

# Arkansas Public Schools' Waiver Pathways

2022 ADEQUACY STUDY

May 3, 2022

Prepared for the Interim Senate Committee on Education  
and the Interim House Committee on Education



**2022 Adequacy Report**





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## Introduction

Waivers from Arkansas state laws and rules governing education – and the ability to apply for them – have expanded significantly since the concept was first introduced in 1995. Legislation that year introduced conversion charter schools, allowing traditional schools to apply for certain waivers from education laws if *not* following the mandate could propel school and student performance through innovative practices. Fast-forward 24 years to the passage of Act 815 of 2019, the latest law expanding the ability to obtain waivers. Now, any traditional school in the state may apply for any waiver held by any charter school in the state. **During the 2021 school year, 813 of the 1,038 public schools in Arkansas operated under 11,427 individual waivers from the state’s laws and rules.** Those schools enrolled 78% of the state’s public school students and were located in 195 of the state’s 235 public school districts and in all 23 charter school systems.<sup>1</sup> (See Appendix A for a comparison of the number of waivers held by various types of Arkansas schools.)

“Waivers” is not a topic mandated under the adequacy study statute to be studied each biennium as part of the adequacy process. The House and Senate Education committees first requested this report as part its 2018 adequacy discussions. Waivers are considered relevant because a number of the waivers granted today are for laws that grew out of the response to the Arkansas Supreme Court’s 2002 *Lake View* ruling, which declared the state’s education system to be unconstitutional. The court found that in order to “ever maintain a general, suitable and efficient system of free public schools” as required by the Arkansas Constitution, the state’s education funding system must address both adequacy and equity standards in terms of quality of and access to education.

In its *Lake View* ruling in 2007, the Court found that by enacting the laws it did as part of the post-*Lake View* reforms, Arkansas’s General Assembly had met the adequacy and equity standards. Importantly, this came after the Arkansas Supreme Court repeatedly found the General Assembly to be out of constitutional compliance between the original case filing and its final 2007 ruling. Many other waivers that schools operate under currently provide exemptions from adhering to the state’s Standards for Accreditation, which existed prior to the *Lake View* case but were identified in the *Lake View* ruling as one of the underpinning systems required for the education system to meet constitutional standards.

Each biennium, the General Assembly updates the funding matrix, which is used to determine the amount of money necessary to provide a constitutionally adequate education system. As illustrated in the following chart, a number of matrix items (highlighted in yellow) cover resources mandated in law or rule that fall in areas for which schools have been granted waivers. Dollar amounts are those approved in the matrix for the 2021 school year.

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<sup>1</sup> Charter school systems do not include The Excel Center because it educates adults.

2021 Matrix Calculations		Students
School Size		500
K = 8% of students		40
Grades 1-2 = 23% of students		115
Grades 4-12 = 69% of students		345
Staffing Ratios		FTEs
K P:T ratio = 20:1		2.0
Grades 1-3 P:T ratio = 23:1		5.0
Grades 4-12 P:T ratio = 25:1		13.8
PAM = 20% of classroom teachers		4.14

	FTEs
Special Ed Teachers	2.9
Instructional Facilitators	2.5
Librarian/Media Specialist	.85
Guidance Counselor and Nurse	2.5
<b>Total Pupil Support Personnel</b>	<b>8.75</b>
<b>SUBTOTAL</b>	<b>33.69</b>
Principal	1.0
Secretary	1.0

School-Level Salaries	
Teacher Salary + Benefit	\$68,470
Per Student Matrix Expenditure	\$4,613.5
Principal Salary + Benefits	\$99,012
Per Student Matrix Expenditure	\$198.1
School-level Secretary Salary + Benefits	\$40,855
Per Student Matrix Expenditure	\$81.7
<b>School-Level Salaries Per Student</b>	<b>\$4,893.3</b>

District-Level Resources	
Operations & Maintenance	\$705.7
Central Office	\$438.8
Transportation	\$321.2
<b>District-Level Resources Per Student</b>	<b>\$1,456.7</b>
Adjustments (Cushion/Retirement)	\$33
<b>Foundation Per Pupil Expenditure</b>	<b>\$7,018</b>

School-Level Resources	
<b>School-Level Resources Per Student</b>	<b>\$625.9</b>
Technology	\$250.0
Instructional Materials	\$187.9
Extra Duty Funds	\$66.2
Supervisory Aides	\$50.0
Substitutes	\$71.8

Categorical Program Funding		
English Language Learner		\$352
Alternative Learning Environment		\$4,700
Enhanced Student Achievement (ESA)		
	ESA <70%	\$526
	ESA 70%-90%	\$1,051
	ESA >90%	\$1,576
Professional Development		\$40.8

This report will examine:

- The presence of waivers in other states
- Types of waivers in Arkansas
- The relationship between waivers and school performance
- The relationship between waivers and school spending patterns

## Waivers in Other States

The Bureau of Legislative Research (BLR) has found some evidence of the granting of waivers from state-level education laws in other states, although the vast majority of states do not grant waivers for the wide assortment of laws and rules as is the statutorily-allowed practice in Arkansas. Waivers in other states often are related to charter schools or a state's efforts to have innovative schools (see following charts for examples). Additional waivers related specifically to COVID-19 were granted in 2021 with expiration dates related to the pandemic.

The charts below contain available information<sup>2</sup> about waivers in the overall top-performing states on the National Assessment for Education Progress (NAEP), the Southern Regional Education Board (SREB) states with the best NAEP performance, and all contiguous states to Arkansas. The waivers are from state laws only; they exclude waivers from federal laws and waivers specific to the COVID-19 pandemic.

**NAEP STATES**

NAEP States	Traditional District Waivers	Charter District Waivers
Massachusetts	From education collaboratives; Innovation School waivers in six areas: curriculum, budget, schedule/calendar, staffing, professional development, and school district policies	Yes
New Jersey	None found	Yes
New Hampshire	None found	Yes
Minnesota	None found	Yes
Wyoming	None found	Yes
Virginia	Waivers from traditional school year	Yes
Vermont	None found	No
Indiana	None found	Yes
Connecticut	None found	Yes
Utah	Waivers granted for innovative instructional or administrative approaches to personalized and competency-based learning	Yes

**SREB STATES**

SREB States	Traditional District Waivers	Charter District Waivers
Virginia	Waivers from traditional school year	Yes
Florida	None found	Yes
Maryland	None found	Yes
North Carolina	Class size waiver available for specific reasons and conditions; school calendar waiver	Yes
Kentucky	Administrative Regulations can be waived except for those relating to health and safety, civil rights, federal law, or state curriculum and testing	Yes
Georgia	Strategic Waiver School Systems can apply for waivers from a number of laws regarding academic, human resources and financial requirements	Yes
Tennessee	State law allows waivers for rules or statutes that inhibit LEA's ability to meet its goals/mission	Yes
Texas	Waivers are offered for wide variety of requirements and are classified as either Expedited, General, Attendance, Minimum Class Size Exception and Other.	Yes

<sup>2</sup> Information for the comparison charts for each state was found by performing searches within each state's education department websites.

*ARKANSAS AND CONTIGUOUS STATES*

Contiguous States	Traditional District Waiver	Charter District Waiver
Missouri	None found	Yes
Tennessee	State law allows waivers for rules or statutes that inhibit LEA's ability to meet its goals/mission	Yes
Texas	Waivers are offered for wide variety of requirements and are classified as either Expedited, General, Attendance, Minimum Class Size Exception and Other.	Yes
Oklahoma	Waivers are available regarding alternative education, library media services, superintendents, principals, Saturday schools and textbook fund	Yes
Arkansas	All waivers granted to an open-enrollment charter school are available	Yes
Mississippi	None found	Yes
Louisiana	None found	Yes

Waiver Pathways in Arkansas

Arkansas provides a number of pathways for public school districts and charter systems or schools to apply for waivers from the state's laws and rules governing education delivery. Conversion and open-enrollment charter school waivers have been available the longest – for more than 20 years. Schools of Innovation and “Act 1240” waivers were added in the last decade. The most recent to be added are Digital Learning Waivers, which were added for the 2021 school year to help schools deal with challenges presented by the COVID-19 pandemic. This latest category of waivers now represents the waiver that most schools have applied for and received.

Waivers may not be sought from federal civil rights and special education laws. While most state-level mandates are eligible to be waived, laws governing open-records, teacher background checks, health and safety codes, state reporting and accountability requirements, and high school graduation requirements generally are not.<sup>3</sup> The waivers analyzed for this report do not include individual teacher waivers for which school districts and charter systems may also apply.

Overall, the most frequent waivers that schools operated under in the 2021 school year were related to laws and rules governing class size, the instructional day, the school calendar, attendance, and recess.<sup>4</sup>

<sup>3</sup> "Prohibited Waivers," Division of Elementary and Secondary Education (Dec. 2016), retrieved at [https://dese.ade.arkansas.gov/Files/20201127153924\\_Prohibited\\_Waivers\\_12\\_30\\_16.pdf](https://dese.ade.arkansas.gov/Files/20201127153924_Prohibited_Waivers_12_30_16.pdf)

<sup>4</sup> Waivers from Section 1-A.4.2 of the Rules Governing Standards for Accreditation of Arkansas Public Schools and School Districts, A.C.A. §6-10-126, and A.C.A. §6-18-213(a)(2) were the three most common.



**OPEN-ENROLLMENT PUBLIC CHARTER SCHOOLS**

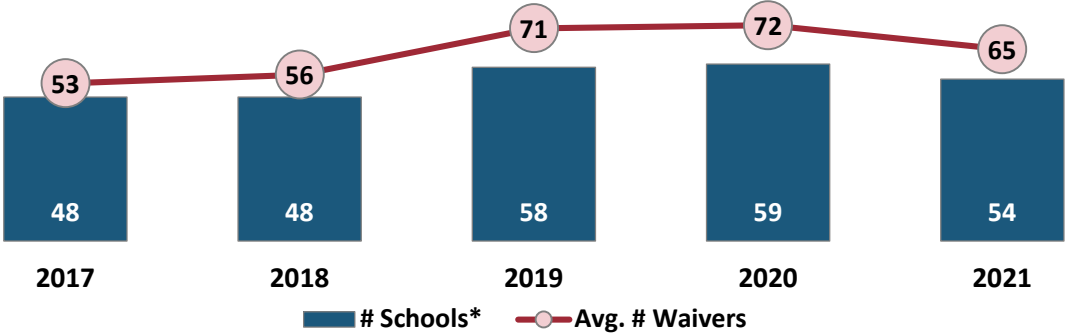
Open-enrollment public charter school operators run schools that are not associated with one of Arkansas’s traditional school districts. Instead, they are usually operated by nonprofit, nonsectarian organizations, but universities and other eligible entities may apply for an open-enrollment public charter as well.<sup>5</sup> The planning process for an open-enrollment charter school takes about one-and-a-half years. Applications are considered by the Charter Authorizing Panel, which is composed of Department of Education Division of Elementary and Secondary Education staff and other stakeholders from outside the Division. Charters are approved for up to five years, at which time the State Board of Education may renew a charter for up to 20 years.

Upon opening, open-enrollment public charters schools often enroll students from across district or county boundaries. Because they have no tax base of their own, state aid supplies all of the per-student state foundation and categorical funding that traditional public school districts are guaranteed.

Currently, a rolling cap is applied to open-enrollment public charter school applications,<sup>6</sup> which now can be approved without regard to the congressional district in which they are located. Any time the number of approved schools reaches within two of the current cap, another five slots are added to create a new maximum.

Open-enrollment public charter schools operate under more waivers per charter than do any other type of school allowed to obtain waivers. In 2021, 23 charter school systems running 54 individual schools operated under an average of 65 waivers per school. The most common waivers that open-enrollment charter schools operated under were related to laws and rules governing teacher salary and licensure, employing a fulltime superintendent, employing a library/media specialist, employing a counselor, and offering alternative learning environments.<sup>7</sup>

**Average Number of Waivers per Open-Enrollment Charter School**



\* Data for all years exclude The Excel Center, an open-enrollment public charter high school for adults.

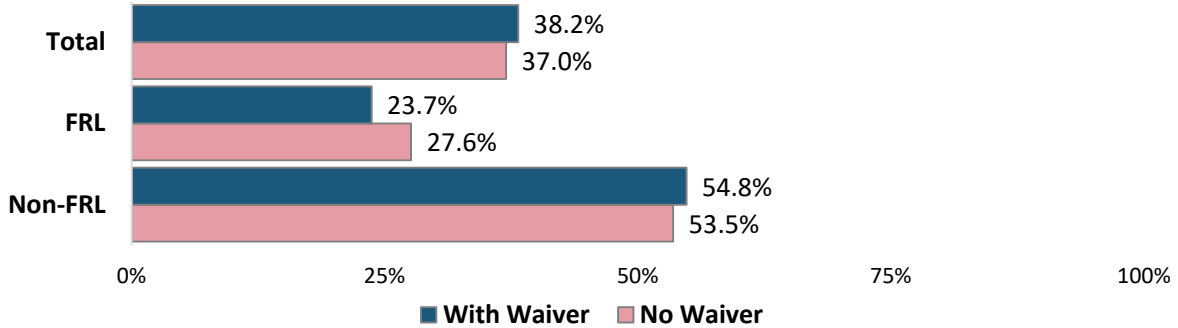
<sup>5</sup> A.C.A. § 6-23-103(6)

<sup>6</sup> A.C.A. § 6-23-304(c)(1)(A)

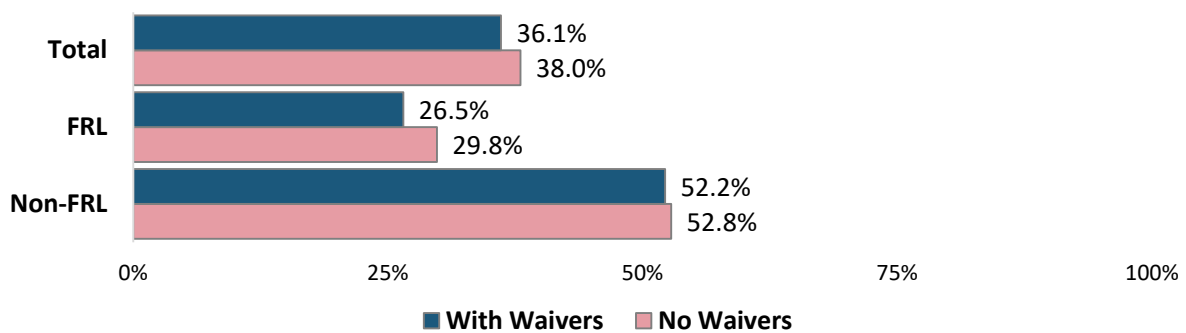
<sup>7</sup> Waivers from the School District Requirement for Personnel Policies, Salary Schedules, Minimum Salaries, and Document Posted to District Website rule was the most common, followed by sections 4-B.2, 4-D.1, 4-E-1, and 4-F.1 of the Rules Governing Standards for Accreditation of Arkansas Public Schools and School Districts, and Rules Governing Special Needs Funding.

On the whole, students tended to perform about the same in the open-enrollment public charter schools as they performed in all other schools, but FRL students tended to score lower in the open-enrollment charter schools than they did in all other schools.

**Percent of Students Scoring Ready or Exceeding - ELA**



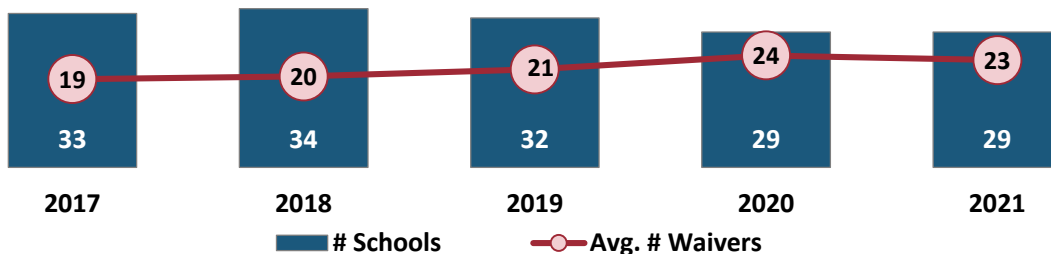
**Percent of Students Scoring Ready or Exceeding - Math Exam**



*CONVERSION CHARTER SCHOOLS*

Conversion charter schools are traditional public schools that have applied to operate under a charter, usually with waivers from some of the laws and rules governing Arkansas’s education system.<sup>8</sup> They enroll students from within the district in which they are located and are funded by the same tax base as other schools in their school district.

**Average Number of Waivers per Conversion Charter School**



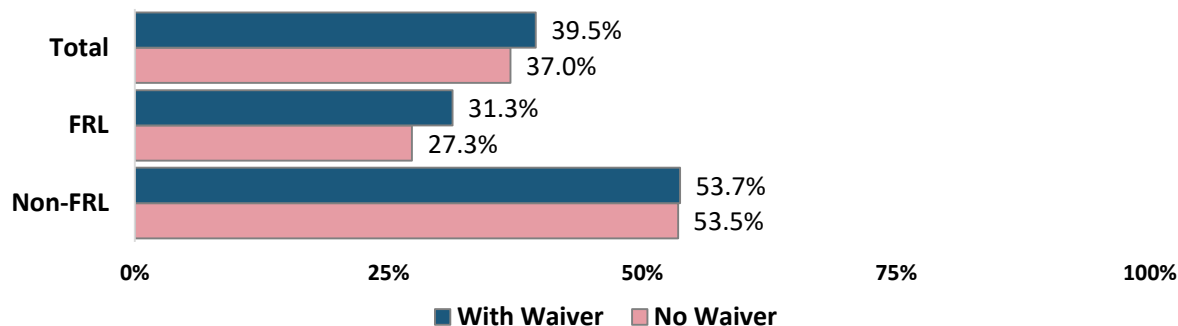
<sup>8</sup> A.C.A. § 6-23-201 et seq.

Conversion charter schools, as with open-enrollment public charters, now submit applications to the Charter Authorizing Panel, which is appointed by the Secretary of DESE, rather than the State Board.<sup>9</sup> Charters for these schools can be approved for up to five years. No limit to the number of conversion charter schools that may exist in the state has been legislated.

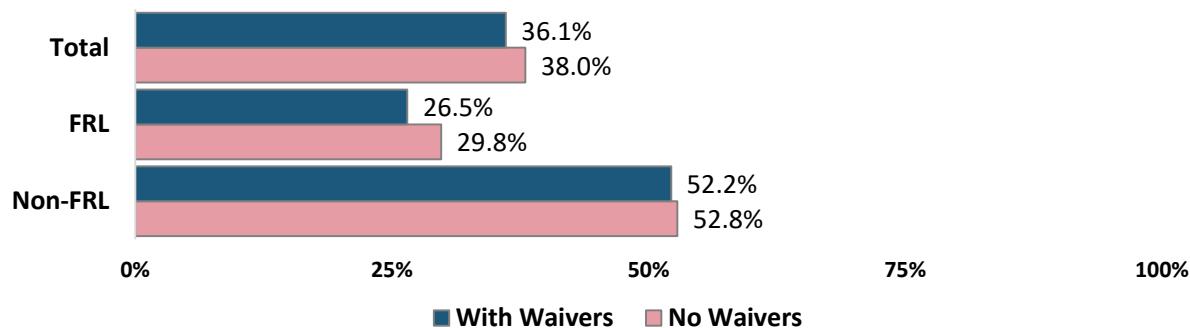
Conversion charter schools operate under fewer waivers, on average, than do open enrollment public charter schools. During the 2021 school year, 29 schools in 25 districts operated under conversion charter school waivers, averaging 23 waivers apiece. The most common waivers that conversion charter schools operated under were related to laws and rules governing teacher salary and licensure and class size and teaching load.<sup>10</sup>

When comparing the performance of FRL students in English Language Arts in the 30 schools operating under conversion charter waivers with all other schools, the FRL students were *more likely* to score Ready and Exceeding in the school with the waivers than they were in schools without waivers. All students performed worse in math in schools with the conversion school waivers than the students in schools without the waiver performed.

**Percent of Students Scoring Ready or Exceeding - ELA Exam**



**Percent of Students Scoring Ready or Exceeding - Math Exam**



<sup>9</sup> A.C.A. § 6-23-201(a)(1).

<sup>10</sup> Waivers from A.C.A. §6-17-309, §6-17-902, §6-17-401, §6-17-812, Sections 1-A.5 , 4-D.1 of the Rules Governing Standards of Accreditation of Arkansas Public Schools, and the Rules Governing Class Size and Teaching Load were the most common.

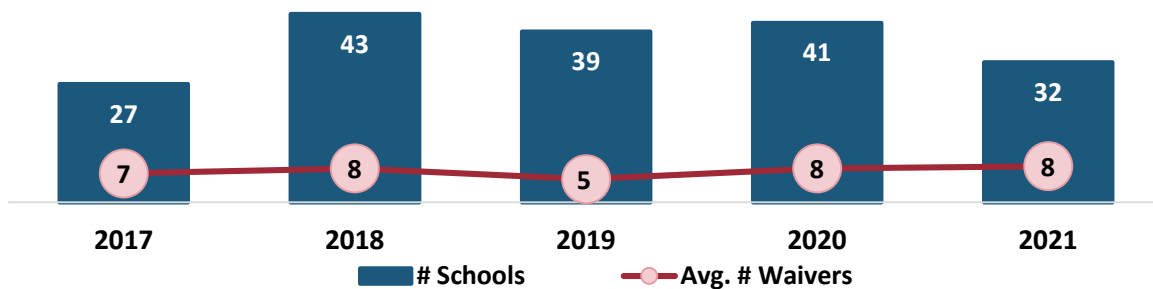
*DISTRICTS AND SCHOOLS OF INNOVATION*

In 2013, Act 601 created districts and schools of innovation, which allowed these public educational entities to apply for and operate under waivers from many of Arkansas’s education-related laws and rules, similarly to their public charter counterparts.<sup>11</sup> (Although the law allows the creation of districts of innovation, the applications approved so far are mostly for schools of innovation.)

Act 601 did not place a cap on the number of allowed schools of innovation. The law does state that schools of innovation are to specify goals and performance targets for the school, which may include:

- Reducing the achievement gap
- Increasing student participation in curriculum options
- Exploring new ways to expand students’ college and career readiness
- Motivating students through innovative teaching and learning choices
- Transforming the school’s culture and climate to lead to “transformative teaching and learning”<sup>12</sup>

**Average Number of Waivers per School with Innovation Pathway Waivers**



The application process to become a district or school of innovation takes 12-18 months, approximately the same amount of time that it takes to get through the process for potential open-enrollment public or conversion charter schools.

In 2021, 32 schools in 20 districts operated under waivers for schools of innovation, with an average of eight waivers apiece from Arkansas laws and rules. The most common waivers that schools of innovation operated under were related to laws and rules governing teacher salary and licensure and the instructional day and school calendar.<sup>13</sup>

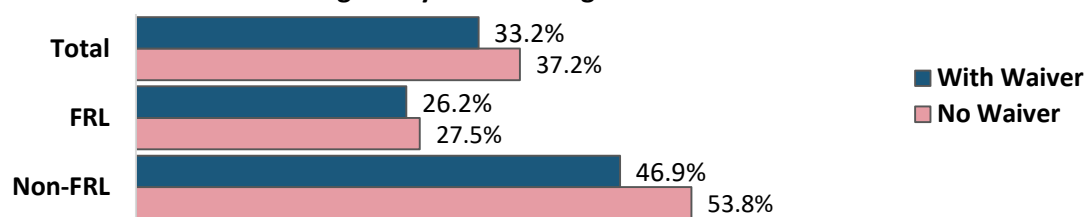
Across all comparisons of students in the 32 Arkansas schools that operated under schools of innovation waivers, smaller percentages of students in schools with those waivers scored Ready or Exceeding in ELA and math on the ACT Aspire than students in schools without those waivers scored on the same exams.

<sup>11</sup> DESE’s Rules Governing Schools of Innovation.

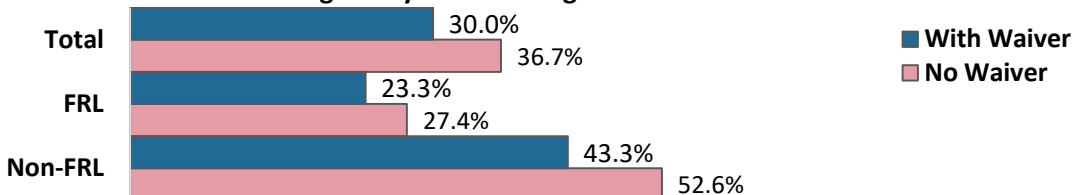
<sup>12</sup> A.C.A. § 6-15-2803(b)(1).

<sup>13</sup> Waivers from A.C.A. §6-17-919, and Sections 1-A.2, 1-A.4.2, and 4-D.1 of the Rules Governing Standards of Accreditation of Arkansas Public Schools were the most common.

**Percent of Students Scoring Ready or Exceeding - ELA Exam**



**Percent of Students Scoring Ready or Exceeding -- Math Exam**

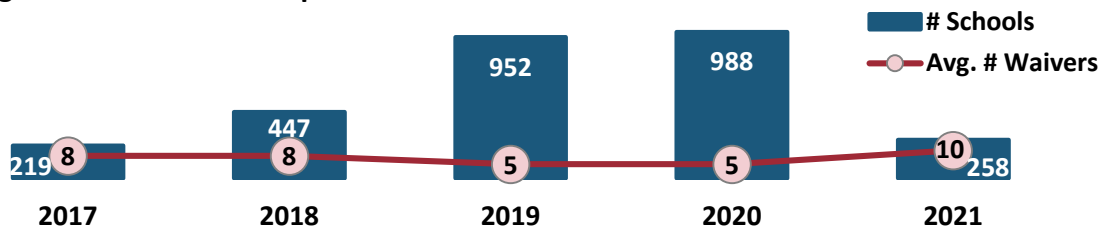


**ACT 1240 WAIVERS**

Legislation passed in 2015 introduced another, quicker pathway to waivers that school districts can now pursue. Act 1240 districts (the law does not apply to schools) could request the same waivers held by any open-enrollment public charter school that enrolled a student from within the school district’s borders within a matter of months.<sup>14</sup> Act 815 of 2019 amended the law so that all schools may now seek any waiver that has been granted to any charter school in the state. These waivers still show up in DESE’s database as “Act 1240” waivers.

Districts submit applications for Act 1240 waivers to DESE’s Legal Services Offices and petition the State Board of Education directly for them. DESE’s rules state that these waivers may only be requested if they “enhance student learning opportunities, promote innovation, or increase equitable access to effective teachers.”<sup>15</sup> Districts’ petitions must include the name of the open-enrollment charter school that holds the waiver they are asking to have granted as well as the proposed duration of the request, proof of stakeholder involvement, and a detailed rationale of the request.<sup>16</sup> All Act 1240 waiver requests are presented during a hearing before the State Board, and the State Board may grant or deny part or all of the waiver request.<sup>17</sup> The State Board has 90 days to make a decision. Act 1240 waivers may be granted for up to five years,<sup>18</sup> and, at the expiration date, a district may seek to renew a waiver. The State Board of Education may also review and revoke waivers at any time.

**Average Number of Waivers per School with Act 1240 Waivers**



<sup>14</sup> A.C.A. § 6-15-103

<sup>15</sup> Arkansas Division of Elementary and Secondary Education Rules Governing Act 1240 Waivers, effective July 6, 2020.

<sup>16</sup> A.C.A. § 6-15-103(b)

<sup>17</sup> DESE’s Rules Governing Act 1240 Waivers.

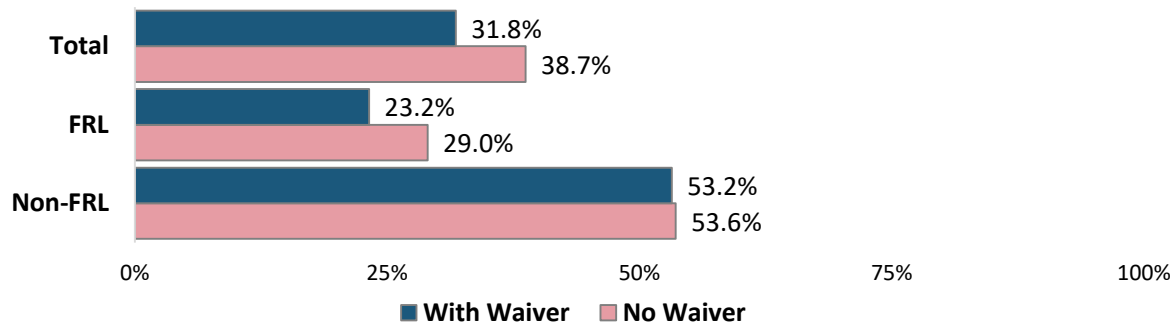
<sup>18</sup> A.C.A. § 6-15-103(c)(4).

In 2021, 258 schools in 63 districts were operating under an average of 10 Act 1240 waivers. This is a notable decrease in the number of schools from the three previous years, and it is mostly due to fewer schools operating under school start-date waivers in 2021. For several years, districts sought waivers from A.C.A. § 6-10-106, which previously included a mandated start date of the days around Aug. 19, because the calendar fell in such a way that testing periods were difficult to manage. In addition to the calendar transitioning naturally from that pattern, Act 688 of 2021 provides a wider range of possible start dates by requiring only that school not begin prior to the Monday the two weeks before Labor Day. Act 688 of 2021 further amended the school start date statute, providing that DESE "shall not grant a public school district a waiver under § 6-15-103 to begin school on an earlier date" than is established by law; however, a school district may receive a waiver to begin school on a later date if DESE determines there exists "a material and substantial reason ... due to very exceptional or emergency circumstances ...."<sup>19</sup> Special language included with Act 217 of 2021 sets the 2024 school year as the first year for this law to be in effect.

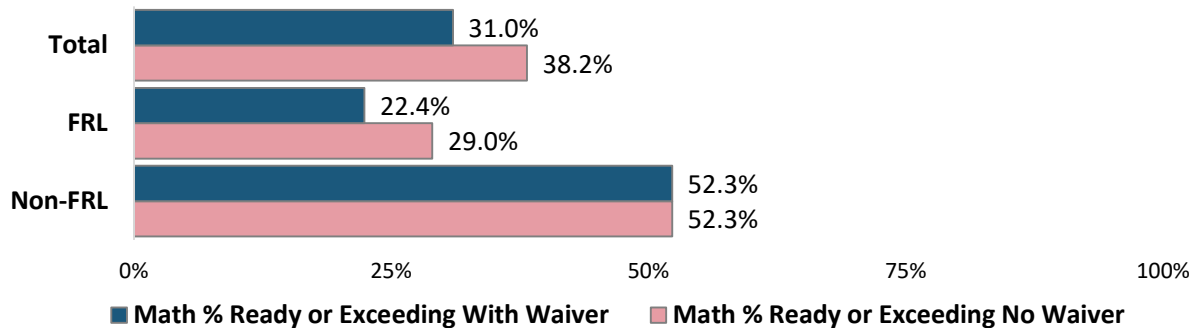
During the 2021 school year, waivers dealing with teacher licensure and teacher salary were the most common waivers for these schools.<sup>20</sup>

When looking only at those schools with Act 1240 waivers against all other schools, student performance overall is lower in schools with the waivers except for the subpopulation of non-FRL students in each subject areas.

**Percent of Students Scoring Ready or Exceeding - ELA Exam**



**Percent of Students Scoring Ready or Exceeding - Math Exam**



<sup>19</sup> A.C.A. § 6-10-106(a)(2).

<sup>20</sup> Waivers from A.C.A. §6-17-309, §6-15-1004, §6-17-401 and §6-17-902 were the most common.

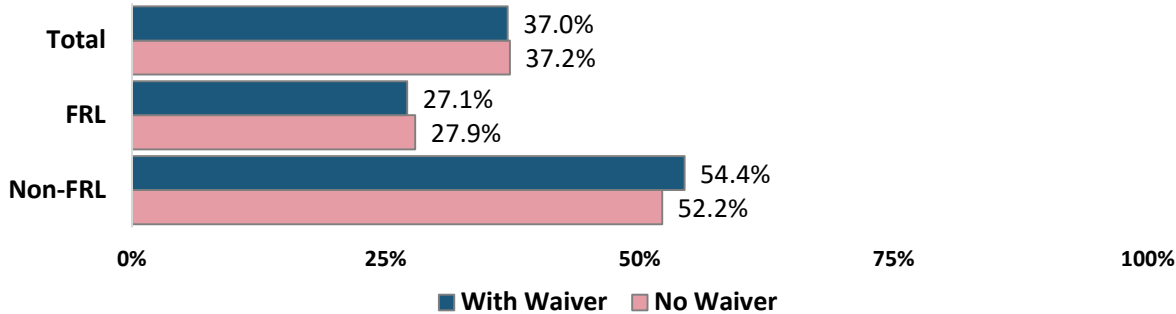
**DIGITAL LEARNING PROGRAM WAIVERS**

Waivers for Digital Learning Programs (DLP) – actually an expedited version of Act 1240 waivers – were established by DESE to allow schools to teach students remotely through online courses. Learning delivery can be provided either synchronously (meaning the teacher and student are online at the same time) or asynchronously. The waivers were put in place during the COVID-19 pandemic but currently last through June of 2022, 2023, or 2024. Separate local education agencies (schools) do not have to be formed but instead the DLP waivers are granted to existing schools. In 2021, 611 schools in 161 districts and open-enrollment public charter school systems operated under DLP waivers, meaning that some or all students could learn remotely some or all of the time, although having a waiver did not mean a school had to deliver education remotely. The most common waivers were for class size, the instructional day, recess and attendance.<sup>21</sup>

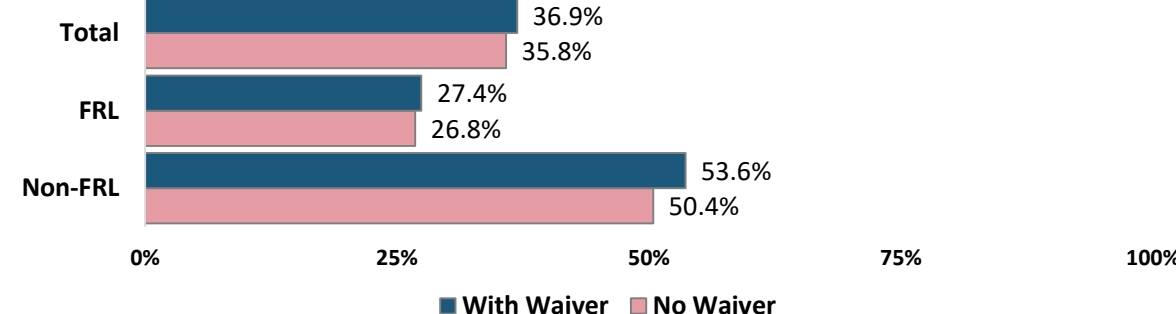
In 2021, 613 schools operated with DLP waivers, which allowed them to offer remote learning options to students.

Similar percentages of students scored Ready or Exceeding on the ELA and math ACT Aspire exams overall and in both subgroups.

**Percent of Students Scoring Ready or Exceeding - ELA Exam**



**Percent of Students Scoring Ready or Exceeding - Math Exam**



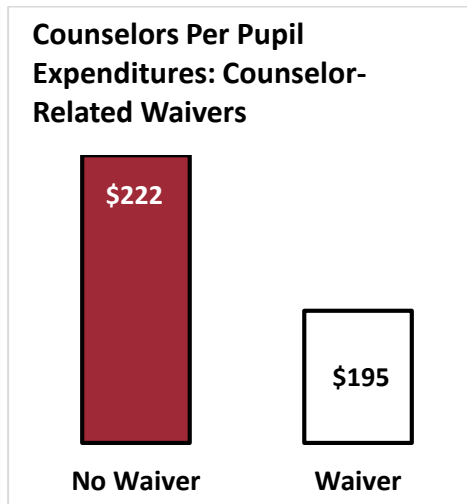
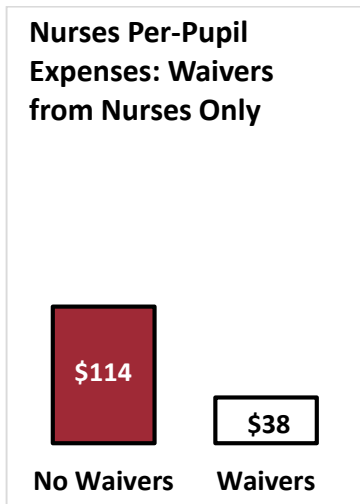
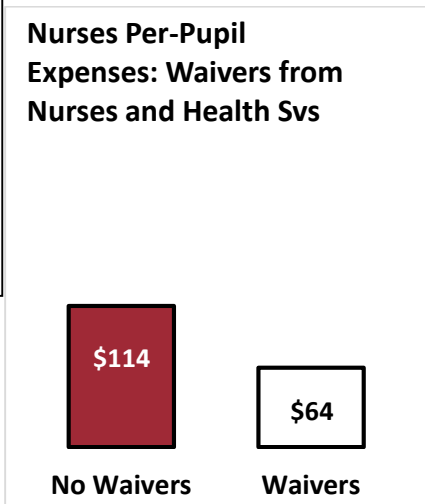
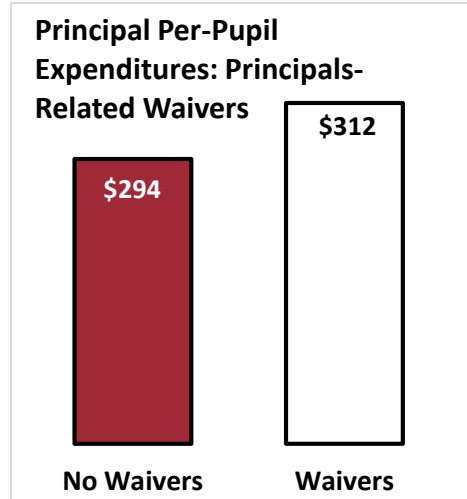
<sup>21</sup> Waivers from A.C.A. §6-10-126, §6-18-213(a)(2) and Section 1-A.4.2 of the Rules Governing Standards for Accreditation of Arkansas Public Schools and School Districts were the most common.

## Waiver Pathways and Expenditures

The impact of waivers on school spending seems to be mixed. For instance, while it may seem intuitive that having waivers from items in the matrix would lead to no expenditures for those items, that does not seem to be the case, as shown in the following graphs. Therefore, while schools may have waivers from such things as nurses or counselors, they may make expenditures for that position. For example, Scott Charter School had a waiver from A.C.A. §6-18-706 regarding school nurses, but still had a per pupil expenditure of \$242 for nurses in the 2021 school year.

Additionally, while spending for some of these items is less than at schools without the same type waivers, that's not always the case either. Schools with waivers relating to principal contracts, licensure, and duties actually spent more per pupil on principals than schools without such waivers spent on principals in the 2021 school year.

As shown in the following graphs, schools with waivers regarding health service programs and school nurses still spent money on a school nurse, although they spent less than the schools with no waivers in those areas spent on school nurses.





## 2021 Legislation

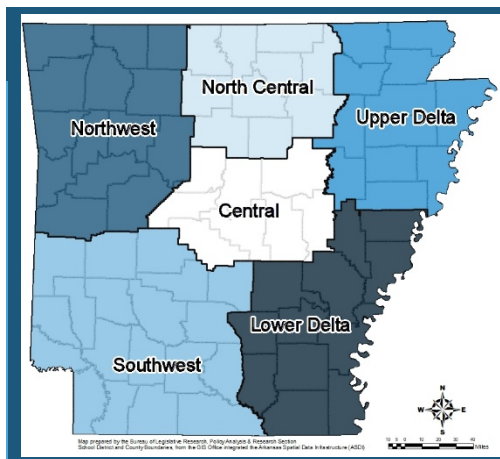
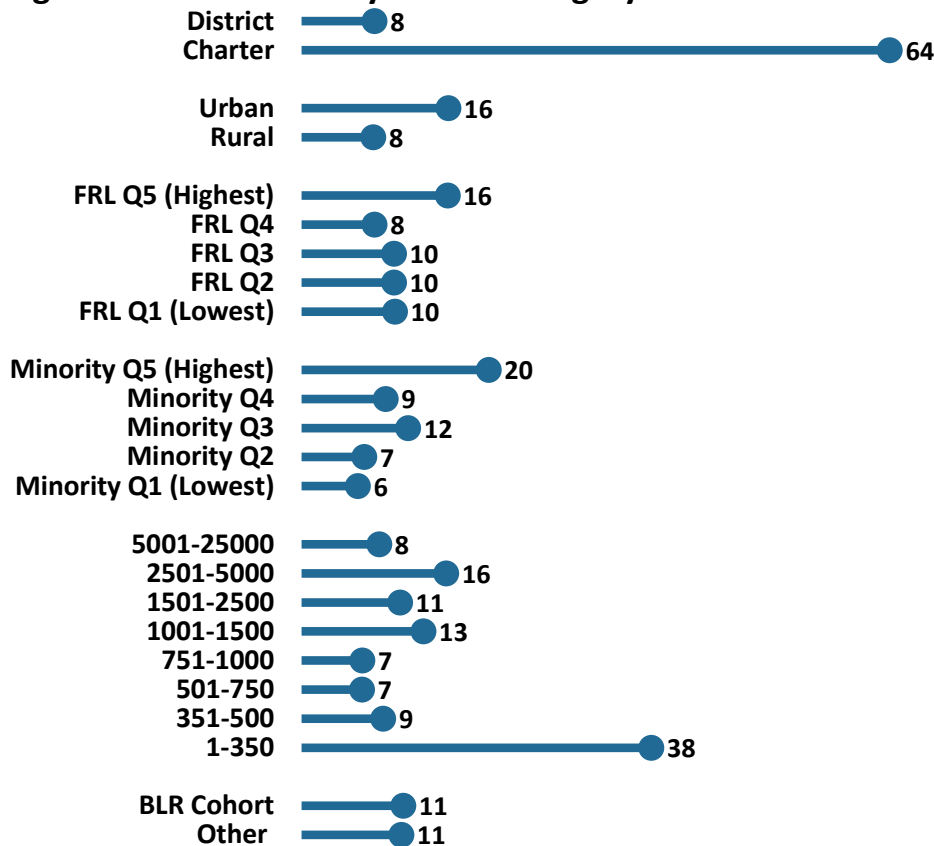
*ACT 774* (SB251) repeals the requirement that a copy of the waivers granted to an open-enrollment public charter school be included in a school district's petition for all or some of the waivers granted to the open-enrollment public charter school. The act provides that the Division of Elementary and Secondary Education may request additional information concerning a school district's waiver petition if necessary. The act provides that if the division determines that additional information is necessary, the State Board of Education shall grant or deny, in whole or in part, the petition for a waiver within ninety (90) days of receiving the requested additional information.



## Appendix A – Number of Waivers by School Categories

The number of overall waivers vary when looking at the school categories used for analysis in the 2022 adequacy study. Not surprisingly, schools in charter systems have more waivers than schools in regular school districts do, as waivers from state laws and rules to promote innovation is a basic feature of charters. Small schools and urban schools also tend to have more waivers, on average, but that is likely due to the number of charter schools represented in those categories.

### Average Number Waivers by School Category



Region	Avg. # Waivers
Lower Delta	17
Central	16
North Central	9
Upper Delta	8
Northwest	9
Southwest	7