

IOWA DEPARTMENT OF EDUCATION

Cite as 30 D.o.E. App. Dec. 103

In re Waiver of Rule 281—31.4(3)“a”)
)
K.W.,)
 Applicant,) Docket # 5149
)
And) ORDER GRANTING WAIVER
)
Marion Independent Community)
School District,)
 Respondent.)

This matter came before the Iowa Department of Education for a hearing on September 30, 2021, before the undersigned administrative law judge. K.W. requests a waiver of Iowa Administrative Code 281—31.4(3)“a”, which requires a certain number of in-person visits by a home school assistance program’s supervising teacher. K.W. testified, as did Janelle Brouwer, superintendent of the Marion Independent Community School District, and Tom Ertz, director of the District’s home school assistance program. After considering the factors set forth in Iowa Administrative Code chapter 281—4, K.W.’s request is GRANTED.

K.W.’s child has a rare and severe autoinflammatory disease. Both the disease and his treatment for it, which suppresses his immune system, make him particularly susceptible to COVID-19 compared to other children, including an extremely elevated risk of hospitalization. This is amply supported by medical evidence, including a detailed report from the child’s treating physician at the University of Iowa Stead Family Children’s Hospital. The family has a sophisticated array of technology to facilitate virtual visits with the supervising teacher to make the child’s interactions with the supervising teacher “as close to normal” as possible. The Marion Independent Community School District concurs in K.W.’s request.

The Department finds and concludes, based on clear and convincing evidence, that K.W. has met her burden of persuasion (Iowa Admin. Code r. 281—4.10(2)) that this waiver should be granted. Application of this rule, which is not required by statute (*Id.* r. 281—4.4(3)) would work an undue hardship on the child and his family (*Id.* r. 281—4.4(1)) based on the undisputed risk factors. Given the family's willingness and ability to make the child's virtual visits "as close to normal" as possible, the Department finds and concludes a waiver "would not prejudice the substantial legal rights of any person" (*Id.* r. 281—4.4(2) and would provide substantially "equal protection of public health, safety, and welfare" (*Id.* r. 281—4.4(4)). Finally, granting the waiver will not have any negative effect on student achievement (*Id.* r. 281—4.4(5)).

Therefore, it is ORDERED:

As to the child of applicant K.W., the requirement of in-person visits by a supervising teacher contained in Iowa Administrative Code rule 281—31.4(3)"a" is waived for the 2021-2022 school year.

The remainder of the rule remains applicable.

Done on October 4, 2021.

Thomas A. Mayes
Administrative Law Judge
Iowa Department of Education



Ann Lebo
Director
Iowa Department of Education

Copies (by e-mail and ordinary mail) to parties