EDUCATION DEPARTMENT [281]

Notice of Intended Action

Pursuant to the authority of Iowa Code section 256.7(5), the Department of Education hereby gives Notice of Intended Action to amend Chapter 98, "Financial Management of Categorical Funding," Iowa Administrative Code.

Chapter 98 outlines the financial management of categorical funding. The proposed amendments to Chapter 98 reflect legislative changes impacting the following: statewide voluntary four-year-old preschool program, at-risk formula weighting, returning dropout and dropout prevention program, management fund, and physical plant and equipment levy (PPEL) fund.

A more detailed explanation of these amendments follows:

Item 1: House File 658 (2015) amended Iowa Code section 256C.4 to expand the permissive uses of the administrative funds from preschool foundation aid received by a school district. This amendment provides additional allowable uses.

Item 2: This amendment removes an incorrect reference to Chapter 41, which does not deal with special education weighting.

Items 3 and 4: House File 658 (2015) amended Iowa Code sections 257.10 and 257.11 and 257.38 through 257.41 to allow greater flexibility and align allowable uses of funds for at risk programs, alternative programs and alternative schools, and programs for potential or returning dropouts, and also incorporated changes included in House File 445 (2015) regarding use of these funds. This amendment is consistent with these changes in the Iowa Code.

Item 5: House File 515 (2015) amended Iowa Code section 298.4 by adding payment of the costs of mediation and arbitration to the allowable uses of the Management Fund. This amendment provides additional allowable use.

Item 6: House File 646 (2015) amended language in Iowa Code 298.3 to allow payment for repair of transportation equipment from the Physical Plant and Equipment Levy, if the cost of the repair exceeds two thousand five hundred dollars. This amendment reflects this change.

Interested individuals may make written comments on the proposed amendments until 4:30 p.m. on November 3, 2015. Comments on the proposed amendments should be directed to Phil Wise, Administrative Rules Co-Coordinator, Iowa Department of Education, Second Floor, Grimes State Office Building, 400 East 14th Street, Des Moines, Iowa 50319-0146; telephone (515)281-4835; e-mail at phil.wise@iowa.gov ; or fax (515)242-5988.

A public hearing will be held on November 3, 2015, from 11:00 to 12:00 a.m. in the State Board Room, Second Floor, Grimes State Office Building, 400 East 14th Street, Des Moines, Iowa, at which time persons may present their views either orally or in writing. Any persons who intend to attend the public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department of Education and advise of specific needs by calling (515)281-5295.

An agencywide waiver provision is provided in 281—Chapter 4.

After analysis and review of this rule making, no impact on jobs has been found.

These amendments are intended to implement Iowa Code sections 256C.4, 257.10, 257.11, 257.38, 257.40, 257.41, 298.3, subsection 1, paragraph I, and 298.4.

The following amendments/rules are proposed.

ITEM 1. Amend rule 281—98.13(256C,257) as follows:

281—98.13(256C,257) Statewide voluntary four-year-old preschool program. The statewide voluntary four-year-old preschool program is a program for a specific category of students. Funding for the program is for the purpose of providing a high-quality early learning environment

for four-year-old children whose families choose to access such programs.

98.13(1) *Appropriate uses of categorical funding.* Because the program is specifically instructional, expenditures generally are limited to the functions of instruction, student support services and staff support services, but include expenditures for actual documented costs of program administration up to 5 percent of the allocation. The up to 5 percent of the allocation can be used for costs for outreach activities and rent for facilities not owned by the school district in addition to program administration.

98.13(2) *Pass-through funding to community-based providers.* The school district shall pass through to a community-based provider for each eligible pupil enrolled in the district's approved local program not less than 95 percent of the per pupil amount.

a. The community-based provider may use up to ~~5~~ 10 percent of the 95 percent portion for documented allowable administrative and operational costs of providing the district's approved local program. The costs of outreach activities, rent for facilities not owned by the school district, and transportation for children participating in the preschool program are also permissive costs allowed from the 10 percent under this subparagraph.

b. Any portion of the 95 percent not documented as expended for direct instruction or administrative and operational costs as allowed by this rule shall be refunded to the district annually on or before July 1.

c. Any portion refunded to the district shall be added to the total amount available for the district's approved local program for the subsequent school year.

98.13(3) *Inappropriate uses of categorical funding.* Inappropriate uses of the statewide voluntary four-year-old preschool program funding include, but are not limited to, indirect costs or use charges, capital expenditures other than equipment, facility acquisition not expressly

allowed by Iowa Code, construction, debt service, operational or maintenance costs or administrative costs that supplant or that exceed 5 percent, or any other expenditures not directly related to providing the statewide voluntary four-year-old preschool program or that supplant existing public funding for preschool programming.

ITEM 2. Amend rule 281—98.17(256B,257) as follows:

281—98.17(256B,257) Special education weighting. Special education weighting provides funding in addition to the student count that generates general purpose revenues for the purpose of providing additional instruction and services to an identified group of students. ~~Further information on the special education program is provided in 281—Chapter 41.~~

ITEM 3. Amend rule 281—98.18(257) as follows:

281—98.18(257) At-risk, alternative program or school, and potential or returning dropout prevention program formula supplementary weighting. ~~At-risk f~~ Formula supplementary weighting provides funding in addition to the student count that generates general purpose revenues for the purpose of providing additional instruction and services to ~~an~~ students identified ~~group of~~ as at-risk, potential or returning dropout, and secondary student attending and alternative program or alternative school ~~secondary students~~ pursuant to Iowa Code section 257.11(4)*"a."*

98.18(1) *Appropriate uses of categorical funding.* Appropriate uses of at-risk formula supplementary weighting funding include costs to develop or maintain programs for at-risk pupils~~'~~ ~~programs~~, ~~which may include~~ alternative ~~school~~ programs and alternative schools for secondary students, and returning dropout and dropout prevention programs, and include, but are not limited to:

a. Salary and benefits for the teacher(s) and guidance counselor(s) of identified students participating in the ~~at-risk or alternative school~~ approved programs when the teacher (or

counselor) is dedicated to working directly and exclusively with providing services to the identified students beyond the services provided by the school district to students who are not identified as at-risk or potential or returning dropouts. If the teacher (or counselor) is part-time serving the program ~~at-risk~~ and part-time regular classroom teacher (counselor), then the portion of time that is related to ~~the at-risk~~ this program may be charged to the program funding, but the portion of time that is related to the regular classroom shall not.

b. Professional development for all teachers and staff working with ~~at-risk~~ identified students under an approved program or alternative school setting~~ and programs involving intervention strategies~~.

c. Research-based resources, materials, software, supplies, equipment, and purchased services that meet all of the following criteria:

(1) Meet the needs of K through 12 identified students~~ at risk~~,

(2) Are beyond those provided by the regular school program,

(3) Are necessary to provide the services listed in the school district's approved at-risk or returning dropout and dropout prevention program plan, and

(4) Will remain with the K through 12 at-risk program, alternative program or alternative school, or returning dropout and dropout prevention program.

d. Instructional costs necessary to address the behavior of a child during instructional time when those services are not otherwise provided to students who do not require special education, and the costs exceed the costs of instruction of pupils in a regular curriculum, and the costs exceed the maximum tuition rate prescribed in section 282.24, and the child has not been placed in a facility operated by the state, and all of the following apply:

(1) The child does not require special education.

(2) The child is not placed by the department of human services or a court in a residential or day treatment program where the treatment necessary to address the student's behavior was included in the contract with the placement agency.

(3) The child is not placed in a hospital unit, health care facility, psychiatric medical institution for children or other treatment facility where the cost of treatment necessary to address the student's behavior is covered by insurance or Medicaid.

(4) The board of directors of the district of residence has determined that the child is likely to inflict self-harm or likely to harm another student.

e. Up to five percent of the total amount that a school district receives as formula supplementary weighting pursuant to Iowa Code section 257.11(4)"a" or as a modified supplemental amount received under Iowa Code section 257.41 may be used in the budget year for purposes of providing district-wide or building-wide at risk and dropout prevention programming targeted to non-identified students.

98.18(2) *Inappropriate uses of categorical funding.* Inappropriate uses of the ~~at-risk~~ formula supplementary weighting program funding include, but are not limited to, indirect costs or use charges, operational or maintenance costs, capital expenditures other than equipment, student transportation other than as allowed in subrule 98.18(1), administrative costs other than as allowed in subrule 98.18(1), or any other expenditures not directly related to providing the ~~at-risk or alternative school~~ approved program beyond the scope of the regular classroom program.

ITEM 4. Amend rule 281—98.21(257) as follows:

281—98.21(257) At-risk, alternative program or school, and potential or ~~R~~ returning dropout ~~and dropout prevention~~ program – modified supplemental amount. A modified supplemental amount is available ~~Returning dropout and dropout prevention programs are funded~~

through a school district-initiated request to the school budget review committee ~~for a modified supplemental amount~~ pursuant to Iowa Code sections 257.38 to 257.41. This amount must account for no~~t~~ more than 75 percent of the school district's total at-risk, alternative program or alternative school, and potential or returning dropout ~~prevention~~ budget. The school district must also provide a local match from the school district's regular program district cost, and the local match portion must be a minimum of 25 percent of the total ~~dropout prevention~~ program budget. In addition, school districts may receive donations and grants, and the school district may contribute more local school district resources toward the program. The 75 percent portion, ~~the~~ local match, previous year carryforward, and all donations and grants shall be accounted for as categorical funding.

98.21(1) *Purpose of categorical funding.* The purpose of the modified supplemental amount ~~dropout prevention funding~~ is to provide funding to meet the needs of identified students ~~at risk of dropping out of school beyond the instructional program and services provided by the regular school program~~ for costs in excess of the amount received under 98.18 (Iowa Code section 257.11, subsection 4). The funding shall be used only for expenditures that are directly related to the ~~returning dropout and dropout prevention~~ district's approved program plan established pursuant to Iowa Code sections 257.38 through 257.41.

a. Returning dropouts are resident pupils who have been enrolled in a school district in any of grades 7 through 12 who withdrew from school for a reason other than transfer to another school or school district and who subsequently reenrolled in a public school in the school district.

b. Potential dropouts are resident pupils who are enrolled in a school district who demonstrate poor school adjustment as indicated by two or more of the following:

(1) High rate of absenteeism, truancy, or frequent tardiness.

(2) Limited or no extracurricular participation or lack of identification with school, including but not limited to expressed feelings of not belonging.

(3) Poor grades, including but not limited to failing in one or more school subjects or grade levels.

(4) Low achievement scores in reading or mathematics which reflect achievement at two years or more below grade level.

(5) Children in grades kindergarten through 3 who meet the definition of at-risk children adopted by the department of education.

98.21(2) *Appropriate uses of categorical funding.* Appropriate uses of the ~~returning dropout and dropout prevention program~~ funding for an approved program include, but are not limited to:

a. Salary and benefits for instructional staff, instructional support staff, and school-based youth services staff ~~who are~~ dedicated to working directly and exclusively with providing services to the identified students ~~who are~~ participating in the approved program ~~dropout prevention programs, alternative programs, and alternative schools, in a traditional or alternative setting, if the staff person's time is dedicated to working with returning dropouts or students who are deemed, at any time during the school year, to be at risk of dropping out, in order to provide services~~ beyond ~~those which are~~ the services provided by the school district to students who are not identified as at-risk or potential or returning ~~of becoming~~ dropouts. However, if the staff person works part-time with students who are participating in the approved program ~~returning dropout and dropout prevention programs, alternative programs, and alternative schools~~ and has another unrelated staff assignment, only the portion of the staff person's time that is related to the program

~~returning dropout and dropout prevention program, alternative program, or alternative school~~ may be charged to the program funding.

For purposes of this paragraph, an alternative setting may be necessary to provide for a program which is offered at a location off school grounds and which is intended to serve student needs by improving relationships and connections to school, decreasing truancy and tardiness, providing opportunities for course credit recovery, or helping students identified as at risk ~~of dropping out~~ to accelerate through multiple grade levels of achievement within a shortened time frame.

b. Professional development for all teachers and staff working with ~~at-risk~~ identified students ~~and~~ under an approved program~~s involving dropout prevention strategies~~.

c. Research-based resources, materials, software, supplies, equipment, and purchased services that meet all of the following criteria:

(1) Meet the needs of K through grade 12 identified students ~~identified as at risk of dropping out and of returning dropouts~~,

(2) Are beyond those provided by the regular school program,

(3) Are necessary to provide the services listed in the school district's approved at-risk or returning dropout and dropout prevention program plan, and

(4) Will remain with the K through grade 12 at-risk program, alternative program or alternative school, or returning dropout and dropout prevention program.

d. Transportation provided by the school district exclusively to transport identified students to an alternative school or alternative program located in and provided by another Iowa school district.

e. The portion of the maximum tuition allowed by Iowa Code section 282.24 that corresponds to the portion exclusively providing direct additional instruction and services to an identified group of students above the costs of instruction of pupils in a regular curriculum.

f. School-level administrator assigned exclusively to an off-site alternative school or program within the district. If the principal is administering the school or program part-time, the~~n~~ the portion of time that is exclusively and directly related to the program may be charged to the program funding, but the portion of time that is related to other purposes shall not.

~~*g.* Up to 5 percent of the total budgeted amount received pursuant to 2012 Iowa Acts, Senate File 451, section 1(1), may be used for purposes of providing districtwide or buildingwide returning dropout and dropout prevention programming targeted to students who are not deemed at risk of dropping out.~~

g. Instructional costs necessary to address the behavior of a child during instructional time when those services are not otherwise provided to students who do not require special education, and the costs exceed the costs of instruction of pupils in a regular curriculum, and the costs exceed the maximum tuition rate prescribed in section 282.24, and the child has not been placed in a facility operated by the state, and all of the following apply:

(1) The child does not require special education.

(2) The child is not placed by the department of human services or a court in a residential or day treatment program where the treatment necessary to address the student's behavior was included in the contract with the placement agency.

(3) The child is not placed in a hospital unit, health care facility, psychiatric medical institution for children or other treatment facility where the cost of treatment necessary to address the student's behavior is covered by insurance or Medicaid.

(4) The board of directors of the district of residence has determined that the child is likely to inflict self-harm or likely to harm another student.

h. Up to five percent of the total amount that a school district receives as formula supplementary weighting pursuant to Iowa Code section 257.11(4)"a" or as a modified supplemental amount received under Iowa Code section 257.41 may be used in the budget year for purposes of providing district-wide or building-wide at risk and dropout prevention programming targeted to non-identified students.

98.21(3) *Inappropriate uses of categorical funding.* Inappropriate uses of the modified supplemental amount ~~returning dropout and dropout prevention~~ program funding include, but are not limited to, indirect costs or use charges, operational or maintenance costs, capital expenditures other than equipment, student transportation other than as allowed in subrule 98.21(2), administrative costs other than those allowed in subrule 98.21(2), expenses related to the routine duties of a school nurse, general support for a school guidance counselor including any activities performed with ~~qualified~~ identified students that are also provided to all students, or any other expenditures not directly related to providing the approved ~~returning dropout and dropout prevention~~ program beyond the scope of the regular classroom.

ITEM 5. Adopt the following **new** paragraph **98.62(2)"i"**:

i. Payment of costs of mediation and arbitration, including but not limited to legal fees associated with such mediation or arbitration, but not including the results of the mediation or arbitration if those costs do not qualify under subparagraph "c" above.

ITEM 6. Amend paragraph **298.98(64)(2)"l"** as follows:

l. Purchase of transportation equipment for transporting students and for repairing such transportation equipment when the cost of the repair exceeds two thousand five hundred

dollars. “Repairing” for purposes of this subparagraph means restoring an existing item of transportation equipment to its original condition, as near as may be, after gradual obsolescence of physical and functional use due to wear and tear, corrosion and decay, or partial destruction, and includes maintenance that meets the definition of equipment and repair and the cost of which exceeds two thousand five hundred dollars.