

Proposed Readoption with Amendments at N.J.A.C. 6A:5, Regulatory Equivalency and Waiver

The following is the accessible version of the proposed readoption with amendments at N.J.A.C. 6A:5. The proposal level document includes three sections – [comments and responses](#), [a summary of the proposed amendments](#) and [the rule text of the proposed amendments](#).

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

This comment and response form contains comments pertaining to the May 1, 2024, meeting of the State Board of Education when the rulemaking was considered at First Discussion Level.

Topic: Regulatory Equivalency and Waiver **Meeting Date:** June 5, 2024

Code Citation: N.J.A.C. 6A:5 **Level:** Proposal

Completed by: Office of the State Board of Education

Summary of Comments and Agency Responses:

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

1. John J. Burns Esq., Senior Legislative Counsel, New Jersey School Boards Association

1. **Comment:** The commenter supported the proposed amendments at N.J.A.C. 6A:5. The commenter also supported the State Board of Education (State Board) providing the Commissioner of Education (Commissioner) with the regulatory flexibility to assist district boards of education in providing an effective and efficient educational program through an equivalency and waiver process. **(1)**
Response: The Department appreciates the support.

2. **Comment:** The commenter asked how many requests were granted of the approximately 155 equivalency and waiver applications received between January 2023 and April 2024. **(1)**
Response: One of the requests is still pending a decision, while the remaining applications were approved.

3. **Comment:** The commenter asked for the most common equivalency or waiver sought and/or granted. **(1)**
Response: Between January 2023 and April 2024, the most common equivalencies received were related to N.J.S.A. 6A:30-2.2(c) and Appendix A. The requests permitted school districts to utilize non-Statewide assessment data from 2020-2021 and 2021-2022 for Instruction and Program Indicators 4 and 5 to demonstrate student growth since the New Jersey Student Learning Assessments were not administered during those years. Requests related to the size of preschool classrooms was the second-most common request during that time period.

4. **Comment:** The commenter asked why the Commissioner cannot grant an equivalency or waiver related to certification requirements or special education. **(1)**
Response: Existing N.J.A.C. 6A:5-1.3(a)1i states that certification requirements at N.J.S.A. 18A:26-2 shall not be violated. N.J.S.A. 18A:26-2 states, in part, that no teaching staff member shall be employed in the public schools by any board of education unless the person holds a valid certificate to teach, administer, direct or supervise the teaching, instruction, or educational guidance of students in public schools. The statute also applies to the rendering -- or the administering, directing, or supervising the rendering -- of nursing services.

When existing N.J.A.C. 6A:5-1.3(a)1i was first adopted in 2000, the Department stated

that requests that satisfy an individual need are not approved pursuant to the equivalency and waiver process because such requests are considered by the State Board of Examiners. The Department continues to view the statutory requirement in this matter and approves requests that satisfy a need at a program level, such as educator preparation programs.

Proposed new N.J.A.C. 6A:5-1.3(a)1ii states that no equivalencies or waivers related to N.J.A.C. 6A:14, Special Education, shall be granted. The proposed new rule mirrors the existing prohibition at N.J.A.C. 6A:14-4.9(f). Before N.J.A.C. 6A:14 was amended in 1998, the Department reviewed requests for equivalencies and waivers of special education rules to identify areas in which changes to the rules would be appropriate. At that time, the Department determined that districtwide equivalencies or waivers to special education rules no longer would be allowed, except for age range or class size on an individual student basis through the executive county superintendents. All previously approved equivalencies and waivers related to N.J.A.C. 6A:14 expired on July 6, 1998.

5. **Comment:** The commenter asked what type of guidance or assistance the Department can provide to school districts to help ensure the success of their application. The commenter also asked if the office of the executive county superintendent would be an available resource for school districts that need assistance. **(1)**

Response: The Department encourages chief school administrators to discuss the regulatory relief sought and the reason(s) why the equivalency or waiver is needed with the executive county superintendent *prior to drafting an application* to ensure that relief pursuant to N.J.A.C. 6A:5 is necessary and feasible. Although consultation is not required because it would be overly prescriptive, the summary discussion of proposed new N.J.A.C. 6A:5-1.3(a)1iii encourages it.

The Department also suggests that chief school administrators ensure the following before seeking district board of education approval of an equivalency or waiver application:

- Citations for the regulations related to the relief sought start with “N.J.A.C. 6A” and not another title and chapter of the New Jersey Administrative Code, such as the Uniform Construction Code at N.J.A.C. 5:23, or “N.J.S.A.” for State statute; and
- Resolutions presented to the district board of education approve the submission of the equivalency or waiver application and not the desired end result (for example, a request for a private preschool provider to utilize classroom space that is smaller than the size required at N.J.A.C. 6A:13A-7.1(a) instead of approving a contract with the private provider that includes the smaller classroom).



State of New Jersey
DEPARTMENT OF EDUCATION
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Proposal Level
June 5, 2024

PHILIP D. MURPHY
Governor

TAHESHA L. WAY
Lt. Governor

KEVIN DEHMER
Acting Commissioner

To: Members, State Board of Education

From: Kevin Dehmer
Acting Commissioner

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

Authority: N.J.S.A. 18A:4-15

Reason for Action: Readoption with amendments

Sunset Date: October 6, 2024

Summary

The Department of Education (Department) proposes to readopt N.J.A.C. 6A:5, Regulatory Equivalency and Waiver, with amendments. The rules provide regulatory flexibility for school districts and other institutions regulated by Title 6A of the New Jersey Administrative Code. The chapter is scheduled to expire on October 6, 2024.

As a part of the response to the call in the early 1990s for regulatory flexibility, the State Board of Education (State Board) adopted new N.J.A.C. 6:3A, Regulatory Equivalency and Waiver, effective July 3, 1995. N.J.A.C. 6:3A was readopted effective June 8, 2000, and then re-codified as Chapter 5 of Title 6A of the New Jersey Administrative Code, effective July 3, 2000. N.J.A.C. 6A:5 has been readopted three times in 2005, 2010, and 2017.

The rules govern the equivalency and waiver process and provide the opportunity for regulatory flexibility for school districts and most programs regulated by the Department. An equivalency is permission to meet the requirements of a rule through an alternative means selected by the district board of education. A waiver allows a district board of education to avoid compliance with the specific procedures or substantive requirements of a rule for reasons that are educationally, organizationally, and fiscally sound. The rules require a school district's educational community, including parents, administration, and staff, to be informed of the proposed equivalency or waiver and provided the opportunity to comment.

The equivalency and waiver process cannot be applied to certification requirements under the purview of the State Board of Examiners or to N.J.A.C. 6A:14, Special Education.

The following summarizes the chapter's provisions and the proposed amendments. Unless otherwise specified, proposed amendments are to update terms or for style, clarity, or grammatical improvement.

Subchapter 1. General Provisions

N.J.A.C. 6A:5-1.1 Purpose

This section outlines the chapter's purpose and scope. The chapter's purpose is to provide regulatory flexibility via an equivalency or waiver to meet the requirements of a specific rule in the New Jersey Administrative Code Title 6A so school districts can provide effective and efficient educational programs. The section outlines the Commissioner's delegated authority to decide each equivalency and waiver request on a case-by-case basis.

The chapter applies to the following entities: school districts; charter schools; renaissance schools; 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 (APSSDs); college-operated programs; and programs operated by the State Departments of Children and Families, Human Services, and Corrections. Agencies and clinics are excluded. School districts that contract with private preschool providers or local Head Start agencies must submit the equivalency or waiver application when seeking relief from requirements at N.J.A.C. 6A:13A, Elements of High-Quality Preschool Programs, that apply to providers or local Head Start agencies.

The Department proposes to amend N.J.A.C. 6A:5-1.1(b) to add that the chapter applies to educator preparation programs, which are Commissioner-approved certificate of eligibility with advanced standing (CEAS) or certificate of eligibility (CE) programs or out-of-State programs that are housed at a higher education institution or other program provider and prepare candidates for instructional, administrative, or educational services certification.

The Department proposes new N.J.A.C. 6A:5-1.1(b)1 to state that "school district" refers to each of the 14 entities referenced at N.J.A.C. 6A:5-1.1(b), unless otherwise indicated.

N.J.A.C. 6A:5-1.2 Definitions

This section defines the terms used in the chapter.

N.J.A.C. 6A:5-1.3 Criteria for an equivalency or waiver

This section establishes the required criteria for an equivalency or waiver request to be considered.

The Department proposes new N.J.A.C. 6A:5-1.3(a)1ii to state that no equivalencies or waivers related to N.J.A.C. 6A:14, Special Education, shall be granted. The proposed new rule mirrors the prohibition in the special education rules at N.J.A.C. 6A:14-4.9(f), which has been in place for nearly 30 years.

The Department proposes new N.J.A.C. 6A:5-1.3(a)1iii to state that 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. Since the Commissioner does not have the authority to provide relief from requirements in State statute or other titles of the New Jersey Administrative Code, the proposed new rule will improve efficiency in the application process by empowering executive county superintendents to not accept applications that cannot be approved under any circumstance. The Department encourages chief school administrators to discuss the regulatory relief sought and the reason(s) why the equivalency or waiver is needed with the executive county superintendent prior to drafting an application to ensure that relief pursuant to N.J.A.C. 6A:5 is necessary and feasible.

N.J.A.C. 6A:5-1.4 Equivalency process

This section lists the information that a school district must submit in its equivalency application. The section also requires the chief school administrator to sign the completed equivalency application and for it to be approved by the district board of education.

The Department proposes to amend N.J.A.C. 6A:5-1.4(a) to indicate that the Commissioner or the Commissioner's designee may approve an equivalency to a specific rule because the Commissioner might have to recuse from making a decision related to a specific school district or entity based on State ethics requirements. The same amendment is proposed at N.J.A.C. 6A:5-1.5(a).

The Department proposes new N.J.A.C. 6A:5-1.4(d) to require the chief school administrator, or the chief school administrator's designee, to 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. The proposed rule will ensure that the application's approval by the district board of education, which is required pursuant to N.J.A.C. 6A:5-1.4(c), is documented in the application materials that are submitted. Proposed new N.J.A.C. 6A:5-1.4(d)1 states the process to be followed by the executive county superintendent after receiving an equivalency application. Proposed new N.J.A.C. 6A:5-1.4(d)2 states that an educator preparation program, as that term is defined at N.J.A.C. 6A:9-2.1, is to submit its equivalency application directly to the Office of the State Board of Education. The same requirements are proposed for waiver applications at new N.J.A.C. 6A:5-1.5(d).

N.J.A.C. 6A:5-1.5 Waiver process

This section lists the information that a school district must submit in its waiver application. The section also requires the chief school administrator to sign the completed waiver application and for it to be approved by the district board of education.

N.J.A.C. 6A:5-1.6 Review and duration of the equivalency or waiver

This section details the Commissioner's responsibility and authority to review and assess granted equivalencies and waivers and to rescind an equivalency or waiver, if appropriate. The section also requires the Commissioner to report quarterly to the State Board regarding granted equivalencies and waivers and to review, at least annually, the equivalencies and waivers to Title 6A to determine whether amendments to the New Jersey Administrative Code should be proposed to the State Board. The section also establishes three years as the maximum length of time an equivalency or waiver can be granted.

N.J.A.C. 6A:5-1.7 Appeals

This section states that a Commissioner's determination to grant or deny an equivalency or waiver application can be appealed to the Appellate Division of the Superior Court as provided by law. The section also provides that a district board of education's action involving an equivalency or waiver can be challenged by initiating a contested case before the Commissioner pursuant to N.J.A.C. 6A:3, Controversies and Disputes.

The Department proposes to amend N.J.A.C. 6A:5-1.7(b) to specify that, for purposes of this specific regulation, "district board of education" means as that term is defined at N.J.A.C. 6A:3-1.2. The proposed amendment will clarify which entities are subject to the provisions at N.J.A.C. 6A:3.

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

Social Impact

The rules proposed for readoption with amendments apply to all local educational agencies (LEAs), which include school districts, charter schools, renaissance school projects, county vocational school districts, county special services school districts, educational services commissions, jointure commissions, and regional day schools; Marie Katzenbach School for the Deaf; approved private schools for students with disabilities (APSSDs); college-operated programs; educator preparation programs; and programs operated by the State Departments of Children and Families, Human Services, and Corrections.

LEAs and other entities that have requested an equivalency or waiver have reported the flexibility is beneficial. The flexibility provided by the rules proposed for readoption with amendments results in an increased ability to redirect resources or add additional programs or services, as well as resolution of problems. LEAs and other entities also report students and parents benefit from improved programs and services. Local taxpayers also benefit as LEAs and other entities have reported cost savings that denote improved, cost-effective management of economic resources. The benefits mean more efficient schools that further the community's needs.

The Department anticipates that the proposed amendments will improve the application process by ensuring that applications for relief from State statutes or regulations outside of Title 6A are not accepted and that documentation of district board of education approval is submitted along with the application.

Economic Impact

LEAs and other entities choose to submit an application for an equivalency or waiver; therefore, the process does not present a financial burden. LEAs and other entities that apply have the responsibility of determining whether the request is cost effective. Local taxpayers may benefit because increased regulatory flexibility, creative programs, and better uses of resources can create higher-quality programs and services at a lower cost or without significant additional education expenditures. The proposed amendments will not alter any potential cost savings.

Federal Standards Statement

The rules proposed for readoption with amendments will not be inconsistent with or exceed Federal requirements or standards as there are no Federal requirements or standards relating to this chapter. However, the chapter cannot be used to grant equivalencies or waivers related to N.J.A.C. 6A:14, Special Education, pursuant to existing N.J.A.C. 6A:14-4.9(f) and new N.J.A.C. 6A:5-1.3(a)1ii. N.J.A.C. 6A:14 ensures that all students with disabilities have available to them a free, appropriate public education as that standard is set pursuant to the Federal Individuals with Disabilities Education Act (IDEA) (20 U.S.C. §§ 1400 et seq.). Existing N.J.A.C. 6A:5-1.3(a)1 also requires approved equivalencies and waivers to serve the spirit and intent of applicable Federal laws and regulations.

Jobs Impact

The rules proposed for readoption with amendments are not likely to result in the generation or loss of jobs.

Agriculture Industry Impact

The rules proposed for readoption with amendments will have no impact on the agriculture industry in New Jersey.

Regulatory Flexibility Statement

The rules proposed for readoption with amendments may impose compliance requirements on APSSDs, which could be small businesses as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., if they seek and/or obtain equivalencies and waivers from applicable Department regulations. APSSDs would incur the administrative expense of application for an equivalency or waiver and for reporting and documentation of results, if granted. However, the Department does not anticipate that professional services would need to be employed to comply with the rules, which are intended to provide the opportunity for regulatory flexibility for APSSDs and other regulated entities. As the requirements are necessary to permit a complete and fair evaluation of an equivalency or waiver application, and to monitor results of a granted equivalency or waiver, no lesser requirement can be provided for APSSDs.

Housing Affordability Impact Analysis

There is an extreme unlikelihood that the rules proposed for readoption with amendments will have any impact on the affordability of housing in New Jersey. There is an extreme unlikelihood that the rules proposed for readoption with amendments would evoke a change in the average costs associated with housing because the rules govern LEAs and other entities that request an equivalency to, or waiver from, specific provisions of Title 6A of the New Jersey Administrative Code.

Smart Growth Development Impact Analysis

The rules proposed for readoption with amendments will have an insignificant impact on smart growth. There is an extreme unlikelihood the rules proposed for readoption with amendments would evoke a change in housing production in Planning Areas 1 and 2, or within designated centers, under the State Development and Redevelopment Plan in New Jersey because the rules govern LEAs and other entities that request an equivalency to, or waiver from, specific provisions of Title 6A of the New Jersey Administrative Code.

Racial and Ethnic Community Criminal Justice and Public Safety Impact

There is an extreme unlikelihood the rules proposed for readoption with amendments would have an impact on pretrial detention, sentencing, probation, or parole policies concerning juveniles and adults in the State because the rules proposed for readoption with amendments govern LEAs and other entities that request an equivalency to, or waiver from, specific provisions of Title 6A of the New Jersey Administrative Code. Accordingly, no further analysis is required.

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

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 [schools] **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.
- i. 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 [of] **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.