COLORADO
Department of Education

August 13, 2026

Peter Hilts, Superintendent
District 49
10850 East Woodmen Road
Peyton, CO 80831
Via: philts@d49.org

Ken Witt, Executive Director
Education ReEnvisioned BOCES
430 Beacon Lite Rd., Suite 150
Monument, CO 80132
Via: ken@edreenvisioned.org

Re: Potential Dissolution of ERBOCES

Dear Mr. Witt and Superintendent Hilts,

I'm writing to follow up on last week's letter, with several matters of legal compliance to address.

## Dissolution

Thank you for passing along the Memorandum of Understanding (MOU) between Education ReEnvisioned BOCES and Pikes Peak State College. We understand that Pikes Peak State College intends to remain a member of ERBOCES through summer 2027, providing the one year's notice contemplated by the MOU.

However, the MOU raises at least one question that must be answered before the Department can recognize ERBOCES's continued validity as a BOCES. The MOU appears to be the instrument through which Pikes Peak State College joined ERBOCES in the first place. Yet it is signed by the president of PPSC, not its board chair—and neither the "whereas" clauses nor any other statement in the MOU describes the board approval required by § 22-5-104(1) and (3), C.R.S. By law, the decision to join a BOCES must be made by the governing board of an institution of higher education and cannot be delegated to the executive officers of the institution.

We ask that you provide documentation showing that Pikes Peak State College has validly acted to join ERBOCES. And we ask that you do so **no later than Tuesday, August 18, 2026**, so that we can share this information with the State Board at this month's meeting and consider whether to pursue legal remedies to compel ERBOCES's closure in the event such documentation cannot be produced.

If your search leads you to the determination that Pikes Peak State College has *not* validly acted to join ERBOCES, we ask that you proceed immediately with the dissolution plans and communications to families described in our letter to you dated August 7, 2026.

## Board Composition

As you know, because the Department raised this matter in its motion to dismiss your recent lawsuit against us, the ERBOCES board of directors has not historically been validly constituted.

By law, a BOCES's board must be comprised of the board members or chief executives of the BOCES's members. *See* § 22-5-104(2), C.R.S. It is not sufficient to be a representative designated by the BOCES members. Nor may the public-at-large members replace or serve in lieu of the representatives from BOCES members.

As near as we can tell, the ERBOCES board was not validly constituted, in compliance with these laws, for quite some time. It appears as a result that all of ERBOCES's board actions—for several years, possibly over a decade—are *ultra vires* and void.

We ask that you provide documentation showing the proper constitution of the ERBOCES board **no later than Tuesday, August 18, 2026**, so that so that we can share this information with the State Board at this month's meeting and consider whether to pursue legal remedies to set aside ERBOCES's board actions in the event such documentation cannot be produced.

Please note that, pursuant to ECEA Rule 3.01(1)(f), ERBOCES's eligibility to serve as an administrative unit depends upon valid board governance. If ERBOCES cannot properly constitute its board, the Department will be compelled to revoke the BOCES's approval to provide a special education program to its students.

If your search leads you to the determination that ERBOCES's board is not validly constituted, we again ask that you proceed immediately with the dissolution plans and communications to families described in our letter to you dated August 7, 2026.

## LEA Status

The Department is beginning a review of all state and federal funding programs in which ERBOCES currently participates directly. By law, a BOCES may participate in such programs only if (1) the program-specific statute allows it, or (2) the BOCES is designated to participate on behalf of at least two school district members. *See* § 22-5-114.5(2)-(3), C.R.S. Because ERBOCES no longer has two school district members, the second option is categorically off the table, and the BOCES may continue to participate only when the program-specific statute allows such eligibility.

We will inform you promptly if we discover any funding that must be terminated following this review.

## Unlawful Expenditures & DEMAND FOR PAYMENT

As we understand it, ERBOCES recently modified its loan to Merit Academy to remove the forgiveness clauses that were apparently contained within the loan instrument.

This does not alleviate our concerns. As you know, our letter to you dated August 7, 2026, took issue with the very existence of this loan, not with its forgiveness structure. We are unaware of any statutory authority for such an intergovernmental loan and see no basis for concluding that a loan for the benefit of another district's constituents can plausibly be considered a reasonable and necessary expense of the BOCES. In the absence of any statutory authority for this expenditure, it is *ultra vires* and invalid.

We ask that you provide documentation showing the legal authority to extend this loan **no later than Tuesday, August 18, 2026**, so that we can share this information with the State Board at this month's meeting and consider whether to pursue legal remedies to declare the loan void and to compel ERBOCES to reimburse the state for the unlawful expenditure of public funds originating from state appropriations.

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**Unlawful Programs &**
**DEMAND FOR PAYMENT**

As we understand it, the district court this week declared invalid Pueblo District 70's action to allow Riverstone Academy to operate within its borders. Because that action was null and void, ERBOCES was never authorized to submit the pupils for October Count; the total program funds received by ERBOCES, through District 49, attributable to those pupils was an overpayment.

It will be some time before the regular per pupil audits for 2025/26 are completed. But in the meantime, we know that CDE must assert overpayments on the basis of Riverstone Academy's entire pupil enrollment. We will notify you shortly regarding the amount owed.

We ask that you commit to provide payment **no later than Tuesday, August 18, 2026**, so that the State Board can be advised at its monthly board meeting on legal remedies in the absence of payment. If you dispute the amount due, please provide a full explanation of your position, including documentary evidence to support your position. In the event payment is not made, CDE will recoup the funds by offsetting the amount payable to District 49 each month under § 22-54-115, C.R.S.

Additionally, Liz Wilson at the Pro-Colorado Education Project has identified $781,083.35 in payments made by ERBOCES to Resurrection Christian School over the past school year. CDE is concerned that ERBOCES is direct-funding the tuition of students enrolled in a private school. However, the Department was unable to find a reference to this entity in the records for your 2025/26 public school finance audit. **No later than Tuesday, August 18, 2026**, we ask that you provide an explanation for these payments, including the underlying documentation, so that the Department can evaluate their legality. This documentation should show both the legal authority to extend payment to this school and the legal authority for ERBOCES to operate within the territory of the relevant school district. We recognize the timing of this request is unusual from the Department. However, given the current circumstances, we believe it is necessary to act immediately on this issue.

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Sincerely,



Dr. Susana Córdova
Commissioner
Colorado Department of Education