

**TO:** [REDACTED], Special Education Director  
Wyoming Virtual Academy- Niobrara #1

**FROM:** Sheila Thomalla, Monitoring Team Supervisor

**SUBJECT:** Special Education Results Driven Accountability Monitoring

**REVIEW DATE:** November 4-10, 2020

**REPORT DATE:** January 13, 2021

### Introduction

The Individuals with Disabilities Act (IDEA) Part B Regulations include the following provision:

*The State must monitor the implementation of this part, enforce this part in accordance with §300.604(a)(JJ and (a)(3), (b)(2)(1) and (b)(2)(v), and (c)(2), and annually report on performance under this part. 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.F.R. §300.600].*

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

### District Selection

The WDE elected to conduct a special monitoring of a sample of special education records from the Wyoming Virtual Academy (WYVA), a program within Niobrara School District #1 to determine compliance with Part B regulations provision of Free and Appropriate Public Education (FAPE).

During early fall of 2020, an Educational Consultation with WDE received phone calls from a Registered Behavioral Technician with The Olive Branch Autism Center, regarding the development of an Individual Education Plan and services for a student participating in WYVA and attending The Olive Branch. Upon further investigation into the services provided by The Olive Branch Autism Center, it was determined that review of WYVA policies, procedures, and practices was necessary to ensure that students with disabilities were receiving a FAPE.

The original monitoring sample consisted of 66 students 1) from all disability categories who had not scored proficient on the state assessment, including students in the low incident eligibility categories who were not receiving related services or those students with less common related services. An additional 25 students were pulled randomly from across the grade bands who were 2) found eligible as learning disabled or speech-language, 3) categorized as receiving education in the regular education environment, and 4) receiving related services other than assistive technology. A total of 64 files were reviewed out of 133 virtual students identified in WYVA-Niobrara #1.

Listed below are the results of the file reviews, and staff interviews. They are provided in four categories: commendations, individual findings of noncompliance, systemic findings of noncompliance, and program recommendations. Individual and systemic findings of noncompliance will require some form of corrective action.

**Commendations** – The WDE would like to commend you on the level of preparedness and professionalism of your staff during this process. The level of commitment to the students served was evident in our interactions. It was evident that WYVA- Niobrara #1 has focused on creating a special education system that is caring and committed. Specifically, the special education staff are willing to go the extra mile for students. Staff are responsive to the needs of families and students. These practices will allow students with disabilities to have needs recognized.

**Findings of Noncompliance**

<p><b>Individual Findings of Noncompliance</b></p>	<ul style="list-style-type: none"><li>• [REDACTED]: Evidence from the file indicates that the student is missing classes due to unstable wifi. Documentation does not indicate that the team has reconvened to address access concerns for the student. Based on CFR §300.320(4)(iii), the special education team should reconvene to determine what supplementary aids and services are needed to ensure the</li></ul>
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student can participate with nondisabled peers in the regular class.

- [REDACTED] Evidence from the file indicated that the comprehensive evaluation indicated the need for a behavior plan but the individual education plan did not provide for behavior. The Prior Written Notice (PWN) dated 2/21/2020 indicated that the team determined to refer to outside resources to help Mom handle behaviors. The school district is required to provide a statement of the services, supplementary aids, modifications or supports for school personnel deemed necessary for the child to progress within the general education setting and to make progress on annual goals. §300.320(a)(1)(i), (4) (i) (ii) (iii), (5), (6) (i). In the instance that a student has health coverage, a school district cannot require parents to use those benefits to cover special education services or require parents to incur out of pocket expenses for special education services. §300.154(d)(2)(i)-(ii). The team should reconvene to determine appropriate services provided through the IEP based upon identified needs.
- [REDACTED] A review of the record indicated that the student had returned to the program after the district was not able to complete a re-evaluation and on a second attempt parents did not provide consent for the testing. The student has not been deemed ineligible or no longer needing special education services through a re-evaluation process and parents have not revoked services. The district is responsible for obtaining parental consent if planning on conducting a new assessment and gathering additional data to determine eligible for re-evaluations. §300.300. Further, the district must provide notice to the parent and complete a comprehensive evaluation to determine if a child is a child with a disability. §300.304, §300.306. The team should reconvene to complete re-evaluation procedures to determine if the child is eligible for special education and offer parents the opportunity to revoke consent for services as methods of returning the student to regular program designation.
- [REDACTED] Evidence from the file review revealed that all needs for the student were not being addressed through

the IEP. Specifically, the student was identified as having behavior needs and the IEP was not aligned to address the needs of the student. Restraint and seclusion procedures are discussed and being used without being aligned to Wyoming Chapter 42 rules. The school district is required to provide a statement of the services, supplementary aids, modifications or supports for school personnel deemed necessary for the child to progress within the general education setting and to make progress on annual goals. §300.320 (a)(1)(i), (4) (i) (iii), (5), (6) (i), The team should reconvene and determine appropriate services for behavior needs and ensure that restraint and seclusion procedures suggested are aligned with Wyoming Chapter 42.

- [REDACTED] The file reviewed revealed that Wyoming eligibility had not been established. Eligibility criteria forms for Wyoming had not been completed. Eligibility determination dates were used from the out-of-state MDT paperwork rather than initiating eligibility for the state of Wyoming based upon the MDT meeting that was held. When students transfer from out of state, school districts are required to provide comparable services, conduct an evaluation to determine eligibility and develop a new IEP for children who are found eligible §300.323(f). The team should reconvene to determine eligibility within the state of Wyoming.
- [REDACTED] The file review revealed that the team did not complete a three-year re-evaluation. According to file documentation, the three-year re-evaluation was not completed because of behavior. However, a psychological report was found that confirmed the Emotional Disability and recommended residential treatment. A disability determination through a three-year re-evaluation was not found within the file documentation. No documentation was found that indicated that the LEA and parents had agreed that the re-evaluation did not need to occur. The district did not convene to review the psychological report or recommendations. Districts are required to ensure that a re-evaluation of a child with a disability is conducted at least once every three years §300.303. The team should reconvene to complete the necessary re-evaluation.

- [REDACTED] A review of the file revealed that a comprehensive evaluation had not been obtained from the prior school district to support the development of the IEP for the current environment. The district is responsible for developing an IEP that indicates how the student's disability affects progress in the general curriculum, how the IEP meets the needs of the student and documents the support necessary to make progress and participate in the general education setting §300.320, §300.324. The district should reconvene to ensure that an evaluation is available that documents all current needs of the student and that those needs are documented within a current IEP.
- [REDACTED] The review conducted on the file revealed that the evaluation and eligibility determination were in draft form. These forms should be locked and active to ensure that the most current forms are considered as part of the students file. Districts are required to ensure that a re-evaluation of a child with a disability is conducted at least once every three years §300.303. The team should review and document locked and active evaluation, eligibility determination documents.
- [REDACTED] The review conducted revealed that no annual IEP had been conducted. Further evidence suggested that the student had been placed out of state. Districts are required to review and revise IEPs no less than annually §300.324(b)The team should reconvene to document the circumstances regarding lack of annual IEP meetings and to conduct a new IEP for the student.
- [REDACTED] Evidence gathered within the file review indicated that the district allowed the IEP to lapse due to following the date of an IEP amendment rather than reviewing the IEP based upon the annual IEP due date. Districts are required to review and revise IEPs no less than annually §300.324(b). The team should reconvene to document the circumstances regarding the lack of annual an IEP meeting and to conduct a new IEP for the student.
- [REDACTED] Evidence gathered within the file review indicated that the district allowed the IEP to lapse. No Prior Written Notice or other supporting documentation was found to indicate the circumstances regarding the lapsed IEP. Districts are required to review and revise IEPs no less than

annually §300.324 (b). The team should reconvene to document the circumstances regarding lack of annual IEP meeting and to conduct a new IEP for the student.

- [REDACTED] Evidence gathered within the file review indicated that the district allowed the IEP to lapse. No Prior Written Notice or other supporting documentation was found to indicate the circumstances regarding the lapsed IEP. Districts are required to review and revise IEPs no less than annually §300.324 (b). The team should reconvene to document the circumstances regarding lack of annual IEP meeting and to conduct a new IEP for the student.
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- [REDACTED] Evidence from the file review revealed that the district extended the IEP by 2-3 weeks after the student's arrival within WYVA-Niobrara #1 and failed to hold the annual due date. Documentation also revealed that the district back-dated documents to remain aligned with the required due date. Districts are required to review and revise IEPs no less than annually §300.324 (b). The team should reconvene to document the circumstances regarding lack of annual IEP meeting and to conduct a new IEP for the student.
- [REDACTED] The file review revealed that the IEP has needs identified from the evaluation that are not addressed through the current IEP. Districts are required to document the goals, services, and supplementary aids and supports needed to ensure students make progress toward IEP goals and within the general education curriculum §300.320. The team should reconvene to determine the needs of the student, document progress and support and services needed to make progress on goals and within the general education curriculum.

**Teams have 30 days from the receipt of this report to correct or develop a plan to bring findings into correction.**

	<b>Evidence of correction will be required to be submitted to the WDE.</b>
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<p><b>Area 1: Comprehensive Evaluation</b> Citation: § 300.301 Initial Evaluations, § 300.304 Evaluation Procedures, § 300.306 Determination of Eligibility</p>	<p><b>Findings:</b> Nineteen student files were reviewed that flagged for concerns with Comprehensive Evaluation. Four individual findings were noted in relation to comprehensive evaluation. According to § 300.301, LEA's are required to conduct a full and individual initial evaluation in accordance with § 300.304 through 300.306. The files reviewed in WYVA- Niobrara #1 did not evidence the presence of individualized comprehensive evaluations or processes that met the regulations for comprehensive evaluations processes and procedures.</p> <p>Throughout the interviewing process, team members indicated that WYVA-Niobrara #1 contracts with professionals around the state to provide components for comprehensive evaluations. However, concerns arise regarding completion of evaluations within the 60 day timelines, participation of contracted professionals in eligibility determination, and further evaluation being completed when new concerns arise for students.</p>
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**Area 2: Identified Needs Reflected In the IEP**

Citation: §300.320  
Definition of Individualized Education Program

**Findings:** The file reviews revealed concerns with documentation of students' needs as determined through a comprehensive evaluation within present levels of performance, measurable goals or accommodations/supplementary aids and services. Twenty files were reviewed that included instances where needs from an evaluation were not present in the educational programming developed. Two individual findings emerged.

Needs identified through initial or three year re-evaluations were left out of the PLAAFP on subsequent annual IEP reviews. It was uncertain if students were making adequate progress as all needs were not addressed within the IEP. Progress monitoring data frequently did not match the baseline from goals or concerns identified within the baseline which lead to difficulty in determining progress for students.

Goals should contain baseline data that are measurable and specific to targets that are reflected in the PLAAFP. Similarly, accommodations, supplementary aids and services should be presented based upon needs identified through the comprehensive evaluation. If current data suggests that needs are no longer a concern, this data should be highlighted as part of the PLAAFP.

According to §300.320 LEAs must write IEPs for “each child with a disability that is developed, reviewed and revised in a meeting in accordance with §300.320 through §300.324 including a statement of present levels measurable annual goals, supplementary aids and services.” IEPs must be reviewed no less than annually to ensure that a student is making progress and to address lack of expected progress, and address concerns.



**Area 2a: Identified Needs Reflected In the IEP**

Citation: §300.320,  
§300.154

**Findings:** The file reviews revealed specific concerns with documentation of students' needs through service provision, accommodations/supplementary aids and supports. Four files were reviewed that included instances where evidence from the file suggested needs may not have been addressed based upon the IEP developed by the school district. WISER ID [REDACTED] indicated that the student had concerns with violent and aggressive behaviors and sensory regulation needs but evidence from the IEP indicates that these needs are being managed by an outside organization that is not overseen by WYVA-Niobrara #1. WISER ID [REDACTED] the comprehensive evaluation indicated the need for a behavior plan but the individual education plan did not provide for behavior. The PWN dated 2/21/2020 indicated that the team determined to refer to outside resources to help Mom handle behaviors. WISER ID [REDACTED] Student is getting services from an outside agency with an "RBT" from the agency that acts as the learning coach. The IEP states the student has behavior concerns, but behavior and social skills are not addressed in the IEP. WYVA defines learning coaches as a parent or other responsible adult who will help facilitate progress and work to modify the pace and schedule for the student as needed. However, if the "RBT" is needed to support the student's identified special education needs to adapt and accommodate the general education setting, this is a special education supplementary aid and service that should be included as part of the IEP and provided by the district. Regarding WISER ID [REDACTED], evidence from the PWN within the file suggests that WYVA-Niobrara #1 did not provide necessary supplementary aids, services and accommodations necessary for the student to demonstrate success within the general education environment.

The school district is required to provide a statement of the services, supplementary aids, modifications or supports for school personnel deemed necessary for the child to progress within the general education setting and

	<p>to make progress on annual goals §300.320. Further, in the instance that a student has health coverage, a school district cannot require parents to use those benefits to cover special education services or require parents to incur out of pocket expenses for special education services. §300.154(d)(2)(i)(ii). The documentation reviewed during monitoring suggests that WYVA-Niobrara #1 may be failing to provide needed supplementary aids, services, supports, etc., and requiring parents to seek such services at their own expense. Such limitations of service provision fail to meet the expectations for a free and individualized public education provided in an environment with non-disabled peers as is determined most appropriate for each child.</p>
<p><b>Area 3: Educational Need</b> Citation: §300.306(c)</p>	<p><b>Findings:</b> Through a review of files, five samples were identified that had limited evidence of sources, information, and teams’ consideration of data documenting educational need. However as §300.306(c) indicates districts must use a variety of sources, and ensure that information is documented and considered to determine eligibility and need for special education. Educational need as part of the comprehensive evaluation/eligibility determination process is linked to IEP development. Failure to complete such steps reduces the team’s ability to determine appropriateness of the IEP.</p>
<p><b>Area 4: Least Restrictive Environment (LRE)</b> Citation: §300.114-115.</p>	<p><b>Findings:</b> Through a review of files, LRE justifications and supporting file documentation indicated that students were removed from the LRE without use of supplementary aids and services within the general education environment. There was not adequate evidence of consideration of the continuum of alternative placements, and a lack of clarification about the general education setting. Four files indicated concern with LRE. The less restrictive environment continuum from least to more</p>

	<p>restrictive is not documented within the IEP or other team documents. Current documentation indicates teams are not adequately documenting the transition processes from determined placement into less restrictive environments. The transition of students along the continuum should be adequately reflected within IEP documentation and discussion about LRE should also be documented. As indicated CFR 34 §300.114, districts must ensure to that maximum extent appropriate, children are to be educated with nondisabled peers in the general education environment and removal from this environment must be considered only after use of supplementary aids and services are ineffective.</p>
<p><b>Area 5: Data Accuracy</b> Citation: §300.211,§300.601</p>	<p><b>Findings:</b> Eight files were reviewed that revealed concern with data accuracy. Documentation within the files revealed lack of accurate record keeping within special education records throughout special education documents. For instance, WISER ID [REDACTED] the student is reported as an eighth grade student in current portions of the record and is listed as a twelfth grade student within the data management system. Similarly within the file, the student’s eligibility changed without documentation through a comprehensive evaluation or eligibility determination. According to CFR 34 §300.211 a district must provide the state with data necessary to carry out reporting duties and that data collected by that state must be valid and reliable (CFR 34 §300.601).</p>

- Recommendations** – The WDE believes that it would be beneficial for the Wyoming Virtual Academy-Niobrara #1 to develop a district wide special education process/procedure manual that can be shared with staff and new hires. This manual should document procedures for established consent, eligibility and paperwork compliance expectations. In addition, the manual should also outline basic processes for communicating with parents, timelines for progress reporting and procedures for carrying out virtual practices for IEPs, meetings and attending special education briefings, professional development, etc. A specific process for ensuring procedural safeguards are sent to parents must be included within the communication practices for parents. Secondly, a district wide procedure should be established to determine how WYVA-Niobrara #1 will address and troubleshoot

technology issues for special education students. The manual could include a district wide special education procedure for expectations for the reconvening of IEP teams.

If you have any questions concerning this report, please contact Anastashia Teepe at [annastashia.teepe@wyo.gov](mailto:annastashia.teepe@wyo.gov).

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