

HB 22-1260 and Access to Medically Necessary Services



Introduction

This guidance document is intended to support the implementation of [HB 22-1260](#) and, more broadly, its relationship to school districts' special education responsibilities.

HB22-1260 amended the Exceptional Children's Educational Act (ECEA) to require each administrative unit in the state to:

adopt a policy that addresses how a student who has a prescription from a qualified health-care provider for medically necessary treatment receives such treatment in the school setting as required by applicable federal and state laws, including section 504 of the federal "Rehabilitation Act of 1973", 29 U.S.C. sec. 794, as amended, and Title II of the federal "Americans with Disabilities Act of 1990".¹

Each policy must notify parents of their students' rights under Section 504 and Title II of the ADA.² It must also address "the process in which a private health-care specialist may observe the student in the school setting, collaborate with instructional personnel in the school setting, and provide medically necessary treatment in the school setting," when required by Section 504 and Title II of the ADA.³ Finally, each policy must provide "notice of a student's right to appeal the decision of an administrative unit concerning access to medically necessary treatment in the school setting."⁴

Frequently Asked Questions

Q1: Should decisions under HB22-1260 always be made by the IEP Team or 504 Plan Team?

- A. Administrative units should always consider whether a request under HB22-1260 implicates its FAPE obligations but should not treat FAPE as the only relevant inquiry. Section 504 and Title II of the ADA impose reasonable-modification duties separate from FAPE,⁵ and the legal standard for "necessity" in this context is not necessarily identical to the legal standard for related services under the IDEA. More importantly, the standard for necessity for purpose of reasonable modifications does not necessarily turn on whether the student is making progress toward IEP goals.

¹ § 22-20-121(2)(a), C.R.S.

² *Id.* at (2)(b)(I).

³ *Id.* at (2)(b)(II). "'Private health-care specialist' means a health-care provider who is licensed, certified, or otherwise authorized to provide health-care services in Colorado, including pediatric behavioral health treatment providers pursuant to the state medical assistance program, articles 4, 5, and 6 of title 25.5, and autism services providers who provide treatment pursuant to section 10-16-104(1.4)[, C.R.S]." *Id.* at (1)(b).

⁴ *Id.* at (2)(b)(III).

⁵ *Fry v. Napoleon Cmty. Schs.*, 580 U.S. 154, 159-61 (2017).

Because the inquiry for FAPE and the inquiry for reasonable accommodations are not the same, administrative units' policies must ensure that the administrative unit and the legal entities within it honor not only their obligation to provide FAPE but also their separate obligation to provide reasonable modifications. From the policies initially adopted by administrative units, CDE has seen examples of (1) policies creating an HB22-1260 process *separate from* the administrative unit's IEP/504 Plan processes, (2) policies creating an HB22-1260 process *within* the administrative unit's IEP/504 Plan processes. CDE believes both approaches are reasonable, subject to the following observations:

- An administrative unit that keeps its HB22-1260 process *separate from* its IEP/504 Plan procedures should ensure that its IEP/504 Plan practices (e.g., as to child find, evaluation, and reevaluation) appropriately account for information learned in the HB22-1260 process; and
- An administrative unit that keeps its HB22-1260 process *within* its IEP/504 Plan procedures should ensure that it also provides separate consideration for reasonable modifications otherwise required by Title II of the ADA and Section 504.
- Both inquiries are required, as separate inquiries, even if the relevant service is approved and provided under one framework (unless the parents have withdrawn their request). In other words, *even if* administrative units provide the same service as a related service under an IEP, the administrative unit must still consider whether to allow access to a private provider under Section 504 and Title II of the ADA—and vice-versa—because the two inquiries are separate.

Q2: HB22-1260 requires an appeal from “the decision of an administrative unit.” Where should that appeal go?

- A. Administrative units are the entities responsible for implementing the IDEA/ECEA, and their decisions on FAPE, placements, and other elements of the IDEA/ECEA are reviewable only through due process hearings or state complaints. For decisions about reasonable modifications outside of the IEP process, any decisions made by an administrative unit should be appealable to the distinct legal entity in which the student is enrolled (i.e., school district or charter school) pursuant to that entity's designated official and grievance procedures under 28 C.F.R. § 35.107, 34 C.F.R. § 104.7, and/or 34 C.F.R. § 104.36, as applicable.

CDE also notes that although the statutory language *assumes* that administrative units make decisions under HB22-1260, it should not be construed as *requiring* that all decisions be made at the administrative-unit level. Administrative units that choose to keep their HB22-1260 procedures separate from their IEP/504 Plan procedures can adopt a policy assigning the initial decision to the distinct legal entities (i.e., school districts or charter schools) within the administrative unit.

Q3: Can an administrative unit disagree with a student's health-care provider about the necessity of access to certain medical services?

- A. HB22-1260 requires a process for handling requests under Title II of the ADA and Subpart A of the Section 504 regulations, but it does not expand or contract the substantive content of those laws. As a result, school districts and charter schools should reasonably investigate whether the requirements of those laws have been met.

This investigation should include examining whether the requested modification is necessary, based on the prescription from a qualified health-care provider as well as other information available to the district. And the investigation should also include examining whether the requested modification is reasonable in light of relevant circumstances.

Q4: If a parent makes a request for medically necessary treatment in the school setting, but these services are not provided at home or in a clinical setting, can this be considered a request under HB22-1260?

- A. A request is a request under HB22-1260 if the parents label it as such. That said, a request for services not provided in other settings might very well implicate FAPE,⁶ and an administrative unit should consider whether to convene an IEP/504 Plan Team to consider the implications of the request.

In addition, HB22-1260 requires a process for handling requests under Title II of the ADA and Subpart A of the Section 504 regulations, but it does not expand or contract the substantive content of those laws. As a result, school districts and charter schools should consider all facts and circumstances relevant to whether the requirements of those laws have been met, including both the necessity and the reasonableness of the requested accommodation.

Q5: What constitutes a parental request to a school district for a child to receive medically necessary treatment at school?

- A. Administrative units should address this issue in their HB22-1260 policies, providing clear guidance to parents and guardians on how to submit a request.

Q6: What constitutes an authorization or denial of the parent's request?

- A. Administrative units should address this issue in their HB22-1260 policies, providing clear guidance to parents and guardians on when and how requests are considered resolved.

Q7: Does HB22-1260 require a prescription? Does it matter who the prescription is from?

- A. Administrative units' policies for handling requests for access to medically necessary treatment must encompass any request involving (1) a prescription from a qualified health-care provider, defined as a health-care provider who is licensed, certified, or otherwise authorized to provide health-care services in Colorado, for (2) medically necessary treatment, defined as treatment recommended or ordered by a Colorado licensed health-care provider acting within the scope of the health-care provider's license.

⁶ See *Fry*, 580 U.S. at 171 (“One clue to whether the gravamen of a complaint against a school concerns the denial of a FAPE, or instead addresses disability-based discrimination, can come from asking a pair of hypothetical questions. First, could the plaintiff have brought essentially the same claim if the alleged conduct had occurred at a public facility that was not a school—say, a public theater or library? And second, could an adult at the school—say, an employee or visitor—have pressed essentially the same grievance? . . . [W]hen the answer is no, then the complaint probably does concern a FAPE, even if it does not explicitly say so; for the FAPE requirement is all that explains why only a child in the school setting (not an adult in that setting or a child in some other) has a viable claim.”).

Administrative units have the discretion whether to include or not include other requests for access to medical services or treatment within their HB22-1260 policies.

Q8: What public disclosure and reporting obligations does the law create?

- A. First, administrative units must make their HB22-1260 policies publicly available on their websites and available to parents and legal guardians upon request.⁷ CDE recommends that each distinct legal entity within an administrative unit do the same.

Second, each July beginning July 1, 2024, each administrative unit must compile and provide to CDE with the total number of requests for access to a student by a private health-care specialist and whether the access was authorized or denied.⁸ Each January beginning January 2025, CDE must make the data received from districts available on its own website and report it to the education committees of the general assembly.⁹

Please note that the data reporting includes all requests, not just those involving students with IEPs; administrative units should thus have systems in place to ensure the distinct legal entities within the administrative unit collect and provide the data. Please also note that the data required is the number of requests made, requests denied, and requests authorized; the statute requires no PII. CDE has created data fields for this purpose, associated with the [Special Education End of Year Data Pipeline Snapshot](#). An AU will not be able to finalize their 23-24 Data Pipeline Snapshot until it has entered these counts in the Data Pipeline input screen. The counts will not be included in the Special Education End of Year Data Pipeline Snapshot records but will instead be housed in a separate data table.

The Individuals with Disabilities Education Act (IDEA) requires that the Colorado Department of Education (CDE) fully inform Administrative Units of Part B requirements and monitor the implementation of these requirements, with an emphasis on ensuring that all IDEA-eligible children in Colorado receive a free appropriate public education in the least restrictive environment. Pursuant to its responsibility for general supervision, the CDE provides this guidance to support Administrative Units in satisfying their obligations under the IDEA. Administrative Units are encouraged to review their policies and procedures for alignment with this guidance and make changes, as needed. This guidance is not binding and should not be construed as legal advice. For legal advice, Administrative Units should consult their legal counsel.

⁷ § 22-20-121(3), C.R.S.

⁸ *Id.* at (4)(a).

⁹ *Id.* at (4)(b).