

IOWA DEPARTMENT
OF EDUCATION
(Cite as 27 D.o.E. App. Dec. 605)

In re Petition for Waiver of Rule

South Central Calhoun Community School District, Petitioner, for a Waiver of Rule 12.1(7)	: : : :	DECISION GRANTING WAIVER REQUEST [Adm. Doc. #5011]
--	------------------	--

On or about May 21, 2015, South Central Calhoun Community School District ["South Central Calhoun"] filed a petition with this agency requesting a waiver from administrative rule 281-Iowa Administrative Code 12.1(7) for the 2014-15 school year. Authority for filing and ruling on petitions for waiver is found in 281 – IAC chapter 4.

I.
FINDINGS OF FACT

At issue in this matter is the requirement in rule 12.1(7) that "[t]he board and authorities in charge of an accredited nonpublic school shall notify the department annually of their decision to have a calendar based on days or based on hours."

In 2013, the Iowa Legislature amended section of Iowa Code section 256.7(19), creating new flexibility for school districts and accredited non-public schools when determining their school calendar. Effective July 1, 2014, school districts and accredited nonpublic schools have the option to choose between 180 days or 1,080 hours of instruction. School boards and authorities in charge of an accredited nonpublic school are authorized to determine the days or hours of their school calendars; however, public schools must hold a public hearing prior to adoption. Schools and school districts are required to report this decision annually to the department.

South Central Calhoun desires to resubmit its annual notification to the department of their decision to have a calendar based on days or based on hours. South Central Calhoun initially submitted to the Department that it would operate a calendar based on days for the 2014-2015 school year. However, on May 10, 2015, South Central Calhoun was hit by a tornado that caused significant damage to the high school and resulted in a loss of power to other schools in the district. As a result the high school is uninhabitable for the remainder of the school year and the elementary and middle schools were closed until power was restored.

Some of the pertinent facts submitted to this agency from South Central Calhoun include the following:

- On May 18, 2015, the South Central Calhoun board approved a change to the current calendar and elected to transition to a school calendar based on hours of required attendance.
- This change would allow the district to provide instructional time under the supervision of a licensed teacher for approximately 14 hours outside the high school building, rather than requiring attendance for the remainder of the school year based on days.
- Since the high school is uninhabitable, it would create an undue hardship to require the district to complete the remainder of the school year on the current calendar.
- South Central Calhoun has not sought a waiver of this requirement in the past.
- South Central Calhoun believes that a waiver of this requirement will not affect student achievement as the minimum required amount of instructional time for all students will be met.
- There is been no evidence that other persons or entities would be adversely affected by granting this waiver.

II. CONCLUSIONS OF LAW

When a petition for waiver is filed, the undersigned must conclude that all five criteria listed in rule 4.4 are satisfied before granting a waiver. Those criteria and the undersigned's conclusions are as follows:

1. *Not waiving the rule would result in an undue hardship to the petitioner.*

The decision of the district to operate a calendar on hours is entirely the discretion of the district. The South Central Calhoun board elected to transition to a school calendar based on hours and not days on May 18, 2015. The board adopted this election after the district was hit by a tornado in May of 2015. The tornado made the South Central Calhoun High School uninhabitable and caused the elementary and middle schools to shut down due to a loss in power. As such the district lost several days of instruction. Therefore, it would create an undue hardship to require the district to complete the remainder of the school year on the current calendar. This change would allow the district more flexibility in completing the required hours of instruction.

2. *Waiver would not prejudice the substantial legal rights of any person.*

The policy underlying the rule that school districts annually notify the department of their decision to have a calendar based on days or based on hours is designed to ensure that students legally get the required amount of instruction. Whether the calendar is based on days or hours will not impact the amount of overall instruction that students are required to receive. There are no known objections to this

waiver by relevant stakeholders. Therefore, the waiver would not prejudice the substantial legal rights of any person.

3. *The provisions of the rule from which waiver is sought are not mandated by statute or other provision of law.*

The requirement of districts to notify the department annual of the decision to have a calendar based on days or based on hours is not mandated by statute and not mandated by any provision of law outside of rule 12.1(7). Therefore, it is a proper subject for waiver request.

4. *Substantially equal protection of public health, safety, and welfare will be afforded by a means other than that prescribed in the rule from which waiver is sought.*

This agency finds that the public health, safety, and welfare are not at stake. Therefore, it is unnecessary to determine whether there is another means by which the same can be met other than by the requirement in rule 12.1(7). This agency finds that the public health, safety, and welfare is best served by granting this waiver.

5. *Waiver would not have a negative impact on the student achievement of any person.*

Granting this waiver would not have a "negative impact on the student achievement of any person." To the contrary, the ability of South Central Calhoun to operate a calendar on hours instead of days will enhance the ability of the district to have flexibility in their calendar due to the natural disaster that rendered the district unable to operate the current school calendar as planned.

The undersigned is satisfied that the intent of the requirement of annual reporting is not harmed by granting a waiver herein.

III. DECISION

For the foregoing reasons, the petition for waiver is GRANTED.

5/26/15
Date

Brad A. Buck
Brad A. Buck, Director