TO: Illinois State Board of Education

FROM: Robert E. Schiller, Superintendent  
Respicio F. Vazquez, General Counsel  
David Wood, Director of Operations

Agenda Topic: Action Item: Request for waiver of State Board Rule (23 Ill. Adm. Code Section 120.90(e) – Cost Proration Related to Pupil Transportation)

Materials: Waiver application  
23 Ill. Adm. Code 120.90

Staff Contact: David Wood

Purpose of Agenda Item

To consider disapproving a request to waive rules governing reimbursement of transportation costs.

Expected Outcome of Agenda Item

The Board's disapproval of the request.

Background Information

At the time the Board adopted emergency rules for the waiver process in March 1995, it also acted to establish a procedure for considering those requests upon which the State Board must act (i.e., modifications of School Code mandates and waivers and modifications of agency rules). By law, the State Board must act on these requests within 45 days. Given this timeframe, the Board delegated responsibility to the State Superintendent to approve those requests that are in conformance with the waiver law. In addition, it stipulated that any request that the State Superintendent believed should be denied must come before the Board for final action. The Board will consider one request that staff believe should be denied; the superintendent representing the school district submitting the request has been notified of the Board's consideration.

In considering denial of a request deemed to be a modification of a School Code mandate or a waiver or modification of agency rules, the State Board reviews
whether the request meets the criteria for disapproval stipulated in the law, which includes the following.

- The request is not based upon sound educational practices.
- The requested action would endanger the health or safety of students or staff.
- The requested action would compromise equal opportunities for learning.
- The request does not address the intent of the rule or mandate in a more effective, efficient or economical manner.
- The request does not have improved student performance as a primary goal.

One request from Oak Park Elementary School District 97 for a waiver of a State Board of Education rule does not appear to meet the intent of the rule in a more effective, efficient, or economical manner. Specific reasons for recommending denial of this request are discussed below. As noted above, the State Board has 45 days to act to deny a request after that request has been received, otherwise the request is "deemed" approved. The 45-day timeline for the Oak Park request will end June 21, 2003.

**Analysis and Policy Implications**

Oak Park Elementary School District 97 is requesting to waive the requirement in the State Board’s rules for transportation reimbursement that provide that payments for all contractual transportation services must be prorated across contract categories when one company provides more than one type of service. The district states that its decision to solicit separate bids for regular education and special education transportation services in 2000, with the contract to go to the lowest bidder in each category, unexpectedly resulted in one bidder winning both contracts. As a result of the bidding outcomes, the district claims that its transportation reimbursement has been reduced by over $60,000 in one year.

The district notes that its costs for special education transportation are substantially more than for other categories of transportation (regular education, field trips, and non-reimbursable field trips). Because the reimbursement formula for special education is higher than other transportation formulas, the annual transportation claim for the district will be reduced when all costs are allocated over all categories, including those for which no reimbursement from the state is received.

The rules for pupil transportation require districts that own and operate their own transportation services (Section 120.90(d) of the rules) to prorate total transportation costs across all categories of transportation services, based on the ratio of miles traveled in each category to total system miles. The same proration formula is to be followed by districts that contract out for transportation services, with the following exceptions, as outlined in Section 120.90(e) of the rules:
1. Contracts with a company which provides only one type of transportation service;
2. Payments to a contractor by a district for costs that are part of a contractual agreement between a cooperative or joint agreement and the contractor; and
3. Expenses related to a district contracting with another district for one type of transportation service.

This cost allocation mechanism was established to reduce costs to the state and to treat districts similarly whether they operate their own transportation systems or contract for services.

The Oak Park board is using the waiver process to request that the programs and claims for special education and regular education services should remain separate as if there were two contractors. While there are two separate contracts, State Board staff believe that the district did not contract with a “company that provides only one type of transportation service;” rather, there is only one contractor for all transportation services. Therefore, that contractor should prorate costs across all transportation services provided under all contracts held with the school district.

State Board staff believe that the district has failed to demonstrate that it can address the cost containment of the cost proration rule in a more effective, efficient, or economical manner. While the district may receive a larger payment from the state if this request is approved, the intent of the rule has not been addressed. Furthermore, approval of this request could create a cost incentive for other districts to contract for transportation services unrelated to any real efficiencies in managing such programs. Finally, when the state is unable to fully fund transportation claims, the additional cost of this waiver will spread to all other school districts.

For these reasons, it is recommended that the State Board of Education deny the request from Oak Park Elementary School District 97 to waive the proration requirement for transportation services when one company provides more than one type of service.

**Superintendent’s Recommendation**

The Board should deny the petition from Oak Park 97 because it does not address the intent of the rule or mandate in a more effective, efficient or economical manner.
Next Steps

The district will be informed of the Board's action. In addition, a description of the request and the Board’s action will be included in the October 1, 2003, report to the General Assembly transmitting waiver requests.