Statewide Coalition of Early Intervention Advocates

OCDEL'S Proposed Announcement,
"Evaluation Tools for Determining Eligibility for Early Intervention
And Documentation of Results"

Comments of the Statewide Coalition of Early Intervention Advocates

On behalf of the Statewide Coalition of Early Intervention Advocates and the children and families we serve, we thank you for the opportunity to provide public comment on the proposed Announcement titled, ***Evaluation Tools for Determining Eligibility for Early Intervention & Documentation of Results.***

The Statewide Coalition of Early Intervention Advocates is a statewide group of parents, advocates, providers, and other professionals whose mission is to ensure that Pennsylvania's youngest children have access to high quality early intervention programs and services, including early childhood education. We have over 100 members and have been meeting monthly for over ten years with legal support and technical assistance from Education Law Center and Disability Rights Network staff. Our comments are based on our members' extensive knowledge and experience.

The Proposed Announcement presents legal and pedagogical concerns: We appreciate the challenge OCDEL faces in trying to identify appropriate diagnostic and evaluation tools to determine which children will be eligible for early intervention services. Nevertheless, the approach that OCDEL has chosen is problematic. It requires the use of one of only three standardized tools as the primary assessment, with limited exceptions for the use of informed clinical opinion. It requires *prior* OCDEL approval for the use of any alternative assessment. Finally, it fails to mention that children who are diagnosed with a physical or mental disability with a high probability of developmental delay are "presumptively eligible" and would be not subject to the proposed assessment criteria.

Given the importance of this issue – access to critical early intervention services for our youngest, most vulnerable children with disabilities—we respectfully urge you *not* to promulgate this policy. Instead, we suggest you look beyond the assessment tools that are "commonly used,"[1] and provide an opportunity for broader public comment to inform Pennsylvania's eligibility policy and practices. We particularly recommend that you obtain input from the field

[1] In the Proposed Announcement, OCDEL states the "eligibility tools were chosen based on the results of a survey conducted with Infant and Toddler and Preschool programs of the most commonly used eligibility tools." Announcement at page 2.

of knowledgeable national experts about the appropriate use of researched-based authentic assessments of very young children.[2]

Before we present our specific concerns, we want to commend OCDEL for emphasizing (at paragraph 4 on page 2) the importance of trained and qualified evaluators who have a "thorough understanding" of the purpose of the evaluation tools, the administration procedures, and scoring protocols. We also support OCDEL's decision (in paragraph 5) to require the evaluation results to include domain scores and to direct the appropriate use of sub-scores.

To summarize our overarching concerns:

(1) Requiring the use of one of only three conventional, standardized assessment tools, and prior approved assessments, is inappropriate for young children with developmental delay and other disabilities and is inconsistent with federal and state law pertaining to infants and toddlers. 20 U.S.C. §1435, 34 C.F.R. §300.322; 55 Pa Code §§4226.22 and 4226.61.

(2) Limiting the use of "informed clinical opinion" to only those circumstances and children where it can be proven with a "solid rational" that there are "no standardized measures or the standardized measures are not appropriate for the child's chronological age or developmental area(s)" and to "rare circumstances" is unwise and beyond what federal and state law permits. 34 C.F.R. §303.303.22(2), 303.303.22 (c)(2) and 55 Pa. Code §4226.22(a) an (b).

(3) Omitting any reference to the legally mandated eligibility of infants and toddlers who are "presumptively eligible" for early intervention services is illegal and will result in fewer eligible children being identified. 20 U.S.C §1432(5)(A)(ii), 34 C.F.R. §303..16(2) and 55 Pa Code §4226.22(a)(3).

The following are our specific concerns in each of these areas:

(1) <u>To require the use of one of only three conventional, standardized assessment tools is inappropriate for infants and toddlers and inconsistent with federal and state law</u>

The IDEA defines an "infant or toddler with a disability" as, among other things, a "*individual under 3 years of age who needs early intervention services because the individual (i) is experiencing developmental delays* ***as measured by appropriate diagnostic instruments and procedures****…."*(Emphasis added). 42 U.S.C. §1432(5)(A)(i). Federal regulations further require that the evaluation and assessment of each child must, among other things: "(1) *Be conducted by personnel train to utilize* ***appropriate methods and procedures"*** (emphasis added), 34 C.F.R. §303.322(c)(1).

[2] Authentic assessments are systemic recordings and observations overtime about the normally occurring behaviors of young children in daily routines by family and knowledgeable caregivers. *See*: Bagnato & Yeh Ho, 2007; Bagnato, Neisworth, & Pretti-Frontczak, 2010-in press.

We acknowledge that it is appropriate for OCDEL to identify standardized tests and other measures that meet Part C standards and for it to recommend these procedures to county agencies. But it cannot standardize the work of evaluators to this extent – evaluators must have the flexibility to use their training and expertise *on a per child basis* to determine what combination of assessments and informed clinical opinion will be best in assessing the eligibility and the service needs of the child they are evaluating.

Moreover, the standardized evaluation tools selected by OCDEL for inclusion in this Announcement have been repeatedly criticized for not ensuring an accurate and representative appraisal of the capabilities of young children with delays and disabilities.[3] This is particularly true for young children exhibiting significant language and physical limitations, and social-emotional and behavioral differences.

For example, the DAYC and the BD12 would *not* take into account the frequency, intensity, or functionality of negative behaviors of a two year old where she is exhibiting behaviors, that if one does not take account of frequency or intensity, are appropriate for two year olds, such as tantrums, frustration, and other oppositional behaviors. Using these instruments only an evaluator would have to find a child with these behaviors *not* eligible for early intervention services. On the other hand, if the evaluator were able to use a domain-specific tool, such as the TABS which accounts for extremes in frequency and intensity of temperament and self-regulatory behavior and functionality, the child would very likely meet the legal standards for eligibility. Similar problems arise when these standardized tests are used in the areas of communication and physical development. The selected standardized tools misrepresent and underestimate the severity of the child's delay rather than offering a true assessment of functional strengths and limitations.

Conventional testing of vulnerable babies is not best practice since the measures and their materials have not been designed in their developmental phase, specifically for young children with disabilities, do not include young children with disabilities in the norm groups, and are expensive, time-consuming to administer, often resulting in "un-testable" results, with little pay off for determining needs and services. (Bagnato, Neisworth, Pretti-Frontaczak, 2010). Thus, there are serious questions whether the standardized tools that OCDEL has chosen *are appropriate diagnostic tools and instruments* for the assessment of young children, let alone a good choice to be the sole tools permitted on a routine basis for determining eligibility.

Only one of the three selected tools, the Infant Developmental Assessment (IDA), is authentic and flexible enough to identify a developmental delay in very young children. The other two assessment tools, the Battelle Developmental Assessment Inventory (BDI 2) and the Developmental Assessment of Young Children (DAYC), have both been criticized by national experts and practicing interdisciplinary early intervention professionals in national consumer

[3] Some of the neglected attributes include procedural flexibility to adapt materials and formats to the child's functional impairments, inclusion of children in the standardization sample who have a range of diverse disabilities, a sufficient density of items and content to enable the appraisal of low functioning levels and inclusion of child performance data across several people settings and occasions. "*Conventional Testing for Early Intervention*" S.J., Macey, M., Salaway, J & Lehman, C. & Bagnato, S.J. (2007)

social validity surveys as not meeting early intervention standards for professional practice for use with young children with development delays. *See*: Bagnato, et al 2010.

In 2001, OSEP expressed concern about the relative paucity of young children found eligible for EI services in the United States compared to national prevalence studies. OSEP concluded that the dearth was the result of problems with typical early intervention assessment practices.[4] OSCEP funded the TRACE Center to explore this issue.[5] After extensive research, the TRACE Center concluded that the major problem has been the inappropriateness and insensitivity of conventional methods of assessment.[6] In making this judgment, TRACE reviewed exemplars of the type conventional standardized tests that OCDEL now proposes to use almost exclusively to assess young children in Pennsylvania.

In 2006, the PEIOS study documented the poor quality of entry-level data from eligibility assessments in six Pennsylvania regions. In the same longitudinal study two other sub-studies were conducted. Clinical judgment based upon extant child record reviews was compared to performance-based assessments for over 100 children in early intervention and found to, more quickly and cost-effectively, reach the same conclusion about EI eligibility than the conventional tests. The measures that OCDEL has chosen were subjected to a consumer social validity study of over 1500 professionals across the country in 2008-2009. The results further demonstrate that the Battelle and the DAYC do not meet evidence-based or professional practice standards required of professionals by the National Association of the Education of Young Children (NAEYC) or the Division of Exceptional Children (DEC). It does not appear that any of the TRACE studies, the PEIOS results, or the OSEP pronouncements were considered in forming the Proposed Announcement.

Further, determining eligibility with a limited range of conventional tests does not align with Pennsylvania's use of the highly flexible, authentic, and judgment-based Ounce and Work Sampling System for early intervention (and early childhood education) outcomes while forcing an adherence to structured conventional tests when determining eligibility. For professionals, this presents and odd inconsistency and a potential ethical clash with published professional practices standards (e.g. NAEYC, DEC).

Recommendation: We urge OCDEL to explore and consider the use of an expanded list of eligibility tools, including research-based authentic assessments, to ensure that eligibility

[4] Office of Special. Education Programs (OSEP) (April 2001). Record of the expert panel on improving results in early childhood for infants, toddlers and preschoolers with disabilities and their families. Washington, D.C.; U.S. Department of Education. Expert panel identified early identification (and eligibility) as a major area for which there is a gap in knowledge that "inhibits effective early intervention practice. (OSEP 2001, p.2).

[5] The TRACE Center for Excellence in Early Childhood Assessment was funded to research and determine the true evidence-base for early childhood assessment practices (2001-2006).

[6] The consensus of the research is that there exists meager or no evidence that the most popular assessment practices have ever been field-validated for any early intervention purpose including eligibility determination, progress monitoring, and accountability (2006).

determinations capture all the infants and toddlers who are eligible for[7] early intervention services.

We also recommend the following change to the third paragraph on page 2:

> The primary tool used for determining eligibility ~~may~~ shall be used in conjunction with a variety of other assessments and strategies, including specialty tools, when a more in-depth picture of the child's needs is required. This combination of a primary eligibility tool and other assessment information will assure that no single measure or assessment is the exclusive sole criteria for determining whether a child has a developmental delay or disability, or determining appropriate services to meet the child's needs.

(2) OCDEL cannot legally limit evaluators from using "informed clinical opinion" to ***only*** those circumstances and children where it can be proven with a "solid rational" that no standardized measures exist or are appropriate or in "rare circumstances."

OCDEL has relegated the use of "informed clinical opinion" to ***only*** those circumstances and children where it can be proven with a "solid rational" that no standardized measures exist or are appropriate or in "rare circumstances." The Proposed Announcement directs the field to use "specialty tools" in the area of development. (p.2.) However, specialty tools are not available to assess infants and toddlers in some areas of development. Moreover, validated clinical judgment process and tools are available use national norms. *See*: Bagnato, McKeating-Esterle, Fevola & Barolomasi, 2008.

Informed clinical opinion is expressly sanctioned in federal and state law for use either alone or in combination with standardized assessments in accordance with the best judgment of the evaluator. *See*: §34 C.F.R. 303.322(c)(2) and see also, 55 Pa Code 4226.22(b).[8] Informed clinical opinion and other authentic assessments may be needed even when there is a standardized measure when other circumstances require flexibility or accommodation, such as when a baby or young child is non-compliant, fatigued by testing, has or sensory or physical impairments that limit the child's ability to perform on a standardized test, or there are language barriers.

Pennsylvania regulations explicitly acknowledge that "informed clinical opinion" should be used "especially" in cases where there are no appropriate standardized assessments,, but the

[7] Although we acknowledge that identifying all eligible infants and toddlers will have financial implications for OCDEL, we cannot support a policy that seeks to limit the number of children served by early intervention programs, by requiring standardized tests, with limited access to informed clinical opinion, that are proven to exclude categories of eligible children.

[8] 55 Pa Code 4226.22(b) states that: "In addition to the diagnostic tools and standard tests specified in subsection (a)(1) and (2), **informed clinical opinion shall be used to establish eligibility**, especially when there are no standardized measures or the standardized measures are not appropriate for the child's chronological age or developmental area. *See also*: 55 Pa Code § 4225.61(b)(i)-(ii) (specifically states that the evaluation and assessment of each referred child shall be conducted by personnel trained to utilize evaluation and assessment methods and procedures "*and shall be based on informed clinical opinion*").

regulations do not limit the use of informed consent to such circumstances. In 55 Pa Code 4226.22(a) it states that OCDEL, through County offices, shall "*ensure that early intervention services are provided to all children who meet one or more of the following eligibility criteria.*" The regulation goes on to list several ways in which a developmental delay or other disability can be established, including the use of "appropriate diagnostic instruments and procedures," documented test performance, a diagnosed physical or mental condition with a high probability of resulting in a developmental delay, and *additionally and specifically,* "**informed clinical opinion**."

(3) O**C**DEL erroneously omits any reference to the legally mandated eligibility of infants and toddlers who are "presumptively eligible" for early intervention services because they have been diagnosed with a physical or mental disability with a high probability of developmental delay

Federal and state law states that infants and toddlers with a physical or mental disability that has a high probability of resulting in a developmental delay are eligible for early intervention services. 20 U.S.C. §1432(5)(A)(ii), 34 C.F.R. §303.16(2) and 55 Pa Code §4226.22(a)(3). OCDEL's failure to mention these children is confusing and misleading. OCDEL should clearly state that these infants and toddlers are eligible and are not subject to further testing for the purpose of establishing their disability using the three standardized tests.

Recommendation: We recommend that OCDEL state in the Proposed Announcement that children who have been diagnosed with a physical or mental disability with a high probability of developmental delay are eligible for early intervention services and are *not* subject to the proposed requirement that they be evaluated by one of the three primary tools to determine their eligibility status.

Conclusion

In conclusion, "*Misrepresenting children by mismeasuring them denies children their rights to beneficial expectations and opportunities* (Bagnato, Neisworth, & Pretti-Frontczak, 2010, p. 22).

OCDEL states that the purpose of the proposed Announcement is to establish "*the use of common evaluation tools… to ensure consistency in the type of evaluation tools used for determining eligibility of referred children so that families have similar experiences with entry into EI as well as transition form Infant/Toddler to Preschool EI programs,"* (p.1). Rather than striving to ensure that families have similar experiences, we urge OCDEL to focus on ensuring that the evaluators have accurate legal information, appropriate tools, and the flexibility to use informed clinical opinion to identify all eligible children. Thus, we ask OCDEL to expand the list of acceptable eligibility tools and further ensure that clinical opinion is recognized to be an equal, not an alternative, method in the eligibility assessment process.

Thank you for this opportunity to comment. We would welcome an opportunity to work with you to develop a sound and effective eligibility policy for our youngest most vulnerable children.

Respectfully submitted,

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**(Signatures on original)

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