

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 and scope

(a) 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. 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; educational services commissions; jointure commissions; regional day schools; Marie Katzenbach School for the Deaf; private schools for the disabled; college-operated programs; and programs operated by the State Departments of Children and Families, Human Services, and Corrections. Agencies and clinics are excluded.

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".

Amended by R.2013 d.140, effective December 16, 2013.
See: 45 N.J.R. 1314(a), 45 N.J.R. 2544(a).

Section was "Purpose". Inserted designation (a); rewrote (a); and added (b).

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.

"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.

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".

Amended by R.2013 d.140, effective December 16, 2013.

See: 45 N.J.R. 1314(a), 45 N.J.R. 2544(a).

Deleted 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 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.

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)1i.

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".

Amended by R.2013 d.140, effective December 16, 2013.
See: 45 N.J.R. 1314(a), 45 N.J.R. 2544(a).

In (a)2, inserted "school"; and in (a)3, inserted a comma following "safety".

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 describe at a minimum:

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

2. The conditions or reasons 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 required current rule; and

4. How the school district's educational 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.

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.

Amended by R.2013 d.140, effective December 16, 2013.
See: 45 N.J.R. 1314(a), 45 N.J.R. 2544(a).

In the introductory paragraph of (a), inserted "describe"; and rewrote (a)1 through (a)4.

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 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 educational 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.

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.

Amended by R.2013 d.140, effective December 16, 2013.
See: 45 N.J.R. 1314(a), 45 N.J.R. 2544(a).

In the introductory paragraph of (a), inserted "describe"; and rewrote (a)1 through (a)4.

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 as required by the Commissioner.

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

(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.