



COLORADO Early Colleges

Special Meeting Minutes of the Colorado Early Colleges Board of Directors Thursday, October 5, 2017

TBD Colorado Early Colleges Aurora – High Five
350 Blackhawk Drive
Aurora, CO 80011

AGENDA

1. Call to Order
2. Approval of Agenda: Motion to approve the Agenda made by Tom Clark and seconded by Robin Phillips.
3. Correspondence/Board Comments
4. Administration Report

Move the approval of the Special MOU

- a. Approval of the MOU for Special Education between the Colorado Early Colleges and the Colorado Charter School Institute – Required to be signed by the Board President by October 6, 2017

Explanation: This Memorandum of Understanding is an agreement between all CSI Charter Schools and CSI. We had several concerns about the MOU and addressed them in a special meeting with CSI on September 25, 2017. We asked for the changes in the form of a Clarification Letter, since half of the CSI schools had already signed it. You can see we got that letter on September 29th. The President of the Colorado Early Colleges Board is required to sign this agreement. We have four different charters so we need to sign one for each school.

- b. For information only: this opinion by the Attorney General is a huge event for all charter schools. This has been an issue since Cheyenne Mountain Charter Academy. That was 30 years ago. This should end all discussions.

Motion to approve the Special MOU made by Laura Calhoun and seconded by Terry McDonald.

5. Public Comments
6. Other Business

DRAFT OF 8/17/17

**Memorandum of Understanding By and Between
the Colorado Charter School Institute and _____ Charter School
Regarding the Provision and Funding of Special Education Services**

Whereas, _____ Charter School (the “Charter School”) is a public charter school which is authorized by, and whose charter application was approved by, the Colorado Charter School Institute (“CSI”); and

Whereas, the Charter School is required, under applicable law—including the Individuals with Disabilities Education Act, 20 U.S.C. § 1400, et seq.; Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794; the Exceptional Children’s Educational Act, C.R.S. § 22-20-101, et seq.; the Elementary and Secondary Education Act, 20 U.S.C. § 6301, et seq.; and the Americans with Disabilities Act, 42 U.S.C. § 12101 et seq.—as well as the terms of the Charter Contract in place between the Charter School and CSI, any other applicable state policies, and various CSI policies, to provide special education services to its students as required by those respective authorities; and

Whereas, under C.R.S. §§ 22-20-106(b) and 22-30.5-503(3), CSI serves as the Local Educational Agency and Administrative Unit for the charter schools that it authorizes, and whereas the Charter School is, with regard to special education and other matters, a school within that LEA; and

Whereas, the Charter School and CSI wish to further describe their respective duties and obligations regarding the provision and funding of special education services at the Charter School through this memorandum of understanding,

NOW, THEREFORE, THE PARTIES DO AGREE AND COVENANT AS FOLLOWS:

1. Definitions

“**Charter Contract**” means the contract entered into and between the Charter School and CSI, as the Charter School’s authorizer, pursuant to Article 30.5 of Title 22 of the Colorado Revised Statutes.

“**Charter School**” means the signatory identified in the “Whereas” clauses of this MOU.

“**CSI**” means the signatory identified in the “Whereas” clauses of this MOU.

“**CSI Special Education Manual**” means the monograph titled *CSI Special Education Manual*, published by CSI and made available to its charter schools, as it may be amended from time to time, or its replacement.

“CSI Guidebook: Special Education Onboarding” means the monograph titled *CSI Guidebook: Special Education Onboarding*, published by CSI and made available to its charter schools, as it may be amended from time to time, or its replacement.

“FAPE” means Free Appropriate Public Education, as defined in 20 U.S.C. § 1401.

“IDEA” means the Individuals with Disabilities Education Act, 20 U.S.C. § 1400, et seq.

“IEP” means an Individualized Education Program, as defined in 20 U.S.C. § 1401 and 20 U.S.C. § 1414.

“LEA” means Local Education Agency.

“LRE” means Least Restrictive Environment, as that term is used in 20 U.S.C. § 1412.

“MOU” means this Memorandum of Understanding between the Parties.

“Parties” means, collectively, CSI and the Charter School.

“Program Plan” means the special education program plan submitted to and approved by CSI at the inception of the Charter School, together with any subsequent modifications made in accordance with CSI’s policy for approving such modifications.

“Section 504” means Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794.

2: Charter School and CSI Special Education Responsibilities

CSI and the Charter School agree to the following general duties and obligations.

2(a): The Charter School shall:

- (1) Adhere to the applicable provisions of the IDEA; Section 504; the Americans with Disabilities Act; applicable Colorado special education laws and regulations; CSI policies, procedures, and requirements, as they may be amended from time to time; and the terms of the school’s Charter Contract;
- (2) Assure that its students with disabilities are accorded a FAPE, including assuring special education and related services as part of the regular school day in the LRE appropriate for their needs;
- (3) Ensure that no student otherwise eligible to enroll in the Charter School will be denied enrollment on the basis of his or her special education status;
- (4) Comply with the applicable requirements and mandates of the U.S. Department of Education, its Office for Civil Rights, and the U.S. Department of Justice;

- (5) Implement the special education Program Plan submitted to and approved by CSI at the inception of the school or as subsequently modified in accordance with CSI's policy for approving such modifications;
- (6) Follow and implement the procedures laid out in the *CSI Special Education Manual*;
- (7) Not establish nor carry out any support services, policies or practices that conflict with the Program Plan or the *CSI Special Education Manual*;
- (8) Be solely responsible for implementing, providing, and subsidizing those specialized instructional and related services required pursuant to student IEPs, as well as the services, modifications, or accommodations required by a student's Section 504 Plan;
- (9) Employ or contract with all requisite special education personnel, including a Special Education Coordinator whose duties and obligations are described more specifically in paragraph 2(c)(5);
- (10) Assign special education support staff as necessary to meet student needs, which staff shall be appropriately licensed in accordance with Colorado law;
- (11) Bear all costs associated the special education-related personnel described in the preceding two paragraphs, above;
- (12) Develop, maintain, and review assessments and IEPs in any format required by CSI, in accordance with federal law, state laws, and the Charter Contract;
- (13) Track attendance for each student, to be reported and certified according to applicable state law and regulation;
- (14) Participate in the state quality assurance process for special education (*e.g.*, verification reviews, coordinated compliance self-reviews, complaints monitoring, procedural safeguards, and the local plan, as further described in the *CSI Special Education Manual*); and
- (15) Participate in any mandatory special education training offered or provided by CSI.

2(b): CSI shall:

- (1) Allocate state and federal special education funding to the Charter School in accordance with CSI's established practice—consistent with C.R.S. § 22-30.5-513.5 and other applicable law—including establishing a baseline allocation,

deducting CSI's administrative costs, and dividing that number by the total number of eligible students;

- (2) Identify all schools in its portfolio of authorized charter schools by Performance Tiers I, II, or III, according to the CSI "Student Services Screener," or other established scoring tool utilized by CSI, using a primary screener and (for some schools) a subsequent secondary screener;
- (3) Offer, to the Charter School, Tier I foundational supports in the form of professional development and technical assistance trainings; and, if the Charter School becomes identified as a Tier II or Tier III school, offer to the Charter School additional interventions and supports targeted to address identified areas of need, including but not limited to: on site school quality reviews, school improvement and prioritization planning, and targeted staff and leadership professional development;
- (4) Provide the applicable tier of support until the Charter School has demonstrated necessary progress related to the outcomes of its special education students;
- (5) CSI may retain commensurate state and federal funds for the purpose of providing the tiered support described in the two preceding paragraphs. A written agreement specifying the services to be provided and their cost may be executed, if needed, which agreement shall constitute an amendment to the Charter Contract.
- (6) Provide information to the Charter School regarding CSI's special education decisions, policies, and procedures to the same extent as they are provided to other schools within CSI; and
- (7) Make available to Charter School staff such training opportunities or information regarding special education as are made available to other school site staff.

2(c): Oversight. CSI and the Charter School agree to the following terms of supervision, support, and enforcement.

- (1) CSI will periodically meet with the Charter School's special education staff or coordinator in order to familiarize itself with the Charter School's special education program and to communicate any pertinent information, guidance, or directives to the Charter School.
- (2) On an ongoing basis, CSI will assess the performance of the Charter School with regard to special education. If—in CSI's sole discretion—CSI finds the Charter School's performance with regard to special education to be deficient, CSI may take remedial steps. Such steps may include, but will not be limited to, increasing CSI's level of oversight of the Charter School.

- (3) Should CSI determine that any remedial steps are necessary, in accordance with the school's Charter Contract and CSI policy, CSI will oversee implementation of these steps.
- (4) In instances where CSI takes on responsibility for tasks that would otherwise be carried out by the Charter School under this MOU, CSI may retain commensurate funds. Such circumstances are expected to be highly unusual. A written agreement specifying the services to be provided and their cost will be executed, which agreement shall constitute an amendment to the Charter Contract, at the time of any such unusual intervention.
- (5) The Special Education Coordinator of the Charter School, mandated above by paragraph 2(a)(9), shall attend to all school-level administrative, compliance, and programmatic tasks with regard to special education, and shall be primarily responsible for ensuring (1) that the special education program of the Charter School is effectively and lawfully carried out and (2) that the needs of students with disabilities and at risk for disabilities are met. The Charter School shall develop and consistently implement a process to ensure that all of its special education personnel or contracted personnel are appropriately credentialed and licensed. The Charter School may rely on its discretion to determine whether or not to look to and contract with outside entities, such as consultants or local districts, for the provision of any mandated special education or related services.
- (6) CSI reserves the right to jointly direct with the Charter School the development and/or modification of any IEP for special education students enrolled at the Charter School. CSI's Director of Special Education or designee shall maintain the same administrative authority, pursuant C.R.S. § 22-20-106 and regulations thereunder, as in all other CSI schools.
- (7) Upon request by CSI, the Charter School shall provide all requested or appropriate documentation to demonstrate the licensure status of Charter School personnel and contractors providing special education or related services, including documentation of the training received by said personnel and contractors, as well as documentation of the steps taken by the Charter School to comply with applicable credentialing requirements. The Charter School shall promptly provide CSI with documentation that updates this information during the course of the school year, to the extent that the Charter School has changes in its personnel, contractors, or training.
- (8) The Charter School shall adopt and utilize a viable student plan management system for maintaining copies of assessments and IEP materials. Upon request, the Charter School will provide this information to CSI for its review.

- (9) The Charter School will also submit to CSI all required reports—including but not limited to the reports identified in the *CSI Guidebook: Special Education Onboarding*—in a timely manner, allowing a reasonable time for response, as necessary to comply with federal and applicable state law requirements.
- (10) The Charter School is responsible for the appropriate management of its special education budgets, personnel, programs, and services in accordance with state and federal law, which includes the requirement that special education funding received be used only for allowable special education purposes. CSI reserves the right to audit the use of special education funds provided to the Charter School to ensure compliance with program and fiscal requirements.

3: Specific Duties and Obligations

CSI and the Charter School agree to the following specific duties and obligations, which supplement but do not supplant the foregoing general duties and obligations.

3(a): Admission and Transferring of Students

- (1) Every student who is admitted or transferred with an IEP or Section 504 plan from his or her previous school shall be placed directly into a program that meets the requirements of such IEP or Section 504 plan—and the Charter School shall provide the special education and related services required by the IEP or Section 504 plan—unless and until the IEP or Section 504 plan is changed.
- (2) To the extent an IEP or Section 504 Plan needs to be changed in order to be implemented by the Charter School, the IEP or Section 504 team will meet promptly to consider such changes as required by applicable law.

3(b): Assessments

- (1) The referral process shall include team meetings (1) to review prior interventions, accommodations, and modifications and (2) to recommend further interventions, accommodations, and modifications as appropriate. The referral process shall be supported by documented interventions such as the Multi-Tiered Systems of Support model approach, using data to identify student strengths and weaknesses or as otherwise appropriate so long as the approach is consistent with state and federal law.
- (2) Upon observation, review of accumulated data, and review of records, the Charter School may determine that assessment is necessary to determine possible eligibility for special education programs and related services.
- (3) Upon referral for an assessment, the Charter School will convene a meeting to review and discuss the request to agree or deny the request for assessment, in light

of student records, acquired data, and student performance. If the Charter School determines that assessment for special education eligibility is not warranted, then prior written notice must be given to the parent/guardian with a clear rationale for such refusal within 15 days of the request. If the Charter School determines that there are suspected disabilities, then the Charter School must develop an assessment plan, utilizing CSI's assessment process as outlined in the CSI Special Education Model, within the 15-day timeline. The assessment plan shall describe the types of assessments that may be used to determine the eligibility of students for special education instruction and services. Assessments shall be conducted, within legal timelines, after receiving the parents' written consent.

- (4) For each student assessed, the Charter School shall conduct an IEP team meeting that includes required team members within mandated timelines, to discuss assessment results, determine eligibility, and (if eligible) specify special education instruction and services. The IEP team convened at the Charter School will make decisions regarding eligibility, goals, program (including staffing and methodology), placement at the school, and exit from special education.

3(c): Alternative Placements

- (1) In the unusual event that, after a student is enrolled in the Charter School, the IEP team of the Charter School determines that the Charter School cannot provide a FAPE in the Charter School, as the LRE appropriate to the student, the Charter School shall contact CSI to discuss placement and service alternatives.
- (2) The IEP team convened at the Charter School shall have the authority to make offers of a FAPE and decisions regarding the staffing and methodology used to provide special education and related services at the Charter School.

3(d): Least Restrictive Environment ("LRE")

- (1) The Charter School will support the education of students with disabilities, including students with moderate to severe disabilities, in the LRE appropriate to their needs, increasing as appropriate the interactions of students with disabilities with non-disabled students.
- (2) The Charter School's general program of instruction for students with disabilities shall be responsive to the required sequence of courses and related curricular activities provided for all students in the Charter School. Assessment and standardized testing procedures shall be implemented, including guidelines for modifications and adaptations, to monitor student progress.

3(e): Staffing Requirements

- (1) The Charter School shall ensure that the teachers and other persons who provide services to students with disabilities are knowledgeable of the content of students' IEPs.
- (2) The Charter School shall provide planned staff development activities and participate in available and mandatory CSI trainings to support access by students with disabilities to the general education classroom, general education curriculum, integration of instructional strategies and curriculum adaptations to address the diverse learner, and interaction with non-disabled peers.
- (3) The Charter School shall maintain responsibility for monitoring progress towards IEP goals for students with disabilities. The Charter School shall assess and develop individual transition plans to help students with disabilities transition to adult living in accordance with CSI policies and procedures.

3(f): Student Discipline

- (1) The Charter School will ensure that it complies with state and federal laws, including the IDEA, regarding discipline of students with disabilities.
- (2) The Charter School shall include positive behavioral interventions in its discipline procedures.
- (3) The Charter School will consult with CSI, for any special education student, (1) prior to convening a manifestation determination, (2) prior to recommending expulsion, and (3) prior to the eleventh day of cumulative suspension.
- (4) The Charter School will collect data on to the number of special education students suspended or expelled, distinguishing between in-school and out-of-school suspensions. The Charter School will report this data to CSI annually.

3(g): Procedural Safeguards and Due Process Hearings

- (1) If CSI determines that such action is legally necessary to ensure compliance with applicable federal and state special education laws and regulations, CSI may:
(1) invoke dispute resolution provisions set out in the charter application, Program Plan, or Charter Contract; (2) initiate due process hearings; and/or (3) utilize other procedures applicable to the Charter School.
- (2) The Charter School may initiate dispute resolution provisions under the Charter Contract or as provided by law.

- (3) CSI and the Charter School shall work together in a good faith attempt to resolve disputes at an early stage (such as through informal settlement or mediation).
- (4) During due process proceedings and any other legal proceedings or actions involving special education, the Charter School will be responsible for its own representation. If the Charter School retains legal representation for a due process proceeding or other legal proceeding or action, the Charter School will be responsible for the cost of such representation.
- (5) The Charter School shall be responsible for satisfying any award by a due process hearing officer, a court, or a settlement, if such award is based on any allegation that the Charter School failed to fulfill its duties under state and federal special education laws and regulations. This obligation may include, without limitation, any award of (i) prospective special education and related services, (ii) compensatory education, (iii) reimbursement, and/or (iv) parents' attorneys' fees and costs. This obligation may be based on, without limitation, allegations concerning (i) identifying students with disabilities, (ii) assessing students, (iii) conducting IEP team meetings, (iv) developing appropriate IEPs, and/or (v) implementing IEPs. Through insurance, reserve funds, or other reasonable means, the Charter School shall assure that appropriate funds are available to meet such obligations.
- (6) CSI shall be responsible for satisfying an obligation, as described in the preceding paragraph, only when the award is based on any allegation that CSI failed to fulfill its own, independent and non-derivative duties under state and federal special education laws and regulations.

3(h): Complaints

- (1) In the event of a complaint involving a student with an IEP or Section 504 Plan, the Charter School shall inform the CSI Director of Special Education and shall follow (i) all State and Federal rules, and (ii) all CSI-approved grievance procedures.
- (2) CSI shall investigate, cooperate with, and respond to all formal special education complaints CSI receives pertaining to the Charter School. CSI shall inform the school in writing of the complaint in accordance with the Charter Contract or prior to any CSI investigation, whichever comes first.
- (3) The Charter School shall cooperate with CSI in any such investigations and shall provide CSI with any and all documentation required to respond to complaints within the timelines imposed by the investigating agency. The Charter School will be solely responsible for any and all costs resulting from, arising out of, or

associated with the investigation and implementation of appropriate remedies in a manner consistent with paragraphs 3(g)(5) and 3(g)(6) above.

3(i): Local Educational Agency (“LEA”) for Special Education

- (1) As the LEA and administrative unit for the charter schools it approves and oversees, CSI will determine the policies and procedures necessary to ensure that the protections of special education law extend to all public school students at CSI schools.
- (2) CSI will track all schools using the CSI Student Services Screener (or its replacement). CSI may monitor the Charter School’s compliance and may direct such changes as necessary to comply with federal or state law or policies, or CSI policies or procedures, concerning the Charter School’s: referral processes; evaluations; reevaluations; eligibility determinations; placement decisions; and development and implementation of IEPs.
- (3) In the event of any disagreement between the Charter School and CSI with regard to the duties of the Charter School under this MOU, CSI’s reasonable interpretation of those duties and its good faith assessment of the sufficiency of the Charter School’s actions in carrying them out shall be binding.

4: Miscellaneous Provisions

4(a): Notices

All notices or the provision of written information shall be given via U.S. mail to the following contacts, unless the Parties expressly agree to a substitute method on a case-by-case basis:

CSI:

Colorado Charter School Institute
Logan Tower, 1580 Logan St # 210
Denver, CO 80203

Charter School:

XXXXXXXXXXXX
XXXXXXXXXXXX
XXXXXXXXXXXX

4(b): Modifications

With the exception of changes to CSI policies and procedures regarding special education, the provisions of this MOU may be modified, supplemented, or terminated only through written agreement of the Parties.

4(c): Integration/Incorporation

This MOU is hereby incorporated by this reference into the Charter Contract and shall, to the extent necessary to carry out the terms and conditions of the MOU, supersede any conflicting provisions in the Charter Contract.

4(d): Term

This MOU is effective upon execution and expires _____, 201_.

Signature blocks

Date: _____

For CSI:

Name

Title

For the Charter School:

Name

Title



SPED MOU Clarification Letter

Colorado Charter School Institute

September 29th, 2017

Dear School Leaders,

Thank you for your feedback and input on the SPED MOU. As you know, the MOU is an outcome of our work with the National Center for Special Education in Charter Schools (NCSECS) with the goal of adding clarity for CSI schools and CSI. The MOU will be updated annually to reflect the rights and responsibilities held by both CSI and CSI schools under federal and state law.

In response to questions raised about this year's version of the MOU, CSI provides the following clarifications:

Purpose of MOU

The purpose of the MOU is to outline the roles and responsibilities of both the CSI school and CSI in serving students with disabilities. CSI recognizes that each of its schools intends to serve students with disabilities to the greatest extent possible and hopes that providing additional clarity will help to progress the entire portfolio's ability to serve special populations.

Student Services Screener and Tiers of Support

The Student Services Screener was developed as a tool to assess the quality of access, instructional supports, and outcomes for special populations (SPED, GT, 504, ELL). The information gained from the Screener helps identify any potential areas of concern in a school's compliance with legal requirements, and informs the school's Tier of Support. The Tiers of Support are designed to provide targeted support to schools based on the areas of need identified through the Screener and does not directly correlate to renewal or other high stakes decisions.

The CSI Annual Review of Schools ("CARS") is still the primary method for evaluating a CSI school's performance. CARS looks at a variety of academic, financial, and operational data. Although a school's "Tier" does not directly influence its CARS rating, CSI continues to utilize performance data to inform a school's accreditation rating. So, for example, if a school is found to be out of compliance with an applicable legal or policy requirement, that area of noncompliance may affect authorization pathways just as before. More information on CARS and the data it considers is available [here](#).

CSI intends to work with each school individually in response to the needs identified through the Screener. CSI has every intention of that being a collaborative process wherein the school and CSI staff discuss potential areas of concern and the school, with CSI's support, can develop a plan for addressing any noted deficiencies keeping in mind the unique program of the school.

Revisions to the Screener

Utilizing feedback provided by the Council of Schools, the Student Services Screener will be revised during the 2017-18 school year. As part of these revisions, the Screener will include n-size used in data reporting so that schools have a clear understanding of how many students are included in the indicator rating. Additionally, the graduation rate indicator will measure a school's "best of" graduation rate, to replace the current 4-year graduation rate measure. Updated Screener Reports that reflect data from the 16-17 school year will be issued once state data is finalized (projected Jan. 2018).

CSI will make the Screener and all revisions thereto available to CSI schools and will provide opportunities for comments and feedback.

Enrollment of Students with Disabilities

CSI will support its schools in the implementation of CSI's Enrollment Procedures for Students with Disabilities. These procedures are based in law. As the Enrollment Procedures specify, the CSI Director of Special Education is part of the IEP Team and will assist schools in making placement determinations. CSI's Enrollment Procedures for Students with Disabilities are available [here](#).

Operational and Financial Support

CSI recognizes that serving students with special needs can present significant financial and operational challenges. CSI does not dictate special education staffing; rather, these decisions are made by the IEP Team on an individualized basis when determining how to provide FAPE to a student, and the required qualifications for special education staff are set by law.

CSI is committed to assisting its schools in applying for additional funding through CDE for qualifying "high-cost" disabilities and exploring other resources that may be available. In addition, the CSI Assistance Fund was created by the Colorado General Assembly to assist CSI schools experiencing reasonable emergency financial situations, including the costs associated with educating students with disabilities that are associated with high costs, through interest free loans and grants.

The unfortunate reality is that staffing and funding for special education is a challenge for all schools. CSI is continuously researching and exploring ways to help CSI schools with operational and financial challenges, and encourages CSI schools to collaborate with each other in finding innovative solutions to these challenges. Although ideas of joint processes like a group insurance pool or mandating the sharing of special education staff have been proposed throughout the years, CSI feels that any such initiatives must be driven by both CSI schools and CSI collectively, particularly since increased costs will ultimately affect each school's annual rebate.

CSI is committed to continuing to support its schools in providing special education services. CSI will continue to issue guidance and resources and is dedicated to both revising the Special Education Manual and developing a 504 Manual during the 2017-18 school year. In addition, the CSI Student Services Team will be out in schools working with school staff and providing training on critical special education topics.

Dispute Resolution

Should an issue with a CSI process or procedure arise, CSI encourages you to reach out – we are always ready and willing to discuss your concerns. As a reminder, there is a Dispute Resolution processes in each

school's charter contract. Additionally, the SPED MOU was designed to be a 1-year agreement in order to provide opportunity to make revisions next year if necessary.

Conclusion

Should you have any additional questions about the SPED MOU, the work CSI has conducted over the past year relating to special education, or questions about this letter, please do not hesitate to reach out. CSI's intent throughout the year was to keep all schools informed of the work it was doing with NCSECS and provide numerous opportunities for comments and feedback (stakeholder interviews with school leaders and special education staff; presentations at the All School Leaders Meeting and Spring Regional Meeting; webinars; in-person meetings). We hope that you feel this has been a transparent and productive process and thank you for your continued support, comments, and suggestions.

Sincerely,

A handwritten signature in blue ink that reads "Terry Croy Lewis". The signature is written in a cursive, flowing style.

Terry Croy Lewis
CSI Executive Director

CYNTHIA H. COFFMAN
Attorney General
MELANIE J. SNYDER
Chief Deputy Attorney General
LEORA JOSEPH
Chief of Staff
FREDERICK R. YARGER
Solicitor General



STATE OF COLORADO
DEPARTMENT OF LAW

RALPH L. CARR
COLORADO JUDICIAL CENTER
1300 Broadway, 10th Floor
Denver, Colorado 80203
Phone (720) 508-6000

Office of the Attorney General

October 2, 2017

Brad Miller
Counsel for Falcon District 49
Law Office of Brad A. Miller
5665 Vessey Road
Colorado Springs, CO 80908

RE: Busing authority under C.R.S. § 22-32-113(1)(c)

Brad:

I'm writing on behalf of the Colorado Charter School Institute, regarding Falcon District 49's request for Colorado Springs Early Colleges to enter into a memorandum of understanding memorializing the district's consent for the school to run buses within the district's borders.

Please be aware that the Attorney General's Office does not represent Colorado Springs Early Colleges. That said, we do represent the Charter School Institute, and we believe District 49's position is not only harmful to the Institute's interests, but also clearly erroneous as a matter of law. This letter sets forth my understanding of the statutory framework. Please let me know if you believe anything herein is mistaken.

As I understand your position, it is that:

- The "consent" clause at the end of § 22-32-113(1)(c) applies here, because it embodies a rule of district control over the school buses picking up children residing in the district; and
- Because § 22-32-113 deals specifically with transportation, it would prevail in a conflict with general statutes protecting institute charter schools' autonomy.

These points are well taken, but they do not extend nearly as far District 49 seeks to extend them. As I read the statute, the consent clause in § 22-32-113(1)(c) applies only to buses running under the authority of § 22-32-113(1)(c). Charter schools run their buses under the authority of §§ 22-30.5-106(1)(m) & -509(1)(m),

C.R.S. As a result, they need not satisfy the conditions of § 22-32-113(1)(c), unless they somehow bring themselves within its operation. The only way this could happen (so far as I know) is if a *district* charter school purchases bus service from its authorizer under § 22-30.5-112.5, C.R.S. Those circumstances are not only absent here, but also absent by definition from all *institute* charter schools.

I. The consent clause in § 22-32-113(1)(c) is merely a condition precedent to a specific statutory power.

Within Title 22 of the Colorado Revised Statutes, Article 32 sets forth the powers and duties of local school boards. Within Article 32, section 113 sets the rules for providing transportation services. Most importantly, the first subsection of the statute provides the basic statutory grant of authority to run buses. Under that subsection:

The board of education of a school district may furnish transportation:

(a) To and from public schools of the district for . . . resident pupils enrolled in the schools of the district;

(b) To and from public schools located in an adjacent state for . . . resident pupils [when they are allowed to attend out-of-state schools];

(c) To and from public schools for . . . pupils enrolled in the schools of the district who are resident of any other school district . . . *if the board or other governing body of the district of residence shall consent to such transportation;*

(d) To and from any school-sponsored activity, or for any emergency, for . . . pupils enrolled in the schools of the district. . . .

§ 22-32-113(1), C.R.S. (emphasis added). As I read it, this is four distinct grants of authority to “furnish transportation” – each with its own attendant conditions. For example, paragraph (a) provides a broad grant of authority, but the authority is limited to pupils that are both resident in the district and enrolled in the schools of the district; the power in paragraph (a) does not extend to nonresident students, nor to students enrolled in schools other than the district’s schools.

Under the statutory framework, then, the conditions within each paragraph apply to the power granted in that specific paragraph. As relevant here, paragraph (c) provides school districts with the power to furnish transportation for *nonresident* pupils, under certain conditions. Those conditions are that the transportation is (1) to and from school; (2) for pupils enrolled in the schools of the district; and (3) with the consent of the pupil’s district of residence. The power in paragraph (c) cannot be exercised unless these conditions are met.

Notably, the right of a district to consent to the transportation of its residents by other entities does not appear anywhere else in Article 32. It appears *only* as a condition on the power in section 22-32-113(1)(c).¹ Thus, the consent clause in section 113(1)(c) is not a free-ranging power for school districts to regulate the transportation of their residents. It is simply a condition precedent, applicable only to the authority otherwise granted to districts of attendance by section 113(1)(c).

As such, the consent clause in section 113(1)(c) can apply to charter school students only if those charter school students are transported under the authority of section 113(1)(c). *Cf.* § 22-30.5-112.5 (rules for charter schools to contract with their district authorizer for bus services). Charter schools that provide bus service pursuant to some other authority must satisfy the conditions of that other authority – not the conditions of section 113(1)(c).

II. The statutory history of § 22-32-113(1) confirms its narrow scope.

The history of Colorado’s applicable statutes confirms the narrow intent of § 22-32-113. Students have been able to attend schools outside their district of residence, under certain conditions, since at least 1883. *See, e.g.*, 1883 Colo. Sess. Laws, p. 269; 1887 Colo. Sess. Laws, p. 393; 1909 Colo. Sess. Laws, ch. 202. Under these laws, students in remote areas can even attend schools in adjacent states, if those schools are closer to the student’s residence than any Colorado school. These statutes authorize the school district to send pupils to other schools, and to pay those other schools a reasonable tuition for taking the pupils.

When the original bus statute was enacted, in 1929, it allowed districts to transport pupils to and from school without any distinction between resident and nonresident pupils. *See* 1929 Colo. Sess. Laws, ch. 166. This changed in 1964, when the statutes now appearing in Article 32 were repealed and reenacted – adding the statutory language now in § 22-32-113(1). *See* 1964 Colo. Sess. Laws, ch. 73, § 14. For the first time, the transportation statute expressly accommodated those students attending out-of-state schools or incoming from adjacent districts. And the newly express transportation powers contained new conditions, mirroring the language in the newly recodified tuition statute. *Compare id., with id.* § 16. For example, the power to bus kids to an out-of-state school was conditioned on the authority to send the kids to such a school in the first place, under the new tuition statute. Likewise, the power to bus kids in from adjacent districts, with the consent of those adjacent districts, reflected the provisions of the new tuition statute –

¹ The consent provision in § 22-32-113(1)(c) has a counterpart in the reimbursement provisions of § 22-32-113(4), which would be subject to the exact same analysis as (1)(c). A similar consent provision limits a district’s authority to establish an entire educational program outside of its own geographic boundaries, § 22-32-109(2); that provision is irrelevant here.

under which the amount of tuition would be set only with the *consent* of both districts. *See id.* § 16(4).

The connection between interdistrict enrollment (as it existed at the time) and busing authority could not have been more explicit. Although the plain text of § 22-32-113(1)(c) might sweep somewhat more broadly in light of today's choice rules, there is no historical reason to believe that section 113(1)(c)'s consent clause reflects a broad principle of geographic sovereignty over student transportation. It reflects, rather, the financial arrangements that districts have historically made for certain types of interdistrict enrollments.

III. Even if § 22-32-113(1)(c) conflicted with the provisions of Article 30.5, Article 30.5 would prevail.

Both the plain language and the statutory history of § 22-32-113(1)(c) establish that it has no application to charter schools (unless those schools bring themselves within its operation). There is therefore no conflict between it and the statutes authorizing charter schools to provide their own transportation services. But if there were a conflict, the charter statutes would prevail over § 22-32-113.

First, newer statutes control over older statutes. *See* § 2-4-206; *Burton v. City and County of Denver*, 61 P.2d 856, 858 (1936). Here, the transportation-and-interdistrict-enrollment scheme dates to 1964. The charter school provisions date to the 1990s (for district charters) and 2004 (for institute charters). Under settled principles of statutory construction, if the charter school statutes cannot be reconciled with § 22-32-113, the charter school statutes prevail.

Second, specific statutes control over general statutes. *See* § 2-4-205; *People v. Smith*, 971 P.2d 1056, 1058 (Colo. 1999). Here, the charter school statutes empower charter schools to provide transportation to their pupils, without applying any geographic limits. §§ 22-30.5-106(1)(m) & -509(1)(m). They further provide that charter schools, unlike school districts, need not enroll pupils only from within a given geographic boundary. *See* §§ 22-30.5-104(2) & -507. And as to institute charters, nothing in Part 5 of Article 30.5 – including the authority to contract for transportation – can be construed to give districts authority over the operations of the charter school. § 22-30.5-507(1)(b). These are specific provisions governing the transportation of charter school pupils, and under settled principles of statutory construction, they trump the authority of school districts to consent to transportation of interdistrict enrollments in general.

To reiterate, there does not appear to be any irreconcilable conflict between § 22-32-113(1)(c) and the provisions of Article 30.5 – because the conditions in § 22-32-113(1)(c), apply only to the power granted in § 22-32-113(1)(c). The buses run by charter schools are authorized under different statutes and are therefore not limited

by anything in § 22-32-113(1)(c). But if there were a conflict, under the settled rules of statutory construction, the provisions of Article 30.5 would prevail.

Conclusion

As I read the statute, the consent clause in § 22-32-113(1)(c) gives District 49 the right to consent to (and therefore veto) bus transportation offered *by another school district*, to take students *to schools of that other district*. By definition, that consent right cannot apply to institute charter schools (nor even most district charter schools).

Thank you for taking the time to consider my analysis. I am eager to hear about any errors I've made.

Sincerely,

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