

## COST-BENEFIT ANALYSIS

In performing a cost-benefit analysis, each rulemaking entity must provide the information requested for the cost-benefit analysis to be considered a good faith effort. The cost-benefit analysis must be submitted to the Office of Policy, Research and Regulatory Reform at least ten (10) days before the administrative hearing on the proposed rule and posted on your agency's web site. For all questions, please attach all underlying data that supports the statements or figures stated in this cost-benefit analysis.

DEPARTMENT: Department of Education AGENCY: State Board of Education

CCR: 1 CCR 301-39 DATE: February 2, 2024

### **RULE TITLE OR SUBJECT:** **RULES FOR THE ADMINISTRATION OF THE PUBLIC SCHOOL FINANCE ACT OF 1994**

Per the provisions of 24-4-103(2.5)(a), Colorado Revised Statutes, the cost-benefit analysis must include the following:

#### **1. The reason for the rule or amendment;**

Section 22-54-120, C.R.S. grants the State Board authority to “make reasonable rules and regulations necessary for the administration and enforcement” of the Public School Finance Act (PSFA) of 1994. The Rules for the Administration of the PSFA are published in 1 CCR 301-39. These rules define the requirements for students to be eligible for public school funding for “brick-and-mortar” public schools. Funding for online schools is addressed in separate rules. The rules at 1 CCR 301-39 are further implemented through the department of education’s annual audit guides (currently, [2023-24 Pupil Count Audit Resource Guide](#)). On December 13, 2023, the Department of Education [presented](#) the need for this rulemaking and the State Board voted to notice the rules.

There are several reasons for the currently proposed rule amendments:

#### **1. Expanding types of learning that qualify for public school funding with appropriate guardrails, oversight and protections:**

Education has been rapidly changing and these rules seek to expand what is eligible to fund public school education for public school students at brick-and-mortar schools, within the current statutory framework. Traditionally, funding for brick-and-mortar schools has been based on the amount of “seat time” – time that students spend at school getting instruction from teachers. Since innovations in education have expanded far beyond what is permitted in the current rules, the Colorado Department of Education (CDE) has been exploring areas where there could be greater funding flexibility. CDE launched a [blended learning initiative \(BLI\)](#) to better understand the blended and online models being used by brick-and-mortar schools and has presented regularly (see, e.g., [February 9, 2023](#)) to the State Board on the information learned. CDE also allowed variances in recent years to ensure that newer models of learning could qualify for per pupil funding – especially when these flexibilities were uniquely needed during the COVID pandemic. With the proposed rule amendments, the State Board would formalize the best practices learned through these endeavors and expand what qualifies for funding. CDE would then phase out its variances/waivers.

The proposed rule amendments would abandon the traditional practice of forcing all instructional time into a “seat time” model for funding purposes. Largely copying the model used under the Online Schools Act, the proposed rule amendments would allow districts to provide equivalency statements, translating their nontraditional courses (referred to as “alternative teacher-pupil instruction” in the proposed rules) into a seat-time value for CDE’s use in the pupil count. Districts and charter schools would have the flexibility to offer these courses in the format they believe will work. They will no longer have to create board policies defining what constitutes being “actively engaged in the educational process” of the district or charter school in order to receive funding for that nontraditional time. See [current rule](#) 2.06(2). That limited flexibility has been replaced with the much broader flexibility embodied in the new “alternative teacher-pupil instruction” and “catalog of courses” framework.

This policy change is reflected in the proposed rules largely in the definitions section, adding proposed Rules 1.01 (“alternative teacher-pupil instruction”), 1.04 (“catalog of courses using alternative teacher-pupil instruction”), and 1.08 (“direct teacher-pupil instruction”). Current Rules 2.06(2) and 2.06(2)(a) would be deleted.

Traditional “seat time” would continue to count as per usual for “direct teacher-pupil instruction.” For example, when the student spends 90 minutes with a teacher in math class at a brick-and-mortar school or face-to-face with the teacher in an online class (called “synchronous” instruction), that 90 minutes counts for funding. Although the method of counting time would remain the same for direct teacher-pupil instruction, proposed rule 1.08 expands traditional seat time by including synchronous virtual learning and by being agnostic to the location where synchronous virtual learning occurs.

When the student receives “alternative teacher-pupil instruction,” the district or charter school creates an “equivalent” time through an established course catalog. For example, if the student takes a supplemental online course using an online curriculum like Edgenuity, the district or charter school would create a defined course in the course catalog and create an equivalent time that the student will be engaged in the educational process with that supplemental online program.

As part of this shift, the draft rules propose using the “catalog of courses” for alternative instruction to make the process transparent and accountable to parents and the broader public. Those courses should be aligned with any applicable [Colorado academic standard](#), and the course description should indicate what the student will learn in that course and how they will learn it (e.g., through Edgenuity or Colorado Digital Learning Solutions). This replaces the current requirement that local boards set and define the “educational process of the district” for the purpose of funding instructional time. However, the proposed rule amendments continue to defer to local choices on curriculum and instruction. Under both the current rules and the proposed rules, local districts and schools design their instructional program and the delivery of educational services. They would now choose whether to offer the instruction through direct teacher-pupil instruction or alternative teacher-pupil instruction (where permitted). If they choose direct-teacher pupil instruction, they count the actual time the student is receiving direct instruction. If they choose alternative teacher-pupil instruction, they count an equivalency for that learning time as established in the course catalog.

In sum, the proposed rules allow more students to qualify for funding even if they do not spend the entire day in a traditional brick-and-mortar school building. They could be engaged in independent study, work study, internships, apprenticeships, blended learning, and online learning.

## **2. Moving certain requirements from the audit guide to the rules related to part-time enrollment, building greater clarity around what qualifies as public education for public schools :**

Several years ago, CDE added express guidance in its [audit guide](#) stating that parent-led instruction is not eligible for funding. Only teacher-led instruction may be considered as instructional time for funding purposes. (These must be licensed teachers unless the district or charter school has a waiver of the statutory requirement for all teachers to be licensed.) The proposed rules codify this interpretation.

In its school finance auditing work, CDE has seen many examples of parent-led instruction that were not authorized by the Public School Finance Act. That parent-led instruction occurred most often when districts or schools contracted with outside private providers to provide educational services to homeschool students. For example, a district or charter school would receive funding for a part-time student purportedly “attending a public school for a portion of the school day.” § 22-33-104.5(6)(a), C.R.S. The district or charter school would keep some of the part-time funding and pay some of it to an external private provider who would be responsible for all of the student’s learning. That private provider would allow parents to choose a la carte from a menu of online and non-online resources (free logins to online curriculum, museum memberships, reimbursements for ballet or piano class, workbooks, subscriptions to “boxes” with learning materials from online companies like TinkerCrate, magazine subscriptions, books chosen by the parent etc.). In some situations, they would provide money to the parents to purchase computers where there was no obligation to return the computer to the public school system. Although there may have been a teacher who checked in occasionally with the student and was available for questions, the learning itself was directed and led by the parent. The result was the creation of de facto educational savings accounts – homeschool parents could access public dollars to subsidize their parent-directed and individualized

homeschool program. The Colorado legislature has not authorized this practice and has not authorized CDE to count such parent-led and -delivered instruction as funded instructional time under the Public School Finance Act. See § 22-32-122(3)(c), C.R.S.

These rules provide clarity and guardrails around funding for both districts and schools when they provide direct services to part-time homeschool students or when they contract with private providers to provide those services. These provisions are in proposed Rule 2.05(a)(3), as follows:

Instructional time for purposes of determining funding eligibility does not include parent-led or parent-directed instruction.

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.

There is an affiliated definition of “parent-led or parent-directed instruction” in proposed new Rule 1.14.

There are many examples of excellent programs for part-time homeschool students who want to “attend[] a public school for a portion of a day.” § 22-33-104.5(6)(a), C.R.S. They may be provided directly by a district or charter school or they may be contracted through a private provider and are “of comparable quality and meet the same requirements and standards that would apply if performed by the school district.” § 22-32-122(3)(a), C.R.S. These programs will not be limited or adversely affected by the proposed rule amendments. The proposed rule amendments are, nonetheless, necessary to ensure that districts and schools have clarity on the appropriate boundaries to ensure that they are making proper claims on government funds through the pupil count.

### **3. Updating facility school funding:**

Senate Bill 23-219 created a new funding model for facility schools. The proposed rule amendments align with the new funding model for facility schools. The new law also creates a distinction between state programs and approved facility schools, which can include specialized day schools. The amended rules reflect this statutory change.

### **4. Equalizing rules for post-secondary education that can be funded through the Public School Finance Act:**

The Colorado legislature has created multiple pathways for students to get post-secondary credits while still enrolled in high school and being funded under the Public School Finance Act – e.g., [ASCENT](#), [concurrent enrollment](#), and [Early Colleges](#). Although these are all pathways to earning post-secondary credit or certifications, the current school finance rules treat them differently for purposes of part-time or full-time funding. For Early Colleges, a student needs to take only 7 credits to qualify for full-time funding. Under concurrent enrollment and the ASCENT program, a student must take 12 credits to qualify for full-time funding. The proposed rule amendment equalize the funding rules across these programs, requiring the equivalent of 12 post-secondary credits for full-time funding. However, they also ensure that the Early Colleges have a path to ensure they do not lose funding. If a student cannot take 12 post-secondary credit courses, the student can still take a mix of post-secondary and high school courses (e.g., independent study) and still qualify for full-time funding.

### **5. Clarifying and streamlining existing language without any substantive changes to historical practices (e.g., language regarding attendance streamlined and shortened to be in one place).**

## **2. The anticipated economic benefits of the rule or amendment, which shall include economic growth, the creation of new jobs, and increased economic competitiveness;**

The Colorado economy depends on a strong public school system. As the legislature noted in the legislative declarations for the Public School Finance Act:

(I) A world-class public education is critical to meeting the workforce demands for Colorado's economy;

(II) The changing realities of Colorado's post-pandemic economy demand that students be agile learners able to continuously learn, adapt, and shift into new roles by developing critical thinking, collaboration, and problem-solving skills; and

(III) The needs of the state require that all students, including those who are underserved or face significant challenges in meeting Colorado's graduation guidelines, complete high school career and college ready.

§ 22-54-102(5)(a).

The primary goal of this rulemaking is to expand flexibility in the funding system, so that schools can receive funding for nontraditional instructional formats and thereby help students graduate prepared for career and college.

More immediately, these rules may allow greater flexibility for high school students to participate in the workforce through flexible schedules, internships, and apprenticeships. For example, if a student needs to work in the afternoon to support their family, they may be able to enroll in a nontraditional class that they can engage in at night after work. That could make the difference between staying in school or dropping out. Many of the economic benefits related to preventing student dropouts and increasing student engagement can be found on CDE's website:

- Providing multiple pathways for students increases student engagement in learning, graduation rates, credit attainment, and preparation for postsecondary options. "Research shows that high school graduates are more likely to be employed, earn higher wages, and have better health outcomes (U.S. Department of Health and Human Services, n.d.)."  
<https://www.cde.state.co.us/dropoutprevention/dpframework>
- Attaining a high school credential is correlated with several lifelong positive outcomes, such as lower unemployment rates, livable wage earnings, homeownership, and healthy economic growth. Increases in lifetime earnings and annual state and local tax revenue are estimated at \$230,000 per high school graduate.  
<https://www.cde.state.co.us/dropoutprevention/2019statepolicyreportondropoutpreventionandstudentengagement>
- Decades of research show that high school dropouts experience higher rates of unemployment, delinquency, teen pregnancy and poverty than their peers that complete school. It is estimated that the average high school dropout will cost taxpayers over \$322,000 in lower tax revenues, public assistance transfers, unemployment payments, incarceration expenditures and additional healthcare costs. Census data records the economic disparities between those who drop out and those who complete school and further their education. The average dropout earns \$20,241 per year, compared to \$30,627 for a high school graduate and \$56,665 for someone with a bachelor's degree.  
[https://www.cde.state.co.us/dropoutprevention/2013\\_dpse\\_report\\_to\\_the\\_legislature](https://www.cde.state.co.us/dropoutprevention/2013_dpse_report_to_the_legislature)

**3. The anticipated costs of the rule or amendment, which shall include the direct costs to the government to administer the rule or amendment and the direct and indirect costs to business and other entities required to comply with the rule or amendment;**

These rules are expected to reduce administrative and compliance costs in the medium- to long-run. The Public School Finance Act is partly enforced retroactively, through a small audit team at CDE. Because of limited funding for this team, audits often occur multiple years after the funding is distributed. As a result, a school district or the Charter School Institute may end up having to pay back funding years after it was received and spent. These rules seek to provide greater clarity to make it less likely that a district or the Charter School Institute would incorrectly submit a student for funding or submit the student for the incorrect

level of funding (i.e., part-time or full-time). This clarity would reduce the compliance burden both for CDE and for school districts and the Charter School Institute.

There may be some adjustment for districts and charter schools to ensure that they have a course catalog for all alternative instruction provided. However, the vast majority of public education will continue to be direct teacher-pupil instruction. Reporting that time for funding will be unchanged. Teachers are the backbone and the heart of our educational system. Even as we innovate, the traditional instructional model of a teacher instructing their class remains the foundation of most high-quality learning aligned to the Colorado academic standards. In short, we will see some short-term transition costs from adjusting how we calculate some nontraditional middle and high school courses for purposes of funding. However, the rest remains unchanged and should not create a burden for school districts and charter schools to submit the required documentation for pupil count or any subsequent audits.

In sum, we do not see any material increase in the administrative costs associated with compliance with the pupil count, and we anticipate a material decrease in the administrative costs of future audits of pupil count.

**4. Any adverse effects on the economy, consumers, private markets, small businesses, job creation, and economic competitiveness; and**

We do not anticipate any adverse effects on the economy, consumers, private markets, small businesses, job creation, and economic competitiveness. However, we will address here what we have heard through public comment as perceived impacts. To date, the State Board has received over 500 submissions of written public comment on these rules. In the upcoming week, CDE will release an FAQ addressing public comment by topic. We will address here the two topics most directly relevant to perceived adverse economic effects.

**6. The proposed rules provide funding for “alternative teacher-pupil instruction,” including asynchronous online formats, for grades 6-12 only (except as otherwise provided for online schools or programs).**

The proposed rules expand funded instructional time from the currently funded formats to include “alternative teacher-pupil instruction.” It does so only for middle and high school students. See Proposed Rule 2.05(a)(1)-(2). Several commenters have suggested that this distinction will have an adverse impact on families as the consumers of educational services, on vendors who provide such services on behalf of schools and districts, and on the overall economic competitiveness of our students after they graduate, because it takes away from currently funded formats for students in elementary grades.

CDE disagrees because these highly independent formats are not *currently* funded for students in elementary grades (absent a waiver or variance from the current rules). This rule change would expand the funded formats in middle and high school without reducing or otherwise changing the funded formats for elementary school.

The legislature has expressly endorsed the flexibility of the sort provided by the new construct of “alternative teacher-pupil instruction” only in the context of higher grades. See, e.g., § 22-7-1015(2)(a), C.R.S.; § 22-5-119(8), C.R.S.; §§ 22-35.6-101 to -107, C.R.S. These rules thus expect and codify more independent/self-directed learning for students as they get older. High school students may leave campus to go to an internship or an apprenticeship. They may take more self-directed supplemental online courses. And their schedule reflects a combination of these things – traditional direct instruction in-person at the brick-and-mortar school and some alternative instruction that may or may not be at the physical location of the school. The State Board’s rules currently fund such independent formats on a very limited basis; the proposed rule amendment would offer considerably more flexibility for funding such formats.

The legislature has not endorsed this sort of flexibility in the elementary context. The distinction makes sense: when we think about elementary school at a brick-and-mortar school, we would not expect elementary students to do unsupervised independent study, work study, or internships away from school. We also wouldn’t expect to see elementary students moving freely between the brick-and-mortar school and off-site unsupervised locations to participate in asynchronous courses. These proposed rules therefore do not expand funded instructional time in elementary grades, despite doing so in middle and high school.



The only context in which the General Assembly has authorized greater flexibility regardless of grade level is for online schools and programs operating under the Online Schools Act, §§ 22-30.7-101, et seq., C.R.S. These schools and programs are subject to the quality standards required by statute and promulgated by the State Board at 1 CCR 301-71. Funding for these programs is also governed by those rules, which are not affected by this proposed rulemaking. As a result, this rulemaking does not eliminate or reduce any options currently available for parents to choose fully online learning for their elementary students.

The only implication this rulemaking has for online schools or programs is to clarify that students enrolled *exclusively* in online courses must be enrolled in an online school or online program, rather than a “brick-and-mortar” program, to be funded. See Proposed Rule 5.08. Correctly categorizing enrollments is necessary because funding procedures and statutory funding levels can vary between brick-and-mortar programs and online schools/programs. It is also necessary to ensure the correct application of the Online Schools Act’s quality standards. This change is not expected to materially impact the number of students enrolled in fully online education. Rather, it will clarify how students’ enrollment is categorized.

In sum, we do not view these rules as limiting access to the types of educational services that parents seek. Instructional formats providing for direct teacher-pupil instruction or contact time, including synchronous online education, would be funded in the traditional manner at all grade levels. Instructional formats providing for more independent formats, including asynchronous online education, have generally not been funded previously but would now be funded under the new “alternative teacher-pupil instruction” system for higher grades. And online schools and programs would continue to be funded separately under a different set of rules, regardless of instructional format. None of these steps removes or reduces funding for any format currently funded.

## **7. The proposed rules clarify that the Public School Finance Act provides funding based on public school instruction, and not parent-led or -directed instruction or educational savings accounts.**

The proposed rules clarify that funded teacher-pupil instruction (whether “direct” or “alternative”) does not include parent-led or -directed instruction. See Proposed Rules 1.14 & 2.05(a)(3). Some commenters have suggested that this would have economic costs to (1) part-time students (primarily home-school students) who would lose the benefit of subsidized curricula, supplies, and other materials, and (2) the vendors who provide these products to part-time students. CDE believes these concerns to be mistaken. The Public School Finance Act and its implementing rules *currently* do not authorize parent-led and -delivered instruction to be counted as funded instructional time and *currently* provide funding only on the basis of teacher-pupil contact time (not on the basis of subsidized educational supplies). The proposed rules simply clarify existing law.

CDE is aware that some school districts and charter schools have been operating out of compliance with the law, creating programs that function much like educational savings accounts. As noted above, these programs have been used by parents (primarily homeschool parents) to cover costs like online curriculum, museum memberships, reimbursements for ballet or piano class, workbooks, subscriptions to “boxes” with learning materials from online companies like TinkerCrate, magazine subscriptions, books chosen by the parents, ski passes, and so on, but do not provide teacher-student contact time synchronously or asynchronously. Because these formats do not rely on teacher-student instruction, they are not properly funded under the State Board’s current rules, which rely on the traditional understanding of teacher-pupil contact time as time spent under the supervision of licensed educators. These formats also cannot be funded under the Public School Finance Act, which provides funding for public schools, not homeschool or private school. See § 22-54-103(6), C.R.S. (defining “total program” as “the financial base of support for public education in that district”); § 22-33-104.5(6)(a), C.R.S. (authorizing part-time funding for homeschool students “attending a public school for a portion of a day”). Finally, to the extent these programs rely on external contractors, they cannot be funded under current law because they do not “meet the same requirements and standards that would apply if performed by the school district.” § 22-32-122(3)(a), (c), C.R.S. In recent years, CDE has communicated that instruction being provided by parents should not be included in the calculation of instructional time. Further, CDE has clearly communicated that when per pupil revenue audits for the 2023-24 school year occur, the department will exclude claimed instructional time submitted for such enrollment. The proposed rulemaking will ensure that these expectations remain clear.

Although schools do not always accurately code homeschool students, CDE estimates that funding for homeschool students enrolled part-time with a public school has increased from approximately \$50 million

in 2021/22 to \$87.5 million in 2023/24 – a 75% increase in the last three years. Some of these funds may be disallowed following CDE’s routine audits. The funding is lawful and consistent with the General Assembly’s policy to the extent the students are “attending a public school for a portion of a day” under § 22-33-104.5(6)(a), C.R.S., and any educational services provided by a school’s or district’s contractors “meet the same requirements and standards that would apply if performed by the school district.” § 22-32-122(3)(a), (c), C.R.S. The funding is unlawful to the extent the enrollments do not meet those statutory requirements. The proposed rulemaking seeks to codify CDE’s longstanding guidance on these matters, to help reduce later audit and compliance costs.

These proposed rules reflect the statutory expectations of the legislature and are reasonably designed to ensure that money from the Public School Finance Act is spent on activities that are actually public school for public school students. The rulemaking does not remove any benefit currently authorized by law and therefore does not have the cost suggested by some commenters.

**5. At least two alternatives to the proposed rule or amendment that can be identified by the submitting agency or a member of the public, including the costs and benefits of pursuing each of the alternatives identified.**

1. In response to stakeholder suggestions, CDE has considered expanding the proposed concept of “alternative teacher-pupil instruction” to include all grades, rather than only middle and high school. CDE believes the proposal would not be consistent with legislative intent, because the General Assembly has not endorsed such highly independent instructional formats in the context of elementary grades (except when such learning takes place through authorized online schools or programs and is subject to the quality standards imposed by the Online Schools Act).
2. As suggested by some stakeholders, CDE has considered not adopting the proposed rulemaking and continuing to rely on the State Board’s current rules. While this alternative would save the costs of transitioning to the new rules for funding independent instructional formats (with new guidance, new compliance systems, and so forth), CDE believes these minimal cost savings do not justify sacrificing the benefits from facilitating the innovation that public schools have shown in pursuing nontraditional instruction. This alternative would also sacrifice the added clarity from streamlining the rules, removing obsolete language, and codifying longstanding guidance on interpreting the Public School Finance Act. By foregoing that additional clarity, this alternative would forego the reduced audit and administrative burden (and other compliance costs) associated with it.