

## 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 in order for the State Board of Education to consider waiver requests involving to seek waivers from statutes and/or rules and regulations that have been imposed on schools and school districts. In addition, the rules specify the process by which the State Board may grant 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.~~

#### **1.00 General Requirements Definitions**

##### ~~1.0 Definitions~~

- 1.01 "Charter School" means a public school that enters into a charter contract pursuant to Article 30.5 of Title 22.
- 1.02 "Institute Charter School" means a charter school authorized pursuant to Article 30.5 of Title 22.
- 1.03 "State Board" means the state board of education.
- 1.04 "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 ~~adopted by rule of the state board~~ 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.

#### **2.00 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](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.

2.05 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.

2.06 Sections ~~Of of~~ Law Ineligible ~~For 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. the following statutory provisions:

- ~~2.6(a) The Public School Finance Act Of 1994, Title 22, Article 54, C.R.S.~~
- ~~2.6(b) The Exceptional Children's Educational Act, Title 22, Article 20, C.R.S.~~
- ~~2.6(c) Any provision of Title 22, Article 11, Part 5, C.R.S., pertaining to the data necessary for performance reports~~
- ~~2.6(d) Any provision of Title 22, C.R.S., that related to fingerprinting and criminal history record checks of educators and school personnel.~~
- ~~2.6(e) The Children's Internet Protection Act, Title 22, Article 87, C.R.S.~~
- ~~2.6(f) Accountability, pursuant to Title 22, Article 11, C.R.S.~~
- ~~2.6(g) Assessments, pursuant to section 22-7-1006.3, C.R.S.~~
- ~~2.6(h) Duties of the president and vice president of a school district board of education, pursuant to 22-32-105, C.R.S.~~
- ~~2.6(i) 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)(I), C.R.S.~~
- ~~2.6(j) Limits and requirements for a school district that conducts an educational program outside of its territorial boundaries, pursuant to 22-32-109(2), C.R.S.~~
- ~~2.6(k) Conduct and school discipline codes, pursuant to 22-32-109.1(2)(a), C.R.S.~~
- ~~2.6(l) Use of on-site peace officers as school resource officers and notifications of arrests and notices issued, pursuant to 22-32-146, C.R.S.~~
- ~~2.6(m) 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.~~

~~2.6(n) The requirement to post on the internet the statutes for which waivers are granted as provided in Section 22-44-305, C.R.S.~~

~~2.6(e) Any provisions of section 22-1-130, relating to notification to parents of alleged criminal conduct by charter school employees.~~

### 3.00 Waiver Requests by Charter Schools and Automatic Waivers

**3.01** List of ~~Automatically-automatically Waived-waived Statutes-statutes~~ for all charter schools:

The following statutes ~~will be~~ automatically waived for ~~all c~~Charter ~~s~~Schools, ~~including an Institute Charter School~~. 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), C.R.S. Local board powers-Policies relating the in-service training and official conduct;

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) 2-63-401, 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.

**3.02** Legal ~~Standard-standard~~ for granting ~~non-automatic~~ waivers to charter schools

3.02(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.

3.02(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.

3.2(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 ~~a charter school's~~ application.

### **3.03** 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 ~~by the State Board~~ shall be subject to review periodically, but at least every five years. A waiver may be revoked if the State Board deems the waiver ~~is deemed~~ no longer necessary ~~by the State Board of Education~~.

### **3.04** Application Process

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

3.04 (a) Within ten days after the charter ~~school~~ 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.

### **3.05** 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. ~~the following statutes and/or related rules:~~

~~3.5(a) School accountability committees as described in section 22-11-401, C.R.S.~~

~~3.5(b) Assessments required to be administered pursuant to section 22-7-1006.3, C.R.S.; 3.5(e) School performance reports pursuant to Title 22, Article 11, Part 5, C.R.S.;~~

~~3.5(d) The Public School Finance Act of 1994, Title 22, Article 54, C.R.S.;~~

~~3.5(e) The Children's Internet Protection Act, Title 22, Article 87, C.R.S.; or~~

~~3.5(f) The requirement to post on the internet the statutes for which waivers are granted as provided in Section 22-44-305, C.R.S.~~

~~3.5(g) Any provisions of section 22-1-130, relating to notification to parents of alleged criminal conduct by charter school employees.~~

### **4.00** ~~Statement of Basis and Purpose~~

~~The basis of these rules, adopted by the State Board of Education is found in 22-2-106(1) (A) and (C), 22-2-107(1)(C), 22-2-117, C.R.S., 22-30.5-104(6) and 22-2-117, C.R.S. The purpose of these rules 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. In addition, the rules 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.~~

- 4.1 — ~~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.~~
- 4.2 — ~~The basis for amendments to section 3.0 of these rules, adopted by the State Board of Education in November 2014 is found in sections 22-30.5-104-106, 22-30.5-507 and 22-30.5-507, C.R.S., which were amended by the General Assembly in 2014 by House Bill 14-1292. The purpose of these amendments is to repeal the obsolete provisions concerning the process for Charter Schools to request automatic waivers of statute and rule and to revise the list of automatic waivers.~~
- 4.3 — ~~The basis for amendments to section 3.01 of these rules, adopted in by the State Board of Education in 2016 is found in Section 22-30.5-104, C.R.S., which was amended by the General Assembly in 2016 in House Bill 16-1422.~~
- 4.4 — ~~The basis for amendments adopted by the State Board of Education 2017 is House Bill 17-1375 which removed two waivers from the list of automatic waivers for charter schools and created a requirement for districts and charter schools to post information on the internet regarding the statutes for which waivers have been granted.~~
- 4.5 — ~~The basis for these amendments is found in sections 22-30.5-104(6) and 22-30.5-507(7), C.R.S., which was amended by the General Assembly in 2018 in House Bill 18-1269.~~

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## **Editor's Notes**

### **History**

Sections 2.04(a), 3.06(b)-(w), 4.05 eff. 01/14/2013.

Sections 2217-R-1.00, 2217-R-3.00, 4.06 eff. 01/15/2015.

Entire rule eff. 01/30/2016.

Sections 2.05, 2.06(j)-(m), 3.01(C)-(Q), 4.07 eff. 12/15/2016.

Sections 2.06(n), 3.01, 3.05(d)-(f), 4.08 eff. 12/30/2017.

Entire rule eff. 11/30/2018.