



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**

Monitoring Dates: April 3 - June 19, 2023
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Introduction

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 services to 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 the Part B regulations governing the following areas:

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

The initial monitoring in 2020-21 identified noncompliance so fundamental to the statute and the basic and central aspects of compliance, that it was impossible to monitor some other areas fully. After correction is made in these fundamental areas, the WDE will conduct further monitoring in more specific areas. In May and June of 2022, the WDE conducted a review to determine progress toward correction of those fundamental deficiencies. A Compliance Agreement went into effect on July 18, 2022. 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 determined continued noncompliance in the fundamental areas of comprehensive evaluations and LRE. 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 again to demonstrate compliance in the areas noted in the initial monitoring will require the WDE to enter into a second-year compliance agreement with the BHD with increased sanctions and requirements. Following are the systemic findings, the evidence reviewed, and the conclusion of those reviews.

Systemic Findings

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

Citation: 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. Noncomprehensive 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

The first mandatory step to proposing FAPE to a student is the requirement to accurately and comprehensively identify the student's disability and all special education needs. Only with that clear understanding is an IEP team able to align special education services to meet the student's unique needs. One of the two major focuses of the compliance agreement for 2022-23 has been to assist the BHD and the regional providers to understand how to comprehensively evaluate all students. Without all regions understanding this basic tenet, it is unlikely that systemic compliance for FAPE can be achieved.

Evidence: 180 evaluations were reviewed. 121 files contained evaluations that were not comprehensive. 69 files indicated evaluations lacking sufficient data for student eligibility. 102 files were found to be inadequate in regard to identifying all needs. 96 evaluations did not include hearing and/or vision screenings prior to the remaining evaluative activities and final eligibility results.

Conclusion: This area remains noncompliant. Providing students with disabilities with FAPE requires accurate and comprehensive identification of a student's disability and all special education needs. This has been identified in previous monitoring and continues to be a concern. There are three general areas that continue to lead to the majority of the noncompliance. Those areas are: 1) vision and hearing screenings 2) lack of probing in all areas of suspected need 3) failure to have a convergence of data to assure the second prong of eligibility (see section 1d of this report).

First, vision and hearing information is essential to conducting a comprehensive evaluation. Files indicating the student is under the care of a professional without providing any recommendations from the medical professional does not provide information to the evaluation team as to any necessary measures to be taken during the evaluation period and/or in the IEP. It also does not provide enough information to determine if disabilities of vision and/or hearing can be ruled out during the eligibility determination process. For example, a student was

referred to an audiologist and optometrist as a result of failed vision and hearing screeners; however, the remaining evaluation measures proceeded without receiving results. This practice does not allow for validity in various assessment items.

Second, there was a lack of probing into all areas of suspected need. Evaluation plans continue to be generic rather than addressing the individualized needs of the student. In one instance, a family expressed concern regarding potential autism. The team agreed with the concern; however, no assessments were completed surrounding this suspected area. The student's parents mentioned an outside evaluation and yet there is no documentation of the team pursuing or justifiably rejecting the information.

Third, there continues to be a lack of understanding regarding the need to develop a convergence of data to determine eligibility and show evidence of the second prong of eligibility. There is a practice of using a single score or sub-test score to determine eligibility even though there are other data that contradict the score used. In one instance of an evaluation, a student was reported to be eligible for services with only one assessment measure's sub scores utilized as a concern in the process. Another file indicated a student 'met eligibility' using only the BASC completed by one rater. The score used was a subdomain score. Data does not support that the student meets the second prong of the eligibility criteria or an overall global delay. Another student had conflicting scores with no convergence of data to indicate eligibility in the first prong.

1b. 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 —

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

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

* * *

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

Evidence: 19 files reviewed demonstrated issues with comprehensive evaluation processes related to dual language learners.

Through the review of evaluations, there was continued evidence of a lack of use of tools in a student's native language. There also is a lack of understanding of how to assess a student who is a dual language learner.

When evaluating communication for students with English as a Second Language, the PLS-5 should be administered in Spanish or a translator should be present to assist in administration. However, evaluation reports did not indicate if either of those was available to the student during

the evaluation. The Battelle Developmental Inventory (BDI) 2 and 3 assessments were not given in Spanish, nor was the Spanish version administered. A review of the BDI-2 Spanish administration manual indicates that "Until examiners establish local norms for their district or state, or the publisher releases Spanish norms, an element of uncertainty will surround the accuracy of the scores." The BDI allows for administration of the assessment utilizing a translator; however, scores for the assessment, when given in this manner, should be interpreted with caution since the assessment was given in a non-standardized delivery. A clear record of testing procedures should be indicated on the reports indicating the administration process used.

Conclusion: Noncompliant.

1c. Parental notification and content of notice (34 C.F.R. §300.503)

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.
- (c) Notice in understandable language. 34 CFR 300.503(c)
- (1) The notice required under paragraph (a) of this section must be—
 - (i) Written in language understandable to the general public; and
 - (ii) Provided in the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so.

Evidence: 68 files reviewed had issues with part or all of the Prior Written Notice; failing to clearly indicate the proposal of the regional provider for the provision of FAPE.

The Prior Written Notice (PWN) is a written explanation of what an IEP team proposes or refuses to do. Multiple PWNs reviewed for this verification failed to indicate adequate description and proposed action of the LEA/IEP Team.

Examples include a Prior Written Notice that states a description of the action the school district or agency proposes or refuses to take is “Hold annual IEP meeting.” This does not ‘describe’ the action being taken within the meeting. The remainder of this form provides little detail regarding what was discussed and decided by the team including steps taken by the LEA to ensure FAPE is offered. Another file was missing a PWN altogether in regard to a meeting where a student did not qualify for special education services based on an evaluation completed by the CDC. Another PWN was not provided to parents in their native language and, for that reason, did not allow them to have proper documentation of FAPE being offered for their child.

Conclusion: Noncompliant. With the team instituting one Prior Written Notice per meeting, as in the cases noted above, the lack of detail present on the PWNs does not clearly outline the actions taken and topics proposed by the team (including the parent) in the meeting. The documentation of FAPE being offered to a student and family does not meet requirements.

1d. 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: WDE reviewed 265 total files for comprehensive evaluation. 85 of these files were removed from the sample because the evaluation was conducted before the CDCs received training on comprehensive evaluations. 180 evaluations were eligible for monitoring. 38 evaluations were completed with a single measure utilized as criterion for eligibility. Eight files indicate a student did not meet both criteria in order to receive special education services (an IDEA disability *and* the need for specially designed instruction).

Conclusion: Noncompliant. The Federal regulations require that the public agency must “draw information from a variety of sources” to include multiple assessment measures. When a student is evaluated using a single measure yielding concerning results, and is made eligible in part because of the single assessment, the public agency is out of compliance with Wyoming Chapter 7 rules and IDEA regulations. In order for a student to qualify for special education services, they must meet two prongs of criteria. The first is meeting eligibility for one of the 13 categories under IDEA. The other is demonstrating the need for specially designed instruction. If a student is not properly evaluated, the accuracy of their meeting the first prong is questionable. If a student does not meet the criteria for prong one, they cannot be considered to meet the qualifications for the second to receive special education services.

1e. Change in student eligibility without appropriate documentation (34 CFR § 300.306)

Citation: 34 CFR § 300.306(a)(1)

(a) **General.** Upon completion of the administration of assessments and other evaluation measures —

(1) A group of qualified professionals and the parent of the child determines whether the child is a child with a disability, as defined in § 300.8, in accordance with paragraph (c) of this section and the educational needs of the child;

Evidence: Eight files reviewed demonstrated a change in student eligibility without appropriate documentation.

Conclusion: Noncompliant. A change in eligibility is an IEP team decision which includes the participation of the parents and required team members. Data, assessments and evaluation measures must be reviewed and considered by the *entire* team before an eligibility decision is made. These files lack evidence of information obtained being appropriately documented and considered by the IEP team prior to making a change in eligibility.

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

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;

Conclusion: Due to the lack of compliance in comprehensive evaluations, the development of Individualized Education Programs was not reviewed as the IEP cannot be completely adequate without a proper evaluation. In other words, we cannot judge whether annual goals meet a student's needs if the student has not been properly evaluated.

1g: 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: 11 files reviewed indicate no documentation that a general education teacher was present in the eligibility determination meeting. Three files noted the Part B coordinator present as a general educator. One file indicated no parent or general education teacher present in the meeting. This same file had a Department of Family Services representative sign as the IDEA parent.

Conclusion: This area continues to be noncompliant. There is a lack of understanding of the requirement of each role in the IEP meetings. The roles provide specific perspectives in the IEP process and assure the needs of students are addressed through the IEP. The general

education teacher is the person who understands the curriculum that the student is, or can be, provided in the general education setting. Therefore, it is important that the general education teacher be as referenced in the regulations, “regular education teacher of the child.”

2. Least Restrictive Environment

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

Citation: 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.

Evidence: 54 files reviewed demonstrate failure to ensure students with disabilities are being educated with their nondisabled peers to the maximum extent appropriate.

Conclusion: Noncompliant. In accordance with the Federal regulations, students with disabilities are to be educated among nondisabled peers to the maximum extent appropriate. When developing the IEP, the team must consider that the student’s environment is with peers to the maximum extent *appropriate*, allowing for the educational benefit. The IEP document itself has a checkbox that indicates the team has ensured this is considered and is accurate in relation to the students’ instruction time in the general education setting. Only when the team has intentionally considered the LRE continuum of placements, should the box be checked that the team has determined their setting is most appropriate for educational benefit.

2b. Inaccurate Reporting of Setting

Evidence: No evidence was found in this review that this remains a concern.

Conclusion: Compliant.

2c. Not Considering the Full Continuum of Placements

Evidence: 84 files failed to consider the full continuum of placements. 26 Least Restrictive Environment (LRE) justification statements were left blank, failing to include any discussion of supplementary aids and services, extended school year services and other relevant considerations made by the team when determining the LRE placement of the student.

Conclusion: Noncompliant. When a team determines a student's Least Restrictive Environment (LRE), thorough consideration is crucial to ensure the student has the appropriate LRE. When a team determines that a student's LRE is in a separate location from typical peers, it is compliant if appropriately justified. When no discussion is noted in any documentation surrounding the consideration of other educational environments before a student is identified to receive instruction outside of the general education setting for a significant portion, if not the entirety, of their school day, the assurance that the team considered the student being educated in regular classes with the use of supplementary aids and services is not evident. While a justification or consideration of placements is not required to be in the designated box on the IEP document, the team must ensure the consideration is documented within the IEP.

If you have any questions concerning this report, please contact Sheila Thomalla at sheila.thomalla2@wyo.gov.

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