

**Talking Points
Teleconference Call
System of Enforcements and Correction of Noncompliance
April 23, 2009
10-11:30 p.m.**

A. Greetings:

- Hi. My name is Mary Anne White and along with my colleague, Bonnie Grifa, we will be presenting today's information related to Correction of Noncompliance and Virginia's System of Enforcements. During this call we will be providing information related to the requirements from the Statue, communications from OSEP and Virginia's work to be in align with both of these requirements.
- Since this is not an operated assisted call, we would like to know who is on the call with us. Please call out the name of your local system.
- We ask that all participants mute their phones at this moment by pushing *6. Please take a moment to do this. When all phones are not on mute, conversations occurring in your office can be heard by all participants and is very disruptive. If we find during the call, that not all phones are not on mute, we will interrupt the discussion to ask that phone be placed on mute.

B. Format of Call:

- We will start and end this call on time. Following our discussion, if time permits, we will have a question and answer period. The information that you received in preparation of this meeting provides all the information that is to be discussed during this call.

C. A Refresher of the Federal Requirements

- As you are aware, when the Individuals with Disabilities Education Improvement Act of 2004 (IDEA 2004) was enacted, several overarching changes occurred. These changes included:
 - Development of a six year plan (the State Performance Plan) that establishes measurable and rigorous targets for identified indicators and outlines the improvement activities that would evaluate each State's effectiveness in implementing the requirements and purposes of Part C of IDEA;
 - Development of the Annual Performance Report which is submitted annually to OSEP describing a State's performance on all indicators within the State Performance Plan as well as the improvement strategies that will be implemented to ensure the State achieves compliance or meets the State target for each indicator. In the APR, the State must also report any newly identified noncompliance from the APR reporting period as well as correction of noncompliance identified in previous reporting periods;
 - Requirement that each State publicly report the State and Local performance on the State Performance Indicators;
 - Development of a method by which State's provide a determination status to each local early intervention system based on monitoring and other available data that demonstrates each local early intervention systems progress in meeting the measurable and rigorous targets established in the SPP; and
 - Development, implementation and monitoring of enforcement actions for local early intervention systems that do not correct noncompliance within one year

of identification or local systems that achieve a determination status for two consecutive year, needs intervention for three consecutive years or needs substantial intervention. Bonnie will review this information in more detail.

D. Compliance versus Results Indicators

- OSEP has begun to make distinctions between the indicators.
- Indicators in which Congress has set the target at 100% are called compliance indicators. These include indicators: 1: Timely Initiation of Services, #7: 45-day timeline, #8: Transition, #9: Correction of noncompliance and #14: Timely and Accurate Data.
- Indicators in which States set the targets are known as results indicators. These include indicators: #2: Primary Service Setting, #3: Child Outcomes, #4: Family Outcomes, #5: Child Find 0-1 and #6: Child Find 0-3.
- OSEP has indicated that States can not call a result indicator “out of compliance” since Congress did not set the standard for compliance and the targets for the results indicators change year to year. In Virginia, we will be using the following terminology related to the results indicators: “Met State Target” (the local system met or exceeded the identified State Target), “Close to State Target” (the local system achieved 95-99% of the State Target) and Did not Meet State Target (the local system achieved less than 95% of the State Target).
- In Virginia, both compliance and results indicators are considered equally important. Virginia must report in the APR the monitoring results for all indicators and must report any newly identified noncompliance/did not meet State Target for each indicator. States must also report the status of previously identified indicators in which compliance or the State Target was not Met.
- In making local systems determination status, performance on both the compliance and results indicators are considered. Also considered is whether the previously identified noncompliance was corrected as soon as possible but no later than one year from the date of identification. Beginning with the current CAP/SEP, the Part C office is allowing local systems up to two years to achieve the state target on results indicators.
- For the purposes of this call, the focus of the discussion will be on the compliance indicators.

E. Reporting Non-Compliance in the APR

- In the Annual Performance Report, each State must report the results of the State’s performance on every indicator (both compliance and results indicators). In the discussion of the State’s performance, the State must also describe the number and nature of any newly identified noncompliance for the compliance indicators and the number and nature of State Targets not met for the results indicators. Each state must address correction of previously identified noncompliance as well as previously identified results indicators in which the State Targets was not met but has since been met the State Target. Throughout the APR, you will see tables indicating the number of local systems monitored, the number of local systems that achieved compliance or met the State Target for the indicator, the number of systems that were in substantial compliance or close to the State Target (95% and higher) and the number of systems that were identified as out of compliance or not meeting the state target.

- In Indicator #9 of the APR, the State provides a summary analysis of identified noncompliance and any correction of previously identified noncompliance for the compliance indicators only.
- OSEP reviews each APR carefully to determine if previously identified noncompliance has been corrected within one year. That means that in the APR submitted in February 2008, OSEP will look at the number of local systems that had findings of noncompliance for indicators #1, 7, and 8. They will then look at the APR submitted in February 2009 to see if those local systems corrected the identified noncompliance in a timely manner. OSEP does take this information into account when considering a State's determination status.
- Virginia has multiple mechanisms in place to identify noncompliance.
- For the compliance indicators, the annual record reviews are used to report Virginia's status and identification of noncompliance for Indicators #1: Timely Initiation of Services and #8: Transition. For Indicator #7, ITOTS reports are used along with any information that needs to be supplied by the local system to determine if an evaluation and IFSP was developed within 45-days from the date of referral.
- For results indicators, Virginia uses the following mechanisms to determine if a local system meets the State Target. For Indicators #2: Primary Service Setting, #3, Child Outcomes, #5 and 6: Child Find, ITOTS reports are used as the sole mechanism for determining if the State Target was met or in conjunction with other data. For Indicator 4: Family Outcomes, analysis of the family survey information is used as the mechanism to determine if a local system Meets the State Target for Families understanding their rights, Families being able to effectively communicate their child's needs and the families competence and confidence to help their child develop and learn.

F. Correction of Noncompliance

- As just described, identification of noncompliance and/or nonperformance is made when a local system does not meet the identified State target for each indicator. You are notified in writing either by Commissioner Reinhard or Mary Ann Discenza about the nature of the non-compliance and the timeline in which you must meet the target. Once you have achieved compliance or met the State Target, you receive a letter from Mary Ann Discenza informing you that you have met the State Target and are released from your CAP-SEP related to the identified indicator.
- States have been advised by OSEP that the notification of identified noncompliance/nonperformance should be made within 3-4 months from the identification of the non-compliance/non-performance. Virginia is working diligently to meet this timeline.
- States have also been advised by OSEP that not only does the previously identified noncompliance have to be corrected as soon as possible and within one year from the identification of the noncompliance, **but** States must **also** verify that the correction of noncompliance within this time period. This means that the Part C office will be requesting documentation supporting the correction of noncompliance PRIOR to the compliance due date. In Virginia, local systems will have up to two years to achieve the State Targets for Results Indicators. Virginia has already implemented these practices but will make refinements as appropriate and necessary.

- Through the Corrective Action Plan/Service Enhancement Plan, you, and your Technical Assistance and Monitoring Consultants discuss your progress or slippage in attaining the State target for identified indicators. You are required in your CAP/SEP to develop a monitoring mechanism that you will use to achieve AND sustain compliance or the State Target once you are released from your CAP-SEP.
- For local systems that are identified as being in substantial compliance (95-99%) on Indicators 1, 7 and/or 8, or have achieved 93-94% on these indicators, you ARE NOT in compliance with the indicator(s). This means that even though you did not develop a CAP/SEP for the indicator, you must achieve compliance as soon as possible and within one year of identification of the noncompliance. You also need to look at what monitoring mechanism(s) you are implementing to obtain and sustain compliance.
- When a local system does not meet the State target for either compliance or results indicators, a CAP/SEP must be developed. The monitoring data for all indicators (compliance and results indicators) as well as the local systems ability to come into compliance on the compliance indicators or meet the State target for results indicators are considered in making local system's determination status.
- For a local system that does not correct non-compliance within one year from the date of identification, Section 616(g) of IDEA requires that the State Lead Agency develop, implement and monitor enforcement actions. Bonnie will be reviewing Virginia's System of Enforcements later in this phone call.
- In the memo from Acting Director of OSEP, William Kndusen, he outlines changes that OSEP is making related to correction of previously identified noncompliance, the impact timely correction of noncompliance will have on a States determination status and concerns OSEP has about the identification of noncompliance and low performance in compliance areas through their review of State's APR's.
- With regard to Correction of Noncompliance:
 - On Page three (3) of this memo, in the first paragraph, it states that for Indicators 8a: Steps and Services, 8b: Notification of the LEA, the State must ensure that the local early intervention system has corrected each individual case of noncompliance, unless the child is no longer residing within the jurisdiction of the local system.
 - For Indicators 1: Timely Initiation of Services, 7: 45-day timeline and 8c: Transition conference, in addition to the steps mentioned above, the State must ensure that the local early intervention program has completed the required action (services have started, IFSP developed, transition conference has occurred), though late, unless the child no longer resides within the jurisdiction of the local early intervention system.
- What does this mean in Virginia?
 1. When Virginia assess the local systems status for Indicators 1, 7, and 8, we will need to make sure that every child in the sample of children used in the record reviews or ITOTS reports has all supports and services outlined on their IFSP implemented, that an IFSP is developed and that all requirements for transition have been completed.
 - In the record reviews submitted to the Part C office in March 2009 related to timely initiation of services, local systems were asked to identify the date of the initial visit for each service listed on the IFSP.

The excel spreadsheet calculated the number of days it took for the service to begin.

- For each child in which initial date of the service is listed, whether within the 30-day timeline or not, the Part C office will be able to report to OSEP in the APR due in February 2010, that services listed on the IFSP for these children did begin.
- For those children in which an initial start date of service is not listed, the local early intervention systems will need to track when/if the child receives the services listed on the IFSP. For these children, the local system will need to provide the Part C office the date and supporting documentation of the initial start date in order for the Part C office to verify the accuracy of the information in order to report correction of noncompliance to the child-level.

- In the record reviews submitted to the Part C office in March 2009 related to transition steps and services, if a local system indicated that steps and services are listed on the IFSP and this was supported by the documentation submitted to the Part C office, Virginia will be able to report to OSEP in the APR due to in February 2010, that children had transition steps and services listed on the IFSP.
- For those children in which there were not steps and services listed on the IFSP or the steps and services did not accurately reflect where the child was in the transition process, the local early intervention system will need to ensure that appropriate steps and services are immediately added to the IFSP. For these children, the local system will need to submit the Transition Page and any other documentation outlining transition activities to the Part C office in order for the Part C office to verify the accuracy of the information in order to report correction of noncompliance to the child-level.

- For Indicator 8b: Notification to the LEA, if a local system indicated and provided supporting documentation that the local school division was notified of all potentially eligible children, even if the family did not choose to pursue Part B services, then the Part C office will be able to report in the APR that the public schools were notified of all potentially eligible children.
- For those potentially eligible children whom the local school division was not notified, the local early intervention system will need to immediately send a notification to the local school division providing the required information for each of these children. For these children, the local early intervention program will need to submit the notification to the Part C office in order for the Part C office to verify the accuracy of the information in order to report correction of noncompliance to the child-level.
 - For local systems that use the referral of children to Part B as their notification to the LEA, you must modify your documents to ensure that the documents reflect both the notification to the LEA and a referral to the LEA.
 - **IMPORTANT:** If you use the above mentioned method, you must also submit the names of those children who may not be referred to the school system but are potentially eligible unless the family

- indicates on page 7 of the IFSP that they do not want identifying information sent to the school divisions.
- As you are aware, record reviews were completed by those local systems who did not achieve compliance for Indicators 1, 7, and 8. This process will apply to all local systems in the 2010 annual record reviews.
 - Shortly, the Part C office will begin to analyze the data related to the 45-day requirement. As you know, the Part C office pulls 4 ITOTS reports to calculate this information (Referral Outcome by Referral Source, Exceeding 45-day timeline, Referred not Evaluated and Eligible no IFSP date). For any information that is missing on the Referred not Evaluated and Eligible no IFSP date reports, the Part C office sends the local system a report listing the ITOTS numbers and asks for the required information to be entered into the report. When this information is returned to the Part C office, we calculate the local systems compliance for this indicator.
 - As with the other indicators mentioned above, if we have all the necessary information to determine if a child had an IFSP developed within or outside the 45-day timeline, Virginia will be able to report in the next APR, that children did receive an evaluation and had an IFSP developed.
 - For those children in which there is no information reported on the Referred but not Evaluated and/or Evaluated but No IFSP report, the local early intervention system will need to track when the child receives the initial evaluation and the status of the evaluation and/or the date the IFSP was developed and the extenuating circumstances why the IFSP may have been developed beyond the 45-day timeline. This information and supporting documentation will need to be submitted to the Part C office in order for the Part C office to verify the accuracy of the information in order to report correction of noncompliance to the child-level.
 - Based on these new requirements from OSEP, local systems may be asked to submit more documentation to the Part C office. We will let you know when documentation needs to be submitted.
 - 2. All local systems **MUST** develop a process by which they are able to monitor throughout the year, whether each child in their local system:
 - (a) Received the entitled services listed on a child's IFSP;
 - (b) Developed an IFSP for all eligible children;
 - (c) Included Transition steps and services on each child's IFSP;
 - (d) Notified local school divisions of all potentially eligible children even if the family chooses not to pursue Part B services; and
 - (e) Ensured a transition conference occurred within 90 days but no later than 9 months for families who gave their approval for a transition conference.
 - For local systems that currently have CAP/SEPs developed for Indicators 1, 7 and/or 8, this process will be included in the strategies of your current CAP-SEP.
 - For local systems that were notified they were in substantial compliance or achieved 93-94% for Indicators 1, 7 and 8, you will develop this process and submit to your TA and Monitoring Consultants

- Local Systems that did not have to develop a CAP/SEP for these indicators, you are to develop your process and keep on file for review by the Part C office when requested.
- Your TA and Monitoring Consultants are available to assist you with this should you have any questions.
- With regard to correction of noncompliance related to making determinations outlined in the OSEP memo, you will note that under Issue 2 on Page 3 of the OSEP memo, OSEP will be making changes in how it looks at a States performance when making decisions about a States determination status. Correction of non-compliance will play a larger role in determining the States determination status.
- For States determination status for 2009, OSEP will not make any substantial changes in the way it has previously made determinations. As previously stated, OSEP looks very carefully at whether identified noncompliance has been corrected in a timely manner.
- In review of all State's APRs over the past several years, OSEP has noted that some states are reporting very low levels of compliance year after year but annually report correction of identified noncompliance in a timely manner. OSEP is concerned about this as this indicates that the State has not corrected the systemic issue causing the noncompliance.
- Beginning in 2010, OSEP will change they way they look at the monitoring data and correction of noncompliance. These changes include:
 - A state will not be considered in substantial compliance based solely on the correction of noncompliance if the State's monitoring data for that year for the indicator is considered to be low (generally 75% or less)
 - A state will be "credited" if it can show that it has addressed each instance of noncompliance (at the child level) that was reported in the previous year's APR. This means that the information the local systems provide to the Part C office related to those children in the annual record reviews for timely initiation of services and transition as well as the children identified in the 45-day timeline report who must be tracked as the requirements for each of these indicators has not been implemented for the child, will be extremely important. This data must be submitted timely and it must be accurate if Virginia is to demonstrate that we have corrected previously identified noncompliance down to the level of the child.

G. Summary:

- Correction of identified noncompliance must be made as soon as possible but no later that one year from the date of notification of the noncompliance.
- OSEP looks very closely at whether a state has corrected previously identified noncompliance in a timely manner. This does have an impact on a States determination status. Beginning in 2010, correction of previously identified noncompliance will play a larger role when OSEP makes a States determination status.
- Correction of noncompliance also play a role in the determination status at the local level.

- OSEP has indicated that for the compliance indicators (indicators, 1, 7, and 8) all correction of noncompliance must be made to the level of the child. This means that for the record reviews submitted in March 2009 we will need local systems to provide the data and supporting documentation to ensure the noncompliance is corrected. This will also hold true when the Part C office calculates compliance with the 45-day timeline.
- Each local system must develop a process in which they will be able to monitor throughout the year that Indicators 1, 7 and 8 have occurred for every child within their system whether within the timeframe or not.
- Local systems that currently have CAP/SEPs for Indicators 1, 7, and/or 8, this monitoring process will be included in your current CAP/SEP
- Local systems that achieved 93% or greater on an indicator but did not have to develop a CAP/SEP must develop their monitoring process and submit it to their Technical Assistance and Monitoring Consultants
- Local systems that did not have to develop a CAP/SEP because they were in compliance with the indicators, must also develop a monitoring process and keep it on file and make available when requested by the Part C office.

I will now turn the discussion over to Bonnie who will talk about Virginia's System of Enforcements.