

MEMORANDUM

To: Developmental Disabilities Division Waiver Providers and Child Developmental Disabilities (DD) Waiver Participants and Guardians

From: Chris Newman, Developmental Disabilities Division Administrator

Date: December 15, 2010

Subject: Clarification on waiver services provided during school hours

The Developmental Disabilities Division (Division) renewed the Child Developmental Disabilities waiver in July 1, 2010 and during that process the Division was required to correct some areas of service delivery that were not in compliance with federal regulations. One specific area corrected in the renewal was prohibiting waiver services to be provided to participants during the participant's local school district hours starting January 1, 2011.

As outlined in the waiver and through past trainings and materials to stakeholders in Summer and Fall 2010, the transition period for families to come into compliance with this requirement and use waiver services as defined in the approved waiver document is December 31, 2010. Case managers have had this transition period to work with families who have been using services during school hours to develop other arrangements and use other services to meet the needs of their child, amend the child's Individualized Education Program (IEP), or utilize other community resources to meet the child supervision needs as the deadline of December 31, 2010 approaches.

The Division understands that children qualifying for an IEP may have shortened school days, home-based education, are home-schooled or attending a private provider. In reviewing the arrangements that exist with Child DD waiver participants and the pertinent Department of Education Statutes, laws, and rules, the Division has received clarification on when waiver services can be provided during normal school hours. **The Division may approve waiver services to be utilized during local school district hours if the services and supports needed to keep the child safe during school hours is not a part of the child's Individualized Education Program (IEP) or available through family or natural supports.**

The Division is required to have documentation in the participant's file verifying that similar services provided on the waiver are not available from another payment source. In situations where the participant or parent/guardian is requesting to have services approved for use during the local school district hours, the case manager shall have the child's IEP on file and submit it to the Division for review and approval before services are provided. Other verifying documentation may be submitted in place of the IEP, which shows the school has assessed the needs of the child and is offering Free and Appropriate Public Education (FAPE) to the extent required in law.

If the parents or legal guardians have refused school services available to the child, the refusal should be documented in a record by the school. Waiver services cannot be provided if another payer for the services, or similar services, are available but not being utilized.

If the family chooses to home school their child, waiver services cannot be provided during the district's school day unless there is a special activity or event that would parallel the child being excused from a traditional school day for that activity.

If the family chooses not to enroll their child in school services either before the age of 7 or after the age of 16, waiver services cannot be provided during local school district hours since FAPE is available to all children in Wyoming from ages 3 through 21 if they qualify to have an IEP. If the school and/or the parents have identified through a professional assessment of the child that FAPE is not available or appropriate for the child before age 7 or after age 16, then the Division shall review the IEP or verifying documentation from the school and family to consider any exceptions for allowing waiver services according to the health and safety needs of the child and the availability of other programs or supports. The Case Manager must have documentation in the participant's file that identifies the reasons the child voluntarily left school services and documentation from the school district that confirms their obligations to the child through the IEP or other assessment of needs.

Often the Division is asked about waiver service utilization on the days when a child is home from school with a brief illness. A child may receive waiver services if the primary caregiver is not available, no other natural support is available, and the use of waiver services is the only available option to provide the supervision or support to the child. If the primary caregiver is working, then respite cannot be used. Other waiver services, such as child habilitation, would have to be utilized. For extended illnesses or absences from school, the family should first work with their local school district to determine if the IEP should be amended to offer FAPE during the extended absence from school. The Division may request a copy of the child's IEP to verify this step has been taken.

As a reminder, no new money will be added to a child's IBA (individual budget amount) if services meet the criteria in this memorandum and are offered during the school day. The team must work within the participant's IBA. The Division reserves the right to work as needed with the local school district services to determine the appropriate payer of services.

This memorandum is being distributed to Child Developmental Disabilities Waiver participants and legal guardians through the mail during the week of December 23-29, 2011. In the meantime, case managers and providers should review this policy with participants or families that may be affected by this decision. For questions or concerns regarding the information in this memorandum, please contact your local Participant Support Specialist at the Division at 307-777-7115.

Developmental Disabilities Division

6101 Yellowstone Road, Suite 186C • Cheyenne WY 82002

E-Mail: ddmail@health.wyo.gov • WEB site: <http://www.health.wyo.gov/DDD/index.html>

Phone (307) 777-7115 • Toll Free (1-800) 510-0280 • Fax (307) 777-6047