

**IOWA DEPARTMENT
OF EDUCATION**
(Cite as 21 D.o.E. App. Dec. 287)

In re Petition for Waiver of Rule :

Susan Lynn Allison, Petitioner : **ORDER GRANTING**
: **WAIVER**
:
: **[Adm. Doc. #4527]**

On or about December 10, 2002, Susan Lynn Allison (“the Petitioner” or “Ms. Allison”) filed a petition with this agency requesting a waiver from administrative rule 281-Iowa Administrative Code 79.13(2). The Petitioner was not represented by legal counsel. Notice of receipt of the petition was duly provided to interested persons, to whom opportunity to comment was provided.

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.

FINDINGS OF FACT

The Petitioner is a student in the teacher preparation program at Iowa Wesleyan College (hereinafter, “the College” or “IWC”). Pursuant to authority provided by Iowa Code section 272.25 and 281-IAC chapter 79, the College’s program is approved by this agency. Ms. Allison is a 42-year-old mother of two dependent children who has a previously-earned B.A. degree in a non-teaching field. She first contacted IWC in October of 2000 to discuss what further courses she would need to take to obtain a K-6 teaching license in the State of Iowa. Ms. Allison was notified on October 5, 2000 of her acceptance into IWC’s teacher preparation program; she has taken night classes in that program for the past two years.

Before beginning classes at the College, Ms. Allison and College personnel discussed the student teaching requirements of a teacher preparation program. Typically, IWC teacher preparation candidates student teach for 15 weeks from 8:00 a.m. to 3:30 p.m. at an Iowa school district. For the past nine years, Ms. Allison has been a permanent part-time employee of Grain Processing Corporation. She is vested in that company’s benefits package, including family health insurance. The administrator and vice-president of human resources of her employer told this agency that her position of training center janitor requires her to work Monday through Friday from 6:00 a.m. to 10:00 a.m. Her employer, not unreasonably, is not willing to allow Ms. Allison to perform her duties for Grain Processing Corporation at night because she would be alone in their building. Accordingly, when IWC officials discussed with the Petitioner the

requirements of student teaching from 8:00 a.m. to 3:30 p.m. daily for 15 weeks, Ms. Allison informed these College officials that it would not be possible for her to complete the student teaching requirement.

In light of Ms. Allison's employment, IWC made arrangements with the Muscatine Community School District ("the District") to have her student teach at the District for a total of 20 weeks from 10:30 a.m. to 3:30 p.m. A letter dated April 9, 2002, from then-chairman of IWC's Division of Education, Stephen J. Voelz, states that, subject to the approval of his successor, Ms. Allison "shows every evidence of becoming a fine teacher" and should be accorded a degree of flexibility in fulfilling her student teaching obligation due to her circumstances. This letter was written at the Petitioner's request when Dr. Voelz announced his retirement because the Petitioner wanted written verification of his verbal commitment made in October of 2000 that she would not have to student teach from 8:00 a.m. to 3:30 p.m. Dr. Voelz's successor, Mary Jo Kish, informed this agency that the College "diligently worked" to secure a student teaching assignment for Ms. Allison "that was more agreeable with her schedule." Dr. Kish did not render an opinion to this agency about the accommodations made by IWC for the Petitioner.

Student teaching occurs during the final year of a teacher candidate's education in a teacher preparation program. The 2002-2003 school year is this Petitioner's final year in her program at IWC. By letter dated September 18, 2002, Ms. Allison was informed by IWC that she had been approved by the College to student teach at the District for 20 weeks from 10:30 a.m. to 3:30 p.m. The first ten weeks of this teaching (November 18, 2002 - February 14, 2003) would take place at Washington Elementary; the second ten weeks (February 17, 2003 - May 9, 2003) at Grant Elementary. Both cooperating teachers and the principals of the two attendance centers approved this arrangement.

Roughly ten days before the start of her student teaching, Ms. Allison was informed by IWC officials that this agency's administrative rule 281-IAC 79.13(2) required student teachers to be in the classroom with their cooperating teacher from 8:00 a.m. to 3:30 p.m. Exercising the option provided to her by 281-IAC chapter 4, Ms. Allison filed her petition for waiver from rule 79.13(2). She states that if she is forced to give up her current employment to student teach from 8:30 a.m., she will lose her job at Grain Processing Corporation, a statement not contradicted by her employer. If she loses that employment, she will lose health insurance coverage for herself and her two children. She states that she will also, in all likelihood, default on her residence mortgage and lose her home.

CONCLUSIONS OF LAW

The rule from which Ms. Allison seeks waiver, 281-IAC 79.13(2) is part of the rules outlining the teacher preparation clinical practice standards, and states as follows:

Student teaching shall be a *full-time experience for a minimum of 12 consecutive weeks* in duration during the student's final year of the practitioner preparation program. [Emphasis added.]

"Full-time" has been interpreted by this agency and by all practitioner or teacher preparation programs to mean the typical contact hours between student and teacher or a typical teacher work day.

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

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.

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 the five criteria listed in 281-IAC 4.4.

The third criterion

If the provisions of rule 79.13(2) are mandated by a statute or other provision of law, it is not within the authority of this agency to grant a waiver from the rule. Therefore, our analysis starts with an examination of the statute. Authority for the rule comes from Iowa Code section 272.25, which in subsection (1) thereof, states in part that the "student teaching experience shall be a minimum of twelve weeks in duration during the student's final year of the practitioner preparation program." Nowhere does the enabling legislation use the term "full-time." Accordingly, the requirement in rule 79.13(2) that student teaching be a full-time experience for a minimum of 12 weeks is not mandated by statute or other provision of law.

The second, fourth, and fifth criteria

Three of the remaining four criteria for waiver in rule 4.4 (numbers 2, 4, and 5 above) are designed to make sure that persons other than the petitioner will not be adversely affected if a waiver is granted. There is no allegation that the substantial legal rights of any persons would be prejudiced by granting the waiver sought by the Petitioner. Persons similarly situated to the Petitioner are required to student teach for a total of about 900 hours (assuming a practicum of 12 weeks from 8:00 a.m. to 3:30 p.m. daily). Ms. Allison will student teach for a total of 1000 hours if allowed to do so for 20 weeks from 10:30 a.m. to 3:30 p.m. The second criterion of rule 4.4 is met.

This agency has received written statements from Ms. Allison's cooperating teacher and building principal at the District. Both state that the students at the elementary attendance center who are taught by the Petitioner have "specials" (i.e., music, physical education, and art) first thing in the morning that are taught by teachers other than Ms. Allison's cooperating teacher. Ms. Allison would not have any direct teaching contact with the students during this time. This agency does not believe that the achievement of any students being taught at the District by Ms. Allison will be negatively impacted, the requirement of the fifth criterion.

The requirement of the fourth criterion brings into question whether the Petitioner will receive a true teaching experience if she is not at the attendance center first thing in the morning to be with the children in her class. To pose the question more globally, is there a rational basis for the rule provision that student teaching be a full-time experience?

While we conclude that the College and the District have taken reasonable steps to ensure that substantially equal protection of public health, safety, and welfare will be afforded by means other than having Ms. Allison student teach from 8:00 a.m. to 3:30 p.m. the entire time of her student teaching, we recognize that the full-time requirement is grounded in good policy. It is important for student teachers to be at the school to greet the students first thing in the morning. However, the degree of importance of this requirement need not be decided in this case. It is enough to note that this agency can condition waiver of rule 79.13(2) in such a way to ensure that the Petitioner will have sufficient early morning contact with her young charges to provide for their equal protection and for that of Ms. Allison's future students. If the waiver is granted, therefore, it will be conditioned on a requirement that Ms. Allison student teach a minimum number of days from 8:00 a.m. to 3:30 p.m.

The first criterion

We are left to examine whether failure to grant a waiver would result in an undue hardship on Ms. Allison. There is no dispute that her income from Grain Processing Corporation is crucial to her family, as is the health insurance coverage provided by her employer. This is not a unique problem, however, particularly with the advent of "non-traditional students" entering

the ranks of practitioner preparation programs. This agency believes that Ms. Allison will face an economic hardship if a waiver is not granted, but this agency finds itself in a position where it cannot ascertain whether the economic hardship is so undue as to justify waiver in this case.

That is not to say that no undue hardship exists. It is a general expectation of this agency and of the Board of Educational Examiners (BoEE) that a teacher preparation program shall work in a timely manner with its student teacher candidates to make what arrangements they need to make to meet the requirements of rule 79.13(2). As BoEE Executive Director, Dr. Anne Kruse, points out in her letter in response to Ms. Allison's petition, teacher preparation programs are expected to stress early and often to students that they need to prepare financially to fulfill their student teaching obligation, especially if the student has been working during the day. However, in this case, the College chose not to assist Ms. Allison in finding a way to fulfill the full-time requirement of student teaching. Rather, the College decided that Ms. Allison was worthy of an exception being made and set about to tailor a schedule to fit her needs. From the time of her enrollment at IWC two years ago, Ms. Allison has been led to believe by the College that she would not be expected to student teach full-time for at least 12 weeks.

It is the College's actions, however well-meant, that now leave the Petitioner in a position of not being able to demonstrate an undue economic hardship as she pursues her petition for waiver. *That is the true hardship that Ms. Allison faces.* Rather than having two years to work on options such as seeking leave from her employer, changing her employment, or borrowing money, Ms. Allison had no time to explore these or other options that would have allowed her to be in full compliance with rule 79.13(2). She has no proof to show this agency that she tried for two years to do something, anything, that would allow her to student teach full-time. As this hardship is outside the control of the Petitioner, this agency concludes that it is indeed an undue hardship.

DECISION

For the foregoing reasons, the petition for waiver is GRANTED. **However, the waiver is conditioned on the Petitioner student teaching one week (five school days) of the remainder of the total of 20 weeks of her practicum from 8:00 a.m. to 3:30 p.m.** At the conclusion of the entire 20 weeks of student teaching, the Petitioner shall submit to this agency a statement signed by her second cooperating teacher, Mary Whittaker, and by Betty Mahoney, Jane Lauer, or Dr. Kish of IWC to verify that this condition was fulfilled. Violation of this condition shall subject the Petitioner to the same penalties as if she violated rule 79.13(2); that is, she shall be deemed not to have completed her student teaching practicum. 281-IAC 4 14.

1-7-03

Date



Ted Stilwill, Director