

## Comparison of Waiver Laws

	<b>Innovation Schools Act</b>	<b>Charter Schools Act</b>	<b>General Waiver Law (C.R.S. 22-2-117)</b>
<b>State Board’s Standard for Approval of Waivers</b>	<ul style="list-style-type: none"> <li>○ The State Board “shall designate the local school board’s school district as a district of innovation if the State Board concludes that the submitted plan: (I) is likely to enhance educational opportunity, standards, and quality within the innovation schools or innovation school zones; and (II) is fiscally feasible.” <i>(C.R.S. 22-32.5-107(3)(a))</i></li> <li>○ As a part of the State Board’s duty to determine whether or not an application is likely to enhance educational opportunity, standards and quality within a school, the board may assess whether or not a replacement plan for one or more waivers sufficiently describes how the applicant will meet the intent of the waived statute and will be accountable for such compliance.</li> </ul>	<p>“The State Board shall grant waivers of state statutory requirements or rules promulgated by the State Board to charter schools when in the judgment of the State Board it deems waivers necessary.” <i>(1 CCR 301-35, rule 3.02(b))</i></p> <ul style="list-style-type: none"> <li>○ As a part of the State Board’s duty to determine whether or not it deems waivers necessary, the board may assess whether or not a replacement plan for one or more waivers sufficiently describes how the applicant will meet the intent of the waived statute.</li> <li>○ If the State Board denies the request, it shall notify the chartering local board of education and the charter school in writing that the request is denied and specify the reasons for denial. <i>(C.R.S. 22-30.5-105(3))</i></li> </ul>	<p>“The State Board shall grant the waiver if it determines that it would enhance educational opportunity and quality within the school district and that the costs to the school district of complying with the requirements for which the waiver is requested significantly limit educational opportunity within the school district.” <i>(C.R.S. 22-2-117(1)(a))</i></p> <ul style="list-style-type: none"> <li>○ As a part of the State Board’s duty to determine whether a waiver would enhance educational opportunity and quality within the school district, the board may assess whether or not a replacement plan sufficiently describes how the applicant will meet the intent of the waived statute and will be accountable for such compliance.</li> </ul>
<b>Ability to Single Out Waivers</b>	<ul style="list-style-type: none"> <li>○ The State Board designates a school district as a district of innovation by approving an innovation plan in its entirety (including all waivers). If the State Board does not designate a school district as a district of innovation, it must provide the local school board with a written explanation of the basis for its decision. <i>(C.R.S. 22-32.5-107(3))</i></li> </ul>	<ul style="list-style-type: none"> <li>○ When multiple waivers are requested by a school, the State Board may deny a waiver of specific statute(s) and approve the remaining waivers. If the state board denies a request for a waiver, the State Board must notify the chartering local board of education and the charter school in writing that the request is denied and specify the reasons for denial. <i>(C.R.S. 22-30.5-105(3))</i></li> </ul>	<ul style="list-style-type: none"> <li>○ The State Board may deny a waiver of specific statute(s) and approve others. The State Board is not required by statute or rule to issue a written explanation of reasons for denying district waivers. <i>(C.R.S. 22-2-117(1)(a))</i></li> </ul>

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<b>Replacement Plans</b>	<ul style="list-style-type: none"> <li>○ An applicant must “specify the manner in which the innovation school or the schools within the innovation zone shall comply with the intent of the waived statutes or rules and shall be accountable to the state for such compliance.” <i>(C.R.S. 22-32.5-108(4))</i></li> </ul>	<ul style="list-style-type: none"> <li>○ “For each requested waiver of a statute or state rule that is not an automatic waiver, the charter school application must state the rationale for the requested waiver and the manner in which the proposed charter school plans to meet the intent of the waived statute, rule, or policy.” <i>(C.R.S. 22-30.5-106(1)(o))</i></li> </ul>	<ul style="list-style-type: none"> <li>○ An applicant must “specify in [its] application the manner in which it shall comply with the intent of the waived rules or statutes and shall be accountable to the state board for such compliance.” <i>(C.R.S. 22-2-117(1)(a))</i></li> </ul>
<b>Oversight</b>	<ul style="list-style-type: none"> <li>○ The local school board must review the performance of an innovation school or innovation zone every three years to determine whether the school is making adequate progress towards performance results identified in its innovation plan. If a local board “finds that the academic performance of students enrolled in the innovation school is not improving at a sufficient rate,” the local school board may revoke the school’s innovation status, remove underperforming schools from an innovation school zone, or revoke an innovation zone’s innovation status. An innovation zone with alternative governance may request the state board of education to hold a public hearing to review and comment on the local school board’s determination and the local school board must include a discussion of</li> </ul>	<ul style="list-style-type: none"> <li>○ When a local school board approves a new charter application, the charter is authorized for at least 4 years. The charter application includes all waivers from state statute and becomes the basis of the charter contract. <i>(C.R.S. 22-30.5-110(1)(a) and 22-30.5-105(3))</i></li> <li>○ The authorizer must annually review the charter school’s performance, including the school’s progress in meeting the objectives identified in the school’s unified improvement plan. A charter may be revoked or not renewed by the chartering local board if it determines that the school failed to meet or make adequate progress toward achievement of terms identified in the charter contract. <i>(C.R.S. 22-30.5-110)</i></li> </ul>	<ul style="list-style-type: none"> <li>○ There is no statutory requirement for the local school board to review the impact of waivers.</li> <li>○ Per the State Board’s request, CDE tracks the performance of districts that have received a waiver, three years after a waiver has been granted and every three years thereafter. CDE will flag for the State Board any significant decrease in performance. Based on this information, the State Board may make the determination to revoke waivers that have been previously granted. (See row below.)</li> </ul>

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	<p>any state board comment as a part of the local board's agenda for a regular voting meeting. <i>(C.R.S. 22-32.5-110(2))</i></p> <ul style="list-style-type: none"> <li>○ Annually, CDE and the State Board must submit a report to the governor and House and Senate Education Committees including an overview of the academic performance of the students served in innovation schools and zones. This report is posted on the CDE's website. <i>(C.R.S. 22-32.5-111)</i></li> </ul>		
<b>Term of Waivers</b>	<ul style="list-style-type: none"> <li>○ Waivers from state law will continue to apply to the innovation school as long as the school maintains its innovation status. <i>(C.R.S. 22-32.5-108(5)(b))</i></li> </ul>	<ul style="list-style-type: none"> <li>○ Waivers from state law are granted through the term of the charter contract. <i>(C.R.S. 22-30.5-104(6)(d))</i></li> <li>○ Waivers are subject to review periodically, at least every 5 years. A waiver may be revoked if the State Board deems the waiver no longer necessary. <i>(C.R.S. 22-30.5-104(6)(d); 1 CCR 301-35, rule 3.03(b))</i></li> </ul>	<ul style="list-style-type: none"> <li>○ Waivers from state law will continue to apply until either: (1) the local school board passes a resolution to revoke the waiver; or (2) the State Board "receives evidence that constitutes good and just cause for revocation of the waiver, as determined by the State Board." <i>(C.R.S. 22-2-117(3)(a))</i></li> <li>○ Based on CDE's triennial review of the performance of a district that has been granted waivers, the State Board may consider a significant decrease in student performance as "good and just cause" for revocation of such waivers.</li> </ul>

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	<b>Innovation Schools Act</b>	<b>Charter Schools Act</b>	<b>General Waiver Law (C.R.S. 22-2-117)</b>
<b>Amendments to Waivers</b>	<ul style="list-style-type: none"> <li>○ If the local school board revises an innovation plan, the local board may request additional waivers or changes to existing waivers as necessary to accommodate the revisions to the innovation plan, and the State Board shall grant the additional waivers or changes to existing waivers if it determines that the new or changed waivers would enhance educational opportunity, standards, and quality within the innovation schools/zone and are fiscally feasible. In requesting a new waiver or a change to an existing waiver, the local school board shall demonstrate the consent of a majority of the teachers and a majority of the administrators employed at and a majority of the school advisory committee for each public school that is affected by the new or changed waivers. <i>(C.R.S. 22-32.5-108(5)(a))</i></li> </ul>	<ul style="list-style-type: none"> <li>○ A material revision of the terms of a charter contract may be made only with the approval of the chartering local board of education and the governing body of the charter school. <i>(C.R.S. 22-30.5-105(4))</i></li> <li>○ If the local board of education and governing body of the charter school approve a material change to the replacement plan for an existing waiver or add a new waiver to the charter contract, the school must submit the waiver amendment(s) to the State Board in the same manner as an initial request for a waiver.</li> </ul>	<ul style="list-style-type: none"> <li>○ If the local school board seeks to materially change the replacement plan for an existing waiver, the local school board must submit the waiver amendment to the State Board in the same manner as an initial request for a waiver.</li> </ul>
<b>Automatic Waivers</b>	<ul style="list-style-type: none"> <li>○ No automatic waivers</li> </ul>	<ul style="list-style-type: none"> <li>○ Through rulemaking, the State Board approves a list of automatic waivers. Statute prohibits the State Board from automatically waiving certain statutes. <i>(C.R.S. 22-30.5-104(6)(b))</i></li> <li>○ Currently, the State Board has approved the following automatic waivers: <ul style="list-style-type: none"> <li>● 22-1-112, calendar holidays;</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>○ No automatic waivers</li> </ul>

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		<ul style="list-style-type: none"> <li>• 22-32-109(1)(f), staff selection and pay;</li> <li>• 22-32-109(1)(t), educational program and selection of textbooks;</li> <li>• 22-32-110 (1)(h), employee termination;</li> <li>• 22-32-110(1)(i), staff reimbursements;</li> <li>• 22-32-110(1)(j), insurance;</li> <li>• 22-32-110(1)(k)(l), in-service training;</li> <li>• 22-32-110(1)(ee), teachers’ aides and other non-certificated personnel;</li> <li>• 22-32-126, employment of principals;</li> <li>• 22-33-104(4), attendance policies;</li> <li>• 22-63-301, teacher dismissal, grounds;</li> <li>• 22-63-302, teacher dismissal, procedure;</li> <li>• 22-63-401, salary schedule;</li> <li>• 22-63-402, teacher licensure; and</li> <li>• 22-63-403, payment of teacher salaries. <i>(1 CCR 301-35, rule 3.01)</i></li> </ul> <p>○ A charter school contract must list the automatic waivers the school is invoking, but need not include a rationale and replacement plan for those automatic waivers. <i>(C.R.S. 22-30.5-105(3))</i></p>	
<b>Prohibited Waivers</b>	<ul style="list-style-type: none"> <li>○ Public School Finance Act;</li> <li>○ Exceptional Children’s Education Act;</li> <li>○ Data for school performance reports (i.e., CMAS results, SAT results and READ Act assessment results);</li> <li>○ Fingerprinting and criminal history record checks;</li> </ul>	<ul style="list-style-type: none"> <li>○ Public School Finance Act;</li> <li>○ State assessments;</li> <li>○ School Accountability Committees;</li> <li>○ Data for school performance reports (i.e., CMAS results, SAT results and READ Act assessment results);</li> <li>○ Children’s Internet Protection Act;</li> </ul>	<ul style="list-style-type: none"> <li>○ Public School Finance Act;</li> <li>○ Exceptional Children’s Education Act;</li> <li>○ State assessments;</li> <li>○ Education Accountability Act;</li> <li>○ Data for school performance reports (i.e., CMAS results, SAT results and READ Act assessment results);</li> </ul>

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	<ul style="list-style-type: none"> <li>○ Children’s Internet Protection Act;</li> <li>○ Requirement to post online the list of waivers that have been obtained;</li> <li>○ Notification to parents of alleged criminal conduct by school district employees;</li> <li>○ Comprehensive human sexuality education content requirements;</li> <li>○ Requirements concerning suspension and expulsion of students in preschool through second grade;</li> <li>○ Provisions concerning discrimination based on hair texture, hair type, or a protective hairstyle that is commonly or historically associated with race;</li> <li>○ State laws prohibiting discrimination on the basis of disability, race, creed, color, sex, sexual orientation, gender identity, gender expression, national origin, religion, ancestry, or need for special education services;</li> <li>○ Non-education statutes (statutes outside of title 22); or</li> <li>○ Federal statutes, including ESSA and IDEA (C.R.S. 22-32.5-108(1))</li> </ul>	<ul style="list-style-type: none"> <li>○ Requirement to post online the list of waivers that have been obtained;</li> <li>○ Notification to parents of alleged criminal conduct by charter school employees; and</li> <li>○ Requirements concerning suspension and expulsion of students in preschool through second grade;</li> <li>○ Provisions concerning discrimination based on hair texture, hair type, or a protective hairstyle that is commonly or historically associated with race;</li> <li>○ State laws prohibiting discrimination on the basis of disability, race, creed, color, sex, sexual orientation, gender identity, gender expression, national origin, religion, ancestry, or need for special education services;</li> <li>○ Non-education statutes (statutes outside of title 22); or</li> <li>○ Federal statutes, including ESSA and IDEA (C.R.S. 22-30.5-104(6)(a) and (c))</li> </ul>	<ul style="list-style-type: none"> <li>○ Fingerprinting and criminal history record checks;</li> <li>○ Children’s Internet Protection Act;</li> <li>○ Board president and vice-president duties (including with respect to written contracts);</li> <li>○ Local school board duty to adopt a tobacco policy;</li> <li>○ Provisions concerning operating educational program outside territorial limits of school district;</li> <li>○ Local school board duties concerning conduct and discipline codes;</li> <li>○ School use of on-site peace officers as school resource officers;</li> <li>○ Local school board duties to adopt written attendance policy;</li> <li>○ Requirement to post online the list of waivers that have been obtained;</li> <li>○ Notification to parents of alleged criminal conduct by school district employees;</li> <li>○ Requirements concerning suspension and expulsion of students in preschool through second grade;</li> <li>○ Comprehensive human sexuality education content requirements;</li> <li>○ Provisions concerning discrimination based on hair texture, hair type, or a protective hairstyle that is commonly or historically associated with race;</li> </ul>

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			<ul style="list-style-type: none"> <li>○ State laws prohibiting discrimination on the basis of disability, race, creed, color, sex, sexual orientation, gender identity, gender expression, national origin, religion, ancestry, or need for special education services;</li> <li>○ Non-education statutes (statutes outside of title 22); or</li> <li>○ Federal statutes, including ESSA and IDEA (C.R.S. 22-2-117(1)(b) and (1.5))</li> </ul>
<b>Community Support for Waiver</b>	<ul style="list-style-type: none"> <li>○ Applications must include evidence that a majority of the administrators employed at the school, a majority of the teachers employed at the school, and a majority of the school accountability committee for the school consent to designation as an innovation school. (C.R.S. 22-32.5-104(3)(f))</li> <li>○ Applications must include a statement of the level of support for designation as an innovation school demonstrated by the other persons employed at the public school, the students and parents of students enrolled in the public school, and the community surrounding the public school. (C.R.S. 22-32.5-104(3)(g))</li> <li>○ Local school boards must vote to either approve or disapprove each innovation</li> </ul>	<ul style="list-style-type: none"> <li>○ Charter school applications must include evidence that an adequate number of parents and pupils support the formation of the charter school. (C.R.S. 22-30.5-106(1)(d))</li> <li>○ District accountability committees must review a charter school application at least 15 days, if possible, before the local school board takes action on the application. (C.R.S.22-30.5-107(1)(c))</li> <li>○ After giving reasonable public notice, the local board of education must hold community meetings in the affected areas or the entire school district to obtain information to assist the board in its decision to approve a charter school application. The local board must rule by resolution on the application in a public hearing, after giving reasonable public notice. (C.R.S. 22-30.5-107(2))</li> </ul>	<ul style="list-style-type: none"> <li>○ Applicants with 3,000 or more students must demonstrate consent of a majority of the appropriate accountability committee, a majority of affected administrators, and a majority of the teachers of the affected school or district. (Note, however, that a school district with exclusive chartering authority is not required to demonstrate that it has obtained majority consent from these groups; except for a waiver from any provision of article 9 or articles 60.5 to 64 of title 22.) (C.R.S. 22-2-117(1)(d) and (6))</li> <li>○ Local school boards must adopt a resolution supporting the waiver request during a public meeting including a public hearing. Notice of the hearing must be provided in 3</li> </ul>

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	<p>application. When submitting to the state board of education, applicants must include a written resolution from the local school board, indicating approval of the application. (C.R.S. 22-32.5-104(1)(b) and <a href="#">Innovation Schools Act of 2008 State Board Procedures</a>)</p>		<p>public places for 30 days prior to the hearing, as well as published in a county newspaper once a week for 4 weeks prior to the hearing. (C.R.S. 22-2-117(2))</p> <ul style="list-style-type: none"> <li>○ Local school boards must consult with the district accountability committee at least 60 days prior to such hearing. (C.R.S. 22-2-117(2))</li> </ul>
<b>CDE Review Process</b>	<ul style="list-style-type: none"> <li>○ Prior to submitting an official application, districts may share a draft application with CDE for preliminary review and feedback.</li> <li>○ After the local board has voted to approve an innovation plan and adopted a board resolution, the district may submit an application along with the CDE coversheet/checklist to the Office of the State Board of Education.</li> <li>○ The Schools of Choice Office reviews each application for completeness and to determine whether the plan conflicts with any non-waivable state laws or policies. Other CDE offices may be engaged for specific content review of replacement plans, as needed.</li> </ul>	<ul style="list-style-type: none"> <li>○ Within 10 days after a charter school contract is signed by both parties, an authorizer must submit a complete copy of the signed charter contract via email to the Office of the State Board of Education. Authorizers may submit an optional cover sheet along with their applications.</li> <li>○ For contract renewals that include only previously approved waivers (and for which CDE already has on file a signed copy of the complete contract), authorizers need only to submit a signed resolution seeking an extension of the contract (and, thus, and extension of the existing waivers).</li> <li>○ The Schools of Choice Office reviews each contract for completeness (i.e., a clear start and end date for term of contract, signatures from both charter school and authorizer, a list of the automatic waivers that the school</li> </ul>	<ul style="list-style-type: none"> <li>○ Prior to submitting an official request, districts may share a draft request and replacement plan with CDE for preliminary review and feedback.</li> <li>○ After the local board has voted to approve a waiver request and adopted a board resolution, the district may submit a waiver request along with the CDE coversheet/checklist to the Office of the State Board of Education.</li> <li>○ The Office of the State Board of Education reviews each request for completeness and to determine whether the request conflicts with any non-waivable state laws or policies. Other CDE offices are engaged for specific content review of the replacement plan(s), as needed.</li> </ul>



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	<ul style="list-style-type: none"> <li>○ For waivers of particular interest to the State Board (as identified by the board chair and vice-chair), CDE will develop a “side-by-side” document comparing underlying statute with an applicant’s proposed replacement plan. Such documents do not include any determination regarding the sufficiency of the replacement plan but may highlight gaps between statutory requirements and the replacement plan.</li> <li>○ CDE may recommend revisions to the plan before it is presented to the State Board for approval. However, CDE will always submit complete plans to the State Board, regardless of whether the suggested changes have been made.</li> <li>○ Per request of the State Board chair and vice-chair, CDE will provide prior academic performance data and demographic data for the applicant, along with the plan.</li> </ul>	<ul style="list-style-type: none"> <li>is invoking and replacement plans for each non-automatic waiver). Other CDE offices may be engaged for specific content review of replacement plans, as needed.</li> <li>○ For waivers of particular interest to the State Board (as identified by the board chair and vice-chair<sup>1</sup>), CDE will develop a “side-by-side” document comparing underlying statute with an applicant’s proposed replacement plan. Such documents do not include any determination regarding the sufficiency of the replacement plan but may highlight gaps between statutory requirements and the replacement plan.</li> <li>○ CDE may recommend revisions to the replacement plans before they are presented to the State Board for approval. However, CDE will always submit complete charter contracts to the State Board, regardless of whether the suggested changes have been made.</li> <li>○ Per request of the State Board chair and vice-chair, CDE will provide prior academic performance data for the applicant, along with the charter contract.</li> </ul>	<ul style="list-style-type: none"> <li>○ For waivers of particular interest to the State Board (as identified by the board chair and vice-chair), CDE will develop a “side-by-side” document comparing underlying statute with an applicant’s proposed replacement plan. Such documents do not include any determination regarding the sufficiency of the replacement plan but may highlight gaps between statutory requirements and the replacement plan.</li> <li>○ CDE may recommend revisions to the waiver request before it is presented to the State Board for approval. However, CDE will always submit complete waiver requests to the State Board, regardless of whether the suggested changes have been made.</li> <li>○ Per request of the State Board chair and vice-chair, CDE will provide prior academic performance data and demographic data for the district, along with the waiver request.</li> </ul>

<sup>1</sup> Note: the State Board may identify different policy areas for special consideration, based on whether a waiver is requested under the Innovation Schools Act, Charter Schools Act, or C.R.S. 22-2-117. More deference may be given to charter school applicants, based on the fact that charter school applicants are subject to an additional level of oversight, being accountable to both their charter board and their authorizer.

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<b>State Board Approval Process</b>	<ul style="list-style-type: none"> <li>○ The State Board must take action on an application within 60 days after receipt of a complete application.</li> <li>○ The State Board will determine whether it wishes for applicants to present in person at a board meeting or to include the application approval on a consent agenda.</li> <li>○ The State Board may ask for presentations of applications from districts that (1) have historically low performance; (2) do not already have innovation schools/zones; (3) are requesting waivers that have not previously been requested by other applicants; (4) have replacement plan policies that significantly differ from the statute(s) being waived; or (5) are requesting waivers in specific policy areas, such as teacher licensure, educator evaluations, or school readiness assessments.</li> <li>○ Even when placed on the consent agenda, the application may be pulled from the consent agenda at the start of the board meeting.</li> </ul>	<ul style="list-style-type: none"> <li>○ For waivers that the State Board has identified as “automatic waivers” for charter schools, a charter school contract need only to indicate which automatic waivers are being invoked and those waivers become effective as soon as the charter contract is executed.</li> <li>○ For waivers from all other statutes (“non-automatic waivers”), the State Board must vote to either grant or deny the request within 45 days after the charter contract has been received by the State Board. If the charter applicant and authorizer do not receive notice of the state board’s decision within 45 days after submittal of the request for release, the request shall be deemed granted. <i>(C.R.S. 22-30.5-105(3))</i></li> <li>○ Typically, the State Board will place charter school waiver requests on their consent agenda.<sup>2</sup> The State Board may choose to discuss applications from schools that (1) have historically low performance; (2) are requesting waivers that have not previously been requested by other applicants; (3) have replacement plan policies that significantly differ from the statute(s) being waived; or (4) are requesting waivers in specific policy areas, such as teacher licensure, educator evaluation, or school readiness assessments.</li> </ul>	<ul style="list-style-type: none"> <li>○ The State Board must take action on a waiver request within 120 days of receiving a complete waiver request.</li> <li>○ The State Board will determine whether it wishes for applicants to present in person at a board meeting or to include the waiver request on a consent agenda. Typically, the State Board has asked for presentations of all waiver requests submitted pursuant to C.R.S. 22-2-117.</li> <li>○ Even when placed on the consent agenda, the waiver request may be pulled from the consent agenda at the start of the board meeting.</li> </ul>

<sup>2</sup> See footnote above, concerning why charter school applications may receive greater deference.

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		<ul style="list-style-type: none"> <li>○ Even when placed on the consent agenda, a charter school waiver request may be pulled from the consent agenda at the start of a board meeting.</li> </ul>	