

Summary of Supplemental Educational Services (SES) Evaluation Definitions of Compliance and Monitoring Procedures in Selected States

To: Fred Balcom, California Department of Education (CDE)
Keith Coppage, California Department of Education
Judi Brown, California Department of Education
Richard Diaz, California Department of Education
Stephanie Smith, California Department of Education

From: LaRena Woods, Karen Gamon, Larisa Shambaugh, and Tom Parrish
California Comprehensive Center (CA CC), American Institutes for Research

Cc: Fred Tempes, California Comprehensive Center (CA CC), WestEd

Date: January 29, 2010

During the meeting with CA CC and CDE staff on November 12, 2009, CDE staff indicated they would like to receive additional information about how different states define, monitor and use provider compliance data in regards to SES. In response, this memo summarizes the compliance definitions used in fourteen states (Arkansas, Georgia, Hawaii, Illinois, Indiana, Kentucky, Louisiana, Massachusetts, Michigan, Mississippi, New Jersey, North Carolina, Tennessee, and Texas), describes how these states monitor SES provider compliance, and outlines the ways that these states include compliance data in their SES decision-making processes (please see Exhibit 1 for detailed information on each state's policies). These fourteen states were selected because they are known to monitor provider compliance to some degree based on a review of their probationary policies and/or survey component of their SES evaluation.¹ For this memo, we reviewed publicly-available state policies and documentation on SES provider compliance for selected states. Although this memo focuses on the use of compliance data in SES decision-making in selected states, all states reviewed also conduct a more comprehensive evaluation of provider performance using other measures (e.g., student achievement data, stakeholder surveys, etc.). It should be emphasized that compliance data serves as one component of a multi-faceted evaluation approach in these states. In addition, in only one of the states discussed below (New Jersey) can compliance violations alone be used as the basis for removal from the state's list of approved providers.

As described in the November 4, 2009 memo summarizing state practices regarding probationary periods for SES providers, the guidebook for evaluating SES providers prepared by the Center for Research in Educational Policy (CREP) and American Institutes for Research (AIR) includes a "decision tree" diagram depicting provider status determinations as a result of outcomes on various quality indicators (this decision tree is included in Appendix 1 of this memo as well). In this decision tree, providers' compliance with federal and state policies is one of the three broad categories used to determine provider status (e.g., full standing, probationary). Student

¹ See previous CA CC memos on state probationary policies and survey methods submitted on November 4 and 25, 2009, respectively, for further information about these states.

achievement and implementation outcomes (e.g., customer satisfaction and service delivery) are the other two broad categories used in the decision tree. All of the nine states with probationary periods described in the November 4 memo include data on compliance violations as one of the measures to determine the status of a provider

I. Defining SES Provider Compliance and Service Delivery in Other States

The guidebook for evaluating SES providers prepared by CREP and AIR recommends that states evaluate a provider's performance in the area of service delivery and compliance, as one of three areas. The authors of the handbook encourage states to examine the question, "Did the provider comply with applicable state and district laws and contractual procedures associated with the delivery of SES?" A detailed description of the service delivery and compliance measures as outlined in the handbook is included in Appendix 2.

Generally, as part of the application to become an SES provider, states require providers to certify compliance with federal, state, and local health and safety standards and civil rights protections, and to comply with the statement of assurances included in the application. These requirements may specifically include 1) background checks for all employees, 2) health, safety and fire inspections for facilities, 3) compliance with Internet policies, and 4) parent permission for communicating with students via email or Internet.

All states reviewed require providers to comply with a statement of assurances included in the Request for Proposals (RFP). Statements of assurances are statements of industry best practices to which providers must abide. Some assurances mandated by states require that the provider comply with all applicable federal, state, and local statutes and regulations—especially those regarding health, safety, and civil rights. Among the many best practices required by states, some also include assurances that providers will provide secular and non-ideological instruction, and that they will keep student information confidential.

Multiple states (Georgia, Kentucky, Michigan, New Jersey, North Carolina, Tennessee, and Texas) have adopted or adapted the Education Industry Association's (EIA) Code of Professional Conduct and Business Ethics for Supplemental Educational Services Providers as their statement of assurances. Depending on the state, districts may choose to voluntarily adopt this code, which describes key organizational behaviors and policies to guide providers' interactions with school and district officials, parents, students and other providers. The EIA's professional conduct code and business ethics includes twelve "General Guidelines" for SES providers. These guidelines include general ethical business practices, such as complying with applicable laws, statutes, regulations and ordinances. The document also includes eleven "Standards Specific to SES" for SES providers. These include provisions against hiring school-employed personnel for any purpose other than program coordination or instruction-related services, and not sponsoring promotional events for the sole benefit of a single provider. The EIA Code of Professional Conduct and Business Ethics for SES Providers can be found in Appendix 3.

Some states, like New Jersey, have an inclusive review of compliance violations which include the federal statute (NCLB), federal non-regulatory guidance, New Jersey assurances for SES

providers, New Jersey adopted EIA code of ethics for SES providers, state implementation policy, district service contract, district implementation policy, and federal, state or local laws.²

In addition, several states (Arkansas, Georgia, Illinois, Kentucky, Mississippi, North Carolina, and Tennessee) define provider compliance based on the standards specified in a provider's corrective action plan. For example, in Georgia a provider that is assigned to probationary status must submit a corrective action plan which describes the policies and practices the provider must implement to return to good standing. This plan must include specific and measurable steps to be taken, a timeline for correcting deficiencies, a budget, and a process for monitoring progress and revising the plan as needed. The state then uses this corrective action plan as an additional standard by which to monitor compliance and evaluate the provider's performance.

The compliance definitions of the fourteen states (Arkansas, Georgia, Hawaii, Illinois, Indiana, Kentucky, Louisiana, Massachusetts, Michigan, Mississippi, New Jersey, North Carolina, Tennessee, and Texas) can be found in Appendix 4 through Appendix 17.

II. Monitoring SES Provider Compliance and Service Delivery in Other States

States monitor SES provider compliance through a variety of means including the review of written complaints, review of provider documents, site visits, and student, principal and district surveys.

One state that monitors compliance through the review of written complaints is New Jersey. New Jersey has a form on their SES Web site entitled "NJ SES Compliance and Safety Investigation Report Form"³ that can be used by the public to submit complaints about provider non-compliance or unsafe practices. The form includes a checkbox section where users can specify the type of alleged compliance violation.

Arkansas also monitors SES provider compliance by reviewing written and signed complaints from individuals, LEAs, and any other entity. Arkansas does not have a provider complaint form available on their Web site. However, in order for a written complaint to result in the removal of an SES provider, the complaint must state the specific claims against the provider and the evidence supporting these claims. Arkansas also monitors provider compliance via state-administered evaluations and on-site monitoring.

Indiana is a state that both conducts provider site visits and reviews provider documents to monitor compliance. The monitoring form includes a compliance section that deals with criminal background checks, student health and safety, and financial viability. Appendix 8 shows the portion of the site visit monitoring form that focuses on compliance issues. In addition, North Carolina and several other states conduct on-site monitoring visits which include observing the tutoring sites and may include interviews with selected stakeholders (e.g., tutors and site and coordinators).

² The New Jersey SES Compliance and Safety Investigation Report form can be found at <http://www.nj.gov/education/title1/program/ss/>.

³ Ibid.

Kentucky monitors provider compliance by monitoring SES providers on-site, analyzing documents, reviewing written complaints, and ensuring that monthly progress reports are created and sent separately for parents and to all districts served by each provider.⁴ For the document analysis, providers are asked to submit information including, but not limited to, documentation of tutor qualifications, recruiting materials, lesson plans, and student progress reports. Providers may choose to either submit evidence for the state to review by mailing it in prior to the on-site visit or by returning the documentation to the on-site reviewer at the time of the visit.

Many states conduct state evaluations to examine SES effectiveness and meet federal monitoring requirements. To this end, some states utilize survey data as a means for monitoring provider compliance. For example, Georgia and Massachusetts use student surveys, principal/site coordinator surveys, and district surveys to assess provider compliance (e.g., “Do providers submit student attendance data?”) and service delivery (e.g., “Did your tutor give you a test before beginning your after-school lesson?”) to ensure that a provider complies with applicable federal, state, and local laws and with the statement of assurances included in their RFP. However, although states reported using survey data as a means for monitoring providers, actions taken directly based on these results are not reported in the state evaluation reports we reviewed.⁵

III. Incorporating SES Provider Compliance and Service Delivery Data into State Decision-making

When considering how compliance data are used in state decision-making, the first question to examine is to what extent are compliance data incorporated into the overall decision-making process. Are compliance violations the sole factor for determining a provider’s status within a state? If not, it is necessary to consider how compliance data is factored into the overall rating or review process for individual providers. For all of the states we reviewed the first step in determining a provider’s status is determining whether the provider has met the compliance requirements. The decision tree diagram in the guidebook for evaluating SES providers prepared by the CREP and AIR also indicates that the first step in the decision-making process is determining provider compliance.

At least one state (New Jersey) has provisions allowing the state to use compliance violations as the sole determinant of provider status. In New Jersey, concerned individuals can submit a “SES Compliance and Safety Investigation Report”⁶ regarding a provider’s non-compliance with appropriate evidence. Once this report is received, the New Jersey Department of Education (NJDOE) provides a summary of the complaint to the provider and the provider is given ten days to submit a response. NJDOE notifies the provider of its findings based on a review of the documentation and makes any necessary changes to the provider’s approval status.

⁴ The 2009 Kentucky Supplemental Educational Services Handbook can be found at <http://www.education.ky.gov/NR/rdonlyres/0E3408CC-1393-4A4C-84C7-DF607C530D73/0/2009KentuckySupplementalEducationalServicesHandbookComplete.pdf>.

⁵ Further information regarding the survey components of state SES evaluations can be found in CA CC memo submitted to CDE on November 25, 2009.

⁶ New Jersey Compliance and Safety Investigation Report, http://www.nj.gov/education/title1/program/ss/incident_report.pdf

Findings may include:

- Revocation of state approval and removal from the Annual State Approved SES Provider List, with cause. (Substantiated student safety issues of a serious nature will result in immediate revocation of state approval.)
- Evidence of provider compliance with a detailed corrective action plan and probationary period in order to remain on the Annual State Approved SES Provider List. Implementation of the corrective action plan is monitored by the NJDOE.
- A probationary period of monitoring.
- Temporary suspension from the Annual State Approved SES Provider List. Suspension entails mandatory cessation of recruitment and service delivery activities of an SES provider.⁷

Most states, however, use provider compliance data in conjunction with other data to evaluate provider performance and make provider status determinations. For example, Indiana uses compliance data as a factor in determining a provider's grade within the "service delivery" component of its evaluation. This grade is averaged with the provider's grade in the two other categories (customer satisfaction and academic effectiveness) to determine its overall letter grade. Low grades (in any category or overall) can result to probationary status or removal from the state-approved list of providers. A number of other states (Arkansas, Georgia, Illinois, Indiana, Kentucky, Louisiana, Michigan, Mississippi, and Tennessee) also use compliance data in probationary determinations and/or in determining a provider's overall rating.

All fourteen states noted that a provider will be removed from the list of approved providers if it fails to provide services consistent with applicable health, safety, and civil rights requirements. Furthermore, in all states reviewed compliance data is used as a trigger for further state investigation of a provider's practices. For example, in Arkansas, once a written complaint is received or a potential provider impropriety is discovered then the state Title I office must notify the provider in writing of the allegations, stating in detail the claims against the provider and the evidence supporting these claims. The provider then has thirty days to issue a response. Next, the state Title I office must assign a team of two to five individuals to conduct an investigation, report their findings, and make recommendations for corrective action.

All of the states we reviewed grant the state education agency the authority to immediately terminate providers due to serious compliance violations. However, nine states (Arkansas, Georgia, Illinois, Indiana, Kentucky, Louisiana, Mississippi, North Carolina, and Tennessee) also have the authority to put an SES provider on probation if the state finds that the provider has committed more minor compliance violations. Probationary periods are often viewed as an opportunity for the state to more carefully evaluate providers that have been initially identified as having poor achievement results or service delivery and compliance outcomes. The different probationary stages provide states with more time to collect and review additional data on a particular provider while giving the provider additional time to improve.

For example, in Louisiana, if a provider has met all compliance requirements and demonstrated positive achievement effects then they are "Approved." If a provider has met all compliance

⁷ Ibid.

requirements, but there is insufficient or only “New and Emerging” evidence of their effectiveness, then the provider will be considered “Satisfactory.” However, if the provider has minor compliance violations or has weak or negative achievement effects or implementation outcomes then they will be put in “Probation I”. If a provider fails to improve their compliance, achievement, and implementation then they will enter “Probation II,” which also lasts one year. If a provider has serious compliance violations or failed to improve their compliance, achievement, and implementation then they will be removed from the state-approved provider list for a minimum of two years.

Twelve states (Georgia, Illinois, Indiana, Kentucky, Louisiana, Massachusetts, Michigan, Mississippi, New Jersey, North Carolina, Tennessee, and Texas) analyze provider documents to determine whether a provider has committed any compliance violations. For example, in Indiana each provider is required to submit evidence of tutor qualifications, academic programming, alignment to Indiana’s academic standards, and progress reporting. A state monitor then analyzes these documents to review teacher qualifications, lesson plans, and health and safety procedures. The state then determines whether the program is being implemented with fidelity according to the description provided in the provider’s original, approved application. For each section, providers are rated “satisfactory” or “unsatisfactory;” based on the ratings assigned, a provider is given a letter grade, which factors into the overall letter grade that they receive.

Most states did not describe how or if compliance data are used as a component of provider grading. Additionally, it is unclear whether, or to what extent, states actually monitor provider compliance in practice even though it is indicated in their policies. For example, the U.S. Department of Education found that in 2005 neither New Jersey nor Michigan directly monitored their providers for SES compliance, but rather both states depended on LEAs for this information.⁸

⁸ See the *Final Audit Report of the New Jersey Department of Education’s (NJDOE) compliance with Title I, Part A (Title I), of the Elementary and Secondary Education Act of 1965 (ESEA), as amended by the No Child Left Behind Act of 2001, Public School Choice and Supplemental Educational Services (SES) provisions for the 2004-2005 school year* (<http://www2.ed.gov/about/offices/list/oig/auditreports/a02f0006.pdf>) and the *Final Audit Report of the Michigan Department of Education’s Compliance with the Public School Choice and Supplemental Educational Services Provisions of the No Child Left Behind Act of 2001 for the 2004-2005 school year* (<http://www2.ed.gov/about/offices/list/oig/auditreports/a05f0007.pdf>) for more information.

Exhibit 1: Information on 14 States with Utilizing Compliance Data in SES Evaluations

State	Compliance Definition	Monitoring Compliance	Use of Compliance Data
Arkansas	<ul style="list-style-type: none"> Federal/state/local regulations Health, safety, and civil rights Standards specified in Corrective Action Plan, if required Statement of assurance in RFP 	<ul style="list-style-type: none"> On-site monitoring Review of written complaints 	<ul style="list-style-type: none"> Conduct an investigation Probation determination⁹ Removal from approved provider list
Georgia	<ul style="list-style-type: none"> Federal/state/local regulations Health, safety, and civil rights Standards specified in Corrective Action Plan, if required Statement of assurance in RFP 	<ul style="list-style-type: none"> Document analysis On-site monitoring Review of written complaints Submission of progress reports by providers 	<ul style="list-style-type: none"> Conduct an investigation Probation determination Removal from approved provider list
Hawaii	<ul style="list-style-type: none"> Federal/state/local regulations Health, safety, and civil rights Statement of assurance in RFP 	<ul style="list-style-type: none"> On-site monitoring Review of written complaints 	<ul style="list-style-type: none"> Conduct an investigation Removal from approved provider list
Illinois	<ul style="list-style-type: none"> Federal/state/local regulations Health, safety, and civil rights Standards specified in Corrective Action Plan, if required Statement of assurance in RFP 	<ul style="list-style-type: none"> Document analysis On-site monitoring 	<ul style="list-style-type: none"> Conduct an investigation Probation determination Removal from approved provider list
Indiana	<ul style="list-style-type: none"> Federal/state/local regulations Health, safety, and civil rights Standards specified in Corrective Action Plan, if required Statement of assurance in RFP 	<ul style="list-style-type: none"> Document analysis On-site monitoring 	<ul style="list-style-type: none"> Conduct an investigation Letter grade determination Probation determination Removal from approved provider list
Kentucky	<ul style="list-style-type: none"> Federal/state/local regulations Health, safety, employment, and civil rights Standards specified in Corrective Action Plan, if required Statement of assurance in RFP 	<ul style="list-style-type: none"> Document analysis On-site monitoring Review of written complaints Submission of progress reports by providers 	<ul style="list-style-type: none"> Conduct an investigation Probation determination Removal from approved provider list
Louisiana	<ul style="list-style-type: none"> Federal/state/local regulations Health, safety, employment, and civil rights Standards specified in Corrective Action Plan, if required Statement of assurance in RFP 	<ul style="list-style-type: none"> Document analysis Online invoicing and/or management system Submission of progress reports by providers 	<ul style="list-style-type: none"> Conduct an investigation Probation determination Removal from approved provider list
Massachusetts	<ul style="list-style-type: none"> Federal/state/local regulations Health, safety, employment, and civil rights Standards for Monitoring SES Providers Statement of assurance in RFP 	<ul style="list-style-type: none"> Document analysis On-site monitoring 	<ul style="list-style-type: none"> Conduct an investigation Removal from approved provider list
Michigan	<ul style="list-style-type: none"> Federal/state/local regulations Health, safety, nondiscrimination, employment, and civil rights Statement of assurance in RFP 	<ul style="list-style-type: none"> Document analysis Interviews On-site monitoring Review of written complaints 	<ul style="list-style-type: none"> Conduct an investigation Removal from approved provider list

⁹ The details of how a determination of status (probation, removal from provider list) is made are not included in the publicly available documentation we reviewed.

State	Compliance Definition	Monitoring Compliance	Use of Compliance Data
Mississippi	<ul style="list-style-type: none"> Federal/state/local regulations Health, safety, employment, and civil rights Standards specified in Corrective Action Plan, if required Statement of assurance in RFP 	<ul style="list-style-type: none"> Document analysis On-site monitoring Review of written complaints 	<ul style="list-style-type: none"> Conduct an investigation Probation determination Removal from approved provider list
New Jersey	<ul style="list-style-type: none"> Federal/state/local regulations Health, safety, employment, and civil rights Statement of assurance in RFP 	<ul style="list-style-type: none"> Document analysis Submission of progress reports by providers 	<ul style="list-style-type: none"> Conduct an investigation Removal from approved provider list
North Carolina	<ul style="list-style-type: none"> Federal/state/local regulations Health, safety, employment, and civil rights Standards specified in Corrective Action Plan, if required Statement of assurance in RFP 	<ul style="list-style-type: none"> Document analysis Interviews On-site monitoring Review of written complaints 	<ul style="list-style-type: none"> Conduct an investigation Probation determination Removal from approved provider list
Tennessee	<ul style="list-style-type: none"> Federal/state/local regulations Health, safety, employment, and civil rights Standards specified in Corrective Action Plan, if required Statement of assurance in RFP 	<ul style="list-style-type: none"> Document analysis Interviews On-site monitoring 	<ul style="list-style-type: none"> Conduct an investigation Probation determination Removal from approved provider list
Texas	<ul style="list-style-type: none"> Federal/state/local regulations Health, safety, employment, and civil rights Statement of assurance in RFP 	<ul style="list-style-type: none"> Document analysis Online invoicing and/or management system¹⁰ Review of written complaints 	<ul style="list-style-type: none"> Conduct an investigation Removal from approved provider list

IV. Next Steps

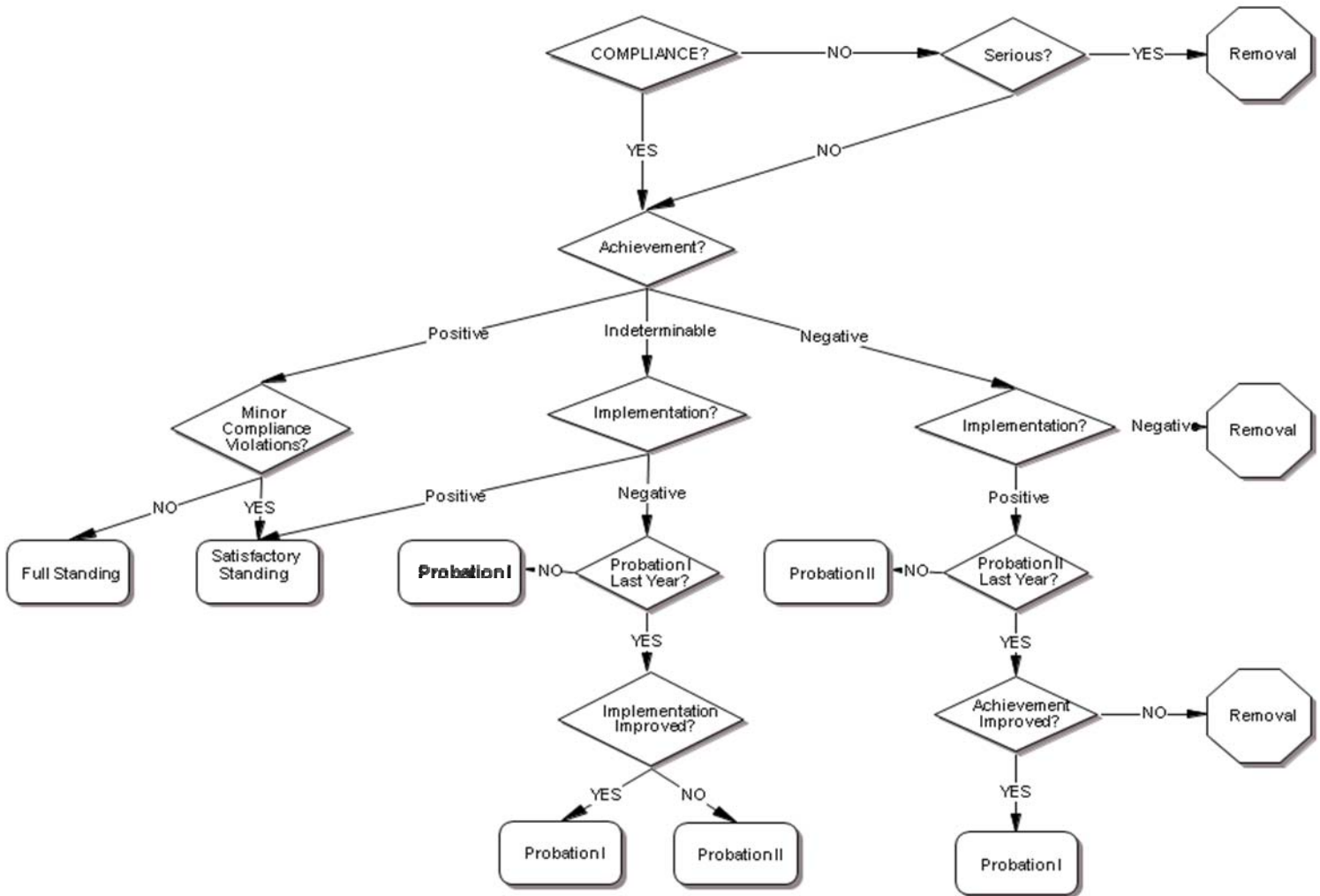
Based on the information presented in this memo, the CA CC could pursue two additional activities, depending on the interest of CDE:

1. CA CC staff can discuss with CDE and provide further guidance on how compliance measures can be utilized in California as part of an SES evaluation system, including developing recommendations for which instruments and administration methods might be adopted from other states.
2. CA CC staff can facilitate discussions with State Departments of Education personnel in states that utilize compliance measures to further understand the implementation and perceived effectiveness of their definitions of compliance. These conversations can also include a discussion of how compliance data are combined with other measures in a state's evaluation system.

¹⁰Texas uses the EZ SES Management System which is Web-based software for data collection, managing and reporting SES. The software enables school districts to upload data for eligible students, assign students to providers, approve learning plans, review monthly progress notes, process invoices, etc. It enables providers to acknowledge enrollment, record assessments, build learning plans, schedule tutoring, record attendance, build monthly progress notes, and generate invoices. Lastly, it enables states to monitor students, providers, and school districts and evaluate SES programs.

Appendix 1

Decision Tree for Probationary Status Determinations¹¹



¹¹ Ross, S.M., Potter, A., & Harmon, J. (2006). *Evaluating Supplemental Educational Service Providers: Suggested Strategies for States, 2nd Edition*. Center for Research in Educational Policy & American Institutes for Research. Academic Development Institute.