

## DEPARTMENT OF EDUCATION

### Colorado State Board of Education

## RULES FOR THE ADMINISTRATION OF THE WAIVER OF STATUTE AND RULE

### 1 CCR 301-35

*[Editor's Notes follow the text of the rules at the end of this CCR Document.]*

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#### 0.00 Statement of Basis and Purpose

The basis of these rules, adopted by the State Board of Education is found in 22-2-117, C.R.S. and 22-30.5-104(6). The purpose of these rules is to clarify the process that schools and school districts must follow to seek waivers from statutes or rules. In addition, the rules specify the process by which the State Board may grant waivers to charter schools and clarify the standards that the State Board will use in determining which waiver requests meet the statutory requirements.

#### 1.0 Definitions

1.1 "Charter School" means a public school that enters into a charter contract pursuant to Article 30.5 of Title 22.

1.2 "Institute Charter School" means a charter school authorized pursuant to Article 30.5 of Title 22.

1.3 "State Board" means the state board of education.

1.4 "Automatic Waiver" means the waiver of a state statute or state board rule:

1.04(a) That is included on the list of automatic waivers contained in these rules;

1.04(b) That is available to each charter school, including an Institute Charter School, and is valid for the initial or subsequent renewal, term of the charter contract; and

1.04(c) For which a charter school, including an Institute Charter School, is not required to submit a statement that specifies the manner in which the charter school intends to comply with the intent of the automatically waived state statute or state board rule.

#### 2.0 Waiver Requests by School Districts

2.1 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.

2.2 Duration/Revocation

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

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- 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.
- 2.3 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).
- 2.4 Application Process
- 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](mailto:state.board@cde.state.co.us) and electronically copying the Schools of Choice Unit at [schoolsofchoice@cde.state.co.us](mailto: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.

2.5 State Board Ruling

The State Board of Education will rule on a waiver request by a school district within 120 days of receipt of a complete request for waiver.

2.6 Sections of Law Ineligible for Waiver

The State Board of Education shall not waive any of the requirements for those sections of law identified as ineligible for a waiver and specified in section 22-2-117(1)(b) and (1.5), C.R.S.

**3.0 Waiver Requests by Charter Schools and Automatic Waivers**

3.1 List of automatically waived statutes for all charter schools:

The following statutes are automatically waived for all charter schools. These waivers will be automatically granted to a charter school upon entering into a charter contract with its authorizer, pursuant to section 22-30.5-105, C.R.S.

- 3.01(a) 22-32-109(1)(f), C.R.S. Local board duties concerning selection of staff and pay;
- 3.01(b) 22-32-109(1)(t), C.R.S. Determine educational program and prescribe textbooks;
- 3.01(c) 22-32-110(1)(h), C.R.S. Local board powers-Terminate employment of personnel;
- 3.01(d) 22-32-110(1)(i), C.R.S. Local board duties-Reimburse employees for expenses;
- 3.01(e) 22-32-110(1)(j), C.R.S. Local board powers-Procure life, health, or accident insurance;
- 3.01(f) 22-32-110(1)(k)(l), C.R.S. Local board powers-Policies relating to in-service training and official conduct, except as it relates to unlawful discrimination, including discrimination based on hair texture, hair type, or a protective hairstyle that is commonly or historically associated with race;
- 3.01(g) 22-32-110(1)(ee), C.R.S. Local board powers-Employ teachers' aides and other non-certificated personnel;
- 3.01(h) 22-32-126, C.R.S. Employment and authority of principals;
- 3.01(i) 22-33-104(4), C.R.S. Compulsory school attendance-Attendance policies and excused absences;
- 3.01(j) 22-63-301, C.R.S. Teacher Employment Act- Grounds for dismissal;
- 3.01(k) 22-63-302, C.R.S. Teacher Employment Act-Procedures for dismissal of teachers;
- 3.01(l) 22-63-401, C.R.S. Teacher Employment Act-Teachers subject to adopted salary schedule;
- 3.01(m) 22-63-402, C.R.S. Teacher Employment Act-Certificate required to pay teachers;
- 3.01(n) 22-63-403, C.R.S. Teacher Employment Act-Describes payment of salaries; and
- 3.01(o) 22-1-112, C.R.S. School Year-National Holidays.

- 3.2 Legal standard for granting non-automatic waivers to charter schools
- 3.02(a) Pursuant to contract, a local board of education may waive locally imposed school district requirements, without seeking approval of the State Board.
- 3.02(b) The State Board of Education shall grant waivers of state statutory requirements or rules when in the judgment of the State Board it deems waivers necessary.
- 3.2(c) Upon request of the charter applicant, the State Board and the charter school authorizer shall provide summaries of such regulations and policies for the applicant to use in preparing its application.

3.3 Duration/Revocation

- 3.03(a) Any waiver of state or local school district regulations shall be for the term of the charter for which the waiver is made.
- 3.03(b) A waiver of state statutes or regulations shall be subject to review periodically, but at least every five years. A waiver may be revoked if the State Board deems the waiver no longer necessary.

3.4 Application Process

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

- 3.4(a) Within ten days after the charter contract is approved, a complete copy of the signed charter contract must be submitted to the State Board of Education by the charter school authorizer and charter school.

3.5 Sections of Law Ineligible for Waiver

The State Board of Education shall not waive any of the requirements for those sections of law identified as ineligible for a waiver and specified in section 22-30.5-104(6)(c), C.R.S. and section 22-30.5-507(7)(b), C.R.S.

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**Editor's Notes**

**History**

Rules 2.04(a), 3.06(b)-(w), 4.05 eff. 01/14/2013.  
Rules 2217-R-1.00, 2217-R-3.00, 4.06 eff. 01/15/2015.  
Entire rule eff. 01/30/2016.  
Rules 2.05, 2.06(j)-(m), 3.01(C)-(Q), 4.07 eff. 12/15/2016.  
Rules 2.06(n), 3.01, 3.05(d)-(f), 4.08 eff. 12/30/2017.  
Entire rule eff. 11/30/2018.  
Entire rule eff. 06/30/2019.  
Rules 3.01(f), 3.01(l) eff. 03/31/2021.

**Annotations**

Rule 2.6(o) (adopted 10/10/2018) was not extended by Senate Bill 19-168 and therefore expired 05/15/2019.