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# Rules of SPECIAL EDUCATION

IOWA DEPARTMENT OF EDUCATION  
1990  
(October 1993 reprint)

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# **RULES OF SPECIAL EDUCATION**

This publication of the Rules of Special Education reflects changes promulgated in 1990, 1992, and 1993.

State of Iowa  
DEPARTMENT OF EDUCATION  
Bureau of Special Education  
Grimes State Office Building  
Des Moines, Iowa 50319-0146

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Title VII  
*SPECIAL EDUCATION*

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TITLE VII  
SPECIAL EDUCATION

CHAPTER 41  
EDUCATION OF PUPILS REQUIRING SPECIAL EDUCATION

[Prior to 9/7/88, see Public Instruction Department(670) Ch 12]

DIVISION I  
DEFINITIONS, GENERAL PRINCIPLES, SCOPE

**281—41.1(256,273,280,281,442) Scope.** These rules apply to the provision of education to children requiring special education between birth and the age of 21 (and to a maximum allowable age in accord with Iowa Code section 281.8) who are enrolled or are to be enrolled in the public schools of this state or in nonpublic schools. In addition, they apply to children who require special education and are being educated at home, in hospitals or in facilities other than schools.

**281—41.2(256,280,281) General principles.**

**41.2(1) Availability required.** Special education must be made available to all children requiring special education. For all persons referred to in 41.1, required services include: early identification; assessment and evaluation to ascertain whether a pupil is in need of special education instructional or special education support services or both; instruction for parents relating to their child's special education; transportation; and, counseling or other aid in order to permit each pupil requiring special education to benefit from appropriate educational experiences.

**41.2(2) Responsibility for provision of program.** The appropriateness of special education shall be determined by the area education agency director of special education. It is the responsibility of the pupil's resident school district to provide or make provision for appropriate special education to meet the requirements of state and federal statutes and rules. This responsibility shall be met by one or more of the following: by each school district acting for itself; by action of two or more school districts through establishment and maintenance of joint programs; by the area education agency; by contract for services from approved public or private agencies offering the appropriate special education; or, by any combination of the foregoing.

**41.2(3) Least restrictive placement preferred.** Children requiring special education shall attend general education classes, participate in extracurricular activities and receive services in a general education setting to the maximum extent appropriate to the needs of the pupil. When integrated into general education, children requiring special education shall be educated in facilities serving nonhandicapped pupils of a corresponding age range, receive instructional time equivalent to pupils who are not handicapped, and, shall be furnished such supplemental equipment, facilities, instructional materials, remediation, specially designed interventions or other special education as may be necessary to enable them to perform satisfactorily in the appropriate, least restrictive environment of the school. Special education classes, facilities and services shall be provided outside the general education setting only to the extent that such other locations are necessary for the proper performance of medical or special education which requires personnel, equipment or facilities which cannot be accommodated within the general education setting.

**281—41.3(281) Definitions.** As used in these rules, unless the context otherwise requires:

"AEA " is the area education agency.

"Agency" "Is a public or nonpublic organization which offers special education in one or more disability areas.

"Appropriate program" is the term describing the educational program option selected and consisting of specially designed interventions serving to meet the needs of a pupil requiring special education. This program is individually designed by a diagnostic-educational team, including the parents, and is defined in the pupil's IEP. The program is consistent with applicable research findings and best educational practices. In the absence of empirical evidence on the efficacy of any



one intervention strategy, the diagnostic-educational team and the parents shall outline a plan of education which would appear to meet the educational needs of the pupil. The program shall not include practices which are not authorized by statute or these rules. The responsible agency must provide special education in accord with the pupil's IEP but the agency, teacher or other person is not held accountable if a pupil does not achieve the growth projected in the annual goals and objectives.

"*Autism*" is a developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before the age of three, that adversely affects a pupil'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. The term does not apply if a pupil's educational performance is adversely affected primarily because the pupil has a serious emotional disturbance.

"*Behaviorally disordered*" is the inclusive term for patterns of situationally inappropriate behavior which deviate substantially from behavior appropriate to one's age and significantly interfere with the learning process, interpersonal relationships, or personal adjustment of the pupil to such an extent as to constitute a behavioral disorder.

1. Clusters of behavior characteristic of pupils who are behaviorally disordered include: Cluster I — Significantly deviant disruptive, aggressive or impulsive behaviors; Cluster II— Significantly deviant withdrawn or anxious behaviors; and Cluster III — Significantly deviant thought processes manifested with unusual communication or behavioral patterns or both. A pupil's behavior pattern may fall into more than one of the above clusters.

2. The determination of significantly deviant behavior is the conclusion that the pupil's characteristic behavior is sufficiently distinct from that of the pupil's peer group to qualify the pupil as requiring special education programs or services on the basis of a behavioral disorder. The behavior of concern shall be observed in the school setting for school-aged pupils and in the home or center-based setting for preschool-aged pupils. It must be determined that the behavioral disorder is not maintained by primary intellectual, sensory, cultural or health factors.

3. In addition to those data required within the comprehensive educational evaluation for each pupil requiring special education, the following areas of data shall be gathered when identifying a pupil as behaviorally disordered which describe the qualitative nature, frequency, intensity, and duration of the behavior of concern. If it is determined that any of the areas of data collection are not relevant in assessing the behaviors of concern, documentation must be provided explaining the rationale for such a decision. Such documentation will be reviewed and maintained by the director.

(a) "*Setting analysis data*" is information gathered through informal observations, anecdotal record review and interviews describing the setting from which a pupil was referred; documented prior attempts to modify the pupil's educational program so as to make behavioral and academic achievement possible in the current placement; and, social functioning data that includes information, gathered from sources such as teacher interviews and sociometric measures, regarding the referred pupil's interaction with peers.

(b) "*Pupil behavioral data*" are measures of actual behavior that include the specific recording, through systematic formal observations, of a pupil's behavior, including the frequency of behaviors of concern; and, measures of reported behavior that include checklists or rating scales and interviews that document the perceptions of school personnel regarding the behavioral pattern of the referred pupil and the perception of the pupil's home and school behavior obtained from the parent or surrogate parent.

(c) "*Individual trait data*" is information about the unique personal attributes of the pupil. This information, gathered through pupil and teacher interviews and relevant personality assessments, describes any distinctive patterns of behavior which characterize the pupil's personal feelings, attitudes, moods, perceptions, thought processes and significant personality traits.

"*Board*" means the Iowa state board of education.

"*Career-vocational education for the handicapped*" includes, as a minimum, all required curricular activities specified in federal and state statutes (Iowa Code chapters 256, 258, 280, 281; 29 U.S.C. §794, and 20 U.S.C. §2301-2461), which are provided to individual pupils as a result

of ongoing assessment of their career development needs and evaluation of their progress in meeting those needs from preschool through graduation.

"*Children requiring special education*" are those pupils handicapped in obtaining an education as specified in Iowa Code chapter 281, and as defined in these rules.

"*Children who are handicapped in obtaining an education*" are those pupils whose educational potential cannot be adequately realized in the general educational experience without the provision of special education as defined in these rules.

"*Communication disability*" is the inclusive term denoting speech and language impairments and hearing impairments.

"*Deaf-blind*" pupils have auditory and visual handicaps, the combination of which causes such severe communication and other developmental and educational problems that the pupils cannot properly be accommodated in special education programs solely for the hearing impaired or the visually impaired, without appropriate modifications.

"*Department*" means the state department of education.

"*Director*" means the director of special education of the AEA.

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

"*Eligible pupil*" means a pupil who has attained 18 years of age and maintains majority rights.

"*Extended evaluation*" is a status which may be utilized for pupils below age 3 who are in need of special education but for whom the diagnostic-educational team cannot determine the primary educational disability. A pupil may receive special education for a maximum of one year within this status to provide an opportunity to gather additional data for determination of a primary disability. A pupil whose disability can be determined shall be so diagnosed in order to assist parents and agencies in planning for the pupil's needs. An extended evaluation is to be used only in unique situations when need for special education is imperative and time would assist with providing a definite educational diagnosis. A pupil receiving special education while placed in extended evaluation status must have on file an interdisciplinary staffing report which defines the educational, observational and medical information obtained prior to provision of special education.

"*Handicapped pupils*" means children requiring special education.

"*Head injury*" is 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 pupil'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.

"*Hearing impairment*" a communication disability, is a loss of auditory sensitivity ranging from mild to profound which may affect one's ability to communicate with others.

1. "*Deaf*" pupils include those individuals whose hearing impairment is so severe that they do not learn primarily by the auditory channel even with amplification, and who need extensive specialized instruction in order to develop language, communicative and learning skills.

2. "*Hard of hearing*" pupils include those individuals whose level of communication ability is adequate to allow them to acquire speech and language and to learn by auditory means although they may experience difficulty, under certain circumstances, in oral communication, language and learning skills with or without amplification, and who may need various classroom and instructional modifications in order to make full use of school experiences.

"*IEP*" means individualized education program.

"*Learning disability*" is the inclusive term denoting the inability to learn efficiently, in keeping with one's potential, when presented with the instructional approaches of the general education curriculum. The inability to learn efficiently is manifested as a disability in an individual's reception, organization, or expression of information relevant to school function. This disability is demonstrated as a severe discrepancy between an individual's general intellectual functioning and achievement in one or more of the following areas: school readiness skills, basic reading skills, reading comprehension, mathematical calculation, mathematical reasoning, written expression and

listening comprehension. A learning disability is not primarily the result of sensory or physical impairments, mental disabilities, behavioral disorders, cultural or language difference, environmental disadvantage, or a history of an inconsistent educational program. The following criteria shall be applied in identifying a pupil as learning disabled and in need of special education:

1. Hearing sensitivity must be within normal limits unless the hearing loss is temporary or not educationally relevant, such as a high frequency loss above the speech range.

2. Vision must be within normal limits after correction unless the impairment is temporary or not educationally relevant.

3. Intellectual functioning must be at or above one standard deviation below the mean as measured by an instrument recognized as a valid measure of intellectual functioning. A total or full-scale score shall be used in applying the intellectual criterion. In cases where measured intellectual functioning does not meet this criterion, but the results are suspect and the pupil's level of intellectual functioning is believed to be within the stated criterion, the individual responsible for assessing intellectual functioning shall state in writing the specific data which support that conclusion.

4. A severe discrepancy between current achievement and intellectual functioning exists when a pupil has been provided with learning experiences that are appropriate for the pupil's age and ability levels, and obtained scores in the achievement area(s) of concern are below the pupil's present grade placement and are more than one standard deviation below the mean on the distribution of achievement scores predicted from obtained intellectual functioning scores. In establishing the difference of one standard deviation, the effects of regression toward the mean and errors of measurement must be applied. If the technical data necessary to account for the effects of regression are not available, the discrepancy between the obtained achievement and intellectual functioning standard scores must be at least two standard errors of measurement for the difference.

If norm-referenced tests are not available in a particular achievement area, the diagnostic-educational team shall state in writing the assessment procedures used, the assessment results, the criteria applied to judge the importance of any difference between expected and current achievement, and whether a severe discrepancy is present that is not correctable without the provision of special education.

In cases where a pupil's obtained scores on norm-referenced tests are not severely discrepant from intellectual functioning, but the results are suspect and the diagnostic-educational team believes that the pupil's current achievement is severely discrepant, the team shall state in writing the specific nonnorm-referenced data, including a description of the assessment procedures used and the criteria applied to determine the presence of a severe discrepancy, which supports the team's conclusion. In such cases, a copy of the supportive documentation will be reviewed and maintained by the director.

5. A member of the diagnostic-educational team must observe the pupil's performance in the general education classroom setting for school-aged pupils or in the home or center-based setting for preschool pupils. The primary purposes of the classroom observation are to seek evidence for the existence of a learning disability and to determine the degree to which the disability, if any, affects learning. The individual responsible for the observation must be someone other than the pupil's classroom teacher who is trained to use observation as a diagnostic procedure.

6. The severe discrepancy between achievement and intellectual functioning must not be primarily attributable to behavioral disorders, chronic health problems, physical impairments, environmental disadvantage, cultural or language difference or a history of an inconsistent educational program.

7. The degree of the achievement-intellectual functioning discrepancy may decrease as a pupil receives special education, progresses academically and maintains that progress. Consideration of these factors will be used to determine a pupil's movement along the continuum of special and general education options, and in targeting appropriate transfer from a special education instructional program. A pupil who attains an achievement level commensurate with expected performance, given current grade level placement and intellectual functioning, and is able to maintain satisfactory educational performance in the general classroom setting shall be transferred from the special education instructional program.

"*Mental disability*" is the inclusive term denoting significant deficits in adaptive behavior and subaverage general intellectual functioning. For educational purposes, adaptive behavior refers to the individual's effectiveness in meeting the demands of one's environment and subaverage general intellectual functioning as evidenced by performance greater than one standard deviation below the mean on a reliable individual test of general intelligence valid for the individual pupil.

"*Multicategorical*" means special education in which the pupils receiving special education have different types of disabilities.

"*Parent*" means a parent, a guardian, a person designated and serving as the parent or a surrogate parent for special education purposes.

"*Physical disability*" is the inclusive term used in denoting physical or visual impairments of pupils requiring special education.

"*Physical impairment*" a physical disability, is manifested as an aberration of an essential body structure, system or function. Physical impairments are defined operationally in terms of orthopedic, neuromuscular, other health impairments, or any combination, which may be a result of congenital or acquired conditions of unknown or miscellaneous causes. These pupils may manifest functional impairments in body balance, ambulation and limb and hand utilization. The severity of these noncognitive functional limitations are such that the pupil needs special education.

"*Preschool handicapped*" are those pupils below the age of 7 who require special education and who are not appropriately provided for within the scope of general education or other special education programs.

"*Primary disability*" is that disability with the most dominant characteristics and for which the greatest intervention is programmed. For those pupils with more than one disability, primary disability is a determination made by the director utilizing recommendations of the diagnostic-educational team.

"*Profoundly multiply handicapped*" are descriptive of pupils who may exhibit a combination of the following characteristics:

1. Use no means of communication beyond affect responses or use an augmented communication system that is not a standard symbol system to indicate needs and wants.
2. Are dependent in mobility or require supervision in order to meaningfully traverse between points in the environment.
3. Are dependent in all daily living activities.
4. Have minimal social interaction skills and may exhibit severe maladaptive behaviors.
5. Have mental, physical or sensory handicaps.
6. Have fragile medical conditions, including seizures.

"*Pupil*" means a person over 7 and under 16 years of age who, pursuant to the statutes of this state, is required to receive an education; a person under 7 or over 16 years of age who, pursuant to the statutes of this state, is entitled to receive a public education; and, a person between the ages of 21 and 24 who, pursuant to the statutes of this state, is entitled to receive special education.

"*School district of the child's residence*" or "*district of residence of the child*" is that school district in which the parent of the pupil resides, with the following statutory and legal interpretations:

1. When full and complete control of the pupil is transferred from a parent to others for the purpose of acquiring a home rather than to obtain a free education, the district of residence of the pupil is the district in which the pupil and those who have accepted full and complete control of the pupil reside, and that district becomes responsible for providing and funding the educational program.

2. If full and complete control of a pupil is transferred by a parent to others who reside in another school district for the purpose of obtaining an education, the district of residence remains with the parents, therefore, the parents must pay tuition to the receiving district. The district of residence cannot be held responsible for tuition payment.

3. "Certain children" are pupils requiring special education who are living in a state supported institution, charitable institution or licensed boarding home which does not maintain a school.

4. "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.

"*Severely handicapped*" are pupils with any severe disability including pupils who are profoundly multiply handicapped.

"*Special education*" is all instructional and support programs and services, provided in accord with Iowa Code chapter 281 and these rules, by the department, AEA, school district or other recognized agencies. Special education provides a continuum of program and service options in order to provide the least restrictive intervention which is required to meet the educational needs of each pupil, regardless of disability.

"*Special education instructional programs*" are those special education classroom and instructionally related activities for children requiring special education ordinarily provided by the school district but which, in some instances, may be contracted from the AEA or another recognized agency.

"*Special education support programs and services*" are those activities which augment, supplement or support general or special education for pupils requiring special education such as special education consulting, educational strategies, audiology, occupational therapy, physical therapy, rehabilitation counseling, school psychology, school social work services, special education nursing services, speech-language pathology, transition services, and work experience coordination. These services are ordinarily provided by the AEA but may be provided by contractual agreement, subject to the approval of the board, by the school district or another qualified agency.

"*Special education support programs and services*" are those activities which augment, supplement or support general or special education for pupils requiring special education and which are ordinarily provided by the AEA but may be provided by contractual agreement, subject to the approval of the board, by the school district or another qualified agency.

"*Speech and language impairment*," a communication disability, includes:

1. Impairment in language: a disability in verbal language resulting in a markedly impaired ability to acquire, use or comprehend spoken, read or written language due to difficulties in acquisition and usage of syntax, morphology, phonology and semantics.

2. Impairment in voice: an abnormality in pitch, loudness or quality resulting from pathological conditions, psychogenic factors or inappropriate use of the vocal mechanism which interferes with communication or results in maladjustment.

3. Impairment in fluency: a disruption in the normal flow of verbal expression which occurs frequently, or is markedly noticeable and not readily controllable by the pupil. The disruption occurs to the degree that the pupil or the pupil's listeners evidence reactions to the manner of the pupil's communication so that communication is impeded.

4. Impairment in articulation: defective production of phonemes which interferes with ready intelligibility of speech.

"*Transition services*" is a coordinated set of activities for a pupil, designed within an outcome-oriented process, that promotes movement from school to postschool activities, including postsecondary education, vocational training, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation. This coordinated set of activities must be based on the individual pupil's needs, taking into account the pupil's preferences and interests; and include: instruction; community experiences; development of employment and other postschool adult living objectives; and, if appropriate, acquisition of daily living skills and functional vocational evaluation.

"*Visual impairment*," a physical disability, is characteristic of pupils whose vision deviates from the normal to such an extent that they require special education. Educational functioning and visual and adaptive skills are used in determining needs of pupils with visual impairments.

DIVISION II  
METHODS OF PROVIDING SPECIAL EDUCATION

**281—41.4(281) General education preferred.**

**41.4(1) *Least restrictive alternative.*** Pupils requiring special education shall attend classes, participate in extracurricular activities and receive services in a general education setting to the maximum extent appropriate to the needs of the child. Handicapped pupils shall be maintained in general education classes with special education support services when appropriate.

**41.4(2) *Continuum of options available.*** Special education shall provide a continuum of program and service options from birth to the maximum age provided by the Iowa Code, whereby systematic instruction and services are given in order to effectively meet the educational needs of each pupil.

**281—41.5(281,282) Special education programs.** Special education programs may be of eight types.

**41.5(1) *Self contained special class.*** An educational program for pupils with similar educational needs who are severely handicapped and whose instructional program is provided by a special education teacher. The pupils shall be offered opportunities to participate in activities with nonhandicapped peers and adults. Preschool programs of this type may be operated on a multicategorical basis. (Reference Iowa Code section 281.9(1)"d ")

**41.5(2) *Self-contained special class with little integration.*** An educational program for pupils with similar educational needs who require special education but who can benefit from limited participation in the general education curriculum with nonhandicapped pupils. The maximum class size for this model is eight at the preschool and the elementary levels and ten at the secondary level. Preschool programs of this type may be operated on a multicategorical basis. (Reference Iowa Code section 281.9(1)"c ")

**41.5(3) *Special class with integration.***

*a.* An educational program for pupils requiring special education who have similar educational needs and who can benefit from participation in the general education curriculum in one or more academic subjects with pupils who are not handicapped. The maximum class size for this model is 12 at the elementary level and 15 at the secondary level with the exception of the hearing impaired which is 10 at both levels. This program shall include provisions for ongoing consultation and demonstration with the pupils' teachers.

*b.* Programs of this type may be operated on multicategorical basis with approval of the director. For approval to be granted, the following conditions shall be considered: support services provided to the program including appropriately authorized consultant services; the need for and availability of paraprofessionals to assist the teacher; served pupils have comparable educational needs; the chronological age range does not exceed four years; and, program curriculum consists of appropriate content for handicapping conditions served. (Reference Iowa Code section 281.9(1)"b")

**41.5(4) *Resource teaching program.*** An educational program for pupils requiring special education who are enrolled in a general education curriculum for a majority of the school day but who require special education in specific skill areas on a part-time basis. Pupils enrolled in this type of program require special education for a minimal average of 30 minutes per day. The maximum class size is 18 at the elementary and secondary levels with the exception of the hearing and visually impaired which is 15 at both levels. The teacher of a resource teaching program shall serve in no more than two attendance centers. This program shall include provisions for ongoing consultation and demonstration with the pupils' teachers and may be operated on a multicategorical basis. (Reference Iowa Code section 281 9(1)"b")

**41.5(5) *Itinerant services (school-based)*** Special education may be provided on an itinerant basis whenever the number, age, severity or location of pupils to be served does not justify provision by professional personnel assigned on a full-time basis to one or two attendance centers.

**41.5(6) Itinerant home services or hospital services.**

a. Pupils requiring special education shall not be denied special education when their condition precludes school attendance. Appropriate special education shall be provided through home or hospital instruction. The provision of special education through home or hospital instruction will be provided only for those handicapped pupils whose condition precludes their participation in the general or special education conducted in schools or related facilities. The status of these pupils will be periodically reviewed to substantiate the appropriateness of the placement.

b. When it is necessary, as determined by the diagnostic-educational team, to "provide a home instruction program for a pupil requiring special education who has been removed from school because of unacceptable school behaviors, the program shall be reviewed by the diagnostic-educational team, including the parents, at least every 30 calendar days to review other alternatives or to determine that home instruction continues to be appropriate.

c. Procedural safeguards shall be afforded to pupils requiring itinerant special education home or hospital instruction. A diagnostic-educational team must make the program recommendations; parents must give consent or be given notice, as appropriate; and a new or a revised IEP must be developed.

d. Teachers primarily employed to provide special education in psychiatric units or mental health centers shall be certificated to serve pupils with behavioral disorders.

**41.5(7) Supplemental services.** Services provided by special education personnel for pupils requiring special education include:

a. Provision of information, consultation and support to classroom teachers, curriculum specialists, special education personnel and administrators.

b. Supervision and training of aides.

c. In-service training of personnel providing or being prepared to provide special education.

d. Parent and pupil counseling and instruction.

e. Demonstration of special education procedures and techniques.

f. Curriculum development activities.

g. Assessment, consultation, preevaluation activities, program planning, and referral and coordination with community agencies and services.

**41.5(8) Special adaptations (supplemental assistance).** Handicapped pupils may be weighted in accord with Iowa Code section 281 9(1)"b," when the diagnostic-educational team recommends that through special adaptations the pupil can appropriately be served in the general education classroom. Authorized programs may include: intensive short-term special education instructional intervention; interpreters for hearing impaired pupils; readers for visually impaired pupils; educational aides; aides for physically disabled pupils or other handicapped pupils for assistance in and about school; materials; and, specialized or modified instructionally related equipment for use in the school.

**281—41.6(281) Maximum class size.** Maximum class size limits are set forth in 41.6(5) and are predicated upon one teacher to the specified class size. In instances where a teacher is employed less than full time, the maximum class size shall be proportionate to the full-time equivalency of the teacher employed.

**41.6(1) Class size and age span (subrule 41.30(2)).** If, in unique circumstances, it is necessary to exceed the class size maximum for a resource teaching program, a special class with integration or a self-contained special class with little integration, the director shall review the proposed placement for appropriateness in accord with Iowa Code section 273.5 and maintain documentation which records the following: that the placement does not adversely affect the appropriateness of the program for all pupils in the class; that support services are provided to the program, including appropriately authorized consultant services; that consideration has been given to the need for and availability of paraprofessionals to assist the teacher; that consideration has been given to the need for additional instructional staff; that served pupils have comparable educational needs; that the chronological age range does not exceed six years (four years for a multicategorical special class with integration); and, that program curriculum consists of appropriate content for the handicapping conditions served.

**41.6(2) Special circumstances.** When circumstances necessitate placing a handicapped pupil in a less restrictive model for receipt of the recommended program, that pupil shall count as two pupils in computing class size maximum.

**41.6(3) Staff to pupil ratio.** The staff-to-pupil ratio in self-contained special classes for severely handicapped pupils shall be one teacher and one educational aide for each five pupils. When pupils numbering six through nine are added, an additional educational aide must be employed. When the tenth pupil is placed, another teacher must be employed for that program. The chronological age range of pupils enrolled in a self-contained special class shall not exceed six years.

**41.6(4) Secondary level classes.** Self-contained special classes with little integration at the secondary level may be operated with enrollments of 15 pupils if an AEA work experience coordinator coordinates and supervises on and off campus work experiences for those pupils requiring specially designed career exploration and vocational preparation.

**41.6(5) Maximum class size.**

	Resource Teaching Program	Special Class With Integration		Self-Contained Special Class With Little Integration			Self-Contained Special Class
		Elementary	Secondary	Preschool <sup>a</sup>	Elementary	Secondary <sup>b</sup>	Severely Handicapped <sup>c</sup>
Speech and Language Impairment	18	12	15	8	8	10	5
Hearing Impairment	15	10	10	8	8	10	5
Behaviorally Disordered	18	12	15	8	8	10	5
Learning Disability	18	12	15	8	8	10	5
Mental Disability	18	12	15	8	8	10	5
Physical Impairment	18	12	15	8	8	10	5
Visual Impairment	15	12	15	8	8	10	5
Multicategorical	18	12 <sup>d</sup>	15 <sup>d</sup>	8	Not An Option		
Profoundly Multiply Handicapped	Not An Option						5

<sup>a</sup> The staff-to-pupil ratio for handicapped preschool age pupils shall be one teacher and one educational aide for each class.

<sup>b</sup> See 41.6(4).

<sup>c</sup> See 41.6(3).

<sup>d</sup> See 41.5(3)"b".

## 281—41.7(281) Special school provisions.

**41.7(1) Providers.** Special schools for pupils who require special education outside the general education setting may be maintained by individual school districts; jointly by two or more school districts; by the AEA; jointly by two or more AEAs; by the state directly; or, by approved private providers. Reference 41.2(3).

**41.7(2) Department recognition.** Department recognition of special education agencies shall be of two types:

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



b. Approval for the nonpublic agency to provide special education and to receive special education funds for the special education contracted for by a local school district or an AEA.

**281—41.8(281) Transportation.** Transportation of pupils requiring special education shall generally be provided as for other pupils, when appropriate. Specialized transportation of a pupil to and from a special education instructional program is a function of that program and, therefore, an appropriate expenditure of funds generated through the weighted enrollment.

**41.8(1) Special arrangements.** Transportation of a pupil to and from a special education support program or service is a function of that program or service, shall be specified in the IEP and is an appropriate expenditure of funds generated for special education support services. When, because of a pupil's disability or because of the location of the program, the diagnostic-educational team determines that unique transportation arrangements are required and the arrangements are specified in the IEP, the local school district shall be required to provide one or more of the following transportation arrangements for instructional programs and the AEA for support services:

a. Transportation from the pupil's residence to the location of the special education and back to the pupil's residence.

b. Special assistance or adaptations in getting the pupil to and from and on and off the vehicle, en route to and from the special education.

c. Reimbursement of the actual costs of transportation when it is necessary for parents to provide transportation for the pupil to and from the special education.

d. Agencies are not required to provide reimbursement to parents who elect to provide transportation in lieu of agency provided transportation.

**41.8(2) Responsibility for transportation.**

a. The AEA shall provide the cost of transportation of pupils to and from special education support services or programs. The AEA shall provide the cost of transportation which is necessary for the provision of special education support programs or services to nonpublic school pupils if the cost of that transportation is in addition to the cost of transportation provided for special education instructional programs.

b. When pupils enrolled in nonpublic schools are dually enrolled in public schools to receive special education instructional programs, transportation provisions between nonpublic and public attendance centers will be the responsibility of the school district of residence.

c. Transportation of pupils, when required for educational diagnostic purposes, is a special education support service and, therefore, an appropriate expenditure of funds generated for special education support programs and services.

**41.8(3) Purchase of transportation equipment.** When it is necessary for a school district to purchase equipment to transport pupils to a weighted instructional program, this equipment shall be purchased from the district's general fund. The direct purchase of transportation equipment is not an appropriate expenditure of funds generated through the weighted enrollment for special education. A written schedule of depreciation for this transportation equipment shall be developed by the district. An annual charge to special education weighted dollars for depreciation of the equipment shall be made and reported as a special education transportation cost in the Special Education Supplement to the Secretary's Annual Report. Annual depreciation charges, except in unusual circumstances, shall be calculated according to the directions provided for the Annual Transportation Report completed by the district and adjusted to reflect the proportion special education mileage is of the total annual mileage.

**41.8(4) Lease of transportation equipment.** A local district may elect to lease equipment to transport pupils to a weighted instructional program. 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 Special Education Supplement to the Secretary's Annual Report.

**41.8(5) Transportation equipment safety standards.** All transportation equipment, either purchased or leased by a district to transport special education pupils to weighted instructional

programs, must conform to the transportation equipment safety and construction standards contained in 281—Chapters 43 and 44.

**281—41.9(281) Special education centers.** Special education centers may be established subject to approval by the director of education. Approval will be based on the following factors:

**41.9(1) *Need for center.*** A demonstrated need for such a center based on the estimated number of pupils in need of specialized diagnostic, therapeutic or instructional services.

**41.9(2) *Lack of provision by schools.*** A demonstrated inefficiency or inability in providing comprehensive and specialized diagnostic, therapeutic or instructional services in elementary and secondary schools.

**41.9(3) *Ability to provide better services.*** The ability of the center to provide diagnostic, therapeutic or instructional services that are more comprehensive and specialized than those services already available.

**41.9(4) *Nonduplicative services.*** The center does not duplicate the diagnostic, therapeutic or instructional services that are readily available to pupils in need of such services.

**41.9(5) *No conflict with state policy.*** The center does not conflict with the policy of the state to provide special education to pupils in need of such special education in a general education elementary or secondary school to the extent appropriate.

### DIVISION III DISTRICT AND AEA RESPONSIBILITIES

**281—41.10(281) School district responsibilities.** These provisions are applicable to each local school district, AEA, state institution and private agency which provides special education.

**41.10(1) *Provision of special education.*** In those cases where it is not expressly otherwise provided by state statute, it is the responsibility of each school district to provide each resident pupil appropriate special education. This responsibility may be fulfilled by using the service delivery alternatives and program options described in Division II of these rules and the support services of the AEA.

**41.10(2) *Evaluation and improvement.*** A school district, in conjunction with the AEA, the department, or both, shall implement activities designed to evaluate and improve special education.

**41.10(3) *Research.*** A school district shall cooperate in research activities designed to evaluate and to improve special education received by pupils requiring special education when sponsored by that district, an AEA or the department, or, another agency when approved by the department.

**41.10(4) *Contracts.*** School districts contracting with other districts or agencies to provide special education for individual pupils or groups of pupils shall maintain responsibility for pupils receiving such special education by:

*a.* Ensuring that all the requirements related to the development of each pupil's IEP are met.

*b.* Ensuring the adequacy and appropriateness of the special education provided by requiring and reviewing periodic progress reports.

*c.* Conditioning payments on delivery of special education in accord with the pupil's IEP.

**41.10(5) *Selection of sites.*** The school district and the AEA shall cooperate in selecting the site or sites of special education from among the several schools which may be within the AEA.

**41.10(6) *Policies and procedures.*** Policies and procedures related to the provision of special education shall be filed at the AEA.

**41.10(7) *Compliance with Federal Code.*** The school district shall adhere to the provisions of, and appending regulations to, 20 U.S.C. §1401 et seq. and applicable portions of 29 U.S.C. §794 pertaining to pupils requiring special education.

**41.10(8) *Extended year.*** The school district shall ensure that rules pertinent to special education are observed when extended year special education programs are provided.

**41.10(9) District plan for special education.** Each school district's board adopted plan which makes provisions for special education and related services shall contain the following items:

- a. A statement that pupils requiring special education shall participate in the school district's general education curriculum when appropriate, and in accord with each handicapped pupil's IEP.
- b. A description of the special education instructional curriculum by handicap, program model and instructional level offered by the school district and in accord with 281—subrules 11.5(1), 11.5(3) and 11.5(8).
- c. A description of the performance criteria used in evaluating each pupil's progress.
- d. A statement that the graduation of pupils requiring special education shall be based on accomplishment of graduation criteria established by school district board policy.

**41.10(10) Department approval for out-of-state placement.** Contracts may be negotiated with out-of-state agencies, in accord with Iowa Code section 273.3(S), with department approval. The department will use 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 will contact 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 out-of-state agency will be contacted by the department to ascertain if its special education complies with the rules of the board.

**41.10(11) Subject to audit.** The school district shall maintain sufficient records and reports for audit by the department pursuant to Iowa Code section 281.9.

#### **281—41.11(273,281) AEA responsibilities.**

**41.11(1)** Provide for special education. The AEA shall develop policy and provide special education to pupils requiring special education pursuant to Iowa Code chapter 273 and these rules.

**41.11(2) Responsibility for quality of special education.** AEAs contracting with school districts or other agencies to provide special education for individual pupils or groups of pupils shall maintain responsibility for the quality of such special education by:

- a. Ensuring that all the requirements related to the development of each pupil's IEP are met.
- b. Ensuring the adequacy and appropriateness of the special education provided by requiring and reviewing periodic progress reports.
- c. Conditioning payments on the delivery of special education in accord with the pupil's IEP.

**41.11(3) Subject to audit.** The AEA shall maintain sufficient records and reports for audit by the department pursuant to Iowa Code section 281.9.

**41.11(4) Policies and procedures filed.** AEA policies and procedures pertinent to the provision of special education shall be filed at the AEA.

**41.11(5) Responsibility for compliance monitoring.** The AEA shall conduct activities in each constituent school district at least once every three years to monitor compliance with the provisions of all applicable federal and state statutes and regulations and rules applicable to the education of handicapped pupils.

**41.11(6) Extended year.** The AEA shall ensure that rules pertinent to special education are observed when extended year or summer school special education programs are provided.

**41.11(7) Compliance with Federal Code.** The AEA shall adhere to the provisions of, and appending regulations to, 20 U.S.C. §1401 et seq. and applicable portions of 29 U.S.C. §794 pertaining to pupils requiring special education.

**41.11(8) In-service education.**

a. At least once every three years, the AEA shall determine, through needs assessment activities, the in-service needs of persons employed within the AEA to provide special education to handicapped pupils.

b. At least once every three years, the AEA, in conjunction with constituent school districts, shall determine, through needs assessment activities, the information and training needs of general education staff related to the provision of appropriate special education to handicapped pupils.

c. The AEA in cooperation with school districts, shall plan for and conduct such priority in-service education identified through needs assessment activities.

**41.11(9) Consultants.** Consultants may be assigned to special education instructional programs for which they are not appropriately authorized provided that an appropriately authorized disability specific consultant is assigned to support the special education instructional program and serve as a resource as needed.

**41.11(10) Department approval for out-of-state placement.** Contracts may be negotiated with out-of-state agencies in accord with Iowa Code section 273.3(5), with department approval. The department will use 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 will contact 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 out-of-state agency will be contacted by the department to ascertain if its special education complies with the rules of the board.

**41.11(11) Out-of-state placements.** When special education appropriate to a pupil's needs is not available within the state, or when appropriate special education in an adjoining state is nearer than the appropriate special education in Iowa, the director may certify a pupil for appropriate special education outside the state in accord with Iowa Code section 273.3 when it has been determined by the department that the special education meets standards set forth in these rules.

**41.11(12) Research.** AEAs shall cooperate in research activities designed to evaluate and to improve special education received by pupils requiring special education when sponsored by that AEA, a local school district or the department, or, another agency when approved by the department.

#### DIVISION IV PLANNING

**281—41.12(273,281) Content and development of plan.** On or before November 1 of each year, for the school year commencing the following July 1, each AEA shall submit to the department on forms provided, a plan for providing comprehensive special education programs and services for pupils requiring special education within the AEA. The plan shall contain:

**41.12(1) Assurances.** A statement assuring that requirements of Iowa Code section 281.11 have been met and that all applicable federal and state statutes and regulations and rules to implement said statutes are observed.

**41.12(2) Offerings.** A general description of the program and service activities that are presently being conducted.

**41.12(3) Needs.** A description of additional program and service needs that presently exist.

**41.12(4) Additional resources and activities.** A description of the additional resources and activities that will be required to meet the program and service needs listed in response to 41.12(3).

**41.12(5) Contractual agreements.** A list of anticipated contractual agreements necessary to serve pupils requiring special education within the AEA during the coming school year.

**41.12(6) Support employees.** A listing, by full-time equivalency, position title and funding source of currently employed and anticipated special education support personnel to be included in the AEA budget.

**41.12(7) Table of organization.** A table of organization for the next school year which represents the proposed staff relationship of AEA special education administration and special education staff. The full-time equivalency of personnel is to be indicated beside each position if less than full time.

**41.12(8) Existing documents.** Existing documents, which contain information requested above, may be used in lieu of a report specifically prepared for this plan.

**41.12(9) Plan participants.** A statement describing how the AEA involved other interested parties in the development of the plan.

**281—41.13(273,281) Approval of plan—exceptions.** The director of education will notify each AEA in writing, of the approval or disapproval of its plan. If approval is denied, the written notice shall contain a statement of the reasons for disapproval. A plan may be approved in part, or subject to the remedying of deficiencies or omissions. A plan that is disapproved shall be revised and resubmitted by the AEA.

**281—41.14(273,281) Plan implementation.** To assist the department in carrying out provisions of Iowa Code section 281.9, each AEA shall, by April 15 each year, submit for the subsequent school year the following program and service information on forms provided:

**41.14(1) Goals of the AEA.** A list of the specific, measurable, special education goals and objectives of the AEA for the next three years.

**41.14(2) Plans of the disability area or discipline.** A list of the priorities and major activities for each disability area and support service discipline for the plan year.

**41.14(3) Recommendations for change.** Suggested statute changes, rule changes and specific department resource assistance required to meet 41.14(1) and 41.14(2):

**41.14(4) Description of special assignments.** A list and description of any special assignments of AEA personnel serving in a capacity different from positions described in these rules.

**41.14(5) Programs operated by the AEA.** A description of any special education instructional program to be operated directly by the AEA for the next school year, and the projected number and types of pupils to be served.

**41.14(6) Use of existing documents.** Existing documents which contain information asked for above may be used in lieu of a report specifically prepared for this document.

**41.14(7) Description of special education centers.** A description of special education diagnostic and evaluation centers to be operated by the AEA in the next school year.

**41.14(8) Names of personnel.** Names of professional personnel employed to fill the positions shall be submitted to the department by September 15 (an exception to the April 15 deadline) of the school year in which the plan is in force.

DIVISION V  
SERVICES AND PROGRAM MANAGEMENT

**281—41.15(281) Programs and procedures required.** The AEA and school district shall establish and maintain procedures to provide the special education identified herein.

**281—41.16(281) Pupil identification.** Each AEA, in conjunction with each constituent school district, shall establish and maintain ongoing identification and evaluation activities to ensure early identification of and appropriate special education for pupils of all ages requiring special education as specified in 41.1 of these rules.

**41.16(1) Early identification.** The AEA shall employ a screening or other process for early identification of pupils requiring special education. The screening or other process will be established by AEA policy consistent with the following:

a. The population to be identified and the model or models to be used in identification shall be specified.

b. Qualified personnel shall conduct or supervise identification programs. Paraprofessional personnel, after receiving appropriate training, may assist in the identification process under supervision of a qualified professional person.

c. Measures shall be included to validate and, where necessary, to refine identification procedures.

d. Referral for further evaluation shall be arranged for those pupils who show problems significant enough to warrant further diagnostic study.

e. Adequate records of the results of identification shall be maintained.

**41.16(2)** *Preevaluation activities.* prior to an initial comprehensive evaluation, the agency shall attempt to resolve the presenting problem or behaviors of concern. These attempts may include teacher consultation with special education personnel, however, special education personnel shall neither collect new pupil-specific data nor conduct an evaluation. The attempts to resolve a problem shall be documented; the parameters of a comprehensive evaluation identified; and, parental permission obtained for a comprehensive evaluation if indicated.

**41.16(3)** *Referral system.* A referral system shall be implemented which includes interaction with pupils, teachers, school administrators, parents and others having specific responsibilities for or knowledge of pupils who may require special education and referral for appropriate evaluations.

**41.16(4)** *Appropriate evaluation instruments.* Specialized tests, materials and equipment appropriate to the evaluation process shall be available for use by qualified professionals. When assessment and diagnostic procedures and instruments are selected, adjustments shall be made, where necessary, to account for sensory and physical differences, behavioral and perceptual characteristics, sociocultural and linguistic background and home environment of pupils. The appropriateness of such procedures and instruments shall be considered in administering such tests and evaluating the results.

**41.16(5)** *Certification of disability.* A confidential record, subject to audit by the department, registering the name and certified disability of each pupil requiring special education, shall be maintained by the AEA and provision made for its periodic revision.

#### **281—41.17(281) Evaluation and placement.**

**41.17(1)** *Responsibility for evaluation.* The AEA shall have written procedures for implementing evaluation and placement decisions consistent with these rules. The AEA and any school district therein, in discharging its responsibilities for providing special education, shall employ such procedures. These procedures shall be consistent with the following:

*a.* Completing a comprehensive educational evaluation of the pupil prior to determining entitlement for special education.

(1) A comprehensive educational evaluation must include, at a minimum, a health history, an educational history, the behavioral observation of the pupil in the educational setting by someone other than the pupil's teacher, screening of hearing, screening of vision, and an evaluation of academic status. Other areas, such as intellect, motor functioning, social functioning, speech and language, adaptive behavior (in the school and community) and career vocational education needs, will be screened or assessed, as necessary, in evaluating all areas related to the suspected disability and in determining the primary disability. If the results of any area screened indicate the need for a more detailed evaluation, such an evaluation will be completed prior to determining a pupil's entitlement for special education.

(2) A pupil may be evaluated in a single special education support service area. When this occurs, the qualified specialist will use evaluation procedures that are appropriate for the assessment of suspected disabilities in the specialist's area of expertise, and will review the pupil's records with the pupil's teacher to determine and document whether or not additional evaluation is indicated to determine the appropriate disability.

(3) All screening and evaluation activities must have been conducted within nine months prior to the initial determination of the pupil's entitlement for special education.

(4) Reports of the results for each area screened and evaluated are signed, dated and filed in the pupil's record.

*b.* Utilizing a multidisciplinary team to conduct the comprehensive educational evaluation. This diagnostic-educational team shall include individuals who are appropriately qualified to conduct and interpret evaluations in the areas to be assessed and who are knowledgeable about the pupil and placement options.

**41.17(2)** *Responsibility for determining entitlement.* Based upon the decision of the diagnostic-educational team, the director shall certify the pupil's entitlement for special education. Pupils determined to have entitlement for special education shall have an IEP developed prior to the provision of special education.

**41.17(3) *Dissenting opinions.*** Each AEA shall have written procedures for the filing of dissenting opinions by professional staff who do not agree with the team's conclusions or with the recommended special education for a pupil. Such procedures shall include the receipt and review of the dissenting opinion by the director and a response from the director within 30 calendar days of the filing date of the dissenting opinion. No disciplinary sanctions may be imposed against authors of dissenting opinions for comments made in good faith.

**41.17(4) *Review of pupil progress.*** As a pupil receives special education, the pupil's movement along the continuum of special and general education program options needs to be considered and the pupil's need for continued special education placement reviewed.

a. Each pupil's IEP and placement shall be reviewed and modified as appropriate at least annually. At the request of a parent, the school district or the AEA, more frequent meetings to review and revise the IEP shall be held. This annual review shall provide an analysis of the pupil's progress, growth, and improvement; a determination of current educational needs; a determination of the need for special education programs or services; and, the appropriateness of the categorical design. A comprehensive reevaluation shall be conducted every three years or more frequently at the request of school personnel or the parent. This reevaluation shall provide current evaluation data to be considered in that year's annual review. The comprehensive reevaluation shall satisfy the requirements of subrule 41.17(1) "a "(1) or 41.17(1) "a "(2), as appropriate.

c. Prior to transfer from a special education program or service, a pupil may be provided a trial placement in the general education setting of not more than 45 school days. A trial placement plan shall be incorporated into a pupil's IEP.

**41.17(5) *Programming beyond age 21.*** Special education may be provided to pupils from age 21 to age 24 under provisions of Iowa Code section 281.8.

**41.17(6) *Length of school day.*** The length of the school day for pupils requiring special education shall be the same as that determined by the board of the school district for other pupils unless a shorter day is prescribed in the pupil's IEP.

**41.17(7) *Preschool handicapped in programs for nonhandicapped.*** A preschool handicapped pupil may be placed in a licensed preschool program for nonhandicapped pupils, provided that all of the following are met:

a. The pupil is also enrolled in a home instruction or center-based program in addition to placement in a preschool for nonhandicapped children.

b. The pupil's special education needs are of a unique nature and cannot be met in any other special educational alternative for preschool handicapped pupils.

c. Appropriate special education support services are provided in accord with the pupil's needs.

d. The length of any placement is for one academic year or less.

e. The director has approved the IEP and a procedure for ongoing evaluation.

f. The preschool teacher serving the handicapped pupil is certified as a prekindergarten-kindergarten teacher by the department's bureau of teacher education and certification.

g. An appropriate special education representative from the AEA is assigned to each pupil to monitor the pupil's progress through regularly scheduled on-site visits.

**41.17(8) *Extended year special education.*** To ensure provision of a free, appropriate education, pupils requiring special education shall be provided extended year special education (EYSE) in identified critical skill areas when the special education instructional program, support services, or both, in which the pupil is regularly enrolled are not in session for periods of three or more consecutive weeks. EYSE may include special education instructional or support services or both. A review of all pupils receiving special education shall be conducted by the multidisciplinary team for the purpose of identifying those pupils who may require EYSE in accordance with this rule. The parents of these pupils shall be provided written notice of their child's potential need for EYSE and of procedures to be followed in making a final determination. The parents of these pupils shall also be provided written notice of the multidisciplinary team's subsequent determination regarding the pupil's need for EYSE. This notice shall occur no later than 60 days prior to the interruption of special education in which the pupil is regularly enrolled. In limited cases where 60 days notice is impracticable (i e., late enrollment; verifiable change in educational

program needs), this notice shall be provided with expediency. Should the parents of the pupil wish to appeal the decision regarding extended year special education, an affidavit of appeal shall be filed pursuant to rule 41.33 within 15 calendar days of receipt of the multidisciplinary team's decision. This requirement is necessary if the appeal is to be heard in time for the implementation of extended year special education during the period for which the request was made.

Determination of the need for EYSE for each pupil shall be made by the multidisciplinary team based on empirical and qualitative data collected by the multidisciplinary team. A pupil shall be provided EYSE if, in the educational professionals' interpretation of the data, either of the following conditions is present:

*a.* Failure to maintain an acquired critical skill, as a result of an interruption of special education instruction or support services in a critical skill area, to the extent that a period of reteaching of nine or more weeks will be required to regain previous competence. In these cases, EYSE programming shall be designed to provide for maintenance rather than continued development of the skills identified.

*b.* Rare and unusual circumstances which will result in the loss or a severe limitation of the pupil's capacity and potential to acquire a critical skill. In these cases, EYSE shall provide for the maintenance of the critical skill and may also provide for the continued development or acquisition of a critical skill to prevent the anticipated loss or limitation.

Critical skills shall be determined at the time of the development of the IEP, shall be appropriate for the pupil, given the pupil's ability to acquire the selected skill, and shall be a priority for developmental and age appropriate growth.

Determination of the need for EYSE shall be made only for the immediate period of interruption. The provision of EYSE for the immediate period does not imply that EYSE will be required for subsequent periods in the absence of a finding to that effect by the multi-disciplinary team.

**41.17(9) Summer school.** Summer school is not an extended year program as described in 41.17(8). Summer school is programming not required for an appropriate program and is not defined in the IEP.

### **281—41.18(281) Delivery of special education.**

**41.18(1) Basis of delivery of special education.** The special education provided shall be based on and responsive to assessment and diagnostic information and evaluation of the pupil's case history and present status.

**41.18(2) The IEP.** The special education needed by each handicapped pupil shall be specified in a written IEP.

*a.* The IEP for each handicapped pupil shall be developed prior to the provision of special education. The IEP shall be implemented within 30 calendar days following the determination that a pupil requires special education. For pupils requiring continued special education from one year to the next, the IEP shall be in effect at the beginning of the school year

*b.* A meeting shall be conducted for the purpose of developing the IEP for each identified handicapped pupil. Participants in the meeting shall include: a representative of the agency, other than the pupil's teacher, who is qualified to provide or supervise the provision of special education; the pupil's teacher; a member of the diagnostic-educational team; a teacher or other specialist with knowledge in the identified disability area; one or both of the pupil's parents subject to rule 41.31; the pupil, if appropriate; and, other individuals as designated by the parents, school district or director.

*c.* After a pupil has been placed in a private school, meetings to review and revise the pupil's IEP may be conducted by the private school.

*d.* The IEP shall include the following:

- (1) A statement of the pupil's present levels of educational performance;
- (2) A statement of annual goals, including short-term instructional objectives;
- (3) A statement of the specific special education and related services to be provided to the pupil and the extent that the pupil will be able to participate in general educational programs;
- (4) The projected dates for initiation of services and the anticipated duration of the services;



(5) A statement describing the specially designed physical education program of the pupil when the pupil is not enrolled or participating in the general education physical education program. Modifications to the regular physical education program must be described in the IEP.

(6) Appropriate objective criteria and evaluation procedures and schedules for determining, on at least an annual basis, whether the short-term instructional objectives are being achieved.

(7) The IEP for each pupil, beginning no later than the age of 16 (and at a younger age, if determined appropriate), must include a statement of the needed transition services defined in rule 41.3(256B), including, if appropriate, a statement of each public agency's and each participating agency's responsibilities or linkages, or both, before the pupil leaves the school setting. If the IEP team determines that services are not needed in one or more of the coordinated set of activities (instruction; community experiences; and development of employment and other postschool adult living objectives), the IEP must include a statement to that effect and the basis upon which the determination was made.

(8) The IEP must include a statement of the projected date of graduation at least 18 months in advance of said date and the criteria to be used in judging whether graduation shall occur. Prior to graduation, the IEP team must find that these criteria have been met.

e. A meeting shall be conducted at least annually for the purpose of reviewing and revising the IEP of each handicapped pupil. The participants in the meeting shall be the special education personnel serving the pupil; a representative of the agency, other than the pupil's teacher, who is qualified to provide or supervise the provision of special education; the pupil's parents subject to rule 41.31; the pupil, if appropriate; and other individuals as designated by the parents, school district or director.

f. An IEP shall be developed for pupils receiving only special education support services. To be entitled to special education support services, the pupil must be identified as having a handicapping condition which handicaps the pupil in obtaining an education. The IEP shall satisfy the requirements of 41.18(2) "a" and 41.18(2) "d" and be prepared by the specialist providing the service; the pupil's parents, subject to rule 41.31; the pupil's teacher, when involvement of the teacher is required in implementing the IEP; and, others designated by the parents, school district or director. The special education support services specialist shall have primary responsibility for recommending the need for support services, the extent of services to be provided and the frequency of direct and indirect contacts with pupils requiring special education support services. When a pupil receives special education support services in conjunction with placement in a special education instructional program, there shall be one written IEP covering all special education.

**281—41.19(281) Other responsibilities.** Other responsibilities of special education personnel include:

**41.19(1)** *Parent conferences.* Participation in parent conferences.

**41.19(2)** *Pupil staffing.* Participation in pupil staffings.

**41.19(3)** *Consultation.* Consultation with medical, teaching and other professional personnel.

**41.19(4)** *Assessment and evaluation.* Assessment and evaluation of pupils referred after the initial screening process.

**41.19(5)** *Observation.* Classroom observation of pupils.

**41.19(6)** *Records and correspondence.* Record keeping and correspondence.

**281—41.20(281) Records and reports.**

**41.20(1)** *Information recorded and confidentiality maintained.* For each pupil, all screening, assessment and evaluation results shall be recorded promptly. Educational records shall be confidential and shall not be disclosed except pursuant to 34 C.F.R. §99 and §300, July 1, 1984.

**41.20(2)** *Reviewing records.* Each agency shall permit parents or eligible pupils to review only those education records related to their child or the eligible pupil. The agency shall comply with a request to review the records without unnecessary delay and before any IEP meeting or

hearing and in no case more than 45 days after the request has been made. Upon request, the agency shall provide the following to the parents or eligible pupil:

- a. Explanations and interpretations of the records.
- b. Copies of the records, if failure to provide them would effectively prevent review of the records. Reasonable fees for copies are allowed unless the fee would prevent the parent or eligible pupil from reviewing the records. Fees for searching for or retrieving information are not allowed.
- c. A list of the types and locations of education records collected or used.
- d. A review of records and decisions within a reasonable time when the parent requests that records be amended because they are believed to be inaccurate, misleading or violating the privacy or other rights of the pupil.
- e. An opportunity for an agency level administrative hearing to challenge information in the education records.

**41.20(3) Forms and procedures.** The AEA shall adopt such forms and procedures as are necessary to document the meeting of all applicable statutes and rules.

**41.20(4) Confidentiality of records.** Each agency shall protect the confidentiality of personally identifiable information at collection, storage, disclosure and destruction stages and shall designate records custodians who shall have primary responsibility for ensuring the confidentiality of records.

**41.20(5) Record of access.** A record of parties obtaining access to education records showing the name of the party, date access was given and the purpose for review will be maintained. This record shall be viewed only by the records custodian, the custodian's assistants, the parents or an eligible pupil.

**41.20(6) Maintain records and reports.** Records and reports shall be initiated and maintained in a current status in order to provide evidence of:

a. Certification of the existence of an individual's disability for pupils requiring special education.

b. Approval for pupil participation in special education.

c. Approval for special education personnel.

d. Continuity and sequential development of special education.

e. Nature and extent of present special education.

f. Assessment of present needs and projections for future needs.

g. Periodic special education evaluation by staff or outside consultants.

h. Data necessary to improve decision making, program planning and staff performance.

**41.20(7) Destruction of records.** Personally identifiable information on a pupil who is handicapped may be retained permanently unless the parents request that it be destroyed. When personally identifiable information is no longer needed to provide special education to the pupil, the agency shall inform parents or the eligible pupil. The agency must provide a reasonable amount of time for the parents or eligible pupil to respond before the records are destroyed. If the parents or eligible pupil requests destruction of records, and when the agency has determined that the pupil's records are no longer educationally relevant, the records must be destroyed. When there is disagreement regarding the educational relevance or contents of the pupil's records, the parents or eligible pupil shall have an opportunity for a local records hearing. The local educational agency shall maintain a permanent record of a pupil's name, address, phone number, the pupil's grades, attendance record, classes attended, grade level completed and year completed.

#### DIVISION VI RELATED SERVICES, SPECIAL HEALTH SERVICES AND MEDICATIONS

**281—41.21(281) Related services.** In order to establish the responsibility of school personnel to provide a specific related service to a pupil requiring special education, the following criteria shall be applied:

**41.21(1) Routinely administered.** The service can routinely be administered by school personnel.

**41.21(2)** *Basic to goals of IEP.* The service is basic to the goals and objectives of the IEP for the pupil.

**41.21(3)** *Frequency and intensity of service.* The pupil's special education necessitates service of a greater frequency and intensity than would be required if the pupil were not in school.

**41.21(4)** *Administered during school hours.* The service has to be administered during the school day, as defined in 281—subrule 3.2(11), in order to reasonably expect the pupil to be able to attend special education.

**41.21(5)** *Exclusive of support services.* Related services are not synonymous with special education support programs and services defined in these rules.

**281—41.22(281)** **Included in IEP.** All related services provided by the AEA shall be included in the pupil's IEP.

**281—41.23(281)** **Special health services.** Some pupils need special health services to participate in an educational program. These pupils shall receive special health services concomitantly with their educational program. The following definitions shall be used in this division, 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 special health service. The rationale for the designation is documented.

*“Coadministration”* is pupil participation in the planning, management and implementation of their 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 pupil, the pupil's parent, administrator, teacher, licensed health personnel, and others involved in the pupil's educational program.

*“Health assessment”* is health data collection, observation, analysis, and interpretation relating to the pupil's educational program.

*“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 an emergency plan. The plan is updated as needed and at least annually. Licensed health personnel develop this written plan with the education team.

*“Instruction”* is education by licensed health personnel to prepare qualified designated personnel to deliver and perform special health services contained in the individual health plan.

Documentation of education and periodic updates shall be on file at school.

*“Licensed health personnel”* includes licensed registered nurse, licensed physician, and other licensed health personnel legally authorized to provide special health services and medications.

*“Parent”* is the pupil's parent, guardian or designated representative serving as the parent or surrogate parent.

*“Prescriber”* is licensed health personnel legally authorized to prescribe special health services and medications.

*“Qualified designated personnel”* is a person instructed, supervised and competent in implementing the individual health plan.

*“Special health services”* includes, but is not limited to, services for individual pupils 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.

**41.23(1)** *Special health services policy.* Each board of a public school or 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 division.

*a.* Licensed health personnel shall provide special health services under the auspices of the school. Duties of the licensed personnel include:

- (1) Participate as a member of the education team.
- (2) Provide the health assessment.
- (3) Plan, implement and evaluate the written individual health plan.
- (4) Plan, implement and evaluate special emergency health services.
- (5) Serve as liaison and encourage participation and communication with health service agencies and individuals providing health care.
- (6) Provide health consultation, counseling and instruction with the pupil, the pupil's parent and the staff in cooperation and conjunction with the prescriber.
- (7) Maintain a record of special health services. The documentation includes the pupil'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) Report unusual circumstances to the prescriber, parent and school administration.
- (9) Assign and delegate, instruct, provide technical assistance and supervise qualified designated personnel.

(10) Update 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 pupil'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.

*c.* Licensed health personnel, in collaboration with the education team, shall determine the special health services to be provided and the qualifications of 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 pupil's needs.
- (4) Review of the designated person's competency.
- (5) Determination of initial and ongoing level of supervision required to ensure 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 individual health plan. Documentation of instruction and periodic updates shall be on file at school.

*f.* Parents shall provide the usual equipment, supplies and necessary maintenance for such. The equipment shall be stored in a secure area. The personnel responsible for the equipment shall be designated in the individual health plan.

**41.23(2)** *Medication administration.* Each board of a public school or authorities in charge of an accredited nonpublic school shall establish medication administration policy and guidelines in conformity with this division and shall include the following:

*a.* A statement on administration of prescription and nonprescription medication.

b. A statement on an individual health plan, developed by the licensed health personnel with the pupil and the pupil's parent, 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. Pupils 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 and file a school record of course completion.

e. A requirement that the pupil'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 the manufacturer's container.

g. A written medication administration record shall be on file at school including:

- (1) Date;
- (2) Pupil'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; and
- (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 pupil's parent or guardian requesting pupil coadministration of medication, when competency is demonstrated.

j. A requirement for emergency protocols for medication-related reactions.

k. A statement regarding confidentiality of information.

This rule is intended to implement Iowa Code section 281.3 and 34 CFR section 300.13 (July 1, 1991).

DIVISION VII  
PERSONNEL

**281—41.24(257,281) Certification.** Special education personnel shall meet the department certification and endorsement or recognition requirements for the position for which they are employed and shall meet the approval requirements of the department as provided for particular discipline areas of special education. In addition, personnel providing special education who do not hold department certification 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—41.25(273,281) Authorized personnel.** An agency is authorized to employ the following types of special education personnel, as appropriate to the special education provided:

**41.25(1) Director of special education.** "Director of special education" shall function as an advocate for pupils requiring special education and assist the state bureau of special education 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 pupils requiring special education 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 administrative 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.

**41.25(2) *Special education instructional personnel*** "Special education instructional personnel" serve as: teachers or educational aides at the preschool, elementary or secondary levels for pupils requiring special education.

**41.25(3) *Special education support personnel.*** The following positions are those of special education support personnel who provide special education services as stated in each definition. These personnel work under the direction of the director and may provide identification, evaluation, remediation, consultation, in-service and referral services in accord with appropriate certification and endorsement or approval, or statement of professional recognition. When appropriately qualified, they may also engage in data collection, applied research and program evaluation.

a. "*Assistant director of special education*" provides specific areawide administrative, supervisory and coordinating functions as delegated by the director.

b. "*Consultant*" is the special education instructional specialist who provides ongoing support to those special education instructional programs for which the consultant is authorized by the department to serve. The consultant participates in the identification and program planning of pupils who are handicapped; demonstrates instructional procedures and techniques; assists in the development of curriculum and special instructional materials; assists in attaining the least restrictive environment appropriate for each handicapped pupil; and, assists in providing in-service training to special education and general education staff regarding the education of handicapped pupils.

c. "*Educational strategist*" provides assistance to regular classroom teachers in developing intervention strategies for pupils who are mildly handicapped in obtaining an education but can be accommodated in the regular classroom environment.

d. "*Itinerant hospital services teacher*" or "*home services teacher*" provides special education instruction through home or hospital instruction for pupils requiring special education.

e. "*Itinerant teacher*" provides special education instruction on an itinerant basis to pupils requiring special education.

f. "*School audiologist*" applies principles, methods and procedures for analysis of hearing functioning in order to plan, counsel, coordinate and provide intervention strategies and services for pupils with hearing impairments

g. "*School occupational therapist*" applies principles, methods and procedures for analysis of motor functioning to determine developmental and adaptive fine motor, sensorimotor, positioning and self-help (feeding, dressing, vocational) competencies in order to plan, counsel, coordinate and provide intervention strategies and services for pupils with physical impairments.

h. "*School physical therapist*" applies principles, methods and procedures for analysis of motor functioning to determine developmental and adaptive sensorimotor and gross motor (positioning, mobility) competencies in order to plan, counsel, coordinate and provide intervention strategies and services for pupils with physical impairment

i. "*School psychologist*" assists in the identification of needs regarding behavioral, social, emotional, educational and vocational functioning of pupils; 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; counsels with parents, pupils and families; provides parent and teacher in-service education; and, conducts applied research related to psychological and educational variables affecting learning.

j. "*School social worker*" enhances the educational programs of pupils requiring special education by assisting in identification and assessment of the pupils' 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 liaison among home, school and community.

k. "*Special education coordinator*" provides coordination of special education within a specific geographic area.

l. "*Special education media specialist*" is a media specialist who facilitates the provision of media services to handicapped pupils, provides consultation regarding media and materials used to

support special education programming for handicapped pupils and aids in the effective use of media by special education personnel.

*m. "Special education nurse "* is a professional registered nurse who assesses, identifies and evaluates the health needs of handicapped pupils; interprets the health needs to the families and educational personnel as those needs relate to the pupils' strengths and educational limitations; implements specific activities commensurate with the practice of professional nursing; and, integrates the health care into an acceptable pattern with the educational program.

*n. "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.

*o. "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.

*p. "Work experience coordinator "* plans and implements, with local district staff, sequential secondary programs which provide on and off campus work experience for pupils requiring specially designed career exploration and vocational preparation when they are not available through the general education curriculum.

*q. "Others "* as approved by the department.

**281—41.26(281) Paraprofessionals.** Special education support aides and instructional aides may be employed to provide assistance to professionals in special education and shall:

**41.26(1) Training.** Complete appropriate preservice and in-service training 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.

**41.26(2) Supervision.** Work under the supervision of professional staff who are appropriately authorized to provide direct services in the same area where the paraprofessional provides assistive services.

**41.26(3) Not a substitute.** Not serve as a substitute for appropriately authorized professional personnel.

**41.26(4) Authorized paraprofessionals.** Authorized special education paraprofessional support personnel include:

*a. "Audiometrist "* provides hearing screening and other specific hearing related activities as assigned.

*b. "Communication aide "* provides certain language, articulation, voice and fluency activities as assigned.

*c. "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.

*d. "Physical therapy assistant "* provides physical therapy activities as assigned.

*e. "Occupational therapy assistant "* provides occupational therapy activities as assigned.

*f. "Psychology aide "* collects screening data through records review, systematic behavior observations, standardized interviews, group and individual assessment techniques; implements psychological intervention plans; and maintains psychological records.

*g. "Vision aide "* provides materials in the appropriate medium for use by visually impaired students and performs other duties as assigned.

*h. "Others "* as approved by the department.

**41.26(5) Paraprofessional instructional personnel.** Authorized special education paraprofessional instructional personnel are those described in 281—subrule 3.4(5).

DIVISION VIII  
FACILITIES, MATERIALS AND EQUIPMENT

**281—41.27(281) Facilities.**

**41.27(1) *Equivalent to general education facilities.*** Each agency providing special education shall supply facilities which shall be at least equivalent in quality to general education classrooms in the system, located in buildings housing regularly enrolled pupils of comparable ages and meet the following criteria:

*a.* Rooms shall be provided for itinerant and permanently assigned staff and shall be regularly available for their use, of adequate size, with sufficient and appropriate work space, seating space and furnishings.

*b.* Physical mobility of pupils shall be considered in providing special education which is accessible to the pupils.

**41.27(2) *Personnel space and clerical help.*** Special education personnel shall be provided work space, secretarial and clerical assistance and telephone service.

**41.27(3) *Plan for emergencies.*** Each facility for pupils who require special education and who need assistance in meeting all potential emergencies and disasters, shall maintain a written plan containing emergency and disaster procedures which will be clearly communicated to and periodically reviewed with staff responsible for such pupils. The emergency plan shall include:

*a.* Plans for the assignment of personnel to specific tasks and responsibilities.

*b.* Instructions relating to the use of alarm systems and signals. If combination visual and auditory warning devices do not exist, the plan shall include specific provisions for warning hearing impaired pupils.

*c.* Information concerning methods of fire containment.

*d.* Systems for notification of appropriate persons and agencies.

*e.* Information concerning the location and use of fire fighting equipment.

*f.* Specification of evacuation routes and procedures.

*g.* Posting of plans and procedures at suitable locations throughout the facility.

*h.* Evacuation drills held as required in Iowa Code section 100.31. Evacuation drills shall include actual evacuation of pupils to safe areas.

*i.* An evaluation for each evacuation drill.

**281—41.28(281) Materials and equipment.**

**41.28(1) *Provision for materials and equipment.*** Each school district shall make provision for special education, facility modifications, 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, performance by the AEA shall be accepted in lieu of performance by the school district.

**41.28(2) *Acquire and maintain equipment.*** Each agency providing special education 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.

**41.28(3) *Provide special equipment.*** The agency responsible for the operation of special education shall provide special aids, equipment, materials or supplies as necessary, but shall not provide devices prescribed or designed on an individual basis for a particular pupil that could not be modified for another pupil.

**41.28(4) *Functioning of hearing aids.*** The agency providing the special education shall ensure that individual and group hearing aids worn by hearing impaired pupils in school are functioning properly.



DIVISION IX  
PROGRAM REVIEW

**281—41.29(281) Reports and consultation.**

**41.29(1) *Record and reports to department.*** Agencies shall submit to the department educational records and reports specifically requested.

**41.29(2) *Review for compliance.*** The department will evaluate each report submitted and may require the reporting agency to furnish additional information to ascertain the status of compliance with the requirements of Iowa Code chapters 256, 273 and 281 and these rules.

**41.29(3) *Department response.*** The department shall inform the agency in writing if any aspect of its report is unsatisfactory and, in such case, shall include the reasons. At the initiation of the agency or the department, conferences and consultations may be held on any matter relating to a report of special education of the agency.

**41.29(4) *Year-end report.*** On or before August 1 of each year, on forms provided, the AEA shall submit by special education disability areas and support services disciplines, an academic year-end report which identifies pupils served and progress toward or problems encountered in meeting the priorities and major activities of the current plan implementation document. Existing documents which contain information asked for may be used in lieu of a specifically prepared report.

**281—41.30(273,281) Rule exceptions.**

**41.30(1) *Department approval.*** In unique circumstances, the director or, in a state operated program, the Superintendent or designee, may request a rule exception from the department. These requests must be filed with the department, on forms provided, and approval granted prior to the intended action. Department action on a request for a rule exception shall be communicated in writing to the director or, in a state operated program, the superintendent and, if granted, such an exception shall be valid for that academic year.

**41.30(2) *Adjusted program reports.*** For the following four circumstances, the director or, in a state operated program, the Superintendent or designee, may grant an adjusted program status. An adjusted program report shall be filed with the department, on forms provided, within 30 days of the action and shall be valid for that academic year.

*a. Program model:* A pupil is appropriately served in an instructional model other than that typically provided for pupils with similar special education needs.

*b. Disability:* A pupil is appropriately served in a categorical instructional program that does not typically serve the pupil's primary disability.

*c. Age span:* The chronological age span of the pupils within the instructional program exceeds six years in a self-contained special class or four years in a multicategorical special class with integration.

*d. Maximum class size:* When class size, including the size of a class served by a teacher employed less than full time, exceeds those limits specified in 41.6.

DIVISION X  
CONSUMER PARTICIPATION

**281—41.31(281) Information.**

**41.31(1) *Parent involvement in IEP meetings.*** Each agency shall take steps to ensure that one or both parents of the handicapped pupil, or the eligible pupil, have the opportunity to be present at each meeting in which required components of the pupil's IEP are developed or revised. The agency shall:

*a.* Notify the parents early enough to give them an opportunity to attend.

*b.* Schedule the meeting at a mutually agreed time and place.

*c.* Notify the parents of the purpose, time and location of the meeting and who will be in attendance.

**41.31(2)** *Pupil represented by parent.* Notwithstanding any other provision of these rules, an eligible pupil who is determined by the diagnostic-educational team to need assistance in making independent decisions shall be represented or assisted by the natural parent or an individual acting as a parent on behalf of the pupil.

**41.31(3)** *Documentation.* If neither parent can attend, the agency shall use other methods to ensure parent participation, including individual or conference telephone calls. A meeting may be conducted without a parent or eligible pupil if the parent or eligible pupil is unable to attend. In this case, the agency must have a record of its attempts to arrange a mutually agreed time 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.
- c. Detailed records of visits made to the parent's home or place of employment and the results of those visits.

**41.31(4)** *Interpreters for parents.* The agency shall take whatever action is necessary to ensure that the parent understands the proceedings at a meeting, including arranging for interpreters for parents who are deaf or whose native language is other than English.

**41.31(5)** *Copy of IEP to parents.* The agency shall give the parent, on request, a copy of the IEP.

**41.31(6)** *Written notice required.* Written notice must be given to parents a reasonable time before the agency proposes or refuses to initiate or change the identification, evaluation, educational placement or to provide a free appropriate public education. A change in educational placement includes any change in the disability type, model or attendance center of the program, other than typical progression through the grades or program levels, which is recommended for an individual pupil. The notice must include:

a. A description of the action proposed or refused by the agency, an explanation of why the agency proposes or refuses to take the action and a description of any options the agency considered and the reasons why those options were rejected.

b. A description of each evaluation procedure, tests, record or report the agency uses as a basis for the proposal or refusal.

c. A description of any other relevant factors.

d. An explanation of all procedural safeguards available to parents.

**41.31(7)** *Written consent required.* Written parental consent must be obtained before the agency conducts a preplacement evaluation and before the initial placement of a handicapped pupil in a program providing special education and related services. Consent is voluntary and may be revoked up until the time the proposed action takes place. If a dispute arises after the pupil is placed, the parents may request a hearing to review the placement decision.

**41.31(8)** *Independent educational evaluation.* A parent has the right to an independent educational evaluation at public expense if the parent disagrees with an evaluation obtained by the public agency. However, the public agency may initiate a hearing under 34 C.F.R. §300.506, July 1, 1984, to show that its evaluation is appropriate. If the final decision is that the evaluation is appropriate, the parent still has the right to an independent educational evaluation, but not at public expense.

**41.31(9)** *Complaints to the department.* Parents, private individuals, organizations or public agencies may make complaints to the department regarding any actions contrary to these rules. The department shall review, investigate and act on any written complaint within sixty days of the receipt of such complaint. The department shall provide for negotiations, technical assistance or other remedial action if necessary to achieve compliance.

**41.31(10)** *Initiating a hearing.* The parent, eligible pupil or appropriate agency may initiate a hearing on any decision related to the provision of a free appropriate public education for a handicapped pupil for whom they have responsibility. The hearing will be conducted pursuant to Division XI of these rules by an impartial administrative law judge.

**41.31(11)** *Surrogate parent procedures.*

a. *Definitions.*

"AEA " means area education agency.

"LEA " means local education agency.

"*Parents*" means a parent, a guardian, a person designated and serving as the parent or a surrogate parent for special education purposes.

"*State agency program*" as used here means a state agency which has the responsibility to educate pupils requiring special education.

"*Surrogate parent*" means an individual who acts in place of a parent in protecting the pupil's rights in the educational decision-making process. A surrogate parent is appointed for a pupil who is handicapped in obtaining an education when the parent is unknown, unavailable or the parents' rights have been terminated and the pupil is under the guardianship of the state.

"*Unavailable*" means the public agency, after reasonable efforts, cannot discover the whereabouts of a parent.

"*Unknown*" means the parent cannot be identified or ascertained by diligent inquiry.

b. *Need for surrogate parents.* Pupils under 18 years of age requiring special education in LEA programs, AEA programs or state agency programs, or other agencies fulfilling the responsibility of the state agency, whose parents are unknown, unavailable, or whose parents' rights have been terminated and who are under the guardianship of the state will be assigned a surrogate parent. Surrogate parents are not to be used merely because the parent is uncooperative or unresponsive to the special education needs of the pupil.

c. "*Eligible surrogate parents*" are persons who are at least 18 years of age, known to be reliable and have had or will receive training in the education of handicapped pupils. A surrogate parent may not be an employee of the state or public agency which is involved in the education or care of the pupil. Foster parents, parents of other handicapped pupils or other interested and knowledgeable persons may be appointed to serve as surrogate parents. Group home directors and caseworkers may not be assigned as surrogate parents.

d. *Appointment.*

(1) A surrogate parent for special education is to be appointed whenever the AEA documents that the parent is unknown, unavailable, or when the parents' rights have been severed and the pupil is under the guardianship of the state and is known to be or is suspected of being handicapped.

(2) In appointing a surrogate parent, it must be assured that there is no conflict of interest regarding the surrogate parent's responsibility to protect the special education rights of the pupil; the surrogate parent is, or is willing to become, knowledgeable about the pupil's handicapping condition and educational needs; and, the surrogate parent is informed of the rights and responsibilities of serving as a surrogate parent.

(3) The AEA director will select a surrogate parent for special education purposes. The director will contact the department of human services district administrator to ascertain whether the proposed surrogate parent has any conflict of interest. The director will appoint the surrogate parent by letter. The letter must contain the pupil's name, age, educational placement and other information about the pupil determined to be useful to the surrogate parent, and must specify the period of time for which the person will serve. A copy of the letter will be sent to the department. Confidential educational records may be reviewed by the surrogate parent who is acting as a parent as defined in 34 C.F.R. §300.10, July 1, 1984.

e. *Training.*

(1) Training will be conducted as necessary by each AEA using a training procedure approved by the department which includes rights and responsibilities of surrogate parent, sample forms used by LEAs and AEAs, specific needs of handicapped pupils and resources for legal and instructional technical assistance.

(2) The department will provide in-service and assistance to AEAs upon request.

f. *Monitoring.* The department will provide assistance to, and will monitor, surrogate parent programs.

DIVISION XI  
SPECIAL EDUCATION APPEAL PROCEDURES

**281—41.32(17A,281,290) Definitions.** As used in this division only:

"*Administrative law judge*" means an administrative law judge designated by the director from the list of approved administrative law judges to hear the presentation of evidence and oral arguments in the hearing. The above referenced administrative law judges are selected under authority granted by the board. Such authority provides for the contracting with qualified personnel to serve as administrative law judges who are not personally or professionally involved so as to conflict with objectivity and are not employees or board members of either state, intermediate or local education agencies involved in the education or care of the pupil. A listing of all administrative law judges provided by the department and their qualifications shall be maintained by the department and shall be made available upon request.

"*Appellant*" means the party bringing a special education appeal to the department.

"*Appellee*" means the party in a matter against whom an appeal is taken.

"*Department*" means the state department of education.

"*Director*" means the director of special education of the area education agency in the area of the pupil's resident school district.

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

"*Parties*" means the appellant, appellee and third parties named or admitted as a party.

**281—41.33(17A,281) Manner of appeal.**

**41.33(1) *Initiating a hearing.*** An eligible pupil, the parent or guardian or the school district in which the pupil resides may initiate a hearing on any decision relating to the identification, evaluation or educational placement of a pupil or the provision of a free appropriate public education to a pupil. In the event that the issues raised by the eligible pupil or the parent or guardian of a pupil relate to identification or placement, the appropriate area education agency serving the child shall be deemed to be an appellee whether or not specifically named by the pupil, parent, or guardian. When parents refuse consent for initial evaluation or initial provision of special education, the public agency including the school district or the director, may initiate a hearing to determine if the pupil may be evaluated or initially provided special education without parental consent.

**41.33(2) *Conducting a hearing.*** The hearing shall be conducted by the department.

**41.33(3) *Appeal by affidavit.*** An appeal shall be made in the form of an affidavit which generally sets forth the facts, the error or errors complained of or the reasons for the appeal in a plain and concise manner. An affidavit requires a sworn affirmation before a notary public or other officer authorized to administer oaths.

**41.33(4) *Notice.*** The director of education or designee shall, within five days after the filing of such affidavit, notify the proper school officials in writing of the appeal and the officials shall, within ten days, file with the board a complete certified transcript of any record and proceedings related to the decision appealed and all relevant education records.

**41.33(5) *Legal and advocacy assistance.*** The department shall notify parents of the availability of low cost or free legal and advocacy assistance.

**41.33(6) *Written notice.*** The director of education or designee shall provide notice in writing delivered either by personal service as in civil actions or by certified mail, return receipt requested, to all parties at least ten 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 will be heard. A copy of the appeal hearing rules shall be included with the notice.

**41.33(7) *Mediation conference.*** Parties will be contacted by department staff persons to ascertain whether they wish to participate in a mediation conference. The involved parties shall be notified that participation in this conference is voluntary and that such a conference in no way will deny or delay a party's right to a full due process hearing. Such a conference, if held, will be scheduled at a time and place that is convenient to all involved persons. The mediation conference is designed to clarify the issues and, if possible, to resolve disagreements prior to a hearing. The

mediation conference proceedings and offers of compromise during mediation shall not be entered as arguments or evidence in a hearing. However, the parties may stipulate to agreements reached in mediation.

**41.33(8) Continuance.** A request for continuance may be made by any party to the designated administrative law judge. A continuance may be granted upon reasonable cause for a period of time to be specified by the administrative law judge.

**41.33(9) Dismissal.** A request for dismissal may be made to the administrative law judge at any time by the party initiating the appeal. A request or motion for dismissal made by the appellee (a party against whom an appeal was taken) shall be granted upon a determination by the administrative law judge that any of the following circumstances apply:

*a.* The issue(s) raised does not establish jurisdiction in that the appellant failed to allege, and it cannot be reasonably inferred given a broad reading of the affidavit of appeal, a decision related to identical issue(s) raised is moot;

*c.* The student is no longer a resident of the school district or area education agency 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.

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 should be granted. An administrative dismissal issued by the administrative law judge shall be without prejudice to the appellant.

**41.33(10) Time and place of hearing.** The hearing will be conducted at a time and place reasonably convenient to the parents and the pupil involved.

#### **281—41.34(17A,281) Participants in the hearing.**

**41.34(1) Conducting hearing.** The hearing shall be conducted by the administrative law judge.

**41.34(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 handicapped pupils.

**41.34(3) Opportunity to be heard—appellant.** The appellant or representative shall have the opportunity to be heard.

**41.34(4) Opportunity to be heard—appellee.** The appellee or representative shall have the opportunity to be heard.

**41.34(5) Opportunity to be heard—director.** The director or designee shall have the opportunity to be heard.

**41.34(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.

**41.34(7) Resource persons.** Representatives of the department may be present as resource persons and may be heard at the discretion of the administrative law judge.

**41.34(8) Presence of pupil.** The pupil who is the subject of the hearing may be present at the parent's discretion.

**41.34(9) Presence of eligible pupil.** An eligible pupil shall have the right to be present.

#### **28141.35(17A,281) Convening the hearing.**

**41.35(1) Announcements and inquiries by administrative law judge.** At the established time, the name and nature of the case are to be announced by the administrative law judge. Inquiries shall be made as to whether the respective parties or their representatives are present.

**41.35(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 appeal hearing may proceed. When any absent party has been properly notified, it 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.

**41.35(3) Types of hearing.** The administrative law judge shall establish with the parties that the hearing will 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.

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.

### **281—41.36(17A,281) Stipulated record hearing.**

**41.36(1) Record hearing is nonevidentiary.** A hearing based on stipulated record is nonevidentiary in nature. No witnesses will be heard nor evidence received. The controversy will be decided on the basis of the 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.

**41.36(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.

**41.36(3) One spokesperson per party.** Unless the administrative law judge determines otherwise, each party shall have one spokesperson.

**41.36(4) Arguments and rebuttal.** The appellant shall present first argument. The appellee then presents second 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.

**41.36(5) Time to present argument.** Appellant and appellee shall have equal time to present their arguments and appellant's total time shall not be increased by the right of rebuttal. The time limit of argument shall be established by the administrative law judge.

**41.36(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 will be reached and a copy of the decision will be mailed to the parties not later than 45 days after the receipt of the request for the hearing.

**41.36(7) Closing of hearing.** The hearing is then closed upon order of the administrative law judge.

### **281—41.37(17A,281) Evidentiary hearing.**

**41.37(1) Testimony and other evidence.** An evidentiary hearing provides for the testimony of witnesses, introduction of records, documents, exhibits or objects.

**41.37(2) Appellant statement.** The appellant may begin by giving a short opening statement of a general nature which may include the basis for the appeal, the type and nature of the evidence to be introduced and the conclusions which the appellant believes the evidence will substantiate.

**41.37(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 which the appellee believes the evidence will substantiate.

**41.37(4) Third party statement.** With the permission of the administrative law judge, a third party may make an opening statement of a general nature.

**41.37(5)** *Witness testimony and other evidence.* The appellant may then call witnesses and present other evidence.

**41.37(6)** *Witness under oath.* Each witness shall be administered an oath by the administrative law judge. The oath may be in the following form: "You do solemnly swear or affirm that the testimony or evidence which you are about to give in the proceeding now in hearing shall be the truth, the whole truth and nothing but the truth. "

**41.37(7)** *Cross-examination by appellee.* The appellee may cross-examine all witnesses and may examine and question all other evidence.

**41.37(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.

**41.37(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. The administrative law judge may request to hear other witnesses and receive other evidence not otherwise presented by the parties.

**41.37(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.

**41.37(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 outlined which the appellant feels most logically follow from the evidence and a recommendation of the administrative law judge.

**41.37(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 outlined which the appellee believes most logically follow from the evidence and a recommendation of action to the administrative law judge.

**41.37(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.

**41.37(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.

**41.37(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 will be reached and a copy of the decision will be mailed to the parties not later than 45 days after the receipt of the request for the hearing.

**41.37(16)** *Closing of hearing.* The hearing is closed upon order of the administrative law judge.

**281—41.38(17A,281) Mixed evidentiary and stipulated record hearing.**

**41.38(1)** *Written evidence of portions of record may be used.* A written presentation of the facts or portions of the certified record which 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. Such evidence cannot later be contested by the parties and no introduction of evidence contrary to that which has been stipulated may be allowed.

**41.38(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.

**281—41.39(17A,281) Witnesses.**

**41.39(1) Subpoenas.** The director of education shall have the power to serve subpoenas for witnesses, to compel the attendance of those thus served and the giving of evidence by them.

**41.39(2) Attendance of witness compelled.** Any party may compel by subpoena the attendance of witnesses.

**41.39(3) Cross-examination.** Witnesses at the hearing or a person 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.

**281—41.40(17A,281) Rules of evidence.**

**41.40(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 which will contribute to an informed result. The ultimate test of admissibility is whether the offered evidence is reliable, probative and relevant.

**41.40(2) Acceptable evidence.** Irrelevant, immaterial or unduly repetitious evidence should be excluded. The kind of evidence which 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 will be expedited and the interests of the parties will not be prejudiced substantially, any part of the evidence may be required to be submitted in verified written form.

**41.40(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. Upon objection, documentary evidence which is not disclosed to the other parties at least five days before the hearing shall be prohibited.

**41.40(4) Independent educational evaluation.** If deemed necessary, the administrative law judge may order an independent educational evaluation, which shall be provided at no cost to the parent and which meets criteria prescribed by the department.

**41.40(5) 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.

**41.40(6) Administrative law judge may evaluate evidence.** The administrative law judge's experience, technical competence and specialized knowledge may be utilized in the evaluation of the evidence.

**41.40(7) Decision.** A decision shall be made upon consideration of the whole record or such portions that are supported by and in accord with reliable, probative and substantial evidence.

**281—41.41(17A,281) Communications.**

**41.41(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.

**41.41(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.

**41.41(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—41.42(17A,281) Record.**

**41.42(1) Closed hearing.** The hearing shall be closed to the public, unless the parents desire that it be open, and shall be recorded by mechanized means or by certified shorthand reporters. Oral proceedings in whole or in part may be transcribed at the request of any party, with the expense of the transcription charged to the requesting party. Copies of recorded tapes of oral proceedings will be provided at no cost to parties.

**41.42(2) Transcripts.** All recording or stenographic notes 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.

**41.42(3) Hearing record.** The record of a hearing under this division shall include:

- a. All pleadings, motions and intermediate rulings.
- b. All evidence received or considered and all other submissions.
- c. A statement of matters officially 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—41.43(17A,281) Decision and review.**

**41.43(1) Decision.** The administrative law judge, after due consideration of the record and the arguments presented shall make a decision on the appeal.

**41.43(2) Basis of decision.** The decision shall be based on the laws of the United States and the state of Iowa, the rules and policies of the department and shall be in the best interest of the education of the pupil.

**41.43(3) Time of decision.** The administrative law judge's decision will be reached and mailed to the parties within 45 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.

**41.43(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 proposed decision be subject to the authority, direction or discretion of any person who has advocated in connection with the hearing, the specific controversy underlying the hearing or a pending related matter involving the same parties.

**281—41.44(17A,281) Finality of decision.**

**41.44(1) Decision final.** The decision of the administrative law judge is final.

**41.44(2) Civil action** Any party who is aggrieved by the findings and decision can bring civil action. The decision may be appealed to the state or federal district court pursuant to state or federal statutes.

**281—41.45(17A,281) Pupil's status during proceedings.**

**41.45(1) Placement during proceedings.** Unless the parties agree otherwise, the pupil involved in the complaint must remain in the pupil's present educational placement during the pendency of any administrative or judicial proceedings.

**41.45(2) Placement during initial admission hearing.** If the hearing involves an application for initial admission to general education or to special education, the pupil, with the consent of the parents, must be placed in the general education program until the completion of all the proceedings. However, by joint agreement among the parents, the school district and the director, the pupil may be placed in special education.

DIVISION XII  
FINANCE

**281—41.46(281,442) Contractual agreements.** Any special education instructional program not provided directly by a school district or any special education support service not provided by an AEA can only be provided through a contractual agreement. The board must 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.

**281—41.47(281) Research and demonstration projects and models for special education program development.** Applications for aid, whether provided directly from state or from federal funds, for special education research and demonstration projects and models for program development shall be submitted to the department.

**281—41.48(281) 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—41.49(273,281,442) Extended year programs.** Approved extended year programs for special education support services, when provided by the AEA for pupils requiring special education, shall be funded through procedures as provided for special education support services. Approved extended year instructional programs shall be funded through procedures as provided for special education instructional programs.

**281—41.50(281,442) Special education centers.** Special education centers, diagnostic and prescriptive, are authorized and funded in accord with special education support services provisions of Iowa Code sections 281.4 and 442.7. When the special educational needs of a pupil have been determined and when the weighted enrollment factor has been certified, the instructional program will be funded in accord with provisions of Iowa Code section 281 9.

**281—41.51(281,442) Program costs.**

**41.51(1) Nonresident pupil.** The program costs charged by a school district or an AEA for an instructional program for a nonresident pupil requiring special education shall be the actual costs incurred in providing that program.

**41.51(2) Contracted special education.** An AEA or school district may make provisions for a resident pupil requiring special education through contracts with public or private agencies which 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.

**41.51(3) District responsibility.** The resident district shall be liable only for instructional costs incurred by an agency for those pupils certified as entitled in accord with these rules unless required by 34 C.F.R. §300.302, July 1, 1984.

**41.51(4) Support service funds.** Support service funds may not be utilized to supplement any special education programs authorized to use weighted instructional funds.

**41.51(5) Responsibility for special education if facility does not have a school.** For pupils living in a state-supported institution, charitable institution or licensed boarding home, the school district 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, will be paid by the school district of residence of the pupil. If the school district of residence of the pupil cannot be determined, and the pupil is not included in the weighted enrollment of any school district in the state, the school district in which the facility is located may certify the costs to the director of education by September 1 of each year for the preceding fiscal year. Payment will be made from the general fund of the state.

**41.51(6)** *Responsibility for special education for pupils placed by court.* For pupils placed by the district court, and for whom parental rights have been terminated by the district court, the school district in which the facility or home is located must provide special education. Costs shall be certified to the director of education by September 1 of each year for the preceding fiscal year by the director of the AEA in which the pupil has been placed. Payment will be made from the general fund of the state.

**41.51(7)** *Proper use of weighted and support service funds.* Weighted instructional funds may be utilized to provide special education instructional programs both in-state and out-of-state with the exceptions of itinerant hospital services or home services, itinerant teaching instructional services and consultative instructional programs which must utilize support service funds for both in-state and out-of-state placements.

**41.51(8)** *Extended evaluation.* Pupils in extended evaluation shall not be assigned a weighting.

**—41.52(281,442)** *Audit.* The department reserves the right to audit the records of any agency providing special education for pupils requiring special education and utilizing funds generated under Iowa Code chapters 273, 281 and 442.

**281—41.53(281,442) Independent educational evaluation.**

**41.53(1)** *Independent educational evaluation—AEA.* If an independent educational evaluation is requested by the AEA, the cost of the independent educational evaluation including travel expenses shall be at no cost to the parent and shall be paid by the AEA.

**41.53(2)** *Independent educational evaluation—administrative law judge.* If an independent educational evaluation is requested by a department administrative law judge, the cost of the independent educational evaluation including travel expenses shall be at no cost to the parent and shall be paid by the department.

**41.53(3)** *AEA policy and procedures.* The AEA shall establish policy and procedures for paying costs of an independent educational evaluation authorized under 34 C.F.R. §300.503, July 1, 1984.

**281—41.54(273,281,442) Sanctions.**

**41.54(1)** *Suspension of financial aid.* Any financial aid provided to an agency in support of special education may be suspended in whole or in part if the agency is found to be in noncompliance with any of the provisions of applicable statutes or rules. Suspension of financial aid would be only for the specific special education not meeting compliance requirements.

**41.54(2)** *Noncompliance.* When it has been determined that an area of noncompliance exists, the department will notify the involved agency in writing of the violation, the required corrective action with timelines, appeal rights and the financial aid to be suspended if corrective action does not occur. If corrective action within the prescribed time limit does not occur, the department shall amend its certification to the director of the department of management so that the financial aid in question will be subtracted from funds available to the agency in the next scheduled payment period.

DIVISION XIII  
STATE PLAN

**281—41.55(256,273,281) State plan of education for all handicapped pupils.** In accord with 20 U.S.C. §1413, the state must submit a plan with certain requisite features.

**41.55(1) Planning process.**

*a.* The three-year state plan shall be developed in accord with all applicable federal statutes and regulations. Copies of such applicable regulations can be obtained at no cost by contacting the department. Beginning with fiscal year 1981, each state plan shall be effective for a period of three fiscal years.

b. A state level advisory panel shall be established and shall serve in an advisory capacity to the department in matters relating to the education of handicapped pupils. This advisory panel will meet as often as necessary to conduct its business, but at least semiannually.

**41.55(2) Public participation.** The department, in order to provide the general public a reasonable opportunity for participation in the development of the state plan for 20 U.S.C. §1401 et seq, will utilize the following procedures:

a. Consult with relevant advisory committees, local agencies, interest groups and experienced professionals in the development of each proposed state plan.

b. Publish a description of each proposed state plan, in a manner that will ensure circulation throughout the state, at least 60 days prior to the date on which the plan is submitted to the secretary of education or on which the plan becomes effective, whichever occurs earlier, with an opportunity for public comments on the proposed plan to be accepted for at least 30 days.

c. Hold public hearings on the proposed state plan as required by the secretary of education or by regulation.

d. Provide an opportunity for interested agencies, organizations and individuals to suggest improvements in the administration of programs and to allege that there has been a failure by an entity to comply with applicable statutes and regulations.

**41.55(3) Applicability of final approved plan.** The provisions of the state plan are applicable to, shall be adopted by and implemented by all political subdivisions of the state that are involved in and have responsibility for the education of handicapped pupils. These would include:

a. The department.

b. Local education agencies.

c. AEAs.

d. Other state agencies, including correctional facilities.

These rules are intended to implement Iowa Code sections 17A.11, 256.7(5), 273.5, 281.3 and 281.6.

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