

Waiver Guide

A GUIDE TO THE CHARTER SCHOOL WAIVER
PROCESS



COLORADO CHARTER SCHOOL INSTITUTE | 1580 LOGAN STREET STE 210 DENVER, CO 8020

Table of Contents

What are Waivers?	2
Automatic v. Non-Automatic Waivers	2
Obtaining Waivers.....	2
Posting of Waivers	3
Automatic Waivers	4
Non-Automatic Waivers	6
Operations.....	6
Employment	8
Academics.....	10
Waiver Template and Sample Waivers.....	11

What are Waivers?

Colorado law allows schools/districts to request waivers from certain areas of state statute and rule. The purpose of a waiver is to allow autonomy in areas that will enhance educational opportunity and quality while still complying the intent of the law. Charter schools can implement their educational mission to its full potential when they are granted certain waivers.

Automatic v. Non-Automatic Waivers

There are two different types of waivers: automatic and non-automatic. **Automatic** waivers are automatically granted to a charter school upon the establishment or renewal of a charter contract. There is no need to formally submit a Rationale and Replacement Plan (RRP) for automatic waivers, but they should be listed in your waiver request. Please see the [CDE waiver webpage](#) for a current list of automatic waivers. Unless specified, 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.

There are a few areas from which charter schools may not request waivers per C.R.S. 22-30.5-507(7)(b):

- 1) School accountability committees as described in section 22-11-401;
- 2) The assessments required to be administered pursuant to section 22-7-1006.3;
- 3) School performance reports pursuant to part 5 of article 11 of this title;
- 4) The "Public School Finance Act of 1994", article 54 of this title 22;
- 5) The "Children's Internet Protection Act", article 87 of this title 22;
- 6) The requirement to post on the internet the statutes for which waivers are granted as provided in section 22-44-305;
- 7) Any provisions of section 22-1-130, relating to notification to parents of alleged criminal conduct by charter school employees;
- 8) Section 22-33-106.1, concerning suspension and expulsion of students in preschool through second grade;
- 9) Section 22-30.5-507(3), 22-32-110(1)(k) and 22-63-206(1) relating to discrimination based on hair texture, hair type, or a protective hairstyle that is commonly or historically associated with race;
- 10) Federal requirements; and
- 11) State statutes that are outside of Title 22.

Obtaining Waivers

A school does not need to explicitly request waiver from or submit RRP for defined automatic waivers. However, charter schools must go through a formal process to waive any state statute or rule that is not already considered automatic. To be granted a waiver, a CSI school must draft its request for all non-automatic waivers and submit them to CSI for review. Requests for non-automatic waivers must include:

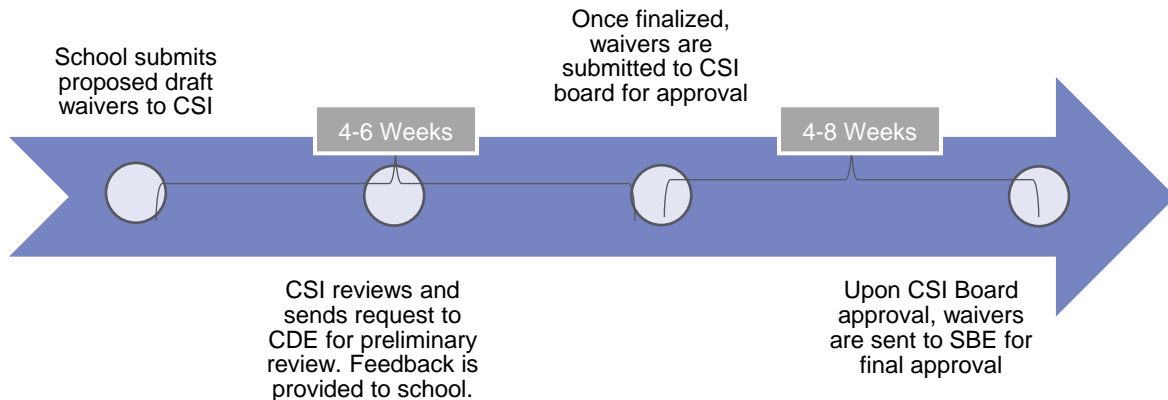
- A list of statutes/rules requested for waiver;
- A RRP for each waiver that addresses the reason for the request ("rationale") and the manner in which a charter school shall comply with the intent of the state statutes and/or state board rules ("replacement plan");
- The duration of the waiver;
- The financial impact (if any) of waiving out of the law or policy;
- An explanation of how the impact of the waivers will be evaluated; and

- The expected outcome from waiving out of this law or policy.

Waivers are typically drafted and submitted to CSI during the contracting process for new schools and subsequently during contract renewal. CSI’s Legal and Policy Associate (LPA) will review the waiver requests and send them to CDE’s Schools of Choice Unit for a preliminary review. Upon receiving feedback from CDE, the school should finalize the requests and obtain approval from the school governing board. CSI’s LPA will then submit the school board-approved waiver requests to the CSI Board for review. The requests will then be submitted to the State Board of Education for final approval.

The LPA will set and communicate the timelines for submitting waiver requests. Generally, waiver requests must be submitted to the CSI at least **4-6 weeks** before the CSI Board meeting at which the waiver requests are reviewed. Once approved by the CSI Board, the waivers are then sent to the State Board of Education for approval. This can take another **4-8 weeks** depending on the state’s meeting schedule.

Approved waivers are valid through the term of the charter contract. For instance, a school that has a contract with CSI until June 30th, 2025 will have valid waivers until that date. Should a school seek to revise its waivers during the term of the contract, the school can submit a [Charter Modification Request](#).



Posting of Waivers

C.R.S. 22-44-305 requires charter schools to post their automatic and non-automatic waivers in a downloadable format on their Financial Transparency page. There should be two separate links on this page:

1. The [standardized description and rationale for automatic waivers](#) provided to charter schools, including the name and contact information for a charter school employee who can provide additional information about the automatic waivers.
2. The non-automatic waivers requested and received by the school, with the corresponding rationale and replacement plans.

Automatic Waivers

As previously described, **automatic** waivers are automatically granted to a charter school upon the establishment or renewal of a charter contract. There is no need to formally submit a RRP for automatic waivers, but they must be listed in your waiver request. The following is a brief description of each of the automatic waivers.

C.R.S. 22-1-112

Statute Title: School Year – National Holidays

Explanation: This statute sets a state school year and national holiday schedule. A waiver of this statute authorizes a charter school to develop its own school calendar that fits its unique needs.

C.R.S. 22-32-109(1)(f)

Statute Title: Local Board Duties Concerning Selection of Staff and Pay

Explanation: This statute authorizes each school district to employ and compensate all personnel required to maintain the operations and carry out the educational program of the district. A waiver of this statute allows a charter school to hire its own staff and set compensation structures independent from the district.

C.R.S. 22-32-109(1)(t)

Statute Title: Determine Educational Program and Prescribe Textbooks.

Explanation: This statute authorizes each school district to determine its educational programs and prescribe textbooks for such programs. A waiver of this statute enables a charter school to choose its own educational program and textbooks in accordance with its charter application as approved by its authorizer.

C.R.S. 22-32-110(1)(h)

Statute Title: Local Board Powers – Terminate Employment of Personnel

Explanation: This statute authorizes each school district to terminate the employment of personnel. A waiver of this statute permits a charter school to terminate its own personnel.

C.R.S. 22-32-110(1)(i)

Statute Title: Local Board Duties – Reimburse Employees for Expenses

Explanation: This statute authorizes each school district to reimburse employees for work-related expenses. A waiver of this statute permits a charter school to adopt its own policies and procedures for employee expense reimbursement.

C.R.S. 22-32-110(1)(j)

Statute Title: Local Board Powers – Procure Life, Health, and Accident Insurance

Explanation: This statute authorizes each school district to obtain insurance coverage for its employees. A waiver of this statute permits a charter school to negotiate and procure its own group life, health, or accident insurance coverage for its employees.

C.R.S. 22-32-110(1)(k)

Statute Title: Local Board Powers – Policies Related to In-service Training and Official Conduct

Explanation: This statute authorizes each school district to adopt written policies relating to employee efficiency, in-service training, professional growth, official conduct, and welfare of employees. A waiver of this statute permits a charter school to adopt its own policies in these areas.

C.R.S. 22-32-110(1)(ee)

Statute Title: Local Board Powers- Employ Teachers’ Aides and Other Non-certified Personnel

Explanation: This statute authorizes each school district to employ teachers’ aides and other non-licensed personnel. A waiver of this statute permits a charter school to employ its own teachers’ aides and other non-licensed personnel.

C.R.S. 22-32-126

Statute Title: Employment and Authority of Principals

Explanation: This statute authorizes each school district to employ licensed principals. A waiver of this statute permits a charter school to employ its own, possibly non-licensed, principals.

C.R.S. 22-33-104(4)

Statute Title: Compulsory School Attendance

Explanation: This statute requires each school district to adopt a written policy setting forth attendance requirements. A waiver of this statute permits a charter school to adopt its own attendance requirements in accordance with applicable laws and regulations (e.g., C.R.S. 22-33-104; 1 CCR 301-78).

C.R.S. 22-63-301

Statute Title: Teacher Employment, Compensation, and Dismissal Act – Grounds for Dismissal

Explanation: This statute sets forth the grounds under which a school district may dismiss a teacher. A waiver of this statute permits a charter school to exercise at-will employment and establish its own grounds for teacher dismissal, provided that employment decisions are made in accordance with applicable laws and regulations (e.g., anti-discrimination laws).

C.R.S. 22-63-302

Statute Title: Teacher Employment, Compensation, and Dismissal Act – Procedures for Dismissal of Teachers

Explanation: This statute sets forth the state procedures for teacher dismissal. A waiver of this statute permits a charter school to exercise at-will employment and determine its own procedures for teacher dismissal, provided that decisions are made in accordance with applicable laws and regulations.

C.R.S. 22-63-401

Statute Title: Teacher Employment, Compensation, and Dismissal Act – Teachers Subject to Adopted Salary Schedule

Explanation: This statute authorizes each school district to adopt a teacher salary schedule. A waiver of this statute permits a charter school to create its own salary schedule that fits its unique needs.

C.R.S. 22-63-402

Statute Title: Teacher Employment, Compensation, and Dismissal Act – Certificate Required to Pay Teachers

Explanation: This statute authorizes each school district to pay only licensed teachers. A waiver of this statute permits a charter school to pay non-licensed teachers, provided that the school has a waiver from C.R.S. 22-63-201 (relating to the requirement to employ licensed teachers).

C.R.S. 22-63-403

Statute Title: Teacher Employment, Compensation, and Dismissal Act – Payment of Salaries Upon Termination

Explanation: This statute requires that upon the dismissal of a teacher and prior to the end of that teacher's employment contract, each school district must pay the pro rata share of salary installments due and payable under the employment contract for the period during which no services are required to be performed. Consistent with the at-will nature of charter school employment, a waiver of this statute enables a charter school to terminate a teacher's pay upon dismissal, provided that decisions are made in accordance with applicable laws and regulations.

Non-Automatic Waivers

Unless specified, 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. The following is a list of commonly requested non-automatic waivers. This list is not exhaustive and there may be other waivers from state statute or rules that CSI schools can request. For a list of other waivers received by charter schools in the state, see [here](#).

Operations

C.R.S. 22-32-109(1)(b)

Statute Title: Local Board Duties Concerning Competitive Bidding

Explanation: Waives the school from the competitive bidding policies of the local district, allowing it to create its own policies. As part of its replacement plan, the school must develop its own policies and procedures for competitive bidding in the purchase of goods and services compliant with state and federal law, best practices, the charter contract, its bylaws and conflict of interest policies, and any other applicable requirements.

Note: The replacement plan should not detail the substance of the policy, rather should state that the school will develop and adhere to its own policy. CSI may request a review of the policy to ensure that one is in place and is being adhered to.

C.R.S. 22-32-109(1)(n)(I)

Statute Title: Length of Academic Session

Explanation: Waives the school from district determinations regarding the length of time the school is in session for the following school year and planned teacher-pupil instruction and contact hours, allowing the school to specify its own academic session provided it meets minimum statutory requirements.

Note: The school must still meet minimum requirements for planned teacher-pupil instruction and contact and the length of the school year. The planned teacher-pupil instruction and teacher-pupil contact cannot be fewer than 1,080 hours during the next school year for high school and junior high students, 900 hours for elementary and full-day kindergarten students, and 450 hours for half-day kindergarten students. School cannot be in session for fewer than 160 days without approval from the Commissioner.

C.R.S. 22-32-109(1)(n)(II)(A)

Statute Title: Teacher-Pupil Contact Hours

Explanation: Waives the school from district determinations of actual teacher-pupil instruction and contact hours, allowing the school to specify its teacher-pupil contact hours provided it meets minimum statutory requirements.

Note: Actual teacher-pupil instruction and contact hours cannot be less than 1,056 for secondary school students, 968 for elementary students, 870 for full-day kindergarten students, or 435 for half-day kindergarten students when factoring in parent-teacher conferences, staff in-service programs, and necessary school closures such as snow days.

C.R.S. 22-32-109(1)(n)(II)(B)

Statute Title: Adoption of District Calendar

Explanation: Waives the school from district calendars so that the school can develop its own calendar.

Note: The school should meet the remainder of this statutory provision which requires that the calendar be provided to the parents of all students enrolled in the school, include the dates for staff in-service programs, and allows for public input from parents and teachers prior to scheduling the staff in-service programs.

C.R.S. 22-32-110(1)(y)

Statute Title: Local board powers-Accepting gifts, donations, and grants

Explanation: Waives the school from the local district's power to accept gifts, donations and grants so that the school itself can accept them. As part of the replacement plan, the school must develop its own policies and practices for accepting gifts, donations, and grants in

accordance with state and federal law, the charter contract, its bylaws and conflict of interest policies, and any other applicable requirements.

Note: The replacement plan should not detail the substance of the policy, rather should state that the school will develop and adhere to its own policy. CSI may request a review of the policy to ensure that one is in place and is being adhered to.

C.R.S. 22-33-105(7)(b)

Statute Title: Suspension, Expulsion, and Denial of Admission

Explanation: Waives the school from the state procedures for suspension, expulsion, and denial of admission as it relates to the authority to suspend, expel, or deny admission to a student.

Note: The replacement plan must still meet the intent of the law, adhere to due process requirements, and comply with state and federal laws pertaining to students with disabilities. The primary purpose of waiver from this statute is to allow the school to develop its own policies and procedures relating to suspension, expulsion, and denial of admission given that there is no district board of education involved. Waiver from this provision is separate from waiver of the *grounds* for suspension, expulsion, and denial of admission. The Charter School Institute reserves the right to approve the plan once it has been created.

School requesting this waiver may also consider waiver from: 22-32-109(1)(bb)(I), 22-32-109.1(2)(a), 22-33-106 together with this replacement plan.

Employment

C.R.S. 22-9-106

Statute Title: Local Boards of Education Duties - Performance Evaluation System

Explanation: Waives schools from having to use the state performance evaluation system in evaluating teachers and administrators.

Note: The replacement plan for this waiver must specify how the school will meet the intent of the law, including a clear statement that (1) there is an evaluation system in place; (2) all staff have been trained in that system; and (3) there are clear quality standards for those being evaluated and the evaluator. If seeking this waiver, the school should also be sure to apply for waiver from 22-2-112(1)(q)(I). **Schools should plan to submit a copy of their evaluation framework/rubrics when submitting this waiver request to the State Board of Education.**

COVID-19 Update: CDE will not monitor the measures of student learning/outcomes (MSL/MSO) portion of the Educator Effectiveness requirements for educator evaluation in the 2020-21 school year. CDE will be working with the Stakeholder engagement group and the State Board of Education, in partnership with the state legislature, on a legislated pause in the 50% growth measure.

C.R.S. 22-2-112(1)(q)(I)

Statute Title: Commissioner - Duties

Explanation: Waives the school from reporting its teacher evaluation results to the state. This waiver is an extension of 22-9-106 that grants the school the ability to administer its own performance evaluations.

Note: The replacement plan for this waiver must address that, although the school does not have to report its evaluation results, it will use the results to inform hiring and professional development. This is an important waiver to request if the school is also seeking waiver from **C.R.S. 22-9-106** because the evaluation results will not align to the state reporting system for schools using a different evaluation system. Waiver from reporting teacher evaluation results does not waive the school from reporting the other requirements of the Teacher Student Data Link. This waives a school from having to report “effectiveness” of teachers per the state’s ESSA plan, but the school must still report in-field/out-of-field and years of experience. To be in-field, a teacher must have one of the following in the subject area which s/he is assigned to teach: (1) endorsement on a CO teaching license; (2) Degree – B.A. or higher; (3) 36 semester credit hours; or (4) passing score on a State Board of Education content exam (e.g., Praxis). For more information, please see [Educator Qualifications Under ESSA](#). CDE will publicly report the rate at which low-income and minority students are being taught by out-of-field teachers.

C.R.S. 22-63-201

Statute Title: Employment - License Required – Exception

Explanation: Waives the school from the state requirement that all teachers hold a valid teacher’s license with CDE so that the school has the ability to hire qualified, unlicensed individuals.

Note: The replacement plan must specify the standards the school will hold teachers to, whether that be (1) a bachelor’s degree or higher in the relevant subject area; (2) completing 36 semester credit hours in the subject matter in which the employee will teach; or (3) passing a State Board approved content exam in the relevant subject area. The replacement plan should also address whether this applies to all teachers or just core content teachers. Schools must report the number of in-field/out-of-field teacher designations, years of experience of teachers, and effectiveness ratings (unless waived) or any other requirements promulgated by CDE. The replacement plan should also indicate that Special Education Teachers will hold the requisite state license and endorsement. This is because Special Education licensure is a federal requirement that is not waivable.

C.R.S. 22-63-202

Statute Title: Employment Contracts - Contracts to be in Writing - Duration - Damage Provision - Repeal

Explanation: Waives the school from the state requirement that schools enter into written employment contracts with teachers and the requirements for what must be included in the contracts so that the school can determine the employment relationship it has with teachers (at-will versus contract) and, if a contracted employee, set the terms of that contract.

Note: The replacement plan should address the employment relationship (at-will versus contract). This waiver does not waive a school from other applicable employment laws and protections such as non-discrimination, whistleblower protection, speech protections, etc.

C.R.S. 22-63-203

Statute Title: Probationary Teachers - Renewal and Nonrenewal of Employment Contract

Explanation: Waives the school from state requirements relating to probationary teachers, allowing the school to set its own definition of probationary teachers (provided the school also receives waiver from 22-9-106) and determine the employment terms that apply to probationary teachers as they relate to re-employment.

C.R.S. 22-63-203.5

Statute Title: Nonprobationary Portability

Explanation: Waives the school from state requirements relating to nonprobationary teachers who seek to retain nonprobationary status when transferring to a new school district by submitting evidence of student academic growth and performance evaluations demonstrating “effectiveness” from the prior two years.

C.R.S. 22-63-205

Statute Title: Exchange of Teachers - Exchange Educator Interim Authorization

Explanation: Waives the school from the ability of a school district to provide for the exchange of teachers with another school district (in-state or out-of-state) or foreign government. Each school has its own ability to development programs allowing for the exchange of teachers in order to promote equal educational opportunity provided that such programs are consistent with law but is not required to participate in the district’s efforts to do so.

C.R.S. 22-63-206

Statute Title: Transfer - Compensation

Explanation: Waives the school from the district’s ability to transfer teachers to and from other schools within the district so that the school is not required to accept district recommendations to transfer teachers in or out of the school.

Note: The replacement plan should specify that, to the extent that teachers are transferred to other positions or grades within the school, there shall be no discrimination shown toward any teacher in the assignment or transfer of that teacher because of sex, sexual orientation, marital status, race, creed, color, religion, national origin, ancestry, or membership or non-membership in any group or organization. Race includes hair texture, hair type, or a protective hairstyle that is commonly or historically associated with race.

Academics

C.R.S. 22-1-110

Statute Title: Effect of Use of Alcohol and Controlled Substances to be Taught

Explanation: Waives the school from teaching the effect of use of alcohol and controlled substances in accordance with state law and instead allows the school to develop its own curriculum and educational program regarding the effects of alcohol and controlled substances.

Note: The replacement plan should indicate that the school will still meet state standards.

C.R.S. 22-7-1014(2)(a)

Statute Title: Individualized Readiness Plans - School Readiness - Assessments

Explanation: Waives the school from having to use one of the state-approved kindergarten readiness assessments. A waiver from the Kindergarten School Readiness Assessment does not waive any curriculum requirements under the READ Act.

A charter school administering a State Board-approved READ Act assessment within the first 60 calendar days of the school year may fulfill the requirement to administer the literacy component of the school readiness assessment. If a charter school chooses not to administer a State Board-approved READ Act assessment within the first 60 calendar days of the school year, the charter school must administer the literacy component of the school readiness assessment within the first 60 calendar days of the school year and a State Board-approved READ Act assessment.

Note: The replacement plan must (1) identify that the school will still administer an assessment that meets the intent of the law within the first 60 days of the kindergarten start date; (2) provide evidence that the selected assessment is reliable and research-based; (3) include an affirmative statement that the school will utilize the results of the assessment to develop individualized readiness plans for students; and (5) confirm that the results of the school readiness assessments will not be used to deny a student admission or progression to first grade.

Waiver Template and Sample Waivers

A waiver template, and examples of commonly requested waivers with sample RRP language based on waivers previously approved by the State Board of Education, can be retrieved [here](#). Schools are welcome to review and add or adjust language to fit individual school needs. These examples are subject to change at any time depending upon guidance from CDE.

To locate more examples of waiver rationale and replacement plans, schools can search the State Board of Education [BoardDocs page](#) (for example, search “ICAP Waiver”). More information on waivers, including a list of waivers that have previously been approved for each charter school, can be found on [CDE’s website](#).