

Adequacy Study 2024

Waivers from Arkansas Laws and Rules

Prepared for the
House and Senate
Committees
on Education



June 4, 2024



Contents

Table of Contents

Introduction.....	1
Waivers and <i>Lake View</i>	1
Parameters for Waivers in Arkansas.....	2
Open-Enrollment Public Charter Schools	2
Performance of Open-Enrollment Public Charter Schools.....	4
Conversion Public Charter Schools.....	5
Performance of District Conversion Charter Schools	6
Districts and Schools of Innovation	6
Performance of Schools of Innovation	7
Act 1240 Waivers.....	7
Performance of Schools with Act 1240 Waivers	9
Digital Learning Program Waivers	9
Performance of Schools with Digital Learning Program Waivers.....	10
2023 Legislation.....	10
Appendix A.....	10
Enrollment Reports for Charter School Applications	10
Appendix B.....	13





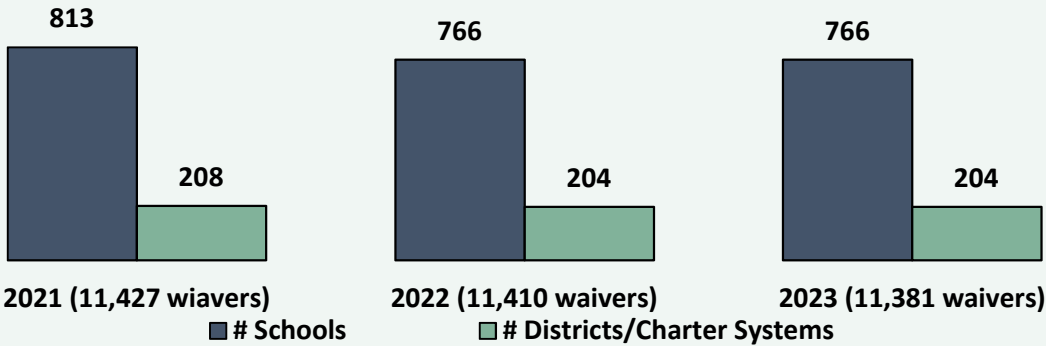
Introduction

Waivers from Arkansas state laws and rules governing education – and the ability to apply for them – have expanded significantly since the concept was first introduced in 1995.¹ Even though the number of pathways to waivers has grown over the last 30 years, the number of waivers has been trending downward during the last few years, as noted in the chart below. Most recently, this is largely due to a decrease in waivers from the school start date law, which was problematic for district planning due to a fluke in the calendar starting in 2018. That issue has eased, and those waivers have been expiring.

During the 2023 school year, according to data from the Arkansas Department of Education, about 75% of public schools in Arkansas operated under 11,381 individual waivers from the state’s laws and rules. Those schools enrolled 78% of the state’s public school students and were located in 179 of the state’s 234 public school districts and in all 21 charter school systems.

One caveat with the data set must be noted. Because waivers are granted for multiple-year periods, the information in the waiver data set is not always up-to-date with school-level or district- and charter system-level changes. For instance, when charter systems merge or schools are closed in district reorganizations, that is not always reflected in the data set. The BLR has indicated this whenever possible, but the BLR has not tried to alter the data set to solve for this issue.

Presence of Waivers, 2021-2023



Source: Data retrieved from Arkansas Department of Education’s MySchoolInfo site.

Waivers and Lake View

“Waivers” is not a topic mandated under the adequacy study statute to be addressed each biennium as part of the adequacy study process. The House and Senate Education committees first requested this report as part of their 2018 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 the Arkansas 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 many of the education laws it did as part of the post-*Lake View*

¹ See Acts 1995, No. 917, Section 8 (authorizing a waiver for a school district that determines that "it cannot meet the minimum salary requirements of this section from funds available").

reforms, Arkansas's General Assembly had made substantial steps toward meeting the adequacy and equity standards.

Many waivers are from laws surrounding items identified in the funding matrix as being necessary for adequacy. These matrix components include staffing ratios for teachers and administrators; library/media, counseling, and school health programs; licensing requirements; teacher salaries; operations and maintenance; central office; and transportation. Additionally, some of the 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 the constitutional standards.

From a financial perspective, as discussed in the Resource Allocation Reports of the 2024 Adequacy Study, the presence of waivers that exempt schools from having to provide specific resources often leads to lower expenditures in those areas for the schools with those waivers.

Parameters for Waivers in Arkansas

Waivers may not be sought from federal civil rights and special education laws. While most state-level mandates are eligible to be waived, laws governing open-records, teacher background checks, health and safety codes, state reporting and accountability requirements, and high school graduation requirements generally are not.² The waivers analyzed for this report do not include individual teacher waivers for which school districts and charter systems may also apply.

Overall, the most frequent waivers that schools operated under in the 2023 school year were related to requirements found in laws and rules falling into the following categories identified by the Bureau of Legislative Research: instructional time, teacher licensure, curriculum, and class size and teacher load. (For a list of all laws and rules in each category, please see Appendix A.)

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 public charter as well.³

The approval process for an open-enrollment public charter school takes about half a year.⁴ Applications are considered by the Charter Authorizing Panel, which is composed of members from the Department of Education's Division of Elementary and Secondary Education (DESE) staff and other stakeholders from

² "Prohibited Waivers," Division of Elementary and Secondary Education (Dec. 2016), retrieved at https://dese.ade.arkansas.gov/Files/20201127153924_Prohibited_Waivers_12_30_16.pdf. See also Ark. Code Ann. § 6-23-401, clarifying that open-enrollment public charter schools are subject to prohibitions, restrictions, and requirements relating to monitoring compliance under Title 6 of the Arkansas Code; public school accountability; high school graduation requirements; special education programs; conducting criminal background checks for employees; health and safety codes established by the State Board of Education and local governmental entities; and reporting through the Arkansas Public School Computer Network applications.

³ A.C.A. § 6-23-103(6)

⁴ 2022 and 2023 Charter School Application Timelines, retrieved from <https://dese.ade.arkansas.gov/Offices/office-of-school-choice-and-parent-empowerment/charter-schools/charter-schools-application-and-renewal-process>

outside the Division. The Panel’s decision is reviewed by the State Board of Education. Charters are approved for up to five years, at which time the State Board may renew a charter for up to 20 years.⁵

Upon opening, open-enrollment public charter schools often enroll students from across district or county boundaries. Because they have no tax base of their own, state aid supplies all of the per-student state foundation funding that traditional public school districts are guaranteed. Funding for new open-enrollment public charter schools is based on current-year student counts when schools are new or have had their charter expanded, such as by adding a grade. For all other open-enrollment public charter schools, funding is based on prior-year student counts, as is the case for traditional school districts. Since the passage of Act 542 of 2017, open-enrollment public charter schools have first right of purchase of any unused or underutilized public school buildings in the community in which they operate.⁶

During the 2023 school year, a rolling cap applied to open-enrollment public charter school applications.⁷ Any time the number of approved schools reached within two of the current cap, another five slots were added to create a new maximum. However, passage of Act 237 (the LEARNS Act) by the 2023 General Assembly repealed the provision calling for a cap, beginning with the 2024 school year.

Open-enrollment public charter schools operate under more waivers on average than any other type of school allowed to obtain waivers.

In 2023, according to data obtained from DESE’s MySchoolInfo website, open-enrollment public charter school systems held waivers for 71 schools operating, on average, under 66 waivers apiece.⁸ That was an increase of 16 charter schools and two additional charter school systems in operation that did not exist in 2022.⁹ Not all of the schools for which waivers were listed in the DESE database, however, may have been functioning during the 2023 school year, because DESE designated grades, including seven labeled Not Applicable, for 69 open-enrollment public charter schools. The most common waivers that open-enrollment charter schools operated under were related to laws and rules governing teacher licensure and salaries, school boards, curriculum, and personnel policies.

⁵ A.C.A. 6-23-307.

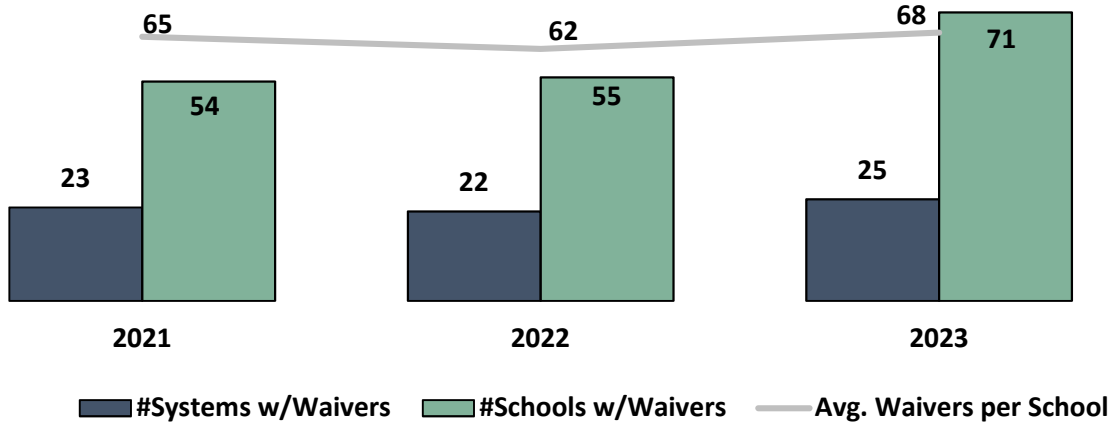
⁶ A.C.A. 6-21-815.

⁷ A.C.A. § 6-23-304(c)(1)(A)

⁸ In the Waiver file from the Arkansas Department of Education’s MySchoolInfo website, 25 open-enrollment charter school systems are included in the data set. The department’s State Aid Data file for that year, however, reported funding only to 21 open-enrollment charter school systems. This is because of consolidation of schools into the Friendship Aspire Academies and the Arkansas Lighthouse Academies systems. Also, The Excel Center is excluded from analysis because it is a charter school operated for adults.

⁹ According to a comparison of the data retrieved from the MySchoolInfo website for both years, the additional schools were in the Founders Classical Academies, Friendship Aspire, LISA Academy, Premier High School public open-enrollment charter school systems and the new Scholarmade Achievement Place or Arkansas and Responsive Ed Solutions Premier High School of North Little Rock systems.

Waivers for Open-Enrollment Public Charters



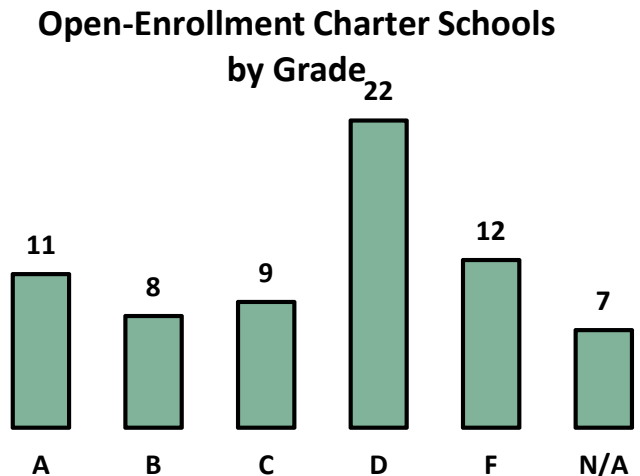
Open-enrollment public charter schools are required to submit annually to DESE reports regarding students who apply, how many are denied admission or placed on wait lists, and how many have been identified as special education students under the federal Individuals with Disabilities Act (IDEA). The forms submitted for 2023 show a total of 25,011 applications, 583 denials, and 2,751 waitlisted students. Reasons listed for denials included inappropriate age, expulsions from other schools, and residing outside of Arkansas.

Six percent of all applicants were identified under the IDEA compared with about 14% in public schools statewide;¹⁰ however, five charter systems said they did not ask about IDEA identification on the initial application. (See [Appendix A](#) for a table of the charter school systems and their responses.)

Performance of Open-Enrollment Public Charter Schools

Arkansas Code Annotated § 6-15-2101 *et seq.* lays out the state’s school rating system (also known as the letter grade system). DESE uses the ESSA School Index to calculate the letter grades. The ESSA School Index includes multiple indicators including achievement, growth, graduation rates, and school quality indicators.

In 2023, the most common grade for open-enrollment public charter schools was D, followed by A. (To see a comparison of grades with all schools, please see [Appendix B](#).)

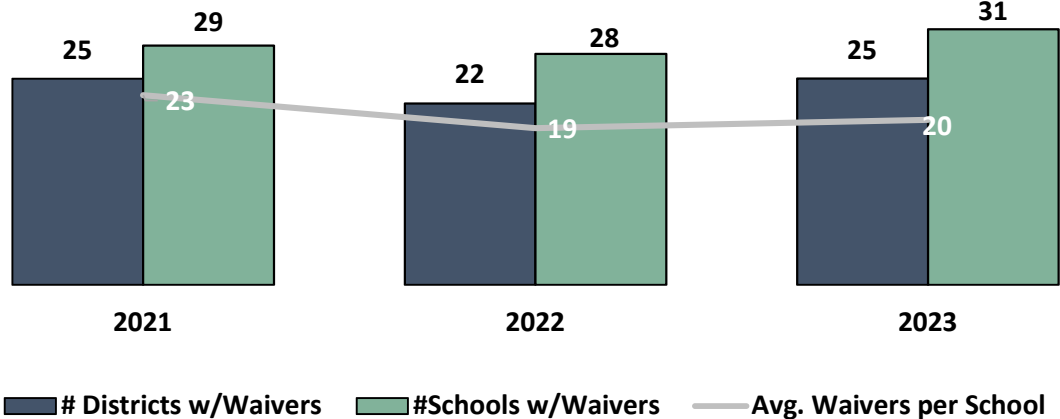


¹⁰ Arkansas Department of Education’s MySchoolInfo website statistics regarding students eligible to receive special education during the 2023 school year retrieved from <https://myschoolinfo.arkansas.gov/State/Detail/AR?FY=33&tab=stats>.

Conversion Public Charter Schools

Conversion charter schools are traditional public schools that have applied to operate under a charter, usually with waivers from some of the laws and rules governing Arkansas’s education system.¹¹ 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.

Waivers for Conversion Charters



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 to the State Board as they originally did.¹² Approval is about a seven-month process.¹³ For the 2023 school year, charters for these schools could be approved for up to five years.

Conversion charter schools operate under fewer waivers, on average, than open enrollment public charter schools. During the 2023 school year, 31 schools in 25 districts operated under conversion charter school waivers, averaging 20 waivers apiece.

The most common waivers are from teacher licensure requirements, followed by waivers from curriculum, class size and teaching load, library media, and instructional time requirements.

Conversion charter schools also are required to submit annually to DESE reports regarding students who apply, how many are denied admission or placed on wait lists, and how many have been identified as special education students under the IDEA. The forms submitted for 2023 show a total of 5,475 applications, zero denials, and one waitlisted student, with 15% identified under IDEA compared with about 14% in public schools statewide.

(See [Appendix A](#) for a table of the conversion charter schools and their responses.)

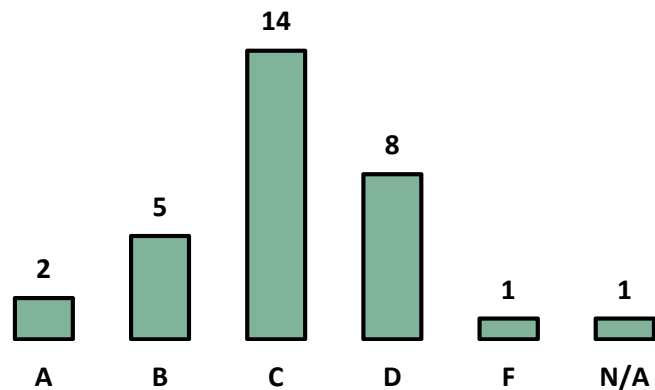
¹¹ A.C.A. § 6-23-201 *et seq.*
¹² A.C.A. § 6-23-201(a)(1).
¹³ 2022 and 2023 Charter School Application Timelines.

Performance of District Conversion Charter Schools

During the 2023 school year, the most common grade for open-enrollment public charter schools was C, followed by D.

(To see a comparison of grades with all schools, please see [Appendix B.](#))

Conversion Charter Schools by Grade



Districts and Schools of Innovation

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 of Arkansas’s education-related laws and rules, similarly to their public charter school counterparts.¹⁴ (Although the law allows the creation of districts of innovation, only schools of innovation operated in 2023.)

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”¹⁵

The application process to become a district or school of innovation takes about 12 months, a few months longer than the amount of time that it takes to get through the process for potential open-enrollment public or conversion charter schools.¹⁶ Final approval to become a School of Innovation is made by the Secretary of Education, and the status is granted for a four-year period.¹⁷

¹⁴ Arkansas Division of Elementary and Secondary Education Rules Governing Schools of Innovation, effective February 7, 2020.

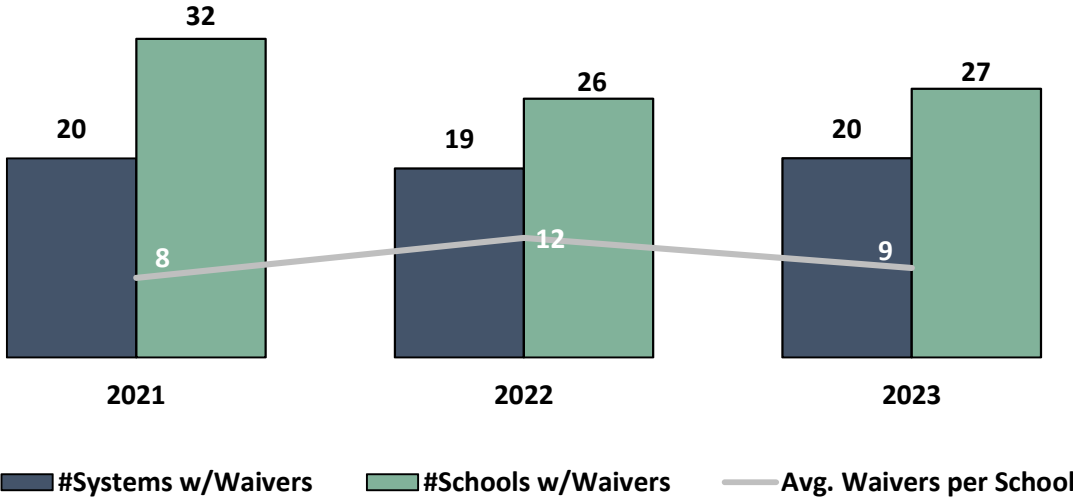
¹⁵ A.C.A. § 6-15-2803(b)(1).

¹⁶ DESE’s School of Innovation (SOI) Application Timeline 2022-2023.

¹⁷ <https://dese.ade.arkansas.gov/Offices/learning-services/schools-of-innovation>.

DESE’s Rules Governing Schools of Innovation require each district or school applying to be an Innovation institution to establish a Council of Innovation made up of various school stakeholders (e.g., certified and classified employees, parents, and community members) to be an integral part of the design and implementation process of the School(s) of Innovation.

Waivers for Schools of Innovation

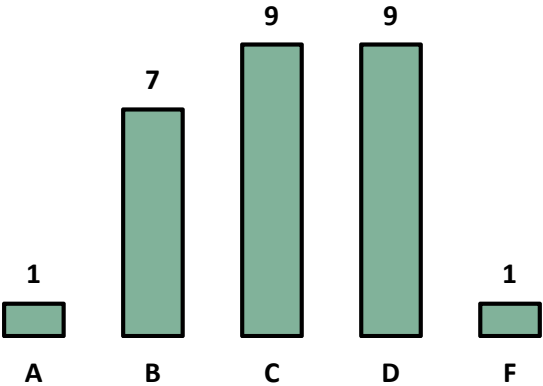


In 2023, 27 schools in 20 districts operated under waivers for schools of innovation, with an average of nine waivers apiece from Arkansas laws and rules. The most common waivers are for teacher licensure requirements, followed by waivers from class size and teaching load requirements.

Performance of Schools of Innovation

In 2023, the most common grades for schools of innovation were C and D, followed by B. (To see a comparison of grades with all schools, please see [Appendix B.](#))

Schools of Innovation by Grade



Act 1240 Waivers

Legislation passed in 2015 introduced another, quicker pathway to waivers that school districts could pursue. Act 1240 districts (the law does not apply to schools) could request the same waivers held by any open-enrollment public charter school that enrolled a student from within the school district’s

borders within a matter of months.¹⁸ Act 815 of 2019 amended the law so that all schools could seek any waiver that had been granted to any charter school in the state. These waivers are still called “Act 1240” waivers in DESE’s database. Finally, Act 347 of 2023 (discussed further in the last section of this report) amended the process by which districts may apply for waivers, more closely aligning the process to that of charters. That change did not have an impact for those districts with waivers in the 2023 school year, however, which is the year of analysis for this report.

To hold waivers for the 2023 school year, districts had to submit applications for Act 1240 waivers to DESE’s Legal Services Offices and petition the State Board of Education directly for them. DESE’s rules state that these waivers may only be requested if they “enhance student learning opportunities, promote innovation, or increase equitable access to effective teachers.”¹⁹

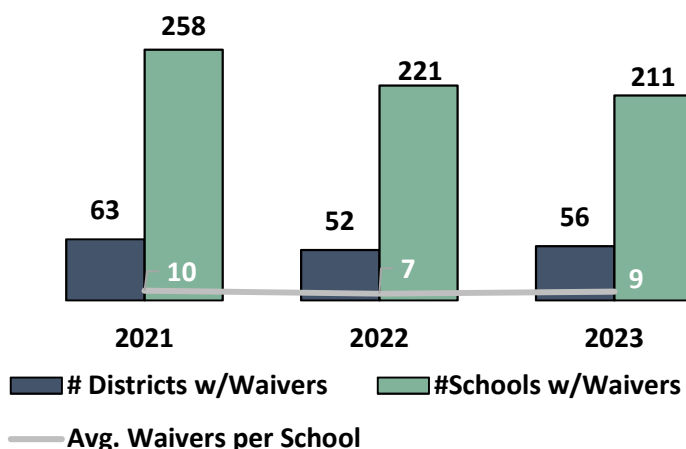
Districts’ petitions must have included the name of the open-enrollment charter school that held the waiver they were asking to have granted as well as the proposed duration of the request, proof of stakeholder involvement, and a detailed rationale of the request.²⁰

All Act 1240 waiver requests were presented during a hearing before the State Board, and the State Board could grant or deny part or all of the waiver request.²¹

During the 2023 and previous school years, the State Board had 90 days to make a decision. Act 1240 waivers could be granted for up to five years,²² and, at the expiration date, a district could seek to renew a waiver. The State Board of Education could also review and revoke waivers at any time.

In 2023, 211 schools in 56 districts were recorded in ADE’s data system as holding an average of nine Act 1240 waivers. However, grade designations were applied to only 197 schools, meaning some of those schools may have not been existence in the 2023 school year. Waivers dealing with teacher licensure requirements, followed by waivers from teacher salary requirements and from class size and teaching load requirements, were the most common waivers for Act 1240 schools.

Waivers for Act 1240 Schools



¹⁸ A.C.A. § 6-15-103

¹⁹ Arkansas Division of Elementary and Secondary Education Rules Governing Act 1240 Waivers, effective July 6, 2020.

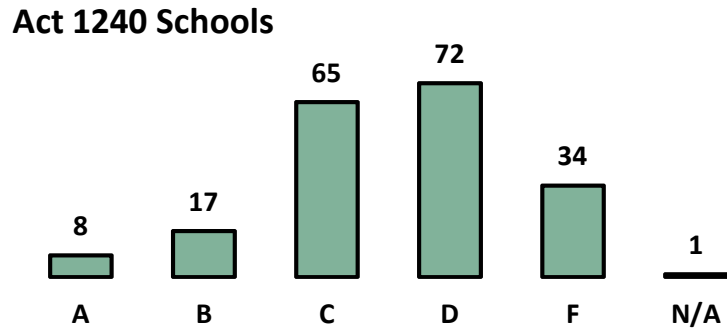
²⁰ A.C.A. § 6-15-103(b)

²¹ DESE’s Rules Governing Act 1240 Waivers.

²² A.C.A. § 6-15-103(c)(4).

Performance of Schools with Act 1240 Waivers

In 2023, the most common grade for schools operating under Act 1240 waivers was D, followed by C. (To see a comparison of grades with all schools, please see [Appendix B.](#))



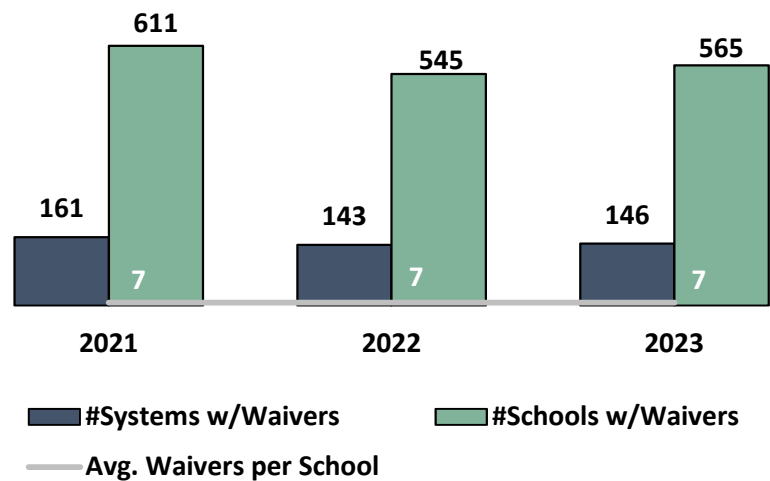
Digital Learning Program Waivers

Waivers for Digital Learning Programs (DLP) – actually an expedited version of Act 1240 waivers – were established by DESE to allow schools to teach students remotely through online courses. Learning delivery can be provided either synchronously (meaning the teacher and student are online at the same time) or asynchronously. The waivers were put in place during the COVID-19 pandemic with expiration dates in June of 2022, 2023 or 2024. Separate local education agencies (schools) did not have to be formed but instead the DLP waivers were granted to existing schools. Schools already operating under other types of waivers could also apply for the DLP waivers.

In 2023, 565 schools in 146 districts and open-enrollment public charter school systems operated under an average of seven DLP waivers, meaning that some or all students could learn remotely some or all of the time, although having a waiver did not mean a school had to deliver education remotely.

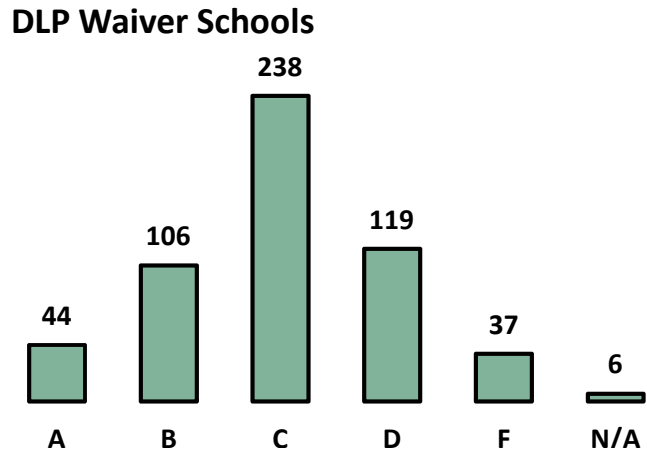
The most common waivers were from laws mandating instructional time requirements, with the next most common from laws mandating class size and teaching load, and finally from laws specifying attendance requirements.

Waivers for Digital Learning Programs



Performance of Schools with Digital Learning Program Waivers

In 2023, DESE issued grades for 250 schools that had DLP waivers. The most common grade for schools operating under DLP waivers was C, followed by D. (To see a comparison of grades with all schools, please see [Appendix B.](#))



2023 LEGISLATION

ACT 347 removes the five-year limit placed on waiver tenure for traditional schools, while also allowing for traditional schools to request waivers using the same criteria as is required of open-enrollment public charter schools. In addition, under Section 35, in order for a public school district to be eligible for funds to implement the new minimum base salary and salary increases required beginning in the 2024 school year, a school district shall not have a waiver of teacher salary requirements, among other prohibitions.

APPENDIX A

Enrollment Reports for Charter School Applications

Each fall, charter school systems are to report to the Arkansas Department of Education information about applications to their schools. Data from the 2023 reports are represented in the tables below.

Open-Enrollment Public Charter School Systems

Charter Name	# Applications	# IDEA Apps	% IDEA Students	# Denied	# on Waiting List
Academics Plus Charter Schools, Inc.	918	*	*	0	207
Arkansas Arts Academy High School	282	13	5%	0	201
Arkansas Connections Academy	3,336	182	5%	47	0
Arkansas Lighthouse Charter Schools	613	41	7%	0	3
Arkansas Virtual Academy	3,842	597	16%	0	0
Don Tyson School of Innovation	1,183	**	**	0	595

eSTEM Public Charter Schools	1,066	**	**	0	38
Exalt Academy of Southwest Little Rock	203	77	38%	0	14
Fayetteville Virtual Academy	86	10	12%	0	0
Founders Classical Academies of Arkansas	1,902	44	2%	7	0
Friendship Aspire Academies of Arkansas	913	65	7%	0	0
Future School of Fort Smith	255	42	16%	0	0
Graduate Arkansas	192	34	18%	3	0
Guy Berry College and Career Academy	69	31	45%	0	0
HAAS Hall Academy	1,434	0	0%	50	825
Hope Academy of NWA	46	**	**	0	9
Imboden Area Charter	63	10	16%	0	0
KIPP Blytheville College Preparatory School	137	13	9%	0	13
KIPP Blytheville Collegiate High School	52	7	13%	0	5
KIPP Delta College Preparatory School	58	2	3%	0	4
KIPP Delta Collegiate High School	24	4	17%	0	0
KIPP Delta Elementary Literacy Academy	133	16	12%	0	21
LISA Academy Public Charter School	5,612	0	0%	471	807
Mountain Home Career academies	1,610	319	20%	0	0
Premier High School of North Little Rock	252	5	2%	0	0
Premier High School of Springdale	135	3	2%	0	0
Premier High Schools of Arkansas	367	22	6%	5	0
Scholarmade Achievement Place of Arkansas	151	4	3%	0	9
Westwind School for Performing Arts	77	8	10%	0	0

*Information not provided. **IDEA information not requested on applications.

Conversion Charter Schools

Charter Name	# Applications	# IDEA Apps	% IDEA Students	# on Waiting List
Academies at Rivercrest High School	315	29	9%	0
Academies of West Memphis	957	108	11%	0
Adventure Online Academy	36	6	17%	0
Bauxite Miner Academy	26	2	8%	0
Cave City High School Career and Collegiate Prep	372	57	15%	0
Cave City Middle School	287	51	18%	0
Centerpoint Academy of Agriculture and Skill Trade	22	10	45%	0
DRIVEN Virtual Academy	296	58	20%	0
Fountain Lake Charter High School	407	52	13%	0
Fountain Lake School Cobra Digital Prep Academy	430	74	17%	0
Hot Springs Junior Academy	816	142	17%	0
Hot Springs World Class High School	732	109	15%	0

River Valley Virtual Academy	154	29	19%	0
Rogers New Technology High School	184	20	11%	1
Southside Charter High School	441	73	17%	0

APPENDIX B

The chart below shows the grades earned by each set of schools that operated under various types of waivers during the 2023 school year.

