

DEPARTMENT OF EDUCATION

South Carolina Department of Health and Environmental Control; Written Findings and Compliance Agreement Under the Infants and Toddlers With Disabilities Program—Part C of the Individuals With Disabilities Education Act

AGENCY: Office of Special Education Programs, Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice of written findings and compliance agreement.

SUMMARY: Section 457 of the General Education Provisions Act (GEPA) authorizes the U.S. Department of Education (Department) to enter into a compliance agreement with a recipient that is failing to comply substantially with Federal program requirements. In order to enter into a compliance agreement, the Department must determine, in written findings, that the recipient cannot comply until a future date with the applicable program requirements and that a compliance agreement is a viable means of bringing about such compliance. On September 9, 2003, the Department entered into a compliance agreement with the South Carolina Department of Health and Environmental Control (DHEC). Under section 457(b)(2) of GEPA, the written findings and compliance agreement must be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Jacquelyn Twining-Martin, U.S. Department of Education, Office of Special Education Programs, 330 C Street, NW., room 3316, Washington, DC 20202. Telephone (202) 205-8258.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1-800-877-8339.

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SUPPLEMENTARY INFORMATION: Under Part C of the Individuals with Disabilities Education Act (Part C), the Department provides funds to States to, and the State must then, “maintain and implement a statewide, comprehensive, coordinated, multidisciplinary, interagency system to provide early intervention services for infants and toddlers with disabilities and their families.” 20 U.S.C. 1433, 1435(a)(2),

1437(a)(3)(A); 34 CFR 303.1 and 303.160. Early intervention services are services that are, among other things, “designed to meet the developmental needs of an infant or toddler with a disability in any one or more of the following areas—(i) physical development; (ii) cognitive development; (iii) communication development; (iv) social or emotional development; or (v) adaptive development”; “are provided by qualified personnel”; “to the maximum extent appropriate, are provided in natural environments, including the home, and community settings in which children without disabilities participate”; and “are provided in conformity with an individualized family service plan adopted in accordance with section 1436 of this title.” 20 U.S.C. 1432(4)(C), (F), (G) and (H).

On January 6, 2003, following an on-site monitoring visit to South Carolina (SC) in February 2002 by the Department’s Office of Special Education Programs (OSEP), OSEP issued a final monitoring report that documented non-compliance by the SC DHEC with Part C. The monitoring report identified DHEC’s failure to meet its responsibilities under Part C. Specifically, the monitoring report identified DHEC’s failure to:

- (1) Meet its general supervision responsibilities and monitor for compliance with regard to all requirements of Part C;
- (2) Ensure that a coordinated child find and public awareness system results in the identification of all eligible infants and toddlers with disabilities;
- (3) Ensure that all infants and toddlers referred to Part C receive timely and comprehensive evaluations in all five developmental areas such that evaluations and assessments are completed within 45 days of referral to enable the initial Individualized Family Service Plan (IFSP) team meeting to be convened in that time period;
- (4) Ensure that all early intervention services needed by an eligible infant or toddler with a disability and the child’s family are identified on the IFSP and provided in a timely manner; and
- (5) Conduct timely and content-appropriate transition planning including transition meetings for children who are transitioning from Part C.

On April 19, 2002, DHEC requested to enter into a compliance agreement with the Department. The purpose of a compliance agreement is “to bring the recipient into full compliance with the applicable requirements of law as soon

as feasible and not to excuse or remedy past violations of such requirements.” 20 U.S.C. 1234f(a). Before entering into a compliance agreement, the Department must hold a hearing at which the recipient, individuals affected by any potential compliance agreement, including infants and toddlers with disabilities and their families or other representatives, and other interested parties are invited to participate. In that hearing, the recipient has the burden of persuading the Department that full compliance with the applicable requirements of law is not feasible until a future date and that a compliance agreement is a viable means for bringing about such compliance in no more than three years. 20 U.S.C. 1234f(b)(1), (c). If, on the basis of all the evidence available to it, the Secretary determines that the recipient has met that burden, the Secretary is to make written findings to that effect and publish those findings, together with the substance of the compliance agreement, in the **Federal Register**. 20 U.S.C. 1234f(b)(2).

At a May 1, 2003 hearing conducted by Department officials, witnesses representing DHEC, families of infants and toddlers with disabilities, and other concerned organizations (including State agencies and other stakeholders) testified on the question of whether the Department should grant DHEC’s request to enter into a compliance agreement. Additional written testimony was submitted to the Department by families of infants and toddlers with disabilities and children with disabilities and concerned organizations both prior to and after the public hearing. On September 9, 2003, the Department, after reviewing all oral and written testimony submitted and other relevant materials, issued the attached Written Findings and Decision (Decision) of the Secretary as required under 20 U.S.C. 1234f(b)(2). As noted in the Decision, the Department has determined that DHEC has met its burden of establishing the following: (1) That compliance by DHEC with Part C is not feasible until a future date, and (2) that DHEC will be able to carry out the terms and conditions of the compliance agreement it has signed (Compliance Agreement) and will come into full compliance with Part C within three years of the date of the Decision. During the effective period of the Compliance Agreement, which expires three years from the date of the Decision, DHEC will be eligible to receive Part C funds as long as it complies with all the terms and conditions of the Compliance Agreement.