Wyoming Department of Education
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MEMORANDUM NO. 2010-173

TO: School District Superintendents
School Principals
School District Special Education Directors
Building Intervention Team Coordinators

FROM: Joe Simpson, Deputy Superintendent
Administration Division

DATE: October 1, 2010

SUBJECT: Educational Services for Students Placed Outside a Conventional School Setting

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IMPORTANT INFORMATION

With the 2010-2011 school year now under way, it is important to provide school districts with updated information regarding 1) educational programs of their students who have been placed outside of their resident district and 2) the resident district's responsibility. Also attached is the September 8, 2004, Attorney General Opinion that discusses this topic.

For the past three years, the Wyoming Department of Education (WDE) has identified a continuum of learning supports for at risk students from *least restrictive* to *most restrictive* environments. The most restrictive environments may include detention, day treatment, state hospital, jail, prison, institutional setting, treatment center, group home, Boards of Cooperative Educational Services (BOCES), and/or a Boys or Girls School. The placement of a student may be in-state or out-of-state, and can be made by the student's family, the student's resident district, or court ordered. Financial responsibility of students placed by the student's family rests with the student's family.

When a student is placed in a most restrictive environment, the student's resident district is responsible for monitoring the student's education. The residence of the student's parent/guardian determines the resident district.

Regardless of student placement, his/her education will be one of the following four major "program types:"

1. Diagnostic assessments: When a student is placed short-term (less than ten days), a basic diagnostics for reading, comprehension, math, writing, and behavioral observations may be the best approach;
2. Diploma bound: When delivering academic content, courses must align to both the district and state standards;
3. Individual Learning Plans: Examples are an Individualized Education Plan (IEP) and a 504 Plan; and an education plan for those students placed outside their resident district; but, for students without an official plan, an Individualized Learning Plan (ILP) must be developed. The ILP should be developed by the resident district and the institutional provider when the student is placed. Case managers from the district and the institution should be assigned to monitor the student's plan; and,
4. General Educational Development (GED).

Whatever program type a student is using, the resident district should assign a case manager to monitor the student's educational progress while he/she is placed outside of his/her resident school.

A case manager is an employee of the resident school district who has knowledge of the student, his/her academics, strengths, any areas of focus, family, and any other related issues that have an impact upon the student affecting his/her academics. The case manager monitors the educational progress of the student before he or she is placed, during the student's placement, and is instrumental as a liaison when the student transitions from placement to either another facility or back to the resident district. The case manager also coordinates active participation among the resident district, parent/guardian, family, and other pertinent agencies involved with the student before, during, and after, ensuring communication between the resident district and facility.

The following summaries are provided to assist districts in appropriately accounting for students who are court order placed, placed out-of-district, placed at a facility within the district, or are placed year-round at a facility such as a treatment center or group home. This includes, but is not limited to, cases involving short-term detention, transitions and district monitoring of educational programs/services. In addition, guidance is provided on the use of state and federal funds.

Court Multi-Disciplinary Teams (MDT):
It is the expectation and legal requirement for districts to participate in community MDTs when such teams meet to discuss the options available regarding resident students.

Court-Ordered Placement of Students:
In accordance with W.S. 21-13-315(b), districts may count court ordered placement of students among their Average Daily Membership (ADM) provided educational programs and services are being offered by the district to students placed and residing in a facility. Also, per Chapter 8 Rules and Regulations for the School Foundation Program, no reimbursement shall be provided for costs previously or simultaneously recovered elsewhere in the Wyoming school finance system.

Out-of-District Placement of Students:
In the case of a student placement outside of his/her resident district, it is the responsibility of both the facility in which the student is placed and the resident district to facilitate the case management of the student. Through appropriate case management of educational programs/services provided by the resident district, costs incurred in the periods prior to placement, through program monitoring, while in transition, and through post-transition can be recovered by including the students among the district's ADM. Costs, in addition to tuition, for a student on an IEP should be recovered via a WDE401, Reimbursable Special Education Expenditures Report, rather than including the student among the district's ADM.

Enrollment:
In order to accommodate all educational and academic transitions for any out of district placed students, the resident school districts can continue to count the student(s) on district enrollment and pay tuition to another district OR allow the other district to count the student on their enrollment; if there exists a written understanding between the resident school district and the facility/juvenile detention center that a student is transferred, disenrolled and re-enrolled, the resident district will list the student(s) as primary enrolled on Form WDE684, WISE Certified Teacher/Course/Student.

In-District Placement of Students:
In the case of a student placement within the resident district, it is the responsibility of both the facility in which the student is placed and the

resident district to facilitate the case management of the student. Through appropriate case management of educational programs/services provided by the resident district, costs incurred in the periods prior to placement, through program monitoring, while in transition, and through post-transition can be recovered by including the students among the resident district's ADM.

Year-Round Placement:
In cases where year-round treatment is necessary, districts may utilize Summer School/Extended Day (Bridges Grants) funds to offset the costs incurred in the case management of educational programs/services provided to students beyond the school year. Districts are resourced 15 percent of one full-time equivalent (FTE) teacher position for every 30 at-risk students (with a minimum of .5 FTE teacher positions) for the Bridges Grant. For the period during the school year, districts should follow the guidance given above for court ordered placed, out-of-district, or in-district placed students.

Title I-Part D Funds for Neglected or Delinquent Students:
Districts with a high proportion of delinquent students receiving services within district boundaries receive Title I-Part D funding. These funds may be used to provide ***supplemental*** materials and services to students in out-of-district placement such as extended day/extended school year activities. Please note that these supplemental monies should not be used to meet a district's legal obligations under Wyoming law.

Certification/Endorsement in Facilities:
If a school district is providing educational services to students in alternative or non-traditional schools, private residential facilities or institutions, please remember that additional endorsements need to be obtained prior to providing educational services. The Wyoming Professional Teaching Standards Board, (***ptsb.state.wy.us***), Chapter 13 Rules and Regulations, "Additional Endorsements" lists the additional endorsement requirements for a "regular education teacher." A Special Education certification is required to provide educational services specified on a student's IEP. The WDE encourages facilities and schools to work together to ensure the qualified and appropriately certified teachers are delivering education services to the students.

Transitions:
For quality academic progress to be transparent, "case managers" from the resident district and institution/facility must be assigned for communication,

plans, and follow-up regarding a student placed, during placement, and returning to the resident district. Transitions allow for follow through by entities to ensure that the returning student is appropriately placed, monitored, and supported.

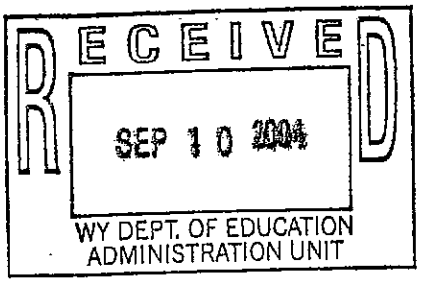
Rapid Response Team:
In an effort to address the questions that arise regarding the complicated issues surrounding students in out-of-district placement, the WDE has established an Out-of-District Placed Rapid Response Team. Any questions or concerns may be directed to either Court Ordered Placement of Students Program Manager, Jo Ann Numoto at (307)777-7222 or jnumot@educ.state.wy.us or Neglected or Delinquent Students Program Manager, Kenya Haynes at (307)777-3672 or khayne@educ.state.wy.us.
Jo Ann and Kenya will bring the issues to the WDE Out-of-District Placed Oversight Team for problem solving or, when necessary, convene an emergency meeting to determine the appropriate guidance and/or course of action.

If you have any questions regarding these requirements, please contact Jo Ann Numoto at jnumot@educ.state.wy.us.

JS:JN

Attachment

Cc: Local Law Enforcement for Wyoming Detention Centers
Wyoming Detention Centers
Wyoming Department of Health
Wyoming Department of Family Services
Wyoming Department of Workforce Services
Volunteers of America, Wyoming branch
State Governor's Office
Wyoming Boys School
Wyoming Girls School
In-and-Out of State Providers



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September 8, 2004

The Honorable Trent Blankenship, Ed.D.
State Superintendent of Public Instruction
Wyoming Department of Education
2300 Capitol Avenue, Second Floor
Cheyenne, Wyoming 82002-0050

RE: May 24, 2004 request for opinion

Dear Dr. Blankenship:

In your letter of May 24, 2004, you requested a written opinion on the following question:

Do Wyoming statutes, either specifically or implied, require school districts to provide educational services to children resident to their district while in a juvenile detention facility?

SHORT ANSWER

Responsibility for providing educational services to children in a juvenile detention facility rests with each school district in a cooperative effort with the Department of Education.

DISCUSSION

2004 WYO. SESSION LAWS, ch. 111 § 3(b) states that "[p]rograms *shall* be provided to those children [placed in juvenile detention facilities] medically capable of receiving educational programs." (Emphasis added). The Legislature, in enacting 2004 WYO. SESSION LAWS, ch. 111 § 3(b), appropriated funds to the Department of Education for the provision of educational

services to students in detention and provided two (2) additional full-time positions to the Department to carry out this act as well as to monitor the quality and cost of providing educational services to students in detention. *Id.* Although the language of this Act clearly requires educational services be provided to students in detention facilities, the law is silent as to *who* is required to provide those educational services.

When interpreting statutes, the primary consideration is to determine legislative intent. *Fontaine v. Board of County Comm'rs*, 4 P.3d 890, 894 (Wyo. 2000); *State ex rel. Motor Vehicle Div. v. Holtz*, 674 P.2d 732, 736 (Wyo. 1983). Legislative intent must be ascertained initially and primarily from the words used in the statute. *Allied-Signal, Inc. v. State Board of Equalization*, 813 P.2d 214, 219 (Wyo.1991); *Phillips v. Duro-Last Roofing, Inc.*, 806 P.2d 834, 837 (Wyo. 1991).

The Wyoming Supreme Court has held that, "a statute is ambiguous only if it is found to be vague or uncertain and subject to varying interpretations." *Allied-Signal, Inc. v. Wyoming State Bd. Of Equalization*, 813 P. 2d 214, 219 (Wyo. 1991), (citing *Story v. State*, 755 P.2d 228 (Wyo. 1988) *cert. denied* 498 U.S. 836, 111 S.Ct. 106, 112 L.Ed.2d 76 (1990). When a statute is ambiguous, general principles of statutory construction apply to discover legislative intent, including consideration of the statute's purpose and the public policy it is designed to facilitate. *Wyo. Ins. Guar. Assn v. Woods*, 888 P.2d 192, 197 (Wyo. 1994).

The Supreme Court has further held that when determining the legislature's intent, "[a]ll statutes must be construed in *pari materia* and, in ascertaining the meaning of a given law, all statutes relating to the same subject or having the same general purpose must be considered and construed in harmony." *In the Matter of the Worker's Compensation Claim of Brad E. Loberg, v. State of Wyoming, ex rel.*, 2004 WY 48 ¶ 5, 88 P.3d 1045, 1048 (Wyo. 2004).

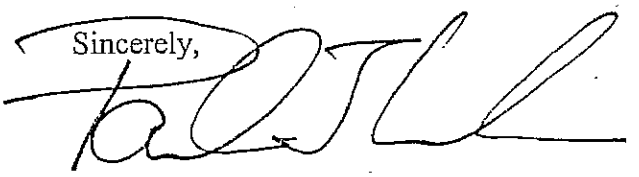
Because 2004 WYO. SESSION LAWS, ch. 111 § 3(b) does not specifically state what entity is required to provide the required educational services, additional sources must be considered, including the Wyoming Constitution, Wyoming case law and other education-related statutes, to determine the intent of the Legislature. Wyoming's Constitution provides that the legislature is to establish a system of public schools for all Wyoming children. WYO. CONST. Art. 21, § 28. Although the Legislature may establish the system of public schools, Wyoming case law reveals that the local school districts are responsible for providing education to the children residing within their district. *Washakie County Sch. Dist. Number One v. Herschler* 606 P.2d 310, 317 (Wyo. 1980). Moreover, various education statutes also look to the individual school districts to provide children within its boundaries services related to educational purposes. See generally, WYO. STAT. § 21-4-401 (requiring school districts to provide transportation or maintenance for isolated students residing within their district); WYO. STAT. § 21-4-501 (requiring school districts with no high school to pay tuition for students residing in their districts who attend school in other districts); WYO. STAT. § 21-4-102(a) (requiring children between the ages of seven and sixteen to attend school in the district within which the child resides); WYO. STAT. § 21-9-101

(requiring school districts to have educational standards in conformity with state board of education's rules and regulations).

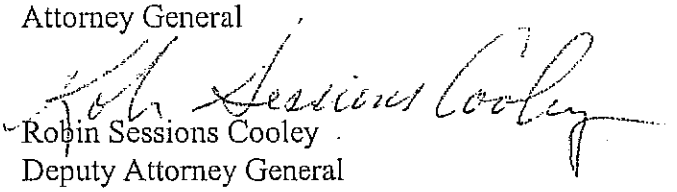
Because local school districts are responsible for providing educational services to the students residing in their districts, it follows from that premise that, in the absence of direction from the Legislature to the contrary, school districts are also responsible for providing educational services to children in detention. However, districts may seek reimbursement from the Department of Education for the cost of those services and the Department is responsible for monitoring the quality and cost of these services. In sum, when 2004 WYO. SESSION LAWS, ch. 111 § 3(b) is read in conjunction with the Wyoming Constitution, Wyoming case law and the other education statutes cited above, it appears that the Legislature intended to facilitate the provision of educational services to students in detention through a cooperative effort of the resident school district and the Department of Education.

If you have any further questions or concerns, please do not hesitate to contact our office.

Sincerely,



Patrick J. Crank
Attorney General



Robin Sessions Cooley
Deputy Attorney General