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ADVANCE SHEET HEADNOTE  
May 20, 2024

**2024 CO 29**

**No. 22SC940, *ERBOCES v. Colorado Springs School District 11* – Education – Statutory Interpretation.**

In this case, the supreme court is asked to decide whether a board of cooperative education services (“BOCES”) – a “regional educational service unit designed to provide supporting, instructional, administrative, facility, community, or any other services contracted by participating members,” § 22-5-103(2), C.R.S. (2023) – may locate a school within the geographic boundaries of a nonmember school district without the consent of that district.

Specifically, the court granted certiorari to consider whether (1) a division of the court of appeals erred in concluding that the plain language of section 22-5-111(2), C.R.S. (2023), prohibits a BOCES from locating a school within the geographic boundaries of a nonmember school district without its consent; and (2) article IX, section 15 of the Colorado Constitution prohibits a BOCES from doing so.

The court now concludes that the division properly determined that section 22-5-111(2) prohibits a BOCES from locating a school within the geographic boundaries of a nonmember school district without its consent. In light of this conclusion, the court need not decide whether article IX, section 15 of the Colorado Constitution effects the same prohibition.

Accordingly, the court affirms the judgment of the division below.

**The Supreme Court of the State of Colorado**  
2 East 14th Avenue • Denver, Colorado 80203

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**2024 CO 29**

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**Supreme Court Case No. 22SC940**  
*Certiorari to the Colorado Court of Appeals*  
Court of Appeals Case No. 21CA708

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**Petitioners:**

Education reEnvisioned BOCES and Colorado Literacy and Learning Center,

v.

**Respondent:**

Colorado Springs School District 11.

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**Judgment Affirmed**

*en banc*

May 20, 2024

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**JUSTICE GABRIEL** delivered the Opinion of the Court, in which **CHIEF JUSTICE BOATRIGHT, JUSTICE MÁRQUEZ, JUSTICE HOOD, JUSTICE HART, JUSTICE SAMOUR,** and **JUSTICE BERKENKOTTER** joined.

JUSTICE GABRIEL delivered the Opinion of the Court.

¶1 Today, we are asked to decide whether a board of cooperative education services (“BOCES”)—a “regional educational service unit designed to provide supporting, instructional, administrative, facility, community, or any other services contracted by participating members,” § 22-5-103(2), C.R.S. (2023)—may locate a school within the geographic boundaries of a nonmember school district without the consent of that district.

¶2 Specifically, we granted certiorari to consider whether (1) a division of our court of appeals erred in concluding that the plain language of section 22-5-111(2), C.R.S. (2023), prohibits a BOCES from locating a school within the geographic boundaries of a nonmember school district without its consent; and (2) article IX, section 15 of the Colorado Constitution prohibits a BOCES from doing so.

¶3 We now conclude that the division properly determined that section 22-5-111(2) prohibits a BOCES from locating a school within the geographic boundaries of a nonmember school district without its consent. In light of this conclusion, we need not decide whether article IX, section 15 of the Colorado Constitution effects the same prohibition.

¶4 Accordingly, we affirm the judgment of the division below.

## I. Facts and Procedural History

¶5 The General Assembly enacted the Boards of Cooperative Services Act of 1965 (“the BOCES Act”) for, among other things, “the general improvement and expansion of educational services of the public schools in the state of Colorado.” § 22-5-102, C.R.S. (2023). The BOCES Act allows “two or more school districts to cooperate in furnishing services authorized by law if cooperation appears desirable.” *Id.*

¶6 The petitioner, Education reEnvisioned BOCES (“ERBOCES”), is such a cooperative. At the time that this dispute arose, its members consisted of Falcon School District 49, Creede Consolidated School District 1, Durango School District 9-R, and Pikes Peak Community College.

¶7 In May 2020, ERBOCES entered into an agreement with the Colorado Literacy and Learning Center’s School for Dyslexic Learners (“CLLC”), a Colorado nonprofit organization with its principal office in Colorado Springs. As part of this agreement, CLLC agreed to operate Orton Academy (“the Academy”), a contract school serving students with reading challenges, for ERBOCES through June 30, 2025. ERBOCES and CLLC opened and have operated the Academy within the geographical boundaries of respondent Colorado Springs School District 11 (“District 11”), which is not a member of ERBOCES. Neither ERBOCES nor CLLC sought or obtained District 11’s permission to do so.

¶8 In August 2020, outside counsel for District 11 sent a letter to representatives of ERBOCES and CLLC objecting to the Academy's operation within District 11's boundaries and demanding that ERBOCES and CLLC take immediate action to cease the Academy's operation.

¶9 Thereafter, ERBOCES filed a complaint seeking a declaratory judgment that it could continue running the Academy at its current location and that it was under no legal obligation to obtain District 11's permission to do so.

¶10 District 11 responded by filing an answer, a counterclaim against ERBOCES, and a third-party claim against CLLC. In its counterclaim and third-party claim, District 11 sought a declaratory judgment that ERBOCES and CLLC must immediately cease operating the Academy within District 11's geographic boundaries and a preliminary injunction requiring ERBOCES and CLLC to cease doing so.

¶11 The parties subsequently filed cross-motions for summary judgment on their respective declaratory judgment claims.

¶12 In their summary judgment motion, ERBOCES and CLLC argued, as pertinent here, that section 22-5-111(2) of the BOCES Act expressly authorized ERBOCES to operate the Academy "'at any appropriate location,' regardless of whether that location is 'within or without [the geographic boundaries of the] school district providing the money for the facilities.'" (Alteration in original.)

ERBOCES and CLLC further maintained that nothing in the BOCES Act (1) limits the location that a BOCES might use to provide educational services or (2) requires a BOCES to seek permission from a school district to locate one of its schools or programs in that district.

¶13 District 11 disagreed. In its cross-motion for partial summary judgment, it asserted that ERBOCES and CLLC could not locate the Academy within District 11's geographical boundaries without District 11's permission because (1) section 22-5-111(2) only addresses locating schools within any of a BOCES's member districts and not extraterritorially and (2) ERBOCES's and CLLC's operation of the Academy within District 11's boundaries and without its permission violated the principle of local control set forth in article IX, section 15 of the Colorado Constitution.

¶14 The district court ultimately granted ERBOCES's and CLLC's motion for summary judgment and denied District 11's cross-motion, concluding that the express language of section 22-5-111(2) permitted ERBOCES "to operate a school 'at any appropriate location,' whether inside or outside of a district providing funding for the facilities." *Educ. reEnvisioned BOCES v. Colo. Springs Sch. Dist. 11*, No. 20CV31562, 2021 WL 9839844, at \*5 (Dist. Ct., El Paso Cnty., Mar. 31, 2021). The court thus determined that ERBOCES and CLLC were under no legal obligation to obtain District 11's permission before operating the Academy within

its geographic boundaries and that, therefore, ERBOCES could continue to operate the Academy, through its contract with CLLC, at its current location. *Id.* at \*7.

¶15 District 11 appealed, and during the pendency of that proceeding, a separate legal entity, Orton Academy LLC, apparently replaced CLLC and contracted with ERBOCES to operate the Academy through June 30, 2025. CLLC, however, remained the party of record in the court of appeals (and it remains so here).

¶16 In a unanimous, published opinion, a division of our court of appeals reversed the district court's summary judgment ruling, concluding, in pertinent part, that section 22-5-111(2) does not allow a BOCES to open and operate schools within the geographic boundaries of nonmember school districts that do not consent. *Educ. reEnvisioned BOCES v. Colo. Springs Sch. Dist. 11*, 2022 COA 128M, ¶ 1, 524 P.3d 324, 325–26. In support of this conclusion, the division first opined that the district court's interpretation of section 22-5-111(2) did not "give effect to the qualifying language 'within or without a school district providing the money for the facilities.'" *Id.* at ¶ 11, 524 P.3d at 327 (quoting § 22-5-111(2)). In the division's view, the plain language of the phrase "'any appropriate location, whether within or without a school district providing the money for the facilities'" means "any location *in the geographic bounds of a participating member school district, whether or not that school district is contributing to the cost of the facilities.*" *Id.* at ¶ 12, 524 P.3d at 327 (quoting § 22-5-111(2)).

¶17 The division found further support for this interpretation in the BOCES Act’s statutory framework. *Id.* at ¶ 13, 524 P.3d at 327. Specifically, the division observed that section 22-5-108, C.R.S. (2023), provides a BOCES with specific, enumerated powers. *ERBOCES*, ¶ 13, 524 P.3d at 327. Although this section incorporates certain portions of section 22-32-110, C.R.S. (2023), which grants enumerated powers to individual school boards, the General Assembly did not grant all of the same powers to a BOCES. *ERBOCES*, ¶ 13, 524 P.3d at 327. In particular, the division reasoned that although the General Assembly gave to individual school boards the power “to take and hold real and personal ‘property located *within or outside the territorial limits of the district,*” that power was “withheld by omission from the BOCES Act.” *ERBOCES*, ¶ 14, 524 P.3d at 327 (quoting § 22-32-110(1)(a)) (emphasis added). Because the General Assembly had thus never granted a BOCES “unrestricted extraterritoriality,” the division refused to read into section 22-5-111(2), a provision concerning a BOCES’s “[b]uildings and facilities,” such a grant of authority. *ERBOCES*, ¶ 14, 524 P.3d at 327.

¶18 The division next opined that its interpretation of the BOCES Act made further sense when viewed alongside section 22-32-109, C.R.S. (2023), which the division erroneously believed the BOCES Act incorporated by reference. *ERBOCES*, ¶ 15, 524 P.3d at 327–28. As the division saw it, section 22-32-110(1)(b), which is incorporated by reference into the powers extended to a BOCES,

authorizes a BOCES to purchase certain real property located within or outside its territorial limits. *ERBOCES*, ¶ 15 n.2, 524 P.3d at 328 n.2. In the division’s view, however, just as the powers granted to school boards under section 22-32-110(1)(b) are limited by the duties imposed under sections 22-32-109(1)(v) and (2), which provide that an individual school board conducting an educational program outside of the district’s territorial limits is required to obtain consent of the district in which the program was to be conducted, so, too, are the powers of a BOCES limited by those duties. *ERBOCES*, ¶ 15 n.2, 524 P.3d at 328 n.2.

¶19 Lastly, the division observed that reading section 22-5-111(2) as ERBOCES and CLLC had suggested would require the division “to conclude that the General Assembly intended to grant to [a BOCES] what it withheld from individual school boards—the ability to locate schools in any district, with or without consent.” *ERBOCES*, ¶ 16, 524 P.3d at 328. Because nothing in the BOCES Act’s plain language or organizational framework indicated that this was the legislature’s intent, the division declined to reach such a conclusion. *Id.*

¶20 In light of its foregoing determinations, the division did not need to address District 11’s constitutional arguments. *Id.* at ¶ 17, 524 P.3d at 328.

¶21 The division thus reversed the district court’s order granting summary judgment to ERBOCES and CLLC and remanded the case with instructions that the district court (1) enter partial summary judgment in District 11’s favor and

(2) determine whether injunctive relief is appropriate in light of then-recent legislative enactments. *Id.* at ¶ 18, 524 P.3d at 328.

¶22 ERBOCES and CLLC petitioned for certiorari review, and we granted their petition.

¶23 During the pendency of these proceedings, the parties jointly notified us that the Academy had applied to become a District 11 authorized charter school and that District 11 had passed a resolution approving that application, subject to the negotiation of and agreement on final contract terms within ninety days of the application's approval. The parties further advised us that upon satisfaction of these conditions and the execution of a charter contract, the Academy could become a District 11 authorized charter school as early as July 1, 2024. In light of this development, we requested and received from the parties supplemental briefing as to whether District 11's approval of the Academy's charter school application rendered the issues before us moot.

## **II. Analysis**

¶24 We begin by addressing District 11's contention that the issues raised in ERBOCES's petition are moot. Concluding that they are not, we proceed to set forth the applicable standard of review and general statutory interpretation principles governing our resolution of the matters before us. We then turn to the issues on which we granted certiorari.

## A. Mootness

¶25 As an initial matter, we address and reject District 11's contention that the issues raised in ERBOCES's and CLLC's petition are moot because District 11 approved the Academy's charter school application.

¶26 We review de novo the question of whether a case is moot. *People ex. rel. Rein v. Meagher*, 2020 CO 56, ¶ 14, 465 P.3d 554, 558. "A case is moot when the relief sought, if granted, would have no practical legal effect." *State Bd. of Chiropractic Exam'rs v. Stjernholm*, 935 P.2d 959, 970 (Colo. 1997). If a case is moot, then we will decline to render an opinion on its merits. *Id.*

¶27 We have, however, recognized two exceptions to the mootness doctrine. *Id.* at 971. A court may hear an otherwise moot case if (1) the matter is capable of repetition yet evades review or (2) the case involves an issue of great public importance or a recurring constitutional violation. *Id.*

¶28 Applying these standards, we conclude that this case is not moot. Although District 11 approved the Academy's charter school application and, subject to the satisfaction of certain conditions, the Academy can become a District 11 charter school as early as July 1, 2024, to our knowledge, the charter contract has not yet been executed, and ERBOCES continues to operate the Academy as a contract school within District 11's boundaries and without District 11's consent. Accordingly, the dispute between the parties remains live, whether or not the

charter contract is ultimately signed. Specifically, if the contract is signed, then, at least until July 1, 2024, ERBOCES will be operating the Academy in a manner that District 11 perceives to be contrary to law. If, conversely, the contract is not signed, then ERBOCES would be contractually obligated to operate the Academy as a contract school through at least June 30, 2025, again in a manner that District 11 perceives to be contrary to law.

¶29 Even if this case were moot, however, in our view, the second mootness exception noted above applies here. Specifically, the question of whether a BOCES can locate a school extraterritorially without a nonmember school district's consent is a matter of great public importance, and ERBOCES may attempt to exercise this purported authority on other occasions (as evidenced by ERBOCES's assertion that it "plans to continue to open schools like Orton Academy moving forward").

¶30 Accordingly, we will proceed to address the issues raised in ERBOCES's and CLLC's certiorari petition.

## **B. Standard of Review and Principles of Statutory Construction**

¶31 We review issues of statutory interpretation de novo. *Colo. State Bd. of Educ. v. Brannberg*, 2023 CO 11, ¶ 15, 525 P.3d 290, 293.

¶32 In interpreting a statute, we seek to ascertain and effectuate the legislature's intent. *Id.* To do so, we construe words and phrases in accordance with their plain

and ordinary meanings, and we look to “the entire statutory scheme to give consistent, harmonious, and sensible effect to all of its parts.” *Id.* In addition, we must avoid constructions that would render any words or phrases superfluous or lead to illogical or absurd results. *Id.* And we must respect the legislature’s choice of language. *Id.* Accordingly, we will not add words to a statute or subtract words from it. *Id.*

¶33 If a statute is unambiguous, then we will apply it as written, and we need not resort to other tools of statutory construction. *Id.* at ¶ 16, 525 P.3d at 293. If the statute is ambiguous, however, then we may consider “the legislature’s intent, the circumstances surrounding the statute’s adoption, and the possible consequences of different interpretations to determine the statute’s proper construction.” *Elder v. Williams*, 2020 CO 88, ¶ 18, 477 P.3d 694, 698. “A statute is ambiguous when it is reasonably susceptible of multiple interpretations.” *Id.*

### **C. Section 22-5-111(2) of the BOCES Act**

¶34 Section 22-5-111(2), which is headed “Buildings and facilities,” provides, in pertinent part:

The boards of education of *the school districts participating in a cooperative service agreement* may jointly, separately, or, after approval of each participating board of education, as a board of cooperative services construct, purchase, or lease sites, buildings, and equipment for the purpose of providing the facilities necessary for the operation of a cooperative service program *at any appropriate location, whether within or without a school district providing the money for the facilities.*

(Emphases added.)

¶35 ERBOCES and CLLC assert that the division erred in concluding that the plain language of section 22-5-111(2) does not provide a BOCES with the authority to locate a school within the geographic boundaries of a nonmember school district without that district's permission. Specifically, they maintain that the phrase "at any appropriate location" is clear and unambiguous and, thus, a BOCES is not limited to the member school districts' boundaries when determining where to locate its facilities.

¶36 District 11, in contrast, contends that section 22-5-111(2) does not grant a BOCES extraterritorial power. Rather, in District 11's view, when read as a whole, section 22-5-111(2) allows a BOCES to locate a school within any *member* district, regardless of whether *that* district paid for the facility. District 11 asserts that interpreting section 22-5-111(2) as ERBOCES and CLLC suggest would render the phrase "whether within or without a school district providing the money for the facilities" superfluous.

¶37 It is this interpretive dispute that frames the issue before us, and we begin, as we must, with the language of the statute.

¶38 As ERBOCES and CLLC contend, section 22-5-111(2) includes the phrase "at any appropriate location." We disagree, however, that the use of this phrase

means that a BOCES may locate a school in *any* district, regardless of whether that district is a member of the BOCES or has consented to such a placement.

¶39 As an initial matter, we note that nothing in section 22-5-111(2) expressly allows a BOCES to locate and operate a school extraterritorially without the consent of the district in which the school is to be located. This is telling because had the legislature intended to authorize a BOCES to do so, it knew how to say that. *See, e.g.,* § 22-32-109(1)(v) (authorizing a school district to cause an educational program to be maintained and operated within, or, if the individual school board makes a specific determination that such an operation is necessary for the efficient operation of the district, outside the district's territorial limits).

¶40 In addition, as its title suggests, section 22-5-111 concerns a BOCES's ability to procure and finance the buildings and facilities needed to operate a BOCES program. Subsection (1) thus authorizes a BOCES to contract for bonded indebtedness for the purpose of purchasing sites and constructing and equipping buildings needed to operate such a program. § 22-5-111(1). Subsection (2) authorizes member districts—jointly, separately, or, in appropriate circumstances, as a BOCES—to construct, purchase, or lease sites, buildings, and equipment necessary to operate the program. § 22-5-111(2). And subsection (3) allows a BOCES to borrow money to purchase sites and erect buildings as needed. § 22-5-111(3). Reading these provisions together, we perceive no basis to conclude

that section 22-5-111, a provision related to financing necessary buildings and facilities, somehow granted to a BOCES sweeping authority to locate a school in a nonmember school district without that district's consent.

¶41 This is especially true given that section 22-5-108 is the provision in the BOCES Act that enumerates the powers granted to a BOCES, and ERBOCES and CLLC make no argument that this provision grants them the broad authority that they assert. Nor could they. Although section 22-5-108(1)(a) allows a BOCES to purchase property outside its territorial limits, that provision has no statutory language authorizing a BOCES to operate a school within a nonmember school district's geographic limits, whether with or without that district's consent. *See* § 22-5-108(1)(a) (incorporating by reference the authority granted to school districts in section 22-32-110(1)(b) to purchase property outside the district's territorial limits, but saying nothing regarding a BOCES's authority to operate a program extraterritorially without consent).

¶42 The plain language of section 22-5-111(2), even when read independently of the other subsections in that statute, mandates the same result. As noted above, that subsection begins by authorizing a BOCES's member districts, either jointly, separately, or as a BOCES, to construct, purchase, or lease sites, buildings, and equipment to operate a BOCES program. *Id.* It is against this background that one must read the next phrase, "at any appropriate location, whether within or

without a school district providing the money for the facilities.” *Id.* Thus, given that the initial phrase in the statute concerns a BOCES’s member districts and authorizes fewer than all such districts to participate in the construction, purchase, or leasing of buildings, facilities, and equipment, we conclude that the latter part of the very same sentence, which allows a BOCES to place a program “at any appropriate location, whether within or without a school district providing the money for the facilities,” plainly means that a BOCES may locate a facility in any member district, whether or not that district provided money for the facility.

¶43 As District 11 asserts, to read the statutory language as ERBOCES and CLLC suggest would render the language “whether within or without a school district providing the money for the facilities” superfluous. This is so because had the legislature intended “at any appropriate location” to include locations outside of a BOCES’s member districts, then it would have been unnecessary to say anything more than “at any appropriate location.” Because we must interpret the statute in a way that gives effect to all of its parts, *Brannberg*, ¶ 15, 525 P.3d at 293, we cannot accept ERBOCES’s and CLLC’s construction.

¶44 In reaching this conclusion, we are unpersuaded by ERBOCES’s and CLLC’s argument that the General Assembly’s use of the word “a” in section 22-5-111(2) supports its claims. Specifically, ERBOCES and CLLC appear to argue that the legislature intended for a BOCES to be able to locate a school in any school district

because the phrase “whether within or without *a* school district providing the money for the facilities” must be read to mean “whether within or without a school district, *member or otherwise*, providing the money for the facilities.” ERBOCES and CLLC assert that had the General Assembly meant to limit “any appropriate location” to a member school district, it would have said “whether within or without *the* school district providing the money for the facilities.” As noted above, however, we read the first portion of section 22-5-111(2)—“The boards of education of the school districts participating in a cooperative service agreement”—to frame and limit the remaining portions of that sentence.

¶45 Moreover, although we agree with ERBOCES and CLLC that the division below erred in stating that a BOCES’s authority to purchase property extraterritorially is limited by the duties set forth in sections 22-32-109(1)(v) and (2) (because those sections were not actually incorporated into the BOCES Act), this does not alter our conclusion. The fact that these duties were not incorporated by reference into the BOCES Act does not mean that a BOCES has unrestricted extraterritorial powers. Indeed, in our view, it would be illogical or absurd to say that an individual school district cannot locate a school extraterritorially without written consent but that a BOCES, and only a BOCES, can do so. *See Brannberg*, ¶ 15, 525 P.3d at 293 (noting that we must avoid statutory constructions that lead

to illogical or absurd results). ERBOCES and CLLC have provided no persuasive justification for such differential treatment, and we can discern none.

¶46 To conclude otherwise and to allow a BOCES to locate a school in any district, anywhere, would also provide a mechanism for evading the comprehensive statutory scheme that the General Assembly enacted in the Charter Schools Act. *See* §§ 22-30.5-101 to -704, C.R.S. (2023). As we have previously observed, the Charter Schools Act sets forth procedures whereby “members of a community can come together to build and operate a public school.” *Brannberg*, ¶ 20, 525 P.3d at 294 (citing § 22-30.5-102, C.R.S. (2023)). The Act requires individuals or groups wishing to create a charter school to submit a charter school application to the local school board of the district in which they intend to open the school. *Id.* at ¶ 21, 525 P.3d at 294 (citing §§ 22-30.5-106(1) and -107, C.R.S. (2023)). This application comprises a proposed agreement that includes, among other things, “descriptions of the proposed school’s educational program, governance, and operation.” *Id.* (citing § 22-30.5-106(1)). After the application is submitted, the local school board “reviews the application, holds public hearings, and evaluates the merits of the proposed charter school.” *Id.* at ¶ 22, 525 P.3d at 294 (citing § 22-30.5-107(2)). If the school board approves the application, then that application “serve[s] as the basis for a contract between’ the charter school and local board.” *Id.* (alteration in original) (quoting § 22-30.5-105(1)(a), C.R.S. (2023)).

If, however, the board denies the charter school application, then the applicant may obtain review of that decision pursuant to the appeal and review process outlined in section 22-30.5-108, C.R.S. (2023). *Id.* (citing § 22-30.5-107(3)).

¶47 Allowing a BOCES to locate a school extraterritorially without the individual school board's consent or without following the detailed procedures set forth above would thus create an easy end run around the Charter Schools Act. We, however, cannot conclude that the General Assembly intended the BOCES Act to allow for such a ready means of evading the legislature's own statutory enactment without a clearer expression of such an intent in the BOCES Act.

¶48 For these reasons, we conclude that under the plain and unambiguous language of section 22-5-111(2), a BOCES may not locate a school within the geographic boundaries of a nonmember school district without its consent.

¶49 Even were section 22-5-111(2)'s language ambiguous, however, we would reach the same conclusion because nothing in the legislative history of the BOCES Act supports ERBOCES's and CLLC's assertion that the General Assembly intended to allow a BOCES to operate extraterritorial schools without the consent of the nonmember school district in which the schools would be placed.

¶50 On this point, we disagree with ERBOCES and CLLC that section 22-5-111(4), C.R.S. (2022), which was enacted in June 2021 and ultimately repealed in July 2023, confirmed that a BOCES could locate a school in a nonmember district

without its consent. Section 22-5-111(4), as initially enacted, provided that, for the 2021-22 school year, a BOCES must obtain written consent before opening an extraterritorial school. Ch. 222, sec. 16, § 22-5-111(4), 2021 Colo. Sess. Laws 1170, 1176. Notwithstanding ERBOCES's and CLLC's assertions to the contrary, the legislative history of this provision does not reveal a legislative intent to change prior law. Rather, the history establishes that the General Assembly enacted this provision as "a one-year moratorium" for a BOCES opening new brick-and-mortar schools in a district in which the BOCES does not reside, pending the resolution of the issues now before us. Hearing on S.B. 21-268 before the S. Educ. Comm., 73d Gen. Assemb., 1st Sess. (May 13, 2021) (statement of Sen. Lundeen). Indeed, one of the bill sponsors explained during a committee meeting that because students were currently being served at the Academy, a moratorium would allow the legislature time to "sort things out." *Id.*

¶51 Consistent with the foregoing, approximately one year after the General Assembly enacted the above-described amendment, it extended the moratorium until the court of appeals division issued its opinion in this case because the legislature anticipated that that opinion would answer whether a BOCES could locate a school extraterritorially without the consent of the district in which the school was to be located. Ch. 237, sec. 4, § 22-5-111(4), 2022 Colo. Sess. Laws 1743, 1745-46; Hearing on H.B. 22-1390 before the H. Educ. Comm., 73d Gen. Assemb.,

2d Sess. (Apr. 21, 2022) (statements of Rep. McCluskie); Hearing on H.B. 22-1390 before the S. Educ. Comm., 73d Gen. Assemb., 2d Sess. (Apr. 28, 2022) (statement of Sen. Zenzinger).

¶52 Accordingly, we do not agree that the legislative history of section 22-5-111(4), which placed a moratorium on BOCES's locating schools extraterritorially and then repealed that provision, supports ERBOCES's and CLLC's assertion that a BOCES has the authority to operate schools within the geographic boundaries of a nonmember district without that district's consent. To the contrary, the legislative history shows no more than the General Assembly's desire to let this open legal question play out in this case.

¶53 For these reasons, we conclude that the plain language of section 22-5-111(2), when read in context, does not permit a BOCES to locate a contract school within a nonmember school district without that district's consent.

#### **D. Local Control Provision**

¶54 In light of our foregoing determination, we need not reach District 11's argument that a BOCES's placement of a school in a nonmember school district without that district's consent violates the principle of local control set forth in article IX, section 15 of the Colorado Constitution. *See Developmental Pathways v. Ritter*, 178 P.3d 524, 535 (Colo. 2008) ("Perhaps most importantly, the principle of judicial restraint requires us to 'avoid reaching constitutional questions in advance

of the necessity of deciding them.'") (quoting *Lyng v. Nw. Indian Cemetery Protective Ass'n*, 485 U.S. 439, 445 (1988)).

### **III. Conclusion**

¶55 For these reasons, we conclude that the division correctly determined that section 22-5-111(2) prohibits a BOCES from locating a school within the geographic boundaries of a nonmember school district without its consent.

¶56 Accordingly, we affirm the judgment of the division below.