

Wyoming Department of Education
Special Education Programs

November 2019 Compliance Report

Region 6 Child Development Center Program Review

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Objective

Wyoming Department of Education, Special Education Programs (WDE) is the state educational agency responsible for special education funding and compliance pursuant to the Individuals with Disabilities Education Act (IDEA).¹ WDE initiated this program review in fulfillment of its general supervisory responsibility with the cooperation of the Wyoming Department of Health, Behavioral Health Division, Early Intervention and Education Program. The Child Development Services of Fremont County review is intended to identify areas of potential noncompliance with IDEA and implement corrective plans in an effort to ensure IDEA compliance and improve outcomes for preschool age students with disabilities.

¹ 34 C.F.R. §300.149.

Introduction

WDE is responsible for special education general supervision pursuant to Part B of the IDEA. In order to meet this obligation, WDE must ensure that the requirements of IDEA are met, that each eligible child with a disability receives a free appropriate public education (FAPE), including special education and related services provided at public expense according to an Individualized Education Program (IEP), and that each educational program for children with disabilities in Wyoming meets the educational standards of the state.²

Part B of IDEA provides a system of services, supports, and protections for children commencing at age 3.³ In Wyoming, the Department of Health, Behavioral Health Division, provides IDEA mandated services for student with disabilities age three through five in 14 regional child development centers.⁴ Because WDE is the state educational agency responsible for special education, WDE maintains responsibility for special education compliance oversight at the regional centers operated by the Division.⁵

Approach

WDE, through the independent undersigned investigator, conducted a program review of the Child Development Services of Fremont County (Region 6). The investigator reviewed multiple data sources, including a random sample of student files. A data convergence model is used to make findings, conclusions, and recommendations to WDE. Data convergence requires a review of multiple data sources with substantiation between one or more sources in order to find noncompliance.

The program review focused on four broad areas necessary for compliance under IDEA. The focus areas included:

- Comprehensive evaluations and identification of educational needs;
- The provision of FAPE, including whether services were aligned with educational need and provided consistent with the IEP;
- The provision of services in the Least Restrictive Environment (LRE); and
- Providing parents Prior Written Notice (PWN).

² 34 C.F.R. §300.17.

³ 34 C.F.R. §300.101

⁴ W.S. §21-2-701

⁵ W.S. §21-2-703(a)

This report protects student confidentiality through the use of the unique student identifier contained in the student's file. No personally identifiable information is used in compiling the report.

It should be noted that Region 6 staff were helpful and accommodating during the onsite review. Staff made files readily available, answered questions, and assisted with scheduling logistics.

Data Sources

- 64 student files, randomly selected, current students and students exited in the last year
- Responses to staff questions
- Interviews with three community members
- Interviews with two area school district directors of special education
- Service provider logs
- January 25, 2019 letter of concern from a parent
- February 8, 2019 letter of concern from a local attorney
- August 28, 2019 letter of concern from a parent
- August 29, 2019 letter of concern from a local provider
- September 3, 2019 letter of concern from a local preschool provider
- September 10, 2019 letter of concern summarizing concerns of 14 previous employees
- September 12, 2019 letter from the Special Education Coordinator
- September 14, 2019 letter of concern from a parent
- Memorandum of Understanding (MOU) Between Child Development Services of Fremont County #6 and PreK/Preschool for All Entity
- Contract Agreement for Community Preschool Services Between Child Development Services of Fremont County and _____
- Tuition Payment Agreement

I. Findings

COMPREHENSIVE EVALUATION

Files were reviewed to determine if a comprehensive evaluation was conducted as required by IDEA. Evaluations must consist of assessments and procedures to determine if the child is eligible under IDEA and the educational needs of the child to assist in determining the content of the IEP.⁶ 44 files were reviewed to determine if Region 6 conducted a comprehensive evaluation. The relevant findings are summarized below:

- Student # [REDACTED]: Student produced no spoken language. Staff was unable to complete all assessments. Relevant scores measured academic skills at less than 1% and speech-language skills at less than 1%. The team determined the student eligible as a learner with a speech-language disability only. No cognitive or functional assessments were conducted. No further assessments were recommended or provided.
- Student # [REDACTED]: Relevant scores measured academic skills at less than 3% and speech-language skills at less than 1%. Staff noted the student was hearing impaired. No assessments were conducted in the areas of hearing, cognition, or functional skills. No further assessments were recommended or provided.
- Student # [REDACTED]: Student's academic skill measure to be at 82%. The team determined the Student was not eligible on October 3, 2018. The Student was retested in November 2018 and found to be eligible as a learner with a developmental delay.
- Student # [REDACTED]: The student was deemed eligible without any assessments. The Student previously received services under Part C of IDEA.
- Student # [REDACTED]: The student was evaluated in August 2018. The team determined the student was not eligible on September 12, 2018. The student's motor skills were retested in October 2018 and deemed eligible as a learner with a developmental delay on November 27, 2018.
- Student # [REDACTED]: Relevant scores measured all skills areas assessed at 1%. The team determined the student eligible as a learner with a speech-language disability only. No cognitive or functional assessments were conducted. No further assessments were recommended or provided.
- Student # [REDACTED]: Developmental skills were measured at 1%. The team determined the student eligible as a learner with a speech-language disability

⁶ 34 C.F.R. §§300.301 through 300.304

only. No cognitive or functional assessments were conducted. No further assessments were recommended or provided.

- Student # [REDACTED]: Notes in the file indicated the student needed to be assessed in all areas. The team conducted assessments in the areas of academic, communication, and motor only.
- Student # [REDACTED]: The student was evaluated and determined eligible on December 1, 2017. A reevaluation was conducted in November 2018 to get more information.
- Student # [REDACTED]: Cognitive skills were measured at 1%. The student was determined eligible as a learner with a speech-language disability only in November 2017. No further assessments were conducted until October 2018. A motor evaluation was conducted, and the student was deemed eligible as a learner with a developmental delay in November 2018.
- Student # [REDACTED]: Notes in the file indicate the student was born addicted to methamphetamine. The guardian was concerned for the child's development. The students' academic skills were measured at 1% and fine motor was 2%. No further assessments were recommended or provided.
- Student # [REDACTED]: Academic skills were measured at 1%. No further assessments were recommended or provided.
- Student # [REDACTED]: The team determined the student was eligible for service without any initial evaluation. The student previously received services under Part C of IDEA.
- Student # [REDACTED]: Academic skills were measured at 2%. No further assessments were recommended or provided.
- Student # [REDACTED]: Academic skills were measured at 2%. No further assessments were recommended or provided.
- Student # [REDACTED]: The team determined the student was eligible for service without any initial evaluation. The student previously received services under Part C of IDEA.

When asked about the assessment practices in Region 6, the Acting Director and the Special Education Coordinator reported that speech-language disability is always the primary consideration. When asked what happens when the team suspects autism or cognitive disability, both staff members stated that "We don't evaluate that," and "We are not allowed to do that." In further detail, the staff explained that if a psychological

evaluation is needed, Region 6 would refer that out to a private provider, as no school psychologists are employed.

With respect to the students who were deemed ineligible, reevaluated in a short period of time, and then determined eligible, the Acting Director explained that if a student was ineligible, it was the Region's practice to conduct an in-depth motor evaluation in order to meet the eligibility criteria in the category of developmental delay.

Two area school districts that receive the majority of students transitioning from Region 6 to kindergarten provided information for this investigation. Both directors reported that Region 6 does not conduct any cognitive evaluations regardless of the suspected disability. Region 6 conducts the same or similar evaluations for speech-language disabilities as for cognitive impairments.

The IDEA imposes additional evaluation requirements prior to exiting a student from special education.⁷ An additional 20 files were reviewed to determine whether Region 6 conducted evaluations prior to exiting a student from special education. Records indicate 8 of the 20 students' exited special education. The files contained no evidence that any student was evaluated prior to exiting special education.

One of the local school district special education directors expressed his concern regarding lack of evaluation by Region 6 prior to exiting special education services. He described a situation where the parents of a Region 6 preschooler believed the student was still on an IEP when transitioned to kindergarten. Because the student had been exited from special education before entering kindergarten, the student lost valuable instructional time. When the director requested that Region 6 evaluate students prior to transition to kindergarten, he was told no.

3 files contained evidence that parents revoked consent for special education, causing the students' exit from services. Although the IDEA does not require an evaluation prior to exit due to revocation, PWN is required.⁸ None of the three files contained PWN explaining the effects of the parents' revocation. The 9 remaining files contained no definitive exit plan and no PWN documenting a transition plan.

THE PROVISION OF FAPE

Under Part B of the IDEA, eligible students are entitled to receive FAPE commencing at age three. FAPE includes special education and related services that are provided at public expense, meet the standards of the state educational agency, and are provided in conformity with an IEP.⁹ The most recent landmark United States Supreme Court

⁷ 34 C.F.R. §300.305(e)

⁸ 34 C.F.R. §300.300(b)(4)

⁹ 34 C.F.R. §300.17

decision further defined FAPE to mean special education and related services reasonably calculated to provide educational benefit in light of a student's unique circumstances.¹⁰ FAPE must be uniquely designed for each student based on results of the comprehensive evaluation and identification of educational needs.

44 files were reviewed for compliance with the FAPE standard. 38 files contained the same level of service for students. Region 6 provided speech or special education one time per week for 20 minutes. Regardless of educational need, most students received 20 minutes per week of service. This was true even for students with extremely low scores on developmental assessments (Students # [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], and [REDACTED]). Upon inquiry, staff indicated that this amount of service was a standard practice at Region 6.

FAPE includes the provision of extended school year (ESY) services when necessary in order for a student to receive FAPE.¹¹ Of the 44 files reviewed, 2 students needed ESY services in order to receive FAPE. The IEPs of both students documented the same amount of time for ESY as 8 sessions for 20 minutes. The students previously noted with extremely low scores on developmental assessments did not have ESY service in their IEPs.

FAPE must be delivered in conformity with an IEP. It was difficult to ascertain from the records reviewed whether services were provided by Region 6 in conformity with the IEPs of enrolled students. Staff reported that the previous Region 6 director no longer required service provider logs to verify service delivery. As of February 2019, Region 6 no longer documented the provision of service in the students' files. Some providers continued to keep service logs for students. September 2019 service logs were reviewed. It was not clear from the partial records reviewed if service was provided consistent with student IEPs.

LEAST RESTRICTIVE ENVIRONMENT

In determining the educational placement of a child with a disability, *including a preschool child with a disability*, Region 6 must ensure that the placement decision is made in conformity with the LRE provisions.¹² The LRE provisions of IDEA are fully applicable to the placement of preschool children with disabilities.¹³ To the maximum extent appropriate, children with disabilities must be educated with nondisabled

¹⁰ *Andrew F. v. Douglas County Sch. Dist. RE-1*, 69 IDELR 174 (2017).

¹¹ 34 C.F.R. §300.106

¹² 34 C.F.R. §300.116 (emphasis added)

¹³ *Dear Colleague Letter: Preschool Least Restrictive Environments*, 69 IDELR 106 (OSEP 2017)

children. Removal from the regular education environment may occur only if the nature or severity of the student's disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.¹⁴

The IDEA requires that all education placement decisions be considered on an individual basis considering each child's unique needs.¹⁵ The developmental preschool model in Wyoming does not provide for a regular classroom environment, as nearly all students participating in the Region 6 program are students with disabilities.

The United States Department of Education, Office of Special Education Programs (OSEP) articulated its expectation that all local education agencies (the regional developmental preschools through contract with the Division) must explore alternative methods to ensure that the LRE requirements are met for each preschool child with a disability. These methods may include: (1) providing opportunities for the participation of preschool children with disabilities in preschool programs operated by public agencies other than LEAs (such as Head Start or community-based child care); (2) enrolling preschool children with disabilities in private preschool programs for nondisabled preschool children; (3) locating classes for preschool children with disabilities in regular public elementary schools; or (4) providing home-based services. If a public agency (Region 6) determines that placement in a private preschool program is necessary for a child to receive FAPE, the public agency must make that program available at no cost to the parent.¹⁶ An August 23, 2017 letter to the Regional Child Development Center Directors reiterated the Division's understanding and commitment to placing preschoolers in the LRE consistent with IDEA.

Of the 44 files reviewed, it was impossible to ascertain whether the student's placement was in a community-based preschool or the center-based preschool. The LRE was frequently identified only as "preschool." Upon inquiry, the acting director and special education coordinator were unaware of the need to identify whether a student's LRE was placement in a community setting or the Region 6 special education environment.

One of the community preschool providers explained that she was required to sign a contract with Region 6 in order for students to continue to receive special education

services there. This provider refused to sign the contract upon advice from counsel. Without this contract, Region 6 was unwilling to serve students in that community-

¹⁴ 34 C.F.R. §300.114

¹⁵ 64 Federal Register 12471

¹⁶ *Dear Colleague Letter: Preschool Least Restrictive Environments*, 69 IDELR 106 (OSEP 2017)

based preschool. The Contract Agreement for Community Preschool Services identified 9 obligations of the community-based preschool in order for the program to be considered as a placement option. The 9 requirements are distinct from any of IDEA's requirements for providing services in the LRE.

The Region 6 contract requirement caused concern according to providers and parents. The three parents who revoked their consent for special education services articulated the desire to have their children served in a community-based preschool setting. Records support that Region 6 only offered a placement in the child development center. Several letters submitted as part of the program review expressed a similar concern.

- A September 14, 2019 letter from a parent states: "At our final 'team' meeting, CDS made it clear that they would only serve our daughter if she participated in full-time special education at their facility."
- An August 28, 2019 letter from another parent states: "My understanding was that, if I opted to enroll my daughter in [community preschool], I was opting out of the opportunity to receive speech therapy through CDS." "This coincided with other parents of children receiving CDS services telling me that they were also told that the way their child received services was going to be changed . . . parents were being pressured to enroll their children in the CDS preschool if they wanted to receive services."
- A January 25, 2019 letter from another parent states: "I was truly caught off guard when I received a phone call in November 2018 telling me if I wanted to continue services for [child] with CDS she would have to be bused from [community preschool] to CDS. There was no option given. Either she would be bused and receive services or not be bused and services would be discontinued. There was no communication with us until this ultimatum was given."

A September 12, 2019 letter from the Special Education Coordinator (provided by community members) indicated that the current administration did not feel that the Community Preschool Contracts were appropriate or necessary. The letter went on to

explain that Region 6 would provide “contracts to parents to help pay for partial tuition if any student is on an IEP and attends a preschool that is their LRE in the community.” A portion of the tuition would be paid directly to the community preschool program. It is unclear what would happen to the tuition payment if a parent was unwilling to sign the contract.

PRIOR WRITTEN NOTICE

One of the most important procedural safeguards is PWN. Region 6 must give a parent prior written notice a reasonable amount of time before it:

- (1) Proposes to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child; or
- (2) Refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child.¹⁷

Nearly all files contained evidence that PWN was provided to parents when proposing evaluations, placements, and amendments. However, this is in marked contrast to the transition out of preschool to kindergarten, or the exit from special education. As previously noted, Region 6 did not propose or conduct reevaluations prior to exiting a student from special education. In addition, of the 20 files reviewed for exit purposes, only 4 files contained PWN to document the students’ transition.

GENERAL CONCERNS

Community members expressed serious concerns about the Board overseeing the Region 6 program. Several community members and parents expressed frustration with the lack of response provided by the Board when concerns were elevated to its level. Although the functions of the developmental preschool Board are beyond the scope of this special education program review, the Board plays an integral role in personnel selection and staff retention.

Region 6 lost 29 employees between the 2018-2019 and 2019-2020 school years. This may have a direct impact on its ability to comprehensively evaluate students, provide individualized services, and provide placements in the LRE. In the 2018-2019 school year, Region 6 employed 76 staff members across all disciplines. In the 2019-2020 school year, the total number of staff members has reduced to 56. Comparing the staff rosters between the two school years, 29 staff members left Region 6, including five speech language clinicians and various other professionals.

II. Conclusions

COMPREHENSIVE EVALUATION

Region 6 does not meet the IDEA's requirements for individualized, comprehensive evaluations. All students received the same or very similar type of evaluation in order to determine if the student was eligible for special education. This held true for students with speech language impairments and for students with significant cognitive impairments. Staff were unaware of the need to comprehensively evaluate students in all suspected areas of disability. Staff reported that they do not conduct cognitive evaluations and do not have the appropriate staff to conduct assessments for cognitive disabilities and autism. The failure to conduct individualized, comprehensive evaluations is a violation of IDEA and Chapter 7 of the Wyoming Department of Education Special Education Rules.

THE PROVISION OF FAPE

Region 6 does not meet IDEA's requirements with respect to the provision of FAPE. Services are provided based on established practice and scheduling, rather than individualized student need. The similarities between service amounts in nearly all IEPs reviewed contradicts the individualized nature of IEP planning. Service amounts must be based in individual student need determined through comprehensive evaluation and planned by the IEP team.

LEAST RESTRICTIVE ENVIRONMENT

Region 6 does not meet IDEA's mandate to provide student placements in the least restrictive environment. The IEPs reviewed do not support or justify the number of students served in the Region 6 preschool setting rather than in the community. There is no evidence in student records that IEP team consider a continuum of placements available to preschool children. In addition, the contractual requirements Region 6 proposed last year, and the Tuition Payment Agreement required this year place additional burdens on parents and community providers. In contrast, the IDEA places the burden to provide placements in the LRE squarely on Region 6. Placements, or

payment for placements, cannot be made contingent upon parents signing any type of agreement.

PRIOR WRITTEN NOTICE

Region 6 appropriately uses PWN at several required points, including proposing evaluations, IEP services, or IEP amendments. However, Region 6 did not meet IDEA's requirement to provide parents PWN before exiting a student from special education, or amending services in the IEP to reflect full day programming and increased expectations in kindergarten.

III. Recommendations

In light of the broad areas of noncompliance documented through this program review, the longstanding nature of the compliance concerns, and the lack of fundamental knowledge regarding the requirements of IDEA, it is recommended that Region 6 obtain the service of a special education leader/mentor. The special education leader/mentor should be responsible for all special education oversight, including staff training, development of compliant procedures, and IDEA implementation. Recommendations for implementation include:

1. 80 hours of leadership/mentoring per month at various Region 6 locations;
2. Leadership/mentoring for at least 6 months duration to ensure well-grounded implementation change;
3. Monthly reports from the leader/mentor to WDE and/or the Division; and
4. A commitment to long-term IDEA compliance from the Board.

Recognizing that this level of oversight is appropriate only in exigent circumstances, the results of this program review confirm many areas of noncompliance and a lack of institutional knowledge on how to develop and implement compliant procedures. In addition, the community has expressed serious and ongoing concerns with Region 6. It is critical to restore the community's confidence in Wyoming's dynamic educational system that supports and improves outcomes for learners with disabilities.

This report is respectfully submitted to WDE in conclusion of the program review. Date:
November 4, 2019



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