

ARKANSAS DIVISION OF ELEMENTARY AND SECONDARY EDUCATION RULES
GOVERNING ACT 1240 WAIVERS
Proposed Effective Date: July 1, 2020

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LEGISLATIVE RESEARCH

1.00 REGULATORY AUTHORITY

1.01 The State Board of Education enacted these rules pursuant to its authority as set forth in Ark. Code Ann. §§ 6-11-105, 6-15-103, and 25-15-201 et seq.

2.00 DEFINITIONS

2.01 "Division" means the Division of Elementary and Secondary Education of the Arkansas Department of Education.

2.02 *"State Board" means the State Board of Education.*

3.00 REQUESTS FOR WAIVER

3.01 A district may petition the State Board of Education for all or some of the waivers granted to an open-enrollment public charter school.

3.01.1 ~~Prior to requesting a waiver, the district must obtain approval from the local school board. the school district board of directors must adopt a resolution authorizing the request for the waiver.~~

3.02 Districts may only request waivers that enhance student learning opportunities, promote innovation, or increase equitable access to effective teachers.

3.02.1 ~~Waivers shall not be granted that are requested for the sole purpose of to avoid violations of the avoiding Standards for Accreditation violations shall not be granted.~~

3.03 The petition shall include, without limitation:

3.03.1 The name of the open-enrollment public charter school that holds the waiver(s):

3.03.2 A list of the waiver(s) that the district seeks to have granted, including:

3.03.2.1 The proposed Standards for Accreditation:

3.03.2.2 The proposed Division Rules:

3.03.2.3 The proposed statutes of the Arkansas Code.

3.03.3 The proposed duration of the requested waiver(s):

3.03.4 ~~Evidence of the local school board's approval~~ *A signed copy of the resolution adopted by the school district's board of directors authorizing the district to request the waiver:*

3.03.5 Evidence of stakeholder involvement, including teachers and student families:

3.03.6 The grades, schools, and classes to which the proposed waiver(s) apply: and

3.03.7 A detailed rationale for the request, including but not limited to:

3.03.7.1 How the waiver(s) enhance student learning opportunities, promote innovation, or increase equitable access to effective teachers:

3.03.7.2 How students will be served: and

3.03.7.3 How the district will monitor and evaluate the effectiveness of the waiver.

3.04 The petition must be submitted to the Division's Charter School Office on the approved request form.

3.04.1 The request form shall be available on the Division's website.

3.05 A district may not request any of the following waivers:

3.05.1 Monitoring compliance with Title 6 of the Arkansas Code, as determined by the Commissioner:

3.05.2 Public school accountability under Title 6 of the Arkansas Code:

3.05.3 High school graduation requirements as established by the State Board:

3.05.4 Special education programs as provided by Title 6 of the Arkansas Code:

3.045.5 Conducting criminal background checks for employees as provided by Title 6 of the Arkansas Code:

3.045.6 Health and safety codes as established by the State Board and local governmental entities:

3.045.7 Arkansas Qualified Teacher Requirements:

~~3.045.8~~ Ethical guidelines and prohibitions as established by Ark. Code Ann. ~~§§ 6-24-101 et seq.~~ and any other controlling state or federal law regarding ethics or conflicts of interest; and

~~3.045.9~~ Reporting through the Arkansas Public School Computer Network applications as provided under Title 6 of the Arkansas Code.

~~3.056~~ A district may request a waiver of the requirements of Ark. Code Ann. § 6-16-102(a)(5), concerning recess, only if the district:

~~3.056.1~~ Submits to the Division for approval of an alternative plan for recess that:

~~3.056.1.1~~ Exceeds the required minimum amount of minutes combined for physical activity under Ark. Code Ann. § 6-16-132 and recess under Ark. Code Ann. § 6-16-102(a); and

~~3.056.1.2~~ Provides for both structured and unstructured social time.

~~3.067~~ Districts shall have the opportunity to amend their request until fifteen (15) days prior to the State Board's consideration of the waiver request.

~~3.067.1~~ If a District wishes to amend its request after the timeline in Section 3.067, it may only do so at the waiver hearing.

4.00 HEARING

~~4.01~~ All waiver requests shall be presented to the State Board of Education.

~~4.02~~ All persons, with exception of the attorneys representing the parties, who plan to provide testimony during the hearing must be sworn by the State Board Chair.

~~4.03~~ The District shall have twenty (20) minutes to present its case to the State Board for approval of the proposed waivers. The Chair may grant additional time if necessary.

~~4.03.1~~ If the district intends to use a presentation, handouts, or any other document, it must provide copies to the Charter School Office no later than ten (10) business days prior to the hearing.

~~4.03.2~~ If the district does not provide materials as required by Section 4.03.1, it may only use a presentation or present additional documents with the permission of the State Board.

4.04 Parties opposed to the proposed waivers, if any, shall have twenty (20) minutes to present their case to the State Board. The Chair may grant additional time if necessary.

4.04.1 Any party in opposition that wishes to present or participate at the hearing must notify the Division's Charter School Office and the district requesting the waiver in writing no later than ten (10) business days prior to the hearing.

4.04.2 If a party in opposition intends to use a presentation, handouts, or any other document, it must provide copies to the Charter School Office and to the district requesting the waiver no later than ten (10) business days prior to the hearing.

4.04.3 A party in opposition that fails to provide notice as required by Sections 4.04.1 and 4.04.2 may only present or participate at the hearing with the permission of the State Board.

4.04.4 If there are multiple individuals or groups who wish to speak in opposition, it is the responsibility of those individuals or groups to divide the twenty (20) minutes between themselves.

4.05 The District shall have five (5) minutes to respond to any arguments in opposition to the proposed waivers. The Chair may grant additional time if necessary.

4.06 The State Board will follow the presentations with discussion of the proposed waivers and may ask questions to any of the parties or to the Division, or both.

4.07 The State Board may ask questions at any time during the presentation by the District or the opposing parties.

4.08 The State Board may grant, in whole or in part, or deny, in whole or in part, the proposed waivers.

4.08.1 The State Board may also take the matter under advisement until a future scheduled Board meeting.

4.08.2 The State Board must make a decision within 90 days of receiving the waiver request.

4.09 Any waiver(s) granted to a district, in whole or in part, is valid for the duration requested by the district, unless the State Board votes otherwise.

4.09.1 The waiver(s) shall not exceed the duration that the waiver is valid for the open-enrollment public charter school on which the request was based.

4.09.2 The waiver(s) shall not be granted for a period of time exceeding five years.

4.09.3 If a district wishes to renew a waiver that is expiring, it must follow the procedure set out in Section 6.00 of these Rules.

4.10 The State Board may request annual reporting as a condition of approval of the proposed waiver(s).

4.11 The Division shall notify the Superintendent of the district in writing of the decision of the State Board.

4.12 All waivers granted under these Rules shall be posted to the Division's website.

4.13 The district must post all waivers granted under these Rules to the district's website under "State--Required Information" within thirty (30) days of the State Board's approval.

5.00 REVIEW AND REVOCATION OF WAIVERS

5.01 The State Board may exercise its right to review waivers granted under Ark. Code Ann. § 6-15-103 and these Rules at any time.

5.01.1 If the State Board chooses to conduct a review, it must give the district at least fifteen (15) business days' notice of its intent to review.

5.01.1.1 The State Board must state the specific reasons for conducting the review and state any additional information the State Board required from the Division or the district.

5.01.2 Following a review of the district's waiver(s), the State Board may modify or revoke the waiver(s) in whole or in part.

6.00 EXPIRATION OF WAIVERS

6.01 If a Standard for Accreditation, Arkansas law, or Division rule is repealed, any waiver(s) of that standard, law, or rule expires ~~as of~~ *on* the date ~~of the~~ repeal *becomes effective*.

6.02 If ~~a~~ Standard for Accreditation, Arkansas law, or Division rule is changed, it is the responsibility of the District to determine if the change necessitates a change in its waiver.

6.03 The Division shall advise district's by Commissioner's memo when ~~standards,~~ laws, ~~or~~ rules, *or the Standards for Accreditation* that impact waivers are changed.

6.04 If the open-enrollment public charter school on which the district based its request closes or gives up its waiver, the district may maintain the waiver until the end of the school year.

6.04.1 The district may bring a new waiver request based on another open-enrollment public charter school if another open-enrollment public charter school holds the waiver.

6.04.2 If no other open-enrollment public charter school holds the waiver, the waiver will expire at the end of the school year.

6.05 If a district wishes to renew a waiver that is expiring, it must submit an Extension Request Form.

6.05.1 ~~The Extension Request Form shall be posted to the Division's website. The request form shall be available on the Division's website.~~

6.05.2 The district must submit the following in its extension request:

6.05.2.1 The name of the open-enrollment public charter school that holds the waiver(s):

6.05.2.2 A list of the waiver(s) that the district seeks to have extended:

6.05.2.3 The proposed duration of the extension:

6.05.2.4 The grades, schools, and classes to which the proposed extension applies, if different than the original request:

6.05.2.5 An explanation of the benefit of the waiver for students, staff, the district, the community, or the State:

6.05.2.6 ~~Evidence of the local school board's approval of the extension request. A signed copy of the resolution adopted by the school district's board of directors authorizing the district to request to waive extension:~~

6.05.2.7 Evidence of support from district staff for the continuation of the waivers; and

6.05.2.8 A detailed rationale for the request, including but not limited to:

6.05.2.8.1 How the waiver(s) enhance student learning opportunities, promote innovation, or increase equitable access to effective teachers;

6.05.2.8.2 How students will be served; and

6.05.2.8.3 How the district will monitor and evaluate the effectiveness of the waiver.

6.05.3 If the district is requesting an extension of teacher licensure waivers, the district must also provide the following information:

6.05.3.1 The number of positions filled by a teacher employed under the waiver;

6.05.3.2 The number of teachers employed under the waiver that have obtained licensure; and

6.04.3.3 The number of teachers employed under the waiver that are actively engaged in a licensure pathway program.

6.05.4 The Extension Request Form must be received by the Charter School Office no later than forty-five (45) days prior to the expiration of the waiver.

6.05.4.1 A district may submit an extension request after the timeline set in Section 6.05.4.5, but the delay may result in a lapse in the waiver prior to extension.

6.06 All waiver expiration dates shall be posted to the Division's website.

1 State of Arkansas *As Engrossed: H2/28/19 H3/13/19*
2 92nd General Assembly **A Bill**
3 Regular Session, 2019

HOUSE BILL 1409

4
5 By: Representatives Della Rosa, *Vaught, Barker, Beck, Bentley, Capp, Cavanaugh, Christiansen,*
6 *Clowney, Coleman, C. Cooper, Crawford, A. Davis, Dotson, Evans, C. Fite, V. Flowers, Gates, Glover,*
7 *M. Hodges, Hollowell, Lundstrum, McCullough, McNair, Miller, Payton, Richardson, Richmond, Scott,*
8 *B. Smith, Warren, Wing*
9 By: Senators Elliott, E. Cheatham, L. Eads, M. Johnson, G. Stubblefield

10
11 **For An Act To Be Entitled**

12 AN ACT CONCERNING UNSTRUCTURED SOCIAL TIME IN
13 SCHOOLS; TO ALLOW FOR EXTENDED LEARNING OPPORTUNITIES
14 THROUGH UNSTRUCTURED SOCIAL TIME; TO REQUIRE THAT A
15 CERTAIN AMOUNT OF INSTRUCTIONAL TIME BE USED FOR
16 RECESS; TO CONSIDER THE SUPERVISION OF STUDENTS
17 DURING UNSTRUCTURED SOCIAL TIME AS AN ACTIVITY WITH
18 AN INSTRUCTIONAL PURPOSE; AND FOR OTHER PURPOSES.

19
20
21 **Subtitle**

22 TO ALLOW FOR EXTENDED LEARNING
23 OPPORTUNITIES THROUGH UNSTRUCTURED SOCIAL
24 TIME; TO REQUIRE A CERTAIN AMOUNT OF TIME
25 FOR RECESS; AND TO CONSIDER SUPERVISION
26 DURING UNSTRUCTURED SOCIAL TIME AS
27 INSTRUCTIONAL.

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29
30 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

31
32 SECTION 1. DO NOT CODIFY. Legislative findings.

33 The General Assembly finds that:

34 (1) Public school students need the ability to learn and grow
35 from one another in a social setting;

36 (2) Often, exchanges between public school students with respect



1 to learning and social awareness occur during recess;

2 (3) Public school students need more opportunities for physical
3 activity during the school day in order to promote healthy and active
4 lifestyles;

5 (4) Public school students should be given a sufficient daily
6 break in the form of recess, which would allow them to fully focus while they
7 are in class;

8 (5) Educational leaders cannot allow for a sufficient amount of
9 time in the school day for recess within the current construct of the
10 instructional requirements and time allotted in a school day, which generates
11 decreased focus in class and fewer opportunities to develop social awareness
12 among public school students;

13 (6) Due to numerous mandates, there has been a steady decline in
14 the amount of time dedicated to recess for elementary public school students;
15 and

16 (7) To address the increased need for public school student
17 social awareness and learning opportunities beyond the classroom, recess
18 should be included as part of the instructional school day.

19
20 SECTION 2. Arkansas Code § 6-16-102(a), concerning a school day, is
21 amended to add an additional subdivision to read as follows:

22 (5)(A) At least forty (40) minutes of instructional time per
23 school day shall be used for recess during the school day for students
24 attending public elementary schools.

25 (B) Recess shall:

26 (i) Consist of supervised, unstructured social time
27 during which public school students may communicate with each other;

28 (ii) Occur outdoors when weather and other relevant
29 conditions permit; and

30 (iii) Include without limitation opportunities for
31 free play and vigorous physical activity, regardless of whether recess occurs
32 indoors or outdoors.

33 (C) The remaining instructional hours required under this
34 section shall be distributed across academic content areas as determined by a
35 public school district board of directors.

36 (D) A public school principal may use discretion to adjust

1 recess time required under this section due to special circumstances or
2 programs that interrupt a regular school day.

3 (E)(i) A public elementary school may seek a waiver from
4 the requirements under subdivision (a)(5) if the public elementary school:

5 (a) Submits to the Department of Education for
6 approval an alternative plan for recess that:

7 (1) Exceeds the required minimum amount
8 of minutes combined for physical activity under § 6-16-132 and recess under
9 this section; and

10 (2) Provides for both structured and
11 unstructured social time; or

12 (b) Is approved by the department to operate
13 as a virtual school.

14 (ii) Beginning with the 2019-2020 school year, the
15 department shall provide to the House Committee on Education and the Senate
16 Committee on Education each year for three (3) years a report that details
17 the following:

18 (a) Which public elementary schools have been
19 granted a waiver under subdivision (a)(5)(E)(i) of this section; and

20 (b) How many waivers have been granted by the
21 department under subdivision (a)(5)(E)(i) of this section.

22
23 SECTION 3. Arkansas Code § 6-17-117(b), concerning noninstructional
24 duties of teachers, is amended to read as follows:

25 (b) As used in this section:

26 (1) "Noninstructional duties" means the supervision of students
27 before or after the instructional day begins or ends for students or for the
28 supervision of students during breakfasts, lunches, ~~recesses~~, or scheduled
29 breaks; and

30 (2) "Instructional purposes" means activities initiated by the
31 teacher related to teaching duties, including, ~~but not limited to~~, without
32 limitation contacting parents, assessing student performance, documenting
33 student performance, organizing the classroom, preparing instructional
34 materials, supervising students during recess, and other teaching
35 responsibilities related to instructional planning and the direct instruction
36 of students.

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/s/Della Rosa

APPROVED: 4/1/19

1 State of Arkansas
2 92nd General Assembly
3 Regular Session, 2019
4

As Engrossed: H3/27/19

A Bill

SENATE BILL 538

5 By: Senator J. Sturch
6

For An Act To Be Entitled

8 AN ACT CONCERNING OPEN-ENROLLMENT PUBLIC CHARTER
9 SCHOOLS; TO AMEND PROVISIONS OF THE CODE WITH RESPECT
10 TO OPEN-ENROLLMENT PUBLIC CHARTER SCHOOL AND
11 TRADITIONAL PUBLIC SCHOOL WAIVERS; TO AMEND
12 PROVISIONS CONCERNING SCHOOLS OF INNOVATION; AND FOR
13 OTHER PURPOSES.
14
15

Subtitle

16
17 *TO AMEND PROVISIONS OF THE CODE WITH*
18 *RESPECT TO OPEN-ENROLLMENT PUBLIC CHARTER*
19 *SCHOOL AND TRADITIONAL PUBLIC SCHOOL*
20 *WAIVERS; AND TO AMEND PROVISIONS*
21 *CONCERNING SCHOOLS OF INNOVATION.*
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23

24 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
25

26 SECTION 1. Arkansas Code § 6-15-103 is amended to read as follows:
27 6-15-103. School district waivers.

28 (a) A public school district may petition the State Board of Education
29 for all or some of the waivers granted to an open-enrollment public charter
30 school ~~that draws students from the school district.~~

31 (b) The petition for all or some of the waivers granted to an open-
32 enrollment public charter school that is submitted by a public school
33 district shall include without limitation:

34 (1) The name of the open-enrollment public charter school that
35 ~~draws students from the school district~~ has the requested waiver;

36 (2) A copy of the waivers granted to the open-enrollment public



1 charter school; and

2 (3) A list of the waivers that the public school district seeks
3 to have granted.

4 (c)(1) The state board shall grant, in whole or in part, or deny, in
5 whole or in part, a petition for a waiver submitted by a public school
6 district within ninety (90) days of receiving the petition.

7 (2) The state board shall notify the superintendent of the
8 public school district in writing of the decision of the state board.

9 (3) A waiver that is granted to a public school district, in
10 whole or in part, shall be valid for the duration approved by the state board
11 not to exceed the duration that the ~~waivers are~~ waiver is valid for the open-
12 enrollment charter school.

13 (4) A waiver under this section shall not be granted for a
14 period of time exceeding five (5) years.

15 (d) The Department of Education may promulgate rules to implement this
16 section.

17
18 SECTION 2. Arkansas Code § 6-15-2801(1)(A), concerning qualification
19 as a district of innovation, is amended to read as follows:

20 (A) ~~Developed~~ Submitted a school of innovation ~~plan~~
21 application in compliance with § 6-15-2803;

22
23 SECTION 3. Arkansas Code § 6-15-2802(a), concerning approval of a
24 public school as a school of innovation, is amended to read as follows:

25 (a)(1) The Commissioner of Education may approve a public ~~school as a~~
26 school's application to become a school of innovation for the purpose of
27 transforming and improving the teaching and learning under § 6-15-2803.

28 (2) The Department of Education may designate a public school as
29 a school of innovation under subdivision (a)(1) of this section if the public
30 school has met the objectives outlined in the public school's application to
31 become a school of innovation within the time period established in the
32 public school's application.

33
34 SECTION 4. Arkansas Code § 6-15-2802(b)(2), concerning the revocation
35 of a public school's designation as a school of innovation, is amended to
36 read as follows:

1 (2) The commissioner may revoke ~~the~~ a public school's school of
2 innovation designation if a the public school fails to substantially fulfill
3 ~~the school's~~ the school of innovation plan as established in the public
4 school's school of innovation application, meet goals and performance
5 targets, or comply with applicable laws or rules.
6

7 SECTION 5. Arkansas Code § 6-15-2802(c)(1), concerning rules adopted
8 by the State Board of Education to administer provisions regarding a school
9 of innovation designation, is amended to read as follows:

10 (1) Rules subject to exemption or modification for a school of
11 innovation ~~plan~~ application if approved by the commissioner;
12

13 SECTION 6. Arkansas Code § 6-15-2803 is amended to read as follows:

14 6-15-2803. School of innovation ~~plan~~ application.

15 (a) A school district shall submit its school of innovation ~~plan~~
16 application, approved by the school district board of directors, to the
17 Commissioner of Education for approval to become a school of innovation.

18 (b) A school of innovation ~~plan~~ application shall address without
19 limitation:

20 (1) The goals and performance targets for the school of
21 innovation, which may include without limitation:

22 (A) Reducing the achievement gap among one (1) or more
23 groups of students by accelerating learning experiences for academically low-
24 achieving students while increasing all student learning through the
25 implementation of highly rigorous standards for student performance;

26 (B) Increasing student participation in curriculum
27 options;

28 (C) Exploring new avenues for expanding students' college
29 and career readiness;

30 (D) Motivating students by exploring innovative teaching
31 and learning choices; and

32 (E) Transforming a school's culture and climate in a
33 manner that will lead to transformative teaching and learning;

34 (2) Changes needed in the school that will lead to ~~better~~
35 ~~prepared~~ students who are better prepared for success in life and career; and

36 (3) Innovative practices to be used in the school of innovation.

- 1 (c) Schools of innovation shall document ~~the~~:
- 2 (1) Parental, school employee, and community engagement;
- 3 (2) ~~Capacity~~ The capacity for the proposed school of innovation;
- 4 (3) ~~Rationale~~ The rationale for law, rule, and local policy
- 5 exception requests;
- 6 (4) Progress toward goals and performance targets; and
- 7 (5) Other information requested by the commissioner.
- 8

9 SECTION 7. Arkansas Code § 6-23-401(b), concerning prohibitions,
10 restrictions, and requirements imposed upon an open-enrollment public charter
11 school by the State Board of Education with respect to certain topics, is
12 amended to add an additional subdivision to read as follows:

13 (7) Reporting through the Arkansas Public School Computer
14 Network applications as provided under Title 6.

15
16 /s/J. Sturch

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19 **APPROVED: 4/9/19**

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