



# Determinations of the Status of Local Programs

Consideration of Requirements,  
Enforcement, Challenges, and  
Stakeholder Involvement, in  
the Development of a  
Determinations Process

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# OSEP Requirements of States

- Pursuant to 616(a)(1)(C)(i) and 300.600(a) [for Part B]
  - States are required to make “Determinations” annually under 616(d) on the performance of LEAs/EIS programs



# OSEP Requirements of States

(cont.)

- States must use the same four categories as OSEP in making Determinations of the status of local programs. These categories are:
  - Meets Requirements
  - Needs Assistance
  - Needs Intervention
  - Needs Substantial Intervention



# OSEP Requirements of States (cont.)

- States must consider...
  - Performance on compliance indicators;
  - Whether data submitted by local programs are valid, reliable, and timely;
  - Uncorrected noncompliance from other sources; and
  - Any audit findings.
  
- In addition, States could also consider...
  - Performance on performance indicators; and
  - Other information.



# Determinations Timeline

- Although there is no specific timeline in statute or regulations when Determinations must be made, States should consider making Determinations:
  - As soon as possible after issuing their annual report to the public
  - In a timely manner so that local programs can take actions necessary for improvement
  - Before contracts are signed or renewed with local programs




# Reporting Requirements

- IDEA does not require States to report Determination decisions to the US Dept. of Education, or to the public.
  - Data used to make the determinations must be publicly reported
- States must inform each local program of their Determination.



# Determinations & Enforcement

- States must use the same four categories as OSEP in making Determinations of the status of local programs. Categories and enforcement actions include:
  - Meets Requirements
  - Needs Assistance – 300.604
    - (a)(1): Advise programs of available sources of technical assistance to address areas on which the program needs assistance.
    - (a)(3): Identify programs as high risk grantee and imposing conditions on use of funds.



# Determinations & Enforcement (cont.)

## ■ Needs Intervention – 300.604

- (b)(2)(i): Require the program to prepare or implement a corrective action plan to correct the identified area(s).
- (b)(2)(v): Withhold, in whole or in part, further payments to programs.

## ■ Needs Substantial Intervention – 300.604


- (c)(2): Withhold, in whole or in part, any Part C funds.



# Determinations & Enforcement

(cont.)

- In addition to IDEA requirements, States may also use enforcement mechanisms and actions in State rules, regulations, or policies.



# Determinations & Enforcement (cont.)

- States are required to implement the timeline in section 616(e) for enforcement for local programs. For example,
  - After *two* consecutive years of a Determination of “needs assistance” the state must take enforcement action.
  - After *three* consecutive years of a Determination of “needs intervention” the state must take enforcement action.
  - If an LEA or EIS program is determined to be in the category “Needs substantial intervention” immediate enforcement action must be taken.



# Issues and Challenges

- Issues related to fairness, equity, and transparency
  - How can we ensure that the process for making Determinations is perceived as fair and equitable?
  - To what extent will stakeholders be involved in developing the Determinations process?
- Issues related to public reporting
  - Do we intend to report the Determinations to the public?
  - How will we take into consideration data that are more recent than our last report to the public?
  - What is the relationship of the public report and program Determination?



# Issues and Challenges (cont).

- Issues related to setting Determinations criteria
  - What is the message that we will send to the public if the Determinations rely solely on local program performance on compliance indicators?
  - What criteria will we use to assign each local program to one of the four Determinations categories?
  - Will we consider data from dispute resolutions—complaints, hearings, or appeals—as part of the criteria?



# Issues and Challenges (cont.)

- Other issues in the Determinations process
  - How can the process be developed in a way that will be clearly articulated to and understood by local programs?
  - Will we have an appeals process?
  - How will we take into consideration local programs that have small numbers?
  - How will we use the Determinations of local programs to allocate resources for improvement activities?



# Stakeholder Involvement

- How will stakeholders be involved?
  - Will the stakeholder group be advisory?
  - Will the stakeholders actively participate in the development of the Determinations process?
  - To what extent will local programs be represented as stakeholders?
  - What process will be used to establish a consensus among stakeholders?



# Stakeholder Involvement (cont).

## ■ Stakeholder Options

- State Interagency Coordinating Council (SICC)
- Technical Assistance providers
- Stakeholders involved with the development of the State Performance Plan & Annual Performance Report
- Local program personnel



# The Kansas Approach

1. Develop a comprehensive Determination system based on all 14 OSEP indicators (indicators 3, 12, and 13 do not have data currently available)
2. Define the four OSEP categories using objective measures
3. Create a composite program rating based on the scores from individual indicators
4. Broadly define corrective actions
5. Create a special circumstance category for performance data that is difficult to classify (eg. audit findings, criminal action, negligence)
6. Develop a data-driven appeals process



# The Process

- KDHE reviewed OSEP's requirements and assembled an initial stakeholder task force that included members from the following groups:
  - Local Program Personnel
  - KITS
  - Greenbush
  - Kansas State ICC
  - State Lead Agency Personnel



# The Process (cont).

- The initial stakeholder task force accomplished the following:
  1. Reviewed OSEP's requirements
  2. Discussed scoring considerations
  3. Developed a scoring rubric
  4. Created the composite scoring system
  5. Recommended an appeal process
  6. Considered special circumstances
  7. Requested that a second task force review their work with "fresh eyes"



# The Process (cont).

- As requested by the initial task force, a second group was assembled, including:
  - Local Personnel
  - KITS
  - Families Together, INC
  - State Lead Agency Personnel



# The Process (cont).

- The second task force reviewed a draft document and process outline and provided feedback on the scoring system, timelines, the corrective action protocol, special circumstances, and the appeal process.



# The Process (cont).

- The initial task force reconvened and considered the recommendations from the second group.
- KDHE staff used the input from the two groups to develop the Determinations process document.
- The final draft document was presented to the State ICC at their December 7, 2007 meeting.




# The Process (cont).

- After the presentation to the State ICC, determinations for each local program were calculated and posted on KDHE's website.

[http://www.kdheks.gov/its/loc\\_prog\\_determ.htm](http://www.kdheks.gov/its/loc_prog_determ.htm)

- This complied with OSEP's requirement that all states post Determinations data on all programs by December 21, 2007.



# Scoring Methodology

## (By Indicator)

**0 points=Meets Requirements:** Local performance is at or above the target percentage for the given indicator.

**1 point=Needs Assistance:** Local performance on a given indicator is below the target percentage for one or two consecutive years.

**2 points=Needs Intervention:** Local performance on a given indicator is below the target for three consecutive years.

**3 points=Needs Substantial Intervention:** Local performance on a given indicator is below the target percentage for four consecutive years.



# Scoring Methodology

## (Program Composite)


- Tally the total points on the 14 indicators for a local program point total. Local program Determinations categories are as follows:

Program Meets Requirements	=	0 points
Program Needs Assistance	=	1-4 points
Program Needs Intervention	=	5-8 points
Program Needs Substantial Intervention	≥	9 points




# Determinations Reporting

- KDHE is required by OSEP to publicly report local performance.
- This requirement pertains to indicator-specific performance, not program Determinations.
- Local program Determinations will be made via letters to local coordinators.
- Locals can anticipate program Determinations based on the adopted scoring rubric.




# Important Notes About the Determinations

- Determinations are based on data presented in the most recently submitted state Annual Performance Report (APR), and only cover that particular reporting period.
- Prior or subsequent data can be used in determining a course of corrective action (or inaction), but is not reflected in actual performance.




# Important Notes About the Determinations (cont).

- The corrective action process is purposefully broad, because varying degrees / methods may be differing local circumstances
- The Network Continuous Improvement Plans (NCIP) and response letters should address local areas of concern



# Important Notes About the Determinations (cont).

- Determinations will be made annually for at least the duration of the six-year State Performance Plan.
- Targets for indicators 4, 5, and 6 increase annually. Static local performance that is compliant one year may not be compliant the next year.



# Important Notes About the Determinations (cont).

- This process is new to KDHE, as well as to local programs.
- Every effort has been made to ensure that the Determinations are entirely data-driven and objective. If the need arises, KDHE reserves the right to adjust the process accordingly.



# Questions / Comments?

## Determinations of the Status of Local Programs

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