

Second Regular Session  
Seventy-second General Assembly  
STATE OF COLORADO

INTRODUCED

LLS NO. 20-0755.01 Shelby Ross x4510

HOUSE BILL 20-1058

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HOUSE SPONSORSHIP

Froelich,

SENATE SPONSORSHIP

Bridges,

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House Committees  
Education

Senate Committees

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A BILL FOR AN ACT

101 CONCERNING SERVICES PERFORMED BY A BOARD CERTIFIED BEHAVIOR  
102 ANALYST FOR STUDENTS DURING SCHOOL HOURS.

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Bill Summary

*(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov>.)*

The bill requires an administrative unit to allow a behavior analyst to provide medically necessary services to a student during school hours if the student's parent or legal guardian requests such services.

The bill requires each administrative unit to adopt a policy that outlines certain requirements for a behavior analyst who is providing services in a school setting and parents who request the services of a

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.  
Capital letters or bold & italic numbers indicate new material to be added to existing statute.  
Dashes through the words indicate deletions from existing statute.

behavior analyst. An administrative unit may establish consequences for a behavior analyst for failure to comply with the administrative unit's policy.

The bill requires each administrative unit to establish reporting requirements and prohibits an administrative unit from entering into a contract or an exclusive agreement with a behavior analyst that prohibits the parent or legal guardian from choosing a behavior analyst for the student.

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1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** In Colorado Revised Statutes, **add 22-20-121** as  
3 follows:

4 **22-20-121. Behavior analysis services in school - not**  
5 **prohibited - written policy - definitions.** (1) AS USED IN THIS SECTION,  
6 UNLESS THE CONTEXT OTHERWISE REQUIRES:

7 (a) "BEHAVIORAL HEALTH EVALUATION" MEANS AN EVALUATION  
8 THAT INCLUDES THE STUDENT'S DIAGNOSIS, IF APPLICABLE; THE TYPE OF  
9 INTERVENTION NEEDED; THE LENGTH OF THE INTERVENTION;  
10 IDENTIFICATION OF THE STUDENT'S GOALS; AND IDENTIFICATION OF  
11 MEDICALLY NECESSARY SERVICES WITHIN THE EDUCATIONAL  
12 ENVIRONMENT THAT GO BEYOND THOSE PROVIDED FOR BY FREE AND  
13 APPROPRIATE PUBLIC EDUCATION PURSUANT TO THE FEDERAL  
14 "REHABILITATION ACT OF 1973", 29 U.S.C. SEC. 701 ET SEQ.

15 (b) "BEHAVIOR ANALYST" MEANS A PERSON WHO IS NATIONALLY  
16 CERTIFIED AS A BOARD CERTIFIED BEHAVIOR ANALYST, OR AS A BOARD  
17 CERTIFIED ASSISTANT BEHAVIOR ANALYST, WHO MAY OVERSEE A  
18 REGISTERED BEHAVIOR TECHNICIAN DURING THE NORMAL COURSE OF THE  
19 BEHAVIOR ANALYST'S PROFESSIONAL DUTIES.

20 (c) "EVALUATOR" MEANS A PROFESSIONAL PERSON AS DEFINED IN  
21 SECTION 27-65-102 (17); A MENTAL HEALTH PROFESSIONAL LICENSED

1 PURSUANT TO PART 3, 4, 5, OR 6 OF ARTICLE 245 OF TITLE 12; OR A SCHOOL  
2 PSYCHOLOGIST LICENSED PURSUANT TO SECTION 22-60.5-210 (1)(b).

3 (2) AN ADMINISTRATIVE UNIT SHALL NOT PROHIBIT A BEHAVIOR  
4 ANALYST FROM PROVIDING MEDICALLY NECESSARY SERVICES TO A  
5 STUDENT DURING SCHOOL HOURS IF THE STUDENT'S PARENT OR LEGAL  
6 GUARDIAN REQUESTS SUCH SERVICES FROM THE BEHAVIOR ANALYST.

7 (3) NO LATER THAN JANUARY 1, 2021, EACH ADMINISTRATIVE  
8 UNIT SHALL ADOPT A POLICY TO IMPLEMENT THE PROVISIONS OF THIS  
9 SECTION. AT A MINIMUM, THE POLICY MUST:

10 (a) REQUIRE A BEHAVIOR ANALYST WHO PROVIDES SERVICES  
11 PURSUANT TO THIS SECTION TO MAINTAIN GENERAL LIABILITY INSURANCE  
12 COVERAGE IN AN AMOUNT NOT LESS THAN ONE MILLION DOLLARS PER  
13 OCCURRENCE AND THREE MILLION DOLLARS PER AGGREGATE AND TO  
14 PROVIDE A CERTIFICATE OF INSURANCE NAMING THE ADMINISTRATIVE  
15 UNIT AS THE CERTIFICATE HOLDER;

16 (b) REQUIRE A BEHAVIOR ANALYST TO COMPLETE A CRIMINAL  
17 BACKGROUND CHECK THAT MEETS THE REQUIREMENTS OF SECTION  
18 22-32-109.7;

19 (c) STATE THAT SERVICES PERFORMED BY A BEHAVIOR ANALYST  
20 ARE PERMITTED DURING SCHOOL HOURS IF THE STUDENT'S PARENT OR  
21 LEGAL GUARDIAN PRESENTS A LETTER OF MEDICAL NECESSITY PROVIDED  
22 BY A PHYSICIAN OR PSYCHOLOGIST OR A BEHAVIORAL HEALTH  
23 EVALUATION PERFORMED BY ANOTHER EVALUATOR CHOSEN BY THE  
24 PARENT OR LEGAL GUARDIAN. THE EVALUATION MUST INDICATE THAT THE  
25 PROVISION OF SERVICES DURING SCHOOL HOURS IS NECESSARY TO ASSIST  
26 THE STUDENT WITH BEHAVIORAL HEALTH IMPAIRMENTS THAT THE  
27 EVALUATOR DETERMINES ARE INTERFERING WITH THE STUDENT'S ABILITY

1 TO THRIVE AND ADAPT AS AN INDIVIDUAL IN SOCIETY, AND THAT  
2 TREATMENT OF THESE BEHAVIORS IS ENVIRONMENTALLY OR  
3 CONTEXTUALLY SENSITIVE AND, AS SUCH, NEEDS TO BE PROVIDED IN THE  
4 SCHOOL SETTING. A BEHAVIORAL HEALTH EVALUATION PRESENTED BY  
5 THE PARENT OR LEGAL GUARDIAN OF A STUDENT IS NOT AN INDEPENDENT  
6 EDUCATION EVALUATION FOR THE PURPOSES OF DETERMINING IF A  
7 STUDENT QUALIFIES FOR SPECIAL EDUCATION AND RELATED SERVICES.

8 (d) STATE THAT SERVICES PERFORMED BY A BEHAVIOR ANALYST  
9 MAY BE PROVIDED DURING STRUCTURED AND UNSTRUCTURED TIME;

10 (e) STATE THAT THE COST OF ANY SERVICES PERFORMED BY A  
11 BEHAVIOR ANALYST FOR A STUDENT IS THE SOLE RESPONSIBILITY OF THE  
12 PARENT OR LEGAL GUARDIAN, INDIVIDUALLY OR THROUGH AN APPLICABLE  
13 HEALTH INSURANCE POLICY, MEDICAID, OR OTHER THIRD-PARTY PAYER;

14 (f) REQUIRE A BEHAVIOR ANALYST TO COMPLY WITH AND ABIDE  
15 BY THE TERMS OF ANY INDIVIDUALIZED EDUCATIONAL PROGRAM,  
16 INDIVIDUAL FAMILY SERVICE PLAN, OR SECTION 504 PLAN DEVELOPED  
17 PURSUANT TO THE FEDERAL "REHABILITATION ACT OF 1973", 29 U.S.C.  
18 SEC. 701 ET SEQ., APPLICABLE TO A STUDENT WHO IS A PATIENT OF THE  
19 BEHAVIOR ANALYST WHILE ON A SCHOOL CAMPUS. THE SERVICES  
20 FURNISHED BY A BEHAVIOR ANALYST MUST BE INCORPORATED INTO A  
21 WRITTEN TREATMENT PLAN APPLICABLE TO THE STUDENT. IF THERE IS A  
22 DIFFERENCE IN THE BEHAVIOR ANALYST'S WRITTEN TREATMENT PLAN AND  
23 THE SCHOOL'S INTERVENTION PLAN CONCERNING SITUATIONS IN WHICH A  
24 STUDENT'S BEHAVIOR SIGNIFICANTLY INTERFERES WITH THE STUDENT'S  
25 DAILY FUNCTIONING INSIDE AND OUTSIDE OF THE SCHOOL SETTING, THE  
26 POLICY MUST ESTABLISH A PROCESS THAT INVOLVES THE STUDENT'S  
27 PARENT OR LEGAL GUARDIAN FOR REMEDYING THE DIFFERENCE.

1 (g) REQUIRE THE PARENT OR LEGAL GUARDIAN OF A STUDENT  
2 RECEIVING SERVICES FROM A BEHAVIOR ANALYST PURSUANT TO THIS  
3 SECTION TO EXECUTE A CONSENT TO RELEASE INFORMATION FORM  
4 BETWEEN THE BEHAVIOR ANALYST AND THE ADMINISTRATIVE UNIT; AND

5 (h) REQUIRE THE ADMINISTRATIVE UNIT AND BEHAVIOR ANALYST  
6 TO ENTER INTO A MEMORANDUM OF UNDERSTANDING ADDRESSING THE  
7 ELEMENTS OUTLINED IN THIS SUBSECTION (3) PRIOR TO THE DELIVERY OF  
8 SERVICES.

9 (4) AN ADMINISTRATIVE UNIT SHALL ESTABLISH REPORTING  
10 REQUIREMENTS FOR A BEHAVIOR ANALYST RELATED TO THE STUDENT'S  
11 PROGRESS AND STUDENT AND SCHOOL SAFETY CONCERNS AS THEY RELATE  
12 TO THE STUDENT'S EDUCATIONAL PROGRAMS.

13 (5) AN ADMINISTRATIVE UNIT MAY ESTABLISH CONSEQUENCES FOR  
14 A BEHAVIOR ANALYST FOR FAILURE TO COMPLY WITH THE  
15 ADMINISTRATIVE UNIT'S POLICY DEVELOPED PURSUANT TO SUBSECTION (3)  
16 OF THIS SECTION, INCLUDING TERMINATION OF THE BEHAVIOR ANALYST'S  
17 AUTHORIZATION TO PROVIDE SERVICES ON ANY SCHOOL CAMPUS IN THE  
18 ADMINISTRATIVE UNIT'S SCHOOL DISTRICT.

19 (6) AN ADMINISTRATIVE UNIT SHALL NOT ENTER INTO A CONTRACT  
20 OR AN EXCLUSIVE AGREEMENT WITH A BEHAVIOR ANALYST THAT  
21 PROHIBITS THE PARENT OR LEGAL GUARDIAN FROM CHOOSING A BEHAVIOR  
22 ANALYST FOR THE STUDENT. HOWEVER, THE PROVISIONS OF THIS SECTION  
23 DO NOT IMPAIR ANY EXISTING CONTRACT ON THE EFFECTIVE DATE OF THIS  
24 SECTION OR THE RENEWAL THEREOF.

25 (7) AN ADMINISTRATIVE UNIT'S FAILURE TO ADOPT A WRITTEN  
26 POLICY PURSUANT TO SUBSECTION (3) OF THIS SECTION DOES NOT  
27 PROHIBIT A BEHAVIOR ANALYST FROM PROVIDING SERVICES TO A STUDENT

1 PURSUANT TO THIS SECTION.

2           **SECTION 2. Act subject to petition - effective date.** This act  
3 takes effect at 12:01 a.m. on the day following the expiration of the  
4 ninety-day period after final adjournment of the general assembly (August  
5 5, 2020, if adjournment sine die is on May 6, 2020); except that, if a  
6 referendum petition is filed pursuant to section 1 (3) of article V of the  
7 state constitution against this act or an item, section, or part of this act  
8 within such period, then the act, item, section, or part will not take effect  
9 unless approved by the people at the general election to be held in  
10 November 2020 and, in such case, will take effect on the date of the  
11 official declaration of the vote thereon by the governor.