TO: Illinois State Board of Education

FROM: Robert E. Schiller, Superintendent
Respicio Vazquez, General Counsel

Agenda Topic: Waiver Report to the General Assembly

Materials: Waiver Report
Physical Education Waiver Addendum Summary

Staff Contacts: Winnie Tuthill
Shelley Helton

Purpose of Agenda Item

• To inform the Board members about requests for waivers and modifications that have been received since the last report in October 2002;

• To consider whether the Board should recommend that the General Assembly disapprove certain requests; and

• To secure approval of the Spring 2003 Waiver Report for submission to the General Assembly by May 1, as required by law.

Expected Outcome(s) of Agenda Item

• The Board's approval to recommend to the General Assembly that it disapprove three requests contained in the report; and

• The Board's authorization to submit the Spring 2003 Waiver Report to the General Assembly.

Background Information

The Spring 2003 Waiver Report is the sixteenth report to be submitted to the General Assembly pursuant to Section 2-3.25g of the School Code. That law, enacted in 1995, permits school districts to request waivers or modifications of state education laws and administrative rules promulgated by the State Board of Education. All waivers of state law must be submitted to the General Assembly for its consideration.
This report contains 85 requests that seek to waive mandates contained in 14 School Code provisions. These include requirements pertaining to daily physical education (20 requests), driver education fees (19 requests), administrative cost limitations (11 requests), parent-teacher conferences and inservice training (seven requests each), and non-resident tuition and evaluation plans for tenured teachers (five petitions each). Other requests to be forwarded to the General Assembly for action address the Academic Watch List, bonds, consolidation, General State Aid, substitute teachers, superintendent duties, and teacher aides.

Since the fall waiver report, the State Board of Education has approved 163 requests that modify School Code mandates or modify or waive agency rules. Of those, 133 address legal school holidays; 17 address adjustment of instructional time pertaining to the spring administration of the Prairie State Achievement Examination; eight address daily physical education; two address driver's education; and one each addresses criminal background checks, school food program, and substitute teachers.

The Board is being asked to consider that three of the 85 waiver requests to be forwarded to the General Assembly be recommended for legislative disapproval. It also is recommended that the remaining 82 requests be submitted to the General Assembly without comment.

**Analysis and Policy Implications**

Staff are recommending that the State Board provide to the General Assembly disapproval recommendations on three waiver requests contained in the report: two address the Academic Watch List and one addresses supervision of teacher aides. The issues associated with the petitions are discussed below.

The recommendations for each denial are based primarily on the reasons stated in the waiver law for the State Board to deny a request upon which it must act. These reasons, which are listed below, have been used in the past to support disapproval recommendations provided to General Assembly.

1. The request is not based upon sound educational practices.
2. The requested action would compromise equal opportunities for learning.
3. The request does not have improved student performance as a primary goal.

Finally, while no recommendations for denial are being made relative to physical education waiver requests, staff have summarized the information received about achievement of the Illinois Learning Standards for Physical Development and Health and the equal learning opportunities provided in lieu of daily physical education.

**St. Anne Community High School District 302 (WM100-2776) and Madison Community Unit School District 12 (WM100-2826)** are asking to waive the provisions of Section 2-3.25d of the School Code, which provides that school districts with schools that remain on the Academic Early Warning List (AEWL) for two consecutive years shall
have those schools placed on the Academic Watch List (AWL). Each district was notified in December 2002 that its high school would be moved from the AEWL to the AWL. Staff are recommending that the Board consider asking the General Assembly to disapprove each of these petitions, based on the following.

- The requests would violate the No Child Left Behind Act of 2001 (NCLB). As a recipient of federal Title I funds, Illinois is required under NCLB to have a uniform, statewide system of academic standards, assessments, and accountability that meets federal requirements. A dual accountability system is created if certain districts’ placement on the Academic Watch List is nullified by the waiver process.
- The requests are not based upon sound educational practices. Placement on the Academic Watch List will allow a School Improvement Panel to be put in place to assist and monitor the districts’ progress and ensure that student performance goals as specified in the revised School Improvement Plan are met and are necessary to remove the school from the AWL.
- The proposed waivers compromise the equal opportunities for learning available to the districts’ students by removing them from the system of academic standards, assessment, and accountability that apply to all other Illinois students under NCLB and state law.
- The requests do not have improvement of student performance as their primary goal. Each of these districts’ schools has been on the Academic Early Warning List for at least four years and has failed to show substantial improvement.

St. Anne and Madison high schools were initially placed on the state’s AEWL in 1998. Staff in the System of Support Division have indicated that since that time, the percentage of students meeting or exceeding the Illinois Learning Standards has fallen from 49.3 percent for St. Anne High School and 49.1 percent for Madison High School to no higher than 36.3 percent for St. Anne and 30.4 percent for Madison during the last four administrations of the state assessment.

Unlike the warning list, placement on the AWL will result in a School Improvement Panel for each district being appointed, which will help improve student performance by:

1. assisting the school district in the development and implementation of a revised School Improvement Plan and amendments to the plan that may be necessary,
2. making progress reports and comments to the State Superintendent of Education, and
3. having the authority to review and approve or disapprove all actions of the board of education that pertain to implementation of the revised School Improvement Plan.

While both districts claim that the panels will impede the academic progress the schools have been making, neither has made sufficient progress under its current School Improvement Plan to remove the school from the AEWL, according to agency staff. Consequently, a more stringent system of accountability is indicated. As an AWL school, school staff, in conjunction with the panel, must revise the School Improvement Plan to ensure that it addresses specific, measurable outcomes for improving student performance so that such performance equals or exceeds standards set for the school by the State Board of Education.
Norridge School District 80 (WM100-2792-2) is a renewal request to allow the district to employ instructional aides without their being under the direct supervision of a certified teacher. This request seeks to waive the provision of Section 10-22.34 of the School Code that requires that any instruction provided by noncertificated individuals be provided under the “immediate supervision” of a certified teacher and that the certified teacher be “continuously aware of the non-certificated persons’ activities and shall be able to control or modify them.”

The district would use the instructional aides to “help children enhance learning” by enabling students to participate in additional one-on-one or small-group activities. The district states that it would try to employ individuals who possess teaching certificates, although other “well-qualified individuals without a certificate” could also be employed. The instructional aides would be involved in individual and small-group activities occurring in the hallways outside of the student’s classroom, in learning centers or in activity centers that are not directly supervised by a certified teacher. All instructional aides would be required to complete a district-developed inservice training program prior to their employment.

Reasons staff believe the request should be disapproved are listed below.

• The waiver, as proposed, would violate the federal No Child Left Behind Act of 2001 (NCLB), if the instructional aides providing instructional support are employed in programs supported by funds received under Part A, of Title I of the Elementary and Secondary Education Act. NCLB requires that such aides work under the direct supervision of a certified teacher (see Section 1119(g)(3)(A) of NCLB). Norridge, as a targeted assistance Title I recipient, would violate NCLB if the unsupervised aides were employed in programs funded by Title I.

• It is not sound educational practice for one group of students to receive instruction from individuals who do not have the complete training of a certified teacher, who is assumed to be fully and highly qualified. The requirement that aides be under the immediate supervision of a certified teacher ensures that intervention would occur should an aide experience problems presenting material or if the instruction is not progressing.

• Having noncertificated individuals providing instructional support outside of the immediate control of the classroom teacher compromises the learning opportunities for students since the instructional aides do not have the benefit of the pedagogical expertise and teaching experience of the classroom teachers.

• The request does not have improvement of student performance as its primary goal. While the district’s intent may be to improve performance of students receiving assistance from the instructional aides, the failure of the classroom teacher to directly monitor the progress of students receiving this instruction and to oversee the work of the instructional aides as it is occurring could hinder rather than improve the academic performance of these students.

• Finally, noncertificated personnel do not enjoy the same protections from liability suits as those enjoyed by certificated personnel. Concerns about an increased potential of liability for these unsupervised employees could affect the district's
insurance costs.

**Physical Education**

The State Board will be transmitting to the General Assembly for action 20 waiver requests from school districts seeking relief from the mandate to provide physical education on a daily basis. Summaries of each of these requests can be found on pages 8 to 11 of the waiver report.

In September 2001, the State Board of Education implemented its policy concerning physical education waivers and modifications that focuses on:
1. student achievement of the Illinois Learning Standards for Physical Development and Health, specifically Goals 19, 20, and 21; and
2. the need for districts seeking to waive or modify the daily physical education mandate to provide the learning opportunities necessary for their students to progress toward achieving these standards.

The spring 2003 report is the fourth opportunity for districts to include with their physical education waiver applications descriptions of their students’ achievement relative to the Illinois Learning Standards for Physical Development and Health and of the additional learning opportunities provided to students to ensure that they continue to make progress toward achieving the standards.

All of the districts submitted this additional information (see attached chart). All school districts whose petitions include elementary grade levels submitted ISAT results for 2002, in addition to results from locally developed assessments. Others also used the Presidential Fitness Test or the Fitnessgram to measure achievement of Goal 20 (i.e., individual fitness). High school districts, for the most part, summarized results from locally developed assessments.

Results from locally developed assessments ranged from a high of 100 percent of the students meeting or exceeding state standards in Mt. Zion Community Unit School District 3 and DePue Unit School District 103 to a low of 41 percent meeting or exceeding state standards for Goal 19 in the DePue school district.

ISAT results revealed that the majority of students in grades 4 and 7 (as applicable) of the school districts requesting waivers affecting elementary grade levels met or exceeded state standards. In two districts, however, scores in the meet/exceeds range were below the statewide average of 65 percent for grade 4 (Springfield School District 186 and Sterling Community Unit School District 5) and 61 percent for grade 7 (Springfield School District 186 and Breese School District 12). One district, Dalzell School District 98, was unable to provide districtwide ISAT results due to the small number of students who took the assessment.

All of the districts described other learning opportunities available to students to help them achieve the learning standards. These include daily recess or supervised play,
kinesthetic classes and related movement activities in the classroom, intramural sports, interscholastic athletic programs, and cheerleading and pompons. Several districts that cited inadequate facilities as the reason for their requests indicated that longer sessions of physical education on less than a daily basis with fewer students per class enable them to provide a higher quality program than what would have been provided in shorter, daily sessions.

Of the 20 requests:
- 16 are renewal requests;
- 15 include kindergarten through grade 8; and
- six include high school grade levels.

Based on the assessment data that the districts provided and the description of other activities available, staff do not believe any of the requests should be recommended for disapproval.

**Superintendent’s Recommendation**

- The requests from St. Anne Community High School District 302 (WM100-2776) and Madison Community Unit School District 12 (WM100-2826), asking to be removed from the Academic Watch List and returned to the Academic Early Warning List, should be forwarded to the General Assembly with a recommendation for legislative disapproval.

- The request from Norridge School District 80 (WM100-2792-2), asking to employ teacher aides without their being under the direct supervision of a certified teacher, should be forwarded to the General Assembly with a recommendation for legislative disapproval.

- The remaining 82 requests summarized in the report should be forwarded without comment.

- The Board should approve the report, along with the recommendations for disapproval, and authorize its submission to the General Assembly by May 1.

**Next Steps**

- Submit the Spring 2003 Waiver Report as presented to the General Assembly by May 1.