

1 Text of the Binding Provisions of the Compliance Agreement –

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3 **Compliance Agreement Under Part C of**
4 **the Individuals with Disabilities Education Act,**
5 **the Infants and Toddlers with Disabilities Program,**
6 **Between the U.S. Department of Education and the**
7 **South Carolina Department of Health and Environmental Control**
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9 I. **Introduction**

10 On January 6, 2003, pursuant to an on-site monitoring visit to South Carolina (SC) in February
11 2002 by the Office of Special Education Programs (OSEP) of the U.S. Department of Education
12 (Department), OSEP issued a final monitoring report that documented non-compliance by the South
13 Carolina Department of Health and Environmental Control (DHEC) with Part C of the Individuals
14 with Disabilities Education Act (Part C of the IDEA). On May 1, 2003, pursuant to a DHEC
15 request to enter into a compliance agreement, OSEP conducted a public hearing regarding DHEC's
16 ability to comply with Part C. The hearing and testimony from representatives of other South
17 Carolina agencies, Part C providers, parents and other individuals confirmed that, under 20 U.S.C.
18 §1234c, full compliance with Part C by DHEC is not feasible until a future date, but that DHEC is
19 able to come into compliance with Part C in no more than three years. Testimony at the hearing and
20 written testimony submitted further supported the development of a compliance agreement in order
21 to bring DHEC into compliance with Part C as soon as feasible and to allow continuation of Part C
22 funds to South Carolina during this process. As indicated in the Secretary's Written Findings and
23 Decision, the Department agrees that a compliance agreement is appropriate to address DHEC's
24 noncompliance with Part C.

25 II. **Areas of Identified Non-Compliance**

26 Pursuant to this Compliance Agreement under 20 U.S.C. §1234f, DHEC must be in full compliance
27 with the requirements of Part C no later than three years from the effective date of this Agreement,
28 which is the date the Secretary's Written Findings of Fact and Decision are issued and when the
29 Compliance Agreement is signed by both DHEC and the Department. Specifically, DHEC¹ must
30 ensure and document that no later than three years from the effective date of this Agreement, the
31 following compliance goals are achieved within each of the following five major areas:

- 32 1. **General Supervision:** DHEC must meet its general supervision responsibilities and
33 monitor for compliance with all requirements of Part C, including employing appropriate
34 methods of administering the Part C program, including monitoring State agencies,
35 institutions, organizations and private providers that are part of the Part C system, and
36 enforcing obligations against and providing training and technical assistance to all such
37 entities and individuals, when identified as part of a required improvement strategy.

¹ DHEC's Part C program is called the BabyNet program. The Compliance Agreement uses the terms BabyNet and DHEC interchangeably. The monitoring system designed by DHEC includes the use of BabyNet Coordination Teams or BNCTs.

- 38 2. Child Find/Public Awareness: DHEC must ensure that a coordinated child find system
39 results in the identification of all eligible infants and toddlers with disabilities and that
40 public awareness materials about the infants and toddlers with disabilities program are
41 made available to the public, including rural, minority and underrepresented populations.
- 42 3. Timely/Comprehensive Evaluations: DHEC must ensure that all infants and toddlers
43 referred to Part C receive timely and comprehensive evaluations in all five
44 developmental areas, such that evaluations and assessments are completed within 45
45 days of referral to enable the initial Individualized Family Service Plan (IFSP) team
46 meeting to be convened in that time period. DHEC must ensure there are adequate
47 personnel in all geographic areas to enable evaluations and assessments to be completed
48 within the 45-day timeline and to eliminate waiting lists for evaluations and assessments.
- 49 4. Identification and Timely Provision of All Early Intervention Services on IFSPs: DHEC
50 must ensure that all early intervention services needed by an eligible infant or toddler
51 with a disability and the child's family are identified on the IFSP, including any family
52 training, counseling and home visits. DHEC must ensure that all early intervention
53 services identified by the IFSP team are provided in a timely manner to infants and
54 toddlers with disabilities and their families. DHEC must ensure that the present level of
55 functioning for each developmental area is identified on each IFSP.
- 56 5. Transition Planning: DHEC must conduct timely and content-appropriate transition
57 plans and transition meetings for children who are transitioning from Part C to Part B of
58 IDEA. For families transitioning to other programs, DHEC will develop content-
59 appropriate transition plans and make reasonable efforts to convene a transition
60 conference.

61 During the period that this Compliance Agreement is in effect, DHEC is eligible to receive Part C
62 funds if it complies with the terms and conditions of this Agreement and all other provisions of Part
63 C not addressed by this Agreement. Specifically, the Compliance Agreement sets forth goals and
64 timetables that are necessary for DHEC to come into compliance with its Part C obligations. In
65 addition, DHEC is required to submit documentation concerning its compliance with these goals
66 and timetables. Included in the Compliance Agreement are five individual Work Plans which
67 address specific topic areas of DHEC's non-compliance with Part C, and include outcomes, goals,
68 objectives, activities to achieve results, verification, and target completion dates for DHEC's
69 progress toward full compliance over the three-year Agreement. Since some of the compliance goal
70 areas are interrelated, some activities and outcomes are repeated in more than one area. With prior
71 written approval from OSEP, amendments to the Activities to Reach Results column listed in the
72 tables may be made when necessary to support achievement of compliance outcomes within the
73 required timelines. The Activities to Reach Results will be evaluated every six months to determine
74 their effectiveness and any need for change. Any requests for changes in the activities or any other
75 amendments to the Agreement shall be submitted in writing to OSEP.

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79 **III. Current Status, Goals and Measurable Outcomes and Verification for Five Areas of**
80 **Non-Compliance**

81 1. AREA 1: GENERAL SUPERVISION

82 Current Status: The Department's January 6, 2003 monitoring report found that: DHEC did not
83 have a method to identify local noncompliance with Part C requirements, that Part C private
84 providers were not following Part C regulations (including provisions that require early intervention
85 services to be provided in the natural environment), DHEC did not monitor other agencies,
86 institutions, organizations and providers used by the State to carry out Part C, DHEC did not
87 enforce all obligations under Part C and DHEC had not adopted and used proper methods of
88 administering each program, including providing technical assistance and training. DHEC's self-
89 assessment data and BabyTrac Data support these findings.

90 Outcome: DHEC will ensure that all eligible infants and toddlers and their families have available
91 appropriate early intervention services in accordance with Part C requirements through the
92 development and implementation of an interagency comprehensive monitoring and general
93 supervision system that includes a continuous improvement and focused monitoring process.

94 Measurable Goals and Verification: DHEC has identified the following goals and will either
95 provide or make available verification to the Department for each goal.

96 Goal 1: Monitoring policies, procedures, and instruments will identify compliance deficiencies
97 and ensure these are corrected in a timely manner.

98 Goal 2: Ongoing technical assistance and training to public and private providers, administrators,
99 paraprofessionals, and special instructors will be provided to ensure compliant provision
100 of services to infants and toddlers with disabilities and their families.

101 Goal 3: Appropriate sanctions will be used when necessary to enforce correction of deficiencies.

102 Verification:

103 In its quarterly report to OSEP, DHEC shall provide summaries of the status of each of the above
104 goals (consistent with the General Supervision Compliance Work Plan) and shall provide a
105 narrative of how DHEC has analyzed and responded to the data provided by each BNCT. DHEC
106 shall also provide in its quarterly reports, summaries of progress in meeting the target completion
107 dates for each of the activities identified under general supervision, including (1) the identification
108 and correction of any barriers, legislative or other, to ensure compliance with Part C, (2) an
109 interagency memorandum of agreement that focuses on monitoring of all State agencies that
110 provide Part C services, and (3) procedures for enforcing or correcting identified non-compliance,
111 including use of appropriate sanctions. In addition, DHEC will submit the verification data and/or
112 documentation listed in the attached General Supervision Compliance Work Plan on the dates the
113 quarterly reports are due to OSEP.

114 2. AREA 2: CHILD FIND/PUBLIC AWARENESS

115 Current Status: OSEP's monitoring report reflected that: public awareness activities were not
116 effective in informing parents of infants and toddlers with disabilities of underrepresented
117 populations; there was a lack of coordination for child find and public awareness among relevant
118 agencies (including child care, migrant Head Start, SSI); physician referrals were problematic

119 including “wait and see” attitude and misperception that BabyNet addresses child health instead of
120 development; there was a lack of public awareness materials in daycare centers, pediatric offices or
121 developmental centers; and public awareness materials were not distributed or available in Spanish.
122 DHEC’s self-assessment data and BabyTrac Data support these findings.

123 Outcome: DHEC will ensure the development and implementation of a comprehensive,
124 coordinated public awareness/child find system that results in the identification, evaluation, and
125 assessment of all eligible infants and toddlers.

126 Measurable Goals and Verification: DHEC has identified the following goals and will either
127 provide or make available verification to the Department for each goal.

128 Goal 1: DHEC shall ensure that the child find system is coordinated with all major efforts to
129 locate and identify eligible children conducted by other State agencies.

130 Goal 2: DHEC will ensure that the child find system is coordinated with all other major efforts to
131 locate and identify children conducted by other State agencies, programs, and
132 organizations, and DHEC shall conduct outreach to these entities including private
133 entities such as pediatric practices and day care centers.

134 Goal 3: Families will have access to public awareness materials (to ensure identification of all
135 eligible infants and toddlers and to enable access to culturally competent services) that
136 inform and promote referral of eligible infants and toddlers to the Part C system.

137 Verification: Within the first week of each month and each month thereafter, each BNCT will
138 prepare a report regarding the Child Find verification data listed in the Child Find
139 Compliance Work Plan. In its quarterly report to OSEP, DHEC shall provide monthly
140 data summaries, by each BNCT, and shall provide a narrative of how DHEC has
141 analyzed and responded to the data provided by each BNCT.

142 3. AREA 3: TIMELY/COMPREHENSIVE EVALUATIONS

143 Current Status: OSEP’s monitoring report reflected that: evaluations and assessments were not
144 completed in all five developmental areas; content on initial IFSPs was limited to future referrals for
145 further evaluation and assessment; infants and toddlers were not evaluated in the areas of vision and
146 hearing; evaluations and assessments were often not completed within the 45-day timeline; there are
147 waiting lists for evaluations and assessments; and shortages of providers in some areas impacted
148 completion of evaluations and assessments in a timely manner.

149 Outcome: DHEC will ensure that infants and toddlers receive timely comprehensive evaluations in
150 all five developmental areas to enable the initial IFSP team meeting to be convened within 45
151 calendar days from referral.

152 Measurable Goals and Verification: DHEC has identified the following goals and will either
153 provide or make available verification to the Department for each goal.

154 Goal 1: DHEC will ensure that evaluations and assessments are completed in all five
155 developmental areas – cognitive development, physical development, including vision and
156 hearing, communication development, social and emotional development and adaptive
157 development.

158 Goal 2: DHEC will ensure that infants and toddlers receive timely evaluations and assessments in
159 order to enable the initial IFSP team meeting to be convened within 45 calendar days from
160 referral and eliminate waiting lists for evaluations and assessments.

161 Verification: Each BNCT will demonstrate continuous improvement in ensuring all infants and
162 toddlers receive timely evaluations and assessments, including vision and hearing within the 45-day
163 timeline. Quarterly benchmarks will be established for each BNCT and incorporated in the BNCT
164 Compliance Plan. Benchmarks will take the BNCT from their specific baseline in this area and
165 ensure continuous substantial progress until all infants and toddlers with disabilities receive timely
166 evaluations and assessments in all developmental areas, including vision and hearing, within the 45-
167 day timeline. DHEC will monitor each BNCT to ensure that benchmarks are met and will intervene
168 directly with individual BNCTs, as necessary. In its quarterly report to OSEP, DHEC shall provide
169 monthly summaries, by each BNCT and shall provide a narrative of how DHEC has analyzed and
170 responded to the data provided by each BNCT.

171 4. AREA 4: PROPER DEVELOPMENT OF, AND TIMELY PROVISION OF EARLY
172 INTERVENTION SERVICES ON, INDIVIDUALIZED FAMILY SERVICE PLAN (IFSP)

173 Current Status: OSEP's monitoring report reflected that: Present levels of functioning were written
174 in some developmental areas, but were frequently omitted for the physical and communication
175 developmental areas; all needed services, including family support services, were not listed on the
176 IFSP; providers reported that it was difficult to obtain counseling services and parenting classes; the
177 provision of early intervention services was delayed; for some infants and toddlers with disabilities
178 and families, EI services were not provided; and waiting lists existed for early intervention services.

179 Outcome: DHEC will ensure the development and implementation of complete IFSPs for all
180 eligible infants and toddlers with disabilities and their families and ensure that all infants and
181 toddlers with disabilities and their families are provided early intervention services in a timely
182 manner.

183 Measurable Goals and Verification: DHEC has identified the following goals and will either
184 provide or make available verification to the Department for each goal.

185 Goal 1: All IFSPs will contain the required components in accordance with Part C.

186 Goal 2: All infants and toddlers with disabilities and their families will receive all early
187 intervention services identified on their IFSP in a timely manner and waiting lists for all
188 early intervention services will be eliminated.

189 Verification: Each BNCT will demonstrate continuous improvement in eliminating waiting lists for
190 receipt of early intervention services on the IFSP each quarter. Quarterly benchmarks will be
191 established for each BNCT and incorporated in the BNCT's Compliance Plan. Benchmarks will
192 take the BNCT from their specific baseline in this area and ensure continuous substantial progress
193 until there are no infants and toddlers on waiting lists for evaluation and assessment. DHEC will
194 monitor each BNCT to ensure that benchmarks are met and will intervene directly with individual
195 BNCTs, as necessary. In its quarterly report to OSEP, DHEC shall provide monthly summaries by
196 each BNCT and shall provide a narrative of how DHEC has analyzed and responded to the data
197 provided by each BNCT.

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199 5. AREA 5: TIMELY TRANSITION PLANNING AND CONFERENCES

200 Current Status: OSEP’s monitoring report reflected that: school districts were not being notified of
201 BabyNet eligible children approaching age three; transition meetings were not being held in
202 accordance with Part C requirements; and transition plans were not being developed and
203 implemented in accordance with Part C requirements.

204 Outcome: DHEC will ensure that timely transition notices are provided and transition meetings are
205 held and that transition plans are developed to assist all eligible children and their families as they
206 exit Part C.

207 Measurable Goals and Verification: DHEC has identified the following goals and will either
208 provide or make available verification to the Department for each goal.

209 Goal 1: DHEC will ensure that the local education agency is notified of children who are
210 approaching the age for transition at least 90 days prior to the child turning three in
211 accordance with Part C.

212 Goal 2: DHEC will ensure that a transition meeting is held in accordance with the requirements of
213 Part C of IDEA.

214 Goal 3: DHEC will ensure that transition plans are developed and implemented in accordance
215 with the requirements under Part C.

216 Verification: Each BNCT will demonstrate continuous improvement in reducing the number of
217 eligible children who have not received required Part C Transition planning in a timely manner
218 when exiting BabyNet. Quarterly benchmarks will be established for each BNCT and incorporated
219 in the BNCT’s Compliance Plan. Benchmarks will take the BNCT from their specific baseline in
220 this area and ensure continuous substantial progress until all eligible children receive required Part
221 C Transition planning in a timely manner when exiting BabyNet. DHEC will monitor each BNCT
222 to ensure that benchmarks are met and will intervene directly with individual BNCTs, as necessary.
223 In its quarterly report to OSEP, DHEC shall provide monthly summaries, by each BNCT and shall
224 provide a narrative of how DHEC has analyzed and responded to the data provided by each BNCT.

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226 Other Conditions
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228 DHEC agrees that its continued eligibility to receive Part C funds is predicated upon compliance
229 with statutory and regulatory requirements of that program, which includes requirements not
230 addressed specifically by this Agreement. Any failure by DHEC to comply with the goals,
231 objectives, timetables, verification or other provisions of the Compliance Agreement, including the
232 reporting requirements, will authorize the Department to consider the agreement no longer in effect.
233 If DHEC fails to comply with the terms of the Agreement, the Department may take any actions
234 authorized under the General Education Provisions Act (GEPA at 20 U.S.C. §§1200 et seq.) and the
235 IDEA at 20 U.S.C. §§1401 et seq. and 1443-1445. Such actions may include, under 20 U.S.C.
236 §1234c, the withholding of Part C funds from the State (consistent with the procedures set forth in
237 the IDEA or at 20 U.S.C. §1234d).

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238 Signed for the South Carolina Department of Health and Environmental Control:

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243 C. Earl Hunter, Commissioner

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245 Dated: _____

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247 Signed for the U.S. Department of Education:

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252 Roderick Paige, Secretary

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254 Dated: _____

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256 Date this Compliance Agreement Becomes Effective: _____

257 (Date on which Written Findings of Fact are Issued)

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