

**IOWA DEPARTMENT
OF EDUCATION
(Cite as 25 D.o.E. App. Dec. 213)**

In re Petition for Waiver of Rule

Walnut Community School District, Petitioner, for a Waiver of Rule 97.7(3)	: : :	ORDER GRANTING WAIVER REQUEST [Adm. Doc. #4705]
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On or about December 4, 2009, the Walnut Community School District ["Walnut"] filed a petition with this agency requesting a waiver from administrative rule 281-Iowa Administrative Code 97.7(3) for the 2009-10 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 Walnut in ruling on the petition.

FINDINGS OF FACT

At issue in this matter is the requirement in rule 97.7(3) that supplementary weighting for the first year of sharing "shall be conditioned upon the submission of cost information provided in the format prescribed by the department of education as part of the certified annual report documenting cost savings directly attributable to the shared operational functions. The documentation shall be filed no later than September 15 preceding the October 1 on which the second, third, fourth, or fifth year of operational function sharing is included for supplementary weighting." 281—97.7(3)"a" and "b."

Walnut shares a human resources director with the Harlan Community School District. This is permitted per statute and rule. 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 a human resources director.

Such sharing is eligible for supplementary weighting for a limited time period. After year one of the sharing and supplementary weighting, the sharing districts must submit proof to the agency of the cost savings. Such proof is to be filed in the districts' CAR, Certified Annual Report.¹

¹ Harlan filed its CAR in a timely manner. That district is not harmed by its sharing partner's failure to do likewise.

Walnut admits that its failure to timely file its CAR relates back to the fact that its chart of accounts source and project codes is incorrect and has been for several years. To its credit, the district has been working steadily with agency staff and other districts with similar chart software to find and fix all inaccuracies; the district has not been ignoring its responsibility.

The CAR of Walnut was filed with this agency on December 1, 2009.

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 students of Walnut would be directly harmed because the amount of funds at stake to Walnut is \$57,700, 5% of the total state aid to this district. 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 that the CAR be filed so this agency can ascertain whether the cost savings are being realized is not substantially compromised by giving Walnut additional reasonable time in which to file. The CAR has been filed.

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

The provisions of 97.7(3)“a” and “b” are not mandated by statute. 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(3).

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 Walnut, as well as the supplementary weighted funds, will enhance the ability of the district to serve its students.

DECISION

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

Date

Judy A. Jeffrey, Director