

**IOWA DEPARTMENT
OF EDUCATION**
(Cite as 25 D.o.E. App. Dec. 79)

In re Petition for Waiver of Rule

Aurelia Community School District,	:	ORDER GRANTING
Petitioner,	:	WAIVER REQUEST
for a Waiver of Rule 97.7(4)	:	[Adm. Doc. #4679]

On or about July 7, 2008, the Aurelia Community School District ["Aurelia"] 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 Aurelia 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.

Aurelia proposes to share the services of Superintendent Lynn Evans with his present employer, the Hartley-Melvin-Sanborn Community School District ["HMS"]. The two districts are not contiguous to each other; one district – South O'Brien Community School District – separates them. South O'Brien's superintendent, Richard Nervig, has stated to this agency that his district does not wish to be part of the proposed sharing agreement and has no objection to this waiver.

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

- The K -12 student enrollment of the Aurelia district is less than 300 pupils. Aurelia's board of directors is looking long-term to a substantial partnership with either the Alta or Cherokee school district; in order to keep its options open, the board recognizes that it would not be wise to share superintendent duties with either of those districts at this time.
- The Aurelia board estimates that the district needs will be adequately and appropriately addressed by a superintendent who serves the district approximately one-third time.
- Aurelia has advertised for a part-time superintendent for the 2008-09 school year, and has a qualified applicant; however, the option of sharing a superintendent with another district would save the district money.
- Superintendent Evans is a native of the Aurelia district, so he is familiar with the demographics of Aurelia, its assets and its challenges. Mr. Evans is highly recommended for this proposed sharing agreement by Les Douma, the recently retired chief administrator of Northwest Area Education Agency.

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 Aurelia is being proactive regarding the harsh realities of being a small district with declining enrollment. If the rule is not waived, the district would have increased administrative personnel costs and would forego the supplementary weighted funds. While Aurelia has presented no specific evidence about increased costs, common sense informs one that its costs will increase, and this will be burdensome to the district. Whether this results in an *undue* hardship to Aurelia 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 Aurelia district.

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 only district between Aurelia and HMS (South O'Brien) 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.

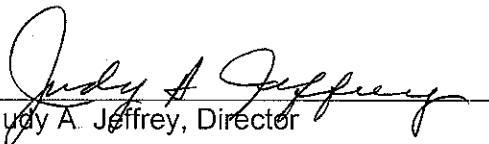
Granting this waiver would not have a "negative impact on the student achievement of any person." To the contrary, the savings to Aurelia and the supplementary weighted funds would enhance that district's ability to serve its students.

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.

7/10/08
Date


Judy A. Jeffrey, Director