

**IOWA DEPARTMENT
OF EDUCATION
(Cite as 25 D.o.E. App. Dec. 82)**

In re Petition for Waiver of Rule

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| IKM Community School District, | : | ORDER GRANTING |
| Petitioner, | : | WAIVER REQUEST |
| for a Waiver of Rule 97.7(4) | : | [Adm. Doc. #4678] |

On or about July 7, 2008, the IKM Community School District ["IKM"] filed a petition with this agency requesting a waiver from administrative rule 281-Iowa Administrative Code 97.7(4) for the 2007-08 school year.

Authority for filing and ruling on petitions for waiver is found in 281—IAC chapter 4. Because the petition herein was not filed within a contested case proceeding and because a hearing is not required by statute, rule, or order, no hearing was held. See 281—IAC 4.9. The agency considered the facts, the criteria for waiver in chapter 4, and the information submitted by IKM in ruling on the petition.

**I.
FINDINGS OF FACT**

At issue in this matter is the requirement in rule 97.7(4) that "[s]chool districts that share operational functions with other school districts must be contiguous school districts."

In 2007, the Iowa Legislature amended sections of Iowa Code chapter 257, creating new opportunities for school districts and area education agencies to request supplementary weighting (Senate File 447 and Senate File 588, section 20). One of the new opportunities was in the area of operational function sharing, which includes sharing the services of a superintendent, and which is eligible for supplementary weighting for up to five years with an annual 20 percent phase-out. Pursuant to the new legislation, amendments were adopted by the State Board of Education to the administrative rules that govern supplementary weighting. The pertinent subrule regarding sharing the services of a superintendent is as follows:

97.7(2) "Operational function sharing" means sharing of managerial personnel in the discrete operational function areas of superintendent management, ... The operational function sharing arrangement does not need to be a newly implemented sharing arrangement in order to be eligible for supplementary weighting.

a. Superintendent management. (1) Shared personnel must perform the services of a superintendent, in the case of a school district, ... for each of the sharing partners. An individual performing the function of a superintendent or chief administrator must be properly licensed for that position.

97.7(4) School districts that share operational functions with other school districts must be contiguous school districts. If two or more sharing partner districts are not contiguous to each other, all districts separating those districts must be a party to the operational function sharing arrangement.

IKM and Walnut shared the services of Superintendent Jeff Kruse during the 2007-08 school year. The two districts are not contiguous to each other; the Harlan Community School District separates them. On behalf of his District, the Harlan Superintendent, Bill Decker, has no objection to this waiver.

Some of the pertinent facts submitted to this agency from IKM include the following:

- When the sharing agreement was initiated, rule 97.7(4) had not been developed; therefore, the districts were unaware that there would be a requirement that sharing partners be contiguous to each other.
- Both IKM and Walnut are proactively exploring further sharing opportunities with neighboring districts.
- Technological advances enhance the opportunities to expand operational sharing between districts that do not border each other.
- Both districts are in Area Education Agency 13. Glenn Grove, AEA 13 chief administrator, has no reservations about granting the 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.*

IKM and Walnut have K-12 student enrollments, respectively, of 392 and 251. Their superintendent management sharing agreement, which was entered into in good faith, was a sensible approach by these districts to manage their resources. The districts had no way of anticipating that this agency's administrative rules, which provide that pre-existing sharing agreements are not precluded from supplementary weighting, would include a requirement that sharing districts be contiguous to each other.

If the rule is not waived, both districts will forego the supplementary weighted funds. While it is not clear whether this would result in an *undue* hardship, this agency does not wish to be a barrier to good faith efforts of school districts to use their resources wisely. In addition, because the undersigned concludes that the other four criteria are met, the benefit of any doubt regarding this criterion is given to the districts.

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

The policy underlying the requirement in the rule of contiguousness is designed to ensure that sharing agreements are sensible from a resource and a geographic

standpoint, and that the sharing partners do not snub any other school district contiguous to one or more partners. The only district between IKM and Walnut (Harlan) has no objection to waiver. Therefore, the policy underpinnings are not compromised by waiver in this case.

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

The requirement of contiguosness is not statutory and is not mandated by any provision of law outside of rule 97.7(4). 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 97.7(4).

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 savings to IKM and Walnut, as well as the supplementary weighted funds would enhance the ability of the districts to serve their students.

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

III. DECISION

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

7-15-08
Date



Judy A. Jeffrey, Director