IOWA DEPARTMENT OF EDUCATION

(Cite as 25 D.o.E. App. Dec. 226)

In re Petition for Waiver of Rule

LeMars Community School District,	:	ORDER GRANTING
Petitioner,	:	WAIVER REQUEST
for a Waiver of Rule 98.21	:	[Adm. Doc. #4709]

On or about February 12, 2010, the LeMars Community School District ["LeMars" or "the District"] filed a petition with this agency requesting a waiver from administrative rule 281—Iowa Administrative Code [IAC] 98.21.

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 interested persons in ruling on the petition.

LeMars is a school district accredited and regulated by this agency. At issue in this matter is the District's use of its modified allowable growth for dropout prevention. LeMars has been using these funds to support its all-day, every day kindergarten program, but has not identified every child in such program as being "at-risk" of being a potential dropout. As part of its petition, the District submitted the letter it received from this agency in December 2001, approving the District's plan to so use these funds.

The pertinent portions of the agency rule in question, effective for the 2009-10 school year, are as follows:

> **281—98.21(257) Returning dropout and dropout prevention program.** Returning dropout and dropout prevention programs are funded thorough a school district-initiated request to the school budget review committee for modified allowable growth pursuant to Iowa Code sections 257.38 to 257.41. ...
> **98.21(1)** *Purpose of categorical funding.* The purpose of the 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. The funding shall be used only for expenditures that are directly related to the returning dropout and dropout prevention program.
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> ...
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> *b.* Potential dropouts are resident pupils who are enrolled in a public or nonpublic school who demonstrate poor school adjustment as indicated by two or more of the following:
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> ...
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> (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 ... include, but are not limited to:

a. Salary and benefits for the teacher(s) of students participating in the dropout prevention programs, alternative programs, and alternative schools, and salary and benefits for guidance counselors or a dean of students dedicated to working directly and exclusively with identified students to provide services beyond those provided by the school district to students who are not identified as at risk of becoming dropouts. If the teacher (or counselor) is a part-time dropout prevention and part-time regular classroom teacher (counselor), then the portion of time that is related to the dropout prevention program may be charged to the program, 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 students and programs involving dropout prevention strategies.

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

(1) Meet the needs of K through 12 identified students at risk of dropping out or 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 dropout prevention plan, and

(4) Will remain with the K through 12 returning dropout and dropout prevention program.

98.21(3) *Inappropriate uses of categorical funding.* Inappropriate uses of the 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, administrative costs other than those related to a separate school located off site and where the administrator is assigned exclusively to this program, or any other expenditures not directly related to providing the returning dropout and dropout prevention program beyond the scope of the regular classroom.

When a petition for waiver is filed, the agency director must find all of the following criteria per rule 281—4.4:

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

2. 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.

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.

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

Since the 2001-2002 school year (the year for which the District arguably received written permission from this agency to fund its all-day, every day kindergarten program with modified allowable growth funds for dropout prevention), the approval process regarding use of these funds has changed. More stringent accountability provisions are now part of the process. The application instructions now alert school

districts that these funds must supplement, not supplant, other funds received by districts.

The District does not dispute that if its request to support its all-day, every day kindergarten program with modified allowable growth funds for dropout prevention were submitted for the first time today, the answer would be "no." The question before this agency is what to do about a request that was previously approved by former agency personnel, but never re-examined.

The regulatory criteria

This agency believes that students of the District could suffer if the District is not granted a year in which to transition away from using its dropout prevention modified allowable growth funds for its all-day, every day kindergarten program. This agency also recognizes that the District maintained a good faith belief that it was using the funds appropriately. LeMars Superintendent Todd Wendt's request for a year in which to work out the transition is reasonable.

DECISION

For the foregoing reasons, the petition for waiver is GRANTED for the 2010-2011 school year only.

2/16/10
Date

Judy A. Jeffrey, Director