

Iowa State Board of Education

Executive Summary

January 28, 2021



Agenda Item: Rules: 281 IAC Chapter 17 – Open Enrollment (Notice)

State Board Priority: Eliminating Achievement and Opportunity Gaps

State Board Role/Authority: Iowa Code section 256.7(5) gives the State Board of Education the statutory authority to adopt rules under Chapter 17A.

Presenter(s): Thomas A. Mayes, General Counsel

Janell Brandhorst, Chief
Bureau of School Improvement

Attachment(s): One

Recommendation: It is recommended that the State Board give notice of intended action to amend Chapter 17.

Background: These proposed amendments modernize the language used in provisions on open enrollment of special education students, based on Senate File 2082. No substantive change is intended. These proposed amendments also conform to the federal process for resolving disputes regarding placement of students with disabilities in school choice programs.

EDUCATION DEPARTMENT[281]

Notice of Intended Action

The State Board of Education hereby proposes to amend Chapter 17, “Open Enrollment,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code section 256.7(5).

State or Federal Law Implemented

This rule making implements, in whole or in part, 2020 Iowa Acts, Senate File 2082.

Purpose and Summary

These proposed amendments modernize the language used in provisions on open enrollment of special education students, based on Senate File 2082. No substantive change is intended. These proposed amendments also conform to the federal process for resolving disputes regarding placement of students with disabilities in school choice programs.

Fiscal Impact

This rule making has no fiscal impact to the state of Iowa.

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 Department of Education for a waiver of the discretionary provisions, if any, pursuant to the Department’s Administrative Code chapter 281-6.

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 Department of Education no later than 4:30 p.m. on March 16, 2021. Comments should be directed to: Thomas A. Mayes, General Counsel and Administrative Rules Coordinator, Grimes State Office Building, Second Floor; 400 E. 14th Street; Des Moines, IA 50319-0416. Phone: 515-281-8661. Fax: 515-242-5988

Public Hearing

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

March 16, 2021

9:00 to 9:30 a.m.

Grimes State Office Building, Room B100

400 E. 14th Street

Des Moines, IA 50319-0146

Also via video conference at the following link:

<https://idoe.zoom.us/j/98069592361?pwd=VHRHQXIUOXF6ZnV4YjJ4Q2dwSzBVZz09>

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 Department of Education and advise of specific needs by calling 515-281-5294.

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:

Item 1. Amend Iowa Administrative Code rule 281—17.6(282), subsection 3, as follows:

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 case load established pursuant to rule 281—41.408(256B,34CFR300), or board-adopted district educational goals and objectives. This policy shall be reviewed annually by the district board.

Item 2. Amend Iowa Administrative Code rule 281—17.11(282) as follows:

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 and chapter 281—41, this request shall receive consideration under the following conditions.

17.11(1) Appropriateness of program. 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—Chapter 41. 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, unless all parties otherwise agree, as provided in chapter 281—41. ~~If the appropriateness of the special education program in the resident district is questioned by the parent, then the parent may request a due process hearing as provided by 281—41.507(256B,34CFR300) or a mediation conference as provided by 281—41.506(256B,34CFR300).~~ 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 the child's individualized education program team, which shall include a representative from the resident district that has the authority to commit district resources, and which decision is subject to the parent's procedural safeguards under chapter 281—41.

17.11(2) Class size and case load. The provisions of subrule 17.6(3) apply to request for open enrollment for a child with a disability. The following conditions apply:

a. The enrollment of the child in the receiving district's program would not cause the size of the class or case load in that special education instructional program in the receiving district to exceed the maximum class size in or case load set forth in subrule 17.6(3).

b. If the child would be assigned to a general education class, there is sufficient classroom space, as established in subrule 17.6(3), for the general education class to which the child would be assigned.

17.11(3) Transportation. District transportation requirements, parent/guardian responsibilities and, where applicable, financial assistance for an open enrollment special education pupil shall be as provided by rule 281—17.9(282) and rule 281—41.412(256B,34CFR300).

17.11(4) Finance. The district of residence shall pay to the receiving district on the schedule set forth in subrule 17.10(5) 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 final 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.