

As required by section 457(b)(2) of GEPA, 20 U.S.C. 1234f(b)(2), the text of the Secretary's Decision is set forth as Appendix A and the Compliance Agreement is set forth as Appendix B of this notice.

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(Authority: 20 U.S.C. 1234c, 1234f, 1431 through 1445)

Dated: October 22, 2003.

**Troy R. Justesen,**

*Acting Assistant Secretary for Special Education and, Rehabilitative Services.*

### Appendix A—Text of the Written Findings and Decision of the Secretary of Education

#### I. Introduction

The United States Department of Education (Department) has determined, pursuant to 20 U.S.C. 1234c, that the South Carolina Department of Health and Environmental Control (DHEC) has failed to comply substantially with the requirements of Part C of the Individuals with Disabilities Education Act (Part C or IDEA), 20 U.S.C. 1401, 14311–1445.<sup>1</sup> On January 6, 2003, the Department issued a final monitoring report for South Carolina (SC) that documented DHEC's failure to comply with Part C in its provision of early intervention services to infants and toddler with disabilities and their

families. Specifically, DHEC has failed to:

(1) Meet its general supervision responsibilities and monitor for compliance with regard to all requirements of Part C, including appropriately administering the Part C program, monitoring State agencies, institutions, organizations and private providers that are part of the Part C system, and enforcing obligations against and providing training and technical assistance to all such entities and individuals, when identified as part of a required improvement strategy;

(2) Ensure that a coordinated child find system results in the identification of all eligible infants and toddlers with disabilities and that public awareness materials about the infants and toddlers with disabilities program are made available to the public, including rural, minority and underrepresented populations;

(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.

As a consequence, the Department concluded, pursuant to the General Education Provisions Act (GEPA) at 20 U.S.C. 1234c, that DHEC is not complying with Part C.

On April 19, 2002, DHEC requested the Department enter into a compliance agreement with DHEC as a means of ensuring a continued flow of Part C funds to South Carolina while a structured plan to come into full compliance with Part C is implemented.

On May 1, 2003, Department officials conducted a public hearing in South Carolina in accordance with the GEPA requirements of 20 U.S.C. 1234f(b), at which oral and written testimony were received. Witnesses representing DHEC, affected families of infants and toddlers with disabilities, and other concerned organizations (including State stakeholders) testified at this hearing 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 affected families, and concerned organizations both prior to and after the public hearing. The Department has reviewed all oral and written testimony submitted, the Compliance Agreement DHEC has signed, and other relevant materials.<sup>2</sup> On the basis of this evidence, the Department concludes, and issues these written findings as required by 20 U.S.C. 1234f(b)(2), 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 and will come into full compliance with Part C within three years of the date of this decision. During the effective period of the Compliance Agreement, which expires three years from the date of this decision, DHEC will be eligible to receive Part C funds as long as it complies with all the terms and conditions of the Agreement.

### II. Legal Basis for Compliance Agreement: Requirements Under Part C and Under GEPA

#### A. Part C of the Individual With Disabilities Education Act

Part C was passed in response to Congress' finding that "there is an urgent and substantial need to enhance the development of infants and toddlers with disabilities and to minimize their potential for developmental delay." 20 U.S.C. 1431(a)(1). Congress established Part C "to provide financial assistance to States to develop and implement a statewide, comprehensive, coordinated, multidisciplinary, interagency system that provides early intervention services for infants and toddlers with disabilities and their families."<sup>3</sup> 20 U.S.C. 1441(b)(1). Early intervention services are defined as "developmental services that":

(A) Are provided under public supervision;

(B) Are provided at no cost except where Federal or State law provides for

<sup>2</sup> A copy of the Compliance Agreement is appended to, and incorporated into, this decision as Attachment A.

<sup>3</sup> An "infant or toddler with a disability" "(A) means an 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 in one or more of the areas of cognitive development, physical development, communication development, social or emotional development, and adaptive development; or (ii) has a diagnosed physical or mental condition which has a high probability of resulting in developmental delay; and (B) may also include, at a State's discretion, at-risk infants and toddlers." 20 U.S.C. 1432(5).

<sup>1</sup> Under the Department of Education Organization Act (DEOA), Congress transferred the administration of the IDEA from the Commissioner of Education to the Secretary of Education. 20 U.S.C. 3441(a)(1) and (a)(2)(H). Section 207 of the DEOA, 20 U.S.C. 3417, in turn delegates responsibility for IDEA to the Assistant Secretary for Special Education and Rehabilitative Services. The Office of Special Education Programs (OSEP), which is part of the Office of Special Education and Rehabilitative Services, is the office within the Department that is primarily responsible for administering Part C of the IDEA. 20 U.S.C. 1402(a).