

CHAPTER 341

EDUCATION - PUBLIC SCHOOLS

SENATE BILL 21-274

BY SENATOR(S) Moreno, Hansen, Rankin, Bridges, Buckner, Fields, Ginal, Gonzales, Kolker, Pettersen, Priola, Winter, Zenzinger;
also REPRESENTATIVE(S) Herod, McCluskie, Bennett, Esgar, Exum, Gonzales-Gutierrez, Hooton, Jodeh, Kipp, Lontine, Michaelson Jenet, Valdez A., Young.

AN ACT

CONCERNING A SUSTAINABLE MODEL THAT IS NOT EMBEDDED IN THE CHILD WELFARE SYSTEM FOR SERVING FACILITY STUDENTS, AND, IN CONNECTION THEREWITH, MAKING AN APPROPRIATION.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. Legislative declaration. (1) The general assembly finds and declares that:

(a) Approximately 1,600 children and youth per day require the delivery of educational services and supports in residential or day treatment facilities, hospital settings, home-bound environments, or other specially designed district programs due to physical, behavioral, mental health, or special education service needs that exceed the services and supports available in some educational settings in the state of Colorado;

(b) Facility schools are currently operated by residential child care, day treatment, and hospital providers whose overall capacity has decreased by thirty percent in the past five years due to provider closures and reforms in the child welfare system that limit the number of placements in a residential facility;

(c) Insufficient capacity in facility schools may result in out-of-state placements for students, separating students from families and communities, and often imposing extraordinary costs on school districts and counties to pay for those out-of-state placements and services; and

(d) The educational placement costs are borne directly by the placing entity, thereby negatively impacting available resources to provide services and supports

Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.

to all children and youth.

(2) The general assembly therefore resolves and declares that addressing the educational, physical, behavioral, and mental health needs of children and youth who need advanced services requires:

(a) The development of a comprehensive continuum of educational settings to support the educational, physical, behavioral, and mental health needs of these children and youth;

(b) The provision of adequate educational options that include, but are not limited to, eligible and approved facility schools as described in part 4 of article 2 of title 22, school districts, boards of cooperative services, multi-district cooperatives, multi-agency partnerships, and the division of youth services; and

(c) Ensuring the development of a sustainable funding structure that supports a high-quality educational continuum intended to meet the educational needs of children and youth requiring advanced services.

SECTION 2. In Colorado Revised Statutes, 22-2-402, **add** (3.3), (3.8), and (9) as follows:

22-2-402. Definitions. As used in this part 4, unless the context otherwise requires:

(3.3) "FACILITY STUDENT", AS USED IN SECTION 22-2-407.5, MEANS A STUDENT WHO IS IN AN APPROVED FACILITY SCHOOL, ELIGIBLE FACILITY SCHOOL, OR SCHOOL DISTRICT SETTING, AND WHO IS RECEIVING OR REQUIRES SPECIALIZED SERVICES, AND WHOSE EDUCATIONAL NEEDS MAY BE BEYOND THE DELIVERY CAPACITY OF THE STUDENT'S CURRENT EDUCATIONAL SETTING.

(3.8) "MODEL" MEANS THE SUSTAINABLE EDUCATIONAL CONTINUUM DESIGNED TO MEET THE EDUCATIONAL NEEDS OF FACILITY STUDENTS IN THE TARGET POPULATION AS DEFINED BY THE WORK GROUP PURSUANT TO SECTION 22-2-407.5.

(9) "WORK GROUP" MEANS THE WORK GROUP CREATED AND CONVENED PURSUANT TO SECTION 22-2-407.5.

SECTION 3. In Colorado Revised Statutes, **add** 22-2-407.5 as follows:

22-2-407.5. Facility schools - sustainable model of education for facility students - work group - created - membership - duties - reporting requirements - funding. (1) (a) ON OR BEFORE JULY 1, 2021, THE DEPARTMENT SHALL CONVENE A WORK GROUP OF THE STAKEHOLDERS DESCRIBED IN SUBSECTION (1)(b) OF THIS SECTION. THE PURPOSE OF THE WORK GROUP IS TO DEVELOP AND IMPLEMENT A SUSTAINABLE MODEL WITH CAPACITY TO MEET THE EDUCATIONAL NEEDS OF CHILDREN AND YOUTH IN OR AT RISK OF OUT-OF-HOME PLACEMENT AND CHILDREN AND YOUTH WHO ARE AT RISK OF EDUCATIONAL FAILURE DUE TO CHALLENGING BEHAVIOR, MENTAL OR BEHAVIORAL HEALTH NEEDS, OR DISABILITIES, REGARDLESS OF THE CHILD'S OR YOUTH'S ELIGIBILITY FOR SPECIAL EDUCATION SERVICES.

(b) THE WORK GROUP SHALL OBTAIN INPUT FROM PARENTS AND STUDENTS WHO REFLECT THE DIVERSITY OF THE STATE WITH REGARD TO RACE, ETHNICITY, IMMIGRATION STATUS, INCOME, AND DISABILITY. THE WORK GROUP MUST INCLUDE REPRESENTATIVES FROM THE FOLLOWING ENTITIES:

(I) SCHOOL DISTRICTS;

(II) BOARDS OF COOPERATIVE SERVICES;

(III) SPECIAL EDUCATION DIRECTORS;

(IV) FACILITY SCHOOLS AND FACILITY SCHOOL BOARD MEMBERS;

(V) THE DEPARTMENT OF HEALTH CARE POLICY AND FINANCING;

(VI) THE DEPARTMENT OF EDUCATION;

(VII) THE DEPARTMENT OF HUMAN SERVICES, INCLUDING THE DIVISION OF YOUTH SERVICES; AND

(VIII) COUNTY DEPARTMENTS OF HUMAN OR SOCIAL SERVICES.

(2) THE WORK GROUP SHALL:

(a) DEFINE THE TARGET POPULATION OF FACILITY STUDENTS;

(b) ANALYZE DATA TO DETERMINE THE EDUCATIONAL NEEDS OF STUDENTS IN THE TARGET POPULATION;

(c) ANALYZE COST DATA FOR PROVIDING EDUCATIONAL SERVICES TO STUDENTS IN THE TARGET POPULATION;

(d) EVALUATE EXISTING CAPACITY WITHIN THE STATE, INCLUDING, BUT NOT LIMITED TO, THE LOCATION AND NUMBER OF DESKS IN EACH FACILITY SCHOOL AND OTHER PROGRAMS THAT CURRENTLY SERVE STUDENTS IN THE TARGET POPULATION IN COLORADO;

(e) EVALUATE OTHER EFFECTIVE EVIDENCE-BASED OPTIONS THAT CURRENTLY EXIST IN COLORADO OR IN OTHER STATES AND THAT MAY BE INCORPORATED INTO THE MODEL TO ENSURE THE NECESSARY CAPACITY TO SERVE STUDENTS IN THE TARGET POPULATION IN THE STATE;

(f) IDENTIFY BARRIERS AND DEVELOP SOLUTIONS TO ADDRESS THE DEVELOPMENT OF ADDITIONAL CAPACITY IN EDUCATIONAL PROGRAMS IN MEETING THE NEEDS OF STUDENTS IN THE TARGET POPULATION;

(g) IDENTIFY AND ANALYZE:

(I) THE STATE'S CURRENT CAPACITY TO PROVIDE APPROPRIATE INSTRUCTION, SUPPORT, AND SERVICES TO STUDENTS IN THE TARGET POPULATION;

(II) THE CURRENT FUNDING METHODOLOGY FOR FACILITY SCHOOLS;

(III) THE FEDERAL, STATE, LOCAL, AND OTHER SOURCES OF FUNDING AVAILABLE TO SUPPORT THE CURRENT EDUCATIONAL OPTIONS FOR SERVING STUDENTS IN THE TARGET POPULATION, INCLUDING THE RESTRICTIONS ON USE OF EACH TYPE OF FUNDING;

(IV) THE CAPACITY AND FUNDING NECESSARY TO ADEQUATELY SERVE AND SUPPORT STUDENTS IN THE TARGET POPULATION WHO WILL RECEIVE EDUCATIONAL SERVICES THROUGH THE MODEL DEVELOPED PURSUANT TO THIS SECTION; AND

(V) THE FUNDING METHODOLOGY AND NECESSARY RESOURCES TO ENSURE LONG-TERM VIABILITY;

(h) IDENTIFY THE OUTCOMES THAT ARE TO BE EVALUATED PURSUANT TO SUBSECTION (3) OF THIS SECTION; AND

(i) DEVELOP SHORT-TERM STRATEGIES TO ADDRESS THE LOST CAPACITY IN FACILITY SCHOOLS.

(3) THE EDUCATIONAL OPTIONS FOR THE MODEL MUST CLEARLY DEFINE THE ROLES OF THE DEPARTMENT OF EDUCATION, THE DEPARTMENT OF HUMAN SERVICES, THE DEPARTMENT OF HEALTH CARE POLICY AND FINANCING, AND THE DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT IN THE MODEL'S CONTINUUM, WHICH INCLUDES, BUT IS NOT LIMITED TO, RESIDENTIAL TREATMENT, DAY TREATMENT, AND HOSPITALS. THE MODEL MUST INCLUDE A MEANS BY WHICH TO EVALUATE APPROPRIATE OUTCOMES OF THE TARGET POPULATION SERVED IN THE CONTINUUM.

(4)(a) AFTER ANALYZING THE DATA REQUIRED PURSUANT TO SUBSECTION (2) OF THIS SECTION, AND NO LATER THAN OCTOBER 1, 2022, THE WORK GROUP SHALL DEVELOP THE MODEL THROUGH WHICH EDUCATIONAL SERVICES WILL BE MADE AVAILABLE TO THE TARGET POPULATION. ON OR BEFORE OCTOBER 1, 2022, THE WORK GROUP SHALL DEVELOP THE IMPLEMENTATION PLAN, INCLUDING THE DEADLINES FOR IDENTIFIED DELIVERABLES WITHIN THE PLAN TO ENSURE THAT IMPLEMENTATION OF THE MODEL CAN BEGIN ON OR BEFORE JULY 1, 2023, AND BE FULLY IMPLEMENTED ON OR BEFORE JULY 1, 2027. ADDITIONALLY, THE WORK GROUP SHALL DEVELOP A REPORT IDENTIFYING ANY NECESSARY STATUTORY CHANGES FOR FULL IMPLEMENTATION OF THE MODEL, AS WELL AS ANY FISCAL IMPACT OF THE MODEL'S IMPLEMENTATION.

(b) THE WORK GROUP SHALL SUBMIT THE INFORMATION REQUIRED BY THIS SUBSECTION (4) TO THE DEPARTMENT ON OR BEFORE OCTOBER 1, 2022. ON OR BEFORE NOVEMBER 1, 2022, THE DEPARTMENT SHALL SUBMIT A WRITTEN REPORT SUMMARIZING THE WORK GROUP'S WORK, AS REQUIRED PURSUANT TO THIS SUBSECTION (4), TO THE JOINT BUDGET COMMITTEE.

(c) THE DEPARTMENT MAY CONTRACT WITH AN INDEPENDENT FACILITATOR TO SUPPORT THE WORK GROUP AND WRITE THE REPORT REQUIRED PURSUANT TO THIS SUBSECTION (4), AND AN INDEPENDENT ENTITY TO PERFORM THE FINANCIAL ANALYSIS REQUIRED PURSUANT TO SUBSECTION (2)(g) OF THIS SECTION.

(d) ON OR BEFORE DECEMBER 31, 2022, THE COMMISSIONER OF EDUCATION, AS DEFINED IN SECTION 22-2-102, SHALL PRESENT THE REPORT COMPILED PURSUANT TO SUBSECTION (4)(b) OF THIS SECTION TO THE JOINT BUDGET COMMITTEE, INCLUDING DETAILS OF THE MODEL, THE IMPLEMENTATION PLAN AND TIMELINE, ANY FISCAL IMPACT OF IMPLEMENTING THE MODEL, ANY NECESSARY STATUTORY CHANGES, AND ANY RECOMMENDATIONS TO INCREASE COLORADO'S SYSTEM TO SERVE AND ITS CAPACITY TO SUPPORT STUDENTS IN THE TARGET POPULATION, INCLUDING SHORT-TERM STRATEGIES DEVELOPED TO ADDRESS LOST FACILITY SCHOOL CAPACITY.

(e) ON OR BEFORE OCTOBER 1, 2023, AND ON OR BEFORE EACH OCTOBER 1 DURING THE IMPLEMENTATION PHASE OF THE MODEL, THE DEPARTMENT SHALL SUBMIT A WRITTEN REPORT CONCERNING THE PROGRESS OF THE MODEL'S IMPLEMENTATION, INCLUDING BUT NOT LIMITED TO, THE STATUS OF EACH DELIVERABLE IDENTIFIED IN THE IMPLEMENTATION PLAN, ANY MODIFICATIONS TO THE IMPLEMENTATION PLAN, AND ANY STATUTORY CHANGES AND FUNDING NECESSARY IN THE UPCOMING FISCAL YEAR IN ORDER TO SUCCESSFULLY IMPLEMENT EACH PHASE OF THE MODEL.

SECTION 4. In Colorado Revised Statutes, 22-2-408, **add** (3) as follows:

22-2-408. Approved facility schools - funding. (3) IN STATE FISCAL YEAR 2021-22 ONLY, AND WITHIN AVAILABLE APPROPRIATIONS, THE DEPARTMENT SHALL DISTRIBUTE SUPPLEMENTAL PAYMENTS TO FACILITY SCHOOLS APPROVED BY THE DEPARTMENT AS OF OCTOBER 1, 2021. THE SUPPLEMENTAL PAYMENTS MUST BE ABOVE AND BEYOND THE CURRENT DAILY PER PUPIL REVENUE RATE AS ESTABLISHED FOR THE 2021-22 STATE FISCAL YEAR. THE DEPARTMENT SHALL DETERMINE THE METHOD THROUGH WHICH THE SUPPLEMENTAL PAYMENTS ARE DISTRIBUTED TO ALL APPROVED FACILITY SCHOOLS AND SHALL ENSURE THAT THE SUPPLEMENTAL PAYMENTS MADE PURSUANT TO THIS SUBSECTION (3) ARE PAID TO THE APPROVED FACILITY SCHOOL PRIOR TO JUNE 30, 2022.

SECTION 5. Appropriation. (1) For the 2021-22 state fiscal year, \$6,200,000 is appropriated to the department of education. This appropriation is from the general fund. To implement this act, the department may use this appropriation as follows:

- (a) \$500,000 for the facility school work group; and
- (b) \$5,700,000 for supplemental payments to facility schools.

SECTION 6. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, or safety.

Approved: June 25, 2021