

# Waiver Request Guidance

Updated September 2017



COLORADO  
Department of Education

## 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 from specified areas of statute once a charter contract has been established. This flexibility is intended to provide charters with the autonomy to fully implement the educational 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.).

There are two types of waivers that apply to charter schools, automatic and non-automatic. **Automatic waivers** are those that are automatically granted to all charter schools upon the establishment of a charter contract, renewal or extension, for the term of the contract. Charter schools no longer have to formally request these types of waivers or provide any documentation to the state as they are automatic once a charter contract is in place. The current automatic waiver list is included in the *Automatic Waiver* section below and can also be found on CDE's waiver webpage (<http://www.cde.state.co.us/cdechart/waivers>).

All other waivers from state statute and rule are considered **non-automatic waiver** requests and must be reviewed and approved by the State Board of Education. See the *Non-automatic Waiver* section of this document for more information.

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.

## Areas of Statute Charters May Not Waive

**Please be aware that charter schools may not seek waivers from any of the following areas of statute:**

- 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.). This includes the READ Act.
- 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

Pursuant to 22-30.5-103, C.R.S., automatic waivers are now defined as those being granted automatically to all charter schools upon the establishment of a charter contract, renewal or extension, for the term of the contract. A charter school **is no longer required** to submit a Rationale and Replacement Plan (RRP) or any other documentation to the state outlining the manner in which the charter school intends to comply with the intent of the automatically waived state statute or state board rule. The list of automatic waivers that have been approved by the state board are as follows:



Automatic Waiver List (As of 6/2/17)	
State Statute Citation	Description
22-32-109(1)(f), C.R.S.	Local board duties concerning selection of staff and pay
22-32-109(1)(t), C.R.S.	Determine educational program and prescribe textbooks
22-32-110(1)(h), C.R.S.	Local board powers-Terminate employment of personnel
22-32-110(1)(i), C.R.S.	Local board duties-Reimburse employees for expenses
22-32-110(1)(j), C.R.S.	Local board powers-Procure life, health, or accident insurance
22-32-110(1)(k), C.R.S.	Local board powers-Policies relating the in-service training and official conduct
22-32-110(1)(ee), C.R.S.	Local board powers-Employ teachers' aides and other non-certificated personnel
22-32-126, C.R.S.	Employment and authority of principals
22-33-104(4)	Compulsory school attendance-Attendance policies and excused absences
22-63-301, C.R.S.	Teacher Employment Act- Grounds for dismissal
22-63-302, C.R.S.	Teacher Employment Act-Procedures for dismissal of teachers
22-63-401, C.R.S.	Teacher Employment Act-Teachers subject to adopted salary schedule
22-63-402, C.R.S.	Teacher Employment Act-Certificate required to pay teachers
22-63-403, C.R.S.	Teacher Employment Act-Describes payment of salaries
22-1-112, C.R.S.	School Year-National Holidays

## Non-Automatic Waivers

A charter school may operate free from specified state rules and statutes as provided in §22-30.5-104(6)(b), C.R.S. by requesting waivers. To obtain these waivers, all charter schools must go through a formal process to waive out of any state statute and rule that is not considered an automatic waiver. 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.).

Once a request for state waivers is approved, the waivers are valid through the term of the contact between the charter school and its authorizer. However, the waivers are subject to periodic review by the state board.

A school district that applies to the state board for a waiver on behalf of a charter school, whether it is a new school, renewal or extension, is only required to provide a ***complete copy of the signed charter contract*** (22-30.5-104(6)(d), C.R.S.). A complete, signed copy of the charter contract should include:

- A clear start and end date of the term of the charter contract.
- Signatures of both the charter school and authorizing local board.
- A list of the non-automatic waivers from state statute and rule the school is requesting.
- A Rationale and Replacement Plan (RRP) for each waiver requested (per 22-30.5-105(2)) that addresses the manner in which a charter school shall comply with the intent of the state statutes and/or state board rules.

### Rationale and Replacement Plans (RRP)

Each waiver being requested by the charter school must have an associated Rationale and Replacement Plan (RRP). A sample Rationale and Replacement Plan (RRP) can be viewed at <http://www.cde.state.co.us/cdechart/waivers>. Each waiver from state statute and rule must contain a rationale as to why the waiver is being requested and a replacement plan indicating 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. Two or more statutes can be combined under the same rationale and replacement plan as long as the plan explains why each waiver is being requested and addresses how the intent of each statute will still be met. In addition to the rationale and replacement plan, CDE recommends as best practice that the charter school include information about the following in their RRP:

- 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

To help schools better understand how specific waivers may apply, we have organized waivers into three different categories: *delegatory*, *substantive* or *non-applicable*.

**Delegatory** - Waivers in which the authority has been delegated from the authorizing board to the charter school governing board to create policies and practices that meet authorizer and state standards. RRP for these types of waivers generally include language like...

*Journey Academy should be delegated the authority from the School District to \_\_\_\_\_ in accordance with the Charter School Agreement.*

**Substantive** - Waivers that allow a charter school governing board to develop their own practice or policy that is separate and independent of their authorizer or the state, but still meet the intent of the law. RRP for these types of waivers generally include language like...

*The School will adopt its own policies concerning \_\_\_\_\_ that will meet or exceed the intent of the law.*

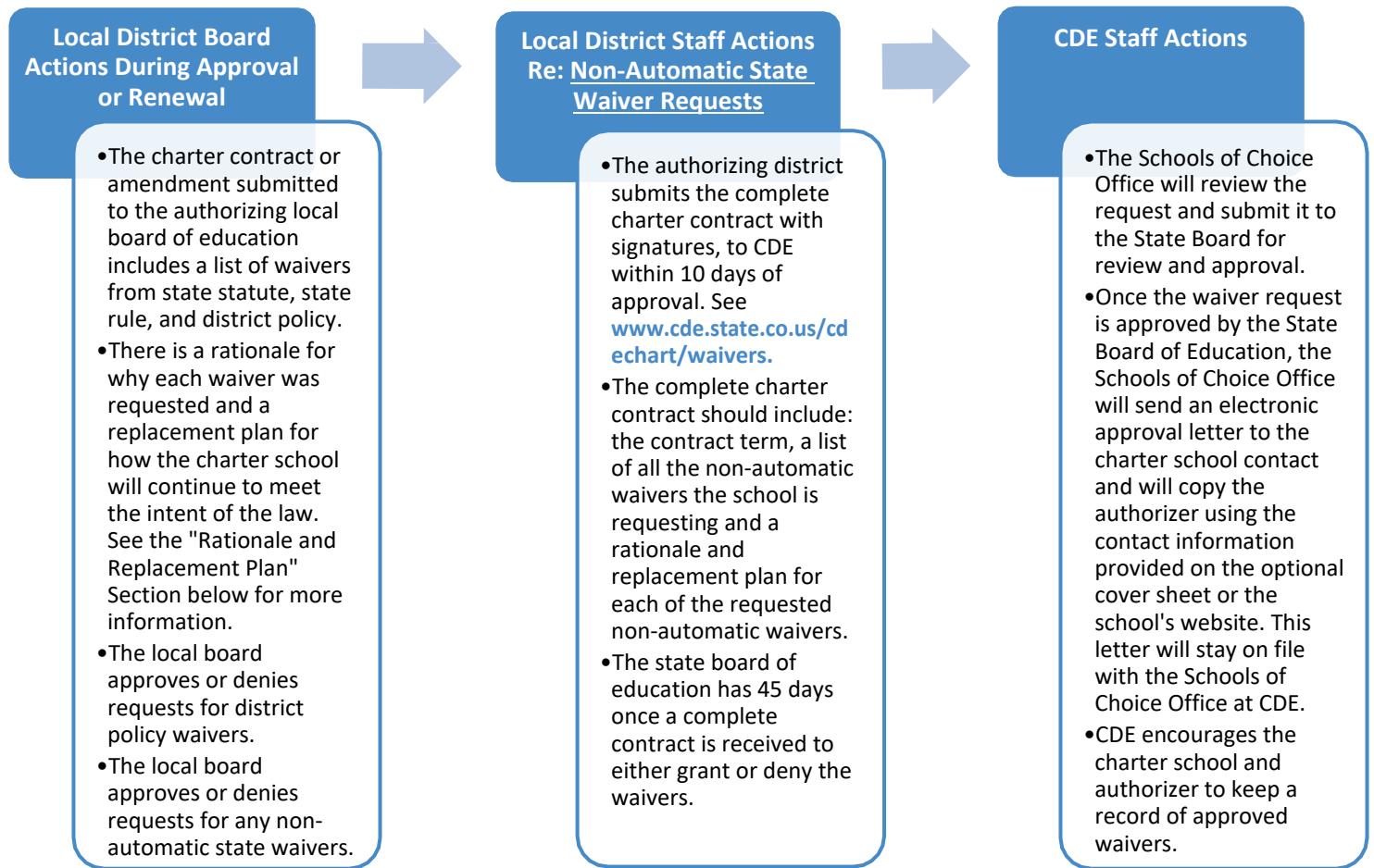
**Non-applicable** - Waivers that do not apply due to the inherent nature of a charter school and the responsibilities granted through the Charter School Act. No documentation is required by the state for these types of waivers if they are on the automatic waiver list.

Commonly Requested Non-Automatic Waivers	
State Statute Citation	Description
22-9-106, C.R.S.	Local board duties concerning performance evaluations
22-2-112(1)(q)(I), C.R.S.	Commissioner Duties-concerning the reporting of performance evaluation ratings.
22-32-109(1)(n)(I), C.R.S.	Local board duties concerning school calendar
22-32-109(1)(n)(II)(A), C.R.S.	Teacher-Pupil Contact Hours
22-32-109(1)(n)(II)(B), C.R.S.	Adopt district calendar
22-63-201, C.R.S.	Teacher Employment Act-Compensation & Dismissal Act-Requirement to hold a certificate
22-63-202, C.R.S.	Teacher Employment Act- Contracts in writing, damage provision
22-63-203, C.R.S.	Teacher Employment Act- Requirements for probationary teacher, renewal & nonrenewal
22-63-206, C.R.S.	Teacher Employment Act-Transfer of teachers



## Process and Required Documents for Requesting Waivers

The following diagram provides an overview of the waiver process.



## Frequently Asked Questions

### Can a charter school waive the School Readiness Assessments?

Charter schools may choose to waive school readiness assessments, and as true for all waivers, schools are accountable for explaining how they will meet the intent of the law. Adequate replacement plans will address the following key components of the statute in their rationale and replacement plan:

- Identify how the school will assess each component of school readiness as it is defined in statute; physical well-being and motor development, social and emotional development, language and comprehension development, and cognitive and general knowledge. What is the method or methods of assessing that will be used? These assessments do not need to be tests; observation protocols and other qualitative methods may be used.
- Briefly describe the school’s plan for providing intervention to students based on what they learn from their readiness assessment process. This may include naming a range of possible interventions or strategies, or the description of a general approach.

### Can charter schools waive the READ ACT?

No, the Charter School Act, in section 22-30.5-104(6)(b), C.R.S., prohibits the state board from allowing a charter school to waive out of “any statute or rule necessary to prepare the school performance reports pursuant to part 5 of article 11 of [title 22].”

**How long are waivers valid for?**

Waivers are valid until the contract with the authorizer expires. Non-automatic 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 (in addition to those automatically granted) to implement their educational plan or model. 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. Many of these waivers are considered automatic waivers which the school does not need to formally request. Charters often seek legal counsel when seeking waivers, but it is not required that they do so. The Schools of Choice Office is happy to talk with you about waiver selection or preview your list of waivers and their replacement plans prior to submitting your request to your authorizer. Please contact the Schools of Choice contact listed at the end of this document with questions. [Click here](#) to view a list of all the non-automatic waivers held by each charter school.

**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>. 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 non-automatic 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. Additional sample language has been provided in the *Rationale and Replacement Plan* section above.

**Where can I see the approved waivers for each charter school?**

A report that shows all the approved waivers for each charter schools is posted on the waiver webpage of the CDE website (<http://www.cde.state.co.us/cdechart/waivers>). This report is updated monthly following each state board meeting.

**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.

## Schools of Choice Waiver Contact

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