



Opportunity Through Education

Jillian Balow – Superintendent of Public Instruction

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Senior Administrator
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Dear ██████████

Enclosed you will find the final report for the Special Education Programs - Results Driven Accountability Monitoring of the Behavioral Health Division's (BHD) Part B/619 Program. As described in the report's introduction, the WDE's direct monitoring of the BHD came about through the Department's exercise of its general supervision authority over all educational programs for children with disabilities in Wyoming ages 3 through 21 [W.S. 21-2-703(a)(ii) and 34 C.F.R. § 300.600].

The report describes fundamental and serious violations of the IDEA. These violations are at the heart of the IDEA's promise of a free, appropriate public education (FAPE) in the least restrictive environment (LRE) to preschoolers with disabilities. These violations include:

- Noncompliant or nonexistent BHD policies and procedures;
- Ineffective BHD monitoring of regional programs;
- Noncompliant or nonexistent prior written notice to parents of significant changes to the child's program
- Noncompliant notice to parents regarding the impact on the child's health insurance;
- Noncompliant evaluations and reevaluations of children;
- Faulty determinations of eligibility for special education and related services;
- Noncompliant IEPs;
- Noncompliant IEP Team composition;
- Inaccurately reporting children's educational settings; and
- Procedural and substantive violations of LRE requirements.

Since the areas of noncompliance are so fundamental to the statute and are basic and central aspects of compliance, it was impossible to fully monitor some areas. For example, a comprehensive evaluation by qualified staff is necessary to determine a child's needs, and an accurate determination of needs is necessary to determine whether a child needs extended school year services to receive FAPE. Once correction is made in the fundamental areas, WDE may conduct further monitoring in those specific areas.

The monitoring history and complaint investigations of BHD over the last decade show repeated noncompliance of the same fundamental requirements. At this time it is imperative that BHD take timely, decisive, and effective steps to correct noncompliance and provide compensatory education where necessary.

The recent BHD monitoring has found evidence of systemic non-compliance. The BHD has 30 calendar days from the date of this letter to appeal any finding of non-compliance in the report. All evidence to support an appeal should be directed to the State Director, Margee Robertson. Due to the fact that full compliance with the IDEA has not been found, the BHD will be required to implement a Corrective Action Plan (CAP) to address the areas of non-compliance. BHD must correct all areas of non-compliance, as verified by the WDE, no later than one year from the date of this letter.

Sincerely,



Sheila Thomalla
Monitoring Team Supervisor

Enclosures

C: [REDACTED] Director, Wyoming Department of Health
Shelley Hamel, Chief Academic Officer, WDE
Margee Robertson, Director of Special Education Programs, WDE



**Individuals with Disabilities Education Act
Results Driven Accountability
Monitoring Report
For
Behavioral Health Division
IDEA Part B/619 Program**

**Monitoring Dates: December 12, 2020 - May 7, 2021
Report Date: June 25, 2021**

**Report Created by: Wyoming Department of Education,
Special Education Programs Division**

Introduction

As the State Education Agency (SEA), the Wyoming Department of Education (WDE) is responsible for ensuring the implementation of the Individuals with Disability Education Act (IDEA). Implementation must occur in accordance with Federal and State regulations. Relevant portions of the IDEA include:

- (a) The State must-
 - (1) Monitor the implementation of this part;
 - (2) Make determinations annually about the performance of each LEA using the categories in §300.603(b)(1);
 - (3) Enforce this part, consistent with §300.604, using appropriate enforcement mechanisms, which must include, if applicable, the enforcement mechanisms identified in §300.604(a)(1) (technical assistance), (a)(3) (conditions on funding of an LEA), (b)(2)(i) (a corrective action plan or improvement plan), (b)(2)(v) (withholding funds, in whole or in part, by the SEA), and (c)(2) (withholding funds, in whole or in part, by the SEA); and
 - (4) Report annually on the performance of the State and of each LEA under this part, as provided in §300.602(b)(1)(i)(A) and (b)(2).
- (b) The primary focus of the State's monitoring activities must be on—
 - (1) Improving educational results and functional outcomes for all children with disabilities; and
 - (2) Ensuring that public agencies meet the program requirements under Part B of the Act, with a particular emphasis on those requirements that are most closely related to improving educational results for children with disabilities.

34 C.F.R. §300.600

SEA responsibility for general supervision.

- (a) The SEA is responsible for ensuring—
 - (1) That the requirements of this part are carried out; and
 - (2) That each educational program for children with disabilities administered within the State, including each program administered by any other State or local agency (but not including elementary schools and secondary schools for Indian children operated or funded by the Secretary of the Interior)—
 - (i) Is under the general supervision of the persons responsible for educational programs for children with disabilities in the SEA; and
 - (ii) Meets the educational standards of the SEA (including the requirements of this part).

34 C.F.R. §300.149(a)

In alignment with these regulations, the goals of the WDE monitoring process are to promote systems change that will positively influence educational results and functional outcomes for students with disabilities, and to ensure compliance with the requirements of the Individuals with Disabilities Education Act. This report is a summary of the findings from RDA monitoring activities conducted from December 12, 2020 - May 7, 2021.

Background

The Behavior Health Division (BHD) of the Wyoming Department of Health is responsible for ensuring that children with disabilities ages three to five years old not enrolled in kindergarten are provided special education and related services. W.S. 21-2-703. Wyoming law defines the BHD as an intermediate educational unit (IEU). W.S. 21-2-702. The BHD's status as an IEU means that BHD meets the definition of an educational service agency and is under the WDE's general supervision. 34 C.F.R. § 300.12(c).

The U.S. Department of Education, Office of Special Education Programs (OSEP) is the federal oversight agency for the IDEA. In its 2010 verification letter¹ to the WDE, OSEP acknowledged the status of the BHD.

The [BHD] as an IEU does not alter or diminish the Wyoming Department of Education's responsibility to exercise general supervision over the [BHD] and the preschool programs for children operated by the [BHD]. . . . The State has the authority to exercise general supervision over the [BHD] and preschool programs operated by the [BHD], including authority to take enforcement action against the [BHD] if it does not meet IDEA requirements.

Beginning in 2011, the WDE, in conjunction with the BHD, began monitoring the fourteen regional contracted providers. The WDE annually monitored one to two regions for IDEA compliance. The WDE and BHD monitored twelve regions from 2012 to 2019. Each monitoring event found systemic noncompliance and most required more than one year to achieve compliance. Identified noncompliance was systemic in the areas of comprehensive evaluations, eligibility determinations, provision of FAPE, and least restrictive environment (LRE). BHD's inability to achieve and sustain compliance in the contracted regional preschools has continued to be a concern because subsequent monitoring events and state complaints resulted in findings of noncompliance in these same areas.

In September 2019 and as part of the Results Driven Accountability (RDA) monitoring process, the WDE and BHD agreed that this fragmented approach to monitoring the regional providers was not providing systemic and sustained compliance. Therefore WDE determined that monitoring the BHD as a whole by reviewing a broad sample of students would allow for the system to be viewed as a whole rather than individually. The BHD and WDE agreed that implementing this approach to monitoring would better equip the BHD to sustain consistent implementation of IDEA. OSEP approved this monitoring process.

Process

As a first step in the monitoring process, the WDE and the BHD reviewed current data associated with students with disabilities between the ages of three and five. In November 2019, the WDE and the BHD analyzed this data to develop two monitoring hypotheses. The hypotheses served as a method of selecting a sample of student files for the WDE to review and provided qualitative data to evaluate systemic practices under the BHD's supervision. The hypotheses developed for this monitoring were:

¹ WY OSEP Verification Enclosure 2011

1. Free Appropriate Public Education (FAPE). This sample consisted of two groups of students.
 - a. Group 1: All preschool students who are not identified as Developmental Delay (DD) or Speech Language (SL) and are not getting extended school year services (ESY). There were 135 students in this group.
 - b. Group 2: A representative sample of preschool students who are identified as DD or SL. There were 20 students from each region selected. The exception to this selection was in Regions 1, 12, and 13 who only had students selected from group 1 due to the high number of students identified in this category. There were 151 files in the Group 2 selection.
2. Least Restrictive Environment (LRE). This sample consisted of two groups of students.
 - a. Group 1: A random sample of preschool students with a primary disability code of SL and receiving services in a C1 (self-contained special education classroom) or C2 (separate school) environment code. Additionally these students were getting 0 or 1 related service.
 - b. Group 2: All Preschool students with a primary disability code of SL and receiving services in a D1 (home) or D2 (other environment such as a therapy office) environment.

Systemic Findings of Noncompliance

1. Failure to ensure a Free and Appropriate Public Education (FAPE)

34 C.F.R. § 300.17:

Free Appropriate Public Education. *Free Appropriate Public Education or FAPE* means special education and related services that –

- (a) Are provided at public expense, under public supervision and direction, and without charge;
- (b) Meet the standards of the SEA, including the requirements of this part;
- (c) Include an appropriate preschool, elementary school, or secondary school education in the State involved, and
- (d) Are provided in conformity with an individualized education program (IEP) that meets the requirements of 34 C.F.R. §§300.320 and 324.

FAPE Findings

1a. Inadequate Policies, Procedures and Monitoring. (34 C.F.R § 300.201)

Citation: 34 C.F.R. § 300.201: “The LEA, in providing for the education of children with disabilities within its jurisdiction, must have in effect policies, procedures, and programs that are consistent with the State policies and procedures established under §§ 300.101 through 300.163, and §§ 300.165 through 300.174.”

Evidence: The WDE reviewed the BHD-provided policies, procedures, and programs. WDE determined that the BHD has not established adequate policies and procedures in all required areas that are consistent with the WDE policies and procedures to assure the education of children with disabilities within its jurisdiction. Additionally, there is evidence that the BHD does not effectively monitor the regional providers to assure compliance with IDEA and lacks evidence that it addresses compliance concerns when they are identified.

1b. Inappropriately Certified Staff (34 C.F.R. § 300.207)

Citation: 34 C.F.R. § 300.207: “The LEA must ensure that all personnel necessary to carry out Part B of the Act are appropriately and adequately prepared, subject to the requirements of § 300.156 (related to personnel qualifications) and section 2102(b) of the ESEA.”

Evidence: The WDE reviewed the certification/licensure of all special education and related service providers and identified 27 staff that were not appropriately or adequately prepared to provide special education services for preschool-age students. The current BHD system does not include regularly verifying teacher and provider certification. The BHD should establish a process to regularly review the certification/licensure of all contracted special education and related service providers and to assure compliance. Due to the extensive scope of this issue and impact on student educational benefit, a letter of finding was issued on April 16, 2021 and this finding is being addressed through a separate corrective action.

1c. Noncompliance in parental notification and content of notice (34 C.F.R. §300.500)

Citation: 34 C.F.R. § 300.503:

(a) *Notice:* Written notice that meets the requirements of paragraph (b) of this section must be given to the parents of a child with a disability a reasonable time before the public agency –

(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.

Evidence: In a sample of 20 files, twelve of the files contained at least one PWN that did not meet minimum compliance requirements. The PWNs did not provide enough information for the parent to understand what the team proposed. As an example, a PWN for an amendment states “[the agency] proposes to update [student’s] feeding goal to address her current skill level.” Nowhere in the PWN (or in this case the actual amendment) does it specify exactly what the new/proposed goal is for this student. This omission constitutes a violation of 34 C.F.R. § 300.503(b)(1), which requires the PWN to include a description of the action proposed by the agency. The quoted description is insufficiently detailed to meet this requirement.

Twenty-seven files reviewed for students transitioning to kindergarten did not contain PWNs describing changes in placement when the student transitioned from preschool to kindergarten. One file contained a signed revocation of services form but no PWN was found.

1d. Inadequate Procedural Safeguards and notifications to parents regarding impact on health insurance (34 C.F.R. § 300.154)

Citation: 34 C.F.R. § 300.154:

(d) *Children with disabilities who are covered by public benefits or insurance.* (1) A public agency may use the Medicaid or other public benefits or insurance programs in which a child participates to provide or pay for services required under this part, as permitted under the public benefits or insurance program, except as provided in paragraph (d)(2) of this section.

(2) With regard to services required to provide FAPE to an eligible child under this part, the public agency—

(i) May not require parents to sign up for or enroll in public benefits or insurance programs in order for their child to receive FAPE under Part B of the Act;

(ii) May not require parents to incur an out-of-pocket expense such as the payment of a deductible or co-pay amount incurred in filing a claim for services provided pursuant to this part, but pursuant to paragraph (g)(2) of this section, may pay the cost that the parents otherwise would be required to pay;

(iii) May not use a child's benefits under a public benefits or insurance program if that use would—

(A) Decrease available lifetime coverage or any other insured benefit;

(B) Result in the family paying for services that would otherwise be covered by the public benefits or insurance program and that are required for the child outside of the time the child is in school;

(C) Increase premiums or lead to the discontinuation of benefits or insurance; or

(D) Risk loss of eligibility for home and community-based waivers, based on aggregate health-related expenditures; and

(iv) Prior to accessing a child's or parent's public benefits or insurance for the first time, and after providing notification to the child's parents consistent with paragraph (d)(2)(v) of this section, must obtain written, parental consent that—

(A) Meets the requirements of § 99.30 of this title and § 300.622, which consent must specify the personally identifiable information that may be disclosed (e.g., records or information about the services that may be provided to a particular child), the purpose of the disclosure (e.g., billing for services under part 300), and the agency to which the disclosure may be made (e.g., the State's public benefits or insurance program (e.g., Medicaid)); and

(B) Specifies that the parent understands and agrees that the public agency may access the parent's or child's public benefits or insurance to pay for services under part 300.

(v) Prior to accessing a child's or parent's public benefits or insurance for the first time, and annually thereafter, must provide written notification, consistent with § 300.503(c), to the child's parents, that includes—

(A) A statement of the parental consent provisions in paragraphs (d)(2)(iv)(A) and (B) of this section;

(B) A statement of the “no cost” provisions in paragraphs (d)(2)(i) through (iii) of this section;

(C) A statement that the parents have the right under 34 CFR part 99 and part 300 to withdraw their consent to disclosure of their child's personally identifiable information to the agency responsible for the administration of the State's public benefits or insurance program (e.g., Medicaid) at any time; and

(D) A statement that the withdrawal of consent or refusal to provide consent under 34 CFR part 99 and part 300 to disclose personally identifiable information to the agency responsible for the administration of the State's public benefits or insurance program (e.g., Medicaid) does not relieve the public agency of its responsibility to ensure that all required services are provided at no cost to the parents.

(e) *Children with disabilities who are covered by private insurance.*

(1) With regard to services required to provide FAPE to an eligible child under this part, a public agency may access the parents' private insurance proceeds only if the parents provide consent consistent with §300.9.

(2) Each time the public agency proposes to access the parents' private insurance proceeds, the agency must—

(i) Obtain parental consent in accordance with paragraph (e)(1) of this section; and

(ii) Inform the parents that their refusal to permit the public agency to access their private insurance does not relieve the public agency of its responsibility to ensure that all required services are provided at no cost to the parents.

Evidence: A review of the procedural safeguards notice revealed that BHD and the regional Part B providers are using a version of the notice that does not contain appropriate written notification to parents prior to accessing a child's or parent's public benefits or insurance. Additionally, through staff interviews it was determined that the BHD does not have policies and procedures to assure compliance with § 300.154(d) and (e). Staff described inconsistent procedures regarding how parents were provided the information in relation to third party billing and the annual written notification.

1e. Inadequate Evaluations and Reevaluations (34 C.F.R. §§ 300.301 through 300.311)

Citation: 34 C.F.R. § 300.301:

(a) *General*: Each public agency must conduct a full and individual initial evaluation, in accordance with §§ 300.305 and 300.306, before the initial provision of special education and related services to a child with a disability under this part.

* * *

(c) *Procedures for initial evaluation*. The initial evaluation—

* * *

(2) Must consist of procedures—

- (i) To determine if the child is a child with a disability under § 300.8; and
- (ii) To determine the educational needs of the child

Evidence: WDE found that 72% of the students sampled had noncompliant evaluations. The sample included a total of 174 files. Of those, 126 of the files did not contain an evaluation sufficient “[t]o determine if the child is a child with a disability under §300.8” or “[t]o determine the educational needs of the child.” 34 C.F.R. § 300.301(c)(2)(i), (ii). Noncompliance was identified in two categories.

Category 1: In 41% of the files sampled the WDE determined that students were not assessed in all areas of suspected need. The WDE found 64 files that contained evidence through testing, data review, or parent input indicating a potential need requiring further evaluation. In these cases, the BHD did not conduct evaluation activities to gather information to determine if the student had educational needs that should be addressed in the IEP. During the interview process, staff stated they did not have an assessment on the approved assessment list that could be used to further evaluate these areas, particularly in the areas of cognition and pre-academic functioning. WDE found that there was a systemic lack of understanding among the staff regarding what tools or methods may be used to further evaluate a student’s needs in addition to the BDI. Staff also expressed a lack of understanding of, and training for, many of the tools on the BHD’s approved assessment list. Furthermore, using an approved assessment list is problematic in the first instance as it could be interpreted as limiting available evaluation tools. Providers are required under IDEA to perform evaluations to address all areas of suspected need.

Category 2: In 32% of the sample files, or 56 cases, the file indicated a possible delay, but it was not clear that specially designed instruction was necessary to address the delay. Specially designed instruction is adapting, as appropriate to the needs of an eligible child, the content, methodology, or delivery of instruction to ensure access to the general curriculum so that the child can meet the educational standards. 34 C.F.R. § 300.39(b)(3)(i), (ii). It was found that a low score on a fine motor evaluation led to students receiving occupational therapy services for either grasping a crayon or cutting without further data to assure the student had a documented need that required these interventions. A low score in gross motor skills resulted in instruction on how to access playground equipment. While the testing may have indicated delay for the student, the team

did not show that the delay resulted in an actual educational need, and the services focused on more medical types of interventions than educational or functional goals.

Failure to appropriately and adequately complete a comprehensive evaluation indicates probable failure to offer FAPE as this is the foundation of the process of the IEP development and the IEP development process. It also indicates that non-qualifying students may have been identified as IDEA students.

1f. Noncompliant Evaluation Procedures (34 C.F.R. § 300.304)

Citation: 34 C.F.R. § 300.304:

(b) *Conduct of evaluation.* In conducting the evaluation, the public agency must—

(1) Use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child, including information provided by the parent that may assist in determining—

(i) Whether the child is a child with a disability under § 300.8; and

(ii) The content of the child’s IEP, including information related to enabling the child to be involved in and progress in the general education curriculum (or for a preschool child, to participate in appropriate activities).

(2) Not use any single measure or assessment as the sole criterion for determining whether a child is a child with a disability and for determining an appropriate educational program for the child;

(c) Other evaluation procedures. Each public agency must ensure that—

(1) Assessments and other evaluation materials used to assess a child under this part—

* * *

(ii) Are administered in the child’s native language or other mode of communication and in the form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally, unless it is clearly not feasible to so provide or administer.

Evidence 1: The WDE reviewed a sample of 50 files. In 48% of the sample, or 24 files, evaluations for the purpose of determining IDEA eligibility were non-compliant. Results from the administration of the BDI 2 or BDI NU were used exclusively. The federal regulations indicate an evaluator shall “[n]ot use any single measure or assessment as the sole criterion for determining whether a child is a child with a disability and for determining an appropriate educational program for the child.” 34 C.F.R. § 300.304(b)(2). While the BDI 2 or BDI NU is an appropriate instrument to determine how a child is progressing in relation to developmental milestones, it cannot be used as the sole criterion for determining if a child is a student with a disability under the IDEA.

Evidence 2: The WDE found six files out of compliance due to assessments being conducted in the English language when there was sufficient evidence to suspect the

student may not have been proficient in English. Assessments should be administered “in the child’s native language or other mode of communication and in the form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally, unless it is clearly not feasible to so provide or administer.” 34 C.F.R. § 300.304(c)(1)(ii).

Additionally, during staff interviews, the WDE identified two cases in which students had been evaluated in both English and another language. However, the multidisciplinary report and eligibility paperwork did not reflect that information. All eligibility paperwork should clearly identify what tools were used and if a deviation from the standard procedure was used due to the child’s suspected disability or need. In these two cases, the lack of appropriate documentation is a procedural violation.

1g. Eligibility Determination Inconsistent with Wyoming Chapter 7 Rules and IDEA (34 C.F.R. § 300.306)

Citation: 34 C.F.R. § 300.306:

(c) *Procedures for determining eligibility and educational need.* (1) In interpreting evaluation data for the purpose of determining if a child is a child with disability under § 300.8, and the education needs of a child, each public agency must—

(i) Draw upon information from a variety of sources, including aptitude and achievement tests, parent input, and teacher recommendations, as well as information about the child’s physical condition, social or cultural background, and adaptive behavior; and

(ii) Ensure that information from all other sources is documented and carefully considered.

34 C.F.R. § 300.8 Child with a disability.

(a) General—

(1) *Child with a disability* means a child evaluated in accordance with §§ 300.304 through 300.111 as having an intellectual disability, a hearing impairment (including deafness), a speech or language impairment, a visual impairment (including blindness), a serious emotional disturbance (referred to in this part as “emotional disturbance”), an orthopedic impairment, autism, traumatic brain injury, an other health impairment, a specific learning disability, deaf-blindness, or multiple disabilities, and who, by reason thereof, needs special education and related services.

Evidence 1: The WDE reviewed 26 files in which the students were determined to have a health impairment or traumatic brain injury. In 73% of the sample, or 19 of the reviewed files, the initial evaluation did not include documentation within the past 12 months from a physician or psychologist of an acute or chronic health problem as required for the determination of a student with a health impairment (HL) or traumatic brain injury (BI).

Interviews were conducted with staff from seven regional providers. All of the staff interviewed misunderstood the requirement and use of the medical documentation for the initial evaluation. In six cases, staff members indicated they had seen documentation for the student as part of a Part C evaluation but did not get the information updated during the Part B evaluation. This is a required part of the initial evaluation process for Part B services, as a medical diagnosis alone does not indicate that the student qualifies as a student with an IDEA disability.

In 38% of the sample, or ten cases, the team used the medical diagnosis as the reason for services without identifying an educational need. For example, a student was qualified as HL with a medical diagnosis of attention deficit hyperactivity disorder. The medical documentation indicated concerns with social emotional needs. But no further testing was completed to determine whether, and if so how, those needs impacted education. Despite this, the student was made eligible for services. The student received services for 18 months and no longer qualifies for IDEA eligibility. In another case, the student had a medical diagnosis that included a cortical visual impairment. When evaluating for Part B services, however, the evaluation team did not assess the student's ability to visually access her environment or the materials in the classroom. Further, because this area was not evaluated and additional needs were not identified, the student had no specially designed instruction or accommodations to address those needs. These are only two specific examples of noncompliance in the evaluation processes.

File review indicated that failing to tie the medical diagnosis and proposed educational impact to the IEP programming and services was a persistent issue. For example, a student was qualified as a student with an HL disability as the result of a cleft palate and educational impact of limited strength and vitality. There is no documentation establishing a relationship between a repaired cleft palate and limited strength and vitality.

Evidence 2: The WDE reviewed two files. Both files identified students as having Cognitive Disabilities (CD) without proper evaluation. In both cases, the evaluation team did not administer the required tests (intellectual, pre-academic and adaptive). It appeared through the file reviews, and was further verified by staff interview, that in many cases the determination of a CD label was based on scores from the BDI-2 and informed clinical opinion of some of the evaluators. Through file review and interview, systemic noncompliance was found in the process for determining if a student has a cognitive disability as defined by Wyoming Chapter 7 Rules. A child is identified with a cognitive disability (CD) if there is a) documentation on a test of intellectual functioning of two or more standard deviations below the mean, b) documentation on an individually administered assessment that the child's academic or pre-academic skills are coexistent with the child's deficits in intellectual functioning, and c) documentation on standardized adaptive behavior measurements that includes input from parents and school staff. *Rules, Wyo. Dep't of Educ., General Agency, Board or Commission Rules, Ch. 7 §4(d)(ii)* (March 22, 2010).

Evidence 3: The WDE reviewed 27 files. Ten students were determined to be eligible as students with an autism spectrum disability (AT) without proper identification of educational needs. The medical report became the basis for the determination, and later limited evaluations were completed to determine educational needs. For one student, the team used a medical diagnosis that was over two years old and a BDI-2 NU. The medical report relied on diagnostic impressions and provided limited general recommendations that would

not have provided enough information for the IEP team to determine educational needs or appropriate programming. In two other cases, the students had extensive evaluations completed by entities other than the regional provider. While the evaluation was used to justify the students' eligibility determinations, in both cases few or none of the recommendations from the reports were incorporated into the students' IEPs.

It should also be noted that, for three of these students who received these extensive evaluations, the regional provider did not pay for the assessment even though in all cases the parents had a suspicion of autism and reported those suspicions to the regional provider. The BHD must assure that all regional providers understand and implement the obligation of providing all evaluation activities that are required to determine a student's eligibility and educational needs free of charge to the parent. 34 C.F.R. § 300.17

Evidence 4: The WDE reviewed 11 files. Nine students were found to be eligible as students with a hearing impairment without fully evaluating the educational and communication needs specific to deaf and hard of hearing students to determine educational needs. In no case was a teacher of the deaf consulted nor was there documentation showing an evaluation of functional hearing. Audiology as a related service was not part of the IEPs, resulting in lack of knowledge, for the IEP team, regarding the status of the student's hearing/auditory access on an annual basis.

Evidence 5: The WDE reviewed 7 files. Six students were found to be eligible as students with visual impairments based solely on medical information. BHD did not conduct assessments of the educational needs specific to students with visual conditions in order to assure access to the learning environment or to identify learning media and mobility needs. In none of these cases was a teacher of students with visual impairments or an orientation and mobility specialist consulted to conduct evaluations or provide consultative services. BHD did not complete functional vision assessments before any other assessments were conducted. The functional assessments are necessary to ensure the student is able to access the assessment tools. Otherwise, subsequent assessment results may not be valid.

1h. Change in student eligibility without appropriate re-evaluations (34 C.F.R. § 300.305)

Citation: 34 C.F.R. § 300.305

(e) *Evaluation before change in eligibility.*

(1) Except as provided in paragraph (e)(2) of this section, a public agency must evaluate a child with a disability in accordance with §§ 300.304 through 300.311 before determining that the child is no longer a child with a disability.

Evidence: Six files indicated a change in eligibility without documentation of an evaluation or review of existing data to support this modification. The only indication in the files that this change occurred was through the use of a PWN. Four files indicated that students were dismissed from services during an IEP meeting with no evidence of an evaluation or an

eligibility determination process. Evaluations are required when exiting a student from special education except when a child graduates or becomes too old to be eligible.

1i. Inadequate IEP (34 C.F.R. §§ 300.320 through 300.323)

Area: Lack of Individualized and appropriate educational program.

Citation 34 C.F.R. § 300.320:

(a) *General.* As used in this part, the term individualized education program or IEP means a written statement for each child with a disability that is developed, reviewed, and revised in a meeting in accordance with §§ 300.320 through 300.324, and that must include—

* * *

(2)(i) A statement of measurable annual goals, including academic and functional goals designed to—

(A) Meet the child's needs that result from the child's disability to enable the child to be involved in and make progress in the general education curriculum; and

(B) Meet each of the child's other educational needs that result from the child's disability;

(ii) For children with disabilities who take alternate assessments aligned to alternate academic achievement standards, a description of benchmarks or short-term objectives;

Evidence: The WDE reviewed a sample of 75 files. Forty-five files did not contain measurable annual goals. The goals in these 45 files were too broad to specify what was being measured, lacked baseline measurements that aligned to the goal, contained insufficient data to determine progress, or were too disconnected from the general education curriculum to ensure student access to that curriculum. Goals contained numerous targets, making it difficult to determine what is being measured and how to determine what progress is being made, i.e., "Goal: In one year's time, [student] will sit and attend to tasks and activities with minimal assistance and redirection, she will do this three out of four times over four sessions with 75% accuracy as noted by teacher and observation." Terms such as "minimal assistance" and "redirection" are subjective in nature and likely would vary from teacher to teacher resulting in inconsistencies. It is also unclear what the 75% accuracy is referencing. There are further concerns because in many cases the baselines are unclear. The baseline for the goal above is indicated as "Baseline: Student currently needs direct assistance to sit and attend to tasks and activities, she does this 80% of the time." The baseline does not indicate what types of tasks, how attending is measured, whether the concern is only during seated activities or includes other activities, or what constitutes direct assistance.

These unclear targets make it very difficult to determine if a student is making progress appropriate in light of the child's circumstances. Due to the lack of data through the evaluation process, the PLAAFP, and progress monitoring, it is difficult to determine if a student's goals could be considered "ambitious" and "challenging." Further there is evidence from at least one region that if students were not making progress on goals, the

process employed was to repeat the goal with a lower target for the following IEP rather than re-evaluating the student's needs or increasing service delivery.

There are many cases in which goals are tied to a therapeutic result rather than to an educational result. For example, "[student] will reduce her use of the phonological pattern stopping by producing s and f sounds at the conversational-level 80% of the time across 3 consecutive sessions as measured by SLP progress notes" and "[student] will block greater than 75% of balls thrown to him from outside 15 feet in midline above eye level." This is an issue because in order for a student to be found eligible for IDEA services the student must not only have documentation of a disability but that disability must require special education in order to progress within the general education environment. When only one prong of eligibility is utilized Wyoming is vulnerable to over identification of students and the LES is in violation of IDEA.

Area: Inadequate IEP Team Composition

Citation: 34 C.F.R. § 300.321

(a) *General.* The public agency must ensure that the IEP Team for each child with a disability includes—

- (1) The parents of the child;
- (2) Not less than one regular education teacher of the child (if the child is, or may be, participating in the regular education environment);
- (3) Not less than one special education teacher of the child, or where appropriate, not less than one special education provider of the child;
- (4) A representative of the public agency who—
 - (i) Is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities;
 - (ii) Is knowledgeable about the general education curriculum; and
 - (iii) Is knowledgeable about the availability of resources of the public agency.
- (5) An individual who can interpret the instructional implications of evaluation results, who may be a member of the team described in paragraphs (a)(2) through (a)(6) of this section;
- (6) At the discretion of the parent or the agency, other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate; and
- (7) Whenever appropriate, the child with a disability.

Evidence: The WDE identified 22 files reflecting an inappropriate IEP team make-up. The data shows the regional providers are not ensuring that the IEP teams consist of the required members and lack understanding of who may act in each of those positions. There were multiple areas of noncompliance identified.

First, there was one file that indicated an IEP meeting was held without the parent's participation. This file also lacked evidence of the use of alternate methods to ensure the parent's participation, or documentation of multiple attempts to arrange for a mutually agreeable place and time. The BHD does not have a policy or procedure to assure all

regional providers make multiple attempts to secure parent participation at IEP team meetings and document those attempts.

Second, the WDE identified 10 instances of one teacher representing both special education and general education. The general education teacher is a required member of the team if the student is or will be participating in the general education setting. 34 C.F.R. § 300.321(a)(2). During interviews, some staff were unable to articulate accurately which position on the IEP team they were occupying. They were unsure if they were acting as a special education teacher or a general education teacher when asked about a specific student.

Third, there were two instances of a speech-language pathologist acting as the special education teacher for students who did not have a primary disability of speech-language. See *Rules, Wyo. Dep't of Educ., General Agency, Board or Commission Rules, Ch. 7 § 4(c)(ii)(A)* (March 22, 2010).

Last, there were four IEP meetings in which the team did not include anyone representing the general education teacher, even though there was evidence through the file review that the student attended a daycare or Head Start program. The records for these meetings did not contain excusals for the general education teachers.

2. Failure to ensure education was provided to students with disabilities with non-disabled peers to the greatest extent appropriate. (Least Restrictive Environment (LRE) 34 C.F.R. §§ 300.114 through 300.117)

Citation: 34 C.F.R. § 300.114:

(a) *General.*

(1) Except as provided in § 300.324(d)(2) (regarding children with disabilities in adult prisons), the State must have in effect policies and procedures to ensure that public agencies in the State meet the LRE requirements of this section and §§ 300.115 through 300.120.

(2) Each public agency must ensure that—

(i) To the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are nondisabled; and

(ii) Special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

(b) *Additional requirement—State funding mechanism—*

(1) *General.*

(i) A State funding mechanism must not result in placements that violate the requirements of paragraph (a) of this section; and

(ii) A State must not use a funding mechanism by which the State distributes funds on the basis of the type of setting in which a child is served that will result in the failure to provide a child with a disability FAPE according to the unique needs of the child, as described in the child's IEP.

Evidence: The WDE reviewed 111 files. Of those, 105, or 94.6% of files, contained both procedural and substantive violations regarding the provision of services in the LRE. These violations are extensive and fall into a variety of different forms.

The WDE would like to acknowledge that there were two regional providers who did not have LRE violations regarding placement or development of the LRE statement in the files reviewed. The BHD should consider the practices of these regions to determine what types of policy and practices have assisted in ensuring compliance.

LRE Findings

2a. Inaccurate Reporting of Setting

Evidence: IEPs reviewed showed a broad proportion of regional providers are not writing an IEP that accurately reflects the setting in which the services are being delivered. Files indicated by the LRE coding that the student was receiving services in a general education setting and, in some cases, the IEP was written to be delivered in a preschool setting. Other documentation in the files, however, indicated that the provider was providing the services in the student's home. In one case (██████████), the 11/24/20 IEP states the services will be provided in the regular education classroom. But in the LRE justification, PWN, and through an interview, the WDE determined that the student had not received services in the classroom since March of 2020. In another case, (██████████) the student is coded in an A1 setting. This indicates that the student is in a general education setting (51% of peers are non-disabled) for more than 10 hours per week. The service delivery site on the IEP is telehealth, and the description of relevant factors in the PWN states the student "participates in a home school program. He is not enrolled in a preschool program." Nevertheless, this file indicates the student is in a general education setting with peers. This is in violation of the BHD's Individual Service Plan policy on how to provide services to home-school students. There were multiple instances of students having no access to the general education setting as a result of a parent or regional provider determination. This raises concerns with data accuracy and that data provided for state and federal reporting is not accurate.

2b. Not Considering the Full Continuum of Placements

Evidence: Sample files indicated that students were receiving services in a restrictive setting without access to typical peers and without proper consideration of a less restrictive setting. The files did not contain evidence justifying the more restrictive setting, as is

required. Through interviews, some staff acknowledged that due to administrative convenience, other settings were not considered if the student was not already in a preschool setting. There are also instances of justifications stating that “there are no preschool services” in the area the student lives, and the services were provided to the student in either the home or a therapy setting. During the interviews, when asked how the general education curriculum was provided to these students, regional staff indicated they were either not providing any general education curriculum or packets were being sent home.

2c. Inadequate Justification of Placement

In the sample files, LRE statements were written as a *description* of how the student will receive services rather than a *justification* of removal from the general education setting. There is little information in the statements that indicate what types of supplementary aids and services may have been used to allow the student to remain in the general education setting, or what supplementary aids and services were considered. An overall concern regarding the IEPs is the lack of supplementary aids and services being used to allow for the student to remain in the general education setting. These inadequate LRE statements, in addition to the other noted issues, indicate that providers do not understand the requirement of developing and designing an IEP that allows the student access to a placement in the LRE or with nondisabled students to the greatest extent appropriate.

Program Recommendations (optional action steps based on WDE reviews)

- The BHD should consider policies and processes that would allow for consistency among the regional providers in the use and storage of information in the statewide data system to allow for easier monitoring of documents and assuring data accuracy.
- The BHD should thoroughly review all eligibility and IEP forms generated by the data system to assure they meet the minimum standards necessary for IDEA compliance.