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Deputy Secretary

**ANNOUNCEMENT: EI-12 #8**  
**Effective Date: 10/26/2012**

**SUBJECT: Local Determination Process**

**TO: Early Intervention Program Leadership**

**FROM: Barbara G. Minzenberg, Ph.D.**  
**Deputy Secretary, Office of Child Development and Early Learning**



**PURPOSE:**

The purpose of this announcement is to provide updated guidance to the Infant/Toddler and Preschool Early Intervention (EI) Programs on the local determination process. This announcement replaces EI-09 #06 Local Determination Process and the Performance Improvement Process. The performance improvement process has been removed from this announcement. The annual data review process in the EI Announcement EI-11#03 has replaced the performance improvement process.

**BACKGROUND:**

As part of the Bureau of Early Intervention Services (BEIS) commitment to ensuring quality in the EI Program, performance measures have been identified to assess quality improvement. These measures are based on federal performance indicators that have been established under the Individuals with Disabilities Education Act (IDEA) of 2004. Under Sections 616(b)(1)(A) and 642 of IDEA and under 34 CFR §300.601 (Part B) and 34 CFR §303.701(Part C) each state is required to develop a six year State Performance Plan (SPP) that establishes targets and improvement activities on performance measures related to the requirements and purposes of the IDEA. States are also required to submit an Annual Performance Report (APR) that describes progress in meeting the targets identified in the SPP. After the submission of the APR to the U.S. Department of Education, Office of Special Education Programs (OSEP), each state receives a determination of performance. In addition, under IDEA Section 616(a)(1)(C)(i) and accompanying regulations at §300.602 (Part B) and 34 CFR §300.702 (Part C), states are required to make determinations on the performance of local Infant/Toddler and Preschool EI Programs.

**DISCUSSION:**

The process BEIS has developed for local determination corresponds with OSEP's state determination process. This process has been successful in achieving program improvement. Data-driven improvement strategies are the most effective means for improving program results for children and their families. Pennsylvania's local determination process enables each Infant/Toddler and Preschool EI Program to realize the specific strengths and needs of its program's efforts. States must use the targets established in the SPP to analyze the performance of Infant/Toddler and Preschool EI programs in implementing Part B and Part C of IDEA. Following the analysis, Pennsylvania is required to make determinations annually about the performance of each Infant/Toddler and Preschool EI Program utilizing the process and categories listed below:

1. Following Pennsylvania's APR submission to OSEP, BEIS will notify each Infant/Toddler and Preschool EI program of its determination category. Determination notices will be issued in April of each year and will be based on the following factors:
  - a. Performance on specified OSEP indicators;
  - b. Data submitted by the Infant/Toddler and Preschool EI Programs is valid, reliable, and timely;
  - c. Uncorrected non-compliances;
  - d. Findings during verification visits;
  - e. Audit findings; and
  - f. Complaint information and the Infant/Toddler and Preschool EI Programs' implementation of the procedural safeguards process, including the investigation of complaints, mediation and due process requests.
  
2. The following categories and factors are considered in making the determination:
  - a. Meets Requirements
    - i. Demonstration of substantial compliance on indicators, that can include, as appropriate, a demonstration of timely correction of identified non-compliance(s) that were previously identified;
    - ii. Valid and reliable data has been presented; and
    - iii. Demonstration that correction of non-compliance occurs in a timely manner (meaning as soon as possible but no later than one year after identification of non-compliance).
  - b. Needs Assistance
    - i. Does not demonstrate substantial compliance on one or more of the indicators;
    - ii. One or more of the indicators do not have valid and reliable data; and
    - iii. Does not demonstrate correction of non-compliance(s) in a timely manner.
  - c. Needs Intervention
    - i. Does not demonstrate substantial compliance on one or more of the indicators and has not made significant progress in correcting non-compliance(s) previously identified;
    - ii. One or more of the indicators do not have valid and reliable data and the Infant/Toddler or Preschool EI program has not made progress in correcting previously identified data issues; and
    - iii. Does not demonstrate that it corrects non-compliance(s) identified by BEIS and has not had significant progress in correcting that noncompliance.
  - d. Needs Substantial Intervention:
    - i. Failure to substantially comply significantly affecting the core requirements of the program, such as delivery of service to children in the Infant/Toddler or Preschool EI Programs exercise of general supervision, and/or;
    - ii. The Infant/Toddler or Preschool EI Program has informed BEIS that it is unwilling to comply.
  
3. The following enforcement actions apply to each determination category:
  - a. Needs Assistance

If BEIS determines, for 2 consecutive years, that the Infant/Toddler or Preschool EI Program needs assistance, BEIS shall take one or more of the following enforcement actions:

    - i. Advise the Infant/Toddler or Preschool EI Program of available sources of technical assistance to address area(s) in which the program needs assistance, and share

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- promising practices utilized by other Infant/Toddler or Preschool EI Programs in addressing performance issues;
  - ii. Direct the use of local administrative funds to an area(s) in which the Infant/Toddler or Preschool EI Program needs assistance; and/or
  - iii. Identify the Infant/Toddler or Preschool EI Program as “high-risk” and impose special conditions on the Infant/Toddler or Preschool EI Program’s allocation.
- b. Needs Intervention  
If BEIS determines, for 3 consecutive years, that the Infant/Toddler or Preschool EI Program needs intervention, BEIS shall take any of the actions described under Needs Assistance and shall take one or more of the following enforcement actions:
- i. Require the Infant/Toddler or Preschool EI Program to prepare an Improvement Plan, to correct the identified areas within 1 year;
  - ii. Withhold, in whole or in part, a percentage of local administrative funds for each year of the determination, to the Infant/Toddler or Preschool EI Program;
  - iii. Seek to recover funds; and/or
  - iv. Withhold any further payments to the Infant/Toddler or Preschool EI Program.
- c. Needs Substantial Intervention  
If BEIS determines, at any time, that the Infant/Toddler or Preschool EI Program needs substantial intervention, BEIS shall take one or more of the following enforcement actions and provide an opportunity for a hearing:
- i. Recover funds;
  - ii. Withhold, in whole or in part, any Part B/C funds to the Infant/Toddler or Preschool EI Program; and/or
  - iii. Replace the Infant/Toddler or Preschool EI program administrative entity.

### **NEXT STEPS:**

1. Infant/Toddler and Preschool EI Programs shall continue to monitor their data and program performance as part of an ongoing quality management process. Those programs that do not meet requirements must take necessary measures to bring their program into full compliance.
2. Infant/Toddler and Preschool EI Programs should review their quality management processes and improvement plans with their Local Interagency Coordinating Councils (LICC) and EI providers as a quality measure for improving services to children and families.

**Comment and questions should be directed to the Office of Child Development and Early Learning, Bureau of Early Intervention Services at 717-346-9330 or [ra-ocdintervention@pa.gov](mailto:ra-ocdintervention@pa.gov).**