

**IOWA DEPARTMENT
OF EDUCATION**
(Cite as 25 D.o.E. App. Dec. 165)

In re Petition for Waiver of Rule

AEA 267 (River Hills School),	:	
Petitioner,	:	ORDER
for a Waiver of	:	
Rule 281—103.8	:	[Adm. Doc. #4694]

On or about April 24, 2009, Area Education Agency 267 (AEA 267) filed a petition with this agency requesting a waiver from administrative rule 281-Iowa Administrative Code 103.8.

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. This agency exercised its authority in rule 4.7 to request additional information from the Petitioner.

**I.
FINDINGS OF FACT**

At issue in this matter is the Petitioner's request to continue to use prone restraint when its staff deems necessary and appropriate to prevent self-harm to one of the students at River Hills School, an attendance center governed by AEA 267. The Petitioner believes it needs a waiver from rule 281—IAC 103.8, which states as follows:

If an employee of a public school, accredited nonpublic school, or area education agency employs physical restraint, the following provisions shall apply:

1. No employee shall use any prone restraints (defined as those in which an individual is held face down on the floor). Employees who find themselves involved in the use of a prone restraint as the result of responding to an emergency must take immediate steps to end the prone restraint;
2. No employee shall use any restraint that obstructs the airway of any child;

The waiver is requested regarding a 20 year old male student, who has autism, is 5'11" tall, weighs 205 pounds, and has physical strength comparable to a non-disabled man of his age. The student has a history of severe self-injury; of specific concern is the student's propensity to bang his head against walls, floors, and the heads of other persons.

The additional information submitted by the Petitioner does not document the use of the prone restraint. We take notice of the fact that services to this student from AEA 267 will cease after the 2009-2010 school year,¹ and that he will transition to care to be governed by the Iowa Department of Human Services.

II. CONCLUSIONS OF LAW

When a petition for waiver is filed under 281—IAC chapter 4, the agency director must find all of the following criteria, per rule 4.4:

1. The application of the rule to the petitioner 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.

The burden of persuasion rests with the petitioner to demonstrate the above criteria by clear and convincing evidence. 281—IAC 4.10(2). A petitioner who requests a waiver from an administrative rule is faced with a very high bar. The evidence submitted to this agency by AEA 267 falls short.

However, it appears that the low frequency but high intensity behavior described by AEA 267 may constitute an emergency. Under rule 103.8, River Hills school staff may lawfully find themselves using a prone restraint with this student as a starting point to prevent harm to the student or others, but must take immediate steps to end the prone restraint by eliminating the emergent condition or establishing other means of control over the student. Put another way, rule 103.8 recognizes the necessity of a prone restraint in extremely rare instances. If River Hills school staff are confronted with a situation governed by the narrow exception contained in rule 103.8, no waiver is necessary.

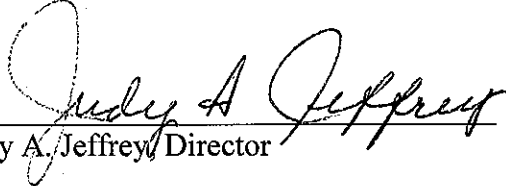
¹ The student will attain his 21st birthday during the 2009-2010 school year, and will exit from special education per Iowa Code section 256B.2.

**III.
DECISION**

For the foregoing reasons, the petition for waiver is DENIED. This is final agency action, and may be appealed via a petition for judicial review pursuant to Iowa Code section 17A.19.

7-13-09

Date


Judy A. Jeffrey, Director