood Iowa areas, and health programs, that work with Early ACCESS, as described in rule 281—120.803(34CFR303).

120.38(4) *Department.* "Department" means the Iowa department of education.

120.38(5) *Director of education.* "Director of education" means the state director of the Iowa department of education.

120.38(6) *Early childhood Iowa area.* "Early childhood Iowa area" means a partnership in a local community with broad representation to lead collaborative efforts involving education, health, and human services programs and services on behalf of children, families and other citizens residing in the local community's geographic area. An early childhood Iowa area mobilizes individuals and their communities to achieve desired results in order to improve the well-being and quality of life for families with young children from birth through the age of five years.

120.38(7) *Early childhood special education.* "Early childhood special education" or "ECSE" means special education and related services under Part B of the Act for those individuals with disabilities younger than the age of six.

120.38(8) *Eligible child.* "Eligible child" is a synonym for "infant or toddler with a disability," as defined in rule 281—120.21(34CFR303).

120.38(9) *Family.* "Family" means the persons who are primarily responsible for the care and nurturing in a child's daily life, including biological or adoptive parents, grandparents, guardians, persons acting as parents, siblings, stepparents, or unmarried partners of parents.

120.38(10) *GEPA.* "GEPA" is an acronym for the General Education Provisions Act.

120.38(11) *Grantee.* "Grantee" means a recipient of funds under Part C of the Act or state funds designated for Early ACCESS that has the fiscal and legal obligation to ensure that the Early ACCESS system is implemented regionally. The term "grantee" shall not be construed in a manner that conflicts with the Act.

120.38(12) *Individualized family service plan team.* "Individualized family service plan team" or "IFSP team" includes the members described in subrule 120.343(1).

120.38(13) *Informed clinical opinion.* "Informed clinical opinion" means the integration of the results of evaluations, direct observations in various settings, and varied activities with the experience, knowledge, and skills of qualified personnel.

120.38(14) *School year.* "School year" means the period during which students who are 3 years of age through 21 years of age attend school.

120.38(15) *Signatory agency.* "Signatory agency" means the departments of education, public health, and human services and the child health specialty clinics.

120.38(16) *Signature.* "Signature" has the meaning given the term in Iowa Code section 4.1(39).
[**ARC 0100C**, IAB 4/18/12, effective 5/23/12]

281—120.39 to **120.99** Reserved.

DIVISION III
STATE ELIGIBILITY FOR A GRANT AND REQUIREMENTS
FOR A STATEWIDE SYSTEM: GENERAL AUTHORITY AND ELIGIBILITY

281—120.100(34CFR303) General authority. The Secretary, in accordance with Part C of the Act, makes grants to states (from their allotments under Section 643 of the Act) to assist each state to maintain and implement a statewide, comprehensive, coordinated, multidisciplinary, interagency system to provide early intervention services for infants and toddlers with disabilities and their families.
[**ARC 0100C**, IAB 4/18/12, effective 5/23/12]

281—120.101(34CFR303) State eligibility—requirements for a grant under Part C of the Act. In order to be eligible for a grant under Part C of the Act for any fiscal year, the state must meet the following conditions:

120.101(1) *Assurances regarding early intervention services and a statewide system.* The state must provide the following assurances to the Secretary that:

a. The state has adopted a policy that appropriate early intervention services, as defined in rule 281—120.13(34CFR303), are available to all infants and toddlers with disabilities in the state and their families, including:

(1) Indian infants and toddlers with disabilities and their families residing on a reservation geographically located in the state;

(2) Infants and toddlers with disabilities who are homeless children and their families; and

(3) Infants and toddlers with disabilities who are wards of the state; and

b. The state has in effect a statewide system of early intervention services that meets the requirements of Section 635 of the Act, including policies and procedures that address, at a minimum, the components required in rules 281—120.111(34CFR303) through 281—120.126(34CFR303).

120.101(2) *State application and assurances.* The state must provide information and assurances to the Secretary, in accordance with 34 CFR §303.200 through 34 CFR §303.236, including:

a. Information that shows that the state meets the application requirements in rules 281—120.200(34CFR303) through 281—120.212(34CFR303); and

b. Assurances that the state also meets the requirements in rules 281—120.221(34CFR303) through 281—120.227(34CFR303).

120.101(3) *Approval before implementation.* The state must obtain approval by the Secretary before implementing any policy or procedure required to be submitted as part of the state's application in 34 CFR §§303.203, 303.204, 303.206, 303.207, 303.208, 303.209, and 303.211.
[**ARC 0100C**, IAB 4/18/12, effective 5/23/12]

281—120.102(34CFR303) State conformity with Part C of the Act. Each state that receives funds under Part C of the Act must ensure that any state rules, regulations, and policies relating to this chapter conform to the purposes and requirements of 34 CFR Part 303.
[**ARC 0100C**, IAB 4/18/12, effective 5/23/12]

281—120.103 and **120.104** Reserved.

281—120.105(34CFR303) Positive efforts to employ and advance qualified individuals with disabilities. Each recipient of assistance under Part C of the Act must make positive efforts to employ and advance in employment qualified individuals with disabilities in programs assisted under Part C of the Act.
[**ARC 0100C**, IAB 4/18/12, effective 5/23/12]

281—120.106 to **120.109** Reserved.

281—120.110(34CFR303) Minimum components of a statewide system. Each statewide system (system) must include, at a minimum, the components described in rules 281—120.111(34CFR303) through 281—120.126(34CFR303).
[**ARC 0100C**, IAB 4/18/12, effective 5/23/12]

281—120.111(34CFR303) State definition of developmental delay. The system must include the state's rigorous definition of developmental delay, consistent with rule 281—120.10(34CFR303) and subrule 120.203(3), that will be used by the state in carrying out programs under Part C of the Act in order to appropriately identify infants and toddlers with disabilities who are in need of services under Part C of the Act. The definition must:

120.111(1) Describe, for each of the areas listed in subrule 120.21(1), the evaluation and assessment procedures, consistent with rule 281—120.321(34CFR303), that will be used to measure a child's development; and

120.111(2) Specify that 25 percent is the applicable level of developmental delay in functioning or other comparable criteria to constitute a developmental delay in one or more of the developmental areas identified in subrule 120.21(1).
[**ARC 0100C**, IAB 4/18/12, effective 5/23/12]

281—120.112(34CFR303) Availability of early intervention services. Each system must include a state policy that is in effect and that ensures that appropriate early intervention services are based on scientifically based research, to the extent practicable, and are available to all infants and toddlers with disabilities and their families, including:

120.112(1) Indian infants and toddlers with disabilities and their families residing on a reservation geographically located in the state; and

120.112(2) Infants and toddlers with disabilities who are homeless children and their families.
[**ARC 0100C**, IAB 4/18/12, effective 5/23/12]

281—120.113(34CFR303) Evaluation, assessment, and nondiscriminatory procedures.

120.113(1) *General.* Subject to subrule 120.113(2), each system must ensure the performance of the following:

a. A timely, comprehensive, multidisciplinary evaluation of the functioning of each infant or toddler with a disability in the state; and

b. A family-directed identification of the needs of the family of the infant or toddler to assist appropriately in the development of the infant or toddler.

120.113(2) *Rule of construction.* The evaluation and family-directed identification required in subrule 120.113(1) must meet the requirements of rule 281—120.321(34CFR303).
[**ARC 0100C**, IAB 4/18/12, effective 5/23/12]

281—120.114(34CFR303) Individualized family service plan (IFSP). Each system must ensure, for each infant or toddler with a disability and the infant's or toddler's family in the state, that an IFSP, as

defined in rule 281—120.20(34CFR303), is developed and implemented that meets the requirements of rules 281—120.340(34CFR303) through 281—120.345(34CFR303), and that includes service coordination services, as defined in rule 281—120.34(34CFR303).
[**ARC 0100C**, IAB 4/18/12, effective 5/23/12]

281—120.115(34CFR303) Comprehensive child find system. Each system must include a comprehensive child find system that meets the requirements in rules 281—120.302(34CFR303) and 281—120.303(34CFR303).
[**ARC 0100C**, IAB 4/18/12, effective 5/23/12]

281—120.116(34CFR303) Public awareness program. Each system must include a public awareness program that focuses on the early identification of infants and toddlers with disabilities; and provides information to parents of infants and toddlers through primary referral sources in accordance with rule 281—120.301(34CFR303).
[**ARC 0100C**, IAB 4/18/12, effective 5/23/12]

281—120.117(34CFR303) Central directory. Each system must include a central directory that is accessible to the general public (i.e., through the department's Web site and other appropriate means) and includes accurate, up-to-date information about:

120.117(1) Public and private early intervention services, resources, and experts available in the state;

120.117(2) Professional and other groups (including parent support, and training and information centers, such as those funded under the Act) that provide assistance to infants and toddlers with disabilities eligible under Part C of the Act and their families; and

120.117(3) Research and demonstration projects being conducted in the state relating to infants and toddlers with disabilities.
[**ARC 0100C**, IAB 4/18/12, effective 5/23/12]

281—120.118(34CFR303) Comprehensive system of personnel development (CSPD). Each system must include a comprehensive system of personnel development (CSPD), including the training of paraprofessionals and the training of primary referral sources with respect to the basic components of early intervention services available in the state.

120.118(1) *Required elements.* A CSPD must include:

a. Training personnel to implement innovative strategies and activities for the recruitment and retention of EIS providers;

b. Promoting the preparation of EIS providers who are fully and appropriately qualified to provide early intervention services under this chapter; and

c. Training personnel to coordinate transition services for infants and toddlers with disabilities who are transitioning from an early intervention service program under Part C of the Act to a preschool program under Section 619 of the Act, Head Start, Early Head Start, an elementary school program under Part B of the Act, or another appropriate program.

120.118(2) *Optional elements.* A CSPD may include:

a. Training personnel to work in rural and inner-city areas;

b. Training personnel in the emotional and social development of young children;

c. Training personnel to support families in participating fully in the development and implementation of the child's IFSP; and

d. Training personnel who provide services under this chapter using standards that are consistent with early learning personnel development standards funded under the state advisory council on early childhood education and care established under the Head Start Act, if applicable.
[**ARC 0100C**, IAB 4/18/12, effective 5/23/12]

281—120.119(34CFR303) Personnel standards.

120.119(1) *General.* Each system must include policies and procedures relating to the establishment and maintenance of qualification standards to ensure that personnel necessary to carry out the purposes of this chapter are appropriately and adequately prepared and trained.

120.119(2) *Qualification standards.* The policies and procedures required in subrule 120.119(1) must provide for the establishment and maintenance of qualification standards that are consistent with any state-approved or state-recognized certification, licensing, registration, or other comparable requirements that apply to the profession, discipline, or area in which personnel are providing early intervention services.

120.119(3) *Use of paraprofessionals and assistants.* Nothing in Part C of the Act may be construed to prohibit the use of paraprofessionals and assistants who are appropriately trained and supervised in accordance with state law, regulation, or written policy to assist in the provision of early intervention services under Part C of the Act to infants and toddlers with disabilities.

[**ARC 0100C**, IAB 4/18/12, effective 5/23/12]

281—120.120(34CFR303) Lead agency role in supervision, monitoring, funding, interagency coordination, and other responsibilities. Iowa's system includes the designation of the Iowa department of education as lead agency, with a single line of responsibility for the following items:

120.120(1) *General supervision.* The department is responsible for the following:

a. The general administration and supervision of programs and activities administered by agencies, institutions, organizations, and EIS providers receiving assistance under Part C of the Act.

b. The monitoring of programs and activities used by the state to carry out Part C of the Act (whether or not the programs or activities are administered by agencies, institutions, organizations, and EIS providers that are receiving assistance under Part C of the Act) to ensure that the state complies with Part C of the Act, including:

(1) Monitoring agencies, institutions, organizations, and EIS providers used by the state to carry out Part C of the Act;

(2) Enforcing any obligations imposed on those agencies, institutions, organizations, and EIS providers under Part C of the Act and these rules;

(3) Providing technical assistance, if necessary, to those agencies, institutions, organizations, and EIS providers;

(4) Correcting any noncompliance identified through monitoring as soon as possible and in no case later than one year after the lead agency's identification of the noncompliance; and

(5) Conducting the activities in subparagraphs 120.120(1)*"a"*(1) through (4), consistent with rules 281—120.700(34CFR303) through 281—120.707(34CFR303), and any other activities required by the state under those rules.

120.120(2) *Identification and coordination of resources.* The identification and coordination of all available resources for early intervention services within the state, including those from federal, state, local, and private sources, consistent with rules 281—120.500(34CFR303) through 281—120.521(34CFR303).

120.120(3) *Assignment of financial responsibility.* The assignment of financial responsibility in accordance with rules 281—120.500(34CFR303) through 281—120.521(34CFR303).

120.120(4) *Procedures concerning timely provision of services.* The development of procedures in accordance with rules 281—120.500(34CFR303) through 281—120.521(34CFR303) to ensure that early intervention services are provided to infants and toddlers with disabilities and their families under Part C of the Act in a timely manner, pending the resolution of any disputes among public agencies or EIS providers.

120.120(5) *Agency-level dispute resolution.* The resolution of intra-agency and interagency disputes in accordance with rules 281—120.500(34CFR303) through 281—120.521(34CFR303).

120.120(6) *Methods of establishing financial responsibility.* The entry into formal interagency agreements or other written methods of establishing financial responsibility, consistent with rule 281—120.511(34CFR303), that define the financial responsibility of each agency for paying for early

intervention services (consistent with state law) and procedures for resolving disputes and that include all additional components necessary to ensure meaningful cooperation and coordination as set forth in rules 281—120.500(34CFR303) through 281—120.521(34CFR303).
[**ARC 0100C**, IAB 4/18/12, effective 5/23/12]

281—120.121(34CFR303) Policy for contracting or otherwise arranging for services. Each system must include a policy pertaining to the contracting or making of other arrangements with public or private individuals or agency service providers to provide early intervention services in the state, consistent with the provisions of Part C of the Act, including the contents of the application, and the conditions of the contract or other arrangements. The policy must:

1. Include a requirement that all early intervention services must meet state standards and be consistent with the provisions of this chapter; and
2. Be consistent with the Education Department General Administrative Regulations in 34 CFR Part 80.

[**ARC 0100C**, IAB 4/18/12, effective 5/23/12]

281—120.122(34CFR303) Reimbursement procedures. Each system must include procedures for securing the timely reimbursement of funds used under Part C of the Act, in accordance with rules 281—120.500(34CFR303) through 281—120.521(34CFR303).
[**ARC 0100C**, IAB 4/18/12, effective 5/23/12]

281—120.123(34CFR303) Procedural safeguards. Each system must include procedural safeguards that meet the requirements of rules 281—120.400(34CFR303) through 281—120.449(34CFR303).
[**ARC 0100C**, IAB 4/18/12, effective 5/23/12]

281—120.124(34CFR303) Data collection.

120.124(1) *General.* Each statewide system must include a system for compiling and reporting timely and accurate data that meets the requirements in subrule 120.124(2) and rules 281—120.700(34CFR303) through 281—120.702(34CFR303) and rules 281—120.720(34CFR303) through 281—120.724(34CFR303).

120.124(2) *Required description.* The data system required in subrule 120.124(1) must include a description of the process that the state uses, or will use, to compile data on infants or toddlers with disabilities receiving early intervention services under this chapter, including a description of the state's sampling methods, if sampling is used, for reporting the data required by the Secretary under Sections 616 and 618 of the Act and rules 281—120.700(34CFR303) through 281—120.707(34CFR303) and rules 281—120.720(34CFR303) through 281—120.724(34CFR303).
[**ARC 0100C**, IAB 4/18/12, effective 5/23/12]

281—120.125(34CFR303) State interagency coordinating council. Each system must include a state interagency coordinating council meeting the requirements of rules 281—120.600(34CFR303) through 281—120.605(34CFR303).
[**ARC 0100C**, IAB 4/18/12, effective 5/23/12]

281—120.126(34CFR303) Early intervention services in natural environments. Each system must include policies and procedures to ensure, consistent with rule 281—120.13(34CFR303) (early intervention services), rule 281—120.26(34CFR303) (natural environments), and subrule 120.344(4) (content of an IFSP), that early intervention services for infants and toddlers with disabilities are provided:

1. To the maximum extent appropriate, in natural environments; and
2. In settings other than the natural environment that are most appropriate, as determined by the parent and the IFSP team, only when early intervention services cannot be achieved satisfactorily in a natural environment.

[**ARC 0100C**, IAB 4/18/12, effective 5/23/12]

281—120.127 to **120.199** Reserved.

DIVISION IV
STATE APPLICATION AND ASSURANCES

281—120.200(34CFR303) State application and assurances. Each application must contain the specific state application requirements (including certifications, descriptions, methods, and policies and procedures) required in rules 281—120.201(34CFR303) through 281—120.212(34CFR303) and the assurances required in rules 281—120.221(34CFR303) through 281—120.227(34CFR303).
[**ARC 0100C**, IAB 4/18/12, effective 5/23/12]

281—120.201(34CFR303) Designation of lead agency. Each application must include the designation of the department as the lead agency that will be responsible for the administration of funds provided under Part C of the Act.
[**ARC 0100C**, IAB 4/18/12, effective 5/23/12]

281—120.202(34CFR303) Certification regarding financial responsibility. Each application must include a certification to the Secretary that the arrangements to establish financial responsibility for the provision of Part C services among appropriate public agencies under rule 281—120.511(34CFR303) and the lead agency's contracts with EIS providers regarding financial responsibility for the provision of Part C services both meet the requirements in rules 281—120.500(34CFR303) through 281—120.521(34CFR303) and are current as of the date of submission of the certification.
[**ARC 0100C**, IAB 4/18/12, effective 5/23/12]

281—120.203(34CFR303) Statewide system and description of services. Each application must include the following items:

120.203(1) *Description of services.* A description of services to be provided under this chapter to infants and toddlers with disabilities and their families through the state's system;

120.203(2) *Identification and coordination of resources.* The state's policies and procedures regarding the identification and coordination of all available resources within the state from federal, state, local, and private sources as required under Division VII of this chapter and including:

a. Policies or procedures adopted by the state as its system of payments that meet the requirements in rules 281—120.510(34CFR303), 281—120.520(34CFR303), and 281—120.521(34CFR303); and

b. Methods used by the state to implement the requirements in subrule 120.511(2); and

120.203(3) *Rigorous definition of developmental delay.* The state's rigorous definition of developmental delay, as required under rule 281—120.111(34CFR303).
[**ARC 0100C**, IAB 4/18/12, effective 5/23/12]

281—120.204 Reserved.

281—120.205(34CFR303) Description of use of funds.

120.205(1) *General.* Each application must include a description of the uses for funds under this chapter for the fiscal year or years covered by the application. The description must be presented separately for the lead agency and the council and include the information required in subrules 120.205(2) through 120.205(5).

120.205(2) Reserved.

120.205(3) *Maintenance and implementation activities.* Each application must include a description of the nature and scope of each major activity to be carried out under Part C of the Act, consistent with rule 281—120.501(34CFR303), and the approximate amount of funds to be spent for each activity.

120.205(4) *Direct services.* Each application must include a description of any direct services that the state expects to provide to infants and toddlers with disabilities and their families with funds under this chapter, consistent with rule 281—120.501(34CFR303), and the approximate amount of funds under this chapter to be used for the provision of each direct service.

120.205(5) *Activities by other public agencies.* If other public agencies are to receive funds under Part C of the Act, the application must include the name of each agency expected to receive funds, the

approximate amount of funds each agency will receive, and a summary of the purposes for which the funds will be used.
[**ARC 0100C**, IAB 4/18/12, effective 5/23/12]

281—120.206(34CFR303) Referral policies for specific children. Each application must include the state's policies and procedures that require the referral for early intervention services under this chapter of specific children under the age of three, as described in subrule 120.303(2).
[**ARC 0100C**, IAB 4/18/12, effective 5/23/12]

281—120.207(34CFR303) Availability of resources. Each application must include a description of the procedure used by the state to ensure that resources are made available under this chapter for all geographic areas within the state.
[**ARC 0100C**, IAB 4/18/12, effective 5/23/12]

281—120.208(34CFR303) Public participation policies and procedures.

120.208(1) *Application.* At least 60 days prior to being submitted to the department, each application for funds (including any policies, procedures, descriptions, methods, certifications, assurances and other information required in the application) must be published in a manner that will ensure circulation throughout the state for at least a 60-day period, with an opportunity for public comment on the application for at least 30 days during that period.

120.208(2) *State policies and procedures.* Each application must include a description of the policies and procedures used by the state to ensure that, before adopting any new policy or procedure (including any revision to an existing policy or procedure) needed to comply with Part C of the Act and these rules, the lead agency:

a. Holds public hearings on the new policy or procedure (including any revision to an existing policy or procedure);

b. Provides notice of the hearings held in accordance with paragraph 120.208(2)*"a"* at least 30 days before the hearings are conducted to enable public participation; and

c. Provides an opportunity for the general public, including individuals with disabilities, parents of infants and toddlers with disabilities, EIS providers, and the members of the council, to comment for at least 30 days on the new policy or procedure (including any revision to an existing policy or procedure) needed to comply with Part C of the Act and these rules.
[**ARC 0100C**, IAB 4/18/12, effective 5/23/12]

281—120.209(34CFR303) Transition to preschool and other programs.

120.209(1) *Application requirements.* The department must include the following in its application:

a. A description of the policies and procedures the state will use to ensure a smooth transition for infants and toddlers with disabilities under the age of three and their families from receiving early intervention services under this chapter to:

(1) Preschool or other appropriate services (for toddlers with disabilities); or

(2) Exiting the program for infants and toddlers with disabilities.

b. A description of how the state will meet each of the requirements in subrules 120.209(2) through 120.209(6).

c. An intra-agency agreement between the department's program that administers Part C of the Act and the department's program that administers Section 619 of Part B of the Act (early childhood special education). To ensure a seamless transition between services under Parts C and B of the Act, the intra-agency agreement must address how the department will meet the requirements of subrules 120.209(2) through 120.209(6) (including any policies adopted by the lead agency under 34 CFR §303.401(d) and (e)), subrule 120.344(8), rule 281—41.124(256B,34CFR300), and 281—subrules 41.101(2) and 41.321(6).

d. Any policy the department has adopted under 34 CFR §303.401(d) and (e).

120.209(2) *Notification to the department and appropriate AEA.*

a. The department must ensure that:

(1) Subject to paragraph 120.209(2)*"b,"* not fewer than 90 days before the third birthday of the toddler with a disability if that toddler may be eligible for preschool services under Part B of the Act, the public agency responsible for providing Early ACCESS services to the toddler notifies the department and the AEA for the area in which the toddler resides that the toddler on the toddler's third birthday will reach the age of eligibility for services under Part B of the Act, as determined in accordance with state law;

(2) Subject to paragraph 120.209(2)*"b,"* if the toddler is determined to be eligible for Early ACCESS services more than 45 but less than 90 days before that toddler's third birthday and if that toddler may be eligible for preschool services under Part B of the Act, the public agency responsible for providing Early ACCESS services to the toddler, as soon as possible after determining the child's eligibility, notifies the department and the AEA for the area in which the toddler with a disability resides that the toddler on the toddler's third birthday will reach the age of eligibility for services under Part B of the Act, as determined in accordance with state law; or

(3) Subject to paragraph 120.209(2)*"b,"* if a toddler is referred to Early ACCESS under rules 281—120.302(34CFR303) and 281—120.303(34CFR303) fewer than 45 days before that toddler's third birthday and that toddler may be eligible for preschool services under Part B of the Act, the public agency that would be responsible for determining the child's eligibility under this chapter, with parental consent required under rule 281—120.414(34CFR303), refers the toddler to the department and the AEA for the area in which the toddler resides; however, no agency is required to conduct an evaluation, assessment, or an initial IFSP meeting under these circumstances.

b. The department must ensure that the notification required under subparagraphs 120.209(2)*"a"*(1) and (2) is consistent with any policy that the state has adopted, under 34 CFR §303.401(e), permitting a parent to object to disclosure of personally identifiable information.

120.209(3) *Conference to discuss services.* The department must ensure that:

a. If a toddler with a disability may be eligible for preschool services under Part B of the Act, the public agency responsible for Early ACCESS services, with the approval of the family of the toddler, convenes a conference, among that agency, the family, and the AEA of the toddler's residence not fewer than 90 days—and, at the discretion of all parties, not more than nine months—before the toddler's third birthday to discuss any services the toddler may receive under Part B of the Act; and

b. If the public agency determines that a toddler with a disability is not potentially eligible for preschool services under Part B of the Act, the public agency, with the approval of the family of that toddler, makes reasonable efforts to convene a conference among that agency, the family, and providers of other appropriate services for the toddler to discuss appropriate services that the toddler may receive.

120.209(4) *Transition plan.* The department must ensure that for all toddlers with disabilities:

a. The appropriate public agency reviews the program options for the toddler with a disability for the period from the toddler's third birthday through the remainder of the school year and each family of a toddler with a disability who is served under this chapter is included in the development of the transition plan required under this rule and subrule 120.344(8);

b. The appropriate public agency establishes a transition plan in the IFSP not fewer than 90 days—and, at the discretion of all parties, not more than nine months—before the toddler's third birthday; and

c. The transition plan in the IFSP includes, consistent with subrule 120.344(8), as appropriate:

(1) Steps for the toddler with a disability and the toddler's family to exit from the Part C program; and

(2) Any transition services that the IFSP team identifies as needed by that toddler and the toddler's family.

120.209(5) *Transition conference and meeting to develop transition plan.* Any conference conducted under subrule 120.209(3) or meeting to develop the transition plan under subrule 120.209(4) (which conference and meeting may be combined into one meeting) must meet the requirements in subrules 120.342(4), 120.342(5), and 120.343(1).

120.209(6) *Applicability of transition requirements.* The transition requirements in subparagraphs 120.209(2)*"a"*(1) and (2), paragraph 120.209(3)*"a,"* and subrule 120.209(4) apply to all toddlers with disabilities receiving services under this chapter before those toddlers turn age three.
[**ARC 0100C**, IAB 4/18/12, effective 5/23/12]

281—120.210(34CFR303) Coordination with Head Start and Early Head Start, early education, and child care programs. Each application must contain a description of state efforts to promote collaboration among Head Start and Early Head Start programs under the Head Start Act (42 U.S.C. 9801 et seq.), early education and child care programs, and services under this chapter. The department must participate, consistent with Section 642B(b)(1)(C)(viii) of the Head Start Act, on the state advisory council on early childhood education and care established under the Head Start Act.
[**ARC 0100C**, IAB 4/18/12, effective 5/23/12]

281—120.211 Reserved.

281—120.212(34CFR303) Additional information and assurances. The department's application shall describe the steps the state is taking to ensure equitable access to, and equitable participation in, the Part C statewide system as required by Section 427(b) of GEPA and shall supply other information and assurances as the Secretary may reasonably require.
[**ARC 0100C**, IAB 4/18/12, effective 5/23/12]

281—120.213 to **120.219** Reserved.

281—120.220(34CFR303) Assurances satisfactory to the Secretary. The department's application must contain assurances satisfactory to the Secretary that the state has met the requirements in rules 281—120.221(34CFR303) through 281—120.227(34CFR303).
[**ARC 0100C**, IAB 4/18/12, effective 5/23/12]

281—120.221(34CFR303) Expenditure of funds. The department must ensure that federal funds made available to the state under Section 643 of the Act will be expended in accordance with the provisions of this chapter, including rules 281—120.500(34CFR303) and 281—120.501(34CFR303).
[**ARC 0100C**, IAB 4/18/12, effective 5/23/12]

281—120.222(34CFR303) Payor of last resort. The department must ensure that it will comply with the requirements in rules 281—120.510(34CFR303) and 281—120.511(34CFR303).
[**ARC 0100C**, IAB 4/18/12, effective 5/23/12]

281—120.223(34CFR303) Control of funds and property. The department must ensure that the control of funds provided under Part C of the Act, and title to property acquired with those funds, will be in a public agency for the uses and purposes provided in this chapter and that a public agency will administer the funds and property.
[**ARC 0100C**, IAB 4/18/12, effective 5/23/12]

281—120.224(34CFR303) Reports and records. The department must ensure that it will make reports in the form and containing the information that the Secretary may require and will keep records and afford access to those records as the Secretary may find necessary to ensure compliance with the requirements of this chapter, the correctness and verification of reports, and the proper disbursement of funds provided under this chapter.
[**ARC 0100C**, IAB 4/18/12, effective 5/23/12]

281—120.225(34CFR303) Prohibition against supplanting; indirect costs.

120.225(1) *General.* The department must provide satisfactory assurance that the federal funds made available under Section 643 of the Act to the state:

a. Will not be commingled with state funds; and

b. Will be used so as to supplement the level of state and local funds expended for infants and toddlers with disabilities and their families and in no case to supplant those state and local funds.

120.225(2) *Additional information.* To meet the requirement in subrule 120.225(1), the total amount of state and local funds budgeted for expenditures in the current fiscal year for early intervention services for children eligible under this chapter and their families must be at least equal to the total amount of state and local funds actually expended for early intervention services for these children and their families in the most recent preceding fiscal year for which the information is available. Allowance may be made for:

a. A decrease in the number of infants and toddlers who are eligible to receive early intervention services under this chapter; and

b. Unusually large amounts of funds expended for such long-term purposes as the acquisition of equipment.

120.225(3) *Requirement regarding indirect costs.*

a. Except as provided in paragraph 120.225(3)*"b,"* the department may not charge indirect costs to its Part C grant.

b. If approved by the department's cognizant federal agency or by the Secretary, the department must charge indirect costs through either:

(1) A restricted indirect cost rate that meets the requirements in 34 CFR 76.560 through 76.569; or

(2) A cost allocation plan that meets the non-supplanting requirements in subrule 120.225(2) and 34 CFR Part 76 of EDGAR.

c. In charging indirect costs under paragraph 120.225(3)*"b,"* the department may not charge rent, occupancy, or space maintenance costs directly to the Part C grant, unless those costs are specifically approved in advance by the Secretary.

[**ARC 0100C**, IAB 4/18/12, effective 5/23/12]

281—120.226(34CFR303) Fiscal control. The department must ensure that fiscal control and fund accounting procedures will be adopted as necessary to ensure proper disbursement of, and accounting for, federal funds paid under Part C of the Act.

[**ARC 0100C**, IAB 4/18/12, effective 5/23/12]

281—120.227(34CFR303) Traditionally underserved groups. The department must ensure that policies and practices have been adopted to ensure that traditionally underserved groups, including minority, low-income, homeless, and rural families and children with disabilities who are wards of the state, are meaningfully involved in the planning and implementation of all the requirements of this chapter and that these families have access to culturally competent services within their local geographical areas.

[**ARC 0100C**, IAB 4/18/12, effective 5/23/12]

281—120.228(34CFR303) Subsequent state application and modifications of application.

120.228(1) *Subsequent state application.* If the state has on file with the Secretary a policy, procedure, method, or assurance that demonstrates that the state meets an application requirement in this chapter, including any policy, procedure, method, or assurance filed under this chapter (as in effect before the date of enactment of the Act, December 3, 2004), the Secretary considers the state to have met that requirement for purposes of receiving a grant under Part C of the Act.

120.228(2) *Modification of application.* An application submitted by the state that meets the requirements of this chapter remains in effect until the state submits to the Secretary such modifications as the state determines necessary. This rule applies to a modification of an application to the same extent and in the same manner as this subrule applies to the original application.

120.228(3) *Modifications required by the Secretary.* The Secretary may require the state to modify its application under Part C of the Act to the extent necessary to ensure the state's compliance with Part C of the Act if:

a. An amendment is made to the Act or to a federal regulation issued under the Act;

b. A new interpretation of the Act is made by a federal court or the state's highest court; or

c. An official finding of noncompliance with federal law or regulations is made with respect to the state.
[**ARC 0100C**, IAB 4/18/12, effective 5/23/12]

281—120.229 to **120.299** Reserved.

DIVISION V
CHILD FIND; EVALUATIONS AND ASSESSMENTS; INDIVIDUALIZED FAMILY SERVICE PLANS

281—120.300(34CFR303) General. The statewide comprehensive, coordinated, multidisciplinary, interagency system to provide early intervention services for infants and toddlers with disabilities and their families referenced in rule 281—120.100(34CFR303) must include the following components:

120.300(1) *Pre-referral activities.* The system must contain pre-referral policies and procedures that include:

a. A public awareness program as described in rule 281—120.301(34CFR303); and

b. A comprehensive child find system as described in rule 281—120.302(34CFR303).

120.300(2) *Referral activities.* The system must contain referral policies and procedures as described in rule 281—120.303(34CFR303).

120.300(3) *Post-referral activities.* The system must contain post-referral policies and procedures that ensure compliance with the timeline requirements in rule 281—120.310(34CFR303) and include:

a. Screening, if applicable, as described in rule 281—120.320(34CFR303);

b. Evaluations and assessments as described in rules 281—120.321(34CFR303) and 281—120.322(34CFR303); and

c. Development, review, and implementation of IFSPs as described in rules 281—120.340(34CFR303) through 281—120.346(34CFR303).
[**ARC 0100C**, IAB 4/18/12, effective 5/23/12]

281—120.301(34CFR303) Public awareness program—information for parents.

120.301(1) *Preparation and dissemination.* In accordance with rule 281—120.116(34CFR303), the system must include a public awareness program that requires the department to:

a. Prepare information on the availability of early intervention services under this chapter, and other services, as described in subrule 120.301(2) and disseminate to all primary referral sources (especially hospitals and physicians) the information to be given to parents of infants and toddlers, especially parents with premature infants or infants with other physical risk factors associated with learning or developmental complications; and

b. Adopt procedures for assisting the primary referral sources described in subrule 120.303(3) in disseminating the information described in subrule 120.301(2) to parents of infants and toddlers with disabilities.

120.301(2) *Information to be provided.* The information required to be prepared and disseminated under subrule 120.301(1) must include:

a. A description of the availability of Early ACCESS services under this chapter;

b. A description of the child find system and how to refer a child under the age of three for an evaluation or early intervention services; and

c. A central directory, as described in rule 281—120.117(34CFR303).

120.301(3) *Information specific to toddlers with disabilities.* The public awareness program also must include a requirement that the department provide for informing parents of toddlers with disabilities of the availability of services under Section 619 of the Act not fewer than 90 days prior to the toddler's third birthday.
[**ARC 0100C**, IAB 4/18/12, effective 5/23/12]

281—120.302(34CFR303) Comprehensive child find system.

120.302(1) *General.* The Early ACCESS system must include a comprehensive child find system that:

a. Is consistent with Part B of the Act (see 34 CFR 300.111);

b. Includes a system for making referrals to applicable public agencies or EIS providers under this chapter that:

(1) Includes timelines; and

(2) Provides for participation by the primary referral sources described in subrule 120.303(3);

c. Ensures rigorous standards for appropriately identifying infants and toddlers with disabilities for early intervention services under this chapter that will reduce the need for future services; and

d. Meets the requirements in subrules 120.302(2) and 120.302(3) and rules 281—120.303(34CFR303), 281—120.310(34CFR303), 281—120.320(34CFR303), and 281—120.321(34CFR303).

120.302(2) *Scope of child find.* The department, as part of the child find system, must ensure that:

a. All infants and toddlers with disabilities in the state who are eligible for early intervention services under this chapter are identified, located, and evaluated, including:

(1) Indian infants and toddlers with disabilities residing on a reservation or settlement geographically located in the state (including coordination, as necessary, with tribes, tribal organizations, and consortia to identify infants and toddlers with disabilities in the state based, in part, on the information provided by them to the department under 34 CFR §303.731(e)(1)); and

(2) Infants and toddlers with disabilities who are homeless, in foster care, and wards of the state; and

(3) Infants and toddlers with disabilities that are referenced in subrule 120.303(2); and

b. An effective method is developed and implemented to identify children who are in need of early intervention services.

120.302(3) *Coordination.*

a. The department, with the assistance of the council, must ensure that the child find system under this chapter:

(1) Is coordinated with all other major efforts to locate and identify children by other state agencies responsible for administering the various education, health, and social service programs relevant to this chapter, including Indian tribes that receive payments under this chapter, and other Indian tribes, as appropriate; and

(2) Is coordinated with the efforts of the:

1. Program authorized under Part B of the Act;

2. Maternal and Child Health program, including the Maternal, Infant, and Early Childhood Home Visiting Program, under Title V of the Social Security Act (MCHB or Title V) (42 U.S.C. 701(a));

3. Early Periodic Screening, Diagnosis, and Treatment (EPSDT) under Title XIX of the Social Security Act (42 U.S.C. 1396(a)(43) and 1396(a)(4)(B));

4. Programs under the Developmental Disabilities Assistance and Bill of Rights Act of 2000 (42 U.S.C. 15001 et seq.);

5. Head Start Act (including Early Head Start programs under Section 645A of the Head Start Act) (42 U.S.C. 9801 et seq.);

6. Supplemental Security Income program under Title XVI of the Social Security Act (42 U.S.C. 1381);

7. Child protection and child welfare programs, including programs administered by, and services provided through, the foster care agency and the state agency responsible for administering the Child Abuse Prevention and Treatment Act (CAPTA) (42 U.S.C. 5106(a));

8. Child care programs in the state;

9. Programs that provide services under the Family Violence Prevention and Services Act (42 U.S.C. 10401 et seq.);

10. Early Hearing Detection and Intervention (EHDI) systems (42 U.S.C. 280g-1) administered by the Centers for Disease Control (CDC); and

11. Children's Health Insurance Program (CHIP) authorized under Title XXI of the Social Security Act (42 U.S.C. 1397aa et seq.).

b. The department, with the advice and assistance of the council, must take steps to ensure that:

(1) There will not be unnecessary duplication of effort by the programs identified in paragraph 120.302(3)*"a"*; and

(2) The state will make use of the resources available through each public agency and EIS provider in the state to implement the child find system in an effective manner.

[**ARC 0100C**, IAB 4/18/12, effective 5/23/12]

281—120.303(34CFR303) Referral procedures.

120.303(1) *General.* The child find system described in rule 281—120.302(34CFR303) must include the state's procedures for use by primary referral sources for referring a child under the age of three to the Part C program. The procedures required in this subrule must:

a. Provide for referring a child as soon as possible, but in no case more than seven days, after the child has been identified; and

b. Meet the requirements in subrules 120.303(2) and 120.303(3).

120.303(2) *Referral of specific at-risk infants and toddlers.* The procedures required in subrule 120.303(1) must provide for requiring the referral of a child under the age of three who:

a. Is the subject of a substantiated case of child abuse or neglect; or

b. Is identified as directly affected by illegal substance abuse or withdrawal symptoms resulting from prenatal drug exposure.

120.303(3) *Primary referral sources.* As used in this division, primary referral sources include:

a. Hospitals, including prenatal and postnatal care facilities;

b. Physicians;

c. Parents, including parents of infants and toddlers;

d. Child care programs and early learning programs;

e. AEAs, LEAs and schools;

f. Public health facilities;

g. Other public health or social service agencies;

h. Other clinics and health care providers;

i. Public agencies and staff in the child welfare system, including child protective service and foster care;

j. Homeless family shelters; and

k. Domestic violence shelters and agencies.

[**ARC 0100C**, IAB 4/18/12, effective 5/23/12]

281—120.304 to **120.309** Reserved.

281—120.310(34CFR303) Post-referral timeline (45 calendar days).

120.310(1) *General.* Except as provided in subrule 120.310(2), any screening under rule 281—120.320(34CFR303); the initial evaluation and the initial assessments of the child and family under rule 281—120.321(34CFR303); and the initial IFSP meeting under rule 281—120.342(34CFR303) must be completed within 45 calendar days from the date the public agency or EIS provider receives the referral of the child.

120.310(2) *Limited exceptions.* Subject to subrule 120.310(3), the 45-day timeline described in subrule 120.310(1) does not apply for any period when:

a. The child or parent is unavailable to complete the screening (if applicable), the initial evaluation, the initial assessments of the child and family, or the initial IFSP meeting due to exceptional family circumstances that are documented in the child's early intervention records; or

b. The parent has not provided consent for the screening (if applicable), the initial evaluation, or the initial assessment of the child, despite documented, repeated attempts by the public agency or EIS provider to obtain parental consent.

120.310(3) *Duties when limited exceptions occur.* The department must develop procedures to ensure that in the event the circumstances described in subrule 120.310(2) exist, the public agency or EIS provider must:

a. Document in the child's early intervention records the exceptional family circumstances or repeated attempts by the public agency or EIS provider to obtain parental consent;

b. Complete the screening (if applicable), the initial evaluation, the initial assessments (of the child and family), and the initial IFSP meeting as soon as possible after the documented exceptional family circumstances described in paragraph 120.310(2)*"a"* no longer exist or parental consent is obtained for the screening (if applicable), the initial evaluation, and the initial assessment of the child; and

c. Develop and implement an interim IFSP, to the extent appropriate and consistent with rule 281—120.345(34CFR303).

120.310(4) *Initial family assessment.* The initial family assessment must be conducted within the 45-day timeline in subrule 120.310(1) if the parent concurs and even if other family members are unavailable.

[**ARC 0100C**, IAB 4/18/12, effective 5/23/12]

281—120.311 to **120.319** Reserved.

281—120.320(34CFR303) Screening procedures.

120.320(1) *General.*

a. The department may adopt procedures, consistent with the requirements of this rule, to screen children under the age of three who have been referred to the Part C program to determine whether they are suspected of having a disability under this chapter. If a public agency or EIS provider proposes to screen a child, the agency or EIS provider must:

(1) Provide the parent notice under rule 281—120.421(34CFR303) of the public agency's or EIS provider's intent to screen the child to identify whether the child is suspected of having a disability and include in that notice a description of the parent's right to request an evaluation under rule 281—120.321(34CFR303) at any time during the screening process; and

(2) Obtain parental consent as required in subrule 120.420(1) before conducting the screening procedures.

b. If the parent consents to the screening and the screening or other available information indicates that the child is:

(1) Suspected of having a disability, after notice is provided under rule 281—120.421(34CFR303) and once parental consent is obtained as required in rule 281—120.420(34CFR303), an evaluation and assessment of the child must be conducted under rule 281—120.321(34CFR303); or

(2) Not suspected of having a disability, the public agency or EIS provider must ensure that notice of that determination is provided to the parent under rule 281—120.421(34CFR303), and that the notice describes the parent's right to request an evaluation.

c. If the parent of the child requests and consents to an evaluation at any time during the screening process, evaluation of the child must be conducted under rule 281—120.321(34CFR303), even if the public agency or EIS provider has determined under subparagraph 120.320(1)*"b"*(2) that the child is not suspected of having a disability.

120.320(2) *Definition of screening procedures.* As used in this rule, "screening procedures":

a. Means activities under subrule 120.320(1) that are carried out by, or under the supervision of, a public agency or EIS provider to identify, at the earliest possible age, infants and toddlers suspected of having a disability and in need of early intervention services; and

b. Includes the administration of appropriate instruments by personnel trained to administer those instruments.

120.320(3) *Condition for evaluation or early intervention services.* For every child under the age of three who is referred to the Part C program or screened in accordance with subrule 120.320(1), the applicable agency is not required to:

a. Provide an evaluation of the child under rule 281—120.321(34CFR303) unless the child is suspected of having a disability or the parent requests an evaluation under paragraph 120.320(1)*"c"*; or

b. Make Early ACCESS services available under this chapter to the child unless a determination is made that the child meets the definition of infant or toddler with a disability under rule 281—120.21(34CFR303).

120.320(4) *Rules of construction.*

a. This rule does not apply to activities undertaken by entities not regulated by this chapter, activities that are undertaken by grantees, signatory agencies, Early ACCESS providers prior to referral, activities undertaken after consent for an evaluation and assessment under rule 281—120.321(34CFR303) is received, or to activities taken pursuant to an IFSP.

b. As a general rule, a public agency suspects a child is a child with a disability when the public agency is aware of facts and circumstances that, when considered as a whole, would cause a reasonably prudent public agency to believe that the child's performance might be explained because the child is an eligible individual under this chapter.

[**ARC 0100C**, IAB 4/18/12, effective 5/23/12]

281—120.321(34CFR303) Evaluation of the child and assessment of the child and family.

120.321(1) *General.* The department must ensure that, subject to obtaining parental consent in accordance with subrule 120.420(1), each child under the age of three who is referred for evaluation or early intervention services under this chapter and suspected of having a disability receives:

a. A timely, comprehensive, multidisciplinary evaluation of the child in accordance with subrule 120.321(4) unless eligibility is established in paragraph 120.321(3)*"a"*; and

b. If the child is determined eligible as an infant or toddler with a disability as defined in rule 281—120.21(34CFR303):

(1) A multidisciplinary assessment of the unique strengths and needs of that infant or toddler and the identification of services appropriate to meet those needs;

(2) A family-directed assessment of the resources, priorities, and concerns of the family and the identification of the supports and services necessary to enhance the family's capacity to meet the developmental needs of that infant or toddler. The assessments of the child and family are described in subrule 120.321(5), and these assessments may occur simultaneously with the evaluation, provided that the requirements of subrule 120.321(4) are met.

120.321(2) *Definitions.* As used in this chapter:

a. "Evaluation" means the procedures used by qualified personnel to determine a child's initial and continuing eligibility under this chapter, consistent with the definition of infant or toddler with a disability in rule 281—120.21(34CFR303);

b. "Initial evaluation" means the child's evaluation to determine the child's initial eligibility under this chapter;

c. "Assessment" means the ongoing procedures used by qualified personnel to identify the child's unique strengths and needs and the early intervention services appropriate to meet those needs throughout the period of the child's eligibility under this chapter and includes the assessment of the child, consistent with paragraph 120.321(5)*"a"* and the assessment of the child's family, consistent with paragraph 120.321(5)*"b"*; and

d. "Initial assessment" means the assessment of the child and the family assessment conducted prior to the child's first IFSP meeting.

120.321(3) *General procedures.*

a. A child's medical and other records may be used to establish eligibility (without conducting an evaluation of the child) under this chapter if those records indicate that the child's level of functioning in one or more of the developmental areas identified in subrule 120.21(1) constitutes a developmental delay or that the child otherwise meets the criteria for an infant or toddler with a disability under rule 281—120.21(34CFR303). If the child's Part C eligibility is established under this paragraph, the public agency or EIS provider must conduct assessments of the child and family in accordance with subrule 120.321(5).

b. Qualified personnel must use informed clinical opinion when conducting an evaluation and assessment of the child. In addition, the department must ensure that informed clinical opinion may

be used as an independent basis to establish a child's eligibility under this chapter even when other instruments do not establish eligibility; however, in no event may informed clinical opinion be used to negate the results of evaluation instruments used to establish eligibility under subrule 120.321(4).

c. All evaluations and assessments of the child and family must be conducted by qualified personnel, in a nondiscriminatory manner, and selected and administered so as not to be racially or culturally discriminatory.

d. Unless clearly not feasible to do so, all evaluations and assessments of a child must be conducted in the native language of the child.

e. Unless clearly not feasible to do so, family assessments must be conducted in the native language of the family members being assessed.

120.321(4) *Procedures for evaluation of the child.* In conducting an evaluation, no single procedure may be used as the sole criterion for determining a child's eligibility under this chapter. Procedures must include:

a. Administering an evaluation instrument;

b. Taking the child's history (including interviewing the parent);

c. Identifying the child's level of functioning in each of the developmental areas in subrule 120.21(1);

d. Gathering information from other sources such as family members, other caregivers, medical providers, social workers, and educators, if necessary, to understand the full scope of the child's unique strengths and needs; and

e. Reviewing medical, educational, or other records.

120.321(5) *Procedures for assessment of the child and family.*

a. An assessment of each infant or toddler with a disability must be conducted by qualified personnel in order to identify the child's unique strengths and needs and the early intervention services appropriate to meet those needs. The assessment of the child must include the following:

(1) A review of the results of the evaluation conducted under subrule 120.321(4);

(2) Personal observations of the child; and

(3) The identification of the child's needs in each of the developmental areas in subrule 120.21(1).

b. A family-directed assessment must be conducted by qualified personnel in order to identify the family's resources, priorities, and concerns and the supports and services necessary to enhance the family's capacity to meet the developmental needs of the family's infant or toddler with a disability. The family-directed assessment must:

(1) Be voluntary on the part of each family member participating in the assessment;

(2) Be based on information obtained through an assessment tool and also through an interview with those family members who elect to participate in the assessment; and

(3) Include the family's description of its resources, priorities, and concerns related to enhancing the child's development.

[**ARC 0100C**, IAB 4/18/12, effective 5/23/12]

281—120.322(34CFR303) Determination that a child is not eligible. If, based on the evaluation conducted under rule 281—120.321(34CFR303), the applicable agency determines that a child is not eligible under this chapter, the agency must provide the parent with prior written notice required in rule 281—120.421(34CFR303), and include in the notice information about the parent's right to dispute the eligibility determination through dispute resolution mechanisms under rule 281—120.430(34CFR303), such as requesting a due process hearing or mediation or filing a state complaint.

[**ARC 0100C**, IAB 4/18/12, effective 5/23/12]

281—120.323 to **120.339** Reserved.

281—120.340(34CFR303) Individualized family service plan—general. For each infant or toddler with a disability, the department must ensure the development, review, and implementation of an individualized family service plan developed by a multidisciplinary team, which includes the parent, that

is consistent with the definition of individualized family service plan in rule 281—120.20(34CFR303) and meets the requirements in rules 281—120.342(34CFR303) through 281—120.346(34CFR303).
[**ARC 0100C**, IAB 4/18/12, effective 5/23/12]

281—120.341 Reserved.

281—120.342(34CFR303) Procedures for IFSP development, review, and evaluation.

120.342(1) *Meeting to develop initial IFSP—timelines.* For a child referred to the Early ACCESS system and determined to be eligible under this chapter as an infant or toddler with a disability, a meeting to develop the initial IFSP must be conducted within the 45-day time period described in rule 281—120.310(34CFR303).

120.342(2) *Periodic review.*

a. A review of the IFSP for a child and the child's family must be conducted every six months, or more frequently if conditions warrant, or if the family requests such a review. The purpose of the periodic review is to determine:

(1) The degree to which progress toward achieving the results or outcomes identified in the IFSP is being made; and

(2) Whether modification or revision of the results, outcomes, or early intervention services identified in the IFSP is necessary.

b. The review may be carried out by a meeting or by another means that is acceptable to the parents and other participants.

120.342(3) *Annual meeting to evaluate the IFSP.* A meeting must be conducted on at least an annual basis to evaluate and revise, as appropriate, the IFSP for a child and the child's family. The results of any current evaluations and other information available from the assessments of the child and family conducted under rule 281—120.321(34CFR303) must be used in determining the early intervention services that are needed and will be provided.

120.342(4) *Accessibility and convenience of meetings.*

a. IFSP meetings must be conducted:

(1) In settings and at times that are convenient for the family; and

(2) In the native language of the family or other mode of communication used by the family, unless it is clearly not feasible to do so.

b. Meeting arrangements must be made with, and written notice provided to, the family and other participants early enough before the meeting date to ensure that they will be able to attend.

120.342(5) *Parental consent.* The contents of the IFSP must be fully explained to the parents and informed written consent, as described in rule 281—120.7(34CFR303), must be obtained, as required in subrule 120.420(1), prior to the provision of early intervention services described in the IFSP. Each early intervention service must be provided as soon as possible after the parent provides consent for that service, as required in subrule 120.344(6).
[**ARC 0100C**, IAB 4/18/12, effective 5/23/12]

281—120.343(34CFR303) IFSP team meeting and periodic review.

120.343(1) *Initial and annual IFSP team meeting.*

a. Each initial meeting and each annual IFSP team meeting to evaluate the IFSP must include the following participants:

(1) The parent or parents of the child.

(2) Other family members, as requested by the parent, if feasible to do so.

(3) An advocate or person outside of the family, if the parent requests that the person participate.

(4) The service coordinator designated by the public agency to be responsible for implementing the IFSP.

(5) A person or persons directly involved in conducting the evaluations and assessments in rule 281—120.321(34CFR303).

(6) As appropriate, persons who will be providing early intervention services under this chapter to the child or family.

b. If a person listed in subparagraph 120.343(1)*"a"*(5) is unable to attend a meeting, arrangements must be made for the person's involvement through other means, including one of the following:

(1) Participating in a telephone conference call.

(2) Having a knowledgeable authorized representative attend the meeting.

(3) Making pertinent records available at the meeting.

120.343(2) *Periodic review.* Each periodic review under subrule 120.342(2) must provide for the participation of persons in subparagraphs 120.343(1)*"a"*(1) through (4). If conditions warrant, provisions must be made for the participation of other representatives identified in subrule 120.343(1).
[**ARC 0100C**, IAB 4/18/12, effective 5/23/12]

281—120.344(34CFR303) Content of an IFSP.

120.344(1) *Information about the child's status.* The IFSP must include a statement of the infant or toddler with a disability's present levels of physical development (including vision, hearing, and health status), cognitive development, communication development, social or emotional development, and adaptive development based on the information from that child's evaluation and assessments conducted under rule 281—120.321(34CFR303).

120.344(2) *Family information.* With the concurrence of the family, the IFSP must include a statement of the family's resources, priorities, and concerns related to enhancing the development of the child as identified through the assessment of the family under paragraph 120.321(5)*"b."*

120.344(3) *Results or outcomes.* The IFSP must include a statement of the measurable results or measurable outcomes expected to be achieved for the child (including preliteracy and language skills, as developmentally appropriate for the child) and family, and the criteria, procedures, and timelines used to determine:

a. The degree to which progress toward achieving the results or outcomes identified in the IFSP is being made; and

b. Whether modifications or revisions of the expected results or outcomes, or early intervention services identified in the IFSP are necessary.

120.344(4) *Early intervention services.*

a. The IFSP must include a statement of the specific early intervention services, based on peer-reviewed research (to the extent practicable), that are necessary to meet the unique needs of the child and the family to achieve the results or outcomes identified in subrule 120.344(3), including:

(1) The length, duration, frequency, intensity, and method of delivering the early intervention services;

(2) A statement that each early intervention service is provided in the natural environment for that child or service to the maximum extent appropriate, consistent with paragraph 120.13(1)*"h,"* rule 281—120.26(34CFR303), and rule 281—120.126(34CFR303), or, subject to subparagraph 120.344(4)*"a"*(3), a justification as to why an early intervention service will not be provided in the natural environment;

(3) The determination of the appropriate setting for providing early intervention services to an infant or toddler with a disability, including any justification for not providing a particular early intervention service in the natural environment for that infant or toddler with a disability and service, must be:

1. Made by the IFSP team (which includes the parent and other team members);

2. Consistent with the provisions in paragraph 120.13(1)*"h,"* rule 281—120.26(34CFR303), and rule 281—120.126(34CFR303); and

3. Based on the child's outcomes identified by the IFSP team in subrule 120.344(3);

(4) The location of the early intervention services; and

(5) The payment arrangements, if any.

b. As used in this subrule:

(1) "Frequency and intensity" means the number of days or sessions that a service will be provided and whether the service is provided on an individual or group basis.

(2) "Method" means how a service is provided.

(3) "Length" means the length of time the service is provided during each session of that service (such as an hour or other specified time period).

(4) "Duration" means projecting when a given service will no longer be provided (such as when the child is expected to achieve the results or outcomes in the child's IFSP).

(5) "Location" means the actual place or places where a service will be provided.

120.344(5) *Other services.* To the extent appropriate, the IFSP also must:

a. Identify medical and other services that the child or family needs or is receiving through other sources, but that are neither required nor funded under this chapter; and

b. If those services are not currently being provided, include a description of the steps the service coordinator or family may take to assist the child and family in securing those other services.

120.344(6) *Dates and duration of services.* The IFSP must include:

a. The projected date for the initiation of each early intervention service in subrule 120.344(4), which date must be as soon as possible after the parent consents to the service, as required in subrules 120.342(5) and 120.420(1); and

b. The anticipated duration of each service.

120.344(7) *Service coordinator.* The IFSP must include the name of the service coordinator from the profession most relevant to the child's or family's needs (or who is otherwise qualified to carry out all applicable responsibilities under this chapter), who will be responsible for implementing the early intervention services identified in a child's IFSP, including transition services, and coordination with other agencies and persons. In meeting the requirements of this subrule, the term "profession" includes "service coordination."

120.344(8) *Transition from Part C services.*

a. The IFSP must include the steps and services to be taken to support the smooth transition of the child, in accordance with rule 281—120.209(34CFR303), from Part C services to:

(1) Preschool services under Part B of the Act, to the extent that those services are appropriate; or

(2) Other appropriate services.

b. The steps required in paragraph 120.344(8)*"a"* must include:

(1) Discussions with, and training of, parents, as appropriate, regarding future placements and other matters related to the child's transition;

(2) Procedures to prepare the child for changes in service delivery, including steps to help the child adjust to, and function in, a new setting;

(3) Confirmation that child find information about the child has been transmitted to the AEA or other relevant agency, in accordance with subrule 120.209(2) and, with parental consent if required under rule 281—120.414(34CFR303), transmission of additional information needed by the AEA to ensure continuity of services from the Part C program to the Part B program, including a copy of the most recent evaluation and assessments of the child and the family and most recent IFSP developed in accordance with rules 281—120.340(34CFR30) through 281—120.345(34CFR303); and

(4) Identification of transition services and other activities that the IFSP team determines are necessary to support the transition of the child.

[**ARC 0100C**, IAB 4/18/12, effective 5/23/12]

281—120.345(34CFR303) Interim IFSPs—provision of services before evaluations and assessments are completed. Early intervention services for an eligible child and the child's family may commence before the completion of the evaluation and assessments in rule 281—120.321(34CFR303), if the following conditions are met:

120.345(1) Parental consent is obtained.

120.345(2) An interim IFSP is developed that includes the name of the service coordinator who will be responsible, consistent with subrule 120.344(7), for implementing the interim IFSP and coordinating with other agencies and persons and includes the early intervention services that have been determined to be needed immediately by the child and the child's family.

120.345(3) Evaluations and assessments are completed within the 45-day timeline in rule 281—120.310(34CFR303).
[**ARC 0100C**, IAB 4/18/12, effective 5/23/12]

281—120.346(34CFR303) Responsibility and accountability. Each public agency or EIS provider who has a direct role in the provision of early intervention services is responsible for making a good-faith effort to assist each eligible child in achieving the outcomes in the child's IFSP. However, Part C of the Act does not require that any public agency or EIS provider be held accountable if an eligible child does not achieve the growth projected in the child's IFSP, so long as the child's IFSP was reasonably calculated to confer benefit and was implemented.
[**ARC 0100C**, IAB 4/18/12, effective 5/23/12]

281—120.347 to **120.399** Reserved.

DIVISION VI
PROCEDURAL SAFEGUARDS

281—120.400(34CFR303) General responsibility of lead agency for procedural safeguards. Subject to subrule 120.400(3), the department must:

120.400(1) Establish or adopt the procedural safeguards that meet the requirements of this division, including the provisions on confidentiality in rules 281—120.401(34CFR303) through 281—120.417(34CFR303), parental consent and notice in rules 281—120.420(34CFR303) and 281—120.421(34CFR303), surrogate parents in rule 281—120.422(34CFR303), and dispute resolution procedures in rule 281—120.430(34CFR303);

120.400(2) Ensure the effective implementation of the safeguards by each participating agency (including the lead agency and EIS providers) in the statewide system that is involved in the provision of early intervention services under this chapter; and

120.400(3) Make available to parents an initial copy of the child's early intervention record, at no cost to the parents.
[**ARC 0100C**, IAB 4/18/12, effective 5/23/12]

281—120.401(34CFR303) Confidentiality and opportunity to examine records.

120.401(1) *General.* The state must ensure that the parents of a child referred under this chapter are afforded the right to confidentiality of personally identifiable information, including the right to written notice of, and written consent to, the exchange of that information among agencies, consistent with federal and state laws.

120.401(2) *Confidentiality procedures.* As required under Sections 617(c) and 642 of the Act, rules 281—120.401(34CFR303) through 281—120.417(34CFR303) ensure the protection of the confidentiality of any personally identifiable data, information, and records collected or maintained pursuant to this chapter by the Secretary and by participating agencies, including the department and EIS providers, in accordance with the protections under the Family Educational Rights and Privacy Act (FERPA) in 20 U.S.C. 1232g and 34 CFR Part 99. The state must have procedures in effect to ensure that:

a. Participating agencies (including the lead agency and EIS providers) comply with the Part C confidentiality procedures in rules 281—120.401(34CFR303) through 281—120.417(34CFR303); and

b. The parents of infants or toddlers who are referred to or receive services under this chapter are afforded the opportunity to inspect and review all Part C early intervention records about the child and the child's family that are collected, maintained, or used under this chapter, including records related to evaluations and assessments, screening, eligibility determinations, development and implementation of IFSPs, provision of early intervention services, individual complaints involving the child, or any part of the child's early intervention record under this chapter.

120.401(3) *Applicability and time frame of procedures.* The confidentiality procedures described in subrule 120.401(2) apply to the personally identifiable information of a child and the child's family that:

a. Is contained in early intervention records collected, used, or maintained under this chapter by the department or an EIS provider; and

b. Applies from the point in time when the child is referred for early intervention services under this chapter until the later of when the participating agency is no longer required to maintain or no longer maintains that information under applicable federal and state laws.

120.401(4) *Disclosure of information: transition from Part C to Part B.*

a. The department shall disclose to the AEA where the child resides, in accordance with subrule 120.209(2), the following personally identifiable information under the Act:

(1) A child's name.

(2) A child's date of birth.

(3) Parent contact information (including parents' names, addresses, and telephone numbers).

b. The information described in this subrule is needed to enable the department, as well as LEAs and AEAs under Part B of the Act, to identify all children potentially eligible for services under Part B of the Act.

[**ARC 0100C**, IAB 4/18/12, effective 5/23/12]

281—120.402(34CFR303) Confidentiality. The Secretary takes appropriate action, in accordance with Section 444 of GEPA, to ensure the protection of the confidentiality of any personally identifiable data, information, and records collected, maintained, or used by the Secretary and by all lead agencies and EIS providers pursuant to Part C of the Act and consistent with rules 281—120.401(34CFR303) through 281—120.417(34CFR303). Rules 281—120.401(34CFR303) through 281—120.417(34CFR303) ensure the protection of the confidentiality of any personally identifiable data, information, and records collected or maintained pursuant to this chapter by the Secretary and by participating agencies, including state lead agencies and EIS providers, in accordance with the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. 1232g, and 34 CFR Part 99.

[**ARC 0100C**, IAB 4/18/12, effective 5/23/12]

281—120.403(34CFR303) Definitions. The following definitions apply to rules 281—120.402(34CFR303) through 281—120.417(34CFR303) in addition to the definition of "personally identifiable information" in rule 281—120.29(34CFR303) and the definition of "disclosure" in 34 CFR 99.3:

120.403(1) "Destruction" means physical destruction of the record or ensuring that personal identifiers are removed from a record so that the record is no longer personally identifiable under rule 281—120.29(34CFR303).

120.403(2) "Early intervention records" means all records regarding a child that are required to be collected, maintained, or used under Part C of the Act and the rules in this chapter.

120.403(3) "Participating agency" means any individual, agency, entity, or institution that collects, maintains, or uses personally identifiable information to implement the requirements in Part C of the Act and the rules in this chapter with respect to a particular child. A participating agency includes the department and EIS providers and any individual or entity that provides any Part C services (including service coordination, evaluations and assessments), but does not include primary referral sources, or public agencies (such as the state Medicaid or CHIP program) or private entities (such as private insurance companies) that act solely as funding sources for Part C services.

[**ARC 0100C**, IAB 4/18/12, effective 5/23/12]

281—120.404(34CFR303) Notice to parents. The relevant agency must give notice when a child is referred under Part C of the Act that is adequate to fully inform parents about the requirements in rule 281—120.402(34CFR303), including:

120.404(1) 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;

120.404(2) 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;

120.404(3) A description of all the rights of parents and children regarding this information, including their rights under the Part C confidentiality provisions in rules 281—120.401(34CFR303) through 281—120.417(34CFR303); and

120.404(4) A description of the extent that the notice is provided in the native languages of the various population groups in the state.

[**ARC 0100C**, IAB 4/18/12, effective 5/23/12]

281—120.405(34CFR303) Access rights.

120.405(1) *General.* Each participating agency must permit parents to inspect and review any early intervention records relating to their children that are collected, maintained, or used by the agency under this chapter. The agency must comply with a parent's request to inspect and review records without unnecessary delay and before any meeting regarding an IFSP, or any hearing pursuant to subrule 120.430(4) and rules 281—120.435(34CFR303) through 281—120.439(34CFR303), and in no case more than ten days after the request is made.

120.405(2) *Inspect and review.* The right to inspect and review early intervention records under this rule includes:

a. The right to a response from the participating agency to reasonable requests for explanations and interpretations of the early intervention records;

b. The right to request that the participating agency provide copies of the early intervention 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 early intervention records.

120.405(3) *Rule of construction.* 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 provided documentation that the parent does not have the authority under applicable state laws governing such matters as custody, foster care, guardianship, separation, and divorce.

[**ARC 0100C**, IAB 4/18/12, effective 5/23/12]

281—120.406(34CFR303) Record of access. Each participating agency must keep a record of parties obtaining access to early intervention records collected, maintained, or used under Part C of the Act (except access by parents and authorized representatives and 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 early intervention records.

[**ARC 0100C**, IAB 4/18/12, effective 5/23/12]

281—120.407(34CFR303) Records on more than one child. If any early intervention 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.

[**ARC 0100C**, IAB 4/18/12, effective 5/23/12]

281—120.408(34CFR303) List of types and locations of information. Each participating agency must provide parents, on request, a list of the types and locations of early intervention records collected, maintained, or used by the agency.

[**ARC 0100C**, IAB 4/18/12, effective 5/23/12]

281—120.409(34CFR303) Fees for records.

120.409(1) *General.* 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, except as provided in subrule 120.409(3).

120.409(2) *No fees to search or retrieve.* A participating agency may not charge a fee to search for or to retrieve information under this chapter.

120.409(3) *Copies of certain documents at no cost.* A participating agency must provide at no cost to parents a copy of each evaluation, assessment of the child, family assessment, and IFSP as soon as possible after each IFSP meeting.
[**ARC 0100C**, IAB 4/18/12, effective 5/23/12]

281—120.410(34CFR303) Amendment of records at a parent's request.

120.410(1) *Parent permitted to request amendment.* A parent who believes that information in the early intervention records collected, maintained, or used under this chapter is inaccurate, misleading, or violates the privacy or other rights of the child or parent may request that the participating agency that maintains the information amend the information.

120.410(2) *Agency to act on parent's request.* The participating agency must decide whether to amend the information in accordance with the request within a reasonable period of time of receipt of the request.

120.410(3) *Agency to inform parent of hearing rights.* If the participating agency refuses to amend the information in accordance with the request, the participating agency must inform the parent of the refusal and advise the parent of the right to a hearing under rule 281—120.411(34CFR303).
[**ARC 0100C**, IAB 4/18/12, effective 5/23/12]

281—120.411(34CFR303) Opportunity for a hearing. The participating agency must, on request, provide parents with the opportunity for a hearing to challenge information in their child's early intervention records to ensure that the information is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child or parents. A parent may request a due process hearing under the procedures in subrule 120.430(4), provided that such hearing procedures meet the requirements of the hearing procedures in rule 281—120.413(34CFR303), or may request a hearing directly under rule 281—120.413(34CFR303).
[**ARC 0100C**, IAB 4/18/12, effective 5/23/12]

281—120.412(34CFR303) Result of hearing.

120.412(1) *Information to be amended.* If, as a result of the hearing, the participating agency decides that the information is inaccurate, misleading or in violation of the privacy or other rights of the child or parent, the participating agency must amend the information accordingly and so inform the parent in writing.

120.412(2) *Information not to be amended.* If, as a result of the hearing, the agency decides that the information is not inaccurate, misleading, or in violation of the privacy or other rights of the child or parent, the agency must inform the parent of the right to place in the early intervention 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.

120.412(3) *Explanation placed in records.* Any explanation placed in the early intervention records of the child under this rule must be maintained by the agency as part of the early intervention records of the child as long as the record or contested portion is maintained by the agency. If the early intervention records of the child or the contested portion are disclosed by the agency to any party, the explanation must also be disclosed to the party.
[**ARC 0100C**, IAB 4/18/12, effective 5/23/12]

281—120.413(34CFR303) Hearing procedures. A hearing held under rule 281—120.411(34CFR303) must be conducted according to the procedures under 34 CFR 99.22.
[**ARC 0100C**, IAB 4/18/12, effective 5/23/12]

281—120.414(34CFR303) Consent prior to disclosure or use.

120.414(1) *General.* Except as provided in subrule 120.414(2), prior parental consent must be obtained before personally identifiable information is:

a. Disclosed to anyone other than authorized representatives, officials, or employees of participating agencies collecting, maintaining, or using the information under this chapter, subject to subrule 120.414(2); or

b. Used for any purpose other than meeting a requirement of this chapter.

120.414(2) *Exceptions.* The department or other participating agency may not disclose personally identifiable information, as defined in rule 281—120.29(34CFR303), to any party except participating agencies (including the department and EIS providers) that are part of the state's Part C system without parental consent unless authorized to do so under:

a. Subrules 120.401(1) and 120.209(2); or

b. One of the exceptions enumerated in 34 CFR 99.31 (where applicable to Part C), which are expressly adopted to apply to Part C through this reference. In applying the exceptions in 34 CFR 99.31 to this chapter, participating agencies must also comply with the pertinent conditions in 34 CFR 99.32, 99.33, 99.34, 99.35, 99.36, 99.38, and 99.39. In applying these provisions in 34 CFR Part 99 to Part C, the reference to:

(1) 34 CFR 99.30 means subrule 120.414(1);

(2) "Education records" means early intervention records under subrule 120.403(2);

(3) "Educational" means early intervention under this chapter;

(4) "Educational agency or institution" means the participating agency under subrule 120.403(3);

(5) "School officials and officials of another school or school system" means qualified personnel or service coordinators under this chapter;

(6) "State and local educational authorities" means the department and EIS providers and grantees; and

(7) "Student" means child under this chapter.

120.414(3) *Policies and procedures regarding refusal to provide consent.* The department must provide policies and procedures to be used when a parent refuses to provide consent under this rule (such as a meeting to explain to parents how their failure to consent affects the ability of their child to receive services under this chapter), provided that those procedures do not override a parent's right to refuse consent under rule 281—120.420(34CFR303).

[**ARC 0100C**, IAB 4/18/12, effective 5/23/12]

281—120.415(34CFR303) Safeguards. Each participating agency must protect the confidentiality of personally identifiable information at the collection, maintenance, use, 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 rules 281—120.401(34CFR303) through 281—120.417(34CFR303) 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.

[**ARC 0100C**, IAB 4/18/12, effective 5/23/12]

281—120.416(34CFR303) Destruction of information.

120.416(1) *Notification to parent.* The participating agency must inform parents when personally identifiable information collected, maintained, or used under this chapter is no longer needed to provide services to the child under Part C of the Act, the GEPA provisions in 20 U.S.C. 1232f, and EDGAR, 34 CFR Parts 76 and 80.

120.416(2) *Mandatory and permissive destruction of personally identifiable information.* Subject to subrule 120.416(1), the information must be destroyed at the request of the parents. However, a permanent record of a child's name, date of birth, parent contact information (including address and telephone number), names of service coordinator(s) and EIS provider(s), and exit data (including year and age upon exit and any programs entered into upon exiting) may be maintained without time limitation.

120.416(3) *Rule of construction—"no longer needed to provide services."* For purposes of this rule, "no longer needed to provide services" means that a record is no longer relevant to the provision of Early ACCESS services and is no longer needed for accountability and audit purposes. At a minimum,

a record needed for accountability and audit purposes must be retained for five years after completion of the activity for which funds were used.
[**ARC 0100C**, IAB 4/18/12, effective 5/23/12]

281—120.417(34CFR303) Enforcement. The department must have in effect the policies and procedures, including sanctions and the right to file a complaint under rules 281—120.432(34CFR303) through 281—120.434(34CFR303), that the department uses to ensure that its policies and procedures, consistent with rules 281—120.401(34CFR303) through 281—120.417(34CFR303), are followed and that the requirements of the Act and the rules in this chapter are met.
[**ARC 0100C**, IAB 4/18/12, effective 5/23/12]

281—120.418 and **120.419** Reserved.

281—120.420(34CFR303) Parental consent and ability to decline services.

120.420(1) *General.* The relevant agency must ensure parental consent is obtained before:

a. Administering screening procedures under rule 281—120.320(34CFR303) that are used to determine whether a child is suspected of having a disability;

b. All evaluations and assessments of a child are conducted under rule 281—120.321(34CFR303);

c. Early intervention services are provided to a child under this chapter;

d. Public benefits or insurance or private insurance is used if such consent is required under rule 281—120.520(34CFR303); and

e. Disclosure of personally identifiable information consistent with rule 281—120.414(34CFR303).

120.420(2) *Parent refusal to consent.* If a parent does not give consent under paragraph 120.420(1)*"a," "b,"* or *"c,"* the agency must make reasonable efforts to ensure that the parent:

a. Is fully aware of the nature of the evaluation and assessment of the child or early intervention services that may be available; and

b. Understands that the child will not be able to receive the evaluation, assessment, or early intervention services unless consent is given.

120.420(3) *Due process procedures unavailable.* The agency may not use the due process hearing procedures under this chapter to challenge a parent's refusal to provide any consent that is required under subrule 120.420(1).

120.420(4) *Parent rights.* The parents of an infant or toddler with a disability:

a. Determine whether they, their infant or toddler with a disability, or other family members will accept or decline any Early ACCESS service under this chapter at any time, in accordance with state law; and

b. May decline a service after first accepting it, without jeopardizing other early intervention services under this chapter.
[**ARC 0100C**, IAB 4/18/12, effective 5/23/12]

281—120.421(34CFR303) Prior written notice and procedural safeguards notice.

120.421(1) *General.* Prior written notice must be provided to parents a reasonable time before an agency or an EIS provider proposes, or refuses, to initiate or change the identification, evaluation, or placement of the parents' infant or toddler or the provision of early intervention services to the infant or toddler with a disability and that infant's or toddler's family.

120.421(2) *Content of notice.* The notice must be in sufficient detail to inform parents about:

a. The action that is being proposed or refused;

b. The reasons for taking the action; and

c. All procedural safeguards that are available under this chapter, including a description of mediation in rule 281—120.431(34CFR303), how to file a state complaint in rules 281—120.432(34CFR303) through 281—120.434(34CFR303) and a due process complaint in the provisions adopted under subrule 120.430(4), and any timelines under those procedures.

120.421(3) *Native language.*

a. The notice must be:

(1) Written in language understandable to the general public; and

(2) Provided in the native language, as defined in rule 281—120.25(34CFR303), 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 or designated EIS provider must take steps to ensure that:

(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 notice; and

(3) There is written evidence that the requirements of this subrule have been met.

[**ARC 0100C**, IAB 4/18/12, effective 5/23/12]

281—120.422(34CFR303) Surrogate parents.

120.422(1) *General.* The department or other public agency must ensure that the rights of a child are protected when:

a. No parent (as defined in rule 281—120.27(34CFR303)) can be identified;

b. The department or AEA, after reasonable efforts, cannot locate a parent; or

c. The child is a ward of the state under the laws of the state.

120.422(2) *Duty of other public agencies.*

a. The duty of the AEA under subrule 120.422(1) includes the assignment of an individual to act as a surrogate for the parent. This assignment process must include a method for:

(1) Determining whether a child needs a surrogate parent; and

(2) Assigning a surrogate parent to the child.

b. In implementing the provisions under this rule for children who are wards of the state or placed in foster care, the AEA must consult with the public agency that has been assigned care of the child.

120.422(3) *Wards of the state.* In the case of a child who is a ward of the state, the surrogate parent, instead of being appointed by the AEA under subrule 120.422(2), may be appointed by the judge presiding over the infant's or toddler's case provided that the surrogate parent meets the requirements in subrules 120.422(4) and 120.422(5).

120.422(4) *Criteria for selection of surrogate parents.*

a. The AEA may select a surrogate parent in any way permitted under state law.

b. The AEA must ensure that a person selected as a surrogate parent:

(1) Is not an employee of the department or any other public agency or EIS provider that provides early intervention services, education, care, or other services to the child or any family member of the child;

(2) Has no personal or professional interest that conflicts with the interest of the child the person represents; and

(3) Has knowledge and skills that ensure adequate representation of the child.

120.422(5) *Nonemployee requirement; compensation.* A person who is otherwise qualified to be a surrogate parent under subrule 120.422(4) is not an employee of the agency solely because the person is paid by the agency to serve as a surrogate parent.

120.422(6) *Surrogate parent responsibilities.* The surrogate parent has the same rights as a parent for all purposes under this chapter.

120.422(7) *Department 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.

[**ARC 0100C**, IAB 4/18/12, effective 5/23/12]

281—120.423 to **120.429** Reserved.

281—120.430(34CFR303) State dispute resolution options.

120.430(1) *General.* Each statewide system must include written procedures for the timely administrative resolution of complaints through mediation, state complaint procedures, and due process hearing procedures, described in subrules 120.430(2) through 120.430(6).

120.430(2) *Mediation.* The department must make available to parties to disputes involving any matter under this chapter the opportunity for mediation that meets the requirements in rule 281—120.431(34CFR303).

120.430(3) *State complaint procedures.* The department must adopt written state complaint procedures that meet the requirements in rules 281—120.432(34CFR303) through 281—120.434(34CFR303) to resolve any state complaints filed by any party regarding any violation of this chapter.

120.430(4) *Due process hearing procedures.* The department must adopt written due process hearing procedures to resolve complaints with respect to a particular child regarding any matter identified in subrule 120.421(1). The department adopts the Part C due process hearing procedures under Section 639 of the Act.

120.430(5) *Status of a child during the pendency of a due process complaint.* During the pendency of any proceeding involving a due process complaint under subrule 120.430(4), unless the agency and parents of an infant or toddler with a disability otherwise agree, the child must continue to receive the appropriate early intervention services in the setting identified in the IFSP that is consented to by the parents. If the due process complaint under subrule 120.430(4) involves an application for initial services under Part C of the Act, the child must receive those services that are not in dispute.

120.430(6) *Status of a child during the pendency of mediation.* During the pendency of any request for mediation under subrule 120.430(2) and for ten days after any such mediation conference at which no agreement is reached, unless the agency and the parents of the child agree otherwise, the child involved in any such mediation conference must continue to receive the appropriate early intervention services identified in the IFSP in the setting that is consented to by the parents. If the mediation involves an application for initial services under Part C of the Act, the child must receive those services that are not in dispute.

[**ARC 0100C**, IAB 4/18/12, effective 5/23/12]

281—120.431(34CFR303) Mediation.

120.431(1) *General.* The department must ensure that procedures are established and implemented to allow parties to disputes involving any matter under this chapter, including matters arising prior to the filing of a due process complaint, to resolve disputes through a mediation process at any time.

120.431(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 due process hearing, or to deny any other rights afforded under Part C of the Act; and

(3) Is conducted by a qualified and impartial mediator who is trained in effective mediation techniques.

b. The department must maintain a list of individuals who are qualified mediators and knowledgeable in laws and regulations relating to the provision of early intervention services. The department must select mediators on a random, rotational, or other impartial basis.

c. The department must bear the cost of the mediation process, including the costs of meetings described in subrule 120.431(4).

d. 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.

e. 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 lead agency who has the authority to bind such agency.

f. A written, signed mediation agreement under this subrule is enforceable in any state court of competent jurisdiction or in a district court of the United States.

g. 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 of a state receiving assistance under Part C of the Act.

120.431(3) *Impartiality of mediator.*

a. An individual who serves as a mediator under this chapter:

(1) May not be an employee of the department or an EIS provider that is involved in the provision of early intervention services or other services to the child; and

(2) Must not have a personal or professional interest that conflicts with the person's objectivity.

b. An individual who otherwise qualifies as a mediator is not an employee of the department or an early intervention provider solely because the individual is paid by the agency or provider to serve as a mediator.

120.431(4) *Meeting to encourage mediation.* The department may establish procedures to offer to parents and EIS providers 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:

a. 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

b. Who would explain the benefits of, and encourage the use of, the mediation process to the parents.

[**ARC 0100C**, IAB 4/18/12, effective 5/23/12]

281—120.432(34CFR303) Adoption of state complaint procedures.

120.432(1) *General.* The department must adopt written procedures for:

a. Resolving any complaint, including a complaint filed by an organization or individual from another state, that meets the requirements in rule 281—120.434(34CFR303) by providing for the filing of a complaint with the department; and

b. Widely disseminating to parents and other interested individuals, including parent training and information centers, protection and advocacy agencies, and other appropriate entities, the procedures under rules 281—120.432(34CFR303) through 281—120.434(34CFR303).

120.432(2) *Remedies for denial of appropriate services.* In resolving a complaint in which the department has found a failure to provide appropriate services, the department, pursuant to its general supervisory authority under Part C of the Act, must address:

a. The failure to provide appropriate services, including corrective actions appropriate to address the needs of the infant or toddler with a disability who is the subject of the complaint and the infant's or toddler's family (such as compensatory services or monetary reimbursement); and

b. Appropriate future provision of services for all infants and toddlers with disabilities and their families.

[**ARC 0100C**, IAB 4/18/12, effective 5/23/12]

281—120.433(34CFR303) Minimum state complaint procedures.

120.433(1) *Time limit; minimum procedures.* The department must include in its complaint procedures a time limit of 60 days after a complaint is filed under rule 281—120.434(34CFR303) to:

a. Carry out an independent, on-site investigation, if the department 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 agency or EIS provider named in the complaint an opportunity to respond to the complaint, including, at a minimum:

(1) At the discretion of the department, a proposal to resolve the complaint; and

(2) An opportunity for a parent who has filed a complaint and the lead agency, public agency, or EIS provider to voluntarily engage in mediation, consistent with subrule 120.430(2) and rule 281—120.431(34CFR303);

d. Review all relevant information and make an independent determination as to whether the agency or EIS provider named in the complaint is violating a requirement of Part C 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 department's final decision.

120.433(2) *Time extension; final decision; implementation.* The department's procedures described in subrule 120.433(1) must:

a. Permit an extension of the time limit under subrule 120.433(1) only if:

(1) Exceptional circumstances exist with respect to a particular complaint; or

(2) The parent (or individual or organization, if mediation is available to the individual or organization under state procedures) and agency or EIS provider named in the complaint agree to extend the time to engage in mediation pursuant to subparagraph 120.433(1)*"c"*(2); and

b. Include procedures for effective implementation of the department's final decision, if needed, including:

(1) Technical assistance activities;

(2) Negotiations; and

(3) Corrective actions to achieve compliance.

120.433(3) *Complaints filed under this rule and due process hearings under subrule 120.430(4).* If a written complaint is received that is also the subject of a due process hearing under subrule 120.430(4), or contains multiple issues of which one or more are part of that hearing, the department 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 hearing must be resolved using the time limit and procedures described in subrules 120.433(1) and 120.433(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 department must inform the complainant to that effect. A complaint alleging the department's, other public agency's, or EIS provider's failure to implement a due process hearing decision must be resolved by the department.

[**ARC 0100C**, IAB 4/18/12, effective 5/23/12]

281—120.434(34CFR303) Filing a complaint.

120.434(1) *Complainant.* An organization or individual may file a signed written complaint under the procedures described in rules 281—120.432(34CFR303) and 281—120.433(34CFR303).

120.434(2) *Contents of complaint.* The complaint must include:

a. A statement that an agency or EIS provider has violated a requirement of Part C 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 EIS provider serving the child;

(3) A description of the nature of the problem of the child, including facts relating to the problem; and

(4) A proposed resolution of the problem to the extent known and available to the party at the time the complaint is filed.

120.434(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 281—120.432(34CFR303).

120.434(4) *Providing copies to parties named in the complaint.* The party filing the complaint must forward a copy of the complaint to the public agency or EIS provider serving the child at the same time the party files the complaint with the department.

120.434(5) *Failure to comply with mediation agreement or due process decision.* A complainant may allege a party has failed to comply with a due process hearing decision, a mediation agreement, or a resolution meeting agreement. If the complaint is substantiated, the department will grant appropriate relief.

[**ARC 0100C**, IAB 4/18/12, effective 5/23/12]

281—120.435(34CFR303) Appointment of an administrative law judge.

120.435(1) *Qualifications and duties.* Whenever a due process complaint is received under subrule 120.430(4), the department will appoint an impartial administrative law judge (ALJ) to implement the complaint resolution process in this chapter. The person must:

a. Have knowledge about the provisions of Part C of the Act and of this chapter and the needs of, and early intervention services available for, infants and toddlers with disabilities and their families; and

b. Perform the following duties:

(1) Listen to the presentation of relevant viewpoints about the due process complaint;

(2) Examine all information relevant to the issues;

(3) Seek to reach a timely resolution of the due process complaint; and

(4) Provide a record of the proceedings, including a written decision.

120.435(2) *Definition of "impartial."*

a. "Impartial" means that the administrative law judge appointed to implement the due process hearing under this chapter:

(1) Is not an employee of the department or other agency or EIS provider involved in the provision of early intervention services or care of the child; and

(2) Does not have a personal or professional interest that would conflict with the ALJ's objectivity in implementing the process.

b. A person who otherwise qualifies under this subrule is not an employee of an agency solely because the person is paid by the agency to implement the due process hearing procedures or mediation procedures under this chapter.

[**ARC 0100C**, IAB 4/18/12, effective 5/23/12]

281—120.436(34CFR303) Parental rights in due process hearing proceedings.

120.436(1) *General.* The department must ensure that the parents of a child referred to or receiving Part C services are afforded the rights in subrule 120.436(2) in the due process hearing carried out under subrule 120.430(4).

120.436(2) *Rights of parents.* Any parent involved in a due process hearing has the right to:

a. Be accompanied and advised by counsel and by individuals with special knowledge or training with respect to early intervention services for infants and toddlers 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 the parent at least five days before the hearing;

d. Obtain a written or electronic verbatim transcription of the hearing at no cost to the parent; and

e. Receive a written copy of the findings of fact and decisions at no cost to the parent.

120.436(3) *Other party rights.* Any public agency or EIS provider that is a party to a due process hearing under subrule 120.430(4) has each of the rights listed in subrule 120.436(2).

[**ARC 0100C**, IAB 4/18/12, effective 5/23/12]

281—120.437(34CFR303) Convenience of hearings and timelines.

120.437(1) *Time and place.* Any due process hearing conducted under this chapter must be carried out at a time and place that is reasonably convenient to the parents.

120.437(2) *Timeline for ALJ decision.* The department must ensure that, not later than 30 days after the receipt of a parent's due process complaint, the due process hearing required under this chapter is completed and a written decision mailed to each of the parties.

120.437(3) *Extension of ALJ timeline.* An ALJ may grant specific extensions of time beyond the period set out in subrule 120.437(2) at the request of either party.
[**ARC 0100C**, IAB 4/18/12, effective 5/23/12]

281—120.438(34CFR303) Civil action. Any party aggrieved by the findings and decision issued pursuant to a due process complaint has the right to bring a civil action in state or federal court under Section 639(a)(1) of the Act.
[**ARC 0100C**, IAB 4/18/12, effective 5/23/12]

281—120.439(34CFR303) Limitation of actions.

120.439(1) *Limitation: due process complaints.* A parent, agency, or EIS provider must request an impartial hearing on the due process complaint within two years of the date the parent, agency, or provider knew or should have known about the alleged action that forms the basis of the due process complaint.

120.439(2) *Exceptions to timeline.* The timeline described in subrule 120.439(1) 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 an agency or EIS provider that it had resolved the problem forming the basis of the due process complaint; or

b. The agency's or EIS provider's withholding of information from the parent that was required under this chapter to be provided to the parent.

120.439(3) *Limitation: civil action.* The party bringing the civil action under rule 281—120.438(34CFR303) shall have 90 days from the date of the decision of the administrative law judge to file a civil action.
[**ARC 0100C**, IAB 4/18/12, effective 5/23/12]

281—120.440(34CFR303) Rule of construction. Nothing in 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 639 of the Act, the procedures under this chapter must be exhausted to the same extent as would be required had the action been brought under Section 639 of the Act.
[**ARC 0100C**, IAB 4/18/12, effective 5/23/12]

281—120.441(34CFR303) Attorney fees. Reasonable attorney fees are available to a prevailing party (parent or, in certain circumstances, public agency or EIS provider) in a due process hearing or a mediation conference to the extent those fees are available under the Act. No fees are available under the state complaint procedure in subrule 120.430(3).
[**ARC 0100C**, IAB 4/18/12, effective 5/23/12]

281—120.442 to **120.448** Reserved.

281—120.449(34CFR303) State enforcement mechanisms. Notwithstanding subrule 120.431(2), which provides for judicial enforcement of a written agreement reached as a result of a mediation, there is nothing in this chapter that would prevent the state from using other mechanisms to seek enforcement of that agreement, 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.
[**ARC 0100C**, IAB 4/18/12, effective 5/23/12]

281—120.450 to **120.499** Reserved.

DIVISION VII
USE OF FUNDS; PAYOR OF LAST RESORT

281—120.500(34CFR303) Use of funds, payor of last resort, and system of payments.

120.500(1) *Statewide system.* The statewide system must include written policies and procedures that meet the requirements of the:

a. Use of funds provisions in rule 281—120.501(34CFR303); and

b. Payor of last resort provisions in rules 281—120.510(34CFR303) through 281—120.521(34CFR303) (regarding the identification and coordination of funding resources for, and the provision of, early intervention services under Part C of the Act within the state).

120.500(2) *System of payments.* The state may establish, consistent with subrules 120.13(1) and 120.203(2), a system of payments for early intervention services under Part C of the Act, including a schedule of sliding fees or cost participation fees (such as copayments, premiums, or deductibles) required to be paid under federal, state, local, or private programs of insurance or benefits for which the infant or toddler with a disability or the child's family is enrolled, that meets the requirements of rules 281—120.520(34CFR303) and 281—120.521(34CFR303).

[**ARC 0100C**, IAB 4/18/12, effective 5/23/12]

281—120.501(34CFR303) Permissive use of funds by the department. Consistent with rules 281—120.120(34CFR303) through 281—120.122(34CFR303) and 281—120.220(34CFR303) through 281—120.226(34CFR303), the department may use funds under this chapter for activities or expenses that are reasonable and necessary for implementing Early ACCESS, including funds:

120.501(1) For direct early intervention services for infants and toddlers with disabilities and their families under this chapter that are not otherwise funded through other public or private sources (subject to rules 281—120.510(34CFR303) through 281—120.521(34CFR303));

120.501(2) To expand and improve services for infants and toddlers with disabilities and their families under this chapter that are otherwise available; and

120.501(3) In any state that does not provide services under 34 CFR 303.204 for at-risk infants and toddlers, as defined in rule 281—120.5(34CFR303), to strengthen the statewide system by initiating, expanding, or improving collaborative efforts related to at-risk infants and toddlers, including establishing linkages with appropriate public and private community-based organizations, services, and personnel for the purposes of:

a. Identifying and evaluating at-risk infants and toddlers;

b. Making referrals for the infants and toddlers identified and evaluated under paragraph 120.501(3)*"a"*; and

c. Conducting periodic follow-up on each referral, to determine if the status of the infant or toddler involved has changed with respect to the eligibility of the infant or toddler for services under this chapter.

[**ARC 0100C**, IAB 4/18/12, effective 5/23/12]

281—120.502 to **120.509** Reserved.

281—120.510(34CFR303) Payor of last resort.

120.510(1) *Nonsubstitution of funds.* Except as provided in subrule 120.510(2), funds under this chapter may not be used to satisfy a financial commitment for services that would otherwise have been paid for from another public or private source, including any medical program administered by the Department of Defense, but for the enactment of Part C of the Act. Therefore, funds under this chapter may be used only for early intervention services that an infant or toddler with a disability needs but is not currently entitled to receive or have payment made from any other federal, state, local, or private source (subject to rules 281—120.520(34CFR303) and 281—120.521(34CFR303)).

120.510(2) *Interim payments—reimbursement.* If necessary to prevent a delay in the timely provision of appropriate early intervention services to a child or the child's family, funds under Part C of the Act may be used to pay the provider of services (for services and functions authorized under this chapter, including health services, as defined in rule 281—120.16(34CFR303) (but not medical

services); functions of the child find system described in rules 281—120.115(34CFR303) through 281—120.117(34CFR303) and rules 281—120.301(34CFR303) through 281—120.320(34CFR303); and evaluations and assessments in rule 281—120.321(34CFR303)), pending reimbursement from the agency or entity that has ultimate responsibility for the payment.

120.510(3) *Nonreduction of benefits.* Nothing in this chapter may be construed to permit a state to reduce medical or other assistance available in the state or to alter eligibility under Title V of the Social Security Act, 42 U.S.C. 701 et seq. (SSA) (relating to maternal and child health) or Title XIX of the SSA, 42 U.S.C. 1396 (relating to Medicaid), including Section 1903(a) of the SSA regarding medical assistance for services furnished to an infant or toddler with a disability when those services are included in the child's IFSP adopted pursuant to Part C of the Act.

[**ARC 0100C**, IAB 4/18/12, effective 5/23/12]

281—120.511(34CFR303) Methods to ensure the provision of, and financial responsibility for, Early ACCESS services.

120.511(1) *General.* The state must ensure that it has in place methods for interagency coordination. Under these methods, the governor must ensure that the interagency agreement or other method for interagency coordination is in effect between the department and each signatory agency in order to ensure:

a. The provision of, and establishing financial responsibility for, early intervention services provided under this chapter; and

b. Such services are consistent with the requirement in Section 635 of the Act and the state's application under Section 637 of the Act, including the provision of such services during the pendency of any dispute between state agencies.

120.511(2) *Methods.* The methods in subrule 120.511(1) must meet all requirements in this rule and be set forth in one of the following:

a. State law or rule;

b. Signed interagency and intra-agency agreements between respective agency officials that clearly identify the financial and service provision responsibilities of each agency (or entity within the agency); or

c. Other appropriate written methods determined by the governor, or the governor's designee, and approved by the Secretary through the review and approval of the state's application.

120.511(3) *Procedures for resolving disputes.*

a. Each method must include procedures for achieving a timely resolution of intra-agency and interagency disputes about payments for a given service or disputes about other matters related to Early ACCESS. Those procedures must include a mechanism for resolution of disputes within agencies and for the governor, governor's designee, or the department to make a final determination for interagency disputes, which determination must be binding upon the agencies involved.

b. The method must:

(1) Permit the agency to resolve its own internal disputes (based on the agency's procedures that are included in the agreement), so long as the agency acts in a timely manner; and

(2) Include the process that the department will follow in achieving resolution of intra-agency disputes, if a given agency is unable to resolve its own internal disputes in a timely manner.

c. If, during the department's resolution of the dispute, the governor, governor's designee, or department determines that the assignment of financial responsibility under this rule was inappropriately made:

(1) The governor, governor's designee, or department must reassign the financial responsibility to the appropriate agency; and

(2) The department must make arrangements for reimbursement of any expenditures incurred by the agency originally assigned financial responsibility.

120.511(4) *Delivery of services in a timely manner.* The methods adopted by the state under this rule must:

a. Include a mechanism to ensure that no services that a child is entitled to receive under this chapter are delayed or denied because of disputes between agencies regarding financial or other responsibilities; and

b. Be consistent with the written funding policies adopted by the state under this division and include any provisions the state has adopted under rule 281—120.520(34CFR303) regarding the use of insurance to pay for Part C services.

120.511(5) *Additional components.* Each method must include any additional components necessary to ensure effective cooperation and coordination among, and the department's general supervision (including monitoring) of, EIS providers (including all public agencies) involved in Early ACCESS.

[**ARC 0100C**, IAB 4/18/12, effective 5/23/12]

281—120.512 to **120.519** Reserved.

281—120.520(34CFR303) Policies related to use of public benefits or insurance or private insurance to pay for Early ACCESS services.

120.520(1) *Use of public benefits or public insurance to pay for Early ACCESS services.*

a. The state may not use the public benefits or insurance of a child or parent to pay for Part C services unless the state provides written notification, consistent with paragraph 120.521(1)*"c,"* to the child's parents, and the state meets the no-cost protections identified in paragraph 120.520(1)*"b."*

b. With regard to the state's using the public benefits or insurance of a child or parent to pay for Part C services, the state:

(1) May not require a parent to sign up for or enroll in public benefits or insurance programs as a condition of receiving Part C services and must obtain consent prior to using the public benefits or insurance of a child or parent if that child or parent is not already enrolled in such a program;

(2) Must obtain consent, consistent with rule 281—120.7(34CFR303) and subrule 120.420(1), to use a child's or parent's public benefits or insurance to pay for Part C services if that use would:

1. Decrease available lifetime coverage or any other insured benefit for that child or parent under that program;

2. Result in the child's parents paying for services that would otherwise be covered by the public benefits or insurance program;

3. Result in any increase in premiums or discontinuation of public benefits or insurance for that child or that child's parents; or

4. Risk loss of eligibility for the child or that child's parents for home- and community-based waivers based on aggregate health-related expenditures.

(3) If the parent does not provide consent under paragraph 120.520(1)*"b,"* the state must still make available those Part C services on the IFSP to which the parent has provided consent.

c. Prior to the state's using a child's or parent's public benefits or insurance to pay for Part C services, the state must provide written notification to the child's parents. The notification must include:

(1) A statement that parental consent must be obtained under rule 281—120.414(34CFR303), if that rule applies, before the department or EIS provider discloses, for billing purposes, a child's personally identifiable information to the department of human services, the state public agency responsible for the administration of the state's public benefits or insurance program (e.g., Medicaid);

(2) A statement of the no-cost protection provisions in subrule 120.520(1) and that if the parent does not provide the consent under that subrule, the agency must still make available those Part C services on the IFSP for which the parent has provided consent;

(3) A statement that the parents have the right under rule 281—120.414(34CFR303), if that rule applies, to withdraw their consent to disclosure of personally identifiable information to the department of human services, the state public agency responsible for the administration of the state's public benefits or insurance program (e.g., Medicaid) at any time; and

(4) A statement of the general categories of costs that the parent would incur as a result of participating in a public benefits or insurance program (such as copayments or deductibles, or the required use of private insurance as the primary insurance).

d. If a state requires a parent to pay any costs that the parent would incur as a result of the state's using a child's or parent's public benefits or insurance to pay for Part C services (such as copayments or deductibles, or the required use of private insurance as the primary insurance), those costs must be identified in the state's system of payments policies under rule 281—120.521(34CFR303) and included in the notification provided to the parent under paragraph 120.520(1)*"c"*; otherwise, the state cannot charge those costs to the parent.

120.520(2) *Use of private insurance to pay for Part C services.*

a. The state may not use the private insurance of a parent of an infant or toddler with a disability to pay for Part C services unless the parent provides parental consent, consistent with rule 281—120.7(34CFR303) and subrule 120.420(1), to use private insurance to pay for Part C services for the parent's child or the state meets one of the exceptions in paragraph 120.520(2)*"d."* This includes the use of private insurance when such use is a prerequisite for the use of public benefits or insurance. Parental consent must be obtained:

(1) When an agency or EIS provider seeks to use the parent's private insurance or benefits to pay for the initial provision of an early intervention service in the IFSP; and

(2) Each time consent for services is required under subrule 120.420(1) due to an increase (in frequency, length, duration, or intensity) in the provision of services in the child's IFSP.

b. If a state requires a parent to pay any costs that the parent would incur as a result of the state's use of private insurance to pay for early intervention services (such as copayments, premiums, or deductibles), those costs must be identified in the state's system of payments policies under rule 281—120.521(34CFR303); otherwise, the state may not charge those costs to the parent.

c. When obtaining parental consent required under paragraph 120.520(2)*"a"* or initially using benefits under a child's or parent's private insurance policy to pay for an early intervention service under paragraph 120.520(2)*"d,"* the state must provide to the parent a copy of the state's system of payments policies that identifies the potential costs that the parent may incur when the parent's private insurance is used to pay for early intervention services under this chapter (such as copayments, premiums, or deductibles or other long-term costs such as the loss of benefits because of annual or lifetime health insurance coverage caps under the insurance policy).

d. The parental consent requirements in paragraphs 120.520(2)*"a"* through *"c"* do not apply if the state has enacted a state statute regarding private health insurance coverage for early intervention services under Part C of the Act that expressly provides that:

(1) The use of private health insurance to pay for Part C services cannot count towards or result in a loss of benefits due to the annual or lifetime health insurance coverage caps for the infant or toddler with a disability, the parent, or the child's family members who are covered under that health insurance policy;

(2) The use of private health insurance to pay for Part C services cannot negatively affect the availability of health insurance to the infant or toddler with a disability, the parent, or the child's family members who are covered under that health insurance policy, and health insurance coverage may not be discontinued for these individuals due to the use of the health insurance to pay for services under Part C of the Act; and

(3) The use of private health insurance to pay for Part C services cannot be the basis for increasing the health insurance premiums of the infant or toddler with a disability, the parent, or the child's family members covered under that health insurance policy.

e. If the state has enacted a state statute that meets the requirements in paragraph 120.520(2)*"d,"* regarding the use of private health insurance coverage to pay for early intervention services under Part C of the Act, the state may reestablish a new baseline of state and local expenditures under subrule 120.225(2) in the next federal fiscal year following the effective date of the statute.

120.520(3) *Inability to pay.* If a parent or family of an infant or toddler with a disability is determined unable to pay under the state's definition of inability to pay under subrule 120.521(1) and does not provide

consent under paragraphs 120.520(2)*"a"* and *"b,"* the lack of consent may not be used to delay or deny any services under this chapter to that child or family.

120.520(4) *Proceeds or funds from public insurance or benefits or from private insurance.*

a. Proceeds or funds from public insurance or benefits or from private insurance are not treated as program income for purposes of 34 CFR 80.25.

b. If the state receives reimbursements from federal funds (e.g., Medicaid reimbursements attributable directly to federal funds) for services under Part C of the Act, those funds are considered neither state nor local funds under subrule 120.225(2).

c. If the state spends funds from private insurance for services under this chapter, those funds are considered neither state nor local funds under rule 281—120.225(34CFR303).

120.520(5) *Funds received from a parent or family member under the state's system of payments.* Funds received by the state from a parent or family member under the state's system of payments established under rule 281—120.521(34CFR303) are considered program income under 34 CFR 80.25. These funds:

a. Are not deducted from the total allowable costs charged under Part C of the Act (as set forth in 34 CFR 80.25(g)(1));

b. Must be used for the state's Part C early intervention services program, consistent with 34 CFR 80.25(g)(2); and

c. Are considered neither state nor local funds under subrule 120.225(2).

[**ARC 0100C**, IAB 4/18/12, effective 5/23/12]

281—120.521(34CFR303) System of payments and fees.

120.521(1) *General.* If a state elects to adopt a system of payments in subrule 120.500(2), the state's system of payments policies must be in writing and specify which functions or services, if any, are subject to the system of payments (including any fees charged to the family as a result of using one or more of the family's public insurance or benefits or private insurance), and include:

a. The payment system and schedule of sliding or cost participation fees that may be charged to the parent for early intervention services under this chapter;

b. The basis and amount of payments or fees;

c. The state's definition of ability to pay (including its definition of income and family expenses, such as extraordinary medical expenses), its definition of inability to pay, and when and how the state makes its determination of the ability or inability to pay;

d. An assurance that:

(1) Fees will not be charged to parents for the services that a child is otherwise entitled to receive at no cost (including those services identified under this subrule and subrules 120.521(2) and 120.521(3));

(2) The inability of the parents of an infant or toddler with a disability to pay for services will not result in a delay or denial of services under this chapter to the child or the child's family such that, if the parent or family meets the state's definition of inability to pay, the infant or toddler with a disability must be provided all Part C services at no cost;

(3) Families will not be charged any more than the actual cost of the Part C service (factoring in any amount received from other sources for payment for that service); and

(4) Families with public insurance or benefits or private insurance will not be charged disproportionately more than families who do not have public insurance or benefits or private insurance;

e. Provisions stating that the failure to provide the requisite income information and documentation may result in a charge of a fee on the fee schedule and specify the fee to be charged; and

f. Provisions that permit, but do not require, the department or other relevant agency to use Part C or other funds to pay for costs such as the premiums, deductibles, or copayments.

120.521(2) *Functions not subject to fees.* The following are required functions that must be carried out at public expense, and for which no fees may be charged to parents:

a. Implementing the child find requirements in rules 281—120.301(34CFR303) through 281—120.303(34CFR303).

b. Evaluation and assessment, in accordance with rule 281—120.320(34CFR303), and the functions related to evaluation and assessment in subrule 120.13(2).

c. Service coordination services, as defined in subrule 120.13(2) and rule 281—120.33(34CFR303).

d. Administrative and coordinative activities related to:

(1) The development, review, and evaluation of IFSPs and interim IFSPs in accordance with rules 281—120.342(34CFR303) through 281—120.345(34CFR303); and

(2) Implementation of the procedural safeguards in Division VI of this chapter and the other components of the statewide system of early intervention services in Division V of this chapter and this division.

120.521(3) *FAPE mandates or use of funds under Part B of the Act to serve children under age three.* If the state has in effect a state law requiring the provision of FAPE for, or uses Part B funds to serve, an infant or toddler with a disability under the age of three (or any subset of infants and toddlers with disabilities under the age of three), the state may not charge the parents of the infant or toddler with a disability for any services (e.g., physical or occupational therapy) under this chapter that are part of FAPE for that infant or toddler and the child's family, and those FAPE services must meet the requirements of both Parts B and C of the Act.

120.521(4) *Family fees.*

a. Fees or costs collected from a parent or the child's family to pay for early intervention services under the state's system of payments are program income under 34 CFR 80.25. The state may add this program income to its Part C grant funds, rather than deducting the program income from the amount of the state's Part C grant. Any fees collected must be used for the purposes of the grant under Part C of the Act.

b. Fees collected under a system of payments are considered neither state nor local funds under subrule 120.225(2).

120.521(5) *Procedural safeguards.*

a. The state's system of payments must include written policies to inform parents that a parent who wishes to contest the imposition of a fee, or the state's determination of the parent's ability to pay, may do one of the following:

(1) Participate in mediation in accordance with rule 281—120.431(34CFR303).

(2) Request a due process hearing under rule 281—120.436(34CFR303).

(3) File a state complaint under rule 281—120.434(34CFR303).

(4) Use any other procedure established by the state for speedy resolution of financial claims, provided that such use does not delay or deny the parent's procedural rights under this chapter, including the right to pursue, in a timely manner, the redress options described in this subrule.

b. The state must inform parents of these procedural safeguard options by either:

(1) Providing parents with a copy of the state's system of payments policies when obtaining consent for provision of early intervention services under subrule 120.420(1); or

(2) Including this information with the notice provided to parents under rule 281—120.421(34CFR303).

[**ARC 0100C**, IAB 4/18/12, effective 5/23/12]

281—120.522 to **120.599** Reserved.

DIVISION VIII
STATE INTERAGENCY COORDINATING COUNCIL

281—120.600(34CFR303) Establishment of council.

120.600(1) *General.* The state establishes a state interagency coordinating council, as defined in rule 281—120.8(34CFR303).

120.600(2) *Appointment.* The council must be appointed by the governor. The governor must ensure that the membership of the council reasonably represents the population of the state.

120.600(3) *Chairperson.* The governor must designate a member of the council to serve as the chairperson of the council or delegate that responsibility to the members of the council. Any member of the council who is a representative of the lead agency designated under rule 281—120.201(34CFR303) may not serve as the chairperson of the council.

120.600(4) *Name of council.* The council established by this division shall be known as the Iowa council for Early ACCESS (council).

[**ARC 0100C**, IAB 4/18/12, effective 5/23/12]

281—120.601(34CFR303) Composition.

120.601(1) *General.* The council must be composed as follows:

a. At least 20 percent of the members must be parents, including minority parents, of infants or toddlers with disabilities or children with disabilities aged 12 years or younger, with knowledge of, or experience with, programs for infants and toddlers with disabilities. At least one parent member must be a parent of an infant or toddler with a disability or a child with a disability aged 6 years or younger.

b. At least 20 percent of the members must be public or private providers of early intervention services.

c. At least one member must be from the state legislature.

d. At least one member must be involved in personnel preparation.

e. At least one member must:

(1) Be from each of the state agencies involved in the provision of, or payment for, early intervention services to infants and toddlers with disabilities and their families; and

(2) Have sufficient authority to engage in policy planning and implementation on behalf of these agencies.

f. At least one member must:

(1) Be from the unit of the department responsible for preschool services to children with disabilities; and

(2) Have sufficient authority to engage in policy planning and implementation on behalf of the department.

g. At least one member must be from the agency responsible for the state Medicaid and CHIP program.

h. At least one member must be from a Head Start or Early Head Start agency or program in the state.

i. At least one member must be from a state agency responsible for child care.

j. At least one member must be from the agency responsible for the state regulation of private health insurance.

k. At least one member must be a representative designated by the Office of the Coordination of Education of Homeless Children and Youth.

l. At least one member must be a representative from the state child welfare agency responsible for foster care.

m. At least one member must be from the state agency responsible for children's mental health.

120.601(2) *Members serving more than one role.* The governor may appoint one member to represent more than one program or agency listed in paragraphs 120.601(1)*"g"* through *"m."*

120.601(3) *Additional members permitted.* The council may include other members selected by the governor, including a representative from the Bureau of Indian Education (BIE) or, where there is no school operated or funded by the BIE in the state, from the Indian Health Service or the tribe or tribal council.

120.601(4) *Limitation on voting: conflict of interest.* No member of the council may cast a vote on any matter that would provide direct financial benefit to that member or otherwise give the appearance of a conflict of interest under state law.

120.601(5) *Executive committee; other committees.* The executive committee shall consist of the council chairperson; the vice-chairperson; at least two council members, one of whom is a parent; and a council representative from each of the signatory agencies. The department's Early ACCESS program

coordinator shall be an ex officio member of the executive committee. The executive committee is responsible for initially reviewing and discussing information and issues that will be addressed by the full council; establishing the framework for overall council business, including the calendar of meetings and the agenda for council meetings; and facilitating the implementation of the interagency agreement among the signatory agencies. The council may establish or dissolve other standing or ad hoc committees from time to time and in the furtherance of its work.
[**ARC 0100C**, IAB 4/18/12, effective 5/23/12]

281—120.602(34CFR303) Meetings.

120.602(1) *Minimum number of meetings.* The council must meet, at a minimum, on a quarterly basis, and in such places as it determines necessary.

120.602(2) *Requirements for meetings.* The meetings must:

a. Be publicly announced sufficiently in advance of the dates they are to be held to ensure that all interested parties have an opportunity to attend;

b. To the extent appropriate, be open and accessible to the general public; and

c. As needed, provide for interpreters for persons who are deaf and other necessary services for council members and participants. The council may use funds under this chapter to pay for those services.
[**ARC 0100C**, IAB 4/18/12, effective 5/23/12]

281—120.603(34CFR303) Use of funds by the council.

120.603(1) *General.* Subject to the approval by the governor, the council may use funds under this chapter to:

a. Conduct hearings and forums;

b. Reimburse members of the council for reasonable and necessary expenses for attending council meetings and performing council duties (including child care for parent representatives);

c. Pay compensation to a member of the council if the member is not employed or must forfeit wages from other employment when performing official council business;

d. Hire staff; and

e. Obtain the services of professional, technical, and clerical personnel as may be necessary to carry out the performance of its functions under Part C of the Act.

120.603(2) *No compensation for members.* Except as provided in subrule 120.603(1), council members must serve without compensation from funds available under Part C of the Act.
[**ARC 0100C**, IAB 4/18/12, effective 5/23/12]

281—120.604(34CFR303) Functions of the council; required duties.

120.604(1) *Advising and assisting the department.* The council must advise and assist the department in the performance of the department's responsibilities in Section 635(a)(10) of the Act, including:

a. Identification of sources of fiscal and other support for services for early intervention service programs under Part C of the Act;

b. Assignment of financial responsibility to the appropriate agency;

c. Promotion of methods (including use of intra-agency and interagency agreements) for intra-agency and interagency collaboration regarding child find under rules 281—120.115(34CFR303) and 281—120.302(34CFR303), monitoring and enforcement under rules 281—120.120(34CFR303) and 281—120.700(34CFR303) through 281—120.708(34CFR303), financial responsibility and provision of early intervention services under rules 281—120.202(34CFR303) and 281—120.511(34CFR303), and transition under rule 281—120.209(34CFR303); and

d. Preparation of applications under this chapter and amendments to those applications.

120.604(2) *Advising and assisting on transition.* The council must advise and assist the department regarding the transition of toddlers with disabilities to preschool and other appropriate services.

120.604(3) *Annual report to the governor and to the Secretary.*

a. The council must:

(1) Prepare and submit an annual report to the governor and to the Secretary on the status of early intervention service programs for infants and toddlers with disabilities and their families under Part C of the Act operated within the state; and

(2) Submit the report to the Secretary by a date that the Secretary establishes.

b. Each annual report must contain the information required by the Secretary for the year for which the report is made.

[**ARC 0100C**, IAB 4/18/12, effective 5/23/12]

281—120.605(34CFR303) Authorized activities by the council. The council may carry out the following activities:

120.605(1) Advise and assist the department regarding the provision of appropriate services for children with disabilities from birth through age five.

120.605(2) Advise appropriate agencies in the state with respect to the integration of services for infants and toddlers with disabilities and at-risk infants and toddlers and their families, regardless of whether at-risk infants and toddlers are eligible for early intervention services in the state.

120.605(3) Coordinate and collaborate with the state advisory council on early childhood education and care for children, as described in Section 642B(b)(1)(A)(i) of the Head Start Act, 42 U.S.C. 9837b(b)(1)(A)(i), if applicable, and other state interagency early learning initiatives, as appropriate.

[**ARC 0100C**, IAB 4/18/12, effective 5/23/12]

281—120.606 to **120.699** Reserved.

DIVISION IX
FEDERAL AND STATE MONITORING AND ENFORCEMENT;
REPORTING; AND ALLOCATION OF FUNDS

281—120.700(34CFR303) State monitoring and enforcement.

120.700(1) *General.* The department must:

a. Monitor the implementation of this chapter;

b. Make determinations annually about the performance of each EIS program, using the categories identified in subrule 120.703(2);

c. Enforce this chapter consistent with rule 281—120.704(34CFR303), using appropriate enforcement mechanisms listed therein; and

d. Report annually on the performance of the state and of each EIS program under this chapter as provided in rule 281—120.702(34CFR303).

120.700(2) *Primary focus of monitoring activity.* The primary focus of the state's monitoring activities must be on:

a. Improving early intervention results and functional outcomes for all infants and toddlers with disabilities; and

b. Ensuring that EIS programs meet the program requirements under Part C of the Act, with a particular emphasis on those requirements that are most closely related to improving early intervention results for infants and toddlers with disabilities.

120.700(3) *Indicators of performance and compliance.* As a part of its responsibilities under subrule 120.700(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 120.700(4), and the indicators established by the Secretary for the state performance plans.

120.700(4) *Monitoring; priority areas.* The department must monitor each EIS program 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. Early intervention services in natural environments.

b. State exercise of general supervision, including child find, effective monitoring, mediation, and a system of transition services as defined in Section 637(a)(9) of the Act.

120.700(5) *Correction of noncompliance.* In exercising its monitoring responsibilities under subrule 120.700(4), the state must ensure that when it identifies noncompliance with the requirements of this chapter by EIS programs and providers, the noncompliance is corrected as soon as possible and in no case later than one year after the state's identification of the noncompliance.
[**ARC 0100C**, IAB 4/18/12, effective 5/23/12]

281—120.701(34CFR303) State performance plans and data collection.

120.701(1) *General.* The state must have in place a performance plan that meets the requirements described in Section 616 of the Act; is approved by the Secretary; and includes an evaluation of the state's efforts to implement the requirements and purposes of Part C of the Act, a description of how the state will improve implementation, and measurable and rigorous targets for the indicators established by the Secretary under the priority areas described in 34 CFR 303.700(d).

120.701(2) *Review of state performance plan.* The state must review its state performance plan at least once every six years and submit any amendments to the Secretary.

120.701(3) *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 data for a particular indicator through state monitoring or sampling, the state must collect and report data on those indicators for each EIS program at least once during the six-year period of a state performance plan.

c. Nothing in Part C of the Act or this chapter may be construed to authorize the development of a nationwide database of personally identifiable information on individuals involved in studies or other collections of data under Part C of the Act.
[**ARC 0100C**, IAB 4/18/12, effective 5/23/12]

281—120.702(34CFR303) State use of targets and reporting.

120.702(1) *General.* The state must use the targets established in the state's performance plan under rule 281—120.701(34CFR303) and the priority areas described in subrule 120.700(4) to analyze the performance of each EIS program in implementing Part C of the Act.

120.702(2) *Public reporting and privacy.*

a. *Public report.* The state must:

(1) Report annually to the public on the performance of each EIS program located in the state on the targets in the state's performance plan as soon as practicable but no later than 120 days following the state's submission of its annual performance report to the Secretary under paragraph 120.702(2)*"b"*; and

(2) Make the state's performance plan under subrule 120.701(1), annual performance reports under this subrule, and the state's annual reports on the performance of each EIS program under this subrule available through public means, including by posting on the department's Web site, distribution to the media, and distribution to EIS programs.

(3) If the state, in meeting the requirements of this subrule, collects data through state monitoring or sampling, the state must include in its public report on EIS programs under this subrule the most recently available performance data on each EIS program and the date the data were collected.

b. *State performance report.* The state must report annually to the Secretary on the performance of the state under the state's performance plan.

c. *Privacy.* The state must 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.
[**ARC 0100C**, IAB 4/18/12, effective 5/23/12]

281—120.703(34CFR303) Department review and determination regarding EIS program performance.

120.703(1) *Review.* The department shall annually review the performance of each EIS provider, 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.

120.703(2) *Determination.* Based on the information provided in subrule 120.703(1) to the department, the department shall determine if each EIS provider:

a. Meets the requirements and purposes of Part C of the Act;

b. Needs assistance in implementing the requirements of Part C of the Act;

c. Needs intervention in implementing the requirements of Part C of the Act; or

d. Needs substantial intervention in implementing the requirements of Part C of the Act.

120.703(3) *Notice and opportunity for a hearing.* For determinations made under paragraphs 120.703(2)*"c"* and *"d,"* the department shall provide reasonable notice of its determination and may, in its sound discretion, grant an informal hearing to the EIS provider; however, if withholding of funds is a remedy associated with any particular determination, the department shall provide a hearing under rule 281—120.705(34CFR303). Under any hearing granted under this subrule or rule 281—120.705(34CFR303), the EIS provider must demonstrate that the department abused its discretion in making the determination described in subrule 120.703(2).

120.703(4) *Criteria for determinations.* The department shall develop criteria for making the determinations required by subrule 120.703(2).

120.703(5) *Adjustment or variance of determination.* In making the determination required by subrule 120.703(2), the department in its discretion may adjust or vary from the criteria described in subrule 120.703(4) based on unusual, unanticipated, or extraordinary aggravating or mitigating measures, on a case-by-case basis.

[**ARC 0100C**, IAB 4/18/12, effective 5/23/12]

281—120.704(34CFR303) Enforcement.

120.704(1) *Needs assistance.* If the department determines, for two consecutive years, that an EIS provider needs assistance under paragraph 120.703(2)*"b"* in implementing the requirements of Part C of the Act, the department shall take one or more of the following actions:

a. Advise the EIS provider of available sources of technical assistance that may help the EIS provider address the areas in which the provider needs assistance, which may include assistance from the Office of Special Education Programs, other offices of the U.S. Department of Education, other federal agencies, technical assistance providers approved by the Secretary or the department, and other federally funded nonprofit agencies, and requires the EIS provider to work with appropriate entities. This technical assistance may include:

(1) The provision of advice by experts to address the areas in which the EIS provider needs assistance, including explicit plans for addressing the areas of concern within a specified period of time;

(2) Assistance in identifying and implementing professional development, early intervention service provision strategies, and methods of early intervention service provision that are based on scientifically based research;

(3) Designating and using administrators, service coordinators, service providers, and other personnel from the EIS program 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 EIS provider as a high-risk grantee and impose special conditions on the provider's grant under this chapter.

120.704(2) *Needs intervention.* If the department determines, for three or more consecutive years, that an EIS provider needs intervention under paragraph 120.703(2)*"c"* in implementing the requirements of Part C of the Act, the following apply:

a. The department may take any of the actions described in subrule 120.704(1).

b. The department shall take one or both of the following actions:

(1) Require the EIS provider to prepare a corrective action plan or improvement plan if the department determines that the EIS provider should be able to correct the problem within one year.

(2) Withhold, in whole or in part, any further payments to the EIS provider under Part C of the Act.

120.704(3) *Needs substantial intervention.* Notwithstanding subrules 120.704(1) and 120.704(2), at any time that the department determines that an EIS provider needs substantial intervention in implementing the requirements of Part C of the Act or that there is a substantial failure to comply with any requirement under Part C of the Act by an EIS program, the department shall withhold, in whole or in part, any further payments to the EIS provider under Part C of the Act. In addition, the department may refer the matter to appropriate authorities, which include but are not limited to the Iowa department of justice or the auditor of state.

120.704(4) *Rule of construction.* The listing of specific enforcement mechanisms in this rule shall not be construed to limit the enforcement mechanisms at the department's disposal in its enforcement of this rule or any other rule in this chapter.

[**ARC 0100C**, IAB 4/18/12, effective 5/23/12]

281—120.705(34CFR303) Withholding funds.

120.705(1) *General.* As a consequence of a determination made under rule 281—120.703(34CFR303) or enforcement of any provision of Part C of the Act and this chapter, the department may withhold some or all of the funds from an EIS provider or a program or service of an EIS provider.

120.705(2) *Hearing.* If the department intends to withhold funds, it shall provide notice and an opportunity for a hearing to an EIS provider. If a hearing is requested, the department may suspend payments to the EIS provider, suspend the authority of the EIS provider 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 C of the Act and of this chapter and shall determine whether the state abused its discretion in its decision under subrule 120.705(1).

120.705(3) *Reinstatement.* If the EIS provider substantially rectifies the condition that prompted the initial withholding under subrule 120.705(1), then the department may reinstate payments. If an EIS provider disagrees with the department's decision that the provider has not substantially rectified the condition that prompted the initial withholding under subrule 120.705(1), the provider may request a hearing under subrule 120.705(2).

[**ARC 0100C**, IAB 4/18/12, effective 5/23/12]

281—120.706(34CFR303) Public attention. Whenever the state receives notice that the Secretary is proposing to take or is taking an enforcement action pursuant to 34 CFR §303.704, the state must, by means of a public notice, take such measures as may be necessary to bring the pendency of an action pursuant to Section 616(e) of the Act and 34 CFR §303.704 to the attention of the public within the state, including by posting the notice on the department's Web site and distributing the notice to the media and to EIS programs.

[**ARC 0100C**, IAB 4/18/12, effective 5/23/12]

281—120.707 Reserved.

281—120.708(34CFR303) State enforcement. Nothing in this division may be construed to restrict the state from utilizing any other authority available to it to monitor and enforce the requirements of the Act.

[**ARC 0100C**, IAB 4/18/12, effective 5/23/12]

281—120.709(34CFR303) State consideration of other state or federal laws. In making the determinations required by subrule 120.703(2), in taking actions pursuant to rule 281—120.704(34CFR303), and in taking any other action under this chapter, the department may consider whether any agency or provider 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 such a law.
[**ARC 0100C**, IAB 4/18/12, effective 5/23/12]

281—120.710 to **120.719** Reserved.

281—120.720(34CFR303) Data requirements—general.

120.720(1) *General requirements.* The department must annually report to the Secretary and to the public on the information required by Section 618 of the Act at the times specified by the Secretary.

120.720(2) *Manner of reporting.* The department must submit the report to the Secretary in the manner prescribed by the Secretary.
[**ARC 0100C**, IAB 4/18/12, effective 5/23/12]

281—120.721(34CFR303) Annual report of children served—report requirement.

120.721(1) *Date of count.* For the purposes of the annual report required by Section 618 of the Act and rule 281—120.720(34CFR303), the department must count and report the number of infants and toddlers receiving early intervention services on any date between October 1 and December 1 of each year.

120.721(2) *Information in report.* The report must include:

a. The number and percentage of infants and toddlers with disabilities in the state, by race, gender, and ethnicity, who are receiving early intervention services (and include in this number any children reported to the department by tribes, tribal organizations, and consortia under 34 CFR 303.731(e)(1));

b. The number and percentage of infants and toddlers with disabilities, by race, gender, and ethnicity, who, from birth through age two, stopped receiving early intervention services because of program completion or for other reasons; and

c. The number and percentage of at-risk infants and toddlers (as defined in Section 632(1) of the Act), by race and ethnicity, who are receiving early intervention services under Part C of the Act.

120.721(3) Reserved.

120.721(4) *Dispute prevention and resolution data.* The report shall include the number of due process complaints filed under Section 615 of the Act, the number of hearings conducted and the number of mediations held, and the number of settlement agreements reached through such mediations.
[**ARC 0100C**, IAB 4/18/12, effective 5/23/12]

281—120.722(34CFR303) Data reporting.

120.722(1) *Protection of identifiable data.* The data described in Section 618(a) of the Act and in rule 281—120.721(34CFR303) must be publicly reported by the state in a manner that does not result in disclosure of data identifiable to individual children.

120.722(2) *Sampling.* If permitted by the Secretary, the state may obtain data in Section 618(a) of the Act through sampling.
[**ARC 0100C**, IAB 4/18/12, effective 5/23/12]

281—120.723(34CFR303) Annual report of children served—certification. The department must include in its report a certification signed by an authorized official of the department that the information provided under rule 281—120.721(34CFR303) is an accurate and unduplicated count of infants and toddlers with disabilities receiving early intervention services.
[**ARC 0100C**, IAB 4/18/12, effective 5/23/12]

281—120.724(34CFR303) Annual report of children served—other responsibilities of the department. In addition to meeting the requirements of rules 281—120.721(34CFR303) through 281—120.723(34CFR303), the department must conduct its own child count or use EIS providers to complete its child count. If the department uses EIS providers to complete its child count, then the department must establish procedures to be used by EIS providers in counting the number of children with disabilities receiving early intervention services; establish dates by which those EIS providers must report to the department to ensure that the state complies with subrule 120.721(1); obtain

certification from each EIS provider that an unduplicated and accurate count has been made; aggregate the data from the count obtained from each EIS provider and prepare the report required under rules 281—120.721(34CFR303) through 281—120.723(34CFR303); and ensure that documentation is maintained to enable the department and the Secretary to audit the accuracy of the count.
[**ARC 0100C**, IAB 4/18/12, effective 5/23/12]

281—120.725 to **120.800** Reserved.

DIVISION X
OTHER PROVISIONS

281—120.801(34CFR303) Early ACCESS system—state level.

120.801(1) *Lead agency.* The Iowa department of education was appointed lead agency on June 24, 1987. Responsibilities of the lead agency include:

a. Developing and implementing policies and procedures regarding the types of information to be gathered and the policies and parameters for sharing of information across agencies and programs, as well as such information that might be necessary for an annual report to the governor and the U.S. Department of Education;

b. Monitoring the agencies, institutions and organizations that provide early intervention services and supports;

c. Enforcing any obligations imposed under Part C of the Act on the agencies listed in paragraph 120.801(1)*"b"*;

d. Providing technical assistance, if necessary, to the agencies, institutions and organizations listed in paragraph 120.801(1)*"b"*;

e. Correcting deficiencies that are identified through monitoring;

f. Adopting and carrying out complaint procedures;

g. Mediating any interagency disputes regarding early intervention services;

h. Establishing policies related to how early intervention services to eligible children and their families shall be paid for;

i. Establishing procedures to ensure the timely provision of services;

j. Ensuring that the following functions and services are provided at public expense:

(1) Child find requirements;

(2) Evaluation and assessment functions;

(3) Service coordination;

(4) Development and review of IFSPs;

(5) Implementation of procedural safeguards; and

(6) Other components of the statewide system of Early ACCESS;

k. Maintaining a data system to be utilized for gathering information regarding early intervention services provided for eligible children in Early ACCESS; and

l. Monitoring use of funds.

120.801(2) *Signatory agencies.* The departments of education, public health, and human services and the child health specialty clinics shall enter into an interagency agreement to formalize their joint commitments to the establishment and ongoing implementation and evaluation of a comprehensive, integrated, interagency Early ACCESS system. The Iowa department of education is responsible for providing education programs and services for preschool and school-age students, including children with disabilities, from birth through 21 years of age. The Iowa department of human services administers social service programs in order to help and empower individuals and families to become increasingly self-sufficient and productive. The Iowa department of public health administers public health programs in order to promote and protect the health of Iowans. The child health specialty clinics are the statewide public health program for children with special health care needs, as designated by the legislature.

120.801(3) *Interagency agreement.* In addition to the requirements set forth elsewhere in this chapter, the agreement between signatory agencies shall outline the commitment of these agencies to the implementation of an interagency, integrated system of Early ACCESS and:

a. Reflect the interagency vision and guiding principles of Early ACCESS;
b. Define the population to be served;
c. Identify roles, responsibilities and expectations of the signatory agencies;
d. Outline financial responsibilities of the signatory agencies;
e. Describe parameters for policy development and management decisions;
f. Describe procedures for resolving disputes;
g. Identify transition activities from Part C services;
h. Describe child find efforts; and
i. Describe the roles and responsibilities of the signatory agencies and assigned staff.
[**ARC 0100C**, IAB 4/18/12, effective 5/23/12]

281—120.802(34CFR303) Interagency service planning. An IFSP process shall be developed by the lead agency and shall be reviewed and approved by the signatory agencies. The process shall be used by all signatory agencies to document the ongoing work between families and providers across all agencies that are providing a service or resource to meet identified needs.
[**ARC 0100C**, IAB 4/18/12, effective 5/23/12]

281—120.803(34CFR303) System-level disputes. System-level disputes involve conflicts over the roles or responsibilities of an agency partner within the Early ACCESS system. System-level disputes may involve financial matters, the implementation of Early ACCESS system aspects that are not law or rules, such as interagency agreements and policies and procedures, or the implementation of provisions of the interagency agreement. The interagency agreement shall detail the resolution of informal and formal intra-agency and interagency system-level disputes.
[**ARC 0100C**, IAB 4/18/12, effective 5/23/12]

281—120.804(34CFR303) Early ACCESS system—regional and community levels.

120.804(1) *Early ACCESS grantees.* Early ACCESS grantees shall have the fiscal and legal obligation for ensuring that the Early ACCESS system is carried out regionally. Early ACCESS grantees shall be designated by the department and shall exist, at a minimum, in geographic areas that ensure statewide coverage as determined by the department.

a. *Policies.* Each grantee shall establish in accordance with this chapter the policies pertinent to a regional Early ACCESS system and shall make such policies available to the department upon request. At a minimum, such policies shall include the following:

(1) Policy to ensure that appropriate early intervention services are available to all eligible children in the state and their families, including Indian infants and toddlers and their families residing on a reservation or settlement geographically located in the state;

(2) Policy to ensure that all infants and toddlers in the state who are eligible for services under this chapter are identified, located, and evaluated and that an effective method to determine which children are receiving needed early intervention services is developed and implemented;

(3) Policy regarding the development and implementation of individualized family service plans;

(4) Policy for the establishment and maintenance of standards to ensure that personnel necessary to carry out the requirements of this chapter are appropriately and adequately prepared and trained;

(5) Policy pertaining to contracting or making other arrangements with public or private service providers to provide early intervention services and service coordination;

(6) Policy to ensure a smooth transition to preschool or other appropriate services for children receiving early intervention services under this chapter; and

(7) Any other policy required to carry out the purposes of this chapter.

b. *Procedures.* Each grantee shall develop, in accordance with this chapter, written procedures pertinent to the implementation of a regional Early ACCESS system, and shall make such procedures available to the department upon request. At a minimum, such procedures shall include the following:

(1) Procedures to ensure that all infants and toddlers who are eligible for services under this chapter are identified, located, and evaluated and that an effective method to determine which children are receiving needed early intervention services is developed and implemented;

(2) Procedures for use by primary referral sources for referring a child to the appropriate public agency within the system for evaluation and assessment or, as appropriate, the provision of services;

(3) Procedures to ensure provision of early intervention services and service coordination, including the appointment of service coordinators;

(4) Procedures to ensure documentation and the development and implementation of an interim IFSP, when circumstances warrant under this chapter;

(5) Procedures for conducting nondiscriminatory evaluation and assessment;

(6) Procedures for the development and implementation of individualized family service plans;

(7) Procedures for the establishment and maintenance of standards to ensure that personnel necessary to carry out the purposes of this chapter are appropriately and adequately prepared and trained;

(8) Procedures for ensuring procedural safeguards that meet the requirements of this chapter;

(9) Procedures for ensuring maintenance and confidentiality of records;

(10) Procedures to allow parties to disputes to resolve the disputes through a mediation process;

(11) Procedures for providing mediation for the timely administrative resolution of complaints by parents regarding an individual child;

(12) Procedures for resolving a complaint that any public agency is violating a requirement of Part C of the Act;

(13) Procedures related to how services to eligible children and their families will be paid for under the state's Early ACCESS program;

(14) Procedures for the timely provision of services, ensuring that no service to which a child is entitled is delayed or denied because of disputes between agencies regarding financial or other responsibilities;

(15) Procedures for resolving intra-agency and interagency disputes about payments for a given service or about other matters related to the state's Early ACCESS program in accordance with any applicable interagency agreement and with this chapter;

(16) Procedures to ensure that services are provided to eligible children and their families in a timely manner pending the resolution of disputes among public agencies or service providers;

(17) Procedures for securing the timely reimbursement of funds; and

(18) Any other procedures required to carry out the purposes of this chapter.

c. Collaboration. Early ACCESS grantees shall collaborate with local representatives of signatory agencies, community partners, and families in the development, implementation and monitoring of policies and procedures described in this rule. Early ACCESS grantees shall designate an individual who has primary responsibility for coordinating regional implementation and serving as a liaison to the department.

120.804(2) *Community partners.* Community partners include state and local representatives of signatory agencies, as well as other regional and community agencies and providers, public and private, including physicians, Early Head Start, child care providers, early childhood Iowa areas, and health programs, that work with Early ACCESS when providing early intervention services or other supports such as supporting family participation in improving the Early ACCESS system, early identification of eligible children, service coordination, provision of other needed services or resources, and other efforts to improve the Early ACCESS system.

[**ARC 0100C**, IAB 4/18/12, effective 5/23/12]

281—120.805(34CFR303) Provision of year-round services. Each Early ACCESS grantee shall ensure that Early ACCESS components and services are available 12 months a year to meet the needs of eligible children and their families.

[**ARC 0100C**, IAB 4/18/12, effective 5/23/12]

281—120.806(34CFR303) Evaluation and improvement. Each grantee, in conjunction with signatory agencies or the department, or both, shall implement activities designed to evaluate and improve the

Early ACCESS system. These activities shall document the performance of eligible children who receive early intervention services.
[**ARC 0100C**, IAB 4/18/12, effective 5/23/12]

281—120.807(34CFR303) Research. Each grantee shall cooperate in research activities designed to evaluate and improve the Early ACCESS system when such activities are sponsored by the department, or a signatory agency when approved by the department, to assess and ensure the effectiveness of efforts to serve eligible children.
[**ARC 0100C**, IAB 4/18/12, effective 5/23/12]

281—120.808(34CFR303) Records and reports. Each signatory agency or grantee shall maintain sufficient records and reports for audit by the department. Records and reports shall include at a minimum:

1. State-approved or state-recognized certification, licensing, registration, or other comparable requirements for all personnel providing early intervention services.
2. All IFSP meetings and annual or periodic reviews for each eligible child.
3. Data required for federal and state reporting.

[**ARC 0100C**, IAB 4/18/12, effective 5/23/12]

281—120.809(34CFR303) Information for department. Each signatory agency or grantee shall provide the department with information necessary to enable the department to carry out its duties under Part C of the Act and this chapter. 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 281—120.703(34CFR303) or in taking any other action to enforce Part C of the Act or this chapter.
[**ARC 0100C**, IAB 4/18/12, effective 5/23/12]

281—120.810(34CFR303) Public information. Each 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 C of the Act.
[**ARC 0100C**, IAB 4/18/12, effective 5/23/12]

281—120.811(34CFR303) Dispute resolution: practice before mediators and administrative law judges. Unless otherwise provided by this chapter, any mediation conference or due process hearing under Division VI of this chapter shall be conducted according to the rules contained in 281—41.1000(256B,34CFR300) through 281—41.1016(256B,34CFR300).
[**ARC 0100C**, IAB 4/18/12, effective 5/23/12]

281—120.812(34CFR303) References to federal law. All references in this chapter to provisions of the United States Code or the Code of Federal Regulations are to those provisions in effect on September 28, 2011.
[**ARC 0100C**, IAB 4/18/12, effective 5/23/12]

281—120.813(34CFR303) 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.
[**ARC 0100C**, IAB 4/18/12, effective 5/23/12]

These rules are intended to implement the Individuals with Disabilities Education Act as amended through July 1, 2005, and Part 303 of Title 34 of the Code of Federal Regulations published in the Federal Register on September 28, 2011.

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