



**HANDOUT D2**

**Research Report**



# **Waivers from Arkansas Education Laws**

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**THE HOUSE INTERIM COMMITTEE ON EDUCATION AND  
THE SENATE INTERIM COMMITTEE ON EDUCATION**

**BUREAU OF LEGISLATIVE RESEARCH**

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## INTRODUCTION

Waivers from Arkansas state laws and rules – 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. **Currently, more than 1,000 public schools in Arkansas operate under more than 10,000 waivers from the state’s laws and rules.** Those schools enroll 97% of the state’s public school students and are located in 229 of the state’s 235 public school districts<sup>1</sup> and in all 25 charter school systems.

“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 2017 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 Arkansas’s 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 in 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.

What’s more, the General Assembly updates the funding matrix, which is used to determine the amount of money necessary to provide a constitutionally adequate education system, every two years. As illustrated by the chart below, a number of matrix items (highlighted in gray) cover expenses mandated in law or rule that are areas for which schools have been granted waivers. Dollar amounts are those listed for the 2019-20 school year.

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	4.12

	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

<sup>1</sup> Districts with no schools with waivers in 2019-2020 were Bearden, Mineral Springs, Scranton, Spring Hill, Strong-Huttig and Trumann, according to January 2020 data from the Division of Elementary and Secondary Education.

School-Level Salaries		District-Level Resources	
Teacher Salary + Benefit	\$67,127	Operations & Maintenance	\$697.5
Per Student Matrix Expenditure	\$4,523.0	Central Office	\$438.8
Principal Salary + Benefits	\$99,012	Transportation	\$321.2
Per Student Matrix Expenditure	\$198.1	<b>District-Level Resources Per Student</b>	<b>\$1,457.5</b>
School-level Secretary Salary + Benefits	\$40,855	<b>Foundation Per Pupil Expenditure</b>	<b>\$6,899</b>
Per Student Matrix Expenditure	\$81.7	Adjustments (Cushion/Retirement)	\$16
<b>School-Level Salaries Per Student</b>	<b>\$4,802.8</b>	<b>Categorical Program Funding</b>	
<b>School-Level Resources</b>		English Language Learner	\$345
<b>School-Level Resources Per Student</b>	<b>\$622.2</b>	Alternative Learning Environment	\$4,700
Technology	\$250.0		
Instructional Materials	\$184.2	Enhanced Student Achievement	\$526
Extra Duty Funds	\$66.2		\$1,051
Supervisory Aides	\$50		\$1,576
Substitutes	\$71.8	Professional Development	\$32.4

This report will examine:

- The growth of waivers in Arkansas
- The application of waivers in other states
- The relationship between waivers and student body characteristics
- The relationship between waivers and school performance
- The relationship between waivers and school spending patterns

**The picture that emerges from a series of statistical analyses is that schools with certain types of waivers did not have, on average, student performance measures that were as good as schools without waivers. This proved particularly true for schools with high percentages of free and reduced lunch students. Furthermore, schools without waivers tended to spend less in instructional expenditures than schools with waivers, though they are funded at the same levels as schools with no waivers.** Because many of these analyses proved to be statistically significant, these patterns could persist. (Please see Appendix A for a description of how the analyses for this report were conducted.)

## THE GROWTH OF WAIVERS IN ARKANSAS

Since 1995, the General Assembly has created various kinds of waivers to exempt public schools – both charter and traditional – from various rules and regulations governing education in Arkansas. What began with limited parameters, however, has grown significantly in the last few years. By the beginning of the 2019-20 school year, in fact, more than 1,000 of Arkansas’s traditional public schools and public charter schools were operating under more than 10,000 waivers from state laws and rules covering Arkansas’s education system. (These do not include waivers for individual teachers who are teaching out of area (ALPs) or who are long-term substitutes.) Those schools accounted for 97% of the state’s enrollment in public schools this year. Waivers continued to be granted throughout the school year, while some may expire during this school year as well.

Waivers from education laws were first legislated by Act 1126 of 1995 for the purpose of creating conversion charter schools. The intention was that schools, once unhampered by the mandates from the state, would be better able to try innovative practices meant to improve student achievement. When no public school pursued the charter school course, the General Assembly broadened the law in 1999 to allow nonprofit organizations to apply to operate open-

enrollment charter schools, with waiver requests being part of the application.<sup>2</sup> Charter schools of both sorts were in operation by the early years of the new millennium. Schools and districts of innovation, somewhat similar to the conversion charter school concept, were added with legislation passed in 2013.

But it was Act 1240 of 2015 that most significantly expanded the ability to apply for waivers and to be granted them quickly. “Act 1240 school districts” were originally allowed to apply for waivers being used by open-enrollment public charter schools that drew students from the public school district and can have those requests answered by the State Board of Education in a matter of six to eight weeks. New legislation in 2019 – Act 815 – expands that ability further by allowing school districts to apply for any waiver held by any open-enrollment public charter school anywhere in the state.

## WHAT’S HAPPENING IN OTHER STATES

The Bureau of Legislative Research (BLR) has found some evidence of the granting of waivers from education laws in other states.

Literature review searches, however, generally produced information regarding states’ waivers from the federal No Child Left Behind laws. Furthermore, a survey of states performed by Education Commission of the States (ECS) at the request of BLR garnered only two responses from other states, neither of which granted waivers.

Still, a search through various state education department websites shows that other states do provide some waiver opportunities. Though not exhaustive, the following list provides a number of examples:

- **Georgia** created Strategic Waiver School Systems, which, according to a map of Georgia school districts on its website, is a designation allowing waivers from some of the state’s education laws that applies to 132 of the state’s 180 school districts. The others are either charter systems (46) or have no waivers (2).
- **South Carolina’s** Department of Education website says: “The South Carolina Department of Education (SCDE) supports innovations that provide for increased student achievement. Occasionally, State Board of Education (SBE) Regulations or SCDE policies may seem to impede the implementation of educational innovations. When this occurs, the SCDE may be able to waive compliance from regulations.” A log of waiver requests lists 323 waivers issued to school districts since 2012. While many of the early waivers dealt with testing, others are listed for such things as “Sixth graders earning high school credit.” “Request for two days due to Winter Storm Grayson” and “Teachers teaching more than 1500 minutes per week.”
- **Mississippi** grants waivers to Districts or Schools of Innovation, the latter of which follows the Early College High School model (a Gates Foundation initiative). According to the Mississippi Department of Education’s website, the state has seven Districts of Innovation and six Schools of Innovation.
- **North Carolina** passed legislation in 2019 to allow individual class-size waivers for grades 1-3. That same year, the state dropped its maximum class size to 16 to 18 students in a class, depending on the grade level, for the 2021-2022 school year.

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<sup>2</sup> KUAR interview with the late Senator Jim Argue, Oct. 4, 2017, retrieved at <https://www.ualrpublicradio.org/post/author-arkansas-original-charter-school-law-explains-why-he-created-charters>.

## TYPES OF WAIVERS IN ARKANSAS AND HOW TO APPLY FOR THEM

To understand the growth of waivers in Arkansas, it's helpful to understand the legislative history of each waiver pathway now in existence. The following sections do that. They also describe the application processes and chart the growth in numbers over the past several years for each pathway.

### 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 charter as well. They are able to enroll students from across district or county boundaries, and they have no tax base of their own. Open-enrollment public charter schools receive similar per-student state foundation and categorical funding as do traditional public school districts.

### LEGISLATIVE HISTORY

Charters were first envisioned in Arkansas law with Act 1126 of 1995, which was "to establish a procedure whereby local schools may be permitted to become charter schools and to operate under the charter provisions rather than under state and local rules, regulations, policies, and procedures... ."

By 1999, no public schools had made the transformation to be a charter,<sup>3</sup> so the General Assembly enacted Act 890 to authorize both the creation of open-enrollment public charter schools and the conversion of public schools to charter schools. The goal stated in the law included increasing learning opportunities for all students, encouraging innovative teaching methods and providing parents and students with expanded choice. Charters, which were to be performance-based contracts, were to be approved by the State Board of Education and could be issued for up to three years. Charters could be granted for a maximum of 12 open-enrollment charter schools in the state, with no more than three to be located in a single congressional district.

As far as waivers, eligible entities (higher education institutions, non-sectarian nonprofits) were to include in their applications the specific education laws found in Title 6 of the Arkansas Code and state and local rules from which they were requesting exemptions. The law specified several things for which waivers would not be granted:

- Monitoring for compliance with the charter school law
- Criminal background checks for employees
- High school graduation requirements as established by the State Board
- Special education programs
- Public school accountability under the charter school law
- Health and safety codes as established by the State Board of Education and local governments

Federal law prohibits waivers from civil and disability rights laws, and DESE also notes that waivers from open records and meetings laws, criminal background checks for volunteers and

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<sup>3</sup> "Senators draft bill to help development of charter schools," Arkansas Democrat-Gazette, Feb. 15, 1999, extracted via Lexis-Nexis.



purchasing limits and requirements are prohibited “by practice.”<sup>4</sup> According to DESE, these have never been granted by the State Board of Education or the charter authorizing panel.<sup>5</sup>

Other requirements of open-enrollment public charter schools under Act 890 of 1999 included:

- Enrollment was not to exceed the maximum set in the charter
- Records of attendance must be kept and submitted to the Arkansas Department of Education (ADE) according to state law
- Annual certified audits were to be prepared by June 30 of each year
- State moneys received by the charters were not to be used for any sectarian use or as collateral for debt
- All net assets of the charter school would be deemed property of the State in case of the school’s closure

Legislation regarding open-enrollment public charter schools in subsequent years expanded the number of charter schools allowed in the state, changed reporting requirements and created new funding sources for facilities. Currently, a rolling cap is applied to open-enrollment charter school applications, 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.

In addition, legislation passed in 2005 and 2007 allowed eligible open-enrollment public charter schools to apply for licenses to open additional schools under their existing charters, a condition that means several current charters are systems with multiple campuses. Since 2005, initial charters could be approved for up to five years before facing renewal for up to another five years. In 2011, the renewal period for charters was expanded to up to 20 years.

Another significant change is that applications now are first submitted to the Charter Authorizing Panel as opposed to the State Board of Education. The panel was designed to deal with all charter school business, including applications for new schools or requests to change existing charters, and to make recommendations to the State Board for final action. The State Board can choose to review and overrule the panel’s decisions or to approve them with no further hearings. When the Charter Authorizing Panel was first created by Act 509 of 2013, the Commissioner (now Secretary) of Education appointed ADE (now the Division of Elementary and Secondary Education, or DESE) staff to serve on it. Act 462 of 2017 changed the makeup of the panel to allow individuals from outside the agency, at the will of the Secretary, to serve on the panel as well as DESE employees.

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## APPLICATION PROCESS

According to DESE materials,<sup>6</sup> entities wanting to establish an open-enrollment school in Arkansas should plan on a 17-month process to prepare, submit and gain approval for an application. The process begins with the submission of a letter of intent and involves a planning period with mandatory workshops and meetings with the public to ascertain interest. It also includes a presentation to the Charter Authorizing Panel during a public hearing and possibly one to the State Board of Education as well.

Open-enrollment public charter schools must include in their applications 18 specific components, including a mission statement and key programmatic features, a governance

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<sup>4</sup> Prohibited Waivers spreadsheet dated Dec. 27, 2016, retrieved at [http://www.arkansased.gov/public/userfiles/Learning\\_Services/District\\_Waiver\\_Requests/Prohibited\\_Waivers\\_12\\_30\\_16.pdf](http://www.arkansased.gov/public/userfiles/Learning_Services/District_Waiver_Requests/Prohibited_Waivers_12_30_16.pdf)

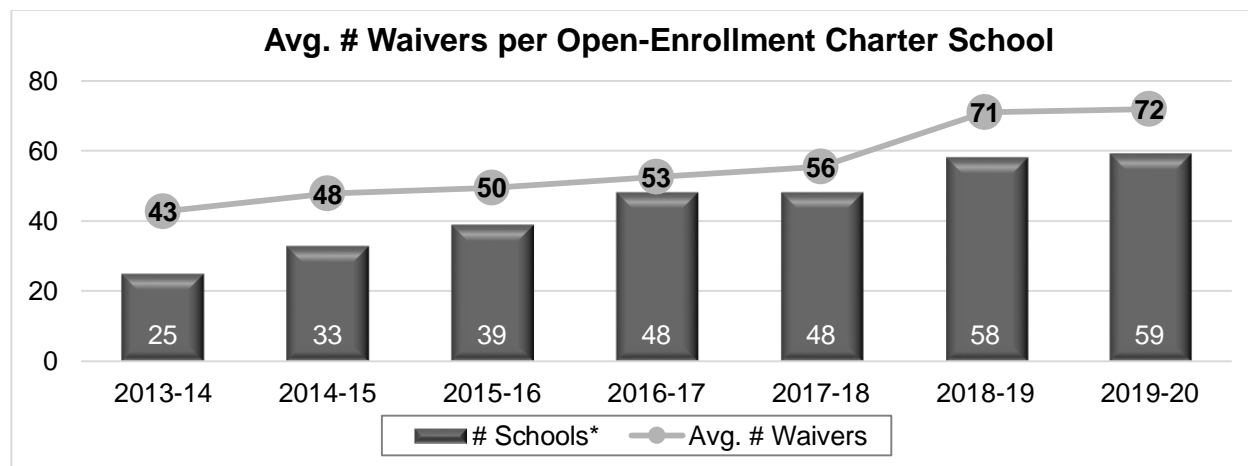
<sup>5</sup> Email from Tracy Webb with DESE’s Public School Accountability Office dated Jan. 27, 2020.

<sup>6</sup> Waiver Distinctions Path spreadsheet dated Jan. 10, 2017, retrieved at [http://www.arkansased.gov/public/userfiles/Learning\\_Services/Charter\\_Schools/Waiver\\_Path\\_Distinctions\\_1\\_30\\_17.pdf](http://www.arkansased.gov/public/userfiles/Learning_Services/Charter_Schools/Waiver_Path_Distinctions_1_30_17.pdf)

structure for the school and the educational need for the school. (See Appendix B for the full list of application requirements with comparisons among waiver pathways.)

**WAIVERS**

Open-enrollment public charter schools operate under more waivers per charter than do any other type of school allowed to obtain waivers. In 2019-2020, 25 charter school systems operate 59 individual schools.<sup>7</sup> Each of those schools operate under an average of 72 waivers. The chart below shows that the number of waivers per open-enrollment charter school continues to increase, as do the number of schools within the charter school systems. Schools with active charters that enrolled students for that year are included in the total count.



\*Numbers of schools operating with waivers granted before Nov. 1 of each year for a school that had enrolled students that year.

**CONVERSION CHARTER SCHOOLS**

Conversion charter schools are traditional public schools that have applied to operate under a charter, usually with waivers from laws and rules governing Arkansas’s education system. 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.

**LEGISLATIVE HISTORY**

As stated earlier, conversion charter schools were the first charter schools envisioned in Arkansas law. Act 1126 of 1995 sought “to establish a procedure whereby local schools may be permitted to become charter schools and to operate under the charter provisions rather than under state and local rules, regulations, policies, and procedures... .”

When no public school had used the law passed by the General Assembly four years earlier, new legislation – Act 890 of 1999 –authorized the creation of open-enrollment charter schools while still allowing public schools to convert to charter schools. The intent was to allow public schools to shed some of the state’s education mandates in order to more nimbly implement innovative and alternative methods of learning and instruction. Charters could be issued for up to three years.

As it did for open-enrollment public charter schools, the law specified the following items for which waivers would not be granted:

- Monitoring for compliance with the charter school law

<sup>7</sup> This number excludes The Excel Center, a charter school for adults, and counts Covenant Keepers & Friendship Aspire as one charter school, as Friendship assumed the charter for Covenant Keepers mid-year.

- Criminal background checks for employees
- High school graduation requirements as established by the State Board
- Special education programs
- Public school accountability under the charter school law
- Health and safety codes as established by the State Board of Education and local governments

A public school had to first have its application approved by the local school board, which would then forward the application to the State Board of Education. The law also considered certified teachers at the public school who might not wish to teach in a charter school environment. Certified teachers could not be transferred to or employed by the charter school if they objected. If there were no schools at the same level to which a teacher could transfer, then a vote by all certified teachers in the school would be called, with a majority of the certified teachers having to vote for implementation of the charter school for the application to proceed.

Among other things, Act 2005 of 2005 increased the time for which a conversion charter could be approved from up to three years to up to five. It also delineated three purposes for becoming a conversion charter school that conversion charters “may include” in their application, though they would not be limited to them:

- Adopting research-based school or instructional designs to improve student and school performance
- Addressing school improvement status/sanctions
- Partnering with other districts or schools to address students’ needs in a geographical location or multiple locations.

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. 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. No new district conversions were approved during the 2018-2019 school year, while four were approved in 2019-2020, according to DESE.<sup>8</sup>

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## APPLICATION PROCESS

The requirements included in the application process and 17-month estimated timeframe for completing them are similar to those of open-enrollment public charter schools, according to DESE.<sup>9</sup> DESE’s process begins with the submission of a letter of intent and involves a planning period with mandatory workshops and meetings with the public to ascertain interest. It also includes a public presentation to the Charter Authorizing Panel and possibly one to the State Board of Education as well.

Conversion charter schools must include 17 components with their applications, including a mission statement and key programmatic features, autonomy of the charter and anticipated expenses with funding methods. These components are both statutory and rule-based. (See Appendix B for the full comparative list of application requirements.)

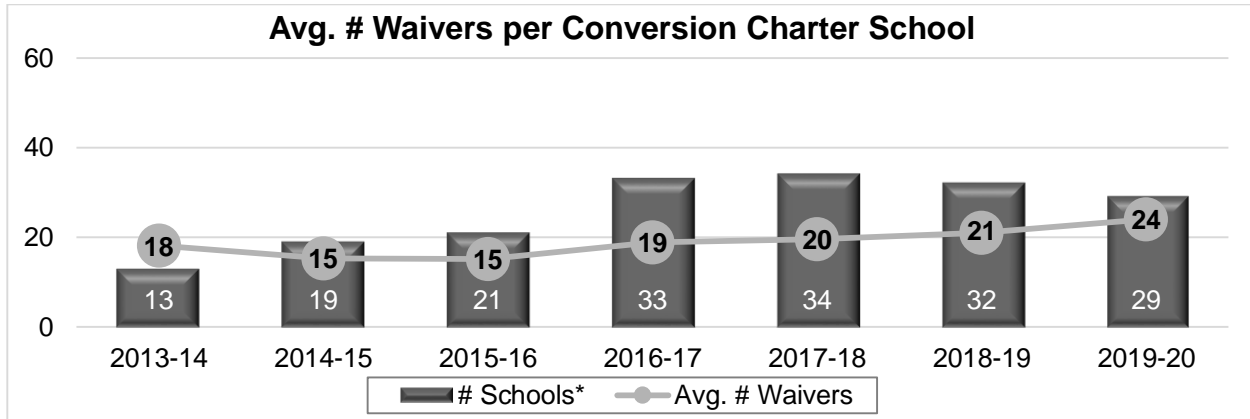
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<sup>8</sup> Email from Tracy Webb, Jan. 27, 2020.

<sup>9</sup> Waiver Path Distinctions.

**WAIVERS**

Conversion charter schools operate under fewer waivers, on average, than do open enrollment public schools. During the 2019-2020 school year, conversion charter schools averaged 24 waivers apiece.



\*Numbers of schools operating with waivers granted before Nov. 1 of each year for a school that had enrolled students that year.

**DISTRICTS AND SCHOOLS OF INNOVATION**

Districts and schools of innovation are public schools that are to implement innovative techniques to improve school and student performance. They, like both types of charters, may apply for waivers from a number of local and state rules and state laws to do so.

**LEGISLATIVE HISTORY**

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 Arkansas laws and rules similarly to their charter counterparts. (Though the law allows the creation of districts of innovation, the applications approved so far are mostly for schools of innovation.)

Before the passage of the Every Student Succeeds Act, federal law (Section 9101 of Public Law 107-110, Elementary and Secondary Education Act) allowed only charter schools to employ non-certified (but still highly qualified) teachers in core subjects, while schools of innovation had to continue to employ licensed teachers in those areas. Under the law, schools of innovation are no longer restricted from asking for the waiver from teacher licensure.

Act 601 stipulated that 60% of a school’s eligible employees must be supportive of the innovation designation before the school district could submit a plan for that school. While charter school applications are submitted to the charter authorizing panel, school of innovation plans are submitted to and must be approved by the Secretary of Education alone. Initial approval is for four years, and four-year renewals are available after that.

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”

DESE's rules supporting Act 601 allow schools of innovation to request exemptions from "local policies and specific laws and rules ... to include any provision of law or rule governing public school districts which is *required* to implement or to support the school of innovation plan." (Italics found in the rule.)<sup>10</sup>

Act 601 specifies that schools of innovation continue:

- Ensuring the same health, safety, civil rights and disability rights requirements are in place that apply to all other public schools
- Adhering to financial audit procedures required of all school districts
- Requiring criminal background checks for school employees and volunteers as is done in all public school districts
- Complying with open meetings and open records requirements
- Complying with purchasing limitations and requirements
- Providing instructional time that meets or exceeds the instructional time required by the State Board unless granted an exception by the Commissioner (now Secretary, and instructional time may include onsite, distance or virtual, and work-based learning on nontraditional school days or hours
- Providing data requested by DESE for generating reports
- Adhering to the Teacher Fair Dismissal Act

In 2017, the General Assembly passed Act 871, which further stipulated that schools of innovation are to understand and implement research-based practices of professional learning communities throughout the school. Act 815 of 2019 allows DESE to designate a school as a school of innovation if it has met the objectives outlined in its application within the prescribed timeline. The law further clarifies the education secretary may revoke a school of innovation designation if the school does not fulfill the plan outlined in its application. DESE is in the process of having the new rules supporting Act 815 approved.

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## APPLICATION PROCESS

According to DESE, the application process to become a district/school of innovation takes 12-18 months, so close to the same amount of time that it takes to get through the process for potential open-enrollment or conversion charter schools. Between the initial submission of the letter of intent and final approval decision by the Secretary, applicants may attend a session at the Innovation Summit, attend a technical assistance meeting, establish school-level councils of innovation to develop the schools' innovation plans, and successfully garner the support of at least 60% of eligible employees in a vote.

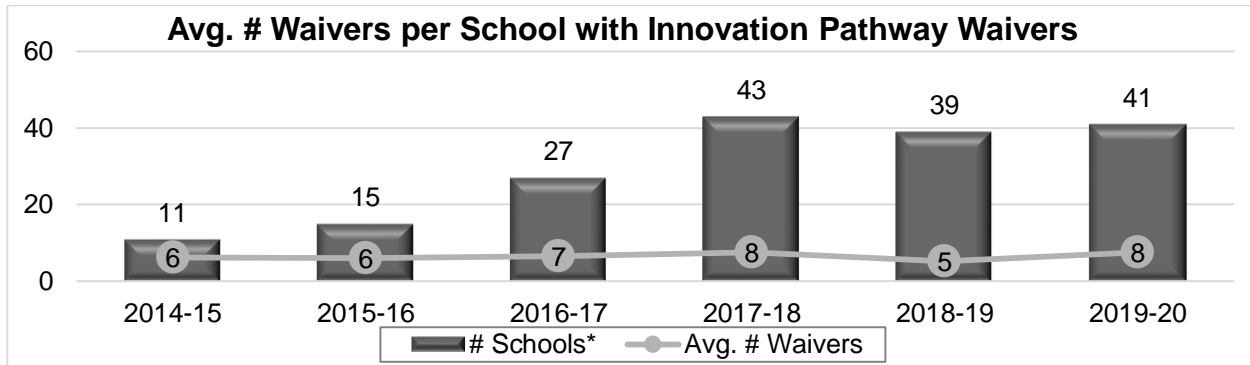
Schools of innovation must include nine specific components in their applications, including vision and mission statements, school election results and documentation of shared leadership. (See Appendix B for the full comparative list of application requirements.)

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<sup>10</sup> Arkansas Department of Education Rules Governing Schools of Innovation, February 2016.

**WAIVERS**

In 2019-2020, 41 schools of innovation were operating under an average of eight waivers from Arkansas laws and rules of all other types of schools that receive waivers. The numbers of both waivers and schools have increased since Act 601 was implemented, with a leveling off of both numbers over the last three years, as the following chart shows.



\*Numbers of schools operating with waivers granted before Nov. 1 of each year for a school with that had enrolled students that year.

**ACT 1240 DISTRICTS**

Legislation passed in 2015 introduced another, quicker pathway to waivers that school districts can now pursue. While any school could follow the months-long process to develop a plan and ask for any eligible waiver to become a conversion charter or a school of innovation, the new Act 1240 districts (the law does not apply to schools) could request the same waivers held by any open-enrollment charter that enrolls a student from within the school district’s borders within a matter of months. (Act 815 of 2019, which will be discussed more fully in a later section, amends the law so that all schools may now seek waivers that have been granted to ANY charter school in the state.) DESE’s application required schools to name the open-enrollment charter schools that hold the requested waiver.

Though Act 1240 districts have existed for fewer than five years, their numbers of schools quickly outpaced the number of open-enrollment public charter schools, conversion charter schools or schools of innovation combined. During the 2019-2020 school year, 988 schools – over 90% of the state’s schools – were operating under an average of five Act 1240 waivers each. (A few of these waivers were granted for schools and districts already operating under waivers obtained via another pathway, so there is some overlap when talking about individual schools versus waiver pathways.)

**LEGISLATIVE HISTORY**

The General Assembly passed Act 1240 in 2015. The law allowed the State Board of Education to grant some or all of school districts’ requests for waivers that mirror the waivers from laws and rules granted to open-enrollment charter schools that draw students from the school district.

**APPLICATION PROCESS**

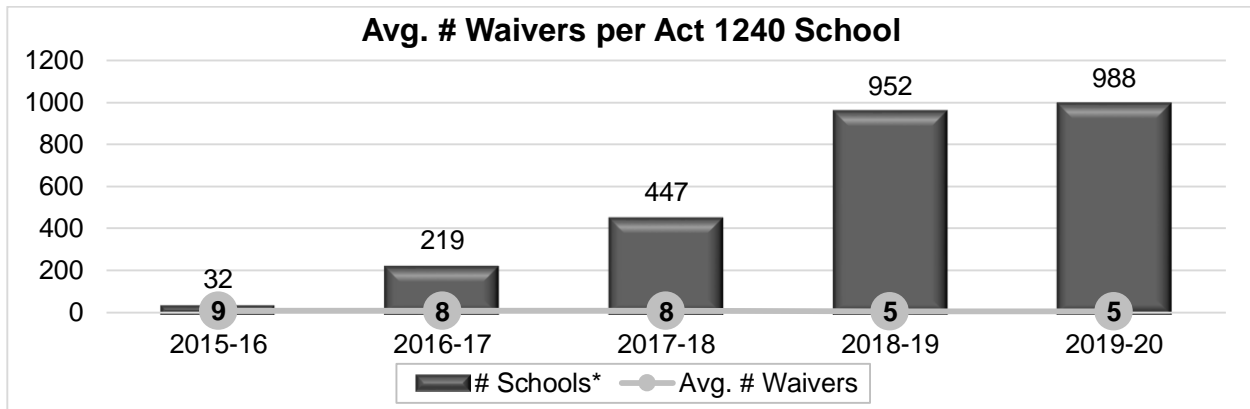
Act 1240 applications were the only waiver requests submitted directly to the State Board for approval. The application for Act 1240 waivers that school districts submitted were to contain three components, according to DESE guidance at the time:

- The name of the open-enrollment charter school that enrolled students from within the school district
- The list of the waivers granted to the named open-enrollment charter school
- The requested waivers with rationale by the district for wanting them

Act 1240 allowed the State Board 90 days to respond to a waiver petition, and DESE estimated the entire process to receive waivers under the act should take four to six weeks. Act 1240 waivers were valid as long as the same waivers remained in existence for the open-enrollment charter school, and no renewal process was mandated. According to DESE, districts often limited their own requests by asking for waivers to be enacted for five years.

**WAIVERS**

While schools in Act 1240 districts generally operate with an average of 10 or fewer waivers, the number of districts being granted waivers under this law grew almost 30-fold from the 2015-16 school year.



\*Numbers of schools operating with waivers granted before Nov. 1 of each year for a school that had enrolled students that year.

**ACT 815 WAIVERS**

Act 815 of 2019 amends much of Act 1240 of 2015 and now allows school districts to apply for any waiver that has been granted to any open-enrollment charter school in the state. The waivers may be granted for up to five years and, as under Act 1240, do not require lengthy planning or application processes. A few of these waivers have already been granted to school districts by the writing of this report. At the January State Board of Education meeting, state board members expressed specific concern about granting a waiver to an open-enrollment public charter school regarding the new law requiring a school counselor to provide direct and indirect services to students for at least 90% of his or her working time. The board’s hesitation was due to the way the door would be opened for any traditional school to easily apply for the same waiver. The open-enrollment charter school’s request for the waiver was not denied, however, but was tabled until a later meeting, at which point the waiver request was changed to a different law pertaining only to the amount of time a counselor spends in a classroom each day.<sup>11</sup> That waiver was granted.

**MINIMUM SIZE SCHOOL DISTRICT WAIVERS**

Another education waiver created by legislation in 2015 is the minimum size school district waiver made possible by Act 377 of 2015. As the name implies, this waiver is granted specifically to allow a school district to operate below the 350 average-daily-membership threshold set by Act 60 of the Second Extraordinary Session of 2003. It does not provide waivers from any other laws or regulations.

<sup>11</sup> The waiver was for A.C.A. 6-18-2002 (2)(A), which states: (A) Regular classroom guidance limited to forty-minute class sessions, not to exceed three (3) class sessions per day and not to exceed ten (10) class sessions per week;

## LEGISLATIVE HISTORY

The purpose of Act 60 was to “ensure the delivery of an equal opportunity for an adequate education to the people of Arkansas in an efficient and effective manner.” The law, which required consolidation of school districts that had fallen below a student population of 350 for two consecutive years, was passed as part of the total education reform effort by the General Assembly to address the issues cited in Lake View. In 2003, Arkansas had 311 school districts. After the first round of consolidations in spring 2004, that number dropped to 256 and reached a low of 234 for the 2015-16 school year before climbing to the current count of 235. (Meanwhile, the number of open-enrollment charter school systems increased from seven in 2004-05 to 25 currently, for a total 259 districts and charter systems in 2019-20.)

Act 377 of 2015 allows school districts that have fallen below the 350-threshold to petition the State Board of Education for an exemption from consolidation or annexation if it meets certain criteria, which are detailed in the section below.

## APPLICATION PROCESS

Act 377 mandates that school districts must petition the State Board of Education for an exemption from § 6-13-1602 (where part of Act 60 is codified) within 30 days of DESE’s release of the list of school districts that have had enrollments below 350 for the two previous years. The State Board has 45 days to respond to the petition. To be eligible for the waiver, the district cannot be in violation of any of the Standards of Accreditation nor can it be classified in Level 5 – Intensive support or in fiscal or facilities distress. Furthermore, its academic facilities must be deemed adequate as evidenced by the facilities master plan. The State Board must determine that closing the school district would mean too long of a bus ride for its students to attend school in another district. Petitions may be made annually as needed, and the State Board may revoke the waiver at any time.

## WAIVERS

Currently, Strong-Huttig School District is the only district operating under the waiver.<sup>12</sup>

## OVERALL PICTURE OF WAIVERS

The total statewide number of waivers that traditional public schools and school districts have been operating under has grown over the years as the number of pathways for which they can apply for waivers has expanded. The newest paths for waivers created under Act 1240 of 2015 and amended by Act 815 of 2019 allow traditional public schools to apply for waivers in a short time and with little planning or justification for the request required. This fact is set forth on DESE’s “Determining Waiver Path” document on its website.

For example, according to the document, schools selecting the district conversion or schools of innovation pathway are those that: “Work collectively (administrators, teachers, other school staff, students, other community members) **to identify barriers to student success** and consider systemic changes and innovations that may **over time** eliminate the barriers.” (Bolded text is in the document.) On the other hand, the Act 1240 pathway is recommended for schools “[i]f an **unanticipated issue** arises and a problem **must be alleviated immediately**,” the district is then to “work collectively (administrators, teachers, other school staff, students, other community members) to develop an action plan for immediate implementation.”

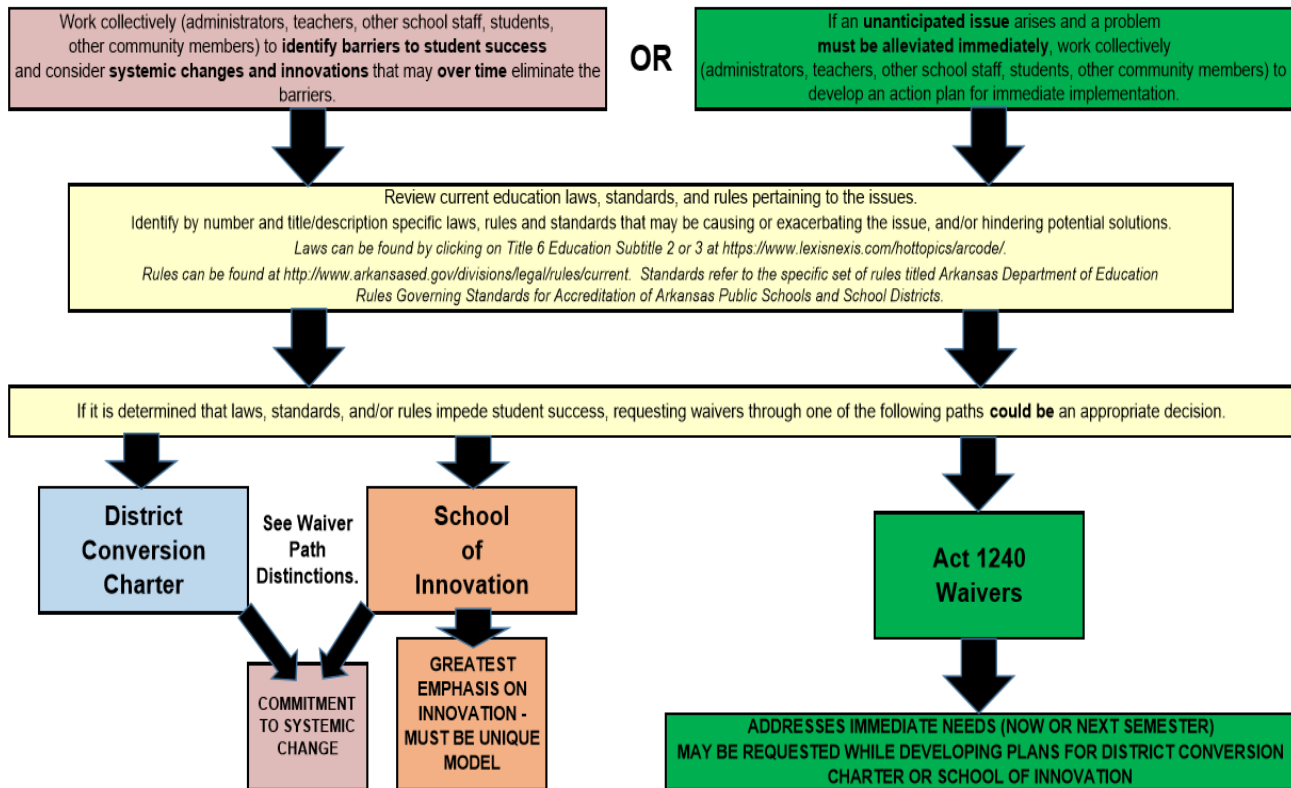
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<sup>12</sup> Email from Lori Freno, DESE attorney, dated Jan. 13, 2020.



December 27, 2016

**SELECTING THE BEST PATH TO MEET STUDENT NEEDS**



Source: DESE

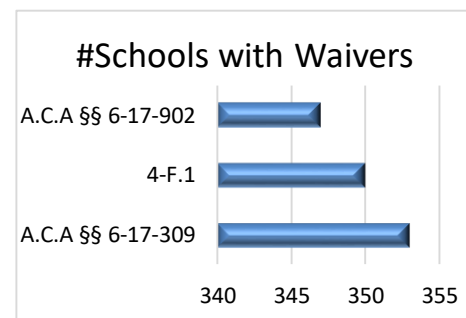
One of the most frequently applied-for and granted waivers in the last few years had to do with the uniform school start date mandated in A.C.A. §6-10-106. In fact, in 2019-20, all 229 of the 235 school districts with waivers were operating under a waiver from that law. A.C.A. §6-10-106 states that the school year shall start on or after the Monday of the week in which Aug. 19 falls, but no earlier than Aug. 14 and no later than Aug. 26. According to testimony before the State Board of Education, because of where Aug. 19 has fallen in recent, current and future years, the requirements were making it difficult for school districts to align the first semester with winter break.

Once that waiver was removed from the analysis, the number of school districts operating under waivers during the 2019-20 school year fell to 118, encompassing about 500 traditional public schools.

The next three most common waivers for traditional public schools from any available pathway in 2019-20 were from mandates regarding licensed teachers in the classroom and library media specialists:

- A.C.A. §6-17-309 regarding licensure waiver
- Standard for Accreditation 4-F.1 regarding employing a licensed library media specialist
- A.C.A. §6-17-902 regarding the definition of a teacher as a licensed individual

(Find the full text of these laws and rules in Appendix C.)



## SCHOOLS INCLUDED FOR ANALYSES

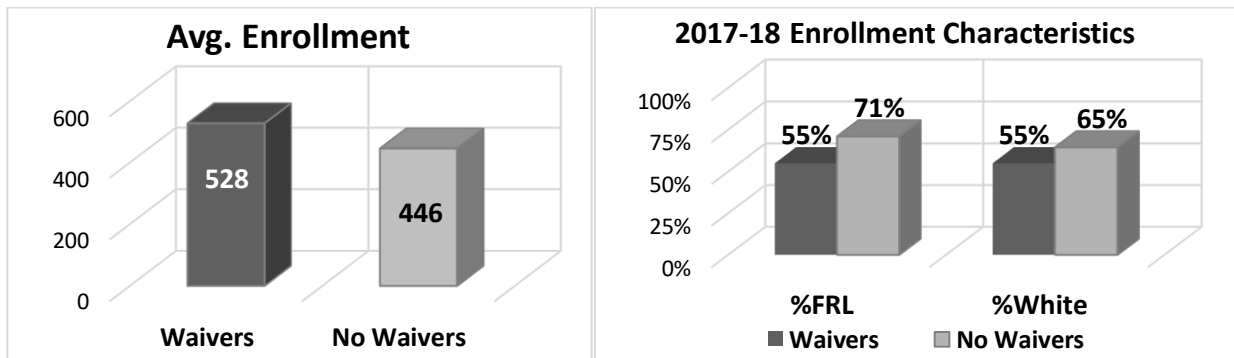
To assess the relationships that might exist between the use of waivers and student performance and educational expenditures, BLR analyzed patterns in a set of schools that had been operating under their waivers for at least two school years. The year of analysis was the 2017-18 school year because that was the most recent data regarding performance and expenditures available at the time of analysis. BLR identified 1,029 schools in 2017-18 that had also enrolled students during the previous school year. Of those, 177 had been operating with waivers for two or more years (by Nov. 1 of the initial year), while 852 had not.

BLR further tested each finding for statistical significance. To do this, BLR used crosstabs with the statistical significance test called Chi square (you can read more about this test in Appendix A). The coefficients produced by the Chi square formula indicate the strength of relationships. Each section that follows notes which analyses had relationships that occurred with statistical significance at a 95% confidence level, and those findings are printed in **bolded** text. A 95% confidence level means there is a 95% probability that the relationship is not a result of pure chance, and, therefore, it is likely to occur again. This does not mean that one variable causes the other. That might be the case, or there might be one or more other unanalyzed variables that influence both of the analyzed variables in the same way.

## IMPACT OF WAIVERS ON EQUITY AND ADEQUACY

In 2017-18, the schools operating with waivers for two or more years tended to be larger and have lower concentrations of students eligible for free and reduced-price lunch (FRL). They also had, on average, higher concentrations of white students.

Indeed, when considered as a whole, the granting of waivers does not seem to be targeted toward schools with any particular subset of students. For instance, early open-enrollment charter schools included both the mostly white, no poverty Haas Hall and the mostly minority, mostly poverty Covenant Keepers. Early conversion charter schools and schools of innovation likewise included larger schools like Blytheville New Tech High School in eastern Arkansas and Little Rock’s Cloverdale Aerospace and Technology Middle School in Little Rock as well as smaller stand-alone alternative learning schools like Miner Academy in Bauxite.



**However, the presence of waivers is sometimes related at statistically significant levels to lower performance scores, particularly in schools with higher than average percentages of free and reduced-price lunch students. These are noted in detail in the following sections.**

## RELATIONSHIPS BETWEEN WAIVERS AND STUDENT PERFORMANCE

For this analysis, BLR looked at all waivers as well as waivers grouped by categories to see if waivers at large OR if specific types of waivers – waivers having to do with curriculum, for instance – might be associated with higher or lower performance than other types of waivers.

The waiver categories constructed for the analysis are:

- All Waivers
- Curriculum Law/Rule Waivers
- Teacher Pay and Qualification Law/Rule Waivers
- Teacher Work Environment Law/Rule Waivers
- Student Services Law/Rule Waivers
- Administration Law/Rule Waivers

Each category is addressed in the following sections, and the specific laws and rules grouped under each category are found in Appendix D.

To compare with performance, BLR used three of the state's accountability measures for the schools – their 2017-18 ESSA School Index, Weighted Achievement and English Language Learners/Content Growth scores – to examine if schools with or without waivers were more likely to have above average scores. Each analysis also was controlled for a school's FRL student population.

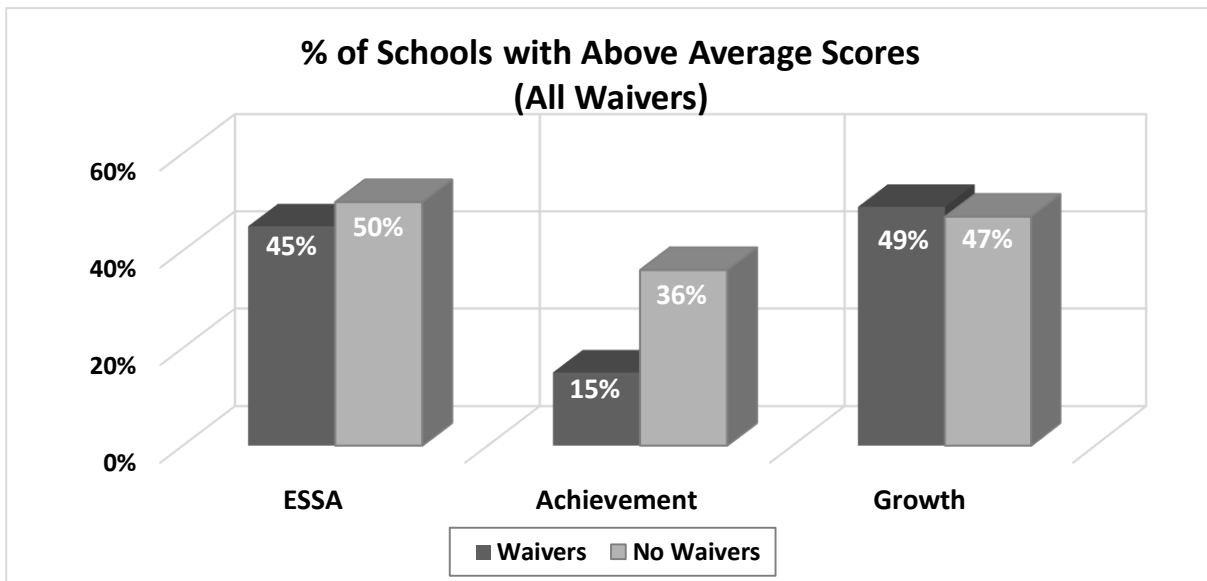
When all waivers are considered together, the comparison of scores between schools with waivers show little difference. What's more, none of the differences prove to be statistically significant at the 95% percent confidence level. But when schools are examined by the category of waivers they operate under, some categories did have statistically significant differences. The same occurred when considering only schools with higher populations of FRL students.

All of these findings are detailed in the sections below, and a detailed description of BLR's analyses can be found in Appendix A.

### ALL WAIVERS

Using the criteria that a school must have been granted a waiver for at least two years to be counted as a "waiver" school in 2017-18, BLR identified 177 schools with waivers and 852 schools without waivers. (These latter include any school – traditional or new open-enrollment public charter – that had been operating under waivers for less than two years.)

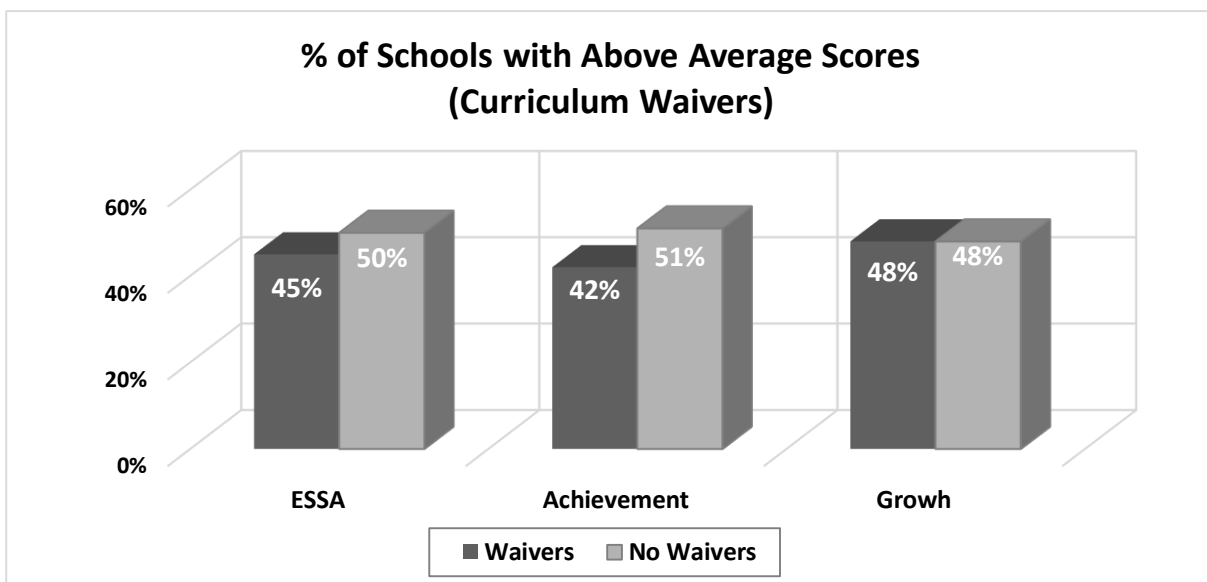
BLR analyzed schools using crosstabs to see if schools with waivers were more or less likely to have above average scores on three 2017-18 school accountability measures: the ESSA School Index score, the Weighted Achievement score and the Growth score. The following chart illustrates the pattern as it existed for these schools in 2017-18. On all three measures, schools WITHOUT waivers were more likely to have above average scores than those WITH waivers. However, these findings were not statistically significant.



The waivers analysis did produce two significant relationships when looking only at schools with larger than average percentages of FRL students. Among those schools, schools **WITHOUT** waivers were more likely to have above average ESSA School Index scores than schools **WITH** waivers (34.7% to 15.1%), and schools **WITHOUT** waivers were also more likely to have above average Weighted Achievement scores than schools **WITH** waivers (35.7% to 21.9%)

**CURRICULUM LAW/RULE WAIVERS**

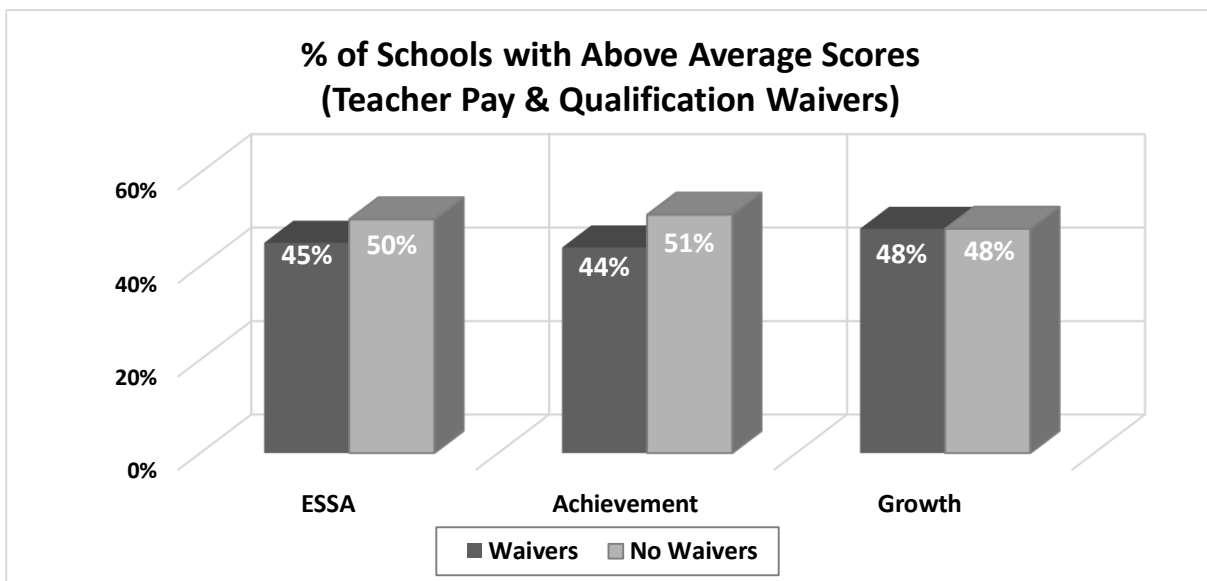
Ninety-two schools had operated for at least two years with waivers from curriculum-related laws and rules. These included waivers from such mandates as teaching required courses or offering gifted and talented programs. (See Appendix D for the list of curriculum-related laws and rules waivers.) The performance scores, as with the analysis of all waivers, were fairly similar, and the differences were not found to be statistically significant.



Again, when looking at schools with higher than average FRL percentages, schools **WITHOUT** curriculum waivers tended to score higher than schools **WITH** curriculum waivers, both on the ESSA School Index (33.3% to 13.5%) and on Weighted Achievement (50.9% to 42%).

**TEACHER PAY AND QUALIFICATION LAW/RULE WAIVERS**

In 2017-18, 147 schools had been operating under waivers related to teacher pay and qualifications for two years or more. (See the list of included laws and rules in Appendix D.) These do not include waivers given to individuals to teach out of area (Additional Licensure Plans) or as long-term substitutes. According to DESE, there were about 1,400 teachers working under Additional Licensure Plans in 2017-18.<sup>13</sup> In addition, about 825 long-term substitutes were teaching in Arkansas classrooms that same school year. The prevalence of teachers without credentials may be a reason that these differences in performance between schools with and without teacher pay and qualification waivers are relatively small and the findings not statistically significant.



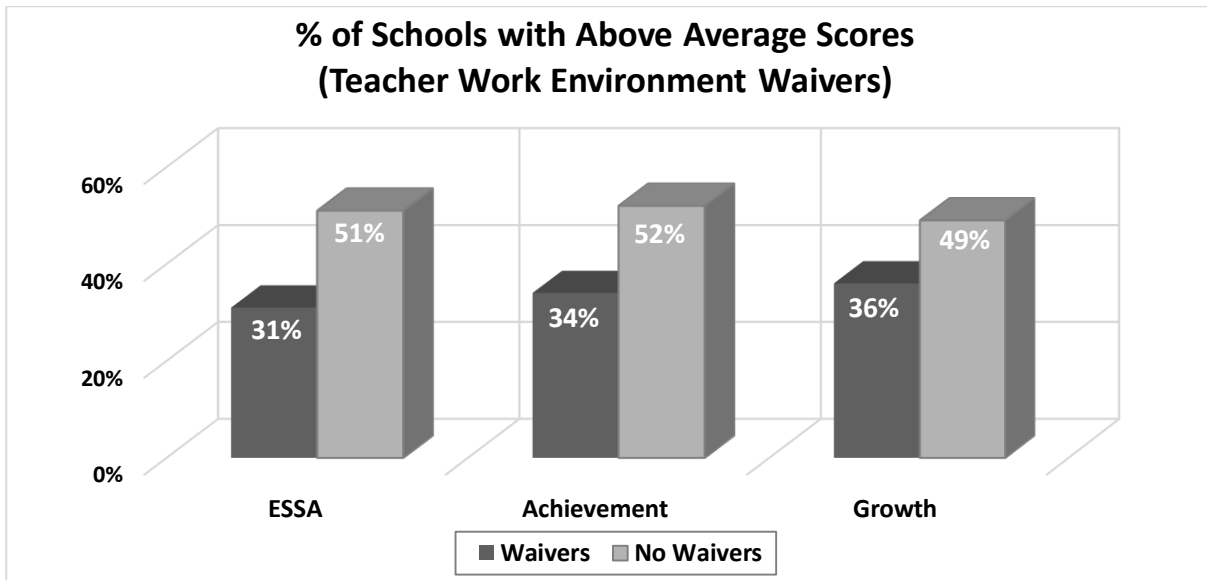
Once again, however, what happens in schools with higher than average percentages of FRL students is statistically significant at the 95% confidence level for two measures. Of these, schools **WITHOUT** teacher pay and qualification waivers were more likely to have above average scores than schools **WITH** teacher pay and qualification waivers for both the ESSA School Index (50.1% to 45.1%) and Weighted Achievement (51.1% to 44.1%).

**TEACHER WORK ENVIRONMENT LAW/RULE WAIVERS**

There were 101 schools that by the 2017-18 school year had been operating under waivers from laws affecting teachers' work environment for at least two years. The full list of rules and laws in this category is found in Appendix D, but these included waivers from rules and laws related to such things as class-size maximums, daily planning time, or money for teachers to use to supplement instructional materials. **Schools WITHOUT these teacher work environment waivers were more likely to have above average ESSA School Index scores and Weighted Achievement scores than did schools WITH the waivers, and both**

<sup>13</sup> DESE Excel spreadsheet "ALPs 17-18SY".

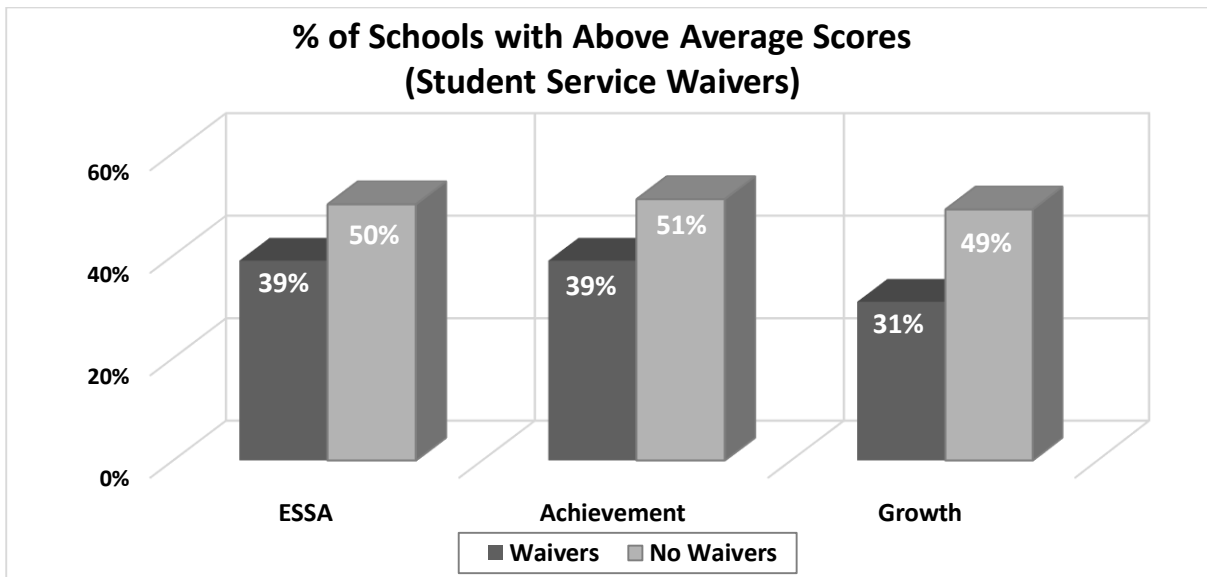
differences were found to be statistically significant at a 95% confidence level. The difference with Growth scores, on the other hand, was not statistically significant.



In addition to the differences in ESSA School Index and Weighted Achievement being statistically significant for all schools, **statistically significant differences were found on all three measures for schools with higher than average percentages of FRL students.** Schools WITHOUT teacher work environment waivers were more likely to have above average scores than schools WITH teacher work environment waivers on the ESSA School Index (34.4% to 8.3%), on Weighted Achievement (35.4% to 18.8%) and on Growth (39.8% to 29.2%)

**STUDENT SERVICES LAW/RULE WAIVERS**

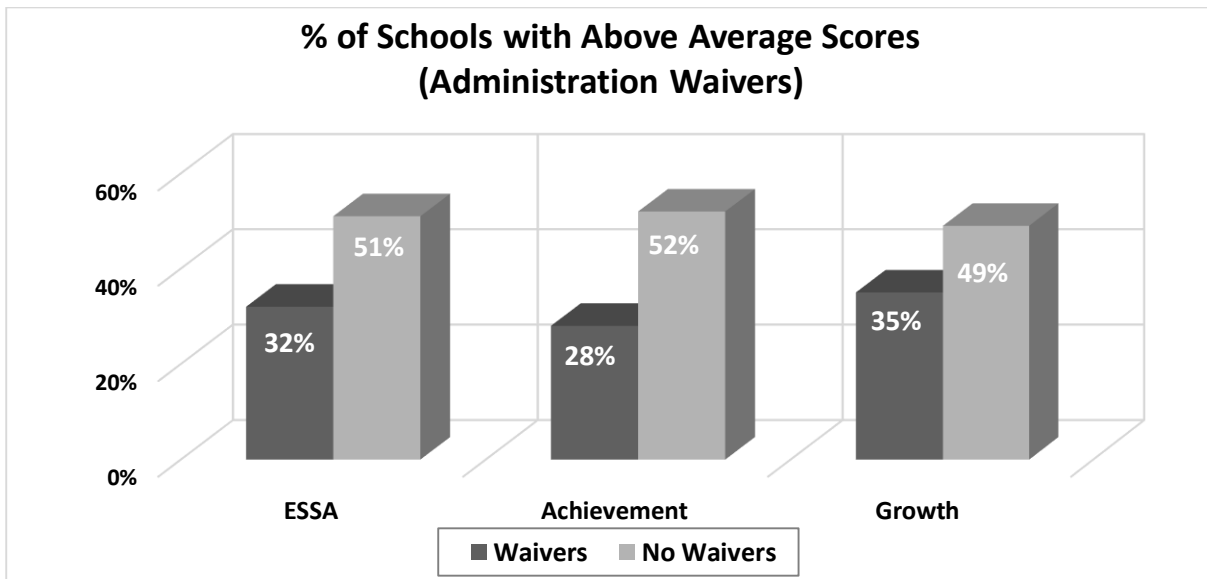
In 2017-18, 48 schools had operated under waivers from student services for at least two years. These included waivers from such requirements as the provision of health programs or library media centers. (See the list of included laws and rules in Appendix D.) **Schools WITHOUT student service waivers were more likely to have above average ESSA School Index, Weighted Achievement and Growth scores than schools WITH waiver. The differences on all three indicators were statistically significant at the 95% confidence level.**



When looking at schools with higher than average percentages of FRL students, the differences are only significant for the ESSA School Index score comparison.<sup>14</sup> Schools WITHOUT student service waivers were more likely to have above average ESSA School Index scores than schools WITH student service waivers (50.2% to 38.7%)

**ADMINISTRATION LAW/RULE WAIVERS**

In 2017-18, 62 schools had waivers for two years or more related to administrators, such as having a full-time principal or participating in the superintendents’ mentoring program. The schools WITHOUT waivers in this category were more likely than schools WITH administration waivers to have above average scores in all three accountability categories. What’s more, the differences for all three indicators were found to be statistically significant.



When looking at schools with higher than average percentages of FRL students, all three indicators again proved to have statistically significant differences. Schools WITHOUT administration waivers were more likely to score above average on the ESSA Index Score (33.6% to 0%), Weighted Achievement (35.4% to 0%) and Growth (39.6% to 25%).

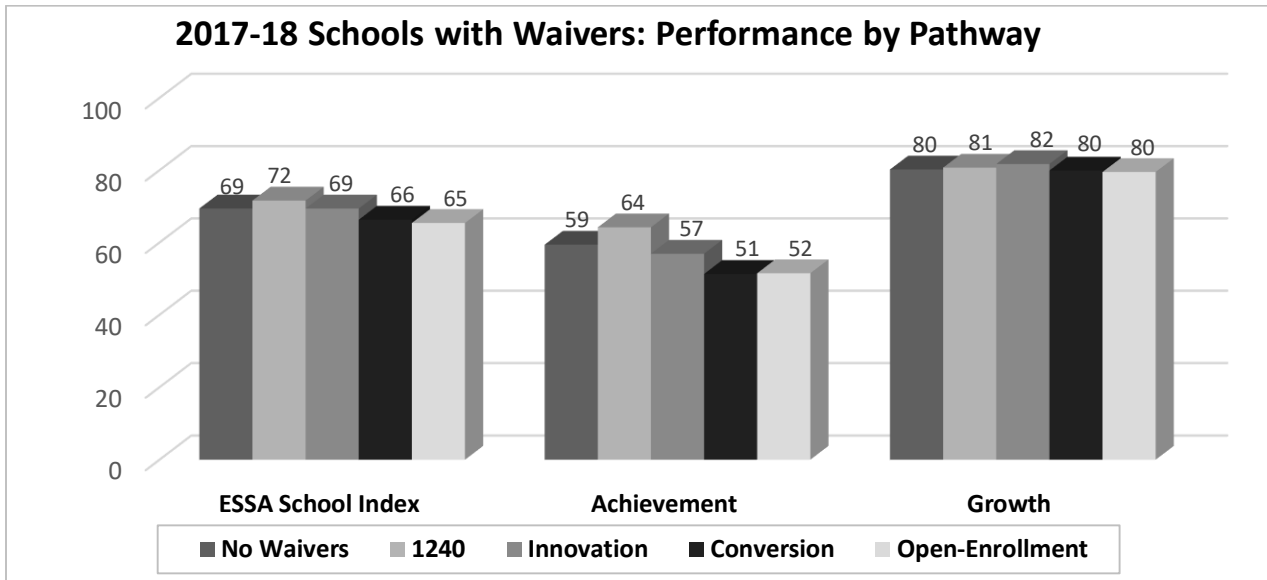
**DIFFERENCES IN PERFORMANCE BY WAIVER PATHWAY**

Another hypothesis considered by BLR is that schools using waiver pathways that required more planning and justifications would produce higher scores on accountability measures. The results from the analysis do not support that hypothesis, however, as the Act 1240 waiver schools have higher performance levels than do schools of innovation, conversion charter schools or open-enrollment public charter schools. And schools without waivers perform nearly as well, on average, as the Act 1240 schools and generally better than schools with waivers obtained through the other pathways. There may be other explanations for these differences that are not revealed in this analysis, however.

Each school is included in the analysis only once. Because some schools operate under waivers gained through more than one waiver pathway – through conversion charter school and

<sup>14</sup> Significant findings were found for schools with lower than average percentages of FRL students on the other two accountability measures. Of schools with fewer than average FRL students, schools without waivers were more likely to have above average scores for both Weighted Achievement and Growth.

Act 1240, for instance – BLR classified them by either considering which waiver pathway was used for the majority of their waivers or by which pathway was utilized first.



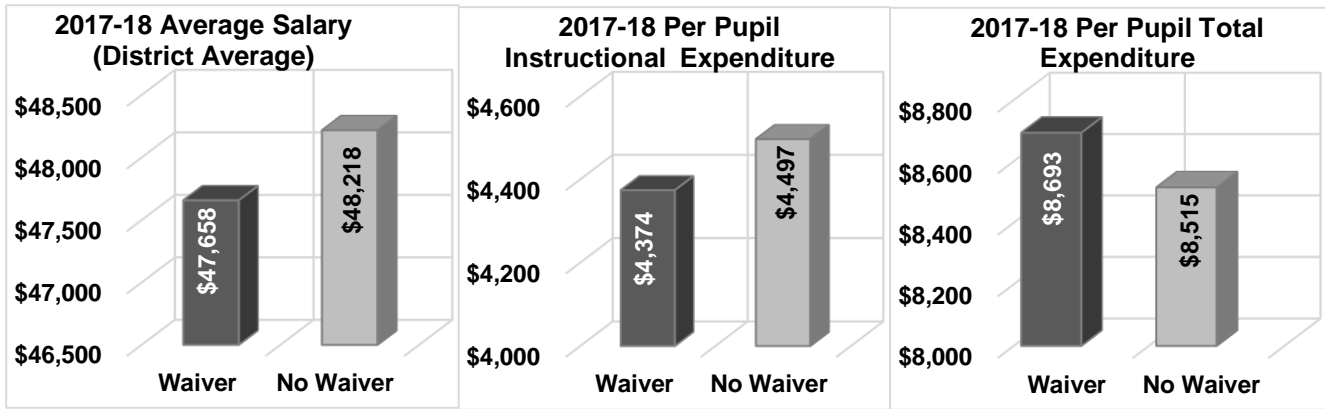
**IMPACT OF WAIVERS ON ADEQUACY: EDUCATIONAL EXPENSES**

Historically, waivers have been granted with no consideration of how they might affect or be related to educational funding or expenses. Something different happened this year, however. The new approach deals with school district’s ability to access the state’s \$60 million pot of money meant to help schools pay the increased minimum teacher salaries. (Beginning with the 2019-2020 school year, the minimum teacher salary is rising by \$1,000 each year for two years and then by \$1,100 each of the following two years.) In December 2019, DESE issued an emergency rule specifying that “[a]ny public school district or open-enrollment charter school that has or receives a waiver of the teacher minimum salary schedule during implementation of the Program shall not be eligible to receive Program funds... .” Almost all charter school systems and fewer than five public school districts appeared to be operating under such a waiver at the beginning of the 2019-20 school year.

Except for the provision issued in that emergency rule, waivers from regulations have not been accompanied by a change in funding. For instance, the total foundation funding amount supplied in the matrix is paid regardless of waivers. This is true whether a district or school has a waiver from maximum class sizes or operating a library media program, though both of those items are considered in the matrix.

When examining differences in spending patterns between the schools that had been operating under waivers for two or more years in 2017-18 versus all other schools, schools with waivers, on average, had lower district average teacher salaries, lower per-pupil instructional expenditures from state and local funds and higher total per-pupil expenditures than did those schools without waivers or with waivers for less than two years. These findings were not statistically significant, however.





\*Includes state and local funds only. Total expenditures do not include the district's central office expenditures.

Still, these patterns for 2017-18 do not reflect other patterns for educational expenditures that are common and have been noted in previous reports by BLR. For instance, in the 2017 adequacy report on Resource Allocations, teacher salaries are frequently lower in districts that are smaller or have higher concentrations of students qualifying for free and reduced-price lunches (FRL). The schools operating with waivers for two or more years in 2017-18, however, on average had higher enrollments and lower concentrations of FRL students. Again, none of these findings were statistically significant<sup>15</sup>, so these same results may not occur in a different year.

**Yet, when considering only those schools with higher than average percentages of FRL students, it proved statistically significant that schools WITHOUT waivers were more likely to pay higher than average salaries (district averages) than schools WITH waivers (37.1% to 20.3%).**

The relationship between waivers and instructional expenditures in schools with higher than average percentages of FRL students still showed no statistical significance, but that wasn't true when looking at per-pupil total expenditures. **Schools with above average percentages of FRL students WITHOUT waivers were less likely to spend over the average for per-pupil total expenditures than schools with waivers (43.9% to 62.2%).**

BLR also considered the size of schools because larger schools and districts can exercise more efficiencies with their spending. Statistically significant relationships showed up for two expenditure categories when analyzed this way.

**Of larger schools, those WITHOUT waivers were more likely to spend more than the average per-pupil instructional expenditures than those WITH waivers (47.6% to 31.6%).**

**On the other hand, larger schools WITHOUT waivers were less likely to spend above average than those WITH waivers for per-pupil instructional expenses (31.8% to 62.2%) as well as per-pupil total expenditures (26.1% to 44.6%).**

<sup>15</sup> The relationship with average salary and waivers/no waivers just missed being statistically significant. The Chi square coefficient produced was .056; a .05 coefficient indicates significance at the 95% confidence level.



**APPENDIX A: HOW BLR PERFORMED THIS ANALYSIS**

In 2017, the Bureau of Legislative Research (BLR) presented its first report about Arkansas schools operating under waivers to Arkansas education laws. For that report, BLR requested data regarding waivers from the then Arkansas Department of Education (now the Division of Elementary and Secondary Education, or DESE). Data was supplied by DESE in the form of a huge checklist of waivers granted to individual charter school systems or school districts. The report focused mainly on the growth of waivers and the kinds of laws and rules for which waivers were granted.

Since then, DESE began tracking waiver data at the school level, so BLR was able to consider expenses and performance at the school level. DESE's My School Info site provides spreadsheets of waivers for each individual school. During summer 2018, BLR downloaded these school-level data and then determined which waivers were operable in which school year by sorting the data by the dates they were granted and the dates they expire. (DESE provided a single spreadsheet of waiver data in January 2020, and the same steps were followed to determine which waivers were in effect in the 2018-19 and 2019-20 school years.) BLR then built data sets for analysis by adding school-level student enrollment, demographic, performance and expense data for corresponding years.

To examine possible relationships between the presence of waivers and performance or expenditures, BLR considered schools that had been operating under waivers for two years or more by the end of the 2017-18 school year as "Waiver" schools. (This year was used because, at the time of the analysis, it was the most recent year for which accountability and expense data were available.) All other schools, including new charter schools that had not been in operation for at least two years, were grouped in the "No Waiver" schools category.

The analyses compared Waiver schools' data with No Waiver schools' data for average ESSA School Index, Achievement and Growth accountability scores and for average teacher salary, per-pupil instructional expenditures and per-pupil total expenditures for expense measures. (Average teacher salaries are provided only at the district level, not the school level.) The comparisons were performed by recoding each school as "below average" or "above average" on each of the indicators and analyzing each relationship between measures and the presence of waivers through a statistical function called cross tabulations, or cross tabs. Crosstabs are a means of analyzing "binary" variables. Binary variables have two possibilities, such as "Waiver" or "No Waiver." Data that is not binary (i.e., ESSA Index Score, Average Teacher Salary) were converted to binary variables by calculating the average of each measure and then coding each school on each measure as "Above Average" or "Below Average".

In addition to making these comparisons between schools with any kind of waiver to other schools, BLR also examined patterns for schools with certain categories of waivers vs. schools without those waivers. These categories included waivers from laws related to Curriculum, Teacher Pay & Qualifications, Teacher Work Environment, Student Services and Administration. These categories were created by BLR, and BLR determined which waivers from laws and rules fit into each category. Schools were operating under many waivers that did not fit into one of the determined categories.

To determine if any of the analyses were statistically significant, BLR used the data software SPSS to calculate Chi square tests for each of the crosstabs.



**APPENDIX B: DESE'S WAIVER PATH DISTINCTIONS**

January 10, 2017	OPEN-ENROLLMENT CHARTER	DISTRICT CONVERSION CHARTER	ACT 1240 WAIVER	SCHOOL OF INNOVATION
<b>AUTHORITY</b>	Ark. Code Ann. § 6-23-301 et seq.	Ark. Code Ann. § 6-23-201 et seq.	Ark. Code Ann. § 6-15-103	Ark. Code Ann. § 6-15-2801 et seq.
	ADE Rules Governing Public Charter Schools	ADE Rules Governing Public Charter Schools		ADE Rules Governing Schools of Innovation
<b>APPROVER</b>	Charter Authoring Panel / State Board of Education	Charter Authoring Panel / State Board of Education	State Board of Education	Commissioner of Education
<b>APPLICABILITY</b>	All schools under the charter	Conversion charter only	All schools in the district	School of innovation only
<b>INITIAL TIME LIMIT</b>	5 years	5 years	Statue states approved as long as the open-enrollment charters operating; practice has been for districts to limit the requests, often to 5 years	4 years
<b>PROCESS LENGTH</b>	17 months	17 months	4 to 6 weeks	12-18 months
<b>INNOVATION STATUTE</b>	Innovative teaching methods Ark. Code Ann. § 6-23-102(3)	Innovative teaching methods Ark. Code Ann. § 6-23-102(3)		Innovation definition Ark. Code Ann. § 6-15-2801(3)
<b>APPROVAL PROCESS</b>	Potential applicant submits letter of intent	Potential applicant submits letter of intent		Potential applicant submits letter of intent
	Meeting, via call or web, for Charter Unit staff to consult individually with potential applicant	Meeting, via web, for Charter Unit staff to consult individually with potential applicant		Potential applicant attends session at Innovation Summit
	Potential applicant attends mandatory workshop	Potential applicant attends mandatory workshop		Potential applicant must attend one regional technical assistance meeting
	Applicant holds public hearing	Applicant holds public hearing		School establishes a Council of Innovation to develop the plan and at least 60% of eligible employees vote for application
	Applicant submits application	Applicant submits application	District submits petition for State Board of Ed. consideration	Applicant submits application
	ADE internal group reviews application	ADE internal group reviews application	ADE charter and legal staff review	ADE staff and others review applications received by initial deadline
	Meeting, via call or web, for Charter Unit staff to consult individually applicant about remaining issues	Meeting, via call or web, for Charter Unit staff to consult individually applicant about remaining issues	ADE staff contacts the district if clarification is needed	The review committee provides the applicant feedback, via the web
	Applicant responds to ADE comments	Applicant responds to ADE comments	District may revise	Applicant revises based on review

January 10, 2017	OPEN-ENROLLMENT CHARTER	DISTRICT CONVERSION CHARTER	ACT 1240 WAIVER	SCHOOL OF INNOVATION
<b>APPROVAL PROCESS</b>	ADE internal group reviews revisions and notes remaining issues	ADE internal group reviews revisions and notes remaining issues		ADE staff and others review final applications and note remaining issues
	Public hearing and vote conducted by the Charter Authorizing Panel	Public hearing and vote conducted by the Charter Authorizing Panel		
	State Board of Education considers the Panel's decision	State Board of Education considers the Panel's decision	State Board of Education considers the petition and makes the final determination	Commissioner of Education makes the final decision
	Board may conduct a second public hearing	Board may conduct a second public hearing		
<b>APPLICATION COMPONENTS</b>	Mission statement and key programmatic features	Mission statement and key programmatic features	Name of open-enrollment charter that draws students	Vision and mission
	Results of public hearing	Results of public hearing	List of the waivers granted to open-enrollment charter	School election results
	Governing structure of the school	Autonomy of the charter		Documentation of Council of Innovation
	Educational need for the school	Educational need for the school		Innovations with purposes
	Innovative teaching methods	Innovative teaching methods		Innovation plan with actions and outcomes
	Goals, assessment tools with performance levels	Goals, assessment tools with performance levels		Goals and performance targets
	Daily schedule and secondary courses to be offered	Daily schedule and secondary courses to be offered		
	Description of curriculum, programs, methods	Description of curriculum, programs, methods		
	Provisions for specific student services	Provisions for specific student services		
	Plans to annually report to parents and public	Plans to annually report to parents and public		
	Enrollment criteria, recruitment and lottery processes	Enrollment criteria, recruitment and lottery processes		
	Personnel with qualifications and salaries	Personnel with qualifications and salaries		Professional development plan
	Business office practices, budget, budget oversight	Expenses with funding methods		
	Description of facilities and renovations	Description of facilities and renovations		
	Methods for avoiding conflicts of interest			
	Involvement of parents and others	Involvement of parents and others		Documentation of shared leadership
	Impact on districts' desegregation efforts	Impact on districts' desegregation efforts		
	Requested waivers with rationales	Requested waivers with rationales	Requested waivers with rationales	Requested waivers with rationales

January 10, 2017	OPEN-ENROLLMENT CHARTER	DISTRICT CONVERSION CHARTER	ACT 1240 WAIVER	SCHOOL OF INNOVATION
<b>MONITORING</b>	Waivers are reviewed in the charter renewal process	Waivers are reviewed in the charter renewal process		Waivers are reviewed in the school of innovation renewal process
	Charters may be called before the authorizer for potential action at any time	Charters may be called before the authorizer and action taken at any time		The commissioner may revoke if a school fails to substantially fulfill the school's innovation plan, meet goals/performance targets, or comply with laws or rules





## APPENDIX C: 2019-20 MOST WAIVED LAWS AND RULES

The following laws and rules were the three most frequently operated under by traditional public schools during the 2019-20 school year:

### A.C.A. §6-17-309 Licensure - Waiver

(a)

(1) No class of students shall be under the instruction of a teacher who is not licensed to teach the grade level or subject matter of the class for more than thirty (30) consecutive school days in the same class during a school year.

(2) This provision shall not apply to:

(A) Nondegreed vocational-technical teachers;

(B) Those persons approved by the Division of Elementary and Secondary Education to teach the grade level or subject matter of the class in the Division of Elementary and Secondary Education's distance learning program;

(C) Those persons teaching concurrent credit courses or advanced placement courses who:

(i) Are employed by a postsecondary institution;

(ii) Meet the qualification requirements of that institution or the Division of Career and Technical Education; and

(iii) Are teaching in a course in which credit is offered by an institution of higher education or a technical institute;

(D) Licensed teachers teaching in the following settings:

(i) An alternative learning environment;

(ii) A juvenile detention facility;

(iii) A residential and day alcohol, drug, and psychiatric facility program;

(iv) An emergency youth shelter;

(v) A facility of the Division of Youth Services; or

(vi) A facility of the Division of Developmental Disabilities Services of the Department of Human Services; and

(E) A licensed special education teacher teaching two (2) or more core academic subjects exclusively to children with disabilities.

(b)

(1) If this requirement imposes an undue hardship on a school district, the school district may apply to the State Board of Education for a waiver.

(2) The state board shall develop rules for granting a waiver.

(3) Any school district that obtains a waiver shall send written notice of the assignment to the parent or guardian of each student in the classroom no later than the thirtieth school day after the date of the assignment.

(4) The state board may waive or modify the requirement that an applicant seeking licensure as a special education teacher complete an additional performance-based program of study if the applicant:

(A) Is licensed in another state with a special education license or endorsement; and

(B) Has taught special education students for not less than five (5) years.

### Standard for Accreditation 4-F.1

Each public school district shall employ library media specialists that meet the licensure requirements in accordance with the laws of the State of Arkansas and the rules of the department or are working under an approved waiver in accordance with the laws of the State of Arkansas and rules of the Department. (D/C)

### A.C.A. §6-17-902 Definition

As used in this subchapter, "teacher" shall include a full-time employee of a school district who is compelled by law to secure a license from the State Board of Education.



**APPENDIX D: WAIVERS INCLUDED ANALYSES OF 2017-18 SCHOOLS**

**CURRICULUM WAIVERS**

Schools having waivers from the following Standards for Accreditation (2015) sections, laws and rules were included in this category:

**Standards for Accreditation:**

18	18.01	24.17	9.03.2.6	9.03.3.11	9.03.3.7	9.03.4.10
19.03	18.02	9	9.03.2.7	9.03.3.12	9.03.3.8	9.03.4.12
10.07	19	9.03	9.03.2.8	9.03.3.4	9.03.3.9	9.03.4.2
14	19.03	9.03.1.2	9.03.3	9.03.3.5	9.03.4	9.03.4.7
14.01	19.04	9.03.2	9.03.3.1	9.03.3.6	9.03.4.1	9.03.4.9

**Arkansas Statute:**

A.C.A. §§ 6-15-1005(b)(5)	A.C.A. §§ 6-16-132	A.C.A. §§ 6-42-101 et seq.
A.C.A. §§ 6-15-214	A.C.A. §§ 6-16-132(b)(1)(a)	A.C.A. §§ 6-42-102
A.C.A. §§ 6-16-124	A.C.A. §§ 6-18-223	A.C.A. §§ 6-42-109
A.C.A. §§ 6-16-130	A.C.A. §§ 6-18-223(a)(1)	A.C.A. §§ 6-48-101 et seq.
A.C.A. §§ 6-16-130(b)(1)		

**DESE Rules:**

- Advanced Placement and International Baccalaureate Diploma Incentive Program
- African American History and Racial and Ethnic Awareness
- Arkansas Comprehensive Testing, Assessment and Accountability Program
- Concurrent College and High School Credit
- Distance Learning
- Gifted and Talented Program Approval Standards
- Technology Training Centers
- Visual Art and Music Instruction

**TEACHER PAY & QUALIFICATIONS**

Schools having waivers from the following Standards for Accreditation (2015) sections, laws and rules were included in this category:

**Standards for Accreditation:**

15.03	10.01.3	15.03.3
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**Arkansas Statute:**

A.C.A. §§ 6-15-1004	A.C.A. §§ 6-17-309	A.C.A. §§ 6-17-902
A.C.A. §§ 6-17-1201 et seq.	A.C.A. §§ 6-17-401	A.C.A. §§ 6-17-908
A.C.A. §§ 6-17-201(c)(2)	A.C.A. §§ 6-17-401 et seq.	A.C.A. §§ 6-17-908(a)(4)(B)
A.C.A. §§ 6-17-2401 et seq.	A.C.A. §§ 6-17-418	A.C.A. §§ 6-17-919
A.C.A. §§ 6-17-2403	A.C.A. §§ 6-17-802	A.C.A. §§ 6-17-919(a)(1)
A.C.A. §§ 6-17-301	A.C.A. §§ 6-17-807	A.C.A. §§ 6-18-501 et seq.

**DESE Rules:**

- Educator Licensure
- Governing Educator Licensure
- Teacher Excellence and Support System
- Waivers for Substitute Teachers

**TEACHER WORK ENVIRONMENT**

Schools having waivers from the following Standards for Accreditation (2015) sections, laws and rules were included in this category:

**Standards for Accreditation:**

10.02	10.02.3	10.02.5	24.15
10.02.2	10.02.4	10.03	

**Arkansas Statute:**

A.C.A. §§ 6-17-111	A.C.A. §§ 6-17-203
A.C.A. §§ 6-17-114	A.C.A. §§ 6-17-208
A.C.A. §§ 6-17-117	A.C.A. §§ 6-17-211
A.C.A. §§ 6-17-1501 et seq.	A.C.A. §§ 6-17-2407
A.C.A. §§ 6-17-1701 et seq.	A.C.A. §§ 6-17-702
A.C.A. §§ 6-17-201 et seq.	A.C.A. §§ 6-21-303(b)(1)

**STUDENT SERVICES**

Schools having waivers from the following Standards for Accreditation (2015) sections, laws and rules were included in this category:

**Standards for Accreditation:**

10.05	16.01	16.02.3	16.03.1
10.06	16.01.3	16.02.4	16.03.3
16	16.02	16.03	21

**Arkansas Statute:**

A.C.A. §§ 6-10-110	A.C.A. §§ 6-25-101 et seq.
A.C.A. §§ 6-18-1001 et seq.	A.C.A. §§ 6-25-103
A.C.A. §§ 6-18-1005(a)(6)	A.C.A. §§ 6-25-103(b)(1)
A.C.A. §§ 6-18-705	A.C.A. §§ 6-25-104
A.C.A. §§ 6-18-706	A.C.A. §§ 6-25-105
A.C.A. §§ 6-19-101 et seq.	A.C.A. §§ 6-25-106

**DESE Rules:**

- ACT 61 - Junior Fire Marshal Program
- Automated External Defibrillator Devices and CPR
- Distribution of Student Special Needs Funding
- Distribution of Student Special Needs Funding and the Determination of Allowable Expenditures of those Funds
- Eye and Vision Screening Report
- Nutrition and Physical Activity Standards
- Public School Student Services

**ADMINISTRATION**

Schools having waivers from the following Standards for Accreditation (2015) sections, laws and rules were included in this category:

**Standards for Accreditation:**

15.01	7.03	15.02
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**Arkansas Statute:**

A.C.A. §§ 6-13-109	A.C.A. §§ 6-17-302	A.C.A. §§ 6-21-406
A.C.A. §§ 6-15-2302	A.C.A. §§ 6-17-427	A.C.A. §§ 6-21-303

**DESE Rules:**

- Expenditure Requirements
- Minimum Qualifications for General Business Managers
- Public School Data in the Arkansas Public School Computer Network
- Superintendent Mentoring
- Superintendent Mentoring Program