

Charter School Board and Administrator Alert

2022-02 Additional Changes to 1 CCR 301-8 Regarding Enrollment of Students with Disabilities in Charter Schools



Background

The State Board of Education recently updated two sets of rules regarding students with disabilities. The most recent changes affect admissions and placement decisions for students with disabilities when they apply to charter schools or participate in any form of public school choice. This alert addresses three specific provisions of the new rules that may impact how charter schools and districts manage enrollment processes.

Summary

The new rule changes cover a range of topics, but for this alert we want to highlight areas that address situations where there are concerns about whether Students with Disabilities can be appropriately served by an individual student's school of choice. Listed here are changes we wanted to highlight for you - most notably from Section 4.03 (8) of the rule.

- A change in building or location that is not a change in educational placement must include parent participation (4.03 (8)(b)(iii)).
- An administrative unit cannot choose a location different from the parents' school of choice unless the IEP team determines appropriate placement cannot be provided at that location (4.03(8)(c)).
- For charter schools that participate in a districtwide centralized enrollment system, the district must ensure and provide assurance in applicable public communications that it does not use the information collected about a student's disability status until after the admissions have been completed (4.03(8)(b)(iv)).

Given that there are a range of questions that may come up, we will attempt to provide clarifications on the following pages.

Where Can I Learn More?

For additional context, please see the CDE Schools of Choice Unit [Presentation](#): "Protecting the Rights of Students with Disabilities in Charter School – What Leaders and Authorizers need to Know."

For additional information about the first phase of rulemaking, please see [Charter Alert 2022-01](#).

January Rulemaking Resources (revisions to charter/authorizer standards):

- [Board Item](#)
- [Final Rule 1 CCR 301-88](#)

April Rulemaking Resources (revisions to ECEA rules):

- [Board Item](#)
- [Final Rule 1 CCR 301-8](#)

[OCR Guidance on Rights of Students with Disabilities in Charter Schools under Section 504](#)

[OSERS Guidance on the Rights of Students with Disabilities in Charter Schools under the IDEA](#)

[CDE ESSU Building Placement and Schools of Choice for Special Education Students Rule Change for Exceptional Children's Educational Act, 1 CCR-301-8](#)

Q&A



Q: My Authorizer has stated that my school can only enroll up to a certain number or percentage of Students with Disabilities. What impact do these changes have upon this practice?

A: Any such policy or contract term that would base decisions without proper consideration of an individual student's needs would likely have been illegal in the first place. Regardless, as clarified in the new rules, an administrative unit shall not choose a location other than the parents' school of choice unless the IEP team determines that an appropriate placement cannot be provided at that location. Thus, any such decisions made outside of the IEP team would violate this rule.

Q: How does this apply to Students with Disabilities choosing to enroll in a school outside their district?

A: The updated rule clarifies that such requirements apply not only to all charter school enrollments, but also to inter- and intra-district choice enrollment as they are outlined in 22-36-101(1), C.R.S.

Q: Can districts decide to serve a Student with Disabilities in a different location from the parent's chosen school?

A: Per section 4.03(8)(c) of the updated rule, *"an administrative unit shall not choose a location other than the parents' school of choice unless the IEP team determines that an appropriate placement cannot be provided at that location."* Thus, the determination would first need to be made by the IEP team. In instances where administrative units provide specialized programming at particular locations (for example, a center-based program), discussion of those designs and offerings will occur within the context of the IEP team meeting.

Q: If the IEP team determines that a Student with Disabilities will be served in a different location from the parent's school of choice, what must the administrative unit communicate to the family?

A: As specified in section 4.03(8)(c) of the updated rule, *"An administrative unit that determines that the parents' school of choice is not an appropriate educational placement shall include a specific explanation of its determination in either the IEP or a separate prior written notice compliant with 34 C.F.R. § 300.503"*

Q: What implications does this rule have for districts with internal choice processes that would look at the particulars of a Student with Disabilities' IEP status pre-enrollment in order to manage enrollment of students with more severe needs with consideration for special services/programs offered by the district?

A: The process would need to change. Under the revised section 4.03(8)(b)(iv), *"if the transfer [i.e. requested enrollment into a school of choice] is part of such a [centralized district admissions] process the district must ensure and should provide assurance in applicable public communications that it does not use the information collected [about a student's disability status] until after the admissions have been completed."* The rule provides further guidance in stating that *"if the transfer constitutes a significant change in placement...the administrative unit in which the receiving school or program is located must comply with Section 4.03(8)(b)(ii)(B) and also convene an IEP Team."*

Q: How do these rules affect Students with Disabilities who have moderate to severe needs?

A: All students entitled to special education and related services have the same right as their non-disabled peers to access school choice unless the IEP team determines that an appropriate placement cannot be provided at the student's school of choice. In such situations, the district/administrative unit shall include a specific explanation of the determination in either the IEP or a separate prior written notice compliant with 34 C.F.R. § 300.503."