

# *White Paper Explaining the Duties and Best Practices for Colorado Providers of Part-Time Enrichment Programs*

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For :  
Education reEnvisioned BOCES

## Introduction

The Colorado legislature, in 1973, first revised its compulsory attendance law to exempt from school attendance any student being educated at home by a parent under an established system of home study approved by the state board of education. Accordingly, the state board, in 1980, adopted rules and regulations for the administering of such programs. These rules involved a number of compulsory standards that made it difficult for many families to comply. In the mid-1980s the rules evolved, and ultimately the legislature adopted the law which, with some minor revisions, is now in place.

A feature of the current legal framework is that under certain circumstances, homeschooled students may enroll in publicly funded enrichment programs offered by public schools. Statewide, the appetite for such opportunities appears to be growing, and Education reEnvisioned Board of Cooperative Educational Services (“ERBOCES”), which offers part-time enrichment programs, has commissioned this paper to explore specific questions that arise in conjunction with such programs. In particular, this paper will review the following issues:

1. What requirements, if any, must a provider of public-funded part-time enrichment programs meet to provide educational supports for a home-educated student with special needs?
2. What are the record-keeping obligations and/or best practices regarding records and parent communications to be pursued by ERBOCES, with regard to part-time enrolled students with special needs?
3. Does ERBOCES have any duties, or are there best-practices recommended, with regard to student assessments of part-time students?

Thus, this paper will not provide an exhaustive review of the legal issues that pertain to part-time enrichment programs in Colorado. For example, items such as access to extracurricular programs are not addressed herein. Similarly, while there may be broad applicability in some areas, the findings here are specifically relevant to the ERBOCES, likely applicable to other Colorado enrichment programs, and not necessarily applicable to similar programs outside Colorado.

In Colorado<sup>1</sup>, “home-based education” is defined as “the sequential program of instruction for the education of a child which takes place in a home, which is provided by the child’s parent or by an adult relative of the child designated by the parent, and which is not under the supervision and control of a school district.”<sup>2</sup> In creating the law, the General Assembly intentionally deregulated homeschooling and reinforced parental rights to educate their child.<sup>3</sup>

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<sup>1</sup> C.R.S. § 22-33-104.5, Home-based education

<sup>2</sup> C.R.S. § 22-33-104.5 (a)

<sup>3</sup> [http://www.cde.state.co.us/choice/homeschool\\_faq](http://www.cde.state.co.us/choice/homeschool_faq) (Retrieved May 28, 2020)

A student who is homeschooled, but takes classes through an enrichment program is still considered a homeschool student, and the parent/guardian is primarily responsible for the educational program. Some scholars have used the term “flexischooler” for these students who are partly homeschooled and partly enrolled in school.<sup>4</sup> For the purposes of this paper, the term “homeschooler” will be used, although the child’s complete educational program could be more accurately described as “flexischooler.”

Colorado law declares that “it is the primary right and obligation of the parent to choose the proper education and training for children under his (sic) care and supervision.” Further, “[i]t is recognized that home-based education is a legitimate alternative to classroom attendance ... and that any regulation of nonpublic home-based educational programs should be sufficiently flexible to accommodate a variety of circumstances.”<sup>5</sup> Thus, Colorado statute goes on to describe a sparse set of rights, duties, and related reports which minimally regulate home-based education in the state. Among these few regulations are duties to evaluate student progress at grades three, five, seven, nine, and eleven using a nationally standardized achievement test.<sup>6</sup> The statute delegates to parents the obligation to ensure that such evaluations are conducted and reported appropriately. Of particular note, parents are also specifically designated as keepers of student records, some of which are required to be reported to the school district of record. At least 14 days prior to commencing homeschooling, a parent must provide a notice of intent to homeschool to a school district within the state and each year thereafter the program is maintained.<sup>7</sup>

Additionally, children participating in a nonpublic home-based education program in Colorado may attend a public school for a portion of the school day, and accordingly, the school may count such child in conjunction with the state’s Public School Finance Act<sup>8</sup> provided they meet certain criteria.

### **Historical and Social Context**

According to J. Michael Smith, President of Homeschooling Legal Defense Association, the beginning of the modern homeschool movement began with *Engel v. Vitale* 370 U.S. 423 (1962), in which the U.S. Supreme Court ruled that voluntary prayer in public schools violated the U.S. Constitution's First Amendment prohibition of a state establishment of religion, and with *Abington School District v. Schempp*, 374 U.S. 203 (1963), in which the Court declared school-sponsored Bible reading in public schools in the United States as unconstitutional.

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<sup>4</sup> Schafer, M. J., & Khan, S. S. (2017). Family Economy, Rural School Choice, and Flexischooling Children with Disabilities. *Rural Sociology*, 82(3), 524–547.

<sup>5</sup> C.R.S. § 22-33-104.5 (1)

<sup>6</sup> C.R.S. § 22-33-104.5 (3)(f)

<sup>7</sup> C.R.S. § 22-33-104.5 (g)

<sup>8</sup> C.R.S § 22-54-101 *et seq.*

From 1999 to 2012 the percentage of school-age children in the United States being homeschooled grew from 1.7 percent to 3.4 percent, approximately where it remains to this day.<sup>9</sup> In Colorado, this would equate to about 30,000 students. A demographically wide variety of parents choose to homeschool, and the decision is usually based on more than one reason. The most common reasons given for homeschooling include:<sup>10</sup>

- individualize the curriculum and learning environment for each child,
- accomplish more academically,
- use different pedagogical approaches,
- enhance relationships between family members,
- provide guided and reasoned social interactions with peers and adults,
- provide a safer environment, and
- impart a particular set of values, beliefs, and worldview.

Additionally, a student's disability may influence the parent's decision to homeschool. Parents of students with disabilities may choose to homeschool because the public school option may be perceived as being inadequate for their child's needs, or they are concerned about negative influences including bullying.<sup>11</sup>

Polling results based on a nationally representative sample of the general public by EdChoice<sup>12</sup> (1,810 online and phone interviews in the summer of 2019) showed that parent satisfaction with homeschooling decreased by 10 percent from 2018 (from 86 to 76 percent). A reason for this shift was not provided in the paper. Eighty percent of the children of parents surveyed attended a public district school, but less than one-third of those parents preferred it. Thirteen percent of parents wanted to homeschool their children, but only 3 percent were actually doing it. The top reasons given for choosing homeschooling were:<sup>13</sup>

- safe environment 41 percent;
- one-on-one attention 36 percent;
- discipline (including bullying) 27 percent; and
- religious environment 25 percent

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<sup>9</sup>Smith, J. M. (2019). Why I Think Homeschooling Will Grow. *The Home School Court Report*, 4<sup>th</sup> Quarter

<sup>10</sup>Ray, B. D. (2019). Research Facts on Homeschooling.

<sup>11</sup>Schafer, M. J., & Khan, S. S. (2017). Family Economy, Rural School Choice, and Flexischooling Children with Disabilities. *Rural Sociology*, 82(3), 524–547.

<sup>12</sup>DiPerna, P. Catt, A.D. Shaw, M. (2019). Schooling in America. *EdChoice*.

<sup>13</sup>DiPerna, P. Catt, A.D. Shaw, M. (2019). Schooling in America. *EdChoice*.

## Colorado Homeschool Students with Special Needs

The Colorado Department of Education (CDE) recognizes sixteen publicly funded “Home School Option/Enrichment Programs”<sup>14</sup> (“enrichment programs”). Some of these involve multiple campuses, and all these programs fall under the auspices of a public school district or public charter school.

Yet, neither state law nor CDE policy or regulation address<sup>15</sup> matters pertaining to exceptional learners on an Individualized Education Program (IEP) or potentially eligible for services through this program. Similarly, while guidance is available to address situations in which students are transitioning between home-based and public education, nothing adopted or published by the State squarely describes record-keeping or assessment options for students primarily educated at home, but also enrolled in a publicly funded part-time program. These gaps give rise to the questions addressed herein.

### Analysis

Because the demographics of students who are homeschooled are closely representative of the general population, it can be assumed that this is also true of the students who will enroll in classes offered by ERBOCES. These needs may be related to disabilities, giftedness, and/or second language learning. Research indicates that homeschooled students have a wide range of disabilities, including specific learning disabilities, attention deficit disorders, mental disabilities, emotional disturbances, autism, and/or speech/language disabilities.<sup>16</sup>

In 2017-2018, the U.S. Department of Education<sup>17</sup> reported that approximately 13.7 percent of all students nationwide, ages 6-21, qualified as having a disability under Individuals with Disabilities Education Act (IDEA) rules and regulations. Of this population, the most prevalent disability was Specific Learning Disability (38.2 percent). Approximately 6 percent of students nationwide qualify as Gifted/Talented (G/T); 10 percent English Language Learners (ELL), and 1.2 percent qualify under Section 504 of the Rehabilitation Act (Section 504)<sup>18</sup>. CDE reported<sup>19</sup> the following percentages for 2018-2019: Gifted/Talented 7.3 percent, Special Education 11.2 percent, and ELL 13.8 percent.

Many students who are homeschooled will have been previously enrolled in public schools, in which case, assessment data and individualized plans may have been developed in these areas

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<sup>14</sup> [http://www.cde.state.co.us/choice/homeschool\\_resources](http://www.cde.state.co.us/choice/homeschool_resources) (Retrieved June 9, 2020)

<sup>15</sup> Education of Exceptional Children, C.R.S. § 22-20 Part 1, and Rules for the Administration of the Exceptional Children’s Act, 1 CCR 301-8.

<sup>16</sup> Duffey, J. (1999). Home Schooling and Students in Special Education: Sorting Out the Options for Parents. *Preventing School Failure*, 43(2), 57.

<sup>17</sup> <https://www2.ed.gov/rschstat/catalog/student-demographics.html> (Retrieved June 9, 2020)

<sup>18</sup> The Rehabilitation Act of 1973, (P.L. 93-112, Section 504)

<sup>19</sup> <http://www.cde.state.co.us/schoolview> (Retrieved June 9, 2020)

of need and may be provided by the parent. Schools the child previously attended may also be able to provide records. In addition, the person responsible for the delivery of instruction (in most cases the parent) will have recommendations to share regarding what are the most effective instructional methods to use with their child. If a classroom teacher suspects that a part-time student has a disability, and there are no records indicating this, the parent or guardian should be consulted. The parents then have the right to request an evaluation from their local public school district. However, the right to a free appropriate public education is based on full-time enrollment in public school and is not available to a homeschooled student. Thus, there is no clear indication present in Colorado law or regulation, that ERBOCES has any affirmative duties with regard to the implementation of an IEP or associated learning disabilities.

According to Colorado law, a homeschooled student's parent(s) has primarily responsibility for the education of their child, which includes special education needs. If a parent requests an evaluation for special services, and services are recommended, it is then the parent's choice to continue to homeschool or to enroll full-time in a public school so the child can access the special services. School personnel should, however, assist the parent in developing a plan for meeting the child's needs in either case, and may provide suggestions for private service providers.

### **Assessments**

A homeschooled student is not required to take state assessments, but the parent may request that their child participate. "A local education provider, upon the request of the parent or legal guardian of a child who is participating in a nonpublic home-based educational program pursuant to section 22-33-104.5, must permit the child to take a state assessment required by subsection (1) of this section and must provide to the parent or legal guardian of the child the results of state assessments administered. The parent or legal guardian of the child must pay all costs associated with administering and providing results for the state assessments."<sup>20</sup>

ERBOCES falls within the definition of a "local education provider" (LEP) in this section and, therefore, may choose to provide this service. However, the more direct interpretation of this provision is that the LEP for such services is the district to which the parents provided their notice of intent to homeschool.

An ERBOCES-authorized part-time program (whether branded as homeschool enrichment or otherwise) is not required to administer state assessments. This, in part, may be a reason that CDE has adopted a practice of declining to issue new school codes for programs engaged solely in part-time education. "A child who is enrolled in a nonpublic school or participating in a nonpublic home-based educational program pursuant to section 22-33-104.5 is not required to take a state assessment administered pursuant to this section, *even though the child may also*

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<sup>20</sup> C.R.S. § 22-7-1006.3(9)(b)

*be attending a public school for a portion of the school day and therefore included in the enrollment of a local education provider.”<sup>21</sup> (emphasis added).*

Further, ERBOCES may freely assert to prospective enrichment program enrollees that the results of any state assessments taken while under a notice of intent to homeschool will not be reported to the State or maintained as records of the school, but only supplied to the parents<sup>22</sup>. However, attendance, test and evaluation results, and immunization records maintained by parents must be produced and provided to the district which has received the homeschool notification pursuant to C.R.S. Sections 25-4-901, 25-4-902, and 25-4-903.

### **Best Practices**

The Administrative Unit (“AU”) application for ERBOCES proposes the following approaches for each special needs category:

- Special Education – grade-level course placement with appropriate differentiation of instruction, interventions, and modifications.
- Gifted/Talented (GT) – utilize higher-level thinking skills and expanded learning in content areas; growth in social/emotional skills through communication skills, oral and written; utilize research-based curriculum and technology applications, flexible pacing, acceleration, and advanced content.
- English Language Learner (ELL) – adapt curriculum to language proficiency level and supplement by gestures, visual aids, clarification, and individual supports.
- Section 504 – provide equal access and opportunity (nondiscrimination) through reasonable accommodations and differentiated or remedial instruction and intervention.

Of these approaches, only Section 504 has direct application to part-time enrolled students who are declared to be homeschooled. The sort of accommodations identified in 504 plans that are designed to provide access as opposed to services, should be implemented and maintained for part-time students unless such plans are unreasonable, costly, or otherwise disruptive to the learning environment, at which point legal counsel should be sought. However, despite assurances provided by ERBOCES in its AU application, the standard protocols and duties related to IEPs, GT, and ELL do not shift from the parent to ERBOCES simply because the student has enrolled in part-time enrichment programs provided by ERBOCES. A useful analogy may be the fact that no state law or regulation addresses academic achievements accomplished by part-time students, but only the questions of seat-time, teacher credentials, and general program matters. Thus, the State expresses an interest in ensuring the part-time provider is accountable in exchange for funding, but is not concerned with student outcomes. In the same

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<sup>21</sup> C.R.S. § 22-7-1006.3

<sup>22</sup> C.R.S. § 22-7-409 (III)(1.3)(b)

way, the State requires that the part-time provider deliver a safe and accessible environment for students, but does not dictate that the provider offer any particular services, including any services for students with IEPs, or GT or ELL needs.

The most important thing to remember is that the homeschool parent (or the adult designee) is the primary provider of instruction and services and should be included in any ongoing planning and implementation of plans, in addition to any insights learned. They are team members as well as parents. More to the point, the parents are the central authority in the education of their child.

Documentation is very important, both about observed needs and the result of interventions and instructional practices, plus any parent contacts and meetings. First, since a student in Colorado is only considered to be home-educated if the family has complied with the provisions of C.R.S. Section 22-33-104.5 (i.e., written notification to a school district, ongoing evaluation, etc.), any part-time program conducted by ERBOCES should seek confirmation of this compliance. With regard to special education, ERBOCES may wish to create a manner of documentation to confirm whether or not the parent has requested an evaluation from their local school district. While the ERBOCES has no affirmative duty in this area, such documentation would be helpful to delineate and to clarify expectations and roles.

### **Key Points for ERBOCES**

- Best practices should be provided to homeschool enrichment programs operated under the ERBOCES, and program leaders encouraged to utilize these practices, whenever possible.
- This paper should be provided to prospective homeschool enrichment programs as they consider how their program will operate.
- The ERBOCES should modify its application for new schools/programs to include the clarifications included in this paper, and contracts developed to authorize schools/programs should reference points embodied in this paper.
- As a plan for evaluation and accountability is created for homeschool enrichment programs, authorized by ERBOCES, key points of this paper should be included to ensure the program is serving these students to the best of its ability.