TO: Illinois State Board of Education
FROM: Robert E. Schiller, Superintendent
Respicio Vazquez, General Counsel

Agenda Topic: Discussion Item: 2003 Cumulative Waiver Report

Materials: Chart Summarizing Approved Waivers/Modifications

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Purpose(s) of Agenda Item

To present for initial review legislative changes that respond to certain approved waivers or modifications and are proposed for inclusion in the cumulative waiver report.

Expected Outcome of Agenda Item

Direction to staff as to the legislative recommendations to be included in the 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 addressed by the approved waivers or modifications. The 2003 report is the sixth report 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 either by the General Assembly or the State Board of Education. At least two of the five previous
reports have also included discussions of policy issues raised by the approved waiver requests, independent of the frequency of those approvals.

As of the October 2002 waiver report, 796 school districts out of 891 operating as of fall 2002 have received approval to waive or modify requirements contained in either the School Code or the agency’s administrative rules. This represents 89.3 percent of districts statewide, an increase in this reporting period of 6.5 percent in the number of districts (52) seeking waivers or modifications for the first time. The chart summarizing these approvals follows this executive summary.

The purpose of this agenda item is to discuss legislative options for this year’s report, which is due by February 1, 2003. Based on the Board’s direction provided during this meeting, staff will prepare the final report and present it for Board approval in January.

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

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 cumulative reports.

This lack of response from the General Assembly makes it difficult to gauge how the Board should approach the statutory requirement. Therefore, staff propose that the report address two areas that have been consistently addressed by school districts and acted on as modifications by the State Board: legal school holidays and changes in the instructional day necessitated by the administration of the Prairie State Achievement Examination.

It should also be noted that physical education represents the second largest category of waiver and modification requests (397 petitions approved to date). As such, previous cumulative reports have either proposed changes to the law or discussed policy issues related to these types of waivers. At the request of Senator Todd Sieben, agency staff met with both proponents and opponents of physical education waivers in October to explore ways in which the law could be changed to provide districts with more flexibility in meeting the mandate. Representatives from the teachers’ unions; associations of school boards, school districts and school administrators; and the Illinois Association for Health, Physical Education, Recreation and Dance agreed that the law governing daily physical education should not be changed. For this reason, staff is recommending that the report not address physical education.

**School Holidays**

*Discussion:* Modification requests to use legally mandated school holidays for purposes other than a holiday (e.g., school attendance, inservice training or teacher institutes, parent-teacher conferences, emergency days) increased the most, both in the number of petitions received and in the number of applicants seeking this modification for the first time.
A total of 301 holiday petitions have been approved since the last cumulative report was submitted in February 2002, with 102 districts submitting legal school holiday applications for the first time. Since the inception of the current waiver process in 1995, 745, or 83.6 percent, of Illinois school districts have received relief from some of the legally mandated school holidays.

All school districts seeking relief from the holiday mandate agree to provide appropriate instruction about the individuals to be honored in lieu of observing the school holidays. 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 modification requests. The most frequently requested holidays are those honoring Dr. Martin Luther King, Jr., Abraham Lincoln, Casimir Pulaski, Christopher Columbus, and all veterans of foreign wars.

As indicated above, about two-thirds of the requests (199) in this reporting cycle were renewals of previously granted modifications. 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, and by special education cooperatives and area vocational centers on behalf of member districts (38 requests).

Given this continuing interest in having more flexibility around holidays, it is important to again call to the attention of the General Assembly the need to examine the legal school holiday mandate.

**Recommendation:** The report should propose a change to Section 24-2 of the School Code to allow school districts to use the following 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. A new subsection (b) should be proposed.

Section 24-2(b). A school board is authorized to hold school on the following legal holidays or to use the holiday for teachers' institutes, parent-teacher conferences, staff development, or other purposes, provided the person or persons honored by the holiday are recognized through instructional activities conducted on that day or at another time during the school year: the third Monday in January, the Birthday of Dr. Martin Luther King, Jr.; February 12, the Birthday of President Abraham Lincoln; the first Monday in March (to be known as Casimir Pulaski’s birthday); the second Monday in October, Columbus Day; and November 11, Veterans’ Day.

**Prairie State Achievement Test and the School Day**

Since the last cumulative report, school districts submitted 35 petitions seeking to adjust the length of the school day to accommodate the administration of the Prairie State Achievement Examination (PSAE). Eight of these school districts were seeking relief for the first time.

The approvals allow school districts to shorten the instructional day – or not to hold school at all – for all or some of their students in grades 9 through 12 because of logistical
problems in administering the PSAE, which includes the ACT exam. It is anticipated that school districts will continue to seek approval for this modification, and the cumulative report may be the appropriate avenue to address statutory changes necessary to accommodate varied schedules on testing days without penalizing districts for the time lost.

In total, 80 school districts have received approval to modify the length of the school day on PSAE administration days. These districts have 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 examination was given or these students did not attend school at all on testing days. Most of the 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 the districts indicated 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 had previously accumulated, or “banked,” sufficient time beyond the five-clock-hour instructional day before the test administration days. This “banked” time was then attributed to the shortened test days so that those days could meet the five-clock-hour requirement and be counted towards the 176 days of pupil attendance required by the School Code. Currently, the law allows districts to bank time for use with inservice training and parent-teacher conference days.

Since the State Board had anticipated seeking legislation to allow districts flexibility on PSAE testing days, the modifications first granted in the spring 2001 were approved for only one year. No legislative proposal was drafted, however, so the limit on the modification’s effectiveness was lifted in spring 2002. School districts now can seek the modification for up to the five years allowed under the waiver law.

Recommendation: The report should include a proposed change to Section 18-8.05(F)(2) of the School Code to incorporate an exception to the five-clock-hour instructional day for PSAE administration, provided that sufficient time beyond the five-clock hour minimum is previously accumulated and then applied towards those days. A new subsection (i) should be proposed.

(i) On the days when the Prairie State Achievement Examination is administered under subsection (c) of Section 2-3.64, the day of attendance for any pupil who is taking the examination or whose school day must be shortened to accommodate required testing procedures may be less than five clock hours, provided that a sufficient number of minutes of school work in excess of five clock hours are completed on other school days to compensate for the loss of school work on the examination days. If any such pupils are required to miss one or more entire days of attendance in order to accommodate required testing procedures, those days may be counted
toward the pupils’ 176 days of attendance required by Section 10-19: however, the district shall not count such pupils in the district’s average daily attendance computation for those days.

**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 for 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, 2003, 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 both legal school holidays and the PSAE, the recommendations put forth represent what has been routinely approved by the State Board of Education as modifications of School Code requirements, rather than addressing waivers that can only be considered by the General Assembly. The State Board’s support of the recommendations 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 legal 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.

**Superintendent’s Recommendation**

Direct staff to include the following in the 2003 Cumulative Waiver Report, which will be presented for final Board action in January:

- a recommendation to allow the use of legal school holidays as described above, provided appropriate instruction is provided to students; and
- a recommendation to allow districts to shorten the instructional day when the Prairie State Achievement Examination is administered, provided that they first accumulate sufficient time beyond the five-clock-hour requirement to be applied to the shortened days.
Next Steps

Staff will prepare the final report for approval at the January Board meeting.