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LEGAL MEMORANDUM

TO: Amanda Bickel, Joint Budget Committee Staff

FROM: Office of Legislative Legal Services

DATE: August 25, 2014

SUBJECT: Definition of "total state appropriation" in H.B. 14-1319.¹

Question

Does the definition of "total state appropriation", as used in part 3 of article 18 of title 23, Colorado Revised Statutes, include state funding for specialty education programs, as defined in part 3?

Short Answer

No. The definition of "total state appropriation" includes amounts appropriated for certain fee-for-service contracts that are referenced in the definition. The referenced fee-for-service contracts do not pertain to specialty education programs. To disregard the limiting purpose of the statutory reference in the definition would fail to give meaning to each word in the definition and would subvert the plain meaning of the statute.

¹ This legal memorandum results from a request made to the Office of Legislative Legal Services (OLLS), a staff agency of the General Assembly. OLLS legal memoranda do not represent an official legal position of the General Assembly or the State of Colorado and do not bind the members of the General Assembly. They are intended for use in the legislative process and as information to assist the members in the performance of their legislative duties.

Discussion

The term "total state appropriation" was created and defined solely for purposes of the new higher education funding model contained in H.B. 14-1319, codified as part 3 of article 18, of title 23, Colorado Revised Statutes (C.R.S.), and was meant to refer to specific state appropriations. Pursuant to section 23-18-302 (10), C.R.S., "total state appropriation" is defined for part 3 of article 18 of title 23, C.R.S., as follows:

23-18-302. Definitions. As used in this part 3, unless the context otherwise requires:

(10) "Total state appropriation" means, for a state fiscal year, the sum of the total amount appropriated to the governing boards of the state institutions of higher education for fee-for-service contracts *determined pursuant to section 23-18-303*, and the amount of the appropriation to the college opportunity fund established in section 23-18-202 for student stipends. [*Emphasis added*]

With respect to the question of whether specialty education funding is included in the definition of "total state appropriation", the reference in the definition to section 23-18-303, C.R.S., is significant. Part 3 of article 18 of title 23, C.R.S., contains two statutory sections, sections 23-18-303 and 23-18-304, C.R.S., that authorize the Department of Higher Education (DHE) to negotiate fee-for-service contracts with the governing boards of the state institutions of higher education. Section 23-18-303, C.R.S., governs the determination of DHE's fee-for-service contracts for the delivery of undergraduate and graduate programs, while section 23-18-304, C.R.S., governs the negotiation of fee-for-service contracts for specialty education services. Section 23-18-304, C.R.S., also includes provisions relating to direct grants to area vocational schools and local district junior colleges. The fee-for-service contracting provisions of each section are different.

To determine the amount of the fee-for-service contracts entered into pursuant to section 23-18-303, C.R.S., DHE must apply certain role and mission factors and performance funding metrics to the institutions of higher education, as well as ensure that the contracts do not conflict with the provisions of section 23-18-305, C.R.S. However, the amount of the fee-for-service contracts for specialty education programs pursuant to section 23-18-304, C.R.S., is tied not to the factors

and metrics contained in section 23-18-303, C.R.S., but to the percentage change in the "total state appropriation" from the preceding state fiscal year. In fact, section 23-18-303 (1), C.R.S., clarifies that "[s]pecialty education programs, area vocational schools, and local district junior colleges are funded pursuant to the provisions of section 23-18-304," and not pursuant to section 23-18-303, C.R.S.

In interpreting the meaning of "total state appropriation," a court will first look to the plain meaning of the language to determine whether the language is clear and unambiguous in the context of the entire statutory scheme.² If the language in the statute is plain, its meaning is clear, and no absurdity results, a court may not adopt a strained interpretation.³ Further, the court will presume that the legislature did not use language idly and will attempt to assign meaning to each word in the statute.⁴ In H.B. 14-1319, the General Assembly clearly distinguishes between fee-for-service contracts for undergraduate and graduate programs determined pursuant to section 23-18-303, C.R.S., and fee-for-service contracts for specialty education services negotiated pursuant to section 23-18-304, C.R.S.⁵ Given the distinction between the two types of fee-for-service

² *Waneka v. Clyncke*, 157 P.3d 1072 (Colo. 2007).

³ *Willer v. Thornton*, 817 P.2d 514 (Colo. 1991).

⁴ *Carlson v. Ferris*, 85 P.3d 504 (Colo. 2003).

⁵ This distinction between fee-for-service contracts for undergraduate and graduate programs and fee-for-service contracts for specialty education programs has been present since the introduction of H.B. 14-1319. At introduction, all of the provisions concerning the determination of fee-for-service contracts were contained in a *single* statutory section, §23-18-303, that included multiple subsections. Subsection (1) of proposed §23-18-303 included the method for determining graduate and undergraduate fee-for-service contracts. Subsection (3) of proposed §23-18-303 included the provisions for funding specialty education programs. The language at the beginning of subsection (1) read, in part, ". . . *except as provided in subsection (3) of this section, concerning fee-for-service contracts for specialty education programs*, the governing board of a state institution of higher education may annually negotiate a fee-for-service contract with the department. . . ." [Emphasis added]. Consistent with this statutory structure at introduction, "total state appropriation" was defined, in relevant part, as ". . . the sum of the total amount appropriated to the governing boards of the state institutions of higher education for fee-for-service contracts negotiated pursuant to section 23-18-303 (1) and the amount of the appropriation to the college opportunity fund" [Emphasis added]. After the bill was introduced, the House Education Committee adopted a "strike below" amendment that, among other things, reorganized the bill provisions and moved the content of §23-18-303 (3), concerning specialty education programs, to its own statutory section, §23-18-304. Concomitant with the structural change, the statutory reference in the definition of "total state appropriation" was changed from "fee-for-service contracts negotiated pursuant to section 23-18-303 (1)" to those "fee-for-service contracts determined pursuant to section 23-18-303", which section no longer included the provisions for specialty education programs. Therefore, except for the conforming changes to the statutory reference, the definition of "total state appropriation" has remained unchanged throughout the legislative process, consistently excluding specialty education program funding. Additionally, the statutory provisions for specialty education program funding remained essentially unchanged in all versions of H.B. 14-1319, with

contracts, the qualifying reference to section 23-18-303, C.R.S., in the definition of "total state appropriation" does not seem unclear or ambiguous. Moreover, interpreting the definition of "total state appropriation" to exclude those fee-for-service contracts authorized and entered into pursuant to a different section, section 23-18-304, C.R.S., logically gives meaning to each word in the definition.

Conclusion

Therefore, according to the plain language of the statute, and giving meaning to each term in the definition, "total state appropriation" includes only the sum of the total amount appropriated for fee-for-service contracts "*determined pursuant to section 23-18-303*" and the amount of the appropriation to the college opportunity fund for student stipends. Thus, for purposes of part 3 of article 18 of title 23, C.R.S., "total state appropriation" does not include specialty education program funding.

the amount of the funding tied to the percentage change in the total state appropriation in the applicable state fiscal year from the preceding state fiscal year.