

## DEPARTMENT OF EDUCATION

### Colorado State Board of Education

## RULES FOR THE ADMINISTRATION OF THE PUBLIC SCHOOL FINANCE ACT OF 1994

### 1 CCR 301-39

*[Editor's Notes follow the text of the rules at the end of this CCR Document.]*

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#### Statement of Basis and Purpose

These rules are adopted pursuant to the authority in section 22-54-103(10) & (10.5), -104(5)(c)(IV), -120, and -129(6), C.R.S., and are intended to be consistent with the requirements of the State Administrative Procedures Act, sections 24-4-101, et seq., C.R.S.

The purpose of these Rules is to:

Establish regulations and procedures for administration of the Public School Finance Act of 1994, including (but not limited to) procedures for revocation or withholding of school district accreditation for Act violations; determination of district pupil membership, enrollment, and district at-risk funding; English Language Learner funding; and assignment of cost of living factors in the event of district reorganizations;

Implementing funding for approved facility schools and state programs; coordinating these rules with the administration of the Exceptional Children Educational Act (article 20 of Title 22, C.R.S.); and assuring the pupil count associated with the Public School Finance Act of 1994 fairly distributes funding to school districts to provide continuing instructional services.

#### 1. Definitions

1.01 "Alternative teacher-pupil instruction" means the organized delivery of educational content (aligned to state standards where applicable) for pupils enrolled in a brick-and-mortar public school under the supervision of a licensed educator that may take place asynchronously. The following types of courses with alternative teacher-pupil instruction can be funded with appropriate documentation: independent study, work-based learning (work-study, internships, apprenticeships), blended learning, and supplemental online learning.

1.01(1) Work-based learning courses are credit-bearing courses that must be incorporated within the student's Individual Career and Academic Plan (ICAP) in order to qualify for funding. They are learning opportunities that occur in part or in whole in the workplace and provide the learner with hands-on, real-world experience.

1.01(2) Blended Learning courses are credit-bearing courses for a student enrolled in a traditional brick-and-mortar school where some of the direct instruction is regularly received in-person and on-site and some of the digitally-delivered asynchronous instruction is received off-site (with some element of student control over the time and place of participation).

1.01(3) Independent study courses are credit-bearing courses in which some or all of the course is being completed off-site, independently by the student. They include the provision of content aligned to grade-level standards (where applicable) and are substantially equivalent to a traditional course. In order to qualify for funding, the independent study course must have a written learning plan that includes the course outline or plan for study, the digital or print

curriculum or materials to be used, requirements for submitting assignments and recording the academic progress, and the role of the supervising licensed teacher. A pupil can be funded for only one alternative instruction independent study course for the fall semester unless the student has exhausted the curriculum options in their brick-and-mortar school.

1.01(4) Supplemental online courses are credit-bearing courses taken by students enrolled in traditional, brick-and-mortar schools in which all of the instruction is digitally delivered and is received off-site or is taken on-site but not at a scheduled time where attendance is mandatory.

1.01(5) Credit-bearing means that a passing grade and credits are given for satisfactory completion of course requirements within the parameters of the academic calendar.

1.01(6) Asynchronous means the delivery of educational content designed to allow the teacher and the pupils to engage with the educational content at different times.

1.01(7) On-site means the physical location where the school or contractor regularly delivers in-person instruction.

1.01(8) Equivalency refers to the fundable time for alternative instruction courses. Whereas direct instruction is funded based on "time in seat," alternative instruction courses are based on an equivalency to the time that a pupil would have been "in a seat" if they had taken a similar course in-person and on-site. The instructional time for all alternative instruction courses will be determined based on equivalency to a same or similar credit-bearing course in the school or district that is delivered 100 percent on site.

1.02 "Applicable count date" means the pupil enrollment count date under section 3 of these rules or, if approved by the Department, the alternative count date under section 4 of these rules.

1.03 "BOCES" means a board of cooperative services pursuant to Article 5 of Title 22, C.R.S.

1.04 "Catalog of Courses Using Alternative Teacher-Pupil Instruction" means a listing of alternative teacher-pupil instruction courses that are eligible for student enrollment by a district, BOCES, innovation school, innovation zone, or charter school.

1.04(1) The catalog of courses using alternative teacher-pupil instruction must include a listing of courses, a description of each of the courses and identification of course provider if applicable, and the credit associated with each course.

1.05 "Commissioner" means the commissioner of education.

1.06 "District" means any public school district organized under the laws of Colorado, except a junior college district. "District" includes a BOCES, innovation school, innovation zone, charter school, or other entity when said entity has legal responsibility for the applicable school calendars and student schedules.

1.07 "Department" means the Colorado Department of Education.

1.08 "Direct teacher-pupil instruction" means the organized delivery of educational content (aligned to state standards where applicable) for pupils enrolled in brick-and-mortar public schools under the supervision of a licensed educator that takes place synchronously, when the licensed educator and the pupil are in the same physical location or when the licensed educator and the pupil are in the same virtual classroom. Direct instruction also includes engagement with educational content in courses, such as study hall or advisory or credit recovery lab or independent study, that are on-site at a scheduled time during regular school hours and for a set amount of time and where attendance is mandatory.

1.08(1) For the purpose of these rules, “synchronous” refers to the organized delivery of educational content which occurs during scheduled times and includes real-time interactions between teacher and pupils in-person, by video, or by phone.

1.09 “Home-bound pupil” means a pupil who cannot receive instruction in a school setting due to a temporary or permanent illness, hospitalization, medical or mental health impairment or condition, or due to an expelled or incarcerated status.

1.10 “Home school pupil” means a pupil receiving a non-public home-based educational program pursuant to Section 22-33-104.5, C.R.S. who is also enrolled and receiving instruction part-time from a Colorado public school.

1.11 “Licensed educator” or “licensed teacher” means a teacher with an active Colorado educator credential. Each local board shall define “supervision of a licensed teacher.” For purposes of these Rules only, “licensed teacher” shall be construed to include any educator of record when the district is not required by law to use a licensed teacher.

1.12 “Local board” means the board of education of a district or the board of a BOCES, charter school, innovation school, innovation zone, or other entity when said entity has legal responsibility for the applicable school calendar and student schedule.

1.13 “Major Religious Holiday,” for purposes of identifying a statewide pupil enrollment count, means a day or days on which approximately two (2) percent of the state’s K-12 pupil population is likely to be absent in order to observe a religious holiday. The Department will identify the percentage of pupils likely to observe a religious holiday based on the most current religious demographic data available from a reliable research organization, such as the Association of Religious Data Archives or The Pew Research Center’s Forum on Religion and Public Life.

1.14 “Private school pupil” means a pupil enrolled in an independent or parochial school which provides a basic academic education pursuant to Section 22-33-104(2)(b), C.R.S. and who is also enrolled and receiving instruction part-time from a Colorado public school.

1.15 “Pupil” means, except as otherwise provided in Section 22-2-402(7) or Articles 20 and 28 of Title 22, C.R.S, a student (1) under age 21 as of October 1 of the applicable budget year who has not met the graduation requirements of the district as of the applicable count date, and (2) at least age five as of October 1 of the applicable budget year.

1.16 “Semester” means the total number of scheduled student contact days for the school year as documented by the district’s adopted board calendar divided by two.

1.17 “State Board” means the state board of education.

## **2. General**

2.01 The Public School Finance Act of 1994 and these rules shall apply to all schools within districts. Section 2.05 does not apply to online schools and programs, which are governed instead by §22-30.7-105(2)(a) and 1 CCR 301-71, Rule 8. The Commissioner may grant variances to any or all of these Rules.

2.01(1) If the Department determines that a district has not complied with the provisions of the Public School Finance Act of 1994 or these rules, the Department shall notify such district in writing of the specific violation and shall state that the district’s accreditation may be revoked or withheld by the State Board for such violation.

2.01(2) Such district shall have 30 days in which to respond in writing to the Department’s notification.

2.01(3) The Department shall review such responses.

2.01(3)(a) If after making such review, the Department determines that such district is in compliance, no further action is necessary.

2.01(3)(b) If after making such review, the Department determines that such district is still not in compliance, it shall forward the notification and the district response to the State Board.

2.01(4) When necessary, the State Board shall schedule a hearing with such district at the next available regularly scheduled State Board meeting occurring after the end of the 30-day district response time and shall notify the district of such hearing.

2.01(5) At such hearing, the Department shall present its findings of non-compliance to the State Board, and the district shall respond to such presentation.

2.01(6) At the next regularly scheduled State Board meeting following such presentation, the State Board shall decide if it intends to revoke or withhold such district's accreditation under section 22-2-106(1), C.R.S., and shall notify the district in writing of its decision.

2.01(7) If the State Board places such district on non-accredited status, the Commissioner shall initiate school organization planning pursuant to Article 30 of Title 22, C.R.S.

2.02 The Department shall prepare necessary forms and appropriate directions related thereto, which a district shall use to provide data required by the Department to meet its responsibilities in the Public School Finance Act of 1994.

2.02(1) A district shall submit its electronic data exchange student file, along with a signed form "certification of pupil enrollment", no later than November 10.

2.03 The Department shall make available to a district detailed procedures with standard forms and records, which a district shall use to compute its certification of pupil enrollment to the State Board pursuant to Section 22-54-112, C.R.S.

2.03(1) A district may request and receive approval from the Department for alternative procedures for documentation which do not follow the standard procedural manual.

2.03(2) The Department requires districts to automate the pupil count process; nonetheless, any such computerization does not reduce or eliminate a district's obligation to provide source documents for auditing purposes.

2.04 Computation and reporting of data shall be as outlined below.

2.04(1) A district and the Department shall compute and report mill levy data to the nearest thousandth.

2.04(2) A district and the Department shall compute and report any dollar data to the nearest cent dollar.

2.04(3) A district and the Department shall compute and report any funded pupil count, pupil membership and pupil enrollment data to the nearest tenth.

2.05 Instructional Time for Purposes of the School Finance Act

2.05(1) To receive funding, a district must provide evidence of Instructional Time for purposes of funding each enrolled and attending pupil.

2.05(1)(a) For grades six through twelve, Instructional Time for funding each pupil may include direct teacher-pupil instruction and alternative teacher-pupil instruction for that pupil.

2.05(1)(a)(I) Alternative teacher-pupil instruction courses may not be considered for funding purposes if the course is not included in the published catalog. Beginning with calendars adopted for the 2024-25 school year and each school year thereafter, districts shall publish a catalog of courses using alternative teacher-pupil instruction (as defined in these rules) for any such courses they intend to provide to secondary pupils that they would also like included as instructional time. The catalog must be published on the school/district/BOCES website by the applicable count date.

2.05(1)(b) For grades kindergarten through five, Instructional Time for funding each pupil may include direct teacher-pupil instruction.

2.05(1)(b)(I) Alternative teacher-pupil instruction time may be used for home-bound students, as outlined in 5.03(2)(c).

2.05(1)(c) For all grades, kindergarten through twelve:

2.05(1)(c)(I) For on-site classes, passing between two classes, and between a class and lunch, may be included as instructional time which counts towards funding eligibility. Each passing that can be considered as instructional time which counts towards determining funding eligibility shall not exceed 7 minutes.

2.05(1)(c)(II) Time provided for breakfast or lunch may not be included as instructional time for purposes of determining funding eligibility.

2.05(1)(c)(III) A district may include time for independent study and/or asynchronous learning that occurs off-site when a district conducts remote learning sporadically in response to public health and safety orders and precautions as instructional time for purposes of determining funding eligibility.

2.05(1)(c)(IV) Instructional time for purposes of determining funding eligibility does not include parent-led or parent-directed instruction.

2.05(1)(c)(IV)(i) Direct teacher-pupil instruction minutes cannot include the minutes where the parent is instructing or supervising the delivery of educational content.

2.05(1)(c)(IV)(ii) Instructional time for purpose of the Public School Finance Act does not include instructional time based on the district (or its contractor) providing funding directly to families or creating a spending account for the parent to use to design their educational experience. For example, a music class counts as instructional time if it is designed by the district (or its contractor) and delivered by employees of the district (or its contractor) that are subject to the Department's HR data collection; by contrast, a music class does not count as instructional time based on directly or indirectly providing funding to families (e.g., reimbursement or direct order) to pay for a private music instructor off-site.

2.05(1)(c)(IV)(iii) For alternative teacher-pupil instruction courses, the course must be designed by the district or contractor rather than custom built by a parent. The catalog of courses must include the educational content that will be provided in the course, not what could be provided based on the interests of the parent.

2.05(1)(c)(IV)(iv) Parent includes guardian or other person living in the home with the pupil. Parent does not include an individual who is employed by or contracted with the school or district and is subject to Human Resources data collections.

2.05(1)(c)(V) In no instance shall a district submit a pupil for funding if the instructional time used to qualify a pupil for funding is provided in an environment that requires participation in a tuition-based non-public school.

2.05(2) A district must comply with Section 22-32-109, C.R.S. regarding planned and actual hours for “teacher-pupil instruction and teacher-pupil contact” at the school level. The Commissioner issues additional guidance regarding the reporting of “teacher-pupil instruction and teacher-pupil contact” for purposes of Section 22-32-109(1)(n), C.R.S. In the Commissioner’s guidance, Instructional Time for purposes of funding under the School Finance Act may be the same or different from “teacher-pupil instruction and teacher-pupil contact” for purposes of planned and actual hours in compliance with Section 22-32-109(1)(n).

### **3. Pupil Enrollment Count Date**

3.01 The Department shall identify the pupil enrollment count date by no later than July 1 of each year. The pupil enrollment count date is October 1 of each year, except as otherwise provided below.

3.01(1) In any year in which October 1 is a Saturday or a Sunday, except as described in section 3.01 (2) of these rules, the pupil enrollment count date is the Monday following that Saturday or Sunday.

3.01(2) In any year in which a day of a Major Religious Holiday occurs upon October 1, or, in years in which October 1 falls on a Saturday or Sunday, as described in section 3.01 (a) of these rules, or upon the Monday directly following October 1, the pupil enrollment count day is the first week day immediately following the conclusion of the holiday.

3.02 A district shall use the pupil enrollment count date unless an alternative count date is approved by the Department.

3.03 The Department may accept amended pupil enrollment count date pupil data, with appropriate supporting documentation, as provided by a district, unless the pupil enrollment count date pupil data has been audited by the Department.

3.04 The applicable 11-day count period is defined as the five school days preceding the applicable count date, the applicable count date, and the five school days following the applicable count date as determined by the district’s adopted calendar.

3.05 In no instance shall a district solicit pupils from other districts for the sole purpose of attendance during the applicable count period.

3.06 In no instance shall a district solicit pupils from the home school population solely for purposes of attendance through the applicable count period.

### **4. Alternative Count Date**

4.01 As needed, a district may submit to the Department a proposal for an alternative count date or dates. The Department may approve the establishment of district or school alternative count date(s) as appropriate prior to a district's proposed alternative count date(s). Such alternative count date(s) shall be set not more than forty-five (45) school days after the first school day of the applicable school year.

4.02 The count on the alternative count date will be conducted in the same manner as the count on the pupil enrollment count date.

4.03 The Department may accept amended alternative count date pupil data, with appropriate supporting documentation, as provided by a district, unless the alternative count date pupil data has been audited by the Department.

## **5. Determination of Membership and Funded Pupil Count Enrollment**

5.01 A district's pupil membership and funded pupil count shall include only pupils enrolled in the district and in attendance in the district or educational program with which the district has contracted to provide instructional services.

5.01(1) No pupil shall be counted in a district's funded pupil count more than one full-time equivalent. A pupil in membership in two or more districts or in two or more eligible educational entities shall not be counted in the state's funded pupil count more than one full-time equivalent in total.

5.01(2) A pupil included in a district's full-time membership shall equal one full-time equivalent (1.0) for purposes of the district's funded pupil count, and a pupil included in a district's part-time membership shall equal one-half of one full-time equivalent (0.5) for purposes of the district's funded pupil count.

5.01(3) Following the November 10 data submission (as described in 2.02(1) of this section), pupils counted in membership by multiple districts, such that the pupil exceeds one full-time equivalent in the state's funded pupil count will be included in the state's duplicate count process as determined by the Department. During the duplicate count process, the Department will evaluate appropriate documentation submitted by each district to determine which district may include the pupil in membership.

5.01(4) A district may only enroll pupils in a school authorized to serve the grades in which the pupils will be enrolled. Authorized to serve means the grades were included in the contract with the authorizer (if applicable) and the school has a school code that reflects the relevant grades.

5.02 A pupil shall be "enrolled" during the school year if such pupil attends a public school, or educational program with which the district has contracted to provide instructional services, at any time on or prior to the applicable count date.

5.02(1) Enrollment must be evidenced by the receiving district with official registration, entry date of pupil, and official individual class schedule dated on or before the applicable count date, as well as the date the pupil first attended on or before the applicable count date.

5.02(2) A district shall record withdrawals and transfers as of the last date of attendance prior to the date the pupil or the pupil's parent or guardian gives oral or written notification of the withdrawal or transfer.

5.03 A pupil shall be in "attendance" if one or more of the following apply.

5.03(1) The pupil is in attendance for all or any portion of the applicable count date.

5.03(1)(a) For pupils exclusively enrolled in alternative teacher-pupil instruction (as defined in these rules), the district must provide attendance verification based upon direct teacher-pupil interaction or evidence of student engagement with course content. The Department will outline additional details in the Student October Count Audit Resource Guide. Districts may obtain pre-approval from the Department to include other forms of attendance verification.

5.03(2) The pupil is not in attendance on the applicable count date, for any reason but has been in attendance with the reporting district at some time prior to the applicable count date during the current school year, has not withdrawn or transferred from the district, and has resumed attendance within 30 calendar days after the applicable count date.

5.03(2)(a) A pupil who is not in attendance on the applicable count date or within 30 days following the applicable count date, but has established attendance prior to the applicable count date, may be considered in attendance if the student is identified as truant and the district has taken legal action as outlined in Article 33 of Title 22, C.R.S., to compel the pupil's attendance. A district shall document that it has notified the pupil's parent or guardian of its request for action by the court or of its directive to its attorney to file a request with the court. A district shall also document that it has made such a request of the court within 10 school days of the applicable count date. Nothing in this section 5.03(2)(a) modifies the rules for counting dropouts or attendance under 1 CCR 301-1 and 1 CCR 301-78.

5.03(2)(b) A pupil that has established attendance within the school year prior to the applicable count date, is expelled, and, within 30 calendar days following the applicable count date, (1) resumes attendance, (2) begins receiving educational services under an Individual Educational Plan (IEP), or (3) begins receiving educational services under Section 22-33-203(2)(c), C.R.S., is enrolled and in attendance for purpose of these Rules.

5.03(2)(c) A pupil that has established attendance within the school year prior to the applicable count date, begins receiving home-bound services, and, within 30 calendar days following the applicable count date, (1) resumes attendance or (2) begins receiving educational services under an Individual Educational Plan (IEP) is enrolled and in attendance for purpose of these Rules.

5.04 Pupils that first establish attendance after the applicable count date but within the applicable 11-day count period may be included in a district's pupil membership only if one of the following exceptions applies:

5.04(1) The pupil (1) moves to Colorado within 30 calendar days preceding the district's applicable count date and (2) establishes attendance after the applicable count date, but before the end of the 11-day count period.

5.04(2) The pupil (1) established attendance during the current school year prior to the applicable count date in any Colorado public school district, (2) transfers and establishes attendance in the receiving district after the applicable count date, but before the end of the 11-day count period, and (3) does not meet the attendance requirements for funding at the sending district.

5.05 A district shall count a pupil in full-time funded pupil count, if (1) the pupil is enrolled and in attendance as of the applicable count day pursuant to these Rules, and (2) the pupil has a schedule that provides at least 360 hours of Instructional Time (as defined in these Rules) in the semester of the applicable count date.

5.05(1) A pupil receiving services under an IEP which states the pupil is unable to benefit from a full-time program of services and explicitly describes how the pupil's disability affects their involvement, progress, and participation in appropriate activities such that the student would not be able to meet the full-time scheduling requirement, shall be deemed to meet the requirements of this section 5.05.

5.05(2) A pupil who completes one school year of enrollment in a half-day kindergarten educational program and does not advance to first grade, pursuant to Section 22-7-1207, C.R.S., is counted as a full-day pupil for the second year in which the pupil is enrolled in the half-day kindergarten educational program.

5.06 A district shall count a pupil in part-time funded pupil count, if (1) the pupil is enrolled and in attendance as of the applicable count day pursuant to these Rules, and (2) the pupil has a schedule that provides at least 90 hours but less than 360 hours of Instructional Time (as defined in these Rules) in the semester of the applicable count date.

5.06(1) Unless a pupil is reported by the district as being in kindergarten, receiving services under an IEP, identified by the Department as being in their fifth year of high school or beyond, or identified as participating in High School Equivalency Diploma program, or identified as a home-based education student receiving educational services by the district, a district shall obtain documentation which describes the reasons the pupil is enrolled part-time and confirms how the pupil is compliant with the Compulsory school attendance requirements of Section 22-33-104, C.R.S.

5.06(2) A district may include home school pupils enrolled and attending a district educational program who meet the requirements of these Rules. A home school pupil is not eligible to be counted for more than a part-time funded pupil count (0.5 FTE).

5.06(3) A district may include private school pupils enrolled and attending a district educational program who meet the requirements of these Rules. A private school pupil is not eligible to be counted for more than a part-time funded pupil count (0.5 FTE).

5.07 For purposes of applying sections 5.03(2)(c), 5.03(2)(d), 5.05, and 5.06 of these Rules, the district shall utilize the pupil's home-bound or expelled schedule if the student has been receiving home-bound or expelled services since the start of the school year, or the pupil's schedule that was in place prior to beginning home-bound or expelled services if the pupil established attendance using that schedule during the current school year.

5.08 For pupils exclusively enrolled in alternative teacher-pupil instruction or any pupil that has a schedule that does not require the pupil's regular physical presence at the public school, the district must verify and document student residency in the State of Colorado upon enrollment and annually thereafter.

5.09 Pupils exclusively enrolled in online K-12 courses that take place off-site, but are not enrolled in an online school, must be enrolled in an online program. A student is not exclusively enrolled in online K-12 courses if they have at least one course scheduled to take place on-site, in-person, at a regularly scheduled time during regular school hours and where attendance is mandatory.

5.10 For pupils enrolled in and attending post-secondary courses:

5.10(1) A pupil may meet the attendance requirements of sections 5.03 and 5.04 by attending either the district school or the institution of higher education. A district shall document the attendance as of the applicable count date of all pupils included in its pupil membership who are enrolled in secondary courses and shall provide evidence of tuition payment for courses at institutions of higher learning.

5.10(2) Pupils enrolled only in courses offered by an institution of higher education may be counted in full-time funded pupil count if the number of semester credit hours for the courses in which the pupil is enrolled on the applicable count date is equivalent to a full-time pupil credit load as defined for the institution of higher education, or is equal to at least twelve semester credit hours.

5.10(3) Pupils enrolled only in courses offered by an institution of higher education may be counted in part-time funded pupil count if the number of semester credit hours for the courses in which the pupil is enrolled on the applicable count date is less than a full-time pupil credit load as defined for the institution of higher education or is less than twelve semester credit hours, but is at least three semester credit hours.

5.10(4) Pupils enrolled in both courses offered by the district and courses offered by an institution of higher education may be counted in full-time funded pupil count if the sum of the instructional hours in the district's educational program is at least 90 hours and the credit hours for the institution of higher education's courses is at least 3 semester credit hours.

5.10(5) If a pupil is enrolled in classes through the district only, sections 5.05 and 5.06 of these Rules apply.

5.10(6) A district shall keep at its central district office a record of pupils included in its pupil membership who are enrolled at institutions of higher learning as of the applicable count date, as well as a record of the class schedules of such pupils.

5.11 A district's pupil enrollment shall be the membership of the district as of the applicable count date and any adjustments for the following as applicable.

5.11(1) A pupil enrolled in a public school and receiving education services from another entity through a purchase agreement may be included in the district's enrollment. The district shall ensure that the educational service provider maintains documentation sufficient to demonstrate compliance with these rules. The district shall be prepared to provide the contract and evidence of payment for the entire cost of services used to determine funding eligibility. The district shall also be prepared to provide documentation from the educational provider that evidences funding criteria have been met, including, at minimum, the provider calendar, provider bell schedule, student attendance, student schedules, and the Department's annual statutory compliance assurances.

5.11(1)(a) Districts must ensure contractual education is of comparable quality and meet the same requirements and standards that would apply if performed by the school district as required by Section 22-32-122(3)(a), C.R.S.

5.11(2) A pupil receiving services from a district under Section 22-32-141, C.R.S., on the applicable count date may be included in the district's pupil enrollment. Pupils receiving services from a district under Section 22-32-141, C.R.S., who has established attendance within any Colorado public school district during the current school year prior to the applicable count date and resume attendance within 30 days after the applicable count date may be included in the district's pupil enrollment if the pupil is not included in any other district's pupil enrollment.

5.12 In the event a pupil meets the funding criteria at multiple districts, the Department will determine which district is eligible for funding. The following duplicate count process criteria will be considered in determining which district is eligible to submit the pupil for funding:

5.12(1) If one district is using the pupil enrollment count date and another is using an approved alternative count date, the district using the pupil enrollment count date is eligible to submit the pupil for funding.

5.12(2) If a pupil transfers on the pupil enrollment count date and meets the funding requirements at multiple districts on the pupil enrollment count date, the receiving district is eligible to submit the pupil for funding.

5.12(3) If a pupil transfers between two districts with approved alternative count dates and meets the funding requirements at both districts on their respective approved alternative count dates, the receiving district is eligible to include the pupil for funding.

5.12(4) If a pupil is enrolled part-time at two Colorado public schools (and is not a home-school or private school pupil), both reporting districts may be eligible to submit the pupil for a maximum of part-time funding, pending a review of documentation to confirm the pupil's eligibility.

5.12(5) If a home-school or private school pupil is simultaneously enrolled and receiving educational services at two different districts, and the pupil meets the part-time funding criteria at both, the district of primary residence is allowed to submit the pupil for funding.

5.12(6) If a pupil transfers from one Colorado public school district to another, after the pupil enrollment count date but within the 11-day count period, the pupil is eligible for funding at the receiving district only if the pupil did not meet the funding criteria at the sending district and the pupil established attendance during the current year in a Colorado public school prior to the pupil enrollment count date.

5.13 A pupil in a short-term detention center on the applicable pupil enrollment count date may be included in a district's pupil membership if they meet the following criteria:

5.13(1) The pupil was in attendance in the month preceding the count date, has not withdrawn from the district of residence, and the resident district received notification from the district in which the detention center is located verifying the pupil was in the detention center as of the pupil enrollment count day.

5.13(2) Students not in attendance in the month preceding the count date are eligible to be counted if the district of residence is also the district where the detention center is located. The district must enroll and establish a schedule with intent to have the pupil attend district schools after release from the detention center.

5.13(3) The district where the detention center is located (district of attendance) may count a pupil that is not eligible to be counted by the district of residence. The district of attendance must receive written verification from the district of residence stating that the pupil was not eligible to be counted by the district of residence. The district of attendance must provide the educational program at the detention center.

5.13(4) Pupils in detention centers are not considered facility placed students.

5.14 A pupil for whom a district either pays or receives any amount of tuition may be included in a district's pupil membership as follows:

5.14(1) A pupil for whom a district receives maximum tuition shall be included only in the pupil enrollment of the district which agrees to pay the tuition. In the event an individual and not a school district is to pay the tuition, no district shall include the pupil in its pupil enrollment.

## **6. At-Risk Pupils and English Language Learners**

6.01 Pursuant to Section 22-54-103(1.5)(d), C.R.S., funding eligible pupils must be identified by a district as eligible for free or reduced-priced lunch as of the applicable count date in order to be included in the district's at-risk count.

6.02 When determining a pupil's eligibility for free or reduced-priced lunch, a district may use a Direct Certification list, Application for Free or Reduced-Price Meals, Family Economic Data Survey form, combination form, or categorical eligibility determination list. All qualifying documentation and records shall be retained by the applicable district office.

6.02(1) Documentation evidencing a pupil's eligibility status shall be for the school year of the applicable count date.

6.02(2) Absent the current year documentation evidencing any lunch eligibility status, a district may submit the pupil's prior year documentation, which shall be valid evidence through the applicable count date of the current year.

6.02(3) A copy of the direct certification listing as of the applicable count date which includes the pupil's name.

6.02(4) For a district with a school or schools operating under a federal Special Assistance Certification and Reimbursement Alternative, documentation must include evidence of the pupil's inclusion on the district's base year count and further evidence that such pupil remains included in a Special Assistance Certification and Reimbursement Alternative site within the district's pupil enrollment. This method shall not be available if a district alters the boundaries of the participating schools.

6.03 Pursuant to Section 22-54-103(6.5)(a), C.R.S., funding eligible pupils are considered English Language Learners if they are reported with a Language Proficiency of Non-English Proficient or Limited-English Proficient as of the applicable count date and are within the five-year services window defined in English Language Proficiency Act (ELPA).

6.03(1) Districts must follow the state's standardized identification and redesignation procedures to identify and redesignate English Language Learners and retain documentation showing these procedures have been followed.

## **7. Cost of Living Factor -- newly organized districts**

7.01 Except in the event of a deconsolidation as described in Section 22-30-102(2)(a), C.R.S., resulting in a newly organized district, the Department shall assign a cost-of-living factor for purposes of the Public School Finance Act of 1994 to a new district organized pursuant to Article 30 of Title 22, C.R.S.

7.02 In determining a cost-of-living factor to assign, the Department shall review materials used in the most recent cost of living analysis conducted by the staff of the legislative council for those districts affected by the reorganization. The Department shall also consult with representatives of the affected school districts and with other parties as necessary. Such cost-of-living factor shall be valid until the staff of the legislative council certifies a cost-of-living factor for such district pursuant to Section 22-54-104(5), C.R.S.

7.03 In the event of a consolidation of existing districts and a cost-of-living factor assigned by the Department which is less than the cost-of-living factor previously applicable to the district prior to consolidation, the Department's assignment shall be attributable to matters other than the mere consolidation of the districts.

7.04 The Department shall assign such cost-of-living factor at least 30 days prior to the start of the newly organized district's budget year and shall certify such factor to the district in writing.

## **8. Department Audits of Districts**

8.01 The Department shall perform audits of pupil enrollment count data to ensure the accuracy of the information used to determine funding.

8.02 Each district shall retain complete documentation supporting any certification made to the Department or any other data given to the Department for purposes of administering the Public School Finance Act of 1994 until audited by the Department or until five years from the certification due date whichever comes first. The Department encourages a district to retain all required documentation in a central location.

8.03 In addition to satisfying section 8.02 of these rules for its own pupils (if any), a BOCES providing services on behalf of a district, charter school, or BOCES shall ensure that its documentation is sufficient to allow such district, charter school, or BOCES to meet the requirement in section 8.02.

8.04 If the Department determines that a district has received payment of funds greater than the amount to which the district or approved facility school is entitled, the district shall be responsible for repayment to the Department.

8.04(1) Audit repayments shall be assessed interest as provided in Section 22-2-113(1)(g), C.R.S.

8.04(2) A district that refuses to pay a determined repayment amount may have its current and future payments or reimbursements withheld until the full amount of the repayment, plus applicable interest, is recovered.

8.05 If the Department determines that a district has not received full payment of funds to which it is entitled, the Department shall be responsible for payment to the district or eligible facility within 45 days following the date the final audit report is issued.

8.06 A district or an eligible facility may appeal any audit finding in writing to the Commissioner within 30 calendar days following the date the final audit report is issued. The Commissioner shall rule within 30 calendar days of receipt of a written appeal. The ruling shall be in writing and shall either uphold, modify, or overturn the appealed audit finding(s). The Commissioner's ruling shall be final, and no additional administrative appeals shall be provided.

## **9. State Average Per Pupil Revenues**

9.01 The Department shall certify the state average per pupil revenues pursuant to Section 22-54-103, C.R.S., by June 15 next preceding the fiscal year. The certified figure may be subject to minor correction and audit changes; agreements between districts and other entities to pay the state average need not be adjusted to the revised figure.

## **10. Buyout of Categorical Programs**

10.01 The Department shall certify to those districts required to levy additional mills pursuant to Section 22-54-107, C.R.S., the amount of categorical program funding which is subject to buyout requirements.

10.02 The Department shall use the best available data, including estimated amounts if actual figures are unknown.

## **11. Timely Payment of School District Obligations**

11.01 If a district has bonds or other obligations described in Section 22-41-110, C.R.S., and does not have adequate funds to pay principal and interest payments due, such district shall notify the Department in writing of its inability to pay no later than 20 calendar days prior to the payment due date.

## **12. Authorization of Additional Local Revenues**

12.01 If a district holds an election pursuant to Article X, Section 20 of the State Constitution, Section 22-40-102, C.R.S., Section 22-42-102, C.R.S., or Sections 22-54-107.5 through -108.7, C.R.S., the president of the local board of education of the district or a designee shall provide to the Department no later than ten business days after the election: (1) a copy of the official ballot question language as certified to the county clerk for a coordinated election or a copy of the official ballot marked with the word "sample;" and (2) the number of votes cast for the question and the number of votes cast against the question.

12.02 When a local board of education decides not to raise any or all of the amount approved at an election pursuant to Section 22-54-108, C.R.S., the amount approved shall not be reduced and shall be available for the local board to include in determining the general fund levy in any future fiscal years.

## **13. Pupils In State Programs**

13.01 "State program" has the same definition as the term is defined in Section 22-54-129(1)(f), C.R.S.

13.02 For purposes of this section, "pupil" means a child or youth who has attained three years of age on or before August 1 and who is under twenty-one years of age, as defined in Section 22-2-402(7), C.R.S. When a pupil reaches age 21, a state program may include such pupil in its monthly report of pupils served and in its calculation of full-time equivalent membership only through the end of the semester in which the pupil reaches age 21.

13.03 State programs shall provide to the Department a pupil enrollment count pursuant to these rules on or before October 5 of each budget year. The mental health institute at Pueblo or Fort Logan shall count only pupils for whom the institute has responsibility because of a court order or other action by a public entity in Colorado (as defined in Section 22-2-402(4.5), C.R.S.).

13.04 On or before the fifteenth day of each month, a state program shall report to the Department the actual number of pupils who received educational services during the prior calendar month and the corresponding number of full-time equivalent pupils to which the state program provided such services.

13.04(1) The mental health institute at Pueblo or Fort Logan shall count only pupils for whom the institute has responsibility because of a court order or other action by a public entity in Colorado, as defined in Section 22-2-402(4.5), C.R.S.

13.04(2) Full-time equivalent membership is determined as follows: Total instructional days in membership divided by total instructional calendar days in reporting period equals full-time equivalent membership.

13.04(3) The first day of attendance following a pupil's enrollment in the educational program establishes the first day of the pupil's full-time equivalent membership in an educational program.

13.04(4) Membership in an educational program continues until the pupil withdraws and the pupil's name no longer appears on the roster of the state program, or until terminated automatically after five consecutive unexcused absences.

13.04(5) A state program may include in its full-time equivalent membership: (1) up to ten days of excused absences for a pupil; and (2) up to five days of unexcused absence.

13.04(6) A state program shall retain documentation of pupil names (first, middle, last); date of birth; parent/guardian resident address; district of residence; state assigned student identification number (SASID); dates of admission and discharge; schedules; and records of attendance, until audited by the Department or until five years from the date the state department submits its monthly reports to the Department, whichever is earlier.

13.05 For each full-time equivalent membership reported, a state program shall receive a monthly payment reflecting a daily rate of statewide base per pupil funding, divided by 176, times 1.4. A state program may claim no more than 235 days of funding per calendar year (amounting to no more than 1.73 times statewide base per pupil funding) for any one pupil. Funding may be prorated under Section 22-22-54-129(4)(c), C.R.S., based on available appropriations.

#### **14. Pupils In Approved Facility Schools**

14.01 "Approved facility school" has the same meaning as the term is defined in section 22-54-129(1)(a), C.R.S.

14.02 For purposes of this section, "pupil" means a child or youth who has attained three years of age on or before August 1 and who is under twenty-one years of age, as defined in Section 22-2-402(7), C.R.S. When a pupil reaches age 21, an approved facility school may include such pupil in its monthly report of pupils served and in its calculation of full-time equivalent membership only through the end of the semester in which the pupil reaches age 21.

14.03 "Baseline funding" means a funding amount based on student enrollment projections that is intended to provide sufficient funding for minimum education program services for an approved facility school.

14.04 "Public entity" means a public entity responsible for referring students to or placing students in out-of-home, day treatment, residential treatment, hospital, and specialized day school placements with providers.

14.05 The Department shall utilize monthly enrollment counts and point-in-time enrollment counts to determine the student count number used to calculate the baseline funding amount annually for each approved facility school.

14.06 On or before the fifteenth day of each month, an approved facility school shall report to the Department the actual number of pupils enrolled to receive educational services during the prior calendar month and the corresponding number of full-time equivalent pupils to which the approved facility school provided such services.

14.06(1) Approved facility schools shall only use student enrollment numbers for those students who are residents of Colorado and are:

14.06(1)(a) placed by a court order,

14.06(1)(b) referred or placed by a public entity, including but not limited to school districts, departments of human services, Department of Youth Services (DYS);

14.06(1)(c) patients of a hospital; or

14.06(1)(d) a homeless child as defined in Section 22-1-102.5, C.R.S.

14.06(2) Full-time equivalent membership is determined as follows: Total instructional days in membership divided by total instructional calendar days in reporting period equals full-time equivalent membership.

14.06(3) The first day of attendance following a pupil's enrollment in the educational program establishes the first day of the pupil's full-time equivalent membership in an educational program.

14.06(4) Membership in an educational program continues until the pupil withdraws and the pupil's name no longer appears on the roster of the approved facility school, or until terminated automatically after five consecutive unexcused absences.

14.06(5) An approved facility school may include in its full-time equivalent membership: (1) up to ten days of excused absences for a pupil; and (2) up to five days of unexcused absence.

14.06(6) An approved facility school shall retain documentation of pupil names (first, middle, last); date of birth; parent/guardian resident address; district of residence; state assigned student identification number (SASID); whether the pupil was placed in the facility as defined in Section 22-2-402(4) and (4.5), C.R.S.; dates of admission and discharge; schedules; and records of attendance, until audited by the Department or until five years from the date it submits its monthly reports to the Department, whichever is earlier.

14.07 Approved facility schools shall receive payments monthly, including applicable prorations, pursuant to section 22-54-129(2.5), C.R.S. An approved facility school shall receive one twelfth of the total baseline funding amount on the 15th of each month. The baseline funding amount shall include the offset amount for the special education rate and hospital offset amount. The baseline funding formula shall be adjusted annually based on inflation, determined by the department. The department shall publicly post and distribute a schedule of student enrollment thresholds and associated decreases, as required by Section 22-54-129(2.5)(e)(I)(C), C.R.S., by July 1st each year. Funding may be prorated under Section 22-22-54-129(2.5)(f), C.R.S., based on available appropriations.

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## **Editor's Notes**

### **History**

Section 2254-R-5.00 eff. 05/10/2007.

Entire rule eff. 09/30/2007.

Sections 2254-R-1.00, 14.00 – 20.00 emer. rule eff. 09/11/2008.

Sections 2254-R-1.00; 14.00 – 20.00 eff. 11/30/2008.

Sections SB&P, 2254-R-14.00 through 19.00 emer. rule eff. 06/10/2009; expired 09/10/2009. Section 2254-R-20.00 emer. rule repealed eff. 06/10/2009; expired 09/10/2009.

Sections SB&P, 2254-R-2.00, 2254-R-14.00 through 19.00 eff. 09/30/2009. Section 2254-R-20.00 repealed eff. 09/30/2009.

Entire rule emer. rule eff. 07/30/2012; expired 10/10/2012.

Entire rule eff. 12/30/2012.

Entire rule eff. 10/30/2020.

### **Annotations**

Rule 2254-R-5.19(3) (adopted 08/08/2007) was not extended by Senate Bill 08-075 and therefore expired 05/15/2008.

Rules 2254-R-14.01(1), 14.03, 14.04, 14.06, 14.07(3), 14.07(5), 14.08, 16.01(1), 16.01(1.01), 16.01(1.02), 16.02, 16.02(1), 17.02, 19.01(2), 20.00 (adopted 10/01/2008) were not extended by House Bill 09-1292 and therefore expired 05/15/2009.