



STATE OF MICHIGAN
DEPARTMENT OF EDUCATION
LANSING



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FROM: Mike Flanagan, Chairman

September 23, 2005

**SUBJ: HIGH SCHOOL INITIATIVE FOSTERING
INNOVATION**

An item on the agenda of our special meeting on October 5 (Item C) deals with what the Department of Education can do to support high schools that want to re-design elements of their program. One way of translating this is to ask what authority the department has to waive certain statutes, rules, and regulations.

Staff have researched this issue and have provided the following as background for the discussion at the meeting:

1. The department does not have the authority to waive anything that is in statute, except for those areas in statute where the department is specifically given this authority. Any change in statute would require legislative action.
2. The department does have the authority to waive any administrative rule which has been promulgated by the department (not a rule promulgated by another department).

Attachment A was developed by staff after a search of the School Code to determine what waiver authority is granted in the Code.

Attachment B is a list of the administrative rules promulgated by the Department of Education.

Staff will discuss this further at our meeting.

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WAIVER AUTHORITY

REVISED SCHOOL CODE

Under current law, there is no authority to waive salutatory requirements in the Revised School Code; however, there is authority to waive Administrative Rules.

Administrative Rules Waiver - MCL 380.1281(3)

In 1995, Public Act 289 amended the *Revised School Code* to allow districts to request a waiver from a state board or department rule [MCL 380.1281(3)]. The state superintendent may grant a waiver if the district demonstrates that it can address the intent of the rule in a more effective, efficient, or economical manner or to stimulate improved pupil performance. The law took effect on July 1, 1996. In June 1996, the State Board approved the process for waivers of Administrative Rules. A Waiver Review Advisory Committee was established in the Department to review waiver requests and to make recommendations to the state superintendent.

STATE SCHOOL AID ACT

The following is a list of the waivers that are available in the State School Aid Act. They are listed in the order in which they appear in the Act.

At-Risk Funds/Reduce Class Size - MCL 388.1631a(9)

In general, districts must use Section 31a **At-Risk Pupils** funding to provide instructional or direct non-instructional services to at-risk pupils. In addition, districts may use the funding to reduce class-size in elementary (K-6) buildings with a percentage of free lunch eligible pupils that exceeds the district-wide percentage. Subsection (9) provides a waiver opportunity for districts to use all of their At-Risk Pupils funding to **reduce class size** in elementary (K-6) buildings with a free lunch eligibility percentage of at least 30%, which must also be equal to at least 60% of the district-wide percentage. The waiver request must demonstrate to the satisfaction of the Department that the class size reduction would be in the best interest of the district's at-risk pupils. *In all cases*, in districts that operate a school breakfast program, up to \$10 per at-risk pupil must be applied to the breakfast program.

Alternative Education – 50% Attendance - MCL 388.1701(3)(c)

The Conference Report for the State School Aid Act includes a waiver option for a district that operates a Department approved alternative education program and does not provide instruction for pupils in all grades K to 12. The district may request a waiver of the 75% daily attendance requirement for a period of three years in order to conduct a pilot study. There must be at least 50% of the districts membership in daily attendance. Not later than 2008-2009, the Department must

report the impact of these waivers to the State Budget Director and the Senate and House Appropriations Subcommittees on State School Aid.

Travel Time - MCL 388.1701(7)(d)

A full-time equated pupil (1.0 FTE) is a pupil whose class schedule provides 1,098 hours of instruction. Those with fewer than 1,098 hours scheduled are recorded as a fraction of an FTE and generate less than a full foundation allowance for the district. Full-time equivalency of 1.0 can be challenging to achieve for pupils who are scheduled to attend classes for part of the day at a site other than their home district because of the non-instructional time spent traveling between instructional sites. A common example is one of pupils attending class at a centralized vocational technical center. Section 101(8)(d) allows districts to count up to 3 hours per week (30 minutes per day) of such travel time as if it was actual instructional time when determining a pupil's full-time equivalency. If a pupil travels between sites for more than 30 minutes each day and the 30 minutes is insufficient to bring the pupil to 1.0 FTE, the district may apply for a waiver for **additional travel time to be counted as instructional time.**

Alternative Education – Instructional Time - MCL 388.1701(9)

Section 101 requires districts to schedule and provide at least 1,098 hours of pupil instruction in order to generate full state aid. Subsection (9) provides a waiver opportunity for districts with a department-approved **alternative education program** to provide **fewer than 1,098 hours** in that program without incurring a reduction in state aid.

Schools of Choice - MCL 388.1705(20) and MCL 388.1705c(20)

Section 105 and 105c describe the requirements for "**within ISD**" **schools of choice and schools of choice for pupils in contiguous ISDs**, respectively. Within each section (in the subsections identified immediately above) is language allowing that, *"Upon application by a district, the superintendent may grant a waiver for the district from a specific requirement under this section for not more than 1 year."* As an example, a common request in recent years has been to waive the final date upon which districts may enroll pupils under the section, allowing districts to continue to enroll pupils through pupil membership count day.

**ADMINISTRATIVE RULES
MICHIGAN DEPARTMENT OF EDUCATION**

State Tenure Commission	R 38.131 - R 38.178
School District Pupil Accounting for State Aid Distribution	R 340.1 - R 340.17
Release of Children for Attending Religious Instruction Classes ..	R 340.71 - R 340.75
Use of School Buses for Transportation of Seniors.....	R 340.231- R 340.238
Fees for Transporting Pupils to and from Non-mandatory and non-credit events.....	R 340.241 - R 340.243
Transportation of Nonpublic School Children.....	R 340.281 - R 340.282
Auxiliary Services for Nonpublic School Children	R 340.291 - R 340.295
Driver Safety School	R 340.431 - R 340.436
Solicitors for Private Schools	R 340.471 - R 340.479
Boarding School Licenses.....	R 340.481 - R 340.489
Reimbursement under National School Lunch Program	R 340.601 - R 340.605
Financial Accounting Systems for Public Schools	R 340.851 - R 340.855
School Social Worker.....	R 340.1011 - R 340.1018
Personality Tests	R 340.1101 - R 340.1107
Education of Pregnant Students.....	R 340.1121 - R 340.1124
Certification of School Nurses	R 340.1161 - R 340.1170
Use of School Buses by Units of Government.....	R 340.1251 - R 340.1256
Eye Protective Devices	R 340.1301 - R 340.1305
Declaratory Rulings, Promulgation of Rules, and Information Requests.....	R 340.1351 - R 340.1355
Special Education Programs and Services.....	R 340.1701 - R 340.1873
Superintendent Hearings	R 349.291
Administrative Certification Program	R 380.101 - R 380.136
School Administrator Continuing Education	R 380.1201
School Psychologist Certificate.....	R 388.201 - R 388.210
State Aid to Improve Achievement in Basic Cognitive Skills	R 388.221 - R 388.235
Transcription of Educational Materials into Braille.....	R 388.261 - R 388.265
Critical Health Problems Education Program	R 388.271 - R 388.275
State Aid for Transportation of Schoolchildren	R 388.371 - R 388.389
Identification of Students Eligible for Bilingual Education Funding.....	R 388.701 - R 388.711
State Board Hearings	R 390.621
Project Costs.....	R 390.641
Teacher's Tenure	R 390.661
Teacher Certification Code	R 390.1101 - R 390.1216
Endorsement of Teachers as Counselors	R 390.1301 - R 390.1305
Standards for Issuance of Work Permits	R 409.1 - R 409.6