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Final Fiscal Note

Drafting Number: LLS 23-0418 Date: May 17, 2023
Prime Sponsors: Sen. Zenzinger, Kirkmeyer; Rep. Bird, Sirota Bill Status: Signed into Law
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Bill Topic: SUPPORTS TO STUDENTS & FACILITY SCHOOLS

- Summary of Fiscal Impact:
- State Revenue
- State Expenditure
- State Transfer
- TABOR Refund
- School District
- Statutory Public Entity

Budget package bill. The bill makes changes to state law related to the regulation and funding of facility schools. The bill increases state expenditures on an ongoing basis.

Appropriation Summary: For FY 2023-24, the bill requires and includes a net appropriation increase of \$18.6 million to the Colorado Department of Education.

Fiscal Note Status: The fiscal note reflects the enacted bill. The bill was recommended by the Joint Budget Committee as part of its FY 2023-24 budget package.

Table 1
State Fiscal Impacts Under SB 23-219

Table with 4 columns: Category, Budget Year FY 2023-24, Out Year FY 2024-25, Out Year FY 2025-26. Rows include Revenue, Expenditures (State Education Fund, Reappropriated Funds, Centrally Appropriated, Total Expenditures, Total FTE), Transfers, and Other Budget Impacts.

## **Summary of Legislation**

The bill makes changes related to the regulation and funding of facility schools, and modifies the duties of the Office of Facility Schools (office) in the Colorado Department of Education (CDE).

**Funding.** The bill establishes a new funding model for facility schools beginning in FY 2023-24. Each facility school must receive a baseline state funding amount based on student enrollment thresholds, a per pupil funding amount, and funding for the staff and administration required to provide minimum services. State baseline funding is offset by tuition received from school districts for special education services, and revenue for hospital-based facility schools. Baseline funding must also be adjusted for inflation and actual enrollment.

Funding for each facility school may be prorated proportionately based on student enrollment, subject to available appropriations, and the CDE may request additional funding through their midyear adjustment if necessary based on actual enrollment. The bill increases the portion of facility school funding that the CDE may use for administrative expenses from two percent to four percent in FY 2022-23 only.

**Specialized day schools.** The bill requires that the office develop a process for approving and periodically reviewing specialized day schools to serve as facility schools, including promulgating rules related to operation, accreditation, health and safety inspections, local zoning, employee background checks, and incident reporting. The office must maintain a list of specialized day schools approved to receive facility school accreditation.

**Accreditation.** Beginning December 1, 2026, a school district or administrative unit must only place a student in an accredited, approved facility school, unless there is not one available and the placement selected instead is in the best interest of the student. Prior to that date, the Facility Schools Board must adopt accreditation measures and review the implementation of the measures by an approved facility school, and the State Board of Education (SBE) may grant accreditation based on the board recommendation. New schools have one year to implement accountability measures.

The CDE must post a list of national independent accreditation organizations online; accreditation by an outside entity may be considered as part of the board's review. Beginning October 1, 2026, the CDE must maintain and post online annual accreditation outcome reports for each approved facility school.

**Working group.** The bill requires that the office contract with a third-party evaluator to report whether the working group recommendations have resulted in more effective services and better access to the services. The evaluation must be completed by September 1, 2025.

The bill also adds additional duties to the existing facility school working group, including consulting with the Department of Health Care Policy and Financing (HCPF) to provide guidance to facility schools on requesting and receiving Medicaid funding for therapeutic services and recommending changes to the method for calculating facility school tuition costs. The SBE must consider the proposed changes to tuition calculations by July 1, 2024.

**Shared Operational Services Grant Program.** The bill creates a grant program in the CDE to award two-year grants for a contract with an organization that provides or coordinates operational services shared by facility schools, such as food, janitorial, billing, transportation or purchasing. In the first year, the grant recipient must determine the shared services needed and contract with an organization service provider. In the second year, the contracted organization must provide the services. The bill establishes grant criteria and reporting requirements for the grant recipient and department.

**Technical assistance center.** The bill creates a technical assistance center in the office to provide training, support, or services to school districts and administrative units serving students with specialized needs who are unable to access a facility school due to lack of proximity, prioritizing rural and remote areas. The center must assess district needs in FY 2023-24 and begin providing assistance in FY 2024-25. The bill establishes reporting requirements and requires the contracted evaluation include the effectiveness of the center

**Resource guide.** By November 1, 2023, the bill requires that the CDE, the Department of Human Services (CDHS), HCPF, and the Department of Public Health and Environment (CDPHE) to create an interagency resource guide to assist facilities with becoming licensed and to support efficient licensure for hospitals, residential child care facilities, day treatment programs, and specialized day schools. The departments must report to the General Assembly on an implementation of the guide and any necessary to statute or rules.

## **Background**

Facility schools are private or non-profit entities that provide educational services to students with physical, behavioral, mental health, or special education needs beyond what can be provided in a classroom. Facility schools must be approved by the CDE, and include day treatment or residential treatment centers licensed by the CDHS and facilities in hospitals licensed by the CDPHE. There are currently 30 approved facility schools, serving approximately 769 students.

Facility schools are currently funded based on a daily per pupil rate (\$53.19 in FY 2021-22), a daily tuition rate paid by school districts for special education services, and fees paid by hospitals that serve students. State funding under current law was \$12.3 million in FY 2022-23.

## **State Expenditures**

The bill increases net state expenditures in the CDE by \$18.6 million in FY 2023-24, \$23.1 million in FY 2024-25, and \$28.0 million in FY 2025-26. The net expenditure increase reflects an \$18.8 million increase from the State Education Fund, growing in subsequent years, and a \$216,626 decrease in reappropriated funds on an ongoing basis. Expenditures are shown in Table 2 and detailed below.

**Table 2  
 Expenditures Under SB 23-219**

	FY 2023-24	FY 2024-25	FY 2025-26
<b>Department of Education</b>			
Net Personal Services	\$509,642	\$548,950	\$638,225
Operating Expenses	\$5,535	\$6,210	\$7,560
Capital Outlay Costs	\$6,680	\$1,670	\$1,670
Shared Operational Services Grant	\$200,000	-	-
Evaluation Costs	\$50,000	\$150,000	\$150,000
Working Group Facilitator Contract	\$50,000	\$50,000	\$50,000
New Specialized Day Schools	\$3,077,269	\$6,778,019	\$11,211,736
Baseline Funding Model	\$14,664,903	\$15,383,484	\$15,798,838
Data System Costs	-	\$129,450	-
Centrally Appropriated Costs <sup>1</sup>	\$80,712	\$89,903	\$109,283
<b>Total Cost</b>	<b>\$18,644,741</b>	<b>\$23,137,686</b>	<b>\$27,967,312</b>
<b>Total FTE</b>	<b>4.1 FTE</b>	<b>4.6 FTE</b>	<b>5.6 FTE</b>

<sup>1</sup> Centrally appropriated costs are not included in the bill's appropriation.

**Colorado Department of Education.** The bill increases staff, contracting, data system costs for the CDE and increases the amount of baseline funding distributed to facility schools on an ongoing basis. Costs are described below.

- **Staff.** The CDE requires an additional 4.1 FTE in FY 2023-24 to implement the bill, increasing to 4.6 FTE in FY 2024-25 and 5.6 FTE in FY 2025-26. Staff include 3.0 FTE in the first year for the facility school office to develop accreditation reports and accountability requirements, approve new specialized day schools, and assess district needs. Facility school staffing increases by 1.0 FTE in the subsequent two years as the technical assistance center grows.

In addition, the CDE requires 1.1 FTE in FY 2023-24 and 0.6 FTE in subsequent years to distribute the operational services grant, develop guidance, projections, and the formula for the new funding model, and distribute monthly payments to an assumed increased number of facility schools. Staffing costs include standard operating and computer costs.

Personal services costs also include an adjustment to current funding for facility school staff. The bill decreases the CDE appropriation for administration by 3.0 FTE and \$216,625 in reappropriated funds, and increases the appropriation by a corresponding 3.0 FTE and \$346,918 paid from the State Education Fund. The net increase in cost is due to the removal of the current 2.0 percent cap on administrative costs.

- **Shared Operational Services Grant.** The CDE requires \$200,000 for the shared operational services grant, which will be spent over two fiscal years.
- **Evaluation costs.** The office will have increased costs to contract for the required evaluation. Costs are assumed to \$50,000 in FY 2023-24 to hire the evaluator and establish evaluation procedures, and \$150,000 in FY 2024-25 and FY 2025-26 to complete the evaluation.
- **Working group contract costs.** The office will have increased costs to contract for a facilitator for the new working group duties. Costs are estimated at \$50,000 per year.
- **New specialized day schools.** Facility schools funding will be provided to new specialized day schools approved by CDE. The fiscal note assumes that four new schools will be approved each year for the first three years and that the schools are a mix between small, medium, and large schools. Based on the new funding model, mix of school sizes, and annual inflationary increases, costs are estimated at \$3.1 million in FY 2023-24, \$6.8 million in FY 2024-25, and \$11.2 million in FY 2025-26.
- **Baseline funding model.** The baseline funding model established in the bill will increase facility school funding by an estimated \$14.7 million in FY 2023-24, with inflationary increases in subsequent years. This estimate reflects the additional costs after accounting for tuition paid by school districts, hospital fees, and funding provided in the Long Bill under current law.
- **Data system costs.** In FY 2024-25 only, the CDE requires \$129,450 to modify the data collection system to include information required for the new accreditation outcome reports. The fiscal note assumes 1,036 hours at a rate of \$125 per hour. The changes needed will be determined in the planning phase in FY 2023-24 and implemented in FY 2024-25.

**Other state agencies.** In FY 2023-24 only, the CDPHE, HCPF, the CDE, and the CDHS will have increased workload to collaborate on an interagency guide for facility schools. The fiscal note assumes that this work will be accomplished within current resources and that any resources needed to make changes to licensing process will be requested through the annual budget process. In addition, the Department of Law may provide additional counsel to these agencies; no change in appropriation is required.

**Centrally appropriated costs.** Pursuant to a Joint Budget Committee policy, certain costs associated with this bill are addressed through the annual budget process and centrally appropriated in the Long Bill or supplemental appropriations bills, rather than in this bill. These costs, which include employee insurance and supplemental employee retirement payments, are shown in Table 2.

## **School District**

The bill may decrease costs for school districts that receive technical assistance from the CDE. In addition, changes in facility school funding, technical assistance, and the new type of school may change how a district chooses to provide services for students with significant needs.

## **Effective Date**

The bill was signed into law by the Governor and took effect on April 20, 2023.

## **State Appropriations**

For FY 2023-24, the bill requires and includes the following appropriations to the Colorado Department of Education:

- an increase of \$18,780,654 from the State Education Fund, and 7.1 FTE;
- a decrease of \$216,625 in reappropriated funds, and 3.0 FTE

## **State and Local Government Contacts**

Education  
Law

Health Care Policy and Financing  
Public Health and Environment

Human Services