

# **N.J.A.C. 6A:5, Regulatory Equivalency and Waiver**

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## **Chapter 5. Regulatory Equivalency and Waiver**

### **Subchapter 1. Equivalency and Waiver Process**

#### **6A:5-1.1 Purpose and scope**

- (a) This chapter’s purpose is to provide regulatory flexibility for school districts to meet the requirements of the rules contained in the New Jersey Administrative Code Title 6A. Regulatory flexibility may be granted as a waiver or equivalency to a specific rule so school districts can provide effective and efficient educational programs. The Commissioner, with authority delegated by the New Jersey State Board of Education, may approve on a case-by-case basis a waiver or equivalency to a specific rule.
- (b) Entities covered by the chapter include: school districts; charter schools; renaissance school projects; county vocational school districts; county special services school districts; educational services commissions; jointure commissions; regional day schools; Marie Katzenbach School for the Deaf; approved private schools for students with disabilities; college-operated programs; educator preparation programs; and programs operated by the State Departments of Children and Families, Human Services, and Corrections. Agencies and clinics are excluded.
  1. Throughout this chapter, unless otherwise indicated, “school district” refers to each of the 14 entities referenced at (b) above.

#### **6A:5-1.2 Definitions**

The following words and terms shall have the following meanings when used in this chapter, unless the context clearly indicates otherwise.

“Equivalency” means approval to achieve the intent of a specific rule through an alternate means that is different from, yet judged to be comparable to or as effective as, those prescribed within the rule.

“Waiver” means approval to avoid compliance either with the specific procedures or the substantive requirements of a specific rule for reasons that are judged educationally, organizationally, and fiscally sound.

### **6A:5-1.3 Criteria for an equivalency or waiver**

- (a) An equivalency or waiver to a specific rule must meet the following criteria:
  - 1. The spirit and intent of New Jersey Statutes Title 18A, applicable Federal laws and regulations, and the New Jersey Administrative Code Title 6A are served by granting the equivalency or waiver.
    - i. Certification requirements at N.J.S.A. 18A:26-2 shall not be violated.
    - ii. No equivalencies or waivers related to N.J.A.C. 6A:14, Special Education, shall be granted.
    - iii. The Department shall not accept any equivalency or waiver application that seeks relief from any title of the New Jersey Statutes or any title other than Title 6A of the New Jersey Administrative Code;
  - 2. The provision of a thorough and efficient education to students in the school district is not compromised as a result of the equivalency or waiver; and
  - 3. There will be no risk to student health, safety, or civil rights by granting the equivalency or waiver.

### **6A:5-1.4 Equivalency process**

- (a) The Commissioner, or the Commissioner’s designee, with authority delegated by the State Board, may approve an equivalency to a specific rule based on a Department-developed application submitted by a school district.
- (b) The application completed by the school district shall describe, at a minimum:

1. How the school district's proposed equivalency meets the spirit and intent of an existing rule;
  2. The condition(s) or reason(s) for the proposed equivalency, including reference to the specific rule that necessitates the proposal;
  3. The projected measurable results that will provide programs or services at least equal to the current rule; and
  4. How the school district's community, including the district board of education, parents, administration, and staff, has been informed of the proposed equivalency to the specific rule and has been provided the opportunity for public comment.
- (c) The completed application shall be signed by the chief school administrator and approved by the district board of education.
- (d) The chief school administrator, or the chief school administrator's designee, shall submit the signed application and the approved district board of education resolution, or other documentation indicating the district board of education's approval of the application, to the executive county superintendent.
1. The executive county superintendent shall review the application for compliance with N.J.A.C. 6A:5-1.3(a)3 and forward, to the Office of the State Board of Education, the application submitted pursuant to (d) above and the executive county superintendent's recommendation whether to approve the application.
  2. An educator preparation program, as that term is defined at N.J.A.C. 6A:9-2.1, shall submit its application directly to the Office of the State Board of Education.

### **6A:5-1.5 Waiver process**

- (a) The Commissioner, or the Commissioner's designee, with authority delegated by the State Board, may approve a waiver to a specific rule based on a Department-developed application submitted by a school district.

- (b) The application completed by the school district shall describe, at a minimum:
1. The waiver sought by the district;
  2. The conditions or reasons for the proposed waiver, including reference to the specific rule that necessitates the proposal;
  3. The projected measurable results that will demonstrate the waiver is educationally, organizationally and fiscally sound; and
  4. How the school district's community, including the district board of education, parents, administration and staff, has been informed of the proposed waiver to the specific rule and has been provided the opportunity for public comment.
- (c) The completed application shall be signed by the chief school administrator and approved by the district board of education.
- (d) The chief school administrator, or the chief school administrator's designee, shall submit the signed application and the approved district board of education resolution, or other documentation indicating the district board of education's approval of the application, to the executive county superintendent.
1. The executive county superintendent shall review the application for compliance with N.J.A.C. 6A:5-1.3(a)3 and forward, to the Office of the State Board of Education, the application submitted pursuant to (d) above and the executive county superintendent's recommendation whether to approve the application.
  2. An educator preparation program, as that term is defined at N.J.A.C. 6A:9-2.1, shall submit its application directly to the Office of the State Board of Education.

**6A:5-1.6 Review and duration of the equivalency or waiver**

- (a) The school district shall submit reports and documentation of the measurable results for periodic review as required by the Commissioner.

- (b) The Commissioner shall present to the State Board quarterly reports of granted equivalencies and waivers.
- (c) The Commissioner at least annually shall review the equivalencies and waivers granted to Title 6A to determine whether amendments to the Administrative Code should be proposed to the State Board.
- (d) The Commissioner may rescind an approved equivalency or waiver if a school district does not comply with the specific rule's intent. The Commissioner shall provide the school district with a reasonable time period to comply with all applicable rules after the equivalency or waiver approval is rescinded.
- (e) An equivalency or waiver shall not be granted for a period of more than three years.

#### **6A:5-1.7 Appeals**

- (a) Any party aggrieved by a Commissioner's determination to grant or deny an equivalency or waiver pursuant to this chapter may appeal the determination to the Appellate Division of the Superior Court as provided by law.
- (b) Any party seeking to challenge an action by a district board of education, as that term is defined at N.J.A.C. 6A:3-1.2, on the grounds that such action is in violation of school laws shall initiate a contested case pursuant to N.J.A.C. 6A:3, Controversies and Disputes, notwithstanding that the action being challenged may involve the implementation of a waiver or equivalency granted by the Commissioner.