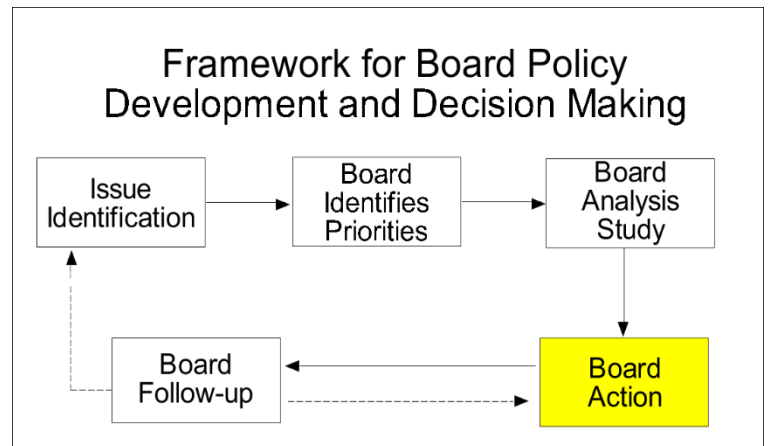


Iowa State Board of Education

Executive Summary

June 11, 2021



Agenda Item: Rules: 281 IAC Chapter 14 – School Health Services (Adopt)

State Board Priority: Creating a Safe, Healthy, and Welcoming Learning Environment

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

Presenter(s): Thomas A. Mayes, General Counsel
Brad Niebling, Chief
Bureau of Learner Strategies and Supports

Attachment(s): One

Recommendation: It is recommended that the State Board adopt these amendments to Chapter 14.

Background: After a period of public comment, the Department made the following changes to the notice of intended action: (1) added a rule of construction (districts not required to have therapeutic classrooms); (2) reorganization of subrule 14.10(3) for readability; (3) changed “same age/grade peers” to “similar age/grade peers” in subrule 14.13(2); (4) added language in rule 14.13 that placement in a therapeutic classroom is not permanent or indefinite in duration; (5) provided additional specificity in the claims requirements in subrule 14.14(2); (6) revised the training review requirement in subrule 14.15(3); and (7) revised the training requirement timeline in subrule 14.15(4) from “accepting employment” to “beginning employment.”

EDUCATION DEPARTMENT[281]

Adopted and Filed

The State Board of Education hereby amends Chapter 14, “School Health Services,” Iowa Administrative Code.

Legal Authority for Rule Making

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

State or Federal Law Implemented

This rule making implements, in whole or in part, 2020 Iowa Acts, Senate Files 2360 (classroom management, therapeutic classrooms) and 2261 (behavioral health screening).

Purpose and Summary

This rule making provides guidance on therapeutic classrooms and telehealth services on school premises. Prior to notice of intended action, the Department conducted five separate meetings with the following stakeholder groups in the drafting of the rules: the Area Education Agency Joint Chiefs and Special Education Directors, the American Civil Liberties Union of Iowa, the Adverse Childhood Experiences Policy Coalition, the ASK Resource Center, Disability Rights Iowa, and the University of Northern Iowa School Psychology Program. The Department also provided opportunity for written comment from the Area Education and Local Education Agency Wellness Committee to collect input on the rules. This rule making incorporates feedback from the stakeholder groups.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on April 21, 2021, as **ARC 5580C**.

A public hearing was held on May 11, 2021, at 9:00 a.m., at the Grimes State Office Building (with the option to participate by video conference). No one attended the hearing.

The Department received one comment from an individual representing the Urban Education Network and the Rural School Advocates of Iowa. The comment was largely supportive of the proposed rules, but had several well-reasoned suggestions for improvement.

Comment 1: The commenter expressed concern that the definition of therapeutic classroom in rule 14.7 may have unintended consequences and further noted that districts are not required to have a therapeutic classroom.

Response 1: The Department will address these concerns by a new rule of construction contained in an additional subrule 14.13(6).

Comment 2: The commenter provided a suggestion to reorganize subrule 14.10(3) for clarity, as well as moving the definition of “attending student” into rule 14.7.

Response 2: The Department will make the suggested organizational changes for readability purposes. Concerning the definition, the Department will add additional explanatory language but keep the definition in rule 14.10.

Comment 3: The commenter requested “same age/grade peers” in subrule 14.13(2) be changed to “similar age/grade peers” because with the potential “for very small class size in therapeutic classrooms, there may not be another student of the same age or grade in the mix.”

Response 3: The Department believes this change is warranted, for the reasons stated. Whether students are of “similar” ages and grades will be determined based on the facts of each case.

Comment 4: The commenter suggested that the requirement for the placement of general education students in a therapeutic classroom be reviewed regularly, rather than every 60 days

(subrule 14.13(3)“c”). The commenter asserts there should be some local control about how often these placements are reviewed. The commenter also suggested including language that placement in a therapeutic classroom is not permanent or indefinite.

Response 4: Regarding the 60-day review period, the Department makes no change. The students at issue are general education students, who lack the more structured procedural safeguards the law provides to children who are eligible for special education. This specific and certain review period adds a layer of protection to general education students, including that they will be evaluated for special education eligibility if their data so suggest. Regarding the second suggestion, the Department will add the suggested language in the introductory paragraph to rule 14.13.

Comment 5: The commenter objects to the prohibition in subrule 14.13(5) on purchasing or holding seats for therapeutic classrooms. The commenter asserts that this funding mechanism may be necessary to “get the ball rolling” and is not prohibited by Senate File 2360. The commenter suggests that this funding mechanism be allowed to pay for seat rights for the first few years of a therapeutic classroom.

Response 5: The Department is unable to make the suggested change. While Senate File 2360 does not prohibit this funding mechanism, the Department is mindful of other laws which lend support to this prohibition, such as the allowance and payment of just claims and the prohibition in federal special education law on making placements based on funding formulas. The Department is concerned about the real possibility of a use-it-or-lose it placement of a child in a therapeutic classroom when such a placement is inappropriate. Rather than relax the rule, the Department will offer guidance and technical assistance to districts seeking to start a therapeutic

classroom. The Department also reminds the commenter and other readers of the availability of a waiver under Chapter 4 of the Department’s administrative rules.

Comment 6: In the claims for reimbursement under subrule 14.14(2), paragraph “g,” the commenter suggested that the claim specify that a student does not have an individualized education plan (“IEP”), consistent with subrule 14.14(20, paragraph “c”.

Response 6: The Department makes the suggested change, for the reasons stated by the commenter.

Comment 7: The commenter requests that the training review requirement in subrule 14.15(3) be “regularly, or at least once every licensure review cycle,” rather than annually.

Response 7: The commenter’s point is sound; however, the renewal cycle for teachers holding a standard teaching license is five years. The Department views this time period as too long for this purpose. For that reason, the Department has revised that subrule to read “regularly, but no less frequently than every three school years.”

Comment 8: The commenter requests that subrule 14.15(4) be revised from “accepting employment” to “beginning employment,” given that many teachers accept teaching positions in the spring but are not yet district employees.

Response 8: The Department makes the suggested change, for the reasons stated by the commenter.

Comment 9: The commenter requests that the training about the documentation and notification requirements of subrule 14.15(5), paragraph “h”, be modified because not all districts will maintain therapeutic classrooms.

Response 9: No change. While not all districts will operate therapeutic classrooms, all districts may have the capability to refer or transfer a student to another district's therapeutic classroom.

Comment 10: The commenter expressed concern about the definition of "behavioral health screening" in Rule 14.21. The commenter worried that a common academic and social-emotional health screener used by schools might meet the definition of behavioral health screener and trigger the obligations of division III.

Response 10: No change is needed. The definition of "behavioral health screening" in Rule 14.21 is verbatim the definition contained in Senate File 2261. The obligations to comply with Division III are triggered only when a district, accredited nonpublic school, or AEA contract with a private provider for behavioral health screenings.

Comment 11: Subrule 14.23(2), paragraph "c," subparagraph (2) requires the parent or guardian be present to establish a provider-patient relationship through telehealth. The commenter asked if the parent or guardian may be present virtually.

Response 11: No change is needed. The language is verbatim the language contained in Iowa Code section 280A.3(c). Whether the parent or guardian must be physically present with the child or may be present electronically from another location is best left to the mental health provider's professional judgment in light of the applicable standard of care.

Comment 12: The commenter requests that the responsibility for providing "information to the student participating in telehealth services about how and to whom to report inappropriate behavior by a mental health professional" (Subrule 14.24(2), paragraph "e") be shifted from schools and AEAs to others, such as the parent. The commenter asserts that this is not the school's responsibility.

Response 12: No change is possible. While the commenter’s public policy argument very well may be sound, Senate File 2261 places this responsibility on the schools. Paragraph “e” is verbatim the language contained in Iowa Code section 280A.4(1)(e).

Additional Comments by the Department. The Department made a clarifying change to subrule 14.14(2), to align with statute (changing “IEP” to “weighted IEP”). Through legislative staff, the Department has been made aware that districts may be hoping to avoid the requirements of Senate File 2360 by using cute, clever euphemisms for “classroom clears” (“Okay kids, time for a ‘bathroom break!’ Let’s go!”). The Department will monitor the implementation of this Chapter and take enforcement action against districts, accredited nonpublic schools, and AEAs that seek to avoid compliance with this Chapter.

Adoption of Rule Making

This rule making was adopted by the State Board on June 11, 2021.

Fiscal Impact

This rule making has a fiscal impact to the State of Iowa, due to a related appropriation to implement 2020 Iowa Acts, Senate File 2360.

Jobs Impact

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

Waivers

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

Review by Administrative Rules Review Committee

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

Effective Date

This rule making will become effective on August 4, 2021.

The following rule-making action is adopted:

ITEM 1. Adopt the following **new 281—Chapter 14**, Division I heading:

DIVISION I

IN GENERAL

ITEM 2. Amend rule 281—14.5(256,280) as follows:

281—14.5(256,280) Severability. If any provisions of ~~these rules~~ this chapter or the application thereof to any person or circumstance shall be held invalid, such invalidity shall not affect the provisions or application of ~~these rules~~ this chapter which can be given effect, and to this end the provisions of ~~these rules~~ this chapter are declared to be severable.

ITEM 3. Amend **281—Chapter 14**, implementation sentence, as follows:

~~These rules are~~ This division is intended to implement Iowa Code sections 135.185, 256.7(33), 279.70 and 280.16.

ITEM 4. Adopt the following **new 281—Chapter 14**, Division II heading:

DIVISION II

COMPREHENSIVE HEALTHY AND SAFE LEARNING ENVIRONMENTS

ITEM 5. Adopt the following **new** rules 281—14.6(279) to 281—14.16(279):

281—14.6(279) Purpose and objectives: comprehensive healthy and safe learning environments. The purpose of this division is to provide uniform definitions and rules for public schools, accredited nonpublic schools, and area education agencies (AEAs) regarding standards for professional development and training in evidence-based classroom management practices, evidence-based interventions, appropriate and inappropriate responses to behavior in the classroom that present an imminent threat of bodily injury to a student or another person, and in accordance with 281—Chapter 103 for the reasonable, necessary, and appropriate physical restraint of a student. This division gives clear guidance that classroom clearance may be used only to terminate or prevent a threat of bodily injury and clarifies the required parental notification, response, and reporting of school behavior challenges.

This division also provides clarification of Iowa AEAs', public school districts', and accredited nonpublic school districts' responsibilities and the responsibilities of behavioral health service providers as required by Iowa Code section 280A.1, should they choose to enter into agreements for behavioral health screenings or telehealth services.

This division is intended to promote a comprehensive safe learning space for learners and school staff, and to promote the dignity, care, safety, welfare, and security of each child and the school community; encourage the use of proactive, effective, and evidence- and research-based strategies resulting in increased learning for all students; lessen disruption to instruction; and expand supports for educators through teacher preparation, revised protocols, training and professional learning.

281—14.7(279) Definitions. For the purposes of this chapter:

“Assault” means the same as defined in Iowa Code section 708.1.

“Bodily injury” or *“injury”* means physical pain, illness, or any other impairment of physical condition. For purposes of required reporting, the injury must be the result of intentional act and not accidental and must be a physical injury to a person’s body that is apparent within 24 hours after the incident and may include damage to any bodily tissue to the extent that the tissue must undergo a healing process in order to be restored to a sound and healthy condition. Mental or verbal insult is not covered by this definition.

“Classroom clear” means clearing all other students out of the classroom to calm a child or to address disruption by a child. It is not necessary to use the phrase “classroom clear” to be covered by this division. The mere use of the term “classroom clear” does not bring that activity within the coverage of this division. Using another term for a “classroom clear” does not remove that activity from the coverage of this division. A classroom clear is not either of the following:

1. Removing other students from a classroom to preserve a student’s dignity/privacy in the event of a medical emergency, health issue, or both, or
2. Emergency procedures a school/district may use in the event of a school crisis or natural disaster.

“Classroom management” means the set of skills, practices, and strategies teachers use to maintain productive and prosocial behaviors that enable effective instruction in whole class or small group settings.

“Department” means the Iowa department of education.

“Evidence-based” means an activity, strategy or intervention that demonstrates a significant effect on improving student outcomes or other relevant outcomes. Activities, strategies, or

interventions with strong or moderate evidence should be prioritized.

“Parent” means an individual included in the definition of “parent” in rule 281—41.30(256B,34CFR300) and also includes an individual authorized to make decisions for the child pursuant to a power of attorney for temporary delegation of custody or for making educational decisions.

“Physical restraint” means the same as defined in rule 281—103.2(256B,280).

“Property damage” means serious damage to property of significant monetary value or significant nonmonetary value or importance because of violence. For purposes of required reporting, the property damage must be the result of intentional act and not accidental. In assessing significant nonmonetary value for purposes of this definition, the following shall be considered: the property is not of significant monetary value but difficult to replace or its loss or damage impedes learning, or an object(s) used as a weapon resulting in damage to the object or property.

“Reasonable and necessary force” means that force, and no more, which a reasonable person would judge to be necessary under the circumstances that existed at the time, that is not intended to cause pain, and that does not exceed the degree or duration required to accomplish the purposes set forth in rule 281—103.5(256B,280).

“School district” means an Iowa public school district directly supported in whole or in part by tax dollars, as defined in Iowa Code section 280.2, and with the power and jurisdiction provided by Iowa Code section 274.1.

“Social-emotional-behavioral health” or *“SEBH”* means social, emotional, behavioral and mental well-being that affects how one thinks, feels, communicates, acts, and learns. These contribute to resilience and to how one relates to others, responds to stress and emotions, and makes choices. Foundational knowledge and skills that promote SEBH include self-awareness,

self-management, responsible decision-making, social awareness, and relationship skills that support positive well-being and academic success.

“Therapeutic classroom” means a classroom designed for the purpose of providing support for any student whose emotional, social, or behavioral needs interfere with the student’s ability to be successful in the current educational environment, with or without supports, until the student is able to successfully return to the student’s current education environment, with or without supports, including but not limited to the general education classroom. It is not necessary to use the phrase “therapeutic classroom” to be covered by this division. The mere use of the term “therapeutic classroom” does not bring those services or locations within the coverage of this division. Using another term for a “therapeutic classroom” does not remove that service or location from the coverage of this division.

281—14.8(279) Classroom clears.

14.8(1) A classroom teacher may clear students from the classroom only if necessary to prevent or terminate an imminent threat of bodily injury to a student or another person in the classroom. A threat is imminent when it is reasonably likely to inflict pain, illness, or any other impairment of physical condition.

14.8(2) A classroom clear means clearing all other students out of the classroom to calm a child. A classroom clear in which an adult remains with a student to calm the student shall not be considered seclusion.

14.8(3) The restrictions on use of classroom clears pertains to all classrooms, general and special education, ages 3 through 21, when a child is served in a setting that is using public funds for educational purposes.

14.8(4) If a classroom clear is included within a school or district’s crisis response plan, the

school or district must also follow the additional requirements outlined in 2020 Iowa Acts, Senate File 2360, and this division.

14.8(5) In determining if a classroom clear may be used to prevent or terminate an imminent threat, the following factors shall be applied:

- a.* The size and physical, mental, and psychological condition of the student;
- b.* The nature of the student's behavior;
- c.* The presence of a weapon or material that can be weaponized;
- d.* The extent and nature of resulting bodily injury to the student and other persons in the classroom; and
- e.* The prevention of physical intervention that will likely escalate behavior and result in bodily injury.

281—14.9(279) Required parent/guardian notifications and responses.

14.9(1) *General.* If a classroom clear is used to prevent an imminent threat, the following notifications and actions shall occur:

- a.* The school principal shall, by the end of the school day if possible, but at least within 24 hours after the incident, notify the parents/guardians of all students assigned to the classroom that it was cleared.
- b.* The notification shall not identify, directly or indirectly, any students involved in the incident giving rise to the classroom clearance.
- c.* The principal shall request that the parent/guardian of the student whose behavior caused the classroom clear meet with the principal, the classroom teacher, and other staff as appropriate.

14.9(2) *Students with disabilities.* When a student with a disability whose behavior caused a classroom clear and has an individualized education program (IEP) or a behavioral intervention

plan (BIP), the classroom teacher shall call for and be included in a review and potential revision of the student's IEP or BIP by the student's IEP team. The AEA, in collaboration with the school district, may, when the parent or guardian meets with the IEP team during the review or reevaluation of the student's IEP, inform the parent or guardian of individual or family counseling services available in the area. The public agencies must provide those services if those services are necessary for a free appropriate public education, pursuant to 281—subrule 41.320(7).

14.9(3) *Students without disabilities.*

a. If a student does not have an IEP or a BIP, the meeting shall include an intervention plan that reduces the likelihood of the recurrence of behaviors requiring a classroom clear.

b. If a student has a BIP but does not have an IEP, the classroom teacher shall call for and be included in a review and potential revision of the student's behavioral intervention plan.

c. If the school suspects the student whose behavior resulted in a classroom clear might be eligible for a BIP, individual health plan (IHP), safety plan, or IEP, the public agencies shall promptly determine the child's eligibility in accordance with the procedures required for determining eligibility.

14.9(4) *Parent input.* The team must consider parent input in identifying supports to address behaviors that caused the classroom clear.

a. If the parent of a student with an IEP chooses not to participate in the meeting, the school must follow procedures to document efforts to invite the parent, as required by rule 281—41.322(256B,34CFR300), and inform the parent of proposed changes to the IEP or BIP, or both, as required by rule 281—41.503(256B,34CFR300).

b. If the parent of a student without an IEP chooses not to participate in the meeting, the school will continue to support the student's needs by planning and providing intervention for the student.

14.9(5) *Additional provisions.* When calling for a meeting, the classroom teacher may be required to follow procedures established by the school district or AEA to request such a meeting. Any recommended change to a student’s behavior intervention plan, individual health plan, safety plan, or educational placement shall be made in accordance with the procedures required for amending said plan or changing said placement.

281—14.10(279) Documentation and reporting.

14.10(1) *General.* A classroom teacher shall report to the principal any incident of assault or violence that results in injury or property damage by a student enrolled in the school. For purposes of this rule, attending students includes all students who are actively attending school, suspended or expelled during the reporting school year. Districts should document all incidents that occur in a school building, on school grounds, or at a school-sponsored function by students attending school in the district. The school district shall report to the department, in a manner prescribed by the department, an annual count of disaggregated incidents of assault, violence resulting in injury, violence resulting in property damage, and referral/transfer to a therapeutic classroom that includes the therapeutic components as described in subrule 14.12(2). Incidents shall be reported if they occurred by a student in a school building, on school grounds, or at a school-sponsored function.

14.10(2) *Contents of report.* The report shall include demographic information on students reported as victims and perpetrators, disaggregated by race, gender, national origin, age, grade level, and disability status, along with any other data required by the department to implement the Elementary and Secondary Education Act as amended by the Every Student Succeeds Act, Public Law 114-95, and with safeguards to ensure student privacy.

14.10(3) *Reporting by the department.* The department of education shall compile and summarize the data it receives under this rule and submit a report to the general assembly each

year by November 1.

281—14.11(256) Crisis response.

14.11(1) *General.* The following consists of appropriate responses to classroom behavior that presents an imminent threat of bodily injury and consistent with rules for seclusion and restraint:

a. Responses shall include nationally recognized best practices of crisis response/intervention to de-escalate behaviors that are likely to result in bodily harm.

b. Crisis response strategies shall include a safety assessment and continuum of strategies informed by the level of risk and the safety assessment.

c. When possible, response strategies shall use less disruptive, nonphysical intervention prior to the use of physical interventions, unless the circumstances are such that physical intervention is necessary to ensure the safety of the student and others.

14.11(2) *Use of reasonable force.* Notwithstanding the ban on corporal punishment in rule 281—103.3(256B,280), no employee subject to these rules is prohibited from using reasonable and necessary force in compliance with this chapter and 281—Chapter 103. An employee is not privileged to use unreasonable force to accomplish any of the purposes listed in this chapter and 281—Chapter 103. If physical force is used, school employees shall comply with any requirements imposed by 281—Chapter 103 and this chapter.

281—14.12(256) Prevention of classroom behaviors that present an imminent threat.

14.12(1) Appropriate responses to behaviors, including classroom behavior that presents an imminent threat of bodily injury, shall be part of evidence-based tiered supports within the department's continuous improvement framework to support student SEBH.

14.12(2) The evidence-based tiered supports shall:

a. Include universal support for all students that foster the emotional well-being of students

through schoolwide safe and supportive environments.

b. Be culturally responsive.

c. Be trauma responsive.

d. Include positive school discipline practices.

e. Include crisis prevention, intervention and de-escalation that is based on student SEBH needs and reasonable in response to the behavior that is being exhibited.

f. Include proactive strategies which enable schools to identify and intervene early in order to minimize the escalation of identified behavioral health symptoms and other barriers to school success.

g. Include classroom management practices that include the following evidence-based practices:

(1) An effectively designed physical classroom.

(2) Predictable classroom routines.

(3) Posted positive classroom expectations.

(4) Prompts and active supervision.

(5) Varied opportunities to respond.

(6) Acknowledgments for expected behavior.

h. Engage parents and guardians as partners in identifying appropriate supports for the students.

i. Support student development of social-emotional competencies and skills through planned universal instruction.

j. Have a set of specific supplemental interventions and intensive intervention supports that:

(1) Are for students whose behaviors are unresponsive to low-intensity strategies.

- (2) Are based on functional behavior assessment (FBA).
- (3) Are supported by individuals trained to handle such issues.
- (4) Involve parents in development and ongoing review.

281—14.13(256) Therapeutic classroom. A school district may include therapeutic classrooms as part of its district’s or building’s tiers of SEBH supports. A therapeutic classroom is designed for the purpose of providing support for any student, with or without an IEP, whose emotional, social, or behavioral needs interfere with the student’s ability to be successful in the current educational environment, with or without supports, until the student is able to successfully return to the student’s current education environment, with or without supports, including but not limited to the general education classroom. A placement in a therapeutic classroom shall not be permanent or indefinite, but shall be reviewed periodically as called for in this rule. For the purpose of this chapter, the word “classroom” is a descriptor of an educational set of services that create the educational environment that may include but is not required to include a separate physical setting from other students.

14.13(1) Continuum of programming. Therapeutic classrooms include the therapeutic programming students may need to support them across a range of educational settings or learning spaces, or both, and are not necessarily standalone or isolated classrooms. Therapeutic classroom supports are part of a district’s tiers of SEBH supports.

14.13(2) Therapeutic classroom requirements. For state cost reimbursement and reporting purposes, a therapeutic classroom shall:

a. Include the following therapeutic components:

(1) A multidisciplinary team who collaborates regularly to support design, implementation and decision-making regarding therapeutic program supports including but not limited to an individual

qualified to conduct diagnostic assessments and support SEBH programming for individuals with social-emotional concerns;

(2) Practices that enhance positive childhood experiences;

(3) Clearly articulated and taught behavioral expectations and routines;

(4) Regular assessment of social-emotional competencies with targeted individualized instruction, small group social-emotional instruction, or both;

(5) Individualized BIPs developed based on FBAs and trauma-informed practice;

(6) Regular engagement of family to review progress and make decisions for more or less restrictive programming;

(7) Supports for generalization and transition to less restrictive supports/settings since a therapeutic classroom is a temporary intervention. Supports include opportunities to practice social-emotional skills in natural contexts with similar age/grade peers.

b. Be operated by and housed in the school district seeking reimbursement.

c. Have appropriately licensed and certified teacher(s).

d. Follow program standards for the age(s) served and the full extent of the district's comprehensive education program, including:

(1) Preschool programs must follow preschool program standards, as specified in 281—Chapter 16;

(2) Prekindergarten-twelfth grade programs must follow 281—Chapter 12;

(3) Programs that serve students with IEPs must also follow 281—Chapter 41.

e. Not solely consist of any one of the following:

(1) Calming room/space;

(2) Single strategy or program without individualization;

(3) Space/location for disciplinary action;

(4) Seclusion room.

14.13(3) *General education students.* When general education students are served through a therapeutic classroom, the following must occur:

a. The therapeutic classroom must have clear requirements for referral, admission, progress monitoring, and exit that focus on supporting learners to return to general services,

b. Each general education student must have an individualized BIP developed based on an FBA,

c. When a student receives therapeutic services for 50 percent or more of the school day, a team of qualified professionals, the teacher, and the family must review the BIP every 60 days to consider the need for transition to more or less intensive programming,

d. If, at any point, public agencies suspect a disability, the public agencies must request consent for a full and individual evaluation for special education from the parent as required by 281—Chapter 41.

14.13(4) *Special education students.* Districts operating therapeutic classrooms that serve learners with IEPs shall follow 281—Chapter 41, including requirements for education in the least restrictive environment.

14.13(5) *Consortium agreements.* A district may enter into a cost-sharing consortium agreement with one or more school districts or area education agencies to provide therapeutic classroom supports. Districts shall not enter into an agreement to purchase or hold seats in a therapeutic classroom. If a district seeks cost reimbursement for student(s) who attend a therapeutic classroom:

a. The therapeutic classroom shall be housed within the district’s boundaries;

b. The district seeking reimbursement shall be fiscally responsible for the therapeutic classroom;

c. The district seeking reimbursement shall be responsible for operating the therapeutic classroom.

14.13(6) *Rule of construction.* A school district is not required to operate a therapeutic classroom; however, a school district is required to ensure therapeutic services are available, whether in-district or otherwise, to students who need those services to access or benefit from an education.

281—14.14(256) Therapeutic classroom—claims. A school district may submit claims to the department for the costs of providing therapeutic classroom services and transportation services in accordance with this rule.

14.14(1) *Reimbursement of transportation services.* If the general assembly appropriates moneys for purposes of transportation claims reimbursement in accordance with this subrule, the resident school district may submit a claim to the department for reimbursement for transportation services for a student who is transported to a therapeutic classroom operated by another school district or accredited nonpublic school and located more than 30 miles from the student's designated school or accredited nonpublic school.

a. Claims are allowable for students enrolled in the school district or in an accredited nonpublic school located in the district boundary and who do not have an assigned special education weighting.

b. Such claims may be allowable when the school districts or school district and accredited nonpublic school have a shared agreement to provide the therapeutic classroom.

c. Claims shall be made to the department of education using an invoice supplied by the

department and completed by the school district providing transportation during the school year.

d. Claims must include a listing of actual costs per student transported to a therapeutic classroom, including number of days transported, transportation miles, and other actual costs.

14.14(2) *Claims for reimbursement of services.*

a. By June 15, 2022, and annually by June 15 thereafter, districts may submit a claim for reimbursement of therapeutic classroom services for the prior school year.

b. By July 1 of each year, the department shall draw warrants payable to school districts for such claims.

c. On June 15, 2022, and continuing each June 15 thereafter, districts providing therapeutic classrooms may submit a claim for reimbursement to the department for students served by their therapeutic classroom during the prior school year who have BIPs but no IEP weighting. Districts may submit claims for 1.5 weighting for the number of days they served the student and the number of days in the school district's calendar.

d. School districts will collect student-level data throughout the year and submit it at the end of the year using a department invoice.

e. In order for the school district to submit a claim for reimbursement for students attending an accredited nonpublic school or receiving competent private instruction, the student shall be counted as a shared-time student in the district in which the nonpublic school of attendance is located.

f. Reimbursement will be prorated if claims exceed the amount appropriated.

g. Claims must include: student served in a therapeutic classroom, confirmation the student has a BIP and does not have a weighted IEP for the period claimed, number of days served and the number of days in the school district's calendar.

h. The costs of providing transportation to nonpublic school pupils as provided in this rule shall not be included in the computation of district cost under Iowa Code chapter 257 but shall be shown in the budget as an expense from miscellaneous income. Any transportation reimbursements received by a school district for transporting nonpublic school pupils shall not affect district cost limitations of Iowa Code chapter 257. The reimbursements provided in this rule are miscellaneous income as defined in Iowa Code section 257.2.

281—14.15(256,279,280) Required training. This rule applies to public schools, nonpublic school districts and area education agencies.

14.15(1) An employee must receive training that complies with 281—Chapter 103 prior to using any form of physical restraint or seclusion and includes research-based alternatives to physical restraint and seclusion.

14.15(2) An employee must receive training regarding the least restrictive environment. While there is a presumption that the general education environment is the least restrictive environment, data may overcome that presumption. “General education classroom” is not synonymous with “least restrictive environment.” Training must include the process and procedures for:

a. Making placement decisions based on individual student performance data and participation with peers without disabilities; and

b. Reviewing student performance data to determine whether changes need to be made to ensure the individual is being educated in the learner’s least restrictive environment.

14.15(3) AEA staff, classroom teachers and school administrators shall receive training prior to using a classroom clear to calm a student. Training shall be reviewed regularly, but no less frequently than once every three school years, and cover the following topics:

a. The rules of this chapter;

- b.* The school's specific policies and procedures regarding the rules of this chapter;
- c.* Training on recognizing and responding to incidents that are an imminent threat of bodily injury;
- d.* Student, parent/guardian, and staff notifications and parent follow-up requirements;
- e.* Reporting requirements for incidents of assault and violence resulting in injury or property damage;
- f.* Reporting requirements for referral and transfer to therapeutic classroom(s);
- g.* The school's specific crisis response plan for incidents of imminent threat;
- h.* Staff supports following a crisis or significant event.

14.15(4) Within one year of beginning employment in a teaching position in Iowa, a classroom teacher shall receive training on the prevention of behaviors that present an imminent threat. Training must include the following topics:

- a.* The school's specific policies and procedures for creating learning environments that are safe and supportive.
- b.* Evidence-based culturally responsive approaches to student discipline.
- c.* Evidence-based classroom management strategies that include:
 - (1) An effectively designed physical classroom.
 - (2) Predictable classroom routines.
 - (3) Posted positive classroom expectations.
 - (4) Prompts and active supervision.
 - (5) Varied opportunities to respond.
 - (6) Acknowledgments for expected behavior.
- d.* Universal instruction of social-emotional competencies.

e. Engaging families as partners in identifying appropriate supports for learner success.

f. Crisis prevention, crisis intervention, and crisis de-escalation techniques consistent with rule 281—14.4(279).

14.15(5) AEA and school district staff who engage in intervention planning to support supplemental and intensive social-emotional interventions shall receive training on evidence-based interventions for challenging classroom behaviors. Training must include the following topics:

a. FBAs;

b. Using FBAs to design BIPs;

c. Individual safety plans;

d. Supports for student reentry to learning following a significant event;

e. Supports for teacher implementation of BIPs;

f. Crisis prevention, crisis intervention, and crisis de-escalation techniques consistent with rule 281—14.4(256,280) that are culturally responsive and trauma responsive;

g. Duties and responsibilities of school resource officers and other responders; the techniques, strategies and procedures used by responders; and knowledge of who in the building is trained and authorized in seclusion and restraint;

h. Documentation and notification requirements for incidents of seclusion, restraint, classroom clear and transfer/referral to a therapeutic classroom.

281—14.16(256) Department responsibilities, evidence-based standards, guidelines and expectations. By June 30, 2022, the department shall develop, establish, and distribute to all school districts evidence-based standards, guidelines, and expectations for the appropriate and inappropriate responses to behavior in the classroom that present an imminent threat of bodily

injury to a student or another person to assist the districts in compliance with this rule. The standards, guidelines, and expectations will be consistent with 281—Chapter 103. The evidence-based standards, guidelines, and expectations for the appropriate and inappropriate responses to behavior in the classroom that presents an imminent threat of bodily injury will be based on the department’s continuous improvement framework to support student social-emotional-behavioral health (SEBH). The director shall consult with the area education agencies to create comprehensive and consistent standards and guidance for professional development relating to successfully educating individuals in the least restrictive environment, and for evidence-based interventions consistent with the standards established pursuant to this rule.

ITEM 6. Adopt the following **new 281—Chapter 14** Division II implementation sentence:

This division is intended to implement Iowa Code chapters 256, 279 and 280.

ITEM 7. Reserve rules **281—14.17** to **281—14.19**.

ITEM 8. Adopt the following **new 281—Chapter 14**, Division III heading:

DIVISION III

SCHOOL BEHAVIORAL HEALTH SCREENING AND TELEHEALTH

ITEM 9. Adopt the following **new** rules 281—14.20(280A) to 281—14.24(280A):

281—14.20(280A) Purpose and objectives: contracted behavioral health screening and telehealth. This division describes the responsibilities of Iowa AEAs, public school districts, and accredited nonpublic school districts and behavioral health service providers as required by Iowa Code section 280A.1, should they choose to enter into agreements for behavioral health screenings or telehealth services.

281—14.21(256B,280A) Definitions. For the purposes of this division, the following definitions

apply:

“Accredited nonpublic school” means any school, other than a public school, that is accredited pursuant to Iowa Code section 256.11 for any and all levels for grades 1 through 12.

“Area education agency” or *“AEA”* means an area education agency established pursuant to Iowa Code chapter 273.

“Behavioral health screening” or *“screening”* means a screening and assessment performed using a universal behavioral health screening and assessment tool, approved for use by the department of education in consultation with the department of public health and the department of human services, to identify factors that place children at higher risk for behavioral health conditions, to determine appropriate treatment or intervention, and to identify the need for referral for appropriate services.

“Behavioral health services” means services provided by a health care professional operating within the scope of the health care professional’s practice which address mental, emotional, medical, or behavioral conditions, illnesses, diseases, or problems.

“Educational service agency” means a governmental agency or government entity which is established and operated exclusively for the purpose of providing educational services to one or more educational institutions.

“Health care professional” means a physician or other health care practitioner licensed, accredited, registered, or certified to perform specified health care services consistent with state law.

“In-person encounter” means that the mental health professional and the student are in the physical presence of each other and are in the same physical location during the provision of behavioral health services.

“Mental health professional” means the same as defined in Iowa Code section 228.1.

“Patient” means a student receiving a behavioral health screening or other behavioral health services in accordance with this chapter.

“Primary care provider” means the personal provider trained to provide the first contact and continuous and comprehensive care to a patient and includes but is not limited to any of the following licensed or certified health care professionals who provide primary care: a physician who is a family or general practitioner or a pediatrician, an advanced registered nurse practitioner, or a physician assistant.

“Provider-patient relationship” means the relationship between the patient and the mental health professional that meets the requirements for commencement and establishment of a valid provider-patient relationship.

“Public school” means any school directly supported in whole or in part by taxation.

“School” means any of the following: an accredited nonpublic school, an area education agency, or a public school.

“School district” means a school district described in Iowa Code chapter 274.

“Student” means a person enrolled in and attending an accredited nonpublic school or a public school in grades 1 through 12.

“Telehealth” means the same as defined in Iowa Code section 514C.34: the delivery of health care services through the use of interactive audio and video. Telehealth does not include the delivery of health care services through an audio-only telephone, electronic mail message, or facsimile transmission.

281—14.22(280A) Behavioral health screenings in school settings.

14.22(1) A school district, an accredited nonpublic school, or an AEA may contract with a

mental health professional or a nationally accredited behavioral health care organization in order to provide universal behavioral health screenings to students. If the school district, accredited nonpublic school, or area education agency contracts with mental health professionals to conduct behavioral health screenings, the following applies:

a. The screenings shall be administered with the contracted mental health professional present, using a screener approved by the department, in consultation with the department of public health and the department of human services.

b. The school district, accredited nonpublic school, or AEA that contracts for on-site student behavioral health screenings shall obtain written parent or guardian consent or, in the case of a student who has reached the age of majority, the student's written consent prior to the student's participating in each screening.

c. At any point before or during the screening, a student may opt out or discontinue participation in the screening without retribution.

14.22(2) The parental consent shall allow for the mental health professional to disclose the screening results to the school or AEA if there is a credible threat to the health and safety of the student or others and provide the appropriate emergency contact. The parental consent may allow for the mental health professional to disclose screening information to the school or AEA in order to support the student(s) who may need intervention that could be provided through the school.

14.22(3) The school district or AEA shall ensure that the mental health professionals contracted to administer the screeners are qualified to administer the selected behavioral health screener.

14.22(4) The school district or AEA shall have procedures to secure and limit the access to health information to comply with the Health Insurance Portability and Accountability Act (HIPAA) in accordance with parental consent.

14.22(5) If a mental health professional conducts the screening and determines that a student needs additional behavioral health services, the mental health professional:

- a.* Shall notify the parent or guardian of the student of the results of the screening.
- b.* May notify the student's primary care provider, with parent or guardian consent, or the consent of the student who has reached the age of majority.
- c.* May provide a list of local primary care providers to the parent or guardian if the student does not have a primary care provider.

281—14.23(280A) Establishment of provider-patient relationship for telehealth in school setting.

14.23(1) A school district, accredited nonpublic school, or AEA may provide access to behavioral health services via telehealth on school/AEA premises.

14.23(2) If a mental health professional provides behavioral health services via telehealth on school/AEA premises, the mental health professional shall first establish a valid provider-patient relationship. The provider-patient relationship is established when:

- a.* The student, with the consent of the student's parent or guardian when the student has not yet reached the age of majority, seeks help from a mental health professional;
- b.* The mental health professional agrees to provide treatment of the student; and
- c.* The student's parent or guardian agrees to have the student treated by the mental health professional.

14.23(3) A valid provider-patient relationship may be established through any of the following means:

- a.* An in-person medical interview and physical examination conducted under the standard of care required for an in-person encounter;

b. Consultation with a primary care provider who has an established relationship with the patient and who agrees to participate in or supervise the patient's care; or

c. Use of interactive audio and video telehealth, if:

(1) The standard of care does not require an in-person encounter, in accordance with evidence-based standards of practice and telehealth practice guidelines that address the clinical and technological aspects of telehealth; or

(2) The student's parent or guardian is present.

14.23(4) If a provider-patient relationship is established and the student has not yet reached the age of majority, parent or guardian consent shall be obtained prior to the student receiving behavioral health services via telehealth in a school or AEA setting and shall be required each academic year that the student receives telehealth services.

14.23(5) The school district shall maintain any consent form completed by a parent or guardian.

281—14.24(280A) Behavioral health services provided via telehealth in a school setting.

14.24(1) On or after January 1, 2021, a school district, accredited nonpublic school or AEA may provide access to behavioral health services via telehealth on school/AEA premises.

14.24(2) If the school district, accredited nonpublic school or AEA provides access to behavioral health services via telehealth on school/AEA premises, it shall:

a. Provide a secure, confidential, and private room for services and the technology necessary to conduct telehealth services.

b. Maintain parent or guardian consent forms for each academic year the student receives services.

c. Maintain a schedule for student appointments and arrange for student access to the room by a school nurse or other appropriately trained school or AEA agency employee.

d. Ensure that no employee is present in the same room as the student during the session or service.

e. Provide information to the student participating in telehealth services about how and to whom to report inappropriate behavior by a mental health professional.

f. Provide access to the student's parent or guardian to participate in any of the student's telehealth sessions.

14.24(3) The school district, accredited nonpublic school or AEA shall not access any of the student's medical records or be responsible for billing for the telehealth services.

14.24(4) A mental health professional with prescribing authority who provides telehealth services shall not alter the dosage of an existing medication or prescribe any new medication during a telehealth session without prior consultation with the student's parent or guardian.

14.24(5) The mental health professional shall notify the student's parent or guardian of the time and place for each scheduled telehealth session and specify the means available for the parent or guardian to participate in the session.

14.24(6) The mental health or primary care provider shall keep confidential all patient records and shall not share with the school or AEA unless:

- a.* Appropriate release of information is obtained, or
- b.* Shared to prevent a serious and imminent threat to the health and safety of a student or other person, and the mental health professional assesses that the student has intent and ability to carry out the threat.

14.24(7) A public school district, an accredited nonpublic school, an AEA, the boards of directors of a school district or AEA, authorities in charge of accredited nonpublic school, and employees of schools or agencies who act reasonably and in good faith shall not be liable for any

injury resulting from the provision of voluntary behavioral health screening or behavioral health services.

This division is intended to implement Iowa Code chapter 280A.