



2011 Amendments to Iowa’s Administrative Rules of Special Education

The Iowa State Board of Education recently adopted amendments to Iowa’s special education rules. These technical amendments do not substantively change the law. They are effective March 30, 2011.

1. They substitute “intellectual disability” for “mental disability.” This change brings the Iowa rules in line with a recent change in federal law.
2. They substitute the word “mediation conference” for “preappeal conference.” The purpose of this change is to make the process more easily understood. This makes no substantive change, and does not diminish Iowa’s history of innovation in special education dispute resolution.
3. They make changes to the Department’s enforcement authority when the Department determines that an AEA or district does not meet the requirements of the IDEA. This change conforms to technical assistance received from the United States Department of Education, and aligns with federal law.

Substituting “Intellectual Disability for “Mental Disability”

Change “mental disability” or its plural to “intellectual disability” or its plural in the following rules.

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| 1. Rule 41.50(6) | Definition of “intellectual disability” |
| 2. Rule 41.50(10) | Definition of “specific learning disability” |
| 3. Rule 41.309 | Determining the existence of a specific learning disability |
| 4. Rule 41.311 | Documenting the existence of a specific learning disability |

Changing “Preappeal Conference” to “Mediation Conference”

A. Make these changes to Rule 41.506 (strikethroughs are deletions, and underscores are additions).

41.506(4) *Special definition* Mediation procedures. ~~In this chapter and in Iowa practice, a A request for mediation filed before the filing of a due process complaint is referred to as a “request for a special education preappeal conference,” further shall be conducted according to the procedures~~ described in rule 281—41.1002(256B,34CFR300).

41.506(5) *Rule of construction.* The department shall accept documents captioned as requests for a “preappeal conference” as requests for mediation prior to the filing of a due process complaint.

B. Make these changes to rules concerning stay-put.

41.518(5) *Preappeal conference* Mediation requested prior to the filing of a due process complaint. Except as provided in rule 281—41.533(256B,34CFR300), during the pendency of any ~~preappeal conference~~ request for mediation filed prior to or in lieu of a due process complaint under rule 281—41.506(256B,34CFR300) and for ten days after ~~a preappeal~~ any such mediation conference at which no agreement is reached, unless the state or local agency and the parents of the child agree otherwise, the child involved in ~~the preappeal~~ any such mediation conference must remain in his or her current educational placement.

281—41.533(256B,34CFR300) *Placement during appeals and preappeal mediations.* When an appeal under rule 281—41.532(256B,34CFR300) or a request for ~~a preappeal conference~~ mediation under rules 281—41.506(256B,34CFR300) and 281—41.1002(256B,34CFR300) has been made by either the parent or the LEA, the child must remain in the interim alternative educational setting pending the decision of the administrative law judge or until the expiration of the time period specified

in subrule 41.530(3) or 41.530(7), whichever occurs first, unless the parent and the SEA or LEA agree otherwise.

C. Make the following changes to rule 41.1002

281—41.1002(256B,34CFR300) Special education ~~preappeal~~ mediation conference.

41.1002(1) Procedures. The parent, the LEA or the AEA may request a special education ~~preappeal~~ mediation conference on any decision relating to the identification, evaluation, educational placement, or the provision of FAPE ~~without the need for filing a due process complaint~~. The ~~preappeal~~ mediation conference shall comply with the requirements of rule 281—41.506(256B,34CFR300).

a. A request for a special education ~~preappeal~~ mediation conference ~~shall be made~~ may be in the form of a letter ~~which identifies or a pleading or on a form provided by the department~~. The request shall identify the student, LEA and AEA, ~~sets and set forth~~ the facts, the issues of concern, or the reasons for the conference. The letter shall be ~~mailed~~ provided to the department, to the AEA, and to the LEA.

b. No change.

c. A ~~preappeal~~ mediation conference will be scheduled and held at a time and place reasonably convenient to all parties involved. Written notice will be sent to all parties by the department.

d. The LEA or the AEA shall submit the ~~special education preappeal~~ checklist to the department and shall provide a copy to the parent within ten business days after receiving the request.

e. The student's complete school record shall be made available for review by the parent prior to the conference, if requested in writing at least ten calendar days before the ~~preappeal~~ conference.

f. The individual's complete school record shall be available to the participants at the ~~preappeal~~ conference.

g. A mediator provided by the department shall preside over the ~~preappeal~~ conference.

h. No change.

i. If agreement is not reached at the ~~special education preappeal~~ conference, all parties shall be informed of the procedures for filing a due process complaint.

41.1002(2) Placement during proceedings. Pursuant to rule 281—41.518(256B,34CFR300), unless the parties agree otherwise, the student involved in the ~~preappeal~~ mediation conference must remain in the student's present educational placement during the pendency of the proceedings.

41.1002(3) Withdrawals or automatic closures. The initiating party may request a withdrawal ~~of the preappeal~~ prior to the conference. Automatic closure of the department file will occur if any of the following circumstances apply:

a. No change.

b. The ~~preappeal~~ conference is held, but parties are not able to reach an agreement. There will be a ten-calendar-day waiting period after the ~~preappeal~~ conference to continue the placement as described in subrule 41.1002(2) in the event a party wishes to pursue a hearing.

c. The ~~preappeal~~ conference is held, ~~and the~~ parties are able to reach an agreement, and the agreement does not specify a withdrawal date. If a withdrawal date is part of the agreement, an agency withdrawal will occur on the designated date.

41.1002(4) Confidentiality of discussions. Discussions that occur during the ~~special education preappeal~~ mediation conference must be confidential, except as may be provided in Iowa Code chapter 679C, and may not be used as evidence in any subsequent due process hearings or civil proceedings; however, the parties may stipulate to agreements reached at the conference. Prior to the start of the conference, the parties and the mediator will be required to sign an Agreement to Mediate form containing this confidentiality provision.

Clarifying the Department's Enforcement Actions

Change the term "may" to "shall" in the following subrules.

1. 41.604(1) Needs assistance
2. 41.604(2)"b" Needs intervention
3. 41.604(3) Needs substantial intervention

Iowa Department of Education, March 2011

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