

Red Tape Review Rule Report (Due: September 1, 2023)

Department Name:	Education	Date:	July 26, 2023	Total Rule Count:	7
IAC #:	281	Chapter/ SubChapter/ Rule(s):	35	Iowa Code Section Authorizing Rule:	282.34
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What is the intended benefit of the rule?

This rule is intended to provide basic education to children placed at private residential facilities by their parents, including notice to parents.

Is the benefit being achieved? Please provide evidence.

Yes. There are two residential facilities governed by this rule, and both comply with this rule by being accredited nonpublic schools. The school that prompted the enactment of the underlying statute, which provided education without any oversight, has permanently closed.

What are the costs incurred by the public to comply with the rule?

To comply with the rule, facilities must provide educational services in one of three ways (becoming an accredited nonpublic school, contracting with a public school district, and contracting with an accredited nonpublic school). There is a cost associated with each of these options. There is also a cost to the public disclosures required by the rule. All of those costs are mandated by the underlying statute.

What are the costs to the agency or any other agency to implement/enforce the rule?

The costs are inherent in the Department's school accreditation process. There are no additional costs to enforce this rule.

Do the costs justify the benefits achieved? Please explain.

Yes. Children's residential facilities are safer and the education provided there is now subject to oversight.

Are there less restrictive alternatives to accomplish the benefit? YES NO

If YES, please list alternative(s) and provide analysis of less restrictive alternatives from other states, if applicable. If NO, please explain.

The Iowa Code requires this rule. The Department has sought ways to make this rule less burdensome. As required by statute, the Department has sought input from the two facilities regulated by this rule, as well as the Department of Health and Human Services.

Does this chapter/rule(s) contain language that is obsolete, outdated, inconsistent, redundant, or unnecessary language, including instances where rule language is duplicative of statutory language? [list chapter/rule number(s) that fall under any of the above categories]

This chapter contains repetitive language and language that unnecessarily repeats statutory requirements.

RULES PROPOSED FOR REPEAL (list rule number[s]):

35.1 (unnecessary)
35.7 (consolidated with another rule)

RULES PROPOSED FOR RE-PROMULGATION (list rule number[s] or include rule text if available):

See attached (below)

METRICS

Total number of rules repealed:	2
Proposed word count reduction after repeal and/or re-promulgation	639
Proposed number of restrictive terms eliminated after repeal and/or re-promulgation	29

ARE THERE ANY STATUTORY CHANGES YOU WOULD RECOMMEND INCLUDING CODIFYING ANY RULES?

None noted.

Proposed New Chapter 281-35

CHAPTER 35
EDUCATIONAL AND PROGRAM STANDARDS FOR CHILDREN'S RESIDENTIAL FACILITIES

281—35.1(282) General. All school-age children, including children younger than 5 years of age and older than 18 years of age who are eligible children to receive special education, who are living in any children's residential facility providing residential care to children within the state of Iowa, which is not otherwise exempted by the Iowa Code, are to be provided an appropriate education.

281—35.2(282) Definitions. For purposes of this chapter, the following definitions apply:

"Child" or *"children"* means an individual or individuals under 18 years of age. A child is "school-age" if the child is at least 5 years of age on September 15 but not more than 21 years of age or if the child is younger than 5 years of age or older than 18 years of age and is an eligible child to receive special education.

"Children's residential facility" is defined in Iowa Code section 237C.1(3), and may also be referred to as a "private facility." It does not include any facility that houses school-age children and children eligible to receive special education who are under the jurisdiction of the department of corrections, department of human services, board of regents, or other governmental agency and that has current authority to offer direct instruction to children from funding available to one of the above agencies.

281—35.3(282) Establishing an appropriate educational program. A children's residential facility may accept any child of school age or a child who is eligible to receive special education services only after it has been issued a certificate of approval by the department of health and human services and has established an appropriate educational program and services under this chapter.

35.3(1) A private facility will establish an appropriate educational program using one of the options provided in Iowa Code section 282.34(1).

35.3(2) Any contract established by the private facility with a school district or accredited nonpublic school is to include, at a minimum, the physical location of the educational program and educational services; the parties involved; the purpose of the contract; the program description in detail; the powers, duties and authority of each party to the contract; the jurisdiction of each party to the contract; the dispute resolution procedure; specifications of the services that are contracted, if any, and how costs are to be calculated; billing procedures; how each legal, testing, and reporting obligations will be met; ownership of property belonging to the party that paid the cost or contributed the item; contract amendment procedures; contract approval procedures; contract renewal and termination procedures; duration of the contract; cross indemnification; application of laws, rules and regulations; binding effect; severability; assurances; and signature of the school board with legal power to authorize the terms of the contract. Any contract developed under this rule is to be submitted to the department of education for review and approval by the director of the department prior to enactment. A contract that fails to comply with any of the provisions of this chapter is void.

35.3(3) Children residing in a private facility who need treatment or security throughout the day shall have classrooms made available at the site of the private facility at no cost to the school district providing the instructional program or instructional

supervision. The classroom is to meet the requirements for educational space for children in accordance with the Iowa Code, administrative rules, and state fire marshal regulations.

35.3(4) Nothing included in this chapter regulates religious education curricula of any private facility.

281—35.4(282) Notices, fees, and reporting.

35.4(1) Concerning notices and fees, private facilities comply with Iowa Code section 282.34(1), paragraphs “b” and “c”.

35.4(2) If the educational programs and educational services are provided by or through the public school district of location, only fees related to the educational programs and educational services that are authorized by the Iowa Code, including but not limited to chapter 282, may be charged. The public school district cannot charge nonresident students a higher fee than resident students.

35.4(3) A private facility is to comply with requests by the Iowa department of education for basic educational and financial information.

281—35.5(282) Provision of appropriate educational services.

35.5(1) Private facilities are to fully cooperate with the area education agency and school district in which the facility is located to fulfill the area education agency’s responsibilities for child find under 281—Chapter 41, including making a child available for evaluation and provision of services for which the child is eligible.

35.5(2) If a child does not need treatment or security by the private facility in such a time or manner as is needed to remain on the campus of the private facility, a child with an individual education plan is to be provided special education instruction and related services with other nondisabled children within the least restrictive environment to the maximum extent appropriate.

35.6(3) The area education agency in which the private facility is located, the school district of residence, and other appropriate public or private agencies or private individuals involved with the care or placement of a child will cooperate with the school district in which the private facility is located in sharing educational information, textbooks, curricula, assignments, and materials to plan and to provide for the appropriate education of the child living in a private facility and to ensure academic credit is granted to the child for instructional time earned upon discharge from the private residential facility.

35.5(4) A private facility that houses eligible children who are 4 years of age by September 15 of the school year will notify the parents or legal guardians of these eligible children about the opportunities to access quality preschool programs. Children whose parents are Iowa residents may access the statewide voluntary preschool program under 281—Chapter 16 at no cost to the parents, and transportation will be provided by the public school district in which the statewide voluntary preschool provider is located from its statewide voluntary preschool programs funding. Children whose parents are not Iowa residents may access the statewide voluntary preschool programs, if space is available, through a tuition and transportation agreement with the public school district in which the statewide voluntary preschool program provider is located.

These rules are intended to implement Iowa Code section 282.34.