

STATE BOARD OF EDUCATION – TOPIC SUMMARY

Topic: Procedure to Request Charter School Waivers

Date: May 21, 2015

Staff/Office: Kate Pattison/Office of Learning

Action Requested: Informational Only Adoption Later Adoption Adoption/Consent Agenda

ISSUES BEFORE THE BOARD: The State Board of Education sets policy and makes decisions regarding individual charter schools across the state including the authority to grant specific waivers of certain provisions within Oregon Revised Statute Chapter 338. The Board and Department have raised questions regarding equity, ethics, and state policy direction for public charter school waivers. The Board will now approve a procedure for reviewing charter school waiver requests based on discussion and input at multiple State Board meetings include the April 2015 work session.

BACKGROUND: Since the establishment of the public charter school law, the Oregon State Board of Education has granted waivers according to ORS 338.025 (2) which states:

Upon application by a public charter school, the State Board of Education may grant a waiver of any provision of this chapter if the waiver promotes the development of programs by providers, enhances the equitable access by underserved families to the public education of their choice, extends the equitable access to public support by all students or permits high quality programs of unusual cost.

On average, the State Board receives 10 waiver requests a year from public charter schools across the state. The most common waiver request is for charter schools to give enrollment priority to students of founders and employees. Twice, the State Board approved waivers to allow students who live within specific attendance boundaries to have enrollment priority. The State Board has also considered waivers related to virtual charter schools, location of a charter school outside the sponsoring district boundary, and teacher licensure requirements. (See attachment)

There are limitations to what the State Board of Education is able to waive, “the State Board of Education may not waive any appeal provision in this chapter or any provision under ORS 338.115 (1)(a) to (y), 338.120, 338.125 (4), 338.135 (2)(b) or 339.122” (ORS 338.025).

Since the August 2014 retreat, the Board has engaged in a number of discussions on its policy regarding approving waivers. The following questions have continued to surface in each discussion:

- What information does the State Board need in order to make informed decisions about waivers?
- What criteria should be used when making decisions on waivers that give students enrollment priority in a public charter school?
- How long should a waiver granted by the State Board be in effect?
- Does granting a public charter school a waiver to allow children of the employees of the public charter school enrollment priority put the employee (a public official) at risk of an ethics violation?
- What responsibility does the State Board have to communicate a shift in policy and provide time for charter schools to adjust their policies?

In order for the State Board to move forward, the Board has considered these questions and asked the Department to recommend a procedure that can be consistently applied to charter school waiver requests and allow the Board to evaluate important components of each request. The attached procedure document includes updated and expanded directions to public charters, provides more clarity on what qualifies as district notification, and includes a rigorous equity lens for evaluating decisions on waivers.

Recommendation

ODE staff recommend formally approving the Process to Request a Wavier of Public Charter School Law.

Attachments

Process to Request a Wavier of Public Charter School Law

Process to Request a Waiver of Public Charter School Law



Charter Schools with an approved charter contract or written approval from a school board if still negotiating a contract, may request waivers of some provisions in [ORS 338](#). The State Board of Education (SBE) has been given the authority to make decisions whether or not to grant a -waiver for a charter school ([ORS 338.025](#) and [OAR 581-026-0130](#)). The Oregon Department of Education (ODE) charter -school staff receives the waiver requests and prepares a recommendation for the state board to review and make a decision. All requests from charter schools must follow a specific format and timeline in order to be presented to the SBE for consideration.

Process:

1. Review the [SBE Policy #302](#) and [SBE Calendar](#) to determine the best time to submit your waiver requests. ODE charter school staff must receive the waiver request at least 30 days before the date of SBE meeting. Waiver requests that have not been considered by the SBE may take two readings for a decision.
2. The charter school governing board should approve the decision to request a waiver. The minutes from this meeting must be included with the waiver request letter.
3. Review the required content of the waiver request and write a letter that addresses each component below:
 - The ORS law to be waived.
 - The specific reason(s) the charter school is seeking the waiver and any other relevant information.
 - The impact the waiver will have on the school and student outcomes.
 - Evidence that the sponsor has received notification of the specific request(s) as required under OAR 581-026-0130.
 - Information on whether or not the sponsor is supportive of the waiver.
 - An explanation of how the waiver will promote the development of programs by providers, enhances the equitable access by underserved families to the public education of their choice, extends the equitable access to public support by all students, or permits high quality programs of unusual cost (ORS 338.025; OAR 581-026-0130).
 - Include narrative, rationale, and supporting data to allow the State Board to evaluate the request using the criteria in #7.
 - Include a plan for reporting on the impact of the waiver if the charter school plans to request the same or similar waiver in the future.
4. Submit the request in writing to ODE charter school staff, include minutes from charter school board meeting and communication from the sponsor indicating whether or not the sponsor supports the waiver request. The waiver may be sent electronically via email.
5. ODE charter school staff will review the request and may request additional information. If the waiver has statewide impact, the SBE may schedule a public hearing prior to making a decision.
6. ODE charter school staff will submit a recommendation to the SBE staff at least one week before the SBE meeting date. The ODE charter school staff recommendation will be made available to the requesting charter school and sponsor at the same time. Recommendations in support of waiver requests are typically for the length of the charter contract unless otherwise requested by the charter school or deemed appropriate by ODE charter school staff. The SBE may require a public charter school to collect data related to the impact of the waiver on the school and student outcomes.
7. The SBE will evaluate the waiver request and base its decision on the following criteria:

Primarily, the SBE will consider whether or not the following criteria are supported by the waiver:

- A. The proposed waiver enhances the equitable access by underserved families to the public education of their choice.
- B. The proposed waiver extends the equitable access to public support by all students.

To better understand how equity will be evaluated, the State Board will consider the following:

- 1. Who are the racial or ethnic and underserved groups affected? What is the potential impact of the waiver and educational opportunity for these groups?
- 2. Does the decision being made ignore or worsen existing disparities or produce other unintended consequences? Does this decision have an impact on eliminating the opportunity gap?
- 3. How does the waiver or educational opportunity advance the 40-40-20 goal?
- 4. Are there barriers to more equitable access to these groups to the public education of their choice? (e.g. mandated, political, emotional, financial, programmatic, or managerial)
- 5. How has the public charter school intentionally involved stakeholders who are also members of these groups within their community?
- 6. How will the public charter school modify or enhance its school to ensure each learner and the school's community's individual and cultural needs are met?
- 7. How is the public charter school collecting data on race, ethnicity, and native language relating to the educational goals for the school and waiver under consideration?
- 8. What is the public charter school's commitment to professional learning for equity? What resources is the public charter school allocating for training in cultural responsive instruction and board governance?

Secondarily, the SBE will consider the following criteria if the first two criteria are found to be supported by the waiver:

- C. The proposed waiver will promote the development of programs by providers.
 - D. The proposed waiver permits high quality programs of unusual cost.
- 8. Each waiver request will be submitted to the SBE and [posted online](#). Depending on the policy questions, potential opposition, and SBE decisions on similar waiver, the request may be included on the consent agenda or considered as a stand-alone topic. If the charter school or sponsor would like an opportunity to address the SBE, please contact the charter school specialist.
 - 9. The SBE record of actions and meeting materials will serve as evidence for a charter school and sponsor regarding the outcome of a waiver request.

Contact:

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[ODE Charter School Technical Assistance Webpage](#)

STATE BOARD OF EDUCATION POLICY & PROCEDURE MANUAL

Policy #302

First Adopted: August 2007

CHARTER SCHOOL LAW WAIVER REQUEST PROCESS

A. Request for Waiver

Pursuant to ORS 338.025, a public charter school (charter school) that has been approved for sponsorship may request the waiver of any provision of ORS 338 (Public Charter School law) by the State Board of Education, as allowed by law.

B. Content of Waiver Request

Such a request must be in writing and addressed to the State Board of Education. Pursuant to OAR 581-020-0341, the request should include the following elements:

1. The ORS law to be waived.
2. The specific reason(s) the charter school is seeking the waiver and any other relevant information.
3. The impact the waiver will have on the school.
4. Evidence that the sponsor has been notified as required under OAR 581-020-0341.
5. How the waiver will promote the development of programs by providers, or enhances the equitable access by underserved families to the public education of their choice, or extends the equitable access to public support by all students, or permits high quality programs of unusual cost (ORS 338.025; OAR 581-020-0341).
6. Whether the sponsoring school district supports the law waiver request.

C. Review Process

Upon receipt of the request, board or ODE staff shall acknowledge receipt of the request to the charter school principals requesting the waiver, and shall assign staff to review the request. Staff will evaluate the request for the following elements:

1. Whether the request is allowed under state law.
2. Whether the board has received and approved similar requests.
3. Whether the sponsoring school district supports the waiver.
4. Who, if anyone, is likely to oppose the request.
5. What policy issues the request raises, if any.
6. The impact on other school districts, other entities, and the state's education system, if any.

Reviewing staff will notify board staff upon completion of the review, notify the requestors of the results of the review (recommend waiver or not) and schedule the item for board review as an information item.

D. Board Review

The contents of the docket item shall be written by the staff reviewer and shall include, at a minimum:

1. The name of the charter school and its sponsor;
2. How long the charter school has been operating;
3. The ORS law to be waived and its content;
4. Whether the sponsoring school district supports the waiver;
5. Any other support and opposition to the waiver submitted to the superintendent;
6. The impact on other school districts, other entities, and the state's education system, if any;
7. Any correspondence or supporting documents from the charter school, district, or others concerning the request; and
8. A recommendation as to whether the request should be granted or not, and the reasons for the recommendation.

Upon review by the board, board members may request additional information from the superintendent regarding the waiver. The item shall be scheduled for action as soon after the initial hearing, generally at the following board meeting.

Should the charter school principals want to make a presentation to the board directly, such requests will be made to board staff and decided by the board chair. Such direct appeals are considered unusual and will require compelling circumstances prior to allowing them by the board chair.

E. Hearing

If waiving the statute(s) has statewide impact, the State Board of Education may schedule a public hearing on the issue prior to making a decision. The hearing may be scheduled during a regular board meeting or may be delegated to the superintendent to schedule at a different time and place. If the hearing takes place separately from a regularly scheduled board meeting, testimony shall be summarized for board members to consider.

F. Decisions

STATE BOARD OF EDUCATION POLICY & PROCEDURE MANUAL

Policy #302

First Adopted: August 2007

CHARTER SCHOOL LAW WAIVER REQUEST PROCESS

Within 120 days of receipt of the proposal, the board will act upon the request. The time period may be extended for good cause. Once the board has voted on whether to grant the waiver or not, the decision shall be communicated to the charter school and the sponsoring school district in a timely manner. Decisions shall also be logged in a reference document identifying the name of the charter school, the waiver requested, and the date the board decided the request. Such a log will aid in the research of future waiver requests.

END OF POLICY