The summaries of the Colorado Court of Appeals published opinions constitute no part of the opinion of the division but have been prepared by the division for the convenience of the reader. The summaries may not be cited or relied upon as they are not the official language of the division. Any discrepancy between the language in the summary and in the opinion should be resolved in favor of the language in the opinion.

SUMMARY
November 3, 2019

2022COA128

No. 21CA0708, *Education ReEnvisioned v. Colo. Sprgs School* — Education — Boards of Cooperative Services Act of 1965 — BOCES — Buildings and Facilities

A division of the court of appeals interprets section 22-5-111(2), C.R.S. 2022, of the Boards of Cooperative Services Act of 1965 (the BOCES Act). The division concludes that under a plain reading of the section, the General Assembly did not grant BOCES extraterritorial authority and therefore BOCES cannot locate schools in nonmember school districts without those districts' permission.

COLORADO COURT OF APPEALS **2022COA128**

Court of Appeals No. 21CA0708
El Paso County District Court No. 20CV31562
Honorable Laura N. Findorff, Judge

Education ReEnvisioned BOCES,

Plaintiff-Appellee,

v.

Colorado Literacy and Learning Center,

Third-Party Defendant-Appellee,

and

Colorado Springs School District 11,

Defendant-Appellant.

JUDGMENT REVERSED AND CASE
REMANDED WITH DIRECTIONS

Division VII
Opinion by JUDGE PAWAR
Harris and Gomez, JJ., concur

Announced November 3, 2022

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Colorado Association of School Boards, and Colorado Association of School Executives

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¶ 1 In this action under the Boards of Cooperative Services Act of 1965 (the BOCES Act), we are asked to decide whether the General Assembly intended to allow school district cooperatives to open and operate schools within the geographic boundaries of nonmember school districts that do not consent. We conclude section 22-5-111(2), C.R.S. 2022, does not grant such extraterritorial authority and, therefore, we reverse the district court's order.

I. Background

¶ 2 The BOCES Act was "enacted for the general improvement and expansion of educational services of the public schools in the state of Colorado." § 22-5-102, C.R.S. 2022. It enables two or more school districts to cooperate in providing services authorized by law through the creation of "boards of cooperative services" (BOCES). *Id.* Finally, it sets forth the BOCES' powers and duties.

¶ 3 Plaintiff, Education ReEnvisioned BOCES (Education ReEnvisioned), is such a school district cooperative. At the time the dispute in this case arose, its members were Falcon School District 49, Creede Consolidated School District 1, Durango School District 9-R, and Pikes Peak Community College. Defendant and third-

party plaintiff, Colorado Springs School District 11 (District 11), is not a member of Education ReEnvisioned.

¶ 4 Education ReEnvisioned and third-party defendant, Colorado Literacy and Learning Center (the Learning Center), entered into an agreement for the Learning Center to operate Orton Academy, a contract school serving students with reading challenges. They located Orton Academy within the geographic boundaries allocated to District 11, without seeking or obtaining permission from the District 11 school board.

¶ 5 District 11 objected, and Education ReEnvisioned filed a complaint seeking a declaratory judgment that it could continue operating Orton Academy at its current location without District 11's permission. District 11 filed a counterclaim against Education ReEnvisioned and a third-party claim against the Learning Center, seeking an opposite declaratory judgment and an injunction against further operation of Orton Academy within its boundaries. Since there were no disputed facts, the parties filed cross-motions for summary judgment on their declaratory judgment claims.

¶ 6 The district court concluded that the language of section 22-5-111(2) then in effect gave Education ReEnvisioned and the Learning

Center the authority to locate Orton Academy within District 11's geographic bounds without District 11's permission. It therefore denied District 11's motion for partial summary judgment and granted Education ReEnvisioned and the Learning Center's motion for summary judgment.

¶ 7 District 11 now appeals.

II. Standard of Review and Principles of Statutory Interpretation

¶ 8 Ordinarily, an order denying a motion for summary judgment isn't appealable. *Dep't of Nat. Res. v. 5 Star Feedlot Inc.*, 2019 COA 162M, ¶ 36, *aff'd on other grounds*, 2021 CO 27. But when a district court rules on cross-motions for summary judgment — denying summary judgment for one party and granting summary judgment for the other — the judgment is final, and we may review the denial. *Id.* We review such an order de novo. *Poudre Sch. Dist. R-1 v. Stanczyk*, 2021 CO 57, ¶ 12. "Because we apply the same standard as the district court in our review, we must 'determine whether a genuine issue of material fact existed and whether the district court correctly applied the law.'" *Id.* (quoting *City of Fort Collins v. Colo. Oil & Gas Ass'n*, 2016 CO 28, ¶ 9).

¶ 9 We also review questions of statutory interpretation de novo. *Id.* at ¶ 13. "Our primary goal when interpreting a statute is 'to effectuate the legislature's intent.'" *Id.* (citation omitted). "To accomplish this, 'we look to the entire statutory scheme in order to give consistent, harmonious, and sensible effect to all of its parts, and we apply words and phrases in accordance with their plain and ordinary meanings.'" *Id.* (citation omitted). We must "avoid constructions that would render any of the statutory language superfluous or that would lead to illogical or absurd results." *Harvey v. Cath. Health Initiatives*, 2021 CO 65, ¶ 16. A statute's "plain meaning may also be discerned from the placement and interaction of subsections within the statutory framework." *Kirkmeyer v. Dep't of Loc. Affs.*, 313 P.3d 562, 568 (Colo. App. 2011). If the statute's plain language is clear and unambiguous, we apply it as written and need not resort to other tools of statutory construction. *Harvey*, ¶ 16.

III. Analysis

¶ 10 The district court based its summary judgment order on the following language in section 22-5-111(2):

> 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*.

(Emphasis added.)[1] It concluded that "any appropriate location" unambiguously means any location, regardless of in which school district, because "to interpret the provision as District 11 asserts assumes information that is not present in the statute."

¶ 11 But while we agree with the district court that the statute is unambiguous, the district court's interpretation does not give effect to the qualifying language "within or without a school district providing the money for the facilities." § 22-5-111(2). And while

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[1] The General Assembly has since amended section 22-5-111, C.R.S. 2022, to add subsection (4). Under subsection 4(a), from July 1, 2021, through December 31, 2022, a BOCES must now obtain advance written consent from a nonmember school district before authorizing a school within that district's geographic boundaries. This requirement does not apply to Orton Academy, however, because subsection 4(b) contains an exception for schools authorized or operating prior to June 11, 2021, so long as they continue to operate through December 31, 2022.

"[w]e do not add words to or subtract words from a statute," *Nieto v. Clark's Mkt., Inc.*, 2021 CO 48, ¶ 12 (citation omitted), we must also "aim to give effect to every word and presume that the legislature did not use language idly," *id.* at ¶ 21.

¶ 12 Keeping in mind the "placement and interaction of subsections within the statutory framework," *Kirkmeyer*, 313 P.3d at 568, we read the plain language "any appropriate location, whether within or without a school district providing the money for the facilities," § 22-5-111(2), to mean 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*.

¶ 13 Our interpretation is supported by the balance of the statutory framework. The General Assembly provided BOCES with specific enumerated powers in section 22-5-108, C.R.S. 2022. This section incorporates by reference certain portions of the statute providing powers to individual school boards — namely, section 22-32-110, C.R.S. 2022, of the School District Organization Act of 1992. The General Assembly did not grant BOCES all the same powers as individual school boards, however. Instead, it incorporated certain provisions from section 22-32-110 and omitted others.

¶ 14 Importantly, among the powers the General Assembly gave to individual school boards but withheld by omission from the BOCES Act is the power to hold real property within or outside the district's territorial limits. *See* § 22-5-108(1)(a) (omitting section 22-32-110(1)(a), which allows a local school board to take and hold real and personal "property located within or outside the territorial limits of the district," from the enumerated powers provided to BOCES). While the General Assembly has amended sections 22-5-108 and 22-32-110 multiple times since their enactments, adding and subtracting powers for both individual school boards and BOCES, it has never included unrestricted extraterritoriality in a BOCES' enumerated powers. We decline to read this grant of authority into section 22-5-111, the section governing "[b]uildings and facilities." *Cf. Connell v. Lima Corp.*, 988 F.3d 1089, 1109 (9th Cir. 2021) ("[W]here Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion.") (citation omitted).

¶ 15 Our interpretation of the BOCES Act makes further sense when viewed alongside certain subsections of the School District Organization Act, § 22-32-109, C.R.S. 2022, which the BOCES Act incorporates by reference. *See* § 22-5-107, C.R.S. 2022. In subsections (1)(v) and (2) of section 22-32-109, the General Assembly provided that an individual school board "conducting a complete educational program outside the territorial limits of the district" is required to "obtain the written consent of the board of the school district in which said educational program is to be conducted prior to establishing said educational program" and, even then, only if operation of the program within the district's own territorial limits would be inefficient based on the district's geographic and topographical characteristics.[2]

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[2] Section 22-32-110(1)(b), C.R.S. 2022, is incorporated into the powers extended to BOCES. *See* § 22-5-108(1)(a), C.R.S. 2022. This section authorizes BOCES to purchase "undeveloped or improved real property located within or outside the territorial limits of the district." But, just as the powers granted to school boards in that section are subject to the duties required under section 22-32-109, C.R.S. 2022, the powers granted to BOCES under section 22-32-110 are similarly limited by the duties imposed under section 22-32-109. This includes the limits imposed by subsections (1)(v) and (2) of that section, which authorize extraterritoriality only after obtaining prior written consent from the district in which the educational program is to be conducted.

¶ 16 Reading section 22-5-111(2) as urged by Education ReEnvisioned and the Learning Center would require us to conclude that the General Assembly intended to grant to school board cooperatives what it withheld from individual school boards — the ability to locate schools in any district, with or without consent. Lacking any indication in the BOCES Act's plain language or organizational framework that this was the legislature's intent, we decline to reach this conclusion.[3] *See Whitman v. Am. Trucking Ass'ns*, 531 U.S. 457, 468 (2001) ("Congress, we have held, does not alter the fundamental details of a regulatory scheme in vague terms or ancillary provisions — it does not, one might say, hide elephants in mouseholes."); *see also Barnhart v. Am. Furniture Warehouse Co.*, 2013 COA 158, ¶ 14 ("[I]f the literal import of the text of an act is inconsistent with the legislative meaning or intent,

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[3] Education ReEnvisioned and the Learning Center's suggestion that the General Assembly intended to restrict an individual school board from conducting an extraterritorial educational program absent prior written consent but allow a school board that is a member of a BOCES to nevertheless jointly or separately conduct an extraterritorial program without prior written consent would likewise lead to an absurd result. *See Barnhart v. Am. Furniture Warehouse Co.*, 2013 COA 158, ¶ 16 (declining a statutory interpretation that would lead to an absurd result).

or such interpretation leads to absurd results, the words of the statute will be construed to agree with the intention of the legislature." (quoting 2A Norman J. Singer & J.D. Shambie Singer, Statutes and Statutory Construction § 46:7, at 253-57 (7th ed. 2009))).

¶ 17 We conclude the district court's summary judgment order was based on a misapplication of the law. *See Poudre Sch. Dist. R-1*, ¶ 12. Because we resolve the question before us based on a plain reading of the statute, we need not address District 11's constitutional arguments. *See HealthONE v. Rodriguez*, 50 P.3d 879, 892 (Colo. 2002) ("Prudential considerations 'recognize that unnecessary or premature decisions of constitutional questions should be avoided . . . .'") (citation omitted). We therefore reverse the court's order denying District 11's motion for partial summary judgment and granting summary judgment to Education ReEnvisioned and the Learning Center. As there remains no dispute of fact, we further conclude District 11 is entitled to judgment as a matter of law.

IV. Conclusion

¶ 18 The order is reversed, and the case is remanded for entry of partial summary judgment in favor of District 11 and for the district court to determine whether injunctive relief is appropriate in light of the recent adoption of section 22-5-111(4) of the BOCES Act.

JUDGE HARRIS and JUDGE GOMEZ concur.