

The Mandate Waiver Program

Act 16 of 2000, the Education Empowerment Act (EEA), created the “Mandate Waiver Program.” This program allows districts to apply to the Department of Education for waivers from certain statutory and regulatory provisions. Subject to certain exceptions, the Department may grant waivers from various provisions of the Public School Code, the Regulations of the State Board of Education, and the Standards of the Secretary of Education. The purpose of the Mandate Waiver Program is to help school districts improve their instructional programs or operate in a more effective, efficient, or economical manner.

Waivers have the potential to provide school districts with relief from some of the requirements regarding construction, public bidding, purchasing, and certification.

The Department’s website (www.pde.state.pa.us) has a list of all the Mandate Waiver requests that have been submitted, along with a brief summary of each request and their status (pending, denied, or approved). Several districts already have benefited from the waivers granted under this program and more appear each week. Based on our experience in preparing applications on behalf of several clients, it is clear that waiver applications must be prepared carefully in order to satisfy the Department’s requirements and because not all school mandates may be waived under the Mandate Waiver Program.

Section 1714-B(g)-(i) of the EEA outlines those educational statutes and regulations that cannot be waived. Among the provisions of the School Code that may not be waived are those affecting student safety, anti-discrimination, due process rights, and academic standards. Additionally, requirements of Federal and State law not addressed above in this article may not be waived. Lastly, waivers must be implemented in a manner consistent with the terms of any court order, collective bargaining agreement, district contract, or school board policy.

Waiver applications and instructions are available from the Department and may be printed from its website http://www.pde.state.pa.us/k12_initiatives/site/default.asp. The requirements for the application process and application contents are rather specific, and past decisions by the Department indicate that districts must strictly comply with these requirements.

Districts should be as specific and thorough as possible when completing waiver applications. Waiver applications must clearly demonstrate how the proposed waiver will improve the district’s instructional program or enable the district to operate in a more effective, efficient, or economical manner. Three years after the date of a granted waiver, the Department will evaluate the waiver to determine whether the waiver has been successful. Accordingly, each application must include a well-developed evaluation procedure that will be used to determine the effectiveness of the waiver, if it is granted. Waivers that are determined to be successful will be renewed by the Department and will remain in effect indefinitely, unless rescinded by the board of school directors.

Note that waiver applications must contain an affirmation that the district’s counsel has reviewed the application to ensure that it does not conflict with other laws, court orders, labor agreements or school board policy.

Clients who have questions regarding issues discussed in this article, or any education law matter, should feel free to call us at 215-345-9111.