

Proposed Revisions to Rules – Prepared by CDE Staff 9.26.11

DEPARTMENT OF EDUCATION

Colorado State Board of Education

RULES FOR THE ADMINISTRATION, CERTIFICATION AND OVERSIGHT OF COLORADO ONLINE PROGRAMS

1 CCR 301-71

1.0 Statement of Basis and Purpose.

These rules were amended to incorporate changes to financial reporting and accountability required by HB 10-1277 (concerning statutory changes involving K-12 education).

These rules were amended to align the evaluation criteria for Online Programs with the evaluation criteria established by SB 09-163 (the Education Accountability Act of 2009).

The statutory basis for these rules is found in sections 22-30.7-105(3)(b), 22-30.7-105(2)(b), 22-7-409, 22-30.7-106(4), 22-30.7-106(5), 22-30.7-106(6), 22-30.7-109(1)(a) and (d), 22-30.7-109(2)(b), 22-30.7-109(2)(c), and 22-30.7-110(1) to (3) C.R.S.

Pursuant to these statutes, the State Board of Education shall promulgate rules to achieve the following purposes, including but not limited to:

- (a) Establishing quality standards for online programs;
- (b) Promoting Online Program student participation in statewide assessments;
- (c) Establishing criteria to be used by the Online Division in certifying Multi-District Online Programs;
- (d) Establishing processes and timelines by which a prospective Authorizer may apply to the Online Division for certification of a Multi-District Online Program;
- (e) Establishing an expedited procedure for the approval or denial of certification for Multi-District Online Programs that were operating as of January 1, 2007;
- (f) Establishing a timeline by which an Authorizer of an online program shall submit a report to the Online Division;
- (g) Establishing a process for responding to a corrective action notice resulting from an audit of annual reporting;
- (h) Providing a process for notification to the State Board with recommendations for actions the State Board may take to address a situation of non-response to a corrective action notice; and
- (i) Establishing a process and timeline for continual review of the Multi-District Online Program after certification.

2.0 Definitions

~~2.01~~ ~~"Advisory Board" means the online learning Advisory Board created in the Department of Education pursuant to section §22-30.7-104 C.R.S.~~

2.021 "Authorizer" means an entity that authorizes an online program. "Authorizer" shall include a school district, any group of two or more school districts, a board of cooperative services created pursuant to §22-5-104 C.R.S., or the state Charter School Institute established pursuant to §22-30.5-503, C.R.S.

2.023 This definition of "complete educational program" is applicable to all public school educational programs that derive their support, in whole or in part, from moneys raised by a general state, county, or School District tax.

2.023.1 "Complete Educational Program" means for the purposes of §22-32-109(2) C.R.S., only, a sequential k-12 program of instruction, managed and operated by a local school district, for the education of a child that is intended to qualify for per pupil revenues under the Public School Finance Act of 1994 and, for children under seventeen years of age, qualifies the child by his or her attendance to be in compliance with Colorado compulsory school attendance laws.

2.023.2 For purposes of §22-32-109(2) C.R.S., the term "Complete Educational Program" shall exclude an online education program as defined by rule 2.10 and which is not delivered in a Learning Center as defined in rule 2.06.

2.023.3 For purposes of §22-32-109(2) C.R.S., the term "Complete Educational Program" shall also exclude a Learning Center as defined by rule 2.06, which is operating in the district pursuant to an MOU negotiated with the district, or pursuant to an order of the State Board of Education under rule 10.07.

2.034 "Course Completion Requirements," for the purposes of transcript recording and statistical enrollment reporting, means the student completion of a course based on meeting the Authorizer's approved academic content work and testing requirements.

2.034.1 The course may be counted as having been completed when academic content work, as based upon authorizer accreditation curriculum standards, has been completed.

2.034.2 Any student counted as an enrollment for the October 1st count date must be included in the course completion rate data.

2.034.3 For calculation purposes, any student who leaves the course within the first 25% of said course shall not be counted.

2.034.4 Mastery or passing a course is not a requirement of course completion, but mastery levels should be consistent with the Authorizer.

2.045 "Department" means the Department of Education created and existing pursuant to §24-1-115, C.R.S.

2.056 "Learning Center" means a facility in which a consistent group of students meets more often than once per week under the supervision of a Teacher or Mentor for a significant portion of a school day for the purpose of participating in an online program. A group of Parents and students meeting repeatedly, occasionally, and informally, even if facilitated by a school, shall not constitute a "Learning Center", and a private home shall not be considered a "Learning Center" under any circumstances pursuant to §22-30.7-102 C.R.S.

- 2.056.1 For purposes of these rules, a “significant portion of the school day for the purpose of participating in an online program” means that students of the Learning Center must be actively participating in the curricula of the certified online program for more than fifty-percent of the school day.
- 2.056.2 A curriculum that is not part of the certified online program must be non-religious and non-sectarian and may only be offered for less than fifty-percent of the school day.
- 2.056.3 In no event shall the parents or guardians of the students enrolled in the Online Program be required to pay tuition on behalf of such students for the Online Program at such Learning Center.
- 2.067 "Mentor" means an individual who is responsible for providing supervision at a Learning Center. A "Mentor" shall not be required to be a licensed Teacher but shall, at a minimum, satisfy the requirements specified for a paraprofessional as such requirements are described in the federal law "No Child Left Behind Act of 2001", 20 U.S.C. §6301 et seq.
- 2.078 "Multi-District Online Program" means an Online Program that serves a student population drawn from two or more school districts.
- 2.089 "Online Division" means the division of online learning created in the Department pursuant to §22-30.7-103, C.R.S.
- 2.0940 "Online Program" means a, non-religious, non-sectarian full-time online education program or school authorized pursuant to §22-30.7-101 C.R.S. et seq., that delivers a sequential program of synchronous or asynchronous instruction from a Teacher to a student primarily through the use of technology via the internet in a virtual or remote setting. "Online Program" does not include a Supplemental Online Program.
- 2.104 "Parent" means a biological Parent, adoptive Parent, or legal guardian.
- 2.112 "Single-District Online Program" means an Online Program that serves only students who reside within a single school district or, in the case of an Online Program authorized by one or more school districts or a board of cooperative services, an Online Program that serves only students who reside within the authorizing school districts or within the member school districts of the authorizing board of cooperative services.
- 2.123 "Standard MOU Form" means the standard Memorandum of Understanding Form adopted by the State Board pursuant to section §22-30.7-111 (5) C.R.S.
- 2.134 "State Board" means the State Board of Education created and existing pursuant to section 1 of Article IX of the Colorado State Constitution.
- 2.145 "Supplemental Online Program" means a program that offers one or more online courses to students to augment an educational program provided by a school, school district, charter school, or board of cooperative services.
- 2.156 "Teacher" means any person who holds a Teacher's license issued pursuant to the provisions of article 60.5 of Title 22, CRS and who is employed to instruct, direct, or supervise the instructional program, "Teacher" includes those persons employed by a charter school as a Teacher pursuant to a waiver granted to the charter school by the State Board pursuant to §22-30.5-105(3), C.R.S., or who are employed by a school district as a Teacher pursuant to a waiver granted to a school district pursuant to §22-2-117, C.R.S.

3.0 Quality Standards for Online Programs.

- 3.01 In supporting and, evaluating Online Programs, and in certifying Multi-District Online Programs, the Online Division will provide guidance related to, and use the following Quality Standards.
- 3.02 Consistent with its Authorizer or school district, Online Programs shall meet or exceed the following quality standards in the administration of program and delivery of curriculum:
 - 3.02.1 The Online Program involves representatives of the Online Program's community, as well as staff, in a collaborative process to develop and communicate the Online Program's vision, mission, goals and results, in a manner appropriate to the online model for that program. The Online Program provides leadership, governance, and structure to support this vision and these supports are used by all staff to guide the decision-making.
 - 3.02.2 [Expired 05/15/2011 per Senate Bill 11-078]
 - 3.02.3 The Online Program has, or has a plan and timeline in place to accomplish, the technological infrastructure capable of meeting the needs of students and staff, and of supporting teaching and learning. The Online Program uses a variety of technology tools and has a user-friendly interface. The Online Program meets industry accepted accessibility standards for interoperability and appropriate access for learners with special needs. Technological support structures and programs are in place to reduce barriers to learning for all students.
 - 3.02.4 The Online Program has, and implements, a technology plan that includes (but is not limited to) documentation that all students and Parents know and understand acceptable use of the internet in accordance with all federal and state statutes. When providing direct services (for example, ISP, computer equipment or "at location") to students, the Online Program will use filtering software to prevent access to inappropriate materials.
 - 3.02.5 Online Programs must comply with all statutory requirements, including the existing budgetary reporting procedures under state law, as well as being consistent with the format required by the authorizing entity. Budgets and accounting records must be transparent, open to the public, and demonstrate support of student academic achievement.
 - 3.02.6 Online Program demonstrates levels of attainment of statewide performance indicators that meet expectations established by the Department's annual performance review as described in §22-11-210, C.R.S.
 - 3.02.7 The Online Program's Teachers use ongoing, research based formative and summative assessments to measure student academic performance. Students have varied opportunities to demonstrate mastery of skills, show academic progress, and receive meaningful feedback on their learning.
 - 3.02.8 An Online Program has a policy regarding course completion.
 - 3.02.9 An Online Program follows policies for tracking attendance, participation, and truancy. The policy includes documentation of Teacher / student interaction.
 - 3.02.10 The Online Program has a policy, and the infrastructure to store, retrieve, analyze and report, required student, Teacher, financial, and other required data collections.
 - 3.02.11 The Online Program has a policy providing guidance counseling services as appropriate to grade level and student need.

- 3.02.12 The Online Program has a policy guiding school/home communication about student and program progress, program governance, and program accountability that is relevant, regular, and available in native language where reasonable.
- 3.02.13 Instructional strategies, practices, and content address various learning needs and styles of students. The Online Program uses a body of evidence to identify advanced, under-performing, economically disadvantaged, or other special needs students. The Online Program will work with its Authorizer to ensure that support structures and programs, including but not limited to, Title I, ESL, Special Ed., and Gifted and Talented, are integrated into the school's instructional program to promote and support student learning.
- 3.02.14 The Online Program evaluates the degree to which it achieves the goals and objectives for student learning. There is a systematic process for collecting, disaggregating, managing, and analyzing data that enables the Online Program's leadership, Teachers, Parents, students, community members and other stakeholders to determine areas of strength and challenge. The data collected are analyzed using a systems approach, and the analysis includes the use of the ~~Student Accountability Report (SAR) and other state accountability reports~~ school performance reports required pursuant to § 22-11-503, C.R.S.
- 3.02.15 The Online Program shall ensure that background checks in accordance with law are performed on all volunteers and paid staff, including but not limited to Mentors, Teachers, Administrators, or any other persons in unsupervised contact with the student, except Parents supervising their children's educational program.

4.0 Multi-District Online Program Application Criteria

- 4.01 The Certification of the Online Program does not constitute approval of operations for the Online Program. The approval of the Online Program is the responsibility of the Authorizer. The Online Program may begin student instruction and operations only after approval by the Authorizer and receipt of certification from the Department.
- 4.02 The Authorizer of the Multi-District Online Program must include in its application evidence of adequate resources and capacity to oversee the Online Program, or evidence of a plan and timeline demonstrating that adequate resources and capacity for oversight of the Online Program will be in place by the beginning of student instruction. Capacity will be determined based upon the following components:
- 4.02.1 Curriculum and instruction;
 - 4.02.2 Use of software applications and technology;
 - 4.02.3 Data gathering analysis and reporting;
 - 4.02.4 Human resources management;
 - 4.02.5 Financial management, facilities management, and risk management.
 - 4.02.6 Other relevant public education administrative functions as submitted by the Multi-district Online Program, to be reviewed as appropriate by the Unit of Online Learning of CDE.
- 4.03 The Authorizer, in its application, will document and verify an acceptable level of compliance by the Online Program to the quality standards as listed in §3.02 of these rules.

- 4.03.1 For new online programs the Authorizer, in its application, will provide evidence of a plan and timeline that the quality standards will be met as listed in §3.02 of these rules.
- 4.04 The plan for operating and monitoring the Online Program must be agreed to by the Authorizer and the principal, director, charter school governing board, or other chief administrator of the Multi-District Online Program, and must be included with the application. The plan must include specific information on how the following items are addressed in the delivery of the Online Program:
 - 4.04.1 A statement of the Online Program's vision, mission and goals;
 - 4.04.2 The organizational structure and governance of the Online Program, including governing board and program policies and procedures, including procedures for public access to records;
 - 4.04.3 Equitable access for all students, within the parameters for operating and monitoring the Multi-District Online Program;
 - 4.04.4 Guidance counseling services for all students enrolled in the Multi-District Online Program in accordance with Authorizer policy;
 - 4.04.5 Student academic credit policies consistent with the Authorizer;
 - 4.04.6 Student achievement and attendance policies, including the monitoring of graduation and dropout rates as well as Course Completion rates pursuant to the policy referenced in §3.02.8 of these rules and the definition as defined in rule 2.04;
 - 4.04.7 Student records policies and procedures consistent with the Authorizer pursuant to SB-07-215;
 - 4.04.8 Student admission and placement policies and procedures;
 - 4.04.9 Staff development plans;
 - 4.04.10 Student services including tutorial support consistent with the Authorizer;
 - 4.04.11 Staff, student, and parent handbooks;
 - 4.04.12 Employment and contractor policies and procedures;
 - 4.04.13 Annual budgeting and finance practices;
 - 4.04.14 Facility plans, including any contemplated physical sites;
 - 4.04.15 Risk management, including school safety, staff policies, and background checks for all employees as required by law;
 - 4.04.16 Data development analysis and reporting; and
 - 4.04.17 Policies and procedures for facilitating communication between the Multi-District Online Program, Parents, community, and school districts in which students that are enrolled in the Multi-District Online Program reside.
- 4.05 The Authorizer will include in its application a list of the Learning Centers for which an MOU has been agreed upon by the local school district and the Online Program, including the name,

address, facility contact, and telephone number for each, and evidence of compliance by the Learning Center with section §2.06 of these rules.

5.0 Procedure and Timeline for Multi-District Online Program Certification by the State Board.

- 5.01 Authorizers must submit applications for certification of Multi-District Online Programs to the Online Division at the Department.
- 5.02 For Multi-District Online Programs intending to begin operations on or after the 2009-2010 school year, submissions will be reviewed twice a year, with submissions accepted no later than January 2nd and April 1st (or closest business day thereafter) of each year. A decision will be made based upon rubrics established by the Online Division.
- 5.03 The response will be given to the Authorizer within sixty days of January 2nd and April 1st (or closest business day thereafter) with detailed reasons for denial if applicable.
- 5.04 For Multi-District Online Programs intending to operate during the 2008-2009 school year, applications for certification of Multi-District Online Programs will be accepted no later than April 1, 2008 (or closest business day thereafter). Responses will be given within sixty days from April 1st (or closest business day thereafter) 2008.
- 5.05 Authorizers of Multi-District Online Programs that were operating as of January 1, 2007, may submit applications for certification of said Multi-District Online Program to the Online Division on April 1, 2008 (or closest business day thereafter) and will receive an expedited response within 30 days from April 1st (or closest business day thereafter) 2008.

6.0 Procedure and Timeline for Submitting Annual Financial and Accounting Reports

- ~~6.01 Pursuant to section 22-30-7-109(1)(a) and (d), the Authorizer of an Online Program shall submit an annual report on or before December 1st of each year, which is not the application for certification, to the Online Division within the Department. The report shall include but not be limited to:~~
 - ~~6.01.1 How the Online Program has satisfied the quality standards established by these Rules, pursuant to section 22-30-7-105;~~
 - ~~6.01.2 The ratio of adults (not to be construed to mean only a licensed Teacher) to students in the Online Program;~~
 - ~~6.01.3 The number of online Teachers employed by the Online Program who satisfy the requirements specified for a highly qualified Teacher as such requirements are described in the federal "No Child Left Behind Act of 2001", 20 U.S.C. §6301 et seq., and which can be retrieved by the Online Division.~~
 - ~~6.01.4 The annual budget of the Online Program, which budget shall account for all state funding received by the Online Program, in accordance with existing budgetary reporting requirements consistent with its Authorizer or school district.~~
- ~~6.02 If after review by the Online Division, there is a corrective action finding, the Authorizer will have thirty days to submit a plan for correction.~~
- ~~6.03 If there is no response from the Online Program to the corrective action finding of the Department, the Department will notify the State Board and will include a recommendation for action the State Board may take.~~

- 6.01 Pursuant to §§ 22-30.7 (3) (l) and 22-30.7-109.5, C.R.S., each Online Program shall submit to its Authorizer and the Online Division within the Department an annual financial and accounting report on or before December 1st of each year. Said report will include the Online Program's budget for the current academic school year and audited financial information for the previous academic school year.
- 6.02 Online Programs that are charter schools and already submit the financial information required pursuant to § 22-30.5-109 (1), C.R.S., may submit a single financial report to satisfy requirements for both charter schools and Online Programs.

7.0 Timeline and Procedure for the Amendment of a Certification of a Multi-District Online Program Recertification of Multi-District Online Programs

- 7.01 A Multi-District Online Program shall notify its authorizer and the Online Division within the Department of any intent to amend the program's application for certification, which shall include any intent to expand grade levels served by the program, any intent to change education service providers, or other intended changes, as defined by the State Board.
- 7.02 If the Department concludes that the Online Program should not be permitted to amend its application for certification, based on the quality standards for Online Programs outlined in section 3.02 of these rules, the Department shall notify the Authorizer of the Online Program of its decision within thirty (30) days of receiving the notification from the Online Program. The Authorizer shall then have thirty (30) days to appeal the Department's decision to the State Board, pursuant to the State Board's administrative policies.

~~Online Programs that have received certification must be re-certified by the Online Division within the Department, using required reports pursuant to §22-30.7-109 C.R.S. and as described in section 6.0 of this document, two years after certification and once every three years thereafter.~~

- ~~7.02 The Online Division shall review a Multi-District Program two years after its initial certification pursuant to §22-30.7-106 C.R.S., which review process shall include input from stakeholders, including but not limited to input from students, parents, and school districts in which a Learning Center of the Multi-District Program is located.~~

8.0 Standardized Process for Documenting Students Enrolled in an Online Program

- 8.01 Pursuant to §22-30.7-105(2)(a) C.R.S., an Online Program must be able to document active participation in an online sequential educational program and individual student attendance in the Online Program during the official count window. Documentation of active participation must include system logins that make evident each student taking part in course content in the online educational program via the internet. Logins must show that the student was online on the official count date (October 1) or if the student is absent on the official count date, there must be a login prior to the official count date and within thirty days following.

8.01.1 Examples of valid documentation include (but are not limited to):

- 8.01.1.1 Student management system login including student name, date, time, and documentation that specifically addresses course content and student work;
- 8.01.1.2 Student management system login including student name, date, time, with a corresponding email documenting specific course content and student work; and

8.01.1.3 Student management system login including student name, date, time, with corresponding documentation of instant messaging, or web conferencing with specific course content and student work.

8.01.2 Examples of invalid documentation include (but are not limited to):

8.01.2.1 Any student system login not including student name, date, time, or documentation that does not specifically address course content and student work;

8.01.2.2 An email that does not have documented corresponding system login information or does not include specific course content and student work-; and

8.01.2.3 Any documentation that can not specifically verify individual student login, date, time, or course content and student work;

8.02 Thereafter, the determination of full-time or part-time status is based upon the minimum number of hours provided for a student to receive instruction. Minimum hours can be based on the number of hours per day (or week) required to earn an equivalent number of credits in a traditional classroom setting.

8.03 The Online Program must have a calendar that reasonably aligns with the beginning date of the school year of the Authorizer that operates it or has been approved for an alternative calendar by the Authorizer and the Department.

8.04 A full time student must have a schedule that provides for a minimum of three hundred and sixty (360) hours of instruction per semester to receive full-time funding pursuant to 2254-R-5.06(3).

8.05 A part time student must have a schedule that provides for a minimum of ninety (90) hours of instruction per semester to receive part-time funding pursuant to 2254-R-5.06(3).

8.06 An Online Program must verify and document student residency in the State of Colorado upon enrollment and annually thereafter and retain a copy of the document or written statement offered as verification in the student's mandatory permanent record. Colorado residency is determined by the student and Parent or legal guardian currently residing within the State of Colorado boundaries, except for students of military families pursuant to §8.06.5 of these rules. Reasonable evidence of residency may be established by documentation including, but not limited to, any of the following:

8.06.1 Property tax payment receipts;

8.06.2 Rent payment receipts;

8.06.3 Utility service payment receipts; or

8.06.4 Written Statement of Residency executed by the student's parent/guardian. The written statement of residency should follow §1-2-102(a) and (b) C.R.S. and may be satisfied by a statement such as: "I, _____, swear and affirm under penalty of perjury that I am a resident of the State of Colorado."

8.06.5 A member or dependent of a member of the United States Armed Services shall be eligible to participate in an Online Program, notwithstanding the length of his or her residency, upon moving to Colorado on a change of station basis.

- 8.06.6 A member or dependent of a member of the United States Armed Services shall be eligible to participate in an Online Program, upon moving out of Colorado on a change of station basis as long as the member of the United States Armed Services qualifies for Colorado residency.
- 8.06.7 In order to meet residency requirements, a member or dependent of a member of the United States Armed Services must maintain Colorado as their state of legal residence for tax purposes, and voters must maintain Colorado voter registration.
- 8.07 The Online Program must comply with all of the state financial and budget rules, regulations, and financial reporting requirements with which the Authorizer is required to comply, including but not limited to annual completion of a governmental audit that complies with the requirements of the Department.
- 10.0 Notice, and Right of Appeal for Refusal to Enter into an MOU agreement.**
- 10.01 A school board may refuse to enter into a memorandum of understanding with a Multi-District Program only on the following grounds:
- 10.01.1 If the Standard MOU Form provided by the Multi-District Program failed to satisfy the requirements of §22-30.7-111(1)(b), C.R.S.; or
- 10.01.2 If the school board reasonably determines that the Multi-District Program is contrary to the best interests of the pupils, parents, community, or school district.
- 10.01.3 The school district shall be required to state its reasons for determining that the multi-district program is contrary to the best interests of the pupils, parents, community or school district.
- 10.02 If a school board refuses to enter into a memorandum of understanding for the operation of a Learning Center, it must provide the applicant with a detailed statement of refusal. The applicant may appeal the decision of the school board to the State Board by submitting a notice of appeal to the State Board within fourteen days after receipt of notice of the school board's decision. The applicant shall include a brief statement in the notice of appeal of the reason(s) it contends the school board's denial was in error. The appeal will proceed in accordance with the scheduling order to be issued by the Department on behalf of the State Board.
- 10.03 Pursuant to the timeline set forth by the State Board order,
1. The applicant shall submit a brief in support of the appeal to the State Board and the school board shall submit a brief in opposition to the appeal.
 2. The applicant may submit a reply brief to the State Board after the school board submits its brief in opposition to the appeal.
 3. The State Board, in its sole discretion, may request an oral presentation on the matter.
- 10.04 Within forty-five days after receipt of the notice of appeal by the State Board, and after reasonable public notice, the State Board shall review the decision of the local board of education and make its findings. The State Board's review of the decision shall be without a hearing; except that the State Board may, in its discretion, choose to request oral presentations from the parties.
- 10.05 If the State Board finds that the local board's decision was contrary to the best interests of the pupils, parents, community, or school district, the State Board shall issue an order directing the school district to enter into a final memorandum of understanding with the Multi-District Online

Program regarding the placement of one or more Learning Centers within the school district and to use the Standard MOU Form provided pursuant to §22-30.7-111 C.R.S.

- 10.06 The Memorandum of Understanding must be entered into by the District within thirty days after receipt of the State Board's order.
- 10.07 If the State Board finds that the local board's decision was in the best interest of the pupils, parents, community, or school district, the State Board will issue a notice to uphold the decision of the local board.
- 10.08 The decision of the State Board shall be final and not subject to further agency appeal.
- 10.09 For each new Learning Center operated by the Online Program, within thirty days of acceptance, the Authorizer or Online Program will submit to the Online Division the name, address, facility contact, and telephone number and evidence of compliance by the Learning Center with section §2.06 of these rules.