

**IOWA DEPARTMENT
OF EDUCATION
(Cite as 25 D.o.E. App. Dec. 145)**

In re Petition for Waiver of Rule

English Valleys and	:	
Iowa Valley	:	
Community School Districts,	:	ORDER GRANTING
Petitioners,	:	WAIVER REQUEST
for a Waiver of Rule 97.7(4)	:	[Adm. Doc. #4689]

On or about December 2, 2008, the English Valleys ["English Valleys"] and Iowa Valley ["Iowa Valley"] Community School Districts filed a petition with this agency requesting a waiver from administrative rule 281-Iowa Administrative Code 97.7(4).

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 English Valleys and Iowa Valley 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.

English Valleys and Iowa Valley propose that they share the services of Superintendent Alan Jensen. The two districts are not contiguous to each other; the Williamsburg Community School District separates them.

Some of the pertinent facts submitted to this agency from English Valleys and Iowa Valley include the following:

- The student enrollments of English Valleys and Iowa Valley are both under 650 students. Because Williamsburg has a student enrollment of over 1,000, that district was not interested in sharing a superintendent.
- English Valleys and Iowa Valley have held sharing agreements in the past with other positions, and those agreements proved to lead to cost savings for the districts while allowing students greater opportunities.
- These districts also share some classes for students and are looking to expand those opportunities.
- The superintendent of the Williamsburg District, Carol Montz, does not object to this waiver request.

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.*

On behalf of this agency, the undersigned recognizes that the districts are being proactive regarding the harsh realities of being small districts with declining enrollment. If the rule is not waived, the districts would forego the supplementary weighted funds. Whether this results in an *undue* hardship to either district is unclear. However, because the undersigned concludes that the other four criteria are met, the benefit of any doubt regarding this criterion is given to the requesting 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 district between English Valleys and Iowa

Valley 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 contiguousness 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 supplementary weighted funds would enhance the districts’ ability to serve their students.

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

III. DECISION

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

Date

Judy A. Jeffrey, Director