

**IOWA DEPARTMENT  
OF EDUCATION**  
(Cite as 24 D.o.E. App. Dec. 172)

***In re Petition for Waiver of Rule***

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|-------------------------------------|---|-------------------|
| Sioux Center Comm. School District, | : | ORDER GRANTING    |
| Petitioner,                         | : | WAIVER REQUEST    |
| for a Waiver of Rule 44.4(20)"b"    | : | [Adm. Doc. #4643] |

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On or about October 26, 2006, the Sioux Center Community School District ("the District") filed a petition with this agency requesting a waiver from administrative rule 281-Iowa Administrative Code 44.4(20)"b".

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.

**I.  
FINDINGS OF FACT**

At issue in this matter is a vehicle<sup>1</sup> owned by the Sioux Center Christian School ["SCCS"]. SCCS is an accredited nonpublic school with one attendance center, which is located in the Sioux Center Community School District.

The SCCS bus picks up SCCS students. Not all of the nonpublic students reside within the District boundaries, so the bus crosses district boundaries lines.<sup>2</sup> The District has an agreement with SCCS whereby the SCCS bus also picks up some of the District's own regularly enrolled students (as well as additional SCCS students) once the bus has re-entered the District's boundaries. The SCCS bus does not pick up any public students who reside in another district and are open enrolled into the Sioux Center Community School District. No resident student of the District travels on the SCCS bus outside of the District boundaries.

Initially there appeared to be some confusion as to the underlying facts. We emphasize that the record shows that the SCCS bus transports primarily SCCS students and incidentally transports an unknown number of public school students who reside in

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<sup>1</sup> The District does not dispute that the vehicle in question is a school bus. Therefore, we shall refer to the vehicle herein as the SCCS bus.

<sup>2</sup> The exact route of the SCCS bus is not in the record before the Department, but it is not material to this action.

the District and attend the District. The primary mission of the SCCS bus is to provide school transportation for the nonpublic school's students. Transportation of open enrolled students is not at issue here.

The beltline of the SCCS bus displays the name "Sioux Center Christian School," placing it in conflict with the following agency rule:

281—Iowa Administrative Code rule 44 4 **School Bus Body**  
(20) *Identification*

b. The bus, whether school-owned or contractor-owned, shall have displayed at the beltline on each side of the vehicle the official name of the school in black standard unshaded letters at least 5 inches, but not more than 7 inches high.

Examples:

- (1) Blank community school district.
- (2) Blank independent school district.
- (3) Blank consolidated school district.

[Emphasis added.]

The petition filed herein by the District requests that the SCCS bus be allowed to retain its present identification on the beltline of the bus while maintaining the status quo for transportation of public and nonpublic students. The District cites the following as possible consequences if the status quo is not permitted to remain:

1. Increased transportation costs to both the District and to SCCS;
2. Duplication of services;
3. Less effective service to District students if a qualified bus driver cannot be hired, necessitating that routes be combined; and
4. Diminished cooperation and goodwill between the District and SCCS.

Notice of the filing of this petition was provided to the Iowa Pupil Transportation Association, the Sioux Center Christian School and to the school districts contiguous to the Sioux Center Community School District. We are obligated to extend an opportunity to provide input to interested persons, but no one to whom such notice is given is required to respond to the same. The Department heard from only SCCS and the West Sioux Community School District ["West Sioux"].

SCCS replied, not unexpectedly, that it is fully supportive of the waiver request from the District, citing convenience to families and efficiencies for both the public and nonpublic schools. The SCCS principal also offered the information that it does not have a similar contractual relationship with any other district.

West Sioux's superintendent stated that his district does not "have a problem with the arrangement with the Christian School" as long as the SCCS bus does not transport students who live in another district and are open enrolled into Sioux Center. However, he also noted that "it is problematic to have buses of a private entity operating without identification" because it begs questions of liability and expenditure of public funds.

## 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:

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.

### 281—IAC 4.4.

The burden of persuasion rests with the petitioner to demonstrate the above criteria by clear and convincing evidence. 281—IAC 4.10(2). If granted, a waiver shall provide the narrowest exception possible to the provisions of the rule. 281—IAC 4.10(3). The agency director may place any condition on a waiver that the director finds desirable to protect the public health, safety, and welfare. 281—IAC 4.10(5).

We begin with an examination of those criteria listed in 281—IAC 4.4 that are most easily disposed.

#### *The third and fifth criteria*

The third criterion asks whether the rule is mandated by statute or other provision of law. Rule 44.4(20)“b” is not mandated by statute or by any federal transportation regulation. [Iowa Code § 321.373(2) states that regulations prescribed for school buses shall include rules for “lettering and identification of the bus,” but the statute itself does not mandate any specific provisions regarding lettering and identification.] Thus, the rule may be waived if all other criteria are met.

Regarding the fifth criterion, waiver would not have a “negative impact on the student achievement of any person.”

#### *The first criterion*

We next examine whether failure to grant a waiver would result in an undue hardship on the District<sup>3</sup>. Both the District and SCCS have made it clear to this agency

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<sup>3</sup> Because the District is the sole Petitioner herein, we do not discuss any potential hardship to the Sioux Center Christian School

that they enjoy a good relationship with each other. We believe it to be unlikely that a failure to grant the requested waiver will actually result in any loss of cooperation and goodwill between the two educational entities. However, if the rule is not waived and if SCCS, as owner of the bus in question, refuses to change the beltline, the District would have to terminate its agreement with SCCS<sup>4</sup>. This undoubtedly would result in some increased transportation costs to the District and a noticeable duplication of services. However, the District has presented no specific evidence about increased costs or about the availability of qualified bus drivers. Therefore, we cannot find that this criterion (of *undue hardship*) is met.

*The second and fourth criteria*

The transportation of public school children directly or indirectly by a District involves the expenditure of public resources. Therefore, the policy underlying the requirement in the rule at issue is designed to ensure that the public is made aware when public students are transported. Waiving the rule would compromise that policy.

However, the fourth criterion requires that we determine whether there is another means by which public safety can be met other than by the requirement in rule 44.4(2)"b." We therefore invoke our ability under rule 4.10(5) to "place any condition on a waiver that the director finds desirable to protect the public health, safety, and welfare."

We are satisfied that the intent of the rule, as well as substantially equal protection of the public health, safety, and welfare, will be met if the District requires – as part of its transportation agreement with SCCS – that SCCS communicates to the public that it is transporting public school students when this is the case. The District may choose between the following two alternatives, and it must inform immediately the Department of Education<sup>5</sup> which alternative it accepts as the sole condition for the granting of this waiver.

1. The SCCS bus driver may place a magnetic or other temporary nameplate on the beltline bearing the name of the District when the SCCS bus stops to pick up its first District student.
2. The SCCS bus driver may place a placard in a bus window in a place where it can be seen by the public but not obstruct the driver's vision bearing the name of the District when the SCCS bus stops to pick up its first District student.

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<sup>4</sup> Iowa Code §§ 285.14 and 285.15 both invoke criminal penalties for noncompliance with our transportation rules.

285.14: "Any person who operates or permits to be operated as a school bus to transport pupils, any vehicle which does not comply with the requirements provided by law or by the rules and regulations of the department of education . . . shall be guilty of a simple misdemeanor."

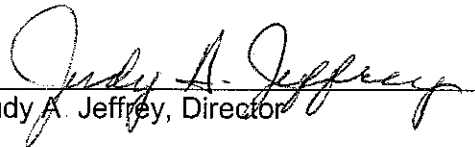
285.15: ". . . Any superintendent, board, or board member who knowingly operates or permits to be operated any school bus transporting public school pupils in violation of any school transportation law shall be deemed guilty of a simple misdemeanor."

<sup>5</sup> The superintendent of Sioux Center Community School District may meet this requirement by calling or emailing Max Christensen or Carol Greta. If the District rejects both alternatives, it shall immediately notify the Department of that rejection, and we shall re-issue this order to clarify that the waiver petition is denied.

**III.  
DECISION**

For the foregoing reasons, the petition for waiver is GRANTED solely on the condition that the District assure this agency that it will follow one of the two preceding alternatives designed to let the public know when students of the District are being transported by the SCCS bus.

12-13-06  
Date

  
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Judy A. Jeffrey, Director