



Local Education Agency and Public Charter School Waiver Guidance

Tennessee Department of Education | July 2025



Local Education Agency (LEA) Waiver Process

General Waiver Authority

Pursuant to Tenn. Code Ann. § 49-1-201(d), upon application by an LEA for one or more of its schools, the commissioner of education (commissioner) may waive any State Board of Education (SBE) rule or state statute that inhibits or hinders the LEA's ability to meet its goals or comply with its mission. The commissioner **may not** grant LEA waivers for regulatory or statutory requirements related to:

- federal and state civil rights;
- federal, state and local health and safety;
- federal and state public records;
- immunizations;
- possession of weapons on school grounds;
- background checks and fingerprinting of personnel;
- federal and state special education services;
- student due process;
- parental rights;
- federal and state student assessment and accountability;
- open meetings;
- educators' due process rights;
- reductions in teachers' salaries;
- employee rights, salaries and benefits; and
- licensure of employees.

Additionally, Tenn. Code Ann. § 49-6-3004(a)(6) authorizes the commissioner to grant a waiver of the 180 days of classroom instruction requirement to an LEA only in the event of a natural disaster or a serious outbreak of illness affecting or endangering students or staff during a school year upon the request submitted by the director of schools.

Waiver Authority Limitations

In addition to the list of items in Tenn. Code Ann. § 49-1-201(d), the following also limit the commissioner's authority to grant waivers:

- Tenn. Code Ann. § 49-1-104 prohibits the commissioner from waiving class the size maximum;
- Tenn. Code Ann. § 49-6-3004(a)(6)(A) limits the commissioner's authority to waive the instructional day requirement to when there is a natural disaster or serious outbreak of illness affecting or endangering students or staff during a school year; and
- Tenn. Code Ann. § 49-6-2206(a) authorizes only the SBE to grant waivers to LEAs to use textbooks and instructional materials not on the list approved by the SBE.

Requesting a Waiver from the Commissioner

LEAs may request a waiver from the commissioner by submitting a completed [General Waiver Request to Education.Waivers@tn.gov](#). Waivers must be requested by the director of schools and may be for the entire LEA or for individual schools, including public charter schools, within the LEA.

Following review by the commissioner, the LEA will be notified in writing if the waiver request is approved or denied. Unless otherwise stated, all waivers granted by the commissioner shall be granted for one-year terms.

Public Charter School Waiver Process

Authority

Tenn. Code Ann. § 49-13-111 authorizes a public charter school to apply to either the public charter school authorizer (authorizer) or the commissioner for a waiver of any SBE rule or state statute that inhibits or hinders the public charter school's ability to meet the school's goals or comply with the school's mission statement. Pursuant to Tenn. Code Ann. § 49-13-111(p), public charter school waivers shall **not be** granted by the authorizer or commissioner if they are prohibited in the Tennessee Public Charter Schools Act or for requirements related to:

- federal and state civil rights;
- federal, state, and local health and safety;
- federal and state public records;
- immunizations;
- possession of weapons on school grounds;
- background checks and fingerprinting of personnel;
- federal and state special education services;
- student due process;
- parental rights;
- federal and state student assessment and accountability;
- open meetings; and
- at least the same equivalent time of instruction as required in regular public schools.

Public Charter Schools Waiver Requests

The commissioner's process for acting on waiver requests from public charter schools includes a requirement that public charter schools first submit waiver requests to their authorizer. If the authorizer denies the request, the request may then be submitted to the commissioner for consideration.

When applying to open a charter school, applicants should indicate waiver requests in their public charter school application. Keep in mind that the public charter school application requires certain information to be included. If the authorizer approves the application with that information, a separate waiver request may not be necessary. For example, if textbooks and instructional materials are approved as part of the public charter school application, a separate waiver is not required for the use of those

textbooks and instructional materials. Approval of the application constitutes approval of the textbooks and instructional materials. Waivers approved as part of the application process shall be for the full term of the charter agreement unless otherwise specified.

For waivers requested outside of the public charter school application process, public charter school operators should contact the appropriate staff for the authorizer to determine the process for submitting waiver requests to the authorizer. Authorizers are encouraged to develop their own waiver process in compliance with Tenn. Code Ann. § 49-13-111 to include:

- instructions for public charter schools to request a waiver outside of the public charter school application process;
- a form for public charter schools to use to submit waiver requests;
- legal review to ensure that the authorizer has the legal authority to grant the waiver requested;
- the length of time (i.e., term) for approved waivers; and
- a procedure for the local board of education or charter commission to act on the waivers requested outside of the public charter school application process.

Authorizers should track approved waivers, and all approved waivers must be included in the [authorizer report](#), due annually on January 1.

How Public Charter Schools Request a Waiver from the Commissioner

If a public charter school requests a waiver from the authorizer and it is denied, the public charter school may then submit the waiver request to the commissioner by submitting a completed [General Waiver Request](#) to Education.Waivers@tn.gov. The request must include documentation that the request was initially submitted to the authorizer and the authorizer's response.

Following review by the commissioner, the public charter school and the authorizer will be notified in writing if the waiver request is approved or denied. Unless otherwise stated, all waivers granted by the commissioner shall be granted for one-year terms.

Waivers Frequently Requested of the Commissioner

Library Information Specialist (SBE Rule 0520-01-02.07(2))

SBE Rule 0520-01-02.07(2) requires a school having a current student enrollment of 550 or more to have a full-time library information specialist with endorsement as a library information specialist. LEAs may request a waiver of this requirement.

The plan for serving students without the requisite number of library information specialist listed in the rule.

English as a Second Language (ESL) Staffing Ratios (SBE Rule 0520-01-19.05)

SBE Rule 0520-01-02.07(2) requires LEAs to provide adequate ESL staff to effectively implement the chosen service model effectively and meet specific staffing ratio requirements. LEAs may request a waiver to use an alternate LEA-wide staff ratio.

The following information must be included in waiver requests for alternate LEA-wide staffing ratios.

- The number of EL students served;
- The proficiency levels of EL students;
- The academic growth of EL students;
- Evidence that no school in the LEA is an Additional Targeted Support and Intervention (ATSI) school based on the EL student accountability subgroup;
- The most recent analysis for the EL student subgroup for achievement assessments in reading/language arts, mathematics, and science;
- The proposed staffing ratio that will be used in place of the recommended thirty-five (35) to one (1) ratio; and
- The justification for the alternate staffing ratio.

Please note that SBE Rule 0520-01-02.07(2) requires LEAs to request waivers from the commissioner that impact the entire LEA; however, it does not address requests from individual public charter schools. Public charter schools may have this waiver approved through the application process. If not, this waiver must be submitted through the authorizer first and then the commissioner if it is denied.

Class Size Average (Tenn. Code Ann. § 49-1-104)

Tenn. Code Ann. § 49-1-104 establishes class size maximums and averages. Waivers of the class size averages may be requested; however, the law prohibits the commissioner from granting waivers for the class size maximums established in the law with the exception of Tenn. Code Ann. § 49-1-104(f). Tenn. Code Ann. § 49-1-104(f) authorizes the commissioner to grant a waiver from the maximum class sizes established in the law in the event of a natural disaster that results in the enrollment of displaced students.

An explanation of why the class size average requirement cannot be met and the average enrollment must be included in the waiver request. If a waiver of the class size maximum is being requested, a description of the natural disaster and a description of how students were displaced due to the natural disaster.

Maximum Time in Transit (Tenn. Code Ann. § 49-6-2105)

Tenn. Code Ann. § 49-6-2105 prohibits students from being in transit to or from school on a school bus more than 1½ hours in the morning or 1½ hours in the afternoon. A waiver may be requested for this requirement; however, the commissioner has traditionally granted this waiver only upon the condition that no student is in transit for longer than 110 minutes.

An explanation of why the maximum time in transit cannot be met must be included in the waiver request.

Remote Instruction (Tenn. Code Ann. § 49-6-3004(i))

Tenn. Code Ann. § 49-6-3004(i)(1) allows up to five days each semester of the required 180 days of classroom instruction via remote instruction in the event of dangerous or extreme weather conditions or of serious outbreak of illness affecting or endangering students or staff. Additional remote instruction days may be requested.

The reason for the need for additional days of remote instruction (i.e., event of dangerous or extreme weather conditions or of serious outbreak of illness affecting or endangering students or staff), including relevant details, must be included in the waiver request.

Waiver of the Requirement for 180 Days of Classroom Instruction

Tenn. Code Ann. § 49-6-3004(a)(6) authorizes the commissioner to grant a waiver of the 180 days of classroom instruction requirement to an LEA only in the event of a natural disaster or a serious outbreak of illness affecting or endangering students or staff during a school year upon the request submitted by the director of schools. This provision was added to the law after the catastrophic flooding that occurred across Tennessee in May 2010. The flooding created a situation where, at the very end of the school year, LEAs were unable to address the lost instructional time due to the flooding through the use of stockpile days or by adhering to the department's [Attendance Manual](#) on making up instructional days missed.

Tenn. Code Ann. § 49-6-3004(a)(6) does not include granting waivers directly to public charter schools. Additionally, Tenn. Code Ann. § 49-13-111(p) prohibits the commissioner or an authorizer from waiving rules or statutes related to the requirement to have at least the same equivalent time of instruction as required in regular public schools.

The commissioner only has the authority to consider waiver requests of the 180 days of classroom instruction requirement when there is a serious outbreak of illness or natural disaster. The waiver authority granted to the commissioner in the law is narrow. Merriam-Webster defines “natural disaster” as a sudden and terrible event in nature (e.g., hurricane, tornado, or flood) that usually results in serious damage and many deaths. The commissioner will only consider waivers of the 180 days of classroom instruction requirement for events of nature that cause substantial damage or disruption to property or critical infrastructure impacting the community and school operations that are beyond regular inclement weather.

When determining whether an event is considered a natural disaster, the commissioner reviews the [Tennessee Emergency Management Plan \(TEMP\)](#). The TEMP includes activation levels 1-5. Level 5 is for normal operations when no state declaration of emergency exists. Level 4 is identified as “elevated” and is when there is a potential or likelihood of an emergency developing or worsening, and the Tennessee Emergency Management Agency (TEMA) may augment staffing for the 24-hour watch staff in the Operations Center to perform more frequent monitoring of a situation. Only levels 1-3 indicate some level of disaster has occurred, and those are only the levels that should be cited as justification for this waiver.

Stockpile Days

A local board of education, private school, or church-related school that exceeds the full six and one-half (6 ½) hours instructional time required by law by one half (1/2) hour daily for the full academic year must be credited with the additional instructional time. The excess instructional time may be accumulated in amounts up to, but not exceeding, 13 instructional days each year, referred to as "stockpile days." Stockpile days may only be applied toward meeting instructional time requirements missed due to:

- dangerous or extreme weather conditions;
- serious outbreaks of illness affecting or endangering students or staff;
- natural disaster or dangerous structural or environmental conditions rendering a school unsafe for use;
- school-wide or district-wide instructional planning meetings, parent-teacher conferences, or other similar meetings; or
- faculty professional development (PD) that complies with state law and the rules and policies established by the state board of education.

Stockpile days may only be used in whole day (6 ½ hours); half day; or one-third (1/3) day increments. A local board of education, private school, or church-related school shall maintain documentation of the purpose for each stockpile day used as required by the Tennessee Department of Education, including reasons for school closures and agendas for professional development for audit purposes. An unused accumulated stockpile day must not be used for the purpose of ending the school year early and cannot be carried over from one school year to the next.

Requesting a Waiver of the 180 Instructional Day Requirement from the Commissioner

The commissioner will only grant waivers of the 180 instructional day requirement when absolutely necessary. LEAs should first exhaust all options (e.g., stockpile days, remote learning, converting unused PD days to instructional, etc.) for providing students access to 180 days of instruction prior to requesting a waiver.

The commissioner will only consider waivers of the 180 instructional day requirement when an LEA has exhausted all its stockpile days. Additionally, the commissioner will review the number of stockpile days the LEA has scheduled for PD. The commissioner may not approve waiver requests if the LEA has

scheduled more than two PD stockpile days, and they are unused at the time the waiver is requested. In these circumstances, PD stockpile days can be converted to stockpile days to be used to make up instructional days missed due to the natural disaster or outbreak of serious illness, if the LEA chooses.

LEAs may request days be waived retroactively, if needed. For example, if a natural disaster or serious outbreak of illness occurs in September, LEAs should use stockpile days for the instructional days missed. LEAs can then request those days be waived to free up the stockpile days if instructional days are missed later in the school year.

The following must be included in waiver requests of the 180 days of classroom instruction requirement:

- Dates of the instructional days requesting to be waived.
- Reason for the request (i.e., natural disaster or a serious outbreak of illness affecting or endangering students or staff during a school year) with relevant details.
- Number of stockpile days scheduled for PD for the current school year.
- Number of PD stockpile days that have been utilized at the time the waiver is requested.
- Confirmation that all stockpile days have been exhausted.
- Number of instructional days that have already been waived during the current school year.

To apply for a waiver, email a completed [General Waiver Request](#) to Education.Waivers@tn.gov. After the commissioner reviews the request, the requestor will receive written notification regarding the approval or denial of the waiver.

If an LEA has exhausted all stockpile days and a waiver is not granted, LEAs must review the current calendar to see what revisions must be made to ensure it includes 180 days of instruction. The [Attendance Manual](#) provides guidance on how to do this if all stockpile and remote instruction days have been exhausted.

Natural Disaster Waiver Request Application

Please note that the department has created a [Natural Disaster Waiver Request Application](#) for natural disasters that may require additional waiver request considerations beyond the 180 days of instructional. It includes pre-filled waiver requests that are commonly needed due to the impact of natural disasters, allowing the requestor to simply check the box. Feel free to reach out to the department's General Counsel at Christy.Ballard@tn.gov to talk through whether a particular waiver is allowable under the law or if there are other options for added flexibility.

Textbook and Instructional Material Waivers

LEAs must request and receive a textbook and instructional materials waiver from the SBE pursuant to Tenn. Code Ann. § 49-6-2206. Public charter schools must request and receive a textbook and instructional materials waiver in accordance with Tenn. Code Ann. § 49-13-111. As with all other waivers,

public charter schools must first request a waiver from the authorizer, and if it is denied, it may then be submitted to the commissioner for consideration.

SBE Rule 0520-01-19 details the textbook and instructional materials waiver process. Additionally, the SBE has issued a [guidance document](#). LEAs should contact TNStandards.Review@tn.gov with questions related to textbook and instructional materials waivers.