

## **EDUCATION DEPARTMENT[281]**

### **Adopted and Filed Emergency**

The State Board of Education hereby adopts Chapter 20, “Students First Act – Education Savings Accounts,” Iowa Administrative Code.

#### *Legal Authority for Rule Making*

This rule making is adopted under the authority provided in 2023 Iowa Acts, House File 68 and Iowa Code section 256.7.

#### *State or Federal Law Implemented*

This rule making implements, in whole or in part, 2023 Iowa Acts, House File 68.

#### *Purpose and Summary*

This rule making adopts a new Chapter 281—20, the administrative rules for the education savings account provisions of the Students First Act. New rule 20.1 provides definitions for the program. New rule 20.2 sets out eligibility requirements for participation. New rule 20.3 sets parameters for the application process. New rule 20.4 provides for administration and accountability for the program.

#### *Reason for Adoption of Rule Making Without Prior Notice and Opportunity for Public Participation*

Pursuant to Iowa Code section 17A.4(3), the State Board finds that notice and public participation are unnecessary or impractical because 2023 Iowa Acts, House File 68, division II, was effective upon enactment and authorizes emergency rule making.

#### *Reason for Waiver of Normal Effective Date*

Pursuant to Iowa Code section 17A.5(2)“b”(1)(a) and (b), the State Board also finds that the normal effective date of this rule making, 35 days after publication, should be waived and the

rule making made effective on May 4, 2023, because 2023 Iowa Acts, House File 68, division II, so provides and because this rule making confers a benefit or some segment thereof.

*Adoption of Rule Making*

This rule making was adopted by the State Board on May 4, 2023.

*Fiscal Impact*

This rule making has a fiscal impact to the state of Iowa, as described in the fiscal note for House File 68, available at <https://www.legis.iowa.gov/docs/publications/FN/1367577.pdf>.

*Jobs Impact*

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

*Waivers*

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

*Review by Administrative Rules Review Committee*

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

*Effective Date*

This rule making became effective on May 4, 2023.

The following rule-making action is adopted:

ITEM 1. Adopt the following **new** 281—Chapter 20:

## CHAPTER 20

### STUDENTS FIRST ACT – EDUCATION SAVINGS ACCOUNTS

#### **281—20.1(257) Definitions**

**20.1(1)** “*Annual income*” means the same as “net income” as defined in Iowa Code section 422.7 in effect for the year preceding the application. In calculating annual income, the Department shall use information from the last year’s state tax form and need not include income of individuals who have no legal obligation to provide support to the student unless said individual is married to the parent or guardian who is responsible for financially supporting the student. If “annual income” cannot be clearly determined through review of the submitted tax return, the department director has authority to request additional information and determine eligibility. This subrule applies only for school years beginning July 1, 2023, and July 1, 2024; it will be repealed by operation of law on July 1, 2025.

**20.1(2)** “*Department*” means the department of education.

**20.1(3)** “*Full time*” means enrollment at a nonpublic school with a minimum school calendar that meets the requirement of Iowa Code section 279.10, for at least seventy-five percent of the school’s definition of full time.

**20.1(4)** “*Household*” means the number of people who reside together and who are related by birth, marriage, adoption, legal guardianship or by placement in the home through a state agency. Household includes parents, student applicants, and other children who share at least one parent by birth, adoption, by a parent’s current marriage or by placement in the home through a state agency. A parent on military duty is considered to be residing in the household. If “household” cannot be clearly determined through review of the submitted tax return, the department director has authority to request additional information and determine eligibility.

This subrule applies only for school years beginning July 1, 2023, and July 1, 2024; it will be repealed by operation of law on July 1, 2025.

**20.1(5)** “*Nonpublic school*” means the same as defined in Code section 285.16.

**20.1(6)** “*Qualified educational expenses*” means the same as defined in Iowa Code section 257.11B, subsection 1, paragraph b.

*a.* For purposes of this definition, an approvable provider of “educational therapies” is qualified by recognized training and education to provide those educational therapies. To prevent waste, fraud, and abuse, “educational therapies” do not include therapies provided by the student’s family. For purposes of this subsection, “family” includes parents, step-parents, guardians, siblings, half siblings, step-siblings, grandparents, step-grandparents, aunts, uncles, or first cousins.

*b.* For purposes of this definition, approvable “online education programs” means online education programs provided by online education providers approved by the department under chapter 281—15.

*c.* For purposes of this definition, an approvable provider of “vocational and life skills education” is any entity approved by the department or any other unit of state government to provide the vocational and life skills education sought.

*d.* For purposes of this definition, an approvable “accredited provider” is any individual or organization holding a credential issued by the Iowa board of educational examiners or any other credential issued by the State of Iowa. For purposes of this paragraph, paraprofessionals or assistants are sufficiently trained if they hold a credential issued under Iowa Code section 272.12 or if they have received training and education deemed sufficient by their supervising professional.

e. For purposes of this definition, expenses listed in Iowa Code section 257.11B, subsection 1, paragraph b, are not eligible for payment.

**20.1(7)** “*Resident*” means the same as defined in Iowa Code section 282.1, subsection 2.

**20.1(8)** “*Student*” is synonymous with the term “pupil,” as that term is used in Iowa Code section 257.11B.

**281—20.2(257) Eligible students**

**20.2(1)** Resident students are eligible as described in Iowa Code section 257.11B, subsection 2, with annual income determined pursuant to subrule 281—20.1(1).

**20.2(2)** Resident students are deemed to attend a nonpublic school for that school budget year under Iowa Code section 257.11B, subsection 2, if the student attends a nonpublic school on a full-time basis.

**20.2(3)** Resident students are deemed enrolled in a nonpublic school for the school year immediately preceding the school year for which the education savings account payment is requested under Iowa Code section 257.11B, subsection 2, if they enrolled in and attended a nonpublic school at any point in the immediately preceding school year.

**281—20.3(257) Application Process.** The parent or guardian of an eligible student may request an ESA payment during the time period specified by Iowa Code section 257.11B, subsection 3, by applying to the department, in a manner prescribed by the department. Within the timeframe provided by Iowa Code section 257.11B, subsection 5, the department provides a response to the application.

**281—20.4(257) Administration, accountability, monitoring, and enforcement.**

**20.4(1)** The department will take reasonable efforts to verify eligibility of parents, students, nonpublic schools, and providers to participate in this chapter, including verifying information with other state agencies.

**20.4(2)** The department will make an equal distribution of funds under this chapter to the third party entity, for distribution to eligible students accounts, after confirming enrollment at the start of the academic year and enrollment and attendance at the midpoint of the academic year.

**20.4(3)** The department's actions under Iowa Code section 257.11B, subsection 5, paragraphs e and f, may be any action consistent with the department's authority under Iowa Code section 256.1.

**20.4(4)** The department must recover all improperly paid ESA funds. The department and its director have flexibility to engage in voluntary collection activities if overpayments were based on a good faith error. For purposes of this chapter, a "false claim" is a statement made in conjunction with this program that is knowingly false or in reckless disregard of the truth.

**20.4(5)** A parent or guardian may appeal to the state board of education any administrative decision the department or third-party entity makes pursuant to this chapter, including determinations of eligibility, allowable expenses, and removal from the program. An appeal under this subrule must be signed and in writing. Electronic submissions and signatures are allowed. Any appeals under this subrule are timely if filed within 30 days of the date of the administrative decision and are governed by chapter 281—6(290).

## **EDUCATION DEPARTMENT[281]**

### **Notice of Intended Action**

The State Board hereby proposes to adopt Chapter 20, “Students First Act – Education Savings Accounts,” Iowa Administrative Code.

#### *Legal Authority for Rule Making*

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#### *State or Federal Law Implemented*

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#### *Purpose and Summary*

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#### *Fiscal Impact*

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#### *Jobs Impact*

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

#### *Waivers*

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

*Public Comment*

Any interested person may submit comments concerning this proposed rule making. Written comments in response to this rule making must be received by the State Board no later than 4:30 p.m. on June 20, 2023. Comments should be directed to:

Thomas Mayes  
Department of Education  
Grimes State Office Building, Second Floor  
400 East 14th Street  
Des Moines, Iowa 50319  
Phone: 515.281.8661  
Email: thomas.mayes@iowa.gov

*Public Hearing*

A public hearing at which persons may present their views orally or in writing will be held as follows:

June 20, 2023, from 9:00 to 10 a.m.  
State Board Room  
Second Floor, Grimes State Office Building  
Des Moines, Iowa  
Or Via videoconference:  
<https://IDOE.zoom.us/j/93664266923?pwd=RVlvc2wxWTR6Q1VsU0t4eWc0blpPQT>

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



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

*Review by Administrative Rules Review Committee*

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

The following rule-making action proposed:

*Emergency Rule Making Adopted by Reference*

This proposed rule making is also published herein as an Adopted and Filed Emergency rule making (see **ARC {XXXXC}**). The purpose of this Notice of Intended Action is to solicit public comment on that emergency rule making, whose subject matter is hereby adopted by reference.