Guidance for Waiver Application

The Operating Standards for Ohio Educational Agencies Serving Children with Disabilities (Operating Standards) provides for waivers to be granted as follows:

Ohio Administrative Code (OAC) 3301-51-09 Delivery of Services

(K) Waiver:

(1) If a school district, county board of developmental disabilities or other educational agency exceeds the workload requirements in paragraph (I) of this rule a waiver request must be filed with the Ohio department of education, office for exceptional children. A school district, county board of developmental disabilities or other educational agency may be granted a waiver for individual service provider limits or for age-range per instructional period as required by this rule.

(2) Requests must be submitted in writing to the Ohio department of education, office for exceptional children or office of early learning and school readiness. The written request shall include, but not be limited to, the following:

(a) Identification of the specific rule for which a waiver is being requested;
(b) Specific period of time for which the waiver is requested; and
(c) Rationale for the request.

(3) Each school district, county board of developmental disabilities or other educational agency shall annually review the reason for its request as it plans for the delivery of services through the strategic planning process as required by paragraph (A)(9) of rule 3301-35-03 of the Administrative Code.

Waiver Request Requirements and Supporting Documentation

The Ohio Department of Education (ODE), Office for Exceptional Children (OEC), may grant a waiver for up to one school year. All elements of the request must be met prior to approval.

ODE shall not grant waivers of the standards provided under IDEA, Ohio Revised Code (ORC) Chapter 3323 or OAC 3301-51 to public agencies if the result is the denial of a free appropriate public education (FAPE) to children with disabilities.

Additional requirements for waivers are set forth in the Doe Consent Order (October 2009).

The elements of the Waiver Application are:

1. **District and Staff Information:** Provide the school year of the waiver request, district and building information and information for the service provider affected by the waiver.

2. **Students affected by the Waiver:** Provide statewide student identifier (SSID) number, age and disability category of students affected by the waiver.

3. **Area for which the waiver is requested:** The number of students per instructional period with class size or age range indicated or per individual related service provider.

4. **Duration:** Indicate specific period of time for which the waiver is requested.

5. **Parent Notification:** Provide documentation that notice of the waiver request has been provided to the parents of each child effected by the proposed waiver.
6. Rationale for the waiver request: Describe the reasons why the waiver is being requested including steps that were taken to avoid the necessity of a waiver.
   a. What did the district/IEP team consider prior to applying for a waiver? (Itemize the steps taken)
   b. Explain why this placement is appropriate for the impacted students including rationale for why this is the least restrictive environment (LRE) for the child/children.

7. Waiver Action Plan: Provide a plan and waiver timeline for bringing the district into compliance within the school year and no later than June 30th of the school year in which the request was granted. Provide contact information for the district staff member monitoring implementation of the Waiver Action Plan.

Example of a completed Waiver Action Plan:

<table>
<thead>
<tr>
<th>7. Waiver Action Plan</th>
</tr>
</thead>
<tbody>
<tr>
<td>Plan for meeting 3301-51-09 Delivery of Services: A plan and timeline must be submitted to bring the district/DD School/ESC classroom into compliance with the Operating Standards no later than June 30th of the current school year.</td>
</tr>
<tr>
<td><strong>Goal 1:</strong> Reduce age range to 60 months within the designated classroom by June 6, 2015</td>
</tr>
<tr>
<td><strong>Action Steps</strong></td>
</tr>
<tr>
<td>1.a. oldest student will join same age peers for all specials and social studies</td>
</tr>
<tr>
<td>1.b.</td>
</tr>
</tbody>
</table>

8. Assurances: The district superintendent assures:
   a. Students with disabilities impacted by the waiver will receive a free and appropriate public education (FAPE) in the least restrictive environment (LRE);
   b. The service provider has been informed of his/her responsibilities regarding the development and implementation of individualized education programs (IEPs) for children served in accordance with the Individuals with Disabilities Education Improvement Act of 2004 (IDEA) at 34 C.F.R. §300.323, 34 C.F.R. §300.324 and the Operating Standards at 3301-51-07;
   c. The progress of each student impacted by the waiver will be monitored through performance data (formative and summative data) and an explanation of the progress made toward IEP goals;
   d. Affected staff are appropriately certified and licensed to provide services for students impacted by the waiver;
   e. Special provisions necessary to provide appropriate instruction during the period in which the waiver is in effect have been made to assist the students and service providers;
   f. Appropriate equipment, supplies and instructional materials in sufficient quantity are in place to support the number of students with disabilities and meet their instructional needs;
g. The district will submit a final report by June 30th of the current school year regarding the performance of students with disabilities impacted by the waiver and provide a written status report for the Waiver Action Plan submitted with the Waiver Application; and

h. The district assures that it will not submit a waiver for the same circumstance in the school year following the current waiver request.

Required documentation includes (online application):

1. District and Staff Information:
   a. Provide the school year of the waiver request, district and building information.
   b. Contact Person (office address, email address, and phone number) and Service Provider(s) listing their ODE issued license number.
   c. Waiver for related service work load concerns list state licensure number plus ODE issued license number

2. Students affected by the waiver:
   a. Provide SSID (statewide student identifier) number for each student affected by the waiver (no student names) along with each student’s age and classroom codes.
   b. Provide a copy of the instructional schedule.
   c. Pertinent information regarding classroom size, layout, equipment and instructional supplies, storage, OSHA updates, Fire Marshall report, etc.

3. Area for which the waiver is requested:
   a. Applicable Areas and Rule.
   b. Provide documentation to verify the local school board approved the waiver request and assured that services will be provided consistent with the requirements under IDEA, Operating Standards and the Doe Consent Order, e.g. school board minutes pertaining to the waiver approval.
4. Parental Notification of request for waiver:

Provide documentation that notice of the waiver request has been provided to the parents of each child effected by the proposed waiver. The notice shall include the following:

a. A statement that FAPE cannot be denied due to the operation of the waiver;
b. Notice of how and when parents may present any concerns that they have about the proposed waiver to the public agency and ODE;
c. Notice that the public agency seeking the waiver will provide parents with a copy of parent notice of procedural safeguards;
d. Contact information for the person within the public agency to whom parents’ concerns should be directed; and

e. Information regarding the pages on ODE’s website that include information about waivers, including approval and denial, and contact information for low cost sources of legal assistance (www.education.ohio.gov, keyword search waiver database).

Requirements for Waivers that are Not Approved

If the district is not granted the waiver, the district must either:

1. Provide documentation verifying compliance; or
2. Provide a corrective action plan as to how the district will come into compliance with the date that corrective action must be completed. Should a district or other provider fail to meet the timeline in their corrective action plan, ODE-OEC may delay and ultimately move to withhold applicable state and/or federal funds.

Approval Notification

ODE-OEC will notify the district contact person by email regarding the status of the Waiver Application within 14 business days of receiving the application.

Submission

Submit completed Waiver Application and required documentation by email to OECWaiver@education.ohio.gov

Monitoring
Further review may be conducted when ODE-OEC deems it appropriate. Further review may include, but is not limited to: a review of documentation pertaining to student progress; review of documentation pertaining to implementation of the required plan to remedy the need for the waiver; and/or an on-site visit to inspect the appropriateness of services or facilities.

**Final Report**

**Due by June 30\(^{th}\) of current school year:**

<table>
<thead>
<tr>
<th>Final Report</th>
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<tbody>
<tr>
<td>1. Page 1 of Waiver Application</td>
<td>For identification purposed</td>
</tr>
<tr>
<td>2. Waiver Action Plan</td>
<td>Step by step process of correcting the need for a waiver come the new school year</td>
</tr>
<tr>
<td>3. Student Performance Data by SSID for students affected by the waiver</td>
<td>Summarize the data per student affected by the waiver.</td>
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<tr>
<td>a. Formative Assessment Data e.g.</td>
<td></td>
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<tr>
<td>Student Learning Objectives</td>
<td></td>
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<tr>
<td>b. IEP data e.g. Present Level of</td>
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<tr>
<td>Performance data and growth data/</td>
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<tr>
<td>end of year data (comparison)</td>
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<tr>
<td>c. State assessment data/alternate</td>
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<tr>
<td>assessment data</td>
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<tr>
<td>d. Progress Monitoring graphs</td>
<td></td>
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</table>

**Authority**

Operating Standards for Ohio Educational Agencies Serving Children with Disabilities, Ohio Administrative Code 3301-51-09 Delivery of Services

Ohio Administrative Code 33013-51-09 Delivery of Services

Doe Consent Order (October 2009)

Appendix A: Waiver Checklist
<table>
<thead>
<tr>
<th>Supporting Documents for Waiver Application</th>
<th>Check yes if completed &amp; provided by district</th>
<th>Date secured (completed by OEC)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Name of School District</strong></td>
<td></td>
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</tr>
</tbody>
</table>

1. Electronically signed waiver application with action plan and assurances.
2. Provide documentation regarding the actions taken to avoid requesting a waiver including, but not limited to, staffing considerations.
3. Provide SSID numbers, ages and classroom codes of students affected by the waiver. Provide a copy of the instructional schedule. Pertinent information regarding classroom size, layout, equipment and instructional supplies, storage, OSHA updates, Fire Marshall report, etc.
4. Provide ODE licensure number of staff indicated in the waiver.
5. Provide documentation that verifies that the waiver request was approved by local school board and the board assures that services will be provided consistent with IDEA and Operating Standards.
6. Provide documentation that notice of the waiver request has been provided to the parents of each child affected by the proposed waiver. This notice included:
   - Statement that FAPE cannot be denied due to the operation of the waiver.
   - How and when parents may present any concerns that they have about the proposed waiver to the district and ODE.
   - Parents were provided notice of the law regarding waivers upon request.
   - Contact information for the person within the district to whom parents’ concerns should be directed.
   - Information regarding the pages on ODE’s website that include information about waivers, the waiver database and how to search for legal services.
7. 30 days prior to June 30th, provide documentation via the Waiver Action Plan to ODE-OEC verifying that the district is in compliance regarding the issue the waiver was granted to address.