

# System of Enforcements Talking Points

April 9<sup>th</sup>, 2009  
10:00-11:30 a.m.

## Why Do We Have To Have Enforcements?

- Section 616(g) of the Individuals with Disabilities Education Act (IDEA) requires that the State Lead Agency (SLA) utilize its authority under the General Education Provisions Act to monitor and enforce the requirements of IDEA.
- Section 616(d) of IDEA requires the SLA review and verify data submitted by each local Early Intervention System (EIS) for inclusion in the State Performance Plan (SPP) and Annual Performance Report (APR). Based on the information provided by the local EIS, the SLA is then required to determine annually if the local EIS: Meets Requirements, Needs Assistance, Needs Intervention or Needs Substantial Intervention. In making these determinations, the IDEA also requires enforcements be applied in specific determination situations, for example, when a local system has a determination of Needs Assistance for two consecutive years, Needs Intervention for three consecutive years or Needs Substantial Intervention at any time.
- The implementation of enforcements is required by Federal statute under Part C of the IDEA to each local EIS that does not correct noncompliance within one year from the date of identification.

## How Were the “System of Enforcements” Developed?

- The “System of Enforcements” document was developed in collaboration with the General Supervision and Monitoring Stakeholder Group which is a sub-committee of the Virginia Interagency Coordinating Council (VICC).
- The “System of Enforcements” document was approved by the SLA administration including Commissioner Reinhard in October 2008.

## What Are the Potential Enforcement Options Available to the SLA?

- If you look at page one of the “System of Enforcements” document, you will see where we have cited the appropriate Federal language related to enforcements mentioned earlier.
- Please note that the SLA can withhold a warrant at any time including when an EIS does not meet a Part C Contract deliverable;
- If you look at the middle of page 1 of the “System of Enforcements” document, you will see that the potential enforcement options available to the SLA include but are not limited to the following:
  - Required targeted Technical Assistance (TA) and/or Training;
  - On-Site Activities (training, TA, record reviews, meetings with staff and/or providers etc) with the Local EIS Manager are made as needed and appropriate;
  - On-Site Activities that include the Local EIS Manager’s Supervisor;
  - On-Site Activities that include the Local EIS Administration;
  - Focused monitoring site visit(s) on area(s) of noncompliance;
  - Increased frequency of CAP/SEP Status Check-ins;
  - Development/revision of the EIS’s annual staff development plan to include professional development related to the area(s) of noncompliance;
  - Require the EIS Manager collect & analyze data & review it with their TA &/or Monitoring Consultant at a frequency determined with the SLA;
  - Require the EIS complete additional record reviews at a frequency determined with the SLA & with verification by the SLA;

- Link to another EIS which demonstrates promising practices in the identified area(s) of noncompliance;
- Require a meeting with the EIS Administration & the State Part C Coordinator, TA & Monitoring Consultants to discuss barriers to compliance, CAP/SEP strategies, how SLA can further assist EIS;
- Report noncompliance to the Administration of the EIS explaining that it may be necessary to redirect or withhold funds if timely improvement is not shown;
- Conditionally approve the local contract;
- Require the EIS to direct the use of Part C funds to areas that will assure correction of noncompliance;
- Withhold a percentage of EIS funds;
- Recover funds;
- Withhold any further payments to the EIS;
- Terminate the local contract.

### **How is the “System of Enforcements” Document Set-Up?**

- If you look at page 2 of the document, you will see that the document is set up as a table with the following across the top:
  - Category
  - CAP/SEP
  - Technical Assistance; AND
  - Required Enforcements
- For each category, there is a description pertaining to what needs to be included in the CAP/SEP, what type of technical assistance is available and/or required and the enforcement action(s) required for that category.
- In addressing the requirements of IDEA related to enforcements, you will see that the Categories are based on the Determination categories including the same determination over time or a determination of Needs Substantial Intervention and includes a category for when an EIS has noncompliance beyond one year.
- In making EIS Determinations and in deciding on the appropriate enforcement actions, the SLA considers all information that is available, including the history, nature and length of time of any reported noncompliance and evidence of correction. In addition, as heard in Mary Anne’s section of today’s call related to the OSEP memo States received in October 2008 related to correction of noncompliance, the SLA must also consider the ability of an EIS to maintain compliance over time.
- You will see that as the Determination Category becomes more serious so do the enforcement actions and requirements for the CAP/SEP and technical assistance.

### **How Will an EIS Be Notified When an Enforcement Action is Necessary?**

- When the enforcement is linked to a Determination category, an EIS will be notified of the enforcement within the memo from the Commissioner stating the EIS’s annual determination status.
- When an enforcement is linked to noncompliance beyond one year, an EIS will be notified within the memo from Mary Ann Discenza that is sent following the monitoring activity that determined the noncompliance had not been corrected by the compliance due date and/or as part of the APR monitoring results memo and chart from the Commissioner.

- If you look at page 2 of the monitoring results chart that accompanied the February 20<sup>th</sup> memo from the Commissioner with the FFY 2007 monitoring results for your local system, you will see where we indicated whether your system corrected noncompliance within one year and whether an enforcement action was required. If you look at the “System of Enforcements” document for the category “Non-Compliance Beyond One Year”, you will see that the CAP is revised to include required targeted technical assistance on topics specific to the areas of noncompliance and that the scheduled CAP status checks include the LSM documenting on the CAP the outcome of the required technical assistance
- The Determination Memo and the APR Monitoring Results Memo that include enforcement information are sent from the Commissioner to the Local Lead Agency’s Executive Director with copies to Frank Tetrick, Mary Ann Discenza, the Local System Manager’s Supervisor, the Local System Manager and the TA and Monitoring Consultants.

This concludes the System of Enforcement section of today’s call. Please unmute your line if you have a question related to Enforcements

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### **To Summarize Some Important Points in Today’s Call**

- The SLA can withhold a warrant at any time or impose any action necessary to monitor and enforce the requirements of IDEA.
- The SLA is required by law to impose enforcements
- Virginia’s System of Enforcements was developed with the Monitoring and Supervision Stakeholder Group and approved by the administration of DMHMRSAS
- Enforcements are primarily linked to the EIS’s determination status, ability to correct noncompliance in a timely manner and to meet Part C contract deliverables.