

Board File: _____

OPTION CERTIFICATE PROGRAM

A. Board Declarations

1. Douglas County School District seeks to establish an education system within the District that maximizes choice, celebrates freedom, improves quality through competition, promotes excellence, and recognizes that the interests of students and parents are paramount.

2. DCSD provides school choice to students and parents through numerous programs, including open enrollment, option schools, magnet schools, charter schools, on-line programs, home-school programs and partnerships, and contract schools. The Option Certificate Program (“OCP”) is another way in which DCSD seeks to maximize school choice for students and parents.

3. The purposes of the Option Certificate Program are to provide greater educational choice for students and parents, improve educational performance through competition, and obtain a high return on investment of DCSD educational spending.

4. The Board of Education finds that the OCP does not violate Section 7 of Article IX, and that it fulfills the local control principle of Section 15 of Article IX, of the Colorado Constitution.

5. The Board of Education further finds that the OCP is consistent with the legal principles contained in *Zelman v. Simmons-Harris*, 536 U.S. 639 (2002); *Owens v. Colorado Congress of Parents, Teachers and Students*, 92 P.3d 933 (Colo. 2004); and *Americans United for Separation of Church and State Fund, Inc. v. State of Colorado*, 648 P.2d 1072 (Colo. 1982).

B. Definitions

1. “Board of Education” or “Board” means the Board of Education for Douglas County School District Re-1.

2. “District” or “DCSD” means Douglas County School District Re-1.

3. An “Option Certificate” is a check, payable by the District to the parent of an OCP student that can be used exclusively pursuant to the terms of the OCP for the sole purpose of paying the educational costs, including tuition, at an OCP nonpublic school.

4. “Option Certificate Program” (also referred to as “OCP”) means the District’s educational program described in this policy.

5. “OCP nonpublic school” means a nonpublic school that meets the standards set forth in subsection E.3 and participates in the OCP. It may be religious or non-religious. An “OCP nonpublic school” shall not include on-line education programs as defined by Colo. Rev. Stat. § 22-30.7-102 or nonpublic home-based educational program as defined by Colo. Rev. Stat. § 22-33-104.5.

6. “OCP Office” is that part of District administration created by this policy and charged with administering the OCP.

7. “OCP student” means a child of school age who meets the standards set forth in subpart D and participates in the OCP.

8. “Parent” means a child’s parent(s) or legal guardian(s).

C. Option Certificate Program and Office Established

1. The Board hereby establishes the Option Certificate Program as another educational option offered by DCSD. The OCP Office is also created to administer the OCP. The Superintendent shall appoint those persons necessary to carry out the functions of the OCP Office.

2. The Board directs the Superintendent and OCP Office to make the OCP operational for the 2011-12 school year.

3. On behalf of the District, the OCP Office shall pay to the parent of an OCP student one-quarter of the value of an Option Certificate in September, November, February, and May, subject to adjustments as described herein. The OCP Office shall calculate and make adjustments to OCP payments to ensure that each parent of an OCP student is receiving the appropriate amount based upon the OCP student’s actual enrollment in the OCP, and that payments are directed to the appropriate OCP nonpublic school(s) as chosen by the parent, including making *pro rata* payments as necessary.

4. To make these payments, the OCP Office shall issue, on behalf of the District, an Option Certificate in the name of the OCP student’s parent. The OCP Office shall send the check to the OCP nonpublic school in which the OCP student is enrolled, and the parent shall restrictively endorse the Option Certificate for the sole purpose of paying for educational services at the OCP nonpublic school.

5. The OCP Office may delay or withhold payments of an Option Certificate if it determines that either (i) the OCP student or his/her parent or (ii) the OCP nonpublic school has violated a material provision of the OCP. This decision may be appealed pursuant to the OCP appeal process described in subsection C.8, but the Office has the discretion to delay or withhold payments pending resolution on appeal.

6. An Option Certificate shall be worth the lesser of:

a. The actual educational cost per pupil at the OCP nonpublic school, or

b. Seventy-five percent of per pupil revenue, as defined by Colo. Rev. Stat. § 22-54-103(9.3) (“PPR”), if the OCP student is enrolled in grades one through twelve, or 35% of PPR if the student is enrolled in kindergarten.

7. Each OCP nonpublic school shall submit to the OCP Office on an annual basis the financial information necessary to permit the calculation of the “actual educational cost per

pupil” for all the students at the OCP nonpublic school, both OCP and non-OCP students. OCP nonpublic schools shall submit this information in a format determined by the OCP Office, with supporting documentation. The “actual educational cost per pupil” for all OCP nonpublic schools shall be made available for review by parents and the public in the clearinghouse of information prescribed by subsection E.3.k of this policy.

8. *Appeal process.* A student, parent, or nonpublic school may appeal a decision of the OCP Office as provided herein. The student, parent, or school must notify the Office of the intention to appeal within 14 days of receipt of the decision at issue. Pursuant to procedures drafted by the Office but ultimately approved by the Board of Education, the student, parent, or school may appeal the decision, first, to the Superintendent or his/her designee, and then second, to the Board of Education, whose decision shall be final and not subject to any further appeals.

9. *Annual report.* At least annually, the OCP Office shall give a report to the Board on the OCP, including but not limited to (i) a comparison of student performance between OCP students and non-OCP District students, (ii) the financial effect of the OCP on the District, and (iii) the numbers of students and nonpublic schools participating in the OCP.

D. Participation by Students and Families

1. To enroll in the District’s Option Certificate Program, a student or his/her parent must complete the informational paperwork required by the OCP Office. A student shall be deemed part of the District’s “pupil enrollment” for purposes of Colo. Rev. Stat. § 22-54-103(10), if that student remains enrolled in the OCP as of October 1, or the school day nearest that date. The OCP Office shall verify that each OCP student is properly enrolled and participating in the OCP as of that date. With regards to enrolling in the OCP, the District’s open enrollment policies shall be consistent with Colo. Rev. Stat. § 22-36-101 *et seq.*

2. A student may disenroll from the OCP by completing the necessary paperwork or by not remaining enrolled and/or actively participating in an OCP nonpublic school. If an OCP student fails to attend school at least 50% of school days in any 60 calendar-day period, then that student shall be deemed to no longer be “actively participating” in the OCP and thus shall become automatically disenrolled from the OCP.

3. No student shall be eligible to participate in the OCP unless that student’s parent signs an OCP Contract describing the rights and obligations of the parent and student, on the one hand, and the District, on the other. The form of this Contract shall be prepared and updated from time to time by the OCP Office. The Contract shall contain at least the following terms:

a. *Student attendance* (as described in subsection D.2). If an OCP student fails to attend school at least 50% of school days in any 60 calendar-day period, then that student shall be deemed to no longer be “actively participating” in the OCP and thus shall become automatically disenrolled from the OCP.

b. *Pro rata payment of funds.* If the OCP student moves from one OCP nonpublic school to any other school or educational program, then the parent agrees that OCP nonpublic school is entitled to only those funds due for the period in which the OCP

student was enrolled. Payments shall be made and adjusted on a *pro rata* basis. See subsection C.3.

c. *Restricted endorsement.* The parent of the OCP student shall agree to restrictively endorse the Option Certificate for the sole purpose of paying the educational costs, including tuition, at an OCP nonpublic school.

d. *Option to disenroll at any time.* An OCP student may disenroll from an OCP nonpublic school or from the OCP at any time without penalty.

e. *Involuntary disenrollment.* The District, through the OCP Office, may disenroll an OCP student from the OCP if it determines, by a preponderance of the evidence, that the student or his/her parent has violated a material provision of the OCP or the OCP contract between the parent and the District described by this subsection D.3.

f. *No liability to District.* The parent of an OCP student shall release the District from any liability arising from participation in the OCP, including liability arising from any conduct by or occurrence at the OCP nonpublic school.

4. Once a student has qualified to participate in the OCP, that student shall remain eligible to participate until completion of twelfth grade or disenrollment from the OCP, either voluntarily (*e.g.*, by withdrawal from OCP) or involuntarily (*e.g.*, for violation of OCP policy, *see* subsection D.3.e).

E. Participation by Nonpublic Schools

1. Nonpublic schools located within the boundaries of Douglas County School District may apply to participate in the OCP.

2. The OCP Office shall determine whether a nonpublic school qualifies to participate in the OCP, subject to the OCP appeal process described in subsection C.8. A nonpublic school may be denied participation only if (i) its application is not complete by the deadline or (ii) it fails to demonstrate that it meets the OCP standards for participation, as described in subsection E.3. The OCP Office must describe in writing the specific reason(s) for denying an application.

3. To be eligible to participate in the OCP, a nonpublic school must demonstrate that it meets the following standards. The school must provide the necessary information as part of its initial OCP application and all renewal applications.

a. *Quality educational program.* A nonpublic school must demonstrate that its educational program fulfills the DCSD Board of Education End Statements. One component of a school's educational program must include how the school intervenes to improve a student's performance to ensure that all students are making satisfactory progress towards achieving the End Statements. Another component is showing how the school serves the educational needs of exceptional children, as defined by Colo. Rev. Stat. § 22-20-103(12).

b. *Financial stability.* To demonstrate financial stability, a nonpublic school must disclose the school's financial history, including at minimum the past three years of audited financial statements; evidence of bank accounts for use solely by the school; financial policies; documentation showing adequate insurance policies; and any other financial documents the OCP Office reasonably determines are relevant to this inquiry. Nonpublic schools that have been operating for fewer than three years at the time of filing the application ("new school applicants") must demonstrate the ability to indemnify the District – through the purchase of a surety bond or any other means the OCP Office deems satisfactory – for any loss to the District if the nonpublic school ceases operations. New school applicants must also provide evidence that their operations, or plan for operations, are economically sound, including providing budgets, financial policies, insurance policies, and contracts regarding financial services.

c. *Safety.* A nonpublic school must demonstrate that its facilities are safe and comply with building codes and that it has a safe school plan consistent with Colo. Rev. Stat. § 22-32-109.1(2)(a).

d. *Employees.* A nonpublic school must provide a copy of its employment policies; a sample copy of its employee contract, if any; a list of its employees as of the date of its application, including their qualifications for the positions they hold; job descriptions for all positions; evidence of background checks on all employees; and sample application materials used for hiring employees. A school must have sound employment policies, including conducting thorough criminal background checks to ensure school employees are safe to work with children.

e. *Facilities.* A nonpublic school must provide a description and map of the building(s) and land used for school purposes; if leased, a copy of the lease agreement; and if owned, a copy of the documents demonstrating ownership, including financial documents related to any purchase (such as mortgage documents).

f. *Nondiscrimination.* A nonpublic school is prohibited from discriminating in its employment or enrollment decisions on any basis protected under federal or state law, except that religious nonpublic schools may make employment (but not enrollment) decisions based upon their religious beliefs, so long as (i) the relevant religious beliefs are clearly articulated in the school's organizational documents, (ii) those beliefs and the implications of those beliefs on employment decisions are disclosed to the District in the school's application(s), and (iii) such employment decisions are not otherwise forbidden by law.

g. *Student assessments.* A nonpublic school must describe how it assesses student performance. The school must use assessments that are both internal and external. At least one of the assessments must be able to track longitudinal growth for individual students. A school must agree to administer, at the school's expense, statewide (or comparable) assessments to the OCP students enrolled at the school. The OCP Office may determine what statewide (or comparable) assessments are appropriate, but it must do so in such a way that the District may compare student performance for OCP students with other District students in other schools or programs.

h. *Enrollment.* A nonpublic school must provide its enrollment policies, including any enrollment agreement the school requires students or parents sign. If the school

requires different enrollment agreements for OCP and non-OCP families, then both must be provided. As described above in subsection E.3.f, to be eligible to participate in the OCP, a nonpublic school must not discriminate when enrolling students on any basis protected under federal or state law. The school must identify its enrollment policies that verify the same. To be eligible to participate in the OCP, a nonpublic school must agree that it will enroll all OCP students who apply, without regard for any admission requirements that the school may enforce against non-OCP students. However, nothing herein shall require an OCP nonpublic school to enroll OCP students if doing so would (i) exceed class size limitations actually enforced by the school against all students, (ii) exceed the capacity of the school's facility, or (iii) significantly impede the success of a core component of the school's educational program.

i. *Student conduct and discipline policies.* A nonpublic school must provide its policies on student conduct and discipline, including its policies on suspension and expulsion. To be eligible to participate in the OCP, a nonpublic school's policies and procedures on discipline, suspension, and expulsion need not replicate the requirements for a non-OCP District school, *cf.* Colo. Rev. Stat. §§ 22-33-105 & -106, but they must provide for an environment where *all* students can gain the benefit of the school's educational program without harassment, disruption, or bullying. Further, all student discipline procedures must be appropriately open and fair, including a multi-level appeal process.

j. *Governance and operations.* A nonpublic school must provide a description of its governance and operations, including identifying the members and qualifications of its governing board and its senior administration.

k. *School information.* A nonpublic school must describe the school's mission, educational goals, history, organizational structure, curriculum, and educational philosophy as well as provide information to calculate the actual educational cost per pupil, as described by subsection C.7 of this policy. The OCP Office may prescribe the format in which this information is provided such that the Office may readily compile the information on a website or other information clearinghouse so that parents and the public may be able to easily compare one OCP nonpublic school to another.

4. *Appeal process.* A nonpublic school whose application (initial or renewal) is denied by the OCP Office may appeal that decision as provided in the appeal process described in subsection C.8.

5. *Pro rata sharing of funds.* As necessary, OCP funds shall be shared on a *pro rata* basis. Thus, an OCP nonpublic school is entitled to receive OCP funds due to the parent's choice of that school only for that period when an OCP student was actually enrolled and receiving educational services from the school. OCP nonpublic schools shall agree that adjustments shall be made to quarterly payments in order to account for student enrollments and disenrollments during the school year. OCP nonpublic schools shall further agree that under certain circumstances they may be required to repay the District for overpayments.

6. *Term of participation.* The District, through the OCP Office, shall grant a nonpublic school the privilege of participating in the OCP for a term of one to five years. Unless renewed, participation in the OCP shall automatically expire at the end of the term.

7. *Contract.* To be eligible to participate in the OCP, a nonpublic school must sign an OCP Contract with the District describing the rights and obligations of the school and the District. The form of this Contract shall be prepared and updated from time to time by the OCP Office. The Contract shall contain at least the following:

- a. the term of participation granted to the nonpublic school,
- b. provisions releasing the District from liability and promising to indemnify the District for any claims arising out of the OCP,
- c. the information the nonpublic school must regularly provide to the District, such as student performance and financial statements, and the schedule for providing that information,
- d. a provision recognizing that the school is a separate entity from the District, and therefore, any debt or financial obligations of the nonpublic school shall not constitute debt or financial obligations of the District unless the District specifically assumes such obligations in writing, and
- e. that an OCP student may disenroll from the nonpublic school at any time without penalty.

8. *Termination from the OCP.* The District, through the OCP Office, may terminate a nonpublic school's participation in the OCP if it determines, by a preponderance of the evidence, that the nonpublic school has violated a material provision of the OCP or the OCP contract between the school and the District. This decision may be appealed pursuant to the OCP appeal process described in subsection C.8, but the Office has the discretion to include or exclude the nonpublic school from the OCP pending resolution on appeal.