

Overview

Colorado law allows districts to request waivers from certain areas of state statute and rule. These waivers can apply to the full district or individual schools within their district, if the waivers will enhance educational opportunity and quality (22-2-117(1)(a), C.R.S.).

Charter schools may receive waivers in additional specified areas of statute. This flexibility is intended to provide charters with the autonomy to fully implement the school plan outlined in the school's contract with the authorizing district. Charter school waiver requests must meet the requirements set in the Charter School Act (22-30.5-101, C.R.S.)

Any waivers from state statute or rule must be reviewed and approved by either CDE staff or the State Board of Education.

Local school boards may approve waivers to district policy for a charter within their district; these kinds of waivers do not need to be approved by the State Board of Education.

There are specified areas of state statute that charter schools **may not** waive out of (22-30.5-104(6)(b), C.R.S.).

Charter schools may not waive out of:

- Statute or rule concerning school accountability committees (22-11-401, C.R.S.)
- Statute or rule related to the assessment required to be administered pursuant to 22-7-409, C.R.S.
- Statute or rule necessary to prepare the school performance reports (Title 22, Article 5, C.R.S.)
- Statute or rule necessary to implement the provisions of the "Public School Finance Act of 1994" (Title 22, Article 54, C.R.S.)
- Statute or rule relating to the "Children's Internet Protection Act" (Title 22, Article 87)

Automatic Waivers

The state board identifies state statutes and rules that are termed automatic waivers for charter schools (22-30.5-104(6)(b), C.R.S.).

As of November 2012, there are 23 statutes categorized as automatic waivers. The automatic waivers are listed below.

Automatic Waivers: Automatic Waivers are waivers from state statute and rule that do not require approval of the state board of education. These waivers have been identified over time as those that should be easier to receive either because they contradict the intent of the Charter School Act in terms of autonomies offered to charter schools, or have been requested so frequently that it is deemed more efficient for both the state and local boards.

Exhibit A

State Statute Citation	Description
22-9-106	Local Board Duties Concerning Performance Evaluations
22-32-109(1)(b)	Local Board Duties Concerning Competitive Bidding
22-32-109(1)(f)	Local Board Duties Concerning Selection of Staff, and Pay
22-32-109(1)(n)(I)	Local Board Duties Concerning School Calendar
22-32-109(1)(n)(II)(A)	Determine teacher-pupil contact hours
22-32-109(1)(n)(II)(B)	Adopt district calendar
22-32-109(1)(t)	Local Board Duties Concerning Textbooks and Curriculum
22-32-126	Employment and Authority of Principals
22-32-110(1)(h)	Local Board Powers-Terminate employment of personnel
22-32-110(1)(i)	Local Board Powers-Reimburse employees for expenses
22-32-110(1)(j)	Local Board Powers-Procure life, health, or accident insurance
22-32-110(1)(k)	Local Board Powers-Policies relating to in service training and official conduct
22-32-110(1)(ee)	Local Board Powers-Employ teachers' aides and other non-certificated personnel
22-33-104(4)	Compulsory School Attendance-Attendance policies and excused absences
*22-63-201 ¹	Teacher Employment Act - Compensation & Dismissal Act-Requirement to hold a certificate
22-63-202	Teacher Employment Act - Contracts in writing, damage provision
22-63-203	Teacher Employment Act-Requirements for probationary teacher, renewal & nonrenewal
22-63-206	Teacher Employment Act-Transfer of teachers
22-63-301	Teacher Employment Act-Grounds for dismissal
22-63-302	Teacher Employment Act-Procedures for dismissal of teachers
22-63-401	Teacher Employment Act-Teachers subject to adopted salary schedule
22-63-402	Teacher Employment Act-Certificate required to pay teachers
22-63-403	Teacher Employment Act-Describes payment of salaries

Charter School Waiver Process

All charter schools must go through a formal process to waive out of state statute and rule. The charter is subject to all federal and state laws and constitutional provisions prohibiting discrimination on the basis of disability, race, creed, color, sex, sexual orientation, national origin, religion, ancestry or need or special education services (22-30.5-104(3), C.R.S.).

¹ Charter schools may waive out of the licensing requirement for staff teaching core and non-core content areas, but those teachers must still meet the remaining NCLB, Highly Qualified Requirements. For more information, please visit <http://www.cde.state.co.us/FedPrograms/tii/index.asp>

If the request for state waivers is approved, the waivers are valid through the term of the contract between the charter school and its authorizer. However, the waivers are subject to periodic review by the state board. If the contract states that the term date may be extended if certain conditions are met, the authorizer will need to request for an extension of state waivers from the State Board so the term date of the waiver request and the term date of the contract aligns. See Appendix A of this document for more information.

When a charter school waives state statute or rule, the school must prove how it will continue to meet the intent of the law. This often means that schools will either meet expectations in a different way or exceed expectations.

As described above, the process for approval of automatic waivers differs from the process for approval of non-automatic waivers. The following diagram provides an overview of the waiver process including those differences.

Local District Board Actions During Approval or Renewal

- The charter contract submitted to the authorizing local board of education includes a list of waivers from state statute, state rule, and district policy.
- There is a rationale for why each waiver was requested and a replacement plan for how the charter school will continue to meet the intent of the law. See the "Rationale and Replacement Plan" Section below for more information.
- The local board approves or denies requests for district policy waivers.
- The local board approves or denies requests for state waivers. These will be forwarded to CDE

Local District Staff Actions Re: State Waiver Requests

- Fill out and get appropriate signatures for the Waiver Request Form. The form is located at: <http://www.cde.state.co.us/cdechart/waivers.asp>
- Submit the following to the CDE Schools of Choice contact listed at: <http://www.cde.state.co.us/cdechart/waivers.asp>
 - An electronic, signed copy of the charter contract between the charter school and its authorizer
 - A complete, typed, and signed Waiver Request Form
 - A Rationale and Replacement Plan (RRP) for each waiver requested from state statute and rule.

CDE Staff Actions

If the request contains non-automatic waivers

Once the request is approved by CDE staff, it will be submitted to the State Board for review and approval.

If the request only contains automatic waivers

The waivers are approved once CDE staff has reviewed and approved the waivers.

Rationale and Replacement Plan (RRP)

Each waiver from state statute, state rule and district policy must contain a rationale as to why the waiver is being requested and a replacement plan as to how the school will continue to meet the intent of the law. Often times this means that the school will meet the intent of the law a different way, and/or exceed expectations written in law and policy. The replacement plan may also simply be a transfer of power from the local authorizing board or school district to the charter school.

Each waiver must have an associated RRP. **Please note:** Two or more waivers may have the same rationale and replacement plan as long as the plan explains why each waiver is being requested and how the intent of the law will still be met

Best Practice: In addition to providing a rationale for waiving the law or policy and a plan for how to meet the intent of the law, CDE recommends that the charter school also include information about the:

- Financial Impact of waiving out of the law or policy
- How the impact of the waivers will be evaluated
- Expected outcome from waiving out of this law or policy

There is a *sample* RRP located at <http://www.cde.state.co.us/cdechart/waivers.asp>

Notification of Approval/Documentation

Once the waiver request is approved by CDE staff or the State Board of Education, the Schools of Choice Office will send an electronic approval letter to the charter school contact and will copy the authorizer contact. CDE staff will use the contact information provided on the waiver request form. This letter will stay on file with the Schools of Choice Office at CDE.

The Schools of Choice Office will also keep an electronic copy of charter school contracts, waiver request forms and rationale and replacement plans for each open charter school for a period of at least two renewal cycles.

CDE encourages the charter school and the authorizer to keep all of these documents on file as well.

Frequently Asked Questions

Are charter schools automatically granted waivers from state statutes on the automatic waiver list?

No. The name is somewhat confusing. Schools ask their authorizer to approve this waiver request, just as they do district or non-automatic state waivers. If the authorizer approved the waiver, automatic waivers are reviewed by CDE staff. If CDE staff determines the waiver request is allowable within statute, they approve the waiver. No approval by the state board is needed.

Do charter school staff members have to meet Federal Highly Qualified requirements?

Yes. Currently there is no way for a public school to waive Highly Qualified requirements.

Can charter schools waive out of the licensing requirement for teachers?

Yes. Currently, a charter school is the only type of school that can waive out of the licensing requirement for staff teaching core content subject areas. Staff must continue to meet the remaining Highly Qualified requirements (hold a degree, demonstrate subject matter competency).

Core content areas include: English, reading or language arts; mathematics; science; foreign languages; social studies (civics, government, history, geography, economics); the arts (visual arts, music).

How long are waivers valid for?

Waivers are valid until the contract with the authorizer expires. Waivers need to be renewed with the state each time the contract is renewed with the authorizer.

How does a charter school decide which waivers to request?

Charter schools should examine each statute to see if they would need a waiver to implement their plan. Commonly schools seek flexibility with those things that statute defines as the responsibility of the district, just to make clear that they are accepting that responsibility. Charters often seek legal counsel when seeking waivers, but it is not required that they do. We are also happy to talk with you about waiver selection.

Are there examples of rationale and replacement plans to reference?

Yes. We provide a *sample* rationale and replacement plan at <http://www.cde.state.co.us/cdechart/waivers.asp>. Please keep in mind that this is just one example. It is not required that every RRP has this format. It is required that each waiver from state statute and rule, and district policy must contain a rationale as to why the waiver is being requested and a replacement plan as to how the school will continue to meet the intent of the law. Often times this means that the school will meet the intent of the law a different way, and/or exceed expectations written in law and policy. The replacement plan may also simply be a transfer of power from the local authorizing board or school district to the charter school.

Is a charter school required to request waivers from state statute or rule?

No. Each charter school determines which waivers to request, and may choose not to request any.

Appendix A: Waiver Extension Guidelines

Some contracts between charter schools and their authorizers state that a contract may be extended beyond the current term date if the charter school meets specified criteria or conditions. If the authorizer approves an extension, the authorizer will also need to request an extension of state waivers.

State waivers will be approved through the official term date set in the contract between the authorizer and the school. The extension date will not be accepted for waivers until the contract has been officially extended by the authorizer. At that point, the authorizer must submit a letter on letterhead via email to the CDE contact listed at <http://www.cde.state.co.us/cdechart/waivers.asp>

The letter must contain:

- Date
- The charter school's name
- The original contract term date
- The extended contract term date
- The reason for the extension
- A statement requesting an extension of state waivers to align with the extended term date
- Signature from the authorizer

Once the request is approved, the authorizer and the charter school will receive a letter from CDE approving the waiver extension.

Please Note: Waiver extensions are only allowable for the current list of waivers the charter school has been granted. If a charter school would like request additional waivers before the renewal of its contract, a new waiver request form and rationale and replacement plan will need to be submitted to CDE for review and approval (see page 3).