

**MEMORANDUM OF UNDERSTANDING
BETWEEN THE WYOMING DEPARTMENT OF EDUCATION AND
WYOMING DEPARTMENT OF HEALTH, BEHAVIORAL HEALTH DIVISION**

1. **Parties.**

This Memorandum of Understanding (hereinafter referred to as MOU) is made and entered into by and between the Wyoming Department of Education (herein after referred to as WDE), whose address is 2300 Capitol Avenue, Hathaway Bldg, 2nd floor, Cheyenne, WY 82002, and the Wyoming Department of Health, Behavioral Health Division, Early Intervention Education Program (hereinafter referred to as BHD/EIEP), whose address is 186C, 6101 Yellowstone Road, Cheyenne, WY 82002.

2. **Purpose.**

The purpose of this MOU is twofold: 1) The MOU outlines the responsibilities of each agency in the provision of services to preschool children with disabilities ages three (3) through five (5) as outlined in Part B of the Individuals with Disabilities Education Act (IDEA), Education Rules, Chapter 7, and W.S. §§21-2-701 through 21-2-704, and 2) The MOU further outlines the responsibilities of each agency in ensuring the coordinated, smooth and effective transition of children and families as they move from early intervention services under Part C into Part B programs and services for the benefit of children and families residing in the State of Wyoming.

The BHD/EIEP is defined in W.S. §21-2-702 as an intermediate educational unit (IEU) and as such meets the definition of a local education agency (LEA), or school district, for purposes of this MOU. This definition meets the requirements in 34 C.F.R. §§300.12(c) and 300.28(b)(1).

3. **Term of MOU.**

This MOU shall commence upon the day and date last signed and executed by the duly authorized representatives of the parties to this MOU and shall remain in full force and effect until terminated or until changes in State or Federal statutes render this agreement unnecessary. This MOU may be terminated, without cause, by either party upon thirty (30) days written notice, which notice shall be delivered by hand or by certified mail.

4. **Payment.**

The WDE shall allocate federal dollars to the BHD/EIEP in accordance with federal regulations 34 C.F.R. §§300.705 and 300.816 and state statute W.S. §21-2-705, until statute changes are made to allow population funding of the BHD/EIEP as an IEU.

5. **Responsibilities of Wyoming Department of Education (WDE).**

The WDE shall exercise general supervision responsibilities over the BHD/EIEP in its role as an IEU to ensure compliance with 20 U.S.C. 1400, et seq., 34 C.F.R. Part 300 and the WDE Chapter 7 Rules (Services for Children with Disabilities), including ensuring appropriate identification and correction of noncompliance in a timely manner. This general supervision shall consist of the following:

A. The WDE shall conduct monitoring activities to validate and verify the accuracy of the BHD/EIEP's identification of noncompliance and timely correction of findings of noncompliance. All monitoring activities will be conducted in accordance with the WDE's Continuous Improvement Focused Monitoring (CIFM) Procedure Manual and the OSEP Memorandum 09-02, dated October 17, 2008, which is attached hereto as Exhibit A. These monitoring activities ensure that BHD/EIEP is correctly implementing the specific regulatory requirements and that BHD/EIEP timely corrects each case of noncompliance, unless the child is no longer within the jurisdiction of the BHD/EIEP.

(i) WDE's monitoring activities will include:

- a. Independent monitoring of additional regions throughout the state in the current school year.
- b. Verification monitoring in a minimum of two regions monitored by the BHD/EIEP in the previous school year.

(i) Within 45 days after the WDE performs the monitoring activities listed in subsection (i), above, the WDE shall provide the BHD/EIEP a notification letter with a copy of its monitoring report specifically outlining all areas of noncompliance that have not been appropriately identified and corrected by the BHD/EIEP. The notification letter and/or monitoring report shall cite the specific regulatory requirement and citation to the regulatory authority to better provide BHD/EIEP the ability to assist the region and/or program to achieve compliance.

(ii) Should the BHD/EIEP fail to take additional action as defined by section 6(A), the WDE may conduct additional monitoring, require additional corrective action, or issue additional findings against the BHD/EIEP.

B. WDE shall also make an annual determination regarding the performance of the BHD/EIEP using all applicable State Performance Plan (SPP) indicators. The annual determination will use the following performance categories: Meets Requirements, Needs Assistance, Needs Intervention or Needs

Substantial Intervention [in accordance with 34 C.F.R. §300.603(b)(1) and WDE Chapter 7 Rules].

- C. Provide technical assistance to the BHD/EIEP in areas of noncompliance.
 - (i) Provide access to professional development activities for the BHD/EIEP and their contractors, in order to comply with IDEA Part B requirements and improve practices related to serving preschool children with disabilities ages three (3) through five (5).
 - (ii) WDE will refer questions, complaints and requests for technical assistance from the contractors to the BHD/EIEP.
- D. Complete federal and state reporting requirements for preschool children with disabilities ages three (3) through five (5).
- E. Provide access to the WDE Grants Management System (GMS) for submission of grant application for federal funding (IDEA, Part B 611 and 619).
- F. Utilize the GMS to review grants for funding and ensure that requests meet the requirements for the allowable use of federal funds. Review annual expenditure reports from BHD/EIEP to ensure effective oversight of the contractors' use of federal funds.
- G. Conduct all dispute resolution activities pertaining to preschool children as outlined in federal regulations, WDE Chapter 7 Education Rules and the WDE Dispute Resolution Procedures.
- H. Ensure that the BHD/EIEP has in place adequate policies and procedures as required by Part B of the IDEA that align with the WDE's policies and procedures adopted July 1, 2010 and any subsequent policies adopted in accordance with Part B of the IDEA.
- I. Implement a graduated series of incentives and sanctions as a means of ensuring compliant practices in accordance with Section 9 of the WDE Chapter 7 Rules, as appropriate.
- J. The WDE will review current state regulations, policies and procedures to ensure a smooth and effective transition from Part C to Part B, in alignment with IDEA requirements.

6. **Responsibilities of Department of Health, Behavioral Health Division.**

In its role as an Intermediate Education Unit (IEU), the BHD/EIEP shall ensure that the agencies with which they contract to provide services to preschool children with

disabilities ages three (3) through five (5) comply with all regulatory requirements of Part B of the IDEA, WDE Chapter 7 Rules and WDE policies/procedures (including timely transition of eligible preschool children from Part C to Part B, as is further discussed in Section 7, below. As the IEU, the BHD/EIEP will also provide all information and complete all activities required by the WDE as part of its general supervision requirements under Part B of the IDEA. These will include the following:

- A. Implement a comprehensive system to monitor compliance and correct each case of noncompliance in accordance with WDE's CIFM Procedure Manual and the requirements of IDEA Part B among the contractors serving preschool children with disabilities ages three (3) through five (5).
 - (i) Ensure that all findings of noncompliance are identified and corrected as soon as possible but in no case more than one (1) year after the finding is made unless the child is no longer within the jurisdiction of the BHD/EIEP - in accordance with OSEP's Memo 09-02.
 - (ii) Provide the WDE with all monitoring documentation related to identification and correction of noncompliance.
 - (iii) Within 30 days of receiving a notification letter and monitoring report from WDE, contact the region and/or program to develop or revise a corrective action plan.
 - a. BHD/EIEP shall certify to the WDE that it has made this contact.
 - b. BHD/EIEP shall thereafter notify WDE of the steps it is taking to ensure compliance, including providing the WDE with copies of all corrective action plans agreed upon between BHD/EIEP and the region and/or program.
 - (iv) BHD/EIEP shall thereafter quarterly report to the WDE progress made toward each corrective action plan, or the lack of progress made toward the plan.
 - (v) The BHD/EIEP and WDE shall follow the Continuous Improvement Focused Monitoring Procedures Manual to ensure compliance of the IDEA Part B requirements and Chapter 7 Rules.
 - (vi) Complete the Self Assessment, desk audit and all other WDE-required monitoring activities within set timelines.
- B. Provide technical assistance and professional development to the programs

contracted to provide services to preschool children with disabilities in order to ensure compliance with the requirements of IDEA Part B and improve practices in serving preschool children with disabilities.

- C. Complete all required data submissions and reports within set timelines:
- (i) The WDE 425 and WDE 427 (Special Education demographic and service data) through the SRM;
 - (ii) All required data on children transitioning from Part C to Part B;
 - (iii) And all other data necessary to complete the WDE's federal and state reporting requirements.
- D. Utilize the Grants Management System (GMS) to complete and submit grants for funding and meet the requirements for the allowable use of federal funds. Exercise effective oversight of the contractors' use of federal funds and submit a report detailing expenditures annually.
- E. Ensure that all regional Part C and B staff members are trained in dispute resolution requirements of IDEA and that all requests for dispute resolution (i.e., state complaints, due process and mediation) are directed to the Special Programs Division of the WDE, in accordance with federal and state regulations and rules.
- F. Have in place policies and procedures consistent with the requirements of 34 C.F.R. §300.201 and aligned with WDE's policies and procedures in accordance with Part B of IDEA.
- G. The BHD/EIEP will review current state regulations, policies and procedures to ensure a smooth and effective transition from Part C to Part B, in alignment with IDEA.

7. Transition Planning from Part C to Part B.

The Part C regulations in 34 CFR §303.209(a)(3)(ii) require the transition interagency or intra-agency agreement to address how the lead agency for Part C and the State Educational Agency (SEA) will meet the IDEA Part C early childhood transition requirements in 34 CFR §303.209(b) through (f) and the IDEA Part B early childhood transition requirements in 34 CFR §§300.101(b), 300.124, 300.321(f) and 300.323(b). The WDE (as the SEA) and BHD/EIEP (as the LEA and the Part C lead agency) shall jointly ensure that transition planning is taking place for those children who may be eligible for Part B preschool special education services.

The BHD/EIEP shall contract with all developmental preschool service providers in

the State of Wyoming that provide Part C services and Section 619 preschool services directly. The contract shall establish that it is each developmental preschool service providers' responsibility under Part C to initiate the transition planning and alert the BHD/EIEP as the Local Educational Agency (LEA) for all special education preschool children in Wyoming that a planning conference is needed. Additionally, all contracts with developmental preschool service providers that provide transition services shall also require the following:

- A. Transition Notification (34 CFR §303.209(b): At least ninety days (90) prior to the child's third birthday, the Part C service coordinator will notify the BHD/EIEP and the WDE, that a child receiving Part C services and who is likely to be eligible for Part B services will turn three years old and exit the Part C program shortly.
- B. Transition Conference to discuss Services for those children who are likely to be eligible for Part B (34 CFR §303.209(c): With the family's approval, the transition conference is convened among the Part C and Part B developmental preschool service providers, the family of the toddler turning three, and if also the transition plan meeting other related service personnel. The conference must occur at least 90 days prior to the child's third birthday or, at the discretion of the parties, up to nine (9) months prior to the child's third birthday. The required parties must discuss any services the toddler may receive under Part B.
- C. Transition Conference to discuss services for those children who are not likely to be eligible for Part B (34 CFR §303.209(c): With the family's approval, the Part C service coordinator shall make all reasonable efforts to convene a conference among the developmental preschool service providers, the family, and providers of other appropriate services for children who are not eligible for preschool special education services under Part B.
- D. Transition Plan (34 CFR §303.209(d): The BHD/EIEP must assure that each infant and toddler with a disability exiting the Part C program has in place, in the IFSP, a transition plan. The Part C service coordinator would establish the plan in the IFSP not fewer than 90 days, but at the discretion of all parties up to 9 months, before the toddler's third birthday. The plan must review the program options for the toddler for the period from the toddler's third birthday through the remainder of the school year. The family must be included in the development of the transition plan. The transition plan must also include, consistent with 34 CFR §303.344(h), any appropriate steps for the toddler to exit the Part C program and any transition services needed by the toddler and his or her family. The transition steps must include confirmation that the child find information has been transmitted to BHD/EIEP and the WDE and the Part C program has transmitted additional information such as the most recent evaluation, assessments, and IFSP with parent consent.

- E. Developing and implementing the IEP by the third birthday for a child eligible under Part B (34 CFR §§300.101(b) and 300.124(b) and 300.321(f): The developmental preschool service providers will assure that each child entering Part B from Part C will have an individualized education plan (IEP) developed and implemented by the child's third birthday. If a child's birthday occurs during the summer, the child's IEP team shall develop the IEP prior to the end of the current school year in order to have the IEP in effect at the beginning of the new school year. If it is necessary for the child to receive uninterrupted services over the summer months, the IEP team shall determine the date when services begin. At the request of the parent, an invitation to the initial IEP meeting must be sent to the Part C service coordinator, or other Part C representative, if the child previously received Part C services. In addition, for all children who transition from Part C services to Part B, the IEP team must consider the IFSP that contains the IFSP content (including the natural environments statement) described in IDEA section 636(d) and its implementing regulation when developing the initial IEP.
- F. Part B developmental preschool providers representing the LEA participating in the transition conference (34 CFR §300.124): Each Part B section 619 preschool program will participate in transition conferences of all children likely to be eligible for Part B transitioning from the Part C program. Developmental preschool service providers shall be required to report information on these meetings and conferences to the BHD/EIEP annually. The BHD/EIEP shall provide this information to the WDE to ensure proper oversight of the transition process.
- G. The developmental preschool service providers shall review current state regulations, policies and procedures to ensure a smooth and effective transition in alignment with IDEA requirements and WDE policy.
- H. The BHD/EIEP will provide technical assistance and training to the developmental preschool service providers to assist them in implementing provisions of this agreement and the federal and state regulations related to these particular transitions.

8. **General Provisions.**

- A. **Amendments.** Either party may request changes in this MOU. Any changes, modifications, revisions, or amendments to this MOU which are mutually agreed upon by the parties to this MOU or required by federal law, shall be incorporated by written instrument, executed and signed by all parties to this MOU. The MOU will be formally evaluated and updated annually.
- B. **Resolution of Issues.** The parties mutually agree to resolve disputes in a non-adversarial fashion by meeting to confer and discuss any issues that

may arise, recognizing that the purpose of the MOU is to promote and ensure collaboration between the agencies for the benefit of children and families in the State of Wyoming. Issues that may arise will be immediately brought to the attention of the agency personnel involved to resolve as expeditiously and informally as possible and at the lowest appropriate level. If these agency personnel cannot resolve the dispute, it will be referred to the Director of the Wyoming Department of Health and the Superintendent of Public Instruction for resolution.

- C. **Entirety of Agreement.** This MOU, consisting of nine (9) pages, and Exhibit A, represent the entire and integrated agreement between the parties and supersedes all prior negotiations, representations and agreements, whether written or oral.
- D. **Prior Approval.** This MOU shall not be binding upon either party unless this MOU has been reduced to writing before performance begins as described under the terms of this MOU, and unless this MOU is approved as to form by the Attorney General or representative.
- E. **Severability.** Should any portion of this MOU be found to be illegal or unenforceable, the remainder of the MOU shall continue in full force and effect, and either party may renegotiate the terms affected by the severance.
- F. **Sovereign Immunity.** The State of Wyoming, Department of Education and the Department of Health, Behavioral Health Division do not waive their sovereign immunity by entering into this MOU, and each fully retains all immunities and defenses provided by law with respect to any action based on or occurring as a result of this MOU.
- G. **Third Party Beneficiary Rights.** The parties do not intend to create in any other individual or entity the status of third party beneficiary, and this MOU shall not be construed so as to create such status. The rights, duties, and obligations contained in this MOU shall operate only between the parties to this MOU and shall inure solely to the benefit of the parties to this MOU. The provisions of this MOU are intended only to assist the parties in determining and performing their obligations under this MOU.

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9. **Signatures.** The parties to this MOU through their duly authorized representatives have executed this MOU on the dates set out below, and certify that they have read, understood, and agreed to the terms and conditions of this MOU as set forth herein.

The effective date of this MOU is the date of the signature last affixed to this page.

DEPARTMENT OF EDUCATION

Cindy Hill
Cindy Hill, Superintendent

1-24-12
Date

DEPARTMENT OF HEALTH

Thomas Forslund
Thomas Forslund, Director

1-24-12
Date

ATTORNEY GENERAL'S OFFICE APPROVAL AS TO FORM

S. Jane Caton #82818
S. Jane Caton
Senior Assistant Attorney General
Representing the Department of Education

1-23-12
Date

Marion Yoder #82818
Marion Yoder
Senior Assistant Attorney General
Representing Department of Health

Jan 23, 2012
Date



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

OCT 17 2008

Contact Person	
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Telephone:	(202) 245-7513

OSEP 09-02

TO : Chief State School Officers
Lead Agency Directors

FROM : William W. Knudsen *William W. Knudsen*
Acting Director
Office of Special Education Programs

SUBJECT : Reporting on Correction of Noncompliance in the Annual
Performance Report Required under Sections 616 and 642 of the
Individuals with Disabilities Education Act.

Introduction

Pursuant to sections 616(d) and 642 of the Individuals with Disabilities Education Act (IDEA), the Department reviews each State's Annual Performance Report (APR) and, based on data provided in the State's APR, information obtained through monitoring visits, including verification visits, and any other public information, determines if the State: Meets Requirements, Needs Assistance, Needs Intervention, or Needs Substantial Intervention. In making determinations in 2007 and 2008, the Office of Special Education Programs (OSEP) considered, among other factors, whether a State demonstrated substantial compliance on all compliance indicators either through reporting a very high level of performance (generally 95% or better) or correction of noncompliance.¹

The purpose of this memorandum is twofold. First, the memorandum reiterates the steps a State must take in order to report that the previously identified noncompliance has been corrected. Second, the memorandum describes how we will factor evidence of correction into our analysis of whether the State has demonstrated substantial compliance for purposes of determinations under sections 616 and 642 of the IDEA (beginning with the Department's 2010 determinations based on a review of the FFY 2008 APRs). This memorandum also addresses concerns

¹ For Indicators B-15 and C-9, which measure timely correction of noncompliance, the only way for States to demonstrate substantial compliance is by demonstrating timely correction.

identified in our review of States' FFY 2005 and FFY 2006 APRs about identification and correction of noncompliance and low performance in compliance areas.

Issue 1 – Demonstrating Correction

As noted in OSEP's prior monitoring reports and verification visit letters, in order to demonstrate that previously identified noncompliance has been corrected, a State must:

- (1) Account for all instances of noncompliance, including noncompliance identified: (a) through the State's on-site monitoring system or other monitoring procedures such as self-assessment; (b) through the review of data collected by the State, including compliance data collected through a State data system; and (c) by the Department;
- (2) Identify where (in what local educational agencies (LEAs) or early intervention services (EIS) programs) noncompliance occurred, the percentage level of noncompliance in each of those sites, and the root cause(s) of the noncompliance;²
- (3) If needed, change, or require each LEA or EIS program to change, policies, procedures and/or practices that contributed to or resulted in noncompliance; and
- (4) Determine, in each LEA or EIS program with identified noncompliance, that the LEA or EIS program is correctly implementing the specific regulatory requirement(s). This must be based on the State's review of updated data such as data from subsequent on-site monitoring or data collected through a State data system.

If an LEA or EIS program did not correct identified noncompliance in a timely manner (within one year from identification), the State must report on whether the noncompliance was subsequently corrected. Further, if an LEA or EIS program is not yet correctly implementing the statutory/regulatory requirement(s), the State must explain what the State has done to identify the cause(s) of continuing noncompliance, and what the State is doing about the continued lack of compliance including, as appropriate, enforcement actions taken against any LEA or EIS program that continues to show noncompliance.

Regardless of the specific level of noncompliance, if a State finds noncompliance in an LEA or EIS program, the State must notify the LEA or EIS program in writing of the noncompliance, and of the requirement that the noncompliance be corrected as soon as possible, but in no case more than one year from identification (i.e., the date on which the State provided written notification to the LEA or EIS program of the noncompliance). In determining the steps that the LEA or EIS program must take to correct the noncompliance and to document such correction, the State may consider a variety of factors, including whether the noncompliance: (1) was extensive or found in only a small percentage of files; (2) resulted in the denial of a basic right under the IDEA (e.g., an extended delay in an initial evaluation with a corresponding delay in the child's receipt of a free appropriate public education or early intervention services, or a failure to provide services in accordance with the individualized education program or individualized family service plan); and (3) represents an isolated incident in the LEA or EIS program, or reflects a long-standing failure to meet the IDEA requirements. Thus, while a State may

² Please note that while we are not requesting that States provide, in the APR, lists of specific LEAs or EIS programs found out of compliance, we may review documentation of correction that the State required of the LEA or EIS program when we conduct a verification visit or other monitoring activity in a State.

determine the specific nature of the required corrective action, the State must ensure that any noncompliance is corrected as soon as possible, but in no case more than one year from identification.

For any noncompliance concerning a child-specific requirement that is not subject to a specific timeline requirement (State Performance Plan (SPP)/APR Indicators B-9, B-10, B-13, C-8A and C-8B), in addition to the steps above, the State also must ensure that the LEA or EIS program has corrected each individual case of noncompliance, unless the child is no longer within the jurisdiction of the LEA or EIS program. Similarly, for any noncompliance concerning a child-specific timeline requirement (SPP/APR Indicators B-11, B-12, C-1, C-7, and C-8C), in addition to the steps enumerated above, the State must ensure that the LEA or EIS program has completed the required action (e.g., the evaluation or initiation of services), though late, unless the child is no longer within the jurisdiction of the LEA or EIS program. In ensuring that each individual case of noncompliance has been corrected, the State does not need to review each child's record in the LEAs or EIS programs where the noncompliance occurred, but rather may review a reasonable sample of the previously noncompliant files to verify that the noncompliance was corrected.

Issue 2 – Factoring Correction into Evaluation of Substantial Compliance

For purposes of the Department's IDEA section 616 determinations issued since June 2007, we considered a State to be in substantial compliance relative to a compliance indicator if the State's data indicate a very high level of compliance (generally 95% or above), or if the State nonetheless demonstrated correction of identified noncompliance related to that indicator. In the interest of fairness to all States, we will evaluate whether a State demonstrated correction of identified noncompliance related to an indicator when we make our 2009 determinations based on the FFY 2007 APRs, and will use the same approach we used in 2007 and 2008. However, some States are reporting very low levels of compliance year after year, while also reporting that they have corrected previously identified noncompliance. This concerns us because it indicates that systemic correction of noncompliance did not occur. Thus, in the interest of improving LEA and EIS program performance and ultimately improving results for infants, toddlers, children and youth with disabilities, beginning with our 2010 determinations:

- (1) We will no longer consider a State to be in substantial compliance relative to a compliance indicator based on evidence of correction of the previous year's noncompliance if the State's current year data for that indicator reflect a very low level of compliance (generally 75% or below); and
- (2) We will credit a State with correction relative to a child-specific compliance indicator only if the State confirms that it has addressed each instance of noncompliance identified in the data for an indicator that was reported in the previous year's APR, as well as any noncompliance identified by the Department more than one year previously. The State must specifically report for each compliance indicator whether it has corrected all of the noncompliance identified in its data for that indicator in the prior year's APR as well as that identified by the Department more than one year previously.

For example --

- Reporting correction of noncompliance identified in on-site monitoring findings alone will not be sufficient to demonstrate correction if the data reported in a State's prior year's APR showing noncompliance were collected through the State's data system, and the monitoring findings do not include all of the instances of noncompliance identified through the prior year's data.
- In order to report correction of noncompliance identified in data based on a statewide sample, the State would need to track the noncompliance identified in the sample data reported in its prior year's APR back to the specific LEAs or EIS programs with noncompliance and report correction for those LEAs or EIS programs.

In other words, a State's demonstration of correction needs to be as broad in scope as the noncompliance identified in the prior year's data.

We hope that you find the information in this memorandum helpful in collecting and reporting data for your future SPP/APR submissions. OSEP is committed to supporting your efforts to improve results for infants, toddlers, children and youth with disabilities and looks forward to working with your State over the next year. If you have any questions, would like to discuss this further, or would like to request technical assistance, please do not hesitate to call your OSEP State Contact.

cc: Part B State Directors
Part C Coordinators