

III. Analysis of DHEC'S Ability To Meet the Requirements of the Compliance Agreement

A. How the Department Determines Whether a Compliance Agreement Is Appropriate

In determining whether it is appropriate to enter into a Compliance Agreement with DHEC, the Department must first determine two issues. First, the Department determines whether compliance by DHEC with Part C (including the requirements concerning general supervision including monitoring, child find and public awareness, timely and comprehensive evaluations, complete IFSP development, timely provision of early intervention services, and transition from Part C) is not immediately feasible. 20 U.S.C. 1234f(b). Second, the Department determines whether DHEC will be able to come into compliance with Part C within a period of no more than three years. If the Department cannot answer these questions in the affirmative, then it is inappropriate for the Department to enter into a Compliance Agreement between the Department and DHEC under 20 U.S.C. 1234f. In arriving at the terms of the Compliance Agreement, DHEC must not only come into full compliance by the end of the effective period of the Compliance Agreement, it must also make steady and measurable progress toward the Agreement's objectives while it is in effect.

B. DHEC Cannot Immediately Come Into Compliance With Part C Requirements

DHEC's failure to comply with the requirements of Part C, as documented in OSEP's January 6, 2003 monitoring report and acknowledged by DHEC, is caused by a number of factors including the fact that early intervention services in South Carolina are provided through complex interagency and private contractor structures, and, as a result, cannot be corrected immediately. The witnesses who testified at the public hearings and the Department's experience in monitoring DHEC's early intervention program, BabyNet, provide compelling support for this conclusion.

1. DHEC Cannot Come Into Compliance Immediately With Those Part C Requirements That Were the Subject of OSEP's Findings

As noted below and confirmed through the testimony of DHEC, parents and providers, DHEC is not in compliance now, and cannot immediately come into compliance, with the following specific Part C

requirements that were findings in OSEP's January 6 2003 report:

- Employing proper methods of administering the Part C program, including monitoring all agencies, institutions, providers, and organizations used by SC to provide Part C services, enforcing Part C requirements against these entities and providing training and technical assistance;
- Ensuring a coordinated child find system and that public awareness materials are made available to the public;
- Ensuring that all infants and toddlers who are referred to Part C are evaluated in all five developmental areas within the required time frame;
- Ensuring that all eligible infants and toddlers with disabilities have IFSPs that are developed with the required content, the initial IFSP meeting is convened within 45 days of referral, and early intervention services listed on the IFSP are provided in a timely manner; and
- Conducting timely transition planning for all children by preparing a transition plan, holding a transition meeting and notifying the local educational agency (LEA) of children approaching the age of transition.

2. DHEC Testified That It Cannot Immediately Come Into Full Compliance With Part C Requirements Due to Three Major Long-Term Barriers

DHEC acknowledged that it is not complying with Part C and cannot immediately come into compliance with Part C requirements. In his power-point presentation and written testimony, *DHEC Presentation at Compliance Agreement Public Hearing*, the DHEC BabyNet Director, David Steele, identified the following three principal barriers to its ability to come into immediate compliance with Part C: the lack of a monitoring system and interagency monitoring and cooperation, the lack of a reliable data system, and the lack of available qualified personnel. DHEC acknowledged that it does not have a systemic monitoring system to monitor all agencies, providers and programs that provide early intervention services in South Carolina and continues to have infants and toddlers on waiting lists for evaluations and assessments as well as for early intervention services in more than one geographic area. The need for interagency cooperation on all aspects of service delivery under the Part C system is a key challenge.

One major barrier to immediate compliance is DHEC's need to establish a monitoring system, since South

Carolina's statewide system of early intervention services involves efforts from six different State agencies as well as numerous private contractors. Six different agencies (including DHEC) conduct child find, evaluations and assessments, transition planning and provide service coordination and early intervention services. During the public hearings, DHEC officials testified that DHEC does not have a monitoring system to monitor its interagency partners or its private providers that conduct evaluations and transition planning and provide service coordination, and early intervention services. The only efforts DHEC had made to monitor its BabyNet program failed to identify and require correction of many important violations of Part C. DHEC also did not have any protocols for evaluating other agencies nor did it have uniform standards for training and services that were in compliance with Part C. DHEC is just now beginning to establish a mechanism for working with each of these agencies on an ongoing basis to coordinate all Part C activities including monitoring these agencies' compliance with Part C requirements and providing joint and collaborative training and technical assistance.

DHEC cannot immediately address this barrier. The first critical step will be the development of memoranda of agreements that address each agency's responsibility in addressing Part C's requirements. Another critical step will be interagency cooperation to allow DHEC to monitor how each agency conducts child find, evaluations and assessments, and transition planning, and provides service coordination and early intervention services based on Part C standards. Jointly training agency staff, implementing a monitoring system and identifying noncompliance issues and developing appropriate corrective action steps are all necessary to address compliance issues.

A second barrier is the need for DHEC to integrate and verify its new online web-based data system, which is a critical component of its monitoring system. DHEC officials testified that ensuring complete and accurate real-time data reporting that is necessary for program decision-making and accountability will take time. Securing baseline data under the new system is critical to DHEC's plan to identifying and addressing the root causes of the areas of noncompliance identified by OSEP. At the time of OSEP's monitoring visit, no information was collected by DHEC regarding private contractors who conducted evaluations and assessments and who provided early intervention services. DHEC intends for the new data