January 31, 2002

TO: The Honorable James "Pate" Philip, Senate President
    The Honorable Emil Jones, Senate Democratic Leader
    The Honorable Michael J. Madigan, Speaker of the House
    The Honorable Lee Daniels, House Republican Leader

FROM: Ernest R. Wish
      State Superintendent of Education
      and Chief Executive Officer

SUBJECT: Summary of Approved Waivers and Modifications: A Cumulative Report

Enclosed are copies of the report on approved waivers and modifications as required by 105 ILCS 5/2-3.25g. The report contains all waivers and modifications approved either by the General Assembly or the Illinois State Board of Education, listing each by topic area and providing the number and percentage of school districts for which the waiver or modification has been granted. In addition, the report contains recommendations for changes in law for certain requested waivers or modifications that have been approved.

If you have questions or comments, please contact Connie J. Wise, Division Administrator, Research Division, at 217-782-3950.

cc: The Honorable George H. Ryan, Governor
    Tony Rossi, Clerk of the House
    Jim Harry, Secretary of the Senate
    Legislative Research Unit
    State Government Report Center
SUMMARY OF APPROVED WAIVERS AND MODIFICATIONS


Illinois State Board of Education
Research Division
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Ronald J. Gidwitz
Chairman
State Board of Education

Ernest R. Wish
State Superintendent of Education
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Foreword

The Illinois 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 of Education 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. This is the fourth report submitted under that law.

This cumulative report covers all waivers and modifications of School Code mandates or administrative rules granted as of December 2001 that have been included in waiver reports submitted to the General Assembly through October 1, 2001.

Ernest R. Wish
State Superintendent of Education
and Chief Executive Officer
Introduction

Summary of Approved Waivers and Modifications lists all requests that have been approved either by the Illinois State Board of Education or the General Assembly since March 1995, when the waiver law was amended to allow school districts to request waivers and modifications from almost all educational mandates contained in the School Code or in the State Board of Education’s administrative rules. The report identifies approved requests alphabetically by general category followed by topic area (with statutory or rule citation); lists the total number of requests granted, including a breakdown by entity granting the request; and identifies the number of school districts for which these requests have been granted and the percentage that number represents out of the state’s 891 school districts operating as of fall 2001. This summary is presented in chart form, and the report concludes by commenting on potential changes in laws that are the subject of approved waivers or modifications.

Summary Chart

The chart organizes the 2,168 waiver and modification requests approved as of December 2001 into seven general categories: Accountability; Calendar/Instructional Time Issues; Course Offerings; Employment Issues; Fiscal Issues; Governance; and Health and Safety. Under each category, approved waivers and modifications are further delineated by topic area. In some instances, large topic areas (i.e., "Driver Education," "Holidays," and "Physical Education") are further subdivided for clarity.

Often a single school district will submit a request in more than one area or several in a single area. Therefore, the total number of petitions will exceed the number of school districts submitting requests. To date, 744 school districts, or 83.5 percent of districts statewide, have been granted waivers or modifications of School Code mandates or of administrative rules.

Recommendations and Discussion

In requiring that a cumulative report on approved waivers and modifications be submitted each year, the General Assembly recognized that the waiver process could raise policy and administrative issues that need to be considered separately from individual requests. This year’s cumulative waiver report looks at four such issues: legal school holidays, the instructional day and the Prairie State Achievement Examination, submission dates for waiver reports, and physical education.

- Specific recommendations for legislative changes are provided in three of these areas: legal school holidays, the instructional day and the Prairie State Achievement Examination, and waiver report submission dates.
- The report concludes with a discussion of physical education waiver and modification requests and the State Board of Education’s policy about such requests.
Recommendations and Discussion

Legislative Recommendations

The following recommendations propose amendments to the School Code in three areas: legal school holidays, instructional day and the Prairie State Achievement Examination, and waiver report submission dates. Proposed changes to the relevant School Code sections for all but the instructional day and Prairie State Achievement Examination are at the end of this report.

Holidays

The topic of school holidays has been addressed by school districts more frequently than any other category of waiver and modification requests. In the last year, school districts submitted 290 holiday requests, all of which were subsequently approved. During the five years covered by this cumulative report, nearly 66 percent of all school districts in the state (584 districts) have requested and received approval for relief from the requirements of Section 24-2 of the School Code regarding legal 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 waiver requests to date.

Districts submitting requests related to legal school holidays want to either hold school on one or more of these days or to use them for purposes other than student attendance. School districts cite continuity of instruction and fewer disruptions as the primary reasons for having students attend school on legal school holidays. In a growing number of instances, school districts have proposed using certain holidays for staff development, teacher institute days, or parent-teacher conferences, without students being in attendance.

The State Board of Education has approved legal school holiday requests as modifications contingent upon the applicant's agreement to provide instructional activities specific to the holiday, either on the holiday if students are in attendance, or before or after the holiday when the day is used for a purpose other than student attendance. This mirrors the instructional requirements for commemorative holidays and assures that students are knowledgeable about the person(s) being recognized by the designated holidays. Under current law, legal school holidays are observed only by the dismissal of school; no related instruction is required.

Given the large number of requests to modify requirements for certain legal school holidays, the State Board of Education has concluded that the scheduling of school on these legal school holidays should be an issue that is decided at the local level. Therefore, the State Board of Education recommends that Section 24-2 of the School Code be amended to allow school districts to establish a calendar using one or more legal school holidays for student attendance, staff development, teacher institutes, and/or parent-teacher conferences, provided that instruction is presented to students about the person or persons being honored by the holiday(s). This would apply to Veterans’ Day and the holidays honoring Abraham Lincoln, Dr. Martin Luther King, Jr., Casimir Pulaski, and Christopher Columbus.
The State Board of Education also recommends the elimination of Good Friday as a legal school holiday, in light of the federal court decision in 1995 that prohibited the state from requiring that districts recognize it as such.

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

During Spring 2001, 45 districts received approval to modify the length of the school day on the days in which the Prairie State Achievement Examination (PSAE) was administered. These districts generally asked to allow either all or some students not taking the PSAE (i.e., those in grades 9, 10 and 12) to be dismissed early on the two days the assessment was given or to require that these students not attend school at all on testing days. Districts also requested that grade 11 students taking the test be dismissed following its administration.

The districts submitting the requests stated that the early dismissal of or nonattendance by one or more grade levels was necessary to implement 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 then used on the shortened test days so that the test days 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 last 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, it is recommended that the School Code be amended to incorporate mechanisms that districts can use to adjust the school day on testing days without experiencing penalties related to not having a legal school calendar.

The agency’s Legal staff have indicated that the necessary legislative change could involve several sections of the School Code and would take some time to prepare. Specially, changes would be needed to Sections 18-8.05 (General State Aid), 10-19 (Length of the School Term) and 2-3.64 (State Goals and Assessment). Should the General Assembly believe that it is reasonable to seek a legislative solution to PSAE test administration, then State Board of Education staff will prepare the necessary legislative proposal.
Cumulative Waiver Report and Spring Report Submission Dates

In the four years that the State Board of Education has been required to submit the cumulative waiver report, the General Assembly has not pursued any of the recommendations contained in the reports. Part of the reason for this may be the report’s due date, which is just before the start of the spring legislative session. At that point in the process, it may be too late for the General Assembly to include recommendations in its agenda for the session. An earlier submission date, such as November 1, would give members of the General Assembly ample time to review the cumulative waiver report and develop legislative proposals to implement its recommendations, if they so choose.

The May 1 submission date for the spring waiver report may also be too late in the legislative session for appropriate consideration of the waiver requests. When the General Assembly decides on an early adjournment date, as it did in 2000, the May 1 due date may be later than the proposed adjournment date. In those circumstances, the State Board of Education must move up the deadline by which school districts have to submit their requests so that those requests can be included in the spring report. Requiring that the spring waiver report be due to the General Assembly earlier than May 1 would ensure that year-to-year changes in the legislative calendar would not adversely affect consideration of waiver requests.

The State Board of Education therefore recommends that Section 2-3.25g of the School Code be amended to require submission of the cumulative waiver report by November 1, beginning in 2002, and the spring waiver report by March 1, beginning in 2003.

Daily Physical Education

No recommendations are being made to either amend the waiver or physical education laws to make waivers and modifications from the daily physical education requirement more difficult to obtain. Instead, this section will summarize the activity related to this type of waiver request that has occurred over the last year.

The State Board continues 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. To date, 195 school districts, or 21.9 percent, have requested and received permission to alter the daily physical education requirement. Of the 353 petitions granted, the General Assembly has approved 247 requests and the State Board of Education has acted on 106 that sought to offer essentially the same amount of time for physical education but on less than a daily basis (i.e., block schedules).

Petitions addressing daily physical education continue to raise concerns among members of the General Assembly, physical education advocacy groups and members of the State Board of Education. In response to these concerns, the State Board of Education 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. The waiver report sent to the General Assembly will summarize the assessment data and standards achievement information that districts provide with their petitions. The State Board also will use this data and information in its deliberations about whether it should recommend that the General Assembly deny certain waiver requests.

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. Several workshops were held in fall 2001 to acquaint local educators with the standards, performance measures, and assessment tools. These were so well-received that additional workshops have been scheduled.

Given the State Board’s policy and the efforts of IAHPERD to acquaint districts with exemplary physical education programs, the State Board should re-examine the need to tighten either the waiver or physical education law after it has had an opportunity to evaluate the effectiveness of the physical education waiver policy. 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 in ensuring that districts seeking to modify daily physical education still provide high-quality programs and equal learning opportunities for all of their students.
Proposed Amendments

Holidays
Section 24-2

Holidays. Teachers shall not be required to teach on Saturdays; nor shall teachers or other school employees, other than noncertificated school employees whose presence is necessary because of an emergency or for the continued operation and maintenance of school facilities or property, be required to work on legal school holidays, which are January 1, New Year’s Day; 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); Good Friday; the day designated as Memorial Day by federal law; July 4, Independence Day; the first Monday in September, Labor Day; the second Monday in October, Columbus Day; November 11, Veteran’s Veterans’ Day; the Thursday in November commonly called Thanksgiving Day; and December 25, Christmas Day. School boards may grant special holidays whenever in their judgment such action is advisable. No deduction shall be made from the time or compensation of a school employee on account of any legal or special holiday.

A school board is authorized to hold school on the following legal holidays or to use the holiday for 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, Veteran’s Veterans’ Day.

Commemorative holidays, which recognize specified patriotic, civic, cultural or historical persons, activities, or events, are regular school days. Commemorative holidays are: January 28 (to be known as Christa McAuliffe Day and observed as a commemoration of space exploration), February 15 (the birthday of Susan B. Anthony), March 29 (Viet Nam War Veterans’ Day), the school day immediately preceding Veteran’s Veterans’ Day (the Korean War Veterans’ Day), October 1 (Recycling Day), December 7 (Pearl Harbor Veterans’ Day), and any day so appointed by the President or Governor. School boards may establish commemorative holidays whenever in their judgment such action is advisable. School boards shall include instruction relative to commemorated persons, activities, or events on the commemorative holiday or at any other time during the school year and at any point in the curriculum when such instruction may be deemed appropriate. The State Board of Education shall prepare and make available to school boards instructional materials relative to commemorated persons, activities, or events which may be used by school boards in conjunction with any instruction provided pursuant to this paragraph.
Waiver or modification of mandates within the School Code and administrative rules and regulations
5/2-3.25g

2-3.25g. Waiver or modification of mandates within the School Code and administrative rules and regulations. Notwithstanding any other provisions of this School Code or any other law of this State to the contrary, school districts may petition the State Board of Education for the waiver or modification of the mandates of this School Code or of the administrative rules and regulations promulgated by the State Board of Education. Waivers or modifications of administrative rules and regulations and modifications of mandates of this School Code may be requested when a school district demonstrates that it can address the intent of the rule or mandate in a more effective, efficient, or economical manner or when necessary to stimulate innovation or improve student performance. Waivers of mandates of the School Code may be requested when the waivers are necessary to stimulate innovation or improve student performance. Waivers may not be requested from laws, rules, and regulations pertaining to special education, teacher certification, or teacher tenure and seniority.

School districts, as a manner of inherent managerial policy, and any Independent Authority established under Section 2-3.25f may submit an application for a waiver or modification authorized under this Section. Each application must include a written request by the school district or Independent Authority and must demonstrate that the intent of the mandate can be addressed in a more effective, efficient, or economical manner or be based upon a specific plan for improved student performance and school improvement. Any district requesting a waiver or modification for the reason that intent of the mandate can be addressed in a more economical manner shall include in the application a fiscal analysis showing current expenditures on the mandate and projected savings resulting from the waiver or modification. Applications and plans developed by school districts must be approved by each board of education following a public hearing on the application and plan and the opportunity for the board to hear testimony from educators directly involved in its implementation, parents, and students. The public hearing must be preceded by at least one published notice occurring at least 7 days prior to the hearing in a newspaper of general circulation within the school district that sets forth the time, date, place, and general subject matter of the hearing. The school district must notify in writing the affected exclusive bargaining agent of the district’s intent to seek approval of a waiver or modification and of the hearing to be held to take testimony from educators. The affected exclusive collective bargaining agents shall be notified of such public hearing at least 7 days prior to the date of the hearing and shall be allowed to attend such public hearing.

A request for a waiver or modification of administrative rules and regulations or for a modification of mandates contained in this School Code shall be submitted to the State Board of Education within 15 days after approval by the board of education. Following receipt of the request, the State Board of Education shall have 45 days to review the application and request. If the State Board of Education fails to disapprove the application within that 45-day period, the waiver or modification shall be deemed granted. The State Board of Education may disapprove any request if it is not based upon sound educational practices, endangers the health or safety of students or staff, compromises equal opportunities for learning, or fails to demonstrate that the intent of the rule or mandate can be addressed in a more effective, efficient, or economical
manner or have improved student performance as a primary goal. Any request disapproved by the State Board of Education may be appealed to the General Assembly by the requesting school district as outlined in this Section.

A request for a waiver from mandates contained in this School Code shall be submitted to the State Board of Education within 15 days after approval by the board of education. The State Board of Education shall review the applications and requests for completeness and shall compile the requests in reports to be filed with the General Assembly. The State Board of Education shall file reports outlining the waivers requested by school districts and appeals by school districts of requests disapproved by the State Board of Education with the Senate and the House of Representatives before each May 1, March 1, and October 1. The General Assembly may disapprove the report of the State Board of Education in whole or in part within 30 calendar days after each house of the General Assembly next convenes after the report is filed by adoption of a resolution by a record vote of the majority of members elected in each house. If the General Assembly fails to disapprove any waiver request or appealed request within such 30-day period, the waiver or modification shall be deemed granted. Any resolution adopted by the General Assembly disapproving a report of the State Board of Education in whole or in part shall be binding on the State Board of Education.

An approved waiver or modification may remain in effect for a period not to exceed 5 school years. An approved waiver or modification and may be renewed upon application by the school district. However, such waiver or modification may be changed within that 5-year period by a local school district board following the procedure as set forth in this Section for the initial waiver or modification request. If neither the State Board of Education nor the General Assembly disapproves, the change is deemed granted.

On or before February 1, 1998, November 1, 2001, and each year thereafter, the State Board of Education shall submit a cumulative report summarizing all types of waivers of mandates and modifications of mandates granted by the State Board of Education or the General Assembly. The report shall identify the topic of the waiver along with the number and percentage of school districts for which the waiver has been granted. The report shall also include any recommendations from the State Board of Education regarding repeal or modification of waived mandates.