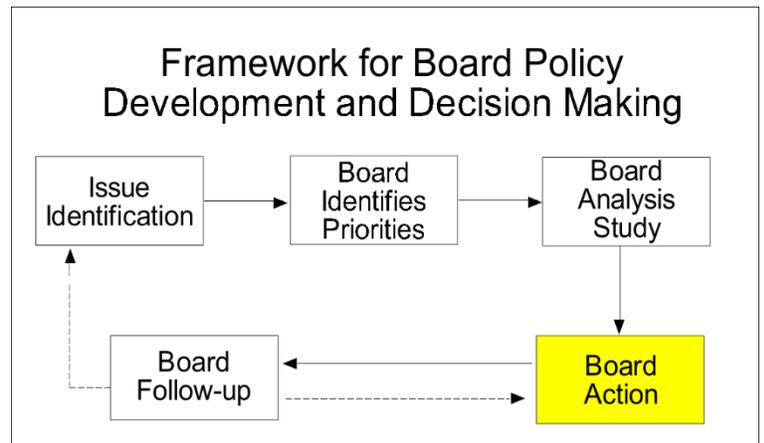


# Iowa State Board of Education

## Executive Summary

August 3, 2023



**Agenda Item:** Rules – Chapter 20, Students First Act / Education Savings Accounts (Adopt)

**State Board Priority:** Eliminating Achievement and Opportunity Gaps

**State Board Role/Authority:** The State Board has authority under Iowa Code section 256.7(5).

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

Kassandra Cline, Chief  
Bureau of School Business Operations

**Attachment(s):** One

**Recommendations:** The Department recommends that the State Board adopt a new chapter 20.

**Background:** After a period of public comment, the Department recommends adopting Chapter 281—20(257) as set forth in the emergency rules, with the following three changes.

1. Added language to allow the director to consider income reductions after the filing of the previous year's tax return.
2. Added language to clarify that an "approved provider" must hold a credential relevant to the service being provided.
3. Added language to clarify what expenses are ineligible.

## EDUCATION DEPARTMENT[281]

### Adopted and Filed

The State Board of Education hereby adopts new Chapter 20, “Students First Act—Education Savings Accounts,” Iowa Administrative Code.

#### *Legal Authority for Rulemaking*

This rulemaking is adopted under the authority provided in section 256.7 and 2023 Iowa Acts, House File 68.

#### *State or Federal Law Implemented*

This rulemaking implements, in whole or in part, 2023 Iowa Acts, House File 68.

#### *Purpose and Summary*

This rulemaking adopts Chapter 20 containing the administrative rules for the education savings account provisions of the Students First Act. Rule 281—20.1(257) provides definitions for the program. Rule 281—20.2(257) sets eligibility requirements for participation. Rule 281—20.3(257) sets parameters for the application process. Rule 281—20.4(257) provides for administration and accountability for the program.

#### *Public Comment and Changes to Rulemaking*

Notice of Intended Action for this rulemaking was published in the Iowa Administrative Bulletin on May 31, 2023, as **ARC 7023C**.

This rulemaking was also adopted and filed emergency and published in the Iowa Administrative Bulletin as **ARC 7024** on the same date.

A public hearing was held on June 20, 2023, at 9:00 a.m. at the Grimes State Office Building, with a videoconference option. Two people were present and one presented public comment at the hearing. Three organizations submitted written comment: the Iowa State Education Association, the Urban Education Network, and the Rural School Advocates of Iowa.

The written comments were largely supportive of the Department’s implementation of the statute as written. The Department also considered the public discussion at the June 13, 2023, meeting of the Administrative Rules Review Committee, as well as technical drafting assistance from the Administrative Code editor.

The Department made three changes from the emergency rules. First, and based on experiences of reviewing applications under the emergency rules, the Department added language in subrule 20.1(1) to allow the director to consider income decreases after the filing of the previous year’s tax return. Second, and based on written comment, the Department added language in subrule 20.1(6), paragraph “d”, to clarify that an “approved provider” must hold a credential relevant to the service being provided. Finally, and based on technical drafting assistance from the Administrative Code Editor, the Department added language to subrule 20.1(6), paragraph “e”, to clarify what expenses are ineligible.

The Department did not make the following changes requested by commenters. One written comment and the comment at the public hearing stated the income restrictions for the first two school years are not constitutional. The Department is unable to address this matter through rulemaking, as statutes are presumed constitutional.

The Department will not add proposed language that restates statutory requirements. For that reason, the Department need not add language spelling out which assessments students participating in the ESA program are required to take.

The Department will not add proposed language that can be adequately addressed through assurances in the platform maintained by the third-party vendor. This includes requests for rule language on notification when a student withdraws from a nonpublic school, and specific reporting requirements for enrollment data to public school districts.

The Department has considered a request to clarify the relationship between online schools and online providers. No rulemaking is necessary; however, the Department restates its position under the emergency rules that online schools and online providers of educational services are not synonymous. Furthermore, other rules provide that no accredited nonpublic school may be fully online without an on-ground presence. Iowa Admin. Code r. 281—15.12(6). It is not necessary to restate that requirement in this chapter.

One commenter asked for clarification on what happens if a student who is eligible for an ESA does not enroll in a nonpublic school. No rulemaking is necessary to provide that clarification. ESA funds are in the state’s possession until the point when the parent/guardian approves an invoice from the nonpublic school for payment of tuition and fees.

#### *Adoption of Rulemaking*

This rulemaking was adopted by the State Board of Education on August 3, 2023.

#### *Fiscal Impact*

This rulemaking has a fiscal impact to the state of Iowa, as described in the Fiscal Note for House File 68, available at [www.legis.iowa.gov/docs/publications/FN/1367577.pdf](http://www.legis.iowa.gov/docs/publications/FN/1367577.pdf). Note that the Fiscal Note estimate was completed before the final enactment of supplemental state aid for the 2023-2024 school year. Additionally, fiscal impacts remain contingent on the number of eligible individuals who use an ESA to enroll in an accredited nonpublic school.

#### *Jobs Impact*

After analysis and review of this rulemaking, 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 rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking 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 rulemaking will become effective on September 27, 2023.

The following rulemaking action is adopted:

ITEM 1. Adopt the following **new** 281—Chapter 20:

CHAPTER 20

STUDENTS FIRST ACT—EDUCATION SAVINGS ACCOUNTS

**281—20.1(257) Definitions.**

**20.1(1)** “Annual income” means the same as “net income” as defined in Iowa Code section 422.7 in effect for the year preceding an application. In calculating annual income, the department shall use information from the last year’s state tax form and need not include income of individuals who have no legal obligation to provide support to the student unless said individual is married to the parent or guardian who is responsible for financially supporting the student. If “annual income” cannot be clearly determined through review of the submitted tax return, the department director has authority to request additional information and determine eligibility. The department director may consider income reductions after the filing of the preceding year’s tax return. This subrule applies only for school years beginning July 1, 2023, and July 1, 2024; it will cease to be applicable by operation of law on July 1, 2025.

**20.1(2)** “Department” means the department of education.

**20.1(3)** “Full-time” means enrollment at a nonpublic school with a minimum school calendar that meets the requirement of Iowa Code section 279.10 for at least 75 percent of the school’s definition of full-time.

**20.1(4)** “Household” means the number of people who reside together and who are related by birth, marriage, adoption, legal guardianship, or placement in the home through a state agency. “Household” includes parents, student applicants, and other children who share at least one parent by birth, by adoption, by a parent’s current marriage, or by placement in the home through a state agency. A parent on military duty is considered to be residing in the household. If “household” cannot be clearly determined through review of the submitted tax return, the department director has authority to request additional information and determine eligibility. This subrule applies only for school years beginning July 1, 2023, and July 1, 2024; it will cease to be applicable by operation of law on July 1, 2025.

**20.1(5)** “Nonpublic school” means the same as defined in Iowa Code section 285.16.

**20.1(6)** “Qualified educational expenses” means the same as defined in Iowa Code section 257.11B(1) “*b*” as enacted by 2023 Iowa Acts, House File 68, section 7.

*a.* For purposes of this subrule, an approvable provider of “educational therapies” is qualified by recognized training and education to provide those educational therapies. To prevent waste, fraud, and abuse, “educational therapies” does not include therapies provided by the student’s family. For purposes of this subrule, “family” includes parents, step-parents, guardians, siblings, half siblings, step-siblings, grandparents, step-grandparents, aunts, uncles, or first cousins.

*b.* For purposes of this subrule, approvable “online education programs” means online education programs provided by online education providers approved by the department under

281—Chapter 15.

*c.* For purposes of this subrule, an approvable provider of “vocational and life skills education” is any entity approved by the department or any other unit of state government to provide the vocational and life skills education sought.

*d.* For purposes of this subrule, an approvable “accredited provider” is any individual or organization holding a credential issued by the Iowa board of educational examiners or any other credential issued by the state of Iowa to provide the service at issue. For purposes of this paragraph, paraprofessionals or assistants are sufficiently trained if they hold a credential issued under Iowa Code section 272.12 or if they have received training and education deemed sufficient by their supervising professional.

*e.* For purposes of this subrule, expenses listed in Iowa Code section 257.11B(1) “*b*” as enacted by 2023 Iowa Acts, House File 68, section 7, as “not included” in the definition of “qualified educational expenses” are not eligible for payment.

**20.1(7)** “Resident” means the same as defined in Iowa Code section 282.1(2).

**20.1(8)** “Student” is synonymous with the term “pupil” as that term is used in Iowa Code section 257.11B as enacted by 2023 Iowa Acts, House File 68, section 7.

**281—20.2(257) Eligible students.**

**20.2(1)** Resident students are eligible as described in Iowa Code section 257.11B(2) as enacted by 2023 Iowa Acts, House File 68, section 7, with annual income determined pursuant to subrule 20.1(1).

**20.2(2)** Resident students are deemed to attend a nonpublic school for that school budget year under Iowa Code section 257.11B(2) as enacted by 2023 Iowa Acts, House File 68, section 7, if the student attends a nonpublic school on a full-time basis.

**20.2(3)** Resident students are deemed enrolled in a nonpublic school for the school year immediately preceding the school year for which the education savings account (ESA) payment is requested under Iowa Code section 257.11B(2) as enacted by 2023 Iowa Acts, House File 68, section 7, if they enrolled in and attended a nonpublic school at any point in the immediately preceding school year.

**281—20.3(257) Application process.** The parent or guardian of an eligible student may request an ESA payment during the time period specified by Iowa Code section 257.11B(3) as enacted by 2023 Iowa Acts, House File 68, section 7, by applying to the department, in a manner prescribed by the department. Within the time frame provided by Iowa Code section 257.11B(5) as enacted by 2023 Iowa Acts, House File 68, section 7, the department provides a response to the application.

**281—20.4(257) Administration, accountability, monitoring, and enforcement.**

**20.4(1)** The department will take reasonable efforts to verify eligibility of parents, students, nonpublic schools, and providers to participate in this chapter, including verifying information with other state agencies.

**20.4(2)** The department will make an equal distribution of funds under this chapter to a third-party entity, for distribution to eligible students' accounts, after confirming enrollment at the start of the academic year and enrollment and attendance at the midpoint of the academic year.

**20.4(3)** The department's actions under Iowa Code section 257.11B(5) "e" and "f" as enacted by 2023 Iowa Acts, House File 68, section 7, may be any action consistent with the department's authority under Iowa Code section 256.1.

**20.4(4)** The department must recover all improperly paid ESA funds. The department and its director have flexibility to engage in voluntary collection activities if overpayments were based on a good faith error. For purposes of this chapter, a "false claim" is a statement made in conjunction

with this program that is knowingly false or in reckless disregard of the truth.

**20.4(5)** A parent or guardian may appeal to the state board of education any administrative decision the department or third-party entity makes pursuant to this chapter, including determinations of eligibility, allowable expenses, and removal from the program. An appeal under this subrule must be signed and in writing. Electronic submissions and signatures are allowed. Any appeals under this subrule are timely if filed within 30 days of the date of the administrative decision and are governed by 281—Chapter 6.

These rules are intended to implement Iowa Code section 257.11B as enacted by 2023 Iowa Acts, House File 68.