

# Permitted Charter School Waivers from Public School Requirements

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## Issue

Describe the state law allowing charter schools to seek waivers from certain mandates that other public schools must meet and provide examples of the waivers that the State Board of Education (SBE) has granted.

## Summary

State law allows for two types of charter schools, state charters and local charters. State charters are approved by the SBE and are independent of any local or regional board of education, while local charters are sponsored by a local board of education, but have a separate board. Once approved by the local sponsoring board of education, a local charter must also receive SBE approval ([CGS §10-66bb](#)). A charter school, whether state or local, is a public, nonsectarian, nonprofit school that operates independently of any local or regional board of education under the terms of its charter. Charters are run by governing councils made up of private citizens, rather than an elected board of education ([CGS § 10-66aa](#)). In Connecticut there are 22 state charters and one local charter.

State law gives charter schools flexibility from certain requirements that other public schools must meet. The statutes creating charter schools (1) allow them to seek waivers from the state for certain laws or regulations and (2) specify what laws cannot be waived, including those regarding health and sanitary requirements, nondiscrimination, and collective bargaining for teachers ([CGS § 10-66dd\(b\)](#)). According to the State Department of Education (SDE) the most frequent waiver requested and granted is permission to exceed the statutory enrollment cap. Of the 10 charter schools we reviewed, eight had asked for enrollment cap waivers.

By statute (rather than by waiver from the SBE), charter schools are permitted to employ some teachers who are not fully state-certified but instead have one of two forms of temporary certification. In addition, the law also authorizes the commissioner to waive the temporary certification requirement and allows up to 30% of the teachers at a charter school to work under a charter school educator permit, which can be obtained more easily than a state educator certification ([CGS § 10-66dd](#) and [§ 10-145q](#)).

## Enrollment Cap Waivers

By law, a state charter school can enroll no more than 250 students or, in the case of a kindergarten through grade eight school, no more than 300, provided the school’s enrollment does not exceed 25% of the district’s overall enrollment. But the law also provides an enrollment cap waiver process. If the charter school seeking the waiver can demonstrate a record of achievement to SBE, then SBE must grant the waiver ([CGS § 10-66bb\(c\)](#)). SDE indicated that enrollment cap waivers are the most frequently requested waivers.

In reviewing available online documents for a sample of 10 charter schools, we found eight that have asked for and received enrollment waivers (see Table 1 below).

**Table 1: Selected State Charter Schools and Enrollment Waivers**

<i>School</i>	<i>Town</i>	<i>Enrollment Waiver Requested</i>	<i>Source</i>
Achievement First Bridgeport Academy	Bridgeport	Yes	<a href="#">Annual Report</a>
Achievement First Hartford Academy	Hartford	Yes	<a href="#">Annual Report</a>
Booker T. Washington Academy	New Haven	Yes	<a href="#">Annual Report</a>
Brass City Charter School	Waterbury	Yes	<a href="#">Annual Report</a>
Capital Preparatory Harbor School	Bridgeport	Yes	<a href="#">Annual Report</a>
Common Ground High School	New Haven	No	<a href="#">Annual Report</a>
Danbury Prospect Charter School	Danbury	Yes*	<a href="#">Danbury Charter School - Application</a>
Explorations Charter School	Winsted	No	<a href="#">Annual Report</a>
Interdistrict School for the Arts and Communications (ISSAC)	New London	Yes	<a href="#">Annual Report</a>
Norwalk Charter School for Excellence	Norwalk	Yes*	<a href="#">Norwalk Charter School for Excellence - Application</a>
*Charter application approved by SBE, but schools have not yet opened; pending funding opening is anticipated for fall 2020			

## **Other Allowed Waivers and Provisions Exempt from Waivers**

The statute creating charter schools allows them to seek waivers from the state for certain laws or regulations and names other laws that cannot be waived ([CGS § 10-66bb\(d\)](#)).

### ***Enrollment Lottery Waivers***

By law, when the number of students applying for seats at a charter school exceeds the number of available seats, the charter school must conduct a random lottery to choose who will be offered the seats. Under a 2012 law, a charter school may ask SBE for a waiver from the lottery requirement if the school's primary purpose is to serve one or more of the following populations:

1. students with a history of behavioral and social difficulties,
2. special education students,
3. English language learners, or
4. students of a single gender ([CGS § 10-66bb\(j\)](#)).

We found one request by a charter school to waive the enrollment lottery requirement that predates this 2012 law. The request was in Jumoke Academy charter school's original charter application in 1996 to allow Jumoke to give an enrollment preference to Head Start students seeking to enroll in Jumoke's kindergarten.

Jumoke made the request noting that part of its school space would be dedicated to a Head Start class and school officials wanted the Head Start students to have a preference when applying to Jumoke. SDE could not immediately determine if this request was granted in 1996, but the school does not currently have such a waiver.

The charter school law allows for a sibling preference in the lottery without asking for a waiver and it exempts a local charter from the lottery requirement if the charter is established at a school that is among the lowest 5% of schools in the state when they are ranked by their accountability index score ([CGS § 10-66bb\(j\)](#)).

### ***Laws that Cannot be Waived***

The charter school law includes (1) specific statutes that apply to all public schools that cannot be waived and (2) legal requirements established in the charter school law that cannot be waived. The two groups are shown separately below.

The following statutes are specific public school laws with which charter schools must comply and are not available for a possible waiver:

1. discrimination prohibited for all school age children in public schools based on race, color, sex, gender identity or expression, religion, national origin, or sexual orientation ([CGS § 10-15c](#));
2. educational evaluation and mastery tests ([CGS Chap. 163c](#));
3. school health and sanitation ([CGS Chap. 169](#));
4. teacher and administrator collective bargaining ([CGS §§ 10-153a to -153g](#), and [-153i](#), [-153j](#), [-153m](#));
5. building and fire code standards ([CGS § 10-292](#)); and
6. strategic school profile report ([CGS § 10-220](#)).

The charter school law also prohibits charter schools from filing requests to waive the statutory and regulatory requirements established under the charter school law ([CGS §§ 10-66aa to 10-66nn](#)).

These include the following requirements:

1. ensuring that the school does not discriminate on account of disability, athletic performance, or proficiency in the English language;
2. establishing procedures for (a) teacher evaluations and professional development for teachers and administrators, (b) encouraging parent involvement, and (c) increasing staff racial and ethnic diversity;
3. providing school facilities, transportation, and student health and welfare;
4. providing a five-year school maintenance and operation plan;
5. developing plans for (a) student recruitment that includes efforts to recruit students who are entitled to free and reduced priced lunch, English language learners, receiving special education services, and others who are high needs and (b) student learning practices and experiences to share with the board of education of the town in which the charter school is located; and
6. for charter schools that enter into a contract with a charter school management organization, complying with specified requirements regarding the terms, cost, scope, and other aspects of the contract ([CGS § 10-66bb\(d\)](#));
7. making contributions to the Teachers Retirement System for qualified school professionals (teachers, administrators, and staff such as school psychologists) required to participate in the system ([CGS § 10-66dd\(d\)](#)); and

8. ensuring special education services to those students who are eligible, whether the services are provided by the charter school or by the school district where the student lives ([CGS § 10-66ee\(d\)\(2\)](#)).

## **Teaching Certification and Certification Waivers**

By law, a local or regional board of education must employ teachers, supervisors, and administrators who hold the proper educator certificate (i.e., license) issued by SBE ([CGS § 10-145](#)). (The law provides an exception when there is a shortage of certified teachers for a particular subject area ([CGS § 10-8b](#)).)

There are three levels of educator certificate: initial, provisional, and professional, with professional being the highest level. There are also two forms of temporary certificates: a temporary 90-day certificate, primarily intended for those who just completed an alternative route to certification (ARC) program, and a non-renewable three-year temporary certificate, primarily intended for new charter school hires or out-of-state teachers ([CGS §§ 10-145b](#) & - [145f\(c\)](#)).

The charter school law for educator certification explicitly allows for up to half of a charter school's teachers to hold one of the two forms of temporary certificates and requires the other half to hold a regular certificate. However, the law authorizes the commissioner to waive this standard and allow up to 30% of the teachers at a state charter school to work under an SBE-issued charter school permit ([CGS § 10-66dd\(b\)](#)). SDE indicated that, while exact numbers were not immediately available, charters do seek and receive this waiver and it is most often sought by Achievement First charter schools, such as Amistad, Achievement First Hartford, and Achievement First Bridgeport. There is no similar statutory leeway for boards of education.

### ***Temporary Educator Certificates***

By law, up to half of a charter school's teachers may hold a non-renewable (1) temporary 90-day teaching certification that can be used at a charter or any other school or (2) temporary three-year certification that, if obtained for a charter school, can only be used at the charter school where the certification holder works ([CGS § 10-66dd\(b\)](#)).

Generally, applicants for teacher certification must complete a bachelor's degree in the appropriate subject area they will be teaching, complete a teacher preparation program, and pass the appropriate SBE-approved teacher credential assessments ([CGS §§ 10-145b](#) and -[145f\(b\)](#)). The temporary 90-day certification requires (1) each of these items (except completing an ARC program substitutes for the teacher preparation program) and (2) a few additional requirements such as having an undergraduate grade point average of at least a "B" and presenting evidence of

experience working with children (the education commissioner can, with good cause, waive the grade and working with children requirements) ([CGS § 10-145b\(c\)](#)).

The temporary three-year certification can be obtained without having to complete all of the above steps. This certification instead requires the applicant to have been hired by a charter school after July 1 for a teaching position in that school year, provided the person could reasonably be expected to complete the same requirements stated above for the temporary 90-day certification ([CGS § 10-145f\(c\)\(2\)](#)). This differs from the general teacher certification process in that for the charter school permit, the person can be hired first and seek the applicable credential after being hired.

The law contemplates that with either of these temporary certificates, the certificate holder would later apply for an initial teacher certificate.

### ***Charter School Educator Permit***

By law, SBE may issue a charter school permit to someone who (1) is employed by a charter school as a teacher or administrator, (2) lacks state certification for the position, and (3) meets specified qualifications. To receive a permit, a person must:

1. either pass the state reading, writing, and math competency test for teacher certification candidates or meet SBE criteria for a testing waiver;
2. pass the same state test as a teacher or administrator certification candidate seeking to work in the same subject or administrative area; and
3. demonstrate effectiveness as a teacher or school administrator, as appropriate.

The permit is only valid for the person to work for the requesting charter school and may be renewed when the school's charter is renewed ([CGS § 10-145q](#)).

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