

Virginia's Local System of Determinations Teleconference

Talking Points

April 23, 2007

1 - 2:30p.m.

A. Greetings:

- Welcome to our 6th teleconference call in a series of calls on the revised general supervision and monitoring system for Virginia.
- Mary Anne White and Bonnie Grifa, Part C Monitoring Consultants will present the information for today's topic. Also participating in today's call from the State Part C Office are: Kyla Patterson, Bev Crouse, Karen Durst, and Beth Tolley. To our knowledge, there are 35 local systems, VICC members, parents and members from the General Supervision and Advisory Committee represented on today's call. We welcome all of you.
- An evaluation form was emailed to you with the information for today's call. We request that you fill it out following the call so we can get your feedback. Please ensure that all participants listening with you receive a copy of the evaluation form.
- The "Talking Points" and materials from today's call will be placed on the Part C website. All talking points and materials from all of the previous teleconference calls are now on the Part C website. You may review any of the information by going onto www.infantva.org, click on "What's New" and then on "Monitoring and Supervision Conference Calls" to locate the information.

B. Format of Call:

- As with all other calls, we will start and end the call on time.
- All phones are currently in "listening" mode".
- When we are finished with our portion of the presentation, we will contact the conference operator who will come on the line and instruct everyone who has questions on how to "dial" in to ask their question.
- Please limit your questions to no more than one per "dial in". If you have additional questions, you may re-query in. This will help us ensure that everyone who has questions will be heard during our allotted time.
- If, we do not get to all questions, we will ask that you e-mail your questions to us to be included in the Q&A that will be posted on the web site following this call.
- All questions will be answered in the order in which the conference operator receives them

C. General Information

- Our discussion today will describe what OSEP will be considering when making determinations for each State. States are required to follow what OSEP is doing so we want to ensure that everyone has a clear understanding of how OSEP will make Virginia's determination as well as the determination for other States and where there may be room for state flexibility as Virginia develops its system of determinations.
- With each determination, there are associated enforcement actions in accordance to 34 CFR 300.604. These will be discussed in relation to how OSEP plans to implement them.
- Virginia has not determined how it will make "determinations" or implement enforcements on local systems as of this phone call. We are reconvening the

General Supervision and Monitoring Advisory Committee and including the Accountability workgroup of the VICC into this group to begin the task of addressing this issue.

- The Part C Office will hold additional teleconference calls on this topic as more Virginia specific information unfolds.

D. Determinations: What will OSEP Do With States?

- With the reauthorization of IDEA, 2004 each State:
 - Must have in place a State Performance Plan (SPP) that evaluates the State's efforts to implement the requirements and purposes of Part C of IDEA and describe how the State will improve its implementation;
 - Each State must report to the Secretary on its performance under the SPP through the Annual Performance Report (APR) on the progress in meeting the measurable and rigorous targets it established in the SPP;
 - OSEP must review the APR/SPP annually.
 - Based on the information obtained through review of the APR and other data sources, OSEP will determine if a State:
 - Meets Requirements
 - Needs Assistance
 - Needs Intervention
 - Needs Substantial Intervention
 - These 4 categories are called the "determinations".
- The State submits the State Performance Plan that outlines how it will implement the requirements of IDEA, 2004. Within this plan, Virginia established targets (or indicated it would meet the pre-set targets) that it would meet on an annual basis over a 6-year period for each of the monitoring indicators identified by OSEP.
- The Annual Performance Report discusses our progress toward meeting those targets.

E. What Information Will OSEP Consider in Making "Determinations"?

- OSEP will consider all information available at the time of the determination including:
 - History, nature and length of time of any reported noncompliance
 - Evidence of correction, including progress toward full compliance
 - Information regarding valid and reliable data
 - Special Conditions
 - Compliance Agreements
 - Audit Findings
 - Verification or Focused Monitoring Visits
- Each determination category has primarily three factors that that will be addressed by OSEP:
 - Demonstration of compliance on the current monitoring indicators or indicators previously identified by OSEP as being out of compliance as well as activities to timely correct identified noncompliance.
 - Reliable and valid data
 - Correction of non-compliance

F. What Are the Determination Categories?

Meets Requirements:

- Demonstration of substantial compliance on indicators 1, 2, 7 and 8, which can include a demonstration through quantitative or qualitative data that the State has corrected noncompliance in a timely manner where noncompliance has previously been identified by OSEP and the State has improvement activities to timely correct identified noncompliance.
 - Substantial compliance means at 100% compliance or a high level of compliance.
 - Indicator 1 is Timely Initiation of Services
 - Indicator 2 is Primary Service Setting
 - Indicator 7 is 45-day timeline
 - Indicator 8 is Transition
 - OSEP has not established a hard and fast number to define “high level of compliance”. They will be looking at multiple factors including timely correction of noncompliance, nature and severity of noncompliance, state improvement activities, etc.
 - In the improvement activities (equivalent to the steps/strategies on our Corrective Action Plan/Service Enhancement Plan), OSEP will be looking for things such as:
 - Level of detail of the activities,
 - Are activities evidenced based?
 - Are activities sequenced over time?
 - If a state is “further out of compliance, are their activities more rigorous and extensive than if they were “closer” to compliance?
 - Are the activities considered to be quality activities that will lead the state out of noncompliance?
- Indicators have valid and reliable data (actual target data, baseline data, etc.
 - Was the data presented in the APR from the correct year? Were the correct measurements used? Did the state use the correct formulas? If a state made a comment that their data was not valid and/or reliable, were strategies identified on how they planned to correct this?
- Timely correction of noncompliance
 - This means as soon as possible but no later than one year from the date of identification.
 - For the data used in the FFY 04-05 APR, was noncompliance corrected in a timely manner? If not, what enforcement activities have been initiated?
 - What progress has been made over time to achieve compliance?
 - Are the improvement activities strong enough to bring the State into compliance?

Needs Assistance

- The state does not demonstrate substantial compliance on one or more of the indicators (Timely Initiation of Services, Primary Service Settings, 45-day timeline and Transition).
- One or more indicators do not have valid and reliable data as required by the SPP/APR
 - Actual target data, baseline data etc.
- The State does not demonstrate that it timely corrects any noncompliance through monitoring or other means.

- **Enforcement Actions for Needs Assistance:**
 - If OSEP determines, for 2 consecutive years that the State needs assistance, OSEP shall take one or more of the following enforcement actions:
 - Advise the State of available sources of Technical Assistance (TA);
 - Direct the use of State-level funds under section 611(e) on area(s) in which the State needs assistance;
 - Identify the State as a high-risk grantee and impose special conditions on the State's grant.

- **Needs Intervention**
 - The State does not demonstrate substantial compliance on one or more of the compliance indicators and has not made significant progress in correcting noncompliance previously identified by OSEP;
 - One or more indicators are missing valid and reliable data as required by the SPP/APR and the State has not made significant progress in correcting previously identified data problems;
 - Data required in the SPP/APR actual target data, baseline data, etc.)
 - The State does not demonstrate that it corrects noncompliance identified by OSEP through monitoring or other means and has not made significant progress in correcting that noncompliance.

- **Enforcement Actions for Needs Intervention**
 - If OSEP determines for 3 consecutive years that the State needs intervention, OSEP may take any of the above actions and shall take one or more of the following enforcement actions consistent with section 616(e)(2)
 - Require the State to prepare a corrective action plan if OSEP determines that the State should be able to correct the noncompliance within 1 year;
 - Require the state to enter into a compliance agreement if OSEP has reason to believe that the State cannot correct the problem within 1 year;
 - Withhold a percentage of the State's funds under section 611(e) for each year of the determination;
 - Seek to recover funds;
 - Withhold any further payments to the state;
 - Refer the matter for appropriate enforcement action.

- **Needs Substantial Intervention**
 - Failure to substantially comply significantly affects the core requirements of the program such as delivery of services to children with disabilities or the State's exercise of general supervision;
 - The State has informed OSEP that it is unwilling to comply.

- **Enforcement Actions for Needs Substantial Intervention:**

- Should a State be “determined” to need substantial intervention, OSEP shall take one or more of the following enforcement actions, consistent with section 616(e)(3) and provide an opportunity for a hearing:
 - Recover funds;
 - Withhold any further payments to the State;
 - Refer the case to the Office of the Inspector General;
 - Refer the matter for appropriate enforcement action.

G. OSEP Requirements of States:

- Section 616 (a)(1)(C)(i) of IDEA 2004 reauthorized, requires States to make “Determinations” annually under 616(d) on the performance of each Local Early Intervention System.
- States must use the same four categories as OSEP in making “Determinations” of the status of local programs.
- The IDEA statute does not require States to make the determination by a specific time. It is recommended, however, that determinations be made as soon as possible after making the APR public on the performance on each local early intervention system.
- Local systems must be informed of their determination. It is not required, however that this information be reported to OSEP or publicly. The information however, is available through the Freedom of Information Act.

H. Determinations and Enforcements

- While a State may develop additional criteria to be used in making determinations, each state must consider:
 - i. Any local noncompliance (monitoring data, complaints, audits, review of ITOTS data etc);
 - ii. Is the local data reliable and valid?
 - iii. Uncorrected noncompliance.
- When a state looks at local noncompliance, it must consider:
 - i. Nature and severity of the noncompliance;
 - ii. Timely correction of noncompliance;
 - iii. If there is a Corrective Action Plan/Service Enhancement Plan in place; is it reasonably calculated to bring the local system into compliance as soon as possible but not later than one year from the date of identification (are the steps/activities developed in a way that the local system will achieve compliance as soon as possible or within one year from the date of identification); are the steps/activities too few to achieve compliance, or are there so many steps/activities listed that a local system could not meet compliance within one year.?
 - iv. Is the local system likely to correct the noncompliance in a timely manner?
- States must use appropriate enforcement actions listed in section 616 (e) and in the Part B regulations at 300.600(a) that refers to the actions listed in 300.604.
 - Not all enforcement actions listed in these sections of the statute and/or regulations may be applicable or appropriate for a state in determining the appropriate enforcement actions for local early intervention systems.
 - The IDEA statute specifically designates the enforcement actions that States must apply after a local early intervention system is determined to “Need Assistance” for 2 consecutive years, “Needs Intervention” for 3 consecutive

years or immediately when a system is determined to be in "Need of Substantial Intervention"

I. Development and Implementation of Determinations and Enforcements

- The General Supervision and Monitoring Advisory Committee has been reconvened to make recommendations to the State Part C office about the criteria and process for identifying a determination status for each local system.
 - This group contains representation from various stakeholder groups including: Parents, VICC, EIIMT, DOE, MR Council, DMHMRSAS (Department of Licensure and Human Rights), Child and Family Services, Local System Managers (one from each region) and the Part C office. These representatives have been asked to provide and gather information to/from their stakeholder groups in order to adequately represent the thoughts and opinions of the various stakeholder groups.
 - The next meeting of this group will be on May 14, 2007. Sharon Walsh, a National Consultant from the National Center for Special Education Accountability Monitoring will facilitate the discussion that will begin Virginia's work on this important topic.
 - Minutes of the meeting will be posted on the Infant & Toddler Connection of Virginia website.

G. To Summarize:

- Making determinations on local systems is required under IDEA 2004, reauthorized;
- There are four determination categories:
 - Meets Requirements
 - Needs Assistance
 - Needs Intervention
 - Needs Substantial Intervention
- VA will follow the requirements of OSEP but has not made any decisions regarding determinations at this point in time.
- With a determination status, there are associated enforcement actions; some are required by the IDEA statute. The State does have the latitude to develop and use other enforcement actions that may be included in State rules, regulations or policies.
- The General Supervision and Monitoring Advisory Group has been reconvened to begin to address this complex issue. Members from the Accountability workgroup of the VICC will be joining the Advisory Group. There is statewide representation from various stakeholders on this Advisory Group.
- Any new and/or additional information that we receive from OSEP related to this topic will be shared with you through your Technical Assistance Consultants.
- Today's call has been recorded and will be available until May 23rd by following the information that was sent to you when we notified you of today's call.
- The Part C Office will hold additional teleconference calls on the topic of determinations as the work of the General Supervision and Monitoring Committee unfolds. We will send you e-mail information regarding the call.

- The Part C Office will hold a teleconference call in early June on the annual Record Reviews that will be completed by each local system this summer. More information will be forthcoming.
- We hope you found the information from today's call helpful to you in understanding Determinations. Please remember to complete an evaluation form.
- Thank you for participating today. We will now contact the Operator to open the line for questions.