

Guidance Regarding Implementation of HB10-1274

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Introduction

House Bill 10-1274 was passed in during the 2010 legislative session. The focus of the bill is transition planning for students who have been identified as “at risk to self or community” within the previous twelve (12) months and who are moving from a facility, public hospital or DYC placement to a public school educational setting. The primary requirements of the bill include:

- Identification of the child welfare education liaison for each school district and the State Charter School Institute;
- Posting the list of the child welfare education liaisons and their contact information on the CDE website;
- Notification, invitation to transition planning and sharing of information to facilitate successful transitions and safety in the school environment;
- Development of a Memorandum of Understanding (MOU) between the Department of Education and the Department of Human Services; and
- Annual reporting to the legislature.

This document is offered as guidance for the implementation of the bill in conjunction with the Memorandum of Understanding (MOU) between the Colorado Department of Education (CDE) and the Colorado Department of Human Services (CDHS). The purpose of this document is to provide a consistent and uniform approach for notification and information sharing to better facilitate:

1. Collaboration in the educational placement of qualifying students,
2. Development of transition plans to assure the success of qualifying students, and
3. Safety in the school community.

Successful transition for qualifying students requires the cooperation of county departments of human/social services, the Division of Youth Corrections (DYC), school districts (including charter schools of the district), the State Charter School Institute and its member schools, approved facility schools, day treatment facilities, and public hospitals. The spirit of the process and guidance is to promote interagency collaboration and information sharing for the successful and safe transition of qualifying students, while respecting the privacy and preventing stigmatization of the student.

Students that must transition to new schools frequently are hampered with having to adjust to new routines, new teachers, different rules, different curriculum, and developing new friendships. When students are in the foster care system, they have those same difficulties, compounded by having to adjust to a new “home”, having to miss academic time for therapy and visitation appointments, and frequently these students are at least one grade level below their peers. Stigmatization of the label of being a “1274 student” because of behavior that occurred in some point of time could be detrimental to their self esteem and their academic career if the label follows them in their educational record. The Health Insurance Portability and Accountability Act (HIPAA) offers protection regarding the disclosure of protected health information (PHI). If the health data is protected by the Federal or State Substance Abuse Confidentiality Regulations (42 C.F.R., part 2), the recipient (school) may not re-disclose this data without the students’ additional written authorization. Upon consent to release such information, HIPAA protections are nullified in the future with regard to educational agencies and the records become part of the Family Educational Rights and Privacy Act (FERPA), under educational law. Under FERPA, information may be shared with other schools and/or school districts. It is important to share only the essential information necessary for successful transition be included in written transition plans for qualifying students.

A consistent notification and information sharing process will promote effective decision-making for the academic success for qualifying students. The guidance document includes information and recommendations regarding implementation and sample forms.

HB10-1274 Components

Qualifying Students

The term danger to self or others is a term used by some agencies to identify imminent danger. In contrast, risk is prospective in nature. For the purpose of the MOU, risk means that the student exhibited behavior in the prior twelve (12) months that could have posed harm to the student or the community. This determination is made by the court or by the treating agency.

A Qualifying Student for purposes of HB10-1274 is a student that:

1. Is re-entering public school,
2. Is transitioning from a treating agency licensed pursuant to:
 - a. Facility school (22-2-402(1), C.R.S.,
 - b. Day treatment facility (26-6-102(2.5), C.R.S., or a
 - c. Public hospital that provides acute and/or psychiatric care (25-3-101, C.R.S. and 25-3-301, C.R.S.),
and
3. Was identified to be a risk to self or the community in the twelve (12) months prior to the proposed transfer by a court or the treating agency.

While the MOU only applies to qualifying students, there is nothing that precludes implementation of a similar notification and information sharing process for any student that is transitioning from a facility, NYC, or detention center placement to a new school, school district or charter school as a best practice and in the best interest of students.

Child Welfare Education Liaisons

Each school district and the State Charter School Institute is required to appoint a person to act as the child welfare education liaison. The individual may be either a regular employee of the district, Board of Cooperative Education Services (BOCES) or State Charter School Institute, or may be someone that is contracted for this purpose.

The requirement to appoint a child welfare education liaison was originally part of another piece of legislation, HB08-1019. The responsibilities of the child welfare education liaison under HB08-1019 and HB10-1274 are similar in some regards, but HB08-1019 addresses school enrollment of students in out-of-home placement such as foster homes or group homes, while HB10-1274 is specific to students transitioning from facilities, public hospitals and NYC. The treating agencies defined in HB10-1274 include day treatment programs not just students in out-of-home placements. The responsibilities of the child welfare education liaison from both of these pieces of legislation are now incorporated in statute in 22-32-138 C.R.S. The primary responsibilities include:

- Working with social workers from county departments, juvenile probation officers, and foster care parents to ensure the prompt school enrollment of students in out-of-home placement and the prompt transfer of their education information and records when students are required to change school enrollment due to changes in placement; (HB08-1019)
- Ensuring that the education information and records of a student in out-of-home placement are delivered to the student's new school within five school days after receiving a request for the transfer of the student's education information and records from a county department; (HB08-1019)
- Participating in a transition planning meeting (or other process if a meeting is not deemed necessary), regarding the enrollment in a public school of a qualifying student or appointing someone to participate in the transition planning process as their designee; (HB10-1274)

- Participating in any interagency collaboration teams or threat-assessment teams centered on students, which the school district may develop or on which teams the school district may be invited to participate; (HB10-1274)
- Working with treating agencies, students, parents, the county department of human/social services or the Division of Youth Corrections (if applicable), to facilitate the prompt and appropriate educational placement, transfer and enrollment in school of qualifying students who are enrolling in the school district or an institute charter school; (HB10-1274)
- Providing information to CDE regarding the students transferred to the district or Institute Charter School under HB10-1274.

The school districts and the State Charter School Institute also have responsibilities under 22-32-138 C.R.S., which may be fulfilled by the child welfare education liaison or by other personnel. These include:

- If a student in out-of-home placement is enrolled in one school and transfers enrollment to another school either in the same school district or in another school district or to another type of school, the sending school district or school shall transfer the student's education information and records to the receiving school within five (5) school days after receiving a transfer request from the county department that has legal custody of the student; (HB08-1019)
- The county department that has legal custody of a student in out-of-home placement may request that the school district or school in which the student was enrolled release the student's education information and records to an employee of the county department for the sole purpose of transferring the education information and records to the student's new school. The school district or school may comply with the requirement to transfer the student education information and records to the receiving school (see bullet above) by complying with the county department's request within five (5) school days after receiving the request; (HB08-1019)
- A school district or school shall not delay the transfer of the education information and records of a student in out-of-home placement for any reason, including but not limited to the existence of any unpaid fines or fees that the student may have outstanding at the school from which the student is transferring; (HB08-1019)
- If a school district or school receives a transfer request or a request for release of records for a student in out-of-home placement and the request involves a student who is receiving special education services pursuant to an individualized education program, the school district or school shall notify the special education director for the school district or school of the request as soon as possible following receipt of the request; (HB08-1019)
- If a student who is in out-of-home placement is either newly placed within a school district or school or required to change schools due to a change in placement, the school district or school shall enroll the student in school within five (5) school days after receiving the student's education information and records, regardless of whether the school district or school has received the student's certificate of immunization, whether the student can comply with school uniform or clothing restrictions, or whether the student can comply with any other pre-enrollment restrictions or requirements imposed by the school district or school. There are exceptions to this requirement found in 22-33-106 C.R.S. (HB08-1019)

There are more details regarding the responsibilities of school districts and the State Charter School Institute, including the waiver of fees, transfer of credits, excused absences for court appointments and other relevant information at 22-32-138 C.R.S.

School districts and the State Charter School Institute are required to give CDE the contact information (name, phone number, fax and e-mail) for each child welfare education liaison and to update the information annually by August 15th. The child welfare education liaison is now included in the directory information collection from school districts that occurs each fall.

It is in the best interest of students to begin the school year or semester on time. Therefore, it is important to have someone available during the summer and other regular school breaks that can receive notifications and transition planning invitations and facilitate the transfer of a student into the district when the child welfare education liaison is not available. Please send the contact information for a substitute child welfare education liaison to: facility_schools@cde.state.co.us

The contact information for the child welfare education liaisons is posted in two forms on the CDE web-site:

The contact information for each child welfare education liaison is posted on the Facility Schools web page at: <http://www.cde.state.co.us/cdesped/facilityschools.asp>. The contact list is the first document on the web page. This list is updated continually throughout the year as new information is received.

Child welfare education liaisons are also included in the "School Districts/Buildings and Personnel" directory, located at: http://www.cde.state.co.us/edulibdir/directory_03.pdf. This list is updated annually through the directory information collection each fall.

Responsible Agencies

A treating agency is a:

- a. Facility school [22-2-402(1), C.R.S.],
- b. Day treatment facility [26-6-102(2.5), C.R.S.], or a
- c. Public hospital that provides acute and/or psychiatric care [25-3-101, C.R.S. and 25-3-301, C.R.S.]

A public hospital is the treating agency when:

- a. It provides inpatient acute care or psychiatric services for a student for more than ten (10) days, and
- b. When there is actual knowledge that the student will attend an identified public school within sixty (60) days after discharge from the hospital. Examples of applicable hospitals include but are not limited to the Pueblo Mental Health Institute, The Children's Hospital, and Denver Health and Hospital, etc.

At a minimum, the treating agency is responsible for the following:

- a. At least ten (10) calendar days prior to the student's transition to the public school, provide written notice to the appropriate school district or State Charter School Institute child welfare education liaison about the pending enrollment of the student.
- b. Invite the child welfare education liaison or designee to participate in the development of a transition plan for the student.
- c. When the county department of human/social services or DYC has legal custody of the qualifying student, provide written notification about the pending enrollment and invitation to the transition planning.
- d. Decide whether a face-to-face meeting is needed to develop the transition plan, or if the plan can be developed through other means in conjunction with the child welfare education liaison, parent(s), and when applicable, the county department of human/social services or DYC.
- e. Invite relevant parties to participate in the transition planning as appropriate, including but not limited to the student, parent(s), county department of human/social services, DYC, Guardian Ad Litem, Educational Surrogate Parent, clinician, and treatment staff, etc.
- f. Provide information to the child welfare education liaison or designee that is pertinent to the *educational* needs of the student and within the parameters of confidentiality for successful transition planning.

County Department of Human Services and DYC Responsibilities

County departments of human/social services and NYC are responsible for notification of pending enrollment and an invitation for transition planning to the child welfare education liaison when the qualifying student:

1. Is in their legal custody, and
2. A change of out-of-home placement occurred with fewer than ten (10) calendar days notice to the child welfare education liaison regarding the pending enrollment of a qualifying student.

This situation may happen when a change of placement is made for the safety of student (emergency placement) through the court, NYC, or a county department of human/social services. When this occurs, the county department of human/social services or NYC is required to:

1. Provide written notice to the appropriate child welfare education liaison about a qualifying student's enrollment within five (5) calendar days following the student's educational placement.
2. Invite the child welfare education liaison or his/her designee to participate in the development of a transition plan.
3. Request in writing that the student's educational records be transferred to the receiving school district when the receiving school district is different than the previous home school district. Alternatively, the county department of human/social services designee may deliver the educational records to the receiving school district.
4. May request the treating agency to send their educational information to the receiving school district.
5. In accordance with state and federal confidentiality laws, provide information to the child welfare education liaison or designee that is pertinent to the educational needs of the student and within the parameters of confidentiality.
6. Work with the receiving school districts, charter school, or State Charter School Institute for appropriate educational placement, including education services.

The requirements are consistent with the Colorado Department of Human Services Staff Manual Volume 7.301.241.

Notice and Invitation

The responsible party that initiates notification and an invitation to the child welfare education liaison is dependent upon the immediate circumstances and may be the treating agency, the county department of human/social services with legal custody or NYC when the student has been committed through a court. In most situations, the treating agency is responsible to notify and invite the child welfare education liaison to participate in the transition planning process except for situations identified above.

There are minimum required notification timeframes, however it is in the best interests of the qualifying student for partner agencies to engage with one another and the parent(s) in ongoing communication regarding the educational needs of the student throughout the duration of the placement in a treating agency. Responsible parties are encouraged to send the required notification/invitation well in advance of the ten (10) calendar day requirement whenever feasible. This allows the partner agencies and the parent(s) to better understand the educational needs of the student and the receiving educational agency to identify and develop appropriate educational services if needed. Privacy laws such as HIPAA are important for protecting personal information, however the protections are lost once the information becomes part of the student's educational record. Under FERPA, notice of re-disclosure of information in the educational record is required and consent is not when the information is being sent to another school in which the student is enrolled or is planning to enroll. It is important that the minimum necessary information be shared to facilitate the student's transition back to public school. This will promote long-term privacy and reduce or prevent stigmatization during the rest of the student's academic career.

When a student who has been identified as at risk to self or community in the previous twelve (12) months will be discharging from a treating agency and transitioning to a public school setting, it is recommended that the

initial contact with the child welfare education liaison be made by telephone or e-mail. Use the student's State Assigned Student Identification (SASID) number but not the student's name in e-mail correspondence. It may be helpful to confirm that the correct district is being contacted based on the address where the student will be living.

The required notification and invitation form is designed with the intent that the treating agency will complete the top portion of the form and e-mail it to the child welfare education liaison. At the time of transition planning and when the student actually begins services in the district, the child welfare education liaison will complete the lower portion of the form and e-mail it to CDE. The form does not reference the student's name, only the SASID and Date of Birth (DOB). Since personally identifying information is not contained, it is acceptable to send the form electronically without a password, however, please identify Secure Confidential in the subject line. The completed form will be used by CDE for data collection and summary report purposes.

Child welfare education liaisons are encouraged to respond to the notification/invitation as soon as possible to facilitate the information sharing and transition planning process in order to prevent delays in enrollment. The legislative declaration of HB10-1274 states, "School districts should be active partners in developing transition plans for students to achieve successful transitions to public schools".

There will be circumstances that are beyond the control of the partner agencies, i.e. students who run away from placement or who are in very short-term emergency placements in which the ten (10) calendar day timeline cannot be met. These situations may fall under the emergency placement provisions of the legislation when the county department of human/social services is required to notify the receiving district within five (5) calendar days of the placement. In unusual circumstances, the partnering agencies need to use professional judgment to implement the spirit of the legislation with the goal of cooperation, information sharing, successful transitions and school safety in mind.

Information Sharing

Information should only be shared in the context of what is important for decisions about educational placement and services. The emphasis should be on observable behavior, triggers and successful strategies to address the behavior. This information rather than disclosure of historic medical and personal information will be the most useful in planning for the services the student needs now and will be helpful in making the transition successful without long-term stigmatization based on historical behavior as previously discussed.

HB10-1274 applies to students who have been identified as "at-risk to self or community" within the prior twelve (12) months, meaning that they have exhibited behavior, which could have posed harm to themselves or others within the prior twelve (12) months. The student may not be exhibiting that behavior at the time of transition, but if the identification occurred in the prior twelve (12) months, HB10-1274 still applies. It will be critical to provide information about current behaviors and successful strategies that were used are an important part of the transition planning process. The transition plan must be based upon the needs and abilities of the student and developed in the context or with consideration of the student's current situation.

It is important that treating agencies engage parents and students in the treatment planning and discharge process, so that they are aware of the student's needs and can make informed decisions about relevant information that should be shared. Information about the student that is shared must conform to state and federal privacy and confidentiality laws. The information shared must be limited to that which is necessary for the receiving educational agency to plan appropriately for services to the student and to plan for the safety of the school community, as needed. Sharing information that refers to medical, mental health, or substance abuse treatment regarding a student falls under HIPAA and the Federal and State Drug and Alcohol Confidentiality Law. Because protections under FERPA are different than those under HIPAA, parents and students should understand the implications of sharing protected health information or refusing to share that

information with the education agency. Students, parents, and guardians should be advised that once HIPAA protected information becomes part of their educational record, only the protections of FERPA may apply to that information and that subsequent disclosure of the information among educational settings may possibly take place without their future consent.

HIPAA requires the *Minimum Necessary Principle* for use and disclosure of protected health information (PHI). The HIPAA entity can only disclose the minimum amount of PHI needed to accomplish the intended purpose. The parent, guardian, and/or student fifteen (15) years of age or older, must be informed that upon their consent to release HIPAA protected information, nullifies privacy under HIPAA in the future with regard to educational agencies. Release of medical information, including physical and mental health information, shall be shared only with the receiving school district if the parent, legal guardian, or the student age fifteen (15) years or older signs an appropriate HIPAA release.

When a HIPAA release is not signed by the parent, guardian, or youth aged fifteen (15) years or older or consent is not obtained, the educational agency may not deny the student access based on their privacy decision. The following steps are required:

- a. The HIPAA covered entity shall notify the child welfare education liaison in the receiving school district,
- b. All remaining requirements regarding the transition planning process apply, and
- c. Other pertinent information that is not HIPAA protected shall be shared.

If a receiving school district or the State Charter School Institute believes that physical or mental health information is vital to its planning for a student, but a HIPAA release has not been signed, the education agency will not have access to the information. One option would be for the receiving education agency to conduct its own assessment to gather the needed information.

Any entity that receives HIPAA protected information must have a process that defines those individuals that have access to the information, how the information is stored and how long the information will be maintained.

FERPA allows entities to provide a student's educational records to another school or school district where the student seeks or intends to enroll without the student's consent. The written transition plan is part of the student's educational record. The educational record should contain the minimum necessary information for the student to successfully transition back to the public school system.

For information protected by the Federal Substance Abuse Confidentiality Regulations (42 C.F.R., part 2), the recipient may not re-disclose such information without another specific release of information.

These laws require a signed consent (release) from the individual before any confidential health information can be released to the educational agency. The individual's decision to share or not share their individually identifiable health information is federally protected. Health care providers and entities that fail to protect these privacy rights are subject to severe fines and penalties including up to 10 years in prison. If the individual believes that the data was shared without their permission, they may file a HIPAA Privacy or Security Complaint with the United States Department of Health and Human Services, Office of Civil Rights.

Information to be provided to the receiving district should include the following categories as appropriate. The bulleted items in each category are suggestions to consider based on the educational needs of the student. The information to be shared is that which is important in determining appropriate educational services for the student and the information needed in determining strategies to ensure a safe learning environment for all students.

Current Educational Setting

- Describe the educational services the student has been receiving:
 - Typical number of students in classes
 - Typical student teacher ratio
 - Has the student been receiving paraprofessional support
 - What type of educational setting has the student been participating in (Day Treatment, Residential, Hospital, Detention, etc.)
- Discharge information:
 - Is this a planned or unplanned discharge
 - Did the student successfully complete the treatment program
 - Will the student's residential placement be changing as well as the educational placement
- Transition planning information:
 - Recommendations for services after discharge

Academic Functioning

- Transcripts/Grades and credits
- Grade placement
- Assessments taken in the prior 12 months
- Performance level (math, reading, writing)
- Current course enrollment
- Copy of current IEP/504/Ttl or general education learning plan
- Instructional strategies that are effective for the student
- Academic strengths/limitations
- Extra-curricular activities student has been involved with or is interested in (sports, music, etc.)

Safety Information

- Describe the behavior that caused the student to be identified as at risk to self or community:
 - What was the behavior
 - What is the timeframe (did the behavior occur recently or is this historical information)
 - Does the student continue to exhibit this behavior
 - If so, how frequently and what is the duration
- What strategies/services need to be in place (for example, line of sight supervision, special passing periods, etc.)
- Describe any legal limitations, such as conditions of probation
- Describe any safety issues related to transportation
- Describe any safety issues related to community based or extra-curricular activities

Behavior Supports Needed

- Recommended strategies (for example, key adult to check in with, adjusted schedule, allowing student to ask for a time out, etc.)
- Level of support needed for success, for example, is the student only successful in 1:1 situations or can the student maintain appropriate behavior in a small group, but becomes anxious and loses focus in groups of more than 6, etc.
- Environmental strategies that have been used and those that are effective, for example, visual cues of the daily schedule and warnings prior to transitions, has physical restraint been used, etc.
- What events or situations tend to trigger unsafe behavior for the student
- What has been the level of participation/engagement in treatment (student and family)

Medical Information

(as relevant to the educational needs of the student and with a signed HIPAA and if appropriate, 42 CFR Part 2 Substance Abuse confidentiality authorization or other required privacy release)

- Medicaid status
- Who has decision making authority for medical issues
 - Contact information for that person
- Physical and mental health information:
 - General health status
 - Diagnosis
 - Medications
 - Allergies
 - Health care plan (if applicable)
 - Mental health assessments conducted
 - What follow up services will be provided (continuity of care plan)

Transition Planning

For students in approved facility schools, transition planning in the general sense, should be an on-going process beginning when the student is placed. Once an anticipated discharge date is identified and decisions are made about changes in residential placement, if applicable, the schools, which are within a reasonable distance can be identified and more specific transition planning should begin as soon as possible.

For students qualifying under the HB10-1274 process the child welfare education liaison, the treating agency, the county department of human/social services or the Division of Youth Corrections if applicable, should decide whether a face to face meeting is needed to develop the transition plan, or if the plan could be developed by some other means. A separate meeting for transition planning is not required. If the student is a special education student, the transition planning process could be accomplished in combination with a Change of Placement meeting. If the treating agency has scheduled a discharge meeting, the transition planning process could occur at that time. Another option would be to use an existing interagency planning committee (such as a 1451 collaborative management team), for transition planning providing that the structure of the group would make it feasible. Transition planning might also be accomplished over the telephone, through video conferencing or electronic or faxed information.

The information sharing and transition planning process required in HB10-1274 only applies to students identified as “at-risk to self or community” within the previous 12 months. However, treating agencies, districts and the State Charter School Institute are strongly encouraged to engage in a similar transition planning process for all students returning to a public school setting from an approved facility school. Such transitions are often difficult for students and focused transition planning and information sharing can help these students be more successful in their new school placement.

The key components that need to be discussed are the student needs, the options for services within the district where the student will be living and specific transition plans (i.e. placement decisions, services and timelines).

HB10-1274 does not specifically require that the transition plan be in writing. However, a written transition plan is encouraged so that all partners in the transition process have a common understanding of the agreed upon plan. Because the transition plan will become part of the student’s educational record, care should be taken to limit information to that which is needed for the successful transition of the student back into the public school setting. Sensitive and protected information (e.g., diagnosis) should be excluded. It is recommended that all

partners, including the parent(s) and student receive a copy of the plan at the time of the transition planning meeting or as soon as possible after whatever transition planning process is used.

Data Collection

School Districts and the State Charter School Institute are required to collect data regarding transitions of qualifying students under HB10-1274. The notification/invitation form has been designed to help facilitate the data collection with minimal impact on the partner agencies.

If data related to HB10-1274 is maintained in the school district's primary electronic student information system, it should be designed so that the identification does not carry over beyond the academic year in which the transition occurred. The notification, invitation and data collection form does not need to be included in the student's educational record.

Dispute Resolution

When there is disagreement regarding the educational placement between the school district or State Charter School Institute and the responsible party, conflict resolution may occur through the following existing mechanisms:

- a. For students identified as having a disability, disagreements regarding educational placement decisions may be resolved using the Special Education procedures. These conflict resolution procedures are located on the Colorado Department of Education website on the Exceptional Student Leadership Unit (ESLU) webpage.
- b. For general education students, disagreements regarding educational placement decisions may be resolved using the procedures of the local school board.