

IOWA DEPARTMENT
OF EDUCATION
(Cite as 28 D.o.E. App. Dec. 510)

<i>In re Petition for Waiver of Rule</i>	:	DECISION GRANTING
281 IAC 12.1,	:	WAIVER REQUEST
	:	
Gilmore City-Bradgate Community	:	[Adm. Doc. #5099]
School District,	:	
Petitioner,	:	

On or about January 2, 2019, the Gilmore City-Bradgate Community School District ["Gilmore"] filed a petition with this agency requesting a waiver from administrative rule 281-Iowa Administrative Code 12.1(7) for the 2018-19 school year. Authority for filing and ruling on petitions for waiver is found in 281 – IAC chapter 4. An amended petition was filed on January 22, 2019.

A telephonic hearing was held in this matter on January 25, 2019, before the Department pursuant to agency rules found at 281 Iowa Administrative Code chapter 6. The Department was represented by Attorney Nicole Proesch. The Petitioner was represented by Attorney Rick Engel. Also present for the Petitioner was Jeff Herzberg, Superintendent of Gilmore.

Gilmore 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 Gilmore in ruling on the petition.

**I.
FINDINGS OF FACT**

At issue in this matter is the requirement in rule 12.1(7) that "[t]he board and authorities in charge of an accredited nonpublic school shall notify the department annually of their decision to have a calendar based on days or based on hours."

In 2013, the Iowa Legislature amended a section of Iowa Code chapter 256.7(19), creating new flexibility for school districts and accredited non-public schools when determining their school calendar. Effective July 1, 2014, school districts and accredited nonpublic schools have the option to choose between 180 days or 1,080 hours of instruction. School boards and authorities in charge of an accredited nonpublic school are authorized to determine the days or hours of their school calendars; however, public schools must hold a public hearing prior to adoption. Schools and school districts are required to report this decision annually to the department.

Gilmore desires to resubmit its annual notification to the Department of their decision to have a calendar based hours rather than days. Gilmore initially submitted to the Department that it would operate a calendar based on days for the 2018-2019 school year. However, the Gilmore has provided evidence that this selection was reported to the Department in error.

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

- The Gilmore school board originally approved a school calendar to operate based on hours at its April 11, 2018 school board meeting as evidenced in Gilmore's Calendar Exhibit. However, the information put into the "BEDS" reporting system was a calendar based on days. Mr. Herzberger testified that this submission was a clerical error.
- Mr. Herzberger also testified that the hours calendar has no impact on teaching contracts which are still written based on calendar days.
- There has been no evidence that other stakeholders object to the request.
- If the district is not granted a waiver the district will be short 2 days of instruction under days.
- If the District is required to operate on days of attendance, it will be required to increase the number of days of required attendance for students and staff by two days.
- Granting the waiver will not have a negative impact on student achievement.
- The district has been operating on an hours based calendar for the past two years.

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 a calendar on hours is entirely the discretion of the district. The Gilmore board did elect to maintain a school calendar based on hours and not days on April 11, 2018. If the annual notification rule is not waived the district will be required to increase the number of days of required attendance for students and staff by 2 days. The impact on the district, staff, students, and parents would undoubtedly result in an undue hardship for all involved because the district would not have enough days to meet the statutory requirement since the approved calendar was based on hours.

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

The policy underlying the rule that school districts annually notify the department of their decision to have a calendar based on days or based on hours is designed to ensure that students legally get the required amount of instruction. Whether the calendar is based on days or hours will not impact the amount of overall instruction that students are required to receive. Staff, students, and parents have already been provided with a calendar based on hours and not days. 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 to notify the department annual of the decision to have a calendar based on days or based on hours is not statutory and not mandated by any provision of law outside of rule 12.1(7). 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 12.1(7).

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 Gilmore to operate a calendar on hours instead of days will enhance the ability of the district to have flexibility in their calendar when issues of inclement weather or an emergency arise.

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

III. DECISION

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

1-28-19
Date

Ryan M. Wise
Ryan M. Wise, Director