

**261—199.2(ExecOrd11) Director/board discretion.** The decision on whether the circumstances justify the granting of a waiver or variance shall be made at the discretion of the director upon consideration of all relevant factors, except for the below-listed programs, for which the board shall make the decision, upon consideration of all relevant factors:

1. Community Economic Betterment Account (CEBA) program, 261—Chapter 53.
2. New Jobs and Income Program (NJIP), 261—Chapter 58.
3. Workforce Development Fund, 261—Chapter 8.
4. Accelerated Career Education Program Physical Infrastructure Assistance Program (ACE PIAP), 261—Chapter 20.

**199.2(1) Criteria for waiver or variance.** The director/board may, in response to a completed petition or on its own motion, grant a waiver or variance from a rule, in whole or in part, as applied to the circumstances of a specified situation if the director/board finds each of the following:

- a. Application of the rule to the person at issue would result in hardship or injustice to that person; and
- b. Waiver or variance on the basis of the particular circumstances relative to that specified person would be consistent with the public interest; and
- c. Waiver or variance in the specific case would not prejudice the substantial legal rights of any person; and
- d. Where applicable, substantially equal protection of public health, safety, and welfare will be afforded by a means other than that prescribed in the particular rule for which the waiver or variance is requested.

In determining whether waiver or variance should be granted, the director/board shall consider whether the underlying public interest policies and legislative intent of the rules are substantially equivalent to full compliance with the rule. When the rule from which a waiver or variance is sought establishes administrative deadlines, the director/board shall balance the special individual circumstances of the petitioner with the overall goal of uniform treatment of all licensees, grantees and constituents.

**199.2(2) Special waiver or variance rules not precluded.** These uniform waiver and variance rules shall not preclude the director/board from granting waivers or variances in other contexts or on the basis of other standards if a statute or other department rule authorizes the director/board to do so, and the director/board deems it appropriate to do so.