

160-1-3-.02 SUSPENSION OF RULES AND LAWS (WAIVER).

(1) DEFINITIONS.

(a) Substantial hardship - a significant, unique, and demonstrable economic, technological, legal, or other type of deprivation to an individual or local education agency (LEA) requesting a variance or waiver which impairs the ability of the individual to continue successfully in meeting the requirements of an educational program or of the LEA to provide educational programs and services to its students.

(b) Individual Waiver – a decision not to apply all or part of a state rule to an individual who is subject to the rule.

(c) System Waiver – a decision not to apply a state rule or law to an LEA that is subject to the state rule or law.

(d) Variance – a decision by an agency to grant a modification to all or part of the literal requirements of a state rule to an LEA or to an individual who is subject to the rule.

(2) REQUIREMENTS.

(a) The state board may defer action on a request until such time as all members have had reasonable opportunity to consider the request.

(b) For any request for waiver or variance of a state board rule or law, additional information or supporting documentation may be requested by the state school superintendent or designee prior to the waiver or variance request being submitted to the state board.

(3) TYPES OF WAIVER REQUESTS.

(a) **ADMINISTRATIVE/FACILITY WAIVER REQUEST.** For those situations when an application of rules can lead to substantial hardship for a local board of education, the local board of education may request a variance or waiver of a rule by submitting to the state school superintendent a local board resolution that specifies the following.

1. The rule from which the variance or waiver is requested
2. The type of action requested
3. The specific facts of substantial hardship which would justify a variance or waiver for the petitioner

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4. The alternative standards which the local board seeking the variance or waiver agrees to meet and a showing that such alternative standards will afford adequate protection for the public health, safety, and welfare

5. The reason why the variance or waiver requested would serve the purpose of the underlying statute.

(b) INDIVIDUAL STUDENT WAIVER REQUEST. Any student or parent(s) or guardian acting on behalf of a student may request a waiver or variance of any rule requirement affecting the student. Requests shall be filed with the local school superintendent for transmittal to the state school superintendent.

1. The request shall specify the following.

(i) The type of action requested, whether a variance or a waiver;

(ii) The rule(s) and requirement(s) being waived or varied, including the specific provisions and wording;

(iii) The specific facts which would justify a variance or waiver for the petitioner;

(iv) What will be accomplished in lieu of the rule requirement(s);

(v) The reason why the variance or waiver requested would serve the purpose of the underlying requirement; and

(vi) Permission for department staff to receive all student records— including special education records— pertinent to the request and to discuss records with school personnel.

2. Within three weeks of receipt of such a request, the local school superintendent shall submit-- along with a copy of the request from the student, parent(s), or guardian-- the following records to the department.

(i) School records, including official student transcript, current schedule/status of the student, attendance records, program of study, pertinent testing data, and remediation activities

(ii) Minutes of student support team (SST) meeting(s) and action plans, if any

(iii) Individual Accommodation Plan (SST or 504, if any)

(iv) Special education records, including evaluation reports, eligibility reports, legible individualized education programs, classroom and test modifications that have been implemented

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(v) A statement setting forth the superintendent's or local board's position with respect to the request, and

(vi) Any other information relevant to the request.

3. Appendix A, *Contents Checklist for Student Waiver Requests*, shall be completed and submitted as a cover page to the request. The checklist shall also be used for those waiver requests submitted in accordance with Rule 160-1-3-.09 Waivers of High School Graduation Assessments.

(c) INSTRUCTIONAL PROGRAM REQUEST. A LUA implementing an instructional program that may require a waiver of state board rule and/or requirement(s) shall submit the request in writing along with the *Instructional Program Waiver Request Checklist* (Appendix B) to the state school superintendent. Such written request shall include the following information.

1. A resolution adopted by the local board of education which specifies

(i) The rule(s) from which the local board is requesting a waiver, including the specific provisions and wording that are to be waived;

(ii) What is requested in lieu of rule requirement(s);

(iii) Duration of the waiver with the beginning date noted. Waivers may be requested for up to three years.

2. A description of the proposed activity which addresses

(i) Goals and objectives of the proposed modification

(ii) Rationale for the modification and how this modification fits into the school or system's overall improvement plan(s)

(iii) Predicted impact of the activity on students, teachers, and the school community. Include the number of students impacted.

(iv) Staff development activities for teachers (if applicable)

(v) Evaluation plan with the following components

(I) The specific question(s) to be answered by the evaluation. These questions shall reflect the stated goals/objectives of the waiver.

(II) Data to be collected in response to each question. These may include improved

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test scores, lower dropout and/or retention rates, increased parent participation, etc.

(III) The method(s) of data collection, including a description or copies of instruments to be used (unless these are nationally/state validated tests or other instruments readily available to the waiver review staff).

(IV) Data describing current conditions that the waiver is expected to change. For example, current test scores, dropout and/or retention rates or present parent participation.

(V) Criteria for determining the success of the waiver implementation. That is, how much improvement or change is expected in order to consider the activity a success by the end of the waiver period?

(VI) An evaluation time line, including the submission of annual reports to the department.

3. To continue a program under waivers, the local board of education shall submit by local board resolution a request for renewal to the state school superintendent.

(i) The resolution shall include the rule and specific provisions that are to be waived and the duration of the waiver request.

(ii) Evaluation data shall reflect the achievement toward the program's goals and objectives from the beginning of the program's implementation.

(d) WAIVERS TO IMPROVE STUDENT PERFORMANCE. Local school systems may apply to the State Board of Education for system waivers of specifically identified state law, rules, regulations, policies, and procedures upon the request of a local school board and in accordance with O.G.C.A. § 20-2-244.

(1) The goal for each system waiver shall be the improvement of student performance.

(2) The State Board of Education shall not waive any federal, state, and local rules, regulations, court orders, and statutes relating to civil rights; insurance; the protection of the physical health and safety of school students, employees, and visitors; conflicting interest transactions; the prevention of unlawful conduct; any laws relating to unlawful conduct in or near a public school; or any reporting requirements pursuant to O.G.C.A. §20-2-320 of Chapter 14 of Title 20.

(3) A local school system that has received a system waiver shall remain subject to the provisions of Part 3 of Article 2 of Chapter 14 of Title 20, the requirement that it shall not charge tuition or fees to its students except as may be authorized for local boards by O.G.C.A. § 20-2-133, and shall remain open to enrollment in the same manner as before the waiver request.

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(4) The provisions of this Code section shall not apply to charter schools.

(5) The State Board of Education shall require the submission of a written application for a waiver that shall include, at a minimum:

(a) Identification of the specific state law, rules, regulations, policies, and procedures, or provisions of this chapter that the LEA is requesting to waive;

(b) A description of the policies and procedures the school or school system shall substitute for the waived state law, rules, regulations, policies, and procedures, or provisions;

(c) A description of how the proposed system waiver will improve student performance;

(d) A description of the students who will be affected by the proposed system waiver, including their estimated number, current performance, grade level, and any common demographic traits;

(e) A list of schools by name that will be affected by the proposed system waiver, and a description of each school, including current performance, grade levels, and demographic traits of the students of each such school;

(f) Methods for collection of data, and for measuring and evaluating any change in student performance resulting from the proposed system waiver;

(g) The period of time for which the proposed system waiver is requested and the proposed starting date; and

(h) A resolution from the local school board approving the system waiver request.

(6) The State Board of Education may grant or deny a system waiver request, or grant a system waiver request subject to specified modifications in the waiver request.

(7) A system waiver may be granted in accordance with this section for any period of time not to exceed five years. The State Board of Education shall require reports from local school systems receiving system waivers under this section regarding the effect of the system waiver at least annually, and may require more frequent reports if necessary to monitor the effect of the system waiver.

(8) The State Board of Education may repeal a system waiver at any time if a system is not meeting the student achievement goals associated with the student achievement waiver.

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(9) The State Board of Education shall report annually to the General Assembly regarding the system waivers granted, the effect of each waiver, and any recommendations for legislative changes generated by successful waivers.

(d) WAIVERS OF CLASS SIZE REQUIREMENTS. In accordance with the provisions set forth in O.C.G.A. §20-2-182, after the first FTE count of a school year, local school systems may apply to the State Board of Education for a system waiver to 160-5-1-.08 Class Size by submitting a written application for a waiver that shall include, at a minimum:

(1) A description of the students who will be affected by the proposed waiver, including school names, grade level and/or courses, and estimated number of students;

(2) The maximum individual class size for K-8 regular education courses, or maximum system average for grades 9-12 regular education courses;

(3) Documentation of the facts precipitating the need for the waiver request.

(4) The specific larger number being requested;

(i) The State Board of Education may approve the request only in the limited circumstances where educationally justified and where an act of God or other unforeseen event led to the precipitous rise in enrollment within that system, or led to another occurrence which resulted in the local board's inability to comply with the maximum class size requirement.

Authority O.G.C.A. § 20-2-244.

Adopted: September 14, 2006

Effective: October 4, 2006

APPENDIX A: CONTENTS CHECKLIST FOR STUDENT WAIVER REQUESTS

STUDENT: _____

SCHOOL: _____ **SYSTEM:** _____

Please check the following items that are included in the packet of information.

- _____ **Student Identification, including name, address, date of birth, parents' names**
- _____ **Superintendent's Recommendation**
- _____ **Petitioner's request**
- _____ **rule/requirement being waived**
- _____ **justification/rationale**
- _____ **offered in lieu of requirement**
- _____ **how waiver will serve purpose of requirement**
- _____ **permission for staff to review and discuss records**
- _____ **School Records**
- _____ **official student transcript**
- _____ **current schedule/status**
- _____ **program of study**
- _____ **attendance records**
- _____ **Individual Score Reports on all GHSGT**
- _____ **Student Support Records**
- _____ **Accommodations in general curriculum (if any)**
- _____ **Individual Accommodation Plan (SST or 504)**
- _____ **Special Education Records (if applicable)**
- _____ **evaluation reports (including language/speech, assistive technology, etc., as appropriate)**
- _____ **eligibility reports**
- _____ **individual education plans (last 3 years including current and transition plan)**
- _____ **classroom modifications**
- _____ **test modifications**
- _____ **Remediation activities**
- _____ **offered by school**
- _____ **participation by student**

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**APPENDIX B: INSTRUCTIONAL PROGRAM WAIVER REQUEST
CHECKLIST**

SCHOOL SYSTEM: _____

SCHOOL (IF APPROPRIATE): _____

CONTACT PERSON: _____

TELEPHONE: _____ **FAX:** _____

E-MAIL ADDRESS: _____

Please check the following items that are included in the packet of information.

- _____ **Resolution of Local Board of Education**
- _____ **rule/requirement being waived**
- _____ **offered in lieu of requirement**
- _____ **duration of waiver**
- _____ **Description of Proposed Activity**
- _____ **goals and objectives**
- _____ **rationale for modification**
- _____ **impact on students, teachers, and school community**
- _____ **staff development**
- _____ **evaluation plan**
- _____ **questions to be answered**
- _____ **data to be collected**
- _____ **method(s) of data collection**
- _____ **data describing current conditions**
- _____ **criteria for determining success**
- _____ **evaluation timeline**

Contact Person's Signature Superintendent's Signature

Date