

## CHAPTER 5

## REGULATORY EQUIVALENCY AND WAIVER

## Authority

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

## Source and Effective Date

R.2010 d.265, effective October 20, 2010.  
See: 42 N.J.R. 1457(a), 42 N.J.R. 2754(b).

## Chapter Expiration Date

In accordance with N.J.S.A. 52:14B-5.1b, Chapter 5, Regulatory Equivalency and Waiver, expires on October 20, 2017. See: 43 N.J.R. 1203(a).

## Chapter Historical Note

Chapter 5, Regulatory Equivalency and Waiver, was originally codified in Title 6 as Chapter 3A, Regulatory Equivalency and Waiver. Chapter 3A was adopted as R.1995 d.354, effective July 3, 1995. See: 27 N.J.R. 1377(a), 27 N.J.R. 2579(b).

Pursuant to Executive Order No. 66(1978), Chapter 3A, Regulatory Equivalency and Waiver, was readopted as R.2000 d.277, effective June 8, 2000. Chapter 3A was recodified as N.J.A.C. 6A:5 by R.2000 d.277, effective July 3, 2000. See: 32 N.J.R. 1326(b), 32 N.J.R. 2469(b).

Chapter 5, Regulatory Equivalency and Waiver, was readopted as R.2005 d.256, effective July 8, 2005. See: 37 N.J.R. 831(a), 37 N.J.R. 2863(a).

Chapter 5, Regulatory Equivalency and Waiver, was readopted as R.2010 d.265, effective October 20, 2010. See: Source and Effective Date. See, also, section annotations.

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## SUBCHAPTER 1. EQUIVALENCY AND WAIVER PROCESS

## 6A:5-1.1 Purpose

The purpose of this chapter is to provide regulatory flexibility for school districts to meet the requirements of the rules contained in the New Jersey Administrative Code Title 6 and Title 6A; this includes: educational services commissions, jointure commissions, regional day schools, Marie Katzenbach School for the Deaf, private schools for the handicapped, college operated programs and programs operated by the Departments of Children and Families, Human Services and Corrections as well as school districts; agencies

and clinics are excluded. Regulatory flexibility may be granted as a waiver to a specific rule or as an equivalency to a specific rule so that school districts can provide effective and efficient educational programs. The Commissioner, with authority delegated by the New Jersey State Board of Education, may on a case-by-case basis, approve a waiver or an equivalency to a specific rule.

Amended by R.2000 d.277, effective July 3, 2000.  
See: 32 N.J.R. 1326(b), 32 N.J.R. 2469(b).

Inserted a reference to Title 6A and deleted a reference to county special services in the first sentence.

Amended by R.2005 d.256, effective August 1, 2005.  
See: 37 N.J.R. 831(a), 37 N.J.R. 2863(a).

Added "New Jersey" preceding "State Board" and added "of Education" following "State Board" in the last sentence.

Amended by R.2010 d.265, effective November 15, 2010.  
See: 42 N.J.R. 1457(a), 42 N.J.R. 2754(b).

Inserted "Children and Families".

## 6A:5-1.2 Definitions

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

"Commissioner" means Commissioner of the New Jersey Department of Education.

"Department" means the New Jersey Department of Education.

"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.

"State Board" means the New Jersey State Board of Education.

"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.

Amended by R.2000 d.277, effective July 3, 2000.  
See: 32 N.J.R. 1326(b), 32 N.J.R. 2469(b).

Amended by R.2005 d.256, effective August 1, 2005.  
See: 37 N.J.R. 831(a), 37 N.J.R. 2863(a).

Added definitions "Commissioner," "Department" and "State Board".

## 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 6 and 6A are served by granting the equivalency or waiver.

i. Certification requirements of N.J.S.A. 18A:26-2 shall not be violated;

2. The provision of a thorough and efficient education to the students in the 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.

Amended by R.2000 d.277, effective July 3, 2000.

See: 32 N.J.R. 1326(b), 32 N.J.R. 2469(b).

Inserted (a)1.

Amended by R.2005 d.256, effective August 1, 2005.

See: 37 N.J.R. 831(a), 37 N.J.R. 2863(a).

In introductory paragraph of (a)1, added "and 6A" following "Title 6".

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

(a) The Commissioner, with authority delegated by the State Board for the purpose of this rule, may approve an equivalency to a specific rule based on an application submitted by a school district. The completed application must be signed by the chief school administrator and approved by the district board of education. The application developed by the Department and completed by the school district shall at a minimum:

1. Describe how the school district's proposed equivalency meets the spirit and intent of an existing rule;

2. Describe the conditions or reasons for the proposed equivalency including the reference of the specific rule which necessitates the proposal;

3. Describe the projected measurable results which will provide programs or services that are at least equal to the required current rule; and

4. Demonstrate that the school district's educational community, including the district board of education, parents, administration and staff, have been informed of the proposed equivalency to the specific rule and have been provided the opportunity for public comment.

Amended by R.2000 d.277, effective July 3, 2000.

See: 32 N.J.R. 1326(b), 32 N.J.R. 2469(b).

In (a)4, substituted "and have been provided the opportunity for public comment" for "through public comment and input" at the end.

Amended by R.2005 d.256, effective August 1, 2005.

See: 37 N.J.R. 831(a), 37 N.J.R. 2863(a).

In introductory paragraph of (a), added "school" preceding "district shall at a minimum:" and added "school" preceding "district" in paragraph (a)1.

Amended by R.2010 d.265, effective November 15, 2010.

See: 42 N.J.R. 1457(a), 42 N.J.R. 2754(b).

Rewrote (a)1.

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

(a) The Commissioner, with authority delegated by the State Board for the purpose of this rule, may approve a waiver to a specific rule based on an application submitted by a school district. The completed application must be signed by the chief school administrator and approved by the district board of education. The application developed by the Department and completed by the school district shall at a minimum:

1. Describe the waiver sought by the district;

2. Describe the conditions or reasons for the proposed waiver including the reference of the specific rule which necessitates the proposal;

3. Describe the projected measurable results which will demonstrate that the waiver is educationally, organizationally and fiscally sound; and

4. Demonstrate that the school district's educational community, including the district board of education, parents, administration and staff, have been informed of the proposed waiver to the specific rule and have been provided the opportunity for public comment.

Amended by R.2000 d.277, effective July 3, 2000.

See: 32 N.J.R. 1326(b), 32 N.J.R. 2469(b).

In (a)4, substituted "and have been provided the opportunity for public comment" for "through public comment and input" at the end.

Amended by R.2010 d.265, effective November 15, 2010.

See: 42 N.J.R. 1457(a), 42 N.J.R. 2754(b).

Rewrote (a)1.

#### Case Notes

Board did not meet its burden of proving unbecoming conduct against a school principal on its charge relating to assigning teachers to areas in which they were not certified because the Board, not the principal, was responsible for hiring the teachers who were then assigned to the schools by the Human Resources department without adequate attention to proper certification; the principal could not be faulted for assigning the teachers he was given to classrooms (adopting 2009 N.J. AGEN LEXIS 126). In re Tenure Hearing of Tracy, OAL Dkt. No. EDU 6213-08, 2009 N.J. AGEN LEXIS 635, Final Decision (April 8, 2009).

#### 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 from time to time as required by the Commissioner.

(b) The Commissioner shall present quarterly reports to the State Board of the equivalencies and waivers that have been granted.

(c) The Commissioner shall evaluate the equivalencies and waivers that were granted to Title 6 and propose amendments to the Administrative Code to the State Board as appropriate.

(d) The Commissioner shall annually evaluate the equivalencies and waivers granted to Title 6A to determine whether amendments to the Administrative Code should be proposed to the State Board.

(e) The Commissioner may rescind the equivalency or waiver to the rule if the district is not complying with the intent of the specific rule. The Commissioner shall provide the district with a reasonable period of time to comply with all applicable rules after the equivalency or waiver approval is rescinded.

(f) An equivalency or waiver shall not be granted for a period of more than three years.

Amended by R.2000 d.277, effective July 3, 2000.

See: 32 N.J.R. 1326(b), 32 N.J.R. 2469(b).

In (b), deleted a reference to annual evaluations; inserted new (c) and (d); and recodified former (c) and (d) as (e) and (f).

### 6A:5-1.7 Appeals

(a) Any party aggrieved by a determination of the Commissioner to grant or deny an equivalency or waiver pursuant to this chapter may appeal that determination in accordance with the provisions of N.J.A.C. 6A:4.

(b) Any party seeking to challenge an action by a district board of education on the grounds that such action is in violation of the school laws shall initiate a contested case pursuant to N.J.A.C. 6A:3, notwithstanding that the action being challenged may involve the implementation of a waiver or equivalency granted by the Commissioner.

New Rule, R.2000 d.277, effective July 3, 2000.

See: 32 N.J.R. 1326(b), 32 N.J.R. 2469(b).

Repeal and New Rule, R.2002 d.37, effective February 4, 2002.

See: 33 N.J.R. 3397(a), 34 N.J.R. 733(a).

Section was "Appeals".