



October 15, 2020

SENT VIA ELECTRONIC MAIL TO: Bill Kottenstette at kottenstette_b@cde.state.co.us; Renee Martinez at Martinez_R@cde.state.co.us; and Joe Peters at Joe.Peters@coag.gov

Re: Request for Feedback on Successor School Criteria

Dear Mr. Kottenstette:

I am writing this letter in response to your September 17, 2020 request for public feedback on the proposed Successor School criteria developed by the Colorado Department of Education (“Department”). I appreciate the public engagement and opportunity to provide feedback on this topic. This feedback is not designed to be comprehensive of all of the potential issues or concerns I may have with the proposed criteria. The focus of my feedback in this letter is on the parameters established in the Successor School statute.

1. Two New Triggers for Multi-District Online (“MDOL”) Certification Applications

SB 19-129 creates two new triggers requiring submission of an MDOL certification application.

The first new requirement is triggered when a new authorizer “...agrees to become the authorizer for an operating multi-district online school that was previously authorized by another authorizer, the new authorizer must apply to the online division for a new certification of the multi-district online school.” (C.R.S. 22-30.7-105(1)(b)).

The second new requirement is triggered when a school closed due to years on performance watch subsequently wants to operate again with the same or a different authorizer. According to the statute, “...If an online school is closed as a result of actions taken pursuant to section 22-11-210(5), the online school must reapply for certification before it may again operate in its original form or as a successor school, regardless of whether the online school or successor school is authorized by the same or a different authorizer.”

2. When A School Can Be Determined to be a “Successor School”

A careful read of SB 19-129 shows that, while the Department is directed to develop criteria for determining when a school is a “Successor School,” that grant of authority includes certain qualifying language – namely that the school must be “newly authorized.”

719.338.4189 (Brad) or 303.810.1601 (Tim)
brad@millerfarmerlaw.com and tim@millerfarmerlaw.com
5665 Vessey Rd. Colorado Springs, CO 80908

millerfarmerlaw.com

“The department shall determine whether a **newly authorized** multi-district online school is actually a new multi-district online school or a successor to a previously authorized multi-district online school by applying criteria adopted by the department. If the department determines that a **newly authorized** multi-district online school is a successor school, the authorizer for the multi-district online school may, within thirty days after receiving notice of the decision, appeal the decision to the state board pursuant to the state board’s administrative policies.” (C.R.S. 22-30.7-106(9), emphasis added).

Additionally, there are two scenarios in which the Department may apply its criteria to determine whether a school is a “Successor School” or not. It is important to note that the statute requires the Department’s Successor School determinations to be “pursuant to section 22-30.7-106(9)” cited above. This section of statute, cited above, clearly limits application of Successor School criteria to “newly authorized” schools.

a. A School on Performance Watch Changes Authorizers

The first instance in which a school may be determined to be a Successor School is when an existing school on performance watch changes authorizers (triggering the requirement to submit an application for MDOL certification), and during that MDOL certification process the Department determines whether the newly authorized school is a Successor School (meaning the newly authorized school remains on performance watch) or not. According to the statute, “If an online school is on performance watch, as defined in section 22-11-103, and changes authorizers in its original form or as a successor school, as determined by the department pursuant to section 22-30.7-106(9),... to the online school that is on performance watch, the online school or the successor school remains on performance watch under the new authorizer as if the authorizer had not changed.”

b. A School on Performance Watch Creates a New School Under the Same Authorizer

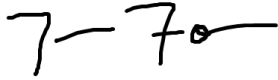
The second instance in which a school may be determined to be a Successor School is when an existing school on performance watch creates a new school with the same authorizer (triggering the requirement to submit an application for MDOL Certification), and during that MDOL certification process the Department determines whether the newly created and authorized school is actually a Successor School (meaning the newly authorized school remains on performance watch) or not. According to the statute, “If an online school is on performance watch, as defined in section 22-11-103, and remains with the same authorizer but is created as a successor school, as determined by the department pursuant to section 22-30.7-106(9), to the online school that is on performance watch, the online school or the successor school remains on performance watch under the new authorizer as if the authorizer had not changed.”

3. Conclusion

As explained above, the Departments ability to make determinations as to whether a school is a Successor School or not is limited to instances in which a school is “newly

authorized.” The definition found in 1 CCR 301-71(2.16) should add that language, to state a “Successor School means a newly authorized online school that is a replication, addition, division, or reorganization of an existing or previously authorized online school as determined by the criteria adopted by the Department.”

Very Truly Yours,

A handwritten signature in black ink, appearing to read "T. Farmer", with a horizontal line extending to the right.

Tim Farmer, Esq.