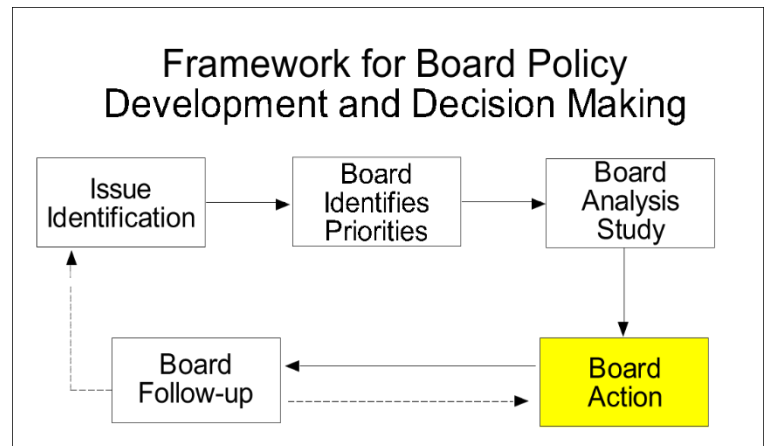


# Iowa State Board of Education

## Executive Summary

December 4, 2023



**Agenda Item:** Rules: 281 IAC Chapter 33 – “Educating Homeless Children and Youth” (Adopt)

**State Board Priority:** Ensuring Equity in Education

**State Board Role/Authority:** This rule making is proposed under the authority provided in Iowa Code section 256.7(5).

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

**Attachment(s):** One

**Recommendation:** It is recommended that the State Board adopt this new Chapter 33.

**Background:** As part of the Department of Education’s review of rules under Executive Order 10, the Department identified several instances where the rules duplicate language from the Iowa Code or the United States Code, including the definition of “homeless child or youth” and the responsibilities of the local homeless coordinator. In this proposed rulemaking, that language is removed and the rules are simplified.

## EDUCATION DEPARTMENT[281]

### Adopted and Filed

The State Board of Education hereby rescinds Chapter 33, “Educating Homeless Children and Youth,” Iowa Administrative Code, and adopts a new Chapter 33 with the same title.

#### *Legal Authority for Rulemaking*

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

#### *State or Federal Law Implemented*

This rulemaking implements, in whole or in part, the McKinney-Vento Homeless Assistance Act (42 U.S.C. §11431).

#### *Purpose and Summary*

As part of the Department of Education’s review of rules under Executive Order 10, the Department identified several instances where the rules duplicate language from the Iowa Code or the United States Code, including the definition of “homeless child or youth” and the responsibilities of the local homeless coordinator. In this proposed rulemaking, that language is removed and the rules are simplified.

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

Notice of Intended Action for this rulemaking was published in the Iowa Administrative Bulletin on October 4, 2023, as **ARC 7087C**.

Two public hearings were held on October 24, 2023: at 10:00 a.m., in the State Board Room, Grimes State Office Building, Des Moines, and at 5:00 p.m. at Roosevelt High School, Des Moines. No one attended the public hearings. No comments were received. No changes were made from the notice of intended action.

#### *Adoption of Rulemaking*

This rulemaking was adopted by the State Board of Education on December 4, 2023.

*Fiscal Impact*

This rulemaking has no fiscal impact to the state of Iowa.

*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 rulemaking 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 January 31, 2024.

The following rulemaking action is adopted:

ITEM 1. Rescind 281—Chapter 33 and adopt the following **new** chapter in lieu thereof:

CHAPTER 33  
EDUCATING HOMELESS CHILDREN AND YOUTH

**281—33.1(256) Definitions.**

“*District of origin*” means the public school district in Iowa in which a child was last enrolled or which a child last attended when permanently housed.

*“Guardian”* means a person of majority age with whom a homeless child or youth of school age is living or a person of majority age who has accepted responsibility for the homeless child or youth, whether or not the person has legal guardianship over the child or youth.

*“Homeless child or youth”* means a child or youth from the age of 3 years through 21 years who meets the definition in Iowa Code section 282.1(2) “a”(2).

*“Preschool child”* means a child who is three, four, or five years of age before September 15.

*“School of origin”* means the school that a child or youth attended when permanently housed or the school in which the child or youth was last enrolled, including a preschool. When the child or youth completes the final grade level served by the school of origin, the term “school of origin” includes the designated receiving school at the next grade level for all feeder schools.

*“Unaccompanied homeless youth”* means a homeless youth not in the physical custody of a parent or guardian.

**281—33.2(256) Responsibilities of school districts.** A public school district (district) shall do all of the following:

**33.2(1)** The district will locate and identify homeless children or youth within the district, whether or not they are enrolled in school.

**33.2(2)** The district will post, at community shelters and other locations in the district where services or assistance is provided to the homeless, information regarding the educational rights of homeless children and youth and encouraging homeless children and youth to enroll in the public school.

**33.2(3)** The district will examine and revise, if necessary, existing school policies or rules that create barriers to the enrollment of homeless children or youth, consistent with these rules. Examination and revision include identifying and removing barriers that prevent such children and

youth from receiving appropriate credit for full or partial coursework satisfactorily completed while attending a prior school, in accordance with state, local, and school policies. Examination and revision also include ensuring that homeless children and youth who meet the relevant eligibility criteria do not face barriers to accessing academic and extracurricular activities, including magnet school, summer school, career and technical education, advanced placement, online learning, and charter school programs, if such programs are available at the state and local levels. School districts are encouraged to cooperate with agencies and organizations for the homeless to explore comprehensive, equivalent alternative educational programs and support services for homeless children and youth when necessary to implement the intent of these rules.

**33.2(4)** The district will enact a policy prohibiting the segregation of a homeless child or youth from other students enrolled in the public school district.

**33.2(5)** The district immediately will enroll a homeless child or youth, pending resolution of any dispute regarding in which school the child or youth should be enrolled.

**33.2(6)** The district will determine school placement based on the best interests of a homeless child or youth. The district, to the extent feasible, will keep a homeless child or youth in the school of origin, except when doing so is contrary to the wishes of the child's or youth's parent or guardian. If the child or youth becomes permanently housed during an academic year, enrollment continues in the school of origin for the remainder of that academic year unless the parent or guardian agrees otherwise.

**33.2(7)** The district will designate as the district's local educational agency liaison for homeless children and youth an appropriate staff person who is able to and has been trained to carry out the duties specified in 42 U.S.C. Section 11432(g)(6) and coordinates and collaborates with state coordinators and community and school personnel responsible for the provision of education and

related services to homeless children and youth.

**281—33.3(256) School records; student transfers.**

**33.3(1)** The school records of each homeless child or youth will be maintained so that the records are available in a timely fashion when a child or youth enters a new school district and in a manner consistent with federal statutes and regulations related to student records.

**33.3(2)** Upon notification that a homeless student intends to transfer out of the district, a school district will immediately provide copies of the student's permanent and cumulative records, or other evidence of placement or special needs, to the homeless child or youth or the parent or guardian of a homeless child or youth who may take the copies with them.

**33.3(3)** Upon the enrollment of a homeless child or youth, a school district will accept copies of records, or other evidence of placement provided by the homeless child, youth, or the parent or guardian of the homeless child or youth, for purposes of immediate placement and delivery of education and support services. Thereafter, the receiving school will request copies of the official records from the sending school. The receiving school shall not dismiss or deny further education to the homeless child or youth solely on the basis that the prior school records are unavailable.

**281—33.4(256) Immunization.**

**33.4(1)** Consistent with the provisions of Iowa Code section 139A.8 and rules of the department of health and human services, a public school shall not refuse to enroll or exclude a homeless child or youth for lack of immunization records if any of the following situations exist. The parent or guardian of a homeless child or youth or a homeless child or youth:

*a.* Offers a statement signed by a doctor licensed by the state board of medical examiners specifying that in the doctor's opinion the immunizations required would be injurious to the health and well-being of the child or youth or to any member of the child's or youth's family or

household.

*b.* Provides an affidavit stating that the immunization conflicts with the tenets and practices of a recognized religious denomination of which the homeless child or youth is a member or adherent, unless the state board of health has determined and the director of health has declared an emergency or epidemic exists.

*c.* Offers a statement that the child or youth has begun the required immunizations and is continuing to receive the necessary immunizations as rapidly as is medically feasible.

*d.* States that the child or youth is a transfer student from any other school, and that school confirms the presence of the immunization record.

**33.4(2)** The school district will make every effort to locate or verify the official immunization records of a homeless child or youth based upon information supplied by the child, youth, parent, or guardian. In circumstances where it is admitted that the homeless child or youth has not received some or all of the immunizations required by state law for enrollment and none of the exemptions listed above is applicable, the district will refer the child, youth, and parent or guardian to the local board of health for the purpose of immunization, and the school is to provisionally enroll the child or youth in accordance with paragraph 33.4(1) “*c*” or “*d*” above.

**281—33.5(256) Waiver of fees and charges encouraged.**

**33.5(1)** If a child or youth is determined to be homeless as defined by these rules, and is not otherwise eligible for a waiver of fees under 281—Chapter 18, a school district is encouraged, subject to state law, to waive any fees or charges that would present a barrier to the enrollment or transfer of the child or youth, such as fees or charges for textbooks, supplies, or activities.

**33.5(2)** A homeless child or youth, or the parent or guardian of a homeless child or youth, who believes a school district has denied the child or youth entry to or continuance of an education in

the district on the basis that mandatory fees cannot be paid may appeal to the department of education using the dispute resolution mechanism in rule 281—33.8(256).

**281—33.6(256) Waiver of enrollment requirements encouraged; placement.**

**33.6(1)** If a homeless child or youth seeks to enroll or to remain enrolled in a public school district, the district is encouraged to waive any requirements, such as mandatory enrollment in a minimum number of courses, which would constitute barriers to the education of the homeless child or youth.

**33.6(2)** In the event that a school district is unable to determine the appropriate grade or placement for a homeless child or youth because of inadequate, nonexistent, or missing student records, the district will administer tests or utilize otherwise reasonable means to determine the appropriate grade level for the child or youth.

**281—33.7(256) Residency of homeless child or youth.**

**33.7(1)** A child or youth, a preschool child if the school offers tuition-free preschool, or a preschool child with a disability who meets the definition of homeless in these rules is entitled to receive a free, appropriate public education and necessary support services in either of the following:

- a.* The district in which the homeless child or youth is actually residing, or
- b.* The district of origin.

The deciding factor as to which district has the duty to enroll the homeless child or youth is the best interests of the child or youth. In determining the best interests of the child or youth, the district(s), to the extent feasible, will keep a homeless child or youth in the district of origin, except when doing so is contrary to the wishes of the parent or guardian of the child or youth. In the case of an unaccompanied homeless youth, the local educational agency liaison assists in the placement



or enrollment decision, taking into consideration the views of the unaccompanied homeless youth. If the child or youth is placed or enrolled in a school other than within the district of origin or other than a school requested by the parent or guardian or unaccompanied homeless youth, the district will provide a written explanation, including notice of the right to appeal under rule 281—33.8(256), to the parent or guardian or unaccompanied homeless youth.

**33.7(2)** The choice regarding placement is made regardless of whether the child or youth is living with a homeless parent or has been temporarily placed elsewhere by the parent(s); or, if the child or youth is a runaway or otherwise without benefit of a parent or legal guardian, where the child or youth has elected to reside.

**33.7(3)** Insofar as possible, a school district will not require a homeless student to change attendance centers within a school district when a homeless student changes places of residence within the district.

**33.7(4)** If a homeless child or youth is otherwise eligible and has made proper application to utilize the provisions of Iowa Code section 282.18 (open enrollment), the child or youth will not be denied the opportunity for open enrollment on the basis of homelessness.

#### **281—33.8(256) Dispute resolution.**

**33.8(1)** If a homeless child or youth is denied access to a free, appropriate public education in either the district of origin or the district in which the child or youth is actually living, or if the child's or youth's parent or guardian believes that the child's or youth's best interests have not been served by the decision of a school district, an appeal may be made to the department of education as follows:

*a.* If the child is identified as a special education student under Iowa Code chapter 256B, the manner of appeal is by letter from the homeless child or youth, or the homeless child's or youth's

parent or guardian, to the department of education as established in Iowa Code section 256B.6 and 281—Chapter 41 and governed by that chapter and the order of the presiding administrative law judge.

*b.* If the child is not eligible for special education services, the manner of appeal is by letter from the homeless child or youth or the homeless child’s or youth’s parent or guardian to the director of the department of education or a designated administrative law judge. The provisions of 281—Chapter 6 apply insofar as possible; however, the hearing shall take place in the district where the homeless child or youth is located or at a location convenient to the appealing party.

*c.* At any time a school district denies access to a homeless child or youth, the district will notify in writing the child or youth and the child’s or youth’s parent or guardian, if any, of the right to appeal and manner of appeal to the department of education for resolution of the dispute and shall document the notice given. The notice will contain the name, address, and telephone number of the legal services office in the area.

**33.8(2)** This chapter will be considered by the presiding officer or administrative law judge assigned to hear the case.

**33.8(3)** Mediation and settlement of the dispute prior to hearing are permitted and encouraged.

**33.8(4)** While dispute resolution is pending, the child or youth is enrolled immediately in the school of choice of the child’s parent or guardian or the school of choice of the unaccompanied homeless youth. The school of choice is to be an attendance center either within the district of residence or the district of origin of the child or youth.

**281—33.9(256) Transportation of homeless children and youth.**

**33.9(1) General.** A child or youth, a preschool child if the school offers tuition-free preschool, or a preschool child with a disability who meets the definition of “homeless child or youth” in

these rules shall not be denied access to a free, appropriate public education solely on the basis of transportation. The necessity for and feasibility of transportation are to be considered, however, in deciding which of two districts would be in the best interests of the homeless child or youth. The dispute resolution procedures in rule 281—33.8(256) apply to disputes arising over transportation issues.

**33.9(2) Entitlement.** Following the determination of the homeless child’s or youth’s appropriate school district under rule 281—33.7(256) or 281—33.9(256), transportation will be provided to the child or youth in the following manner:

*a.* If the appropriate district is determined to be the district in which the child or youth is actually living, transportation for the homeless child or youth is to be provided on the same basis as for any resident child of the district, as established by Iowa Code section 285.1 or local board policy.

*b.* If the appropriate district is determined to be a district other than the district in which the child or youth is actually living, the district in which the child or youth is actually living (sending district) and the district of origin will agree upon a method to apportion the responsibility and costs for providing the child with transportation to and from the receiving district. If these districts are unable to agree upon such method, the responsibility and costs for transportation will be shared equally.

**281—33.10(256) School services.**

**33.10(1)** The school district designated for the homeless child’s or youth’s enrollment will make available to the child or youth all services and assistance, including the following services, on the same basis as those services and assistance are provided to resident pupils:

*a.* Compensatory education;

- b.* Special education;
- c.* English as a second language;
- d.* Career and technical education courses or programs;
- e.* Programs for gifted and talented pupils;
- f.* Health services;
- g.* Preschool (including Head Start);
- h.* Before- and after-school child care;
- i.* Food and nutrition programs;
- j.* School counseling services to advise homeless students and prepare and improve the readiness of such students for college.

**33.10(2)** A district must include homeless students in its academic assessment and accountability system under the federal Every Student Succeeds Act, P.L. 114-95, and report disaggregated data regarding the academic achievement and graduation rates for homeless children, as set forth in that Act.

These rules are intended to implement the provisions of the McKinney-Vento Homeless Assistance Act (42 U.S.C. §11431, et seq.), as reauthorized December 10, 2015, by Title IX, Part A, of the Every Student Succeeds Act.