

Proposed Rulemaking for N.J.A.C. 6A:9B-5.15 and 11.10

The following is the accessible version of the proposed amendments to N.J.A.C. 6A:9B-5.15 and 11.10 to authorize a third issuer of the Water Safety Instructor Certificate, which is required for anyone employed to coach or serving as coach for interscholastic swimming and/or diving programs in New Jersey public schools and for candidates seeking the swimming and water safety endorsement to the instructional certificate. The adoption level document includes three sections – [comment and response](#), [summary of the proposed amendments](#), and [text of the proposed amendments](#).

**State Board of Education
Administrative Code
Comment/Response**

This comment and response form contains comments from and since the December 4, 2019, meeting of the State Board of Education when the rulemaking was considered at Proposal Level.

Topic: State Board of Examiners
and Certification

Meeting Date: May 6, 2020

Code Citation: N.J.A.C. 6A:9B

Level: Adoption

Division: Academics and Performance

Completed by: Office of Certification and
Induction

Summary of Comments and Agency Responses:

The following is a summary of the comments received from State Board of Education members and members of the public and the Department of Education's (Department) responses. Each commenter is identified at the end of the comment by a letter or number that corresponds to the following list:

- A. Kathy Goldenberg, President
State Board of Education
- 1. Sara Palumbo, Aquatics Director, Neptune School District
- 2. Leslie Donovan, President and CEO, Starfish Aquatics Institute

1. Comment: The commenter asked for confirmation that another State department participated in the review of the proposed amendments to the swimming and water safety endorsement. **(A)**

Response: The Department consulted with the Department of Health on whether the Flotation Aided Swim Training Program (FAST Swim Program™) would be an acceptable issuer of the Water Safety Instructor Certificate, which is required for a teacher to be eligible for the swimming and water safety endorsement. The Department of Health recommended the FAST Swim Program as an alternative issuer.

2. Comment: The commenters requested that the State Board approve a fourth option for the issuer of the Water Safety Instructor Certificate. The commenters specifically requested that the State Board approve the Starfish Aquatics Institute as a fourth issuer. **(1, 2)**

Response: The Department cannot consider this request upon adoption because it would be considered a substantive change to the proposal that would require the Department to consult with the Department of Health as to whether the Starfish Aquatics Institute would be an acceptable issuer of the Water Safety Instructor Certificate. Therefore, the commenters would need to submit to the Department a [petition for rulemaking](#) demonstrating how the Starfish Aquatics Institute's program that leads to the Water Safety Instructor Certificate meets or exceeds the programs of the approved issuers.



State of New Jersey
DEPARTMENT OF EDUCATION
PO Box 500
TRENTON, NJ 08625-0500

Adoption Level
May 6, 2020

PHILIP D. MURPHY
Governor

SHEILA Y. OLIVER
Lt. Governor

LAMONT O. REPOLLET, Ed.D.
Commissioner

To: Members, State Board of Education

From: Lamont O. Repollet, Ed.D.
Commissioner

Subject: N.J.A.C. 6A:9B, State Board of Examiners and Certification

Reason
For Action: Amendments

Authority: N.J.S.A. 18A:4-15, 18A:6-38, and 18A:26-2.3

Sunset Date: November 12, 2022

Summary

The Department of Education (Department) proposes to amend N.J.A.C. 6A:9B, State Board of Examiners and Certification, to provide a third option for the issuer of the water safety instructor certificate that candidates are required to hold to be eligible for a swimming and water safety endorsement to the instructional certificate and to be employed to coach, or to serve as coach, for interscholastic swimming and/or diving programs. Specifically, the Department proposes to amend N.J.A.C. 6A:9B-11.10, Swimming and water safety, to add the Flotation Aided Swim Training Program (FAST Swim Program™) as one of three acceptable issuers of the Water Safety Instructor Certificate.

The proposed amendments are the result of a petition for rulemaking submitted by Linda Bolger, creator of the FAST Swim Program. The petitioner requested amendments to N.J.A.C. 6A:9B-11.10(a)4, which requires candidates to hold a valid Water Safety Instructor Certificate issued by the American Red Cross or YMCA, to add the FAST Swim Program as an issuer of the required certificate.

In accordance with N.J.S.A. 18A:26-2.3, the Department sought the assistance of the Department of Health to review the materials submitted by the petitioner and to make a recommendation to the Department as to whether the FAST Swim Program is comparable to the water safety instructor programs offered by American Red Cross or YMCA. The Department of Health recommended the FAST Swim Program as an alternative issuer of the Water Safety Instructor Certificate. After further deliberations and reviewing the Department of Health's recommendation, the Department, on July 15, 2019, granted the petitioner's request to add the FAST Swim Program as one of the acceptable issuers of the Water Safety Instructor Certificate,

required at N.J.A.C. 6A:9B-11.10(a)4, for a candidate to be eligible for the swimming and water safety endorsement to an instructional certificate.

Pursuant to the rules governing petitions for rulemaking at N.J.A.C. 1:30-4.2(a)3, the Department is required to initiate a rulemaking to effectuate the approved request within 90 days of approving a petition.

The Department also proposes an amendment at N.J.A.C. 6A:9B-5.15, Persons employed to coach or serving as coach for interscholastic swimming and/or diving programs, to reflect the additional issuer of the Water Safety Instructor Certificate.

The proposed amendments will provide a third option for the issuer of the Water Safety Instructor Certificate, which is required for candidates to be eligible for the swimming and water safety endorsement to the instructional certificate and to be employed to coach, or to serve as coach, for interscholastic swimming and/or diving programs.

The proposed amendments will have no impact on class size, curriculum, or required equipment of swimming or diving programs in school districts or on anything other than the issuance of the Water Safety Instructor Certificate for a candidate to be eligible for the swimming and water safety endorsement. Likewise, approval of the FAST Swim Program, for purposes of N.J.A.C. 6A:9B-11.10(a)4, will not constitute endorsement or favoring by the Department over other listed authorizers. If the proposed amendments are adopted, all promotional materials will need to be limited to statements indicating that the FAST Swim Program may issue the Water Safety Instructor Certificate required for a candidate to be eligible for the swimming and water safety endorsement to an instructional certificate in New Jersey. The use and display of the seal of the State of New Jersey and State agencies are restricted by law.

The proposed amendments also do not constitute any type of approval or endorsement of the FAST Swim Program by the Department of Health.

Subchapter 5. General Certification Policies

N.J.A.C. 6A:9B-5.15 Persons employed to coach or serving as coach for interscholastic swimming and/or diving programs

This section sets forth the requirements for a candidate to qualify as a coach for interscholastic swimming or diving programs and specifies how school districts report the qualifying coaches in their school districts each year.

The Department proposes to amend N.J.A.C. 6A:9B-5.15(b)2, which requires a chief school administrator to annually forward to the executive county superintendent copies of each valid American Red Cross or YMCA certificate required in N.J.A.C. 6A:9B-11.10(a)2 through 4 for every person employed to coach, or serving as coach, for interscholastic swimming and/or diving programs. The Department proposes to delete “American Red Cross or YMCA” since N.J.A.C. 6A:9B-11.10(a)4 will be amended to include the FAST Swim Program, but N.J.A.C. 6A:9B-11.10(a)2 and 3 will still have American Red Cross or YMCA as the sole acceptable issuers of the Cardiopulmonary Resuscitation (CPR) for Professional Rescuer Certificate and

Lifeguard Certificate, respectively. The Department proposes the same amendment at N.J.A.C. 6A:9B-11.10(b)2.

Subchapter 11. Additional Requirements or Exceptions to Requirements for Instructional Certification with Special Endorsements

N.J.A.C. 6A:9B-11.10 Swimming and water safety

This section sets forth the requirements for the swimming and water safety endorsement.

The Department proposes to amend N.J.A.C. 6A:9B-11.10(a)4, which requires a candidate for the swimming and water safety endorsement to hold a valid Water Safety Instructor Certificate issued by the American Red Cross or the YMCA, to add the FAST Swim Program as an acceptable issuer.

As the Department has provided a 60-day comment period on this notice of proposal, the notice is excepted from the rulemaking calendar requirement, pursuant to N.J.A.C. 1:30-3.3(a)5.

Social Impact

Although the proposed amendments will provide a third option for the issuer of the required Water Safety Instructor Certificate, the Department does not anticipate that the proposed amendments will have a social impact on candidates seeking a swimming and water safety endorsement to the instructional certificate and individuals employed to coach, or serving as coach, for interscholastic swimming and/or diving programs. The proposed amendments will not have any social impact on school districts or students.

Economic Impact

Although the proposed amendments will provide a third option for the issuer of the required Water Safety Instructor Certificate, the Department does not anticipate that the proposed amendments will have an economic impact on candidates seeking a swimming and water safety endorsement to the instructional certificate and individuals employed to coach, or serving as coach, for interscholastic swimming and/or diving programs. The proposed amendments will not have an economic impact on school districts or students.

Federal Standards Statement

There are no Federal requirements that impact the proposed amendments.

Jobs Impact

The proposed amendments will not result in the generation or loss of jobs.

Agriculture Industry Impact

The proposed amendments will have no impact on the agriculture industry.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not required because the proposed amendments do not impose reporting, recordkeeping, or other compliance requirements on small businesses, as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed amendments impact candidates seeking a swimming and water safety endorsement to the instructional certificate and individuals employed to coach, or serving as coach, for interscholastic swimming and/or diving programs.

Housing Affordability Impact Analysis

The proposed amendments will have an insignificant impact on the affordability of housing in New Jersey. There is an extreme unlikelihood the proposed amendments would evoke a change in the average costs associated with housing because the proposed amendments concern candidates seeking a swimming and water safety endorsement to the instructional certificate and individuals employed to coach, or serving as coach, for interscholastic swimming and/or diving programs.

Smart Growth Development Impact Analysis

The proposed amendments will have an insignificant impact on smart growth. There is an extreme unlikelihood the proposed amendments would evoke a change in housing production in Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan in New Jersey because the proposed amendments impact candidates seeking a swimming and water safety endorsement to the instructional certificate and individuals employed to coach, or serving as coach, for interscholastic swimming and/or diving programs.

Racial and Ethnic Community Criminal Justice and Public Safety Impact

There is an extreme unlikelihood that the proposed amendments would have an impact on pretrial detention, sentencing, probation, or parole policies concerning juveniles and adults in the State because the proposed amendments concern candidates seeking a swimming and water safety endorsement to the instructional certificate and individuals employed to coach, or serving as coach, for interscholastic swimming and/or diving programs.

Full text of the proposal (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

Subchapter 5. General Certification Policies

6A:9B-5.15 Persons employed to coach or serving as coach for interscholastic swimming and/or diving programs

- (a) Persons employed to coach or serving as coach for interscholastic swimming and/or diving programs shall:
 - 1. Hold a New Jersey certification pursuant to the rules for hiring athletics personnel at N.J.A.C. 6A:9B-5.16(b); and
 - 2. Meet the requirements for water safety training pursuant to N.J.A.C. 6A:9B-11.10(a)2 through 4.
- (b) The chief school administrator of the employing district board of education shall:
 - 1. Annually notify the executive county superintendent of all persons employed to coach or serving as coach for interscholastic swimming and/or diving programs; and
 - 2. Annually forward to the executive county superintendent copies of each valid [American Red Cross or YMCA] certificate required in (a)2 above for every person employed to coach or serving as coach for interscholastic swimming and/or diving programs.

Subchapter 11. Additional Requirements or Exceptions to Requirements for Instructional

Certification with Special Endorsements

6A:9B-11.10 Swimming and water safety

- (a) To be eligible for the swimming and water safety endorsement, candidates shall hold:
 - 1. A standard New Jersey instructional certificate;

2. A valid Cardiopulmonary Resuscitation for Professional Rescuer Certificate issued by the American Red Cross or the YMCA;
 3. A valid Lifeguard Certificate issued by the American Red Cross or the YMCA;
and
 4. A valid Water Safety Instructor Certificate issued by the American Red Cross, [or] the YMCA, **or the Flotation Aided Swim Training Program (FAST Swim Program™).**
- (b) The chief school administrator of the employing district board of education shall:
1. Annually notify the executive county superintendent of all teachers assigned to teach swimming and/or diving; and
 2. Annually forward to the executive county superintendent copies of each valid [American Red Cross or YMCA] certificate identified in (a)2 through 4 above for every person assigned to teach swimming and/or diving.
- (c) Any person otherwise qualified to serve as a substitute pursuant to N.J.A.C. 6A:9B-7 shall be required to hold all of the safety certificates in (a) above to serve as a substitute for a swimming and water safety teacher.