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M E M O R A N D U M

September 16, 2016

TO: Interested Persons
FROM: Lisa Gezelter, Research Analyst, 303-866-3264
SUBJECT: Waivers from State Education Laws

Summary

This memorandum provides information regarding the regulation of school districts, charter schools, innovation schools, and home schools. Specifically, it describes the waivers to state law granted by the State Board of Education (SBE) to school districts, charter schools, innovation districts and schools, and home schools. Also included is information relating to the processes for requesting waivers.

Background. In general, Colorado statutes apply to all public schools, including charter schools and innovation schools, unless waived by the State Board of Education (SBE). Waivers are granted in response to approved charter school applications, approved innovation plans, or via special request. State law places certain limitations on the SBE's ability to grant waivers, and those limitations vary for each type of public school. The SBE has promulgated rules for the granting of waivers (Attachment A).

According to the Colorado Department of Education (CDE), over 800,000 students are enrolled in Colorado's public schools. For the 2015-16 school year, over 226 charter schools in Colorado served over 108,000 students; 29,164 students were enrolled in innovation schools; and 8,606 students were enrolled in full-time home-based educational programs (home schools).

School districts. Any school district in Colorado can request a waiver of state law from the SBE. Section 22-2-117, C.R.S., gives the SBE the authority to grant waivers to school districts at its discretion; however, the SBE may not waive statutes for school districts in the following thirteen areas:

- the Public School Finance Act of 1994 (Article 54 of Title 22, C.R.S.);
- the Exceptional Children's Education Act (Article 20 of Title 22, C.R.S.);
- school performance reports pursuant to Part 5 of Article 11 of Title 22, C.R.S.;
- any provision of state law relating to fingerprinting and criminal history record checks of educators and school personnel;

- the Children's Internet Protection Act (Article 87 of Title 22, C.R.S.);
- accreditation statutes in Article 11 of Title 22, C.R.S.;
- administration of statewide assessments (Section 22-7-1006.3, C.R.S.);
- duties of school board members (Section 22-32-105, C.R.S.);
- ban on tobacco use on school property (Section 22-32-109 (1)(bb)(I), C.R.S.);
- requirement that school boards need written consent to conduct educational programs outside of their territorial boundaries (Section 22-32-109 (2), C.R.S.);
- school boards' enactment of conduct and discipline codes (Section 22-32-109.1 (2)(a), C.R.S.);
- statutes relating to school resource officers (Section 22-32-146, C.R.S.); and
- statutes relating to districts' written attendance policies (Section 22-33-104 (4), C.R.S.).

Charter schools. State law also gives the SBE the authority to grant waivers of state law to charter schools (Section 22-30.5-104 (6)(b), C.R.S.). New charter schools are created via an application process. Organizers submit an application to an authorizer, which may be a local school district or the state Charter School Institute. These applications contain a list of state laws that the charter organizers request to have waived, in addition to the automatic waivers granted by the SBE for every approved charter school (see Table 1). Authorizers either approve or disapprove these applications. If applicants are requesting the waiver of any portion of state law that is not on the list of automatic waivers, the applicants and authorizers must seek the permission of the SBE. Any applications that are disapproved by local authorizers can be appealed to the state board. Three sections of law may not be waived for any charter school:

- Article 54, Title 22, C.R.S., Public School Finance Act;
- Section 22-11-401 *et seq.*, C.R.S., relating to school accountability; and
- Article 87, Title 22, C.R.S., the Children's Internet Protection Act.

State law requires the SBE to promulgate rules that list automatic waivers granted to every approved charter school. The SBE may not include the following statutes on its list of automatic waivers; however, these statutes may be waived when specifically requested by charter school organizers:

- Section 22-9-106, C.R.S., performance evaluation system for educators;
- certain parts of Section 22-32-109, C.R.S. concerning the school calendar; and
- Section 22-63-201, *et seq.*, C.R.S., concerning licensed personnel.

As required by state law, the SBE has promulgated rules for the granting of automatic waivers to charter schools whose applications are approved. Table 1 lists these waivers and specifies the pertinent areas of state law.

Table 1
Automatic Waivers Granted to Charter Schools by the State Board of Education

Section of State Law	Subject Matter
§ 22-1-112, C.R.S.	School Year Holidays
§ 22-32-109 (1)(b), C.R.S.	Competitive bidding
§ 22-32-109 (1)(f), C.R.S.	Selection of staff and pay
§ 22-32-109 (1)(t), C.R.S.	Educational programs and prescribing textbooks
§ 22-32-110 (1)(h), C.R.S.	Relating to termination of employment for school personnel
§ 22-32-110 (1)(i), C.R.S.	Reimbursement of employees for expenses
§ 22-32-110 (1)(j), C.R.S.	Life, health, or accident insurance
§ 22-32-110 (1)(k), C.R.S.	In-service training and official conduct
§ 22-32-110 (1)(y), C.R.S.	Gifts, donations, and grants
§ 22-32-110 (1)(ee), C.R.S.	The employment of teachers' aides and other non-certificated personnel
§ 22-32-126, C.R.S.	Employment and authority of principals
§ 22-33-104 (4), C.R.S.	Compulsory school attendance, attendance policies, and excused absences
§ 22-63-301, C.R.S.	Grounds for dismissal of teachers
§ 22-63-302, C.R.S.	Procedures for dismissal of teachers
§ 22-63-401, C.R.S.	Teachers subject to adopted salary schedule
§ 22-63-402, C.R.S.	Certificates required to pay teachers
§ 22-63-403, C.R.S.	Payment of teachers' salaries

Source: 1 CCR 301-35.

In addition to the automatic waivers, individual charter schools can request waivers from additional sections of state law in their applications. These additional waivers must also be approved by the SBE, and differ for each of the 226 charter schools currently operating in Colorado.

Innovation schools. The Innovation Schools Act was passed in 2008 as a means of allowing school districts some of the same flexibility granted to charter schools. Schools and districts wishing to adopt innovation status must first create an innovation plan, which must be approved by the local board of education. Any requests for waivers from state law that are included in these innovation plans approved by the local board must also be approved by the SBE. Unlike charter schools, there are no automatic waivers for innovation schools. The SBE may not waive the following provisions of state law for innovation schools and districts:

- Article 54 of Title 22, C.R.S., the Public School Finance Act;
- Article 20 of Title 22, C.R.S., the Exceptional Children's Educational Act;
- any section of Part 5 of Article 11 of Title 22, C.R.S., pertaining to performance reports;
- requirements for fingerprinting and criminal background checks for educators and school personnel;
- Article 87 of Title 22, C.R.S., Children's Internet Protection Act; and
- any section of state law not in Title 22, C.R.S.

Table 2 provides a side-by-side comparison of the waivers from state law available to school districts, charter schools, and innovation schools.

**Table 2
Comparison of Available Waivers of Education Statutes**

	School Districts	Charter Schools	Innovation Schools
Statutory Authority for Waivers from State Law	Section 22-2-117, C.R.S.	Section 22-30.5-104 (6)(b), C.R.S.	Section 22-32.5-108, C.R.S.
Automatic Waivers	None	See Table 1	None
Additional Waivers Granted on Case-by-Case Basis?	Yes	Yes	Yes
Statutes That Cannot Be Waived	<ul style="list-style-type: none"> • Article 54 of Title 22, C.R.S., the Public School Finance Act of 1994 • Article 20 of Title 22, C.R.S., the Exceptional Children's Education Act • school performance reports pursuant to Part 5 of Article 11 of Title 22, C.R.S. • any provision of state law relating to fingerprinting and criminal history record checks of educators and school personnel • Article 87 of Title 22, C.R.S., the Children's Internet Protection Act • Article 11 of Title 22, C.R.S., pertaining to accreditation; • Section 22-7-1006.3, C.R.S., relating to the administration of statewide assessments • Section 22-32-105, C.R.S., relating to the duties of school board members • Section 22-32-109 (1)(bb)(I), C.R.S., relating to the ban on tobacco use on school property • Section 22-32-109 (2), C.R.S., relating to school boards needing written consent to conduct educational programs outside of their territorial boundaries • Section 22-32-109.1 (2)(a), C.R.S., relating to school boards' enactment of conduct and discipline codes • Section 22-32-146, C.R.S., relating to school resource officers • Section 22-33-104 (4), C.R.S., relating to districts' written attendance policies 	<ul style="list-style-type: none"> • Article 54, Title 22, C.R.S., Public School Finance Act • Section 22-11-401, C.R.S. <i>et seq</i>, relating to school accountability • Article 87, Title 22, C.R.S., the "Children's Internet Protection Act" 	<ul style="list-style-type: none"> • Article 54, Title 22, C.R.S. "Public School Finance Act" • Article 20, Title 22, C.R.S., "Exceptional Children's Educational Act" • Section 22-11-501 <i>et seq.</i>, C.R.S., pertaining to performance reports • Requirements for fingerprinting and criminal background checks for educators and school personnel • Article 87, Title 22, C.R.S., "Children's Internet Protection Act" • Any section of state law not in title 22

Source: Legislative Council Staff.