

Iowa State Board of Education

Executive Summary

January 11, 2024



Agenda Item: Rules: 281 IAC Chapter 35 – “Educational and Program Standards for Children’s Residential Facilities” (Adopt)

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

State Board Role/Authority: This rule making is proposed under the authority provided in Iowa Code section 259A.5.

Presenter(s): None – Consent Agenda

Attachment(s): One

Recommendation: It is recommended that the State Board amend Chapter 35.

Background: This rulemaking is pursuant to Executive Order 10. After a review and regulatory analysis, the Department identified many instances of overly restrictive language and language that duplicates statutory text verbatim. This proposed rulemaking eliminates that language.

The Department received no public comment. The adopted rules are identical to those in the notice of intended action.

EDUCATION DEPARTMENT[281]

Adopted and Filed

The State Board of Education hereby rescinds Chapter 35, “Educational Standards and Program Requirements for Children’s Residential Facilities,” Iowa Administrative Code, and to adopt a new chapter with the same title.

Legal Authority for Rulemaking

This rulemaking is adopted under the authority provided in Iowa Code section 282.34.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code section 282.34.

Purpose and Summary

This rulemaking is pursuant to Executive Order 10. After review and Regulatory Analysis, the Department of Education identified many instances of overly restrictive language and language that duplicates statutory text verbatim. This rulemaking eliminates that language. In drafting this rulemaking, the Department sought input from the Department of Health and Human Services, as well as the two facilities that are subject to this rules chapter.

Public Comment and Changes to Rulemaking

Notice of Intended Action for this rulemaking was published in the Iowa Administrative Bulletin on December 13, 2023, as **ARC 7162C**.

Two public hearings were held as follows:

January 3, 2024 1:30 to 2 p.m.	State Board Room, Second Floor Grimes State Office Building Des Moines, Iowa
January 4, 2024 9:30 to 10 a.m.	State Board Room, Second Floor Grimes State Office Building Des Moines, Iowa

No one attended the hearing. No one submitted any public comment. The adopted rules are identical to those set forth in the notice.

Adoption of Rulemaking

This rulemaking was adopted by the State Board on January 11, 2024.

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 March 13, 2024.

The following rulemaking action is adopted:

ITEM 1. Rescind 281—Chapter 35 and adopt the following **new** chapter in lieu thereof:

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*” means the same as 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 health and 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 obligation 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) A private facility is to comply with Iowa Code sections 282.34(1)“*b*” and 282.34(1)“*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 Iowa Code 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) A private facility is 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 a 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.

35.5(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 four 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.