ILLINOIS STATE BOARD OF EDUCATION
December 12, 2001

Agenda Topic: 2002 Cumulative Waiver Report

Materials: Summary of Approved Waiver/Modifications Chart
Supporting Documentation for Physical Education Requests (provided under separate cover)

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Purpose(s) of Agenda Item

• Consider policy issues associated with or resulting from waiver requests.
• Identify legislative changes that respond to certain approved waivers or modifications and recommend those to the General Assembly.

Expected Outcome of Agenda Item

• Agreement on recommendations to be included in report to the General Assembly.

Background Information

The State Board of Education, pursuant to 105 ILCS 5/2-3.25g, must submit to the Illinois General Assembly on or before February 1 of each year a report listing "all types of waiver mandates and modifications of mandates granted by the State Board or the General Assembly ... (identifying) the topic of the waiver along with the number and percentage of school districts for which the waiver has been granted." In addition, the report must include any recommendations for amendments to or repeal of School Code mandates involved in the waivers or modifications. The 2002 report is the fifth to be submitted under that law.

The report is submitted to the General Assembly in two parts: a narrative portion that summarizes the requirements for the report and any recommendations for legislative action, and a chart that lists the approved waivers and modifications by topic area and the number and percentage of districts to date that have received approval for each waiver or modification type.

In general, these reports have focused on two or three topics where a legislative change appeared warranted based on the number of waiver requests approved by either the General Assembly or the State Board of Education. At least two of the four reports have also included discussions of policy issues raised by the waiver requests, independent of the frequency of those requests.
The purpose of this agenda item is to discuss possible options for this year’s report, which is due by February 1, 2002. Based on Board direction during this meeting, staff will prepare the report and present it for Board approval in January.

This strategic discussion is important for two reasons. First, the General Assembly has not acted on any of the recommendations contained in the cumulative waiver reports submitted since this requirement was put in place in July 1997. The legislature has acted independently to amend various sections of the School Code in response to certain waiver requests (see footnote in the accompanying chart), but it has not acted on nor has it voiced any concerns about legislative changes proposed in the reports. This lack of response makes it difficult to gauge how the Board should approach the statutory requirement.

Second, the Governor has initiated a review of the School Code, with the goal of streamlining its provisions. Although this is not directly related to the waiver issue, it may highlight provisions of Illinois school law, which have been the subject of waiver and modification requests, that should be modified.

**Analysis and Implications for Policy, Budget, Legislative Action and Communications**

As of the October 2001 waiver report, 744 school districts out of 891 operating as of fall 2001 have received approval to waive or modify requirements contained in either the School Code or the agency’s administrative rules. This represents 83.5 percent of districts statewide, an increase in this reporting period of about 7 percent in the number (50) of districts seeking waivers or modifications for the first time. The chart summarizing these approvals follows this executive summary.

The largest increase in both number of petitions and of first-time applicants occurred with modifications to use mandated legal school holidays for purposes other than a holiday (e.g., school attendance, inservice training or teacher institutes, parent-teacher conferences, emergency days).

A total of 290 holiday petitions have been approved since the last cumulative report was submitted in February 2001, with 38 districts submitting legal school holiday applications for the first time. Since the inception of the current waiver process in 1995, 584, or 65.5 percent, of Illinois school districts have requested relief from some of the mandated legal school holidays. This continuing interest in having more flexibility around holidays (it is the School Code mandate most frequently addressed by modification requests) suggests that it is important to continue to call the need to examine the legal school holiday mandate to the attention of the General Assembly.

Another substantial increase has occurred in the number of applications approved to adjust the length of the school day or of the school year. This increase – from six to 51 approved requests – is due to modifications that 45 districts sought in the five-clock-hour school day for one or more grade levels in order to administer the Prairie State Achievement Examination (PSAE). School districts indicated that these modifications were needed due to the Standard Testing Requirements that must be implemented during the administration of the PSAE, which includes the ACT exam. It is anticipated school districts this year will again seek approval for this modification. The report may be the
appropriate avenue to address how the law can be changed to accommodate varied schedules on testing days without districts being penalized for the time that is lost.

The State Board has continued to receive waiver and modification requests for physical education; relief from the daily physical education mandate is addressed the most frequently after school holidays. During this reporting cycle, 43 physical education requests were granted; 32 of those requests were renewals of previously approved petitions. Only a quarter of the applicants (11) were seeking relief for the first time. In the past, the Board has included specific recommendations for statutory changes regarding physical education and could do so again; however, there are several compelling reasons to address this issue in a different way in this year’s report (see discussion below).

None of the other types of waiver approvals have occurred with sufficient frequency to warrant recommended changes to the School Code. On the other hand, the timing of waiver reports can be improved. Last year’s cumulative waiver report addressed this issue. State Board staff continue to believe that in order for the cumulative waiver report to be a more effective tool in influencing the General Assembly’s legislative agenda, it needs to be brought to that body before the start of the legislative session. For this reason, staff continues to support the recommendation that the due date for the report be changed from February 1 to November 1.

Based on the analysis of waivers and modifications approved to date, staff believe the February 2002 cumulative waiver report should address four key issues: legal school holidays, PSAE testing and the school day, physical education, and due dates for waiver reports. Specific recommendations and options are discussed below.

**School Holidays**

**Discussion:** School districts have addressed the mandate for legal school holidays most consistently in the last six years. As indicated above, school districts received approval for 290 holiday requests, compared to 175 in the previous reporting period. Most of those requests were renewals of previously granted modifications. Of the 12 legal holidays listed in the School Code, only July 4, Thanksgiving, Christmas Day, and New Year’s Day have not been the subject of waiver requests.

Legal school holidays are also the primary mandate addressed in petitions submitted by Regional Offices of Education on behalf of schools established under Article 13A of the School Code (15 approvals) and by special education cooperatives on behalf of member districts (six approvals).

Last year’s report recommended that Section 24-2 of the School Code be amended to allow school districts to hold school on certain legal holidays or to use these holidays for other purposes. School districts would only be able to do this if they provide to students instruction specific to the contributions of the individual or individuals being honored by the holiday.

In previous reports, the State Board recommended that before legal holidays could be observed as commemorative holidays, a public hearing must be held. This restriction was
omitted last year since it was assumed the public would be informed about the holidays at the time the school calendar was prepared.

Recommendation: The report should include a proposed change to Section 24-2 of the School Code to allow school districts to use these holidays for other purposes, provided instruction specific to the contributions of the individual or individuals being honored by the holiday is provided to students, either on the holiday, if students are in attendance, or at another time during the school year.

Prairie State Achievement Test and the School Day

The 45 districts that received approval to modify the length of the school day on PSAE administration days proposed two options: either all or some students not taking the PSAE (i.e., those in grades 9, 10 and 12) were dismissed early on the two days the assessment was given or these students did not attend school at all on testing days. Districts also requested that grade 11 students taking the test be dismissed following its administration.

The early dismissal of or nonattendance by one or more grade levels was due to implementation of the Standard Testing Requirements for the PSAE administration. These requirements address, in part, acceptable facilities for testing, personnel to be employed, security features to be observed, and the timing of tests – requirements that districts said could not be fully implemented if all of their students were present for a full school day on each of the two testing days.

The State Board approved these requests as modifications of Section 18-8.05(F)(2), provided that the districts accumulated, or “banked,” sufficient time over the five-clock-hour instructional day before the test administration days. This “banked” time was used on the shortened test days so that they could meet the five-clock-hour requirement and be counted towards the 176 days of pupil attendance required by the School Code.

Since the State Board had anticipated seeking legislation to allow districts flexibility on PSAE testing days, the modifications granted in the spring were good for only one year. No legislative proposal was drafted, however, so the limit on the modification’s effective date was lifted this year. School districts now can seek the modification for up to the five years allowed under the waiver law.

It is anticipated that the State Board will again receive dozens of requests to adjust the school day during the PSAE administration. For this reason, the difficulty districts are experiencing due to the test can be brought to the attention of the General Assembly through the cumulative report.

Recommendation: The report could propose that those students taking the PSAE, as well as other students whose daily schedules must be altered in order to implement the Standard Testing Requirements, be allowed to have fewer than five clock-hours of instruction on PSAE days, provided the district had previously banked the missing time.

The agency’s Legal staff have indicated that the legislative change to accomplish this could involve several sections of the School Code and would take some time to prepare. For this reason and given the failure of the General Assembly to act on recommendations
contained in the cumulative waiver report, staff would advise that the report outline the
difficulties districts now face and summarize proposed legislation without preparing the
specific amendments that would be necessary.

**Physical Education**

The daily physical education mandate has resulted in numerous requests for waivers and
modifications, as well as ongoing controversy about the requirement itself. Daily physical
education advocates point to the poor physical fitness of many students, with
accompanying increases in the number of obese children and those with such diseases as
diabetes, as strong reasons to prohibit any erosion to the mandate to provide daily
physical education. School district officials, on the other hand, stress the challenges they
face in finding sufficient time in an already-tight schedule to improve student achievement
in all academic areas.

The State Board of Education has adopted a two-part strategy for fulfilling its
responsibilities under the law and ensuring that students have access to high-quality
learning opportunities that will allow them to meet the standards for Physical Development
and Health.

In March 2001, the Board adopted a policy that requires applicants seeking to waive or
modify the physical education requirement to submit evidence that their students are
meeting the learning standards and that equal opportunities for learning will not be
compromised should physical education be offered on less than a daily basis.

The policy is in effect starting with all requests submitted for consideration in the Spring
2002 waiver report. A one-page addendum to the waiver application was prepared for use
by applicants in addressing the policy. That addendum seeks information about the type
of assessment tools a district uses to determine students’ progress toward meeting the
physical development standards and asks how students not participating in physical
education will be afforded equal opportunities to achieve these standards.

To date, the staff have received eight petitions addressing daily physical education. Of
those, three have been approved by the State Board as modifications (i.e., districts asked
to revise schedules to offer substantially similar time for physical education on less-than-a-
daily basis as students would receive in daily physical education). Five requests are
 waivers that will be considered by the General Assembly in the spring. All of the districts
with physical education requests have been asked to submit the addendum; four have
completed and returned the form. A summary of the information provided is presented
under separate cover.

At the same time, the Board has worked with the Illinois Association for Health, Physical
Development, Education, Recreation and Dance (IAHPERD) to support school districts in
aligning their physical education programs with the standards. A series of workshops have
been held this fall to acquaint local educators with the standards, performance measures,
and assessment tools. These have been so well-received that additional workshops have
been scheduled.
In the General Assembly, physical education waiver requests have received close scrutiny both in the spring and the fall sessions. The General Assembly did pass House Resolution 333 last spring that called for an annual report from IAHPERD on the status of physical education programs in Illinois and requested that the State Superintendent review physical education petitions to ensure that they meet all of the requirements of the waiver law. The legislature in the spring session, however, failed to act on the State Board’s recommendation to limit physical education waivers to two years, and it did not disapprove any requests this fall about which the Board had expressed its concerns regarding the failure of some districts to provide equal learning opportunities.

**Recommendation:** Given the Board’s policy, the efforts of IAHPERD to acquaint districts with exemplary physical education programs, and the General Assembly’s failure to act to restrict the number and type of physical education waivers (either through legislation or through disapproval of certain requests), staff believe that further recommendations for legislative changes to the physical education requirement should be deferred for up to two years. Instead, the Board should re-examine the need to tighten the law after it has had an opportunity to evaluate the effectiveness of the physical education waiver policy. At that time, the Board’s policy would have been in effect for at least two waiver cycles.

At the end of this current school year, 56 physical education approvals will expire; another 40 requests expire at the end of the 2002-2003 school year. Many of these districts will choose to seek approval to renew their original waivers or modifications. This should provide sufficient data to determine the effectiveness of the policy.

If the Board wishes to propose legislative means to restrict waivers and modifications, it could offer amendments to either the physical education law (Section 27-6 of the School Code) or the waiver law (Section 2-3.25g of the School Code). Based on Board direction, staff could prepare several recommendations for consideration at the January Board meeting.

The most extreme recommendation would be to amend Section 27-6 to prohibit any waivers or modifications from the daily physical education mandate. This action would be similar to the one the General Assembly took to prohibit any waivers or modifications to mandates pertaining to the township treasurer. Such a recommendation, however, is likely to draw strong objections from school districts and their lobbying organizations.

Other legislative options would be amendments that would require additional evidence that students are meeting standards (similar to the evidence requested under the Board’s policy) or that would restrict the timeframe in which these waivers and modifications can be in effect. This proposal could mirror the requirements of HB 1927 (Rep. Willie Delgado), which failed to be enacted during the last legislative session. Another way to provide flexibility for districts which are providing substantially equal time for physical education but on less than a daily basis would be to amend the law to allow block scheduling modifications to be secured without going through the waiver process. Notification to the public could be ensured by requiring that a public hearing be held before any block schedule for physical education is implemented.

*Cumulative Waiver Report and Spring Report Submission Dates*
Discussion: In the four years that the Board has been required to submit the cumulative waiver report, not one recommendation has been pursued by the General Assembly. Part of the reason for this may be the timing of the report, which is due just prior to the start of the spring legislative session. At this point in the process, it may be too late for the General Assembly to include recommendations in its agenda for the session. An earlier date of November 1 would assist both agency staff and legislative staff in drafting proposals. A date of November 1 also would not conflict with the Board's consideration of the fall waiver report, which is due by October 1.

In addition, staff are recommending that the spring report be submitted to the General Assembly by March 1 rather than May 1. In 2000, the General Assembly decided to recess early before the spring report was due, causing the Board to move up the deadline for school districts to submit requests. The early adjournment placed a burden on school districts, which still had to provide proper notice, hold a public hearing, and receive board approval before submitting their requests. A due date of March 1 will ensure that the report will be submitted early enough in the session so as not to conflict with early adjournment dates, while still providing sufficient time for districts to prepare and submit requests where approval is needed for fall implementation.

Recommendation: The report should contain a recommendation that the General Assembly consider changing due dates for the cumulative waiver report and spring waiver report to November 1 and March 1, respectively.

Budget Implications: None.

Legislative Implications: Submission of the report fulfills the statutory mandate contained in the waiver law. While the report is not a legislative proposal, it may very well provide suggestions of several issues that legislators may choose to consider relative to statutory changes that would be appropriate in light of approvals of waiver and modification requests.

Communications: The report will be submitted to the General Assembly by February 1, 2002, as per agency procedures.

Pros and Cons of Various Actions

While the recommendations included in the cumulative waiver report are not a legislative proposal per se, they would represent the consensus of the State Board as to the advisability of supporting certain changes to the School Code. With this in mind, the State Board would need to consider whether it would support the proposed amendments, should the General Assembly decide to act on the recommendations contained in the report.

In the case of legal school holidays, the recommendation put forth represents what has been routinely approved by the State Board of Education rather than addressing those areas usually dealt with by the General Assembly. The State Board's support of the recommendation acknowledges the routine nature of these requests and the likelihood that applicants meeting the requirements of the waiver law and requirements for approval will continue to have their modification requests granted.
It would be remiss, however, not to acknowledge that a proposal to amend the school holiday statute has the potential to generate a fair amount of controversy, should it be put forth as legislation. In the past, members of both the Senate and House education committees, as well as members of the public, have expressed concerns about holding school on certain legal holidays, particularly Veterans' Day and the birthday of Dr. Martin Luther King, Jr.

There continues to be a vocal minority in the House and Senate who are against physical education waivers of any kind. These legislators might welcome strong legislative recommendations from the State Board about ways in which these waivers can be restricted. On the other hand, the General Assembly has only denied four physical education requests from among the 357 it has been asked to consider. Providing to the General Assembly information received as a result of the Board’s physical education waiver policy may prove more useful in influencing action on those requests the Board deems lacking than placing further restrictions on all districts that wish to modify daily physical education.

**Superintendent’s Recommendation**

Authorize the completion of the 2002 Cumulative Waiver Report, which will be presented for final Board action in January and include the following:

- A recommendation to allow the use of legal school holidays as commemorative holidays, provided appropriate instruction is presented;
- A discussion of the difficulty districts face in administering the PSAE and providing a full school day for all of their students and a summary of the type of amendments that could be proposed to address these difficulties;
- A discussion of the Board’s physical education waiver policy; and
- A recommendation to change the due dates for the cumulative waiver report and spring waiver report to November 1 and March 1, respectively.

**Next Steps**

Prepare the final report for consideration at the January Board meeting.