

September 23, 2004

Honorable Earl Hunter  
Commissioner  
Department of Health and Environmental Control  
260 Bull Street  
Columbia, South Carolina 29201

Dear Commissioner Hunter:

The purpose of this letter is to respond to the Department of Health and Environmental Control's (DHEC's) May 28, 2004 submission of its Federal Fiscal Year (FFY) 2002 Annual Performance Report (APR) for the Individuals with Disabilities Education Act (IDEA) Part C funds used during the grant period July 1, 2002 through June 30, 2003. The APR reflects actual accomplishments made by the State during the reporting period, compared to established objectives. The APR for Part C of IDEA is designed to provide uniform reporting from States and result in high-quality information across States.

The APR is a significant data source utilized in the Continuous Improvement and Focused Monitoring System (CIFMS) implemented by the Office of Special Education Programs (OSEP), within the U.S. Department of Education. The APR falls within the third component of OSEP's four-part accountability strategy (i.e., supporting States in assessing their performance and compliance, and in planning, implementing, and evaluating improvement strategies) and consolidates the self-assessing and Improvement Planning functions of the CIFMS into one document. OSEP's Memorandum regarding the submission of Part C APRs directed States to address five cluster areas: General Supervision; Comprehensive Public Awareness and Child Find System; Family Centered Services; Early Intervention Services in Natural Environments; and Early Childhood Transition.

### ***Background***

On January 6, 2003, OSEP issued a Monitoring Report that identified seven areas of noncompliance with Part C in South Carolina. On May 20, 2003, OSEP conducted a hearing to determine if South Carolina was an appropriate candidate for a Compliance Agreement under Part C. In its September 9, 2003 Written Findings and Decision, the Department concluded that South Carolina had addressed two of the seven findings and on that same date, the Department entered into a Part C Compliance Agreement with DHEC regarding the remaining five areas of noncompliance from OSEP's 2003 Monitoring Report to ensure that DHEC: (1) meets its general supervision responsibilities under Part C including monitoring, enforcing obligations and providing training and technical assistance; (2) has a coordinated child find system and that public awareness materials are made available to the public; (3) ensures that all infants and toddlers receive timely and comprehensive evaluations such that the initial IFSP meeting is held

within 45 days of referral; (4) ensures that early intervention services needed by infants and toddlers with disabilities and their families are identified on the Individualized Family Service Plan (IFSP) and provided in a timely manner; and (5) conducts timely transition planning and conferences. Under the Compliance Agreement, DHEC has until September 8, 2006 to come into compliance with these five findings of noncompliance.

The FFY 2002 APR reports on data prior to DHEC's entering into the Compliance Agreement and thus OSEP's response to this APR is limited to a review of the information provided by the State and does not include responses to the quarterly reports that DHEC was required to submit under the Compliance Agreement. OSEP will be conducting a visit to the State in the Fall 2004 to review the implementation of the Compliance Agreement by DHEC. Following that visit, OSEP will issue under separate cover, a letter that responds to the State's progress in year one of the Compliance Agreement, as well as the quarterly reports submitted by DHEC under the Compliance Agreement.

In September 2003, OSEP conducted a visit to South Carolina to verify the effectiveness of the State's systems for general supervision and collection of data under section 618 of the IDEA. In OSEP's December 24, 2003 letter regarding the visit, OSEP reflected the State's challenges in collecting accurate personnel data and ensuring accurate data entry, revision and analysis. In the letter, OSEP suggested that as the State implemented its new web-based system, DHEC consider ways to use the system to inform its monitoring decision-making. OSEP also encouraged DHEC to discuss effective methods of collecting and reporting personnel data with Westat and other Federal technical assistance providers such as the National Early Childhood Technical Assistance Center and the Regional Resource Center to improve the State's performance in this area. In addition, OSEP concluded that the State's monitoring and dispute resolution systems were not sufficiently developed to be used in a coordinated manner. OSEP also concluded that DHEC's proposed plan for general supervision, as reflected in the Compliance Agreement constituted a reasonable approach to the identification and correction of noncompliance; however, OSEP could not, at that time, determine whether the plan, when implemented, would be effective in identifying and correcting noncompliance.

The State's APR should reflect the collection, analysis, and reporting of relevant data, and document data-based determinations regarding performance and compliance in each of the cluster areas. However, as noted above, because DHEC is operating under a Compliance Agreement, OSEP will not respond to the noncompliance issues that are the subject of the Compliance Agreement until after OSEP's Fall 2004 visit to the State. OSEP's comments are listed by cluster area.

### ***General Supervision***

OSEP's 2003 Monitoring Report identified the following noncompliance that was addressed in the Compliance Agreement: (1) DHEC did not have a method to identify local noncompliance with Part C requirements (34 CFR § 303.501(b)(1)); (2) DHEC did not monitor other agencies or enforce all obligations under Part C (34 CFR §303.501(b)(2)); and (3) DHEC had not adopted and used proper methods of administering each program, including providing technical assistance and training (34 CFR §303.501(b)(3)).

In its FFY 2002 APR, DHEC identified components of its general supervision system: a State-wide, web-based data system that was utilized to identify Part C compliance, a targeted training and technical assistance system (linked to areas of noncompliance), local compliance plans, enforcement actions, an Interagency Memorandum of Agreement, contracting procedures to ensure accountability, and a dispute resolution system. DHEC identified OSEP's February 2003 Monitoring Report findings as baseline data in this cluster. On March 31, 2004 DHEC submitted a signed Memorandum of Agreement with other State agencies providing Part C services as required under the Compliance Agreement. DHEC provided the following information on additional activities to address noncompliance during this reporting period: (1) revision of contracts for private contractors; (2) adoption of an Infant-Toddler credential sanctions process; (3) collection of baseline data regarding referrals of underrepresented populations (including rural, Catawba Nation, and other populations) in addition to referrals of infants and toddlers by primary referral sources; and (4) revision of the State's data management system.

OSEP appreciates DHEC's reporting on the State's activities to ensure performance and compliance in this cluster area. As noted earlier, because DHEC is in the first year of its three-year Compliance Agreement, OSEP will review DHEC's status in meeting the conditions of the Compliance Agreement and in correcting this area of noncompliance after OSEP's Fall 2004 visit to the State.

### ***Comprehensive Public Awareness and Child Find System***

OSEP's 2003 Monitoring Report identified the following area of noncompliance that was addressed in the State's Compliance Agreement: the State did not have a coordinated child find system and did not ensure that public awareness materials were made available to the public (34 CFR §303.321). In its FFY 2002 APR on page 12, DHEC reported that all activities under the Compliance Agreement were implemented during this reporting period. OSEP's 2003 Monitoring Report findings were identified as baseline data in this cluster. On page 12, DHEC reported that as of December 2003, the State identified 160 additional infants and toddlers as eligible for Part C services as compared to the December 2002 child count. DHEC reported that this increase resulted in an increased enrollment of 1.06 percent of all children birth-to-three in South Carolina. The State reported that it was below both the national average and its target rate of two percent. The State identified a target rate of 1.25 percent for December 2004. Page 12 of the APR contained a numerical goal for increasing the number of children identified by Part C. While it is not inconsistent with Part C of the IDEA to include a numerical goal to increase the percentages of infants and toddlers with disabilities determined eligible for services, the State must continue to monitor to ensure that eligibility decisions for all infants and toddlers are made in conformity with the individual evaluation and assessment requirements of Part C of IDEA (at 34 CFR §§303.320 through 303.323) and not based upon a numerical goal.

OSEP appreciates DHEC's reporting on the State's activities to ensure performance and compliance in this cluster area. As noted earlier, because DHEC is in the first year of its three-year Compliance Agreement, OSEP will review DHEC's status in meeting the conditions of the Compliance Agreement and in correcting this area of noncompliance after OSEP's Fall 2004 visit to the State.

### ***Family Centered Services***

Noncompliance was not identified in OSEP's 2003 Monitoring Report for this cluster. On page 19, DHEC reported that all targeted activities for the reporting period were implemented. In order to improve performance for FFY 2003, the State indicated that it planned to implement the following activities: (1) revision of the State's data management system to include data on the completion of family assessments and the number of parents that decline family assessment; (2) revision of Babynet policies and procedures related to family assessment and services; (3) revision of the IFSP to include data on family outcomes and family services; (4) State-wide training on new IFSP policies and procedures related to family outcomes and services; and (5) in accordance with Medicaid requirements, implementation of an annual family survey to determine service quality and impact on the family's ability to enhance their child's development. OSEP looks forward to reviewing information resulting from implementation of these strategies in the next APR.

### ***Early Intervention Services in Natural Environments***

OSEP's 2003 Monitoring Report identified the following areas of noncompliance that were addressed in the State's Compliance Agreement: (1) multi-disciplinary evaluations and assessments of all infants and toddlers were not conducted in all five required developmental areas (34 CFR §§303.322(a)(1)) and 303.322(c)(3)(ii)); (2) evaluations and assessments were not completed within the 45-day timeline (34 CFR §§303.321(e)(2), 303.342, and 303.322); and (3) parents and infants and toddlers were on waiting lists for services.

DHEC identified OSEP's 2003 Monitoring Report findings as baseline data in this cluster. On pages 23 through 26, DHEC reported data on the status of waiting lists (136 children waiting for early intervention services State-wide) and the status of evaluations and assessments and initial IFSP meetings within the required 45-day timeline. DHEC also provided descriptions of activities designed to ensure compliance: analysis of three months of self-reported provider data to determine the extent and causes of challenges in this area, and identification of systemic State-wide strategies to resolve compliance issues specific to waiting lists.

The State reported baseline data based on the December 2002 child count that 67 percent of early intervention services were provided in natural environments. On page 29 of the APR, DHEC indicated that one of its goals was that 70 percent of families would receive services in the natural environment. While the State may set a performance goal for providing services in natural environments, the State must monitor to ensure that service setting decisions are made by IFSP meeting participants on an individualized basis and not on a numerical goal. Setting a numerical goal to serve a specific percentage of the State's population in natural environments raises concerns under Part C of IDEA. The Part C regulations, at 34 CFR § 303.12(b), require that, to the maximum extent appropriate to the needs of the child, early intervention services must be provided in natural environments, including the home and community settings in which children without disabilities participate.

The Part C FFY 2002 APR requested data on the percentage of children participating in the Part C program that demonstrate improved and sustained functional abilities (in the developmental areas listed in 34 CFR §303.322(c)(3)(ii)). The State did not provide OSEP with any data in response to this performance indicator. DHEC indicated in its APR that it did not have a mechanism in place to respond to this indicator; however it was following the activities of the National Early Childhood Outcomes Center to assist in planning a system to collect this information. DHEC must provide to OSEP, in the next APR (for FFY 2003), either responsive data or the State's plan on how it will collect this data (whether through sampling, monitoring, individual IFSP review, or other methods).

OSEP appreciates DHEC's reporting on the State's activities to ensure performance and compliance in this cluster area. As noted earlier, because DHEC is in the first year of its three-year Compliance Agreement, OSEP will review DHEC's status in meeting the conditions of the Compliance Agreement and in correcting this area of noncompliance after OSEP's Fall 2004 visit to the State.

### ***Early Childhood Transition***

OSEP's 2003 Monitoring Report identified the following noncompliance that was included in the Compliance Agreement: lack of timely and content-appropriate transition planning including transition meetings for children who are transitioning from Part C services (34 CFR §303.148(b)(2)(i)(ii)). On page 33, of the FFY 2002 APR, the State reported that all activities were implemented during this reporting period. DHEC identified OSEP's 2003 Monitoring Report findings as baseline data in this cluster. The State reported benchmark data on the numbers of children not referred to local education agencies prior to age three, and the numbers of children for whom transition conferences were not conducted for each of its twelve health districts. DHEC provided information on the following activities designed to address noncompliance: (1) data collection, reporting and analysis; (2) the development and implementation of local interagency transition agreements; (3) the completion of local transition compliance plans containing baseline data, targets and benchmarks; and (4) completion of a transition guidance document for families.

OSEP appreciates DHEC's reporting on the State's activities to ensure performance and compliance in this cluster area. As noted earlier, because DHEC is in the first year of its three-year Compliance Agreement, OSEP will review DHEC's status in meeting the conditions of the Compliance Agreement and in correcting this area of noncompliance after OSEP's Fall 2004 visit to the State.

We appreciate your efforts in preparing the APR and in reviewing the impact of your activities under the Compliance Agreement and look forward to meeting with you to review South Carolina's status in implementing the conditions of the Compliance Agreement at the end of year one. We look forward to collaborating with South Carolina as you continue to improve results for infants and toddlers with disabilities and their families. If you have questions, please contact Jacquelyn Twining-Martin at (202) 245-7558.

Sincerely,

Stephanie Smith Lee  
Director  
Office of Special Education Programs

cc: Mr. David Steele  
Part C Coordinator