

CHAPTER 125

EDUCATION - PUBLIC SCHOOLS

HOUSE BILL 03-1160

BY REPRESENTATIVE(S) Spence, Briggs, Cadman, Clapp, Crane, Fairbank, Harvey, Hefley, King, Lee, Lundberg, Rhodes, Rose, Schultheis, Spradley, Stafford, White, Williams T., Witwer, Fritz, Hall, May M., and Wiens;
also SENATOR(S) Anderson, Andrews, Arnold, Cairns, Chlouber, Evans, Hillman, Johnson S., Jones, Lamborn, May R., McElhany, Owen, and Teck.

AN ACT

CONCERNING THE PROVISION OF FINANCIAL ASSISTANCE FOR KINDERGARTEN THROUGH TWELFTH GRADE EDUCATION TO DISADVANTAGED CHILDREN.

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

SECTION 1. Title 22, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW ARTICLE to read:

ARTICLE 56
Colorado Opportunity Contract Pilot Program

22-56-101. Short title. THIS ARTICLE SHALL BE KNOWN AND MAY BE CITED AS THE "COLORADO OPPORTUNITY CONTRACT PILOT PROGRAM".

22-56-102. Legislative declaration. (1) THE GENERAL ASSEMBLY HEREBY FINDS AND DECLARES THAT:

(a) MEETING THE EDUCATIONAL NEEDS OF HIGH-POVERTY, LOW-ACHIEVING CHILDREN IN OUR STATE'S HIGHEST-POVERTY PUBLIC SCHOOLS IS OF THE GREATEST IMPORTANCE TO THE FUTURE WELFARE OF COLORADO;

(b) CLOSING THE ACHIEVEMENT GAP BETWEEN HIGH-PERFORMING AND LOW-PERFORMING CHILDREN, INCLUDING THE GAP BETWEEN MINORITY AND NON-MINORITY STUDENTS AND BETWEEN ECONOMICALLY DISADVANTAGED STUDENTS AND THEIR MORE ADVANTAGED PEERS, IS A SIGNIFICANT AND PRESENT CHALLENGE; AND

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

(c) PROVIDING A BROADER RANGE OF EDUCATIONAL OPTIONS TO PARENTS AND UTILIZING EXISTING RESOURCES AND EDUCATIONAL STRUCTURES MAY HELP HIGH-POVERTY, LOW-ACHIEVING STUDENTS IMPROVE THEIR ACADEMIC ACHIEVEMENT.

(2) THE GENERAL ASSEMBLY FURTHER FINDS AND DECLARES THAT THE PILOT PROGRAM ESTABLISHED IN THIS ARTICLE:

(a) PROVIDES COLORADO FAMILIES WITH A FINANCIAL TOOL TO ACCESS ADDITIONAL EDUCATIONAL RESOURCES IN AN EFFORT TO IMPROVE ACADEMIC ACHIEVEMENT;

(b) IS NOT IN VIOLATION OF EITHER SECTION 7 OF ARTICLE IX OR SECTION 34 OF ARTICLE V OF THE STATE CONSTITUTION; AND

(c) MEETS THE STANDARDS SET FORTH IN BOTH *ZELMAN V. SIMMONS-HARRIS*, 536 U.S. 639, 122 S.Ct. 2460, 153 L. Ed. 2d. 604 (2002), AND *AMERICANS UNITED FOR SEPARATION OF CHURCH AND STATE FUND, INC. V. STATE*, 648 P.2d 1072 (COLO. 1982).

22-56-103. Definitions. AS USED IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(1) "ASSISTANCE" MEANS THE FINANCIAL ASSISTANCE PROVIDED BY A SCHOOL DISTRICT TO THE PARENT OF AN ELIGIBLE CHILD ATTENDING A PARTICIPATING NONPUBLIC SCHOOL PURSUANT TO THIS ARTICLE.

(2) "DEPARTMENT" MEANS THE DEPARTMENT OF EDUCATION CREATED AND EXISTING PURSUANT TO SECTION 24-1-115, C.R.S.

(3) "ELIGIBLE CHILD" MEANS A CHILD WHO MEETS THE ELIGIBILITY CRITERIA FOR PARTICIPATION IN THE PILOT PROGRAM AS PROVIDED IN SECTION 22-56-104.

(4) "NONPUBLIC SCHOOL PILOT PROGRAM MEMBERSHIP" MEANS THE NUMBER OF ELIGIBLE CHILDREN WHO ARE ATTENDING A NONPUBLIC SCHOOL PURSUANT TO THIS ARTICLE ON OCTOBER 1 OF EACH SCHOOL YEAR.

(5) "OPPORTUNITY CONTRACT" MEANS THE CONTRACT ENTERED INTO BETWEEN A SCHOOL DISTRICT AND THE PARENT OF AN ELIGIBLE CHILD PURSUANT TO THIS ARTICLE.

(6) "PARENT" MEANS AN ELIGIBLE CHILD'S PARENT OR LEGAL GUARDIAN.

(7) "PARTICIPATING NONPUBLIC SCHOOL" MEANS A NONPUBLIC SCHOOL THAT MEETS THE STANDARDS SET FORTH IN SECTION 22-56-106 AND THAT PARTICIPATES IN THE PILOT PROGRAM.

(8) "PARTICIPATION CAP" MEANS THE LIMITATION ON THE NUMBER OF A SCHOOL DISTRICT'S ELIGIBLE CHILDREN PERMITTED TO PARTICIPATE IN THE PILOT PROGRAM IN ANY SCHOOL YEAR, AS DESCRIBED IN SECTION 22-56-104 (5) (a).

(9) "PILOT PROGRAM" MEANS THE COLORADO OPPORTUNITY CONTRACT PILOT

PROGRAM ESTABLISHED PURSUANT TO SECTION 22-56-104.

(10) (a) "SCHOOL DISTRICT" MEANS:

(I) A SCHOOL DISTRICT WHICH, FOR THE 2001-02 SCHOOL YEAR, HAD AT LEAST EIGHT SCHOOLS THAT RECEIVED AN ACADEMIC PERFORMANCE RATING OF "LOW" OR "UNSATISFACTORY" PURSUANT TO SECTION 22-7-604 (5), AND WHICH SCHOOL DISTRICT CONTINUES TO OPERATE SAID SCHOOLS IN THE 2003-04 SCHOOL YEAR; OR

(II) A SCHOOL DISTRICT THAT CHOOSES TO PARTICIPATE IN THE PILOT PROGRAM PURSUANT TO SECTION 22-56-104 (1) (b).

(b) FOR PURPOSES OF THIS SUBSECTION (10), A SCHOOL IS DEEMED TO HAVE RECEIVED AN ACADEMIC PERFORMANCE RATING OF "LOW" OR "UNSATISFACTORY" IF ONE OR MORE SCHOOL LEVELS WITHIN THE SCHOOL HAS RECEIVED SAID RATING, AS "SCHOOL LEVEL" IS DEFINED IN SECTION 22-7-602 (8).

(11) "STATE BOARD" MEANS THE STATE BOARD OF EDUCATION CREATED AND EXISTING PURSUANT TO SECTION 1 OF ARTICLE IX OF THE STATE CONSTITUTION.

22-56-104. Pilot program - established - eligible child - criteria - application - limitations on participation - priorities. (1) (a) THERE IS HEREBY ESTABLISHED IN THE DEPARTMENT THE COLORADO OPPORTUNITY CONTRACT PILOT PROGRAM TO PROVIDE ASSISTANCE TO ELIGIBLE CHILDREN IN ATTENDING PARTICIPATING NONPUBLIC SCHOOLS.

(b) A SCHOOL DISTRICT IN THE STATE, OTHER THAN A SCHOOL DISTRICT DESCRIBED IN SECTION 22-56-103 (10) (a) (I), MAY PARTICIPATE VOLUNTARILY IN THE PILOT PROGRAM. A SCHOOL DISTRICT SHALL INDICATE ITS INTENT TO PARTICIPATE IN THE PILOT PROGRAM THROUGH THE ADOPTION OF A FAVORABLE RESOLUTION BY THE SCHOOL DISTRICT BOARD OF EDUCATION AND THE PROVISION OF A COPY OF THE RESOLUTION TO THE STATE BOARD.

(2) A CHILD WHO RESIDES WITHIN A SCHOOL DISTRICT MAY PARTICIPATE IN THE PILOT PROGRAM IF, AT THE TIME OF APPLYING, THE SCHOOL DISTRICT DETERMINES THAT THE CHILD MEETS THE FOLLOWING CRITERIA:

(a) THE CHILD IS ELIGIBLE TO RECEIVE FREE OR REDUCED-COST LUNCH PURSUANT TO THE PROVISIONS OF THE FEDERAL "NATIONAL SCHOOL LUNCH ACT", 42 U.S.C. SEC. 1751 ET SEQ.; AND

(b) (I) FOR CHILDREN ENTERING OR ENROLLED IN ONE OF GRADES FOUR THROUGH TWELVE, THE CHILD WAS CONTINUOUSLY ENROLLED IN AND ATTENDING A PUBLIC SCHOOL DURING THE PREVIOUS SCHOOL YEAR AND:

(A) PERFORMED AT THE PROFICIENCY LEVEL OF "UNSATISFACTORY" IN AT LEAST ONE ACADEMIC AREA ON THE MOST RECENT STATEWIDE ASSESSMENT FOR WHICH DATA IS AVAILABLE; OR

(B) PERFORMED AT THE PROFICIENCY LEVEL EQUIVALENT TO "UNSATISFACTORY" IN READING, WRITING, OR MATHEMATICS ON THE MOST RECENT CURRICULUM-BASED,

ACHIEVEMENT COLLEGE ENTRANCE EXAMS FOR WHICH DATA IS AVAILABLE.

(II) FOR CHILDREN ENTERING OR ENROLLED IN ONE OF GRADES ONE THROUGH THREE, THE CHILD:

(A) WAS CONTINUOUSLY ENROLLED IN AND ATTENDING A PUBLIC SCHOOL DURING THE PREVIOUS SCHOOL YEAR;

(B) LACKS OVERALL LEARNING READINESS ATTRIBUTABLE TO AT LEAST THREE SIGNIFICANT FAMILY RISK FACTORS, AS DESCRIBED IN SECTION 22-28-106; OR

(C) RESIDES IN AN AREA IN WHICH THE CHILD'S NEIGHBORHOOD SCHOOL, AS DEFINED IN SECTION 22-1-122 (2) (c), IS A PUBLIC SCHOOL IN THE SCHOOL DISTRICT THAT RECEIVED AN ACADEMIC PERFORMANCE RATING OF "LOW" OR "UNSATISFACTORY" PURSUANT TO SECTION 22-7-604 (5).

(III) FOR CHILDREN ENTERING OR ENROLLED IN KINDERGARTEN, THE CHILD:

(A) LACKS OVERALL LEARNING READINESS ATTRIBUTABLE TO AT LEAST THREE SIGNIFICANT FAMILY RISK FACTORS, AS DESCRIBED IN SECTION 22-28-106; OR

(B) RESIDES IN AN AREA IN WHICH THE CHILD'S NEIGHBORHOOD SCHOOL, AS DEFINED IN SECTION 22-1-122 (2) (c), IS A PUBLIC SCHOOL IN THE SCHOOL DISTRICT THAT RECEIVED AN ACADEMIC PERFORMANCE RATING OF "LOW" OR "UNSATISFACTORY" PURSUANT TO SECTION 22-7-604 (5).

(3)(a) THE PARENT OF A CHILD WHO SEEKS TO PARTICIPATE IN THE PILOT PROGRAM AND TO ENTER INTO AN OPPORTUNITY CONTRACT SHALL APPLY TO THE SCHOOL DISTRICT IN WHICH THE CHILD RESIDES ON OR BEFORE JANUARY 1 OF THE SCHOOL YEAR PRECEDING THE SCHOOL YEAR IN WHICH THE CHILD INTENDS TO ENROLL IN AND ATTEND A PARTICIPATING NONPUBLIC SCHOOL PURSUANT TO THE PILOT PROGRAM. ON OR BEFORE FEBRUARY 15 OF THE SCHOOL YEAR IN WHICH THE APPLICATION WAS RECEIVED BY THE SCHOOL DISTRICT, THE SCHOOL DISTRICT SHALL NOTIFY EACH APPLYING PARENT WHOSE CHILD MEETS THE CRITERIA SPECIFIED IN SUBSECTION (2) OF THIS SECTION. ONCE A CHILD IS ELIGIBLE TO PARTICIPATE IN THE PILOT PROGRAM, THE CHILD REMAINS ELIGIBLE SO LONG AS HE OR SHE ENROLLS IN A PARTICIPATING NONPUBLIC SCHOOL AND CONTINUES TO BE INCLUDED IN THE SCHOOL DISTRICT'S PUPIL ENROLLMENT, AND THE CHILD NEED NOT REAPPLY TO PARTICIPATE IN THE PILOT PROGRAM. IF AN ELIGIBLE CHILD ENROLLS IN AND ATTENDS A PUBLIC SCHOOL AND SUBSEQUENTLY CHOOSES TO PARTICIPATE IN THE PILOT PROGRAM, THE PARENT OF THE CHILD SHALL SUBMIT AN APPLICATION AS REQUIRED IN THIS PARAGRAPH (a), AND THE SCHOOL DISTRICT SHALL MAKE A NEW DETERMINATION REGARDING WHETHER THE CHILD MEETS THE ELIGIBILITY CRITERIA SPECIFIED IN SUBSECTION (2) OF THIS SECTION.

(b) NOTWITHSTANDING THE PROVISIONS OF PARAGRAPH (a) OF THIS SUBSECTION (3), IF AN ELIGIBLE CHILD ENROLLS IN AND ATTENDS A PUBLIC SCHOOL BECAUSE THE CHILD IS DENIED PARTICIPATION IN THE PILOT PROGRAM PURSUANT TO SUBSECTION (5) OF THIS SECTION, THE CHILD'S APPLICATION SHALL BE KEPT ON FILE BY THE SCHOOL DISTRICT IN THE EVENT AN OPENING OCCURS IN THE PILOT PROGRAM DURING THE SCHOOL YEAR. IF AN ELIGIBLE CHILD IS NOT SELECTED TO PARTICIPATE IN THE

PILOT PROGRAM, THE ELIGIBLE CHILD SHALL REAPPLY IN ACCORDANCE WITH PARAGRAPH (a) OF THIS SUBSECTION (3) TO BE CONSIDERED FOR THE PILOT PROGRAM IN SUBSEQUENT YEARS.

(4) EACH ELIGIBLE CHILD SHALL PROVIDE ANNUAL WRITTEN NOTICE OF INTENT TO PARTICIPATE IN THE PILOT PROGRAM AND TO RENEW HIS OR HER OPPORTUNITY CONTRACT.

(5) (a) A SCHOOL DISTRICT'S PARTICIPATION CAP SHALL BE DETERMINED AS FOLLOWS:

(I) FOR THE 2004-05 SCHOOL YEAR, NO MORE THAN ONE PERCENT OF A SCHOOL DISTRICT'S STUDENT ENROLLMENT FOR THE PREVIOUS SCHOOL YEAR MAY PARTICIPATE IN THE PILOT PROGRAM.

(II) FOR THE 2005-06 SCHOOL YEAR, NO MORE THAN TWO PERCENT OF A SCHOOL DISTRICT'S STUDENT ENROLLMENT FOR THE PREVIOUS SCHOOL YEAR MAY PARTICIPATE IN THE PILOT PROGRAM.

(III) FOR THE 2006-07 SCHOOL YEAR, NO MORE THAN FOUR PERCENT OF A SCHOOL DISTRICT'S STUDENT ENROLLMENT FOR THE PREVIOUS SCHOOL YEAR MAY PARTICIPATE IN THE PILOT PROGRAM.

(IV) FOR THE 2007-08 SCHOOL YEAR AND FOR EACH SCHOOL YEAR THEREAFTER, NO MORE THAN SIX PERCENT OF A SCHOOL DISTRICT'S STUDENT ENROLLMENT FOR THE PREVIOUS SCHOOL YEAR MAY PARTICIPATE IN THE PILOT PROGRAM.

(b) IF THE NUMBER OF ELIGIBLE CHILDREN IN A SCHOOL DISTRICT WHO SEEK TO PARTICIPATE IN THE PILOT PROGRAM EXCEEDS THE SCHOOL DISTRICT'S PARTICIPATION CAP FOR A SCHOOL YEAR, THE SCHOOL DISTRICT SHALL SELECT FROM AMONG THE ELIGIBLE CHILDREN SEEKING TO PARTICIPATE IN THE PILOT PROGRAM, ON OR BEFORE MARCH 1 OF THE SCHOOL YEAR PRECEDING THE SCHOOL YEAR IN WHICH THE ELIGIBLE CHILD INTENDS TO ENROLL IN AND ATTEND A PARTICIPATING NONPUBLIC SCHOOL PURSUANT TO THE PILOT PROGRAM, BY APPLYING THE FOLLOWING PRIORITIES:

(I) THE SCHOOL DISTRICT SHALL GIVE FIRST PRIORITY TO ELIGIBLE CHILDREN WHO PARTICIPATED IN THE PILOT PROGRAM IN THE PRECEDING SCHOOL YEAR, IF ANY. IF THE NUMBER OF ELIGIBLE CHILDREN DESCRIBED IN THIS SUBPARAGRAPH (I) EXCEEDS THE SCHOOL DISTRICT'S PARTICIPATION CAP, THE SCHOOL DISTRICT SHALL SELECT FROM AMONG THEM BY USE OF A LOTTERY.

(II) IF, AFTER SELECTING THE ELIGIBLE CHILDREN DESCRIBED IN SUBPARAGRAPH (I) OF THIS PARAGRAPH (b), THE SCHOOL DISTRICT HAS NOT REACHED ITS PARTICIPATION CAP, THE SCHOOL DISTRICT SHALL GIVE PRIORITY TO ELIGIBLE CHILDREN WHO ARE SIBLINGS OF ELIGIBLE CHILDREN WHO HAVE BEEN SELECTED TO PARTICIPATE IN THE PILOT PROGRAM. IF THE NUMBER OF ELIGIBLE CHILDREN DESCRIBED IN THIS SUBPARAGRAPH (II) PLUS THE ELIGIBLE CHILDREN DESCRIBED IN SUBPARAGRAPH (I) OF THIS PARAGRAPH (b) EXCEEDS THE SCHOOL DISTRICT'S PARTICIPATION CAP, THE SCHOOL DISTRICT SHALL SELECT FROM AMONG THE ELIGIBLE CHILDREN DESCRIBED IN THIS SUBPARAGRAPH (II) BY USE OF A LOTTERY.

(III) IF, AFTER SELECTING THE ELIGIBLE CHILDREN DESCRIBED IN SUBPARAGRAPHS (I) AND (II) OF THIS PARAGRAPH (b), THE SCHOOL DISTRICT HAS NOT REACHED ITS PARTICIPATION CAP, THE SCHOOL DISTRICT SHALL SELECT FROM AMONG THE REMAINING ELIGIBLE CHILDREN BY USE OF A LOTTERY.

(6) WITHIN FIFTEEN DAYS AFTER MAKING THE SELECTIONS DESCRIBED IN PARAGRAPH (b) OF SUBSECTION (5) OF THIS SECTION, THE SCHOOL DISTRICT SHALL NOTIFY IN WRITING AN ELIGIBLE CHILD'S PARENT WHETHER THE ELIGIBLE CHILD IS SELECTED TO PARTICIPATE IN THE PILOT PROGRAM. IF THE ELIGIBLE CHILD IS NOT SELECTED PURSUANT TO PARAGRAPH (b) OF SUBSECTION (5) OF THIS SECTION, THE NOTICE SHALL INFORM THE PARENT OF THE OPPORTUNITY TO SUBMIT A NOTICE OF INTENT TO PARTICIPATE IN THE PILOT PROGRAM FOR THE FOLLOWING SCHOOL YEAR.

(7) (a) A PARENT MAY WITHDRAW AN ELIGIBLE CHILD FROM A PARTICIPATING NONPUBLIC SCHOOL AT ANY TIME DURING THE SCHOOL YEAR AND MAY EITHER:

(I) ENROLL THE ELIGIBLE CHILD IN A PUBLIC SCHOOL; OR

(II) ENROLL THE ELIGIBLE CHILD IN ANOTHER PARTICIPATING NONPUBLIC SCHOOL THAT HAS SPACE FOR THE ELIGIBLE CHILD AND HAS ACCEPTED THE ELIGIBLE CHILD FOR ADMISSION.

(b) WHILE AN ELIGIBLE CHILD MAY ENROLL IN AND ATTEND MORE THAN ONE PARTICIPATING NONPUBLIC SCHOOL IN A SCHOOL YEAR AFTER WITHDRAWING PURSUANT TO PARAGRAPH (a) OF THIS SUBSECTION (7), A SCHOOL DISTRICT NEED NOT MAKE MORE THAN ONE PAYMENT IN A QUARTERLY PAYMENT PERIOD DESCRIBED IN SECTION 22-56-108 (3).

(8) (a) A PARENT IS DEEMED TO HAVE BREACHED THE OPPORTUNITY CONTRACT AND TO HAVE RELINQUISHED THE RIGHT TO RECEIVE PAYMENTS PURSUANT TO THE PILOT PROGRAM IF:

(I) THE PARENT VOLUNTARILY NOTIFIES THE SCHOOL DISTRICT IN WRITING OF HIS OR HER INTENT TO RELINQUISH THE RIGHT;

(II) THE PARENT FAILS TO SUBMIT AN APPLICATION TO A PARTICIPATING NONPUBLIC SCHOOL PURSUANT TO SECTION 22-56-105;

(III) THE ELIGIBLE CHILD DOES NOT ENROLL IN A PARTICIPATING NONPUBLIC SCHOOL BY SEPTEMBER 15 OF THE SCHOOL YEAR FOR WHICH THE ELIGIBLE CHILD WAS ACCEPTED BY A PARTICIPATING NONPUBLIC SCHOOL;

(IV) THE ELIGIBLE CHILD FAILS TO ATTEND THE NONPUBLIC SCHOOL AT LEAST SIXTY PERCENT OF THE SCHOOL DAYS IN TWO QUARTERLY PAYMENT PERIODS, AS DESCRIBED IN SECTION 22-56-108 (3), UNLESS THE ATTENDANCE FAILURE IS DUE TO ILLNESS, INJURY, OR OTHER REASON EXCUSED AT THE DISCRETION OF THE SCHOOL DISTRICT;

(V) THE ELIGIBLE CHILD'S DOMICILE BECOMES LOCATED OUTSIDE THE STATE; OR

(VI) THE ELIGIBLE CHILD FAILS TO TAKE A STATEWIDE ASSESSMENT REQUIRED

PURSUANT TO LAW, UNLESS THE FAILURE IS EXCUSED BY THE SCHOOL DISTRICT.

(b) FOLLOWING A BREACH AND RELINQUISHMENT BY THE PARENT PURSUANT TO PARAGRAPH (a) OF THIS SUBSECTION (8), THE SCHOOL DISTRICT SHALL SELECT ANOTHER ELIGIBLE CHILD THROUGH A LOTTERY CONDUCTED AT LEAST WEEKLY AND SHALL ENTER INTO AN OPPORTUNITY CONTRACT WITH THE ELIGIBLE CHILD'S PARENT. THE SCHOOL DISTRICT NEED NOT COMPLY WITH THE PRIORITIES DESCRIBED IN SECTION 22-56-104 (5) (b) IN SELECTING AN ELIGIBLE CHILD PURSUANT TO THIS PARAGRAPH (b).

(9) A CHILD WHO WAS CONTINUOUSLY ENROLLED IN AND ATTENDING A NONPUBLIC SCHOOL, OR PARTICIPATING IN A NONPUBLIC HOME-BASED EDUCATIONAL PROGRAM PURSUANT TO SECTION 22-33-104.5, SHALL NOT BE ENTITLED TO PARTICIPATE IN THE PILOT PROGRAM IN THE SCHOOL YEAR FOLLOWING THE SCHOOL YEAR IN WHICH THE CHILD ATTENDED THE NONPUBLIC SCHOOL OR PARTICIPATED IN THE NONPUBLIC HOME-BASED EDUCATIONAL PROGRAM; EXCEPT THAT THE PROVISIONS OF THIS SUBSECTION (9) SHALL NOT APPLY IF THE CHILD WAS ENROLLED IN THE NONPUBLIC SCHOOL THROUGH PARTICIPATION IN THE PILOT PROGRAM.

22-56-105. Pilot program - application to participating nonpublic school - acceptance. (1) ON OR AFTER APRIL 1, BUT PRIOR TO JUNE 1, OF THE SCHOOL YEAR IN WHICH THE ELIGIBLE CHILD IS DEEMED ELIGIBLE AND IS SELECTED TO PARTICIPATE IN THE PILOT PROGRAM, A PARENT SHALL SUBMIT AN APPLICATION TO THE PARTICIPATING NONPUBLIC SCHOOL ON A FORM PROVIDED BY THE SCHOOL DISTRICT. WITHIN FIFTEEN DAYS AFTER RECEIVING THE APPLICATION, THE PARTICIPATING NONPUBLIC SCHOOL SHALL NOTIFY THE APPLICANT, IN WRITING, WHETHER THE ELIGIBLE CHILD HAS BEEN ACCEPTED FOR ADMISSION. IN ADDITION TO ANY OTHER ADMISSION CRITERIA USED BY A PARTICIPATING NONPUBLIC SCHOOL THAT IS CONSISTENT WITH THIS ARTICLE, THE PARTICIPATING NONPUBLIC SCHOOL SHALL DETERMINE WHICH ELIGIBLE CHILDREN TO ACCEPT FOR ADMISSION ON THE BASIS OF THE ORDER IN WHICH THEIR APPLICATIONS ARE RECEIVED.

(2) NOTWITHSTANDING THE PROVISIONS OF SUBSECTION (1) OF THIS SECTION, A PARTICIPATING NONPUBLIC SCHOOL MAY GIVE PREFERENCE IN ACCEPTING FOR ADMISSION:

(a) ELIGIBLE CHILDREN WHO HAVE ATTENDED THE PARTICIPATING NONPUBLIC SCHOOL PURSUANT TO THE PILOT PROGRAM IN A PREVIOUS SCHOOL YEAR; AND

(b) SIBLINGS OF ELIGIBLE CHILDREN ALREADY ACCEPTED FOR ADMISSION.

22-56-106. Pilot program - participating nonpublic school standards - appeal - annual notification. (1) A NONPUBLIC SCHOOL THAT CHOOSES TO PARTICIPATE IN THE PILOT PROGRAM SHALL FILE AN APPLICATION WITH A SCHOOL DISTRICT. THE NONPUBLIC SCHOOL SHALL PROVIDE INFORMATION AT THE TIME OF FILING THE APPLICATION PURSUANT TO THIS SUBSECTION (1), AND ANNUALLY THEREAFTER AS LONG AS THE NONPUBLIC SCHOOL SEEKS TO PARTICIPATE IN THE PILOT PROGRAM, THAT INDICATES THAT THE NONPUBLIC SCHOOL MEETS THE FOLLOWING STANDARDS:

(a) FOR THE SCHOOL YEAR 2004-05, AND FOR EACH SCHOOL YEAR THEREAFTER, THE NONPUBLIC SCHOOL NOTIFIES THE SCHOOL DISTRICT OF ITS INTENT TO

PARTICIPATE IN THE PILOT PROGRAM;

(b) THE NONPUBLIC SCHOOL DOES NOT DISCRIMINATE AGAINST ELIGIBLE CHILDREN IN ADMISSIONS, DISMISSALS, OR OTHER RIGHTS OR PRIVILEGES OF PARENTS OR ELIGIBLE CHILDREN, ON THE BASIS OF RACE, COLOR, RELIGION, NATIONAL ORIGIN, OR DISABILITY;

(c) THE NONPUBLIC SCHOOL DOES NOT ADVOCATE OR FOSTER UNLAWFUL BEHAVIOR OR TEACH HATRED OF A PERSON OR A GROUP;

(d) THE NONPUBLIC SCHOOL MEETS ALL HEALTH AND SAFETY LAWS OR CODES THAT APPLY TO PUBLIC SCHOOLS;

(e) THE NONPUBLIC SCHOOL PERMITS THE SCHOOL DISTRICT, AT THE NONPUBLIC SCHOOL'S COST, TO ADMINISTER STATEWIDE ASSESSMENTS TO THE ELIGIBLE CHILDREN ATTENDING THE NONPUBLIC SCHOOL PURSUANT TO THIS ARTICLE;

(f) THE NONPUBLIC SCHOOL AGREES TO MAKE AN INQUIRY TO THE DEPARTMENT PURSUANT TO SECTION 22-1-121, TO REQUIRE THE SUBMISSION OF FINGERPRINTS FOR EACH EMPLOYEE OR PROSPECTIVE EMPLOYEE OF THE NONPUBLIC SCHOOL, AND TO BEAR THE COSTS OF EACH FINGERPRINT-BASED CRIMINAL HISTORY RECORD CHECK;

(g) THE NONPUBLIC SCHOOL PERMITS THE ELIGIBLE CHILD ATTENDING THE NONPUBLIC SCHOOL PURSUANT TO THE PILOT PROGRAM TO WITHDRAW FROM THE NONPUBLIC SCHOOL AT ANY TIME WITHOUT FURTHER OBLIGATION BUT WITHOUT A RIGHT OF RECOVERY FOR PAYMENTS MADE PRIOR TO THE WITHDRAWAL; AND

(h) THE NONPUBLIC SCHOOL PROVIDES INFORMATION REGARDING THE SCHOOL'S HISTORY AND ADMINISTRATIVE STRUCTURE AND PROVIDES A DESCRIPTION OF THE SCHOOL'S EDUCATIONAL PHILOSOPHY AND CURRICULUM.

(2) (a) A NONPUBLIC SCHOOL OPERATING FOR FEWER THAN THREE YEARS AT THE TIME OF FILING AN APPLICATION PURSUANT TO SUBSECTION (1) OF THIS SECTION SHALL INCLUDE AS PART OF THE APPLICATION EVIDENCE OF A SAVINGS ACCOUNT, DEPOSIT, OR CERTIFICATE OF DEPOSIT MEETING THE REQUIREMENTS OF SECTION 11-35-101, C.R.S., OR A SURETY BOND AS SET FORTH IN PARAGRAPH (b) OF THIS SUBSECTION (2) COVERING THE NONPUBLIC SCHOOL AND ITS AGENTS. A NONPUBLIC SCHOOL DESCRIBED IN THIS PARAGRAPH (a) THAT FAILS TO COMPLY WITH THE REQUIREMENTS OF THIS PARAGRAPH (a) IS PROHIBITED FROM PARTICIPATING IN THE PROGRAM.

(b) AN APPLICANT NONPUBLIC SCHOOL, ACTING AS PRINCIPAL, AND A SURETY COMPANY AUTHORIZED TO DO BUSINESS IN THIS STATE MAY EXECUTE A SURETY BOND. THE BOND SHALL BE CONDITIONED TO PROVIDE INDEMNIFICATION FOR ANY LOSS INCURRED IF THE NONPUBLIC SCHOOL CEASES OPERATIONS. THE AMOUNT OF THE BOND SHALL BE EQUAL TO A REASONABLE ESTIMATE OF THE SUM OF THE PAYMENTS THE NONPUBLIC SCHOOL ANTICIPATES RECEIVING FOR EACH QUARTERLY PAYMENT PERIOD DESCRIBED IN SECTION 22-6-108 (3); EXCEPT THAT THE AMOUNT OF THE BOND SHALL NOT BE LESS THAN FIVE THOUSAND DOLLARS.

(3) (a) A NONPUBLIC SCHOOL SHALL PROVIDE THE NOTICE DESCRIBED IN

PARAGRAPH (a) OF SUBSECTION (1) OF THIS SECTION BY OCTOBER 1 OF THE SCHOOL YEAR PRECEDING THE SCHOOL YEAR IN WHICH THE NONPUBLIC SCHOOL INTENDS TO PARTICIPATE IN THE PILOT PROGRAM. THE NOTICE SHALL SPECIFY THE NUMBER OF ELIGIBLE CHILDREN FOR WHICH THE NONPUBLIC SCHOOL HAS SPACE IN EACH GRADE LEVEL OFFERED BY THE NONPUBLIC SCHOOL AND WHETHER THE NONPUBLIC SCHOOL IS WILLING TO ACCEPT ELIGIBLE CHILDREN FOR ADMISSION AFTER THE BEGINNING OF THE SCHOOL YEAR. THE NONPUBLIC SCHOOL MAY CHANGE THE NUMBER OF AVAILABLE SPACES BY WRITTEN AMENDMENT AT ANY TIME; EXCEPT THAT THE NONPUBLIC SCHOOL SHALL NOT DECREASE THE NUMBER OF AVAILABLE SPACES DURING THE PERIOD BEGINNING MARCH 1 AND ENDING AUGUST 15 THAT FOLLOWS THE DATE THE NOTICE IS GIVEN PURSUANT TO THIS PARAGRAPH (a).

(b) WITHIN THIRTY DAYS AFTER RECEIVING THE APPLICATION SUBMITTED PURSUANT TO SUBSECTION (1) OF THIS SECTION, A SCHOOL DISTRICT SHALL NOTIFY THE NONPUBLIC SCHOOL APPLICANT, IN WRITING, OF ITS DECISION TO ACCEPT OR DENY THE APPLICATION. A SCHOOL DISTRICT SHALL DENY AN APPLICATION ONLY ON THE BASIS OF:

(I) FAILURE OF A NONPUBLIC SCHOOL TO PROVIDE REASONABLE DOCUMENTATION DEMONSTRATING COMPLIANCE WITH THE STANDARDS DESCRIBED IN SUBSECTION (1) OF THIS SECTION; OR

(II) A REASONABLE DETERMINATION BY THE SCHOOL DISTRICT BOARD OF EDUCATION THAT THE NONPUBLIC SCHOOL DOES NOT MEET THE STANDARDS DESCRIBED IN SUBSECTION (1) OF THIS SECTION.

(c) A NONPUBLIC SCHOOL THAT IS DENIED PARTICIPATION IN THE PILOT PROGRAM BY A SCHOOL DISTRICT MAY FILE AN APPEAL WITH THE STATE BOARD WITHIN THIRTY DAYS AFTER RECEIVING NOTIFICATION OF THE DENIAL. WITHIN SIXTY DAYS AFTER RECEIVING NOTICE OF THE APPEAL, THE STATE BOARD, AFTER PROVIDING REASONABLE NOTICE AND HOLDING A HEARING ON THE MATTER, SHALL RENDER ITS DECISION ON WHETHER THE NONPUBLIC SCHOOL APPLICANT MAY PARTICIPATE IN THE PILOT PROGRAM. THE DECISION OF THE STATE BOARD SHALL BE FINAL AND NOT SUBJECT TO APPEAL.

(4) EACH PARTICIPATING NONPUBLIC SCHOOL SHALL ANNUALLY AFFIRM THAT IT MEETS THE STANDARDS DESCRIBED IN SUBSECTION (1) OF THIS SECTION AND NOTIFY THE SCHOOL DISTRICT OF ITS INTENT TO CONTINUE AS A PARTICIPATING NONPUBLIC SCHOOL. A NONPUBLIC SCHOOL THAT CEASES PARTICIPATION IN THE PILOT PROGRAM AND LATER SEEKS TO AGAIN BECOME A PARTICIPATING NONPUBLIC SCHOOL SHALL FILE AN APPLICATION WITH A SCHOOL DISTRICT PURSUANT TO SUBSECTION (1) OF THIS SECTION.

(5) BY DECEMBER 1 OF EACH SCHOOL YEAR, A SCHOOL DISTRICT SHALL PROVIDE INFORMATION TO ELIGIBLE CHILDREN AND THEIR PARENTS WHO RESIDE IN THE SCHOOL DISTRICT REGARDING THE NONPUBLIC SCHOOLS PARTICIPATING IN THE PILOT PROGRAM. AT A MINIMUM, THE INFORMATION SHALL BE IN A FORM THAT INCLUDES A DESCRIPTION OF THE PILOT PROGRAM, THE IDENTITIES OF PARTICIPATING NONPUBLIC SCHOOLS, AND AN APPLICATION FOR PARTICIPATION IN THE PROGRAM. THE INFORMATION MAY BE EITHER IN AN ELECTRONIC FORMAT OR IN A MAILING TO PARENTS. IF THE SCHOOL DISTRICT RECEIVES PRIVATE MONEY'S SUFFICIENT TO PAY

FOR A MAILING TO THE PARENTS, THE SCHOOL DISTRICT SHALL PROVIDE THE INFORMATION TO THE PARENTS IN SUCH A MAILING. THE SCHOOL DISTRICT SHALL PROVIDE TO PARTICIPATING NONPUBLIC SCHOOLS AN ELECTRONIC FILE, IF AVAILABLE, THAT INCLUDES THE NAMES AND CONTACT INFORMATION OF THOSE ELIGIBLE STUDENTS WHO HAVE APPLIED TO PARTICIPATE IN THE PILOT PROGRAM.

22-56-107. Pilot program - opportunity contracts - terms - financing.

(1) THE PARENT OF AN ELIGIBLE CHILD CHOSEN TO PARTICIPATE IN THE PILOT PROGRAM AND ACCEPTED BY A PARTICIPATING NONPUBLIC SCHOOL SHALL ENTER INTO AN OPPORTUNITY CONTRACT WITH THE SCHOOL DISTRICT. THE OPPORTUNITY CONTRACT SHALL SET FORTH THE RESPONSIBILITIES OF THE PARTIES, WHICH SHALL INCLUDE AT A MINIMUM:

(a) THE TERMS AND PROCEDURES OF PAYMENT MADE BY THE SCHOOL DISTRICT TO THE PARENT IN ACCORDANCE WITH SECTION 22-56-108;

(b) THE CONSEQUENCES FOR FAILURE TO ABIDE BY THE TERMS OF THE OPPORTUNITY CONTRACT;

(c) THE CIRCUMSTANCES INVOLVING THE ADMINISTRATION OF THE STATEWIDE ASSESSMENTS TO THE ELIGIBLE CHILD, AS DESCRIBED IN SECTION 22-56-106 (1) (e); AND

(d) OTHER MATTERS, AS REQUIRED BY THE PROVISIONS OF THIS ARTICLE.

(2) IN THE CASE OF AN ELIGIBLE CHILD WHO HAS AN INDIVIDUAL EDUCATIONAL PROGRAM PURSUANT TO ARTICLE 20 OF THIS TITLE, THE OPPORTUNITY CONTRACT SHALL SET FORTH THE RESPONSIBILITIES OF THE PARTICIPATING NONPUBLIC SCHOOL IN WHICH THE ELIGIBLE CHILD IS ENROLLED, THE PARENT, AND THE ADMINISTRATIVE UNIT IN IMPLEMENTING THE INDIVIDUAL EDUCATIONAL PROGRAM. UNLESS OTHERWISE SPECIFIED IN THE OPPORTUNITY CONTRACT, THE PRESUMPTION SHALL BE THAT THE ADMINISTRATIVE UNIT IS RESPONSIBLE FOR PROVIDING ALL INDIVIDUAL EDUCATIONAL PROGRAM SERVICES.

(3) FOR PURPOSES OF DETERMINING PUPIL ENROLLMENT UNDER THE "PUBLIC SCHOOL FINANCE ACT OF 1994", ARTICLE 54 OF THIS TITLE, THE SCHOOL DISTRICT IN WHICH AN ELIGIBLE CHILD WHO IS PARTICIPATING IN THE PILOT PROGRAM RESIDES SHALL BE ENTITLED TO COUNT THE ELIGIBLE CHILD, IN ACCORDANCE WITH THE PROVISIONS OF SECTION 22-54-103 (10) (a) (III).

22-56-108. Report of enrollment - assistance - payments. (1) ON OR BEFORE OCTOBER 15, 2004, AND ON OR BEFORE OCTOBER 15 OF EACH YEAR THEREAFTER, EACH PARTICIPATING NONPUBLIC SCHOOL SHALL FILE WITH THE DEPARTMENT, AND WITH THE SCHOOL DISTRICT OF RESIDENCE OF EACH ELIGIBLE CHILD ENROLLED IN THE PARTICIPATING NONPUBLIC SCHOOL, A REPORT STATING ITS NONPUBLIC SCHOOL PILOT PROGRAM MEMBERSHIP.

(2) FOR THE SCHOOL YEAR 2004-05, AND FOR EACH SCHOOL YEAR THEREAFTER, UPON RECEIPT FROM A PARTICIPATING NONPUBLIC SCHOOL OF PROOF OF AN ELIGIBLE CHILD'S ENROLLMENT IN A PARTICIPATING NONPUBLIC SCHOOL DURING A SCHOOL YEAR AND THE SIGNING OF AN OPPORTUNITY CONTRACT, THE SCHOOL DISTRICT SHALL

PAY PURSUANT TO SUBSECTIONS (3) AND (4) OF THIS SECTION AN AMOUNT EQUAL TO THE LESSER OF THE FOLLOWING:

(a) THE PARTICIPATING NONPUBLIC SCHOOL'S ACTUAL EDUCATIONAL COST PER PUPIL AS EVIDENCED BY AN ANNUAL COST-REPORT AUDIT; OR

(b) (I) SEVENTY-FIVE PERCENT OF THE SCHOOL DISTRICT'S PER PUPIL OPERATING REVENUES, AS DEFINED IN SECTION 22-54-103 (9), IF THE ELIGIBLE CHILD IS ENROLLED IN ONE OF GRADES ONE THROUGH EIGHT;

(II) EIGHTY-FIVE PERCENT OF THE SCHOOL DISTRICT'S PER PUPIL OPERATING REVENUES, AS DEFINED IN SECTION 22-54-103 (9), IF THE ELIGIBLE CHILD IS ENROLLED IN ONE OF GRADES NINE THROUGH TWELVE; OR

(III) THIRTY-SEVEN AND ONE-HALF PERCENT OF THE SCHOOL DISTRICT'S PER PUPIL OPERATING REVENUES, AS DEFINED IN SECTION 22-54-103 (9), IF THE ELIGIBLE CHILD IS ENROLLED IN KINDERGARTEN.

(3) THE SCHOOL DISTRICT SHALL PAY ASSISTANCE TO THE PARENT OF AN ELIGIBLE CHILD WHO IS PARTICIPATING IN THE PILOT PROGRAM AS FOLLOWS: TWENTY-FIVE PERCENT OF THE AMOUNT DESCRIBED IN SUBSECTION (2) OF THIS SECTION IN SEPTEMBER, TWENTY-FIVE PERCENT OF THE AMOUNT IN NOVEMBER, TWENTY-FIVE PERCENT OF THE AMOUNT IN FEBRUARY, AND THE REMAINDER IN MAY.

(4) (a) THE SCHOOL DISTRICT SHALL ISSUE A CHECK FOR EACH PAYMENT DESCRIBED IN SUBSECTION (3) OF THIS SECTION IN THE NAME OF THE ELIGIBLE CHILD'S PARENT. THE SCHOOL DISTRICT SHALL SEND THE CHECK TO THE PARTICIPATING NONPUBLIC SCHOOL IN WHICH THE PARENT'S CHILD IS ENROLLED, AND THE PARENT SHALL RESTRICTIVELY ENDORSE THE CHECK FOR THE SOLE USE OF THE PARTICIPATING NONPUBLIC SCHOOL.

(b) NOTWITHSTANDING THE PROVISIONS OF PARAGRAPH (a) OF THIS SUBSECTION (4), THE SCHOOL DISTRICT MAY WITHHOLD A PAYMENT DESCRIBED IN SUBSECTION (3) OF THIS SECTION IF THE ELIGIBLE CHILD HAS NOT ATTENDED AT LEAST SIXTY PERCENT OF THE SCHOOL DAYS AT THE PARTICIPATING NONPUBLIC SCHOOL DURING THE PRECEDING QUARTERLY PAYMENT PERIOD; EXCEPT THAT THE PROVISIONS OF THIS PARAGRAPH (b) SHALL NOT APPLY DURING THE FIRST QUARTERLY PAYMENT PERIOD IN WHICH THE ELIGIBLE CHILD IS ATTENDING THE PARTICIPATING NONPUBLIC SCHOOL.

22-56-109. Performance and financial audit - state auditor - report - repeal.

(1) ON OR BEFORE JANUARY 1, 2008, THE STATE AUDITOR SHALL CONDUCT OR CAUSE TO BE CONDUCTED A PERFORMANCE AND FINANCIAL AUDIT OF THE PILOT PROGRAM. THE STATE AUDITOR'S OFFICE SHALL SUBMIT ITS FINDINGS, CONCLUSIONS, AND RECOMMENDATIONS IN THE FORM OF A WRITTEN REPORT TO THE MEMBERS OF THE LEGISLATIVE AUDIT COMMITTEE OF THE GENERAL ASSEMBLY AND TO THE MEMBERS OF THE EDUCATION COMMITTEES OF THE SENATE AND THE HOUSE OF REPRESENTATIVES.

(2) THIS SECTION IS REPEALED, EFFECTIVE JANUARY 15, 2008.

22-56-110. Report on the program - student achievement - repeal. (1) A

SCHOOL DISTRICT SHALL EVALUATE THE ACADEMIC PERFORMANCE OF EACH ELIGIBLE CHILD WHO IS ENROLLED IN A PARTICIPATING NONPUBLIC SCHOOL PURSUANT TO THE PILOT PROGRAM. ON OR BEFORE JANUARY 1, 2008, THE SCHOOL DISTRICT SHALL PROVIDE A WRITTEN REPORT TO THE MEMBERS OF THE EDUCATION COMMITTEES OF THE SENATE AND THE HOUSE OF REPRESENTATIVES AND TO THE DEPARTMENT. THE REPORT SHALL INCLUDE NON-IDENTIFYING INDIVIDUAL STUDENT DATA ON THE STATEWIDE ASSESSMENTS AND AN ANALYSIS OF INDIVIDUAL STUDENT ACHIEVEMENT. THE SCHOOL DISTRICT SHALL ALSO RECORD SIMILAR DATA FOR THOSE ELIGIBLE CHILDREN NOT SELECTED IN THE LOTTERY PROCESS TO PARTICIPATE IN THE PILOT PROGRAM. THE SCHOOL DISTRICT SHALL ALSO REPORT THE FINANCIAL IMPACT OF THE PILOT PROGRAM ON THE SCHOOL DISTRICT.

(2) THIS SECTION IS REPEALED, EFFECTIVE JANUARY 15, 2008.

SECTION 2. 22-54-103 (10) (a), Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBPARAGRAPH to read:

22-54-103. Definitions - repeal. As used in this article, unless the context otherwise requires:

(10) (a) (III) "PUPIL ENROLLMENT" SHALL INCLUDE A PUPIL WHO RESIDES IN THE SCHOOL DISTRICT AND IS ENROLLED AND ATTENDING A PARTICIPATING NONPUBLIC SCHOOL UNDER THE TERMS OF AN OPPORTUNITY CONTRACT PURSUANT TO ARTICLE 56 OF THIS TITLE ON OCTOBER 1 WITHIN THE APPLICABLE BUDGET YEAR OR THE SCHOOL DAY NEAREST SAID DATE.

SECTION 3. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: April 16, 2003