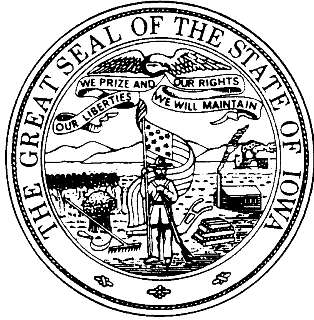

IOWA ADMINISTRATIVE BULLETIN

Published Biweekly VOLUME XXIX NUMBER 25
June 6, 2007 Pages 1537 to 1668

CONTENTS IN THIS ISSUE

Pages 1550 to 1664 include **ARC 5912B** to **ARC 5946B**

ALL AGENCIES
Agency identification numbers 1548
Citation of administrative rules 1539
Schedule for rule making 1540
Subscription information 1541

CREDIT UNION DIVISION[189]
COMMERCE DEPARTMENT[181]"umbrella"
Notice, Debt cancellation products, ch 5 **ARC 5930B** 1550

EDUCATIONAL EXAMINERS BOARD[282]
EDUCATION DEPARTMENT[281]"umbrella"
Notice, Fee increase—one-year extension of coaching authorization renewal, 14.121(1), 19.5(2) **ARC 5945B** 1553
Notice, Statement of professional recognition for school nurses—addition of baccalaureate degree, 14.140(11)"b" **ARC 5917B** 1554
Notice, Business teaching endorsement, 14.141(3) to 14.141(5) **ARC 5942B** 1554
Notice, Access by applicants to appropriate geometry course, 14.141(13)"b" **ARC 5946B** . . 1555
Notice, Renewal of evaluator license or license with evaluator endorsement, 20.58(1) **ARC 5943B** 1555
Filed Emergency, Statement of professional recognition for school nurses—addition of baccalaureate degree, 14.140(11) **ARC 5916B** . 1633

EDUCATION DEPARTMENT[281]
Notice, Special education, ch 41 **ARC 5920B** 1556
Notice, Practitioner and administrator preparation programs, 79.2 to 79.7, 79.10 to 79.15 **ARC 5921B** 1619
Filed, K-12 media program, 12.2, 12.3 **ARC 5919B** 1637

ENGINEERING AND LAND SURVEYING EXAMINING BOARD[193C]
Professional Licensing and Regulation Bureau[193]
COMMERCE DEPARTMENT[181]"umbrella"
Notice, Clarification of six-year experience requirement, 5.1(1) **ARC 5944B** 1623
Notice, Secure electronic signatures, 6.1(9) **ARC 5941B** 1624

HUMAN SERVICES DEPARTMENT[441]
Filed, Students—eligibility for food assistance, 65.26 **ARC 5918B** 1637
Filed, Medicaid—annual eligibility cards, amendments to chs 75, 76, 80, 88, 92 **ARC 5940B** 1638
Filed, Family-centered child welfare services, ch 172, 182.2, 182.3, 182.5 to 182.8 **ARC 5937B** 1640

INTERIOR DESIGN EXAMINING BOARD[193G]
Professional Licensing and Regulation Bureau[193]
COMMERCE DEPARTMENT[181]"umbrella"
Filed, Professional conduct, ch 4 **ARC 5931B** . . . 1646
Filed, Disciplinary authority, investigations, proceedings, chs 5 to 7 **ARC 5932B** 1647

LABOR SERVICES DIVISION[875]
WORKFORCE DEVELOPMENT DEPARTMENT[871]"umbrella"
Notice, Shoot-fighting events—responsibility for conduct of participants and officials, 177.2(2) **ARC 5929B** 1624
Notice, Attendance of commissioner or designee at each professional shoot-fighting event, rescind 177.9 **ARC 5928B** 1625
Notice, Shoot fighting—health insurance coverage, 177.10 **ARC 5934B** 1625
Filed, Notice of determination; OSHA standards, 9.16, 10.20 **ARC 5936B** 1647
Filed, Blood-borne disease testing, 173.54, 177.5(11) **ARC 5935B** 1647

PHARMACY EXAMINERS BOARD[657]
PUBLIC HEALTH DEPARTMENT[641]"umbrella"
Amended Notice, Automated medication distribution system, 9.1 to 9.9 **ARC 5933B** 1626
Filed, Bulk drug counting machines; pharmacy licensure; CQI program, 8.5(8), 8.26, 8.35(8) **ARC 5925B** 1648
Filed, Sterile compounding practices, 8.30, ch 13 **ARC 5924B** 1649

Continued on page 1539

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

PREFACE

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

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

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

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

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

Telephone: (515)281-3355
(515)281-8157
Fax: (515)281-5534

PHARMACY EXAMINERS BOARD[657] (Cont'd)
Filed, Controlled substances, 10.16, 10.31 to 10.35 **ARC 5926B** 1657
Filed, Wholesale drug licenses, 17.3(6), 17.6 **ARC 5923B** 1661
Filed, Emergency/first dose drug supply, 22.7 **ARC 5922B** 1662

PUBLIC HEALTH DEPARTMENT[641]
Notice, Radiation, amendments to chs 38, 39, 41, 42, 45, 46 **ARC 5912B** 1627
Notice, Brain injury services program, ch 56 **ARC 5915B** 1631
Notice, Abuse education review panel, 93.2(1), 93.3 **ARC 5913B** 1632
Filed Emergency, Brain injury services program, ch 56 **ARC 5914B** 1633

PUBLIC HEARINGS
Summarized list 1542

SECRETARY OF STATE[721]
Filed Emergency, Election for reimposing a local sales and services tax; correction of cross reference, 21.800(3)"b"(2) **ARC 5927B** . . 1635

USURY
Notice 1632

UTILITIES DIVISION[199]
COMMERCE DEPARTMENT[181]"umbrella"
Filed, Rules prohibiting unauthorized changes in telecommunications service, 22.23(2)"a"(5) **ARC 5938B** 1662
Filed, Equipment distribution program income limit, 37.3(8) **ARC 5939B** 1663

CITATION of Administrative Rules

The Iowa Administrative Code shall be cited as (agency identification number) IAC (chapter, rule, subrule, lettered paragraph, or numbered subparagraph).

441 IAC 79	(Chapter)
441 IAC 79.1(249A)	(Rule)
441 IAC 79.1(1)	(Subrule)
441 IAC 79.1(1)"a"	(Paragraph)
441 IAC 79.1(1)"a"(1)	(Subparagraph)

The Iowa Administrative Bulletin shall be cited as IAB (volume), (number), (publication date), (page number), (ARC number).

IAB Vol. XII, No. 23 (5/16/90) p. 2050, ARC 872A

Schedule for Rule Making 2007

NOTICE SUBMISSION DEADLINE	NOTICE PUB. DATE	HEARING OR COMMENTS 20 DAYS	FIRST POSSIBLE ADOPTION DATE 35 DAYS	ADOPTED FILING DEADLINE	ADOPTED PUB. DATE	FIRST POSSIBLE EFFECTIVE DATE	POSSIBLE EXPIRATION OF NOTICE 180 DAYS
Dec. 27 ’06	Jan. 17 ’07	Feb. 6 ’07	Feb. 21 ’07	Feb. 23 ’07	Mar. 14 ’07	Apr. 18 ’07	July 16 ’07
Jan. 12	Jan. 31	Feb. 20	Mar. 7	Mar. 9	Mar. 28	May 2	July 30
Jan. 26	Feb. 14	Mar. 6	Mar. 21	Mar. 23	Apr. 11	May 16	Aug. 13
Feb. 9	Feb. 28	Mar. 20	Apr. 4	Apr. 6	Apr. 25	May 30	Aug. 27
Feb. 23	Mar. 14	Apr. 3	Apr. 18	Apr. 20	May 9	June 13	Sept. 10
Mar. 9	Mar. 28	Apr. 17	May 2	May 4	May 23	June 27	Sept. 24
Mar. 23	Apr. 11	May 1	May 16	***May 16***	June 6	July 11	Oct. 8
Apr. 6	Apr. 25	May 15	May 30	June 1	June 20	July 25	Oct. 22
Apr. 20	May 9	May 29	June 13	June 15	July 4	Aug. 8	Nov. 5
May 4	May 23	June 12	June 27	***June 27***	July 18	Aug. 22	Nov. 19
May 16	June 6	June 26	July 11	July 13	Aug. 1	Sept. 5	Dec. 3
June 1	June 20	July 10	July 25	July 27	Aug. 15	Sept. 19	Dec. 17
June 15	July 4	July 24	Aug. 8	Aug. 10	Aug. 29	Oct. 3	Dec. 31
June 27	July 18	Aug. 7	Aug. 22	***Aug. 22***	Sept. 12	Oct. 17	Jan. 14 ’08
July 13	Aug. 1	Aug. 21	Sept. 5	Sept. 7	Sept. 26	Oct. 31	Jan. 28 ’08
July 27	Aug. 15	Sept. 4	Sept. 19	Sept. 21	Oct. 10	Nov. 14	Feb. 11 ’08
Aug. 10	Aug. 29	Sept. 18	Oct. 3	Oct. 5	Oct. 24	Nov. 28	Feb. 25 ’08
Aug. 22	Sept. 12	Oct. 2	Oct. 17	Oct. 19	Nov. 7	Dec. 12	Mar. 10 ’08
Sept. 7	Sept. 26	Oct. 16	Oct. 31	Nov. 2	Nov. 21	Dec. 26	Mar. 24 ’08
Sept. 21	Oct. 10	Oct. 30	Nov. 14	***Nov. 14***	Dec. 5	Jan. 9 ’08	Apr. 7 ’08
Oct. 5	Oct. 24	Nov. 13	Nov. 28	Nov. 30	Dec. 19	Jan. 23 ’08	Apr. 21 ’08
Oct. 19	Nov. 7	Nov. 27	Dec. 12	***Dec. 12***	Jan. 2 ’08	Feb. 6 ’08	May 5 ’08
Nov. 2	Nov. 21	Dec. 11	Dec. 26	***Dec. 26***	Jan. 16 ’08	Feb. 20 ’08	May 19 ’08
Nov. 14	Dec. 5	Dec. 25	Jan. 9 ’08	Jan. 11 ’08	Jan. 30 ’08	Mar. 5 ’08	June 2 ’08
Nov. 30	Dec. 19	Jan. 8 ’08	Jan. 23 ’08	Jan. 25 ’08	Feb. 13 ’08	Mar. 19 ’08	June 16 ’08
Dec. 12	Jan. 2 ’08	Jan. 22 ’08	Feb. 6 ’08	Feb. 8 ’08	Feb. 27 ’08	Apr. 2 ’08	June 30 ’08
Dec. 26	Jan. 16 ’08	Feb. 5 ’08	Feb. 20 ’08	Feb. 22 ’08	Mar. 12 ’08	Apr. 16 ’08	July 14 ’08

PRINTING SCHEDULE FOR IAB

ISSUE NUMBER	SUBMISSION DEADLINE	ISSUE DATE
1	**Friday, June 15, 2007**	**July 4, 2007**
2	**Wednesday, June 27, 2007**	**July 18, 2007**
3	**Friday, July 13, 2007**	**August 1, 2007**

PLEASE NOTE:

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

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

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

SUBSCRIPTION INFORMATION

Iowa Administrative Code

The Iowa Administrative Code and Supplements are sold in complete sets by subscription. Supplement (replacement pages) subscriptions must be for the complete year and will expire on June 30 of each year.

Prices for the Iowa Administrative Code and its Supplements are as follows:

Iowa Administrative Code – $1,520

(Price includes complete set of rules and index, plus a one-year subscription to the Code Supplement and the Iowa Administrative Bulletin. Additional or replacement binders may be purchased for $20.)

Iowa Administrative Code Supplement – $510

Iowa Administrative Bulletin

The Iowa Administrative Bulletin is sold as a separate publication and may be purchased by subscription or single copy. All subscriptions will expire on June 30 of each year. Subscriptions must be paid in advance and are prorated quarterly.

July 1, 2006, to June 30, 2007	$328
October 1, 2006, to June 30, 2007	$246
January 1, 2007, to June 30, 2007	$164
April 1, 2007, to June 30, 2007	$ 82

Single copies may be purchased for $23.

All checks should be made payable to the Treasurer, State of Iowa, and mailed to:

Attn: Nicole Navara
Legislative Services Agency
Miller Building
Des Moines, IA 50319
Telephone: (515)281-6766

IOWA LAW, IOWA ADMINISTRATIVE RULES and IOWA COURT RULES on CD-ROM

For free brochures and order forms for 2007 IOWA LAW CD-ROM, contact Nicole Navara at the above address or at nicole.navara@legis.state.ia.us.

AGENCY	HEARING LOCATION	DATE AND TIME OF HEARING
CREDIT UNION DIVISION[189]		
Debt cancellation products, ch 5 IAB 6/6/07 **ARC 5930B**	Division Conference Room 200 East Grand Ave. Des Moines, Iowa	June 26, 2007 10 a.m.
EDUCATIONAL EXAMINERS BOARD[282]		
Fee for extension for renewal of coaching authorization, 14.121(1), 19.5(2) IAB 6/6/07 **ARC 5945B**	Room 3 Southwest Grimes State Office Bldg. Des Moines, Iowa	June 27, 2007 1 p.m.
Statement of professional recognition for school nurses, 14.1040 IAB 6/6/07 **ARC 5917B** (See also **ARC 5916B** herein)	Room 3 Southwest Grimes State Office Bldg. Des Moines, Iowa	June 27, 2007 1 p.m.
Business teaching endorsements, 14.141 IAB 6/6/07 **ARC 5942B**	Room 3 Southwest Grimes State Office Bldg. Des Moines, Iowa	June 27, 2007 1 p.m.
Mathematics teaching endorsement, 14.141(13) IAB 6/6/07 **ARC 5946B**	Room 3 Southwest Grimes State Office Bldg. Des Moines, Iowa	June 27, 2007 1 p.m.
Renewal of evaluator endorsement or license, 20.58(1) IAB 6/6/07 **ARC 5943B**	Room 3 Southwest Grimes State Office Bldg. Des Moines, Iowa	June 27, 2007 1 p.m.
EDUCATION DEPARTMENT[281]		
Special education, ch 41 IAB 6/6/07 **ARC 5920B** **(ICN Network)**	Department of Public Health Sixth Floor, NW Quad., Lucas State Office Bldg. Des Moines, Iowa	June 26, 2007 2 to 4:30 p.m.
	Bettendorf Public Library Kelinson Room 2950 Learning Campus Dr. Bettendorf, Iowa	June 26, 2007 2 to 4:30 p.m.
	Cedar Falls Public Library 524 Parkade Cedar Falls, Iowa	June 26, 2007 2 to 4:30 p.m.
	Xavier High School 6300 42nd St. NE Cedar Rapids, Iowa	June 26, 2007 2 to 4:30 p.m.
	Centerville High School 600 High St. Centerville, Iowa	June 26, 2007 2 to 4:30 p.m.
	Educational Services Center 12 Scott St. Council Bluffs, Iowa	June 26, 2007 2 to 4:30 p.m.

EDUCATION DEPARTMENT[281] (Cont'd)

Location	Date/Time
Southwestern Comm. College Room 107 1501 W. Townline Rd. Creston, Iowa	June 26, 2007 2 to 4:30 p.m.
Carnegie-Stout Public Library 360 W. 11th St. Dubuque, Iowa	June 26, 2007 2 to 4:30 p.m.
Keystone AEA 1 1400 2nd St. NW Elkader, Iowa	June 26, 2007 2 to 4:30 p.m.
St. Edmond High School Room 101 501 N. 22nd St. Fort Dodge, Iowa	June 26, 2007 2 to 4:30 p.m.
Harlan High School Room 123 2102 Durant Harlan, Iowa	June 26, 2007 2 to 4:30 p.m.
Iowa Valley Comm. College, Dist. 1 Room 86 3702 S. Center St. Marshalltown, Iowa	June 26, 2007 2 to 4:30 p.m.
North Iowa Area Comm. College Room 119 500 College Dr. Mason City, Iowa	June 26, 2007 2 to 4:30 p.m.
Muscatine Comm. College Room 60, Larson Hall 152 Colorado St. Muscatine, Iowa	June 26, 2007 2 to 4:30 p.m.
DMACC, Newton Campus 2 Room 118 600 N. 2nd Ave. W. Newton, Iowa	June 26, 2007 2 to 4:30 p.m.
Indian Hills Comm. College Videoconferencing & Training Ctr. 651 Indian Hills Dr. Ottumwa, Iowa	June 26, 2007 2 to 4:30 p.m.
Sioux Center High School Room 125 550 9th St. NE Sioux Center, Iowa	June 26, 2007 2 to 4:30 p.m.
Central Campus Individual Learning Ctr., Room 311 1121 Jackson St. Sioux City, Iowa	June 26, 2007 2 to 4:30 p.m.
Spirit Lake High School 2701 Hill Ave. Spirit Lake, Iowa	June 26, 2007 2 to 4:30 p.m.

EDUCATION DEPARTMENT[281] (Cont'd)

	Villisca Community High School 205 S. 4th Ave. Villisca, Iowa	June 26, 2007 2 to 4:30 p.m.
Special education, ch 41 IAB 6/6/07 **ARC 5920B** **(ICN Network)**	Department of Education, 2nd Floor Grimes State Office Bldg. Des Moines, Iowa	June 28, 2007 2:30 to 4:30 p.m.
	Mississippi Bend AEA 9 Louisa Room 729 21st St. Bettendorf, Iowa	June 28, 2007 2:30 to 4:30 p.m.
	Burlington Public Library 210 Court St. Burlington, Iowa	June 28, 2007 2:30 to 4:30 p.m.
	National Guard Armory Dewey Road RR1 Box 125B Centerville, Iowa	June 28, 2007 2:30 to 4:30 p.m.
	Cedar Rapids Public Library Conference Rm., Second Floor 500 1st St. SE Cedar Rapids, Iowa	June 28, 2007 2:30 to 4:30 p.m.
	Council Bluffs Public Library 400 Willow Ave. Council Bluffs, Iowa	June 28, 2007 2:30 to 4:30 p.m.
	Matilda J. Gibson Memorial Library 200 W. Howard St. Creston, Iowa	June 28, 2007 2:30 to 4:30 p.m.
	Keystone AEA 1 Room 2 2310 Chaney Rd. Dubuque, Iowa	June 28, 2007 2:30 to 4:30 p.m.
	Central Comm. Jr-Sr High School Room 119 Elkader, Iowa	June 28, 2007 2:30 to 4:30 p.m.
	Fort Madison High School Room 506 2001 Avenue B Fort Madison, Iowa	June 28, 2007 2:30 to 4:30 p.m.
	Heartland AEA 11 6500 Corporate Dr. Johnston, Iowa	June 28, 2007 2:30 to 4:30 p.m.
	AEA 267, Regional Office 909 S. 12th St. Marshalltown, Iowa	June 28, 2007 2:30 to 4:30 p.m.

EDUCATION DEPARTMENT[281] (Cont'd)

	North Iowa Area Comm. College Room 106, Activities Ctr. 500 College Dr. Mason City, Iowa	June 28, 2007 2:30 to 4:30 p.m.
	Muscatine Comm. College Room 60, Larson Hall 152 Colorado St. Muscatine, Iowa	June 28, 2007 2:30 to 4:30 p.m.
	DMACC, Newton Campus 2 Room 118 600 N. 2nd Ave. W. Newton, Iowa	June 28, 2007 2:30 to 4:30 p.m.
	Indian Hills Comm. College Videoconferencing & Training Ctr. 651 Indian Hills Dr. Ottumwa, Iowa	June 28, 2007 2:30 to 4:30 p.m.
	AEA 4 Room 103 1382 4th Ave. NE Sioux Center, Iowa	June 28, 2007 2:30 to 4:30 p.m.
	Spirit Lake High School 2701 Hill Ave. Spirit Lake, Iowa	June 28, 2007 2:30 to 4:30 p.m.
	Villisca Community High School 205 S. 4th Ave. Villisca, Iowa	June 28, 2007 2:30 to 4:30 p.m.
Practitioner preparation programs, amendments to ch 79 IAB 6/6/07 **ARC 5921B**	State Board Room Grimes State Office Bldg. Des Moines, Iowa	June 26, 2007 11 a.m. to 12 noon

ENVIRONMENTAL PROTECTION COMMISSION[567]

Criteria for chemical constituents, 61.3(3) IAB 5/23/07 **ARC 5898B**	Municipal Utilities Conf. Rm. 15 W. Third St. Atlantic, Iowa	June 14, 2007 11 a.m.
	Cherokee Community Center 530 W. Bluff St. Cherokee, Iowa	June 14, 2007 7 p.m.
	Farmers and Merchants Savings Trust 101 E. Main St. Manchester, Iowa	June 19, 2007 11 a.m.
	Clear Lake Community Mtg. Rm. 15 N. Sixth St. Clear Lake, Iowa	June 19, 2007 7 p.m.
	Washington Community Y 121 E. Main St. Washington, Iowa	June 21, 2007 7 p.m.

ENVIRONMENTAL PROTECTION COMMISSION[567] (Cont'd)

	5th Floor Conference Rooms Wallace State Office Bldg. 502 East 9th St. Des Moines, Iowa	June 26, 2007 1 p.m.
Nonpoint source pollution control set-aside programs, 93.3(2), 93.5, 93.6(1) IAB 5/23/07 **ARC 5901B**	Conference Room, Suite M IDNR Water Supply Office 401 SW 7th St. Des Moines, Iowa	June 14, 2007 10 a.m.

IOWA FINANCE AUTHORITY[265]

Local housing trust fund program, 19.1, 19.2 IAB 5/23/07 **ARC 5891B**	2015 Grand Ave. Des Moines, Iowa	June 12, 2007 10 a.m.

LABOR SERVICES DIVISION[875]

Professional shoot fighting—promoter responsibilities, 177.2(2) IAB 6/6/07 **ARC 5929B**	Stanley Room 1000 E. Grand Ave. Des Moines, Iowa	June 27, 2007 8:30 a.m. (If requested)
Professional shoot fighting—attendance of commissioner, 177.9 IAB 6/6/07 **ARC 5928B**	Stanley Room 1000 E. Grand Ave. Des Moines, Iowa	June 27, 2007 10 a.m. (If requested)
Professional shoot fighting—health insurance, 177.10 IAB 6/6/07 **ARC 5934B**	Stanley Room 1000 E. Grand Ave. Des Moines, Iowa	June 27, 2007 1:30 p.m. (If requested)
Minimum wage, 215.1(1), 215.2, 215.3(11), 216.1(4), 216.30(3) IAB 5/23/07 **ARC 5884B**	Stanley Room 1000 E. Grand Ave. Des Moines, Iowa	June 13, 2007 2:30 p.m. (If requested)

PROFESSIONAL LICENSURE DIVISION[645]

Board of barbering, amendments to chs 21, 23 to 25 IAB 5/23/07 **ARC 5886B**	5th Floor Board Conference Rm. Lucas State Office Bldg. Des Moines, Iowa	June 12, 2007 9:30 to 10 a.m.
Board of respiratory care, amendments to chs 260 to 265 IAB 5/23/07 **ARC 5887B**	5th Floor Board Conference Rm. Lucas State Office Bldg. Des Moines, Iowa	June 12, 2007 9 to 9:30 a.m.

PUBLIC HEALTH DEPARTMENT[641]

Radiation, amendments to chs 38, 39, 41, 42, 45, 46 IAB 6/6/07 **ARC 5912B**	Room 523 Lucas State Office Bldg. Des Moines, Iowa	June 26, 2007 8:30 a.m.

PUBLIC HEALTH DEPARTMENT[641] (Cont'd)

Brain injury services program, ch 56 IAB 6/6/07 **ARC 5915B** (See also **ARC 5914B** herein)	Room 518 Lucas State Office Bldg. Des Moines, Iowa	June 26, 2007 1 to 2:30 p.m.

SOIL CONSERVATION DIVISION[27]

Financial incentive program for soil erosion control, amendments to ch 10 IAB 5/23/07 **ARC 5907B**	2nd Floor Conference Room Wallace State Office Bldg. Des Moines, Iowa	June 12, 2007 2 p.m.
Water protection fund, 12.51, 12.61 to 12.63, 12.73(7), 12.76, 12.77, 12.82(1), 12.83, 12.84(1) IAB 5/23/07 **ARC 5908B**	2nd Floor Conference Room Wallace State Office Bldg. Des Moines, Iowa	June 12, 2007 1 p.m.

AGENCY IDENTIFICATION NUMBERS

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

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

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

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

The following list will be updated as changes occur:

ADMINISTRATIVE SERVICES DEPARTMENT[11]
AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]
  Agricultural Development Authority[25]
  Soil Conservation Division[27]
ATTORNEY GENERAL[61]
AUDITOR OF STATE[81]
BEEF INDUSTRY COUNCIL, IOWA[101]
BLIND, DEPARTMENT FOR THE[111]
CAPITAL INVESTMENT BOARD, IOWA[123]
CITIZENS' AIDE[141]
CIVIL RIGHTS COMMISSION[161]
COMMERCE DEPARTMENT[181]
  Alcoholic Beverages Division[185]
  Banking Division[187]
  Credit Union Division[189]
  Insurance Division[191]
  Professional Licensing and Regulation Bureau[193]
    Accountancy Examining Board[193A]
    Architectural Examining Board[193B]
    Engineering and Land Surveying Examining Board[193C]
    Landscape Architectural Examining Board[193D]
    Real Estate Commission[193E]
    Real Estate Appraiser Examining Board[193F]
    Interior Design Examining Board[193G]
  Savings and Loan Division[197]
  Utilities Division[199]
CORRECTIONS DEPARTMENT[201]
  Parole Board[205]
CULTURAL AFFAIRS DEPARTMENT[221]
  Arts Division[222]
  Historical Division[223]
ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]
  City Development Board[263]
  Grow Iowa Values Board[264]
  Iowa Finance Authority[265]
EDUCATION DEPARTMENT[281]
  Educational Examiners Board[282]
  College Student Aid Commission[283]
  Higher Education Loan Authority[284]
  Iowa Advance Funding Authority[285]
  Libraries and Information Services Division[286]
  Public Broadcasting Division[288]
  School Budget Review Committee[289]
EGG COUNCIL, IOWA[301]
ELDER AFFAIRS DEPARTMENT[321]
EMPOWERMENT BOARD, IOWA[349]
ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA[351]
EXECUTIVE COUNCIL[361]
FAIR BOARD[371]
HUMAN RIGHTS DEPARTMENT[421]
  Community Action Agencies Division[427]
  Criminal and Juvenile Justice Planning Division[428]
  Deaf Services Division[429]
  Persons With Disabilities Division[431]
  Latino Affairs Division[433]
  Status of African-Americans, Division on the[434]
  Status of Women Division[435]
HUMAN SERVICES DEPARTMENT[441]

INSPECTIONS AND APPEALS DEPARTMENT[481]
  Employment Appeal Board[486]
  Foster Care Review Board[489]
  Racing and Gaming Commission[491]
  State Public Defender[493]
IOWA PUBLIC EMPLOYEES' RETIREMENT SYSTEM[495]
LAW ENFORCEMENT ACADEMY[501]
LIVESTOCK HEALTH ADVISORY COUNCIL[521]
LOTTERY AUTHORITY, IOWA[531]
MANAGEMENT DEPARTMENT[541]
  Appeal Board, State[543]
  City Finance Committee[545]
  County Finance Committee[547]
NATURAL RESOURCES DEPARTMENT[561]
  Energy and Geological Resources Division[565]
  Environmental Protection Commission[567]
  Natural Resource Commission[571]
  Preserves, State Advisory Board for[575]
PETROLEUM UNDERGROUND STORAGE TANK FUND
    BOARD, IOWA COMPREHENSIVE[591]
PREVENTION OF DISABILITIES POLICY COUNCIL[597]
PUBLIC DEFENSE DEPARTMENT[601]
  Homeland Security and Emergency Management Division[605]
  Military Division[611]
PUBLIC EMPLOYMENT RELATIONS BOARD[621]
PUBLIC HEALTH DEPARTMENT[641]
  Professional Licensure Division[645]
  Dental Examiners Board[650]
  Medical Examiners Board[653]
  Nursing Board[655]
  Pharmacy Examiners Board[657]
PUBLIC SAFETY DEPARTMENT[661]
RECORDS COMMISSION[671]
REGENTS BOARD[681]
  Archaeologist[685]
REVENUE DEPARTMENT[701]
SECRETARY OF STATE[721]
SHEEP AND WOOL PROMOTION BOARD, IOWA[741]
TELECOMMUNICATIONS AND TECHNOLOGY COMMISSION, IOWA[751]
TRANSPORTATION DEPARTMENT[761]
  Railway Finance Authority[765]
TREASURER OF STATE[781]
TURKEY MARKETING COUNCIL, IOWA[787]
UNIFORM STATE LAWS COMMISSION[791]
VETERANS AFFAIRS, IOWA DEPARTMENT OF[801]
VETERINARY MEDICINE BOARD[811]
VOLUNTEER SERVICE, IOWA COMMISSION ON[817]
VOTER REGISTRATION COMMISSION[821]
WORKFORCE DEVELOPMENT DEPARTMENT[871]
  Labor Services Division[875]
  Workers' Compensation Division[876]
  Workforce Development Board and
    Workforce Development Center Administration Division[877]

ARC 5930B

CREDIT UNION DIVISION[189]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code sections 17A.3 and 533.1, the Credit Union Division hereby gives Notice of Intended Action to adopt new Chapter 5, "Debt Cancellation Products," Iowa Administrative Code.

These rules implement the authority of credit unions organized in accordance with Iowa Code chapter 533 to engage in the activity of offering debt cancellation products in accordance with Iowa Code section 533.16(9)"b" and are promulgated under authority of Iowa Code section 533.1.

Interested persons may make written comments on the proposed amendments on or before June 26, 2007. Such written material should be directed to the Superintendent of Credit Unions, Credit Union Division, Department of Commerce, 200 East Grand Avenue, Suite 370, Des Moines, Iowa 50309. Persons who want to convey their views orally should contact the Superintendent of Credit Unions, Department of Commerce, at (515)281-6516 or at 200 East Grand Avenue, Suite 370.

Also, a public hearing will be held on June 26, 2007, at 10 a.m. in the Credit Union Division Conference Room at 200 East Grand Avenue. Persons may present their views at the public hearing either orally or in writing. Persons who wish to make oral presentations at the public hearing should contact the Superintendent of Credit Unions at least one day prior to the date of the public hearing.

These rules are intended to implement Iowa Code section 533.16(9)"b."

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

The following **new** chapter is proposed.

CHAPTER 5
DEBT CANCELLATION PRODUCTS

189—5.1(533) Authority and purpose.

5.1(1) Authority. These rules implement the authority of credit unions organized in accordance with Iowa Code chapter 533 to engage in the activity of offering debt cancellation products in accordance with Iowa Code section 533.16(9)"b" and are promulgated under the authority of Iowa Code section 533.1.

5.1(2) Purpose. These rules set forth the standards that apply to voluntary debt cancellation contracts and agreements entered into by credit unions. The purpose of these standards is to ensure that credit unions offer and implement such contracts and agreements consistent with safe and sound practices, and subject to appropriate consumer protections.

189—5.2(533) Definitions. The definitions of terms included in rule 189—1.1(533) apply to such terms used in this chapter unless otherwise provided in this rule. In addition, the following definitions apply as used in these rules:

"Actuarial method" means the method of allocating payments made on a debt between the amount financed and the finance charge whereby a payment is first applied to the accumulated finance charge and any remainder is subtracted from or any deficiency is added to the unpaid balance of the amount financed.

"Bona fide" means authentic and genuine in nature and made in a sincere and honest fashion without any intention to deceive.

"Borrower" means an individual who is a credit union member who obtains an extension of credit from a credit union primarily for personal, family or household purposes.

"Business day" means every day except Saturday, Sunday and federal holidays unless on any such day an office of the credit union is open to conduct substantially all of its business.

"Debt cancellation product" means a written contractual arrangement between a credit union and a borrower modifying loan terms under which the credit union agrees to suspend or cancel all or part of the borrower's obligation to repay an extension of credit from that credit union upon the occurrence of a specified event. The contractual arrangement may be in the form of a debt cancellation contract, a debt suspension agreement or other accord and may be separate from or a part of other loan documents. A debt cancellation product does not include a loan payment deferral arrangement which is the borrower's unilateral election to defer repayment or the credit union's unilateral decision to allow a deferral of repayment.

"Reasonable fee structure" means a fee structure which allows a moderate return on investment and is suited to or within the means of an ordinary person, and is not formulated in a manner that an ordinary person would consider the fee structure excessive, outrageous, overreaching or unconscionable.

"Residential mortgage loan" means a loan secured by one to four family members for residential real property.

189—5.3(533) Debt cancellation products.

5.3(1) General. A credit union may offer any debt cancellation product so long as the credit union complies with this chapter. The product may be offered for a fee or as an additional charge under a lease, loan or other extension of credit, and participation by a borrower must be voluntary.

5.3(2) Policies required. A credit union, before offering any debt cancellation product, must adopt written policies approved by its board of directors which establish and maintain effective risk management and control processes over the offering of the product. In addition, the policies must establish:

a. A reasonable fee structure, if any fee will be charged for the product;

b. Appropriate disclosures, which shall be given to the borrower in accordance with this chapter; and

c. Claims-processing procedures, which shall be utilized to process debt cancellation claims.

5.3(3) Additional requirements. A credit union offering any debt cancellation product must:

a. Purchase insurance or reinsurance from an insurance company authorized to do business in Iowa to indemnify the credit union from loss resulting from offering the product;

b. Establish a loss reserve relating to the debt cancellation product in an amount sufficient to offset losses not covered by insurance or reinsurance. The superintendent may require any credit union offering a debt cancellation product to provide evidence of the adequacy of the loss reserve re-

lated to that product, including an actuarial opinion assessing the adequacy of the loss reserve; and

c. Not condition the making or alteration of the terms or conditions of a lease, loan or extension of credit upon the borrower's agreeing to purchase a debt cancellation product.

5.3(4) Notification to the superintendent of offering of debt cancellation products. A credit union must notify the superintendent in writing of its intent to offer any type of debt cancellation product at least 30 days prior to any such product being offered to borrowers. The notice must contain:

a. A statement describing the type(s) of debt cancellation product(s) the credit union will offer to its membership;

b. The fee structure established for the debt cancellation product, if any fee will be charged for the product; and

c. The name of the insurance company from which the credit union will purchase contractual liability coverage or other insurance required by paragraph 5.3(3)"a," along with information describing policy limits, deductible amounts and all limitations on coverage.

5.3(5) Existing debt cancellation products offered prior to [effective date of this rule]. A credit union offering any type of debt cancellation product prior to [the effective date of this rule] must, immediately following that date, provide to the superintendent notice of the existence of such product and provide to the superintendent the same information as required in subrule 5.3(4). A debt cancellation product in existence prior to [the effective date of this rule] may not continue to be offered by the credit union unless all the requirements of this chapter are satisfied.

189—5.4(533) Prohibited practices.

5.4(1) Anti-tying. A credit union may not extend credit or alter the terms or conditions of an extension of credit conditioned upon the borrower's entering into a debt cancellation contract or debt suspension agreement with the credit union.

5.4(2) Misrepresentations generally. A credit union may not engage in any practice or use any advertisement that could mislead or otherwise cause a reasonable person to reach an erroneous belief with respect to a debt cancellation agreement.

5.4(3) Prohibited contractual arrangement terms. A credit union may not offer debt cancellation agreements that contain terms:

a. Giving the credit union the right to unilaterally modify the arrangement unless:

(1) The modification is favorable to the borrower and is made without additional charge to the borrower; or

(2) The borrower is notified of any proposed change and is provided a reasonable opportunity to cancel the arrangement without penalty before the change goes into effect; or

b. Requiring the borrower to make a lump sum, single payment at the outset of the contract or agreement, except as provided in rule 189—5.6(533), or where the debt subject to the contract or agreement is a residential mortgage loan.

189—5.5(533) Refunds of fees in the event of termination or prepayment of the covered loan.

5.5(1) Refund. If a debt cancellation contract or debt suspension agreement is terminated (including, for example, when the borrower prepays the covered loan), a credit union shall refund to the borrower any unearned fees paid for the contract unless the contract provides otherwise. A credit union may offer a borrower a debt cancellation product that does not provide for a refund only if the credit union also offers that borrower a bona fide option to purchase a comparable contractual arrangement that provides for a refund.

5.5(2) Method of calculation. A credit union shall calculate the amount of a refund using a method at least as favorable to the borrower as the actuarial method.

189—5.6(533) Method of payment of fees. A credit union may offer a borrower the option of paying the fee for a debt cancellation product in a single payment, provided the credit union also offers the borrower a bona fide option of paying the fee for that arrangement on a weekly, monthly or other periodic payment schedule. If a credit union offers the borrower the option to finance the single payment by adding the single payment to the amount financed, the credit union must also disclose to the borrower, in accordance with rule 189—5.7(533), whether, and, if so, the time period during which, the borrower may cancel the arrangement and receive a refund.

189—5.7(533) Disclosures. In connection with offering debt cancellation products, a credit union must make the short- and long-form disclosures described in this rule. In order to satisfy the requirements of this rule, the short-form disclosure must be substantially in the form described in rule 189—5.9(533) and the long-form disclosure must be substantially in the form described in rule 189—5.10(533).

5.7(1) Short-form disclosure. The credit union must make the short-form disclosure orally at the time the credit union first solicits the purchase of the contract or agreement with the borrower.

5.7(2) Long-form disclosure. The credit union must make the long-form disclosure in writing before the borrower completes the purchase of the contract or agreement. If the initial solicitation occurs in person, then the credit union shall provide the long-form disclosure in writing at that time.

5.7(3) Exceptions for non-in-person transactions.

a. If the debt cancellation product is solicited by telephone, the credit union must make the short-form disclosure orally as required in subrule 5.7(1), and must mail the long-form disclosure required in subrule 5.7(2), and, if appropriate, a copy of the contract or agreement to the borrower, within three business days, beginning with the first business day after the telephone solicitation.

b. If the debt cancellation product is solicited using the mail or "take one" applications, the credit union may make only the short-form disclosure in writing as part of the written materials. If not included in the application materials, the long-form disclosure must be mailed to the borrower within three business days, beginning with the first business day after the borrower contacts the credit union in response to the solicitation.

c. If the debt cancellation product is solicited using electronic media, the credit union may provide the disclosures required by this rule electronically, consistent with the requirements of this rule and the requirements of the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. 7001 et seq.

5.7(4) Exception to receipt of borrower's acknowledgment of disclosures. A credit union may not obligate the borrower to pay for the debt cancellation product until after receiving the borrower's written acknowledgment of receipt of disclosures unless the credit union:

a. Maintains sufficient documentation to demonstrate that it provided the acknowledgment of receipt of disclosures to the borrower as required by this subrule;

b. Maintains sufficient documentation to demonstrate that it made reasonable efforts to obtain from the borrower a written acknowledgment of receipt of the long-form disclosure; and

CREDIT UNION DIVISION[189](cont'd)

c. Permits the borrower to cancel the purchase of the contract without penalty within 30 days after the credit union mailed the long-form disclosure to the borrower.

5.7(5) Form of disclosure. The disclosures required by this rule must be in a meaningful form, conspicuous, direct, and readily understandable and be designed to call attention to the nature and significance of the information provided, and, if in written or electronic form, must include:

a. A plain-language heading to call attention to the disclosure.

b. A type size and a typeface that are easy to read.

c. Wide margins and ample line spacing.

d. Boldface or italics for key words and phrases.

e. Distinctive type style, and graphic devices, when the disclosures are combined with other information.

5.7(6) Disclosures in advertisements and promotional materials. The short-form disclosure is required in advertisements and promotional materials except where the debt cancellation product is merely listed among products and services offered by the credit union.

189—5.8(533) Affirmative election to purchase and acknowledgment of receipt of disclosure.

5.8(1) Before entering into a debt cancellation contract or agreement, the credit union must obtain from the borrower a written affirmative election to purchase the product and written acknowledgment of receipt of the disclosures required in rule 189—5.7(533). The election and acknowledgment information must meet the intent and purpose of the standards established in rule 189—5.7(533).

5.8(2) The credit union must maintain sufficient documentation to demonstrate that it provided to the borrower the disclosures required by rule 189—5.7(533) and obtained from the borrower the documents required by this rule.

5.8(3) The credit union must permit the borrower to cancel the purchase of the debt cancellation product without penalty within 30 days after the credit union has mailed the long-form disclosure to the borrower or provided it to the borrower electronically according to paragraph 5.7(4)"c."

189—5.9(533) Short-form disclosure.

5.9(1) The product is optional. "Your purchase of [debt cancellation product name] is optional. Whether or not you purchase [debt cancellation product name] will not affect your application for credit or the terms of any credit agreement you have with the credit union."

5.9(2) Lump sum payment of fee. "You may choose to pay the fee in a single lump sum or in [weekly, monthly or other periodic payments commensurate with the repayment of the indebtedness]. Adding the lump sum of the fee to the amount you borrow will increase the cost of [product name]."

NOTE: This provision is applicable if the credit union offers to the borrower the option to pay the fee in a single payment. Lump sum payment of the fee is prohibited where the debt subject to the contract or agreement is a residential mortgage loan.

5.9(3) Refund of fee. "You may choose [product name] with a refund provision or without a refund provision. Prices of refund and no-refund products are likely to differ." And either: "If you pay the fee in a single payment, you may cancel [product name] within 30 days and receive a full refund." or "If you finance the payment of the fee as part of your loan and you pay off your loan early, you will receive a pro rata refund of any unearned premium." or "If you cancel [product name] after the first 30 days of your loan, you will not receive a refund."

NOTE: This provision is prohibited where the debt subject to the contract or agreement is a residential mortgage loan.

5.9(4) Additional disclosures. "We will give you additional information before you are required to pay for [product name]." And, if applicable: "This information will include a copy of the contract containing the terms of [product name]."

5.9(5) Eligibility requirements, conditions, and exclusions. "There are certain eligibility requirements, conditions, and exclusions that could prevent you from receiving benefits under [product name]." And either: "You should carefully read our additional information for a full explanation of the terms of [product name]." or "You should carefully read the contract for a full explanation of the terms of [product name]."

189—5.10(533) Long-form disclosure.

5.10(1) The product is optional. "Your purchase of [product name] is optional. Whether or not you purchase [product name] will not affect your application for credit or the terms of any credit agreement you have with the credit union."

5.10(2) Explanation of debt suspension agreement. "If [product name] is activated, your duty to pay the loan principal and interest to the credit union is only suspended. You must fully repay the loan after the period of suspension has expired." And, if applicable: "This includes interest accumulated during the period of suspension."

NOTE: The provision in this subrule is applicable if the contract has a debt suspension feature.

5.10(3) Amount of fee. For closed-end credit: "The total fee for [product name] is $----." For open-end credit, either: "The monthly fee for [product name] is based upon your account balance each month multiplied by the unit-cost, which is $------." or "The formula used to compute the fee is ----------------."

5.10(4) Lump sum payment of fee. "You may choose to pay the fee in a single lump sum or in [weekly, monthly or other periodic payments commensurate with the repayment of the indebtedness]. Adding the fee to the amount you borrow will increase the cost of [product name]."

NOTE: This provision is applicable if the credit union offers the option to pay the fee in a single payment. Lump sum payment of the fee is prohibited where the debt subject to the contract or agreement is a residential mortgage loan.

5.10(5) No refund of fee paid in lump sum. "You have the option to purchase [product name] that includes a refund of the unearned premium of the fee if you terminate the contract or repay the loan in full prior to the scheduled termination date. Prices of refund and no-refund products may differ."

NOTE: This provision is applicable if the credit union offers the option to pay the fee in a single payment for a no-refund debt cancellation product. This provision is prohibited where the debt subject to the contract or agreement is a residential mortgage loan.

5.10(6) Refund of fee paid in lump sum. Either: "If you pay the fee in a single payment, you may cancel [product name] within 30 days and receive a full refund." or "If you finance the payment of the fee as part of your loan and you pay off your loan early, you will receive a pro rata refund of any unearned premium." or "If you cancel [product name] after the first 30 days of your loan, you will not receive a refund."

NOTE: This provision is applicable where the borrower pays the fee in a single payment and the fee is added to the amount borrowed. This provision is prohibited where the debt subject to the contract or agreement is a residential mortgage loan.

5.10(7) Termination of [product name]. Either: "You have no right to cancel [product name]." or "You have the right to cancel [product name] in the following circumstances: ---------------." And either: "The credit union has no right to cancel [product name]." or "The credit union has the right to cancel [product name] in the following circumstances: ---------------."

5.10(8) Eligibility requirements, conditions, and exclusions. "There are certain eligibility requirements, conditions, and exclusions that could prevent you from receiving benefits under [product name]." And either: "The following is a summary of the eligibility requirements, conditions, and exclusions: [Summary of eligibility requirements, conditions, and exclusions.]" or "You may find a complete explanation of the eligibility requirements, conditions, and exclusions in paragraph(s) ---------- of the [product name] agreement."

189—5.11(533) Safe and sound practices.

5.11(1) A credit union must ensure that risks associated with debt cancellation contracts and debt suspension agreements are managed in accordance with safe and sound principles and practices. Consequently, a credit union must implement and maintain effective risk management and control processes in conjunction with its debt cancellation contracts and debt suspension agreements, including, but not limited to, appropriate recognition and reporting of income, expenses, assets and liabilities. Additionally, the processes must provide for the recognition and financial reporting of the appropriate treatment of all expected and unexpected losses associated with these products.

5.11(2) A credit union must assess the adequacy of its internal controls and risk mitigation activities in view of the characteristics and extent of its debt cancellation contracts and debt suspension agreements. Accordingly, a credit union must evaluate its risk levels and management systems, including compliance and reputation risks, and the potential adverse impact weaknesses may have on the financial performance of the credit union.

5.11(3) Debt cancellation agreements may only be offered by a credit union in connection with an extension of credit primarily for personal, family or household purposes.

These rules are intended to implement Iowa Code section 533.16(9)"b."

ARC 5945B

EDUCATIONAL EXAMINERS BOARD[282]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 272.2, the Board of Educational Examiners hereby gives Notice of Intended Action to amend Chapter 14, "Issuance of Practitioner's Licenses and Endorsements," and Chapter 19, "Coaching Authorization," Iowa Administrative Code.

The proposed amendments update fee changes made in 2005 to Chapter 14 by including the fee increase for the one-year extension for renewal of the coaching authorization.

A waiver provision is not included. The Board has adopted a uniform waiver rule.

Any interested party or persons may present their views either orally or in writing at the public hearing that will be held Wednesday, June 27, 2007, at 1 p.m. in Room 3 Southwest, Third Floor, Grimes State Office Building, East 14th Street and Grand Avenue, Des Moines, Iowa.

At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the proposed amendments. Persons who wish to make oral presentations at the public hearing may contact the Executive Director, Board of Educational Examiners, Grimes State Office Building, East 14th Street and Grand Avenue, Des Moines, Iowa 50319-0147, or at (515)281-5849, prior to the date of the public hearing.

Any person who intends to attend the public hearing and requires special accommodations for specific needs, such as a sign language interpreter, should contact the office of the Executive Director at (515)281-5849.

Any interested person may make written comments or suggestions on the proposed amendments before 4 p.m. on Friday, June 29, 2007. Written comments and suggestions should be addressed to Marcia J. Henderson, Board Secretary, Board of Educational Examiners, at the above address, or sent by E-mail to marcia.henderson@iowa.gov, or by fax to (515)281-7669.

These amendments are intended to implement Iowa Code chapter 272.

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

The following amendments are proposed.

ITEM 1. Amend subrule **14.121(1)**, paragraph **"b,"** by adding the following **new** subparagraph **(10)**:

(10) The fee for a one-year extension for renewal of a coaching authorization shall be $40.

ITEM 2. Amend subrule 19.5(2) as follows:

19.5(2) Five planned renewal activities/courses related to athletic coaching approved in accordance with guidelines approved by the board of educational examiners. Beginning on or after July 1, 2000, each applicant for the renewal of a coaching authorization shall have completed one renewal activity/course relating to the knowledge and understanding of professional ethics and legal responsibilities of coaches. A one-year extension of the holder's coaching authorization will be issued if all requirements for the renewal of the coaching authorization have not been met. This extension is not renewable. ~~Effective September 1, 2004, the fee for the one-year extension shall be $25.~~ *The fee for this extension is found in 282—14.121(272).*

ARC 5917B

EDUCATIONAL EXAMINERS BOARD[282]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 272.2, the Board of Educational Examiners hereby gives Notice of Intended Action to amend Chapter 14, "Issuance of Practitioner's Licenses and Endorsements," Iowa Administrative Code.

The proposed amendment to subrule 14.140(11), paragraph "b," changes the requirements of a Statement of Professional Recognition (SPR) for school nurses. This amendment will require all applicants for an SPR to verify that they have attained at least a minimum of a baccalaureate degree. Based on Iowa Code section 272.2(10), the Board of Educational Examiners has the authority to establish the standards for SPRs. The Board has previously made the the requirements for an SPR for special education nurses to include a baccalaureate degree.

A waiver provision is not included. The Board has adopted a uniform waiver rule.

Any interested party or persons may present their views either orally or in writing at the public hearing that will be held Wednesday, June 27, 2007, at 1 p.m. in Room 3 Southwest, Third Floor, Grimes State Office Building, East 14th Street and Grand Avenue, Des Moines, Iowa.

At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the proposed amendment. Persons who wish to make oral presentations at the public hearing may contact the Executive Director, Board of Educational Examiners, Grimes State Office Building, East 14th Street and Grand Avenue, Des Moines, Iowa 50319-0147, or at (515)281-5849, prior to the date of the public hearing.

Any person who intends to attend the public hearing and requires special accommodations for specific needs, such as a sign language interpreter, should contact the office of the Executive Director at (515)281-5849.

Any interested person may make written comments or suggestions on the proposed amendment before 4 p.m. on Friday, June 29, 2007. Written comments and suggestions should be addressed to Marcia J. Henderson, Board Secretary, Board of Educational Examiners, at the above address; sent by E-mail to marcia.henderson@iowa.gov; or faxed to (515)281-7669.

This amendment was also Adopted and Filed Emergency and is published herein as **ARC 5916B**. The content of that submission is incorporated by reference.

This amendment is intended to implement Iowa Code chapter 272.

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

ARC 5942B

EDUCATIONAL EXAMINERS BOARD[282]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 272.2, the Board of Educational Examiners hereby gives Notice of Intended Action to amend Chapter 14, "Issuance of Practitioner's Licenses and Endorsements," Iowa Administrative Code.

The proposed amendments are intended to allow for the bundling of several business teaching endorsements into a single endorsement.

A waiver provision is not included. The Board has adopted a uniform waiver rule.

Any interested party or persons may present their views either orally or in writing at the public hearing that will be held Wednesday, June 27, 2007, at 1 p.m. in Room 3 Southwest, Third Floor, Grimes State Office Building, East 14th Street and Grand Avenue, Des Moines, Iowa.

At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the proposed amendments. Persons who wish to make oral presentations at the public hearing may contact the Executive Director, Board of Educational Examiners, Grimes State Office Building, East 14th Street and Grand Avenue, Des Moines, Iowa 50319-0147, or at (515)281-5849, prior to the date of the public hearing.

Any person who intends to attend the public hearing and requires special accommodations for specific needs, such as a sign language interpreter, should contact the office of the Executive Director at (515)281-5849.

Any interested person may make written comments or suggestions on the proposed amendments before 4 p.m. on Friday, June 29, 2007. Written comments and suggestions should be addressed to Marcia J. Henderson, Board Secretary, Board of Educational Examiners, at the above address, or sent by E-mail to marcia.henderson@iowa.gov, or by fax to (515)281-7669.

These amendments are intended to implement Iowa Code chapter 272.

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

The following amendments are proposed.

ITEM 1. Amend subrule 14.141(3) as follows:

14.141(3) Business ~~— general~~ *all*. 5-12. Completion of ~~24~~ *30* semester hours in business to include 6 semester hours in accounting, ~~6~~ *3* semester hours in business law *to include contract law*, ~~and coursework~~ *3 semester hours* in computer *and technical* applications *in business*, ~~and coursework in~~ *6 semester hours in marketing to include* consumer studies*, 3 semester hours in management, 6 semester hours in economics, and 3 semester hours in business communications to include formatting, language usage, and oral presentation.*

Coursework in entrepreneurship and in financial literacy may be a part of, or in addition to, the coursework listed above.

ITEM 2. Rescind and reserve subrules **14.141(4)** and **14.141(5)**.

ARC 5946B

EDUCATIONAL EXAMINERS BOARD[282]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 272.2, the Board of Educational Examiners hereby gives Notice of Intended Action to amend Chapter 14, "Issuance of Practitioner's Licenses and Endorsements," Iowa Administrative Code.

The proposed amendment broadens the type of geometry course required to better enable applicants to access a geometry course to fulfill the requirement.

A waiver provision is not included. The Board has adopted a uniform waiver rule.

Any interested party or persons may present their views either orally or in writing at the public hearing that will be held Wednesday, June 27, 2007, at 1 p.m. in Room 3 Southwest, Third Floor, Grimes State Office Building, East 14th Street and Grand Avenue, Des Moines, Iowa.

At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the proposed amendment. Persons who wish to make oral presentations at the public hearing may contact the Executive Director, Board of Educational Examiners, Grimes State Office Building, East 14th Street and Grand Avenue, Des Moines, Iowa 50319-0147, or at (515)281-5849, prior to the date of the public hearing.

Any person who intends to attend the public hearing and requires special accommodations for specific needs, such as a sign language interpreter, should contact the office of the Executive Director at (515)281-5849.

Any interested person may make written comments or suggestions on the proposed amendment before 4 p.m. on Friday, June 29, 2007. Written comments and suggestions should be addressed to Marcia J. Henderson, Board Secretary, Board of Educational Examiners, at the above address, or sent by E-mail to marcia.henderson@iowa.gov, or by fax to (515)281-7669.

This amendment is intended to implement Iowa Code chapter 272.

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

The following amendment is proposed.

Amend subrule **14.141(13)**, paragraph **"b,"** as follows:

b. 5-12. Completion of 24 semester hours in mathematics to include a linear algebra or an abstract (modern) algebra course, a ~~postcalculus~~ geometry course, a two-course sequence in calculus, a computer programming course, a probability and statistics course, and coursework in discrete mathematics.

ARC 5943B

EDUCATIONAL EXAMINERS BOARD[282]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 272.2, the Board of Educational Examiners hereby gives Notice of Intended Action to amend Chapter 20, "Evaluator Endorsement and License," Iowa Administrative Code.

The proposed amendment is needed to maintain compliance with the statutory language that created the evaluator license. The original evaluator license was based on the legislated evaluator training. The proposed language is generic enough to comply with any changes to the evaluator training.

A waiver provision is not included. The Board has adopted a uniform waiver rule.

Any interested party or persons may present their views either orally or in writing at the public hearing that will be held Wednesday, June 27, 2007, at 1 p.m. in Room 3 Southwest, Third Floor, Grimes State Office Building, East 14th Street and Grand Avenue, Des Moines, Iowa.

At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the proposed amendment. Persons who wish to make oral presentations at the public hearing may contact the Executive Director, Board of Educational Examiners, Grimes State Office Building, East 14th Street and Grand Avenue, Des Moines, Iowa 50319-0147, or at (515)281-5849, prior to the date of the public hearing.

Any person who intends to attend the public hearing and requires special accommodations for specific needs, such as a sign language interpreter, should contact the office of the Executive Director at (515)281-5849.

Any interested person may make written comments or suggestions on the proposed amendment before 4 p.m. on Friday, June 29, 2007. Written comments and suggestions should be addressed to Marcia J. Henderson, Board Secretary, Board of Educational Examiners, at the above address, or sent by E-mail to marcia.henderson@iowa.gov, or by fax to (515)281-7669.

This amendment is intended to implement Iowa Code chapter 272.

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

The following amendment is proposed.

Amend subrule 20.58(1) as follows:

20.58(1) Coursework for renewal of the evaluator license or the license with the evaluator endorsement must comple-

EDUCATIONAL EXAMINERS BOARD[282](cont'd)

ment the initial requirements. This coursework*, approved by the Iowa department of education,* must be *completed for* at least one semester hour of college or university credit or *for at least* one renewal unit from an approved Iowa staff development program.

ARC 5920B

EDUCATION DEPARTMENT[281]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 256.7(5), the State Board of Education hereby proposes to rescind Chapter 41, "Special Education," Iowa Administrative Code, and to adopt a new Chapter 41 with the same title.

The format of new Chapter 41 parallels the federal special education regulations. Federal statutory and regulatory changes require most of the substantive revisions in proposed Chapter 41, including access to instructional materials, state monitoring and general supervision, early intervening services, and services to parentally placed private school students. Other substantive changes include elimination of rules-based instructional delivery systems and specifying that provision of instructional services in homes and hospitals is the responsibility of the district of residence.

No waiver provision is included because the Board of Education has adopted agencywide waiver rules in 281—Chapter 4.

Any interested person may submit electronic, oral or written comments on or before June 28, 2007, by addressing them to Thomas Mayes, Legal Consultant, Bureau of Children, Family and Community Services, Department of Education, Grimes State Office Building, Des Moines, Iowa 50319-0146; telephone (515)242-5614; fax (515)281-6019; E-mail Thomas.Mayes@Iowa.gov.

Two public hearings will be held over the Iowa Communications Network (ICN). The public hearings are scheduled on June 26, 2007, from 2 to 4:30 p.m. and on June 28, 2007, from 2:30 to 4:30 p.m., at which persons may present their views orally or in writing. The following ICN sites will be available:

Tuesday, June 26, 2007, 2 to 4:30 p.m.

Origination Location:
Department of Public Health
6th Floor, NW
Lucas State Office Building
321 E. 12th St.
Des Moines, IA

Bettendorf Public Library
Kelinson Room
2950 Learning Campus Dr.
Bettendorf, IA

Iowa Valley Comm. College
Dist. - 1, Room 806
3702 South Center St.
Marshalltown, IA

Cedar Falls Public Library
524 Parkade
Cedar Falls, IA

North Iowa Area Comm. College, Room 119
500 College Dr.
Mason City, IA

Xavier High School
6300 42nd St. NE
Cedar Rapids, IA

Muscatine Comm. College
Larson Hall, Room 60
152 Colorado St.
Muscatine, IA

Centerville High School
600 High St.
Centerville, IA

DMACC - Newton Campus - 2, Room 118
600 North 2nd Ave. W
Newton, IA

Educational Services Center
12 Scott St.
Council Bluffs, IA

Indian Hills Comm. College
Videoconferencing & Training Center
651 Indian Hills Dr.
Ottumwa, IA

Southwestern Comm. College, Room 107
1501 West Townline Rd.
Creston, IA

Sioux Center High School
Room 125
550 9th St. NE
Sioux Center, IA

Carnegie-Stout Public Library
360 West 11th St.
Dubuque, IA

Central Campus Individual Learning Center, Room 311
1121 Jackson St.
Sioux City, IA

Keystone AEA 1 - Elkader
1400 2nd St. NW
Elkader, IA

Spirit Lake High School
2701 Hill Ave.
Spirit Lake, IA

St. Edmond High School
Room 101
501 N. 22nd St.
Fort Dodge, IA

Villisca Comm. High School
205 S. 4th Ave.
Villisca, IA

Harlan High School
Room 123
2102 Durant
Harlan, IA

Thursday, June 28, 2007, 2:30 to 4:30 p.m.

Origination Location:
Department of Education
Grimes State Office Building, Second Floor
E. 14th and Grand Ave.
Des Moines, IA

Mississippi Bend AEA - 9
Louisa Room
729 21st St.
Bettendorf, IA

Heartland AEA - 11
6500 Corporate Dr.
Johnston, IA

Burlington Public Library
210 Court St.
Burlington, IA

AEA - 267
Regional Office
909 S. 12th St.
Marshalltown, IA

Cedar Rapids Public Library
Conf. Room, 2nd Floor
500 1st St. SE
Cedar Rapids, IA

North Iowa Area Comm. College
Activities Center, Room 106
500 College Dr.
Mason City, IA

Centerville National Guard Armory
Dewey Rd.
R.R. 1, Box 125B
Centerville, IA

Muscatine Comm. College
Larson Hall, Room 60
152 Colorado St.
Muscatine, IA

Council Bluffs Public Library
400 Willow Ave.
Council Bluffs, IA

DMACC - Newton Campus - 2, Room 118
600 North 2nd Ave. W
Newton, IA

EDUCATION DEPARTMENT[281](cont'd)

Matilda J. Gibson Memorial Library 200 W. Howard St. Creston, IA	Indian Hills Comm. College Videoconferencing & Training Center 651 Indian Hills Dr. Ottumwa, IA
Keystone AEA - 1 Room 2 2310 Chaney Rd. Dubuque, IA	AEA - 4 Room 103 1382 4th Ave. NE Sioux Center, IA
Central Comm. Jr.-Sr. High School Room 119 Elkader, IA	Spirit Lake High School 2701 Hill Ave. Spirit Lake, IA
Fort Madison High School Room 506 2001 Ave. B Fort Madison, IA	Villisca Comm. High School 205 S. 4th Ave. Villisca, IA

These amendments are intended to implement Iowa Code chapter 256B, the 2004 amendments to the Individuals with Disabilities Education Act, and the 2006 federal regulations implementing those amendments.

Persons requiring reasonable accommodations to participate in public hearings because of a disability should contact the Iowa Department of Education at (515)281-3176 no later than June 21, 2007. All ICN sites are accessible to persons with disabilities.

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

The following amendment is proposed.

Rescind **281—Chapter 41** and adopt the following **new** chapter in lieu thereof:

CHAPTER 41
SPECIAL EDUCATION

DIVISION I
PURPOSE AND APPLICABILITY

281—41.1(256B,34CFR300) Purposes. The purposes of this chapter are as follows:

1. To ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living;
2. To ensure that the rights of children with disabilities and their parents are protected;
3. To assist local educational agencies, area education agencies, and state agencies to provide for the education of all children with disabilities and to allocate responsibilities among those agencies; and
4. To assess and ensure the effectiveness of efforts to educate children with disabilities.

281—41.2(256B,34CFR300) Applicability of this chapter. The provisions of this chapter are binding on each public agency in the state that provides special education and related services to children with disabilities, regardless of whether that agency is receiving funds under Part B of the Individuals with Disabilities Education Act (Act).

41.2(1) General. The provisions of this chapter apply to all political subdivisions of the state that are involved in the education of children with disabilities, including:

a. The state educational agency (SEA).

b. Local educational agencies (LEAs), area education agencies (AEAs), and public charter schools that are not otherwise included as LEAs or educational service agencies (ESAs) and are not a school of an LEA or ESA.

c. Other state agencies and schools, including but not limited to the departments of human services and public health and state schools and programs for children with deafness or children with blindness.

d. State and local juvenile and adult correctional facilities.

41.2(2) Private schools and facilities. Each public agency in the state is responsible for ensuring that the rights and protections under Part B of the Act are given to children with disabilities referred to or placed in private schools and facilities by that public agency; or placed in private schools by their parents under the provisions of rule 41.148(256B, 34CFR300).

41.2(3) Age. This chapter applies to all children requiring special education between birth and the twenty-first birthday and to a maximum allowable age under Iowa Code section 256B.8.

DIVISION II
DEFINITIONS

281—41.3(256B,34CFR300) Act. "Act" means the Individuals with Disabilities Education Act as amended through August 14, 2006.

281—41.4(256B,273) Area education agency. "Area education agency" or "AEA" is a political subdivision of the state organized pursuant to Iowa Code chapter 273. An area education agency, depending on context, may be a local educational agency, as defined in rule 41.28(256B,34CFR300), an educational service agency, as defined in rule 41.12(256B, 34CFR300), or both simultaneously.

281—41.5(256B,34CFR300) Assistive technology device. "Assistive technology device" means any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve the functional capabilities of a child with a disability. The term does not include a medical device that is surgically implanted or the replacement of such device.

281—41.6(256B,34CFR300) Assistive technology service. "Assistive technology service" means any service that directly assists a child with a disability in the selection, acquisition, or use of an assistive technology device. The term includes the following:

1. The evaluation of the needs of a child with a disability, including a functional evaluation of the child in the child's customary environment;
2. Purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by children with disabilities;
3. Selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing assistive technology devices;
4. Coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs;
5. Training or technical assistance for a child with a disability or, if appropriate, that child's family; and

6. Training or technical assistance for professionals (including individuals providing education or rehabilitation services), employers, or other individuals who provide services to, employ, or are otherwise substantially involved in the major life functions of that child.

281—41.7(256B,34CFR300) Charter school. "Charter school" has the meaning given the term in Section 5210(1) of the Elementary and Secondary Education Act of 1965 as amended through August 14, 2006, 20 U.S.C. 6301 et seq. (ESEA).

281—41.8(256B,34CFR300) Child with a disability. "Child with a disability" refers to a person under 21 years of age, including a child under 5 years of age, who has a disability in obtaining an education because of a head injury, autism, behavioral disorder, or physical, mental, communication, or learning disability, as defined by this chapter, who by reason of such disability requires special education and related services. The term includes an individual who is over 6 and under 16 years of age who, pursuant to the statutes of this state, is required to receive a public education; an individual under 6 or over 16 years of age who, pursuant to the statutes of this state, is entitled to receive a public education; and an individual between the ages of 21 and 24 who, pursuant to the statutes of this state, is entitled to receive special education and related services. In federal usage, this refers to infants, toddlers, children and young adults. In these rules, this term is synonymous with "child requiring special education" and "eligible individual."

281—41.9(256B,34CFR300) Consent.

41.9(1) Obtaining consent. "Consent" is obtained when all of the following conditions are satisfied:

a. The parent has been fully informed of all information relevant to the activity for which consent is sought, in his or her native language, or other mode of communication;

b. The parent understands and agrees in writing to the carrying out of the activity for which parental consent is sought, and the consent describes that activity and lists the records (if any) that will be released and to whom; and

c. The parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time.

41.9(2) When revocation of consent is effective. If a parent revokes consent, that revocation is not retroactive (i.e., it does not negate an action that occurred after the consent was given and before the consent was revoked).

281—41.10(256B,34CFR300) Core academic subjects. "Core academic subjects" means English, reading or language arts, mathematics, science, foreign languages, civics and government, economics, arts, history, and geography.

281—41.11(256B,34CFR300) Day; business day; school day. "Day" means calendar day unless otherwise indicated as business day or school day.

1. "Business day" means Monday through Friday, except for federal and state holidays, unless holidays are specifically included in the designation of business day, as in 41.148(4)"b."

2. "School day" means any day, including a partial day, that children are in attendance at school for instructional purposes. School day has the same meaning for all children in school, including children with and without disabilities. The length of the school day for an eligible individual shall be the same as that determined by the local educational agency's board of directors for all other individuals, unless a shorter day or longer day is prescribed in the eligible individual's individualized education program.

281—41.12(256B,34CFR300) Educational service agency. "Educational service agency" means a regional public multiservice agency that is authorized by state law to develop, manage, and provide services or programs to LEAs; and is recognized as an administrative agency for purposes of the provision of special education and related services provided within public elementary schools and secondary schools of the state. "Educational service agency" includes any other public institution or agency that has administrative control and direction over a public elementary school or secondary school and includes entities that meet the definition of intermediate educational unit in Section 602(23) of the Act as in effect prior to June 4, 1997.

281—41.13(256B,34CFR300) Elementary school. "Elementary school" means a nonprofit institutional day or residential school, including a public elementary charter school, that provides elementary education, as determined under state law.

281—41.14(256B,34CFR300) Equipment. "Equipment" means machinery, utilities, and built-in equipment and any necessary enclosures or structures to house the machinery, utilities, or equipment. "Equipment" includes other items necessary for the functioning of a particular facility as a facility for the provision of educational services, including items such as instructional equipment and necessary furniture; printed, published and audio-visual instructional materials; telecommunications, sensory, and other technological aids and devices; and books, periodicals, documents, and other related materials.

281—41.15(256B,34CFR300) Evaluation. "Evaluation" means procedures used in accordance with rules 41.304(256B,34CFR300) to 41.311(256B,34CFR300) to determine whether a child has a disability and the nature and extent of the special education and related services that the child needs.

281—41.16(256B,34CFR300) Excess costs. "Excess costs" means those costs that are in excess of the average annual per-student expenditure in an LEA during the preceding school year for an elementary school or secondary school student, as may be appropriate, and that must be computed after deducting the following:

41.16(1) Certain federal funds. Amounts received under Part B of the Act; under Part A of Title I of the ESEA; and under Parts A and B of Title III of the ESEA; and

41.16(2) Certain state or local funds. Any state or local funds expended for programs that would qualify for assistance under subrule 41.16(1), but excluding any amounts for capital outlay or debt service.

281—41.17(256B,34CFR300) Free appropriate public education. "Free appropriate public education" or "FAPE" means special education and related services that are provided at public expense, under public supervision and direction, and without charge; that meet the standards of the SEA, including the requirements of this chapter; that include an appropriate preschool, elementary school, or secondary school education; and that are provided in conformity with an individualized education program (IEP) that meets the requirements of rules 41.320(256B,34CFR300) to 41.324(256B,34CFR300).

EDUCATION DEPARTMENT[281](cont'd)

281—41.18(256B,34CFR300) Highly qualified special education teachers.

41.18(1) Requirements for special education teachers teaching core academic subjects. For any public elementary or secondary school special education teacher teaching core academic subjects, the term "highly qualified" has the meaning given the term in Section 9101 of the ESEA and 34 CFR 200.56, except that the requirements for "highly qualified" also include the following:

a. The requirements described in subrule 41.18(2); and

b. The option for teachers to meet the requirements of Section 9101 of the ESEA by meeting the requirements of subrules 41.18(3) and 41.18(4).

41.18(2) Requirements for special education teachers in general.

a. When used with respect to any public elementary school or secondary school special education teacher, "highly qualified" requires that:

(1) The teacher has obtained full state certification as a special education teacher, including certification obtained through alternative routes to certification, or has passed the state special education teacher licensing examination and holds a license to teach in the state as a special education teacher, except that when used with respect to a teacher teaching in a public charter school, "highly qualified" means that the teacher meets the certification or licensing requirements, if any, set forth in the state's public charter school law;

(2) The teacher has not had special education certification or licensure requirements waived on an emergency, temporary, or provisional basis; and

(3) The teacher holds at least a bachelor's degree.

b. A teacher will be considered to meet the standard in 41.18(2)"a"(1) if that teacher is participating in an alternative route to special education certification program as follows:

(1) The teacher meets the following requirements:

1. Receives high-quality professional development that is sustained, intensive, and classroom-focused in order to have a positive and lasting impact on classroom instruction, before and while teaching;

2. Participates in a program of intensive supervision that consists of structured guidance and regular ongoing support for teachers or a teacher mentoring program;

3. Assumes functions as a teacher only for a specified period of time not to exceed three years; and

4. Demonstrates satisfactory progress toward full certification as prescribed by the state; and

(2) The state ensures, through its certification and licensure process, that the provisions in 41.18(2)"b"(1) are met.

c. Any public elementary school or secondary school special education teacher who is not teaching a core academic subject is "highly qualified" if the teacher meets the requirements in 41.18(2)"a" or the requirements in 41.18(2)"a"(3) and 41.18(2)"b."

41.18(3) Requirements for special education teachers teaching to alternate achievement standards. When used with respect to a special education teacher who teaches core academic subjects exclusively to children who are assessed against alternate achievement standards established under 34 CFR 200.1(d), "highly qualified" means the teacher, whether new or not new to the profession, may either:

a. Meet the applicable requirements of Section 9101 of the ESEA and 34 CFR 200.56 for any elementary, middle, or secondary school teacher who is new or not new to the profession; or

b. Meet the requirements of paragraph (B) or (C) of Section 9101(23) of the ESEA as applied to an elementary school teacher, or, in the case of instruction above the elementary level, meet the requirements of paragraph (B) or (C) of Section 9101(23) of the ESEA as applied to an elementary school teacher and have subject matter knowledge appropriate to the level of instruction being provided and needed to effectively teach to those standards, as determined by the state.

41.18(4) Requirements for special education teachers teaching multiple subjects. When used with respect to a special education teacher who teaches two or more core academic subjects exclusively to children with disabilities, "highly qualified" means that the teacher may either:

a. Meet the applicable requirements of Section 9101 of the ESEA and 34 CFR 200.56(b) or (c);

b. In the case of a teacher who is not new to the profession, demonstrate competence in all the core academic subjects in which the teacher teaches in the same manner as is required for an elementary, middle, or secondary school teacher who is not new to the profession under 34 CFR 200.56(c); or

c. In the case of a new special education teacher who teaches multiple subjects and who is "highly qualified" in mathematics, language arts, or science, demonstrate, not later than two years after the date of employment, competence in the other core academic subjects in which the teacher teaches in the same manner as is required for an elementary, middle, or secondary school teacher under 34 CFR 200.56(c).

41.18(5) Reserved.

41.18(6) Rule of construction. Notwithstanding any other individual right of action that a parent or student may maintain under Part B of the Act or this chapter, nothing in Part B of the Act or this chapter shall be construed to create a right of action on behalf of an individual student or class of students for the failure of a particular SEA or LEA employee to be "highly qualified," or to prevent a parent from filing a complaint under rules 41.151(256B,34CFR300) to 41.153(256B, 34CFR300) about staff qualifications with the SEA as provided for under this chapter.

41.18(7) Applicability of definition to ESEA; clarification of new special education teacher.

a. A teacher who is "highly qualified" under this rule is considered "highly qualified" for purposes of the ESEA.

b. For purposes of 41.18(4)"c," a fully certified regular education teacher who subsequently becomes fully certified or licensed as a special education teacher is a new special education teacher when first hired as a special education teacher.

41.18(8) Private school teachers not covered. The requirements in this rule do not apply to teachers hired by private elementary schools and secondary schools including private school teachers hired or contracted by LEAs to provide equitable services to parentally placed private school children with disabilities under rule 41.138(256,256B, 34CFR300).

281—41.19(256B,34CFR300) Homeless children. "Homeless children" has the meaning given the term "homeless children and youths" in Section 725 (42 U.S.C. 11434a) of the McKinney-Vento Homeless Assistance Act as amended through August 14, 2006, 42 U.S.C. 11431 et seq.

281—41.20(256B,34CFR300) Include. "Include" means that the items named are not all of the possible items that are covered, whether like or unlike the ones named.

281—41.21(256B,34CFR300) Indian and Indian tribe. "Indian" means an individual who is a member of an Indian

tribe. "Indian tribe" means any federal or state Indian tribe, settlement, band, rancheria, pueblo, colony, or community, including any Alaska native village or regional village corporation as defined in or established under the Alaska Native Claims Settlement Act, 43 U.S.C. 1601 et seq.

281—41.22(256B,34CFR300) Individualized education program. "Individualized education program" or "IEP" means a written statement for a child with a disability that is developed, reviewed, and revised in accordance with rules 41.320(256B,34CFR300) to 41.324(256B,34CFR300). A single IEP for each eligible individual, which specifies all the special education and related services the eligible individual is to receive, is required.

281—41.23(256B,34CFR300) Individualized education program team. "Individualized education program team" or "IEP team" means a group of individuals described in rule 41.321(256B,34CFR300) that is responsible for developing, reviewing, or revising an IEP for a child with a disability.

281—41.24(256B,34CFR300) Individualized family service plan. "Individualized family service plan" or "IFSP" has the meaning given the term in Section 636 of the Act.

281—41.25(256B,34CFR300) Infant or toddler with a disability. "Infant or toddler with a disability" means an individual under three years of age who needs early intervention services either because the individual has a condition, based on informed clinical opinion, known to have a high probability of resulting in later delays in growth and development if early intervention services are not provided; or the individual has a developmental delay, which is a 25 percent delay as measured by appropriate diagnostic instruments and procedures, based on informed clinical opinion, in one or more of the following developmental areas: cognitive development, physical development including vision and hearing, communication development, social or emotional development, or adaptive development.

281—41.26(256B,34CFR300) Institution of higher education. "Institution of higher education" has the meaning given the term in Section 101 of the Higher Education Act of 1965 as amended through August 14, 2006, 20 U.S.C. 1021 et seq. (HEA); and also includes any community college receiving funds from the Secretary of the Interior under the Tribally Controlled Community College or University Assistance Act of 1978, 25 U.S.C. 1801 et seq.

281—41.27(256B,34CFR300) Limited English proficient. "Limited English proficient" has the meaning given the term in Section 9101(25) of the ESEA.

281—41.28(256B,34CFR300) Local educational agency.

41.28(1) General. "Local educational agency" or "LEA" means a public board of education or other public authority legally constituted within a state for either administrative control or direction of, or to perform a service function for, public elementary or secondary schools in a city, county, township, school district, or other political subdivision of a state, or for a combination of school districts or counties as are recognized in a state as an administrative agency for its public elementary schools or secondary schools.

41.28(2) Educational service agencies and other public institutions or agencies. The term includes an educational service agency, as defined in rule 41.12(256B,34CFR300) and any other public institution or agency having administrative control and direction of a public elementary school or secondary school, including a public nonprofit charter school that is established as an LEA under state law.

41.28(3) BIA-funded schools. The term includes an elementary school or secondary school funded by the Bureau of Indian Affairs, and not subject to the jurisdiction of any SEA other than the Bureau of Indian Affairs, but only to the extent that the inclusion makes the school eligible for programs for which specific eligibility is not provided to the school in another provision of law and the school does not have a student population that is smaller than the student population of the LEA receiving assistance under the Act with the smallest student population.

281—41.29(256B,34CFR300) Native language.

41.29(1) General. "Native language," when used with respect to an individual who is limited English proficient, means the following:

a. The language normally used by that individual or, in the case of a child, the language normally used by the parents of the child; or

b. The language normally used by the child in the home or learning environment; this language shall be considered "native language" in all direct contact with a child, including evaluation of the child.

41.29(2) Special rule. For an individual with deafness or blindness, or for an individual with no written language, the mode of communication is that normally used by the individual, such as sign language, Braille, or oral communication.

281—41.30(256B,34CFR300) Parent.

41.30(1) General. "Parent" means:

a. A biological or adoptive parent of a child;

b. A foster parent, unless state law, regulations, or contractual obligations with a state or local entity prohibit a foster parent from acting as a parent;

c. A guardian generally authorized to act as the child's parent, or authorized to make educational decisions for the child, but not the state if the child is a ward of the state;

d. An individual acting in the place of a biological or adoptive parent including a grandparent, stepparent, or other relative with whom the child lives or an individual who is legally responsible for the child's welfare; or

e. A surrogate parent who has been appointed in accordance with rule 41.519(256B,34CFR300) or 20 U.S.C. 1439(a)(5).

41.30(2) Rules of construction and application. The following rules are to be used to determine whether a party qualifies as a parent:

a. Except as provided in 41.30(2)"b," the biological or adoptive parent, when attempting to act as the parent under this chapter and when more than one party is qualified to act as a parent under this chapter, must be presumed to be the parent for purposes of this rule unless the biological or adoptive parent does not have legal authority to make educational decisions for the child.

b. If a judicial decree or order identifies a specific person or persons under paragraphs "a" to "d" of subrule 41.30(1) to act as the parent of a child or to make educational decisions on behalf of a child, then such person or persons shall be determined to be the parent for purposes of this rule.

c. "Parent" does not include a public or private agency involved in the education or care of a child or an employee or contractor with any public or private agency involved in the education or care of the child in that employee's or contractor's official capacity.

EDUCATION DEPARTMENT[281](cont'd)

281—41.31(256B,34CFR300) Parent training and information center. "Parent training and information center" means a center assisted under Section 671 or 672 of the Act.

281—41.32(256B,34CFR300) Personally identifiable. "Personally identifiable" means information that contains the name of the child, the child's parent, or other family member; the address of the child; a personal identifier, such as the child's social security number or student number; or a list of personal characteristics or other information that would make it possible to identify the child with reasonable certainty.

281—41.33(256B,34CFR300) Public agency; nonpublic agency; agency. "Public agency" includes the SEA, LEAs, ESAs, nonprofit public charter schools that are not otherwise included as LEAs or ESAs and are not a school of an LEA or ESA, and any other political subdivisions of the state that are responsible for providing education to children with disabilities. "Nonpublic agency" includes any private organization of whatever form that is responsible for providing education to children with disabilities and that is not a public agency. "Agency" includes public agencies and nonpublic agencies.

281—41.34(256B,34CFR300) Related services.

41.34(1) General. "Related services" means transportation and such developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special education. "Related services" includes speech-language pathology and audiology services; interpreting services; psychological services; physical and occupational therapy; recreation, including therapeutic recreation; early identification and assessment of disabilities in children; counseling services, including rehabilitation counseling; orientation and mobility services; and medical services for diagnostic or evaluation purposes. "Related services" also includes school health services and school nurse services, social work services in schools, and parent counseling and training.

41.34(2) Exception; services that apply to children with surgically implanted devices, including cochlear implants.

a. "Related services" does not include a medical device that is surgically implanted, the optimization of that device's functioning (e.g., mapping), maintenance of that device, or the replacement of that device.

b. Nothing in paragraph "a" of this subrule shall:

(1) Limit the right of a child with a surgically implanted device (e.g., cochlear implant) to receive related services as listed in subrule 41.34(1) that are determined by the IEP team to be necessary for the child to receive FAPE;

(2) Limit the responsibility of a public agency to appropriately monitor and maintain medical devices that are needed to maintain the health and safety of the child, including breathing, nutrition, or operation of other bodily functions, while the child is transported to and from school or is at school; or

(3) Prevent the routine checking of an external component of a surgically implanted device to make sure it is functioning properly, as required in rule 41.113(256B, 34CFR300).

41.34(3) Individual related services terms defined. The terms used in this definition are defined as follows:

a. "Audiology" includes:

(1) Identification of children with hearing loss;

(2) Determination of the range, nature, and degree of hearing loss, including referral for medical or other professional attention for the habilitation of hearing;

(3) Provision of habilitative activities, such as language habilitation, auditory training, speech reading (lip-reading), 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.

281—41.35(34CFR300) Scientifically based research. "Scientifically based research" has the meaning given the term in Section 9101(37) of the ESEA.

281—41.36(256B,34CFR300) Secondary school. "Secondary school" means a nonprofit institutional day or residential school, including a public secondary charter school that provides secondary education, as determined under state law, except that it does not include any education beyond grade 12.

281—41.37(34CFR300) Services plan. "Services plan" has the meaning given the term in 34 CFR 300.37.

281—41.38(34CFR300) Secretary. "Secretary" means the Secretary of the United States Department of Education.

281—41.39(256B,34CFR300) Special education.

41.39(1) General. "Special education" means specially designed instruction, at no cost to the parents, to meet the unique needs of a child with a disability, including:

a. Instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings; and

b. Instruction in physical education.

41.39(2) Specific services included in special education. Special education includes each of the following, if the services otherwise meet the requirements of subrule 41.39(1):

a. Any service listed in this chapter, including support services, related services, and supplemental aids and services, that is specially designed instruction under subrule 41.39(1) or state standards or is required to assist an eligible individual in taking advantage of, or responding to, educational programs and opportunities;

b. Travel training; and

c. Vocational education.

41.39(3) Individual special education terms defined. The terms in this definition are defined as follows:

a. "At no cost" means that all specially designed instruction is provided without charge, but does not preclude incidental fees that are normally charged to nondisabled students or their parents as a part of the regular education program. An AEA or LEA may ask, but not require, parents of children with disabilities to use public insurance or benefits or private insurance proceeds to pay for services if they would not incur a financial cost, as described in rule 41.154(256B, 34CFR300).

b. "Physical education" means the development of physical and motor fitness; fundamental motor skills and patterns; and skills in aquatics, dance, and individual and group games and sports, including intramural and lifetime sports; and includes special physical education, adapted physical education, movement education, and motor development.

c. "Specially designed instruction" means adapting, as appropriate to the needs of an eligible child under this chapter, the content, methodology, or delivery of instruction:

(1) To address the unique needs of the child that result from the child's disability; and

(2) To ensure access of the child to the general curriculum, so that the child can meet the educational standards within the jurisdiction of the public agency that apply to all children.

d. "Travel training" means providing instruction, as appropriate, to children with significant cognitive disabilities, and any other children with disabilities who require this instruction, to enable them to:

(1) Develop an awareness of the environment in which they live; and

EDUCATION DEPARTMENT[281](cont'd)

(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 41.114(256B,34CFR300) to 41.116(256B,34CFR300).

281—41.43(256B,34CFR300) Transition services.

41.43(1) General. "Transition services" means a coordinated set of activities for a child with a disability and meets the following description:

a. Is designed to be within a results-oriented process, that is focused on improving the academic and functional achievement of the child with a disability to facilitate the child's movement from school to postschool activities, including postsecondary education, vocational education, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation;

b. Is based on the individual child's needs, taking into account the child's strengths, preferences, and interests; and includes the following:

(1) Instruction;

(2) Related services;

(3) Community experiences;

(4) The development of employment and other postschool adult living objectives; and

(5) If appropriate, acquisition of daily living skills and provision of a functional vocational evaluation.

41.43(2) May be special education or a related service. Transition services for children with disabilities may be special education, if provided as specially designed instruction, or a related service if required to assist a child with a disability to benefit from special education.

281—41.44(34CFR300) Universal design. "Universal design" has the meaning given the term in Section 3 of the Assistive Technology Act of 1998 as amended through August 14, 2006, 29 U.S.C. 3002.

281—41.45(256B,34CFR300) Ward of the state.

41.45(1) General. Subject to subrules 41.45(2) and 41.45(3), "ward of the state" means a child who, as determined by the state where the child resides, is:

a. A foster child;

b. In the custody of a public child welfare agency; or

c. A ward of the state.

41.45(2) Exception. "Ward of the state" does not include a foster child who has a foster parent who meets the definition of a parent in rule 41.30(256B,34CFR300).

41.45(3) Interpretive note. "Ward of the state" is a term rarely used in Iowa law. It would be an extremely rare occurrence for a child to be a ward of the state while not being either a foster child or in the custody of a public child welfare agency.

281—41.46 to **41.49** Reserved.

281—41.50(256B,34CFR300) Other definitions associated with identification of eligible individuals. The following terms may be encountered in the identification of children with disabilities.

41.50(1) Autism. "Autism" means a developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before the age of three, which adversely affects a child's educational performance. Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences. Autism does not apply if a child's educational performance is adversely affected primarily because the child has a behavior disorder, as defined in subrule 41.50(2). A child who manifests the characteristics of autism after the age of three could be identified as having autism if the criteria in the first sentence of this subrule are satisfied.

41.50(2) Behavior disorder. "Behavior disorder" means any condition that exhibits one or more of the following five characteristics over a long period of time and to a marked degree that adversely affects a child's educational performance.

a. An inability to learn that cannot be explained by intellectual, sensory, or health factors.

b. An inability to build or maintain satisfactory interpersonal relationships with peers and teachers.

c. Inappropriate types of behavior or feelings under normal circumstances.

d. A general pervasive mood of unhappiness or depression.

e. A tendency to develop physical symptoms or fears associated with personal or school problems.

41.50(3) Deaf-blindness. "Deaf-blindness" means concomitant hearing and visual impairments, the combination of which causes such severe communication and other developmental and educational needs that they cannot be accommodated in special education programs solely for children with deafness or children with blindness.

41.50(4) Deafness. "Deafness" means a hearing impairment that is so severe that the child is impaired in processing linguistic information through hearing, with or without amplification, and that adversely affects a child's educational performance.

41.50(5) Hearing impairment. "Hearing impairment" means an impairment in hearing, whether permanent or fluctuating, that adversely affects a child's educational performance but that is not included under the definition of deafness in 41.50(4).

41.50(6) Mental retardation. "Mental retardation" means significantly subaverage general intellectual functioning, that exists concurrently with deficits in adaptive behavior and is manifested during the developmental period, and which adversely affects a child's educational performance.

41.50(7) Multiple disabilities. "Multiple disabilities" means concomitant impairments, such as mental retardation-blindness or mental retardation-orthopedic impairment, the

combination of which causes such severe educational needs that they cannot be accommodated in special education programs solely for one of the impairments. Multiple disabilities does not include deaf-blindness.

41.50(8) Orthopedic impairment. "Orthopedic impairment" means a severe orthopedic impairment that adversely affects a child's educational performance. The term includes impairments caused by a congenital anomaly; impairments caused by disease, e.g., poliomyelitis or bone tuberculosis; and impairments from other causes, e.g., cerebral palsy, amputations, and fractures or burns that cause contractures.

41.50(9) Other health impairment. "Other health impairment" means having limited strength, vitality, or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment, that:

a. Is due to a chronic or acute health problem such as asthma, attention deficit disorder or attention deficit hyperactivity disorder, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, sickle cell anemia, and Tourette syndrome; and

b. Adversely affects a child's educational performance.

41.50(10) Specific learning disability. "Specific learning disability" means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in the imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations, including conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. Specific learning disability does not include learning problems that are primarily the result of visual, hearing, or motor disabilities, of mental retardation, of emotional disturbance, or of environmental, cultural, or economic disadvantage.

41.50(11) Speech or language impairment. "Speech or language impairment" means a communication disorder, such as stuttering, impaired articulation, a language impairment, or a voice impairment, that adversely affects a child's educational performance.

41.50(12) Traumatic brain injury. "Traumatic brain injury" means an acquired injury to the brain caused by an external physical force, resulting in total or partial functional disability or psychosocial impairment, or both, that adversely affects a child's educational performance. Traumatic brain injury applies to open or closed head injuries resulting in impairments in one or more areas, such as cognition; language; memory; attention; reasoning; abstract thinking; judgment; problem solving; sensory, perceptual, and motor abilities; psychosocial behavior; physical functions; information processing; and speech. Traumatic brain injury does not apply to brain injuries that are congenital or degenerative, or to brain injuries induced by birth trauma.

41.50(13) Visual impairment. "Visual impairment," including blindness, means an impairment in vision that, even with correction, adversely affects a child's educational performance. The term includes both partial sight and blindness. Individuals who have a medically diagnosed expectation of visual deterioration in adolescence or early adulthood may qualify for instruction in Braille reading and writing.

281—41.51(256B,34CFR300) Other definitions applicable to this chapter. The following additional definitions apply to this chapter.

41.51(1) Appropriate activities. "Appropriate activities" means those activities that are consistent with age-relevant abilities or milestones that typically developing children of the same age would be performing or would have achieved.

41.51(2) Board. "Board" means the Iowa state board of education.

41.51(3) Department. "Department" means the state department of education.

41.51(4) Director. "Director" means the director of special education of the AEA.

41.51(5) Director of education. "Director of education" means the state director of the department of education.

41.51(6) Early childhood special education. "Early childhood special education" or "ECSE" means special education and related services for those individuals below the age of six.

41.51(7) General curriculum. "General curriculum" means the curriculum adopted by an LEA or schools within the LEA for all children from preschool through secondary school.

41.51(8) General education environment. "General education environment" includes, but is not limited to, the classes, classrooms, services, and nonacademic and extracurricular services and activities made available by an agency to all students. For preschool children who require special education, the general education environment is the environment where appropriate activities occur for children of similar age without disabilities.

41.51(9) General education interventions. "General education interventions" means attempts to resolve presenting problems or behaviors of concern in the general education environment prior to conducting a full and individual evaluation as described in rule 41.312(256B,34CFR300).

41.51(10) Head injury. "Head injury" means an acquired injury to the brain caused by an external physical force, resulting in total or partial functional disability or psychosocial impairment, or both, that adversely affects an individual's educational performance. The term applies to open or closed head injuries resulting in impairments in one or more areas such as cognition; language; memory; attention; reasoning; abstract thinking; judgment; problem solving; sensory, perceptual and motor abilities; psychosocial behavior; physical functions; information processing; and speech. The term does not apply to brain injuries that are congenital or degenerative or brain injuries induced by birth trauma.

41.51(11) Multicategorical. "Multicategorical" means special education in which the individuals receiving special education have different types of disabilities.

41.51(12) School district of the child's residence. "School district of the child's residence" or "district of residence of the child" is that school district in which the parent of the individual resides, subject to the following:

a. If an eligible individual is physically present ("lives") in a district other than the district of residence of the individual's parent for a primary purpose other than school attendance, then the district of residence of the individual is the district in which the individual resides, and that district becomes responsible for providing and funding the special education and related services.

b. If an an eligible individual is physically present ("lives") in a district other than the district of residence of the individual's parent solely for the purpose of school attendance, the district of residence remains that of the parent; therefore, the parent must pay tuition to the receiving district. The district of residence cannot be held responsible for tuition payment.

c. "Children living in a foster care facility" are individuals requiring special education who are living in a licensed child foster care facility as defined in Iowa Code section 237.1 or in a facility providing residential treatment as de-

fined in Iowa Code section 125.2. District of residence of an individual living in a foster care facility and financial responsibility for special education and related services are determined pursuant to subrule 41.907(5).

d. "Children placed by the district court" are pupils requiring special education for whom parental rights have been terminated and who have been placed in a facility or home by a district court. Financial responsibility for special education and related services of individuals placed by the district court is determined pursuant to subrule 41.907(6).

41.51(13) Severely disabled. "Severely disabled" is an adjective applied to individuals with any severe disability including individuals who are profoundly, multiply disabled.

41.51(14) Signature. "Signature" has the meaning given the term in Iowa Code section 4.1(39).

41.51(15) Systematic progress monitoring. "Systematic progress monitoring" means a systematic procedure for collecting and displaying an individual's performance over time for the purpose of making educational decisions.

281—41.52 to **41.99** Reserved.

DIVISION III

RULES APPLICABLE TO THE STATE AND TO ALL AGENCIES

281—41.100(256B,34CFR300) Eligibility for assistance. To be eligible for assistance under Part B of the Act for a fiscal year, the state shall submit a plan that provides assurances to the Secretary that the state has in effect policies and procedures to ensure that the state meets the conditions in rules 41.101(256B,34CFR300) to 41.176(256B).

281—41.101(256B,34CFR300) Free appropriate public education (FAPE).

41.101(1) General. A free appropriate public education must be available to all children residing in the state through their twenty-first birthday, 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 or an IFSP is in effect for the child by that date, in accordance with subrule 41.323(2).

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 or IFSP 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. Children aged 21, unless otherwise provided in this rule.

b. Certain children incarcerated in adult prisons.

(1) General. A child aged 18 to 21 who, in the last educational placement prior to incarceration in an adult correctional facility:

1. Was not actually identified as being a child with a disability under this chapter; and

2. Did not have an IEP under Part B of the Act.

(2) Inapplicability of exception. The exception in 41.102(1)"b"(1) does not apply to a child with disabilities, aged 18 to 21, who:

1. Had been identified as a child with a disability under this chapter and had received services in accordance with an IEP, but who left school prior to incarceration; or

2. Did not have an IEP in the child's last educational setting, but who had actually been identified as a child with a disability under this chapter.

c. Graduates with a regular high school diploma.

(1) General. Children with disabilities who have graduated from high school with a regular high school diploma.

(2) Inapplicability of exception. The exception in 41.102(1)"c"(1) does not apply to children who have graduated from high school, but have not been awarded a regular high school diploma.

(3) Graduation is a change in placement. Graduation from high school with a regular high school diploma constitutes a change in placement requiring written prior notice in accordance with rule 41.503(256B,34CFR300).

(4) Rule of construction. As used in 41.102(1)"c"(1) to (3), the term "regular high school diploma" does not include an alternative degree that is not fully aligned with the state's academic standards, such as a certificate or a general educational development credential (GED).

d. Children eligible for services under Section 619 who receive services under Part C of the Act. Children with disabilities who are eligible under Section 619 of the Act and Division X of this chapter, but who receive early intervention services under Part C of the Act.

e. Eligibility beyond the age of 21. An agency may continue the special education and related services of an eligible individual beyond the individual's twenty-first birthday 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 three years or until the individual's twenty-fourth birthday.

41.102(2) Documents relating to exceptions. The state must ensure that the information it has provided to the Secretary regarding the exceptions in subrule 41.102(1) is current and accurate.

281—41.103(256B,34CFR300) FAPE—methods and payments.

41.103(1) All means available to meet Part B requirements. The state may use whatever state, local, federal, and private sources of support are available in the state to meet the requirements of Part B of the Act.

41.103(2) Third-party obligations not eliminated. Nothing in this chapter relieves an insurer or similar third party from an otherwise valid obligation to provide or to pay for services provided to a child with a disability.

41.103(3) No delay in implementing an IEP. Consistent with rule 41.323(256B,34CFR300), there shall be no delay in implementing an eligible individual's IEP, including any case in which the payment source for providing or paying for special education and related services to the child is being determined.

EDUCATION DEPARTMENT[281](cont'd)

281—41.104(256B,34CFR300) Residential placement. If placement in a public or private residential program is necessary to provide special education and related services to an eligible individual, the program, including nonmedical care and room and board, must be at no cost to the parents of the child.

281—41.105(256B,34CFR300) Assistive technology.

41.105(1) General. Each public agency must ensure that assistive technology devices or assistive technology services, or both, as those terms are defined in rules 41.5(256B, 34CFR300) and 41.6(256B,34CFR300), respectively, are made available to a child with a disability if required as a part of the child's:

a. Special education under rule 41.39(256B, 34CFR300);

b. Related services under rule 41.34(256B, 34CFR300); or

c. Supplementary aids and services under rule 41.42(256B,34CFR300) and 41.114(2)"b."

41.105(2) Use of assistive technology devices at home or in other settings. On a case-by-case basis, the use of school-purchased assistive technology devices in a child's home or in other settings is required if the child's IEP team determines that the child needs access to those devices in order to receive FAPE.

281—41.106(256B,34CFR300) Extended school year services.

41.106(1) General. Each public agency must ensure that extended school year services are available as necessary to provide FAPE.

a. Extended school year services must be provided only if a child's IEP team determines, on an individual basis, in accordance with rules 41.320(256B,34CFR300) to 41.324(256B,34CFR300), that the services are necessary for the provision of FAPE to the child.

b. In implementing the requirements of this rule, a public agency may not limit extended school year services to particular categories of disability or unilaterally limit the type, amount, or duration of those services.

41.106(2) Definition. As used in this rule, the term "extended school year services" means special education and related services that meet the standards of the SEA and are provided to a child with a disability beyond the normal school year of the public agency, in accordance with the child's IEP and at no cost to the parents of the child.

281—41.107(256B,34CFR300) Nonacademic services.

41.107(1) General. Each public agency must take steps, including the provision of supplementary aids and services determined appropriate and necessary by the child's IEP team, to provide nonacademic and extracurricular services and activities in the manner necessary to afford children with disabilities an equal opportunity for participation in those services and activities.

41.107(2) Definition. Nonacademic and extracurricular services and activities may include counseling services, athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the public agency, referrals to agencies that provide assistance to individuals with disabilities, and employment of students, including both employment by the public agency and assistance in making outside employment available.

281—41.108(256B,34CFR300) Physical education. All public agencies in the state shall comply with the following:

41.108(1) General. Physical education services, specially designed if necessary, must be made available to every child with a disability receiving FAPE, unless the public agency enrolls children without disabilities and does not provide physical education to children without disabilities in the same grades.

41.108(2) Regular physical education. Each child with a disability must be afforded the opportunity to participate in the regular physical education program available to nondisabled children unless the child is enrolled full-time in a separate facility or the child needs specially designed physical education, as prescribed in the child's IEP.

41.108(3) Special physical education. If specially designed physical education is prescribed in a child's IEP, the public agency responsible for the education of that child must provide the services directly or make arrangements for those services to be provided through other public or private programs.

41.108(4) Education in separate facilities. The public agency responsible for the education of a child with a disability who is enrolled in a separate facility must ensure that the child receives appropriate physical education services in compliance with this rule.

281—41.109(256B,34CFR300) Full educational opportunity goal (FEOG). Each public agency shall ensure the provision of full educational opportunity to children requiring special education. Each public agency shall have in effect policies and procedures to demonstrate that the agency has established a goal of providing full educational opportunity to all children with disabilities, aged birth to 21, and a detailed timetable for accomplishing that goal.

281—41.110(256B,34CFR300) Program options. Each public agency shall take steps to ensure that its children with disabilities have available to them the variety of educational programs and services available to nondisabled children in the area served by the agency, including art, music, industrial arts, consumer and homemaking education, and vocational education.

281—41.111(256B,34CFR300) Child find.

41.111(1) General. All children with disabilities residing in the state, including children with disabilities who are homeless children or are wards of the state and children with disabilities who attend private schools, regardless of the severity of their disability, and who are in need of special education and related services, must be identified, located, and evaluated; and a practical method must be developed and implemented to determine which children are currently receiving needed special education and related services.

41.111(2) Reserved.

41.111(3) Other children in child find. Child find also must include the following:

a. A child who is suspected of being a child with a disability and in need of special education, even though the child is advancing from grade to grade; and

b. Highly mobile children, including migrant children.

41.111(4) Classification based on disability not required. Nothing in the Act requires that children be classified by their disability so long as each child who has a disability that is listed in rule 41.8(256B,34CFR300) and who, by reason of that disability, needs special education and related services is regarded as a child with a disability under Part B of the Act.

281—41.112(256B,34CFR300) Individualized education programs (IEPs). An IEP, or an IFSP that meets the requirements of Section 636(d) of the Act, is developed, reviewed,

and revised for each child with a disability in accordance with rules 41.320(256B,34CFR300) to 41.324(256B,34CFR300), except as provided in 41.300(2)"d"(2).

281—41.113(256B,34CFR300) Routine checking of hearing aids and external components of surgically implanted medical devices.

41.113(1) Hearing aids. Each public agency must ensure that hearing aids worn in school by children with hearing impairments, including deafness, are functioning properly.

41.113(2) External components of surgically implanted medical devices.

a. Subject to 41.113(2)"b," each public agency must ensure that the external components of surgically implanted medical devices are functioning properly.

b. For a child with a surgically implanted medical device who is receiving special education and related services under this chapter, a public agency is not responsible for the post-surgical maintenance, programming, or replacement of the medical device that has been surgically implanted or of an external component of the surgically implanted medical device.

281—41.114(256B,34CFR300) Least restrictive environment (LRE).

41.114(1) General. Except as provided in 41.324(4)"a" regarding children with disabilities in adult prisons, each public agency in the state shall have policies and procedures in place to meet the LRE requirements of this rule and rules 41.115(256B,34CFR300) to 41.120(256B,34CFR300).

41.114(2) Public agency assurances. Each public agency must ensure and maintain adequate documentation that:

a. To the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are nondisabled; and

b. Special classes, separate schooling, or other removal of children with disabilities from the general education environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

41.114(3) State funding mechanism. A state funding mechanism must not result in placements that violate the requirements of this rule; and the state must not use a funding mechanism by which funds are distributed on the basis of the type of setting in which a child is served or which will result in the failure to provide a child with a disability FAPE according to the unique needs of the child, as described in the child's IEP.

281—41.115(256B,34CFR300) Continuum of alternative services and placements.

41.115(1) General. Each public agency must ensure that a continuum of alternative services and placements is available to meet the needs of children with disabilities for special education and related services.

41.115(2) Requirements. The continuum required in subrule 41.115(1) must meet the following requirements:

a. Include the alternative placements listed in the definition of special education under rule 41.39(256B,34CFR300) (instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions); and

b. Make provision for supplementary services, such as resource room or itinerant instruction, to be provided in conjunction with regular class placement.

281—41.116(256B,34CFR300) Placements.

41.116(1) General. In determining the educational placement of a child with a disability, including a preschool child with a disability, each public agency must ensure the following:

a. The placement decision shall be made:

(1) By a group of persons, including the parents and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options; and

(2) In conformity with the LRE provisions of this chapter, including rules 41.114(256B,34CFR300) to 41.118(256B,34CFR300);

b. The child's placement shall be:

(1) Determined at least annually;

(2) Based on the child's IEP; and

(3) Located as close as possible to the child's home;

c. Unless the IEP of a child with a disability requires some other arrangement, the child shall be educated in the school that he or she would attend if nondisabled;

d. In selecting the LRE, the agency shall consider any potential harmful effect on the child or on the quality of services that he or she needs; and

e. A child with a disability shall not be removed from education in age-appropriate regular classrooms solely because of needed modifications in the general education curriculum.

41.116(2) Special rule: Iowa Code section 282.9. For eligible individuals subject to Iowa Code section 282.9, any decision of educational setting for such eligible individuals shall be made in accordance with this rule.

41.116(3) Special rule: disciplinary placements. If a child is placed in an interim alternative educational setting pursuant to rules 41.530(256B,34CFR300) and 41.531(256B,34CFR300), that setting shall be determined by the IEP team.

41.116(4) Special considerations. The team establishing the eligible individual's placement must answer the following questions.

a. Questions concerning least restrictive environment. When developing an eligible individual's IEP and placement, the team shall consider the following questions 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 can't these accommodations, modifications and adaptations 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. Questions concerning special school placement. When 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 can't these aids and supports be provided in an integrated setting?

(4) What is the continuum of placements and services available for the eligible individual?

41.116(5) Out-of-state placements. When special education and related services appropriate to an eligible individual's needs are not available within the state, or when appropriate special education and related services in an adjoining state are nearer than the appropriate special education and related services in Iowa, the director may certify an eligible individual for appropriate special education and related services outside the state in accordance with Iowa Code section 273.3 when it has been determined by the department that the special education and related services meet standards set forth in these rules.

41.116(6) Department approval for out-of-state placement. Contracts may be negotiated with out-of-state agencies, in accordance with Iowa Code section 273.3(5), with department approval. The department uses the following procedures to determine if an out-of-state agency meets the rules of the board:

a. When requested to determine an agency's approval status, the department contacts the appropriate state education agency to determine if that state's rules are comparable to those of the board and whether the specified out-of-state agency meets those rules.

b. If the appropriate state education agency's rules are not comparable, the department will contact the out-of-state agency to ascertain if its special education complies with the rules of the board.

41.116(7) Trial placements. Prior to transfer from a special education program or service, an eligible individual may be provided a trial placement in the general education setting of not more than 45 school days. A trial placement shall be incorporated into this individual's IEP.

281—41.117(256B,34CFR300) Nonacademic settings. In providing or arranging for the provision of nonacademic and extracurricular services and activities, including meals, recess periods, and the services and activities set forth in rule 41.107(256B,34CFR300), each public agency must ensure that each child with a disability participates with nondisabled children in the extracurricular services and activities to the maximum extent appropriate to the needs of that child. The public agency must ensure that each child with a disability has the supplementary aids and services determined by the child's IEP team to be appropriate and necessary for the child to participate in nonacademic settings.

281—41.118(256B,34CFR300) Children in public or private institutions. Except as provided in rule 41.149(256B, 34CFR300) regarding agency responsibility for general supervision for some individuals in adult prisons, an SEA must ensure that rule 41.114(256B,34CFR300) is effectively implemented, including, if necessary, making arrangements with public and private institutions such as a memorandum of agreement or special implementation procedures.

281—41.119(256B,34CFR300) Technical assistance and training activities. The state shall carry out activities to ensure that teachers and administrators in all public agencies are fully informed about their responsibilities for implementing rule 41.114(256B,34CFR300) and are provided with technical assistance and training necessary to assist them in this effort. If a public agency is having difficulty in locating an appropriate placement for an eligible individual, the public agency may contact the department for potential assistance.

281—41.120(256B,34CFR300) Monitoring activities. The state shall carry out activities to ensure that rule 41.114(256B,34CFR300) is implemented by each public agency. If there is evidence that a public agency makes placements that are inconsistent with rule 41.114(256B, 34CFR300), the SEA must review the public agency's justification for its actions and assist in planning and implementing any necessary corrective action. Failure of the public agency to implement any necessary corrective action may result in adverse determinations under rule 41.603(256B,34CFR300) or any other available enforcement action.

281—41.121(256B,34CFR300) Procedural safeguards. Each public agency in the state shall meet the requirements of rules 41.500(256B,34CFR300) to 41.536(256B,34CFR300), and children with disabilities and their parents must be afforded the procedural safeguards identified in those rules.

281—41.122(256B,34CFR300) Evaluation. Children with disabilities must be evaluated in accordance with rules 41.300(256B,34CFR300) to 41.313(256B,34CFR300), and each AEA shall develop and use procedures to implement those rules.

281—41.123(256B,34CFR300) Confidentiality of personally identifiable information. All public agencies in the state shall comply with rules 41.610(256B,34CFR300) to 41.626(256B,34CFR300) related to protecting the confidentiality of any personally identifiable information collected, used, or maintained under Part B of the Act.

281—41.124(256B,34CFR300) Transition of children from the Part C program to preschool programs. Each public agency shall comply with the state's policies concerning the transition of infants and toddlers from programs under Part C to programs under Part B of the Act and shall ensure the following regarding such transition:

41.124(1) Smooth transition. Children participating in early intervention programs assisted under Part C of the Act, and who will participate in preschool programs assisted under Part B of the Act, experience a smooth and effective transition to those preschool programs in a manner consistent with Section 637(a)(9) of the Act;

41.124(2) IEP or IFSP developed. By the third birthday of a child described in subrule 41.124(1), an IEP or, if consistent with subrule 41.323(2) and Section 636(d) of the Act, an IFSP has been developed and is being implemented for the child consistent with subrule 41.101(2); and

41.124(3) Participating agencies. Each affected LEA will participate in transition planning conferences arranged by the designated lead agency under Section 635(a)(10) of the Act.

281—41.125 to **41.128** Reserved.

281—41.129(256B,34CFR300) Responsibility regarding children in private schools. Each public agency shall meet the private school requirements in rules 41.130(256,256B, 34CFR300) to 41.148(256B,34CFR300).

281—41.130(256,256B,34CFR300) Definition of parentally placed private school children with disabilities. "Parentally placed private school children with disabilities" means children with disabilities enrolled by their parents in accredited nonpublic, including religious, schools or facilities that meet the definition of elementary school in rule 41.13(256B,34CFR300) or secondary school in rule 41.36(256B,34CFR300), other than children with disabil-

ities covered under rules 41.145(256B,34CFR300) to 41.147(256B,34CFR300).

281—41.131(256,256B,34CFR300) Child find for parentally placed private school children with disabilities.

41.131(1) General. Each AEA must locate, identify, and evaluate all children with disabilities who are enrolled by their parents in accredited nonpublic, including religious, elementary schools and secondary schools located in the school district served by the AEA, in accordance with subrules 41.131(2) to 41.131(5), and rules 41.111(256B, 34CFR300) and 41.201(256B,34CFR300).

41.131(2) Child find design. The child find process must be designed to ensure:

a. The equitable participation of parentally placed private school children; and

b. An accurate count of those children.

41.131(3) Activities. In carrying out the requirements of this rule, the AEA or, if applicable, the SEA must undertake activities similar to the activities undertaken for the agency's public school children.

41.131(4) Cost. The cost of carrying out the child find requirements in this rule, including individual evaluations, may not be considered in determining if an AEA has met its obligation under rule 41.133(256,256B,34CFR300).

41.131(5) Completion period. The child find process must be completed in a time period comparable to that for students attending public schools in the AEA consistent with rule 41.301(256B,34CFR300).

41.131(6) Out-of-state children. Each AEA in which accredited nonpublic, including religious, elementary schools and secondary schools are located must, in carrying out the child find requirements in this rule, include parentally placed private school children who reside in a state other than the state in which the accredited nonpublic schools that they attend is located.

281—41.132(256,256B,34CFR300) Provision of services for parentally placed private school children with disabilities: basic requirement.

41.132(1) General. To the extent consistent with the number and location of children with disabilities who are enrolled by their parents in accredited nonpublic, including religious, elementary schools and secondary schools located in the area served by the AEA, provision is made for the participation of those children in the program assisted or carried out under Part B of the Act by providing them with special education and related services, including direct services determined in accordance with rule 41.137(256,256B,34CFR300), unless the Secretary has arranged for services to those children under the bypass provisions in 34 CFR Sections 300.190 to 300.198.

41.132(2) IEP for parentally placed private school children with disabilities. In accordance with subrule 41.132(1) and rules 41.137(256,256B,34CFR300) to 41.139(256,256B,34CFR300), as well as Iowa Code section 256.12, an IEP must be developed and implemented for each private school child with a disability who has been designated by the AEA in which the private school is located to receive special education and related services under this chapter.

41.132(3) Record keeping. Each AEA must maintain in its records, and provide to the state, the following information related to parentally placed private school children covered under rules 41.130(256,256B,34CFR300) to 41.144(256,256B,34CFR300):

a. The number of children evaluated;

b. The number of children determined to be children with disabilities; and

c. The number of children served.

281—41.133(256,256B,34CFR300) Expenditures.

41.133(1) Formula. To meet the requirement of subrule 41.132(1), each AEA must spend the following on providing special education and related services, including direct services, to parentally placed private school children with disabilities:

a. For children aged 3 to 21, an amount that is the same proportion of the AEA's total subgrant under Section 611(f) of the Act as the number of private school children with disabilities aged 3 to 21 who are enrolled by their parents in private, including religious, elementary schools and secondary schools located in the school district served by the AEA, is to the total number of children with disabilities in its jurisdiction aged 3 to 21.

b. Additional calculation for children aged 3 to 5.

(1) For children aged 3 to 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 to 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 to 5.

(2) As described in 41.133(1)"b"(1), children aged 3 to 5 are considered to be parentally placed private school children with disabilities enrolled by their parents in private, including religious, elementary schools, if and only if they are enrolled in a private school that meets the definition of elementary school in rule 41.13(256B,34CFR300).

c. If an AEA has not expended for equitable services all of the funds described in 41.133(1)"a" and "b" by the end of the fiscal year for which Congress appropriated the funds, the AEA must obligate the remaining funds for special education and related services, including direct services, to parentally placed private school children with disabilities during a carry-over period of one additional year.

41.133(2) Calculating proportionate amount. The state shall calculate each AEA's proportionate share from data provided by each AEA after each AEA has completed the consultation described in rule 41.134(256,256B,34CFR300) and the child count described in rule 41.131(256,256B, 34CFR300) and subrule 41.133(3).

41.133(3) Annual count of the number of parentally placed private school children with disabilities.

a. Each AEA must:

(1) After timely and meaningful consultation with representatives of parentally placed private school children with disabilities, consistent with rule 41.134(256,256B, 34CFR300), determine the number of parentally placed private school children with disabilities attending private schools located in the AEA; and

(2) Ensure that the count is conducted on any date between October 1 and December 1, inclusive, of each year.

b. The count must be used to determine the amount that the AEA must spend on providing special education and related services to parentally placed private school children with disabilities in the next subsequent fiscal year.

41.133(4) Supplement, not supplant. State and local funds may supplement, and in no case supplant, the proportionate amount of federal funds required to be expended for parentally placed private school children with disabilities under this chapter.

EDUCATION DEPARTMENT[281](cont'd)

281—41.134(256,256B,34CFR300) Consultation. To ensure timely and meaningful consultation, an AEA or, if appropriate, an SEA must consult with private school representatives and representatives of parents of parentally placed private school children with disabilities during the design and development of special education and related services for the children regarding the following:

41.134(1) Child find. The child find process shall determine:

a. How parentally placed private school children suspected of having a disability can participate equitably; and

b. How parents, teachers, and private school officials will be informed of the process.

41.134(2) Proportionate share of funds. An explanation that the proportionate share shall be calculated by the state based on data submitted by the AEA, consistent with rule 41.133(256,256B,34CFR300).

41.134(3) Consultation process. The consultation process among the AEA, private school officials, and representatives of parents of parentally placed private school children with disabilities, including how the process will operate throughout the school year to ensure that parentally placed children with disabilities identified through the child find process can meaningfully participate in special education and related services.

41.134(4) Provision of special education and related services. How, where, and by whom special education and related services funded by Part B of the Act under rules 41.130(256,256B,34CFR300) to 41.147(256B,34CFR300) will be provided for parentally placed private school children with disabilities, including a discussion of the following:

a. The types of services, including direct services and alternate service delivery mechanisms;

b. How special education and related services will be apportioned if funds are insufficient to serve all parentally placed private school children;

c. How and when decisions regarding 41.134(4)"a" and "b" will be made;

d. That the consultation process concerns only funds under Part B of the Act, and does not concern special education and related services provided under Iowa Code section 256.12. The consultation process may, but is not required to, include discussions of special education and related services provided under Iowa Code section 256.12.

41.134(5) Written explanation by AEA regarding services. How, if the AEA disagrees with the views of the private school officials on the provision of services or the types of services, whether provided directly or through a contract, the AEA will provide to the private school officials a written explanation of the reasons why the AEA chose not to provide services directly or through a contract.

281—41.135(256,256B,34CFR300) Written affirmation. When timely and meaningful consultation, as required by rule 41.134(256,256B,34CFR300), has occurred, the AEA must obtain a written affirmation signed by the representatives of participating private schools. If the representatives do not provide the affirmation within a reasonable period of time, the AEA must forward the documentation of the consultation process to the SEA.

281—41.136(256,256B,34CFR300) Compliance.

41.136(1) General. A private school official has the right to submit a complaint to the SEA 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 SEA 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 SEA.

c. If the private school official is dissatisfied with the decision of the SEA, the official may submit a complaint to the Secretary by providing the information on noncompliance described in 41.136(2)"a." The SEA must forward the appropriate documentation to the Secretary.

281—41.137(256,256B,34CFR300) Equitable services determined.

41.137(1) No individual right to special education and related services. No parentally placed private school child with a disability has an individual right to receive any special education or related services funded by Part B of the Act and provided pursuant to rules 41.130(256,256B,34CFR300) to 41.147(256B,34CFR300). This subrule shall not be construed as limiting any entitlement or right created by Iowa Code section 256.12.

41.137(2) Decisions. Decisions about the services that will be provided to parentally placed private school children with disabilities funded by Part B of the Act under rules 41.130(256,256B,34CFR300) to 41.144(256,256B,34CFR300) must be made in accordance with subrules 41.134(3) and 41.137(3). The AEA must make the final decisions with respect to the services to be provided to eligible parentally placed private school children with disabilities.

41.137(3) IEP for parentally placed private school children with disabilities. The AEA and LEA must offer to develop an IEP for each child with a disability who is enrolled in a religious or other private school by the child's parents and develop an IEP if one is requested, pursuant to this chapter. An IEP is offered and prepared pursuant to Iowa Code section 256.12. There is no need to prepare a services plan (see rule 41.37(34CFR300)) for such a student. A parent of a child with a disability who is voluntarily enrolled in a private school may not reject an IEP and demand a services plan instead. At any IEP team meeting for a parentally placed private school student with disabilities, the AEA must ensure that a representative of the private school attends each meeting. If the representative cannot attend, the AEA shall use other methods to ensure participation by the private school, including individual or conference telephone calls.

281—41.138(256,256B,34CFR300) Equitable services provided.

41.138(1) General. The services provided to parentally placed private school children with disabilities must be provided by personnel meeting the same standards as personnel providing services in the public schools, except that private elementary school and secondary school teachers who are providing equitable services to parentally placed private school children with disabilities do not have to meet the highly qualified special education teacher requirements of rule 41.18(256B,34CFR300). Parentally placed private school children with disabilities may receive a different amount of services funded by Part B of the Act than children with disabilities in public schools. Nothing in this subrule shall be construed as limiting any entitlement or right created by Iowa Code section 256.12.

41.138(2) Services provided in accordance with an IEP. Each parentally placed private school child with a disability who will receive special education and related services pursuant to the Act and Iowa Code section 256.12 must have an IEP developed in accordance with this chapter.

41.138(3) Provision of equitable services. The provision of services pursuant to this rule and rules 41.139(256,256B,34CFR300) to 41.143(256,256B,34CFR300) must be provided by employees of a public agency or through contract by the public agency with an individual, association, agency, organization, or other entity.

41.138(4) Secular, neutral and nonideological. Special education and related services, including materials and equipment, provided to parentally placed private school 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 Iowa Code section 256.12.

41.139(2) Transportation.

a. General.

(1) If necessary for the child to benefit from or participate in the services provided under this chapter, a parentally placed private school child with a disability must be provided transportation from the child's school or the child's home to a site other than the private school and from the service site to the private school or to the child's home, depending on the timing of the services.

(2) AEAs or LEAs are not required to provide transportation from the child's home to the private school.

b. Cost of transportation. The cost of the transportation described in 41.139(2)"a"(1) may be included in calculating whether the AEA has met the requirement of rule 41.133(256,256B,34CFR300).

281—41.140(256,256B,34CFR300) Due process complaints and state complaints.

41.140(1) When due process complaints available. Pursuant to Iowa Code section 256.12, parents of children with disabilities who are voluntarily placed in accredited nonpublic schools may file a due process complaint as provided in rules 41.504(256B,34CFR300) to 41.519(256B,34CFR300), except as provided in subrule 41.140(2).

41.140(2) When due process complaints unavailable. The procedures in rules 41.504(256B,34CFR300) to 41.519(256B,34CFR300) may not be used to challenge the particular amount of services funded by Part B that a parentally placed private school child with disabilities receives, unless the allegation is made that the child was denied FAPE under Iowa Code section 256.12, but a parent of a child with a disability may file a due process complaint alleging the AEA failed to comply with the child find requirements of rule 41.131(256,256B,34CFR300). A private school official may not file a due process complaint under this chapter.

41.140(3) State complaints. Any complaint that an SEA or AEA has failed to meet the requirements in rules 41.132(256,256B,34CFR300) to 41.135(256,256B,34CFR300) and 41.137(256,256B,34CFR300) to 41.144(256,256B,34CFR300) must be filed in accordance with the procedures described in rules 41.151(256B,34CFR300) to 41.153(256B,34CFR300). A complaint filed by a private school official under subrule 41.136(1) must be filed with the SEA in accordance with the procedures in subrule 41.136(2).

281—41.141(256,256B,34CFR300) Requirement that funds not benefit a private school.

41.141(1) Funds may not benefit private school. An AEA may not use funds provided under Section 611 or 619 of the Act to finance the existing level of instruction in a private school or to otherwise benefit the private school.

41.141(2) Funds only for special education. The AEA must use funds provided under Part B of the Act to meet the special education and related services needs of parentally placed private school children with disabilities, but not for meeting either of the following needs:

a. The needs of a private school; or

b. The general needs of the students enrolled in the private school.

281—41.142(256,256B,34CFR300) Use of personnel.

41.142(1) Use of public school personnel. An AEA may use funds available under Sections 611 and 619 of the Act to make public school personnel available in other than public facilities based on the following two criteria:

a. If and to the extent necessary to provide services under rules 41.130(256,256B,34CFR300) to 41.144(256,256B,34CFR300) for parentally placed private school children with disabilities; and

b. If those services are not normally provided by the private school.

41.142(2) Use of private school personnel. An AEA may use funds available under Sections 611 and 619 of the Act to pay for the services of an employee of a private school to provide services under rules 41.130(256,256B,34CFR300) to 41.144(256,256B,34CFR300) if the following two conditions are met:

a. The employee performs the services outside of the employee's regular hours of duty; and

b. The employee performs the services under public supervision and control.

281—41.143(256,256B,34CFR300) Separate classes prohibited. An AEA may not use funds available under Section 611 or 619 of the Act for classes that are organized separately on the basis of school enrollment or religion of the children if the classes are at the same site; and the classes include both children enrolled in public schools and children enrolled in private schools.

281—41.144(256,256B,34CFR300) Property, equipment, and supplies.

41.144(1) General. A public agency must control and administer the funds used to provide special education and related services under rules 41.137(256,256B,34CFR300) to 41.139(256,256B,34CFR300) and hold title to and administer materials, equipment, and property purchased with those funds for the uses and purposes provided in the Act.

41.144(2) Equipment and supplies on private school premises only while needed. The public agency may place equipment and supplies in a private school for the period of time needed for the Part B program.

41.144(3) Public agency to supervise placement and use of equipment and supplies. The public agency must ensure that the equipment and supplies placed in a private school are used only for Part B purposes and can be removed from the private school without remodeling the private school facility.

41.144(4) Duty to remove equipment and supplies. The public agency must remove equipment and supplies from a private school if the equipment and supplies are no longer

needed for Part B purposes or removal is necessary to avoid unauthorized use of the equipment and supplies for other than Part B purposes.

41.144(5) No Part B funds for repair or construction. No funds under Part B of the Act may be used for repairs, minor remodeling, or construction of private school facilities.

281—41.145(256B,34CFR300) Applicability of rules 41.146(256B,34CFR300) to 41.147(256B,34CFR300). Rules 41.146(256B,34CFR300) and 41.147(256B, 34CFR300) apply only to children with disabilities who are or have been placed in or referred to a private school or facility by a public agency as a means of providing special education and related services.

281—41.146(256B,34CFR300) Responsibility of SEA. Each SEA must ensure the following for each child with a disability who is placed in or referred to a private school or facility by a public agency.

41.146(1) FAPE. The child is provided special education and related services in conformance with an IEP that meets the requirements of rules 41.320(256B,34CFR300) to 41.325(256B,34CFR300) and at no cost to the parents.

41.146(2) Meet state standards. The child is provided an education that meets the standards that apply to education provided by the SEA and LEAs, including the requirements of this chapter except for rule 41.18(256B,34CFR300) and subrule 41.156(3).

41.146(3) All rights. The child has all of the rights of a child with a disability who is served by a public agency.

281—41.147(256B,34CFR300) Implementation by SEA. In implementing rule 41.146(256B,34CFR300), the SEA must monitor compliance through procedures such as written reports, on-site visits, and parent questionnaires; disseminate copies of applicable standards to each private school and facility to which a public agency has referred or placed a child with a disability; and provide an opportunity for those private schools and facilities to participate in the development and revision of state standards that apply to them.

281—41.148(256B,34CFR300) Placement of children by parents when FAPE is at issue.

41.148(1) General. An LEA or AEA is not required to pay for the cost of education, including special education and related services, of a child with a disability at a private school or facility if that agency made FAPE available to the child and the parents elected to place the child in a private school or facility. However, the public agency must include that child in the population whose needs are addressed consistent with rules 41.131(256,256B,34CFR300) to 41.144(256, 256B,34CFR300) and Iowa Code section 256.12.

41.148(2) Disagreements about FAPE. Disagreements between the parents and a public agency regarding the availability of a program appropriate for the child, and the question of financial reimbursement, are subject to the due process procedures in rules 41.504(256B,34CFR300) to 41.520(256B,34CFR300).

41.148(3) Reimbursement for private school placement. If the parents of a child with a disability who previously received special education and related services under the authority of a public agency enroll the child in a private preschool, elementary school, or secondary school without the consent of or referral by the public agency, a court or an administrative law judge may require the agency to reimburse the parents for the cost of that enrollment if the court or administrative law judge finds that the agency had not made FAPE available to the child in a timely manner prior to that enrollment and that the private placement is appropriate. A parental placement may be found to be appropriate by an administrative law judge or a court even if it does not meet the state standards that apply to education provided by the SEA and LEAs.

41.148(4) Limitation on reimbursement. The cost of reimbursement described in subrule 41.148(3) may be reduced or denied in any of the following cases.

a. At the most recent IEP team meeting that the parents attended prior to removal of the child from the public school, the parents did not inform the IEP team that they were rejecting the placement proposed by the public agency to provide FAPE to their child, including stating their concerns and their intent to enroll their child in a private school at public expense.

b. At least ten business days, including any holidays that occur on a business day, prior to the removal of the child from the public school, the parents did not give written notice to the public agency of the information described in 41.148(4)"a."

c. If, prior to the parents' removal of the child from the public school, the public agency informed the parents, through the notice requirements described in 41.503(1)"a," of its intent to evaluate the child, including a statement of the purpose of the evaluation that was appropriate and reasonable, but the parents did not make the child available for the evaluation; or

d. Upon a judicial finding of unreasonableness with respect to actions taken by the parents.

41.148(5) Exceptions. Notwithstanding the notice requirement in 41.148(4)"a" and "b," the cost of reimbursement:

a. Must not be reduced or denied for failure to provide the notice if:

(1) The school prevented the parents from providing the notice;

(2) The parents had not received notice, pursuant to rule 41.504(256B,34CFR300), of the notice requirement in 41.148(4)"a" and "b"; or

(3) Compliance with 41.148(4)"a" and "b" would likely result in physical harm to the child; and

b. May, in the discretion of the court or an administrative law judge, not be reduced or denied for failure to provide this notice if:

(1) The parents are not literate or cannot write in English; or

(2) Compliance with 41.148(4)"a" and "b" would likely result in serious emotional harm to the child.

281—41.149(256B,34CFR300) SEA responsibility for general supervision. The state shall exercise general supervision over the implementation of Part B of the Act and this chapter. Part B of the Act does not limit the responsibility of agencies other than educational agencies for providing or paying for some or all of the costs of FAPE to eligible individuals.

281—41.150 Reserved.

281—41.151(256B,34CFR300) Adoption of state complaint procedures.

41.151(1) General. The state maintains written procedures for the following:

a. Resolving any complaint, including a complaint filed by an organization or individual from another state, that meets the requirements of rule 41.153(256B,34CFR300) by providing for the filing of a complaint with the SEA.

b. Widely disseminating to parents and other interested individuals, including parent training and information centers, protection and advocacy agencies, independent living centers, and other appropriate entities, the state procedures under rules 41.151(256B,34CFR300) to 41.153(256B, 34CFR300).

41.151(2) Remedies for denial of appropriate services. In resolving a complaint in which the state has found a failure to provide appropriate services, the state, pursuant to its general supervisory authority under Part B of the Act, shall address the following:

a. The failure to provide appropriate services, including corrective action appropriate to address the needs of the child, such as compensatory services or monetary reimbursement; and

b. Appropriate future provision of services for all children with disabilities.

281—41.152(256B,34CFR300) Minimum state complaint procedures.

41.152(1) Time limit; minimum procedures. The state shall include in its complaint procedures a time limit of 60 days after a complaint is filed under rule 41.153(256B, 34CFR300) to do the following:

a. Carry out an independent on-site investigation, if the state determines that an investigation is necessary;

b. Give the complainant the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint;

c. Provide the public agency with the opportunity to respond to the complaint, including, at a minimum:

(1) At the discretion of the public agency, a proposal to resolve the complaint; and

(2) An opportunity for a parent who has filed a complaint and the public agency to voluntarily engage in mediation consistent with rule 41.506(256B,34CFR300);

d. Review all relevant information and make an independent determination as to whether the public agency is violating a requirement of Part B of the Act or of this chapter; and

e. Issue a written decision to the complainant that addresses each allegation in the complaint and contains:

(1) Findings of fact and conclusions; and

(2) The reasons for the state's final decision.

41.152(2) Time extension; final decision; implementation. The state's procedures described in subrule 41.152(1) shall do the following:

a. Permit an extension of the time limit under subrule 41.152(1) only if:

(1) Exceptional circumstances exist with respect to a particular complaint; or

(2) The parent or individual or organization and the public agency involved agree to extend the time to engage in mediation pursuant to 41.152(1)"c"(2), or to engage in other alternative means of dispute resolution, if available in the state; and

b. Include procedures for effective implementation of the state's final decision, if needed, including:

(1) Technical assistance activities;

(2) Negotiations; and

(3) Corrective actions to achieve compliance.

41.152(3) Complaints filed under this rule and due process hearings. If a written complaint is received that is also the subject of a due process hearing under rule 41.507(256B, 34CFR300) or 41.530(256B,34CFR300) to 41.532(256B, 34CFR300), or that contains multiple issues of which one or more are part of that hearing, the state must set aside any part of the complaint that is being addressed in the due process hearing until the conclusion of the hearing. However, any issue in the complaint that is not a part of the due process action must be resolved using the time limit and procedures described in subrules 41.152(1) and 41.152(2). If an issue raised in a complaint filed under this rule has previously been decided in a due process hearing involving the same parties, the due process hearing decision is binding on that issue and the state must inform the complainant to that effect. A complaint alleging a public agency's failure to implement a due process hearing decision must be resolved by the state.

281—41.153(256B,34CFR300) Filing a complaint.

41.153(1) Complainant. An organization or individual may file a signed written complaint under the procedures described in rules 41.151(256B,34CFR300) and 41.152(256B, 34CFR300).

41.153(2) Contents of complaint. The complaint must include the following:

a. A statement that a public agency has violated a requirement of Part B of the Act or of this chapter;

b. The facts on which the statement is based;

c. The signature and contact information for the complainant; and

d. If alleging violations with respect to a specific child:

(1) The name and address of the residence of the child;

(2) The name of the school the child is attending;

(3) In the case of a homeless child or youth within the meaning of Section 725(2) of the McKinney-Vento Homeless Assistance Act, 42 U.S.C. 11434a(2), available contact information for the child, and the name of the school the child is attending;

(4) A description of the nature of the problem of the child, including facts relating to the problem; and

(5) A proposed resolution of the problem to the extent known and available to the party at the time the complaint is filed.

41.153(3) Time limit. The complaint must allege a violation that occurred not more than one year prior to the date that the complaint is received in accordance with rule 41.151(256B,34CFR300).

41.153(4) Complainant must provide copy of complaint to LEA. The party filing the complaint must forward a copy of the complaint to the 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 decision, mediation agreement, resolution meeting agreement. A complainant may allege a public agency has failed to comply with a due process hearing, 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 noneduca-

tional 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 41.5(256B,34CFR300) relating to assistive technology devices, rule 41.6(256B,34CFR300) relating to assistive technology services, rule 41.34(256B,34CFR300) relating to related services, rule 41.42(256B,34CFR300) relating to supplementary aids and services, and rule 41.43(256B,34CFR300) relating to transition services) that are necessary for ensuring FAPE to children with disabilities within the state, the public agency must fulfill that obligation or responsibility, either directly or through contract or other arrangement pursuant to subrule 41.154(1) or an agreement pursuant to subrule 41.154(3).

(2) A noneducational public agency described in 41.154(2)"a"(1) may not disqualify an eligible service for Medicaid reimbursement because that service is provided in a school context.

b. Failure to comply with general rule. If a public agency other than an educational agency fails to provide or pay for the special education and related services described in 41.154(2)"a," the LEA (or state agency responsible for developing the child's IEP) must provide or pay for these services to the child in a timely manner. The LEA or state agency is authorized to claim reimbursement for the services from the noneducational public agency that failed to provide or pay for these services, and that agency must reimburse the LEA or state agency in accordance with the terms of the interagency agreement or other mechanism described in subrule 41.154(1).

41.154(3) Special rule. The requirements of subrule 41.154(1) may be met through the following:

a. State statute or regulation;

b. Signed agreements between respective agency officials that clearly identify the responsibilities of each agency relating to the provision of services; or

c. Other appropriate written methods as determined by the chief executive officer of the state or designee of that officer and approved by the Secretary.

41.154(4) Children with disabilities who are covered by public benefits or insurance.

a. General. A public agency may use the Medicaid or other public benefits or insurance programs in which a child participates to provide or pay for services required under this chapter, as permitted under the public benefits or insurance program, except as provided in 41.154(4)"b."

b. Exceptions to ability to use public benefits or insurance. With regard to services required to provide FAPE to an eligible child under this chapter, the public agency:

(1) May not require parents to sign up for or enroll in public benefits or insurance programs in order for their child to receive FAPE under Part B of the Act;

(2) May not require parents to incur an out-of-pocket expense such as the payment of a deductible or copay amount incurred in filing a claim for services provided pursuant to this chapter but, pursuant to 41.154(6)"b," may pay the cost that the parents otherwise would be required to pay;

(3) May not use a child's benefits under a public benefits or insurance program if that use would do any of the following:

1. Decrease available lifetime coverage or any other insured benefit;

2. Result in the family's paying for services that would otherwise be covered by the public benefits or insurance program and that are required for the child outside of the time the child is in school;

3. Increase premiums or lead to the discontinuation of benefits or insurance; or

4. Risk loss of eligibility for home- and community-based waivers, based on aggregate health-related expenditures; and

(4) Must obtain parental consent, consistent with rule 41.9(256B,34CFR300), each time that access to public benefits or insurance is sought and notify parents that the parents' refusal to allow access to their public benefits or insurance does not relieve the public agency of its responsibility to ensure that all required services are provided at no cost to the parents.

41.154(5) Children with disabilities who are covered by private insurance.

a. General. With regard to services required to provide FAPE to an eligible child under this chapter, a public agency may access the parents' private insurance proceeds only if the parents provide consent consistent with rule 41.9(256B,34CFR300).

b. Obtaining access to private insurance proceeds. Each time the public agency proposes to access the parents' private insurance proceeds, the agency must:

(1) Obtain parental consent in accordance with 41.154(5)"a"; and

(2) Inform the parents that their refusal to permit the public agency to access their private insurance does not relieve the public agency of its responsibility to ensure that all required services are provided at no cost to the parents.

41.154(6) Use of Part B funds.

a. Agency unable to obtain consent. If a public agency is unable to obtain parental consent to use the parents' private insurance, or public benefits or insurance when the parents would incur a cost for a specified service required under this chapter, to ensure FAPE, the public agency may use its Part B funds to pay for the service.

b. Use of Part B funds to avoid cost to parents. To avoid financial cost to parents who otherwise would consent to use private insurance, or public benefits or insurance if the parents would incur a cost, the public agency may use its Part B funds to pay the cost that the parents otherwise would have to pay to use the parents' benefits or insurance (e.g., the deductible or copay amounts).

41.154(7) Proceeds from public benefits or insurance or private insurance. Proceeds from public benefits or insur-

ance or private insurance will not be treated as program income for purposes of 34 CFR 80.25. If a public agency spends reimbursements from federal funds (e.g., Medicaid) for services under this chapter, those funds will not be considered state or local funds for purposes of the maintenance of effort provisions in rules 41.163(256B,34CFR300) and 41.203(256B,34CFR300).

41.154(8) Rule of construction. Nothing in this chapter should be construed to alter the requirements imposed on a state Medicaid agency, or any other agency administering a public benefits or insurance program by federal statute, 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.

281—41.155(256B,34CFR300) Hearings relating to AEA or LEA eligibility. The SEA 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, a state must adopt a policy that includes a requirement that AEAs and LEAs in the state take measurable steps to recruit, hire, train, and retain highly qualified personnel to provide special education and related services under Part B of the Act and this chapter to children with disabilities.

41.156(5) Rule of construction. Notwithstanding any other individual right of action that a parent or student may maintain under this chapter, nothing in this chapter shall be construed to create a right of action on behalf of an individual student or a class of students for the failure of a particular SEA, AEA, or LEA employee to be highly qualified, or to prevent a parent from filing a complaint about staff qualifications with the SEA as provided for under this chapter.

281—41.157 to **41.161** Reserved.

281—41.162(256B,34CFR300) Supplementation of state, local, and other federal funds.

41.162(1) Expenditures. Funds paid to a state under this chapter must be expended in accordance with all the provisions of this chapter.

41.162(2) Prohibition against commingling.

a. Funds paid to a state under this chapter must not be commingled with state funds.

b. The requirement in 41.162(2)"a" is satisfied by the use of a separate accounting system that includes an audit trail of the expenditure of funds paid to a state under this chapter. Separate bank accounts are not required. (See 34 CFR 76.702, fiscal control and fund accounting procedures.)

41.162(3) State-level nonsupplanting.

a. Except as provided in rule 41.202(256B,34CFR300), funds paid to a state under Part B of the Act must be used to supplement the level of federal, state, and local funds, including funds that are not under the direct control of the SEA or LEAs, expended for special education and related services provided to children with disabilities under Part B of the Act, and in no case to supplant those federal, state, and local funds.

b. If the state provides clear and convincing evidence that all children with disabilities have available to them FAPE, the Secretary may waive, in whole or in part, the requirements of 41.162(3)"a" if the Secretary concurs with the evidence provided by the state under 34 CFR Section 300.164.

281—41.163(256B,34CFR300) Maintenance of state financial support. The state must not reduce the amount of state financial support for special education and related services for children with disabilities, or otherwise made available because of the excess costs of educating those children, below the amount of that support for the preceding fiscal year.

281—41.164 Reserved.

281—41.165(256B,34CFR300) Public participation.

41.165(1) General. Prior to the adoption of any policies and procedures needed to comply with Part B of the Act, including any amendments to those policies and procedures, the state must ensure that there are public hearings, adequate notice of the hearings, and an opportunity for comment available to the general public, including individuals with disabilities and parents of children with disabilities.

41.165(2) State plan. Before submitting a state plan under this chapter, the state must comply with the public participation requirements in subrule 41.165(1) and those in 20 U.S.C. 1232d(b)(7).

281—41.166(256B,34CFR300) Rule of construction. In complying with rules 41.162(256B,34CFR300) and 41.163(256B,34CFR300), the state may not use funds paid to it under this chapter to satisfy state-mandated funding obligations to LEAs, including funding based on student attendance or enrollment, or inflation.

281—41.167(256B,34CFR300) State advisory panel. An advisory panel is established and maintained for the purpose of providing policy guidance with respect to special educa-

tion 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 SEA 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 SEA in developing evaluations and reporting on data to the Secretary under Section 618 of the Act;

4. Advise the SEA in developing corrective action plans to address findings identified in federal monitoring reports under Part B of the Act; and

5. Advise the SEA in developing and implementing policies relating to the coordination of services for children with disabilities.

281—41.170(256B,34CFR300) Suspension and expulsion rates.

41.170(1) General. The SEA 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 SEA must review and, if appropriate, revise (or require the affected state agency or LEA to revise) its policies, procedures, and practices relating to the development and implementation of IEPs, the use of positive behavioral interventions and supports, and procedural safeguards to ensure that these policies, procedures, and practices comply with the Act.

281—41.171 Reserved.

281—41.172(256B,34CFR300) Access to instructional materials.

41.172(1) General. The state:

a. Adopts the National Instructional Materials Accessibility Standard (NIMAS) published in the Federal Register on July 19, 2006, (71 Fed. Reg. 41084) for the purposes of providing instructional materials to blind persons or other persons with print disabilities in a timely manner; and

b. Establishes the following definition of "timely manner" for purposes of this chapter: Providing instructional materials in accessible formats to children with disabilities in a "timely manner" means delivering those accessible instructional materials at the same time as other children receive instructional materials.

41.172(2) Public agencies. All public agencies must comply with rule 41.210(256B,34CFR300).

41.172(3) Assistive technology. In carrying out this rule, the SEA, 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 SEA designed to prevent the inappropriate overidentification or disproportionate representation by race and ethnicity of children as children with disabilities, including children with disabilities with a particular impairment.

281—41.174(256B,34CFR300) Prohibition on mandatory medication.

41.174(1) General. No public agency personnel are permitted to require parents to obtain a prescription for substances identified under Schedule I, II, III, IV, or V in Section 202(c) of the Controlled Substances Act (21 U.S.C. 812(c)) for a child as a condition of attending school, receiving an evaluation or services under Part B or this chapter.

41.174(2) Rule of construction. Nothing in subrule 41.174(1) shall be construed to create a federal prohibition against teachers and other school personnel consulting or sharing classroom-based observations with parents or guardians regarding a student's academic and functional performance, or behavior in the classroom or school, or regarding the need for evaluation for special education or related services under rule 41.111(256B,34CFR300) related to child find.

281—41.175 Reserved.

281—41.176(256B) Special school provisions.

41.176(1) Providers. Special schools for eligible individuals who require special education outside the general education environment may be maintained by individual LEAs, jointly by two or more LEAs, by the AEA, jointly by two or more AEAs, by the state directly, or by approved private providers.

41.176(2) Department recognition. Department recognition of agencies providing special education and related services shall be of two types:

a. Recognition of nonpublic agencies and state-operated programs providing special education and related services in compliance with these rules.

b. Approval for nonpublic agencies to provide special education and related services and to receive special educa-

tion funds for the special education and related services contracted for by an LEA or an AEA.

281—41.177(256B) Facilities.

41.177(1) Equivalent to general education. Each agency providing special education and related services shall supply facilities which shall be at least equivalent in quality to general education classrooms in the system, located in buildings housing regularly enrolled individuals of comparable ages, and readily accessible to individuals with disabilities.

41.177(2) Personnel space and assistance. Each agency providing special education shall ensure that special education personnel are provided adequate access to telephone service and clerical assistance and sufficient and appropriate work space regularly available for their use that is readily accessible to individuals with disabilities.

281—41.178(256B) Materials, equipment and assistive technology.

41.178(1) Provision for materials, equipment, and assistive technology. Each LEA shall make provision for special education and related services, facility modifications, assistive technology, necessary equipment and materials, including both durable items and expendable supplies; provided that, where an AEA, pursuant to appropriate arrangements authorized by the Iowa Code, furnishes special education and related services, performance by the AEA shall be accepted in lieu of performance by the LEA.

41.178(2) Acquire and maintain equipment. Each agency providing special education and related services shall have a comprehensive program in operation under which equipment for special education is acquired, inventoried, maintained, calibrated and replaced on a planned and regular basis.

281—41.179 to **41.185** Reserved.

281—41.186(256B,34CFR300) Assistance under other federal programs. Part B of the Act may not be construed to permit a state to reduce medical and other assistance available, or to alter eligibility, under Titles V and XIX of the Social Security Act with respect to the provision of FAPE to children with disabilities in the state.

281—41.187(256B) Research, innovation, and improvement.

41.187(1) Evaluation and improvement. Each agency, in conjunction with other agencies, the department, or both, shall implement activities designed to evaluate and improve special education. These activities shall document the individual performance resulting from the provision of special education.

41.187(2) Research. Each agency shall cooperate in research activities designed to evaluate and improve special education when such activities are sponsored by an LEA, an AEA or the department, or another agency, when approved by the department, to assess and ensure the effectiveness of efforts to educate all children with disabilities.

41.187(3) Support and facilitation. State rules, regulations, and policies under Part B of the Act must support and facilitate AEA, LEA and school-level system improvement designed to enable children with disabilities to meet the challenging state student academic achievement standards.

281—41.188 to **41.199** Reserved.

DIVISION IV

LEA AND AEA ELIGIBILITY, IN GENERAL

281—41.200(256B,34CFR300) Condition of assistance. An AEA or an LEA is eligible for assistance under Part B of the Act for a fiscal year if the agency submits a plan that provides assurances to the state that the LEA meets each of the conditions in rules 41.201(256B,34CFR300) to 41.213(256B,34CFR300).

41.200(1) Required descriptions, policies and procedures. Each AEA shall submit to the department the policies and procedures identified in subrules 41.407(1) and 41.407(2) and other descriptions that may be required by the department for approval. Any modifications to an AEA's descriptions, policies or procedures shall be submitted to the department for approval.

41.200(2) AEA application. Each AEA shall submit to the department, 45 calendar days prior to the start of the project year, an application for federal funds under Part B of the Act, implementing federal regulations, and this chapter. An AEA application shall receive department approval only when there is an approved AEA comprehensive plan as described in rule 281—72.9(273) on file at the department and the requirements of subrule 41.200(1) have been met. The application, on forms provided by the department, shall include the following:

a. General information.

b. Utilization of funds.

c. Assurances.

281—41.201(256B,34CFR300) Consistency with state policies. The AEA or LEA, in providing for the education of children with disabilities within its jurisdiction, must have in effect policies, procedures, and programs that are consistent with the state policies and procedures established under 41.101(256B,34CFR300) to 41.163(256B,34CFR300) and 41.165(256B,34CFR300) to 41.187(256B).

281—41.202(256B,34CFR300) Use of amounts.

41.202(1) General. Amounts provided to the AEA or LEA under Part B of the Act must be:

a. Expended in accordance with the applicable provisions of Part B of the Act and this chapter;

b. Used only to pay the excess costs of providing special education and related services to children with disabilities, consistent with subrule 41.202(2); and

c. Used to supplement state, local, and other federal funds, and not to supplant those funds.

41.202(2) Excess cost requirement.

a. General.

(1) The excess cost requirement prevents an AEA or LEA from using funds provided under Part B of the Act to pay for all of the costs directly attributable to the education of a child with a disability, subject to 41.202(2)"a"(2).

(2) The excess cost requirement does not prevent an AEA or LEA from using Part B funds to pay for all of the costs directly attributable to the education of a child with a disability aged 3 to 5 or 18 to 20 if no local or state funds are available for nondisabled children of these ages. However, the AEA or LEA must comply with the nonsupplanting and other requirements of Part B of the Act and of this chapter in providing the education and services for these children.

b. Meeting excess cost requirement.

(1) An AEA or LEA meets the excess cost requirement if it has spent at least a minimum average amount for the education of its children with disabilities before funds under Part B of the Act are used.

(2) The amount described in 41.202(2)"b"(1) is determined in accordance with the definition of excess costs in rule 41.16(256B,34CFR300). That amount may not include capital outlay or debt service.

c. Joint establishment of eligibility. If two or more AEAs or LEAs jointly establish eligibility in accordance with rule 41.223(256B,34CFR300), the minimum average amount is the average of the combined minimum average amounts determined in accordance with the definition of excess costs in rule 41.16(256B,34CFR300) in those agencies for elementary or secondary school students, as the case may be.

281—41.203(256B,34CFR300) Maintenance of effort.

41.203(1) General. Except as provided in rules 41.204(256B,34CFR300) and 41.205(256B,34CFR300), funds provided to an AEA or LEA under Part B of the Act must not be used to reduce the level of expenditures for the education of children with disabilities made by the AEA or LEA from local funds below the level of those expenditures for the preceding fiscal year.

41.203(2) Standard.

a. Except as provided in 41.203(2)"b," the SEA must determine that an AEA or LEA complies with subrule 41.203(1) for purposes of establishing the LEA's eligibility for an award for a fiscal year if the AEA or LEA budgets, for the education of children with disabilities, at least the same total or per capita amount from either of the following sources as the LEA spent for that purpose from the same source for the most recent prior year for which information is available:

(1) Local funds only.

(2) The combination of state and local funds.

b. An AEA or LEA that relies on 41.203(2)"a"(1) for any fiscal year must ensure that the amount of local funds it budgets for the education of children with disabilities in that year is at least the same, either in total or per capita, as the amount it spent for that purpose in the most recent fiscal year for which information is available and the standard in 41.203(2)"a"(1) was used to establish its compliance with this rule.

c. The SEA may not consider any expenditures made from funds provided by the federal government for which the SEA is required to account to the federal government or for which the AEA or LEA is required to account to the federal government directly or through the SEA in determining an AEA's or LEA's compliance with the requirement in subrule 41.203(1).

281—41.204(256B,34CFR300) Exception to maintenance of effort. Notwithstanding the restriction in subrule 41.203(1), an AEA or LEA may reduce the level of expenditures by the AEA or LEA under Part B of the Act below the level of those expenditures for the preceding fiscal year if the reduction is attributable to any of the following:

41.204(1) Departure of personnel. The voluntary departure, by retirement or otherwise, or departure for just cause, of special education or related services personnel.

41.204(2) Decrease in enrollment. A decrease in the enrollment of children with disabilities.

41.204(3) Termination of obligation to provide an "exceptionally costly" program to a particular child. The termination of the obligation of the agency to provide a program of special education to a particular child with a disability that is an exceptionally costly program, as determined by the SEA, because the child:

a. Has left the jurisdiction of the agency;

b. Has reached the age at which the obligation of the agency to provide FAPE to the child has terminated; or

c. No longer needs the program of special education.

41.204(4) Termination of costly expenditures for long-term purchases. The termination of costly expenditures for long-term purchases, such as the acquisition of equipment or the construction of school facilities.

41.204(5) High-cost fund. The assumption of cost by the high-cost fund operated by the state under this chapter.

281—41.205(256B,34CFR300) Adjustment to local fiscal efforts in certain fiscal years.

41.205(1) Amounts in excess. Notwithstanding 41.202(1)"b," 41.202(2), and 41.203(1), and except as provided in 41.205(4) and 41.230(5)"b," for any fiscal year for which the allocation received by an LEA under rule 41.705(256B,34CFR300) exceeds the amount the LEA received for the previous fiscal year, the LEA may reduce the level of expenditures otherwise required by subrule 41.203(1) by not more than 50 percent of the amount of that excess.

41.205(2) Use of amounts to carry out activities under ESEA. If an LEA exercises the authority under subrule 41.205(1), the LEA must use an amount of local funds equal to the reduction in expenditures under subrule 41.205(1) to carry out activities that could be supported with funds under the ESEA regardless of whether the LEA is using funds under the ESEA for those activities.

41.205(3) State prohibition. Notwithstanding subrule 41.205(1), if the SEA determines that an LEA is unable to establish and maintain programs of FAPE that meet the requirements of Section 613(a) of the Act and of this chapter or the SEA has taken action against the LEA under Section 616 of the Act and rules 41.600(256B,34CFR300) to 41.609(256B,34CFR300), the SEA must prohibit the LEA from reducing the level of expenditures under subrule 41.205(1) for that fiscal year.

41.205(4) Special rule. The amount of funds expended by an LEA for early intervening services under rule 41.226(256B,34CFR300) shall count toward the maximum amount of expenditures that the LEA may reduce under subrule 41.205(1).

281—41.206(256B,34CFR300) Schoolwide programs under Title I of the ESEA.

41.206(1) General. Notwithstanding the provisions of rules 41.202(256B,34CFR300) and 41.203(256B,34CFR300) or any other provision of Part B of the Act, an LEA may use funds received under Part B of the Act for any fiscal year to carry out a schoolwide program under Section 1114 of the ESEA, except that the amount used in any schoolwide program may not exceed the amount received by the LEA under Part B of the Act for that fiscal year; divided by the number of children with disabilities in the jurisdiction of the LEA; and multiplied by the number of children with disabilities participating in the schoolwide program.

41.206(2) Funding conditions. The funds described in subrule 41.206(1) are subject to the following conditions:

a. The funds must be considered as federal Part B funds for purposes of the calculations required by 41.202(1)"b" and "c."

b. The funds may be used without regard to the requirements of 41.202(1)"a."

41.206(3) Meeting other Part B requirements. Except as provided in subrule 41.206(2), all other requirements of Part B of the Act must be met by an LEA using Part B funds in accordance with subrule 41.206(1), including ensuring that children with disabilities in schoolwide program schools:

EDUCATION DEPARTMENT[281](cont'd)

a. Receive services in accordance with a properly developed IEP; and

b. Are afforded all of the rights and services guaranteed to children with disabilities under the Act.

281—41.207(256B,34CFR300) Personnel development. Each public agency must ensure that all personnel necessary to carry out Part B of the Act are appropriately and adequately prepared, subject to the requirements of rule 41.156(256B,34CFR300) related to personnel qualifications and Section 2122 of the ESEA.

281—41.208(256B,34CFR300) Permissive use of funds.

41.208(1) Uses. Notwithstanding rule 41.202(256B, 34CFR300) and subrules 41.203(1) and 41.162(2), funds provided to an LEA under Part B of the Act may be used for the following activities:

a. Services and aids that also benefit nondisabled children. For the costs of special education and related services and supplementary aids and services provided in a regular class or other education-related setting to a child with a disability in accordance with the IEP of the child, even if one or more nondisabled children benefit from these services. This provision may not be construed to apply to rules 41.172(256B,34CFR300) and 41.210(256B,34CFR300).

b. Early intervening services. To develop and implement coordinated, early intervening educational services in accordance with rule 41.226(256B,34CFR300). Such development and implementation may be required by the SEA under subrule 41.646(2).

c. High-cost special education and related services. To establish and implement cost- or risk-sharing funds, consortia, or cooperatives for the LEA itself, or for LEAs working in a consortium of which the LEA is a part, to pay for high-cost special education and related services.

41.208(2) Administrative case management. An LEA may use funds received under Part B of the Act to purchase appropriate technology for record keeping, data collection, and related case management activities of teachers and related services personnel providing services described in the IEP of children with disabilities, that is needed for the implementation of those case management activities.

281—41.209(256B,34CFR300) Treatment of charter schools and their students.

41.209(1) Rights of children with disabilities. Children with disabilities who attend public charter schools and their parents retain all rights under this chapter.

41.209(2) Charter schools that are public schools of the LEA.

a. General. In carrying out Part B of the Act and these rules with respect to charter schools that are public schools of the LEA, the LEA must:

(1) Serve children with disabilities attending those charter schools in the same manner as the LEA serves children with disabilities in its other schools, including providing supplementary and related services on site at the charter school to the same extent to which the LEA has a policy or practice of providing such services on the site to its other public schools; and

(2) Provide funds under Part B of the Act to those charter schools:

1. On the same basis as the LEA provides funds to the LEA's other public schools, including proportional distribution based on relative enrollment of children with disabilities; and

2. At the same time as the LEA distributes other federal funds to the LEA's other public schools, consistent with the state's charter school law.

b. Relationship to rule 41.705(256B,34CFR300). If the public charter school is a school of an LEA that receives funding under rule 41.705(256B,34CFR300) and includes other public schools:

(1) The LEA is responsible for ensuring that the requirements of this chapter are met, unless state law assigns that responsibility to some other entity; and

(2) The LEA must meet the requirements of 41.209(2)"a."

281—41.210(256B,34CFR300) Purchase of instructional materials.

41.210(1) General. An AEA, an LEA, or any other public agency, when purchasing print instructional materials, must acquire those instructional materials for children who are blind or 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 are not included under the definition of blind 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 SEA chooses to coordinate with the NIMAC, an AEA, an LEA, or any other public agency must:

a. As part of any print instructional materials adoption process, procurement contract, or other practice or instrument used for purchase of print instructional materials, enter into a written contract with the publisher of the print instructional materials to:

(1) Require the publisher to prepare and, on or before delivery of the print instructional materials, provide to NIMAC electronic files containing the contents of the print instructional materials using the NIMAS; or

(2) Purchase instructional materials from the publisher that are produced in, or may be rendered in, specialized formats.

b. Provide instructional materials to blind persons or other persons with print disabilities in a timely manner.

41.210(4) Definitions. The following definitions apply to this rule and rule 41.172(256B,34CFR300), and apply to each state and LEA, regardless of whether the state or LEA chooses to coordinate with the NIMAC:

a. "Blind persons or other persons with print disabilities" means children served under this chapter who may qualify to receive books and other publications produced in specialized formats in accordance with 2 U.S.C. 135a and 36 CFR 701.6.

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.

EDUCATION DEPARTMENT[281](cont'd)

281—41.211(256B,34CFR300) Information for SEA. Each public agency shall provide the SEA with information necessary to enable the SEA to carry out its duties under Part B of the Act, including, with respect to 34 CFR Sections 300.157 and 300.160, information relating to the performance of children with disabilities participating in programs carried out under Part B of the Act. This information shall be submitted in a manner and at a time determined by the SEA. Failure to submit timely and accurate information may be considered by the SEA in making the determinations under rule 41.603(256B,34CFR300) or in taking any other action to enforce Part B of the Act or this chapter.

281—41.212(256B,34CFR300) Public information. Each public agency must make available to parents of children with disabilities and to the general public all documents relating to the eligibility of the agency under Part B of the Act.

281—41.213(256B,34CFR300) Records regarding migratory children with disabilities. Each AEA or LEA must cooperate in the Secretary's efforts under Section 1308 of the ESEA to ensure the linkage of records pertaining to migratory children with disabilities for the purpose of electronically exchanging, among the states, health and educational information regarding those children.

281—41.214 to **41.219** Reserved.

281—41.220(256B,34CFR300) Exception for prior local plans.

41.220(1) General. If an AEA or LEA or a state agency described in rule 41.228(256B,34CFR300) has on file with the SEA policies and procedures that demonstrate that the AEA or LEA or state agency meets any requirement of 41.200(256B,34CFR300), including any policies and procedures filed under Part B of the Act as in effect before December 3, 2004, the SEA must consider the AEA or LEA or state agency to have met that requirement for purposes of receiving assistance under Part B of the Act.

41.220(2) Modification made by an AEA or LEA or state agency. Subject to subrule 41.220(3), policies and procedures submitted by an LEA or a state agency remain in effect until the AEA or LEA or state agency submits to the SEA the modifications that the AEA or LEA or state agency determines are necessary.

41.220(3) Modifications required by the SEA. The SEA may require an AEA or LEA or a state agency to modify its policies and procedures, but only to the extent necessary to ensure the LEA's or state agency's compliance with Part B of the Act or state law, if:

a. After December 3, 2004, the effective date of the Individuals with Disabilities Education Improvement Act of 2004, the applicable provisions of the Act, or the regulations developed to carry out the Act, are amended;

b. There is a new interpretation of an applicable provision of the Act by federal or state courts; or

c. There is an official finding of noncompliance with federal or state law or regulations.

281—41.221(256B,34CFR300) Notification of AEA or LEA or state agency in case of ineligibility. If the state determines that an AEA or LEA or state agency is not eligible under Part B of the Act, then the state must notify the AEA or LEA or state agency of that determination and provide the AEA or LEA or state agency with reasonable notice and an opportunity for a hearing. This hearing shall not be considered a contested case under Iowa Code chapter 17A.

281—41.222(256B,34CFR300) AEA or LEA and state agency compliance.

41.222(1) General. If the state, after reasonable notice and an opportunity for a hearing, finds that an AEA or LEA or state agency that has been determined to be eligible under this chapter is failing to comply with any requirement described in rules 41.201(256B,34CFR300) to 41.213(256B,34CFR300), the state must reduce or must not provide any further payments to the AEA or LEA or state agency until the state is satisfied that the AEA or LEA or state agency is complying with that requirement.

41.222(2) Notice requirement. Any state agency or AEA or LEA in receipt of a notice described in subrule 41.222(1), by means of public notice, must take the measures necessary to bring the pendency of an action pursuant to this rule to the attention of the public within the jurisdiction of the agency.

41.222(3) Consideration. In carrying out its responsibilities under this rule, the state must consider any decision resulting from a hearing held under rules 41.511(256B,34CFR300) to 41.533(256B,34CFR300) that is adverse to the AEA or LEA or state agency involved in the decision.

281—41.223(256B,34CFR300) Joint establishment of eligibility.

41.223(1) General. The state may require an AEA or LEA to establish its eligibility jointly with another AEA or LEA if the state determines that the AEA or LEA will be ineligible because the agency will not be able to establish and maintain programs of sufficient size and scope to effectively meet the needs of children with disabilities.

41.223(2) Reserved.

41.223(3) Amount of payments. If the state requires the joint establishment of eligibility under subrule 41.223(1), the total amount of funds made available to the affected AEAs or LEAs must be equal to the sum of the payments that each AEA or LEA would have received under rule 41.705(256B,34CFR300) if the agencies were eligible for those payments.

281—41.224(256B,34CFR300) Requirements for jointly establishing eligibility.

41.224(1) Requirements for AEAs or LEAs in general. AEAs or LEAs that establish joint eligibility under this rule must:

a. Adopt policies and procedures that are consistent with the state's policies and procedures under rules 41.101(256B,34CFR300) to 41.163(256B,34CFR300) and 41.165(256B,34CFR300) to 41.187(256B); and

b. Be jointly responsible for implementing programs that receive assistance under Part B of the Act.

41.224(2) Requirements for educational service agencies in general. If an educational service agency is required by state law to carry out programs under Part B of the Act, the joint responsibilities given to AEAs or LEAs under Part B of the Act:

a. Do not apply to the administration and disbursement of any payments received by that educational service agency; and

b. Must be carried out only by that educational service agency.

41.224(3) Additional requirement. Notwithstanding any other provision of rule 41.223(256B,34CFR300) and this rule, an educational service agency must provide for the education of children with disabilities in the least restrictive environment, as required by this chapter.

281—41.225 Reserved.

EDUCATION DEPARTMENT[281](cont'd)

281—41.226(256B,34CFR300) Early intervening services.

41.226(1) General. An AEA or LEA may not use more than 15 percent of the amount the AEA or LEA receives under Part B of the Act for any fiscal year, less any amount reduced by the AEA or LEA pursuant to rule 41.205(256B,34CFR300), if any, in combination with other amounts, which may include amounts other than education funds, to develop and implement coordinated, early intervening services, which may include interagency financing structures, for students in kindergarten through grade 12, with a particular emphasis on students in kindergarten through grade 3, who are not currently identified as needing special education or related services, but who need additional academic and behavioral support to succeed in a general education environment.

41.226(2) Activities. In implementing coordinated, early intervening services under this rule, an AEA or LEA may carry out activities that include:

a. Professional development, which may be provided by other entities, for teachers and other school staff to enable such personnel to deliver scientifically based academic and behavioral interventions, including scientifically based literacy instruction and, where appropriate, instruction on the use of adaptive and instructional software; and

b. Providing educational and behavioral evaluations, services, and supports, including scientifically based literacy instruction.

41.226(3) Construction. Nothing in this rule shall be construed to either limit or create a right to FAPE under Part B of the Act or to delay appropriate evaluation of a child suspected of having a disability.

41.226(4) Reporting: in general. Each AEA or LEA that develops and maintains coordinated, early intervening services under this rule must annually report to the SEA on:

a. The number of children served under this rule who received early intervening services; and

b. The number of children served under this rule who received early intervening services and subsequently receive special education and related services under Part B of the Act during the preceding two-year period.

41.226(5) Reporting: disproportionality. If an LEA is required to reserve the maximum amount available under this rule for early intervening services because of a determination of significant disproportionality under rule 41.646(256B,34CFR300), that LEA must make additional reports on the use of funds under this rule and rule 41.646(256B,34CFR300), as required by the SEA.

41.226(6) Coordination with ESEA. Funds made available to carry out this rule may be used to carry out coordinated, early intervening services aligned with activities funded by and carried out under the ESEA if those funds are used to supplement, and not supplant, funds made available under the ESEA for the activities and services assisted under this rule.

281—41.227 Reserved.

281—41.228(256B,34CFR300) State agency eligibility. Any state agency that desires to receive a subgrant for any fiscal year under rule 41.705(256B,34CFR300) must demonstrate to the satisfaction of the state that all children with disabilities who are participating in programs and projects funded under Part B of the Act receive FAPE, and that those children and their parents are provided all the rights and procedural safeguards described in this chapter; and the agency meets the other conditions of this chapter that apply to LEAs.

281—41.229(256B,34CFR300) Disciplinary information.

41.229(1) Requirement of transmittal of disciplinary records. Pursuant to Iowa Code section 279.9A, the state requires that a public agency include in the records of a child with a disability a statement of any current or previous disciplinary action that has been taken against the child and transmit the statement to the same extent that the disciplinary information is included in, and transmitted with, the student records of children without disabilities.

41.229(2) Contents of transmittal. The transmittal shall include an accurate record of any suspension or expulsion actions taken and the basis for those actions taken. It may include any other information that is relevant to the safety of the child and other individuals involved with the child, to the extent that information is transmitted for children without disabilities.

41.229(3) Additional contents of transmittal. If the child transfers from one school to another, the transmission of any of the child's records must include both the child's current IEP and any statement of current or previous disciplinary action that has been taken against the child.

41.229(4) When transmittal must occur. Pursuant to Iowa Code section 279.9A, a transmittal of records under this rule shall occur if requested by officials of the school to which the student seeks to transfer or has transferred.

41.229(5) Additional state law requirement. Pursuant to Iowa Code section 279.9A, this rule applies also to accredited nonpublic schools, as well as AEAs.

281—41.230(256B,34CFR300) SEA flexibility. The SEA reserves to itself the flexibility provided by 34 CFR Section 300.230.

281—41.231 to **41.299** Reserved.

DIVISION V

EVALUATION, ELIGIBILITY, IEPs, AND PLACEMENT DECISIONS

281—41.300(256B,34CFR300) Parental consent and participation.

41.300(1) Parental consent for initial evaluation.

a. General.

(1) The public agency proposing to conduct an initial evaluation to determine if a child qualifies as a child with a disability under this chapter must, after providing notice consistent with rules 41.503(256B,34CFR300) and 41.504(256B,34CFR300), obtain informed consent, consistent with rule 41.9(256B,34CFR300), from the parent of the child before conducting the evaluation.

(2) Parental consent for an initial evaluation must not be construed as consent for initial provision of special education and related services.

(3) The public agency must make reasonable efforts to obtain the informed consent from the parent for an initial evaluation to determine whether the child is a child with a disability.

b. Special rule: initial evaluation for child who is a ward of the state and not residing with a parent. For initial evaluations only, if the child is a ward of the state and is not residing with the child's parent, the public agency is not required to obtain informed consent from the parent for an initial evaluation to determine whether the child is a child with a disability if:

(1) Despite reasonable efforts to do so, the public agency cannot discover the whereabouts of the parent of the child;

(2) The rights of the parents of the child have been terminated in accordance with state law; or

(3) The rights of the parent to make educational decisions have been subrogated by a judge in accordance with state law and consent for an initial evaluation has been given by an individual appointed by the judge to represent the child.

c. Parental refusal to provide consent for initial evaluation.

(1) If the parent of a child enrolled in public school or seeking to be enrolled in public school does not provide consent for initial evaluation under 41.300(1)"a," or the parent fails to respond to a request to provide consent, the public agency may, but is not required to, pursue the initial evaluation of the child by utilizing the procedural safeguards in this chapter, including the mediation procedures under rule 41.506(256B,34CFR300) or the due process procedures under rules 41.507(256B,34CFR300) to 41.516(256B, 34CFR300), if appropriate, except to the extent inconsistent with state law relating to such parental consent.

(2) The public agency does not violate its obligation under rules 41.111(256B,34CFR300) and 41.301(256B, 34CFR300) to 41.311(256B,34CFR300) if it declines to pursue the evaluation under 41.300(1)"c"(1).

41.300(2) Parental consent for services.

a. A public agency that is responsible for making FAPE available to a child with a disability must obtain informed consent from the parent of the child before the initial provision of special education and related services to the child.

b. The public agency must make reasonable efforts to obtain informed consent from the parent for the initial provision of special education and related services to the child.

c. If the parent of a child fails to respond or refuses to consent to services under 41.300(2)"a," the public agency may not use the procedural safeguards of this chapter, including the mediation procedures or the due process procedures under this chapter, to obtain agreement or a ruling that the services may be provided to the child.

d. If the parent of the child refuses to consent to the initial provision of special education and related services, or the parent fails to respond to a request to provide consent for the initial provision of special education and related services, the public agency:

(1) Will not be considered to be in violation of the requirement to make available FAPE to the child for the failure to provide the child with the special education and related services for which the public agency requests consent; and

(2) Is not required to convene an IEP team meeting or develop an IEP for the child for the special education and related services for which the public agency requests such consent.

41.300(3) Parental consent for reevaluations.

a. General. Subject to 41.300(3)"b":

(1) Each public agency must obtain informed parental consent, in accordance with 41.300(1)"a," prior to conducting any reevaluation of a child with a disability.

(2) If the parent refuses to consent to the reevaluation, the public agency may, but is not required to, pursue the reevaluation by using the consent override procedures described in 41.300(1)"c."

(3) The public agency does not violate its obligation under rules 41.111(256B,34CFR300) and 41.301(256B, 34CFR300) to 41.311(256B,34CFR300) if it declines to pursue the evaluation or reevaluation.

b. Exception. The informed parental consent described in 41.300(3)"a" need not be obtained if the public agency can demonstrate that:

(1) It made reasonable efforts to obtain such consent; and

(2) The child's parent has failed to respond.

41.300(4) Other consent requirements.

a. When parental consent not required. Parental consent is not required before:

(1) A review of existing data as part of an evaluation or a reevaluation; or

(2) Administration of a test or other evaluation that is administered to all children unless, before administration of that test or evaluation, consent is required of parents of all children.

b. Additional consent requirements. In addition to the parental consent requirements described in subrule 41.300(1), a state may require parental consent for other services and activities under Part B of the Act and of this chapter if it ensures that each public agency in the state establishes and implements effective procedures to ensure that a parent's refusal to consent does not result in a failure to provide the child with FAPE.

c. Limitation on public agency's use of failure to give consent. A public agency may not use a parent's refusal to consent to one service or activity under 41.300(1) or 41.300(4)"b" to deny the parent or child any other service, benefit, or activity of the public agency, except as required by this chapter.

d. Children who are home schooled or placed by their parents in private schools.

(1) If a parent of a child who is home schooled or placed in a private school by the parents at their own expense does not provide consent for the initial evaluation or the reevaluation, or the parent fails to respond to a request to provide consent, the public agency may not use the consent override procedures described in 41.300(1)"c" and 41.300(3)"a"; and

(2) The public agency is not required to consider the child as eligible for services under rules 41.132(256B,34CFR300) to 41.144(256B,34CFR300).

e. Documenting reasonable efforts. To meet the reasonable efforts requirement in 41.300(1)"a"(3), 41.300(1)"b"(1), 41.300(2)"b," and 41.300(3)"b"(1), the public agency must document its attempts to obtain parental consent using the procedures in subrule 41.322(4).

41.300(5) Parental participation. The identification process shall include interactions with the individual, the individual's parents, school personnel, and others having specific responsibilities for or knowledge of the individual. AEA and LEA personnel shall seek active parent participation throughout the process, directly communicate with parents, and encourage parents to participate at all decision points.

281—41.301(256B,34CFR300) Full and individual initial evaluations.

41.301(1) General. Each public agency must conduct a full and individual initial evaluation, in accordance with rules 41.305(256B,34CFR300) and 41.306(256B, 34CFR300), before the initial provision of special education and related services to a child with a disability under this chapter.

41.301(2) Request for initial evaluation. Consistent with the consent requirements in rule 41.300(256B,34CFR300), either a parent of a child or a public agency may initiate a request for an initial evaluation to determine if the child is a child with a disability.

41.301(3) Procedures for initial evaluation. The initial evaluation:

a. Must be conducted within 60 calendar days of receiving parental consent for the evaluation;

b. Must consist of procedures:

(1) To determine if the child is a child with a disability under this chapter; and

(2) To determine the educational needs of the child.

41.301(4) Exception. The time frame described in 41.301(3)"a" does not apply to a public agency if:

a. The parent of a child repeatedly fails or refuses to produce the child for the evaluation; or

b. A child enrolls in a school of another public agency after the relevant time frame in 41.301(3)"a" has begun, and prior to a determination by the child's previous public agency as to whether the child is a child with a disability under this chapter.

41.301(5) Applicability of exception in 41.301(4)"b." The exception in 41.301(4)"b" applies only if the subsequent public agency is making sufficient progress to ensure a prompt completion of the evaluation and the parent and subsequent public agency agree to a specific time when the evaluation will be completed.

41.301(6) Content of full and individual initial evaluation. The purpose of the evaluation is to determine the educational interventions that are required to resolve the presenting problem, behaviors of concern, or suspected disability, including whether the educational interventions are special education. An evaluation shall include:

a. An objective definition of the presenting problem, behaviors of concern, or suspected disability.

b. Analysis of existing information about the individual, as described in 41.305(1)"a."

c. Identification of the individual's strengths or areas of competence relevant to the presenting problem, behaviors of concern, or suspected disability.

d. Collection of additional information needed to design interventions intended to resolve the presenting problem, behaviors of concern, or suspected disability, including, if appropriate, assessment or evaluation of health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, adaptive behavior and motor abilities.

281—41.302(256B,34CFR300) Screening for instructional purposes is not evaluation. The screening of a student by a teacher or specialist to determine appropriate instructional strategies for curriculum implementation shall not be considered to be an evaluation for eligibility for special education and related services.

281—41.303(256B,34CFR300) Reevaluations.

41.303(1) General. A public agency must ensure that a reevaluation of each child with a disability is conducted in accordance with rules 41.304(256B,34CFR300) to 41.311(256B,34CFR300):

a. If the public agency determines that the educational or related services needs, including improved academic achievement and functional performance, of the child warrant a reevaluation; or

b. If the child's parent or teacher requests a reevaluation.

41.303(2) Limitation. A reevaluation conducted under subrule 41.303(1):

a. May occur not more than once a year, unless the parent and the public agency agree otherwise; and

b. Must occur at least once every three years, unless the parent and the public agency agree that a reevaluation is unnecessary.

281—41.304(256B,34CFR300) Evaluation procedures.

41.304(1) Notice. The public agency must provide notice to the parents of a child with a disability, in accordance with rule 41.503(256B,34CFR300), that describes any evaluation procedures the agency proposes to conduct.

41.304(2) Conduct of evaluation. In conducting the evaluation, the public agency must:

a. Use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child, including information provided by the parent, that may assist in determining:

(1) Whether the child is a child with a disability under this chapter; and

(2) The content of the child's IEP, including information related to enabling the child to be involved in and progress in the general education curriculum (or for a preschool child, to participate in appropriate activities);

b. Not use any single measure or assessment as the sole criterion for determining whether a child is a child with a disability and for determining an appropriate educational program for the child; and

c. Use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.

41.304(3) Other evaluation procedures. Each public agency must ensure that:

a. Assessments and other evaluation materials used to assess a child under this chapter:

(1) Are selected and administered so as not to be discriminatory on a racial or cultural basis;

(2) Are provided and administered in the child's native language or other mode of communication and in the form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally, unless it is clearly not feasible to so provide or administer;

(3) Are used for the purposes for which the assessments or measures are valid and reliable;

(4) Are administered by trained and knowledgeable personnel; and

(5) Are administered in accordance with any instructions provided by the producer of the assessments.

b. Assessments and other evaluation materials include those tailored to assess specific areas of educational need and not merely those that are designed to provide a single general intelligence quotient.

c. Assessments are selected and administered so as best to ensure that if an assessment is administered to a child with impaired sensory, manual, or speaking skills, the assessment results accurately reflect the child's aptitude or achievement level or whatever other factors the test purports to measure, rather than reflecting the child's impaired sensory, manual, or speaking skills (unless those skills are the factors that the test purports to measure).

d. The child is assessed in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities.

e. Assessments of children with disabilities who transfer from one public agency to another public agency in the same school year are coordinated with those children's prior and subsequent schools, as necessary and as expeditiously as possible, consistent with 41.301(4)"b" and 41.301(5), to ensure prompt completion of full evaluations.

f. The evaluation of each child with a disability under rules 41.304(256B,34CFR300) to 41.306(256B,34CFR300) is sufficiently comprehensive to identify all of the child's special education and related services needs, whether or not

commonly linked to the disability category in which the child has been classified.

g. Assessment tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the child are provided.

281—41.305(256B,34CFR300) Additional requirements for evaluations and reevaluations.

41.305(1) Review of existing evaluation data. As part of an initial evaluation, if appropriate, and as part of any reevaluation under this chapter, the IEP team and other qualified professionals, as appropriate, must:

a. Review existing evaluation data on the child, including:

(1) Evaluations and information provided by the parents of the child;

(2) Current classroom-based, local, or state assessments, and classroom-based observations; and

(3) Observations by teachers and related services providers; and

b. On the basis of that review, and input from the child's parents, identify what additional data, if any, are needed to determine:

(1) Whether the child is a child with a disability, as defined in this chapter, and the educational needs of the child or, in the case of a reevaluation of a child, whether the child continues to have such a disability, and the educational needs of the child;

(2) The present levels of academic achievement and related developmental needs of the child;

(3) Whether the child needs special education and related services, or in the case of a reevaluation of a child, whether the child continues to need special education and related services; and

(4) Whether any additions or modifications to the special education and related services are needed to enable the child to meet the measurable annual goals set out in the IEP of the child and to participate, as appropriate, in the general education curriculum.

41.305(2) Conduct of review. The group described in subrule 41.305(1) may conduct its review without a meeting.

41.305(3) Source of data. The public agency must administer such assessments and other evaluation measures as may be needed to produce the data identified under subrule 41.305(1).

41.305(4) Requirements if additional data are not needed.

a. If the IEP team and other qualified professionals, as appropriate, determine that no additional data are needed to determine whether the child continues to be a child with a disability or to determine the child's educational needs, the public agency must notify the child's parents of:

(1) The determination and the reasons for the determination; and

(2) The right of the parents to request an assessment to determine whether the child continues to be a child with a disability and to determine the child's educational needs.

b. The public agency is not required to conduct the assessment described in 41.305(4)"a"(2) unless requested to do so by the child's parents.

41.305(5) Evaluations before change in eligibility.

a. Except as provided in 41.305(5)"b," a public agency must evaluate a child with a disability in accordance with these rules before determining that the child is no longer a child with a disability.

b. The evaluation described in 41.305(5)"a" is not required before the termination of a child's eligibility under this chapter due to graduation from secondary school with a regular diploma, or due to exceeding the age eligibility for FAPE under state law.

c. For a child whose eligibility terminates under circumstances described in 41.305(5)"b," a public agency must provide the child with a summary of the child's academic achievement and functional performance, which shall include recommendations on how to assist the child in meeting the child's postsecondary goals.

41.305(6) At no cost to parent. Evaluations or reevaluations under this chapter, including any outside consultations or evaluations, shall be at no cost to the parent. AEAs or LEAs may access a parent's private insurance or public benefits or insurance, however, provided that a parent gives informed consent consistent with rule 41.9(256B,34CFR300) and subrules 41.154(4) and 41.154(5).

281—41.306(256B,34CFR300) Determination of eligibility.

41.306(1) General. Upon completion of the administration of assessments and other evaluation measures:

a. A group of qualified professionals and the parent of the child determine whether the child is a child with a disability, as defined in this chapter, in accordance with subrule 41.306(2) and the educational needs of the child; and

b. The public agency provides a copy of the evaluation report and the documentation of determination of eligibility at no cost to the parent.

41.306(2) Special rule for eligibility determination. A child must not be determined to be a child with a disability under this chapter:

a. If the determinant factor for that determination is:

(1) Lack of appropriate instruction in reading, including the essential components of reading instruction, as defined in Section 1208(3) of the ESEA;

(2) Lack of appropriate instruction in math; or

(3) Limited English proficiency; and

b. If the child does not otherwise meet the eligibility criteria under this chapter.

41.306(3) Procedures for determining eligibility and educational need.

a. In interpreting evaluation data for the purpose of determining if a child is a child with a disability under this chapter, and the educational needs of the child, each public agency must:

(1) Draw upon information from a variety of sources, including aptitude and achievement tests, parent input, and teacher recommendations, as well as information about the child's physical condition, social or cultural background, and adaptive behavior; and

(2) Ensure that information obtained from all of these sources is documented and carefully considered.

b. If a determination is made that a child has a disability and needs special education and related services, an IEP must be developed for the child in accordance with these rules.

c. All determinations of eligibility must be based on the individual's disability (progress and discrepancy) and need for special education.

41.306(4) Director's certification. If a child is determined to be an eligible individual pursuant to these rules, the AEA director of special education shall certify the individual's entitlement for special education. A confidential record, subject to audit by the department, registering the name and required special education and related services of each eligible individual shall be maintained by the AEA, and provision shall be made for its periodic revision.

EDUCATION DEPARTMENT[281](cont'd)

281—41.307(256B,34CFR300) Specific learning disabilities.

41.307(1) General. The state must adopt, consistent with rule 41.309(256B,34CFR300), criteria for determining whether a child is an eligible individual on the basis of a specific learning disability as defined in subrule 41.50(10). In addition, the criteria adopted by the state:

a. Requires the use of a process based on the child's response to scientific, research-based intervention or the use of other alternative research-based procedures for determining whether a child has a specific learning disability, as defined in subrule 41.50(10); and

b. Prohibits the use of a severe discrepancy between intellectual ability and achievement for determining whether a child is an eligible individual on the basis of a specific learning disability.

41.307(2) Consistency with state criteria. A public agency must use the state criteria adopted pursuant to subrule 41.307(1) in determining whether a child is an eligible individual on the basis of a specific learning disability.

41.307(3) Rule of construction: "Labelling." Nothing in this rule or rules 41.308(256B,34CFR300) to 41.311(256B,34CFR300) shall be construed as requiring children evaluated under these rules to be classified as having a specific learning disability, as long as the child is regarded as a child with a disability or an eligible individual under this chapter.

41.307(4) Rule of construction: Use of rules 41.307(256B,34CFR300) to 41.310(256B,34CFR300). Nothing in this rule or rule 41.308(256B,34CFR300) or 41.311(256B,34CFR300) shall be construed as limiting their applicability solely to determining whether a child is an eligible individual on the basis of a specific learning disability. The procedures, methods, etc. listed in this rule and rules 41.308(256B,34CFR300) and 41.310(256B,34CFR300) may be employed in evaluating any child suspected of being an eligible individual, if appropriate in the child's circumstances.

281—41.308(256B,34CFR300) Additional group members. The determination of whether a child suspected of being an eligible individual due to the presence of a specific learning disability is a child with a disability as defined in this chapter, must be made by the child's parents and a team of qualified professionals, which must include the following persons:

41.308(1) Required teachers.

a. The child's general education teacher; or

b. If the child does not have a general education teacher, a general education teacher qualified to teach a child of his or her age; or

c. For a child of less than school age, an individual qualified by the SEA to teach a child of his or her age.

41.308(2) Individual qualified to conduct diagnostic examinations. At least one person qualified to conduct individual diagnostic examinations of children, such as a school psychologist, speech-language pathologist, or a remedial reading teacher.

281—41.309(256B,34CFR300) Determining the existence of a specific learning disability.

41.309(1) Required determinations. The group described in rule 41.306(256B,34CFR300) may determine that a child has a specific learning disability, as defined in subrule 41.50(10), after considering the following three factors:

a. Lack of adequate achievement. The child does not achieve adequately for the child's age, grade-level expectations or such grade-level standards the SEA may choose to adopt in one or more of the following areas, when provided with learning experiences and instruction appropriate for the child's age or grade-level expectations or such grade-level standards the SEA may choose to adopt:

(1) Oral expression.

(2) Listening comprehension.

(3) Written expression.

(4) Basic reading skill.

(5) Reading fluency skills.

(6) Reading comprehension.

(7) Mathematics calculation.

(8) Mathematics problem solving.

b. Lack of adequate progress.

(1) The child does not make sufficient progress to meet age expectations, grade-level expectations, or such state-approved grade-level standards as the state may choose to adopt in one or more of the areas identified in 41.309(1)"a" when using a process based on the child's response to scientific, research-based intervention; or

(2) The child exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, grade-level expectations, such state-approved grade-level standards as the state may choose to adopt, or intellectual development, that is determined by the group to be relevant to the identification of a specific learning disability, using appropriate assessments, consistent with rules 41.304(256B,34CFR300) and 41.305(256B,34CFR300).

c. Exclusionary factors. The group determines that its findings under 41.309(1)"a" and 41.309(1)"b" are not primarily the result of:

(1) A visual, hearing, or motor disability;

(2) Mental retardation;

(3) Emotional disturbance;

(4) Cultural factors;

(5) Environmental or economic disadvantage; or

(6) Limited English proficiency.

41.309(2) Review of data. To ensure that underachievement in a child suspected of having a specific learning disability is not due to lack of appropriate instruction in reading or math, the group must consider, as part of the evaluation described in rules 41.304(256B,34CFR300) to 41.306(256B,34CFR300):

a. Data that demonstrate that prior to, or as a part of, the referral process, the child was provided appropriate instruction in regular education settings, delivered by qualified personnel; and

b. Data-based documentation of repeated assessments of achievement at reasonable intervals, reflecting formal assessment of student progress during instruction, which was provided to the child's parents.

41.309(3) When consent required. The public agency must promptly request parental consent to evaluate the child to determine if the child needs special education and related services and must adhere to the time frames described in rules 41.301(256B,34CFR300) and 41.303(256B,34CFR300):

a. If, prior to a referral, a child has not made adequate progress after an appropriate period of time when provided instruction, as described in 41.309(2)"a" and "b"; and

b. Whenever a child is referred for an evaluation.

41.309(4) Rule of construction. Subparagraph 41.309(1)"b"(2) shall not be construed to require a child with a pattern of strengths and weaknesses in performance, achievement, or both, to be identified as an eligible individu-

al, absent a determination that the child has a disability and needs special education and related services.

41.309(5) Rule of construction. A process by which a child's response to intervention is measured is a component of a full and individual evaluation and is not, considered alone, a full and individual evaluation, unless the response to intervention process contains all required elements of a full and individual evaluation under this chapter.

281—41.310(256B,34CFR300) Observation.

41.310(1) Observation required. The public agency must ensure that the child is observed in the child's learning environment, including the regular classroom setting, to document the child's academic performance and behavior in the areas of difficulty.

41.310(2) Who must observe. The group described in 41.306(1)"a," in determining whether a child has a specific learning disability, must decide to:

a. Use information from an observation in routine classroom instruction and monitoring of the child's performance that was done before the child was referred for an evaluation, consistent with rules 41.306(256B,34CFR300), 41.309(256B,34CFR300), 41.312(256B,34CFR300) and 41.313(256B,34CFR300); or

b. Have at least one member of the group described in 41.306(1)"a" conduct an observation of the child's academic performance in the regular classroom after the child has been referred for an evaluation and parental consent, consistent with subrule 41.300(1), is obtained.

41.310(3) Child less than school age or out of school. In the case of a child of less than school age or out of school, a group member must observe the child in an environment appropriate for a child of that age. This subrule also applies to school-age children who must be evaluated during school breaks.

281—41.311(256B,34CFR300) Specific documentation for the eligibility determination.

41.311(1) Documentation required. For a child suspected of having a specific learning disability, the documentation of the determination that the child is an eligible individual, as required in 41.306(1)"b," must contain a statement of:

a. Whether the child has a specific learning disability;

b. The basis for making the determination, including an assurance that the determination has been made in accordance with 41.306(3)"a";

c. The relevant behavior, if any, noted during the observation of the child and the relationship of that behavior to the child's academic functioning;

d. The educationally relevant medical findings, if any;

e. The determination that:

(1) The child does not achieve adequately for the child's age or to meet grade-level expectations or such grade-level standards the SEA may choose to adopt consistent with 41.309(1)"a"; and

(2) The child does not make sufficient progress for the child's age or to meet grade-level expectations or such grade-level standards the SEA may choose to adopt consistent with 41.309(1)"b"(1); or the child exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to the child's age or to meet grade-level expectations, such grade-level standards the SEA may choose to adopt, or intellectual development consistent with 41.309(1)"b"(2);

f. The determination of the group concerning the effects of a visual, hearing, or motor disability; mental retardation; emotional disturbance; cultural factors; environmental or economic disadvantage; or limited English proficiency on the child's achievement level; and

g. If the child has participated in a process that assesses the child's response to scientific, research-based intervention:

(1) The instructional strategies used and the student-centered data collected; and

(2) The documentation that the child's parents were notified about:

1. The state's policies regarding the amount and nature of student performance data that would be collected and the general education services that would be provided;

2. Strategies for increasing the child's rate of learning; and

3. The parents' right to request an evaluation.

41.311(2) Certification required. Each group member must certify in writing whether the report reflects the member's conclusion. If it does not reflect the member's conclusion, the group member must submit a separate statement presenting the member's conclusions.

281—41.312(256B,34CFR300) General education interventions. Each LEA, in conjunction with the AEA, shall attempt to resolve the presenting problem or behaviors of concern in the general education environment prior to conducting a full and individual evaluation. In circumstances when the development and implementation of general education interventions are not appropriate to the needs of the individual, the IEP team and, as appropriate, other qualified professionals, may determine that a full and individual initial evaluation shall be conducted. Documentation of the rationale for such action shall be included in the individual's educational record.

41.312(1) Notice to parents. Each LEA shall provide general notice to parents on an annual basis about the provision of general education interventions that occur as a part of the agency's general program and that may occur at any time throughout the school year.

41.312(2) Nature of general education interventions. General education interventions shall include teacher consultation with special education support and instructional personnel working collaboratively to improve an individual's educational performance. The activities shall be documented and shall include measurable and goal-directed attempts to resolve the presenting problem or behaviors of concern, communication with parents, collection of data related to the presenting problem or behaviors of concern, intervention design and implementation, and systematic progress monitoring to measure the effects of interventions.

41.312(3) Referral for full and individual initial evaluation. If the referring problem or behaviors of concern are shown to be resistant to general education interventions or if interventions are demonstrated to be effective but require continued and substantial effort that may include the provision of special education and related services, the agency shall then conduct a full and individual initial evaluation.

41.312(4) Parent may request evaluation at any time. The parent of a child receiving general education interventions may request that the agency conduct a full and individual initial evaluation at any time during the implementation of such interventions.

281—41.313(256B,34CFR300) Systematic problem-solving process.

41.313(1) Definition. When used by an AEA in its identification process, "systematic problem-solving" means a set of procedures that is used to examine the nature and severity of an educationally related problem. These procedures 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 to **41.319** Reserved.

281—41.320(256B,34CFR300) Definition of individualized education program.

41.320(1) General. As used in this chapter, the term individualized education program or IEP means a written statement for each child with a disability that is developed, reviewed, and revised in a meeting in accordance with these rules, and that must include:

a. A statement of the child's present levels of academic achievement and functional performance, including:

(1) How the child's disability affects the child's involvement and progress in the general education curriculum (i.e., the same curriculum as for nondisabled children); or

(2) For preschool children, as appropriate, how the disability affects the child's participation in appropriate activities;

b. A statement of measurable annual goals, including academic and functional goals designed to meet:

(1) The child's needs that result from the child's disability to enable the child to be involved in and make progress in the general education curriculum; and

(2) Each of the child's other educational needs that result from the child's disability;

c. For children with disabilities who take alternate assessments aligned to alternate achievement standards, a description of benchmarks or short-term objectives;

d. A description of:

(1) How the child's progress toward meeting the annual goals described in 41.320(1)"b" will be measured; and

(2) When periodic reports on the progress the child is making toward meeting the annual goals, such as through the use of quarterly or other periodic reports, concurrent with the issuance of report cards, will be provided;

e. A statement of the special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided to enable the child:

(1) To advance appropriately toward attaining the annual goals;

(2) To be involved in and make progress in the general education curriculum in accordance with 41.320(1)"a," and to participate in extracurricular and other nonacademic activities; and

(3) To be educated and participate with other children with disabilities and nondisabled children in the activities described in this rule;

f. An explanation of the extent, if any, to which the child will not participate with nondisabled children in the regular class and in the activities described in 41.320(1)"e";

g. A statement of any individual appropriate accommodations that are necessary to measure the academic achievement and functional performance of the child on state and districtwide assessments consistent with Section 612(a)(16) of the Act; and, if the IEP team determines that the child must take an alternate assessment instead of a particular regular state or districtwide assessment of student achievement, a statement of why the child cannot participate in the regular assessment and why the particular alternate assessment selected is appropriate for the child; and

h. The projected date for the beginning of the services and modifications described in 41.320(1)"e" and the anticipated frequency, location, and duration of those services and modifications.

41.320(2) Transition services. Beginning not later than the first IEP to be in effect when the child turns 14, or younger if determined appropriate by the IEP team, and updated annually, thereafter, the IEP must include:

a. Appropriate measurable postsecondary goals based upon age-appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills; and

b. The transition services, including courses of study, needed to assist the child in reaching those goals.

EDUCATION DEPARTMENT[281](cont'd)

41.320(3) Transfer of rights at age of majority. Beginning not later than one year before the child reaches the age of majority under state law, the IEP must include a statement that the child has been informed of the child's rights under Part B of the Act, if any, that will transfer to the child on reaching the age of majority under rule 41.520(256B,34CFR300).

41.320(4) Construction. Nothing in this rule shall be construed to require:

a. That additional information be included in a child's IEP beyond what is explicitly required in Section 614 of the Act; or

b. The IEP team to include information under one component of a child's IEP that is already contained under another component of the child's IEP.

41.320(5) Special considerations. The IEP, or an associated document, must contain the answers to the questions contained in subrule 41.116(4).

41.320(6) Prohibited practices. An IEP shall not include practices that are precluded by constitution, statute, this chapter, or any other applicable law.

281—41.321(256B,34CFR300) IEP team.

41.321(1) General. The public agency must ensure that the IEP team for each child with a disability includes the following:

a. The parents of the child;

b. At least one regular education teacher of the child if the child is, or may be, participating in the regular education environment;

c. At least one special education teacher of the child or, where appropriate, at least one special education provider of the child;

d. A representative of the public agency who:

(1) Is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities;

(2) Is knowledgeable about the general education curriculum; and

(3) Is knowledgeable about the availability of resources of the public agency.

e. An individual who can interpret the instructional implications of evaluation results, who may be a member of the team described in 41.321(1)"b" to "f";

f. At the discretion of the parent or the agency, other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate; and

g. Whenever appropriate, the child with a disability.

41.321(2) Transition services participants.

a. In accordance with 41.321(1)"g," the public agency must invite a child with a disability to attend the child's IEP team meeting if a purpose of the meeting will be the consideration of the postsecondary goals for the child and the transition services needed to assist the child in reaching those goals under subrule 41.320(2).

b. If the child does not attend the IEP team meeting, the public agency must take other steps to ensure that the child's preferences and interests are considered.

c. To the extent appropriate, with the consent of the parents or a child who has reached the age of majority, in implementing the requirements of 41.321(2)"a," the public agency must invite a representative of any participating agency that is likely to be responsible for providing or paying for transition services.

41.321(3) Determination of knowledge and special expertise. The determination of the knowledge or special expertise of any individual described in 41.321(1)"f" must be made by the party (parents or public agency) who invited the individual to be a member of the IEP team.

41.321(4) Designating a public agency representative. A public agency may designate a public agency member of the IEP team to also serve as the agency representative, if the criteria in 41.321(1)"d" are satisfied.

41.321(5) IEP team attendance.

a. A member of the IEP team described in 41.321(1)"b" to "e" is not required to attend an IEP team meeting, in whole or in part, if the parent of a child with a disability and the public agency agree, in writing, that the attendance of the member is not necessary because the member's area of the curriculum or related services is not being modified or discussed in the meeting.

b. A member of the IEP team described in 41.321(5)"a" may be excused from attending an IEP team meeting, in whole or in part, when the meeting involves a modification to or discussion of the member's area of the curriculum or related services, if:

(1) The parent, in writing, and the public agency consent to the excusal; and

(2) The member submits, in writing to the parent and the IEP team, input into the development of the IEP prior to the meeting.

41.321(6) Initial IEP team meeting for child under Part C. In the case of a child who was previously served under Part C of the Act, an invitation to the initial IEP team meeting must, at the request of the parent, be sent to the Part C service coordinator or other representatives of the Part C system to assist with the smooth transition of services.

281—41.322(256B,34CFR300) Parent participation.

41.322(1) Public agency responsibility—general. Each public agency must take steps to ensure that one or both of the parents of a child with a disability are present at each IEP team meeting or are afforded the opportunity to participate, including:

a. Notifying parents of the meeting early enough to ensure that they will have an opportunity to attend; and

b. Scheduling the meeting at a mutually agreed-upon time and place.

41.322(2) Information provided to parents.

a. The notice required under 41.322(1)"a" must:

(1) Indicate the purpose, time, and location of the meeting and who will be in attendance; 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, con-

sistent with rule 41.328(256B,34CFR300) related to alternative means of meeting participation.

41.322(4) Conducting an IEP team meeting without a parent in attendance. A meeting may be conducted without a parent in attendance if the public agency is unable to convince the parents that they should attend. In this case, the public agency must keep a record of its attempts to arrange a mutually agreed-upon time and place, including:

a. Detailed records of telephone calls made or attempted and the results of those calls;

b. Copies of correspondence sent to the parents and any responses received; and

c. Detailed records of visits made to the parent's home or place of employment and the results of those visits.

41.322(5) Use of interpreters or other action, as appropriate. The public agency must take whatever action is necessary to ensure that the parent understands the proceedings of the IEP team meeting, including arranging for an interpreter for parents with deafness or whose native language is other than English.

41.322(6) Parent copy of child's IEP. The public agency must give the parent a copy of the child's IEP at no cost to the parent.

41.322(7) Rule of construction: "final" versus "draft" IEPs. An agency shall not present a completed and finalized IEP to parents before there has been a full discussion with the parents regarding the eligible individual's need for special education and related services and the services the agency will provide to the individual. An agency may come prepared with evaluation findings, proposed statements of present levels of educational performance, proposed recommendations regarding annual goals or instructional objectives, and proposals concerning the nature of special education and related services to be provided. The agency shall inform the parents at the outset of the meeting that the proposals are only recommendations for review and discussion with the parents.

281—41.323(256B,34CFR300) When IEPs must be in effect.

41.323(1) General. An IEP must be in effect before special education and related services are provided to eligible individuals. At the beginning of each school year, each public agency must have in effect, for each child with a disability within its jurisdiction, an IEP, as defined in rule 41.320(256B,34CFR300).

41.323(2) Reserved.

41.323(3) Initial IEPs; provision of services. Each public agency must ensure that:

a. A meeting to develop an IEP for a child is conducted within 30 days of a determination that the child needs special education and related services; and

b. As soon as possible following development of the IEP, special education and related services are made available to the child in accordance with the child's IEP.

41.323(4) Accessibility of child's IEP to teachers and others. Each public agency must ensure that:

a. The child's IEP is accessible to each regular education teacher, special education teacher, related services provider, and any other service provider who is responsible for its implementation; and

b. Each teacher and provider described in 41.323(4)"a" is informed of:

(1) His or her specific responsibilities related to implementing the child's IEP; and

(2) The specific accommodations, modifications, and supports that must be provided for the child in accordance with the IEP.

41.323(5) IEPs for children who transfer public agencies in the same state. If a child with a disability who had an IEP that was in effect in a previous public agency in this state transfers to a new public agency in this state and enrolls in a new school within the same school year, the new public agency, in consultation with the parents, must provide FAPE to the child including services comparable to those described in the child's IEP from the previous public agency until the new public agency either:

a. Adopts the child's IEP from the previous public agency; or

b. Develops, adopts, and implements a new IEP that meets the applicable requirements in these rules.

41.323(6) IEPs for children who transfer from another state. If a child with a disability who had an IEP that was in effect in a previous public agency in another state transfers to a public agency in this state and enrolls in a new school within the same school year, the receiving public agency, in consultation with the parents, must provide the child with FAPE, including services comparable to those described in the child's IEP from the previous public agency, until the receiving public agency:

a. Conducts an evaluation pursuant to these rules if determined to be necessary by the receiving public agency; and

b. Develops, adopts, and implements a new IEP, if appropriate, that meets the applicable requirements in these rules.

41.323(7) Transmittal of records. To facilitate the transition for a child described in subrules 41.323(5) and 41.323(6):

a. The receiving public agency in which the child enrolls must take all reasonable steps to promptly obtain the child's records, including the IEP and supporting documents and any other records relating to the provision of special education or related services to the child, from the previous public agency in which the child was enrolled, pursuant to 34 CFR Section 99.31(a)(2); and

b. The previous public agency in which the child was enrolled must take all reasonable steps to promptly respond to the request from the receiving public agency.

41.323(8) Other. It is expected that an IEP of an eligible individual will be implemented immediately after an IEP team meeting. Exceptions to this would be when the meeting occurs during the summer or vacation period, unless the child requires services during that period, or where there are circumstances requiring a short delay (e.g., making transportation arrangements); however, there can be no undue delay in providing special education and related services to an eligible individual.

281—41.324(256B,34CFR300) Development, review, and revision of IEP.

41.324(1) Development of IEP.

a. General. In developing each child's IEP, the IEP team must consider:

(1) The strengths of the child;

(2) The concerns of the parents for enhancing the education of their child;

(3) The results of the initial or most recent evaluation of the child; and

(4) The academic, developmental, and functional needs of the child.

b. Consideration of special factors. The IEP team must:

(1) In the case of a child whose behavior impedes the child's learning or that of others, consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior;

(2) In the case of a child with limited English proficiency, consider the language needs of the child as those needs relate to the child's IEP;

(3) In the case of a child who is blind or visually impaired, provide for instruction in Braille and the use of Braille unless the IEP team determines, after an evaluation of the child's reading and writing skills, needs, and appropriate reading and writing media, including an evaluation of the child's future needs for instruction in Braille or the use of Braille, that instruction in Braille or the use of Braille is not appropriate for the child;

(4) Consider the communication needs of the child and, in the case of a child who is deaf or hard of hearing, consider the child's language and communication needs, opportunities for direct communications with peers and professional personnel in the child's language and communication mode, academic level, and full range of needs, including opportunities for direct instruction in the child's language and communication mode; and

(5) Consider whether the child needs assistive technology devices and services.

c. Requirement with respect to regular education teacher. A regular education teacher of a child with a disability, as a member of the IEP team, must, to the extent appropriate, participate in the development of the IEP of the child, including the determination of:

(1) Appropriate positive behavioral interventions and supports and other strategies for the child; and

(2) Supplementary aids and services, program modifications, and support for school personnel consistent with 41.320(1)"e."

d. Agreement.

(1) In making changes to a child's IEP after the annual IEP team meeting for a school year, the parent of a child with a disability and the public agency may agree not to convene an IEP team meeting for the purposes of making those changes and instead may develop a written document to amend or modify the child's current IEP.

(2) If changes are made to the child's IEP in accordance with 41.324(1)"d"(1), the public agency must ensure that the child's IEP team is informed of those changes.

(3) A public agency may only agree to make changes pursuant to 41.324(1)"d"(1) concerning resources the public agency has the authority to commit.

e. Consolidation of IEP team meetings. To the extent possible, the public agency must encourage the consolidation of reevaluation meetings for the child and other IEP team meetings for the child.

f. Amendments. Changes to the IEP may be made either by the entire IEP team at an IEP team meeting or as provided in 41.324(1)"d" by amending the IEP rather than by redrafting the entire IEP. Upon request, a parent must be provided with a revised copy of the IEP with the amendments incorporated.

41.324(2) Review and revision of IEPs.

a. General. Each public agency must ensure that, subject to 41.324(2)"b" and "c," the IEP team:

(1) Reviews the child's IEP periodically, but not less frequently than annually, to determine whether the annual goals for the child are being achieved; and

(2) Revises the IEP, as appropriate, to address the following:

1. Any lack of expected progress toward the annual goals described in 41.320(1)"b," and in the general education curriculum, if appropriate;

2. The results of any reevaluation conducted under rule 41.303(256B,34CFR300);

3. Information about the child provided to or by the parents, as described in 41.305(1)"b";

4. The child's anticipated needs; or

5. Other matters.

b. Consideration of special factors. In conducting a review of the child's IEP, the IEP team must consider the special factors described in 41.324(1)"b."

c. Requirement with respect to regular education teacher. A regular education teacher of the child, as a member of the IEP team, must, consistent with 41.324(1)"c," participate in the review and revision of the IEP of the child.

41.324(3) Failure to meet transition objectives.

a. Participating agency failure. If a participating agency, other than the public agency, fails to provide the transition services described in the IEP in accordance with subrule 41.320(2), the public agency must reconvene the IEP team to identify alternative strategies to meet the transition objectives for the child set out in the IEP.

b. Construction. Nothing in this chapter relieves any participating agency, including a state vocational rehabilitation agency, of the responsibility to provide or pay for any transition service that the agency would otherwise provide to children with disabilities who meet the eligibility criteria of that agency.

41.324(4) Children with disabilities in adult prisons.

a. Requirements that do not apply. The following requirements do not apply to children with disabilities who are convicted as adults under state law and incarcerated in adult prisons:

(1) The requirements contained in Section 612(a)(16) of the Act and 41.320(1)"g" relating to participation of children with disabilities in general assessments.

(2) The requirements in subrule 41.320(2) relating to transition planning and transition services do not apply with respect to the children whose eligibility under Part B of the Act will end because of their age before they will be eligible to be released from prison based on consideration of their sentence and eligibility for early release.

b. Modifications of IEP or placement.

(1) Subject to 41.324(4)"b"(2), the IEP team of a child with a disability who is convicted as an adult under state law and incarcerated in an adult prison may modify the child's IEP or placement if the state has demonstrated a bona fide security or compelling penological interest that cannot otherwise be accommodated.

(2) The requirements in rules 41.320(256B,34CFR300) relating to IEPs and 41.114(256B,34CFR300) relating to LRE do not apply with respect to the modifications described in 41.324(4)"b"(1).

41.324(5) Interim IEP. An IEP must be in effect before special education and related services are provided to an eligible individual. This does not preclude the development of an interim IEP which meets all the requirements of rule 41.320(256B,34CFR300) when the IEP team determines that it is necessary to temporarily provide special education and related services to an eligible individual as part of the evaluation process, before the IEP is finalized, to aid in determining the appropriate services for the individual. An interim IEP may also be developed when an eligible individual moves from one LEA to another and a copy of the current IEP is not available, or either the LEA or the parent believes that the current IEP is not appropriate or that additional information is needed before a final decision can be made regarding the specific special education and related services that are need-

EDUCATION DEPARTMENT[281](cont'd)

ed. IEP teams cannot use interim IEPs to circumvent the requirements of this division. It is essential that the temporary provision of service not become the final special education for the individual before the IEP is finalized. In order to ensure that this does not happen, IEP teams shall take the following actions:

a. Specific conditions and timelines. Develop an interim IEP for the individual that sets out the specific conditions and timelines for the temporary service. An interim IEP shall not be in place for more than 30 school days.

b. Parent agreement and involvement. Ensure that the parents agree to the interim service before it is carried out and that they are involved throughout the process of developing, reviewing, and revising the individual's IEP.

c. Complete evaluation and make judgments. Set a specific timeline for completing the evaluation and making judgments about the appropriate services for the individual.

d. Conduct meeting. Conduct an IEP meeting at the end of the trial period in order to finalize the individual's IEP.

281—41.325(256B,34CFR300) Private school placements by public agencies.

41.325(1) Developing IEPs.

a. Before a public agency places a child with a disability in, or refers a child to, a private school or facility, the agency must initiate and conduct a meeting to develop an IEP for the child in accordance with these rules.

b. The agency must ensure that a representative of the private school or facility attends the meeting. If the representative cannot attend, the agency must use other methods to ensure participation by the private school or facility, including individual or conference telephone calls.

41.325(2) Reviewing and revising IEPs.

a. After a child with a disability enters a private school or facility, any meetings to review and revise the child's IEP may be initiated and conducted by the private school or facility at the discretion of the public agency.

b. If the private school or facility initiates and conducts these meetings, the public agency must ensure that the parents and an agency representative are involved in any decision about the child's IEP and agree to any proposed changes in the IEP before those changes are implemented.

41.325(3) Responsibility. Even if a private school or facility implements a child's IEP, responsibility for compliance with this chapter remains with the public agency and the SEA.

281—41.326(256B,34CFR300) Other rules concerning IEPs.

41.326(1) Children from birth to the age of three. A fully developed IFSP shall be considered to have met the requirements of an IEP for an eligible individual younger than the age of three.

41.326(2) Support services only. An IEP that satisfies the requirements of this chapter shall be developed for eligible individuals who require only special education support services. The special education support service specialist with knowledge in the area of need shall have primary responsibility for recommending the need for support service, the type or model of service to be provided, and the amount of service to be provided; however, the determination that an individual is eligible for special education shall be based on these rules. The special education support service provider shall attend the IEP meetings for the eligible individual being served.

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, as required by Iowa Code section 273.5, shall function as an advocate for eligible individuals and assist the department in meeting the intent of the special education mandate and complying with statutes and rules. 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 shall be employed on a full-time basis and shall not be assigned the responsibility for any other adminis-

trative unit within the AEA. It shall be the responsibility of the director to report any violation of these rules 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, with LEA personnel, 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 licensed registered nurses, physicians and persons who have successfully completed a medication administration course reviewed by the board of pharmacy examiners. Individuals who have demonstrated competency in administering their own medications may self-administer their medication.

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 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. If the designation decision of the team differs from the licensed health professional, team members may file a dissenting opinion.

"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. Docu-

mentation 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 educational diagnosis of a specific disability, such as autism or sensory impairment, 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 modification and adaptation of curriculum, instructional techniques and strategies, and instructional materials.

(2) The provision of specially designed instruction and related activities through cooperative efforts of special education teachers and general education teachers in the general education classroom.

(3) The provision of specially designed instruction on a limited basis by a special education teacher in the general classroom or in an environment other than the general classroom, including consultation with general education teachers.

(4) The provision of specially designed instruction to eligible individuals with similar special education instructional needs organized according to the type of curriculum and instruction to be provided, and the severity of the educational needs of the eligible individuals served.

b. The delivery system shall be described in writing and shall include the following components:

(1) A description of how services will be organized and how services will be provided to eligible individuals consistent with the requirements of this chapter, and the provisions described in 41.408(2)"a."

(2) A description of how the caseloads of special education teachers will be determined and regularly monitored to ensure that the IEPs of eligible individuals are able to be fully implemented.

(3) A description of the procedures a special education teacher can use to resolve concerns about caseload. The procedures shall specify timelines for the resolution of a concern and identify the person to whom a teacher reports a concern. The procedures shall also identify the person or persons who are responsible for reviewing a concern and rendering a decision, including the specification of any corrective actions.

(4) A description of the process used to develop the system, including the composition of the group responsible for its development.

(5) A description of the process that will be used to evaluate the effectiveness of the system.

(6) A description of how the delivery system will meet the targets identified in the state's performance plan, described in this chapter.

(7) A description of how the delivery system will address needs identified by the state in any determination made under this chapter.

c. The following procedures shall be followed by the agency:

(1) Before initiating the development of the delivery system, the LEA board shall approve such action and the LEA personnel and parents who will participate in the development of the alternative.

(2) The delivery system shall be developed by a group of individuals that includes parents of eligible individuals, special education and general education teachers, administrators, and at least one AEA representative. The AEA representative shall be selected by the director.

(3) The director shall verify that the delivery system is in compliance with these rules prior to LEA board adoption.

(4) Prior to presenting the delivery system to the LEA board for adoption, the group responsible for its development shall provide an opportunity for comment on the system by the general public. In presenting the delivery system to the LEA board for adoption, the group shall describe the comment received from the general public and how the comment was considered.

(5) The LEA board shall approve the system prior to implementation.

d. The procedure presented in subrule 41.907(9) shall be followed in applying the weighting plan for special education instructional funds described in Iowa Code section 256B.9 to any delivery system developed under these provisions.

e. An LEA shall review, revise, and readopt its delivery system using the procedures identified in paragraph "c" of this subrule at least every five years, or sooner if required by the state in conjunction with any determination made under this chapter.

f. An LEA shall make the document describing its delivery system readily available to LEA personnel and members of the public.

g. A director may grant an adjusted program status, if an LEA submits a request to the AEA for such status, if class size, including the size of a class served by a teacher employed less than full-time, exceeds those limits specified in 41.408(2)"b"(2).

281—41.409(256B,34CFR300) Support services. Support services are the specially designed instruction and activities that augment, supplement or support the educational program of eligible individuals. These services include special education consultant services, educational strategist services, audiology, occupational therapy, physical therapy, school psychology, school social work services, special education nursing services, speech-language services, and work experience services provided by the support personnel described in subrule 41.402(3). 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:

EDUCATION DEPARTMENT[281](cont'd)

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. Related 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—41.412(256B,34CFR300) Transportation. Transportation of eligible individuals shall generally be provided as for other individuals, when appropriate. Specialized transportation of an eligible individual to and from a special education instructional service is a function of that service and, therefore, an appropriate expenditure of special education instructional funds generated through the weighting plan. Transportation includes travel to and from school and between schools; travel in and around school buildings; and specialized equipment, such as special or adapted buses, lifts, and ramps, if required to provide special transportation for a child with a disability.

41.412(1) Special arrangements. Transportation of an eligible individual to and from a special education support service is a function of that service, shall be specified in the IEP, and be considered an appropriate expenditure of funds generated for special education support services. When, because of an eligible individual's educational needs or because of the location of the program, the IEP team determines that unique transportation arrangements are required and the arrangements are specified in the IEP, the resident LEA shall be required to provide one or more of the following transportation arrangements for instructional services and the AEA for support services:

a. Transportation from the eligible individual's residence to the location of the special education services and back to the individual's residence, or child care placement for eligible individuals below the age of six.

b. Special assistance or adaptations in getting the eligible individual to and from and on and off the vehicle, en route to and from the special education services.

c. Reimbursement of the actual costs of transportation when by mutual agreement the parents provide transportation for the eligible individual to and from the special education services.

d. Agencies are not required to provide reimbursement to parents who elect to provide transportation in lieu of agency-provided transportation.

41.412(2) Responsibility for transportation.

a. The AEA shall provide the cost of transportation of eligible individuals to and from special education support services. The AEA shall provide the cost of transportation necessary for the provision of special education support services to nonpublic school eligible individuals if the cost of that transportation is in addition to the cost of transportation provided for special education instructional services.

b. When individuals enrolled in nonpublic schools are dually enrolled in public schools to receive special education instructional services, transportation provisions between nonpublic and public attendance centers will be the responsibility of the school district of residence.

c. Transportation of individuals, when required for educational diagnostic purposes, is a special education support service and, therefore, an appropriate expenditure of funds generated for special education support services.

41.412(3) Purchase of transportation equipment. When it is necessary for an LEA to purchase equipment to transport eligible individuals to special education instructional services, this equipment shall be purchased from the LEA's general fund. The direct purchase of transportation equipment is not an appropriate expenditure of special education instructional funds generated through the weighting plan. A written schedule of depreciation for this transportation equipment shall be developed by the LEA. An annual charge to special education instructional funds generated through the weighting plan for depreciation of the equipment shall be made and reported as a special education transportation cost in the LEA Certified Annual Report. Annual depreciation charges, except in unusual circumstances, shall be calculated by the LEA according to the directions provided with the Annual Transportation Report and adjusted to reflect the proportion of special education mileage to the total annual mileage.

41.412(4) Lease of transportation equipment. An LEA may elect to lease equipment to transport eligible individuals to special education instructional services. Cost of the lease, or that portion of the lease attributable to special education transportation expense, shall be considered a special education transportation cost and reported in the LEA Certified Annual Report.

41.412(5) Transportation equipment safety standards. All transportation equipment, either purchased or leased by an LEA to transport eligible individuals to special education 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.

281—41.413(256,256B,34CFR300) Additional rules relating to accredited nonpublic schools.

41.413(1) State and local funds under Iowa Code section 256.12. State and local funds expended to provide special education and related services to eligible individuals who receive special education and related services in accredited nonpublic schools under Iowa Code section 256.12 must be expended on services, including materials and equipment, that are secular, neutral, and nonideological and, unless a provision of section 256.12 specifically requires the contrary, are subject to the restrictions contained in rules 41.138(256,256B,34CFR300) to 41.144(256,256B,34CFR300).

41.413(2) Placements by public agencies. State and local funds expended to provide special education and related services to eligible individuals who receive special education and related services in accredited nonpublic schools pursuant to a placement made or referred by a public agency pursuant to rules 41.145(256B,34CFR300) to 41.147(256B,34CFR300) must be expended on services, including materials and equipment, that are secular, neutral, and nonideological and, unless a provision of law specifically requires the contrary, are subject to the restrictions contained in rules 41.138(256,256B,34CFR300) to 41.144(256,256B,34CFR300).

281—41.414 to **41.499** Reserved.

DIVISION VII

PROCEDURAL SAFEGUARDS

281—41.500(256B,34CFR300) Responsibility of SEA and other public agencies. The SEA shall ensure that each public agency establishes, maintains, and implements procedural safeguards that meet the requirements of rules 41.500(256B,34CFR300) to 41.536(256B,34CFR300).

281—41.501(256B,34CFR300) Opportunity to examine records; parent participation in meetings.

41.501(1) Opportunity to examine records. The parents of a child with a disability must be afforded, in accordance with the procedures of rules 41.613(256B,34CFR300) to 41.621(256B,34CFR300), an opportunity to inspect and review all education records with respect to:

a. The identification, evaluation, and educational placement of the child; and

b. The provision of FAPE to the child.

41.501(2) Parent participation in meetings.

a. The parents of a child with a disability must be afforded an opportunity to participate in meetings with respect to:

(1) The identification, evaluation, and educational placement of the child; and

(2) The provision of FAPE to the child.

b. Each public agency must provide notice consistent with 41.322(1)"a" and 41.322(2)"b" to ensure that parents of children with disabilities have the opportunity to participate in meetings described in 41.501(2)"a."

c. A meeting does not include informal or unscheduled conversations involving public agency personnel and conversations on issues such as teaching methodology, lesson plans, or coordination of service provision. A meeting also does not include preparatory activities that public agency personnel engage in to develop a proposal or response to a parent proposal that will be discussed at a later meeting.

41.501(3) Parent involvement in placement decisions.

a. Each public agency must ensure that a parent of each child with a disability is a member of any group that makes decisions on the educational placement of the parent's child.

b. In implementing the requirements of 41.501(3)"a," the public agency must use procedures consistent with the procedures described in 41.322(1) to 41.322(2)"a."

c. If neither parent can participate in a meeting in which a decision is to be made relating to the educational placement of their child, the public agency must use other methods to ensure their participation, including individual or conference telephone calls, or video conferencing.

d. A placement decision may be made by a group without the involvement of a parent, if the public agency is unable to obtain the parent's participation in the decision. In this case, the public agency must have a record of its attempt to ensure parental involvement.

281—41.502(256B,34CFR300) Independent educational evaluation.

41.502(1) General.

a. The parents of a child with a disability have the right to obtain an independent educational evaluation of the child, subject to subrules 41.502(2) to 41.502(5).

b. Each public agency must provide to parents, upon request for an independent educational evaluation, information about where an independent educational evaluation may be obtained and the agency criteria applicable for independent educational evaluations as set forth in subrule 41.502(5).

c. For the purposes of this division:

(1) "Independent educational evaluation" means an evaluation conducted by a qualified examiner who is not employed by the public agency responsible for the education of the child in question; and

(2) "Public expense" means that the AEA either pays for the full cost of the evaluation or ensures that the evaluation is otherwise provided at no cost to the parent.

41.502(2) Parent right to evaluation at public expense.

EDUCATION DEPARTMENT[281](cont'd)

a. A parent has the right to an independent educational evaluation at public expense if the parent disagrees with an evaluation obtained by the AEA, subject to the conditions in 41.502(2)"b" to "d."

b. If a parent requests an independent educational evaluation at public expense, the AEA must, without unnecessary delay, either:

(1) File a due process complaint to request a hearing to show that its evaluation is appropriate; or

(2) Ensure that an independent educational evaluation is provided at public expense, unless the AEA demonstrates in a hearing pursuant to these rules that the evaluation obtained by the parent did not meet agency criteria.

c. If the AEA files a due process complaint notice to request a hearing and the final decision is that the AEA's evaluation is appropriate, the parent still has the right to an independent educational evaluation, but not at public expense.

d. If a parent requests an independent educational evaluation, the AEA may ask for the parent's reason why the parent objects to the public evaluation. However, the AEA may not require the parent to provide an explanation and may not unreasonably delay either providing the independent educational evaluation at public expense or filing a due process complaint to request a due process hearing to defend the public evaluation.

e. A parent is entitled to only one independent educational evaluation at public expense each time a public agency conducts an evaluation with which the parent disagrees.

41.502(3) Parent-initiated evaluations. If the parent obtains an independent educational evaluation at public expense or shares with a public agency an evaluation obtained at private expense, the results of the evaluation:

a. Must be considered by the public agency, if it meets agency criteria, in any decision made with respect to the provision of FAPE to the child; and

b. May be presented by any party as evidence at a hearing on a due process complaint under this chapter regarding that child.

41.502(4) Requests for evaluations by administrative law judges. If an administrative law judge requests an independent educational evaluation as part of a hearing on a due process complaint, the cost of the evaluation must be at public expense.

41.502(5) Agency criteria.

a. If an independent educational evaluation is at public expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, must be the same as the criteria that the public agency uses when it initiates an evaluation, to the extent those criteria are consistent with the parent's right to an independent educational evaluation.

b. Except for the criteria described in 41.502(5)"a," a public agency may not impose conditions or timelines related to obtaining an independent educational evaluation at public expense.

c. Each AEA shall establish policy and procedures for implementing this rule.

281—41.503(256B,34CFR300) Prior notice by the public agency; content of notice.

41.503(1) Notice. Written notice that meets the requirements of subrule 41.503(2) must be given to the parents of a child with a disability within a reasonable time before the public agency:

a. Proposes to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child; or

b. Refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child.

41.503(2) Content of notice. The notice required under subrule 41.503(1) must include the following:

a. A description of the action proposed or refused by the agency;

b. An explanation of why the agency proposes or refuses to take the action;

c. A description of each evaluation procedure, assessment, record, or report the agency used as a basis for the proposed or refused action;

d. A statement that the parents of a child with a disability have protection under the procedural safeguards of this chapter and, if this notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained;

e. Sources for parents to contact to obtain assistance in understanding the provisions of this chapter;

f. A description of other options that the IEP team considered and the reasons why those options were rejected; and

g. A description of other factors that are relevant to the agency's proposal or refusal.

41.503(3) Notice in understandable language.

a. The notice required under subrule 41.503(1) must be written in language understandable to the general public, and must be provided in the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so.

b. If the native language or other mode of communication of the parent is not a written language, the public agency must take steps to ensure the following:

(1) The notice is translated orally or by other means to the parent in the parent's native language or other mode of communication;

(2) The parent understands the content of the notice; and

(3) There is written evidence that the requirements in 41.503(3)"b"(1) and (2) have been met.

281—41.504(256B,34CFR300) Procedural safeguards notice.

41.504(1) General. A copy of the procedural safeguards available to the parents of a child with a disability must be given to the parents only once a school year, except that a copy also must be given to the parents as follows:

a. Upon initial referral or parent request for evaluation;

b. Upon receipt of the first state complaint under rules 41.151(256B,34CFR300) to 41.153(256B,34CFR300) and upon receipt of the first due process complaint under 41.507(256B,34CFR300) in a school year;

c. In accordance with the discipline procedures in subrule 41.530(8); and

d. Upon request by a parent.

41.504(2) Internet Web site. A public agency may place a current copy of the procedural safeguards notice on its Internet Web site if a Web site exists.

41.504(3) Contents. The procedural safeguards notice must include a full explanation of all the procedural safeguards available under this chapter relating to the following:

a. Independent educational evaluations;

b. Prior written notice;

c. Parental consent;

d. Access to education records;

e. Opportunity to present and resolve complaints through the due process complaint and state complaint procedures, and must explain:

(1) The time period in which to file a complaint;

EDUCATION DEPARTMENT[281](cont'd)

(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 SEA. 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 apart from or 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. SEA responsibility for mediation.

(1) The state must maintain a list of individuals who are qualified mediators and knowledgeable in laws and regulations relating to the provision of special education and related services.

(2) The SEA must select mediators on a random, rotational, or other impartial basis.

d. The state must bear the cost of the mediation process, including the costs of meetings described in 41.506(2)"b."

e. Each session in the mediation process must be scheduled in a timely manner and must be held in a location that is convenient to the parties to the dispute.

f. If the parties resolve a dispute through the mediation process, the parties must execute a legally binding agreement that sets forth that resolution and that:

(1) States that all discussions that occurred during the mediation process will remain confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding; and

(2) Is signed by both the parent and a representative of the agency who has the authority to bind the agency.

g. A written, signed mediation agreement is enforceable in any state court of competent jurisdiction or in a district court of the United States. Discussions that occur during the mediation process must be confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding of any federal court or state court.

41.506(3) Impartiality of mediator.

a. An individual who serves as a mediator under this chapter:

(1) May not be an employee of the SEA or the LEA that is involved in the education or care of the child; and

(2) Must not have a personal or professional interest that conflicts with the person's objectivity.

b. A person who otherwise qualifies as a mediator is not an employee of an LEA or state agency described under rule 41.228(256B,34CFR300) solely because the person is paid by the agency to serve as a mediator.

41.506(4) Special definition. In this chapter and in Iowa practice, a request for mediation filed before the filing of a due process complaint is referred to as a "request for a special education preappeal conference."

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 SEA rules and documents, that term shall be construed to mean "due process complaint."

281—41.508(256B,34CFR300) Due process complaint.

41.508(1) General. A due process complaint shall be provided to the department, and a copy shall be provided to each party to the complaint.

41.508(2) Content of complaint. The due process complaint required in subrule 41.508(1) must include the following information:

a. The name of the child;

b. The address of the residence of the child;

c. The name of the school the child is attending;

d. In the case of a homeless child or youth within the meaning of Section 725(2) of the McKinney-Vento Homeless Assistance Act, 42 U.S.C. 11434a(2), available contact information for the child and the name of the school the child is attending;

e. A description of the nature of the problem of the child relating to the proposed or refused initiation or change, including facts relating to the problem; and

f. A proposed resolution of the problem to the extent known and available to the party at the time.

41.508(3) Notice required before a hearing on a due process complaint. A party may not have a hearing on a due process complaint until the party, or the attorney representing the party, files a due process complaint that meets the requirements of subrule 41.508(2).

41.508(4) Sufficiency of complaint.

a. General. The due process complaint required by this rule must be deemed sufficient unless the party receiving the due process complaint notifies the administrative law judge and the other party in writing, within 15 days of receipt of the due process complaint, that the receiving party believes the due process complaint does not meet the requirements in subrule 41.508(2).

b. Determination. Within five days of receipt of notification under 41.508(4)"a," the administrative law judge must make a determination on the face of the due process complaint of whether the due process complaint meets the requirements of subrule 41.508(2), and must immediately notify the parties in writing of that determination.

c. Amending due process complaint. A party may amend its due process complaint only if:

(1) The other party consents in writing to the amendment and is given the opportunity to resolve the due process complaint through a meeting held pursuant to rule 41.510(256B, 34CFR300); or

(2) The administrative law judge grants permission, except that the hearing officer 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 SEA 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 SEA or LEA may not require the use of the model forms.

41.509(2) Use of forms. Parents, public agencies, and other parties may use the appropriate model form described in subrule 41.509(1), or another form or other document, so long as the form or document that is used meets, as appropriate, the content requirements in subrule 41.508(2) for filing a due process complaint, or the requirements in subrule 41.153(2) for filing a state complaint.

281—41.510(256B,34CFR300) Resolution process.

41.510(1) Resolution meeting.

a. General. Within 15 days of receiving notice of the parent's due process complaint, and prior to the initiation of a due process hearing, the LEA must convene a meeting with the parent and the relevant member or members of the IEP team who have specific knowledge of the facts identified in the due process complaint that:

(1) Includes a representative of the public agency who has decision-making authority on behalf of that agency; and

(2) May not include an attorney of the LEA unless the parent is accompanied by an attorney.

b. Purpose of meeting. The purpose of the meeting is for the parent of the child to discuss the due process complaint and the facts that form the basis of the due process complaint so that the LEA has the opportunity to resolve the dispute that is the basis for the due process complaint.

c. When meeting not necessary. The meeting described in 41.510(1)"a" and "b" need not be held if the parent and the LEA agree in writing to waive the meeting, or the parent and the LEA agree to use the mediation process described in rule 41.506(256B,34CFR300).

d. Determining relevant members of IEP team. The parent and the LEA determine the relevant members of the IEP team to attend the meeting.

41.510(2) Resolution period.

a. General. If the LEA has not resolved the due process complaint to the satisfaction of the parent within 30 days of the receipt of the due process complaint, the due process hearing may occur.

b. Timeline for decision. Except as provided in subrule 41.510(3), the timeline for issuing a final decision under rule 41.515(256B,34CFR300) begins at the expiration of this 30-day period.

c. Failure of parent to participate: delay of timeline. Except where the parties have jointly agreed to waive the resolution process or to use mediation, the failure of the parent filing a due process complaint to participate in the resolution meeting will delay the timelines for the resolution process and due process hearing until the meeting is held.

d. Failure of parent to participate: dismissal of complaint. If the LEA is unable to obtain the participation of the parent in the resolution meeting after reasonable efforts have been made and documented using the procedures in subrule 41.322(4), the LEA may, at the conclusion of the 30-day period, request that a hearing officer 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 both 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 SEA, 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 SEA.

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 SEA 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 their 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.

EDUCATION DEPARTMENT[281](cont'd)

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 SEA, after deleting any personally identifiable information, must:

a. Transmit the findings and decisions referred to in 41.512(1)"e" to the state advisory panel established under rule 41.167(256B,34CFR300); and

b. Make those findings and decisions available to the public.

281—41.514(256B,34CFR300) Finality of decision. A decision made in a hearing conducted pursuant to this division is final, except that any party involved in the hearing may appeal the decision by filing a civil action in state or federal court.

281—41.515(256B,34CFR300) Timelines and convenience of hearings.

41.515(1) Timeline. The public agency must ensure that not later than 45 days after the expiration of the 30-day period under subrule 41.510(2), or the adjusted time periods described in subrule 41.510(3):

a. A final decision is reached in the hearing; and

b. A copy of the decision is mailed to each of the parties.

41.515(2) Reserved.

41.515(3) Extensions of time or continuances. An administrative law judge may grant specific extensions of time or continuances beyond the periods set out in subrule 41.515(1) at the request of either party.

41.515(4) Hearing time. Each hearing must be conducted at a time and place that is reasonably convenient to the parents and child involved.

281—41.516(256B,34CFR300) Civil action.

41.516(1) General. Any party aggrieved by the findings and decision made under this division has the right to bring a civil action with respect to the due process complaint notice requesting a due process hearing under this division. The action may be brought in any state court of competent jurisdiction or in a district court of the United States without regard to the amount in controversy.

41.516(2) Time limitation. The party bringing the action shall have 90 days from the date of the decision of the administrative law judge to file a civil action.

41.516(3) Additional requirements. In any action brought under subrule 41.516(1), the court:

a. Receives the records of the administrative proceedings;

b. Hears additional evidence at the request of a party; and

c. Basing its decision on the preponderance of the evidence, grants the relief that the court determines to be appropriate.

41.516(4) Jurisdiction of United States district courts. The district courts of the United States have jurisdiction of actions brought under Section 615 of the Act without regard to the amount in controversy.

41.516(5) Rule of construction. Nothing in Part B of the Act or this chapter restricts or limits the rights, procedures, and remedies available under the Constitution, the Americans with Disabilities Act of 1990, Title V of the Rehabilitation Act of 1973, or other federal laws protecting the rights of children with disabilities, except that before the filing of a civil action under these laws seeking relief that is also available under Section 615 of the Act, the procedures under rules 41.507(256B,34CFR300) and 41.514(256B,34CFR300) must be exhausted to the same extent as would be required had the action been brought under Section 615 of the Act.

281—41.517(256B,34CFR300) Attorneys' fees.

41.517(1) General. In any action or proceeding brought under Section 615 of the Act, the court, in its discretion, may award reasonable attorneys' fees as part of the costs to any of the following:

a. The prevailing party who is the parent of a child with a disability;

b. To a prevailing party who is an SEA or LEA against the attorney of a parent who files a complaint or subsequent cause of action that is frivolous, unreasonable, or without foundation, or against the attorney of a parent who continued to litigate after the litigation clearly became frivolous, unreasonable, or without foundation; or

c. To a prevailing SEA or LEA against the attorney of a parent, or against the parent, if the parent's request for a due process hearing or subsequent cause of action was presented for any improper purpose, such as to harass, to cause unnecessary delay, or to needlessly increase the cost of litigation.

41.517(2) Prohibition on use of funds.

a. Funds under Part B of the Act may not be used to pay attorneys' fees or costs of a party related to any action or proceeding under Section 615 of the Act and this division.

b. Paragraph 41.517(2)"a" does not preclude a public agency from using funds under Part B of the Act for conducting an action or proceeding under Section 615 of the Act.

41.517(3) Award of fees. A court awards reasonable attorneys' fees under Section 615(i)(3) of the Act consistent with the following:

a. Amount of fees. Fees awarded under Section 615(i)(3) of the Act must be based on rates prevailing in the community in which the action or proceeding arose for the kind and quality of services furnished. No bonus or multiplier may be used in calculating the fees awarded under this paragraph.

b. When fees and costs may not be awarded.

(1) Attorneys' fees may not be awarded and related costs may not be reimbursed in any action or proceeding under Section 615 of the Act for services performed subsequent to the time of a written offer of settlement to a parent if:

1. The offer is made within the time prescribed by Rule 68 of the federal Rules of Civil Procedure or, in the case of an administrative proceeding, at any time more than ten days before the proceeding begins;

2. The offer is not accepted within ten days; and

3. The court or administrative law judge finds that the relief finally obtained by the parents is not more favorable to the parents than the offer of settlement.

(2) Attorneys' fees may not be awarded relating to any meeting of the IEP team unless the meeting is convened as a result of an administrative proceeding or judicial action, or at the discretion of the state, for a mediation described in rule 41.506(256B,34CFR300).

(3) A meeting conducted pursuant to rule 41.510(256B, 34CFR300) shall not be considered either of the following:

1. A meeting convened as a result of an administrative hearing or judicial action; or

2. An administrative hearing or judicial action for purposes of this rule.

c. Exception to offer of settlement subrule. Notwithstanding 41.517(3)"b"(1), an award of attorneys' fees and related costs may be made to a parent who is the prevailing party and who was substantially justified in rejecting the settlement offer.

d. Reduction in attorney fees. Except as provided in 41.517(3)"e," the court reduces, accordingly, the amount of the attorneys' fees awarded under Section 615 of the Act, if the court finds that:

(1) The parent, or the parent's attorney, during the course of the action or proceeding, unreasonably protracted the final resolution of the controversy;

(2) The amount of the attorneys' fees otherwise authorized to be awarded unreasonably exceeds the hourly rate prevailing in the community for similar services by attorneys of reasonably comparable skill, reputation, and experience;

(3) The time spent and legal services furnished were excessive considering the nature of the action or proceeding; or

(4) The attorney representing the parent did not provide to the LEA the appropriate information in the due process request notice in accordance with rule 41.508(256B, 34CFR300).

e. Exception to reduction in fees subrule. The provisions of 41.517(3)"d" do not apply in any action or proceeding if the court finds that the state or local agency unreasonably protracted the final resolution of the action or proceeding or there was a violation of Section 615 of the Act.

281—41.518(256B,34CFR300) Child's status during proceedings.

41.518(1) General. Except as provided in rule 41.533(256B,34CFR300), during the pendency of any administrative or judicial proceeding regarding a due process complaint notice requesting a due process hearing under rule 41.507(256B,34CFR300), unless the state or local agency and the parents of the child agree otherwise, the child involved in the complaint must remain in his or her current educational placement.

41.518(2) Initial admission to public school. If the complaint involves an application for initial admission to public school, the child, with the consent of the parents, must be placed in the public school until the completion of all the proceedings.

41.518(3) Transition from Part C to Part B. If the complaint involves an application for initial services under this chapter from a child who is transitioning from Part C of the Act to Part B and is no longer eligible for Part C services because the child has reached the age of three, the public agency is not required to provide the Part C services that the child had been receiving. If the child is found eligible for special education and related services under Part B and the parent consents to the initial provision of special education and related services under subrule 41.300(2), then the public agency must provide those special education and related services that are not in dispute between the parent and the public agency.

41.518(4) Administrative law judge decision. If the administrative law judge in a due process hearing conducted by the SEA agrees with the child's parents that a change of placement is appropriate, that placement must be treated as an agreement between the state and the parents for purposes of subrule 41.518(1).

41.518(5) Preappeal conference. Except as provided in rule 41.533(256B,34CFR300), during the pendency of any preappeal conference under rule 41.506(256B,34CFR300) and for ten days after a preappeal conference at which no agreement is reached, unless the state or local agency and the parents of the child agree otherwise, the child involved in the preappeal conference must remain in his or her current educational placement.

281—41.519(256B,34CFR300) Surrogate parents.

41.519(1) General. Each public agency must ensure that the rights of a child are protected when:

a. No parent as defined in rule 41.30(256B,34CFR300) can be identified;

b. The public agency, after reasonable efforts, cannot locate a parent;

c. The child is a ward of the state under the laws of the state; or

d. The child is an unaccompanied homeless youth as defined in Section 725(6) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(6)).

41.519(2) Duties of public agency. The duties of a public agency under subrule 41.519(1) include the assignment of an individual to act as a surrogate for the parents. This must include a method for determining whether a child needs a surrogate parent and for assigning a surrogate parent to the child.

41.519(3) Wards of the state. In the case of a child who is a ward of the state, the surrogate parent alternatively may be appointed by the judge presiding in the child's case, provided that the surrogate meets the requirements in 41.519(4)"b"(1) and 41.519(5).

41.519(4) Criteria for selection of surrogate parents.

a. The public agency may select a surrogate parent in any way permitted under state law.

b. Public agencies must ensure that a person selected as a surrogate parent:

(1) Is not an employee of the SEA, the LEA, or any other public or private agency that is involved in the education or care of the child;

(2) Has no personal or professional interest that conflicts with the interest of the child the surrogate parent represents; and

(3) Has knowledge and skills that ensure adequate representation of the child.

41.519(5) Nonemployee requirement; compensation. A person otherwise qualified to be a surrogate parent under subrule 41.519(4) is not an employee of the agency solely because the person is paid by the agency to serve as a surrogate parent.

41.519(6) Unaccompanied homeless youth. In the case of a child who is an unaccompanied homeless youth, appropriate staff of emergency shelters, transitional shelters, independent living programs, and street outreach programs may be appointed as temporary surrogate parents without regard to 41.519(4)"b"(1), until a surrogate parent can be appointed that meets all of the requirements of subrule 41.519(4). Service as a temporary surrogate parent under this subrule is limited to the period in subrule 41.519(8).

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 SEA 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 SEA 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 state shall establish procedures for appointing the parent of a child with a disability, or, if the parent is not available, another appropriate individual, to represent the educational interests of the child throughout the period of the child's eligibility under Part B of the Act if the child can be determined by the competent authority, by clear and convincing evidence, not to have the ability to provide informed consent with respect to the child's educational program.

281—41.521 to **41.529** Reserved.

281—41.530(256B,34CFR300) Authority of school personnel.

41.530(1) Case-by-case determination. School personnel may consider any unique circumstances on a case-by-case basis when determining whether a change in placement, consistent with the other requirements of this rule, is appropriate for a child with a disability who violates a code of student conduct.

41.530(2) General.

a. School personnel under this rule may remove a child with a disability who violates a code of student conduct from his or her current placement to an appropriate interim alternative educational setting, another setting, or suspension, for not more than ten consecutive school days, to the extent those alternatives are applied to children without disabilities, and for additional removals of not more than ten consecutive school days in that same school year for separate incidents of misconduct, as long as those removals do not constitute a change of placement under rule 41.536(256B,34CFR300).

b. After a child with a disability has been removed from his or her current placement for ten school days in the same school year, during any subsequent days of removal the public agency must provide services to the extent required under subrule 41.530(4).

41.530(3) Additional authority. For disciplinary changes in placement that would exceed ten consecutive school days, if the behavior that gave rise to the violation of the school code is determined not to be a manifestation of the child's disability pursuant to subrule 41.530(5), school personnel may apply the relevant disciplinary procedures to children with disabilities in the same manner and for the same duration as the procedures would be applied to children without disabilities, except as provided in subrule 41.530(4).

41.530(4) Services.

a. A child with a disability who is removed from the child's current placement pursuant to subrule 41.530(3) or 41.530(7) must receive the following:

(1) Educational services, as provided in subrule 41.101(1), so as to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP; and

(2) As appropriate, a functional behavioral assessment, and behavioral intervention services and modifications, that are designed to address the behavior violation so that it does not recur.

b. The services required by 41.530(4)"a" and "c" to "e" may be provided in an interim alternative educational setting.

c. A public agency is required to provide services during periods of removal to a child with a disability who has been removed from his or her current placement for ten school days or less in that school year, only if it provides services to a child without disabilities who is similarly removed.

d. After a child with a disability has been removed from his or her current placement for ten school days in the same school year, if the current removal is for not more than ten consecutive school days and is not a change of placement under rule 41.536(256B,34CFR300), school personnel, in consultation with at least one of the child's teachers, shall determine the extent to which services are needed, as provided in subrule 41.101(1), so as to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP.

e. If the removal is a change of placement under rule 41.536(256B,34CFR300), the child's IEP team determines appropriate services under 41.530(4)"a."

41.530(5) Manifestation determination.

a. Within ten school days of any decision to change the placement of a child with a disability because of a violation of a code of student conduct, the LEA, the parent, and rele-

vant members of the child's IEP team, as determined by the parent and the 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 LEA's failure to implement the IEP.

b. The conduct must be determined to be a manifestation of the child's disability if 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 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 LEA must take immediate steps to remedy those deficiencies.

41.530(6) Determination that behavior was a manifestation. If 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 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 LEA agree to a change of placement as part of the modification of the behavioral intervention plan.

41.530(7) Special circumstances. School personnel may remove a student to an interim alternative educational setting for not more than 45 school days without regard to whether the behavior is determined to be a manifestation of the child's disability, if the child:

a. Carries a weapon to or possesses a weapon at school, on school premises, or to or at a school function under the jurisdiction of an SEA or an LEA;

b. Knowingly possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance, while at school, on school premises, or at a school function under the jurisdiction of an SEA or an LEA; or

c. Has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of an SEA or an LEA.

41.530(8) Notification. On the date on which the decision is made to make a removal that constitutes a change of placement of a child with a disability because of a violation of a code of student conduct, the LEA must notify the parents of that decision and provide the parents the procedural safeguards notice described in rule 41.504(256B,34CFR300).

41.530(9) Definitions. For purposes of this rule, the following definitions apply:

a. Controlled substance. "Controlled substance" means a drug or other substance identified under Schedule I, II, III, IV, or V in Section 202(c) of the Controlled Substances Act (21 U.S.C. 812(c)).

b. Illegal drug. "Illegal drug" means a controlled substance; but does not include a controlled substance that is legally possessed or used under the supervision of a licensed health care professional or that is legally possessed or used under any other authority under that Act or under any other provision of federal law.

c. Serious bodily injury. "Serious bodily injury" has the meaning given the term "serious bodily injury" under paragraph (3) of subsection (h) of Section 1365 of Title 18, United States Code.

d. Weapon. "Weapon" has the meaning given the term "dangerous weapon" under paragraph (2) of the first subsection (g) of Section 930 of Title 18, United States Code. A "weapon" under Iowa law is not necessarily a weapon for purposes of this rule unless it meets this definition of a "dangerous weapon."

281—41.531(256B,34CFR300) Determination of setting. The child's IEP team determines the interim alternative educational setting for services under 41.530(3), 41.530(4)"e," and 41.530(7).

281—41.532(256B,34CFR300) Appeal.

41.532(1) General. The parent of a child with a disability who disagrees with any decision regarding placement under rules 41.530(256B,34CFR300) and 41.531(256B,34CFR300), or the manifestation determination under 41.530(5), or an LEA that believes that maintaining the current placement of the child is substantially likely to result in injury to the child or others, may appeal the decision by requesting a hearing. The hearing is requested by filing a complaint pursuant to rule 41.507(256B,34CFR300) and subrules 41.508(1) and 41.508(2).

41.532(2) Authority of administrative law judge.

a. An administrative law judge under rule 41.511(256B,34CFR300) hears and makes a determination regarding an appeal under subrule 41.532(1).

b. In making the determination under subrule 41.532(1), the administrative law judge may do either of the following:

(1) Return the child with a disability to the placement from which the child was removed if the administrative law judge determines that the removal was a violation of rule 41.530(256B,34CFR300) or that the child's behavior was a manifestation of the child's disability; or

(2) Order a change of placement of the child with a disability to an appropriate interim alternative educational setting for not more than 45 school days if the administrative law judge determines that maintaining the current placement of the child is substantially likely to result in injury to the child or to others.

c. The procedures under 41.532(1) and 41.532(2)"a" and "b" may be repeated, if the LEA believes that returning the child to the original placement is substantially likely to result in injury to the child or to others.

41.532(3) Expedited due process hearing.

a. Whenever a hearing is requested under subrule 41.532(1), the parents or the LEA involved in the dispute must have an opportunity for an impartial due process hearing consistent with the requirements of rule 41.507(256B,34CFR300), subrules 41.508(1) to 41.508(3), and rules 41.510(256B,34CFR300) to 41.514(256B,34CFR300), except as provided in 41.532(3)"b" and "c."

b. The SEA is responsible for arranging the expedited due process hearing, which must occur within 20 school days of the date the complaint requesting the hearing is filed. The administrative law judge must make a determination within 10 school days after the hearing.

c. Unless the parents and LEA agree in writing to waive the resolution meeting described in this paragraph, or agree to use the mediation process described in rule 41.506(256B,34CFR300), the procedure is as follows:

EDUCATION DEPARTMENT[281](cont'd)

(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 both parties within 15 days of the receipt of the due process complaint.

d. Reserved.

e. The decisions on expedited due process hearings are appealable consistent with rule 41.514(256B,34CFR300).

281—41.533(256B,34CFR300) Placement during appeals and preappeal mediations. When an appeal under rule 41.532(256B,34CFR300) or a request for a preappeal conference under rule 41.506(256B,34CFR300) has been made by either the parent or the LEA, the child must remain in the interim alternative educational setting pending the decision of the administrative law judge or until the expiration of the time period specified in subrule 41.530(3) or 41.530(7), whichever occurs first, unless the parent and the SEA or LEA agree otherwise.

281—41.534(256B,34CFR300) Protections for children not determined eligible for special education and related services.

41.534(1) General. A child who has not been determined to be eligible for special education and related services under this chapter and who has engaged in behavior that violated a code of student conduct may assert any of the protections provided for in this chapter if the public agency had knowledge, as determined in accordance with subrule 41.534(2), that the child was a child with a disability before the behavior that precipitated the disciplinary action occurred.

41.534(2) Basis of knowledge. A public agency must be deemed to have knowledge that a child is a child with a disability if before the behavior that precipitated the disciplinary action occurred any of the following occurred:

a. The parent of the child expressed concern in writing to supervisory or administrative personnel of the appropriate educational agency or to a teacher of the child that the child is in need of special education and related services;

b. The parent of the child requested an evaluation of the child pursuant to this chapter; or

c. The teacher of the child, or other personnel of the LEA, expressed specific concerns about a pattern of behavior demonstrated by the child directly to the director of special education of the agency or to other supervisory personnel of the agency.

41.534(3) Exception. A public agency would not be deemed to have knowledge under subrule 41.534(2) under the following conditions:

a. The parent of the child has not allowed an evaluation of the child pursuant to this chapter or has refused services under Part B of the Act or this chapter; or

b. The child has been evaluated in accordance with this chapter and determined not to be a child with a disability under Part B of the Act and this chapter.

41.534(4) Conditions that apply if no basis of knowledge.

a. General. If a public agency does not have knowledge that a child is a child with a disability, in accordance with subrules 41.534(2) and 41.534(3), prior to taking disciplinary measures against the child, the child may be subjected to the disciplinary measures applied to children without disabilities who engage in comparable behaviors consistent with 41.534(4)"b."

b. Request for evaluation.

(1) If a request is made for an evaluation of a child during the time period in which the child is subjected to disciplinary measures under rule 41.530(256B,34CFR300), the evaluation must be conducted in an expedited manner.

(2) Until the evaluation is completed, the child remains in the educational placement determined by school authorities, which can include suspension or expulsion without educational services.

(3) If the child is determined to be a child with a disability, taking into consideration information from the evaluation conducted by the agency and information provided by the parents, the agency must provide special education and related services in accordance with Part B of the Act and this chapter, including the requirements of rules 41.530(256B,34CFR300) to 41.536(256B,34CFR300) and Section 612(a)(1)(A) of the Act.

281—41.535(256B,34CFR300) Referral to and action by law enforcement and judicial authorities.

41.535(1) Rule of construction. Nothing in Part B of the Act or this chapter prohibits an agency from reporting a crime committed by a child with a disability to appropriate authorities or prevents state law enforcement and judicial authorities from exercising their responsibilities with regard to the application of federal and state law to crimes committed by a child with a disability.

41.535(2) Transmittal of records.

a. An agency reporting a crime committed by a child with a disability must ensure that copies of the special education and disciplinary records of the child are transmitted for consideration by the appropriate authorities to whom the agency reports the crime.

b. An agency reporting a crime under this rule may transmit copies of the child's special education and disciplinary records only to the extent that the transmission is permitted by the Family Educational Rights and Privacy Act.

281—41.536(256B,34CFR300) Change of placement because of disciplinary removals.

41.536(1) General. For purposes of removals of a child with a disability from the child's current educational placement under rules 41.530(256B,34CFR300) to 41.535(256B, 34CFR300), a change of placement occurs under the following circumstances:

a. The removal is for more than ten consecutive school days; or

b. The child has been subjected to a series of removals that constitute a pattern based on the following:

(1) The series of removals total more than ten school days in a school year;

(2) The child's behavior is substantially similar to the child's behavior in previous incidents that resulted in the series of removals; and

(3) Additional factors, such as the length of each removal, the total amount of time the child has been removed, and the proximity of the removals to one another.

41.536(2) Rules of construction.

a. The public agency determines on a case-by-case basis whether a pattern of removals constitutes a change of placement.

b. This determination is subject to review through due process and judicial proceedings.

c. Nothing in this rule shall be construed to prohibit LEAs from establishing policies that a change of placement occurs on the eleventh cumulative day of removal, regardless of the factors set forth in 41.536(1)"b."

41.536(3) In-school suspensions and other actions. In determining whether an in-school suspension or other disciplinary action is to be considered a removal for purposes of this rule, an in-school suspension or other disciplinary action will not be considered a removal if all three of the following questions are answered in the affirmative:

EDUCATION DEPARTMENT[281](cont'd)

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 SEA from using other mechanisms to seek enforcement of that agreement, such as the state complaint procedure, provided that use of those mechanisms is not mandatory and does not delay or deny a party the right to seek enforcement of the written agreement in a state court of competent jurisdiction or in a district court of the United States.

281—41.538 to **41.599** Reserved.

DIVISION VIII

MONITORING, ENFORCEMENT, CONFIDENTIALITY, AND PROGRAM INFORMATION

281—41.600(256B,34CFR300) State monitoring and enforcement.

41.600(1) General. The state must monitor the implementation of Part B of the Act and this chapter, enforce this chapter in accordance with rule 41.604(256B,34CFR300), and annually report on performance under Part B of the Act and this chapter.

41.600(2) Primary focus of monitoring activity. The primary focus of the state's monitoring activities must be on the following:

a. Improving educational results and functional outcomes for all children with disabilities; and

b. Ensuring that public agencies meet the program requirements under Part B of the Act, with a particular emphasis on those requirements that are most closely related to improving educational results for children with disabilities.

41.600(3) Indicators of performance and compliance. As a part of its responsibilities under subrule 41.600(1), the state must use quantifiable indicators and such qualitative indicators as are needed to adequately measure performance in the priority areas identified in subrule 41.600(4) and the indicators established by the Secretary for the state performance plans.

41.600(4) Priority indicators. The state must monitor the LEAs located in the state, using quantifiable indicators in each of the following priority areas and using such qualitative indicators as are needed to adequately measure performance in those areas:

a. Provision of FAPE in the least restrictive environment.

b. State exercise of general supervision, including child find, effective monitoring, the use of resolution meetings, mediation, and a system of transition services as defined in rule 41.43(256B,34CFR300) and in 20 U.S.C. 1437(a)(9).

c. Disproportionate representation of racial and ethnic groups in special education and related services, to the extent the representation is the result of inappropriate identification.

281—41.601(256B,34CFR300) State performance plans and data collection.

41.601(1) General. Each state must have in place a performance plan that evaluates the state's efforts to implement the requirements and purposes of Part B of the Act and describes how the state will improve such implementation.

a. Each state must submit the state's performance plan to the Secretary for approval in accordance with the approval process described in Section 616(c) of the Act.

b. Each state must review its state performance plan at least once every six years and submit any amendments to the Secretary.

c. As part of the state performance plan, each state must establish measurable and rigorous targets for the indicators established by the Secretary under the priority areas described in 34 CFR Section 300.600(d).

41.601(2) Data collection.

a. The state must collect valid and reliable information as needed to report annually to the Secretary on the indicators established by the Secretary for the state performance plans.

b. If the Secretary permits states to collect data on specific indicators through state monitoring or sampling, and the state collects the data through state monitoring or sampling, the state must collect data on those indicators for each LEA at least once during the period of the state performance plan.

281—41.602(256B,34CFR300) State use of targets and reporting.

41.602(1) General. The state shall use the targets established in the state's performance plan under rule 41.601(256B,34CFR300) and the priority areas described in subrule 41.600(4) to analyze the performance of each LEA.

41.602(2) Public reporting and privacy.

a. Public report. The state must:

(1) Report annually to the public on the performance of each LEA located in the state on the targets in the state's performance plan; and

(2) Make the state's performance plan available through public means, including by posting on the Web site of the SEA, distribution to the media, and distribution through public agencies.

(3) If the state collects performance data through state monitoring or sampling, the state must include in its report under 41.602(2)"a"(1) the most recently available performance data on each LEA, and the date the data were obtained.

b. State performance report. The state shall report annually to the Secretary on the performance of the state under the state's performance plan.

c. Privacy. The state shall not report to the public or the Secretary any information on performance that would result in the disclosure of personally identifiable information about individual children or where the available data are insufficient to yield statistically reliable information.

281—41.603(256B,34CFR300) SEA 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 SEA shall develop criteria for making the determinations required by subrule 41.603(2).

41.603(4) Variance of determination. In making the determination required by subrule 41.603(2), the SEA in its discretion may adjust or vary from the criteria described in subrule 41.603(3) based on unusual, unanticipated, or extraordinary aggravating or mitigating factors, on a case-by-case basis.

41.603(5) Notice and opportunity for a hearing. For determinations made under 41.603(2)"a" or "b," the state shall provide reasonable notice of its determination. For determinations made under 41.603(2)"c" or "d," the state shall provide reasonable notice of its determination and may, in its sound discretion, grant an informal hearing to an AEA or LEA; however, if withholding of funds is a remedy associated with a particular determination, the state shall provide a hearing under rule 41.605(256B,34CFR300). Under any hearing granted under this rule or rule 41.605(256B, 34CFR300), the AEA or LEA must demonstrate that the state abused its discretion in making the determination described in subrule 41.603(2).

281—41.604(256B,34CFR300) Enforcement.

41.604(1) Needs assistance. If the state determines for two consecutive years that an LEA or AEA needs assistance under 41.603(2)"b" in implementing the requirements of Part B of the Act, the state may take one or more of the following actions:

a. Advise the LEA or AEA of available sources of technical assistance that may help the LEA or AEA to address the areas in which it needs assistance, which may include assistance from the Iowa department of education, other state agencies, technical assistance providers approved by the Secretary, and other federally funded and state-funded nonprofit agencies, and require it to work with appropriate entities. Such technical assistance may include any of the following:

(1) The provision of advice by experts to address the areas in which the LEA or AEA needs assistance, including explicit plans for addressing the area for concern within a specified period of time;

(2) Assistance in identifying and implementing professional development, instructional strategies, and methods of instruction that are based on scientifically based research;

(3) Designating and using distinguished superintendents, principals, special education administrators, special education teachers and other teachers to provide advice, technical assistance, and support; and

(4) Devising additional approaches to providing technical assistance, such as collaborating with institutions of higher education, educational service agencies, national centers of technical assistance supported under Part D of the Act, and private providers of scientifically based technical assistance.

b. Identify the LEA or AEA as a high-risk grantee and impose special conditions on its grant under Part B of the Act.

41.604(2) Needs intervention. If the state determines for three or more consecutive years that an LEA or AEA needs intervention under 41.603(2)"c" in implementing the requirements of Part B of the Act, the following shall apply:

a. The state may take any of the actions described in subrule 41.604(1).

b. The state may take one or more of the following actions:

(1) Require the LEA or AEA to prepare a corrective action plan or improvement plan if the state determines that the LEA or AEA should be able to correct the problem within one year.

(2) Withhold, in whole or in part, any further payments to the AEA or LEA under Part B of the Act.

41.604(3) Needs substantial intervention. Notwithstanding subrule 41.604(1) or 41.604(2), at any time that the state determines that an LEA or AEA needs substantial intervention in implementing the requirements of Part B of the Act or of this chapter or that there is a substantial failure to comply with any condition of an LEA's eligibility or an AEA's eligibility under Part B of the Act or this chapter, the state may take one or more of the following actions:

a. Withhold, in whole or in part, any further payments to the LEA or AEA under Part B of the Act.

b. Refer the matter for appropriate enforcement action, which may include referral to the Iowa department of justice or the auditor of state.

41.604(4) Rule of construction. The listing of specific enforcement mechanisms in this rule shall not be construed to limit the enforcement mechanisms at the state's disposal in its enforcement of this rule or any other rule in this chapter.

281—41.605(256B,34CFR300) Withholding funds.

41.605(1) General. As a consequence of a determination made under rule 41.603(256B,34CFR300) or enforcement of any provision of Part B of the Act and this chapter, the state may withhold some or all of the funds from an AEA or LEA or a program or service of an AEA or LEA, or may direct an AEA to withhold all or some funds from an LEA or a program or service of an LEA.

41.605(2) Hearing. If the state intends to withhold funds, the state shall provide notice and an opportunity for a hearing to the AEA or LEA. If a hearing is requested, the state may suspend payments to an AEA or LEA, or suspend the authority of the AEA or LEA to obligate funds, or both, until a decision is made after the hearing. A hearing under this rule, which shall not be a contested case under Iowa Code chapter 17A, shall be requested within 30 days of notice of withholding by requesting a hearing before the director of the Iowa department of education or the director's designee. The presiding officer at the hearing shall consider the purposes of Part B of the Act and of this chapter and shall determine whether the state abused its discretion in its decision under subrule 41.605(1).

41.605(3) Reinstatement. If the LEA or AEA substantially rectifies the condition that prompted the initial withholding under subrule 41.605(1), then the state may reinstate payments to the LEA or AEA. If an LEA or AEA disagrees with the state's decision that it has not substantially rectified the condition that prompted the initial withholding under subrule 41.605(1), the LEA or AEA may request a hearing under subrule 41.605(2).

281—41.606(256B,34CFR300) Public attention. Any LEA or AEA that has received notice under 41.603(2)"b," "c," or "d" must, by means of a public notice, take such measures as may be necessary to notify the public within the LEA or AEA of such notice and of the pendency of an action taken pursuant to rule 41.604(256B,34CFR300).

281—41.607 Reserved.

281—41.608(256B,34CFR300) State enforcement.

41.608(1) Prohibition on reduction of maintenance of effort. If an SEA determines that an LEA or AEA is not meeting the requirements of Part B of the Act, including the tar-

EDUCATION DEPARTMENT[281](cont'd)

gets in the state's performance plan, the SEA must prohibit the LEA or AEA from reducing its maintenance of effort under rule 41.203(256B,34CFR300) for any fiscal year.

41.608(2) Rule of construction. Nothing in this chapter shall be construed to restrict the state from utilizing any other authority available to it to monitor and enforce the requirements of Part B of the Act or of this chapter.

281—41.609(256B,34CFR300) State consideration of other state or federal laws. In making the determinations required by rule 41.603(256B,34CFR300), in ordering actions pursuant to rule 41.604(256B,34CFR300), and in taking any other action under this chapter, the SEA may consider whether any agency has complied with any other applicable state or federal law, including but not limited to education law or disability law, or with any corrective action ordered by any competent authority for violation of any such law.

281—41.610(256B,34CFR300) Confidentiality. The state shall take appropriate action, in accordance with Section 444 of the General Education Provisions Act, to ensure the protection of the confidentiality of any personally identifiable data, information, and records collected or maintained by the state and by LEAs and AEAs pursuant to Part B of the Act and this chapter, and consistent with rules 41.611(256B,34CFR300) to 41.626(256B,34CFR300).

281—41.611(256B,34CFR300) Definitions. The following definitions apply to rules 41.611(256B,34CFR300) to 41.625(256B,34CFR300).

41.611(1) Destruction. "Destruction" means physical destruction or removal of personal identifiers from information so that the information is no longer personally identifiable.

41.611(2) Education records. "Education records" means the type of records covered under the definition of "education records" in 34 CFR Part 99 (the regulations implementing the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. 1232g (FERPA)).

41.611(3) Participating agency. "Participating agency" means any agency or institution that collects, maintains, or uses personally identifiable information, or from which information is obtained, under Part B of the Act or this chapter.

281—41.612(256B,34CFR300) Notice to parents.

41.612(1) General. The SEA must give notice that is adequate to fully inform parents about the requirements of rule 41.123(256B,34CFR300), including the following information:

a. A description of the extent that the notice is given in the native languages of the various population groups in the state;

b. A description of the children on whom personally identifiable information is maintained, the types of information sought, the methods the state intends to use in gathering the information, including the sources from whom information is gathered, and the uses to be made of the information;

c. A summary of the policies and procedures that participating agencies must follow regarding storage, disclosure to third parties, retention, and destruction of personally identifiable information; and

d. A description of all of the rights of parents and children regarding this information, including the rights under FERPA and implementing regulations in 34 CFR Part 99.

41.612(2) Media announcements required. Before any major identification, location, or evaluation activity, the notice must be published or announced in newspapers or other media, or both, with circulation adequate to notify parents throughout the state of the activity.

281—41.613(256B,34CFR300) Access rights.

41.613(1) General. Each participating agency must permit parents to inspect and review any education records relating to their children that are collected, maintained, or used by the agency under this chapter. The agency must comply with a request without unnecessary delay and before any meeting regarding an IEP, or any hearing pursuant to rule 41.507(256B,34CFR300) or rules 41.530(256B,34CFR300) to 41.532(256B,34CFR300), or resolution session pursuant to rule 41.510(256B,34CFR300), and in no case more than 45 days after the request has been made.

41.613(2) Extent of right to inspect and review. The right to inspect and review education records under this rule includes the following:

a. The right to a response from the participating agency to reasonable requests for explanations and interpretations of the records;

b. The right to request that the agency provide copies of the records containing the information if failure to provide those copies would effectively prevent the parent from exercising the right to inspect and review the records; and

c. The right to have a representative of the parent inspect and review the records.

41.613(3) Who may inspect and review. An agency may presume that the parent has authority to inspect and review records relating to the parent's child unless the agency has been advised that the parent does not have the authority under applicable state law governing such matters as guardianship, separation, and divorce.

281—41.614(256B,34CFR300) Record of access. Each participating agency must keep a record of parties that obtain access to education records collected, maintained, or used under Part B of the Act, except access by parents and authorized employees of the participating agency, including the name of the party, the date access was given, and the purpose for which the party is authorized to use the records.

281—41.615(256B,34CFR300) Records on more than one child. If any education record includes information on more than one child, the parents of those children have the right to inspect and review only the information relating to their child or to be informed of that specific information.

281—41.616(256B,34CFR300) List of types and locations of information. Each participating agency must provide parents on request a list of the types and locations of education records collected, maintained, or used by the agency.

281—41.617(256B,34CFR300) Fees.

41.617(1) Fees for copies in certain circumstances. Each participating agency may charge a fee for copies of records that are made for parents under this chapter if the fee does not effectively prevent the parents from exercising their right to inspect and review those records.

41.617(2) No fees permitted for record retrieval. A participating agency may not charge a fee to search for or to retrieve information under this chapter.

281—41.618(256B,34CFR300) Amendment of records at parent's request.

41.618(1) Parent may request amendment. A parent who believes that information in the education records collected, maintained, or used under this chapter is inaccurate or misleading or violates the privacy or other rights of the child may request the participating agency that maintains the information to amend the information.

41.618(2) Agency to act on parent's request. The agency must decide whether to amend the information in accordance

with the request within a reasonable period of time of receipt of the request.

41.618(3) Agency to inform parent of hearing rights. If the agency decides to refuse to amend the information in accordance with the request, it must inform the parent of the refusal and advise the parent of the right to a hearing under rule 41.619(256B,34CFR300).

281—41.619(256B,34CFR300) Opportunity for a hearing. The agency must, on request, provide an opportunity for a hearing to challenge information in education records to ensure that it is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child.

281—41.620(256B,34CFR300) Result of hearing.

41.620(1) Information to be amended. If, as a result of the hearing, the agency decides that the information is inaccurate, misleading or otherwise in violation of the privacy or other rights of the child, it must amend the information accordingly and so inform the parent in writing.

41.620(2) Information not to be amended. If, as a result of the hearing, the agency decides that the information is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child, it must inform the parent of the parent's right to place in the records the agency maintains on the child a statement commenting on the information or setting forth any reasons for disagreeing with the decision of the agency.

41.620(3) Explanation placed in student records. Any explanation placed in the records of the child under this rule must be maintained by the agency as part of the records of the child as long as the record or contested portion is maintained by the agency; and, if the records of the child or the contested portion is disclosed by the agency to any party, the explanation must also be disclosed to the party.

281—41.621(256B,34CFR300) Hearing procedures. A hearing held under rule 41.619(256B,34CFR300) must be conducted according to the procedures in 34 CFR 99.22.

281—41.622(256B,34CFR300) Consent.

41.622(1) When parental consent required. Parental consent must be obtained before personally identifiable information is disclosed to parties, other than officials of participating agencies in accordance with subrule 41.622(2), unless the information is contained in education records and the disclosure is authorized without parental consent under 34 CFR Part 99.

41.622(2) When parental consent not required. Except as provided in subrules 41.622(3) and 41.622(4), parental consent is not required before personally identifiable information is released to officials of participating agencies for purposes of meeting a requirement of this chapter.

41.622(3) Parental consent required related to transition. Parental consent, or the consent of an eligible child who has reached the age of majority under state law, must be obtained before personally identifiable information is released to officials of participating agencies providing or paying for transition services in accordance with 41.321(2)"c."

41.622(4) Parental consent required relating to students enrolled in certain private schools. If a child is enrolled or is going to enroll in a private school that is not located in the LEA and AEA of the parent's residence, parental consent must be obtained before any personally identifiable information about the child is released between officials in the LEA and AEA where the private school is located and officials in the LEA and AEA of the parent's residence.

281—41.623(256B,34CFR300) Safeguards. Each participating agency must protect the confidentiality of personally identifiable information at collection, storage, disclosure, and destruction stages. One official at each participating agency must assume responsibility for ensuring the confidentiality of any personally identifiable information. All persons collecting or using personally identifiable information must receive training or instruction regarding the state's policies and procedures under rule 41.123(256B,34CFR300) and 34 CFR Part 99. Each participating agency must maintain, for public inspection, a current listing of the names and positions of those employees within the agency who may have access to personally identifiable information.

281—41.624(256B,34CFR300) Destruction of information.

41.624(1) Parents to be informed when information no longer required. The public agency must inform parents when personally identifiable information collected, maintained, or used under Part B of the Act or this chapter is no longer needed to provide educational services to the child.

41.624(2) Mandatory and permissive destruction of information. The information must be destroyed at the request of the parents. However, a permanent record of a student's name, address, and telephone number, his or her grades, attendance record, classes attended, grade level completed, and year completed may be maintained without time limitation.

281—41.625(256B,34CFR300) Children's rights.

41.625(1) General. The state must have in effect policies and procedures regarding the extent to which children are afforded rights of privacy similar to those afforded to parents, taking into consideration the age of the child and type or severity of disability.

41.625(2) Transfer of rights under FERPA. Under the regulations for FERPA in 34 CFR 99.5(a), the rights of parents regarding education records are transferred to the student at the age of 18.

41.625(3) Transfer of rights under Part B of the Act. If the rights accorded to parents under Part B of the Act are transferred to a student who reaches the age of majority, consistent with rule 41.520(256B,34CFR300), the rights regarding educational records in rules 41.613(256B,34CFR300) to 41.624(256B,34CFR300) must also be transferred to the student. However, the public agency must provide any notice required under Section 615 of the Act to the student and the parents.

281—41.626(256B,34CFR300) Enforcement. The state must have in effect policies and procedures, including sanctions that the state uses, to ensure that its policies and procedures consistent with rules 41.611(256B,34CFR300) to 41.625(256B,34CFR300) are followed and that the requirements of the Act and the rules in this chapter are met.

281—41.627 to **41.639** Reserved.

281—41.640(256B,34CFR300) Annual report of children served—report requirement. The SEA must annually report to the Secretary on the information required by Section 618 of the Act at the times specified by the Secretary, and on forms provided by the Secretary.

281—41.641(256B,34CFR300) Annual report of children served—information required in the report.

41.641(1) Date of count. For purposes of the annual report required by Section 618 of the Act and rule 41.640(256B,34CFR300), the state and the Secretary of the

EDUCATION DEPARTMENT[281](cont'd)

Interior must count and report the number of children with disabilities receiving special education and related services on any date between October 1 and December 1 of each year.

41.641(2) Child's age. For the purpose of this reporting provision, a child's age is the child's actual age on the date of the child count.

41.641(3) Count each child under only one disability category. The SEA may not report a child under more than one disability category.

41.641(4) Child with more than one disability. If a child with a disability has more than one disability, the SEA must report that child in accordance with the following procedure:

a. If a child has only two disabilities and those disabilities are deafness and blindness, and the child is not reported as having a developmental delay, that child must be reported under the category "deaf-blindness."

b. A child who has more than one disability and is not reported as having deaf-blindness or as having a developmental delay must be reported under the category "multiple disabilities."

281—41.642(256B,34CFR300) Data reporting.

41.642(1) Protection of personally identifiable data. The data described in Section 618(a) of the Act and in rule 41.641(256B,34CFR300) must be publicly reported by each state in a manner that does not result in disclosure of data identifiable to individual children.

41.642(2) Sampling permitted. The Secretary permits the SEA to obtain data in Section 618(a) of the Act through sampling.

281—41.643(256B,34CFR300) Annual report of children served—certification. The SEA must include in its report a certification signed by an authorized official of the agency that the information provided under rule 41.640(256B, 34CFR300) is an accurate and unduplicated count of children with disabilities receiving special education and related services on the dates in question.

281—41.644(256B,34CFR300) Annual report of children served—criteria for counting children. The SEA may include in its report children with disabilities who are enrolled in a school or program that is operated or supported by a public agency, and that provides them with both special education and related services that meet state standards; provides them only with special education, if a related service is not required, that meets state standards; or, in the case of children with disabilities enrolled by their parents in private schools, counts those children who are eligible under the Act and receive special education or related services or both that meet state standards under rules 41.132(256,256B,34CFR300) to 41.144(256,256B,34CFR300).

281—41.645(256B,34CFR300) Annual report of children served—other responsibilities of the SEA. In addition to meeting the other requirements of rules 41.640(256B, 34CFR300) to 41.644(256B,34CFR300), the SEA must establish procedures to be used by LEAs and other educational institutions in counting the number of children with disabilities receiving special education and related services; set dates by which those agencies and institutions must report to the SEA to ensure that the state complies with rule 41.640(256B, 34CFR300); obtain certification from each agency and institution that an unduplicated and accurate count has been made; aggregate the data from the count obtained from each agency and institution, and prepare the reports required under rules 41.640(256B,34CFR300) to 41.644(256B,34CFR300); and ensure that documentation is maintained that enables the state and the Secretary to audit the accuracy of the count.

281—41.646(256B,34CFR300) Disproportionality.

41.646(1) General. The state shall collect and examine data to determine if significant disproportionality based on race and ethnicity is occurring in the state and the LEAs of the state with respect to the following:

a. The identification of children as children with disabilities, including the identification of children as children with disabilities in accordance with a particular impairment described in Section 602(3) of the Act;

b. The placement in particular educational settings of these children; and

c. The incidence, duration, and type of disciplinary actions, including suspensions and expulsions.

41.646(2) Review and revision of policies, practices, and procedures. In the case of a determination of significant disproportionality with respect to the identification of children as children with disabilities, or the placement in particular educational settings of these children, or the incidence, duration, and type of disciplinary actions, in accordance with subrule 41.646(1), the state must proceed as follows:

a. Provide for the review and, if appropriate, revision of the policies, procedures, and practices used in the 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 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 paragraph "a" of this subrule.

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 to 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.

EDUCATION DEPARTMENT[281](cont'd)

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 to 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 to 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, a state may use not more than 20 percent of the maximum amount the state may reserve under rule 41.812(256B,34CFR300) for any fiscal year.

41.813(2) Use for administering Part C. Funds described in subrule 41.813(1) may also be used for the administration of Part C of the Act.

281—41.814(256B,34CFR300) Other state-level activities. The state must use any funds the state reserves under rule 41.812(256B,34CFR300) and does not use for administration under rule 41.813(256B,34CFR300) for other state-level activities, consistent with 34 CFR Section 300.814.

281—41.815(256B,34CFR300) Subgrants to AEAs. Each state that receives a grant under Section 619 of the Act for any fiscal year must distribute all of the grant funds that the state does not reserve under rule 41.812(256B,34CFR300) to AEAs in the state that have established their eligibility under Section 613 of the Act.

281—41.816(256B,34CFR300) Allocations to AEAs. The state must allocate to AEAs the amount described in rule 41.815(256B,34CFR300), consistent with 34 CFR Section 300.816.

281—41.817(256B,34CFR300) Reallocation of LEA funds. If an SEA determines that an LEA is adequately providing FAPE to all children with disabilities aged three to five residing in the area served by the LEA with state and local funds, the SEA may reallocate any portion of the funds under Section 619 of the Act that are not needed by that LEA to provide FAPE to other LEAs in the state that are not adequately providing special education and related services to all children with disabilities aged three to five residing in the areas the other LEAs serve.

281—41.818(256B,34CFR300) Part C of the Act inapplicable. Part C of the Act does not apply to any child with a disability receiving FAPE, in accordance with Part B of the Act, with funds received under Section 619 of the Act.

281—41.819 to **41.899** Reserved.

DIVISION XI
ADDITIONAL RULES CONCERNING
FINANCE AND PUBLIC ACCOUNTABILITY

281—41.900(256B,282) Scope. In addition to other rules in this chapter, rules 41.901(256B,282) to 41.908(256B,282) concern finance and accountability for special education and related services.

281—41.901(256B,282) Records and reports. Each agency shall maintain sufficient records and reports for audit by the department. Records and reports shall include at a minimum: licensure (certification) and endorsements or recognition requirements for all special education personnel under rules 41.401(256B,34CFR300) to 41.403(256B); all IEP and IFSP meetings and three-year reevaluations for each eligible individual; and data required for federal and state reporting.

281—41.902(256B,282) Audit. The department reserves the right to audit the records of any agency providing special education for eligible individuals and utilizing funds generated under Iowa Code chapters 256B, 273 and 282.

281—41.903(256B,282) Contractual agreements.

41.903(1) General. Any special education instructional program not provided directly by an LEA or any special education support service not provided by an AEA can only be provided through a contractual agreement. The board shall approve contractual agreements for AEA-operated special education instructional programs and contractual agreements permitting special education support services to be provided by agencies other than the AEA.

41.903(2) Specific requirements. Each agency contracting with other agencies to provide special education and related services for individuals or groups of individuals shall maintain responsibility for individuals receiving such special education and related services by:

a. Ensuring that all the requirements related to the development of each eligible individual's IEP are met.

b. Requiring and reviewing periodic progress reports to ensure the adequacy and appropriateness of the special education and related services provided.

c. Conditioning payments on delivery of special education and related services in accordance with the eligible individual's IEP and in compliance with these rules.

281—41.904(256B) Research and demonstration projects and models for special education program development. Applications for aid, whether provided directly from state or federal funds, for special education research and demonstration projects and models for program development shall be submitted to the department.

281—41.905(256B,273) Additional special education. Additional special education made available through the provisions of Iowa Code section 273.3 shall be furnished in a manner consistent with these rules.

281—41.906(256B,273,282) Extended school year services. Approved extended school year programs for special education support services, when provided by the AEA for eligible individuals, shall be funded through procedures as provided for special education support services. Approved extended school year instructional programs shall be funded

EDUCATION DEPARTMENT[281](cont'd)

through procedures as provided for special education instructional programs.

281—41.907(256B,282,34CFR300,303) Program costs.

41.907(1) Nonresident individual. Subject to subrule 41.131(6), the program costs charged by an LEA or an AEA for an instructional program for a nonresident eligible individual shall be the actual costs incurred in providing that program.

41.907(2) Contracted special education. An AEA or LEA may make provisions for resident eligible individuals through contracts with public or private agencies that provide appropriate and approved special education. The program costs charged by or paid to a public or private agency for special education instructional programs shall be the actual costs incurred in providing that program.

41.907(3) LEA responsibility. The resident LEA shall be liable only for instructional costs incurred by an agency for those individuals certified as eligible in accordance with these rules unless required by 34 CFR Section 300.104.

41.907(4) Support service funds. Support service funds may not be utilized to supplement any special education programs authorized to use special education instructional funds generated through the weighting plan.

41.907(5) Responsibility for special education for children living in a foster care facility. For eligible individuals who are living in a licensed child foster care facility as defined in Iowa Code section 237.1 or in a facility as defined in Iowa Code section 125.2, the LEA in which the facility is located must provide special education if the facility does not maintain a school. The costs of the special education, however, shall be paid by the school district of residence of the eligible individual. If the school district of residence of the eligible individual cannot be determined and this individual is not included in the weighted enrollment of any LEA in the state, the LEA in which the facility is located may certify the costs to the director of education by August 1 of each year for the preceding fiscal year. Payment shall be made from the general fund of the state.

41.907(6) Responsibility for special education for individuals placed by court. For eligible individuals placed by the district court, and for whom parental rights have been terminated by the district court, the LEA in which the facility or home is located must provide special education. Costs shall be certified to the director of education by August 1 of each year for the preceding fiscal year by the director of the AEA in which this individual has been placed. Payment shall be made from the general fund of the state.

41.907(7) Proper use of special education instructional and support service funds. Special education instructional funds generated through the weighting plan may be utilized to provide special education instructional services both in state and out of state with the exceptions of itinerant instructional services and special education consultant services which shall utilize special education support service funds for both in-state and out-of-state placements.

41.907(8) Funding of ECSE instructional options. Eligible individuals below the age of six may be designated as full-time or part-time students depending on the needs of the child. Funding shall be based on individual needs as determined by the IEP team. Special education instructional funds generated through the weighting plan can be used to pay tuition, transportation, and other necessary special education costs, but shall not be used to provide child care.

a. Full-time ECSE instructional services shall include 20 hours or more of instruction per week. The total hours of participation in special education and general education, such as kindergarten or special education tuitioned preschool placements, 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, such as kindergarten or special education tuitioned preschool placements, 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 the sole or motivating factor in a placement decision. One of three levels of service shall be assigned by the director:

a. Level I. A level of service that provides specially designed instruction for a limited portion or part of the educational program. A majority of the general education program is appropriate. This level of service includes modifications and adaptations to the general education program. (Reference Iowa Code section 256B.9(1)"b")

b. Level II. A level of service that provides specially designed instruction for a majority of the educational program. This level of service includes substantial modifications, adaptations, and special education accommodations to the general education program. (Reference Iowa Code section 256B.9(1)"c")

c. Level III. A level of service that provides specially designed instruction for most or all of the educational program. This level of service requires extensive redesign of curriculum and substantial modification of instructional techniques, strategies and materials. (Reference Iowa Code section 256B.9(1)"d")

281—41.908(256B,282) Accountability. The responsible agency shall provide special education and related services in accordance with the individual's IEP; but the agency, teacher, or other person is not held accountable if an individual does not achieve the growth projected in the annual goals and objectives of the IEP, so long as the individual's IEP was reasonably calculated to confer education benefit and was implemented. Nothing in this rule or this chapter shall be construed to create a right of action against any individual.

281—41.909 to **41.999** Reserved.

DIVISION XII

PRACTICE BEFORE MEDIATORS AND ADMINISTRATIVE LAW JUDGES

281—41.1000(17A,256B,290) Applicability. In addition to rules in Division VII, this division applies to matters under this chapter brought before administrative law judges or mediators.

281—41.1001(17A,256B,290) Definitions. As used in this chapter:

41.1001(1) Administrative law judge. "Administrative law judge" means an individual designated by the director of education from the list of approved administrative law judges to hear the presentation of evidence and, if appropriate, oral arguments in the hearing.

41.1001(2) Appeal. In Iowa practice and for purposes of these rules, an "appeal" is synonymous with a "due process complaint."

41.1001(3) Appellant. "Appellant" means a party that files a due process complaint under this chapter.

41.1001(4) Appellee. "Appellee" means a party that opposes the due process complaint filed by the appellant.

41.1001(5) Party. "Party" means the appellant, appellee and third parties named or admitted as a party.

281—41.1002(256B,34CFR300) Special education preappeal conference.

41.1002(1) Procedures. The parent, the LEA or the AEA may request a special education preappeal conference on any decision relating to the identification, evaluation, educational placement, or the provision of FAPE. The preappeal conference shall comply with the requirements of rule 41.506(256B,34CFR300).

a. A request for a special education preappeal conference shall be made in the form of a letter which identifies the student, LEA and AEA, sets forth the facts, the issues of concern, or the reasons for the conference. The letter shall be mailed to the department.

b. Within five business days of receipt of the request for the conference, the department shall contact all pertinent parties to determine whether participation is desired. A checklist shall be sent by the department to the LEA or AEA to receive information about the student.

c. A preappeal conference will be scheduled and held at a time and place reasonably convenient to all parties involved. Written notice will be sent to all parties by the department.

d. The LEA or the AEA shall submit the special education preappeal checklist to the department and shall provide a copy to the parent within ten business days after receiving the request.

e. The student's complete school record shall be made available for review by the parent prior to the conference, if requested in writing at least ten calendar days before the preappeal.

f. The individual's complete school record shall be available to the participants at the preappeal conference.

g. A mediator provided by the department shall preside over the preappeal conference.

h. If an agreement is reached, a document meeting the requirements of 41.506(2)"f" shall be executed.

i. If agreement is not reached at the special education preappeal conference, all parties shall be informed of the procedures for filing a due process complaint.

41.1002(2) Placement during proceedings. Pursuant to rule 41.518(256B,34CFR300), unless the parties agree otherwise, the student involved in the preappeal must remain in the student's present educational placement during the pendency of the proceedings.

41.1002(3) Withdrawals or automatic closures. The initiating party may request a withdrawal of the preappeal prior to the conference. Automatic closure of the department file will occur if any of the following circumstances apply:

a. One of the parties refuses to participate in the voluntary process.

b. The preappeal conference is held but parties are not able to reach an agreement. There will be a ten-calendar-day waiting period after the preappeal to continue the placement as described in subrule 41.106(3) in the event a party wishes to pursue a hearing.

c. The preappeal conference is held and parties are able to reach an agreement and the agreement does not specify a withdrawal date. If a withdrawal date is part of the agreement, an agency withdrawal will occur on the designated date.

41.1002(4) Confidentiality of discussions. Discussions that occur during the special education preappeal conference must be confidential, except as may be provided in Iowa Code chapter 679C, and may not be used as evidence in any subsequent due process hearings or civil proceedings; however, the parties may stipulate to agreements reached at the conference. Prior to the start of the conference, the parties and the mediator will be required to sign an Agreement to Mediate form containing this confidentiality provision.

281—41.1003(17A,256B) Procedures concerning due process complaints.

41.1003(1) AEA as a party. The appropriate AEA serving the individual shall be deemed to be a party with the LEA whether or not specifically named by the parent or agency filing the appeal.

41.1003(2) Individual served by contract with another agency. In instances where the individual is served through a contract with another agency, the school district of residence of the individual shall be deemed a party.

41.1003(3) Notice. The director of education or designee shall, within five business days after the receipt of the appeal, notify the proper officials with the LEA and the AEA of the filing of the due process complaint and shall request in writing that the proper school officials file with the department all records relevant to the due process complaint. The officials shall, within ten business days after receipt of the request, file with the department all records relevant to the decision appealed.

41.1003(4) Free or low-cost legal services. The department shall inform the parent of any free or low-cost legal and other relevant services available in the area if the parent requests the information or the parent or the agency initiates a hearing.

41.1003(5) Written notice. The director of education or designee shall provide notice in writing delivered by fax, personal service as in civil actions, or by certified mail, return receipt requested, to all parties at least ten calendar days prior to the hearing unless the ten-day period is waived by both parties. Such notice shall include the time and the place where the matter of appeal shall be heard. A copy of the appeal hearing rules shall be included with the notice.

41.1003(6) Mediation conference. The department shall contact the parties to determine whether they wish to participate in a mediation conference under rule 41.506(256B,34CFR300). Discussions that occur during the mediation process must be confidential, except as may be provided in Iowa Code chapter 679C, and may not be used as evidence in any subsequent due process hearings or civil proceedings; however, the parties may stipulate to agreements reached in mediation. Prior to the start of the mediation, the parties to the mediation conference and the mediator will be required to sign an Agreement to Mediate form containing a confidentiality provision.

41.1003(7) Dismissal. The appellant may make a request for dismissal by the administrative law judge at any time. A request or motion to dismiss made by the appellee shall be granted upon a determination by the administrative law judge that any of the following circumstances apply:

EDUCATION DEPARTMENT[281](cont'd)

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 na-

ture 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 and other requests 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 not be used to expand on the issues developed by the parties or interject new issues into the hearing.

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 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—41.1008(17A,256B) Mixed evidentiary and stipulated record hearing.

41.1008(1) Written evidence of portions of record may be used. A written presentation of the facts or portions of the certified record that are not contested by the parties may be placed into the hearing record by any party, unless there is timely objection by the other party. No party may later contest such evidence or introduce evidence contrary to that matter which has been stipulated.

41.1008(2) Conducted as evidentiary hearing. All oral arguments, testimony by witnesses and written briefs may refer to evidence contained in the material as any other evidentiary material entered at the hearing. The hearing is conducted as an evidentiary hearing pursuant to rule 41.1007(17A,256B).

281—41.1009(17A,256B) Witnesses.

41.1009(1) Subpoenas. The director of education shall have the power to issue, but not to serve, subpoenas for witnesses and to compel the attendance of those thus served and the giving of evidence by them. The subpoenas shall be given to the requesting parties whose responsibility it is to serve to the designated witnesses. Requests for subpoenas may be denied or delayed if not submitted to the department at least five business days prior to the hearing date.

41.1009(2) Attendance of witness compelled. Any party may compel by subpoena the attendance of witnesses, subject to limitations imposed by state law.

41.1009(3) Cross-examination. Witnesses at the hearing shall be subject to cross-examination. An individual whose testimony has been submitted in written form, if available, shall be subject to cross-examination by any party necessary for a full and true disclosure of the facts. If the individual is not available and cross-examination is necessary for a full and true disclosure of the facts, the administrative law judge may exclude the individual's testimony in written form.

281—41.1010(17A,256B) Rules of evidence.

41.1010(1) Receiving relevant evidence. Because the administrative law judge must decide each case fairly, based on the information presented, it is necessary to allow for the reception of all relevant evidence that will contribute to an informed result. The ultimate test of admissibility is whether the offered evidence is reliable, probative and relevant.

41.1010(2) Acceptable evidence. Irrelevant, immaterial or unduly repetitious evidence shall be excluded. The kind of evidence reasonably prudent persons rely on may be accepted even if it would be inadmissible in a jury trial. The administrative law judge shall give effect to the rules of privilege recognized by law. Objections to evidence may be made and shall be noted in the record. When a hearing is expedited and the interests of the parties are not prejudiced substantially, any part of the evidence may be required to be submitted in verified written form.

41.1010(3) Documentary evidence. Documentary evidence may be received in the form of copies or excerpts, if the original is not readily available. Upon request, parties shall be given an opportunity to compare the copy with the original, if available. Any party has the right to prohibit the

introduction of any evidence at the hearing that has not been disclosed to that party at least five business days before the hearing.

41.1010(4) Administrative notice and opportunity to contest. The administrative law judge may take official notice of all facts of which judicial notice may be taken and of other facts within the specialized knowledge of the administrative law judge. Parties shall be notified at the earliest practicable time, either before or during the hearing or by reference in preliminary reports, and shall be afforded an opportunity to contest such facts before the decision is announced unless the administrative law judge determines as part of the record or decision that fairness to the parties does not require an opportunity to contest such facts.

41.1010(5) 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(6) 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 45 calendar days after the department receives the original request for a hearing, unless a continuance has been granted by the administrative law judge for a good cause.

41.1013(4) Impartial decision maker. No individual who participates in the making of any decision shall have advocated in connection with the hearing, the specific controversy underlying the case or other pending factually related matters, nor shall any individual who participates in the making of any decision be subject to the authority, direction or discretion of any person who has advocated in connection with the hearing, the specific controversy underlying the hearing or a pending related matter involving the same parties.

281—41.1014(17A,256B) Finality of decision.

41.1014(1) Decision final. The decision of the administrative law judge is final. The date of postmark of the decision is the date used to compute time for purposes of appeal.

41.1014(2) Notice to department of a civil action. A party initiating a civil action in state or federal court under rule 41.516(256B,34CFR300) shall provide an informational copy of the petition or complaint to the department within 14 days of filing the action.

281—41.1015(256B,34CFR300) Disqualification of mediator. Any party may request an appointment of a new mediator for any reason listed in subrule 41.1004(1). The department shall determine whether such grounds exist and, if so, shall appoint a new mediator.

281—41.1016(17A) Correcting decisions of administrative law judges. An administrative law judge may, on the motion of any party or on the administrative law judge's own motion, correct any error in a decision or order under this chapter that does not substantively alter the administrative law judge's findings of fact, conclusions of law, or ordered relief, including but not limited to clerical errors, errors in grammar or spelling, and errors in the form of legal citation. Any such correction shall be made within 90 days of the date of the order or decision, shall relate back to the date of the order or decision, and shall not extend any applicable statute of limitations.

281—41.1017 to **41.1099** Reserved.

DIVISION XIII

ADDITIONAL RULES NECESSARY TO IMPLEMENT AND APPLY THIS CHAPTER

281—41.1100(256B,34CFR300) References to Code of Federal Regulations. All references in this chapter to regulations found at Part 300 of Title 34 of the Code of Federal

Regulations (34 CFR Part 300) are to those final regulations published in the Federal Register on August 14, 2006 (71 Fed. Reg. 46540). All references to any other regulation found elsewhere in Title 34 of the Code of Federal Regulations shall be to the volume published on July 1, 2006.

281—41.1101(256B,34CFR300) Severability. Should any rule or subrule in this chapter be declared invalid by a court of competent jurisdiction, every other rule and subrule not affected by that declaration of invalidity shall remain valid.

These rules are intended to implement Iowa Code chapter 256B, the 2004 amendments to the Individuals with Disabilities Education Act, and Part 300 of Title 34 of the Code of Federal Regulations published in the Federal Register on August 14, 2006.

ARC 5921B

EDUCATION DEPARTMENT[281]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 256.7(5), the State Board of Education hereby proposes to amend Chapter 79, "Standards for Practitioner and Administrator Preparation Programs," Iowa Administrative Code.

This chapter was first implemented in 2001 and has not been substantively amended since then. The nature of PK-12 schools continues to evolve, and practitioner preparation programs must keep pace accordingly and anticipate changes when possible. The agency also is striving to hold such programs accountable for the quality of their candidates, for the sake of PK-12 students and the candidates themselves.

Dr. Arlie Willems led a group of representatives from 12 (of 32 total) practitioner preparation programs in a review of the chapter. All programs were given the opportunity to review conceptual changes in conjunction with the spring 2007 meeting of the Iowa Association of Colleges for Teacher Education.

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

Interested individuals may make written comments on the proposed amendments on or before 4:30 p.m. on June 26, 2007. Comments on the proposed amendments should be directed to Arlie Willems, Administrative Consultant, Iowa Department of Education, Third Floor, Grimes State Office Building, Des Moines, Iowa 50319-0146; telephone (515) 281-3427; E-mail arlie.willems@iowa.gov; or fax (515)281-7700.

A public hearing will be held on June 26, 2007, from 11 a.m. to 12 noon in the State Board Room, Grimes State Office Building, East 14th Street and Grand Avenue, Des Moines, Iowa, at which time persons may present their views either orally or in writing. Any persons who intend to attend the public hearing and have special requirements such as those related to hearing or mobility impairments should contact the Department of Education and advise of specific needs by calling (515)281-5295.

These amendments are intended to implement Iowa Code sections 256.7(3), 256.16, and 272.25.

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

The following amendments are proposed.

ITEM 1. Amend **281—Chapter 79** by adding the following **new** division title to precede rule 281—79.1(256):

DIVISION I
GENERAL STANDARDS APPLICABLE TO
ALL PRACTITIONER PREPARATION PROGRAMS

ITEM 2. Amend rule **281—79.2(256)** as follows:

Amend the definitions of "cooperating teachers," "institution," "novice," "practitioner preparation programs," and "unit" as follows:

"Cooperating teachers" means *appropriately licensed* classroom teachers *of record* who provide guidance and supervision to teacher candidates *in the cooperating teachers' classrooms* during the candidates' field experiences in the schools.

"Institution" means a college or university in Iowa offering practitioner, ~~or~~ *including* administrator, preparation or an organization offering administrator preparation and seeking state board approval of its practitioner ~~or administrator~~ preparation program(s).

"Novice" means an individual in an educational position who has no previous experience in the role of that position *or who is newly licensed by the board of educational examiners*.

"Practitioner preparation programs" means the programs of practitioner preparation leading to licensure of teachers, *administrators,* and other professional school personnel.

"Unit" means the organizational entity within an institution with the responsibility of administering the practitioner ~~or administrator~~ preparation ~~program, or both~~ *program(s)*.

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

"Clinical experiences" means a candidate's direct experiences in PK–12 schools. Clinical experiences include 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.

ITEM 3. Amend rule 281—79.3(256) as follows:

281—79.3(256) Institutions affected. All Iowa colleges and universities ~~or~~ *engaged in the preparation of practitioners, including administrators, as well as other educational* organizations engaged in the preparation of ~~practitioners or~~ administrators ~~and seeking state board approval of their programs (hereinafter institutions)~~ shall meet the standards contained in this chapter *to gain or maintain state board approval of their programs*.

ITEM 4. Amend rule 281—79.4(256) as follows:

281—79.4(256) Criteria for Iowa practitioner preparation programs. Each institution seeking approval of its programs of practitioner ~~or administrator~~ preparation shall file evidence of the extent to which it meets the standards contained in this chapter by means of a written self-evaluation report and an evaluation conducted by the department. *The department shall develop a template which shall be used by programs to demonstrate such evidence.* After the state board has approved the practitioner ~~or administrator~~ preparation programs ~~filed by~~ *of* an institution, students who complete the programs and are recommended by the authorized official of

that institution will be issued the appropriate license and endorsement(s).

ITEM 5. Amend rule 281—79.5(256) as follows:

281—79.5(256) Approval of programs. Approval of institutions' practitioner ~~or administrator~~ preparation programs by the state board shall be based on the recommendation of the director after study of the factual and evaluative evidence on record about each program in terms of the standards contained in this chapter.

Approval, if granted, shall be for a term of five years; however, approval for a lesser term may be granted by the state board if it determines conditions so warrant.

If approval is not granted, the applying institution will be advised concerning the areas in which improvement or changes appear to be essential for approval. In this case, the institution shall be given the opportunity to present factual information concerning its programs at ~~the next~~ *a* regularly scheduled meeting of the state board*, not beyond three months of the board's initial decision*. ~~The~~ *Following a minimum of six months after the board's decision to deny approval, the* institution may ~~also~~ reapply ~~at its discretion~~ when it is ready to show what actions have been taken to address the areas of suggested improvement.

Programs may be granted conditional approval upon review of appropriate documentation. In such an instance, the program shall receive a full review after one year or, in the case of a new program, at the point at which candidates demonstrate mastery of standards for licensure.

ITEM 6. Amend rule 281—79.6(256) as follows:

281—79.6(256) Visiting teams. Upon application or reapplication for approval, a team shall visit each institution for evaluation of its practitioner ~~or administrator~~ preparation ~~program~~ *program(s)*. The membership of the team shall be selected by the ~~practitioner preparation and licensure bureau~~ *department* with the concurrence of the institution being visited. The team may include faculty members of other practitioner ~~or administrator~~ preparation institutions ~~within or outside the state~~; personnel from elementary and secondary schools, to include ~~administrators or classroom~~ *licensed* practitioners; personnel of the state department of education; and representatives from professional education organizations. Each team member should have appropriate competencies, background, and experiences to enable the member to contribute to the evaluation visit. The expenses for the visiting team shall be borne by the institution.

ITEM 7. Amend rule 281—79.7(256) as follows:

281—79.7(256) Periodic reports. ~~Institutions placed on the approved~~ *Approved* programs ~~list may be asked to~~ *shall* make periodic reports upon request of the department which shall provide basic information necessary to keep records of each practitioner ~~or administrator~~ preparation program up to date and to provide information necessary to carry out research studies relating to practitioner ~~or administrator~~ preparation.

ITEM 8. Rescind rules **281—79.10(256)** to **281—79.15(256)** and adopt the following **new** divisions:

DIVISION II

SPECIFIC EDUCATION STANDARDS APPLICABLE TO ALL PRACTITIONER PREPARATION PROGRAMS

281—79.10(256) Governance and resources standard. Governance and resources shall adequately support the preparation of practitioner candidates to meet professional, state and institutional standards in accordance with the following provisions.

79.10(1) A clearly understood governance structure provides guidance and support for the practitioner preparation program(s).

79.10(2) The professional education unit has primary responsibility for all programs offered at the institution for the initial and continuing preparation of teachers, administrators and other professional school personnel.

79.10(3) The unit's conceptual framework establishes the shared vision for the unit and provides the foundation for coherence among curriculum, instruction, field experiences, clinical practice, assessment, and evaluation.

79.10(4) The work climate, policies, and assignments promote intellectual vitality, including best practices in teaching, scholarship and service among faculty.

79.10(5) The unit provides evidence of ongoing collaboration with the professional community including evidence that there is an active advisory committee that, at a minimum, is solicited semiannually for program input to inform the unit.

79.10(6) The unit provides evidence of ongoing collaboration with the arts and sciences departments of the institutions, especially regarding content endorsements.

79.10(7) Procedures for an appeals process for candidates and faculty are clearly communicated and provided to all candidates and faculty.

79.10(8) The unit administers a systematic and comprehensive evaluation system designed to enhance the teaching competence and intellectual vitality of the professional education unit.

79.10(9) The institution provides the commitment and resources necessary to support a quality clinical program for all practitioner candidates.

79.10(10) Institutional commitment to the unit includes financial resources, facilities, appropriate educational materials, library services, and equipment to ensure the fulfillment of the institution's and unit's missions, delivery of quality programs, and preparation of practitioner candidates.

79.10(11) The unit provides sufficient faculty, administrative, clerical, and technical staff to plan and deliver a quality practitioner program(s).

79.10(12) Resources are available to support professional development opportunities for faculty.

79.10(13) Resources are available to support technological and instructional needs to enhance candidate learning.

79.10(14) The use of part-time faculty and graduate students in teaching roles is purposeful and managed to ensure integrity, quality, and continuity of programs.

281—79.11(256) Diversity standard. The environment and experiences provided practitioner candidates shall support candidate growth in knowledge, skills, and dispositions to help all students learn in accordance with the following provisions.

79.11(1) The institution and unit maintain a climate that supports diversity.

79.11(2) The institution and unit document their efforts in maintaining and increasing a diverse faculty and include teacher education candidates in plans, policies, and practices as required by the Higher Learning Commission.

79.11(3) Practitioner candidates demonstrate within an exceptional learner component (teacher candidates only), 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.

79.11(4) Practitioner candidates experience clinical practices in settings that include diverse populations and students of different grade levels and of diverse learning needs.

281—79.12(256) Faculty standard. Faculty qualifications and performance shall facilitate the professional development of practitioner candidates in accordance with the following provisions.

79.12(1) Faculty members in professional education are adequately prepared for responsibilities assigned to them, and have had experiences in situations similar to those for which the practitioner candidates are being prepared.

79.12(2) Faculty members instruct and model best practices in teaching, including the assessment of their own effectiveness as related to candidate performance.

79.12(3) Faculty members are engaged in professional development as well as scholarly and service activities that relate to teaching, learning, and practitioner preparation.

79.12(4) Faculty members collaborate regularly and in significant ways with colleagues in the professional education unit and other college/university units, schools, the department, area education agencies, and professional associations as well as with community representatives.

79.12(5) Part-time faculty members and graduate assistants, when employed, are identified as faculty members and meet the licensure and experience requirements appropriate for their assigned responsibilities.

79.12(6) Faculty members preparing practitioner candidates maintain an ongoing, meaningful involvement in activities in preschools or elementary, middle, or secondary schools. A minimum of 60 hours of such activities shall include team teaching during the period between approval visits. A maximum of 30 hours of the 60-hour requirement may be completed by supervising preservice candidates in PK-12 classroom settings.

DIVISION III
SPECIFIC EDUCATION STANDARDS APPLICABLE
ONLY TO INITIAL PRACTITIONER PREPARATION
PROGRAMS FOR TEACHER CANDIDATES

281—79.13(256) Clinical practice standard. The unit and its school partners shall provide field experiences and student teaching opportunities that assist candidates in becoming successful teachers in accordance with the following provisions.

79.13(1) Candidates admitted to a teacher preparation program participate in field experiences including both observation and participation in teaching activities in a variety of school settings and totaling at least 80 hours' duration, with at least 10 hours occurring prior to acceptance into the program. A maximum of 40 hours of previous experience as a teacher or teaching associate may be credited toward the 80 hours if a program chooses to implement specific criteria for this option.

79.13(2) Clinical practice for teacher and other professional school personnel candidates supports the development of knowledge, dispositions, and skills that are identified in the unit standards.

79.13(3) Programs document clinical expectations at various developmental levels throughout the program. These expectations are shared with candidates, supervisors, and cooperating teachers.

79.13(4) Environments for clinical practice support learning in context, and include all of the following:

a. Scheduling and use of time and resources to allow candidates to participate with teachers and other practitioners and learners in the school setting.

b. Teacher candidate learning that takes place in the context of providing high-quality instructional programs for children in a state-approved school.

c. Opportunities for teacher candidates to observe and be observed by others and to engage in discussion and reflection on clinical practice.

d. The involvement of teacher candidates in assessment, planning and instruction as well as in activities directed toward the improvement of teaching and learning.

79.13(5) PK-12 school and college/university personnel share responsibility for the selection of cooperating teachers who demonstrate skills, knowledge, and dispositions of highly accomplished practitioners.

79.13(6) Cooperating teachers and college/university supervisors share responsibility for supervising the candidate's achievement of unit standards.

79.13(7) The unit is responsible for all of the following:

a. Defining qualifications for practitioner candidates entering clinical practice.

b. Providing quality supervision that includes primary responsibility for communication/collaboration with cooperating teacher and candidate.

c. Responding to specific needs of cooperating schools.

d. Implementing an evaluation process that assists in selecting quality cooperating teachers.

79.13(8) Accountability for student teaching experiences is demonstrated through all of the following:

a. Involvement of the cooperating teacher in the daily 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 a written evaluation procedure with the completed evaluation form included in practitioner candidates' permanent records.

79.13(9) The student teaching experience for initial licensure meets all of the following:

a. Includes full-time experience for a minimum of 14 consecutive weeks or a full college/university semester in duration 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 from the cooperating teacher's school district.

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, 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—

EDUCATION DEPARTMENT[281](cont'd)

20.51(272) and Iowa Code section 284.10), which shall not be used as an assessment tool by the program.

g. Requires the student teacher to bear primary responsibility for planning and instruction within the classroom for a minimum of two weeks (ten school days).

h. Involves the student teacher in professional meetings and other school-based activities directed toward the improvement of teaching and learning.

i. Involves the student teacher in communication and interaction with parents or guardians of students in the student teacher's classroom.

79.13(10) The institution annually offers one or more workshops for cooperating teachers to define the objectives of the student teaching experience, review the responsibilities of the cooperating teacher, and provide the cooperating teacher other information and assistance the institution deems necessary. The cumulative instructional time for the workshops shall be one school day or the equivalent hours, and the workshops shall utilize delivery strategies identified as appropriate for staff development and reflect information gathered through feedback from workshop participants.

79.13(11) The institution enters into a written contract with the cooperating school providing clinical experiences, including field experiences and student teaching.

281—79.14(256) Candidate knowledge, skills and dispositions standard. Teacher candidates shall demonstrate the content, pedagogical, and professional knowledge, skills and dispositions necessary to help all students learn in accordance with the following provisions.

79.14(1) Prior to admission to the teacher preparation program, each teacher candidate attains the qualifying score determined by the unit on a basic skills test of reading, writing, and mathematics.

79.14(2) Each teacher candidate demonstrates the acquisition of a core of liberal arts knowledge including but not limited to English composition, mathematics, natural sciences, social sciences, and humanities.

79.14(3) Each teacher candidate completes an approved human relations component and thus demonstrates acquisition of knowledge about and skill in interpersonal and intergroup relations that contributes 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.

79.14(4) Each teacher candidate in elementary education demonstrates acquisition of knowledge about and receives preparation in elementary reading programs, including but not limited to reading recovery.

79.14(5) Each teacher candidate in secondary education demonstrates acquisition of knowledge about and receives preparation in the integration of reading strategies into secondary content areas.

79.14(6) 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.

b. Student learning. The candidate demonstrates an understanding of how students develop and learn, and receives 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 and use of a variety of instructional strategies to encourage students 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; and maintains effective classroom management.

g. Communication. The candidate uses knowledge of effective verbal, nonverbal, and media communication techniques, and other forms of symbolic representation, to foster active inquiry, collaboration, and 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. Reflective practice and professional development. 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 students 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 and dispositions for cooperation with other educators, especially in collaborative/co-teaching as well as in other educational team situations.

k. Technology. The candidate effectively integrates technology into instruction to support student learning.

l. Methods of teaching. Methods of teaching have an emphasis on the subject and grade level endorsement desired.

79.14(7) Each teacher candidate meets all requirements established by the board of educational examiners for any endorsement for which the candidate is recommended as well as standards developed by national professional organizations as appropriate for specific endorsement areas. Programs shall submit curriculum exhibit sheets for approval by the board of educational examiners and the department.

79.14(8) Candidates seeking an endorsement in elementary education attain the state's designated criterion score on a content knowledge assessment as a condition precedent to successful program completion and recommendation for licensure.

79.14(9) Candidates seeking an endorsement in elementary education demonstrate competency in content coursework

directly related to the curricula taught in Iowa elementary schools.

281—79.15(256) Assessment system and unit evaluation standard. The unit's assessment system shall appropriately monitor individual candidate performance and use that data in concert with other information to evaluate and improve the unit and its programs.

79.15(1) Unit assessment system.

a. The unit utilizes a clearly defined management system for the collection, analysis, and use of assessment data.

b. The unit provides evidence that the assessment system is congruent with the institution's mission and the unit's framework for preparation of effective teachers.

c. The unit demonstrates an alignment of unit standards with INTASC standards, as well as Iowa Teaching Standards, Iowa preparation core professional standards [79.14(7)], and Iowa board of educational examiners' licensing standards [282—subrules 14.123(4) and 14.123(5)].

d. The unit clearly documents candidates' attainment of the unit standards.

e. The unit demonstrates propriety, utility, accuracy and fairness of both the overall assessment system and the instruments used, and provides scoring rubrics or other criteria used in evaluation instruments.

f. The unit documents the quality of programs through the collective presentation of assessment data related to performance of teacher candidates. Documentation shall include:

(1) Data collected throughout the program;

(2) Evidence of evaluative data collected from teachers who work with the unit's candidates; and

(3) Evidence of evaluative data collected by the unit through follow-up studies of graduates and their employers.

g. The unit explains the process for reviewing and revising the assessment system.

h. The unit demonstrates how the information gathered by the unit and from the candidate assessment system is shared with faculty and other stakeholders and used for program improvement.

79.15(2) Performance assessment system for teacher candidates.

a. The system is an integral part of the unit's planning and evaluation system.

b. The system has multiple admission criteria and assessments to identify candidates with the potential to become successful teachers.

c. The system includes the administration of a basic skills test with program admission denied to any applicants failing to achieve the institution's designated criterion score.

d. The system has multiple summative decision points. (Minimum: admission to professional education program, approval for student teaching, and recommendation for licensure.)

e. The system includes a coherent, sequential assessment system for individual teacher candidates that is shared with faculty with guidance for course and program improvement, as well as assessment criteria (e.g., rubrics) and a process for ongoing feedback to teacher candidates about their achievement of program standards with guidance for reflection and improvement, and is drawn from multiple formative and summative assessments, including, but not limited to, institutional assessment of content knowledge, professional knowledge, and pedagogical knowledge and their applications, and teaching performance including the effect on student learning.

79.15(3) The unit annually reports to the department such data as is required by the state and federal governments at dates determined by the department.

79.15(4) The department shall periodically conduct a survey of educational agencies employing licensed graduates of approved programs to ensure that the graduates' needs are adequately met by their programs and by the approval process herein.

ITEM 9. Amend **281—Chapter 79** by adding the following **new** division title to precede rule 281—79.16(256):

DIVISION IV
SPECIFIC EDUCATION STANDARDS APPLICABLE ONLY
TO ADMINISTRATOR PREPARATION PROGRAMS

ARC 5944B

ENGINEERING AND LAND SURVEYING EXAMINING BOARD[193C]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 542B.6, the Engineering and Land Surveying Examining Board hereby gives Notice of Intended Action to amend Chapter 5, "Land Surveying Licensure," Iowa Administrative Code.

This amendment clarifies that the six-year experience requirement, which is in addition to graduation from a two-year degree program, may be reduced for graduates of a degree program of more than two years and explains the conditions under which an on-line degree will be accepted as satisfactory by the Board for proper preparation of the applicant for the fundamentals of surveying examination.

Waiver of this rule may be sought pursuant to 193—Chapter 5.

Any interested person may make written or oral suggestions or comments on the proposed amendment on or before June 26, 2007. Comments should be directed to Gleean Coates, Executive Officer, Iowa Engineering and Land Surveying Examining Board, 1920 SE Hulsizer Road, Ankeny, Iowa 50021, or by telephoning (515)281-7360.

This amendment is intended to implement Iowa Code sections 542B.2, 542B.13, 542B.14, 542B.15, and 542B.20.

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

The following amendment is proposed.

Amend subrule 5.1(1) as follows:

5.1(1) First, the applicant for initial licensure in Iowa must satisfy the education plus experience requirements as follows: graduation from a course of two years or more in mathematics, physical sciences, mapping and surveying, or engineering in a school or college and six years of practical experience, all of which, in the opinion of the board, will

properly prepare the applicant for the examination in fundamental land surveying subjects.

a. The six-year experience requirement above may be reduced based upon the number of years of the degree program from which the applicant graduated. Refer to the chart at 5.1(6).

b. Internet or on-line degrees will only be considered as qualifying degrees if the institution issuing the degree is accredited by a recognized accreditation board.

ARC 5941B

ENGINEERING AND LAND SURVEYING EXAMINING BOARD[193C]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 542B.6, the Engineering and Land Surveying Examining Board hereby gives Notice of Intended Action to amend Chapter 6, "Seal and Certificate of Responsibility," Iowa Administrative Code.

This amendment changes the term "digital" signature to "secure electronic" signature and explains the conditions under which an electronic signature meets the signature requirements of this chapter.

Waiver of this rule may be sought pursuant to 193—Chapter 5.

Any interested person may make written or oral suggestions or comments on the proposed amendment on or before June 26, 2007. Comments should be directed to Gleean Coates, Executive Officer, Iowa Engineering and Land Surveying Examining Board, 1920 SE Hulsizer Road, Ankeny, Iowa 50021, or by telephoning (515)281-7360.

This amendment is intended to implement Iowa Code sections 542B.13, 542B.15, 542B.20 and 542B.30.

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

The following amendment is proposed.

Amend subrule 6.1(9) as follows:

6.1(9) ~~Digital signatures~~ *Secure electronic signature*. ~~A digital~~ *An electronic* signature as defined in or governed by Iowa Code chapter 554D meets the signature requirements of this rule *if it is protected by a security procedure, as defined in Iowa Code section 554D.103(14), such as digital signature technology. It is the licensee's responsibility to ensure, prior to affixing an electronic signature to an engineering or land surveying document, that security procedures are adequate to (1) verify the signature is that of a specific person and (2) detect any changes that may be made or attempted after the signature of the specific person is affixed.*

ARC 5929B

LABOR SERVICES DIVISION[875]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 90A.7, the Labor Commissioner hereby gives Notice of Intended Action to amend Chapter 177, "Professional Shoot Fighting," Iowa Administrative Code.

The proposed amendment enhances an existing rule by stipulating that the promoter is responsible for the conduct of all participants and officials at shoot-fighting events.

The purposes of this amendment are to protect the safety and health of the public and to implement legislative intent.

If requested in accordance with Iowa Code section 17A.4(1)"b" by the close of business on June 26, 2007, a public hearing will be held on June 27, 2007, at 8:30 a.m. in the Stanley Room at 1000 East Grand Avenue, Des Moines, Iowa. Interested persons will be given the opportunity to make oral statements and file documents concerning the proposed amendment. The facility for the oral presentations is accessible to and functional for persons with physical disabilities. Persons who have special requirements should call (515)242-5869 in advance to arrange access or other needed services.

Interested persons may submit written data, views, or arguments to be considered in adoption no later than June 27, 2007, to Division of Labor Services, 1000 East Grand Avenue, Des Moines, Iowa 50319-0209. Comments may be sent electronically to kathleen.uehling@iwd.iowa.gov.

This amendment is intended to implement Iowa Code chapter 90A.

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

The following amendment is proposed.

Amend subrule 177.2(2) as follows:

177.2(2) General. The promoter shall have responsibility for compliance with the rules of this chapter. The promoter shall make certain that the referee is familiar with rules and that the referee enforces them. *The promoter shall be responsible for the conduct of all officials and participants at a shoot-fighting event.* The promoter shall be answerable to the commissioner for noncompliance.

ARC 5928B

LABOR SERVICES DIVISION[875]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 90A.7, the Labor Commissioner hereby gives Notice of Intended Action to amend Chapter 177, "Professional Shoot Fighting," Iowa Administrative Code.

The proposed amendment rescinds a rule requiring the attendance of the Labor Commissioner or the Labor Commissioner's designee at each professional shoot-fighting event.

The purpose of this amendment is to give the Labor Commissioner greater flexibility in assigning work to staff of the Division of Labor Services.

If requested in accordance with Iowa Code section 17A.4(1)"b" by the close of business on June 26, 2007, a public hearing will be held on June 27, 2007, at 10 a.m. in the Stanley Room at 1000 East Grand Avenue, Des Moines, Iowa. Interested persons will be given the opportunity to make oral statements and file documents concerning the proposed amendment. The facility for the oral presentations is accessible to and functional for persons with physical disabilities. Persons who have special requirements should call (515)242-5869 in advance to arrange access or other needed services.

Interested persons may submit written data, views, or arguments to be considered in adoption no later than June 27, 2007, to Division of Labor Services, 1000 East Grand Avenue, Des Moines, Iowa 50319-0209. Comments may be sent electronically to kathleen.uehling@iwd.iowa.gov.

This amendment is intended to implement Iowa Code chapter 90A.

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

The following amendment is proposed.

Rescind and reserve rule **875—177.9(90A)**.

ARC 5934B

LABOR SERVICES DIVISION[875]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 90A.7, the Labor Commissioner hereby gives Notice of Intended Action to amend Chapter 177, "Professional Shoot Fighting," Iowa Administrative Code.

The proposed amendment requires a promoter of shoot-fighting events to provide life, medical, surgical and hospital insurance to shoot fighters and sets forth minimum coverage requirements for insurance.

The purposes of this amendment are to protect the safety and health of the public and to implement legislative intent.

If requested in accordance with Iowa Code section 17A.4(1)"b" by the close of business on June 26, 2007, a public hearing will be held on June 27, 2007, at 1:30 p.m. in the Stanley Room at 1000 East Grand Avenue, Des Moines, Iowa. Interested persons will be given the opportunity to make oral statements and file documents concerning the proposed amendment. The facility for the oral presentations is accessible to and functional for persons with physical disabilities. Persons who have special requirements should call (515)242-5869 in advance to arrange access or other needed services.

Interested persons may submit written data, views, or arguments to be considered in adoption no later than June 27, 2007, to Division of Labor Services, 1000 East Grand Avenue, Des Moines, Iowa 50319-0209. Comments may be sent electronically to kathleen.uehling@iwd.iowa.gov.

This amendment is intended to implement Iowa Code chapter 90A.

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

The following amendment is proposed.

Adopt **new** rule 875—177.10(90A) as follows:

875—177.10(90A) Health insurance.

177.10(1) Each promoter shall obtain $25,000 of health insurance coverage on each fighter to provide for medical, surgical and hospital care for injuries sustained and illnesses contracted during the event. If the fighter pays for covered care, the insurance proceeds shall be paid to the fighter or the fighter's beneficiaries as reimbursement for payment. The deductible, if any, shall be the sole responsibility of the promoter and shall not be charged to or paid by the fighter.

177.10(2) Each promoter shall provide no less than $20,000 of life insurance coverage on each fighter to cover death caused by injuries sustained or illnesses contracted during the event.

177.10(3) The promoter shall provide a certificate of health and life insurance to the labor commissioner at least one week before an event. Failure to provide timely proof of insurance that is acceptable to the labor commissioner shall be grounds to deny the issuance of a license for the event.

177.10(4) Insurance policies shall be purchased from companies authorized to do business in the state of Iowa.

ARC 5933B

PHARMACY EXAMINERS BOARD[657]

Amended Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 147.76, the Board of Pharmacy Examiners hereby amends the Notice of Intended Action to amend Chapter 9, "Automated Medication Distribution Systems," Iowa Administrative Code.

The amendments were approved at the April 24, 2007, regular meeting of the Board of Pharmacy Examiners.

An initial Notice of Intended Action for these amendments was published in the February 28, 2007, Iowa Administrative Bulletin as **ARC 5740B**. The Board received written comments agreeing with the proposed amendments but urging further amendment of the rules to ensure that all distribution systems include a plan for verification of the accuracy of component fills regardless of whether the system is used for floor-stock distribution or other medication distribution.

Recent errors in hospitals in other states have resulted in serious health issues and the death of one or more patients because the health care practitioners relied too heavily on the accuracy of drugs dispensed utilizing an automated medication distribution system (AMDS). Automation and technology are tools that can assist health care professionals in functions relating to the distribution of prescription medications, particularly in hospitals and other institutional settings, but automated systems cannot be safely used without ensuring the continued accuracy of the system and without ensuring that human errors are not compounded because the health care professional blindly relies on the accuracy of the technology.

In response to the comments and as a result of concerns expressed by various members of the Board and Board staff, the amendments proposed in **ARC 5740B** have been revised.

The proposed amendments in both **ARC 5740B** and herein clarify the requirements for a pharmacist's check and verification of each dose of a prescription medication before the medication is removed from the pharmacy and stocked by a nonpharmacist into a component of an automated medication distribution system. The amendments proposed herein further amend the requirements related to utilization of a decentralized unit dose AMDS by eliminating the distinction between an AMDS utilized for floor-stock distribution of patient medications and an AMDS utilized for other than floor-stock distribution. The revised amendments require verification of the accuracy of medication stocked into AMDS components based not on the intended use of the AMDS component but on whether bar coding or other technology-based verification is used during medication stocking.

Requests for waiver or variance of the discretionary provisions of these rules will be considered pursuant to 657—Chapter 34.

Any interested person may present written comments, data, views, and arguments on the proposed amendments not later than 4:30 p.m. on July 6, 2007. Such written materials may be sent to Terry Witkowski, Executive Officer, Board of Pharmacy Examiners, 400 S.W. Eighth Street, Suite E, Des Moines, Iowa 50309-4688, or by E-mail to terry.witkowski@iowa.gov.

These amendments are intended to implement Iowa Code sections 147.107, 155A.13, and 155A.33.

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

The following amendments are proposed.

ITEM 1. Amend **657—Chapter 9**, parenthetical implementation statutes, by striking "79GA,ch182" wherever it appears and inserting "147,155A" in lieu thereof.

ITEM 2. Amend rule 657—9.7(147,155A) as follows:

657—9.7(147,155A) Decentralized unit dose AMDS. ~~Decentralized unit dose AMDS may be utilized in two ways. Either subrule 9.7(1) or subrule 9.7(2) shall apply, based on the utilization of the decentralized unit dose AMDS.~~

~~**9.7(1)** Floor-stock distribution. If the~~ *Components of a* decentralized unit dose AMDS ~~is~~ utilized for the storage and dispensing of ~~floor-stock medications only,~~ medications may be restocked ~~into components~~ *with medication* by an appropriately trained pharmacy technician following pharmacist verification in the pharmacy of ~~medications~~ *each dose of medication* to be restocked. *The provisions of either subrule 9.7(1) or 9.7(2) shall also apply based on whether or not bar coding or other technology-based verification is utilized to check the accuracy of medication dose placement in the AMDS component.*

~~**9.7(2)** Other than floor-stock distribution. If the decentralized unit dose AMDS is utilized for medications other than floor-stock medications, including but not limited to medications intended for first-dose administration or medications otherwise dispensed in unit dose cassettes, the following shall apply:~~

~~a. Pharmacist or nurse verification.~~ ***9.7(1)*** *No technology-based verification is available or used.* When bar coding or other technology-based verification is not utilized to check the accuracy of medication doses stocked in *a* dispensing ~~components~~ *component*, *a pharmacist shall check each medication dose prior to releasing the drugs from the pharmacy.*

a. Following restocking of medication doses into the AMDS component, a pharmacist or a nurse shall verify that 100 percent of all medication doses are accurately placed in each medication bin of each dispensing component.

b. Policies, procedures, and safeguards shall be developed and implemented that control, while ensuring availability and access to needed medications, utilization of medications added to the dispensing component prior to pharmacist or nurse verification of the addition. Policies and procedures shall also provide for documentation identifying the individual who provides verification of medications stocked in dispensing components.

~~b.~~ ***9.7(2)*** Bar coding or technology-based verification *is available and used*. When bar coding or other technology-based verification is utilized *to check the accuracy of medication doses stocked in a dispensing component* and a ~~pharmacist is not filling~~ *nonpharmacist fills* the ~~dispensing~~ component, *a pharmacist shall check each medication dose prior to releasing the drugs from the pharmacy.* ~~the~~ *The* quality assurance plan shall provide for random verification by a pharmacist *by one of the methods described in paragraphs "a" and "b" below. A pharmacy may petition the board pur-*

PHARMACY EXAMINERS BOARD[657](cont'd)

suant to 657—Chapter 34 for a variance for an alternate pharmacist verification process.

a. ~~The plan shall provide that, one~~ *One* day each month, all medication doses or bins contained in 5 percent of the components utilized within the system *shall* be verified by a pharmacist.

b. ~~Or the plan shall provide that, one~~ *One* day each month, 5 percent of the medication doses or bins contained in each component utilized within the system *shall* be verified by a pharmacist. If, however, the system includes fewer than five components, a pharmacist shall, one day each month, verify all medication doses or bins contained in one component utilized within the system. ~~A pharmacy may petition the board pursuant to 657—Chapter 34 for a variance for an alternate pharmacist verification process.~~

9.7(3) No change.

ITEM 3. Amend **657—Chapter 9**, implementation clause, as follows:

These rules are intended to implement ~~2001 Iowa Acts, chapter 182, section 5(10), paragraph "i."~~ *Iowa Code sections 147.107, 155A.13, and 155A.33.*

ARC 5912B

PUBLIC HEALTH DEPARTMENT[641]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 136C.3, the Department of Public Health hereby gives Notice of Intended Action to amend Chapter 38, "General Provisions for Radiation Machines and Radioactive Materials," Chapter 39, "Registration of Radiation Machine Facilities, Licensure of Radioactive Materials and Transportation of Radioactive Materials," Chapter 41, "Safety Requirements for the Use of Radiation Machines and Certain Uses of Radioactive Materials," Chapter 42, "Minimum Certification Standards for Diagnostic Radiographers, Nuclear Medicine Technologists, and Radiation Therapists," Chapter 45, "Radiation Safety Requirements for Industrial Radiographic Operations," and Chapter 46, "Minimum Requirements for Tanning Facilities," Iowa Administrative Code.

The following paragraphs itemize the proposed changes.

Item 1 increases fees for registering generally licensed radioactive materials. The agency is tasked with charging fees necessary to cover the cost of operation.

Item 2 increases fees for the industrial radiography examination given by the agency. The fee charged by the company providing the examination was increased.

Item 3 corrects language to cover all entities possessing radioactive materials or machines that might need surveillance activities.

Item 4 adds fees for podiatry assistants. This program has been transferred from the Board of Podiatry Examiners to the Bureau of Radiological Health.

Item 5 ties the training requirements for radiation therapy physicists to the fees for providing services.

Item 6 places restrictions on operators of CT equipment that have been agency standards for some time.

Item 7 adds a definition required to meet Nuclear Regulatory Commission compatibility.

Items 8, 13, and 16 rescind a subrule that is no longer applicable.

Items 9, 12, 14, 15, and 17 correct references.

Items 10 and 11 change language in order to meet Nuclear Regulatory Commission compatibility.

Items 18, 19, 20, 25, 26, 27, and 34 add language for podiatry assistants. This program has been transferred from the Board of Podiatry Examiners to the Bureau of Radiological Health.

Items 21, 22, 23, 30, and 31 add language for certification of operators of CT units. This is a new area of regulation.

Items 24, 28, 29, 32, and 33 correct and clarify language for training of operators in diagnostic radiography, nuclear medicine, and radiation therapy.

Item 35 adds language to clarify who is qualified as a trainer of industrial radiographers.

Item 36 clarifies the process for registering a tanning facility.

Item 37 adds information about the different types of tanning units to the information that all tanning customers are required to read. This information is intended to clarify the differences between the tanning units.

These rules are subject to waiver pursuant to the Department's exemption provision contained at 641—38.3(136C). For this reason, the Department has not provided a specific provision for waiver of these particular rules.

Any interested person may make written suggestions or comments on these proposed amendments prior to the close of business on June 26, 2007. Such written materials should be directed to Chief of Bureau of Radiological Health, Iowa Department of Public Health, Lucas State Office Building, 5th Floor, 321 East 12th Street, Des Moines, Iowa 50319; fax (515)281-4529; or E-mail ccraig@idph.state.ia.us.

A public hearing will be held on June 26, 2007, at 8:30 a.m. in the Fifth Floor Conference Room 523, Iowa Department of Public Health, Lucas State Office Building, Des Moines, Iowa, at which time persons may present their views orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments.

Any person who plans to attend the public hearing and has special requirements such as those related to hearing or mobility impairments should contact the Department to advise of specific needs.

These amendments are intended to implement Iowa Code chapters 136C and 136D.

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

The following amendments are proposed.

ITEM 1. Amend subrule **38.8(2)**, paragraph **"c,"** as follows:

c. Registration. Each person having generally licensed radioactive materials shall annually register with the department and pay a nonrefundable annual fee of ~~$150~~ *$200.*

ITEM 2. Amend subrule **38.8(3)**, paragraph **"a,"** as follows:

a. A nonrefundable fee of ~~$150~~ *$175* shall be submitted with each application for taking an industrial radiography examination to become certified by the agency.

ITEM 3. Amend subrule 38.8(5) as follows:

38.8(5) Environmental surveillance fee. A fee may be levied against any licensee*, registrant, corporation, company, business, or individual* for environmental surveillance activities which are necessary to ~~access~~ *assess* the radiological impact of activities conducted by the licensee*, registrant, corporation, company, business, or individual*. This fee shall be sufficient to defray actual costs incurred by the agency, including, but not limited to, salaries of agency employees, per diem, travel, and costs of laboratory analysis of samples, when required.

ITEM 4. Amend subrule 38.8(6), introductory paragraph, as follows:

38.8(6) Certification fees. Diagnostic radiographers, radiologist assistants, radiation therapists, and nuclear medicine technologists (as defined in 641—Chapter 42), other than licensed practitioners of the healing arts, are required to pay fees sufficient to defray the cost of administering 641—Chapter 42. *For podiatry assistant fees, see 641—42.7(136C).* Fees are as follows:

ITEM 5. Amend subrule **39.3(3)** by adopting **new** paragraph **"g"** as follows:

g. Radiation therapy physicists providing services for therapeutic radiation machines must provide proof that the training requirements of 641—subrule 41.3(6) have been met.

ITEM 6. Amend subrule **41.1(11)**, paragraph **"d,"** subparagraph **(4)**, numbered paragraph **"1,"** as follows:

1. The CT X-ray system shall not be operated except by *a licensed practitioner or* an individual who has been specifically trained in its operation *in accordance with 641—subrule 42.2(9)*.

ITEM 7. Amend subrule **41.2(2)** by adopting the following **new** definition in alphabetical order:

"Unit dosage" means a dosage prepared for medical use for administration as a single dosage to a patient or human research subject without any further manipulation of the dosage after it is initially prepared.

ITEM 8. Rescind and reserve subrule **41.2(18)**, paragraph **"g."**

ITEM 9. Amend subrule **41.2(59)**, paragraph **"a,"** subparagraph **(7)**, as follows:

(7) A licensee shall retain a copy of the procedures required by ~~41.2(59)"b"~~ *41.2(59)"a"(2)* until the licensee no longer possesses the teletherapy unit.

ITEM 10. Amend subrule **41.2(59)**, paragraph **"b,"** subparagraph **(6)**, introductory paragraph, as follows:

(6) A licensee shall retain *for three years* a record of each spot check required in 41.2(59)"b"(4) ~~and a copy of the procedures required by 41.2(59"b"(2)~~. The record must include:

ITEM 11. Amend subrule **41.2(59)**, paragraph **"c,"** subparagraph **(7)**, introductory paragraph, as follows:

(7) A licensee shall retain *for three years* a record of each spot check required by 41.2(59)"c"(3) and (4) ~~and a copy of the procedures required in 41.2(59)"c"(2)~~. The record must include:

ITEM 12. Amend subrule 41.2(68), introductory paragraph, as follows:

41.2(68) Training for imaging and localization studies. Except as provided in 41.2(75) ~~and 41.2(76)~~, the licensee shall require the authorized user of unsealed radioactive material specified in 41.2(33) to be a physician who:

ITEM 13. Rescind and reserve subrule **41.2(76)**.

ITEM 14. Amend subrule 41.2(77) as follows:

41.2(77) Recentness of training. The training and experience specified in 41.2(65) to ~~41.2(79)~~ *41.2(78)* and 41.2(81), 41.2(82), and 41.2(89) shall have been obtained within the seven years preceding the date of application or the individual shall have had related continuing education and continuing applicable experience since the required training and experience were completed.

ITEM 15. Amend subrule 41.2(78), introductory paragraph, as follows:

41.2(78) Training for an authorized nuclear pharmacist. Except as provided in ~~41.2(79)~~ *41.2(75)*, the licensee shall require the authorized nuclear pharmacist to be a pharmacist who:

ITEM 16. Rescind and reserve subrule **41.2(79)**.

ITEM 17. Amend subrule **41.3(17)**, paragraph **"b,"** introductory paragraph, as follows:

b. Facility design requirements for therapeutic radiation machines capable of operating in the range 50 kV to 500 kV. In addition to shielding adequate to meet requirements of ~~41.3(8)~~ *41.3(19)*, the treatment room shall meet the following design requirements:

ITEM 18. Amend subrule **42.1(2)** as follows:

Amend the following definitions:

"Clinical education" means the direct participation of the student in ~~completion of diagnostic studies~~ *radiographic exposures as part of the approved course of study.*

"Radiation therapy technology" means the science and art of performing simulation radiography or applying ionizing radiation emitted from X-ray machines, particle accelerators, or radioactive materials *in the form of sealed sources* to human beings for therapeutic purposes.

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

"ARRT" means the American Registry of Radiologic Technologists.

"Clinical podiatric sponsor" means a person who is licensed under Iowa Code chapter 149 and who is supervising a podiatric student.

"Podiatric radiography" means the application of X-radiation to the human foot and ankle for diagnostic purposes only.

"Podiatry assistant" means an individual employed in a podiatry office who performs podiatric radiography.

ITEM 19. Amend subrule **42.2(1)** by adopting **new** paragraph **"j"** as follows:

j. For podiatry assistants only, follow the application process in 42.7(4).

ITEM 20. Amend subrule **42.2(2)**, paragraphs **"a," "b,"** and **"d,"** as follows:

a. Operating as a diagnostic radiographer, *podiatric radiographer,* radiologist assistant, nuclear medicine technologist, or radiation therapist without meeting the requirements of this chapter.

b. Allowing any individual excluding a licensed practitioner as defined in 641—38.2(136C) to operate as a diagnostic radiographer, *podiatric radiographer,* radiologist assistant, nuclear medicine technologist, or radiation therapist

if that individual cannot provide proof of certification by the agency.

d. Submitting false information in order to obtain certification or renewal certification as a diagnostic radiographer, *podiatric radiographer,* radiologist assistant, nuclear medicine technologist, or radiation therapist.

ITEM 21. Amend subrule **42.2(3)**, paragraph **"a,"** subparagraph **(1)**, as follows:

(1) General diagnostic radiographer: 24 clock hours, 1.0 hour must be in radiation protection. *Subjects must be directly related to general diagnostic radiography as defined in 42.1(2) and approved by the agency.*

1. Individuals holding an additional category in CT, as specified in 42.2(9), must complete 6.0 of the 24.0 hours in CT-related courses.

2. Individuals not holding the additional category in CT may not submit continuing education hours in CT.

ITEM 22. Amend subrule **42.2(3)**, paragraph **"a,"** subparagraph **(4)**, numbered paragraph **"3,"** as follows:

3. The remaining 20 clock hours of continuing education in each two-year period ~~may~~ *must* be in ~~any other~~ subjects related to nuclear medicine *procedures as defined in 42.1(2)* and approved by the ~~department~~ *agency.*

- *Individuals holding an additional category in CT, as specified in 42.2(9), must complete 6.0 of the 24.0 hours in CT-related courses.*
- *Individuals not holding the additional category in CT may not submit continuing education hours in CT.*

ITEM 23. Amend subrule **42.2(3)**, paragraph **"a,"** subparagraph **(6)**, as follows:

(6) Radiation therapist*, dosimetrist, simulation therapist*: ~~proof of~~ 24.0 clock hours*, 1.0 hour must be in radiation protection.* ~~of continuing~~ *Continuing* education courses ~~in subjects~~ *must be* directly related to radiation therapy *as defined in 42.1(2) and approved by the agency.*

1. Individuals holding an additional category in CT, as specified in 42.2(9), must complete 6.0 of the 24.0 hours in CT-related courses.

2. Individuals not holding an additional category in CT may not submit continuing education hours in CT.

ITEM 24. Rescind and reserve subrule **42.2(3)**, paragraph **"a,"** subparagraph **(7)**.

ITEM 25. Amend subrule **42.2(3)**, paragraph **"a,"** by adopting **new** subparagraph **(9)** as follows:

(9) Podiatry assistant: See 42.7(5).

ITEM 26. Amend subrule **42.2(3)**, paragraph **"g,"** subparagraph **(2)**, as follows:

(2) Any individual who fails to complete the required continuing education before the continuing education due date but submits a written plan of correction to obtain the required hours plus 3.0 additional penalty hours for limited technologists and 6.0 additional hours for general technologists *and 1.0 hour for podiatric assistants* and the fee required in 641—paragraph 38.8(6)"c" shall be allowed no more than 60 days after the original continuing education due date to complete the plan of correction and additional penalty hours and submit the documentation of completion of continuing education requirements. After 60 days, the certification shall be terminated and the individual shall not function as a diagnostic radiographer, radiation therapist, ~~or~~ nuclear medicine technologist *or podiatric radiographer* in Iowa.

ITEM 27. Amend subrule **42.2(4)**, paragraph **"a,"** by adopting **new** subparagraph **(4)** as follows:

(4) Podiatry assistants must meet the requirements of 42.7(6).

ITEM 28. Amend subrule **42.2(6)**, paragraph **"a,"** subparagraph **(3)**, as follows:

(3) Proof that the instructor meets the requirements of this chapter as a *two-year trained* diagnostic radiographer, nuclear medicine technologist, *or* radiation therapist or is a licensed physician trained in the specific area of competence.

ITEM 29. Amend subrule **42.2(6)**, paragraph **"a,"** by adopting **new** subparagraph (**6**) as follows:

(6) A statement of permission to allow a representative of the agency to periodically evaluate the progress of the student.

ITEM 30. Amend subrule 42.2(7) as follows:

42.2(7) Requirements for operators of dual imaging devices.

a. When a unit is operated as a stand-alone nuclear medicine imaging device, the operator must have a permit to practice as a nuclear medicine technologist and meet the requirements of 641—42.4(136C).

b. When the unit is operated as a stand-alone CT imaging device, the operator must have a permit to practice as a general diagnostic radiographer*, nuclear medicine technologist, or radiation therapist* and meet the requirements of ~~641—42.3(136C)~~ *42.2(9).*

c. When a unit is operated in dual mode as a SPECT/CT or PET/CT device, the operator must have a permit to practice as a nuclear medicine technologist *and meet the requirements of 42.2(9).*

~~b. In order to operate a SPECT/CT or PET/CT unit as a stand-alone CT unit, the individual must:~~

~~(1) Be certified as a nuclear medicine technologist;~~

~~(2) Complete a training program approved by the agency; and~~

~~(3) Successfully complete the ARRT specialty examination for CT.~~

ITEM 31. Adopt **new** subrule 42.2(9) as follows:

42.2(9) Specific requirements for CT certification.

a. Operators of CT units must meet the following requirements:

(1) Hold certification as a general diagnostic radiographer, radiation therapist, or nuclear medicine technologist;

(2) Complete the manufacturer's training or an agency-approved equivalent training course. Training must include equipment operation, contrast media, sectional anatomy, and CT radiation protection and be at least 15.0 hours in length. Initial training may be used as continuing education in the reporting period taken if approved by the agency. Passing the ARRT certification examination in CT will meet the training requirement; and

(3) Complete 6.0 hours of continuing education in CT-related subjects each two-year reporting period. These hours may be a part of the 24.0 hours of continuing education required in 42.2(3)"a"(1), (4), and (6).

b. Proof of initial training shall be forwarded to the agency for review.

c. "CT" must be on the individual's permit in order for the individual to perform CT scans.

ITEM 32. Amend subrule **42.3(1)**, paragraph **"a,"** subparagraph **(7)**, as follows:

PUBLIC HEALTH DEPARTMENT[641](cont'd)

(7) Clinical experience sufficient to demonstrate competency in the application of the above as specified in the "Standards for an Accredited Education Program in Radiologic Sciences" as adopted by the Joint Review Committee on Education on Radiologic Technology. *Clinical experience must be directly supervised by a two-year trained general radiographer.*

ITEM 33. Rescind and reserve subrule **42.3(1)**, paragraph **"b,"** subparagraph **(1)**, numbered paragraph **"8."**

ITEM 34. Adopt **new** rule 641—42.7(136C) as follows:

641—42.7(136C) Specific requirements for podiatric assistants.

42.7(1) Training requirements. Any person wishing to operate radiation-emitting equipment for purposes of podiatric radiography shall:

a. Complete an approved program or course of study that includes the following:

(1) Didactic training in podiatric radiological practices including radiation health, safety, and physics, lower extremity anatomy and physiology, positioning techniques, infection control, and equipment maintenance with efficiencies to minimize radiation exposure and frequency of retakes. The didactic training shall be at least 15 hours in length; and

(2) A radiographic clinical program sufficient to demonstrate proficiency to a podiatric sponsor. Training shall:

1. Include equipment maintenance, exposures and positioning, film processing, film evaluation for quality, and mounting and filing of radiographic films;

2. Include at least 50 total exposures. Exposures must be taken in at least 20 working days in a podiatric office or clinic;

3. Be directly supervised by a podiatrist, general radiographer, or certified podiatric assistant; and

4. Not be started until notification of the desire to conduct a clinical training program has been submitted to this agency and verification received by the podiatric sponsor; and

(3) Upon completion of the training in 42.7(1)"a," submit a form signed by the clinical podiatric sponsor certifying completion of and competency of 42.7(1)"a"(2); and

b. Pass a written examination approved by this agency; or

c. Meet the requirements of this rule after submission of proof that the individual holds a current certificate in podiatric radiography issued by another state, jurisdiction, agency or recognized professional registry provided that the agency finds that the standards, procedures, and examinations are equivalent to 641—42.7(136C).

42.7(2) Examination.

a. The examination shall be given by an agency-approved entity and proctored by appropriate personnel.

b. The passing score shall be 70 percent or greater.

c. Any individual who fails the examination in three tries must successfully repeat the didactic portion of the training program before testing again.

42.7(3) Exemptions.

a. Students enrolled and participating in an approved course of clinical study for podiatry assistants or an approved school of medicine, osteopathy, or podiatry who, as part of their course of study, may apply ionizing radiation to a human being while under the supervision of a licensed practitioner.

b. Licensed practitioners as defined in 641—Chapter 38.

42.7(4) Application for certification. Any individual seeking certification under rule 641—42.7(136C) shall:

a. Graduate from high school or its equivalent;

b. Be at least 18 years of age;

c. Be able to adequately perform necessary duties without constituting a hazard to the health and safety of patients or operators;

d. Satisfactorily complete the agency-approved didactic and clinical training;

e. Satisfactorily complete the agency-approved examination;

f. Upon completion of "d" and "e," apply to the agency for a permit to practice and pay a fee of $25;

g. Submit an annual renewal application that includes the $25 fee;

h. Submit copies of proof of completion of continuing education required in subrule 42.7(5);

i. Post the permit at the individual's place of employment;

j. Work only under the supervision of a licensed practitioner as defined in 641—Chapter 38;

k. Submit a written report of any misdemeanor or felony, any disciplinary action brought against the individual in connection with a certificate or license issued from a certifying or licensing entity, or any disciplinary action brought against the individual by an employer or patient.

42.7(5) Continuing education requirements.

a. Each individual certified under rule 641—42.7(136C) shall, during a two-year period, obtain two clock hours of continuing education.

b. Hours may be satisfied by attending courses in podiatric radiography approved by this agency or given by the American Podiatric Medical Association (APMA) or the Iowa Podiatric Medical Society (IPMS).

c. Proofs of completion shall be retained by the podiatric assistant for four years.

d. For late submission of continuing education, the requirements in 42.2(3)"g" shall apply.

42.7(6) Recertification.

a. If an individual allows the certification to expire for any reason or if any individual voluntarily terminates certification, the following shall apply:

(1) Any individual who wishes to regain certification and makes application within six months of the termination date will be allowed to do so with no additional training or testing required but must complete any delinquent continuing education.

(2) Any individual who wishes to regain certification after two years must complete an approved training program and pass the required examination as required in 42.7(1) and 42.7(2).

b. Reserved.

42.7(7) Any licensed podiatrist who permits an individual to perform podiatric radiography contrary to this chapter shall be subject to discipline by the board of podiatric examiners pursuant to 645—Chapter 224.

ITEM 35. Amend subrule **45.1(10)**, paragraph **"c,"** subparagraph (**2**), as follows:

(2) Has one year of documented experience as an industrial radiographer *and possesses a current ID card issued at least one year prior to the application for a trainer card*; and

ITEM 36. Amend subrule **46.5(1)**, paragraph **"c,"** as follows:

c. A tanning facility shall ~~provide~~ *require* each consumer ~~with a written warning statement~~ *to read the information in Appendices 1, 2, and 3* prior to the consumer's initial expo-

sure and annually thereafter. ~~which includes at least the following information:~~

~~(1) The representative list of potential photosensitizing drugs and agents shown in Appendix 1.~~

~~(2) Information regarding potential negative health effects related to ultraviolet exposure, as shown in Appendix 3.~~

~~(3) Basic information on how different skin types respond to tanning (see Appendix 2).~~

~~(4) An explanation of the need to use eyewear.~~

~~(5)~~ *(1)* The operator shall then ~~request that~~ *require* the consumer *to* sign a statement that the information has been read and understood.

~~(6)~~ *(2)* The ~~items in 46.5(1)"c"(1), (2), and (3)~~ *information in Appendices 1, 2, and 3* shall be posted in each tanning room.

ITEM 37. Amend **641—Chapter 46**, **Appendix 3**, as follows:

Appendix 3
POTENTIAL NEGATIVE HEALTH EFFECTS
RELATED TO ULTRAVIOLET EXPOSURE

1. Increased risk of skin cancer later in life.
2. Increased risk of skin thickening*, age spots, irregular pigmentation,* and premature aging.
3. Possibility of burning or rash, especially if using any of the potential photosensitizing drugs and agents. The consumer should consult a physician before using a tanning device if using medications, if there is a history of skin problems or if the consumer is especially sensitive to sunlight.
4. Increased risk of eye damage unless proper eyewear is worn. *Iowa law requires the use of proper eyewear during tanning sessions.*

TANNING SYSTEMS

1. *Low-pressure tanning systems use a higher percentage of UVB rays which penetrate only the upper layer of skin and can cause burning more easily than high-pressure tanning systems. Low-pressure systems require more frequent sessions to maintain a tan.*
   High-intensity tanning systems use more lamps and shorter tanning sessions than low-intensity tanning systems. These are still classified as low-pressure systems.
2. *High-pressure tanning systems use a higher percentage of UVA rays which penetrate more deeply and can permanently damage the lower layers of skin and increase the incidences of skin cancers. High-pressure systems require fewer and less frequent sessions to maintain a tan.*
3. *The exposure schedule for each specific unit is shown on the labeling on the tanning unit. Iowa law requires the operator to limit the exposure of each consumer to the exposure schedule shown on the unit in which the consumer is tanning.*

ARC 5915B

PUBLIC HEALTH DEPARTMENT[641]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code sections 135.11 and 135.22B, the Department of Public Health hereby gives Notice of Intended Action to adopt new Chapter 56, "Brain Injury Services Program," Iowa Administrative Code.

A Brain Injury Services Program was created through legislation passed in 2006. The purpose of the Brain Injury Services Program is to provide services, service funding, or other support for persons with a brain injury under either the waiver-eligible component or the cost-share component, as provided by Iowa Code section 135.22B. The proposed new chapter provides guidance on how to apply for assistance and the financial eligibility requirements for the waiver-eligible and cost-share components of the program.

Consideration will be given to all written suggestions or comments on these proposed rules on or before June 26, 2007. Such written materials should be sent to Ben Woodworth, Department of Public Health, Lucas State Office Building, 321 E. 12th Street, Des Moines, Iowa 50319; fax (515)281-4535; or E-mail bwoodwor@idph.state.ia.us.

There will be a public hearing held on June 26, 2007, from 1 to 2:30 p.m. in Room 518, Lucas State Office Building, 321 E. 12th Street, Des Moines, Iowa, at which time persons may present their views either orally or in writing. Any persons who plan to attend the public hearing and have special requirements such as those related to hearing or mobility impairments should contact the Department of Public Health at (515)281-6283 and advise of specific needs so that reasonable accommodations can be made.

This amendment was also Adopted and Filed Emergency and is published herein as **ARC 5914B**. The content of that submission is incorporated by reference.

These rules are intended to implement Iowa Code section 135.22B.

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

ARC 5913B

PUBLIC HEALTH DEPARTMENT[641]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 135.11, the Department of Public Health hereby gives Notice of Intended Action to amend Chapter 93, "Abuse Education Review Panel," Iowa Administrative Code.

The rules in Chapter 93 describe the purpose, composition, and duties of the abuse education review panel; standards for approval of abuse education curricula; the process for application review and approval; and the process for appeal.

Currently, the abuse education review panel is comprised of six members with a quorum of two-thirds of the members present. However, there have been meetings during the past year when three members have been absent and, as a result, a quorum could not be established. The Assistant Attorney General assigned to the Department has recommended that the composition of the panel be changed from six members to seven members with a quorum of four members. The proposed amendments will allow three members to be absent while still maintaining a quorum of four members.

The amendment in Item 1 proposes to increase the size of the panel from six members to seven members and to require that the added member represent mandatory reporters or employers of mandatory reporters. The amendment in Item 2 proposes to establish a quorum to be four members.

Any interested person may make written comments or suggestions on the proposed amendments on or before June 26, 2007. Such written comments should be directed to Diana E. Nicholls Blomme, RN, Department of Public Health, Lucas State Office Building, 321 E. 12th Street, Des Moines, Iowa 50319. E-mail may be sent to dnicholl@idph.state.ia.us.

These amendments are intended to implement Iowa Code chapter 135.

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

The following amendments are proposed.

ITEM 1. Amend subrule 93.2(1) as follows:

93.2(1) Panel composition. The director shall appoint the members of the panel. The panel shall be comprised of ~~six~~ *seven* members, with one member having expertise in issues related to child abuse, one member having expertise in issues related to dependent adult abuse, one member having expertise in curriculum development, and ~~three~~ *four* members representing mandatory reporters or employers of mandatory reporters. Appointments shall be for three-year staggered terms that shall expire on June 30. A member shall serve no more than three terms or nine years. The director shall fill any vacancy for the unexpired term of the vacancy. The director shall make all reasonable efforts to ensure that the total composition of the panel is fair, impartial, and equitable.

ITEM 2. Amend rule 641—93.3(135) as follows:

641—93.3(135) Meetings. The panel shall meet as necessary and appropriate. ~~Two-thirds of~~ *Four* members shall constitute a quorum, and ~~the affirmative vote of two-thirds of members present shall be necessary for any action to be taken by the panel. However,~~ no recommendations may be adopted without the affirmative vote of at least four members of the panel. The members of the panel shall be eligible for reimbursement of actual and necessary expenses for the performance of their official duties.

NOTICE—USURY

In accordance with the provisions of Iowa Code section 535.2, subsection 3, paragraph "a," the Superintendent of Banking has determined that the maximum lawful rate of interest shall be:

June 1, 2006 — June 30, 2006	7.00%
July 1, 2006 — July 31, 2006	7.00%
August 1, 2006 — August 31, 2006	7.25%
September 1, 2006 — September 30, 2006	7.00%
October 1, 2006 — October 31, 2006	7.00%
November 1, 2006 — November 30, 2006	6.75%
December 1, 2006 — December 31, 2006	6.75%
January 1, 2007 — January 31, 2007	6.50%
February 1, 2007 — February 28, 2007	6.50%
March 1, 2007 — March 31, 2007	6.75%
April 1, 2007 — April 30, 2007	6.75%
May 1, 2007 — May 31, 2007	6.50%
June 1, 2007 — June 30, 2007	6.75%

ARC 5916B

EDUCATIONAL EXAMINERS BOARD[282]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code section 272.2, the Board of Educational Examiners hereby amends Chapter 14, "Issuance of Practitioner's Licenses and Endorsements," Iowa Administrative Code.

The amendment to subrule 14.140(11), paragraph "b," changes the requirements of a Statement of Professional Recognition (SPR) for school nurses. This amendment requires all applicants for an SPR to verify that they have attained at least a minimum of a baccalaureate degree. Based on Iowa Code section 272.2(10), the Board of Educational Examiners has the authority to establish the standards for SPRs. The Board has previously made the requirements for an SPR for special education nurses to include a baccalaureate degree.

In the most recent legislative session, 2007 Iowa Acts, Senate File 277, changed the requirements for an SPR, among other things. In 2007 Iowa Acts, Senate File 277, section 9, the requirements for an SPR were changed so that an applicant for an SPR must have a baccalaureate degree. The Board was concerned at its last meeting that there would be applicants for an SPR who would apply and receive their SPRs but by July 1, 2007, their SPRs would be essentially worthless. Many nurses were applying for SPRs in hopes to access the teacher quality money that was also included in 2007 Iowa Acts, Senate File 277. If the Board waited to file this amendment under the regular rule-making process, or even filed the amendment on an Emergency basis and made the amendment effective July 1, 2007, there would be many applicants who would pay the more than $100 fee, but not receive anything of value in return. Applicants with less than a baccalaureate degree would pay for a background check and the licensure fee, but might not be able to access the teacher quality money.

In compliance with Iowa Code section 17A.4(2), the Board finds that notice and public participation are unnecessary because this amendment is simultaneously being proposed under Notice of Intended Action to allow for public comment.

The Board also finds, pursuant to Iowa Code section 17A.5(2)"b"(2), that the normal effective date of this amendment should be waived and this amendment should be made effective upon filing with the Administrative Rules Coordinator on May 9, 2007, as the Board has the authority under Iowa Code section 272.2(10) to establish the requirements to obtain a Statement of Professional Recognition.

The Board of Educational Examiners adopted this amendment on May 4, 2007.

This amendment is also published herein under Notice of Intended Action as **ARC 5917B** to allow public comment.

This amendment is intended to implement Iowa Code chapter 272.

This amendment became effective on May 9, 2007.

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

The following amendment is adopted.

Amend subrule **14.140(11)**, paragraph **"b,"** as follows:

b. Requirements for a statement of professional recognition (SPR) for school nurses. If a person has passed the registered nurses examination and is licensed by the Iowa board of nursing, the person may obtain a statement of professional recognition (SPR) from the board of educational examiners.

(1) An applicant will be issued an SPR if the applicant:

1. Has passed the registered nurses examination, ~~and~~ is licensed by the Iowa board of nursing *and has a baccalaureate degree in nursing*.

2. While employed by an accredited K-12 school district, maintains licensure with the Iowa board of nursing.

(2) to (6) No change.

[Filed Emergency 5/9/07, effective 5/9/07]
[Published 6/6/07]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 6/6/07.

ARC 5914B

PUBLIC HEALTH DEPARTMENT[641]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code sections 135.11 and 135.22B, the Department of Public Health hereby adopts new Chapter 56, "Brain Injury Services Program," Iowa Administrative Code.

A Brain Injury Services Program was created through legislation passed in 2006. The purpose of the Brain Injury Services Program is to provide services, service funding, or other support for persons with a brain injury under either the waiver-eligible component or the cost-share component, as provided by Iowa Code section 135.22B. The new chapter provides guidance on how to apply for assistance and the financial eligibility requirements for the waiver-eligible and cost-share components of the program.

2006 Iowa Acts, House File 2772, section 3, directed the Department to adopt these rules under Iowa Code sections 17A.4(2) and 17A.5(2)"b."

In compliance with Iowa Code section 17A.4(2), the Department finds that notice and public participation are impracticable and contrary to public interest because of the immediate need for new rules to implement provisions of this legislation.

The Department also finds, pursuant to Iowa Code section 17A.5(2)"b"(2), that the normal effective date of this new chapter should be waived and this chapter should be made effective upon filing with the Administrative Rules Coordinator on May 9, 2007, as it confers a benefit upon persons with brain injury who are in need of funding for services.

These rules were adopted by the State Board of Health on May 9, 2007.

This chapter is also published herein under Notice of Intended Action as **ARC 5915B** to allow for public comment. This emergency filing permits the Department to implement the cost-share component of the brain injury services program.

These rules are intended to implement Iowa Code section 135.22B.

These rules became effective May 9, 2007.

PUBLIC HEALTH DEPARTMENT[641](cont'd)

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

The following **new** chapter is adopted.

CHAPTER 56
BRAIN INJURY SERVICES PROGRAM

641—56.1(135) Definitions. For purposes of this chapter, the following definitions apply:

"Assessment" means the review of the consumer's current functioning with regard to the consumer's situation, needs, strengths, abilities, desires and goals.

"Brain injury services waiver" means the state's medical assistance home- and community-based services waiver for persons with brain injury.

"Consumer" means an individual who has applied for and been found eligible to participate in the waiver-eligible component or the cost-share component of the brain injury services program.

"Cost share" means the portion an individual is responsible to pay for services received by the individual.

"Countable income," when determining initial and ongoing eligibility for the brain injury services program, means all earned and unearned income, unless specifically exempted in 441—subrule 86.2(2).

"Department" means the Iowa department of public health.

"Family size," for purposes of establishing initial and ongoing eligibility under the brain injury services program, means all persons living together who are children and who are parents of those children as defined in 441—subrule 86.2(3).

"Program administrator" means the division of behavioral health and professional licensure within the department of public health.

641—56.2(135) Purpose. The purpose of the brain injury services program is to provide services, service funding, or other support for persons with a brain injury under one of the program components established pursuant to Iowa Code section 135.22B. The overall purpose of this chapter is to establish administrative rules in accordance with Iowa Code section 135.22B relative to the financial eligibility requirements for services under the waiver-eligible and cost-share components of the brain injury services program.

641—56.3(135) Waiver-eligible component. Persons eligible for the brain injury services waiver and on the waiting list for the waiver are eligible for the waiver-eligible component. The brain injury services program may provide funding for the nonfederal share of the cost of services if the appropriation for the medical assistance program does not have sufficient funding designated to do so.

56.3(1) Provision of funding under this component is not an entitlement and is subject to funding availability.

56.3(2) A person who receives support under the waiver-eligible component of the brain injury services program is not eligible to receive support under the cost-share component of the program.

641—56.4(135) Cost-share component. Persons determined ineligible for the brain injury services waiver, due to fiscal or functional criteria, or persons who are eligible for the waiver but for whom funding was not authorized or available to provide waiver eligibility are eligible for the cost-share component of the brain injury services program.

56.4(1) An individual must meet all of the following requirements:

a. The individual is aged one month through 64 years.

b. The individual has a diagnosed brain injury as defined in Iowa Code section 135.22.

c. The individual is a resident of Iowa and either a United States citizen or a qualified alien as defined in 8 U.S.C. Section 1641.

d. The individual must meet the cost-share component's financial eligibility requirements and be willing to pay a cost share for the cost-share component.

56.4(2) Cost-share financial eligibility. Countable income shall be used when determining initial and ongoing eligibility for the program. All of the following criteria must be met.

a. Individuals who are at 300 percent or below the federal poverty level for a family of the same size will not be assessed a cost share.

b. Individuals whose countable income is between 301 percent and 350 percent of the federal poverty level for a family of the same size will be assessed a 10 percent cost share for services that will be payable to the service provider.

c. Individuals whose countable income is between 351 percent and 400 percent of the federal poverty level for a family of the same size will be assessed a 20 percent cost share for services that will be payable to the service provider.

d. Individuals whose countable income is above 400 percent of the federal poverty level for a family of the same size will be assessed a 30 percent cost share for services that will be payable to the service provider.

56.4(3) The cost-share component must be the source of last resort for payment; the program shall not pay for services when the provision of those services is mandated by law or administrative rule to be the responsibility of another governmental unit, private agency or program. Brain injury cost-share services are not available to an individual who receives services or funding under any type of medical assistance home- and community-based services waiver.

641—56.5(135) Application process.

56.5(1) The applicant must authorize the department of human services to provide the applicant's brain injury services waiver application materials to the brain injury services program.

56.5(2) The department of human services will provide the department the application materials, which shall include but are not limited to the waiver application and any denial letter, financial assessment, and functional assessment regarding the person in an agreed-upon format.

56.5(3) The department will determine eligibility within 45 days of receipt of complete application materials.

a. After determining if the applicant's service needs fit within the scope of the brain injury services program, the department shall inform the discharge planner or case manager on behalf of the applicant or the applicant's legal representative of the applicant's eligibility.

b. The case manager shall establish an interdisciplinary team for each consumer and, with the team, identify the consumer's plan based on the consumer's needs and desires as well as the availability and appropriateness of services. The case manager shall notify the department of the service plan.

c. The date of eligibility for applicants deemed eligible for the cost-share component will be the date when both the

service eligibility and financial eligibility assessments have been completed.

d. Notification of eligibility shall be mailed or given to the applicant or the applicant's legal representative within seven days of the date eligibility determination is completed.

56.5(4) After determining an applicant's eligibility, if no payment slot is available, the brain injury services program shall enter the applicant on a waiting list according to the following:

a. The date a completed Form 470-2927 or 470-2927(S), Health Services Application, is date-stamped in the county department of human services office. If more than one application is received on the same date, applicants shall be entered on the waiting list on the basis of the applicant's month of birth, with January designated month one.

b. As slots become available, applicants shall be selected from the waiting list based on their order on the waiting list to maintain the number of persons approved for participation in the program.

56.5(5) The consumer or the consumer's legal representative shall complete and sign Iowa department of human services Form 470-3349, Brain Injury Functional Assessment, indicating the consumer's choice of caregiver.

56.5(6) The case manager for the consumer will initiate development of the consumer's service plan and commencement of services. All service plans must be approved by the program administrator.

56.5(7) The department will not pay the cost of services provided to a consumer prior to approval of eligibility.

56.5(8) The program administrator shall make the final determination as to whether program funding will be authorized under the cost-share component.

641—56.6(135) Service providers and reimbursement.

56.6(1) A service provider must either be certified to provide services under the brain injury services waiver or have a contract with a county to provide services and apply to become certified to provide services under the brain injury services waiver within 90 days of the date that services commence.

56.6(2) The reimbursement rate payable for the cost of a service provided under the cost-share component is the rate payable under the medical assistance program. However, if the service provider does not have a medical assistance program reimbursement rate, the rate shall be the amount payable under the county contract.

56.6(3) All service providers must contract with the department and will be paid retroactively to the date of service eligibility.

56.6(4) Service providers will be responsible for billing and collection of any cost share from an individual as determined by the program administrator within the department.

641—56.7(135) Available services/service plan.

56.7(1) Services available shall be consistent with the services offered through the Medicaid home- and community-based services waiver.

56.7(2) Service plans must reflect use of all services, including non-cost-shared services, to ensure that no duplication of services occurs.

56.7(3) All service plans must be submitted, either electronically or in hard-copy format, to the program administrator for approval prior to implementation.

56.7(4) Any change to the service plan must be approved by the program administrator.

641—56.8(135) Redetermination.

56.8(1) A complete financial redetermination of continuing eligibility for the brain injury services program shall be completed annually by the department, after consultation with the case manager and the interdisciplinary team.

56.8(2) A redetermination of continuing eligibility shall also be made when a change in financial or functional circumstances occurs that affects eligibility.

641—56.9(135) Appeal rights. Appeal rights for any individual denied funding under either the waiver-eligible or the cost-share component of the program are as defined in 641—176.8(135,17A) with the following exception: An appeal must be submitted within 45 days of receipt of notification of an adverse decision.

These rules are intended to implement Iowa Code section 135.22B.

[Filed Emergency 5/9/07, effective 5/9/07]
[Published 6/6/07]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 6/6/07.

ARC 5927B

SECRETARY OF STATE[721]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code section 47.1, the Secretary of State hereby amends Chapter 21, "Election Forms and Instructions," Iowa Administrative Code.

The purpose of this amendment is to strike a restriction contained in subparagraph 21.800(3)"b"(2) that prohibits jurisdictions from holding an election for the purpose of reimposing a local sales and services tax more than 14 months before the scheduled repeal date of the tax. The amendment also corrects an outdated cross reference to a section of the Code of Iowa, changing the cross reference from 422B.9, which has been renumbered, to the current applicable section, 423B.6.

In compliance with Iowa Code section 17A.4(2), the Secretary finds that notice and public participation are contrary to the public interest, because there are requests pending in two counties to hold local sales and services tax reimposition elections more than 14 months before the expiration date of the current tax. Legal counsel in the Attorney General's office has advised the Agency that "the 14-month rule may be a valid exercise of the Secretary's general oversight authority in section 47.1, but I find nothing in the statutes requiring a limitation upon the date for re-imposition or 'extension' of a county/city LOSST."

The Secretary also finds, pursuant to Iowa Code section 17A.5(2)"b"(2), that the normal effective date of the amendment should be waived and this amendment should be made effective upon filing, as it confers a benefit upon the public by removing an unnecessary restriction.

The Secretary of State adopted this amendment on May 14, 2007.

This amendment became effective on May 14, 2007.

This amendment is intended to implement Iowa Code section 423B.1.

SECRETARY OF STATE[721](cont'd)

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

The following amendment is adopted.

Amend subparagraph **21.800(3)"b"(2)** to read as follows:

(2) The date the tax will be imposed (which shall be the next implementation date provided in Iowa Code section ~~422B.9~~ *423B.6* following the date of the election and at least 90 days after the date of the election, except that an election to impose a local option tax on a date immediately following the scheduled repeal date of an existing similar tax may ~~not~~ be held ~~more than 14 months or less than 90 days before the scheduled repeal date~~ *at any time that otherwise complies with the requirements of Iowa Code chapter 423B*). The imposition date shall be uniform in all areas of the county voting on the tax at the same election.

[Filed Emergency 5/14/07, effective 5/14/07]
[Published 6/6/07]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 6/6/07.

ARC 5919B

EDUCATION DEPARTMENT[281]

Adopted and Filed

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

2006 Iowa Acts, chapter 1182, sections 2 and 3, amended accreditation statutes to require that each school district have a qualified (i.e., licensed by the Board of Educational Examiners) teacher librarian. The new legislation also requires that the State Board establish in rule a definition of and standards for an articulated sequential kindergarten through grade 12 media program. These amendments comply with new Iowa Code section 256.11(9) and amended section 256.11A.

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

Notice of Intended Action was published in the March 28, 2007, Iowa Administrative Bulletin as **ARC 5789B**. A public hearing was held on April 17, 2007, and public comments were allowed until 4:30 p.m. on April 17, 2007. No one attended the public hearing. On April 16, 2007, the Department received one written comment, which was entirely supportive of the amendments. A representative of the Iowa Association of School Boards verbally commented prior to April 17, 2007, questioning what was meant by the phrase "legal and ethical use of information resources" in paragraph "c" of new subrule 12.3(12). Therefore, since publication of the Notice of Intended Action, paragraph "c" has been changed to clarify that phrase. No other changes from the Notice have been made.

These amendments are intended to implement Iowa Code sections 256.11(9) and 256.11A.

These amendments shall become effective July 11, 2007.

The following amendments are adopted.

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

"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.

ITEM 2. Amend subrule 12.3(11) as follows:

12.3(11) Policy required relating to health services~~, media services programs~~ and guidance programs. The board of directors of each school district and the authorities in charge of an accredited nonpublic school shall adopt a local policy relating to health services~~, media services programs~~ and guidance programs. The policy shall state whether or not the services shall be provided. This subrule shall not be interpreted to require schools and school districts to provide or to offer health services~~, media services~~ or guidance programs.

ITEM 3. Adopt **new** subrule 12.3(12) as follows:

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.

[Filed 5/10/07, effective 7/11/07]
[Published 6/6/07]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 6/6/07.

ARC 5918B

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

Pursuant to the authority of Iowa Code section 234.6, the Department of Human Services amends Chapter 65, "Food Assistance Program Administration," Iowa Administrative Code.

This amendment allows students whose work hours vary to qualify for Food Assistance as long as they average 20 hours of work per week. Students enrolled in an institution of higher education must meet at least one of the federal student eligibility criteria in order to receive Food Assistance. One

way to meet the criteria is to work at least 20 hours each week and be paid wages. Instead of canceling or denying benefits, the Department has obtained a waiver from the U.S. Department of Agriculture Food and Nutrition Service to allow averaging of hours worked if there is a week in which the student works fewer than 20 hours.

This policy takes into account work schedules that fluctuate and may allow more students to qualify for Food Assistance. It will also promote efficiency in program administration by measuring a college student's work hours in the same way that a participant's work hours are measured to determine exemptions from work registration.

This amendment was previously Adopted and Filed Emergency and was published in the Iowa Administrative Bulletin on March 14, 2007, as **ARC 5768B**. Notice of Intended Action on the amendment was published as **ARC 5769B** on the same date to allow for public comment. The Department received no comments on the Notice of Intended Action. This amendment is identical to that Adopted and Filed Emergency and published under Notice of Intended Action.

This amendment does not provide for waivers in specified situations, since it removes a restriction. Requests for the waiver of any rule may be submitted under the Department's general rule on exceptions at 441—1.8(17A,217).

The Council on Human Services adopted this amendment May 9, 2007.

This amendment is intended to implement Iowa Code section 234.12.

This amendment will become effective on July 11, 2007, at which time the Adopted and Filed Emergency amendment is hereby rescinded.

The following amendment is adopted.

Adopt **new** rule 441—65.26(234) as follows:

441—65.26(234) Eligible students. A student who is enrolled in an institution of higher education shall meet student eligibility criteria if the student:

1. Is employed for an average of 20 hours per week and is paid for this employment; or
2. Is self-employed for an average of 20 hours per week and receives average weekly earnings at least equal to the federal minimum wage multiplied by 20 hours.

[Filed 5/10/07, effective 7/11/07]
[Published 6/6/07]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 6/6/07.

ARC 5940B

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services amends Chapter 75, "Conditions of Eligibility," Chapter 76, "Application and Investigation," Chapter 80, "Procedure and Method of Payment," Chapter 88, "Managed Health Care Providers," and Chapter 92, "IowaCare," Iowa Administrative Code.

These amendments provide for issuing eligibility cards for Medicaid members annually rather than monthly. Historically, Medicaid eligibility was determined on a monthly basis; therefore, Medical Assistance eligibility cards have been issued to eligible members monthly. Eligibility is now reviewed annually for almost all Medicaid coverage groups and does not change as frequently as it did in the past. Individual state legislators have asked the Department to explore issuing eligibility cards annually.

Issuing an annual card rather than a monthly card will result in significant savings in postage, printing, and computer system time. Cards will be issued at the time of approval for new members and in July of each year for current members. A lost, stolen, or damaged card will be replaced upon request. This process is consistent with that used by commercial market health plans and by the majority of states.

At the time of services, providers must confirm eligibility, identify any eligibility restrictions (such as a member who is "locked in" to designated providers, has a primary care physician, or is under managed care requirements), and ascertain whether a member has any other health insurance coverage. With improvements in technology, providers can confirm eligibility on the Department's secure Web site or by telephone through the Department's Eligibility Verification System.

Annual cards will provide the following additional benefits:

- Currently, a delay in mail delivery or a change of address may cause a member not to receive the card until well past the first of the month. With an annual card, a member will not have to wait to receive the card for the current month before obtaining services.
- Currently, each household is issued one card that lists all members. With annual cards, each member will be issued an individual card. Therefore, an individual member will be able to access services more easily when the member is away from the rest of the household (e.g., a child who is visiting noncustodial parents, is away at school or on vacation, or is in an institution).
- Providers may copy the annual card for the member's medical file and check eligibility at the time of services rather than require the member to present the card at each visit.
- Nursing homes and other facilities will not need to track and file each member's eligibility card every month.

These amendments do not provide for waivers in specified situations because the Department does not have the capacity to make individual exceptions to this policy.

Notice of Intended Action on these amendments was published in the Iowa Administrative Bulletin on February 14, 2007, as **ARC 5716B**. The Department received 42 comments on the Notice of Intended Action, mostly from medical clinic staff who were concerned about access to the cards, the burden placed on providers to check a patient's Medicaid eligibility through the telephone verification system or Internet Web site, and the adequacy of those systems to respond to the increased demand.

In January 2006, the Department sent a survey to the members of the Medical Assistance Advisory Council (MAAC) to solicit input from the providers they represent on the issuance of an annual Medicaid card. The MAAC is made up of public members as well as over 40 representatives of the provider community who are charged with making recommendations to the Department on the Medicaid program. While very few responses were received, the majority of the comments supported the concept of an annual card. In addition to the survey, an update on the project has been provided to the members of the MAAC on at least two subsequent occasions. No opposition to the project was expressed at either of those meetings.

The Department's contract for annual cards specifies that each family member will receive a personal, durable wallet-size card plus two key-chain cards. The extra cards will al-

low each parent to have a card for each of the children. The Department anticipates that providing a key-chain card will decrease the likelihood of losing the card and increase the likelihood that the member will have the card at the time of service. The Department plans to begin a member education campaign two months before the change is made.

In anticipation of the expected increase in utilization of the Eligibility Verification System in going to an annual card, the Iowa Medicaid Enterprise has doubled the capacity of the system to 48 interactive voice response lines. Providers may also confirm eligibility, identify any restrictions (such as lock-in, HMO, MediPASS, Iowa Plan), and ascertain other health insurance coverage on the Department's secure Web site. Providers are encouraged to use the secure Web portal whenever possible, as that method will be quicker and will have fewer limitations in service delivery.

Since Medicaid eligibility is granted on a monthly basis, a provider needs to verify eligibility only on the first visit per month. Analysis of the eligible population indicates that the majority of all Medicaid members remain eligible for at least 12 continuous months, and nearly three-fourths of members remain eligible for at least six continuous months, so many of the eligible groups are very stable. Groups that experience more changes include members under the MediPASS managed care system, who may change their patient manager, and coverage groups that have to meet a spenddown or pay a premium to attain eligibility, such as Medically Needy and Medicaid for employed people with disabilities.

Several commenters indicated a preference for an electronic verification system using a "swipe card" to verify eligibility. The Department has researched using swipe-card technology and may reconsider this technology in the future. This type of validation requires a considerable investment by individual providers for the hardware needed, and providers would pay a transaction fee to the card reader manufacturer each time the card was read.

The Council on Human Services adopted these amendments on May 9, 2007. These amendments are identical to those published under Notice of Intended Action.

These amendments shall become effective on August 1, 2007.

These amendments are intended to implement Iowa Code chapter 249A.

The following amendments are adopted.

ITEM 1. Amend subparagraph **75.1(39)"b"(2)** as follows:

(2) Eligibility is contingent upon the payment of any assessed premiums. ~~A medical card~~ *Medical assistance eligibility* shall not be ~~issued~~ *made effective* for a month until the premium for the month is received. The premium must be paid within three months of the month of ~~eligibility~~ *coverage* or *of* the month of initial billing, whichever is later, for the person to ~~receive a medical card~~ *be eligible for the month*.

ITEM 2. Amend rule **441—75.25(249A)** by adopting the following **new** definition in alphabetical order:

"Member" shall mean a person who has been determined eligible for medical assistance under rule 441—75.1(249A). "Member" may be used interchangeably with "recipient." This definition does not apply to the phrase "household member."

ITEM 3. Amend rule 441—76.6(249A) as follows:

Amend the introductory paragraph as follows:

441—76.6(249A) Certification for services. The department of human services shall issue a Medical Assistance Eligibility Card ~~(Fee-for-Service)~~, Form 470-1911, to persons *who have been* determined to be eligible for the benefits provided under the Medicaid program unless one of the following situations exists:

Rescind subrules **76.6(1)** through **76.6(4)** and renumber subrule **76.6(5)** as **76.6(1)**.

Adopt the following **new** subrule 76.6(2):

76.6(2) IowaCare. A person who is enrolled in the IowaCare program shall be issued an IowaCare Medical Card, Form 470-4164.

ITEM 4. Amend rule 441—76.9(249A) as follows:

Amend the catchwords as follows:

441—76.9(249A) ~~Recipient~~ *Member* lock-in.

Amend subrule 76.9(2) as follows:

76.9(2) Provider selection. The ~~recipient~~ *member* may select the provider(s) from which services will be received. ~~The selection shall be made by using Form MA-4068, Designation of Primary Providers.~~ The designated providers will be identified on the ~~Medical Assistance Eligibility Card (Lock-in), Form 470-3348~~ *department's eligibility verification system (ELVS)*. Only prescriptions written or approved by the designated primary physician(s) will be reimbursed. Other providers of the restricted service will be reimbursed only under circumstances specified in subrule 76.9(3).

ITEM 5. Amend subrule 80.5(1) as follows:

80.5(1) Identification cards. ~~A medical identification card shall be issued to recipients~~ *The department shall issue Form 470-1911, Medical Assistance Eligibility Card, to members* for use in securing medical and health services available under the program *except as provided in 441—76.6(249A)*.

a. The ~~cards are issued by the~~ department ~~on a monthly basis and are~~ *shall issue the Medical Assistance Eligibility Card:*

(1) When the member's eligibility is initially determined.

(2) Annually thereafter.

(3) Upon the member's request for replacement of a lost, stolen, or damaged card.

b. The Medical Assistance Eligibility Card is valid only for ~~the month of issuance~~ *months in which the member has established eligibility, as indicated on the department's eligibility verification system (ELVS)*. Payment will be made for services provided *to* an ineligible ~~recipient~~ *person* when ~~verification establishes~~ *ELVS indicates* that the ~~recipient~~ *person* was ~~issued a medical identification card~~ *eligible* for the ~~month~~ *period* in which the service was provided.

ITEM 6. Amend subrule 88.5(1) as follows:

88.5(1) Amount, duration, and scope of services. Except as provided for in the contract, HMOs shall cover as a minimum all services covered by the Medicaid program as set forth in 441—Chapter 78.

a. The recipient shall ~~receive~~ *be issued* Form ~~470-2213~~ *470-1911*, ~~Medicaid Managed Health Care~~ *Medical Assistance Eligibility* Card, ~~which lists~~ *and information about* those services not covered by the HMO.

b. To the maximum extent possible, the HMO shall make enrolled recipients aware of alternate providers for services not covered by the HMO.

ITEM 7. Amend subrule 88.46(5) as follows:

88.46(5) Identification card. The department shall issue Form ~~470-2213~~ *470-1911*, Medical Assistance Eligibility Card ~~(Managed Care)~~, to all enrolled recipients. ~~The card shall contain the following information:~~

~~a. Name, case number and state identification number of the enrolled recipient.~~

~~b. Name and 24-hour access telephone number of the managed health care provider.~~

~~c. Services that do not require authorization from the managed health care provider.~~

Providers of medical ~~service~~ *services* shall ~~examine the card~~ *access the department's eligibility verification system (ELVS) via telephone or access the department's secure Web site* at the time of service in order to establish that the patient is Medicaid-eligible and whether the services being provided require the authorization of the patient manager.

ITEM 8. Amend subrules 88.63(2) and 88.63(6) as follows:

88.63(2) Members subject to enrollment. All Medicaid members shall be subject to mandatory enrollment in the Iowa Plan.

a. Members who are enrolled in the Iowa Plan are notified ~~with a message on their medical card~~ *of enrollment and the effective date of the enrollment*.

b. When a coverage group is included *in* or excluded from Iowa Plan enrollment, the department and the contractor shall jointly notify members and participating and nonparticipating Medicaid providers ~~prior to~~ *before* implementation of the change. The department shall implement a transition plan to ensure continuity of services to members.

88.63(6) Medical card. The department shall issue ~~medical assistance eligibility cards~~ *Form 470-1911, Medical Assistance Eligibility Card,* to ~~all Medicaid members~~ *each member.* ~~The medical assistance eligibility card shall include information to identify the member as an Iowa Plan enrollee.~~ *Before delivering mental health or substance abuse services, the provider shall access the department's eligibility verification system (ELVS) to verify the member's enrollment in the Iowa Plan.*

ITEM 9. Amend rule 441—92.6(249A,249J), introductory paragraph, as follows:

441—92.6(249A,249J) Effective date. The department shall issue Form 470-4164, IowaCare Medical Card, to persons ~~determined to be eligible for~~ *enrolled in the* IowaCare ~~benefits~~ *program.*

[Filed 5/16/07, effective 8/1/07]
[Published 6/6/07]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 6/6/07.

ARC 5937B

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

Pursuant to the authority of Iowa Code section 234.6, the Department of Human Services adopts new Chapter 172, "Family-Centered Child Welfare Services," and amends Chapter 182, "Family-Centered Services," Iowa Administrative Code.

These amendments implement a new child welfare service program to replace the family-centered services program. Development of new services is necessary due to the "delinking" of child welfare and behavioral health services resulting from implementation of Medicaid remedial services (see **ARC 5514B**, published in the Iowa Administrative Bulletin on November 8, 2006), and discontinuation of rehabilitative treatment services (see **ARC 5819B**, published in the Iowa Administrative Bulletin on April 11, 2007).

These amendments replace the existing family-centered services rules in Chapter 182 with a new chapter that implements the following new child welfare services:

- Safety plan services to keep children safe during the child protective assessment or the child in need of assistance assessment process.
- Family safety, risk, and permanency services to achieve safety, permanency, and well-being for children and families in the child welfare system, regardless of the setting in which the children reside.
- Supportive services, which include family team meeting facilitation, drug testing, and legal services for permanency. These service components are designed to assist children and families in achieving safety, permanency, and well-being.

Providers for these services will be selected through competitive bidding. The contracts will provide for a portion of the provider's payment to be based on the provider's level of achievement on specified outcome-based performance measures. Specific requirements about provider qualifications, service activities, and provider reimbursement have been published in a request for proposals and will be included in the contracts negotiated with the selected providers. Information about the request for proposals is available at: http://bidopportunities.iowa.gov/.

The amendments allow Department service area managers to use a portion of their child welfare funding allocation to contract for unique child welfare services tailored to the conditions and circumstances specific to the respective service area.

Notice of Intended Action on these amendments was published in the Iowa Administrative Bulletin on January 31, 2007, as **ARC 5699B**. The Department held nine public hearings on the Notice of Intended Action and received comments from five people. The Department has made the following changes to these amendments in response to those comments and to issues raised in the development of the requests for proposals under Chapter 172:

- Added a definition of "permanency" to rule 441—172.1(234), based on the Adoption and Safe Families Act of 1997, which sets requirements for receipt of federal foster care and adoption assistance funds.
- Changed the name of the services described in Chapter 172, Division II, from "safety monitoring and evaluation programs" to "safety plan services" for ease of understanding.
- Added language to subrule 172.2(2) requiring providers to design services to address the risk factors that affect the child's safety, permanency, and well-being.
- Added language to rule 441—172.4(234) to clarify that services must also meet the requirements of the contract between the Department and the provider in order to become a liability of the state.
- Removed a reference to reduction of service in rule 441—172.5(234). The Department will no longer be prescribing the amount of service that the child and family are to receive.
- Added a requirement in subrule 172.10(3) that safety plan services shall be designed to address the factors that have led to the assessment of the child as "conditionally safe."
- Added a requirement in subrule 172.20(3) that providers of family safety, risk and permanency services shall ad-

dress the risk factors and needs that are barriers to the child's safety, permanency, and well-being.

- Clarified language in subrule 172.22(2) defining the child's service needs.
- Modified the language in paragraph 172.23(3)"l" on the provision of tangible supports as a component of family safety, risk, and permanency services to clarify that the cost of tangible supports must be covered under the unit rate for the service, not a separate payment, and that the supports do not have to be individually approved by the Department.
- Changed subrule 172.25(1) to reflect that payment for a partial month of family safety, risk, and permanency services will be prorated at one-thirtieth of the monthly rate per day of service, including both the beginning and ending date of service, instead of on a tiered basis. This method of payment will be easier to calculate and is expected to reduce errors.
- Added to paragraph 172.30(2)"b" coaching and mentoring of new facilitators as duties of a provider of family team meeting facilitation services.
- Clarified rule 441—172.31(234) by removing extraneous language and paragraphs "a" and "b" from subrule 172.31(1) and by adding to subrule 172.31(2) specification of the geographic area covered to the requirements of the request for proposals.
- Clarified the conditions for family team meeting facilitation payment and service provision in subrule 172.34(2).
- Eliminated the item rescinding 441—Chapter 181, since this change was adopted in **ARC 5819B**.
- Removed the provision rescinding the entire 441—Chapter 182 and added transition procedures in subrule 182.3(1) to allow for continued provision of supervision, parental counseling and education, community resource procurement, or family team meeting facilitation under 441—Chapter 182 after the effective date of these amendments in specific circumstances. When a family cannot be transferred to a new service by October 1, 2007, or a family's services from a provider who will no longer be participating are expected to end before December 31, 2007, the service area manager may authorize continued service provision for a period ending no later than December 31, 2007.
- In Chapter 182, rescinded provisions on relative home studies and flexible family support funding, as these services will not be provided after October 1, 2007.

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

The Council on Human Services adopted these amendments on May 9, 2007.

These amendments are intended to implement Iowa Code section 234.6.

These amendments shall become effective on October 1, 2007.

The following amendments are adopted.

ITEM 1. Adopt **new** 441—Chapter 172 as follows:

CHAPTER 172
FAMILY-CENTERED CHILD WELFARE SERVICES

PREAMBLE

These rules define and describe procedures for delivery of family-centered child welfare services. The rules describe the service definitions and eligibility criteria, provider selection and contracting processes, performance measures, billing and payment methods, procedures for client appeals, and service review and audit procedures.

DIVISION I
GENERAL PROVISIONS

441—172.1(234) Definitions.

"Child" means a person who meets the definition of a child in Iowa Code section 234.1(2).

"Conditionally safe child" means that a safety concern is identified on Form 470-4132, Safety Assessment/Plan, for which a safety plan is required.

"Department" means the Iowa department of human services.

"Family" means persons who have a blood or legal relationship with the child and persons who have an interest in the child, such as godparents, clan or tribal members, and other persons who have a significant relationship with the child.

"Family safety, risk, and permanency service" means a service that uses strategies and interventions designed to achieve safety and permanency for a child with an open department child welfare case, regardless of the setting in which the child resides.

"Permanency" means a child has a safe, stable, custodial environment in which to grow up and a lifelong relationship with a nurturing caregiver.

"Protective capacities" means the family strengths or resources that reduce, control, or prevent risks from arising or from having an unsafe impact on a child.

"Provider" means a public or private agency or organization authorized to do business in Iowa that has entered into a contract with the department to provide one or more of the services defined in this chapter. The provider is also known as the claimant.

"Risk" means the probability or likelihood that a child will experience maltreatment.

"Safe child" means that there are no present or impending dangers to the child, or that existing dangers are controlled by the caregiver's protective capacities.

"Safety plan service" means a service that is designed to monitor the safety of a child during the department's child protective assessment or child in need of assistance assessment process.

"Service area manager" means the department official responsible for managing the department's programs, operations, and budget within one of the eight department service areas.

441—172.2(234) Purpose and scope. Family-centered child welfare services are designed to achieve safety, permanency, and well-being for children.

172.2(1) Family-centered child welfare services provide interventions and supports for children who have come to the department's attention because of:

a. Allegations of child abuse; or

b. Juvenile court action to adjudicate the child as a child in need of assistance.

172.2(2) Family-centered child welfare services shall be designed to:

a. Identify and build on the family's strengths and enhance the family's protective capacities;

b. Address the risk factors that affect the child's safety, permanency, and well-being; and

c. Help the family become connected with community support systems in order to promote greater self-reliance.

172.2(3) Family-centered child welfare services shall utilize evidence-based interventions to the greatest possible extent.

441—172.3(234) Authorization. When the department has approved provision of family-centered child welfare services for a child and family, the department worker shall notify the provider by issuing Form 470-3055, Referral and Authorization for Child Welfare Services. The referral form shall indicate:

1. The specific service category authorized (safety plan; family safety, risk, and permanency; drug testing; family team meeting facilitation; or legal services for permanency); and
2. The duration of the authorization.

441—172.4(234) Reimbursement. Billed services that meet the requirements of this chapter and the contract between the department and the provider shall become a liability of the state. The format and process for submitting billings to the department and for receiving department payments shall be specified in all provider contracts with the department. The department shall process claims for payment promptly upon submission by the provider.

172.4(1) The provider shall bear ultimate responsibility for the completeness and accuracy of all billings submitted.

172.4(2) The provider shall maintain all financial and service records that are necessary to substantiate the provider's claims submitted for reimbursement for services provided to department clients as specified in the provider's contract with the department.

441—172.5(234) Client appeals. Clients may appeal the department's decision pursuant to 441—Chapter 7 when:

1. The client's application for services as described in this chapter is denied, or
2. The services are terminated.

441—172.6(234) Reviews and audits. Providers of the services described in this chapter shall be subject to review and audit procedures established by the department. Information on these procedures shall be included in the request for proposals and in contracts resulting from the procurement process.

441—172.7 to **172.9** Reserved.

DIVISION II
SAFETY PLAN SERVICES

PREAMBLE

Family-centered safety plan services are designed to maintain children safely in their own families whenever possible. These services use strategies and interventions to monitor and evaluate the safety of children who, during a child protective assessment or during the department's child in need of assistance assessment process, are assessed to be conditionally safe.

441—172.10(234) Service requirements. A provider of a safety plan service shall meet the following requirements:

172.10(1) The service shall meet the minimum expectations defined in the provider's contract with the department.

172.10(2) The provider shall provide interventions and supports based on the particular service needs identified for each child and family.

172.10(3) The provider shall design interventions that:

a. Promote identification and enhancement of family strengths and protective capacities;

b. Address the factors that have placed the child in "conditionally safe" status;

c. Strengthen family connections to community resources and informal supports; and

d. Are culturally competent and respectful of the family's cultural, ethnic, and racial identity and values.

441—172.11(234) Provider selection. Family-centered safety plan services shall be available on a statewide basis and shall be purchased through a formal competitive selection process according to the requirements of 11—Chapters 106 and 107.

172.11(1) The department shall issue a request for proposals at the state level to seek applications from organizations interested in providing family-centered safety plan services within specific geographic areas.

172.11(2) The request for proposals shall specify:

a. The minimum qualifications and requirements for consideration as a provider;

b. The scope of services to be purchased; and

c. The duration of contracts to be awarded.

172.11(3) The department shall select one or more providers within each department service area based on service needs and the number and quality of provider proposals.

172.11(4) When multiple providers are selected to serve the same geographic area, the department shall implement a fair and equitable case referral process.

441—172.12(234) Service eligibility. Family-centered safety plan services may be provided to a child who, during a child protective assessment or child in need of assistance assessment process, has been assessed by department staff to be conditionally safe.

441—172.13(234) Service components.

172.13(1) Strategies and interventions. Safety plan services shall provide a flexible array of strategies and interventions to:

a. Monitor, evaluate, and intervene to ensure the child's safety; and

b. Evaluate and supplement the protective capacities of the child's caregivers.

172.13(2) Service activities. The activities to be provided by safety plan services shall be as described in the scope of services section of the request for proposals. At a minimum, a provider of safety plan services shall do all of the following:

a. Be available 24 hours a day, seven days per week.

b. Respond to the department worker within one hour after the provider receives a referral call.

c. Initiate face-to-face contact with the family within 24 hours of the referral from the department worker.

d. Make daily face-to-face contact with the referred family unless the department worker identifies a different frequency in the safety plan.

e. Provide an E-mail contact to update the department worker within 24 hours after each contact with the child or family.

f. Attend all family team meetings held on behalf of the family during the service delivery period.

g. Respond within two hours to any family crisis during the service delivery period, and update the department worker with an oral or E-mail contact.

h. Attend court hearings about the child upon request of the court or the department worker.

172.13(3) Additional services available. Based on child and family needs and subject to approval by the department worker, a child and family who are receiving safety plan ser-

vices may also receive the following services, which shall be purchased and funded separately, in addition to the activities listed in subrule 172.13(2):

a. Drug testing as provided in subrule 172.30(1).

b. Family team meeting facilitation as provided in subrule 172.30(2).

c. Legal services for permanency as provided in subrule 172.30(3).

d. Payment of foster family care maintenance costs under rule 441—156.6(234) if the child is placed in foster family care.

e. Shelter care payment as provided in 441—subrule 156.11(3) if the child is placed in shelter care.

441—172.14(234) Monitoring of service delivery.

172.14(1) Case management. During the time a child and the child's family are approved to receive safety plan services, the department worker shall be responsible for providing case management. The department worker shall maintain contact with the family and the family's provider to ensure that factors that present risks to the safety and well-being of children in the family are being adequately addressed.

172.14(2) Provider progress reports. A provider of safety plan services shall submit client reports in accordance with the requirements concerning format, content, and frequency that are specified in the provider's contract with the department.

172.14(3) Outcome measures. The department shall establish outcome-based performance measures for safety plan services. These performance measures shall:

a. Be specified in each provider's contract with the department; and

b. Be aligned with the measures defined by the federal government as part of the child and family services review process.

441—172.15(234) Billing and payment.

172.15(1) Unit of service. Safety plan services shall be delivered based on a 15-calendar-day unit of service with an established per-unit payment rate that shall be specified in each provider's contract. The department worker may purchase up to two units of service for a child and family.

172.15(2) Performance-based payments. Contracts for safety plan services may contain provisions under which a portion of the payment to the provider is connected to the provider's level of achievement on specified outcome-based performance measures. Any provisions for performance-based payments shall be described in the department's request for proposals and in provider contracts with the department.

441—172.16 to **172.19** Reserved.

DIVISION III
FAMILY SAFETY, RISK, AND PERMANENCY SERVICES

PREAMBLE

Family safety, risk, and permanency services provide family-focused interventions and supports to improve parents' capacity to keep their children safe. The purpose of these services is to achieve safety and permanency for children, regardless of the setting in which the children reside. The outcome may be to maintain children safely within their own families or with relatives, to reunite children safely with their parents or other relatives, or to achieve alternative permanent family connections for the child.

441—172.20(234) Service requirements. Family safety, risk, and permanency services shall meet the following requirements:

172.20(1) The service shall meet the minimum expectations defined in the provider's contract with the department.

172.20(2) The provider shall have flexibility to select interventions and supports based on the particular service needs identified for each child and family.

172.20(3) The provider shall:

a. Identify family strengths and protective capacities;

b. Build on these strengths in the provider's interventions with children and families;

c. Participate in family team meetings and court hearings;

d. Be culturally competent and respectful of the family's cultural, ethnic, and racial identity and values;

e. Work to connect children and families with community resources and informal support systems to promote family self-reliance;

f. Use evidence-based models of intervention to the greatest extent possible;

g. Address risk factors and needs that are barriers to the child's safety, permanency, and well-being.

441—172.21(234) Provider selection. Family safety, risk, and permanency services shall be available on a statewide basis and shall be purchased through a formal competitive selection process according to the requirements of 11—Chapters 106 and 107.

172.21(1) The department shall issue a request for proposals at the state level to seek applications from organizations interested in providing family safety, risk, and permanency services within specific geographic areas.

172.21(2) The request for proposals shall specify:

a. The minimum qualifications and requirements for consideration as a provider;

b. The scope of services to be purchased; and

c. The duration of contracts to be awarded.

172.21(3) The department shall select one or more providers within each department service area based on service needs and the number and quality of provider proposals.

172.21(4) When multiple providers are selected to serve the same geographic area, the department shall implement a fair and equitable case referral process.

441—172.22(234) Service eligibility. Family safety, risk, and permanency services may be provided to a child and to the child's family when the child meets the following criteria:

172.22(1) The child is eligible for department child welfare services based on:

a. The child's adjudication as a child in need of assistance; or

b. The child's placement out of home under the care and supervision of the department; or

c. Evaluation of the child's age, the findings of a child abuse assessment report, and the family's risk assessment score.

172.22(2) The child is in need of services:

a. To maintain the child's placement safely within the child's own family or in the home of a relative or other suitable person; or

b. To reunify the child safely with the child's birth family or with another relative following placement with a relative or in a foster family, shelter care facility, group care facility, or other placement setting; or

c. To move the child toward an alternative permanent family connection.

HUMAN SERVICES DEPARTMENT[441](cont'd)

441—172.23(234) Service components.

172.23(1) Strategies and interventions. Family safety, risk, and permanency services shall be designed to deliver a flexible array of strategies and interventions to promote achievement of the goals of child and family safety, risk reduction, and permanency for children. It is expected that:

a. The specific interventions and supports delivered and service intensity will vary depending on child and family needs identified during the course of the family's child welfare involvement with the department; and

b. The provider will use evidence-based models of intervention when possible as well as develop creative and innovative service models.

172.23(2) Service activities. Specific minimum service standards and expectations for family safety, risk, and permanency services shall be as described in the request for proposals issued by the department. The provider shall be responsible for meeting identified needs of referred children and families through interventions that may include, but are not limited to, the following:

a. Assistance and instruction for parents in life skills and household management.

b. Family functioning assessment.

c. Crisis intervention response.

d. Support for a plan of family visits when children are placed out of home, and supervision of visits, if necessary.

e. Safety checks and supervision to ensure that children are safe within their environments.

f. Transportation assistance for children and families to access needed services and supports.

g. Interventions to enhance family functioning skills, which may include interventions and instruction in one or more of the following areas:

(1) Communication and social interaction skills.

(2) Family relationship enhancement.

(3) Parenting education and behavior management of children.

(4) Consumer education instruction.

(5) Advocacy skill enhancement.

(6) Transitional life skills for adolescents.

h. Activities to help connect the child and family with mental health and substance abuse services and with community resources and informal supports to promote self-reliance.

i. Activities to support the families' participation in services related to mental health, domestic violence, and substance abuse.

j. Family reunification interventions.

k. Permanency planning activities, including help in identifying and achieving alternative permanent family connections for the child.

l. Provision of tangible supports for children and families.

172.23(3) Additional services available. Based on child and family needs and subject to approval by the department worker, a child and family who are receiving family safety, risk, and permanency interventions may also be approved to receive the following services, which shall be purchased and funded separately:

a. Drug testing as provided in subrule 172.30(1).

b. Family team meeting facilitation as provided in subrule 172.30(2).

c. Legal services for permanency as provided in subrule 172.30(3).

d. Foster care maintenance payments under rule 441—156.6(234) if the child is placed in foster family care.

e. Shelter care payment as provided in 441—subrule 156.11(3) if the child is placed in shelter care.

f. Group care maintenance and group care child welfare services under rule 441—156.9(234) if the child is placed in group care.

g. Supervised apartment living maintenance and services under rule 441—156.12(234) if the child is placed in supervised apartment living placement.

441—172.24(234) Monitoring of service delivery.

172.24(1) Case management. During the time that a child and the child's family are approved to receive family safety, risk, and permanency services, the department worker shall be responsible for maintaining contact with the child and family to ensure that:

a. The factors that present risks of harm to the safety and well-being of all children in the family are being adequately addressed; and

b. Services and supports are in place to achieve the child's permanency goal.

172.24(2) Provider progress reports. A provider of family safety, risk, and permanency services shall submit reports on clients receiving services in accordance with the format, content, and frequency requirements as specified in the department's request for proposals and in the provider's contract with the department.

172.24(3) Outcome measures. The department shall establish outcome-based performance measures for family safety, risk, and permanency services. These performance measures shall:

a. Be specified in department contracts with providers; and

b. Be aligned with the measures defined by the federal government as part of the child and family services review process.

441—172.25(234) Billing and payment.

172.25(1) Unit of service. Family safety, risk, and permanency services shall be purchased based on a calendar month as one unit of service.

a. A monthly payment rate shall be established for each contract.

b. When services are opened or closed with department worker approval during a calendar month, payment shall be prorated based on the number of days the case was approved for services during the month, including both the beginning and ending dates of service. The amount paid for each day of service shall be the provider's monthly rate divided by 30.

172.25(2) Performance-based payments. Contracts for family safety, risk, and permanency services may contain provisions under which a portion of the provider's payment is connected to the provider's level of outcome-based performance achievement. Any performance-based payment provisions and procedures shall be described in the department's request for proposals and in provider contracts with the department.

441—172.26 to **172.29** Reserved.

DIVISION IV
FAMILY-CENTERED SUPPORTIVE SERVICES

PREAMBLE

Family-centered supportive child welfare services are specific services that department workers may approve and deliver at various points during the course of a child's and family's involvement with the department's child welfare

system to address the children's safety, permanency, and well-being.

441—172.30(234) Service components. Family-centered supportive services include the following components:

172.30(1) Drug testing. At a minimum, drug testing contractors shall be responsible for the costs associated with all of the following activities:

a. Collection of samples from adults or children or installation of sweat patches or other drug-testing devices;

b. Purchasing of collection supplies and devices;

c. Preservation and documentation of the chain of evidence for collected samples;

d. Laboratory testing and analysis fees;

e. Reporting of test results to the referring worker; and

f. Provision of court testimony, if requested, concerning testing results.

172.30(2) Family team meeting facilitation. Meeting facilitation shall:

a. Be provided in accordance with the department's family team meeting model of practice and family team meeting standards; and

b. Include activities involved in:

(1) Planning, preparing for, arranging, facilitating, and reporting on a family team meeting for a child welfare case; and

(2) Coaching and mentoring new facilitators.

172.30(3) Legal services for permanency. Payment for legal services shall include:

a. Providing funding to an attorney for legal services associated with achieving greater permanency for children through either:

(1) Modification of a child custody order; or

(2) Creation of a guardianship or adoptive relationship for a child who is residing with a relative or another suitable caretaker; and

b. Payment of related legal fees, such as filing costs and reporting fees.

172.30(4) Service-area-specific services. A service area manager shall have the authority to use a portion of the child welfare funds allocated to that service area to fund family-centered services specific to that department service area. Service-area-specific services shall be designed to:

a. Address unique child welfare needs within the service area;

b. Allow flexibility and innovation in intervention approach; and

c. Promote safety, permanency, and well-being for children.

441—172.31(234) Provider selection. Family-centered supportive services shall be purchased through a formal competitive selection process according to the requirements of 11—Chapters 106 and 107. With the exception of service-area-specific services, family-centered supportive services shall be available on a statewide basis.

172.31(1) The department shall procure family-centered supportive services within specific geographic areas.

172.31(2) The request for proposals shall specify:

a. The minimum qualifications and requirements for consideration as a provider;

b. The scope of services to be purchased;

c. The specific geographic areas to be covered; and

d. The duration of contracts to be awarded.

172.31(3) The department shall select one or more providers within each geographic area based on service needs and the number and quality of provider proposals.

172.31(4) When multiple providers are selected to serve the same geographic area, the department shall implement a fair and equitable case referral process.

441—172.32(234) Service eligibility. Supportive child welfare services are designed to provide services for children when:

1. The department has initiated a child protective assessment in response to receipt of a report of child maltreatment concerning the child or another child within the same family; or

2. The department has assumed care and supervision of a child placed in out-of-home care; or

3. The department has opened a child welfare service case on the child or family following a child abuse assessment or juvenile court action; or

4. A child in need of assistance petition has been filed on behalf of the child and the court has set a date for the prehearing conference or adjudication hearing.

441—172.33(234) Monitoring of service delivery.

172.33(1) Case management. When the department approves a child and family to receive one or more family-centered supportive service components, the child's department worker shall be responsible for providing case management. Case management shall include maintaining contact with the child, the family, and the provider to ensure that approved services:

a. Are delivered in a manner that will be most effective; and

b. Are helping to achieve identified goals and objectives.

172.33(2) Provider progress reports. The department shall establish and define mandated provider reporting requirements for each family-centered supportive service component and include these requirements in the department's request for proposals and contracts developed as a result of the procurement process.

441—172.34(234) Billing and payment. The units of service for family-centered supportive service components shall be as follows:

172.34(1) Drug testing. The unit of service for drug testing shall be completion of one drug testing procedure, as defined in the department's request for proposals.

172.34(2) Family team meeting facilitation.

a. Family team meeting facilitation shall be purchased based on either:

(1) A payment rate for each facilitated family team meeting; or

(2) A monthly payment to a provider to facilitate family team meetings.

b. Regardless of the purchasing method, facilitation services shall include:

(1) Completion of necessary premeeting planning activities;

(2) Facilitation of the meeting; and

(3) Completion of a written report of meeting results.

172.34(3) Legal services for permanency. The unit of service for legal services shall be a variable amount per client, based on the actual costs of legal services and related court costs necessary to achieve the desired legal result.

172.34(4) Service-area-specific services. The unit of services and unit cost for service-area-specific services shall be

defined in the request for proposals and provider contracts resulting from the procurement process.

These rules are intended to implement Iowa Code section 234.6.

ITEM 2. Rescind and reserve subrules **182.2(6)** and **182.2(8)**.

ITEM 3. Amend rule 441—182.3(234) as follows:

Amend the introductory paragraph as follows:

441—182.3(234) Eligibility for services. ~~To be eligible to receive~~ *Effective October 1, 2007, new referrals for* family-centered services~~, children and families must meet the following requirements:~~ *shall be evaluated, processed, and served under 441— Chapter 172. No new applications or referrals shall be accepted for services under 441—Chapter 182.*

Rescind subrule 182.3(1) and adopt the following **new** subrule in lieu thereof:

182.3(1) Transition. The following procedures apply to children and families who are approved to receive family-centered services as described in this chapter before October 1, 2007, and who require services after October 1, 2007:

a. The department shall make every effort to transition each case to family-centered safety plan services or family safety, risk, and permanency services as described in 441—Chapter 172.

b. If the case cannot be transferred to a contractor for services under 441—Chapter 172 by October 1, 2007, the department worker may request continued authorization of services under 441—Chapter 182 for a limited period until the case can be transferred.

c. The department worker may also request continued authorization of services under 441—Chapter 182 if:

(1) The child and family are receiving services from a provider that will not be a contractor or subcontractor for services under 441—Chapter 172;

(2) The child and family have a strong and positive relationship with that provider; and

(3) The department worker expects that the child's and family's need for services will end by December 31, 2007.

d. Services that may be continued include supervision, parental counseling and education, community resource procurement, and family team meeting facilitation only.

e. The service area manager or the manager's designee must authorize any continued services by October 1, 2007. The authorization period shall not extend beyond December 31, 2007.

f. Any continued need for family-centered services after December 31, 2007, shall be assessed and served in accordance with the procedures in 441—Chapter 172.

ITEM 4. Amend rule 441—182.5(234) as follows:

Amend subrule **182.5(1)** as follows:

Amend paragraph **"b"** by rescinding subparagraphs **(2)** and **(4)** and renumbering subparagraph **(3)** as **(2)**.

Amend paragraph **"c"** by rescinding subparagraphs **(2)** and **(4)** and renumbering subparagraph **(3)** as **(2)**.

Rescind and reserve subrule **182.5(5)**.

ITEM 5. Rescind and reserve subrules **182.6(7)** and **182.6(9)**.

ITEM 6. Amend rule 441—182.7(234) as follows:

Amend subrule **182.7(1)**, paragraph **"a,"** by rescinding subparagraphs **(2)** and **(4)** and renumbering subparagraph **(3)** as **(2)**.

Amend subrules 182.7(2) and 182.7(3) as follows:

182.7(2) Progress reports. For family-centered supervision and parental counseling and education, providers shall complete progress reports that comply with 441—paragraph 185.10(6)"f." Provider progress reports are not required for family team meeting facilitation~~,~~ *or* community resource procurement~~, relative home studies and updates, or the flexible family support fund~~.

182.7(3) Discharge summary. For family-centered supervision and parental counseling and education, providers shall prepare a written report for the referral worker in accordance with 441—paragraph 185.10(6)"e" within 30 days of the termination of services. Discharge summaries are not required for family team meeting facilitation~~,~~ *or* community resource procurement~~, relative home studies, or the flexible family support fund~~.

Amend subrule **182.7(4)** by rescinding and reserving paragraphs **"e"** and **"f."**

ITEM 7. Amend rule 441—182.8(234) as follows:

Amend subrule **182.8(1)** by rescinding and reserving paragraph **"e."**

Amend subrule **182.8(2)** as follows:

Amend paragraph **"b"** by rescinding subparagraph **(3)** and renumbering subparagraph **(4)** as **(3)**.

Rescind and reserve paragraph **"c."**

[Filed 5/16/07, effective 10/1/07]
[Published 6/6/07]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 6/6/07.

ARC 5931B

INTERIOR DESIGN EXAMINING BOARD[193G]

Adopted and Filed

Pursuant to the authority of Iowa Code section 544C.3, the Interior Design Examining Board hereby adopts new Chapter 4, "Professional Conduct," Iowa Administrative Code.

Chapter 4 provides rules of professional conduct for interior designers.

Notice of Intended Action was published in the Iowa Administrative Bulletin on March 28, 2007, as **ARC 5781B**. No public comments were received. No changes have been made from the Notice of Intended Action.

This amendment was adopted by the Board on May 15, 2007.

This amendment will become effective July 11, 2007.

This amendment is intended to implement Iowa Code chapters 544C and 272C.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of this amendment [Ch 4] is being omitted. This amendment is identical to that published under Notice as **ARC 5781B**, IAB 3/28/07.

[Filed 5/15/07, effective 7/11/07]
[Published 6/6/07]

[For replacement pages for IAC, see IAC Supplement 6/6/07.]

ARC 5932B

INTERIOR DESIGN EXAMINING BOARD[193G]

Adopted and Filed

Pursuant to the authority of Iowa Code section 544C.3, the Interior Design Examining Board hereby adopts new Chapter 5, "Disciplinary Authority and Grounds for Discipline," Chapter 6, "Disciplinary Investigations," and Chapter 7, "Disciplinary Proceedings," Iowa Administrative Code.

Chapter 5 establishes the Board's disciplinary authority and grounds for discipline. Chapter 6 sets forth investigative authority, provides for initiation of disciplinary investigations and sources of information, addresses conflict of interest and elaborates on the complaint and investigative processes. Chapter 7 describes the initiation of disciplinary proceedings, sets forth sanctions and provides conditions for reinstatement when a registered interior design license has been suspended, revoked or voluntarily surrendered.

Notice of Intended Action was published in the Iowa Administrative Bulletin on March 28, 2007, as **ARC 5782B**. No public comments were received. No changes have been made from the Notice of Intended Action.

These rules were adopted by the Board on May 15, 2007.

These rules will become effective July 11, 2007.

These rules are intended to implement Iowa Code chapters 544C and 272C.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these rules [Chs 5 to 7] is being omitted. These rules are identical to those published under Notice as **ARC 5782B**, IAB 3/28/07.

[Filed 5/15/07, effective 7/11/07]
[Published 6/6/07]

[For replacement pages for IAC, see IAC Supplement 6/6/07.]

ARC 5936B

LABOR SERVICES DIVISION[875]

Adopted and Filed

Pursuant to the authority of Iowa Code section 88.5, the Labor Commissioner hereby amends Chapter 9, "Discrimination Against Employees," and Chapter 10, "General Industry Safety and Health Rules," Iowa Administrative Code.

The first item adopts a rule which is similar to federal language and clarifies procedures for handling employee discrimination complaints. The second item adopts by reference changes to federal occupational safety and health standards affecting general industry. The standard revisions strengthen employee protections and reflect more current practices and technologies in the industry. The changes focus on safety in the design and installation of electric equipment in the workplace, including new requirements for ground-fault circuit interrupters, a new option for classifying and installing equipment in hazardous locations, and new provisions on wiring carnivals and similar installations.

The principal reasons for adoption of these amendments are to implement Iowa Code chapter 88, to protect the safety and health of Iowa's workers, and to make Iowa's rules more current and consistent with federal regulations. Pursuant to Iowa Code subsection 88.5(1)(a) and 29 Code of Federal Regulations 1953.5, Iowa must adopt the federal standards.

No waiver provision is included in these rules as there are waiver provisions at 875—Chapter 5.

Notice of Intended Action was published in the Iowa Administrative Bulletin on April 11, 2007, as **ARC 5839B**. A public hearing was held on May 4, 2007, at 1:30 p.m. in the Stanley Room at Iowa Workforce Development, 1000 East Grand Avenue, Des Moines, Iowa. No comments were received on the proposed amendments. The adopted amendments are identical to those published under Notice of Intended Action.

These amendments are intended to implement Iowa Code section 88.5.

These amendments will become effective on August 13, 2007.

The following amendments are adopted.

ITEM 1. Adopt the following **new** rule:

875—9.16(88) Notice of determination. Iowa Code subsection 88.9(3) provides that within 90 days of the filing of a complaint, the commissioner is to notify a complainant whether prohibited discrimination occurred. This 90-day provision is considered to be directory in nature. While every effort will be made to notify complainants of the commissioner's determination within 90 days, there may be instances when it is not possible to meet the directory period set forth in Iowa Code subsection 88.9(3).

ITEM 2. Amend rule **875—10.20(88)** by inserting the following at the end thereof:

72 Fed. Reg. 7190 (February 14, 2007)

[Filed 5/16/07, effective 8/13/07]
[Published 6/6/07]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 6/6/07.

ARC 5935B

LABOR SERVICES DIVISION[875]

Adopted and Filed

Pursuant to the authority of Iowa Code section 90A.7, the Labor Commissioner hereby amends Chapter 173, "Professional Boxing," and Chapter 177, "Professional Shoot Fighting," Iowa Administrative Code.

The changes eliminate a requirement for hepatitis A testing, add a requirement for hepatitis C testing, and require that blood test results be provided to the Labor Commissioner and to the ringside physician at least one week in advance of the event.

The purposes of these amendments are to protect the health of the public and implement legislative intent.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 5829B** on April 11, 2007. No comments from the public regarding the proposed amendments were received. No changes have been made from the Notice of Intended Action.

No waiver provision is contained in these rules as there are waiver provisions at 875—Chapter 1.

These amendments are intended to implement Iowa Code chapter 90A.

These amendments will become effective on July 11, 2007.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [173.54, 177.5(11)] is being omitted. These amendments are identical to those published under Notice as **ARC 5829B**, IAB 4/11/07.

[Filed 5/16/07, effective 7/11/07]
[Published 6/6/07]

[For replacement pages for IAC, see IAC Supplement 6/6/07.]

ARC 5925B

PHARMACY EXAMINERS BOARD[657]

Adopted and Filed

Pursuant to the authority of Iowa Code section 147.76, the Board of Pharmacy Examiners hereby amends Chapter 8, "Universal Practice Standards," Iowa Administrative Code.

The amendments establish requirements for a continuous quality improvement program or CQI program to be implemented and maintained in each pharmacy that provides pharmaceutical services to patients in Iowa. The CQI program will identify events to be recorded, processes to be followed upon discovery of a reportable event, event analysis and response procedures, and record-keeping requirements. The amendments also establish requirements related to stocking of bulk drug counting machines and establish a deadline for completion of the pharmacy licensure process.

Requests for waiver or variance of the discretionary provisions of these rules will be considered pursuant to 657—Chapter 34.

Notice of Intended Action was published in the February 28, 2007, Iowa Administrative Bulletin as **ARC 5739B**. The Board received written comments regarding the amendments. The adopted amendments differ from those published under Notice as follows:

The proposed amendment addressing a pharmacist's refusal to fill a prescription or dispense a drug based on various factors, including conscientious objection, has not been adopted based on comments received regarding the proposal, the majority of which strongly opposed the amendment.

Comments on proposed rule 657—8.26(155A) relating to the establishment of a pharmacy continuous quality improvement program prompted the Board to revise the proposed introductory paragraph to exempt a hospital or corporate CQI program that meets the objectives of the rule from the requirement to implement a new CQI program.

Subrule 8.26(1) has been changed to simplify the criteria comprising a reportable program event. In addition, the pharmacist in charge or appropriate designee will be required not only to be informed of but also to review all reported program events. In addition, language relating to the steps to be taken to remedy any problems or potential problems has been clarified.

Subrule 8.26(5) has been changed to clarify that CQI program records must be maintained and accessible on site at the pharmacy. Requirements relating to the content of program records and elements of event analysis and response in subrules 8.26(5) and 8.26(6) also have been simplified in response to comments.

The amendments were approved during the April 24, 2007, meeting of the Board of Pharmacy Examiners.

These amendments will become effective on July 11, 2007.

These amendments are intended to implement Iowa Code sections 147.107, 155A.13, 155A.33, and 155A.41.

The following amendments are adopted.

ITEM 1. Adopt **new** subrule 8.5(8) as follows:

8.5(8) Bulk counting machines. Unless bar-code scanning is required and utilized to verify the identity of each stock container of drugs utilized to restock a counting machine cell or bin, a pharmacist shall verify the accuracy of the drugs to be restocked prior to filling the counting machine cell or bin. A record identifying the individual who verified the drugs to be restocked, the individual who restocked the counting machine cell or bin, and the date shall be maintained. The pharmacy shall have a method to calibrate and verify the accuracy of the counting device and shall, at least quarterly, verify the accuracy of the device and maintain a dated record identifying the individual who performed the quarterly verification.

ITEM 2. Adopt **new** rule 657—8.26(155A) as follows:

657—8.26(155A) Continuous quality improvement program. Each pharmacy licensed to provide pharmaceutical services to patients in Iowa shall implement or participate in a continuous quality improvement program or CQI program. The CQI program is intended to be an ongoing, systematic program of standards and procedures to detect, identify, evaluate, and prevent medication errors, thereby improving medication therapy and the quality of patient care. A pharmacy that participates as an active member of a hospital or corporate CQI program that meets the objectives of this rule shall not be required to implement a new program pursuant to this rule.

8.26(1) Reportable program events. For purposes of this rule, a reportable program event or program event means a preventable medication error resulting in the incorrect dispensing of a prescribed drug that is received by the patient or that is administered to the patient and includes but is not necessarily limited to:

a. An incorrect drug;

b. An incorrect drug strength;

c. An incorrect dosage form;

d. A drug received by the wrong patient;

e. Inadequate or incorrect packaging, labeling, or directions; or

f. Any incident related to a prescription dispensed to a patient that results in or has the potential to result in serious harm to the patient.

8.26(2) Responsibility. The pharmacist in charge is responsible for ensuring that the pharmacy utilizes a CQI program consistent with the requirements of this rule. The pharmacist in charge may delegate program administration and monitoring, but the pharmacist in charge maintains ultimate responsibility for the validity and consistency of program activities.

8.26(3) Policies and procedures. Each pharmacy shall develop, implement, and adhere to written policies and procedures for the operation and management of the pharmacy's

CQI program. A copy of the pharmacy's CQI program description and policies and procedures shall be maintained and readily available to all pharmacy personnel. The policies and procedures shall address, at a minimum, a planned process to:

a. Train all pharmacy personnel in relevant phases of the CQI program;

b. Identify and document reportable program events;

c. Minimize the impact of reportable program events on patients;

d. Analyze data collected to assess the causes and any contributing factors relating to reportable program events;

e. Use the findings to formulate an appropriate response and to develop pharmacy systems and workflow processes designed to prevent and reduce reportable program events; and

f. Periodically, but at least annually, meet with appropriate pharmacy personnel to review findings and inform personnel of changes that have been made to pharmacy policies, procedures, systems, or processes as a result of CQI program findings.

8.26(4) Event discovery and notification. As provided by the procedures of the CQI program, the pharmacist in charge or appropriate designee shall be informed of and review all reported and documented program events. All pharmacy personnel shall be trained to immediately inform the pharmacist on duty of any discovered or suspected program event. When the pharmacist on duty determines that a reportable program event has occurred, the pharmacist shall ensure that all reasonably necessary steps are taken to remedy any problems or potential problems for the patient and that those steps are documented. Necessary steps include, but are not limited to, the following:

a. Notifying the patient or the patient's caregiver and the prescriber or other members of the patient's health care team as warranted;

b. Identifying and communicating directions or processes for correcting the error; and

c. Communicating instructions for minimizing any negative impact on the patient.

8.26(5) CQI program records. All CQI program records shall be maintained on site at the pharmacy or shall be accessible at the pharmacy and be available for inspection and copying by the board or its representative for at least two years from the date of the record. When a reportable program event occurs or is suspected to have occurred, the program event shall be documented in a written or electronic storage record created solely for that purpose. Records of program events shall be maintained in an orderly manner and shall be filed chronologically by date of discovery.

a. The program event shall initially be documented as soon as practicable by the staff member who discovers the event or is informed of the event.

b. Program event documentation shall include a description of the event that provides sufficient information to permit categorization and analysis of the event and shall include:

(1) The date and time the program event was discovered and the name of the staff person who discovered the event; and

(2) The names of the individuals recording and reviewing or analyzing the program event information.

8.26(6) Program event analysis and response. The pharmacist in charge or designee shall review each reportable program event and determine if follow-up is necessary. When appropriate, information and data collected and documented shall be analyzed, individually and collectively, to assess the cause and any factors contributing to the program event. The analysis may include, but is not limited to, the following:

a. A consideration of the effects on the quality of the pharmacy system related to workflow processes, technology utilization and support, personnel training, and both professional and technical staffing levels;

b. Any recommendations for remedial changes to pharmacy policies, procedures, systems, or processes; and

c. The development of a set of indicators that a pharmacy will utilize to measure its program standards over a designated period of time.

ITEM 3. Adopt **new** subrule 8.35(8) as follows:

8.35(8) Failure to complete licensure. An application for a pharmacy license, including an application for registration pursuant to 657—Chapter 10, if applicable, will become null and void if the applicant fails to complete the licensure process within six months of receipt by the board of the required applications. The licensure process shall be complete upon the pharmacy's opening for business at the licensed location following an inspection rated as satisfactory by an agent of the board if such an inspection is required pursuant to this rule. When an applicant fails to timely complete the licensure process, fees submitted with applications will not be transferred or refunded.

[Filed 5/14/07, effective 7/11/07]
[Published 6/6/07]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 6/6/07.

ARC 5924B

PHARMACY EXAMINERS BOARD[657]

Adopted and Filed

Pursuant to the authority of Iowa Code section 147.76, the Board of Pharmacy Examiners hereby amends Chapter 8, "Universal Practice Standards," and adopts new Chapter 13, "Sterile Compounding Practices," Iowa Administrative Code.

The amendments rescind the current rule regarding sterile compounding and adopt a new chapter on the same topic. The new chapter defines terms relating to the sterile compounding of pharmaceuticals and establishes responsibilities relating to training and verifying compounding procedures. Requirements for written policies and procedures, references, containers, and labeling are identified. Preparation risk levels are defined, and requirements unique to each are identified. Physical environment requirements are identified, and environmental monitoring requirements are established. Quality assurance program components are identified.

Requests for waiver or variance of the discretionary provisions of these rules will be considered pursuant to 657—Chapter 34.

Notice of Intended Action was published in the February 28, 2007, Iowa Administrative Bulletin as **ARC 5742B**. The Board received written comments regarding the amendments. The adopted amendments differ from those published under Notice as follows:

The definition in rule 13.2(124,126,155A) of "biological safety cabinet" has been changed to remove the reference to

"Class III"; the definition of "compounding aseptic isolator" has been expanded for clarity; and references to "federal standards" in the definitions of the ISO classes have been changed to reference "ISO standards."

The term "nonhazardous" has been omitted from numbered paragraph "1" in rule 13.14(155A) regarding the preparation of immediate-use preparations. In addition, the final sentence in the introductory paragraph of rule 13.20(124, 155A) has been omitted, eliminating the prohibition against compounding immediate-use preparations containing hazardous drugs.

The requirements for the hazardous drugs sterile preparation area in subrule 13.20(3) have been revised to recommend rather than require negative air pressure and venting to the outside of the building, and subrule 13.20(4), regarding protective apparel, has been revised for clarity and broader applicability.

Subrule 13.24(2), paragraph "b," subparagraph (3), has been changed to clarify the purpose of the filter.

Garbing procedural requirements in subrule 13.28(2), paragraph "f," have been revised to ensure gowns used during the compounding of hazardous drugs are not reused during subsequent compounding sessions. Paragraph 13.28(2)"g" has been omitted because the requirements of that paragraph are duplicated elsewhere in these rules.

Identification of "Federal Standard 209E" has been changed throughout to current ISO standards as the ruling standards for certification of equipment and environment.

Other minor changes were made for clarity.

The amendments were approved during the April 24, 2007, meeting of the Board of Pharmacy Examiners.

These amendments will become effective on July 11, 2007.

These amendments are intended to implement Iowa Code sections 124.301, 126.10, 155A.2, 155A.4, 155A.13, 155A.13A, and 155A.28.

The following amendments are adopted.

ITEM 1. Rescind and reserve rule **657—8.30(126,155A)**.

ITEM 2. Adopt **new** 657—Chapter 13 as follows:

CHAPTER 13
STERILE COMPOUNDING PRACTICES

657—13.1(124,126,155A) Purpose and scope. These rules establish standards and procedures for the preparation, labeling, and distribution of sterile preparations by licensed pharmacies pursuant to a physician's order or prescription; for sterile product quality and characteristics; and for pharmaceutical care. The standards and procedures outlined in this chapter apply to pharmacy practice when a preparation:

1. Is prepared according to the manufacturer's labeled instructions and requires other manipulations that expose the original contents to potential contamination;

2. Contains nonsterile ingredients or employs nonsterile components or devices that must be sterilized before administration; or

3. Is a biologic, diagnostic, drug, or nutrient that possesses characteristics of either "1" or "2" above and includes, but is not limited to, the following preparations that are required to be sterile when they are administered to patients: baths and soaks for live organs and tissues, injections (e.g., colloidal dispersions, emulsions, solutions, and suspensions), aqueous bronchial and nasal inhalations, irrigations for wounds and body cavities, ophthalmic drops and ointments, and tissue implants.

Standards and safe practices for the compounding of radioactive preparations are identified in 657—Chapter 16.

657—13.2(124,126,155A) Definitions. For the purposes of this chapter, the following definitions shall apply:

"Anteroom" or "ante area" means an ISO Class 8 or superior area where personnel perform hand hygiene and garbing procedures, staging of components, order entry, preparation labeling, and other high-particulate generating activities.

"Aseptic processing" means a method of preparing pharmaceutical products that involves the transfer of the product into the container and closure of the container using procedures designed to preclude contamination of drugs, packaging, equipment, or supplies by microorganisms during processing.

"Beyond-use date" means the date or time following compounding after which the preparation shall not be stored, transported, or administered.

"Biological safety cabinet, Class II" or "BSC" means a ventilated cabinet having an open front with inward airflow for personnel protection, downward HEPA-filtered laminar airflow for product protection, and HEPA-filtered exhausted air for environmental protection.

"Buffer area" or "cleanroom" means a room or area in which the concentration of airborne particles is controlled to meet an ISO Class 7 standard.

"Compounding" means the constitution, reconstitution, combination, dilution, or other process causing a change in the form, composition, or strength of any ingredient or of any other attribute of a product.

"Compounding aseptic isolator" or "CAI" means a form of barrier isolator specifically designed for compounding pharmaceutical ingredients or preparations. A CAI is designed to maintain an aseptic compounding environment within the isolator throughout the compounding and material transfer processes. Air exchange into the isolator from the surrounding environment should not occur unless it has first passed through a microbially retentive filter, HEPA minimum.

"Critical surface" means any area that provides an opportunity for exposure to contamination during aseptic processing, including sterilized products, devices, components, and containers used in the preparation, packaging and transferring of compounded sterile preparations.

"Hazardous drug" means a pharmaceutical that is antineoplastic, carcinogenic, mutagenic, or teratogenic.

"HEPA" means high efficiency particulate air.

"High-risk preparation" means a sterile preparation that is compounded from nonsterile ingredients; that is compounded with nonsterile components, containers, or equipment and requires terminal sterilization; or that meets the conditions of rule 13.13(155A).

"ISO Class 5" or "Class 100 condition" means an atmospheric environment that contains less than 100 particles, 0.5 microns in diameter per cubic foot of air, according to ISO standards.

"ISO Class 7" or "Class 10,000 condition" means an atmospheric environment that contains less than 10,000 particles, 0.5 microns in diameter per cubic foot of air, according to ISO standards.

"ISO Class 8" or "Class 100,000 condition" means an atmospheric environment that contains less than 100,000 particles, 0.5 microns in diameter per cubic foot of air, according to ISO standards.

"Laminar airflow workbench" or "LAFW" means an apparatus designed to provide an ISO Class 5 environment for

the preparation of sterile products that uses air circulation in a defined direction that passes through a HEPA filter to remove the initial particles and the particles generated within the controlled environment.

"Low-risk preparation" means a sterile preparation that is compounded with sterile equipment, sterile ingredients, and sterile contact surfaces or that meets the conditions of rule 13.11(155A).

"Medium-risk preparation" means a sterile preparation that is compounded with sterile equipment, sterile ingredients, and sterile contact surfaces and involves complex or numerous manipulations of a sterile product or that meets the conditions of rule 13.12(155A).

"MFT" means a media-fill test as specified in rule 13.25(155A).

"Positive pressure room" means a room that is at a higher pressure compared to adjacent spaces, creating a net airflow out of the room.

"Preparation" or "compounded sterile preparation" means a drug or nutrient that is prepared in a licensed pharmacy or other health care-related facility pursuant to the order of a licensed prescriber, which preparation may or may not be sterile.

"Primary engineering control device" means a device or room that provides an ISO Class 5 environment during the compounding process. Such devices include, but may not be limited to, laminar airflow workbenches (LAFWs), biological safety cabinets (BSCs), and compounding aseptic isolators (CAIs).

"Product" means a commercially manufactured sterile drug or nutrient that has been evaluated for safety and efficacy by the FDA.

"Sterile compounding" means the aseptic processing in a clean air environment of any pharmaceutical including, but not limited to, the following preparations that are required to be sterile when they are administered to patients: baths and soaks for live organs and tissues, injections (e.g., colloidal dispersions, emulsions, solutions, and suspensions), aqueous bronchial and nasal inhalations, irrigations for wounds and body cavities, ophthalmic drops and ointments, and tissue implants.

657—13.3(155A) Responsibilities.

13.3(1) Pharmacist. Each pharmacy shall have a pharmacist responsible for ensuring that:

a. Preparations are accurately identified, measured, diluted, and mixed; and are correctly purified, sterilized, packaged, sealed, labeled, stored, dispensed, and distributed.

b. Appropriate cleanliness conditions are maintained, including preservation of the sterile environment during the compounding process.

c. Beyond-use dates are established based on direct testing or extrapolation from reliable literature sources. The pharmacy shall maintain written justification of the chosen beyond-use date or, if a written standard is not available, a maximum 24-hour expiration shall be used.

d. Equipment, apparatus, and devices used to compound a preparation are consistently capable of operating properly and within acceptable tolerance limits.

13.3(2) In-process checking procedure. Each pharmacy shall establish a written quality assurance procedure that includes the following in-process checks:

a. Appropriate procedures are followed for measuring, mixing, diluting, purifying, sterilizing, packaging, and labeling of the specific preparation.

b. Packaging selection is appropriate to preserve the sterility and strength of the preparation.

c. All functions performed by nonpharmacists are verified by the pharmacist before the preparation is dispensed to the patient.

13.3(3) Training documentation. All personnel involved with compounding, repackaging, or manipulating sterile preparations shall be adequately educated and trained. Training shall include written documentation certifying that compounding personnel are able to adequately complete the following activities:

a. Perform antiseptic hand cleansing and disinfection of nonsterile compounding surfaces.

b. Select and appropriately don protective garb.

c. Maintain or achieve sterility of preparations in ISO Class 5 primary engineering control devices.

d. Identify, weigh, and measure ingredients.

e. Manipulate sterile products aseptically, sterilize high-risk preparations, and label preparations.

f. Protect personnel and compounding environments from contamination by hazardous drugs.

657—13.4 Reserved.

657—13.5(155A) References required. The pharmacy shall have sufficient current reference materials related to sterile products and preparations. References may be printed or computer-accessed. In addition to meeting the requirements set forth in rule 657—6.3(155A), 657—7.3(155A), 657—15.4(155A), or 657—16.5(155A), as applicable, all pharmacies involved in sterile compounding shall maintain a minimum of one current reference, including access to current periodic updates, from each of the following categories:

1. A general information reference.
2. An injectable drug compatibility reference.
3. If the pharmacy is compounding hazardous drugs, a reference related to hazardous drugs.

657—13.6(126,155A) Policies and procedures. A written policy and procedure manual shall be prepared, implemented, maintained, and adhered to for the compounding, dispensing, delivery, administration, storage, and use of sterile preparations. The manual shall establish policies and procedures relating to subjects identified in this and other rules within this chapter.

13.6(1) Quality assurance program. The policy and procedure manual shall include a quality assurance program pursuant to rule 13.31(155A).

13.6(2) Sampling. The policy and procedure manual shall include procedures that require sampling of a preparation as provided in rule 13.29(126,155A) or if microbial contamination is suspected.

13.6(3) Preparation recall. The policy and procedure manual shall include procedures for the recall of dispensed preparations that fail to meet product quality standards.

13.6(4) Hazardous products and infectious waste. The policy and procedure manual shall include procedures for proper handling of hazardous drug products and infectious waste, if applicable.

13.6(5) Periodic review. The policy and procedure manual shall be periodically reviewed. Policies shall specify the frequency of review. The manual shall be available for inspection and copying by the board or agents of the board.

657—13.7(126,155A) Labeling requirements.

13.7(1) Patient-specific dispensing container. At the time of delivery, a patient-specific dispensing container used for a preparation shall bear a label with at least the following information:

a. Name and quantity of all contents.

b. Patient's name.

c. For home care patient prescriptions, unique serial number or prescription number.

d. Preparer's and reviewing pharmacist's initials or unique identifiers.

e. Stability (beyond-use date) as set forth in the pharmacy's policy and procedure manual.

f. The prescribed flow rate in ml/hr, if applicable.

g. Auxiliary labels as needed.

13.7(2) Batch preparation. Each container of a batch preparation that is compounded in anticipation of later dispensing shall bear a label with at least the following information:

a. Name and quantity of all contents.

b. Internal code to identify the date and time of preparation and the preparer's and reviewing pharmacist's initials or unique identifiers.

c. Stability (beyond-use date) as set forth in the pharmacy's policy and procedure manual.

d. Auxiliary labels as needed.

657—13.8 and **13.9** Reserved.

657—13.10(126,155A) Microbial contamination risk levels. Preparations shall be assigned an appropriate risk level—low, medium or high—according to the corresponding probability of contaminating a preparation with microbial contamination such as microbial organisms, spores, and endotoxins, and chemical and physical contamination such as foreign chemicals and physical matter. The characteristics described in rules 13.11(155A), 13.12(155A), and 13.13(155A) are intended as guides to the diligence required in compounding at each risk level.

657—13.11(155A) Low-risk preparations.

13.11(1) Conditions defined. Preparations compounded under all of the following conditions are at a low risk of contamination.

a. The preparations are compounded with aseptic manipulations entirely within ISO Class 5 or superior air quality using only sterile ingredients, products, components, and devices.

b. The compounding involves only transferring, measuring, and mixing no more than three commercially manufactured sterile products and entries into one container (e.g., bag, vial) of sterile product to make the preparation.

c. Manipulations are limited to aseptically opening ampoules, penetrating sterile stoppers on vials with sterile needles and syringes, and transferring sterile liquids in sterile syringes to sterile administration devices, containers of other sterile products, and containers for storage and dispensing.

d. In the absence of the preparation's passing a sterility test and provided that the preparation is properly stored before administration, storage periods shall not exceed the following:

(1) At controlled room temperature for 48 hours;

(2) At a cold temperature for 14 days; or

(3) In a solid-frozen state at minus 20 degrees Celsius or colder for 45 days.

13.11(2) Examples. Examples of low-risk compounding include:

a. The single-volume transfer of sterile dosage forms from ampoules, bottles, bags, and vials using sterile syringes with sterile needles, other administration devices, and other sterile containers. When ampoules are employed, solution content shall be passed through a sterile filter to remove any particles.

b. The manual measuring and mixing of no more than three manufactured products including an infusion or diluent solution to compound drug admixtures and nutritional solutions.

657—13.12(155A) Medium-risk preparations.

13.12(1) Conditions defined. Preparations compounded aseptically under low-risk conditions with one or more of the following additional conditions are at a medium risk of contamination.

a. Multiple individual or small doses of sterile products are combined or pooled to prepare a sterile preparation for administration either to multiple patients or to one patient on multiple occasions.

b. The compounding process includes complex aseptic manipulations other than the single-volume transfer.

c. The compounding process requires an unusually long duration, such as that required to complete dissolution or homogeneous mixing.

d. In the absence of the preparation's passing a sterility test and provided that the preparation is properly stored before administration, storage periods shall not exceed the following:

(1) At controlled room temperature for 30 hours;

(2) At a cold temperature for 9 days; or

(3) In a solid-frozen state at minus 20 degrees Celsius or colder for 45 days.

13.12(2) Examples. Examples of medium-risk compounding include:

a. Compounding total parenteral nutrition fluids, using manual or automated devices and involving multiple injections, detachments, or attachments of nutrient source products to the device or machine to deliver all nutritional components to a final sterile container.

b. Filling reservoirs of injection or infusion devices with more than three sterile drug products and evacuating air from those reservoirs before dispensing the filled device.

c. Transferring volumes from multiple ampoules or vials into one or more final sterile containers.

657—13.13(155A) High-risk preparations.

13.13(1) Conditions defined. Preparations that are either contaminated or likely to become contaminated with infectious microorganisms when compounded under any of the following conditions are at a high risk of contamination.

a. Nonsterile ingredients, including manufactured products not intended for sterile use, are incorporated or a nonsterile device is used in the compounding process before terminal sterilization.

b. Sterile contents of commercially manufactured products, preparations that lack effective antimicrobial preservatives, and sterile surfaces of devices and containers intended for the preparation, transfer, sterilization, and packaging of preparations are exposed to air quality inferior to ISO Class 5 for more than one hour.

c. Nonsterile procedures such as weighing and mixing in air quality inferior to ISO Class 7 are performed before sterilization, compounding personnel are not properly garbed and gloved, or water-containing preparations are stored for more than six hours.

d. The chemical purity and content strength of bulk ingredients, whether the ingredients are in opened or unopened packages, are not verified by examination of labeling and documentation of suppliers or by direct determination.

e. For a sterilized high-risk preparation, in the absence of the preparation's passing a sterility test, the storage periods shall not exceed the following:

(1) At controlled room temperature for 24 hours;
(2) At a cold temperature for 3 days; or
(3) In a solid-frozen state at minus 20 degrees Celsius or colder for 45 days.

13.13(2) Examples. Examples of high-risk compounding include:

a. Dissolving nonsterile bulk drugs or nutrient powders to make solutions that will be terminally sterilized.

b. Measuring and mixing sterile ingredients in nonsterile devices before sterilization is performed.

c. Assuming, without appropriate evidence or direct determination, that packages of bulk ingredients contain at least 95 percent by weight of their active chemical moiety and have not been contaminated or adulterated between uses.

d. Exposing the sterile ingredients and components used to prepare and package the preparation to air quality inferior to ISO Class 5 for more than one hour.

657—13.14(155A) Immediate-use preparations. For the purpose of emergency or immediate patient care, pharmacies are exempted from requirements described in this chapter for low- and medium-risk preparations when all of the following criteria are met:

1. Only simple aseptic measuring and transfer manipulations are performed with not more than three sterile commercial drug products including an infusion or diluent solution.
2. Unless required for the preparation, the compounding procedure occurs continuously without delays or interruptions and does not exceed one hour.
3. At no point during preparation are critical surfaces and ingredients of the preparation directly exposed to contact contamination, such as human touch, cosmetic flakes or particulates, blood, human body substances (e.g., nasal and oral excretions and secretions), and nonsterile inanimate sources.
4. Administration begins not later than two hours after compounding of the preparation has begun.
5. If administration has not begun within two hours after compounding of the preparation has begun, the preparation is promptly and safely discarded. Immediate-use preparations shall not be stored for later use.

657—13.15(155A) Utilization of single-dose and multiple-dose containers. Pharmacies utilizing single-dose and multiple-dose containers in sterile compounding shall comply with the following:

1. Single-dose containers that are opened or needle-punctured shall be used within one hour if opened in air quality conditions inferior to ISO Class 5.
2. Single-dose vials that are continuously exposed to ISO Class 5 air shall be used within six hours after initial needle puncture.
3. Opened single-dose ampoules shall not be stored for any period of time under any air quality conditions.
4. Multiple-dose containers that are entered or opened shall be used within 28 days of initial entry or opening unless otherwise specified by the manufacturer.
5. Multiple-dose and single-dose sterile products shall not be combined for use as multiple-dose applications.

657—13.16(155A) Utilization of proprietary bag and vial systems. Sterility storage and beyond-use times for attached and activated container pairs of drug products for intravascular administration shall follow manufacturers' instructions for handling and storage.

657—13.17 to **13.19** Reserved.

657—13.20(124,155A) Sterile preparation of hazardous drugs. Hazardous drugs shall only be prepared for administration under conditions that protect pharmacy personnel in the preparation area.

13.20(1) Storage and handling. Policies and procedures shall identify appropriate storage and handling of hazardous drugs to prevent contamination and personnel exposure.

13.20(2) Caution labeling and distribution. Preparations containing hazardous drugs shall be labeled on the primary container and placed in an overwrap bag that is also properly labeled. Prepared doses of dispensed hazardous drugs shall be labeled and distributed in a manner to minimize the risk of accidental rupture of the primary container. Proper labeling shall include any necessary precautions.

13.20(3) Preparation area. All hazardous drugs shall be compounded in a vertical flow Class II or Class III biological safety cabinet or in a compounding aseptic isolator containment and control device with biohazard control capabilities.

a. It is preferable for the ISO Class 5 BSC or CAI to be placed in a contained environment where air pressure is negative and where the ISO Class 5 BSC or CAI is appropriately vented to the outside of the building.

b. If the pharmacy compounds fewer than five preparations per week in a BSC or CAI and uses a closed system vial transfer device to compound the preparations, the BSC or CAI may be located in a positive pressure room.

13.20(4) Protective apparel. Personnel compounding hazardous drugs shall wear appropriate protective apparel in accordance with documented procedures. Protective apparel may include disposable, nonshedding coveralls or gowns with tight cuffs, face masks, eye protection, hair covers, double gloves, and shoe covers.

13.20(5) Techniques. Appropriate safety and containment techniques for compounding hazardous drugs shall be used in conjunction with the aseptic techniques required for processing sterile preparations.

13.20(6) Training required. All personnel who compound hazardous drugs shall be fully trained in the storage, handling, and disposal of these drugs. This training shall occur before personnel prepare or handle hazardous preparations and shall be verified and documented for each person at least annually.

13.20(7) Waste. Disposal of hazardous waste shall comply with all applicable local, state, and federal requirements.

13.20(8) Spills of hazardous drugs. Written procedures for handling both major and minor spills of hazardous drugs shall be developed, maintained, implemented, and adhered to. The procedures shall be maintained with the policies and procedures required in rule 13.6(155A).

657—13.21 and **13.22** Reserved.

657—13.23(124,155A) Verification of compounding accuracy and sterility. Compounding procedures and sterilization methods used for preparations require planned testing, monitoring, and documentation to demonstrate adherence to environmental quality requirements, personnel practices, and procedures critical to achieving and maintaining sterility. Pharmacist verification of a preparation shall include visual inspection of labeling, physical integrity, and expected appearance, including final fill amount.

657—13.24(124,155A) Sterilization methods. The selected sterilization method employed shall be based on experience and appropriate information sources.

13.24(1) Presterilization requirements for high-risk preparations.

a. During all compounding activities that precede terminal sterilization, such as weighing and mixing, compounding personnel shall be garbed and gloved in the same manner as when performing compounding in an ISO Class 5 environment. All presterilization procedures shall be completed in an ISO Class 8 or superior environment.

b. Immediately before use, all nonsterile measuring, mixing, and purifying devices used in the compounding process shall be thoroughly rinsed with sterile, pyrogen-free water, and then thoroughly drained or dried.

13.24(2) Sterilization methods for high-risk preparations.

a. Sterilization by filtration.

(1) Sterile filters used to sterile filter preparations shall be pyrogen-free and have a nominal porosity of 0.22 microns. The filter dimensions and liquid material to be sterile filtered shall permit the sterilization process to be completed rapidly without the replacement of the filter during the filtering process.

(2) Compounding personnel shall ascertain that selected filters will achieve sterilization of the specific preparation.

(3) Sterilization by filtration shall be performed entirely within an ISO Class 5 or superior air quality environment.

b. Thermal sterilization. Use of saturated steam under pressure, or autoclaving, is the preferred method to terminally sterilize aqueous preparations.

(1) All materials shall be exposed to steam at 121 degrees Celsius under the recommended pressure and duration, verified by testing the sterility of the finished preparation.

(2) The description of steam sterilization conditions and duration for specific preparations shall be included in written documentation maintained in the compounding facility.

(3) Before or during entry into final containers, all high-risk preparations in solution form that are subjected to terminal steam sterilization shall pass through a filter with nominal porosity not larger than 1.2 microns for removal of particulate matter.

c. Dry heat sterilization. Dry heat sterilization shall be completed in an oven designed for sterilization and shall be used only for those materials that cannot be sterilized by steam. The effectiveness of dry heat sterilization shall be verified using appropriate biological indicators and temperature-sensing devices.

13.24(3) Records. Record requirements for high-risk preparations shall include documentation of the following:

a. Lot numbers of nonsterile components used in compounding high-risk preparations.

b. Sterilization records including methods used for each preparation.

13.24(4) Testing and quarantine requirements. All high-risk preparations that are prepared in groups of 25 or more identical single-dose containers or in multiple-dose vials for administration to multiple patients, or that are exposed longer than 12 hours at 2 to 8 degrees Celsius and longer than 6 hours at warmer than 8 degrees Celsius, shall be quarantined and tested to ensure that the preparations are sterile before they are dispensed or administered.

13.24(5) Release of preparations prior to receipt of testing results. If a preparation may be needed before the results of sterility testing have been received, the pharmacy shall have a written procedure requiring daily observation of incubating test specimens and immediate recall of the dispensed preparations when there is any evidence of microbial growth in the test specimens.

13.24(6) Bacterial endotoxin (pyrogen) testing. All high-risk preparations, except those for inhalation and ophthalmic administration, that are prepared in groups of more than 25 identical individual single-dose containers, or in multiple-dose vials for administration to multiple patients, or that are exposed longer than 12 hours at 2 to 8 degrees Celsius and longer than 6 hours at warmer than 8 degrees Celsius before they are sterilized, shall be tested to ensure that the preparations do not contain excessive bacterial endotoxins.

657—13.25(155A) Media-fill testing by personnel. The pharmacy shall develop, maintain, and implement written procedures that include appropriate media-fill testing by personnel authorized to compound preparations. Tests shall be performed without interruption in an ISO Class 5 environment under conditions that closely simulate the stressful conditions encountered during compounding of the specific risk level preparations for which the test is intended. The pharmacy shall maintain records of media-fill testing performed, and results of testing procedures shall be available to the board or agents of the board. Compounding personnel whose media-fill test vials result in gross microbial colonization shall be immediately reinstructed and reevaluated by expert compounding personnel to ensure correction of all aseptic practice deficiencies.

13.25(1) Low-risk MFT procedure. Each person authorized to compound low-risk preparations shall annually perform an appropriate successful MFT procedure. The following is an example of a low-risk MFT procedure:

1. Using the same sterile 10-ml syringe and vented needle combination, aseptically transferring three sets of four 5-ml aliquots of sterile soybean-casein digest medium into separate sealed, empty, sterile 30-ml clear vials (i.e., four 5-ml aliquots into each of three 30-ml vials);
2. Affixing sterile adhesive seal closures onto the three filled vials;
3. Incubating the vials at temperatures between 25 and 35 degrees Celsius for 14 days. Failure is indicated by visible turbidity in the medium on or before the passage of 14 days.

13.25(2) Medium-risk MFT procedure. Each person authorized to compound medium-risk preparations shall annually perform an appropriate successful MFT procedure. The following is an example of a medium-risk MFT procedure:

1. Aseptically transferring six 100-ml aliquots of sterile soybean-casein digest medium by gravity through separate tubing sets into separate evacuated sterile containers;
2. Arranging the six containers as three pairs and using a sterile 10-ml syringe and 18-gauge needle combination to exchange two 5-ml aliquots of medium from one container to the other container in the pair (for example, adding 5-ml aliquot from the first container to the second container in the pair, agitating the second container for 10 seconds, and transferring 5-ml aliquot from the second container back to the first container in the pair; then agitating the first container for 10 seconds and transferring the next 5-ml aliquot from the first container back to the second container in the pair; and repeating the procedure for each pair of containers);
3. Aseptically injecting a 5-ml aliquot of medium from each container into a sealed, empty, sterile 10-ml clear vial using a sterile 10-ml syringe and vented needle. Affixing sterile adhesive seals to the rubber closures on the three filled vials and incubating the vials at temperatures within a range of 20 to 35 degrees Celsius for 14 days. Failure is indicated by visible turbidity in the medium on or before the passage of 14 days.

13.25(3) High-risk MFT procedure. Each person authorized to compound high-risk preparations shall semiannually

perform an appropriate successful MFT procedure. The following is an example of a high-risk MFT procedure:

1. Dissolving 3 gm of nonsterile commercially available soybean-casein digest medium in 100 ml of nonbacteriostatic water to make a 3 percent solution;

2. Drawing 25 ml of the medium into each of three 30-ml sterile syringes. Transferring 5 ml from each syringe into separate sterile 10-ml vials (these vials are the positive controls to generate exponential microbial growth, which is indicated by visible turbidity upon incubation);

3. Under aseptic conditions and using aseptic techniques, affixing a sterile 0.2 micron porosity filter unit and a 20-gauge needle to each syringe. Injecting the next 10 ml from each syringe into three separate 10-ml sterile vials. Repeating the process into three more vials. Labeling all vials, affixing sterile adhesive seals to the closure of the nine vials, and incubating them at temperatures between 25 and 35 degrees Celsius. Inspecting for microbial growth over 14 days. Failure is indicated by visible turbidity in the medium on or before the passage of 14 days.

657—13.26 Reserved.

657—13.27(124,126,155A) Physical environment requirements. The pharmacy shall have a designated area for compounding sterile preparations, with entry restricted to designated personnel. The area shall be used only for sterile compounding. The area shall be structurally isolated from other areas and shall be designed to avoid unnecessary traffic and airflow disturbances. The area shall be of sufficient size to accommodate at least one primary engineering control device and to provide for the storage of drugs and supplies under appropriate temperature, light, moisture, sanitation, ventilation, and security conditions.

13.27(1) Requirement for primary engineering control device. The primary engineering control device shall be capable of maintaining at least ISO Class 5 air quality in the area where critical objects are exposed and critical activities are performed. The device shall be capable of maintaining ISO Class 5 air quality during normal activity. A primary engineering control device includes, but is not limited to, a horizontal or vertical laminar airflow workbench or CAI.

13.27(2) Placement of primary engineering control device. The primary engineering control device shall be placed in a cleanroom or buffer area where HEPA filters are employed and the air quality is maintained at ISO Class 7. This area shall have cleanable, nonshedding, smooth surfaces; all junctures shall be coved; and all cracks and crevices shall be caulked. The ceiling shall be impervious and hydrophobic. The buffer area shall not contain any drains or sinks. Only the furniture, equipment, supplies and other material required for compounding activities to be performed shall be brought into the room. Such items brought into the room shall be cleaned and disinfected. Placement in buffer areas and cleanrooms of objects and devices not essential to the compounding process is dictated by the measured effect of those objects and devices on the required environmental quality of air atmospheres and surfaces.

13.27(3) Exception for placement of CAI. The CAI shall be placed in an ISO Class 7 cleanroom unless the CAI meets each of the following conditions:

a. The CAI provides isolation from the room and maintains ISO Class 5 conditions when ingredients, components, and devices are transferred into and out of the CAI during the preparation process.

b. The manufacturer provides documentation verifying that the CAI meets the standard in paragraph "a" when the CAI is located in an environment inferior to ISO Class 7.

13.27(4) Anteroom requirements. An anteroom or ante area shall be located adjacent to the buffer area and maintained at ISO Class 8 air quality. This area is to be used for unpacking and disinfecting supplies for storage and for hand sanitizing and gowning. If the sterile preparation area is to be used only for the compounding of low- and medium-risk preparations, the ante area shall be clearly demarcated for the compounding of low- and medium-risk preparations. If the sterile preparation area is to be used for the compounding of high-risk preparations, the ante area shall be physically separated from the buffer area.

13.27(5) Delayed implementation. A pharmacy whose sterile compounding area is in substantial compliance with the physical and structural requirements of this rule shall be authorized to engage in the compounding of sterile preparations pursuant to the practice standards established by this chapter and subject to the following:

a. Any pharmacy that commences, on or after July 11, 2007, new construction or remodeling of a pharmacy sterile compounding area shall comply with the physical and structural requirements of this rule.

b. Any pharmacy engaged in the compounding of sterile preparations shall, no later than December 31, 2010, complete any necessary changes or improvements to the sterile compounding area to ensure compliance with the physical and structural requirements of this rule.

657—13.28(155A) Cleaning, maintenance, and supplies. The pharmacy shall have appropriate equipment and supplies and documented procedures for maintaining an environment suitable for the aseptic processing of sterile preparations.

13.28(1) Supplies and equipment. Required supplies and equipment shall include, but may not be limited to, the following:

a. Appropriate attire including nonshedding coveralls or gowns, head and facial covers, face masks, appropriate gloves, and shoe covers.

b. A sink with hot and cold running water, with bactericidal soap available for the purpose of hand and forearm scrubs, which shall be located convenient to the area used for compounding sterile preparations but outside the buffer area.

13.28(2) Documented procedures. Documented procedures shall include, but not be limited to, the following:

a. Specific cleaning procedures and frequencies for each compounding area involved.

b. Identification of the individual responsible for completing each procedure.

c. A list of approved cleaning agents for each procedure.

d. A written plan and schedule for the evaluation of airborne microorganisms in each controlled air environment (e.g., LAFW, barrier isolators, buffer area, and anteroom).

e. Equipment calibration, annual maintenance, and monitoring of proper function of equipment, apparatus, and devices used to compound sterile preparations.

f. An appropriate cleansing and garbing procedure. Coveralls and gowns may be hung outside the entry in the buffer area and reused for one shift, provided the coveralls and gowns are not visibly soiled and have not been worn during the compounding of hazardous drugs.

657—13.29(126,155A) Environmental monitoring requirements.

13.29(1) Certification required. All cleanrooms, laminar airflow workbenches, and barrier isolators shall be certified

by an independent contractor according to ISO Standards 14644- 1:1999(E) and ISO Standards 14664-3:2005(E), or National Sanitation Foundation Standard 49, for operational efficiency at least every six months and whenever the device or room is relocated or altered or whenever major service to the facility is performed. Inspection and certification records shall be maintained for two years from the date of certification.

13.29(2) Procedures required. The pharmacy shall establish written procedures appropriate for the risk level preparations compounded by the pharmacy. The procedures shall include environmental testing, end testing, and evaluation of validation results.

a. Air sampling. Microbial sampling of air within the primary engineering control devices, buffer areas, and anterooms is required on a monthly basis for pharmacies engaging in low- and medium-risk compounding and weekly for pharmacies engaging in high-risk compounding.

b. Pressure differential monitoring. A pressure gauge or velocity meter shall be installed to monitor the pressure differential or airflow between the buffer area and the anteroom and between the anteroom and the general pharmacy area. The gauge/meter shall alert the pharmacy when air conditions do not meet recommended conditions, and all compounding shall be discontinued until the alarm condition is corrected. If the gauge/meter is incapable of alerting the pharmacy to inappropriate conditions, the pharmacy shall monitor and review the gauge/meter daily and document the results in a log.

657—13.30 Reserved.

657—13.31(155A) Quality assurance (QA). The pharmacy shall establish, implement, and document an ongoing quality assurance program in order to maintain and improve facilities, equipment, personnel performance, and the provision of patient care.

13.31(1) Physical performance QA. The portion of the quality assurance program that monitors facilities, equipment, and personnel performance shall include, but need not be limited to, the following:

a. Methods for verification of automated compounding devices for parenteral nutrition compounding.

b. Methods for sampling finished preparations to ensure that the pharmacy is capable of consistently preparing sterile preparations that meet appropriate risk level specifications and to ensure product integrity.

c. Procedures for inspection of all prescription orders, written compounding procedures, preparation records, and materials used to compound at all contamination risk levels, to ensure accuracy of ingredients, aseptic mixing, sterilizing, packaging, labeling, and expected physical appearance of the finished preparation.

d. Procedures for visual inspection of preparations to ensure the absence of particulate matter in solutions, the absence of leakage from vials and bags, and the accuracy and thoroughness of labeling.

e. Procedures for review of all orders and packages of ingredients to ensure that the correct ingredients and quantity of ingredients were compounded.

f. Methods for routine disinfection and air quality testing of the direct compounding environment to minimize microbial surface contamination and maintain ISO Class 5 air quality.

g. Methods for ensuring personnel qualifications, training, and performance, including periodic performance of applicable MFT procedures.

h. Procedures for visual confirmation that compounding personnel are properly donning and wearing appropriate items and types of protective garments.

i. Methods for establishing beyond-use dates of preparations.

13.31(2) Care outcomes QA. The portion of the quality assurance program that monitors patient care shall include, but need not be limited to, the following:

a. Utilizing specific procedures for recording, filing, and evaluating reports of adverse events and the quality of preparation identified in the adverse event.

b. Utilizing written policies and procedures that include specific procedures or instructions for receiving, acknowledging, and dating the receipt of products.

c. Reviewing documented patient or caregiver education and training required pursuant to rule 13.32(155A).

d. Ensuring that a qualified pharmacist is available and accessible at all times to respond to the questions and needs of other health professionals, the patient, or the patient's caregiver.

e. Identifying activities and processes that are deemed high-risk, high-volume, or problem-prone and providing effective corrective actions to remedy these activities and processes.

657—13.32(155A) Patient or caregiver education and training. If sterile preparations are provided to the patient in the home environment, the pharmacist, in conjunction with nursing or medical personnel, shall verify and document the patient's or caregiver's training and competence in managing the type of prescribed therapy.

13.32(1) Pharmacist involvement. A pharmacist shall be actively involved in patient training processes relating to drug compounding, labeling, administration, storage, stability, compatibility, or disposal. The pharmacist shall continually reassess the patient's or caregiver's competency in these areas.

13.32(2) Demonstration and practice. Training programs shall include hands-on demonstrations and practice with actual items that the patient or caregiver is expected to use in managing the specific type of therapy.

13.32(3) Additional training tools. Printed materials and posttraining verbal counseling shall be used periodically, as appropriate, to reinforce initial training programs and to ensure the patient's or caregiver's continuing correct and complete fulfillment of responsibilities.

657—13.33(124,155A) Storage and delivery of sterile preparations. The pharmacy is responsible for proper packaging, handling, transport, and storage of preparations compounded and dispensed by the pharmacy and for appropriate education, training, and supervision of pharmacy and nonpharmacy personnel responsible for such functions. The pharmacy shall establish, maintain, and implement written policies and procedures to ensure product quality and packaging integrity until the preparation is administered.

13.33(1) Storage areas. Controlled temperature storage areas within the pharmacy shall be monitored at least once daily and the results documented on a temperature log. Temperature-sensing mechanisms shall be suitably placed within the storage space to accurately reflect the area's temperature.

13.33(2) Packaging, handling and transport. Appropriate policies and procedures shall be established, maintained, and implemented by the pharmacy with the involvement of other departments or services whose personnel are responsible for preparation or handling functions outside the pharmacy.

a. Policies and procedures shall include instruction in proper hand washing, aseptic techniques, site care, and change of administration sets to ensure the quality and sterility of the preparation.

b. A pharmacy that compounds or prepares products or devices or uses techniques where in-line filtration, automated infusion control devices, or replenishment of drug products into reservoirs of portable infusion pumps is required shall implement policies and procedures to address the special needs related to those products and techniques.

c. Policies and procedures shall provide for the return to the pharmacy of unused preparations for appropriate disposition. Appropriate disposition may include redispensing only if the continuing quality and sterility of the preparation can be fully ensured. The pharmacy shall be the sole authority for determining whether a preparation that was not administered as originally intended can be used for an alternate patient or under alternate conditions.

d. Policies and procedures regarding the handling of hazardous preparations shall identify safeguards intended to maintain the integrity of the preparations and to minimize the exposure potential of these products to the environment and to personnel who have contact with the products.

These rules are intended to implement Iowa Code sections 124.301, 126.10, 155A.2, 155A.4, 155A.13, 155A.13A, and 155A.28.

[Filed 5/14/07, effective 7/11/07]
[Published 6/6/07]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 6/6/07.

ARC 5926B

PHARMACY EXAMINERS BOARD[657]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 124.301 and 147.76, the Board of Pharmacy Examiners hereby amends Chapter 10, "Controlled Substances," Iowa Administrative Code.

The amendments revise rule 10.31(124,155A), pertaining to dispensing Schedule V controlled substances without a prescription, to exclude methamphetamine precursor substances and adopt a new rule establishing criteria, in compliance with both federal and state laws, for dispensing products containing ephedrine, pseudoephedrine, and phenylpropanolamine without a prescription. The amendments also establish requirements for a perpetual inventory of Schedule II controlled substances in Iowa pharmacies and amend the requirements for a physical inventory of controlled substances by changing the interval between physical inventories from biennial to annual, changing the period for retention of the written inventory record from four years to two years, and requiring that counts of hydrocodone-containing products be exact rather than estimated. New subrule 10.34(7) establishes the criteria for use of the DEA Controlled Substances Ordering System (CSOS) as an alternative to the multicopy paper DEA Form 222 for ordering or distributing Schedule I and II controlled substances. Additionally, rule 657—10.16(124) is amended to more clearly identify situations that require the completion and submission of a report of theft or loss of controlled substances.

Requests for waiver or variance of the discretionary provisions of these rules will be considered pursuant to 657—Chapter 34.

Notice of Intended Action was published in the February 28, 2007, Iowa Administrative Bulletin as **ARC 5741B**. The Board received written comments regarding some of the proposed amendments. The adopted amendments differ from those published under Notice as follows:

Item 1 has been changed to ensure that registrants understand that satisfying the requirements for reporting a theft or loss of controlled substances to the Board does not fulfill all requirements for notice to the federal Drug Enforcement Administration (DEA).

Items 2 and 3 have been revised to clarify that a "bound logbook" means a record book with pages sewn or glued to the spine of the book.

Subrule 10.33(4) in Item 4 has been changed to require periodic rather than monthly reconciliation of the physical inventory of Schedule II controlled substances with the perpetual inventory and to clarify the requirements for reporting significant discrepancies to the Board and to the DEA. In addition, the physical and perpetual inventories of Schedule II controlled substances shall be reconciled no less than annually and all records shall be maintained for a period of two years following the date of the record.

Subrule 10.35(1) has been revised to reflect the change from monthly reconciliation of the perpetual inventory to a periodic reconciliation and subrules 10.35(5) and 10.35(6) have been changed to maintain uniformity of language relating to the timing of taking a physical inventory of all controlled substances.

The amendments were approved during the April 24, 2007, meeting of the Board of Pharmacy Examiners.

These amendments will become effective on July 11, 2007.

These amendments are intended to implement Iowa Code sections 124.301, 124.306, 124.307, 124.308, 155A.2, and 155A.13.

The following amendments are adopted.

ITEM 1. Amend rule 657—10.16(124) as follows:

657—10.16(124) Report of theft or loss. A registrant shall report in writing, on forms provided by the board, any theft or significant loss of any controlled substance ~~upon discovery of the theft or loss~~ *when the loss is attributable to other than inadvertent error.* The report shall be submitted to the board office within two weeks of the discovery of the theft or loss. Thefts shall be reported whether or not the controlled substances are subsequently recovered or the responsible parties are identified and action is taken against them. A copy of the report shall be maintained in the files of the registrant*, and the board will provide a copy of the report to the DEA. In addition to this required report, DEA requires the registrant to deliver notice, immediately upon discovery of a theft or significant loss of controlled substances, to the nearest DEA field office via telephone, facsimile, or a brief written message explaining the circumstances.*

ITEM 2. Amend rule 657—10.31(124,155A) as follows:

657—10.31(124,155A) Dispensing Schedule V controlled substances without a prescription. A controlled substance listed in Schedule V, which substance is not a prescription drug as determined under the federal Food, Drug and Cosmetic Act, *and excepting products containing ephedrine, pseudoephedrine, or phenylpropanolamine,* may be dispensed or

administered without a prescription by a pharmacist to a purchaser at retail pursuant to the conditions of this rule.

10.31(1) Who may dispense. Dispensing shall be by a licensed Iowa pharmacist or by a registered pharmacist-intern under the direct supervision of a pharmacist preceptor.

~~a. Except as provided in this subrule, dispensing shall not be by a pharmacy technician or other nonpharmacist employee even if under the direct supervision of a pharmacist.~~

~~b.~~ This subrule does not prohibit, after the pharmacist has fulfilled the professional and legal responsibilities set forth in this rule *and has authorized the dispensing of the substance*, the completion of the actual cash or credit transaction or the delivery of the substance by a nonpharmacist.

10.31(2) Frequency and quantity. Dispensing at retail to the same purchaser in any 48-hour period shall be limited to no more than one of the following quantities of a Schedule V *controlled* substance:

a. 240 cc (8 ounces) of any controlled substance containing opium~~;~~.

b. 120 cc (4 ounces) of any other controlled substance~~, except as provided in subrule 10.31(7);~~.

c. 48 dosage units of any controlled substance containing opium~~;~~.

d. 24 dosage units of any other controlled substance~~, except as provided in subrule 10.31(7)~~.

10.31(3) Age of purchaser. The purchaser shall be at least 18 years of age.

10.31(4) Identification. The pharmacist shall require every purchaser under this rule not known by the pharmacist to present a government-issued photo identification, including proof of age when appropriate.

10.31(5) Record. ~~Except as provided in subrule 10.31(7), a~~ *A* bound record book *(i.e., with pages sewn or glued to the spine)* for dispensing of Schedule V controlled substances pursuant to this rule shall be maintained by the pharmacist. The book shall contain the name and address of each purchaser, the name and quantity of controlled substance purchased, the date of each purchase, and the name or unique identification of the pharmacist *or pharmacist-intern* who ~~dispensed~~ *approved the dispensing of* the substance to the purchaser.

10.31(6) Prescription not required under other laws. No other federal or state law or regulation requires a prescription prior to distributing or dispensing a Schedule V *controlled* substance.

~~**10.31(7)** Dispensing pseudoephedrine-containing products. Dispensing at retail to the same purchaser within any 30-day period shall be limited to products collectively containing no more than 7,500 mg of pseudoephedrine.~~

~~a. A legible dispensing record shall be created and maintained for the dispensing of pseudoephedrine products pursuant to this subrule. The record shall contain the name and address of each purchaser, the name and quantity of the product purchased including the total milligrams of pseudoephedrine contained in the product, the date of each purchase, and the name or unique identification of the pharmacist who dispensed the product to the purchaser. The record may be maintained using one of the following options:~~

~~(1) A hard-copy record.~~

~~(2) A record in the pharmacy's electronic prescription dispensing record-keeping system.~~

~~(3) A record in an electronic data collection system that captures each of the data elements required by this subrule. The electronic data collection system shall be capable of producing a hard-copy printout of the records upon request by the board or its representative or to such other persons or governmental agencies authorized by law to receive such information.~~

~~b. Dispensing of pseudoephedrine products pursuant to this subrule shall comply with other provisions of this rule for the dispensing of Schedule V substances including who may dispense a substance and the age and identification of the purchaser.~~

ITEM 3. Adopt **new** rule 657—10.32(124,155A) as follows:

657—10.32(124,155A) Dispensing products containing ephedrine, pseudoephedrine, or phenylpropanolamine. A product containing ephedrine, pseudoephedrine, or phenylpropanolamine, which substance is a Schedule V controlled substance and is not listed in another controlled substance schedule, may be dispensed or administered without a prescription by a pharmacist to a purchaser at retail pursuant to the conditions of this rule.

10.32(1) Who may dispense. Dispensing shall be by a licensed Iowa pharmacist or by a registered pharmacist-intern under the direct supervision of a pharmacist preceptor. This subrule does not prohibit, after the pharmacist has fulfilled the professional and legal responsibilities set forth in this rule and has authorized the dispensing of the substance, the completion of the actual cash or credit transaction or the delivery of the substance by a nonpharmacist.

10.32(2) Packaging of nonliquid forms. A nonliquid form of a product containing ephedrine, pseudoephedrine, or phenylpropanolamine includes gel caps. Nonliquid forms of these products to be sold pursuant to this rule shall be packaged either in blister packaging with each blister containing no more than two dosage units or, if blister packs are technically infeasible, in unit dose packets or pouches.

10.32(3) Frequency and quantity. Dispensing at retail to the same purchaser within any 30-day period shall be limited to products collectively containing no more than 7,500 mg of ephedrine, pseudoephedrine, or phenylpropanolamine; dispensing at retail to the same purchaser within a single calendar day shall not exceed 3,600 mg.

10.32(4) Age of purchaser. The purchaser shall be at least 18 years of age.

10.32(5) Identification. The pharmacist shall require every purchaser under this rule to present a government-issued photo identification, including proof of age when appropriate. The pharmacist shall be responsible for verifying that the name on the identification matches the name provided by the purchaser and that the photo image depicts the purchaser.

10.32(6) Record. A legible dispensing record shall be created and maintained for the dispensing of ephedrine, pseudoephedrine, and phenylpropanolamine products pursuant to this rule.

a. Record contents. The record shall contain the following:

(1) The name, address, and signature of the purchaser.

(2) The name and quantity of the product purchased, including the total milligrams of ephedrine, pseudoephedrine, or phenylpropanolamine contained in the product.

(3) The date and time of the purchase.

(4) The name or unique identification of the pharmacist or pharmacist-intern who approved the dispensing of the product.

b. Record format. The record shall be maintained using one of the following options:

(1) A hard-copy record maintained in a bound logbook (i.e., with pages sewn or glued to the spine).

(2) A record in the pharmacy's electronic prescription dispensing record-keeping system.

(3) A record in an electronic data collection system that captures each of the data elements required by this subrule. The electronic data collection system shall be capable of producing a hard-copy printout of a record upon request by the board or its representative or to such other persons or governmental agencies authorized by law to receive such information.

10.32(7) Notice required. The following notice shall be included in the logbook required pursuant to subrule 10.32(6) or shall be displayed in the dispensing area and be visible to the public:

"WARNING: Section 1001 of Title 18, United States Code, states that whoever, with respect to the logbook, knowingly and willfully falsifies, conceals, or covers up by any trick, scheme, or device a material fact, or makes any materially false, fictitious, or fraudulent statement or representation, or makes or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry, shall be fined not more than $250,000 if an individual or $500,000 if an organization, imprisoned not more than five years, or both."

ITEM 4. Adopt **new** rule 657—10.33(124,155A) as follows:

657—10.33(124,155A) Schedule II perpetual inventory in pharmacy. Each pharmacy located in Iowa that dispenses Schedule II controlled substances shall maintain a perpetual inventory system for all Schedule II controlled substances pursuant to the requirements of this rule. All records relating to the perpetual inventory shall be maintained by the pharmacy and shall be available for inspection and copying by the board or its representative for a period of two years from the date of the record.

10.33(1) Record format. The perpetual inventory record may be maintained in a manual or an electronic record format. Any electronic record shall provide for hard-copy printout of all transactions recorded in the perpetual inventory record for any specified period of time and shall state the current inventory quantities of each drug at the time the record is printed.

10.33(2) Information included. The perpetual inventory record shall identify all receipts for and disbursements of Schedule II controlled substances by drug or by national drug code (NDC) number. The record shall be updated to identify each prescription filled and each shipment received. The record shall also include incident reports and reconciliation records pursuant to subrules 10.33(3) and 10.33(4).

10.33(3) Changes to a record. If a perpetual inventory record is able to be changed, the individual making a change to the record shall complete an incident report documenting the change. The incident report shall identify the specific information that was changed including the information before and after the change, shall identify the individual making the change, and shall include the date and the reason the record was changed. If the electronic record system documents within the perpetual inventory record all of the information that must be included in an incident report, a separate report is not required.

10.33(4) Reconciliation. The pharmacist in charge shall be responsible for reconciling the physical inventory of all Schedule II controlled substances with the perpetual inventory balance on a periodic basis but no less frequently than annually. In case of any discrepancies between the physical inventory and the perpetual inventory, the pharmacist in charge shall determine the need for further investigation, and significant discrepancies shall be reported to the board pursuant to rule 10.16(124) and to the DEA pursuant to federal DEA regulations. Periodic reconciliation records shall be maintained and available for review and copying by the board or agents of the board for a period of two years from the date of the record. The reconciliation process may be completed using either of the following procedures or a combination thereof:

a. The dispensing pharmacist verifies that the physical inventory matches the perpetual inventory following each dispensing and documents that reconciliation in the perpetual inventory record. If controlled substances are maintained on the patient care unit, the nurse or other responsible licensed health care provider verifies that the physical inventory matches the perpetual inventory following each dispensing and documents that reconciliation in the perpetual inventory record. All discrepancies shall be reported to the pharmacist in charge. If any Schedule II controlled substances in the pharmacy's current inventory have been dispensed and verified in this manner within the year, and there are no discrepancies noted, no additional reconciliation action is required. A drug that has had no activity within the year shall be reconciled pursuant to paragraph "b" of this subrule.

b. A physical count of each Schedule II controlled substance stocked by the pharmacy shall be completed at least once each year, and that count shall be reconciled with the perpetual inventory record balance. The physical count and reconciliation may be completed over a period of time not to exceed one year in a manner that ensures that the perpetual inventory and the physical inventory of Schedule II controlled substances are annually reconciled. The individual performing the reconciliation shall record the date, the time, the individual's initials or unique identification, and any discrepancies between the physical inventory and the perpetual inventory. Any discrepancies between the physical inventory and the perpetual inventory shall be reported to the pharmacist in charge.

ITEM 5. Amend subrule 10.34(6) as follows:

10.34(6) Ordering or distributing Schedule I or II *controlled* substances – *DEA Form 222*. Except as otherwise provided *by subrule 10.34(7) and* under federal law, a DEA Form 222 is required for each distribution of a Schedule I or II controlled substance. An order form may be executed only on behalf of the registrant named on the order form and only if the registrant's DEA and Iowa registrations for the substances being purchased have not expired or been revoked or suspended by the issuing agency.

a. Order forms shall be obtained, executed, and filled pursuant to DEA requirements. Each form shall be complete, legible, and properly prepared, executed, ~~or~~ *and* endorsed and shall contain no alteration, erasure, or change of any ~~description~~ *kind*.

b. The purchaser shall submit Copy 1 and Copy 2 of the order form to the supplier.

c. The purchaser shall maintain Copy 3 of the order form in the files of the registrant. Upon receipt of the substances from the supplier, the purchaser shall record on Copy 3 of the order form the quantity of each substance received~~,~~ and the date of receipt, and shall initial each ~~record of receipt~~ *line identifying a substance received*.

d. The supplier shall record on Copy 1 and Copy 2 of the order form the quantity of each substance distributed to the purchaser and the date on which the shipment is made. The supplier shall maintain Copy 1 of the order form in the files

of the supplier and shall forward Copy 2 of the order form to the DEA district office.

e. Order forms shall be maintained separately from all other records of the registrant.

f. Each unaccepted, defective, or otherwise "void" order form and any attached statement or other documents relating to any order form shall be maintained in the files of the registrant.

g. If the registration of any purchaser of Schedule I or II controlled substances is terminated for any reason, or if the ~~registrant changes~~ name or address *of the registrant* as shown on the registration *is changed*, the registrant shall return all unused order forms to the DEA district office.

ITEM 6. Adopt **new** subrule 10.34(7) as follows:

10.34(7) Ordering or distributing Schedule I or II controlled substances – electronic ordering system. A registrant authorized to order or distribute Schedule I or II controlled substances via the DEA Controlled Substances Ordering System (CSOS) shall comply with the requirements of the DEA relating to that system, including the maintenance and security of digital certificates, signatures, and passwords and all record-keeping and reporting requirements.

a. For an electronic order to be valid, the purchaser shall sign the electronic order with a digital signature issued to the purchaser or the purchaser's agent by the DEA.

b. An electronic order may include controlled substances that are not in Schedules I and II and may also include noncontrolled substances.

c. A purchaser shall submit an order to a specific wholesale distributor appropriately licensed to distribute in Iowa.

d. Prior to filling an order, a supplier shall verify the integrity of the signature and the order, verify that the digital certificate has not expired, check the validity of the certificate, and verify the registrant's authority to order the controlled substances.

e. The supplier shall retain an electronic record of every order, including a record of the number of commercial or bulk containers furnished for each item and the date on which the supplier shipped the containers to the purchaser. The shipping record shall be linked to the electronic record of the order. Unless otherwise provided under federal law, a supplier shall ship the controlled substances to the registered location associated with the digital certificate used to sign the order.

f. If an order cannot be filled for any reason, the supplier shall notify the purchaser and provide a statement as to the reason the order cannot be filled. When a purchaser receives such a statement from a supplier, the purchaser shall electronically link the statement of nonacceptance to the original electronic order. Neither a purchaser nor a supplier may correct a defective order; the purchaser must issue a new order for the order to be filled.

g. When a purchaser receives a shipment, the purchaser shall create a record of the quantity of each item received and the date received. The record shall be electronically linked to the original order and shall identify the individual reconciling the order. A purchaser shall, for each order filled, retain the original signed order and all linked records for that order for two years. The purchaser shall also retain all copies of each unfilled or defective order and each linked statement.

h. A supplier shall retain each original order filled and all linked records for two years. A supplier shall, for each electronic order filled, forward to the DEA within two business days either a copy of the electronic order or an electronic report of the order in a format specified by the DEA.

i. Records of CSOS electronic orders and all linked records shall be maintained by a supplier and a purchaser for two years following the date of shipment or receipt, respectively. Records may be maintained electronically or in hard-copy format. Records that are maintained electronically shall be readily retrievable from all other records, shall be easily readable or easily rendered into a readable format, shall be readily retrievable at the registered location, and shall be made available to the board, to the board's agents, or to the DEA upon request. Records maintained in hard-copy format shall be maintained in the same manner as DEA Form 222.

ITEM 7. Amend rule 657—10.35(124,155A) as follows:

657—10.35(124,155A) ~~**Inventory requirements**~~ ***Physical count and record of inventory.*** Responsibility for ~~taking any~~ *ensuring that a required* inventory ~~rests~~ *is timely completed shall rest* with the registrant or, in the case of a registered business, shall rest with the owner of the business. A registrant or owner of a registered business may delegate the actual taking of any inventory. The person or persons responsible for taking the inventory shall sign the completed inventory record.

10.35(1) Record and procedure. Each inventory record*, except the periodic count and reconciliation required pursuant to subrule 10.33(4),* shall comply with the requirements of this subrule and shall be maintained for a minimum of ~~four~~ *two* years from the date of the inventory.

a. Each inventory shall contain a complete and accurate record of all controlled substances on hand on the date and at the time the inventory is taken.

b. Each inventory shall be maintained in ~~written~~ *a handwritten*, typewritten, or *electronically* printed form at the registered location. An inventory of Schedule II controlled substances shall be maintained separately from an inventory of all other controlled substances.

c. Controlled substances shall be deemed to be on hand if they are in the possession of or under the control of the registrant. These shall include prescriptions prepared for dispensing to a patient but not yet delivered to the patient*, substances maintained in emergency medical services programs or care facility emergency supplies, outdated or adulterated substances pending destruction,* and substances stored in a warehouse on behalf of the registrant.

d. A separate inventory shall be made for each registered location and for each independent activity registered except as otherwise provided under federal law.

e. The inventory shall be taken either ~~as of~~ *prior to* opening ~~of business~~ or ~~as of~~ *following* the close of business on the inventory date, and the inventory record shall identify either opening or close of business.

f. The inventory record, unless otherwise provided under federal law, shall include the following information:

(1) The name of the substance;

(2) The strength and dosage form of the substance; *and*

(3) The quantity of the substance~~; and~~

~~(4) The number of commercial containers of each strength and dosage form of the substance~~.

g. ~~If the substance is~~ *For all substances* listed in Schedule I or II, *and for all solid oral and injectable hydrocodone-containing products,* the quantity shall be an exact count or measure of the substance.

h. ~~If the substance is~~ *For all substances* listed in Schedule III, IV, or V, *except for hydrocodone-containing products identified in paragraph "g" herein,* the quantity may be an estimated count or measure of the substance unless the container has been opened and originally held more than ~~1,000~~ *100* dosage units. If the *opened* commercial container originally held more than ~~1,000~~ *100* dosage units, an exact count of the contents shall be made. *Liquid oral hydrocodone-*

containing products packaged in incremented containers shall be measured to the nearest increment; products packaged in nonincremented containers may be estimated to the nearest one-fourth container.

10.35(2) Initial inventory. A new registrant shall take an inventory of all stocks of controlled substances on hand on the date the new registrant first engages in the manufacture, distribution, or dispensing of controlled substances. If the registrant commences business or the registered activity with no controlled substances on hand, the initial inventory shall record that fact.

10.35(3) ~~Biennial~~ *Annual* inventory. After the initial inventory is taken, a registrant shall take a new inventory of all stocks of controlled substances on hand at least ~~every two years~~ *annually*. The ~~biennial~~ *annual* inventory may be taken on any date that is within ~~two years~~ *one year* of the previous ~~biennial~~ inventory date.

10.35(4) Change of ownership. Both the current owner and the prospective owner shall be responsible for ~~taking~~ *ensuring that* an inventory of all controlled substances *is timely completed* whenever there is a change of ownership of any pharmacy or drug wholesaler licensed pursuant to Iowa Code section 155A.13 or 155A.17, respectively.

10.35(5) Change of pharmacist in charge (PIC). An inventory of all controlled substances shall be completed whenever there is a change of PIC. The inventory shall be taken ~~at~~ *following* the close of business ~~of~~ the last day of the terminating PIC's employment and ~~before~~ *prior to* opening for business the first day of the new PIC's employment. A single inventory shall be sufficient if there is no lapse between employment of the terminating PIC and the new PIC.

10.35(6) Change of registered location. A registrant shall take an inventory of all controlled substances whenever there is a change of registered location. The inventory shall be taken ~~at~~ *following* the close of business ~~of~~ the last day at the location being vacated. This inventory shall serve as the ending inventory for the location being vacated as well as a record of ~~starting~~ *beginning* inventory for the new location.

10.35(7) Discontinuing registered activity. A registrant shall take an inventory of controlled substances at the close of business ~~of~~ the last day the registrant is engaged in registered activities. If the registrant is selling or transferring the remaining controlled substances to another registrant, this inventory shall serve as the ending inventory for the registrant discontinuing business as well as a record of additional or starting inventory for the registrant to whom the substances are transferred.

10.35(8) Newly controlled substances. On the effective date of the addition of a previously noncontrolled substance to any schedule of controlled substances, any registrant who possesses the newly controlled substance shall take an inventory of all stocks of the substance on hand. ~~The~~ *That initial* inventory record shall be maintained with the most recent controlled substances inventory *record*. Thereafter, the newly controlled substance shall be included in each inventory made by the registrant.

[Filed 5/14/07, effective 7/11/07]
[Published 6/6/07]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 6/6/07.

ARC 5923B

PHARMACY EXAMINERS BOARD[657]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 147.76 and 155A.17, the Board of Pharmacy Examiners hereby amends Chapter 17, "Wholesale Drug Licenses," Iowa Administrative Code.

The amendments establish a deadline for completion of the wholesale drug licensure process, describe misrepresentative deeds and unethical conduct or behavior, and establish the licensed drug wholesaler's responsibility for the actions of the wholesaler's "managerial agent" as defined in rule 17.6(155A).

Requests for waiver or variance of the discretionary provisions of these rules will be considered pursuant to 657—Chapter 34.

Notice of Intended Action was published in the February 28, 2007, Iowa Administrative Bulletin as **ARC 5743B**. The Board received no comments regarding the amendments. The adopted amendments are identical to those published under Notice.

The amendments were approved during the April 24, 2007, meeting of the Board of Pharmacy Examiners.

These amendments will become effective on July 11, 2007.

These amendments are intended to implement Iowa Code section 155A.17.

The following amendments are adopted.

ITEM 1. Adopt **new** subrule 17.3(6) as follows:

17.3(6) Failure to complete licensure process. An application for a wholesale drug license, including an application for registration pursuant to 657—Chapter 10, if applicable, will become null and void if the applicant fails to complete the licensure process within six months of receipt by the board of the required applications. The licensure process shall be complete upon the wholesaler's opening for business at the licensed location following an inspection rated as satisfactory by an agent of the board if such an inspection is required pursuant to this rule. When an applicant fails to timely complete the licensure process, fees submitted with applications will not be transferred or refunded.

ITEM 2. Adopt **new** rule 657—17.6(155A) as follows:

657—17.6(155A) Responsibility for conduct. A licensed drug wholesaler shall be held responsible for actions of the wholesaler's managerial agent when the conduct of the agent may fairly be assumed to represent the policy of the wholesaler. "Managerial agent" includes, but is not necessarily limited to, an officer or director of a corporation or an association or a partner of a partnership, and includes a person having management responsibility for submissions to the FDA regarding the development or approval of any drug product; the production, quality assurance, or quality control of any drug product; or research and development of any drug product.

17.6(1) Misrepresentative deeds. A managerial agent shall not make any statement intended to deceive, misrepresent, or mislead anyone, or be a party to or an accessory to any fraudulent or deceitful practice or transaction in the manufacture, distribution, or marketing of prescription drugs.

17.6(2) Unethical conduct or behavior. A managerial agent shall not exhibit unethical behavior in connection with

the manufacture, distribution, or marketing of prescription drugs or refuse to provide reasonable information or answer reasonable questions for the benefit of a health professional or a patient. Unethical behavior shall include, but not be limited to, the following acts: verbal abuse, coercion, intimidation, harassment, sexual advances, threats, degradation of character, indecent or obscene conduct, and theft.

[Filed 5/14/07, effective 7/11/07]
[Published 6/6/07]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 6/6/07.

ARC 5922B

PHARMACY EXAMINERS BOARD[657]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 124.301 and 147.76, the Board of Pharmacy Examiners hereby amends Chapter 22, "Unit Dose, Alternative Packaging, and Emergency Boxes," Iowa Administrative Code.

The amendments emphasize that drugs included in the emergency/first dose drug supply provided by a pharmacy to a care facility shall be limited to the drugs necessary to meet the emergency needs of the facility's patients and that the drug supply is not intended to relieve the provider pharmacy of the responsibility for ensuring timely delivery of each patient's medications. The amendments also provide that the drugs maintained in an emergency/first dose drug supply be made available for the treatment of all facility patients, without discrimination, and that any service charge assessed for the administration of a drug from the emergency/first dose drug supply shall be assessed to each patient to whom a drug from that drug supply is administered, regardless of the patient's choice of pharmacy for routine pharmaceutical services.

Requests for waiver or variance of the discretionary provisions of these rules will be considered pursuant to 657—Chapter 34.

Notice of Intended Action was published in the February 28, 2007, Iowa Administrative Bulletin as **ARC 5744B**. The Board received no comments regarding the amendments. The adopted amendments are identical to those published under Notice.

The amendments were approved during the April 24, 2007, meeting of the Board of Pharmacy Examiners.

These amendments will become effective on July 11, 2007.

These amendments are intended to implement Iowa Code sections 124.301, 124.306, 155A.13, and 155A.15.

The following amendments are adopted.

ITEM 1. Amend subrule 22.7(1) as follows:

22.7(1) Emergency/first dose drug supplies. All contents of the emergency/first dose drug supply shall be provided by one *provider* pharmacy designated by the facility*, and the drug supply shall be available to meet the needs of all patients of the facility, without penalty or discrimination*. The provider pharmacy shall be properly registered with the federal Drug Enforcement Administration (DEA) and the board and shall be currently licensed by the board. The provider pharmacist, the consultant pharmacist, the director of nursing of the facility, and the medical director of the facility, or their respective designees, shall jointly determine and prepare a list of drugs necessary for prompt use in patient care that will be available in the emergency/first dose drug supply. Drugs shall be listed by identity and quantity*, shall be limited to drugs necessary to meet the emergency needs of the patients served,* and shall be periodically reviewed ~~per~~ *pursuant to* policy. Careful patient planning should be a cooperative effort between the pharmacy and the facility to make drugs available, and this supply ~~should~~ *shall* only be used for emergency or unanticipated needs. *The intent of the emergency/first dose drug supply is not to relieve a pharmacy of the responsibility for timely provision of a patient's routine drug needs; the intent is to ensure that a supply of drugs is available to each patient in case of urgent need.* The drugs in the emergency/first dose drug supply are the responsibility of the pharmacy and, therefore, shall not be used or altered in any way except as provided in this rule.

ITEM 2. Amend subrule 22.7(7) as follows:

22.7(7) Procedures.

a. The consultant or provider pharmacist shall, in communication with the director of nursing of the facility and the medical director of the facility, or their respective designees, develop and implement written policies and procedures to ensure compliance with this rule.

b. The provider pharmacy shall keep a record of each prescription drug stored in the emergency/first dose drug supply and the number of doses provided.

c. The facility shall keep a complete record of the use of prescription drugs from the emergency/first dose drug supply for two years following such use. The record shall include the patient's name, the date of use, the name of the drug used, the strength of the drug, the number of doses used, the name of the prescriber authorizing the administration, and the initials or unique identification of the person administering the dose.

d. The drugs maintained in the emergency/first dose drug supply shall be available for the emergency pharmaceutical care of all facility patients, without penalty or discrimination. If a service charge is assessed for the administration of a drug from the emergency/first dose drug supply, the same reasonable service charge shall be assessed to each patient to whom a drug from the emergency/first dose drug supply is administered, regardless of the patient's choice of pharmacy for pharmaceutical services.

[Filed 5/14/07, effective 7/11/07]
[Published 6/6/07]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 6/6/07.

ARC 5938B

UTILITIES DIVISION[199]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 17A.4, 476.1, 476.2, and 476.103 (2007), the Utilities Board (Board) gives notice that on May 16, 2007, the Board issued an order in Docket No. RMU-06-8, <u>In re: Revisions to Rules Prohibiting Unauthorized Changes in Telecommunications Service [199 IAC 22]</u>, "Order Adopting Amendment and Providing Specific Statement of Principal Reasons For and Against the Amendment." The order adopted an amendment which was

published under Notice of Intended Action in IAB Vol. XXIX, No. 8 (10/11/06) p. 506, **ARC 5423B**, with revisions described in the order.

The amendment is made to 199 IAC 22, which contains the Board's prohibition of unauthorized changes in telecommunications service and which specifies methods for verifying a consumer's authorization for a change in service. One way a telecommunications carrier can establish a valid consumer request for a change in service is by maintaining sufficient internal records. The purpose of the amendment is to identify call records as examples of the kinds of internal records a telecommunications service provider can submit to the Board when responding to a consumer's complaint filed with the Board alleging an unauthorized change in service that results in an additional charge on the consumer's telephone bill, and to specify what those records should contain.

Written comments were filed by the Consumer Advocate Division of the Department of Justice (Consumer Advocate); AT&T Communications of the Midwest, Inc., TCG Omaha, Inc., and SBC Long Distance, LLC, d/b/a AT&T Long Distance (collectively AT&T); Evercom Systems, Inc., and T-NETIX Telecommunications Services, Inc. (collectively E&T); MCImetro Access Transmission Services, LLC, d/b/a Verizon Access Transmission Services, and MCI Communications Services, Inc., d/b/a Verizon Business Services (collectively Verizon); and the Iowa Telecommunications Association (ITA).

An oral comment hearing was held on November 21, 2006. In an order issued in this docket on November 21, 2006, the Board allowed any interested party to file supplemental comments.

Supplemental written comments were filed on December 1, 2006, by Alltel, U.S. Cellular Corp., and NPCR, Inc. (Nextel Partners) (collectively referred to as the Wireless Companies); E&T; and Verizon. Also on December 1, 2006, Consumer Advocate filed a supplemental statement of position and, pursuant to Iowa Code section 17A.4(1)"b," a request that, if the Board decides to adopt the amendment, the Board provide a concise statement of the principal reasons for and against the amendment, incorporating the reasons for overruling arguments against the amendment. The Board granted the request; the concise statement is contained in the Board's order.

The Board made one revision to the amendment based on its final review of the comments. The Board's order adopting the revised amendment can be found on the Board's Web site, www.state.ia.us/iub.

This amendment will become effective July 11, 2007.

This amendment is intended to implement Iowa Code sections 17A.4, 476.1, 476.2, and 476.103.

The following amendment is adopted.

Amend subparagraph **22.23(2)"a"(5)** as follows:

(5) For other changes in service resulting in additional charges to existing accounts only, a service provider shall establish a valid customer request for the change in service through maintenance of sufficient internal records. At a minimum, any such internal records must include the date and time of the customer's request and adequate verification under the circumstances of the identification of the person requesting the change in service. Any of the three verification methods in 22.23(2)"a"(1) to (3) will also be acceptable. The burden will be on the telecommunications carrier to show that its internal records are adequate to verify the customer's request for the change in service. *Where the additional charge is for one or more specific telephone calls, examples of internal records a carrier may submit include call records showing the origin, date, time, destination, and duration of the calls, and any other data the carrier relies on to show the calls were made or accepted by the customer, along with an explanation of the records and data.*

[Filed 5/16/07, effective 7/11/07]
[Published 6/6/07]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 6/6/07.

ARC 5939B

UTILITIES DIVISION[199]

Adopted and Filed

Pursuant to Iowa Code sections 17A.4 and 477C.4, the Utilities Board (Board) gives notice that on May 16, 2007, the Board issued an order in Docket No. RMU-07-2, In re: Change in Equipment Distribution Program Income Limit [199 IAC 37.3(8)], "Order Adopting Amendment." The order adopts an amendment to subrule 37.3(8) to update the income limit for eligibility for participation in the equipment distribution program established by Iowa Code section 477C.4 and 199 IAC 37. The proposed amendment was published in the Iowa Administrative Bulletin on April 11, 2007, at IAB Vol. XXIX, No. 21 (4/11/07) p. 1332, **ARC 5827B**. Comments were due May 1, 2007.

The Consumer Advocate Division of the Department of Justice filed a written comment in support of the proposed amendment. No other comments were received. The amendment adopted by the Board is identical to that published in the Notice of Intended Action.

Iowa Code section 477C.4 gives the Board the authority to establish and administer a program to distribute specialized telephone equipment for deaf, hard-of-hearing, and speech-impaired individuals. The Board has adopted rules for this equipment distribution program at 199 IAC 37, and 199 IAC 37.3(477C) contains the eligibility requirements for the program. One of these eligibility requirements is that applicants must have gross household income less than the limit set in subrule 37.3(8).

The income limit set in subrule 37.3(8) is based primarily on the Iowa median income published annually by the U.S. Bureau of the Census (Census Bureau), with an allowance to accommodate future increases in Iowa median income until the subrule is changed again. The income limit in subrule 37.3(8) was last changed in 2000. At that time, the subrule set an income limit of $57,000 for a family of four, with increases or decreases of $9,000 for each family member above or below four. This income limit was based on a year 2000 Iowa median income for a family of four of $51,782, with an allowance to accommodate future increases expected to occur in the next several years. The most recent Iowa median income information published by the Census Bureau shows the Iowa median income for a family of four to be $65,575, based on 2005 inflation-adjusted dollars.

The income limit in the subrule is set at an amount high enough to reflect current Iowa median income and to accommodate expected future increases in Iowa median income for the next three or four years so that the subrule will not have to be changed every year. The Board notes that increases to the minimum wage have been adopted in Iowa and proposed at the federal level and there is no reason to believe that Iowa median income will not continue to rise as it has in the past.

UTILITIES DIVISION[199](cont'd)

Therefore, the Board amends subrule 37.3(8) as proposed to increase the income limit to $70,000 for a family of four, with a corresponding increase or decrease of $8,000 for each family member above or below four. The change in the increment per family member from the current $9,000 to $8,000 is adopted because the amended subrule will more closely correspond to the current Iowa median income figures for various family sizes as published by the Census Bureau.

This amendment is intended to implement Iowa Code section 477C.4.

This amendment will become effective on July 11, 2007.

The following amendment is adopted.

Amend subrule 37.3(8) as follows:

37.3(8) An applicant's gross household income must be less than ~~$57,000~~ *$70,000* for a family of four. Household numbers above or below four will increase or decrease that amount in ~~$9,000~~ *$8,000* increments.

[Filed 5/16/07, effective 7/11/07]
[Published 6/6/07]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 6/6/07.

IOWA ADMINISTRATIVE BULLETIN
Customer Service Center
Department of Administrative Services
Hoover State Office Building, Level A
Des Moines, Iowa 50319

PRSRT STD
U.S. Postage
PAID
Des Moines, Iowa
Permit No. 1195