

IOWA DEPARTMENT  
OF EDUCATION  
(Cite as 28 D.o.E. App. Dec. 504 )

*In re Petition for Waiver of Rule 43.1*

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Murray Community School District,	:	DECISION GRANTING
Petitioner,	:	WAIVER REQUEST
for a Waiver of Rule 43.1	:	
	:	[Adm. Doc. #5094]

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On or about October 2, 2018, the Murray Community School District ["MCS"] filed a petition with this agency requesting a waiver from administrative rule 281-Iowa Administrative Code (IAC) 43.1(3) for the 2018-2019 school year. Authority for filing and ruling on petitions for waiver is found in 281 – IAC chapter 4.

A telephonic hearing was held in this matter on November 5, 2018, before the Department pursuant to agency rules found at 281-IAC chapter 6. The Department was represented by Director Ryan Wise, Attorney Nicole Proesch, and Transportation Education Program Consultant Max Christensen. The Petitioner was represented by Attorney Jess Vilsack. Also present was Margaret Buckton from the Urban Education Network of Iowa and the Rural School Advocates of Iowa.

MCS answered questions related to the criterion required for the waiver request. The Department has considered the facts, the criteria for waiver in chapter 4, and the information submitted by MCS in ruling on the petition.

I.  
FINDINGS OF FACT

At issue in this matter is the requirement in rule 43.1(3) that "The riding time, under normal conditions, from the designated stop to the attendance center, or on the return trip, shall not exceed 75 minutes for high school pupils or 60 minutes for elementary pupils. (These limits may be waived on requests of the parents)."

MCS has requested a waiver of these limitations for the 2018-2019 school year and beyond. MCS serves students in and around Murray, Iowa. MCS has found it increasingly difficult to find qualified bus drivers in the district to transport students to and from school. Due to these difficulties, the district has reduced the number of bus routes from three to two, but it has not reduced the number of students that it is serving. The district argues that with the reduction in the number of bus routes, it is difficult to comply with rule 43.1(3) and continue to serve the needs of all students. In some cases the district has been forced to go over the time limitations by only seven minutes. The

district is being proactive in this request because it anticipates a need to go over the limitations in the rule. Thus, MCS is requesting a waiver from rule 43.1(3).

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

- If MCS is required to comply with the rule it will be forced to eliminate transportation for some of its elementary and high school students and create a burden on parents to find alternative transportation for their students to school.
- Granting the waiver will not have a negative impact on student achievement and the district argues it will help student achievement.
- Parents of the district were surveyed and the survey results show an overwhelming support for this waiver request with only two out of ninety-two parents indicating they were not in support of the request.
- The MCS Board is making this request on behalf of the district.
- The MCS Board overwhelmingly supports this request.
- If the request is granted the Board will consider the age of students, length of bus routes, and input from parents in developing bus routes that are in the best interest of students.
- The MCS Board will be setting ride times and does not anticipate going over ninety minutes for any student.
- The MCS Board is requesting local decision making authority to approve time limits for the student ride times for the 2018-2019 school year and beyond.
- There has been no evidence that other stakeholders object to the 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.*

The decision of the district to operate only two bus routes is entirely the discretion of the district. 281 IAC 43.1(3) creates a hardship on MCS students and parents who rely on MCS transportation to get to and from school each day. Without a waiver MCS would have to:

- 1) Eliminate bus transportation for some of its elementary students who live closer than two miles from school and high school students who live closer than three miles from school.
- 2) Stop picking up certain students from home and instead consolidate bus stops in and around the district.

Both could create safety issues for students and hinder school attendance.

Thus, the impact on the district, staff, students, and parents would undoubtedly result in an undue hardship for all involved because students would no longer be picked up and dropped off at their home by the school bus, and parents of these students will be forced to find alternative means of getting their children safely and conveniently to and from school.

2. *Waiver would not prejudice the substantial legal rights of any person.*

The policy underlying the rule that bus ride times shall not exceed 75 minutes for high school pupils or 60 minutes for elementary pupils, is so that students will not have to sit on buses for long bus rides, requiring them to be at the bus stop early in the morning. However, transportation to and from school is paramount to bus ride times. Under the circumstances outlined by the district, the need to get students to and from school outweighs the need to comply with the time limitations in this rule.

There is no evidence that anyone has an objection to this waiver. Therefore, the 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.*

The requirement of districts that bus ride times shall not exceed 75 minutes for high school pupils or 60 minutes for elementary pupils is not mandated by any provision of law outside of rule 43.1(3). 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 granting of this waiver would not negatively impact the public health, safety, and welfare of MCS students or the general public. In fact one could argue that not providing the waiver would impact the safety of MCS students getting to and from school.

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 ability of MCS to operate two bus routes with longer ride times will allow MCS to provide more transportation to more students to and from school in the district. The undersigned is satisfied that students and parents are not harmed by granting a waiver herein.

### III. DECISION

For the foregoing reasons, the petition for waiver is GRANTED with the understanding that the district will not impose school bus ride times that exceed 90

minutes for any student under normal riding conditions and this waiver is only for the 2018-2019 school year and the 2019-2020 school year. Under Iowa Code 17A.9A(3), a waiver or variance shall not be permanent, unless the petitioner can show that a temporary waiver or variance would be impracticable. There was no showing made that a temporary waiver would be impractical. The Department may, in its sole discretion, renew the waiver at any time if the agency finds all of the factors set out in subsection 2 remain valid.

12-20-18  
Date

Ryan M. Wise  
Ryan M. Wise, Ed. L.D.,  
Director