

Wyoming Department of Education  
Special Education Division

**WYOMING BEHAVIORAL HEALTH DIVISION  
VERIFICATION OF CORRECTION  
OF NONCOMPLIANCE**

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**CHILD DEVELOPMENT SERVICES OF  
FREMONT COUNTY**

**REGION 6**

WDE conducted the verification review in November 2021.

WDE Consultant, Lenore Knudtson, compiled the findings of the verification review  
into this report issued in January 25, 2022.

## Background

In November 2019, the Wyoming Department of Education, pursuant to its general supervisory authority as the State Education Agency under Part B of the Individuals with Disabilities Education Act (IDEA) enumerated at 34 C.F.R. § 300.149, conducted a program review at the Child Development Services of Fremont County (Region 6), the entity providing Part B services for eligible three to five year old children with disabilities under contract with the Wyoming Department of Health, Behavioral Health Division (BHD), Early Intervention and Education Program. Although Region 6 is the contracted provider of services, the BHD is ultimately responsible for any noncompliance as the agency designated to provide services to preschool age students with disabilities in Wyoming. The review was intended to ensure students with disabilities receive a Free Appropriate Public Education (FAPE) through the identification of potential noncompliance with IDEA, federal regulation, and Wyoming Special Education Rules. The results are described below, and a summary comparison table is attached as an appendix to this report, permitting a longitudinal comparison of progress made toward correction of noncompliance.

## 2019 PROGRAM REVIEW SUMMARY

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

- **Comprehensive evaluations and identification of educational needs:**

As part of a comprehensive evaluation, the IDEA requires that a child be assessed in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities. 34 C.F.R. §300.304(c)(4). It is impermissible to rely on a single measure or assessment as the sole criterion for determining whether a child is a child with a disability or for determining an appropriate educational program for the child. 34 C.F.R. §300.304(b)(2). Medical service or evaluation performed by a physician may be necessary for some students. When

needed for the purpose of eligibility determinations or contents of the IEP, that service must be provide by the public agency at no cost to the parent. *34 C.F.R. §300.34(c)(5)*.

- **The provision of FAPE, including whether services were aligned with educational need and provided consistent with the IEP:**

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. *34 C.F.R. §300.17*. The most recent landmark United States Supreme Court 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. *Endrew F. v. Douglas County Sch. Dist. RE-1*, 69 IDELR 174 (2017). FAPE must be uniquely designed for each student based on results of the comprehensive evaluation and identification of educational needs. The IDEA requires that services be aligned to students' unique educational needs rather than program configurations or funding.

- **The provision of services in the Least Restrictive Environment (LRE):**

The IDEA requires that all education placement decisions be made on an individual basis considering each child's unique needs. In determining the educational placement of a child with a disability, *including a preschool child with a disability*, the Region 6 must ensure that the placement decision is made in conformity with the LRE provisions. *34 C.F.R. §300.116* (emphasis added). The LRE provisions of IDEA are fully applicable to the placement of preschool children with disabilities. *Dear Colleague Letter: Preschool Least Restrictive Environments*, 69 IDELR 106 (OSEP 2017). To the maximum extent appropriate, children with disabilities must be educated with nondisabled 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. *34 C.F.R. §300.114*.

- **Providing parents Prior Written Notice (PWN):**

PWN is a hallmark procedural safeguard for the parent of a student with a disability. The federal regulations at *34 C.F.R. §300.503* require that PWN be given to a parent of a child with a disability a reasonable amount of time before a public agency:

- o Proposes to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child; or
- o Refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child.

The results of the original program review and the subsequent verification reviews are described in detail below.

### COMPREHENSIVE EVALUATION

44 files were reviewed to determine if Region 6 conducted comprehensive evaluations. Region 6 did 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

44 files were reviewed for compliance with the FAPE standard. 38 files contained the same level of service for students. The 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. Upon inquiry, staff indicated that this amount of service was a standard practice in Region 6.

### LEAST RESTRICTIVE ENVIRONMENT

Of note, the developmental preschool model in Wyoming does not provide for a regular classroom environment. Nearly all students participating in the BHD's Region 6 program are students with disabilities.

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.

### PRIOR WRITTEN NOTICE

Region 6 appropriately used 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 the amount of service in the IEP.

## **2020 VERIFICATION REVIEW SUMMARY**

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According to the IDEA, findings of noncompliance must be corrected as soon as possible, but not later than one year from the original finding. *34 C.F.R. §300.603*. As part of its general supervisory duty, WDE must verify correction of noncompliance within the one-year period. If correction is not verified, WDE must outline the steps necessary to achieve compliance.

The initial verification review focused on correction of noncompliance subsequent to the 2019 program review. WDE reviewed files for compliance across the same four broad focus areas as the 2019 program review, allowing a direct comparison of noncompliance documented in 2019 with progress made in 2020. During the verification review, WDE reviewed 24 files of students enrolled in or exited from services in Region 6.

### COMPREHENSIVE EVALUATION

The BHD has a list of approved assessments on its website

([https://health.wyo.gov/wp-content/uploads/2018/02/ApprovedAssessmentsLetter\\_8-14-2017.pdf](https://health.wyo.gov/wp-content/uploads/2018/02/ApprovedAssessmentsLetter_8-14-2017.pdf)). The Battelle Developmental Inventory II (BDI) is only one of 17 approved assessment tools for the preschool population. Region 6 relied on the BDI (either administered the BDI or relied upon it if used in a previous evaluation) in all evaluations. No child should be evaluated using

only one measure or assessment, and children with more significant disabilities would need other targeted assessments in addition to the BDI to determine eligibility and educational needs.

The BDI is described in many of the 24 files reviewed as a “progress monitoring” tool rather than an assessment tool, further describing the use of the BDI “for progress monitoring purposes only.” Despite this stated limitation, the BDI was routinely used as the sole assessment for eligibility purposes. In sum, other comprehensive assessment tools are approved for use by the BHD, but remain unused when conducting IDEA evaluations. At least 16 of the 24 files reviewed contained evidence of noncompliance with the comprehensive evaluation requirement.

Also of concern is the lack of documentation regarding a student’s disability adversely affecting educational performance such that the student needs special education as required by the federal regulations and Wyoming rule. *34 C.F.R. §300.8*. A February 12, 2018 letter from the BHD to all Regional Child Development Centers (<https://health.wyo.gov/wp-content/uploads/2018/02/Eligibility-Guidance.pdf>) explains the necessity of making a two-prong eligibility determination, confirming an IDEA disability and the need for specially designed instruction. At least five of the files reviewed failed to document the second prong, or the disability’s adverse affect on the student’s educational performance and the need for special education.

In summary, Region 6 continues to struggle with conducting comprehensive evaluations in all areas related to a suspected disability. As a result, Region 6 continues to be noncompliant with the IDEA and Wyoming’s comprehensive evaluation requirements.

### THE PROVISION OF FAPE

IEPs must be designed to meet a child’s unique educational needs. However, the majority of the 24 files reviewed during this verification process confirmed that students, regardless of disability or educational need, received the same amount of specially designed instruction or speech service. Typically, Region 6 provided speech or special education one time per week (or 3 times per month) for 20 minutes. The offer of same or similar amounts of service based on program configuration rather than educational need, especially for students with significant disabilities, violates the IDEA’s FAPE requirements. Region 6 continues to be noncompliant in this area.

### LEAST RESTRICTIVE ENVIRONMENT

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 BHD) 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 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. *Dear Colleague Letter: Preschool Least Restrictive Environments*, 69 IDELR 106 (OSEP 2017). In response to the OSEP letter, on August 23, 2017, the BHD sent a letter to all Regional Child Development Center Directors, including Region 6, reiterating the BHD's understanding and commitment to placing preschoolers in the LRE consistent with IDEA.

Of the 24 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." Although this was identified as a concern in the November 2019 program review, the practice of utilizing "preschool" or "center" as the identified LRE does not sufficiently address the mandatory components of LRE or provide sufficient information to verify the full continuum of placements was considered by each IEP team.

Based on a review of IEPs in their entirety, the majority of students continued to receive services in a center-based model with no consideration of lesser-restrictive alternative placements (with the exception of remote services due to COVID). Region 6 continues to be out of compliance with the LRE mandates.

#### PRIOR WRITTEN NOTICE

Nearly all files contained evidence that PWN was provided to parents when proposing evaluations, placements, and IEP amendments. Issuance of PWN at the mandatory trigger points is a noted strength for Region 6 and represents an improvement from the time of the 2019 program review.

## 2021 VERIFICATION REVIEW

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The 2021 verification review focused on correction of noncompliance after the 2020 program review. WDE reviewed files for compliance across three of the four broad focus areas as the 2019 program review and the 2020 verification review. The fourth area, PWN, was not specifically reviewed based on the progress noted during the 2020 verification review. During this verification review, WDE reviewed files of 37 students enrolled in or exited from services in Region 6.

### COMPREHENSIVE EVALUATION

Noncompliance with the comprehensive evaluation requirement was found in multiple files as described below:

- 15 of the 37 files indicate that the student failed vision and/or hearing screening with no follow up by Region 6. As a threshold matter, a child with vision and/or hearing difficulties must be directly assessed in those areas, either by considering evaluative information provided by the parent, or through conducting assessments in those specific areas to determine if a vision or hearing disability exists. Further, poor hearing or vision at the time of evaluation may result in inaccurate and/or invalidated scores. *Intellectual Ability and Assessment: A Primer for Parents and Educators*, Ortiz, Leller, and Canter (National Association of School Psychologists, 2000). In addition to noting failed vision or hearing screening with no follow up, two files noted that a “complete eye exam is recommended,” and another file noted that Region 6 recommended the child be taken to an ophthalmologist for evaluation, but no follow up was documented. (Refer to file # [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], and [REDACTED].)
- In 13 of the 37 files, the BDI was the only assessment tool or measure used. Region 6 was previously cited for noncompliance with the comprehensive evaluation requirement for using the BDI as the sole measure or assessment tool. This is the third year of

continued noncompliance. (Refer to file # [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], and [REDACTED].)

- 16 of the 37 files also had evidence of other educational concerns and or other suspected disabilities with no additional assessments documented. These students were not assessed in all areas related to suspected disabilities. This is the third year of continued noncompliance for failing to evaluate children in all suspected areas of disability. (Refer to file # [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], and [REDACTED].)

### THE PROVISION OF FAPE

Noncompliance with IDEA's FAPE requirements was found in multiple files as described below:

- IEPs must be designed to meet a child's unique educational needs. Previous findings confirm that special education supports and services for children with disabilities enrolled in Region 6 were not individualized. The majority of children were offered the same amount of service regardless of severity of the disability or educational need. A clear majority of special education and related services are delivered in 20 or 30 minute weekly increments. It is unclear if this "standardization" of service results from provider schedules or the Region 6 classroom routine. Regardless of the reason, it is contrary to the IDEA to provide a "standard" amount of service to a majority of children. The type, amount, frequency, and duration must be individualized to meet each child's educational needs. It is anticipated that children with the most significant impairments may need more service, up to and including a full day of special education service and supports, depending on the needs of an individual child. It is also a concern that children identified "articulation only" as a disability category routinely receive 15 to 20 minutes of service weekly. It is unclear if a child was appropriately identified as a child with a disability if the adverse affect of the disability can be appropriately addressed in 15 to 20 minutes per week. (For

example, reference file # [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], and [REDACTED].). The lack of IEP service individualization is a continuing violation for the third year.

- If a child fails to make progress toward IEP goals, or in the event of little progress, the public agency must make efforts to recalibrate the IEP to address the lack of progress. 7 of the 37 files reviewed documented little or no progress. The IDEA requires that the IEP is reviewed and revised, as necessary, to address lack of expected progress. 34 C.F.R. §300.324(b). There was no evidence in these files that the amount of service, the delivery of instruction, or the type of service was changed to address the lack of progress. This is an area of ongoing concern as it represents a denial of FAPE. (Reference file # [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], and [REDACTED].)

Also noted, chronic absence interfered with IEP service delivery in some cases. When a student is chronically absent resulting in missed IEP service, it is necessary to review the IEP to determine the child's anticipated needs and if additional services or supports, like transportation, may be necessary for the child to receive FAPE. 34 C.F.R. §300.324(b). Chronic absences with no response from the IEP team may result in a denial of FAPE. (For example, reference file # [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], and [REDACTED].)

Several files contained a statement that services were "by appointment," or "as needed." This practice is contrary to IDEA's requirement that the amount, frequency, and duration of service be specified in the IEP. (For example, reference file # [REDACTED], [REDACTED], [REDACTED], [REDACTED], and [REDACTED].)

### LEAST RESTRICTIVE ENVIRONMENT

Most of the files reviewed (27 of the 37 files) confirmed that no consideration was given to a full continuum of placement options or a lesser restrictive environment than the BHD's preschool program in Region 6. One of the Child Development Centers in Region 6 is frequently the only placement offered, regardless of the severity of a child's disability, and even if the child was already attending a community-based preschool prior to or during enrollment. There is little justification for placing a child identified as an "articulation only" student in a center based program like Region 6 in any of the files reviewed. The BHD's

Region 6 was cited for noncompliance with the LRE mandate in the 2019 program review and the 2020 verification review. This is the third year of noncompliance regarding the LRE mandate.

Also of concern, in several files the location of service in provider logs did not align with the location of service as specified in the IEP. If an IEP team determines that services are to be delivered in the classroom environment rather than one-to-one or on a pull-out basis, the provider is not free to change the location of the service.

**CONCLUSION**

WDE finds continued noncompliance in the focus areas of Comprehensive Evaluation, the Provision of FAPE, and the LRE as noted in this report.

**CORRECTIVE ACTION**

<b>APPENDIX: COMPARISON OF FINDINGS 2019-2021</b>			
	<b>2019 Program Review</b>	<b>2020 Verification Review</b>	<b>2021 Verification Review</b>
<b>COMPREHENSIVE EVALUATION</b>	44 files were reviewed to determine if Region 6 conducted comprehensive evaluations. Region 6 did not meet the IDEA's requirements for individualized, comprehensive evaluations. All students received the same or very similar types 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	Region 6 relied on the BDI (either administered the BDI or relied upon it if used in a previous evaluation) in all evaluations. No child should be evaluated using only one measure or assessment, and children with more significant disabilities would need other targeted assessments in addition to the BDI to determine eligibility and educational needs.  The BDI is described in many of the 24 files reviewed as a	15 of the 37 files indicate that the student failed vision and/or hearing screening with no follow up by Region 6. As a threshold matter, a child with vision and/or hearing difficulties must be directly assessed in those areas, either by considering evaluative information provided by the parent, or through conducting assessments in those specific areas to determine if a vision or hearing disability exists. Further, poor hearing or

	<p>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.</p>	<p>“progress monitoring” tool rather than an assessment tool, further describing the use of the BDI “for progress monitoring purposes only.” Despite this stated limitation, the BDI was routinely used as the sole assessment for eligibility purposes. In sum, other comprehensive assessment tools are approved for use by the BHD, but remain unused when conducting IDEA evaluations.</p> <p>At least 16 of the 24 files reviewed contained evidence of noncompliance with the comprehensive evaluation requirement.</p>	<p>vision at the time of evaluation may result in inaccurate and/or invalidated scores. <i>Intellectual Ability and Assessment: A Primer for Parents and Educators</i>, Ortiz, Leller, and Canter (National Association of School Psychologists, 2000). In addition to noting failed vision or hearing screening with no follow up, two files noted that a “complete eye exam is recommended,” and another file noted that Region 6 recommended the child be taken to an ophthalmologist for evaluation, but no follow up was documented.</p> <p>In 13 of the 37 files, the BDI was the only assessment tool or measure used. This is the third year of continued noncompliance.</p> <p>16 of the 37 files also had evidence of other educational concerns and or other suspected disabilities with no additional assessments documented. These students were not assessed in all areas related to suspected disabilities.</p> <p>This is the third year of continued noncompliance for failing to evaluate children in all suspected areas of disability.</p>
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<p style="text-align: center;"><b>FAPE</b></p>	<p>44 files were reviewed for compliance with the FAPE standard. 38 files contained the same level of service for students. The 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. Upon inquiry, staff indicated that this amount of service was a standard practice at Region 6.</p>	<p>IEPs must be designed to meet a child’s unique educational needs. However, the majority of the 24 files reviewed during this verification process confirmed that students, regardless of disability or educational need, received the same amount of specially designed instruction or speech service. Typically, Region 6 provided speech or special education one time per week (or 3 times per month) for 20 minutes. The offer of same or similar amounts of service based on program configuration rather than educational need, especially for students with significant disabilities, violates the IDEA’s FAPE requirements. Region 6 continues to be noncompliant in this area.</p>	<p>If a child fails to make progress toward IEP goals, or in the event of little progress, the public agency must make efforts to recalibrate the IEP to address the lack of progress. 7 of the 37 files reviewed documented little or no progress. The IDEA requires that the IEP is reviewed and revised, as necessary, to address lack of expected progress. 34 C.F.R. §300.324(b). There was no evidence in these files that the amount of service, the delivery of instruction, or the type of service was changed to address the lack of progress. This is an area of ongoing concern as it represents a denial of FAPE.</p>
<p style="text-align: center;"><b>LRE</b></p>	<p>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</p>	<p>Of the 24 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.” Although this was identified as a concern in the November 2019 program review, the practice of utilizing “preschool” or “center” as the identified LRE does not sufficiently address the mandatory</p>	<p>27 of the 37 files confirmed that no consideration was given to a full continuum of placement options or a lesser restrictive environment than the BHD’s preschool program in Region 6. One of the Child Development Centers in Region 6 is frequently the only placement offered, regardless of the severity of a child’s disability, and even if the child was already attending a community-based</p>

	<p>the Region 6 special education environment.</p>	<p>components of LRE or provide sufficient information to verify the full continuum of placements was considered by each IEP team.</p> <p>Based on a review of IEPs in their entirety, the majority of students continued to receive services in a center-based model with no consideration of lesser alternative placements (with the exception of remote services due to COVID). Region 6 continues to be out of compliance with the LRE mandates.</p>	<p>preschool prior to or during enrollment. There is little justification for placing a child identified as an “articulation only” student in a center based program like Region 6 in any of the files reviewed.</p> <p>The BHD’s Region 6 was cited for noncompliance with the LRE mandate in the 2019 program review and the 2020 verification review. This is the third year of noncompliance regarding the LRE mandate.</p>
<p><b>PWN</b></p>	<p>Region 6 appropriately used PWN at several required points, including proposing evaluations, IEP services, or IEP amendments. However, the Region 6 did not meet IDEA’s requirement to provide parents PWN before exiting a student from special education or amending the amount of service in the IEP.</p>	<p>Nearly all files contained evidence that PWN was provided to parents when proposing evaluations, placements, and IEP amendments. Issuance of PWN at the mandatory trigger points is a noted strength for Region 6 and represents an improvement from the time of the 2019 program review.</p>	<p>No further verification required due to compliance.</p>