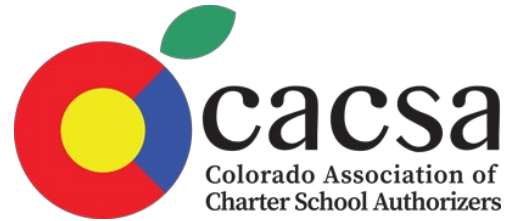


CACSA White Paper

HB22-1294: Proposed Legislation Regarding Special Education Services in Charter Schools



Bill Number: HB 22-1294

Title: Concerning Additional Pathways to Provide Special Education Services to Children with Disabilities in Charter Schools

Sponsors: Representatives D. Michaelson Jenet and M. Young, and Senators B. Gardner and R. Zenzinger

Introduced: March 10, 2022

Status: Referred to House Education Committee, scheduled for Thursday, March 24, 1:30 (last item)

[Bill Text](#) & [CLCS Bill Summary](#)

The Colorado League of Charter Schools (CLCS) drafted a bill that was introduced as Colorado HB22-1294 on March 10, 2022. CACSA does not have a position on this bill. This summary outlines the key sections of the bill and provides analysis of issues that may be of interest to charter school authorizers.

A. Enrollment Preferences for Students with Disabilities (Sections 1 and 2)

The bill allows charter schools to use preferential admissions policies to increase enrollments of students with disabilities. This language applies to schools overseen by CSI as well as district-approved charter schools.

The bill would allow preferences upon approval of the local board of education, or by the Charter School Institute (CSI) for schools authorized by CSI.

Any enrollment preferences must maintain the school's obligation to provide a Free Appropriate Public Education under the Federal Individuals with Disabilities Act (IDEA) in the Least Restrictive Environment (LRE) as addressed in federal requirements.

Charter schools implementing an enrollment preference are allowed to ask about a prospective student's disability status for the purpose of providing the preference only.

Discussion

It is not clear that anything in current statute prevents charter schools from enacting such an enrollment preference now. Current policies support and incentivize charter schools to do so, but it is not clear how many charter schools have exercised existing authority to create such preferences.

The Colorado Department of Education (CDE) applied for and received waivers from the U.S. Department of Education (ED) to provide charter schools that incorporate an enrollment preference for students with disabilities additional grant funding or competitive preferences for its start-up grant program. Charter schools receiving grants from the Charter School Program (CSP) from CDE for start-up,

expansion, and replication for schools have had the option of including an enrollment preference for at-risk students in their initial opening plans.

According to CDE, a few CSP grantees have planned to include these preferences while receiving CSP grants. There is no available information about the final number of schools exercising this clause, that used such preferences, or whether schools continue using a weighted lottery to provide a preference after their CSP grant ends. Generally, in recent years, most new schools are not oversubscribed in their first years while they have a CSP grant, and thus do not run lotteries for any students.

It is worth noting that if lotteries are addressed in statute, amendments could address Colorado's long-standing acceptance of first-come-first-served admissions processes. Some charter schools in the Colorado continue to use a first-come first-served basis and do not use a lottery. If the language around charter admissions is changed in statute, one possible improvement would be to mandate lotteries in all charter schools that are oversubscribed. Many charter states have a mandatory lottery in their state charter school law.

B. Administrative Units (Section 3)

The bill revises the definition of an Administrative Unit (AU) for special education to include a charter school collaborative (CSC) and a charter school network (CSN), referred to collectively as an Alternative Administrative Unit (AAU).

In current law, CRS 22-30.5-603 describes how a charter collaborative is formed. Any two or more charter schools may form a collaborative to take on a function that a single charter school performs. There is no review or standard for forming a collaborative. CRS 22-30.5-104.7 describes a charter school network, which is a legal entity, which operates more than one school.

C. Charter School Institute AU May Accept District-Charter Schools and Criteria (Section 4)

CSI AU Available to District Charters

CSI is currently the AU for the schools it authorizes under CRS 22-30.5-105.3. Under the bill, CSI would be allowed to be the AU for non-CSI authorized schools. These schools would remain district charter schools (overseen by their current district authorizer), but they could apply to CSI to be admitted to the CSI AU for special education purposes. The bill defines the CSI AU as including district charter schools entering the CSI AU that are not authorized by CSI.

Criteria to Become an AU

To approve the formation of a new AU, the State Board of Education applies criteria that demonstrate that a new AU can perform the necessary functions and that the creation of the new AU will not undermine the original AU to which the school or district originally belonged. The State Board is expected to develop criteria for the approval of alternative AUs that are similar to criteria used now for Boards of Cooperative Education Services (BOCES) and districts. The bill states:

A CHARTER SCHOOL NETWORK OR CHARTER SCHOOL COLLABORATIVE THAT IS DESIGNATED AND APPROVED AS AN ADMINISTRATIVE UNIT BY THE STATE BOARD, DELIVERS SPECIAL EDUCATION SERVICES TO DISTRICT CHARTER SCHOOLS OR INSTITUTE CHARTER SCHOOLS, AND MEETS CRITERIA ESTABLISHED BY THE STATE BOARD THAT ARE SUBSTANTIALLY CONSISTENT WITH THE CRITERIA APPLIED TO BOARDS OF COOPERATIVE SERVICES AND SCHOOL DISTRICTS (emphasis added).

Discussion

Background on State Board of Education (SBE) criteria for considering a new AU are [here](#), and the details are addressed in ECEA Rule 3.01(4)(b). The review includes a requirement that the original AU and the new AU commission a third-party, independent financial analysis that confirms the proposal meets the above criteria.

Districts attempting to be their own AU must continue to meet state board criteria that include operating with the “geographic size and location to achieve maximum efficiency in administering programs of special education.” Alternative AUs would be subject to criteria developed by the State Board and the director of special education. In the bill, Alternative AUs are not explicitly subject to the requirement relating to size and location and maximum efficiency listed in the statute for other AUs, although the State Board could develop rules to apply the same standard in its rule-making process. They are also not necessarily subject to the analysis of impact on the AU the school would leave. The State Board would have the discretion to shape those criteria to determine what constitutes “substantially consistent”.

Having the authority to develop criteria that are not precisely the same will allow the State Board to make adjustments that accommodate legal and procedural details that may not work as intended when applied in the charter school context. The State Board may or may not include in the criteria for charter school networks and collaboratives a similar provision describing scale and requiring maximum efficiency. It is also not stated that the independent analysis of financial and programmatic impact on the original AU would be part of that criteria. During bill drafting, the CLCS explained that their intent was that the criteria for the Alternative AUs would be the same as it is for a BOCES now.

D. Excess Costs (Section 5)

Students with higher needs generate excess costs covered in CRS 22-20-114 (1)(c)(II). An Alternative AU is to be considered the AU of attendance. The AU of residence is required to provide to the AU of attendance the tuition charged for the excess costs associated with a student attending the AU of attendance. The application of a tuition charge may be clarified in a contract between the AU of residence and the AU of attendance, and is subject to state board rules under CRS [22-20-108 \(8\)](#), which describes the funding for students placed in facilities. If a student leaves an Alternative AU mid-year, the Alternative AU is responsible for transferring funding to the AU the student’s new AU.

E. Definitions of AU and At-Risk Student Clarified (Section 6)

The bill defines alternative Administrative Units and at-risk pupils for other sections of statute addressing AUs and the Charter School Institute.

F. Contract Amendment and Criteria for School to Join an Alternative AU and Legal and Financial Responsibilities of Alternative AUs (Section 7)

Contract Amendment

The district and the school are required to amend the school’s charter contract to address the transition and operation under the Alternative AU. The bill states:

THE CHARTER SCHOOL AND ITS AUTHORIZING SCHOOL DISTRICT SHALL AMEND THE CHARTER CONTRACT, PURSUIT TO THIS SUBSECTION (1), AS NECESSARY TO ALLOW THE CHARTER SCHOOL TO PARTICIPATE IN THE ALTERNATIVE ADMINISTRATIVE UNIT.

There is no process for the district to approve or reject a transition. Contract negotiations may not open up the school's authorization and are limited to issues related to implementing the transfer to the Alternative AU.

While districts may not prevent a school the district authorizes from joining an Alternative AU, the AU the school intends to join must determine that the school meets the following criteria:

- (I) DEMONSTRATES THE CAPACITY AND COMMITMENT TO SERVE CHILDREN WITH DISABILITIES, AS DEFINED IN SECTION 22-20-103, THROUGH AN ANALYSIS OF THE CHARTER SCHOOL'S EXISTING RECORD OF SERVING CHILDREN WITH DISABILITIES OR BY EXPRESSLY SUBMITTING A PLAN TO THE ALTERNATIVE ADMINISTRATIVE UNIT ARTICULATING AN EXISTING OR INTENDED COMMITMENT;
- (II) CREATES A STRATEGIC PLAN TO RECRUIT CHILDREN WITH DISABILITIES FOR ENROLLMENT IN THE CHARTER SCHOOL TO INCREASE EDUCATIONAL OPTIONS FOR FAMILIES WITH CHILDREN WITH DISABILITIES;
- (III) HAS OR DEVELOPS AND IMPLEMENTS SPECIAL EDUCATION PROGRAMMING THAT RESULTS IN THE RETENTION OF CHILDREN WITH DISABILITIES;
- (IV) HAS OR DEVELOPS AND IMPLEMENTS MULTI-TIERED SYSTEMS OF SUPPORT TO IDENTIFY AND REFER CHILDREN WITH DISABILITIES TO SPECIAL EDUCATION SERVICES; AND
- (V) DEMONSTRATES HOW THE AGREEMENT WITH THE ALTERNATIVE ADMINISTRATIVE UNIT WILL ALLOW THE CHARTER SCHOOL TO BETTER AND MORE EFFICIENTLY SERVE CHILDREN WITH DISABILITIES.

If the district finds in its review of the criteria and the school's submission that the school does not meet those criteria, it may choose to not amend the contract to reflect the transfer. If the school and district cannot agree on revised contract language, the district must provide a written explanation of why. Such an action by the district can be appealed to the SBE by the school as a unilateral contract condition. The process for such appeals is the same as other unilateral contract conditions.

The amendments to the charter contract may not address issues unrelated to the transfer of the school to the Alternative AU, but amendments may address the oversight of special education programming. The bill states:

NEGOTIATIONS TO AMEND THE CHARTER CONTRACT TO ALLOW THE CHARTER SCHOOL TO PARTICIPATE IN THE ALTERNATIVE ADMINISTRATIVE UNIT MUST NOT INCLUDE NEGOTIATIONS REGARDING TERMS OF THE CHARTER CONTRACT THAT ARE NOT DIRECTLY IMPACTED BY THE CHARTER SCHOOL'S PARTICIPATION IN THE ALTERNATIVE ADMINISTRATIVE UNIT AND MUST NOT UNILATERALLY REOPEN THE CHARTER SCHOOL'S AUTHORIZATION. **THE AMENDED CONTRACT MAY INCLUDE PROVISIONS PERMITTING CONSIDERATION OF THE CHARTER SCHOOL'S SPECIAL EDUCATION PERFORMANCE AS PART OF THE OVERALL CHARTER SCHOOL PERFORMANCE** (emphasis added).

Discussion

The criteria above could be met by demonstrating an historical record of work for each criterion or through the submission of plans that are not yet implemented but that are designed to address each criterion. A school with a record of problematic practices, extremely low enrollment of students with disabilities, or a record of providing poor services to students with disabilities could propose planned activities that are treated as demonstrating its commitment to future work that would allow it to meet all the criteria. For a new school submitting a charter application, such plans are the best indicator of what a school intends to do. For a long-established school with a record of previous poor performance in this area, ensuring authorizers can oversee the implementation of the plans, and can hold the school accountable for that implementation, is a reasonable strategy to describe in the amended contract to ensure the transition to the proposed activities occurs as outlined in the plan. It is not clear how the State Board would consider contract language that allowed the authorizer to consider a charter school’s future failure in these areas as justification for non-renewal or other interventions the district would apply to charter schools operating in the district’s AU.

Responsibility for District Expenses

Under the proposed bill, the charter school is not responsible for any expenses in the district’s special education programming and the district may not charge the charter school for such expenses. The bill states:

(a) A CHARTER SCHOOL THAT PARTICIPATES IN AN ALTERNATIVE ADMINISTRATIVE UNIT IS NOT RESPONSIBLE FOR PAYING ANY PORTION OF THE SPECIAL EDUCATION COSTS OF ITS AUTHORIZING SCHOOL DISTRICT.

Legal Responsibility for Dispute Resolution and Providing Services

The Alternative AU is responsible for dispute resolution and for providing all special education services and the AU would presumably assume responsibility for OCR and due-process complaints. What responsibility an authorizing district might retain, if any, is unclear. The bill states:

b) AN ALTERNATIVE ADMINISTRATIVE UNIT IS RESPONSIBLE FOR THE COST OF DISPUTE RESOLUTION WITH THE PARENTS OF A CHILD WITH DISABILITIES WHO IS ENROLLED IN A CHARTER SCHOOL THAT PARTICIPATES IN THE ALTERNATIVE ADMINISTRATIVE UNIT.

(c) AN ALTERNATIVE ADMINISTRATIVE UNIT IS LEGALLY RESPONSIBLE FOR PROVIDING EDUCATIONAL SERVICES FOR CHILDREN WITH DISABILITIES WHO ARE ENROLLED IN A CHARTER SCHOOL THAT PARTICIPATES IN THE ALTERNATIVE ADMINISTRATIVE UNIT.