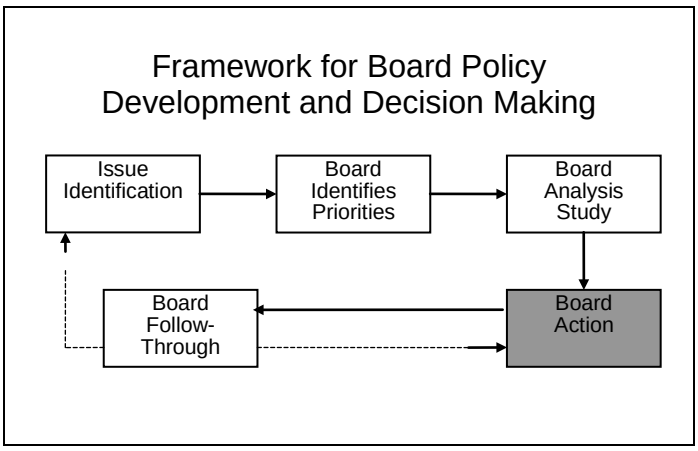
Iowa State Board of Education

Executive Summary

November 20, 2013



Agenda Item: Rules: Chapter 31 – Competent Private Instruction, Independent Private Instruction, and Dual Enrollment (Adopt)

Iowa Goal: All PK-12 students will achieve at a high level.

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: Mike Cormack, Policy Liaison
Division of Policy and Communications

Attachments: 1

Recommendation: It is recommended that the State Board adopt the changes to Chapter 31.

Background: In House File 215, provisions were introduced in the legislation that provided for new options for those who engage in private instruction, commonly known as home schooling. The Department has sent out an annual guidebook to districts, that both districts and the home school community use for guidance in this policy area, for instruction on how best to put the new law changes into practice. These rules are a companion to that instructional guide which is already in the field, due to the July 1 enactment date of the legislation.

This set of rules help provide clarity on what the new notification requirements are for families and what the oversight responsibilities are for districts in various categories of private instruction.

A public hearing was held with two in attendance who made no comment. One written comment was received that did not like the underlying law, but understood the rules were reflecting the law as passed. These rules have gone before the Administrative Rules Review Committee with no comment offered by members or the public at that meeting.

EDUCATION DEPARTMENT [281]

Adopted and Filed

Pursuant to the authority of Iowa Code section 299A.10 and 2013 Iowa Acts, House File 215 and House File 454, the State Board of Education hereby proposes to amend Chapter 31, Competent Private Instruction, Independent Private Instruction, and Dual Enrollment, Iowa Administrative Code.

In 2013, the enacted education reform bill included provisions to allow parents choosing private instruction to enroll their child in competent private instruction, independent private instruction, or private instruction by a non-licensed person (also deemed a form of competent private instruction for certain purposes). New legislation also provided changes in the access to and to the costs of annual achievement evaluations for students under private instruction. The Department is proposing changes to these rules to reflect the newly enacted provisions of private instruction. In addition, the Department proposes changes to align this chapter with the requirements of special education law and to make a technical correction concerning blood lead testing.

An agency wide waiver provision is provided in 281— Chapter 4.

Notice of Intended Action was published in the October 16, 2013, Iowa Administrative Bulletin as ARC 1126 C. Public comments were allowed until 4:30 p.m. on November 5, 2013. A public hearing was held on that date, with two in attendance and no public comment given by those in attendance. One written comment was received that indicated that they didn't like the underlying law, but were fine with the rules as written to comply with the law change.

These amendments are identical to those published under Notice.

After analysis and review of this rule making, there is no job impact in the proposed

rules.

These amendments are intended to implement Iowa Code chapters 299 and 299A as amended by 2013 Iowa Acts, House File 215 and House File 454.

The proposed rules shall become effective on January 15, 2014.

The following amendments are adopted.

ITEM 1. The title of the chapter is amended as follows.

CHAPTER 31

PRIVATE INSTRUCTION AND DUAL ENROLLMENT

ITEM 2. Rule 281—31.1(299,299A) is amended as follows.

281—31.1(299,299A) Purpose and definitions.

31.1(1) *Purpose***.** It is the purpose of this chapter to give guidance concerning the provision, assistance, and supervision of competent private instruction, independent private instruction, and private instruction to children of compulsory attendance age outside the traditional school setting. This chapter also establishes responsibilities related to dual enrollment.

31.1(2) *Definitions.* The following definitions apply to this chapter:

a. "Competent private instruction" means private instruction provided on a daily basis for at least one hundred forty-eight days during a school year, to be met by attendance for at least thirty-seven days each school quarter, by or under the supervision of a licensed practitioner in the manner provided under Iowa Code section 299A.2 and this chapter, or other person under Iowa Code section 299A.3 and this chapter, which results in the student as to whom a report of private instruction has been filed making adequate progress.

b. "Independent private instruction" means instruction that meets the following criteria:

(1) Is not accredited.

(2) Enrolls not more than four unrelated students.

(3) Does not charge tuition, fees, or other remuneration for instruction.

(4) Provides private or religious-based instruction as its primary purpose.

(5) Provides enrolled students with instruction in mathematics, reading and language arts, science, and social studies.

(6) Provides, upon written request from the superintendent of the school district in which the independent private instruction is provided, or from the director of the department of education, a report identifying the primary instructor, name and location of the authority responsible for the independent private instruction, and the names of the students enrolled.

(7) Is not a nonpublic school and does not provide competent private instruction as defined in Iowa Code section 299A.1 and these rules.

(8) Is exempt from all state statutes and administrative rules applicable to a school, a school board, or a school district, except as otherwise provided in Iowa Code chapters 299 and 299A.

c. "Private instruction" means instruction using a plan and a course of study in a setting other than a public or organized accredited nonpublic school.

ITEM 3. Rule 281—31.2(299,299A), subsection 1, is amended as follows.

281—31.2(299,299A) Reports as to competent private instruction.

31.2(1) *Reporting.* Subject to subrule 31.2(3), t~~T~~he parent, guardian, or legal or actual custodian of a child of compulsory attendance age who does not enroll the child in a public school or Iowa accredited nonpublic school or who is not obtaining independent private instruction for the child shall complete a report in duplicate on forms created by the department of education and provided by the resident public school district, indicating the parent, guardian, or legal or actual custodian's intent to provide or arrange for competent private instruction for

the child for each school year. The report shall be filed with the school district by ~~August 26, except as otherwise provided by these rules~~September 1 of the school year in which the child will be under competent private instruction.

a. The report shall include the following information:

(1) The name and address of the parent, guardian, or legal or actual custodian reporting;

(2) The name and birth date of the child;

(3) An indication of the number of days of instruction, which must be a minimum of 148 days per academic year;

(4) The name and address of the person or persons providing competent private instruction to the child and an indication of whether each such person is the holder of a valid Iowa practitioner license or teaching certificate appropriate to the age and grade level of the child being taught;

(5) An outline of the courses of study, including subjects covered, lesson plans, and time spent on the areas of study;

(6) The titles and authors or publishers of the texts to be used;

(7) Evidence of immunization of the child or evidence of exemption, as required by law, if the child is being placed under competent private instruction for the first time, and, if the child is under 10 years of age, a blood lead test in accordance with Iowa Code section 135.105D (note that noncompliance with the blood lead test requirement shall not be considered a violation of compulsory attendance laws).

b. The report shall also seek the following information, which may be supplied by the person filing the report:

(1) An indication of whether and to what extent dual enrollment of the child in the public school is desired;

(2) An indication of whether the child is currently identified as a child requiring special education pursuant to the rules of special education; and

(3) An indication of which form of annual assessment, if applicable, is to be administered to the child and which test, if known, is desired.

ITEM 4. The following new rule 281—31.2(299,299A), subsection 3, is adopted.

31.2(3) *Reporting requirement option: "Private Instruction Exemption."* A parent, guardian, or legal or actual custodian of a child of compulsory attendance age providing competent private instruction to the child under Iowa Code section 299A.3 ("private instruction by nonlicensed person") may meet, but is not required to meet, all of the following requirements:

a. Complete and send, in a timely manner, the report required under Iowa Code section 299.4 and this rule to the school district of residence of the child.

b. Ensure that the child under the parent's, guardian's, or legal custodian's instruction is evaluated annually to determine whether the child is making adequate progress, as defined in Iowa Code section 299A.6 and this chapter.

c. Ensure that the results of the child's annual evaluation are reported to the school district of residence of the child and to the department of education by a date not later than June 30 of each year in which the child is under competent private instruction.

31.2(4) *Reporting requirement option not available.*

a. The reporting requirement option provided in subrule 31.2(3) shall not be available to any parent, guardian, or legal or actual custodian who requests services from a school district or area education agency under this chapter, including but not limited to provision of instructional materials under subrule 31.5(4), assistance from a home school assistance program under subrule 31.5(5), dual enrollment under rule 281—31.6(299,299A), open enrollment under rule 281—

31.7(299,299A), and special education services under rule 281—31.10(299,299A). Parents electing the reporting requirement option under subrule 31.2(3) who want testing assistance under subrule 31.5(2) or an approved course in driver education under subrule 31.5(6) need not complete the form required by subrule 31.2(1), but must demonstrate that the child is receiving competent private instruction under this chapter.

b. Notwithstanding the reporting requirement option described in subrule 31.2(3), a parent, guardian, or legal or actual custodian of a child currently requiring special education must obtain approval pursuant to rule 281—31.10(299,299A) before providing competent private instruction, unless that rule provides otherwise.

ITEM 5. Rule 281—31.5(299,299A), subsection 1, is amended as follows.

281—31.5(299A) School district duties related to competent private instruction.

31.5(1) *Reports.*

a. The secretary of a public school district shall make available reporting forms developed by the department of education and shall receive reports as to competent private instruction, maintaining one copy in the district and forwarding one copy to the area education agency as required by law.

b. The secretary of the district shall provide forms to any accredited nonpublic school located within the district for the purpose of reporting the nonpublic school's student enrollment data as required by law. The district secretary shall notify the appropriate school districts of nonresident students enrolled in accredited nonpublic schools within the district.

c. The district shall review the completed form to ascertain whether the person filing has complied with the reporting requirements of the law and these rules. Specifically, the district shall determine from the report that the person providing the instruction is either the child's

parent, guardian, legal or actual custodian, or a person with a valid Iowa practitioner's license appropriate to the age and grade level of the child; that the designated period of instruction is at least 148 days per academic year; that immunization evidence is provided for children placed under competent private instruction for the first time; and that the report is timely under these rules.

d. The district shall annually report to the department of education by June 30 the names of all resident children who are subject to an annual assessment and who either failed to make adequate progress or whose parent, guardian, or legal or actual custodian failed to comply with the assessment requirements of the compulsory attendance law.

e. The district shall report noncompliance with the reporting, immunization, attendance, instructor qualifications, and assessment requirements of the compulsory attendance law and these rules to the county attorney for the county of residence of the child's parent, guardian, or legal or actual custodian.

f. Upon the request of a parent, guardian, or legal or actual custodian of a child of compulsory attendance age who is under competent private instruction, or upon the referral of a licensed practitioner who provides instruction or instructional supervision of a child of compulsory attendance age who is under competent private instruction, <u>or upon any other evidence that the child may require special education,</u> the district shall refer a child who may require special education to the area education agency division of special education for evaluation.

<u>g. The district may request a parent, guardian, or legal or actual custodian of a child of compulsory attendance age providing competent private instruction to the child under Iowa Code section 299A.3 ("private instruction by nonlicensed person") to provide the information required</u>

by his subrule; however, the parent, guardian, or legal custodian is not required to do so, pursuant to Iowa Code section 299A.3 and subrule 31.2(3).

ITEM 6. Rule 281—31.5(299,299A), subsection 2, is amended as follows.

31.5(2) *Testing assistance.*

a. If a standardized test has been requested by the child's parent, guardian, or legal or actual custodian, the district shall administer the standardized test to the child, delegate the test administration to the appropriate area education agency, or allow the child's parent, guardian, or legal or actual custodian to procure standardized testing through a correspondence or other school accredited by an accrediting agency approved by the federal Department of Education, or through any testing service authorized by the publisher of any test approved by the state department of education for assessment purposes. ~~If the child is under dual enrollment, n~~No fee is charged to the parent, guardian, or legal or actual custodian.

b. If a student has been administered an approved standardized test by a correspondence or other school accredited by an accrediting agency approved by the federal Department of Education, or by any testing service authorized by the publisher of any test approved by the state department of education for assessment purposes during the academic school year for which testing is required and the administration of the test has met the terms or protocol of the test publisher, a copy of the test result report, from which test results not required under law may be redacted, may be submitted to the resident district by the parent, guardian, or legal or actual custodian of the child being tested, in satisfaction of the annual assessment option. The submitted test results shall be accompanied by a certification statement signed by the test administrator to the effect that the publisher's protocol or terms required for test administration have been met.

c. The administration of the annual achievement evaluation shall not constitute a dual

enrollment purpose under section Iowa Code section 299A.8 and this rule.

ITEM 7. Rule 281—31.5(299,299A), subsection 3, is amended as follows.

31.5(3) *Finance.* A public school district may count a competent private instruction student for purposes of its certified enrollment only under the following circumstances:

a. A resident student or the student's parent, guardian, or legal or actual custodian has requested dual enrollment, in which case the student is counted as authorized by law. However, if the student is receiving special education services or instruction, the student shall qualify for additional weighting pursuant to the provisions of Iowa Code section 257.6; or

b. The school district provides an Iowa licensed practitioner to instruct or to assist and supervise parents, guardians, or legal or actual custodians providing competent private instruction and the child has been enrolled in the district's home school assistance program.

c. Dual enrollment of a child is not required solely for purposes of accessing the annual achievement evaluation, and the administration of the annual achievement evaluation shall not constitute a dual enrollment purpose.

ITEM 8. Rule 281—31.5(299,299A), subsection 6, is amended as follows.

31.5(6) *Driver education.* The public school district shall offer or make available to all resident students, including those receiving competent private instruction on an equal basis with students enrolled in the district, an approved course in driver education, as required by Iowa Code section 321.178(1)(c) (as amended by 2013 House File 215).

ITEM 9. Rule 281—31.6(299,299A) is amended as follows.

281—31.6(299A) Dual enrollment.

31.6(1) The parent, guardian, or legal or actual custodian of a child who is receiving competent private instruction may enroll the child in the school district of residence of the child

under dual enrollment. The parent, guardian, or legal or actual custodian desiring dual enrollment shall notify the district of residence of the child not later than September 15 of the school year for which dual enrollment it sought. If the child is not of compulsory school attendance age, the parent, guardian, or legal custodian is only required to provide the name of the child, age of the child, contact information for the person requesting the dual enrollment, and a listing of the programs or services for which dual enrollment is requested.

ITEM 10. Rule 281—31.10(299,299A) is amended as follows.

281—31.10(299A) Special education students. Any duty to attempt to find and to offer to evaluate all children who may require special education includes children in private instruction. When there is evidence that a child receiving private instruction may be being eligible for special education under Iowa Administrative Code chapter 281—41(256B,34CFR300), parental consent to evaluate will be sought. Parents may decline consent to evaluate, and public agencies are not required to use the procedural safeguards of Chapter 41 to obtain an evaluation.

When a child has been identified as currently requiring special education, the child is eligible to receive competent private instruction with the written approval of the director of special education of the area education agency of the child's district of residence unless the child's parent declines consent to continued services or refuses consent to a periodic reevaluation.

The director of special education of each area education agency shall issue a written decision, approving provision of competent private instruction, conditioning approval on modification of the proposed program, or denying approval, based upon the appropriateness of the proposed competent private instruction program for the child requiring special education, considering the child's individual disability. Pursuant to 34 CFR Section 300.300, the parent, guardian, or legal

or actual custodian of a child with a disability is not required to seek approval from the area education agency to provide competent private instruction for the child if the parent, guardian, or legal or actual custodian does not consent to initial evaluation or to reevaluation of the child for receipt of special education services or programs.

The request for approval for placement under competent private instruction by the parent, guardian, or legal or actual custodian may be presented to the special education director at any time during the calendar year. If the special education director denies approval or if no written decision has been rendered within 30 calendar days, that decision or the absence thereof is subject to review by an impartial administrative law judge under provisions of 20 U.S.C. Sections 1401 et seq., federal regulations adopted thereunder, and Iowa Code section 256B.6 and rules adopted thereunder found at 281—41.500(256B,34CFR300) et seq.

If a parent, guardian, or legal or actual custodian of a child requiring special education provides competent private instruction without the approval of the director of special education, the director may either request an impartial hearing before an administrative law judge under the rules of special education, 281—41.500(256B,34CFR300) et seq., or notify the secretary of the child's district of residence for referral of the matter to the county attorney pursuant to Iowa Code section 256B.6, incorporating chapter 299, unless the parent, guardian, or legal or actual custodian does not consent to initial evaluation or to reevaluation of the child for receipt of special education services or programs.

A program of competent private instruction provided to a student requiring special education is not a program of special education for purposes of federal and state law.

The director of special education shall advise the parent, guardian, or legal or actual custodian of a child requiring special education of the probable consequences of placing the child

under private instruction and withdrawing the child from specialized instruction and services to which the child is entitled. The director of special education may require the parent, guardian, or legal or actual custodian of a child requiring special education to accept full responsibility for the parent's, guardian's, or legal or actual custodian's decision to reject special education programs and services, forgoing a later request for compensatory education for the period of time when the child was under private instruction.

A parent, as defined in Iowa Administrative Code rule 281—41.30(256B,34CFR300) who elects independent private instruction for the parent's child shall be deemed to have waived special education services. Approval from the area education agency's director of special education is not required before a child requiring special education receives independent private instruction.

ITEM 11. New rule 281—31.11(299,299A) is adopted as follows.

281—31.11(299,299A) Independent private instruction.

31.11(1) *Instructor responsibilities.* The person providing independent private instruction shall meet each of the requirements in subrule 31.1(2), paragraph "b".

31.10(2) *School district responsibilities: services.*

a. The public school district shall offer or make available to all resident students receiving independent private instruction an approved course in driver education on an equal basis with students enrolled in the district, as required by Iowa Code section 321.178(1)(c) (as amended by 2013 House File 215).

b. The public school district shall make available to all students receiving independent private instruction programs under Iowa Code section 261E.8 and Iowa Administrative Code rule 281—22.11(261E) (concurrent enrollment program, also known as also known as district-to-

community college sharing), subject to the terms of that Code section and that Administrative Code rule.

31.10(3) *School district responsibilities: information from parents.*

a. A school district shall seek answers to the questions allowed in subrule 31.1(2), paragraph "b", subparagraph 6, whenever services described in subrule 31.10(2) are requested for a child receiving independent private instruction.

b. A school district superintendent may seek answers to the questions allowed in subrule 31.1(2), paragraph "b", subparagraph 6, in all other instances. The request must be in writing and it must be mailed to the parent, guardian, or legal or actual custodian.

31.10(4) *Services not available.* Unless otherwise specifically required by a provision of this chapter, no service other than those listed in subrule 31.10(2) shall be provided to children receiving independent private instruction. This includes but is not limited to provision of instructional materials under subrule 31.5(4), assistance from a home school assistance program under subrule 31.5(5), dual enrollment under rule 281—31.6(299,299A), open enrollment under rule 281—31.7(299,299A), and special education services under rule 281—31.10(299,299A).

ITEM 12. New rule 281—31.12(299,299A) is adopted as follows.

31.12(299,299A) Miscellaneous provisions.

31.12(1) *Confidentiality of records.* Records maintained by school districts or area education agencies under Iowa Code chapters 299 and 299A and this chapter shall be protected under Iowa Code chapter 22, as well as 20 U.S.C. section 1232g and 34 C.F.R. part 99. Personally identifiable information about students, as defined in 34 C.F.R. part 99, shall be disclosed only as permitted by that part.

31.12(2) *Compulsory attendance actions.* In taking any action under Iowa Code chapters

299 and 299A, a school district shall consider the requirements of compulsory attendance satisfied in the following instances:

a. Enrollment in a public school district, and compliance with the district's attendance policy as determined by the district (including the district's policy on excusal of absences).

b. Enrollment in an accredited nonpublic school, and compliance with the school's attendance policy as determined by the district (including the district's policy on excusal of absences).

c. Compliance with this chapter's provisions regarding competent private instruction.

d. The child is receiving private instruction under subsection 31.2(3) and Iowa Code section 299A.3, unless those sections do not apply.

e. The child is receiving independent private instruction under rule 281—31.10(299,299A), unless paragraph "f" of this paragraph applies.

f. Responding to a request for information about independent private instruction authorized by subrule 31.1(2), paragraph "b," subparagraph 6.

31.12(3) *Rules of construction.* No public school district or area education agency may add a requirement for participation in private instruction, including instruction under subrule 31.2(3), or independent private instruction.

These rules are intended to implement Iowa Code chapters 299 and 299A (2013), as amended by 213 House File 215.