Compliance Agreement Under Part C of the Individuals with Disabilities Education Act, the Infants and Toddlers with Disabilities Program, Between the U.S. Department of Education and the South Carolina Department of Health and Environmental Control

I. Introduction

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

II. Areas of Identified Non-Compliance

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

1. General Supervision: DHEC must meet its general supervision responsibilities and monitor for compliance with all requirements of Part C, including employing appropriate methods of administering the Part C program, including 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.

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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.
2. **Child Find/Public Awareness:** DHEC must 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. **Timely/Comprehensive Evaluations:** DHEC must 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. DHEC must ensure there are adequate personnel in all geographic areas to enable evaluations and assessments to be completed within the 45-day timeline and to eliminate waiting lists for evaluations and assessments.

4. **Identification and Timely Provision of All Early Intervention Services on IFSPs:** DHEC must 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, including any family training, counseling and home visits. DHEC must ensure that all early intervention services identified by the IFSP team are provided in a timely manner to infants and toddlers with disabilities and their families. DHEC must ensure that the present level of functioning for each developmental area is identified on each IFSP.

5. **Transition Planning:** DHEC must conduct timely and content-appropriate transition plans and transition meetings for children who are transitioning from Part C to Part B of IDEA. For families transitioning to other programs, DHEC will develop content-appropriate transition plans and make reasonable efforts to convene a transition conference.

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

1. AREA 1: GENERAL SUPERVISION

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

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

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

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

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

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

Verification:

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

2. AREA 2: CHILD FIND/PUBLIC AWARENESS

Current Status: OSEP’s monitoring report reflected that: public awareness activities were not effective in informing parents of infants and toddlers with disabilities of underrepresented populations; there was a lack of coordination for child find and public awareness among relevant agencies (including child care, migrant Head Start, SSI); physician referrals were problematic
including “wait and see” attitude and misperception that BabyNet addresses child health instead of
development; there was a lack of public awareness materials in daycare centers, pediatric offices or
developmental centers; and public awareness materials were not distributed or available in Spanish.
DHEC’s self-assessment data and BabyTrac Data support these findings.

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

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

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

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

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

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

3. AREA 3: TIMELY/COMPREHENSIVE EVALUATIONS

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

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

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

Goal 1: DHEC will ensure that evaluations and assessments are completed in all five
developmental areas – cognitive development, physical development, including vision and
hearing, communication development, social and emotional development and adaptive
development.
Goal 2: DHEC will ensure that infants and toddlers receive timely evaluations and assessments in order to enable the initial IFSP team meeting to be convened within 45 calendar days from referral and eliminate waiting lists for evaluations and assessments.

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

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

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

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

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

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

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

Verification: Each BNCT will demonstrate continuous improvement in eliminating waiting lists for receipt of early intervention services on the IFSP each quarter. Quarterly benchmarks will be established for each BNCT and incorporated in the BNCT’s Compliance Plan. Benchmarks will take the BNCT from their specific baseline in this area and ensure continuous substantial progress until there are no infants and toddlers on waiting lists for evaluation and assessment. DHEC will monitor each BNCT to ensure that benchmarks are met and will intervene directly with individual BNCTs, as necessary. In its quarterly report to OSEP, DHEC shall provide monthly summaries by each BNCT and shall provide a narrative of how DHEC has analyzed and responded to the data provided by each BNCT.
5. **AREA 5: TIMELY TRANSITION PLANNING AND CONFERENCES**

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

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

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

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

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

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

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

**Other Conditions**

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

C. Earl Hunter, Commissioner
Dated: ________________

Signed for the U.S. Department of Education:

Roderick Paige, Secretary
Dated: ________________

Date this Compliance Agreement Becomes Effective: ________________
(Date on which Written Findings of Fact are Issued)