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November 2, 2007

MEMORANDUM

TO: Committee on Legal Services

FROM: Julie Pelegrin, Office of Legislative Legal Services

RE: Rules of the State Board of Education, Department of Education, concerning administration of the "Public School Finance Act of 1994", 1 CCR 301-39 (LLS Docket No. 070411; SOS Tracking No. 2007-00579).

STATUTORY REVIEW:

Pursuant to the provisions of section 24-4-103, C.R.S., the Office of Legislative Legal Services has examined the above-referenced rules to determine whether they are within the rule-making authority of the State Board of Education (hereinafter referred to as the "State Board"). Under the provisions of section 24-4-103 (8) (c) (I), C.R.S., these rules are scheduled to expire on May 15, 2008, unless the General Assembly acts by bill to postpone such expiration.

RULES EXAMINED:

The rules examined by this office are rules of the State Board concerning administration of the "Public School Finance Act of 1994".

The rules were adopted by the State Board on August 8, 2007. The Attorney General issued an opinion on the rules on August 14, 2007, and the rules were submitted to the Office of Legislative Legal Services on August 22, 2007.

CONCLUSIONS:

Rule 2254-R-5.19 (3), which allows a school district that had in place a program to allow students to simultaneously complete the requirements for a high school diploma and an associates degree or career and technical education certificate ("a fifth-year program") prior to enactment of the "Fast College Fast Jobs Act" to continue to include the students enrolled in the fifth-year program in its pupil enrollment, regardless of the students' grade levels, conflicts with section 22-35.5-105 (1), C.R.S., which specifies that a student who participates in a fast college fast jobs education program must begin the program in ninth grade.

We therefore recommend that Rule 2254-R-5.19 (3) of the rules of the State Board of Education concerning administration of the "Public School Finance Act of 1994" not be extended.

ANALYSIS:

I. Background concerning fifth-year programs in statute and in rule.

The General Assembly originally enacted the "Postsecondary Enrollment Options Act", article 35 of title 22, C.R.S., (hereinafter referred to as the "PSEO") in 1988. Pursuant to this act, a school district may allow a student "who is not more than twenty-one years old and who is enrolled in the eleventh or twelfth grade" to enroll in higher education courses while still enrolled in high school.¹ The school district is authorized to include these students in its pupil enrollment count for purposes of calculating the school district's funding so long as the students are taking courses for which they are receiving high school credit.²

In recent years, some school districts have created programs through which students may choose to remain enrolled in "twelfth grade" for additional years, enroll in higher education courses, and simultaneously complete the requirements for a high school diploma and for an associates degree or a career and technical education certificate, ultimately graduating with both credentials simultaneously. The school districts have included the students enrolled in these programs in their pupil enrollment counts and have received state funding for them beyond the traditional one year of twelfth grade.

These programs were identified in a report by the State Auditor that was

¹ Section 22-35-104 (1), C.R.S. See Addendum A, attached.

² Section 22-35-105 (3) (a), C.R.S. See Addendum A, attached.

released in June of 2001. In the report, the State Auditor questioned the school districts' interpretation of section 22-35-104 (1), C.R.S., in extending the time during which students were enrolled in twelfth grade in order to allow them to complete a higher education credential while still being funded through the K-12 education system and the potential costs to the state if the programs were adopted by more school districts. The State Auditor specifically recommended that the Department of Education work with the Colorado Commission on Higher Education to determine whether specific statutory authority is needed for fifth-year programs and, if so, propose a statutory change.³

Presumably in response to the audit, the State Board adopted Rule 2254-R-5.18 (1), which prohibited school districts from receiving funding for students who "voluntarily extend their high school education one year and graduate with a high school diploma and an associates degree simultaneously" and specifically prohibited school districts from offering fifth-year programs.

In 2007, the General Assembly enacted the "Fast College Fast Jobs Act", article 35.5 of title 22, C.R.S. (hereinafter referred to as the "FCFJA"). Under this act, certain school districts, including any school district that had in place an agreement with a community college to implement a fifth-year program in the two years prior to passage of the act, may offer a fast college fast jobs education program in target high schools in the district. A student who chooses to participate in a fast college fast jobs education program enrolls in the program in the ninth grade and then takes a schedule of classes sufficient to ensure that he or she completes the high school diploma and an associates degree or a career and technical education certificate within five years. The school district may include the student in its pupil enrollment for state funding for the entire five years. If the student enrolls in twelve or more higher education credit hours as of October 1 of any school year, the school district will receive 85% of the per pupil funding for the student; otherwise, it receives 100% of per pupil funding for the student. Once the student completes the fifth year of enrollment in the fast college fast jobs education program, the school district cannot continue to include the student in its pupil enrollment.

In May of 2007, the State Board repealed Rule 2254-R-5.18 (1), which prohibited fifth year programs, and enacted Rule 2254-R-5.19, which specifies the funding for students enrolled in a fast college fast jobs education program.

II. Authorizing a school district with a pre-existing fifth-year program to

³ The Commission disagreed with the recommendation, stating its position that fifth-year programs violate statutory intent. The Department of Education agreed with the recommendation, stating that it was not the Department's position at the time that fifth-year programs needed specific statutory authority.

include in its pupil enrollment students participating in the program, regardless of the students' grade levels, conflicts with the FCFJA.

Rule 2254-R-5.19 generally specifies how an eligible school district that chooses to provide a fast college fast jobs education program may include the participating students in its pupil enrollment and thereby receive state funding for these students. The rule references the definition of "eligible school district" found in section 22-35.5-103 (2) (a), C.R.S.:

22-35.5-103. Definitions. As used in this article, unless the context otherwise requires:

(2) (a) "Eligible school district" means a school district, other than a junior or community college district, organized and existing pursuant to law, that:

(I) Contracted with a community college to implement a dual degree program within the two years preceding April 2, 2007; or

(II) Had a graduation rate of less than seventy-five percent for the 2004-05 academic year, as reported by the department.

Subsection (3) of Rule 2254-R-5.19 provides as follows:

5.19 Pupils enrolled in Fast College Fast Jobs Education Program

5.19 (3) An eligible school district that had contracted with a community college to implement a dual degree program within two years preceding the effective date of the Fast College Fast Jobs Education Program may continue to count any pupils enrolled in that program regardless of their grade for purposes of determining pupil enrollment under sections 5.18 (1) and (2).

Section 22-35.5-105 (1), C.R.S., sets requirements for students who choose to participate in a fast college fast jobs education program, as follows:

22-35.5-105. Fast college fast jobs education program - requirements - student participation. (1) Each eligible school district that chooses to participate in the pilot program shall establish within the target high schools of the school district a fast college fast jobs education program. **A student who chooses to participate in the fast college fast jobs education program shall begin the program in ninth grade** and take a prescribed schedule of high school courses and higher education courses with a sufficient number of credits to ensure that the student earns a high school diploma and an associate's degree or a career and technical education certificate in five years. **(Emphasis added)**

While the statute allows a school district with a previously existing dual degree program to operate a fast college fast jobs education program, it does not automatically grandfather in the students who were participating in the

pre-existing program. Section 22-35.5-105 (1), C.R.S., requires each student participating in a fast college fast jobs education program to begin the program in ninth grade. Rule 2254-R-5.19 (3) conflicts with the statute because it would allow any student who was previously participating in a dual enrollment program to participate in the fast college fast jobs educational program. Therefore, rule 2254-R-5.19 (3) should not be extended.

ADDENDUM A

22-35-104. Enrollment in institution of higher education - cooperative agreement. (1) Any pupil who is not more than twenty-one years old and who is enrolled in the eleventh or twelfth grade of a school district, as defined in section 22-30-103 (13), and who is deemed by the pupil and the pupil's parent or legal guardian, with the advice and counsel of the principal of the high school in which such pupil is enrolled, to be in need of course work at a higher academic level than that available at the pupil's school or is deemed by the high school to be in need of a different environment is eligible to apply to an institution of higher education to allow such pupil to enroll in such institution in accordance with the provisions of this article. The school district shall notify all students and parents of the opportunity for postsecondary enrollment. This notification shall be given with sufficient time to allow the students and parents to consider this option.

22-35-105. Financial provisions - payment of tuition. (3) If pupils of any school district are enrolled pursuant to the provisions of this article in one or two courses per academic term offered by any institution of higher education for postsecondary students and:

(a) If the pupil so enrolled is receiving high school credit for such course:

(I) The pupil shall be included in the pupil enrollment of the school district in which such pupil is enrolled as determined pursuant to the provisions of section 22-54-103 (10);

(II) The institution of higher education in which such pupil is enrolled shall include such pupil in counting full-time equivalent students pursuant to the provisions of title 23, C.R.S.;

(III) Except as otherwise provided in subsection (8) of this section, the pupil or the pupil's parent or guardian shall pay to the institution of higher education the amount of tuition to which the institution of higher education would be entitled on behalf of a regularly enrolled student taking such courses; except that, for any state-supported institution of higher education, such amount of tuition shall not exceed the in-state tuition rate charged by such state-supported institution of higher education, and, for any nonpublic institution of higher education, such amount of tuition shall not exceed the average in-state tuition charged by the representative group of comparable state institutions used for purposes of section 23-3.3-101 (1.5) (a), C.R.S. Payment of tuition pursuant to this subparagraph (III) shall be subject to reimbursement by the school district as provided in subsection (6) of this section.

(IV) For purposes of this paragraph (a), notwithstanding any law to the contrary, every pupil enrolled in an institution of higher education pursuant to the provisions of this article who otherwise would not be classified as an in-state student for tuition purposes at any state-supported institution of higher education shall be classified as an in-state student for purposes of tuition;