

3-12-2015

The Waivers Sought by Arkansas Charters: Should They Be Extended to All?

Sarah C. McKenzie

University of Arkansas, Fayetteville

Gary W. Ritter

University of Arkansas, Fayetteville

Follow this and additional works at: <http://scholarworks.uark.edu/oepbrief>

 Part of the [Educational Assessment, Evaluation, and Research Commons](#), [Education Law Commons](#), and the [Education Policy Commons](#)

Recommended Citation

McKenzie, Sarah C. and Ritter, Gary W., "The Waivers Sought by Arkansas Charters: Should They Be Extended to All?" (2015). *Policy Briefs*. 25.

<http://scholarworks.uark.edu/oepbrief/25>

This Brief is brought to you for free and open access by the Office for Education Policy at ScholarWorks@UARK. It has been accepted for inclusion in Policy Briefs by an authorized administrator of ScholarWorks@UARK. For more information, please contact scholar@uark.edu, cmiddle@uark.edu.

Summary Points

- **House Bill 1377 proposes allowing traditional public school districts to apply for the same waivers as nearby charter schools.**
- **Charters most commonly ask for waivers from:**
 - teacher licensure requirements
 - planned instruction time (length of school day and year)
 - Gifted and Talented programming
 - class size / teaching load
 - duty limits (e.g. duty free lunch)
- **Charters indicate the waivers support student learning by allowing flexibility to allocate resources more effectively.**
- **Most open-enrollment charter schools seek waivers involving teacher and employee contracts.**

The Waivers Sought by Arkansas Charters: Should They Be Extended to All?

Should traditional public school districts be allowed to use the same waivers as nearby charter schools? Perhaps the flexibility afforded to charters might be helpful for all schools by allowing them to become nimble, responsive organizations, less governed by inertia and more guided by innovation. House Bill 1377 proposes such an extension of waivers.

In this brief, we examine the most common waivers that charter schools request to assess what types of waivers could be available to traditional public schools if House Bill 1377 were signed into law.

Why Waivers?

Public schools may be seen as products of inertia—teachers unwilling to stray from instructional practices that have worked in the past, unions unwilling to stray from teacher tenure programs that have protected teachers in the past, districts unwilling to stray from administrative hierarchies that have worked in the past—decisions for the future based on what worked to a degree in the past, rather than thinking about what might work in the future. The concern, of course, is that if these ideas do not work, students will be worse off than they already are.

In this context, charter schools are often viewed as laboratories of innovation: a school that is given freedom from regulations that have helped students in the past to see if there are practices that could help students even more in the future. Charter schools, in their applications, request exemptions from particular state regulations, which if approved by the Charter Authorizing Panel and/or the State Board of Education, grant them more flexibility.

The waivers most requested by open-enrollment charter schools are presented in Table 1. The waivers most frequently request-

This Brief

Why Waivers? P. 1
 Analysis of Requested Waivers P. 2
 HB 1377 P. 4
 Conclusion P. 5

ed by all charter schools in Arkansas are represented in Table 2. Which waivers are seen as most critical to student success? Follow up investigation with schools revealed that the waivers surrounding hiring and firing of teachers are seen by charter leaders as being the most important waiver in terms of achieving student success.

Table 1: Five Most Frequently Requested Waivers (Open-Enrollment Charters).

Most requested waivers (open enrollment):

1. Teacher Licensure.....	100%
2. Teacher/Employee Contracts.....	94%
3. Gifted and Talented Programs.....	89%
4. Teacher Salary and Schedule.....	83%
5. Principal Qualifications/Responsibilities..	83%

Table 2: Five Most Frequently Requested Waivers (Open-Enrollment and District-Conversion Charters).

Most requested waivers (all charter schools):

1. Teacher Licensure.....	92%
2. Length of School Day or Year.....	67%
3. Gifted and Talented Programs.....	59%
4. Class Size and Teaching Load.....	56%
5. Duty Limits (e.g. duty free lunch).....	56%

Under the proposed legislation House Bill 1377, traditional public schools (TPS) could request the same waivers as nearby charter schools. The State Board of Education would have 90 days to grant or deny the requested waiver. If approved, the waiver would be available to the TPS for the same amount of time as those granted to enrollment charter schools. Additionally, if the open-enrollment charter school closes or has a waiver revoked, the TPS district would lose the waiver as well.

There are three different types of schools in Arkansas that can be granted waivers from particular state regulations or laws that mandate specific school practices, policies, courses, or other actions. Open-enrollment charter schools, district-conversion charter schools and schools of innovation can apply for waivers that allows certain flexibility.

The number of schools that receive waivers has been increasing. Currently there are 22 district-conversion charter schools, 18 open-enrollment charter schools and 11 schools of innovation operating in Arkansas^{3,4}. A significant difference between open-enrollment charters, district-conversion charters and schools of innovation is that schools of innovation **cannot apply for a Teacher Fair Dismissal waiver**. For more information on schools of innovation, see the Office for Education's policy brief on the topic.⁶

During the last four school years, 12 to 16 applications for new charter schools have been submitted each year,⁵ indicating that there is an ongoing desire for flexibility and choice.

Analysis of Requested Waivers

The Arkansas Department of Education provided the list of approved charter school waivers as of July 4, 2014. In the 2011-2012 school year, the Charter Authorizing Panel was the only body responsible for authorizing charter applications; in the 2013-2014 school year, the Charter Authorizing Panel was the initial source of approval for applications, but the State Board

of Education had the ability to review the Panel's decisions and approve or disapprove of charter applications. Those approved waivers comprise the sample for this brief. Of the 39 charter schools examined, 18 are open-enrollment, while 21 are district-conversion charters. In the sections that follow, we will discuss the most frequently requested and approved waivers.

Teacher licensure

The most frequently requested waiver for charter schools relates to teacher licensure. 100% of open-enrollment and 85% of district-conversion charter schools we analyzed requested waivers related to teacher licensure. Many charters indicated in their applications that they were seeking the ability to hire community professionals without a teaching background to teach non-core courses such as music and art. Schools were also interested in bringing in business professionals to help students understand what they need to do in order to succeed at their future careers. As noted by the charters in their applications and by the ADE in their compiled list of Commonly Granted Waivers⁸, any teacher hired under the teacher licensure waiver must meet all the requirements of a Highly Qualified Teacher, except for the licensure portion. Arkansas law establishes different requirements for a highly-qualified teacher based on years of service and grade levels taught, but generally teachers need to have a degree in their content area, and passing scores on their licensure exams. In hearings, the Charter Authorizing Panel noted that while charters often request waivers for teacher licensure requirements, many hire teachers with full licensure credentials, particularly for the core classes.

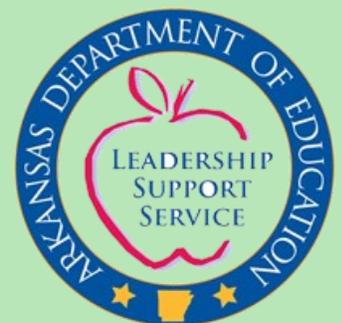
As teacher licensure was one of the most frequently requested (and often one of the most controversial) waivers, OEP reached out to contacts at the open-enrollment charter schools in the state to gather more information regarding the use of this waiver. Several themes emerged from school leaders related to the importance of the teacher licensure waiver.

School leaders indicated the teacher licensure waiver is important for having the flexibility to hire teachers with specific skill sets and that

ADE's Perspective on Curriculum Waivers

In the transcripts of their public hearings in November 2013, the Charter Authorizing Panel indicated that curriculum is a serious concern for them when deciding whether to approve a charter request or not¹². The Charter Board denied requests for waivers requesting broad exemption from curriculum requirements without a detailed plan for replacement. The Panel asked schools highly specific questions on what curricular programs would be used, how those programs are implemented by teachers, whether they align with Common Core, and whether the curriculum was proven rigorous. In its November 13, 2013 hearing, the Capitol City Charter application was denied largely on the basis of curriculum, and particular concern with the use of Saxon as their math curriculum. The Panel also denied applications from Ozark College and Career Academy in Springdale and the Redfield Tri-County College Academy in part because of a lack of detail about the high school curriculum. The Panel was unwilling to waive the requirement that 38 credits be taught each year, except as part of a phasing in of 9-12 grades. However, the Panel did note that SIA Tech had a specific waiver that allowed them to offer some of those courses off-campus, so that while the classes were offered each year, they were only taught in response to student demand, or individual students took classes off-campus.

Transcripts from the Charter Authorizing Panel and the State Board of Education indicate that while curriculum is a very real focus of ADE when deciding whether to approve a charter or not, those concerns can be mitigated with a detailed plan for delivery of all standards, meaning these classes could be waived as stand-alone requirements. The Charter Schools Program arm of the ADE confirmed that this was the case, saying that as long as schools detail which courses will be embedded, how the curricula will be merged, and guarantee that the requirements are met, their requests can be granted⁷.



anywhere from 10% to 50% of their teachers were not formally licensed. They noted that individuals not holding traditional licenses have been effective in the classroom. However, several of them reiterated the fact that the vast majority of their teachers still meet the highly qualified teacher (HQT) requirements.

Furthermore, it appears that while these schools value highly the flexibility to hire uncertified teachers, they view it as a way to get them in the door, but still incent them to obtain formal certification in the future. In some cases, charter schools are encouraging teachers to get certified by offering higher salaries for certified teachers.

At-will termination and teacher contracts

A less frequently used but perhaps more controversial waiver relates to teacher contracts and at-will termination. Interestingly, while these types of waivers were frequently requested by open-enrollment charter schools (94%), they were much less common in district-conversion schools (14%). This could have implications for the impact of HB 1377, if passed, because it's possible that TPS districts would be similarly hesitant to use this type of waiver. When the OEP reached out to charter school leaders about the use of these "hot-button" waivers, several themes emerged.

A common theme that emerged in relation to the lack of contracts was that it gives both the employer and employee freedom. Employment is voluntarily entered into, and therefore either party can terminate the employment relationship at will, at any time. Interestingly, one charter school leader indicated teacher contracts were reinstated in response to losing teachers to other traditional districts.

When asked how often these schools used at-will termination in the past three years the results varied. One school indicated they had only used it once, and another indicated not-renewing employment at the end of the school year over twenty times. Generally, though, it appears that schools use this waiver infrequently, but that the idea that no position is guaranteed sends a message and allows school leaders to hire the best teacher for their students.

Gifted and Talented program

The prevalence of waiver requests for Gifted and Talented (GT) programming (89% of open-enrollment and 33% of district-conversion charters) was interesting because of the difference in frequency of use between the two types of charter schools. It could be that district-conversion charter schools are less interested in GT waivers because they already have existing resources, rather than having to develop a new GT program from scratch.

Applicants had widely varying rationales for requesting these waivers. Many schools at the middle and high school levels argued that they would offer pre-AP and AP course in lieu of specific GT programming, allowing GT students to be challenged in that way; similarly, some schools proposed self-contained GT classes instead of pull-out work. Other schools argued their utilization of individualized learning plans and project-based learning would allow all students to be challenged, including GT students, making such programming redundant. Finally, some schools were upfront about the real challenge of maintaining a GT program: they simply did not have the resources to maintain a meaningful GT program.

Gifted and Talented programming waivers presented an interesting question of whether schools are able to provide meaningful enrich-

Curricular Waivers

Charter schools requested a number of curriculum-related waivers, particularly for Health and Safety Education (26% of schools), Fine arts and music (23% of schools), CTE courses (18% of schools), and oral communications (15% of schools). Often, charter schools indicated they were interested in embedding the curricula of these courses into other courses, rather than teaching them as stand-alone classes. To get a feel for whether or not this could be effective, high school graduation requirements were compared across the states, using information from each state's Department of Education (or Department of Public Instruction). The results were somewhat surprising. Only four states (including Arkansas) require students to take a designated Oral Communications/speech class before graduating—others include oral communications as part of standard English classes, offer it as an elective, or include it in other electives, such as drama or debate. It therefore does not seem that charter schools are denying students the ability to become proficient speakers by not requiring them to take a stand-alone oral communications course.

Eighteen states (including Arkansas) require students to take designated CTE course in order to graduate, but requirements of specific courses—such as keyboarding and career orientation—are rare. Instead, CTE will have a credit requirement, and students get to choose which courses are most relevant to them. In at least one state that required a keyboarding course, students can waive that requirement by demonstrating proficiency. Some states even allow CTE courses to count towards a math or science requirement. A few states are changing their graduation requirements, and are adding on CTE requirements for graduation. It seems that CTE courses are popular enough that not requiring CTE credits will not prevent students from taking classes, but the trend seems to be that more states and LEAs are requiring CTE for graduation; however, they are not prescribing which CTE courses students must take. Again, it does not seem that students in charter schools that have waived CTE curriculum requirements are at a significant disadvantage as compared to their in-state or out-of-state peers.

Curriculum waivers for Health and Safety education was also quite common—10 schools requested a waiver. 30 states do require students to take some sort of health class separate from a physical education course for graduation. While health and physical education are both pretty commonplace high school graduation requirements, there is far from consensus on what those courses should entail, making it difficult to say if this waiver has an effect on students.

ment for advanced students without state-mandated GT programming. A comparison of the number of GT-designated students across states with and without mandated GT identification using data from the National Association for Gifted Children revealed that states that mandate how LEAs define GT students and those that do not have roughly the same percentage of identified GT students. Thus, it is difficult to say, based off of other states' GT policies, whether exempting charter schools from state GT requirements has any real impact on GT students in charter schools in Arkansas.

Planned instruction time (length of school day / school year)

Seventy-eight percent of open-enrollment charter schools and 57% of district-conversion charter schools have approved waivers related to planned instruction time. Several schools requested permission to either have regular early release or late-start days in order to give teachers common planning time. Many schools were particularly interested in the opportunities this presented for interdisciplinary planning and co-teaching which has been found as a contributing factor to increased student achievement, higher teacher retention, and higher teacher satisfaction¹⁰ Most schools requesting permission for a weekly shortened¹¹ school day also requested permission for a longer school year, so the overall timing should either balance out, or come down on the side of increased school time for students.

Another potential concern is that for many students, not being in school means they do not have anywhere productive or safe to go. Depending on the student and the community, they may not have adult supervision or a safe place to go during this extra free time, and may be more likely to get in trouble. The late start option could help address this concern—if students get out of school early, they're likely to have more opportunities to get in trouble or in dangerous situations. On the other hand, if they start school late, they will likely use the time to sleep in.

Class size and teaching load

Forty-four percent of open-enrollment and 67% of district-conversion charter schools requested waivers related to class size and teaching load. These waivers related to things such as student to teacher ratio at certain grade levels, and a maximum number of students that can be assigned to a teacher. Charter schools may view this as a way to spread students across more teachers, but perhaps use the savings from this to pay more to attract teachers with a certain level of expertise. Again, this seems to be mainly an issue of flexibility.

Duty limits (e.g., duty free lunch)

Charter schools also routinely requested waivers for duty time limits. Charter schools particularly wanted teachers to have lunch duty, whether voluntarily as a means of reaching their weekly duty requirements, or by standard practice, with teachers eating lunch daily with the students. Schools rationalized the lunch duty as a way for teachers to build closer relationships with students, but much of the reasoning behind the increased duty is simply logistical—charter schools do not have the staff available to cover lunch and other duty times unless they place even greater demands on teachers.

Other Useful Waivers

School leaders also reached out to the OEP with information about other highly valued waivers. One mentioned that waivers from time requirements for various curricular areas such as PE, health, art, and music were critical. The school leader indicated that their organization infuses these instructional areas into other parts of the curriculum, so the waiver just provides flexibility in timing. Furthermore, this school leader valued flexibility in the school day and school length requirements.

Furthermore, both of these school leaders indicated that waivers related to board supervision were extremely important. In addition to these commonly requested waivers, there are waivers that are of particular importance to individual school situations. For a complete list of all waivers requested, see Table 3 in the Appendix.

The analysis of waivers presented here is interesting in and of itself. It is particularly relevant during this legislative session in light of HB 1377, which would extend the right to request such waivers to TPS. Thus, in the section that follows, we discuss arguments on both sides of the debate over HB 1377.

House Bill 1377

Arguments against HB 1377

Opponents to HB 1377 have argued that this bill could harm public school quality and student achievement. The Arkansas Education Association (AEA), for example, has called it a “dangerous piece of legislation with wide ranging and negative implications for parents, students, teachers, and classified public school employees.”⁹

Opposition focuses on details about which types of districts are allowed to request waivers, on concerns about specific types of waivers, on the fact that schools already have options for flexibility (schools of innovation and charter schools) and on broad based assumptions about the potential negative impacts on teacher morale and student well-being. The AEA is concerned that HB 1377 allows any district that loses *any* number of students to a charter school to file for waivers.

Some opponents may claim that the bill is unnecessary because there are already options for TPS schools to receive flexibility, and other avenues for them to obtain more. For example, TPS districts already have some waivers (such as hiring educators out of their licensure area) available to them. In addition, state law already allows flexibility through district-conversion charters and schools of innovation, although arguably, these changes would take much longer and be more costly to implement than a single waiver.

Many opponents are concerned in particular about the effect on instruction, claiming it may water down instruction. However, if districts receive waivers to hire uncertified teachers, they still have to meet the Highly Qualified Teacher standards in core subjects. We must trust that the school principals are educational professionals and will select the best applicant for the students. This waiver doesn't allow exemptions from background checks or the Code of Ethics for Arkansas Educators, and standardized assessments would still need to be administered only by licensed teachers.⁸

Office for Education Policy

For more information about this policy brief and other education issues in Arkansas, contact us:

Office for Education Policy
211 Grad Ed Building
Fayetteville, AR 72701
Phone: (479) 575-3773
Fax: (479) 575-3196
oep@uark.edu

Visit Us Online:

officeforeducationpolicy.org
officeforedpolicy.com

FACULTY

DIRECTOR:

Gary W. Ritter, PhD

EXECUTIVE

DIRECTOR:

Sarah C. McKenzie, PhD

MANAGING

DIRECTOR:

Jennifer W. Ash

RESEARCH STAFF:

Kaitlin P. Anderson

Denice Pugh

Charlene A. Reid

Evan T. Rhinesmith



UNIVERSITY OF
ARKANSAS

Arguments for HB 1377

Proponents of HB 1377 argue that allowing TPS districts to use waivers simply “levels the playing field” and allows them to compete with nearby charter schools. In some cases, TPS districts in some cases are losing students to nearby charter schools who have this flexibility. Singular waivers tied to specific issues allow for a low-cost form of additional flexibility without the requirements associated with opening a district-conversion charter school or applying to be a school of innovation.

In addition, these waivers still have to go through an approval process similar to the charter school process. In the case of charter schools, this decision comes to the Charter Authorizing Panel and/or the State Board of Education. Under Act 1377, districts would have to apply to the state board, who then has 90 days to grant or deny, in whole or in part, the request. These bodies often deny charter school applications that ask for broad exemptions without detailed plans. Similarly, we should expect a high level of scrutiny if TPS districts were allowed to apply for waivers, and should not be too concerned about this getting out of hand.

Furthermore, some waivers are already allowed for TPS, so what’s wrong with adding a bit more? For example, districts can file waivers to employ educators out of their licensure area, and if approved, can hire an out of area educator for up to three consecutive years. There are policies and procedures the districts must follow, of course. For example, these educators must make adequate yearly progress each school year,⁷ and are still required by federal law to meet Highly Qualified teacher standards if they teach a core academic subject (English Language Arts, Reading, Mathematics, Science, Foreign Languages, Social Studies, Music, and Art).⁸

Conclusion

The waivers discussed at length here seem to represent flexibility in addressing challenges that public schools could also face when trying to provide quality instruction and meaningful opportunities for students. Based on the regulations charters ask to waive, and how those regulations compare to other states’ regulations, will it do harm to allow nearby TPS districts to use the same waivers?

We might expect that the types of waivers that TPS districts request will look more similar to those used by district-conversion charter schools, since they are more similar to TPS districts than open-enrollment charter schools. Therefore, we may expect TPS districts to request – if HB 1377 is ultimately made into law – waivers from things such as teacher licensure requirements, class size and teaching load, planned instruction time, duty limits, and Health and Safety Education classes. Concerns about waivers related to Teacher Fair Dismissal Act and contracts may be

calmed as district-conversion charter schools (which again, may look more like TPS districts) use these waivers infrequently.

It seems that offering traditional public schools the opportunity to apply for the same waivers the charter school down the street has been granted could be good for Arkansas students. We won’t know unless we try.

References

- ¹<http://www.arkleg.state.ar.us/assembly/2015/2015R/Bills/HB1377.pdf>
- ²<http://www.arkansasonline.com/news/2015/mar/04/school-rules-waiver-clears-house-panel-1/>
- ³http://www.arkansased.org/contact-us/charter-schools/charter_school_categories/district-conversion
- ⁴http://www.arkansased.org/contact-us/charter-schools/charter_school_categories/open-enrollment
- ⁵<http://www.arkansased.org/divisions/learning-services/charter-schools/submitted-letters-of-intent-and-applications>
- ⁶ <http://www.officeforeducationpolicy.org/wp-content/uploads/Schools-of-Innovation.pdf>
- ⁷<http://www.arkansased.org/divisions/human-resources-educator-effectiveness-and-licensure/educator-licensure-unit/waiver-request-forms>
- ⁸http://www.arkansased.org/public/userfiles/Learning_Services/Charter%20and%20Home%20School/Charter%20School-Division%20of%20Learning%20Services/Applications/Waiver_Document.pdf
- ⁹<http://www.aeaonline.org/news/urgent-action-alert-damaging-bill-moving-through-arkansas-house-representatives>
- ¹⁰<http://www2.ed.gov/programs/slcp/finalcommon.pdf>
- ¹¹<http://educationnext.org/time-for-school/>
- ¹²<http://www.arkansased.org/about-ade/charter-authorizing-panel/minutes>

Appendix

Table 3: Requested Waivers (Open Enrollment Charters and District Conversion Charters).

<i>Waiver Category</i>	<i>Open-Enrollment</i>	<i>District -Conversion</i>	<i>All Charter Schools</i>
	<i>(18)</i>	<i>(21)</i>	<i>(39)</i>
	<i>Percent</i>	<i>Percent</i>	<i>Percent</i>
Teacher Licensure	100%	86%	92%
Planned instruction time (length of school day and year)	78%	57%	67%
Gifted and Talented programming	89%	33%	59%
Class size and teaching load	44%	67%	56%
Duty limits	67%	48%	56%
Principal qualifications and responsibilities	83%	29%	54%
Teacher Fair Dismissal Act & Teacher Contracts	94%	14%	51%
Library media specialist	89%	19%	51%
Public School Employee Fair Hearing Act	89%	10%	46%
Planning time requirements	56%	33%	44%
Required Committees	72%	14%	41%
Teacher salary and schedule	83%	0%	38%
Classified Staff (minimum salary, etc.)	78%	0%	36%
Grades (grading scale, etc.)	50%	24%	36%
School Board & Meeting Requirements	78%	0%	36%
Superintendent	78%	0%	36%
Alternative Learning Environment	72%	0%	33%
Certified Personnel	56%	10%	31%
Guidance counselor	56%	10%	31%
School elections (for school board members)	67%	0%	31%
Teachers' Salary Fund	61%	5%	31%
Health and Safety Education	0%	48%	26%
Fine Arts and Music	11%	33%	23%
Student Attendance	17%	29%	23%
Health and Safety Services (School Nurse)	44%	5%	23%
CTE (especially keyboarding and career orientation)	6%	29%	18%
Leased facilities & construction standards	33%	0%	15%
Oral communications	0%	29%	15%
Flagstaff (having a flagpole outside the building)	22%	0%	10%
Transportation	22%	0%	10%