

DEPARTMENT OF EDUCATION

Colorado State Board of Education

RULES FOR THE ADMINISTRATION OF THE WAIVER OF STATUTE AND RULE

1 CCR 301-35

2217-R-1.00 General Requirements

1.01 Definitions

1.01(A) “charter school” means :

- 1.01(a)(i) A district charter school pursuant to section 22-30.5-101 to 115, C.R.S.;
- 1.01(a)(ii) An independent charter school pursuant to section 22-30.5-301 to 308, C.R.S.; or
- 1.01(a)(iii) An institute charter school pursuant to section 22-30.5-502 (6), C.R.S.

1.01(B) “charter school authorizer” means :

- 1.01(b)(i) In the case of a district charter school or an independent charter school, a school district board of education; or
- 1.01(b)(ii) In the case of a state institute charter school, the board of the state charter school institute as defined in section 22-30.5-502 (5), C.R.S.

1.02 School districts and charter schools shall have the opportunity to request a waiver of any requirements imposed by Title 22, C.R.S. and/or any rule and regulation that has been adopted by the State Board of Education pursuant to Title 22, except as prohibited by law, described for school districts in section 2.06 of these rules and in section 3.05 of these rules for charter schools. Such waivers may involve individual schools, including charter schools, or entire school districts.

This process does not apply to waiver requests made pursuant to section 22-60.5-114, C.R.S. and 1 CCR 301-37 Rule 2260.5-R-23.00, both of which deal with the process by which the State Board may grant waivers to alternative teacher programs, approved induction programs, professional development plans, or approved programs of preparation.

1.03 Pursuant to the contract with its charter school authorizer, a charter school may operate free from automatically waived state statutes and state rules as provided in section 3.06 of these rules.

2217-R-2.00 Waiver Requests by School Districts

2.01 Legal Standard for granting waivers

The State Board shall grant waivers to school districts when it determines that such waivers would enhance educational opportunity and quality within the school district and when the costs to the school district of complying with the requirements for which the waiver is requested significantly limit educational opportunities within the school district

2.02 Duration/Revocation

Any waiver granted by the State Board of Education to a school district (not involving a charter school) shall continue **indefinitely** unless:

- 2.02(a) The school district board of education that holds the waiver by resolution requests revocation of the waiver; or
- 2.02(b) The State Board receives evidence that constitutes good and just cause for revocation of the waiver, as determined by the State Board.

2.03 Pre-Application Process

- 2.03(a) Prior to submitting an application for a waiver, a school district board of education, in a public meeting including a public hearing, shall adopt a resolution stating the board's intent to apply for a waiver and specifying the statutes and rules for which the board will request waivers.
- 2.03(b) The school district board of education shall post notice of such public meeting in three public places within the school district for a period of not less than thirty calendar days prior to such meeting, giving the time and location of such meeting and a description of the waiver request, and, if a newspaper is published within the county, shall publish such notice once each week for at least four weeks prior to the meeting in such newspaper.
- 2.03(c) At least sixty days prior to such public meeting and hearing, the school district board of education shall meet with the school district accountability committee to consult with the committee concerning the intent to seek the waiver(s).

2.04 Application Process

Waiver requests by school districts shall be submitted as follows:

- 2.04(a) Written requests for waivers shall be submitted electronically to the State Board of Education by emailing state.board@cde.state.co.us and electronically copying the Schools of Choice Unit at schoolsofchoice@cde.state.co.us.
- 2.04(b) A complete request for a waiver shall include:
 - 2.04(b)(i) A list of statutes and/or rules requested for waiver;
 - 2.04(b)(ii) A statement explaining how the waiver would enhance educational opportunity and quality within the school district;
 - 2.04(b)(iii) A statement explaining how costs to the school district of complying with the requirement for which the waiver is requested significantly limit educational opportunity within the school district;
 - 2.04(b)(iv) A statement describing the manner in which the school district shall comply with the intent of the waived rules or statutes as well as how it shall be accountable to the state board for such compliance;
 - 2.04(b)(v) Documentation of legal requirements for district's public hearing process; and
 - 2.04(b)(vi) Additionally, a school district of 3,000 or more pupils shall provide signatures demonstrating that its application has the consent of a majority of the appropriate accountability committee, a majority of the affected licensed administrators, and

a majority of the affected school district teachers and shall indicate how the affected staff and committee were determined.

2.05 State Board Ruling

The State Board of Education will rule on a waiver request by a school district within 90 days of receipt of a complete request for waiver.

2.06 Sections Of Law Ineligible For Waiver

The State Board of Education shall not waive any of the requirements specified in the following statutory provisions:

2.06(a) The Public School Finance Act Of 1994 , Title 22, Article 54, C.R.S.

2.06(b) The Exceptional Children's Educational Act , Title 22, Article 20, C.R.S.

2.06(c) Data necessary for school accountability reports, pursuant to 22-7-601, et seq., C.R.S.

2.06(d) Assessments, pursuant to 22-7-409, et seq., C.R.S.

2.06(e) Duties of the president and vice president of a school district board of education, pursuant to 22-32-105, C.R.S.

2.06(f) Duty of a school district board of education to adopt a policy mandating prohibition against the use of all tobacco products on school property and at school-sponsored activities by students, teachers, staff, and visitors, and to adopt rules to enforce such prohibition, excluding expulsion of any student solely for such tobacco use pursuant to 22-32-109(1)(bb)(l), C.R.S.

2.06(g) Requirements governing a school district board of education planning to conduct a complete educational program outside the territorial limits of the district, pursuant to 22-32-109(2), C.R.S.

2.06(h) Duty of each school district board of education to adopt a written policy setting forth the district's attendance requirements, pursuant to 22-33-104(4), C.R.S.

2217-R-3.00 Waiver Requests by Charter Schools and Automatic Waivers

3.01 Legal Standard for granting waivers to charter schools

3.01(a) Pursuant to contract, a charter school may operate free from specified school district regulations and state regulations. Pursuant to contract, a local board of education may waive locally imposed school district requirements, without seeking approval of the State Board.

3.01(b) The State Board of Education 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.

3.01(c) Upon request of the charter applicant, the State Board and the charter school authorizer shall provide summaries of such regulations and policies to use in preparing a charter school application.

3.02 Duration/Revocation

3.02(a) Any waiver of state or local school district regulations shall be for the term of the charter for which the waiver is made.

3.02(b) A waiver of state statutes or regulations by the State Board shall be subject to review periodically, but at least every five years. A waiver may be revoked if the waiver is deemed no longer necessary by the State Board of Education.

3.03 Application Process

Waiver requests by charter schools shall be submitted for the term of the charter as follows:

Within ten days after the charter school contract is approved, a signed contract including any request for release from state statutes and/or regulations, as well as the duration of the waiver requested, must be submitted to the State Board of Education by the charter school authorizer and a charter school on a form provided by the department of education and obtainable from the department's internet web site. Specific statutory and regulatory citations must be included.

3.04 State Board Ruling on Waiver Requests

3.04(A) Request concerning automatic waivers of state statutes and state rules.

3.04(a)(i) If the request for release concerns only those state statutes and rules that have been automatically waived by the state board of education pursuant to section 3.06 of these rules, the department shall provide written approval of the request in a timely manner following its receipt of the request.

3.04(a)(ii) If the request for release only concerns requests for waivers of state statutes and rules that have not been automatically waived by the state board, or a combination of automatically waived and non-waived state statutes and rules, the procedures set forth in section 3.04 (b) - (e) of these rules shall apply.

3.04(b) Within forty-five days after a request for release is received by the state board of education, the state board of education shall either grant or deny the request.

3.04(c) If the state board of education grants the request, it shall notify the charter school authorizer and the charter school of its decision in writing.

3.04(d) If the State Board of Education denies the request, it shall notify the charter school authorizer and the charter school in writing that the request is denied and specify the reasons for the denial. If the request for release includes multiple state statutes or regulations, the denial shall specify the state statutes and regulations for which the release is denied, and the denial shall apply only to those state statutes and regulations so specified.

3.04(e) If the charter school authorizer and the charter school do not receive notice of the state board of education's decision within forty-five days after official receipt of the request for release, the request shall be deemed granted.

3.05 Sections of Law Ineligible for Waiver

The State Board of Education shall not waive any of the requirements specified in the following statutes and/or related rules:

3.05(a) Assessments required to be administered pursuant to section 22-7-209, C.R.S.; or

3.05(b) Assessments necessary to prepare the school accountability reports pursuant to C.R.S. 22-7-601, et seq.

3.05(c) Any statute or rule relating to the Children's Internet Protection Act, C.R.S. 22-87-101 to 107.

2217-R-3.06 Automatic Waivers of State Statutes and State Rules for Charter Schools

The state board automatically waives the following state statutes and state rules for charter schools. Any such automatically waived state statute and/or state rules shall be reflected in the contract between the charter school and its charter school authorizer:

- 3.06(a) Section 22-9-106, C.R.S., local board duties concerning performance evaluations for licensed personnel;
- 3.06(b) Section 22-32-109(1)(b), C.R.S., local board duties concerning policies, rules and regulations for the efficient administration of district affairs, including competitive bidding in the purchase of goods and services;
- 3.06(c) Section 22-32-109(1)(f), C.R.S., local board duties concerning selection of personnel and pay;
- 3.06(d) Section 22-32-110(1)(h), C.R.S., local board powers concerning employment termination of school personnel;
- 3.06(e) Section 22-32-109(1)(n)(I), C.R.S., determining school calendar;
- 3.06(f) Section 22-32-109(1)(n)(II)(A), C.R.S., determining teacher-pupil contact hours;
- 3.06(g) Section 22-32-109(1)(n)(II)(B), C.R.S., determining district calendar;
- 3.06(h) Section 22-32-109(1)(t), C.R.S., determining educational program and prescribing textbooks;
- 3.06(i) Section 22-32-110(1)(i), C.R.S., reimbursing employees for expenses;
- 3.06(j) Section 22-32-110(1)(j), C.R.S., procuring group life, health, or accident insurance;
- 3.06(k) Section 22-32-110(1)(k), C.R.S., adopting written policies concerning in-service training;
- 3.06(l) Section 22-32-110(1)(ee), C.R.S., employing paid or voluntary teacher aides or non-licensed personnel;3.06(m)
- 3.06(m) Section 22-32-126, C.R.S., employment and authority of principals;
- 3.06(n) Section 22-33-104(4), C.R.S., attendance policy and excused absences;
- 3.06(o) Section 22-63-201, C.R.S., Teacher Employment, Compensation and Dismissal Act of 1990: Employment - license required - exception;
- 3.06(p) Section 22-63-202, C.R.S., Teacher Employment, Compensation and Dismissal Act of 1990: contracts in writing - duration - damage provision;
- 3.06(q) Section 22-63-203, C.R.S., Teach Employment, Compensation and Dismissal Act of 1990: Probationary teachers - renewal and nonrenewal of employment contract;
- 3.06(r) Section 22-63-206, C.R.S., Teacher Employment, Compensation and Dismissal Act of 1990: Transfer of teachers - compensation;
- 3.06(s) Section 22-63-301, C.R.S., Teacher Employment, Compensation and Dismissal Act of 1990: Grounds for dismissal;

- 3.06(t) Section 22-63-302, C.R.S., Teacher Employment, Compensation and Dismissal Act of 1990: Procedures for dismissal of teachers and judicial review;
- 3.06(u) Section 22-63-401, C.R.S., Teacher Employment, Compensation and Dismissal Act of 1990: Teachers subject to adopted salary schedule;
- 3.06(v) Section 22-63-402, C.R.S., Teacher Employment, Compensation and Dismissal Act of 1990: License, authorization of residency required in order to pay teachers; and
- 3.06(w) Section 22-63-403, C.R.S., Teacher Employment, Compensation and Dismissal Act of 1990: Payment of salaries.

2217-R-4.00 Statement of Basis and Purpose

The basis of these rules, adopted by the State Board of Education on (January 11, 1990) is found in 22-2-106(1) (A) and (C), 22-2-107(1)(C) and 22-2-117, C.R.S. The purpose of these amendments is to clarify the process that schools and school districts must follow in order for the State Board of Education to consider waiver requests involving statutes and rules and regulations that have been imposed on schools and school districts.

- 4.01 The basis for these amendments, adopted by the State Board of Education on (November 10, 1994) is found in sections 22-30.5-104(6) and 22-2-117, C.R.S. which were amended by the General Assembly in 1994. The purpose of these amendments is to specify the process by which waivers may be granted to charter schools pursuant to the aforementioned statutes and to clarify the standards that the State Board will use in determining which waiver requests meet the statutory requirements.
- 4.02 The basis for these amendments, adopted by the State Board of Education on (08-13-98) is found in sections 22-30.5-105(3), C.R.S., which was amended by the general assembly in 1998. The purpose of these amendments is to specify the process by which waivers may be granted to charter schools pursuant to the aforementioned statute.
- 4.03 The basis for these amendments, adopted by the State Board of Education on August 9, 2001 is found in 22-2-117, et seq., 22-7-601 et seq., and 22-30.5-104(6) and 105(3), C.R.S. the purpose of these amendments is to conform the State Board's rules to statute, including major amendments to 22-2-117 and the addition of 22-7-601 from the 2000 legislative session.
- 4.04 The basis for these amendments, adopted by the State Board of Education on January 13, 2005, is found in 22-30.5-104 (6), C.R.S., which was amended by the General Assembly in 2004 by House Bill 04-1141. The purpose of these amendments is to identify the state statutes that the State Board has determined will be automatic waivers for charter schools.
- 4.05 The basis for these amendments, adopted by the State Board of Education in November 2012, is found in section 22-30.5-104 (6), C.R.S., which authorizes the board to promulgate rules identifying state statutes and state rules that are automatically waived for all charter schools.