

a system of payments by families, including a schedule of sliding fees;

(C) Are 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;

(D) Meet the standards of the State in which they are provided, including the requirements of this part;

(E) Include [a list of early intervention services];

(F) Are provided by qualified personnel;

(G) To the maximum extent appropriate, are provided in natural environments, including the home, and community settings in which children without disabilities participate; and

(H) Are provided in conformity with an individualized family service plan (IFSP) adopted in accordance with section 636 (20 U.S.C. 1436). 20 U.S.C. 1432(4); 34 CFR 303.12.

In order to ensure that all early intervention services are provided in compliance with Part C, a State must ensure that the Part C requirements regarding general supervision (including monitoring), child find and public awareness, timely evaluations and assessments, IFSP development, timely provision of early intervention services, and transition planning are met.

The lead agency's general supervision responsibilities include monitoring, ensuring correction and enforcement, providing technical assistance and training and ensuring the provision of procedural safeguards through the due process and State complaint procedures. 20 U.S.C. 1435(a)(1)(A); 34 CFR 303.500 through 303.512. The lead agency is required to ensure that all programs and activities used by the State to carry out Part C, whether or not they receive Part C funds, are monitored for compliance with Part C requirements and that interagency agreements are in place to ensure that services are provided in a timely manner. 20 U.S.C. 1435(a)(1)(A); 34 CFR 303.501 and 303.523 through 303.528. When the lead agency determines that program providers and other agencies, institutions and organizations that are part of the Part C system in a State are not in compliance, Part C requires the lead agency to enforce the requirements of Part C and correct deficiencies that are identified through monitoring and its general supervision authority. 20 U.S.C. 1435(a)(1)(A); 34 CFR 303.501(b)(2) and (4). The lead agency is also responsible for providing technical assistance and

training to agencies, institutions and organizations that administer the Part C program. 20 U.S.C. 1435(a)(1)(A); 34 CFR 303.501(b)(3). Part C requires that there be a single line of responsibility and clear interagency guidelines to ensure that one agency, the lead agency, is responsible for administering Part C in the State. 20 U.S.C. 1435(a)(1)(A); 34 CFR 303.500. General supervision has been a challenge for DHEC due to the large number of agencies that provide some part of Part C services and the number of private contractors.

The Part C general supervision requirement must be read in conjunction with DHEC's responsibility under GEPA at 20 U.S.C. 1232d(b)(3), to adopt and use proper methods of administering the Part C program, including, among other requirements: (1) Monitoring of agencies, institutions, and organizations responsible for carrying out Part C; (2) the enforcement of the obligations imposed on those agencies, institutions, and organizations under Part C; (3) providing technical assistance, where necessary, to such agencies, institutions, and organizations; and (4) the correction of deficiencies in program operations that are identified through monitoring or evaluation.

Other Part C requirements include ensuring that all infants and toddlers with disabilities and their families: Are timely referred into the program, are assigned a single service coordinator, are evaluated in all five developmental areas, and, if determined eligible, have IFSPs timely developed that address all content requirements, are timely provided those early intervention services and receive timely transition meetings and plans as they exit the program. This system is intended to be seamless so that an infant and toddler with a disability and the family receive all appropriate services to support them. DHEC's failure to ensure the provision of key components of the system have led to waiting lists for evaluations and assessments and early intervention services.

B. The Department's Authority To Enter Into a Compliance Agreement

If a State fails to comply substantially with the requirements of Part C, the IDEA authorizes the Department to withhold funds from that State or refer the matter to the Department of Justice. 20 U.S.C. 1416(a) and 1442. GEPA provides the Department with additional options for dealing with a grant recipient that it concludes is "failing to comply substantially with any requirements of law applicable to such funds." 20 U.S.C. 1234c. These

remedies include issuing a cease and desist order. 20 U.S.C. 1234c. As an alternative to withholding funds, issuing a cease and desist order, or referral to the Department of Justice, the Department may enter into a Compliance Agreement with a recipient that is failing to comply substantially with specific program requirements. 20 U.S.C. 1234f. In this instance, and at DHEC's request, the Department has decided to address DHEC's failure to comply substantially with the requirements of Part C through a Compliance Agreement.

The purpose of a Compliance Agreement is "to bring the recipient into full compliance with the applicable requirements of the 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, affected infants and toddlers with disabilities and their parents or their 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). If, on the basis of all the evidence available to it, the Secretary determines that the recipient has met that burden, he 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).

A Compliance Agreement must set forth an expiration date not later than 3 years from the date of the Secretary's written findings under 20 U.S.C. 1234f(b)(2), by which time the recipient must be in full compliance with all program requirements. In addition, the Compliance Agreement must contain the terms and conditions with which the recipient must comply during the period that the Agreement is in effect. 20 U.S.C. 1234f(c). If the recipient fails to comply with any of the terms and conditions of the Compliance Agreement, the Department may consider the Agreement no longer in effect and may take any action authorized by law, including withholding of funds, issuing of a cease and desist order, or referring the matter to the Department of Justice. 20 U.S.C. 1234f(d).