

**IOWA DEPARTMENT
OF EDUCATION**
(Cite as 25 D.o.E. App. Dec. 168)

In re Petition for Waiver of Rule

Red Oak Community School District,	:	ORDER GRANTING
Petitioner,	:	WAIVER REQUEST
for a Waiver of Rule 97.7(4)	:	[Adm. Doc. #4697]

On or about July 16, 2009, the Red Oak Community School District ["Red Oak"] filed a petition with this agency requesting a waiver from administrative rule 281-Iowa Administrative Code 97.7(4) 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 Red Oak 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 transportation director, 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 transportation director 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.

...

- d. Student transportation management.
- (1) Shared personnel shall include transportation directors or supervisors. Shared personnel must perform services related to transportation for each of the

sharing partners, but may perform different transportation services for each of the sharing partners.

...

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.

Red Oak desires to share the services of its transportation director with the Villisca Community School District, commencing with the 2009-2010 school year. The two districts are not contiguous to each other; the Stanton Community School District separates them. On behalf of his district, Superintendent Judson Ashley has no objection to this waiver.

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

- Red Oak has explored this sharing option with all of its contiguous neighbors, but none were interested in sharing the transportation director, so Red Oak approached Villisca with the idea.
- Villisca cannot support a fulltime transportation director, nor does the district have a need for a fulltime person in that position.
- The supplementary weighting will provide additional financial resources to both districts, enabling them to more fully meet the academic and educational needs of their students.

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.*

An agreement between Red Oak and Villisca to share a transportation director is a sensible approach by these districts to manage their resources. 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 superintendent of the district between Red Oak

and Villisca has no objection to this 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 Red Oak and Villisca, as well as the supplementary weighted funds, will 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.

7/16/09
Date

Judy A Jeffrey
Judy A Jeffrey, Director