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SENATE BILL 26-023

CONCERNING SCHOOL FINANCE (ERBOCES-DRIVEN CHANGES); CODIFIED IN PART AT C.R.S. §§ 22-33-104.3, 22-30.7-105 & 22-33-122.

Senate Bill 26-023 was the school finance act for 2026. The SFA always includes tweaks to the finance statutes. But this year, as in others, it was a vehicle for a sweeping programmatic change including one we-really-mean-it provision. This was largely prompted by the ongoing behavior of the former Education ReEnvisioned BOCES (ERBOCES). While ERBOCES provided toxic inspiration, the changes went beyond targeting that entity to more thoroughly regulating public school contracting-out behavior and all half-time programs.

The statute first declares a BOCES is "not a statewide program" but a "public entity" that can only run a public "school or program." The statute eliminates any unilateral BOCES authority to run programs outside the boundaries of BOCES's member districts. The Supreme Court found that existing law forbade this two years ago. But ERBOCES treated that clear precedent as if it were optional. The explicit new language leaves no room for any doubt.

The statute clarifies the practice of running homeschool support or half-time public education programs. *Any* program that is meant to generate half-time PPR must now meet the requirements of the new law. Charter schools, school districts, and BOCES may all run such programs. Generally, this must be done inside district boundaries (meaning, for institute charter schools, the boundaries of the district in which the school is physically located). There are two separate provisions for extraterritorial programs. One only exists for the 2026-2027 school year and was meant to allow programs that ERBOCES was funding to engage in an appropriate soft landing with their parents: either finding a proper long term partner, being sponsored for one more year while submitting an application for charter status, or shutting down responsibly. If anyone is considering picking up one of the ERBOCES programs for this "hold harmless" year, you should already be knee deep into that process. Because ERBOCES has recently dissolved, programs may be scrambling for a sponsor. For only the 2026-2027 school year any district or charter school can sponsor any of these programs. The deadline for applying to sponsor such programs for next year has moved to September 4.

Permanently, exterritoriality for half-time programs is now limited to: (1) state board certification of such a program based on it meeting to-be-defined transparency and quality regulations (scheduled to be issued in December); or (2) a local district board electing to allow another local provider (district, charter or BOCES) to start a half-time program in its boundaries. In the second case, the local district board that is allowing the placement of the extraterritorial program must certify to the state board that the program meets the state board's quality and transparency standards. This certification and permission must be renewed by the district board where the program is located every two years. In addition, a student may not be funded on a part-time basis if they are also enrolled in an independent (private) or parochial school.

Third, education management organizations working with an online school must now provide specified information to the school authorizer. This includes performance data at other schools managed by the provider; data demonstrating organizational capacity to provide online education; transparency with respect to potential conflict-of-interest issues; and a copy of the management contract (which must have several specified provisions).

Finally, the general statute governing school districts contracting for services has been comprehensively amended. It is no longer possible to create a “contract” school. The only “contractual” relationships now allowed to define core public school or education program operations lie with charter schools, innovation schools, online schools, facility schools, or in supporting individual student IEPs. This reflects the essence of the Supreme Court decision that ERBOCES lost. The legislature clearly labeled this a “clarification” of the law, not a “substantive change” in law. In other words: ERBOCES fought the law, and the law won.

In all seriousness, thousands of students in ERBOCES programs are just now learning their school or part time program is suddenly closing. Based on reporting, a good number of those programs were not educationally sound. But some were sound and many parents had been drawn into reliance on those programs. This is a case study in how to provoke definitive and hostile regulatory change, while hanging parents, students, and educators out to dry through one entity’s stubborn disregard for the law.