

IOWA DEPARTMENT OF EDUCATION

[Cite as 30 D.o.E. App. Dec. 159]

*In re GEER II Mental Health Schools Grant,*

Waukee Community School District,

[Admin. Doc. #5148]

Appellant,

vs.

**DECISION**

Iowa Department of Education,

Appellee.

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In this matter, the Waukee Community School District (“Waukee”) challenges an Iowa Department of Education (“Department”) to not award a competitive grant. This appeal is governed by the standards set forth in Iowa Administrative Code rule 281 – 7.5 (2021).

This matter was heard on October 1, 2021, by the undersigned, presiding as administrative law judge on behalf of Director Ann Lebo. Waukee was not represented by counsel and provided sworn testimony through Lesley Christensen, district social worker; Sarah Kautz, chief financial officer; Stacie De Haan, director of instructional services; and Kandi Hensel, director of student services. Waukee’s exhibits A through L were admitted into evidence. The Department was represented by Assistant Attorney General Jordan Esbrook, and provided sworn testimony through Brad Niebling, bureau chief; Barb Anderson, administrative consultant; and Kathy Bertsch, also an administrative consultant. The Department’s exhibits 1 through 7 were admitted into

evidence. After considering the evidence in light of the governing law, Waukee's challenge is rejected and the Department's decision is AFFIRMED.

*Rule 281 – 7.5*

An appeal of a denial of a competitive grant

must be based on a contention that the process was conducted outside of statutory authority; violated state or federal law, policy, or rule; did not provide adequate public notice; was altered without adequate public notice; or involved conflict of interest by staff or committee members.

Iowa Admin. Code r. 281 – 7.5. These grounds are narrow, by design. An appeal under rule 281 – 7.5 is not a vehicle to challenge the policy objectives of the competitive grant or the discretionary choices made in the development of the grant application or scoring criteria. It is also not a vehicle to get a “do over” for unsuccessful grant applicants.

Additionally, any allegation must be proven. The burden of production and persuasion in on Waukee. *See Wonder Life Co. v. Liddy*, 207 N.W.2d 27, 31 (Iowa 1973) (holding, “in administrative proceedings, as well as in court proceedings, the burden of proof, apart from statute, is on the party asserting the affirmative of an issue”); *Boys and Girls Club of the Cedar Valley*, 27 D.o.E. App. Dec. 805, 808 (2016) (“Furthermore, BGCCV provided no evidence to the contrary.”).

*Findings of Fact*

The Governor's Emergency Education Relief fund (GEER-II) is a component of the Coronavirus Response and Relief Supplemental Appropriations Act (CRRSA), Pub. L. 116-260 (Exhibit 1). GEER-II provides significant discretion to Governors to award funds to school districts or institutes of higher education “most significantly impacted

by coronavirus,” or to school districts, institutes of higher education, or “other education-related entities that the Governor ‘deems essential’ for carrying out emergency educational services, providing child care and early childhood education, providing social and emotional support, and protecting education-related jobs” (Exhibit 2, item A-3). Within that broad statutory charge, each Governor has “wide discretion” in choosing which entities to fund (Exhibit 2, item A-5) and criteria for awarding subgrants (Exhibit 2, item A-14). Nothing in the federal grant award or supporting documents requires or prohibits any specific formula for the distribution of funds.

Governor Reynolds determined that \$8.6 million would be used for mental health supports, including services to students, mental health first aid, and suicide prevention (Exhibit A). The funds were to be allocated across seven district sizes (Exhibit A). Waukee was in the largest district size (Exhibit A), with a recommended budget amount of \$650,000. The grant application instructions stated: “Districts should work to stay within the budget allowances based on their district size and scope of their proposal but may submit a proposal that goes over the allowance if they include an explanation of need” (Exhibit A). Each grant was assessed at two “Gates”: first, whether the district provided “evidence of unique student and family mental health need(s) as a function of COVID-19” and second, whether the district’s “goals align to the COVID-19 related need(s) and have measurable impact” (Exhibit A). Gate 1 aligned with the GEER-II requirement to support districts “most significantly impacted by coronavirus.” If a district did not make it through Gate 1, its application was not evaluated further (Exhibit 4). If a district made it through Gate 1, its application

proceeded to Gate 2, where it was scored by two trained reviewers against a rubric evaluating the application's "goals and impact," "action plan," and "budget proposal" (Exhibit 5). If the district made it through Gate 1, its scores for Gates 1 and 2 were added together for the district's final score.

Each district submitted its grant application through one of the Department's web-based computer applications. Some fields were character-limited. Those character limits applied to all applicants. The timeline required to submit the application was tight, from announcement on April 30, 2021 (Exhibit A) to a due date of May 30, 2021 (Exhibit C).

Waukeee is a large and rapidly growing school district (Kautz testimony). With its growth comes additional student and family needs (*See, e.g.*, Christensen testimony, Hensel testimony, Exhibit H). Based on census data, Waukeee is, when compared to other school districts of similar size, relatively affluent. For that reason, it does not receive as much as similarly sized districts under the Elementary and Secondary Education Act of 1965 ("ESEA"), as amended, allocations under which are based in significant part on student poverty, or under the various allocations of funds under the Elementary and Secondary School Emergency Relief Fund ("ESSER"), which are based in significant part on ESEA allocations (Exhibit D). Some of the funds available under ESEA and ESSER are available to provide mental health services to students, as well as funds available under other sources, such as mental health regions (De Haan testimony, Exhibit E, Exhibit F, Exhibit K, Exhibit L).

Waukee's application made it through Gate 1, with a score of 9.38 out of ten (Exhibit 6). At Gate 2, Waukee's application scored well on "goals and impact" and "action plan" (Anderson testimony) but scored low on "budget proposal," receiving only ten of fifteen possible points from each reviewer (Exhibit 7). The reviewers remarked that Waukee's budget "far exceeds recommended budget for district size" (Exhibit 7). No other district in the relevant size category had an average budget score that low. Each of the two reviewers had Waukee ranked sixth of seven districts in the relevant size category (Exhibit 6).

Waukee's application was not funded.

Shortly after this grant application closed, the Department and the University of Iowa College of Education announced the creation of the Iowa Center for School Mental Health (Exhibit J). The Center would provide "professional development resources and services to support mental health needs in schools and conduct research on the effective delivery of these services to students" (Exhibit J). The Center received some funding from the Department's ESSER set-aside for statewide projects. One of the Size 7 districts that was awarded a grant was the Iowa City Community School District (Exhibit 6), the school district in which the University of Iowa College of Education is located. Iowa City did not list the University as a collaborative partner in its application (Bertsch testimony) and there was no connection between this grant opportunity and the Center (Bertsch testimony).

This appeal timely followed (Exhibit C).

### *Conclusions of Law*

Waukees notice of appeal raised several points, which may be grouped for convenience of discussion as follows: violation of state or federal law or policy by failing to take available ESSER and ESEA funds when scoring this application, altering the grant without public notice by failing to take available ESSER and ESEA funds into account, and a conflict of interest due to funding the school district in which the Iowa Center for School Mental Health is located. These will be dealt with in turn.

*Failure to Follow State or Federal Law or Policy.* Waukee alleges the law was violated when the Department did not account for other funding sources available to districts when determining how to award these grants, such as ESEA funds, ESSER funds, and state law "modified allowable growth" for dropout prevention efforts. This contention is simply addressed. No federal law requires the type of scrutiny that Waukee seeks. Nothing in CRRSA, the grant award notification (Exhibit 1), or the relevant federal guidance (Exhibit 2) would require the Department to consider other available funds. Governor Reynolds had wide latitude in determining how these grants were to be awarded, which she and the Department exercised. With such broad discretion to address the mental health needs, there is no violation of state or federal law.

While Waukee suggested that it might have been "best practice" to consider other funds (Cross Examination of Bertsch), "best practice" is not the standard under rule 7.5. Falling far short of that rule's exacting standard, this objection must be overruled.

*Alteration without Public Notice.* Taking a different approach to the same general argument, Waukee asserts the application was altered without public notice because any consideration of other available funds was removed. This approach fares no better.

This argument fails for one basic reason: the initial grant application and instructions never stated the Department would consider other available funds (Exhibit A). In fact, to do otherwise would be a true alteration of the application without public notice. Iowa Admin. Code r. 281 – 7.5.

This objection must be overruled.

*Conflict of Interest.* The assertion that there was somehow a conflict of interest due to the separate establishment of the Iowa Center for School Mental Health has no basis in law or fact. Rather, it is based solely on mere “suspicion, surmise, conjecture, or speculation.” *Matter of Will of Pritchard*, 443 N.W.2d 95, 98 (Iowa Ct. App. 1989). “A conflict of interest does not exist merely because an unsuccessful applicant is dissatisfied with a score.” *Cedar Rapids Cmty. Sch. Dist.*, 29 D.o.E. App. Dec. 307, 310 (2020).

Department witnesses testified credibly that there is no connection between this grant and the Center (Bertsch testimony). Waukee offered no evidence to the contrary. In fact, Waukee’s notice of appeal reflects the mere speculation underlying this objection: “Conflict of interest by staff or committee members *may* have occurred...” (Exhibit C, emphasis added). This mere speculation does not meet the high bar for relief under rule 7.5.

This objection must be overruled.

*Final Conclusions of Law.* The process employed by the Department to evaluate this competitive grant was reasonable, *see, e.g., Cedar Rapids Cmty. Sch. Dist.*, 29 D.o.E. App. Dec. at 309, and the policy decisions underlying the grant process are not subject to review by an appeal under Rule 7.5.

Waukee's argument, when reduced to its essence, is based on Waukee's perception that the manner in which ESEA funds and ESSER funds are distributed is unfair to it. The manner in which such funds are distributed is determined under federal law and is outside the scope of any appeal under rule 7.5.

*Decision*

I have considered all issues presented, whether or not discussed in this decision. The District's appeal points are OVERRULED and the Department's decision is AFFIRMED.

This decision is final agency action, from which the District may file a petition for judicial review under Iowa Code section 17A.19.

Dated October 13, 2021.

*/s/ Original Signed*  
Thomas A. Mayes  
Administrative Law Judge &  
General Counsel

IT IS SO ORDERED.



Ann Lebo  
Director  
Iowa Department of Education