

Archived Information

COMPLIANCE AGREEMENT

**Under Part C of the Individuals with Disabilities Education Act (IDEA),
The Infants and Toddlers with Disabilities Program,
Between the United States Department of Education and the
Arizona Department of Economic Security**

I. Introduction/Background

This Compliance Agreement is entered into under the General Education Provisions Act (GEPA) (at 20 U.S.C. §1234f) between the United States Department of Education (the Department or ED) and the State of Arizona through the Arizona Department of Economic Security (DES) to address certain requirements under Part C of the Individuals with Disabilities Education Act (IDEA) (codified at 20 U.S.C. §§1401 through 1407 and 1431 through 1445) and its implementing regulations (at 34 CFR Part 303).

Under section 1234f of GEPA, the Department may enter into a Compliance Agreement with the purpose of bringing a grant recipient (DES) into full compliance with the applicable requirements of law as soon as feasible and not to excuse or remedy past violations. Before entering into a compliance agreement, the Department must hold a hearing where the recipient and other affected and interested parties are invited to participate. Compliance agreements must contain an expiration date not later than three years from the date of the Written Findings and the terms and conditions with which the recipient must comply until it is in full compliance. A compliance agreement allows a recipient to continue to receive its grant award while it works toward achieving full compliance under the terms of the agreement.

On March 15, 2004, in response to Arizona's Part C Federal fiscal year (FFY) 2001 Annual Performance Report (APR) and following a State verification monitoring visit by the ED Office of Special Education Programs (OSEP) to Arizona in December 2003, OSEP issued two letters documenting DES's continued noncompliance with the following four requirements:

(1) Utilizing effective monitoring procedures to ensure the identification and correction of noncompliance with Part C under 34 CFR §303.501; (2) Conducting evaluations and assessments and holding the initial Individualized Family Service Plan (IFSP) meeting within 45 days from initial referral under 34 CFR §§303.321(e)(2), 303.322(e)(1) and 303.342(a); (3) Providing in a timely manner all early intervention services identified on the IFSP to all eligible infants and toddlers with disabilities, including infants and toddlers on reservations, under 34 CFR §303.342(e); and (4) Ensuring that all service coordination functions are implemented under 34 CFR §§303.23 and 303.344(g). These same noncompliance findings were four of the seven findings originally identified in OSEP's 2000 Arizona Part C Monitoring Report.

Although DES has addressed three of the findings from OSEP's 2000 monitoring report, DES has indicated that it will need more than one year to make systemic changes in its monitoring, data, service delivery, and other systems in order to ensure correction of these remaining four findings.

On March 25, 2004, DES Director David Berns requested that the Department consider entering into a Compliance Agreement with DES under Part C of the IDEA. In addition, Mr. Berns invited OSEP to conduct public hearings in Arizona as required by GEPA prior to the

establishment of a Compliance Agreement. On May 20, 2004, OSEP conducted a public hearing in Phoenix, Arizona, regarding DES's ability to meet certain Part C requirements. The testimony and materials either presented at the hearing, or provided in relation to the hearing, by DES representatives, other Arizona participating agencies, Part C providers, and other affected or interested individuals confirmed that, as required under 20 U.S.C. §1234f, full compliance with Part C requirements by DES is genuinely not feasible until a future date, but that DES will be able to come into full compliance with Part C within three years. Testimony and written submissions supported the development of a compliance agreement that would bring DES into compliance with Part C as soon as feasible and allow continuation of Part C funding by OSEP to Arizona during this process. As indicated in the Secretary's Written Findings and Decision of the ED Secretary (Secretary), ED agrees that a compliance agreement is appropriate to address noncompliance and this document reflects the terms of the Compliance Agreement.

II. Parties

The parties to this Compliance Agreement under IDEA, Part C, are the U.S. Department of Education and the Arizona Department of Economic Security (DES). DES is the designated lead agency under Part C of the IDEA. The Arizona Early Intervention Program (DES/AZEIP) is the office within DES that is responsible for the daily administration and oversight of Arizona's early intervention program for infants and toddlers with disabilities and their families under Part C of the IDEA.¹ The Arizona Part C program referred to herein includes the AZEIP participating state agencies (DES, AHCCCS, ADE, ASDB and ADHS) and the providers of early intervention services (whether contractors of AZEIP or other state agency entities).

III. Areas of Identified Noncompliance

Under the terms of this Compliance Agreement, entered into pursuant to 20 U.S.C. §1234f, DES must be in full compliance with the requirements of Part C of IDEA no later than three years from the effective date of this Agreement, which is the date the Secretary signs the Written Findings of Fact and Decision and the Compliance Agreement. Specifically, DES must ensure and document that no later than three years from the effective date of this Agreement, compliance is achieved in each of the following four major areas:

1. **General Supervision**: DES is meeting its general supervision responsibilities and monitoring for compliance with all requirements of Part C, including using appropriate methods to administer the Part C program. In particular, DES is: 1) monitoring state participating agencies/DES participating programs and governmental or private providers who deliver or contract to deliver Part C services in Arizona; 2) enforcing contractual and/or legal obligations regarding Part C compliance; 3) providing training and technical

¹ The Arizona Part C early intervention statewide system of services comprises the following State agencies and its contractors: (1) DES (which includes AZEIP, and the Division of Developmental Disabilities (DDD) (another unit within DES, and which is a major early intervention service provider in Arizona), (2) the Arizona State Schools for the Deaf and the Blind (ASDB), (3) the Arizona Department of Health Services (ADHS), (4) the Arizona Department of Education (ADE), and (5) the Arizona Health Care Cost Containment System (AHCCCS).

assistance as needed to providers and governmental participants in the Part C program; and 4) correcting deficiencies identified through monitoring.

2. **Timely Evaluation, Assessment and Development of the IFSP:** DES is ensuring that all potentially eligible infants and toddlers referred to Part C receive timely and comprehensive evaluations in all five developmental areas (cognitive, physical, communication, social/emotional, and adaptive skills). Evaluations and assessments are completed and, if the infant or toddler is eligible, the initial IFSP meeting is conducted within 45 days of the date a referral is received containing sufficient family contact information to enable the Arizona Part C program to contact the family.
3. **Identification and Timely Provision of All Early Intervention Services Specified in IFSPs:** DES is ensuring that all early intervention services identified on the IFSPs are linked to functional outcomes, which are based on the current developmental needs of eligible infants or toddlers with disabilities and the resources, priorities and concerns of their families. DES is also ensuring that all early intervention services identified on the IFSP are provided in a timely manner to all eligible infants and toddlers with disabilities, including Native American families and children residing on reservations.
4. **Service Coordination:** DES is ensuring that each eligible family has a single service coordinator who: 1) coordinates all services across agency lines; 2) serves as the single point of contact for the family to help parents obtain the services and assistance they need; 3) facilitates timely delivery of available services; 4) seeks appropriate services necessary to benefit the development of each child served for the duration of the child's eligibility; and (5) ensures that all infants and toddlers and their families receive appropriate prior written notice and understand their procedural rights and safeguards.

IV. Funding and Work Plans

During the term of the Compliance Agreement, DES 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.

This Compliance Agreement specifies the goals and timetables required for DES to come into full compliance with its Part C obligations in each of the four areas. DES is required to submit documentation concerning its compliance with enumerated activities, goals and timetables. Included in this Compliance Agreement are two individual work plans (Attachments A and B), which address the previously enumerated areas of noncompliance with Part C requirements. These work plans include measurable outcomes, goals/objectives, activities to achieve the goals, target completion dates for each activity and goal, and ways to verify compliance with the work plans during the three-year term of this Agreement. A report on progress made under these work plans, reflecting activities/goals met, any obstacles and other information as to progress shall be submitted by DES quarterly to OSEP. This reporting shall begin the final day of the third month following the effective date of this Agreement, and shall continue quarterly throughout the term of this Agreement. Attachment C, DES/AzEIP's Program Self-Assessment and Monitoring

Cycle, supports Attachment A, General Supervision, and describes the schedule for monitoring programs within the State.

Amendments to this Compliance Agreement must be made in writing. If DES determines that any items in the work plans need to be changed or items need to be deleted/added, DES will promptly submit to OSEP in writing any requests for changes to the work plans and the terms of this Compliance Agreement. Within five working days of receipt of any such request, OSEP shall acknowledge via e-mail or letter that the request was received and the date of receipt. OSEP will respond in writing within a reasonable period of time to DES's written requests for amendments. OSEP will review proposed amendments for any activities to achieve compliance including tasks, timelines and reporting requirements; DES is not required to implement those activities that are the subject of proposed amendments and are pending review by OSEP until OSEP has provided its response regarding those activities. Any requests for amendments to the compliance agreement by the State will be responded to in writing by OSEP.

V. Current Status, Goals/Measurable Outcomes and Verification

AREA 1: General Supervision

Current Status: The Department's 2000 Monitoring Report found that DES did not have a method for identifying and correcting noncompliance with Part C requirements. OSEP's March 15, 2004 letter following its December 2003 verification monitoring visit to the State confirmed that, although DES had piloted a partial monitoring system, it did not have in place a monitoring system to ensure the monitoring of all entities that provide Part C services as well as monitoring for all Part C compliance requirements. In addition, the March 15, 2004 letter documented that DES did not have in place methods to ensure the correction of any identified noncompliance.

Outcome: DES will utilize effective monitoring and general supervision procedures to ensure the identification and correction of noncompliance with Part C.

Measurable Goals:

Goal 1: DES will monitor all State or contracted programs that provide Part C services in Arizona, for compliance with all Part C requirements.

Goal 2: DES will ensure that deficiencies identified through monitoring are corrected in a timely manner.

Verification: In its quarterly reports to OSEP and through additional specific reporting (as identified on the attached workplans), DES shall submit verification that it has: (1) revised or replaced its interagency agreement(s) among the AzEIP participating State agencies to address all Part C general supervision requirements; (2) aligned policies and procedures across agencies to include general supervision and Part C compliance issues (on monitoring, data collection, contract review and technical assistance); (3) implemented a monitoring system, which includes analysis of data to identify and correct noncompliance and ensuring correction of identified noncompliance; (4) formalized an interagency technical assistance system; (5) revised its ACTS data system to expand data collection and reporting functions, incorporating timely data access

and management reporting at the local and State AZEIP offices; and (6) incorporated data elements and reports into the data systems of other Part C participating State agencies.

**AREAS 2, 3, and 4: Early Intervention Services in the Natural Environment (EIS-NE):
Timely Identification, Individualization and Provision of all Early Intervention and Service
Coordination Services**

Current Status: OSEP's 2000 monitoring report found that DES had failed to: (1) Conduct evaluations and assessments and hold the initial Individualized Family Service Plan (IFSP) meeting within 45 days from initial referral; (2) Individualize, and provide in a timely manner, all early intervention services identified on the IFSP to all eligible infants and toddlers with disabilities, including infants and toddlers on reservations; and (3) Ensure that all service coordination functions are implemented. OSEP's March 15, 2004 letter following its December 2003 verification monitoring visit to the State confirmed that the State had not corrected these areas of noncompliance.

Outcomes: The initial IFSP meeting will be held within 45 days of a referral and IFSPs will be individualized based on the child and family's unique needs. All appropriate early intervention services will be identified on the IFSP and provided in a timely manner along with service coordination for all eligible infants and toddlers with disabilities, including infants and toddlers on reservations.

Measurable Goals:

Goal 1: Initial IFSP meetings (and evaluations and assessments) for all infants and toddlers referred to Part C shall be conducted within 45 days of the referral.

Goal 2: All IFSPs shall contain the early intervention services that are needed by the child and family to meet the functional outcomes, which are based on the unique strengths and needs of the child and the resources, priorities and concerns of the family. All eligible infants and toddlers with disabilities and their families shall receive the early intervention services identified on their IFSP in a timely manner.

Goal 3: Each family shall have a single designated service coordinator who shall: 1) coordinate all services across agency lines; 2) serve as the single point of contact for the family to help it obtain the services and assistance it needs; 3) facilitate timely delivery of available services; 4) seek appropriate services necessary to benefit the development of each child served for the duration of the child's eligibility; and (5) ensure that all families receive appropriate prior written notice and understand their procedural rights and safeguards.

Verification: In its quarterly reports to OSEP and through additional other specific reporting (as identified on the attached work plans), DES shall submit verification that it has: (1) evaluated the nature and cause of the delays in system capacity issues (timely evaluation and assessments and provision of early intervention services) and implemented appropriate and responsive recruitment and retention strategies; 2) developed an interagency, team-based service delivery model that ensures compliance with timely identification of infants and toddlers with disabilities and provision of services to infants and toddlers with disabilities and their families while maximizing personnel resources; (3) ensured that all service coordination functions are

implemented statewide and across agencies; (4) aligned policies and procedures across agencies to ensure compliance with Part C requirements regarding the 45-day timeline, identification and timely provision of early intervention services and service coordination functions; (5) implemented a monitoring system, which includes analysis of data to identify and correct noncompliance and ensuring correction of identified noncompliance regarding 45-day timeline, identification and timely provision of early intervention services and service coordination functions; (6) revised its ACTS data system to expand data collection and reporting on Part C requirements regarding 45-day timeline, identification and timely provision of early intervention services and service coordination functions; and (7) incorporated data elements and reports into the data systems from other Part C participating state agencies (to ensure compliance with 45-day timeline, identification and timely provision of early intervention services and service coordination functions).

VI. Other Terms and Conditions

This Compliance Agreement is executed in two original counterparts in order to provide each party with an original. DES agrees that its continued eligibility to receive Part C funds is predicated upon compliance with statutory and regulatory requirements of that program, which include requirements not addressed specifically by this Agreement. Any failure by DES 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 DES fails to comply with the terms of the Agreement, the Department may take any actions authorized under GEPA at 20 U.S.C. §§1200 et seq. and the IDEA at 20 U.S.C. §§1401 et seq. (including 1443-1445). Such actions may include withholding of funds under the IDEA (42 U.S.C. §§1416 and 1442), referral to the Department of Justice, and other enforcement mechanisms.

Attachments:

Attachment A: Area 1: General Supervision

Attachment B: Areas 2, 3 and 4: Early Intervention Services in the Natural Environment

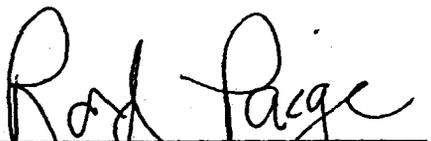
Attachment C: Program Self Assessment and Monitoring Cycle

Signed for the Arizona Department of Economic Security:


David A. Berns, Director

Dated: 12-8-04

Signed for the U.S. Department of Education:


Rod Paige, Secretary

Dated: DEC 16 2004

Date this Compliance Agreement Becomes Effective: DEC 16 2004
(Date on which Written Findings of Fact and Decision are Signed)