



Opportunity Through Education

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

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Introduction

The Individuals with Disabilities Act (IDEA) Part B Regulations include the following provision at 34 CFR § 300.600

- (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.
- (c) As a part of its responsibilities under paragraph (a) of this section, the State must use quantifiable indicators and such qualitative indicators as are needed to adequately measure performance in the priority areas identified in paragraph (d) of this section, and the indicators established by the Secretary for the State performance plans.
- (d) The State must monitor the LEAs located in the State, using quantifiable indicators in each of the following priority areas, and using such qualitative indicators as are needed to adequately measure performance in those areas:
 - (1) Provision of FAPE in the least restrictive environment.
 - (2) State exercise of general supervision, including child find, effective monitoring, the use of resolution meetings, mediation, and a system of transition services as defined in § 300.43 and in 20 U.S.C. 1437(a)(9).
 - (3) Disproportionate representation of racial and ethnic groups in special education and related services, to the extent the representation is the result of inappropriate identification.
- (e) In exercising its monitoring responsibilities under paragraph (d) of this section, the State must ensure that when it identifies noncompliance with the requirements of this part by LEAs, the noncompliance is corrected as soon as possible, and in no case later than one year after the State's identification of the noncompliance.

In accordance with these regulations, the ultimate goal of the Wyoming Department of Education's (WDE) monitoring process is to promote systems change that will positively influence educational results and functional outcomes for students with disabilities.

District Selection

During the 2020- 21 school year, the Behavioral Health Division (BHD) Part B/619 program was selected for Results Driven Accountability (RDA) Monitoring. The BHD is an Intermediate Educational Unit that is responsible for Part B students ages three to five statewide. The Part B/619 services are provided by the BHD through 14 contracted regional providers.

The WDE conducted a review of a sample of special education records for compliance with Part B regulations governing the following areas:

- a. Free Appropriate Public Education (FAPE)
- b. Least Restrictive Environment (LRE)

It should be noted that the areas of non-compliance are so fundamental to the statute and are basic and central aspects of compliance, that it was impossible to fully monitor some areas during the initial monitoring. 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 (ESY) services to receive FAPE. After correction is made in the fundamental areas, WDE will conduct further monitoring in those specific areas. This review was to determine progress toward correction of these fundamental deficiencies.

A Corrective Action Plan (CAP) went into effect on June 25, 2021. The BHD had one year to complete the agreed-upon action steps to remediate noncompliance, ensure changed practices to maintain IDEA compliance in the future, and improve outcomes for students with disabilities.

During the verification monitoring of the BHD, the WDE reviewed eligibility and IEPs for 399 students determined eligible between January 1, 2022, and May 16, 2022. The WDE also reviewed the policies and guidance delivered by the BHD to the regional providers over the past year in relation to these areas of noncompliance.

The original monitoring found nine broad areas of noncompliance in relation to FAPE. As cited in the cover letter and report for the initial monitoring, the areas of noncompliance are fundamental to the IDEA statute and are basic and central aspects of compliance, so it was impossible to fully monitor some areas. Correction in these fundamental areas will be necessary before the WDE is able to conduct further monitoring of the other aspects of the IDEA.

According to the OSEP 09/02 memo, correction is to be obtained as soon as possible after notification, but in no more than one year. Failure to demonstrate compliance by the BHD in the areas noted in the initial monitoring will require the WDE to enter into a compliance agreement with the BHD.

Following are the systemic findings, evidence reviewed, and the conclusion of those reviews.

Systemic Findings:

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.

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 Early Intervention and Education Program: Part B/619 Special Education Manual. This manual holds all of the policies required in accordance with 34 C.F.R. § 300.20.

Conclusion: The WDE determined there is evidence of adequate policies and procedures to assure the education of children with disabilities within the BHD’s jurisdiction. The BHD has begun to conduct monitoring activities of the regional providers in an attempt to develop systemic compliance and to address professional development needs. The WDE encourages the BHD to develop a process for the regular review and revision of the policies to assure they remain relevant. The WDE finds the BHD compliant in this area.

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 Personnel Certification (EIEP-21-017) and submitted documentation by Kim Caylor, Part B/619 Coordinator.

Conclusion: The review and documentation provided indicate that the EIEP has a process for ongoing and regular review of teacher and related service provider certification. The WDE finds the BHD compliant in this area.

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.

(b) Content of notice. The notice required under paragraph (a) of this section must include-

(1) A description of the action proposed or refused by the agency;

(2) An explanation of why the agency proposes or refuses to take the action;

(3) A description of each evaluation procedure, assessment, record, or report the agency used as a basis for the proposed or refused action;

(4) A statement that the parents of a child with a disability have protection under the procedural safeguards of this part and, if this notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained;

(5) Sources for the parent to contact to obtain assistance in understanding the provisions of this part;

(6) A description of other options that the IEP Team considered and the reasons why those options were rejected; and

(7) A description of other factors that are relevant to the agency's proposal or refusal.

Evidence: The WDE reviewed PWN Guidance Document provided by the BHD and student records.

Conclusion: The review indicated ongoing noncompliance in meeting the minimum requirements of a PWN. Through the WDE review, 135 PWNs for initial consent for services did not meet the minimum requirements as outlined in 34 C.F.R. § 300.503(b). The review found that most regional providers have a template that is used and only minimal changes are being made from one student to another student i.e., for all students in a region the only topic discussed under the rejected section was ESY. A PWN should provide enough information for the parent to have a full understanding of what they are agreeing to in the IEP. One region is providing the PWN on the same day that services are starting. The regulations state the PWN should be provided “a reasonable time before the public agency” initiates or refuses to initiate an action. The practice of providing the PWN on the same day as the proposed action does not allow parents adequate time to exercise their parental rights.

There was further concern with the development of PWNs for students who were transitioning from preschool to kindergarten. In 58 student files, there was evidence of a PWN stating the student was transitioning to kindergarten without evidence of a transition meeting with the receiving school district or amendment of the IEP to assure it is in place for the first day of school. Four student files had a PWN that appeared to pre-determine the student's transition process and was included with the notice of a transition meeting provided to the parent.

1d. Inadequate Procedural Safeguards and notifications to parents regarding the 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: The WDE reviewed Third Party Billing (EIEP-21-015) and student records.

Conclusion: Through the reviewed documents, the WDE was able to determine that the BHD has a policy and process for notifying parents as required of their procedural safeguards. Through the review of student records, the WDE found evidence that the regional providers are following the procedure as set forth by the BHD. The WDE finds this area compliant.

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: The WDE reviewed 399 evaluations conducted by the regional providers for students determined eligible from January 1, 2022 - May 16, 2022. WDE also reviewed guidance documents provided by the BHD to the regional providers in the Early Intervention & Education Program: Part B/619 Special Education Manual. Also of note for this review was a guidance document sent to all regional providers called Notice of Special Education Action (9/27 Ref.: RL-21-006).

Conclusion: The review of the documents and student evaluations found ongoing noncompliance in the area of conducting a comprehensive evaluation. Since a comprehensive evaluation is foundational to determining student eligibility and the need for specially designed instruction, failure to address these areas makes the team’s ability to determine an appropriate FAPE offering highly unlikely.

132 evaluations were conducted without evidence of the student passing a hearing and/or vision screening. All but one regional provider had students in this finding. Vision and hearing must be directly assessed as part of the comprehensive evaluation for a student unless there is evaluative evidence provided by the parent for these areas. Poor hearing or vision at the time of evaluation may result in inaccurate or invalid scores.

123 of the files reviewed did not provide adequate data or information to support the second prong of eligibility by describing the student’s educational need. Educational need is the unique needs of a student that require specially designed instruction “to enable the child to be involved in and progress in the preschool general education curriculum and for a preschool child to participate in appropriate activities.” EIEP 21-004(5)(b)(2). This lack of data and information to support the student’s needs leads to vague statements of educational need. Statements such as “[student's] mom has speech concerns, primarily with his articulation” do not provide enough data or information to support the requirement of specially designed instruction. One region has a practice of only reporting scores within the eligibility paperwork without describing educational implications and reports very general statements that are similar among multiple students to define educational need in the IEPs. This failure to identify this second prong of eligibility is noncompliant, and may also lead to an overidentification or misidentification of eligible students.

The WDE noted during the review of evaluations that 13 evaluations relied on testing that was completed for the student’s Part C eligibility. While a review of data should be a part of the Part B eligibility determination for a student, relying solely on the scores from the Part C evaluation along with an observation generally does not provide enough information to satisfy both prongs of eligibility and encourages the practice of determining eligibility based solely on a “score”.

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.

The initial monitoring identified 2 areas of noncompliance. The first finding was that students were evaluated using a single tool or assessment as the sole criterion. The second area identified was not evaluating students in their native language when there was reason to suspect the student may not be proficient in English.

Evidence: The WDE reviewed BHD’s policy Evaluation and Eligibility EIEP-21-004 and student evaluations.

Conclusion: Twenty-five of these evaluations relied on one test (BDI 2) as the criterion for determining eligibility. Per 34 C.F.R. §§ 300.304(b)(2), a single measure or assessment cannot be the sole criterion for determining whether a student is a child with a disability and the appropriate educational program. Per the BHD Eligibility and Evaluation Procedure (EIEP-21-004), the BHD requires the use of more than one measure for the purpose of determining eligibility.

Through the review, WDE identified nineteen student evaluations in which the testing was not administered in the native language of the student, nor did the eligibility paperwork reflect any discussion of how the decision was made to administer the test in English even though there was evidence the student was a dual language learner. In one instance a student was exposed to both English and Russian in the home and the mother indicated the student’s primary language was Russian. However, the student was not tested in Russian and was later found to be eligible for services as a student with a speech-language disability. The educational impact defined by the IEP team is “[student’s] difficulty with following directions and responding to questions impacts his independence and ability to complete learning activities at school.” Since the student was tested in English rather than Russian there is not enough evidence to assure the student has an actual disability and the concerns with following directions and responding to questions are not the result of limited proficiency in English.

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: The WDE reviewed Evaluation & Eligibility (EIEP-21-004) and student evaluations.

Conclusion: The WDE identified 4 students who were identified as a student with a visual impairment or a hearing impairment without evaluating for educational needs that are specific to those disabilities. These evaluations did not include persons who specialize in the education and assessment of these types of disabilities such as a teacher of the deaf or a teacher of the visually impaired. This remains a systemic ongoing area of noncompliance.

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.

The initial monitoring identified two areas of concern: 1) not assessing in all areas of suspected need and 2) scores driving services.

Evidence: The WDE reviewed the BHD policy Evaluation and Eligibility 21-004 and evaluations for students determined eligible from 1/1/22 - 5/16/22.

Conclusion: 168 evaluations or 50% of those reviewed were found to be non-comprehensive due to possible areas of need that were not fully probed. The regional providers rely upon a select set of assessment tools that may not always provide adequate information to determine a student’s needs. There is a practice within the regional providers to assess further when possible needs are found in language and motor, but areas of cognition, social-emotional, adaptive, and behavior are not addressed even when there is evidence that these areas should be. Frequently, low scores in the unprobed areas are attributed to low language skills or lack of exposure to a school setting without any supporting data. This practice is problematic as it is likened to the use of “informed clinical opinion” which is allowable in the identification of children for Part C but not for students in Part B.

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;

The WDE reviewed student IEPs and Notice of Special Education 9/27 (RL-21-006).

Evidence: The WDE reviewed 132 IEPs that indicate an ongoing and systemic concern with the regional providers developing IEPs that are “ambitious” and “challenging” in light of the individual needs of the student. As stated in the earlier sections of this report, the failure of the regional providers to comprehensively identify needs and determine educational relevance impedes the ability to develop IEPs that provide educational benefit. There is evidence of similar service packages offered to all students i.e., 20 min of speech, and 15 min of specially designed instruction, that appear to be based upon the program schedules rather than driven by student need. The use of supplementary aids and services are frequently not addressed or are addressed in general terms that make it difficult to know how, when, and where they should be used.

22 IEPs indicated a limited understanding of how to determine the need for ESY, especially during the initial IEP for a student. ESY justifications are indicating that the team “does not have enough data to indicate a need for ESY” even when a student has significant needs or for students who have an initial IEP developed in May with a service start date in September. The BHD and regional providers are reminded that regression and recoupment is not the only measure to be used in the determination of the necessity of ESY.

Another area of concern noted for FAPE was that 56 students had placements at a community preschool with no discussion of what portion of general education would be paid for by the regional provider. Through interviews with some regional providers, they indicated a process for payment; however, the failure to define this in the IEP and/or PWN makes it unclear if these are individual IEP team decisions or the regional provider’s policy. Anything less than it being an IEP team decision would be considered non-compliant. This is an area of needed ongoing professional development for the BHD and the regional providers.

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 reviewed the eligibility determinations of the 399 students with initial eligibility from 1/1/22 to 5/16/22. Evidence in these IEPs indicates an ongoing and systemic concern in regards to a general education provider not being included as part of the eligibility determination meeting. 121 student IEPs lacked evidence of a general education teacher participating in the eligibility determination. This causes a double impact as these meetings are often combined with the IEP meeting which results in a lack of representation from general education in the development of the IEP as well.

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.

2a. Inaccurate Reporting of Setting

The WDE reviewed Least Restrictive Environment (EIEP-21-007), Notice of Special Education Action 9/27 (RL-21-006), LRE Justification Guidelines (KC-2022-010), and student IEPs.

The review of 57 IEPs showed an ongoing systemic concern with the accurate reporting of the educational setting for students. Of primary concern were IEPs that indicated the student was in an A1 setting, but the LRE statement indicated the student needed 5 hours per week of general education which would indicate a B1 setting. In other instances, the IEP indicated the student was in a setting that differed from what was indicated in the data system. For example, the IEP may indicate that the student was in an A2 setting while the data system indicated the student was in an A1 setting. It is important to note that not only is this a concern with data accuracy for reporting purposes but could indicate a larger concern for parental notice of LRE.

2b. Not Considering the Full Continuum of Placements

The WDE reviewed Least Restrictive Environment (EIEP-21-007), Notice of Special Education Action 9/27 (RL-21-006), LRE Justification Guidelines (KC-2022-010), and student IEPs.

The review of IEPs indicates an ongoing systemic concern with IEP teams considering the full continuum of placement options for students with disabilities. 81 IEPs indicated concerns that the team had determined the student's LRE was in a restrictive setting without adequate justification for the decision. Often, the IEP team would make placement decisions based on a parent's request. For example, "[Mom] opted to have him attend preschool and receive his IEP services at CDC" or "[Student]'s mother requested to have her attend a CDC preschool classroom and receive her services". It is the IEP team's responsibility to consider the full continuum of placements, determine the appropriate LRE setting for that student, and make a FAPE offering within that environment. While parents are part of the IEP team and their input should be considered in the placement decision process, parent preference should not be solely relied on to determine appropriate LRE. In some cases, students were being placed in highly restrictive environments without any evidence of supplementary aids and supports being attempted within a lesser restrictive environment beforehand. For example, during one student's IEP meeting, it was determined that due to his behaviors, he would only be able to come into the center 2 times per week for 30 minutes to receive therapy services in an isolated setting. The team did not attempt a less restrictive environment prior to this placement. There was no FBA conducted or BIP developed in an attempt to provide the student with

appropriate services or supplementary aids which might help him to be successful within a less restrictive environment.

2c. Inadequate Justification of Placement

Review of student IEPs, indicate a systemic lack of understanding of how to adequately justify a student’s educational placement. This lack of understanding is of a fundamental nature that it affects the LRE placement decisions at all levels. As noted in other areas of this report, a full understanding of what the LRE is, what data and documentation is required to justify the removal of the student and the determination of who is responsible for the general education of the student are all impacting the poor justifications in the IEPs. Until the regional providers develop a full understanding of the basic requirements of LRE, the ability to adequately justify an LRE decision will be problematic.

Individual Findings of Noncompliance	<p>Welligent ID [REDACTED] The student was found eligible for services on 5/10/22. The PWN and Initial Consent for Services states, “The team considered placement at [regional provider], but rejected this because [regional provider] is full. The parents were informed that they would need to find community placement for [student]. If the placement is before the 26th of May, 2022 [regional provider] will start services, if the placement is not found by the 26th of May, 2022 services will start the 25th of August 2022.” The IEP does not indicate a start date on services and it is unclear if the student is currently receiving services. The team has also determined the student is in an A1 setting prior to establishing a general education placement. The team should offer compensatory services for the time that the student has missed due to a lack of placement prior to IEP initiation. Additionally, the team should ensure that the responsibility to secure an appropriate placement for the student does not fall solely on the parent and does not preclude the student from receiving a FAPE offering.</p> <p>WISER ID [REDACTED] The student has bilateral hearing loss and uses hearing aids. There was no testing done regarding functional hearing and a TOD was not involved in the evaluation process. Additionally, audiology is not indicated as a related service. The team should reconvene and, with the help of a TOD, reevaluate the student to determine her needs within the classroom and ensure the IEP is written to adequately meet those needs identified in the evaluation.</p> <p>WISER ID [REDACTED] It was determined that due to the student’s behaviors, he would only be able to come into the center 2 times per week for 30 minutes to receive therapy services in an isolated setting. The team did not attempt a less restrictive environment prior to this placement. There was no FBA conducted or BIP developed in an attempt to provide the student with appropriate services or</p>
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supplementary aids which might help him to be successful within a lesser restrictive environment. The team should reconvene and determine what additional evaluative data is needed in order to be able to program for and provide services to this student in his least restrictive environment.

WISER ID [REDACTED] During the eligibility determination process, the team qualified the student based on scores they anticipated the student *would have* scored had he been tested ten days later. The team should reconvene and conduct a reevaluation to determine if the student qualifies as a student with an IDEA disability.

WISER ID [REDACTED] The team used a review of Part C testing and observations to determine eligibility without discussing any progress made in Part C. Additionally, the parent and the student's teacher expressed concerns regarding Autism and there was no further testing done to explore this area of concern. The team should reconvene and develop a plan to rule out the possibility of autism and ensure all of the student's needs are being met as a result.

WISER ID [REDACTED] The student was found eligible for services on 4/13/22. The PWN and Initial Consent for Services states, "[Student] currently does not have a preschool placement. The team discussed the need for the family to locate a community placement as [regional provider] classrooms are currently full. The team provided the parent with information about tuition reimbursement and community options. [Student]'s Mom reported that she cannot currently afford to pay the remainder of the tuition for a preschool placement. The team will follow up with Mom about placement options. Currently, [student]'s Mom has requested that services start in August, and has requested a [regional provider] preschool placement at that time." The IEP indicates services will begin on 5/4/22. Documentation indicates that the student has limited communication and does not use words consistently. The IEP was amended on 5/12/22 to add ESY (15m/w of speech for 5 weeks) based on a slow rate of progress in Part C (little to no progress in 8 months) to determine the need for ESY and the regional providers had not served her at that point. The team has also determined the student is in an A1 setting prior to establishing a general education placement. The team should offer compensatory services for the time that the student has missed due to a lack of placement prior to IEP initiation. Additionally, the team should ensure that the inability of the parent to pay for the additional hours of preschool does not preclude the student from receiving a FAPE offering.

WISER ID [REDACTED] The student's hearing was not able to be screened and he failed his vision screening prior to evaluation. The eligibility paperwork states that he has characteristics consistent with autism and that he is on the waitlist at Denver Children's Hospital for red flags consistent with autism. However, no additional testing was done in this area. The team should reconvene and develop a plan to evaluate the student for autism and ensure all of his needs are being met as a result of the evaluation.

WISER ID [REDACTED] The student has bilateral hearing loss and has been prescribed hearing aids. The team determined that they should keep his hearing aids at the preschool until he will wear them more. He is demonstrating some concerning behaviors such as hitting, biting, and refusing to wear his hearing aids, yet the team has not addressed any of these concerns. The team should reconvene and work with the family to ensure he has access to hearing outside of the learning environment and consider the potential need for parent training in this area. Additionally, the team should consider if additional evaluation and/or services may be warranted to address the behaviors that are being displayed.

WISER ID [REDACTED] The team determined the student was eligible under the category of Developmental Delay based on low cognitive scores on both the BDI and the DAYC. PWN and Initial Consent for Services states, "[Student's] language scores were slightly below age level; however, she did not exhibit a delay significant enough for her age range to receive a qualifying score at this time. It has been determined that if [Student]'s speech and language skills would have been assessed after her fourth birthday, 5/13, her scores would have made her eligible for both receptive and expressive language services." The IEP that was developed for the student indicates services and goals only in communication and speech/language. There are no services addressing low cognitive scores, the area in which she qualified for special education services. The team should reconvene and develop an IEP which adequately addresses the student's needs based on the results of the evaluation.

WISER ID [REDACTED] The student was found eligible under the Autism category based on an ADOS and ABAS conducted only by the parent while the student was still in Part C. The student also had an outside evaluation done but none of the recommendations from that report were incorporated into the student's IEP. The team should reconvene and 1) determine whether or not they have adequate information to establish eligibility, and 2) consider what recommendations from the outside evaluations should be incorporated into the student's IEP.

	<p>WISER ID [REDACTED] During the eligibility determination process, the team qualified the student based on scores they anticipated the student <i>would have</i> earned had he been tested fifteen days later. The team should reconvene and conduct a reevaluation to determine if the student qualifies as a student with an IDEA disability.</p> <p>WISER ID [REDACTED] The team determined that the student has qualified as a student with a disability under the Orthopedic Impairment category. Evaluation scores indicate above-average abilities in all areas except motor. The student’s IEP reflects specially designed instruction in the areas of fine and gross motor only, resulting in a lack of evidence of educational need. The team should reconvene and ensure they establish the second prong of eligibility and if unable to do so, consider that the student may not qualify as a student with an IDEA disability, but instead might meet the criteria for a student in need of a 504 plan.</p> <p>WISER ID [REDACTED] The student failed her vision screening and hearing was not tested prior to evaluation. The team determined she was eligible under the Developmental Delay category based on a BDI and PDMS only. She demonstrated significant developmental concerns in nearly all domains but no further testing was completed other than in motor. Additionally, the team determined her LRE to be a D2 environment as she currently receives services in the Part C playgroup setting. The team should reconvene and establish a plan to comprehensively evaluate the student for all needs and develop an IEP which is reflective of those needs. The team should also determine a more appropriate placement option for the student where she has the opportunity to be educated with same-aged peers.</p>
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If you have any questions concerning this report, please contact Sheila Thomalla at sheila.thomalla2@wyo.gov .

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