

MEMORANDUM

TO: Joint Budget Committee Members

FROM: Kevin Neimond, Joint Budget Committee Staff, 303-866-4958

SUBJECT: Staff Comeback: Division of Youth Corrections Special Education Request

DATE: March 18, 2016

Request: The Department of Human Services requests an increase of \$125,000 General Fund for FY 2016-17 to conduct a needs assessment for special education resources in all Division of Youth Corrections' (DYC) facilities. This request was mentioned in the narrative for the Department's "R2 DYC Security Staffing in Facilities, Phase 2," but was erroneously not included as an itemized cost item in the documentation for this decision item. Due to this omission, it was not considered during figure setting for DYC.

Recommendation: Staff recommends rejecting this request. The Department has identified the resource deficiencies that prohibit DYC from providing adequate special education services to youth in its custody. It is staff's opinion that the Department should not request funding to further study the issue, but rather should be requesting funding to add resources (e.g. special education teachers) to begin remedying the issue.

Analysis: DYC provides special education services to youth committed to the custody of the Department through State FTE and through contract providers. At any given time, approximately 50 percent of its DYC student population is comprised of students with disabilities and, of students in this category, 60 percent are identified as having emotional disabilities. The number of students who have been identified as having a social emotional disability has risen from 38 percent in FY 2009-10 to 65 percent in FY 2013-14.

The Department contends that it has limited resources to provide the growing number of students with disabilities with adequate educational services that benefit the students and ensure compliance with the federal Individuals with Disabilities Education Act (IDEA). Specifically, the Department indicates that DYC has a need for more staffing resources so that each student with identified special education needs receives an Individualized Education Plan (IEP) developed specific to their learning and behavioral needs. Staffing resources needed to develop and implement IEPs are additional teachers, social workers, counselors, and psychologists.

As a result of the Department-identified deficiencies in providing special education services, the agency requests an appropriation of \$125,000 General Fund for FY 2016-17 to conduct a needs assessment of educational services across DYC facilities. The purpose of the requested needs assessment is three-fold. First, the Department seeks to determine if DYC is appropriately resourced to provide general education services, special education services, and administrative

support for educational programming in its facilities. Second, the Department wants to determine if DYC is providing the appropriate curriculum for general and special education and whether the provision of special education services is compliant with State and federal laws and rules. Finally, the Department seeks to identify if DYC has the correct level of resources to provide career and technical education services that contribute to youth success.

Staff recommends rejecting the request to perform a needs assessment. In its request, the Department has identified a growing population of students with special education needs and the staffing resources needed to meet these needs. Staff is skeptical that a needs assessment is going to uncover information of which DYC leadership is not already aware. It is staff's opinion that the Department should use its existing knowledge of service gaps in the delivery of special education services to formulate a budget request to add staff.

Given that this request was not discussed during figure setting for the Department, staff has included the Department's documentation on the following pages.

Limited Resources for Special Education

In addition to the steady increase of newly committed youth who enter the NYC system with high risk scores in the domain of aggression, the number of youth/students who have been identified with a Social Emotional Disability has risen. This is significant as it describes students, who among other issues, have difficulties with interpersonal relationships (conflict, fighting, etc.) and/or lack significant social skills. These students struggle behaviorally in the classroom and require higher levels of support and attention from teachers and other adjunct professionals.

Context

The Division of Youth Corrections' education program serves approximately 335 students with special education needs over the course of a fiscal year. At any given time, approximately 50% of the student population in NYC is comprised of students with disabilities and of these, 60% are identified as having emotional disabilities. The national average for the percentage of special education students served during a year in public schools is 12.9% (U.S. Department of Education, National Center for Education Statistics, 2015). This extraordinarily high ratio of special education students in the NYC population requires a much higher staffing level of special education teachers than are provided in the average public school.

Currently, the NYC has limited resources to provide special education students with the services necessary to ensure compliance with Individuals with Disabilities Education Act (IDEA) during a time when NYC has experienced a significant increase in the number of special education students who fall into the category of Social/Emotional Disability. The number of students who have been identified with a Social Emotional Disability has risen from 38% in FY 2009-10 to 65% in FY 2013-14. This is significant as it describes students, who among other issues, have difficulties with interpersonal relationships (conflict,

fighting, etc.) and/or lack significant social skills. These students struggle behaviorally in the classroom and require higher levels of support and attention from teachers and other adjunct professionals.

The Division of Youth Corrections currently provides special education services to youth committed to the custody of the Department through State FTE and through contract providers. Through both structures, DYC is only able to provide a bare minimum of the necessary services. In addition, the DYC does not have school social workers who are essential in providing certain behavioral intervention support and services. Such positions require a firm understanding of special education laws, specialty education and licensing. The lack of available resources to address special education needs puts the Department at risk of violating the IDEA. The issues surrounding the provision of special education services are compounded by the fact these services are being provided in a secure youth correction's institution. Behavioral intervention must be coordinated between education staff and milieu staff requiring additional time, effort and expertise. These school social worker positions would be able to travel to provide services to facilities including the conducting a Manifestation Determination Review (MDR). This review is required by law to ensure that the behavior which necessitated classroom removals was not a result of the student's disability.

Resource Deficiencies

Special Education Student Needs

Each student with identified special education needs is required to have an Individualized Education Plan (IEP) developed specific to their learning and behavioral needs. This plan must be created and monitored by licensed and trained special education teachers and be in compliance with all IDEA and Colorado Exceptional Children's Education Act (ECEA) rules and regulations. Current understaffing prevents students with emotional disabilities and behavioral issues from receiving the level and quality of services needed to be successful in the general education classroom and impedes DYC from implementing all IDEA/ECEA requirements with consistency and fidelity, leaving the Department open to legal due process complaints and other litigation.

Support from Licensed School Social Work / Counselor

School districts hire professionals (school psychologists, counselors and school social workers) who are specially trained and licensed through the Colorado Department of Education in providing services in the education setting. An IEP team often determines that a student with emotional disabilities be provided some form of behavioral support from educationally licensed school psychologists, social workers, or counselors to improve classroom success. Such individuals provide services that are directly supporting teachers in each of the six areas noted below. These services may take the form of direct student intervention, consultation in planning, or facilitating various types of meetings.

Impact of Resource Deficiencies to the Ability to Meet IDEA Elements

Current special education teacher staffing levels and the lack of school social worker/counselor/psychologist positions impact DYC's ability to meet IDEA requirements that students with behavioral issues be provided every opportunity to access appropriate education services.

Such requirements means schools must:

1. Teach appropriate replacement behaviors;
2. Employ a multiplicity of interventions to ensure access to education services;
3. Monitor and evaluate the success of interventions on a daily/weekly basis;
4. Develop functional behavioral assessments (FBA) on students with ongoing behavioral needs to determine root cause and probable interventions;

5. Develop specific and individualized behavior intervention plans (BIP) to support the student in successfully accessing the general education curriculum; and,
6. Hold Manifestation Determination Review (MDR) meetings each time a student is out of school for 10 school days in a school year, whether those days are consecutive or cumulative.

Given the high percentage of students in NYC with emotional disabilities and related behavioral issues, these processes need to be utilized consistently and with fidelity to ensure special education students the greatest opportunity to be successful in the educational setting.

All of these processes must be directed and monitored by licensed and trained special education staff. The current number of special education teachers limit the NYC's ability to fulfill the requirements of providing students the needed supports for academic success and does not mitigate legal challenges of the NYC special education practices. Special education teachers are unable to both tend to the class as a whole and manage the individual requirements of youth to ensure that behaviors in the class are not manifestations of their disabilities.

Liability

The NYC is the Administrative Unit (AU) of record for special education services provided to students in the six NYC State-operated commitment facilities. The Colorado Department of Education (CDE) holds NYC legally accountable for the provision of services to students with disabilities and when the Division fails in this duty, the potential for legal action against the Department greatly increases. The Department was recently served a Special Education Due Process Complaint from a private attorney. Through work of the Department and the Office of the Attorney General, the matter was successfully resolved and produced insight of NYC special education needs.

Current Efforts

The Division has increased training for special education teachers in the areas of Functional Behavioral Assessment (FBA), Behavior Intervention Plans (BIP), and Manifestation Determination Review (MDR) meetings in order to make clear to facility schools the requirements and needs for performing these functions consistently and with fidelity. NYC has worked to include general education teachers in special education processes to support the staffing needs; however, general education teachers lack the training and certification required by law to provide compliant special education services. Additionally, pulling general education teachers into special education service delivery weakens the provision of general education requirements needed for students to graduate high school. These efforts although necessary and beneficial overall, do not solve fundamental resource deficiency issues.

It is unknown if there is a direct link to special education needs and safety issues, however since these needs are prevalent for committed youth, the Department wants to ensure it has appropriate programs to meet the appropriate needs of the youth. As part of this request, the Department is asking for funding to conduct a special education needs assessment.