

**Notice of Adoption Regarding Readoption with Amendments at N.J.A.C. 6A:5,  
Regulatory Equivalency and Waiver**

The following is the accessible version of the notice of adoption for the readoption with amendments at N.J.A.C. 6A:5.

## **Education**

### **State Board of Education**

#### **Regulatory Equivalency and Waiver**

#### **Readoption with Amendments: N.J.A.C. 6A:5**

Proposed: July 15, 2024, at 56 N.J.R. 1224(a).

Adopted: November 6, 2024, by the State Board of Education, Kevin Dehmer, Acting Commissioner, Department of Education and Acting Secretary, State Board of Education.

Filed: November 7, 2024, as R.2024 d.118, **without change**.

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

Effective Dates: November 7, 2024, Readoption;

December 2, 2024, Amendments.

Expiration Date: November 7, 2031.

#### **Summary of Public Comments and Agency Responses:**

Comments were received from David Bander Esq., Kaitlyn Dunphy Esq., and Katrina Home, Esq., associate directors, Legal Services and Member Rights, and Elisabeth Yucis, Associate Director, Professional Development and Instructional Issues, New Jersey Education Association.

1. Comment: The commenter suggested that the Department of Education (Department) change the proposed amendment at N.J.A.C. 6A:5-1.7(b) to extend the definition of “district board of education” to mean all entities referenced at N.J.A.C. 6A:5-1.1(b) and not only the entities in the definition at N.J.A.C. 6A:3-1.2, as the Department has proposed.  
Response: The Department’s stated intent when proposing N.J.A.C. 6A:5-1.7(b) in 2001 was for the regulation to expressly provide that any challenge to a determination or action by a district board of education is to be made by initiating a contested case before the

Commissioner of the Department (Commissioner) pursuant to N.J.A.C. 6A:3, Controversies and Disputes, notwithstanding that the determination or action being challenged involves a waiver or equivalency granted by the Commissioner. It is clear that the Department did not intend for the regulation to apply to the State agencies and private entities referenced at N.J.A.C. 6A:5-1.1 at that time. The Department maintains that it is not necessary to expand the regulation's covered entities beyond those mentioned in the definition of "district board of education" at N.J.A.C. 6A:3. Therefore, the Department declines to make the requested change.

2. Comment: The commenter asked how the Department arrived in the Jobs Impact statement that the rules proposed for readoption with amendments are not likely to create or eliminate jobs. The commenter suggested the continued monitoring of the regulations' impact on jobs.

Response: N.J.A.C. 6A:5 governs a process and does not require the entities eligible to submit an equivalency or waiver to create or eliminate a specific position or employee. The Department remains conscientious as to whether an approved equivalency or waiver submitted pursuant to N.J.A.C. 6A:5 could lead to the elimination of a position. For example, the Acting Commissioner of the Department recently denied an application that sought to provide students with library media services through access to county-level library-media services, rather than fulfilling the requirements at N.J.A.C. 6A:13-2.1(h) to provide library-media services that are connected to classroom studies in each school building and to provide the library-media services under the direction of a certified school library media specialist (SLMS).

### **Federal Standards Statement**

The rules readopted with amendments are not 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.

**Full text** of the readopted rules can be found in the New Jersey Administrative Code at N.J.A.C. 6A:5.

**Full text** of the adopted amendments follows:

Text