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February 27, 2007**

Part III

Department of Education

Ohio Department of Health; Written Findings and Decision of the Secretary and Compliance Agreement Under the Infants and Toddlers With Disabilities Program—Part C of the Individuals With Disabilities Education Act; Notice

DEPARTMENT OF EDUCATION

Ohio Department of Health; Written Findings and Decision of the Secretary and Compliance Agreement Under the Infants and Toddlers With Disabilities Program—Part C of the Individuals with Disabilities Education Act

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice of written findings and decision and compliance agreement.

SUMMARY: Section 457 of the General Education Provisions Act (GEPA) authorizes the U.S. Department of Education (Department) to enter into a compliance agreement with a recipient that is failing to comply substantially with Federal program requirements. In order to enter into a compliance agreement, the Department must determine, in written findings, that the recipient cannot comply with the applicable program requirements until a future date and that a compliance agreement is a viable means of bringing about such compliance. On November 8, 2006, the Department entered into a compliance agreement with the Ohio Department of Health (ODH). Under section 457(b)(2) of GEPA, the written findings and decision and compliance agreement must be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: David Steele, U.S. Department of Education, 400 Maryland Avenue, SW., room 4025, Potomac Center Plaza, Washington, DC 20202-2600. Telephone (202) 245-6520.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1-800-877-8339.

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SUPPLEMENTARY INFORMATION: Under Part C of the Individuals with Disabilities Education Act (Part C), the Department provides funds to States to “maintain and implement a statewide, comprehensive, coordinated, multidisciplinary, interagency system to provide early intervention services for infants and toddlers with disabilities and their families.” 20 U.S.C. 1433. Early intervention services are services that are, among other things, “designed to meet the developmental needs of an infant or toddler with a disability, as identified by the individualized family

service plan team, in any 1 or more of the following areas: (i) Physical development; (ii) cognitive development; (iii) communication development; (iv) social or emotional development; or (v) adaptive development”; “are provided by qualified personnel”; “to the maximum extent appropriate, are provided in natural environments, including the home, and community settings in which children without disabilities participate”; and “are provided in conformity with an individualized family service plan adopted in accordance with section 636” of IDEA. 20 U.S.C. 1432(4)(C), (F), (G), and (H).

The Department’s February 27, 2006 letter responding to Ohio’s December 2005 State Performance Plan (SPP) indicated that ODH had yet to ensure compliance with the following four noncompliance findings originally identified in the Department’s March 30, 2001 Ohio Part C Monitoring Report:

(1) *Monitoring:* the lead agency’s responsibility to monitor (identifying and timely correcting any noncompliance by all programs and activities used to implement the statewide early intervention system as required by 34 CFR 303.501(b));

(2) *45-day Timeline:* evaluations and assessments in all five developmental areas and the initial Individualized Family Service Plan (IFSP) meetings are held within 45 days after a referral is received as required by 34 CFR 303.321(e)(2), 303.322(e)(1) and 303.342(a);

(3) *Timely Service Provision:* early intervention services on the child’s IFSP are timely provided as required by 34 CFR 303.340(c), 303.342(e) and 303.344(f)(1); and

(4) *Timely Transition Planning:* 90-day conferences are held as required by 34 CFR 303.148(b)(2)(i) and IFSPs include the early childhood transition plan as required by 34 CFR 303.148(b)(4) and 303.344(h).

On March 10, 2006, ODH Director, J. Nick Baird, requested that the Department consider entering into a compliance agreement with ODH under Part C. Before entering into a compliance agreement, the Department must hold a hearing at which the recipient, individuals affected by any potential compliance agreement, including infants and toddlers with disabilities and their families or other representatives, and other interested parties are invited to participate. In that hearing, the recipient has the burden of persuading the Department that: (1) Full compliance with the applicable requirements of law is not feasible until a future date; and (2) that a compliance

agreement is a viable means for bringing about such compliance in no more than three years. 20 U.S.C. 1234f(b)(1) and (c). If, on the basis of all the evidence available, the Secretary determines that the recipient has met that burden, the Secretary is to make written findings to that effect and publish those findings, together with the substance of the compliance agreement, in the **Federal Register**. 20 U.S.C. 1234f(b)(2).

On May 9, 2006, Department officials conducted a public hearing in Columbus, Ohio regarding ODH’s ability to meet certain Part C requirements. The testimony and materials either presented at the hearing, or submitted in relation to the hearing, by ODH representatives, other State agency representatives, parent and State Interagency Coordinating Council representatives, Part C early intervention service providers, and other affected or interested individuals confirmed that, as required under 20 U.S.C. 1234f, full compliance with Part C requirements by ODH is genuinely not feasible until a future date, but that ODH 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 ODH into compliance with Part C as soon as feasible and would allow continuation of Part C funding by OSEP to Ohio during this process. As indicated in the Written Findings and Decision of the Secretary, the Department has determined that a compliance agreement is appropriate to address the four outstanding areas of Part C non-compliance.

As required by section 457(b)(2) of GEPA, 20 U.S.C. 1234f(b)(2), the text of the Secretary’s Written Findings and Decision and the substance of the compliance agreement are published in this notice of written findings and decision and compliance agreement.

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(Authority: 20 U.S.C. 1234c, 1234f, 1431 through 1444)

Dated: February 20, 2007.

John H. Hager,

Assistant Secretary for Special Education and Rehabilitative Services.

United States Department of Education

In the Matter of the Request of the Ohio Department of Health To Enter Into a Compliance Agreement—Written Findings and Decision of the Secretary

I. Introduction

The United States Department of Education (Department) finds, pursuant to 20 U.S.C. 1234c, that the Ohio Department of Health (ODH) has failed to comply substantially with the requirements of Part C of the Individuals with Disabilities Education Act (Part C or IDEA), 20 U.S.C. 1401–1408 and 1431–1444, and applicable regulations, 34 CFR part 303. ODH is the lead agency designated by the Governor of Ohio to implement Ohio's statewide system of early intervention services under IDEA, 20 U.S.C. 1435(a)(10) and 34 CFR 303.500. The Bureau of Early Intervention Services (BEIS), within ODH, is responsible for the daily administration and oversight of Ohio's early intervention program for infants and toddlers with disabilities and their families under Part C.

The Department's February 27, 2006 letter and April 4, 2006 conversation with ODH representatives confirmed that ODH was not in compliance with the following four Part C requirements originally identified in the 2001 Ohio Part C Monitoring Report issued by the Department's Office of Special Education Programs (OSEP):¹

¹ OSEP's 2001 Ohio Monitoring Report identified nine areas of noncompliance and required the State to submit an Improvement Plan that addressed all nine findings. OSEP's October 24, 2002 letter that accepted ODH's 2002 Improvement Plan required that ODH submit a final Progress Report by October 24, 2003, providing data demonstrating compliance with these findings. ODH provided data and information indicating correction of five of the nine findings. However, ODH's final October 30, 2003 final progress report under its Improvement Plan and subsequent reports, requested by OSEP and submitted by ODH on April 30, 2004, November 1, 2004 and March 31, 2005, failed to provide data demonstrating compliance with the four remaining findings: monitoring, 45-day timeline, timely service provision and timely transition planning.

The Department imposed special conditions on two of the areas (45-day timeline and timely transition planning) in Ohio's FFY 2005 Part C grant. The special conditions required Ohio to provide OSEP a progress report in November 2005 and a final report by April 2006 that included data demonstrating compliance. The Department's February 27, 2006 letter responding to the State's

(1) Monitoring to ensure the identification and timely correction of noncompliance with Part C as required by 34 CFR 303.501(b) (General Supervision or GS);

(2) Conducting evaluations and assessments and the initial Individualized Family Service Plan (IFSP) meetings within 45 days from referral of an infant or toddler to Part C as required by 34 CFR 303.321(e)(2), 303.322(e)(1) and 303.342(a) (45-day Timeline);

(3) Providing in a timely manner all early intervention services identified on the IFSP to all eligible infants and toddlers with disabilities and their families as required by 34 CFR 303.340(c), 303.342(e), 303.344(f)(1) (Service Provision); and

(4) Conducting timely transition planning as required by 34 CFR 303.148(b)(2)(i), 303.148(b)(4) and 303.344(h) (Timely Transition Planning).

On March 10, 2006, ODH requested that the Department consider entering into a compliance agreement, because ODH indicated it needed additional time (not to exceed three years) to ensure compliance. ODH invited the Department to hold a public hearing, which the Department is required to conduct before it can enter into a compliance agreement under the General Education Provisions Act (GEPA), 20 U.S.C. 1234f(b)(1). On May 9, 2006, Department officials conducted a public hearing in Columbus, Ohio, at which oral and written testimony were received regarding ODH's ability to comply with the four outstanding requirements. At the hearing, testimony was provided by ODH representatives, other Ohio State participating agencies, Part C early intervention providers, parents of infants, toddlers and children with disabilities, representatives from the Ohio State interagency coordinating council (SICC), and other affected or interested individuals. Additional written testimony was submitted to the Department through the comment period, which ended on June 1, 2006.

At the public hearing, the State bears the burden of demonstrating that: (1)

Performance Plan (SPP) and April 4, 2006 conversation with ODH representatives confirmed that ODH had yet to ensure compliance with four noncompliance findings from OSEP's 2001 Ohio Monitoring Report and questioned the feasibility of ODH's ability to ensure compliance with these requirements. On March 10, 2006, ODH indicated it could not come into compliance. ODH requested that the Department consider entering into a Compliance Agreement with ODH under Part C of the IDEA because ODH would need additional time (not to exceed three years) to make systemic changes in its monitoring, data, service delivery, and other systems in order to ensure correction of these four findings.

Full compliance with the applicable requirements of Part C is not feasible until a future date and (2) a compliance agreement is a viable means for bringing about such compliance in no more than three years. 20 U.S.C. 1234f(b)(1). Based on the testimony received and other information available, the Department concludes, as required under 20 U.S.C. 1234f, that full compliance with the above four Part C requirements by ODH is genuinely not feasible until a future date, but that under the terms of the attached compliance agreement, which expires three years from the date of this decision, ODH will be able to come into full compliance with Part C within this three-year period.

II. Legal Basis for Entering Into a Compliance Agreement: Requirements Under Part C and GEPA

A. Part C Requirements

Part C was enacted in 1986, and amended in 2004, in response to Congress's finding that "there is an urgent and substantial need * * * to enhance the development of infants and toddlers with disabilities, to minimize their potential for developmental delay, and to recognize the significant brain development that occurs during a child's first 3 years of life." 20 U.S.C. 1431(a)(1). Under Part C, the Department provides funds to States to implement a statewide, comprehensive, coordinated, multidisciplinary, interagency system that provides early intervention services for infants and toddlers with disabilities and their families. 20 U.S.C. 1431(b)(1).

An "infant or toddler with a disability" is a child under three years of age who needs early intervention services because the child either: (1) Is experiencing developmental delays, as measured by appropriate diagnostic instruments and procedures, in one or more of the following five areas of development: cognitive, physical, communication, social or emotional, or adaptive; or (2) has a diagnosed physical or mental condition which has a high probability of resulting in developmental delay. 20 U.S.C. 1432(5). Early intervention services are developmental services designed to meet the developmental needs of an infant or toddler with a disability, as identified by the IFSP team, in any one or more of the five developmental areas listed above. 20 U.S.C. 1432(4); 34 CFR 303.12.

Part C requires that there be a single line of responsibility and clear interagency guidelines to ensure that one agency, the lead agency, is responsible for administering Part C in

the State. 20 U.S.C. 1435(a)(10)(A); 34 CFR 303.500, 303.523–303.528. The lead agency must monitor all programs and activities used by the State to carry out Part C for compliance with all Part C requirements, and ensure the correction of any noncompliance it identifies. 20 U.S.C. 1435(a)(10)(A); 34 CFR 303.501.

Other Part C requirements include ensuring that all infants and toddlers referred to Part C are evaluated and assessed, and an initial IFSP meeting is held, within 45 days of the child's referral to Part C. 34 CFR 303.321(e)(2), 303.322(e)(1), and 303.342(a). The evaluation must be conducted in all five developmental areas, including vision and hearing. 34 CFR 303.322(c)(3)(ii). The lead agency must ensure that the early intervention services identified as needed on the child's IFSP are provided in a timely manner to the child and his or her family. 34 CFR 303.340(c), 303.342(e) and 303.344(f)(1). In addition, the lead agency must ensure that timely transition planning is provided for children when they exit the Part C program, which typically occurs at age three. 34 CFR 303.148(b) and 303.344(h). For children exiting from Part C, the IFSPs must contain transition steps and services. 34 CFR 303.148(b)(4) and 303.344(h). For children potentially eligible under Part B of the IDEA, with the approval of the family, a transition conference must be convened among the lead agency, the family, and the local educational agency at least 90 days before the child's third birthday. 34 CFR 303.148(b)(2)(i). Thus, under Part C, the lead agency must ensure that it makes available all appropriate early intervention services to an infant or toddler with a disability and his or her family to meet the unique developmental needs of the child and to support the family while the child receives Part C services and as the child transitions from Part C to Part B or other programs.

B. Authority To Enter Into a Compliance Agreement Under Part C and GEPA

If a State fails to comply substantially with the requirements of Part C, the Department has the authority under GEPA and Part C to take certain enforcement actions, including withholding funds, seeking a cease and desist order, entering into a compliance agreement, or taking other action authorized by law with respect to the State. 20 U.S.C. 1234c, 1416, 1437(c) and 1442; 34 CFR 303.101. In this instance, and at ODH's request, the Department has determined it is appropriate to address ODH's failure to comply substantially with the

requirements of Part C through a compliance agreement.

The purpose of a compliance agreement is "to bring the recipient into full compliance with the applicable requirements of the law as soon as feasible and not to excuse or remedy past violations of such requirements." 20 U.S.C. 1234f(a). As mentioned above, the recipient has the burden of persuading the Department that: (1) Full compliance with the applicable requirements of law is not feasible until a future date and (2) a compliance agreement is a viable means for bringing about such compliance in no more than three years. 20 U.S.C. 1234f(b)(1). If, on the basis of all the evidence available to the Department, the Secretary determines that the recipient has met that burden, the Secretary must publish written findings to that effect, together with the substance of the compliance agreement, in the **Federal Register**. 20 U.S.C. 1234f(b)(2).

The compliance agreement must contain the terms and conditions with which the recipient must comply during the period that the Agreement is in effect. 20 U.S.C. 1234f(c). If the recipient fails to comply with any of the terms and conditions of the compliance agreement, the Department may consider the Agreement no longer in effect and may take any action authorized by law, including withholding funds or seeking a cease and desist order. 20 U.S.C. 1234f(d).

III. ODH's Ability To Meet the Requirements of the Compliance Agreement

A. ODH Cannot Immediately Come Into Compliance With Part C Requirements

As confirmed through the testimony of ODH, State agency representatives, early intervention service providers, parents of infants, toddlers and children with disabilities, Ohio SICCC representatives and others, ODH is not in compliance now, and cannot immediately come into compliance, with Part C's General Supervision, 45-day Timeline, Service Provision, and Timely Transition Planning requirements. ODH's failure to comply with these major Part C requirements is caused by a number of complicated factors and cannot be corrected immediately. In the testimony provided by ODH and other witnesses at the public hearing, six major barriers to ODH's ability to come into immediate compliance with Part C were identified. The barriers identified are a lack of: (1) Coordination with other State and local partners to ensure correction of noncompliance; (2) clarity in the lead

agency's policies, procedures and guidance regarding evaluations and assessments and timely transition planning; (3) a monitoring system that identifies Part C compliance requirements and available corrective actions; (4) clarity in the lead agency's single line of responsibility, including monitoring authority over its 88 counties;² (5) the State's current data system's ability to collect key compliance elements; and (6) sufficient qualified personnel and system capacity to conduct evaluations and assessments and provide Part C services.

One major barrier to immediate compliance is the need for coordination with other State and local partners to ensure correction of noncompliance. Under the compliance agreement, ODH has agreed to revise Interagency Agreements with the Ohio Department of Mental Retardation Developmental Disabilities (ODMRDD), the Ohio Department of Education (ODE), and other participating State agencies to clarify each agency's responsibility in ensuring compliance with Part C requirements, including timely transition planning. At the hearing, representatives from ODE and ODMRDD expressed their commitment to work with ODH to enter into revised Interagency Agreements that will help ODH come into compliance with the Part C requirements.

Another aspect of the need for coordination with other State and local partners is the delineation of Part C requirements. At the hearing, witnesses from the Ohio's SICCC Help Me Grow Advisory Council and the County Boards of MRDD Association explained how there is little delineation between the Part C requirements and the requirements for other programs that provide services to children through the Help Me Grow program.³ Under the compliance agreement, ODH will clarify its guidance to distinguish Part C from other Help Me Grow program requirements and align the policies of other State agency partners, particularly ODMRDD with ODH's policies and procedures on substantive Part C requirements, including the 45-day timeline and EI service provision. Defining the respective agencies'

² The Ohio Part C early intervention statewide system of services is provided through the Help Me Grow program, which provides funds to the 88 county Family and Children First Councils (FCFCs). ODMRDD is not part of ODH, but the 88 county boards within ODMRDD are the largest provider of Part C early intervention services in Ohio.

³ Help Me Grow provides Part C services for children eligible under Part C but also provides services to other children through other programs and provides services under other programs to children eligible under Part C.

responsibilities and delineating the Part C requirements are necessary to ensure compliance with Part C.

A second barrier to immediate compliance is the lack of clarity in the lead agency's policies, procedures and guidance regarding evaluations and assessments and timely transition planning. At the hearing, the Chief of BEIS, Debbie Wright, testified that ODH's policies and procedures do not ensure consistent documentation of transition planning, and do not ensure that evaluations and assessments include screenings in all developmental areas, such as hearing and vision. Under the compliance agreement, ODH will revise its policies, procedures and guidance to address these issues. It will take ODH more than a year to revise and implement those policies, procedures and guidance, and to monitor for compliance with the related Part C requirements.

A third barrier to immediate compliance is the need to revise the State's monitoring system to include identification of noncompliance and corrective actions. At the hearing, Ms. Wright testified that the State's monitoring system must be revised to align with the State's Performance Plan and to increase the State's ability to identify areas of noncompliance and ensure timely corrective action. The uncontroverted testimony at the hearing confirmed that implementing all of the steps necessary to revise the State's monitoring process, including adding compliance elements in the data and monitoring systems and implementing corrective action procedures, will require more than one year. Under the compliance agreement, the State will first review and revise its monitoring process, with input from OSEP, then the State will pilot the revised monitoring system in its first year, and beginning in the second year, the State will implement its revised monitoring process to demonstrate correction.

A fourth barrier to immediate compliance is the need to review, and determine if revisions are needed to, the State's current authorizing authority, its Governor's Executive Order, to provide for a clearer line of responsibility by the Part C lead agency. At the hearing, witnesses from the Ohio Help Me Grow Advisory Council and the County Boards of MRDD Association explained that the lead agency's single line of authority is not clearly defined. Heather Kendall representing the testimony of the Ohio Superintendents County Boards of MRDD Association, explained "in the current system, the local Family and Children First Council has the authority to determine how the

compliance of ODH Part C policies and procedures is met. This system allows for 88 different interpretations of Part C service delivery in Ohio." ODH reported that different counties have different interpretations of some policies, including evaluations and assessment and transition planning. An important step in ensuring compliance with Part C will be to strengthen ODH's single line of responsibility, which cannot be done immediately. Under the compliance agreement, ODH will review its authorizing Governor's Order, legislation, FCFC applications, and other State policies to determine whether it needs to clarify ODH's lead agency authority and general supervision responsibilities under IDEA § 635(a)(10) and 34 CFR 303.500.

A fifth barrier to immediate compliance is the need for ODH to revise its data system (Early Track) to ensure that it includes critical Part C compliance elements. Under the compliance agreement, ODH will revise its Early Track data system to collect and report information on the 45-day timeline and transition that will help ODH to identify and correct noncompliance. Revising and verifying its new data system, and collecting data from the new system, will take ODH more than one year. Effectively utilizing the data from the new data system as part of its new monitoring system to verify both noncompliance areas and corrective action results will take ODH even longer.

Finally, ODH's ability to comply with Part C is affected by the capacity of the system to serve the number of infants and toddlers referred to the program. One possible cause is the lack of system capacity including the availability of sufficient qualified personnel to conduct evaluations and assessments and provide early intervention services. Testimony from ODH officials and early intervention providers cited personnel recruitment and retention, adequate financial resources and other personnel and system issues as among the major challenges for timely evaluations and assessments and early intervention service delivery, particularly in rural counties. For example, a local provider in Carroll County explained at the hearing how there is a lack of providers in her area. She explained that she is from a rural agricultural Appalachian county that has a shortage of health professionals. ODH cannot, acting on its own, immediately address this personnel shortage. Under the compliance agreement, ODH will conduct a needs assessment with its State agency partners to identify available services and gaps in services.

As part of the needs assessment, ODH will analyze the impact of its newly developed system of payments and will explore its ability to maximize the use of all funding sources. ODH will then develop a plan to address the issues identified in the needs assessment and will work with its state partners to implement the plan. Removing these system capacity barriers and obtaining needed personnel will require a long-term effort that will involve working with other organizations in Ohio to ensure that qualified personnel are available to conduct evaluations and assessments and provide early intervention services.

The evidence gathered by the Department at the public hearings confirms that ODH is not able to immediately come into compliance with the requirements of Part C. These problems are not isolated examples of noncompliance that can be quickly or easily corrected, but the outgrowth of systemic failures, for which systemic change is needed. The Department, therefore, concludes that ODH cannot come into immediate compliance with the requirements of Part C.

B. ODH Can Ensure Full Compliance With the Four Part C Requirements Within Three Years

The compliance agreement addresses the four major areas of ODH's noncompliance with Part C, namely: (1) General Supervision, (2) 45-day Timeline, (3) Service Provision, and (4) Timely Transition Planning. The compliance agreement sets out specific timelines, activities and responsible parties to implement the following strategies to address these areas of noncompliance.

General Supervision

Under the compliance agreement, ODH will develop, revise or update Interagency Agreements with other State agencies, and will implement and utilize effective monitoring and general supervision procedures, to ensure the identification and timely correction of noncompliance with Part C. ODH will also review its authorizing authority, including its Governor's Executive Order, state statutes and regulations, to determine how to strengthen its single line of authority as the Part C lead agency in Ohio.

45-day Timeline and Service Provision

Under the compliance agreement, ODH will revise and implement its program guidance to ensure that evaluations and assessments and the initial IFSP meetings are conducted within the 45-day timeline, and that

early intervention services are timely provided to eligible infants and toddlers with disabilities and their families. ODH will work with other State agencies to align their policies with the ODH policies and procedures. In addition, ODH will develop and implement its guidance and documentation procedures to ensure vision and hearing status is assessed for infants and toddlers referred to Part C, and present levels of functioning are documented on a child's IFSP. ODH and other State agencies will also collaborate to determine whether and how its early intervention system may be redesigned in the long-term to increase its system capacity (including providers) and maximize funding for early intervention services.

Timely Transition Planning

Under the compliance agreement, ODH will revise its transition policies and procedures to ensure documentation of transition planning is aligned across State agencies and in all 88 counties. The Interagency Agreement between ODH and ODE, and the transition agreements between the county FCFC and the local education agencies, will be developed, updated or revised to ensure compliance with the timely transition planning requirements under IDEA.

The compliance agreement sets forth the data collection and reporting procedures that ODH will follow. These provisions will enable the Department to determine whether or not ODH is meeting each of its commitments under the compliance agreement. The compliance agreement, because of the obligations it imposes on ODH, will provide the Department with the information and authority it needs to protect the Part C rights of Ohio infants and toddlers with disabilities.

IV. Conclusion

For the foregoing reasons, the Department finds that: (1) Full compliance by ODH with the requirements of Part C is not feasible until a future date, and (2) ODH can meet the terms and conditions of the attached compliance agreement and come into full compliance with the four requirements of Part C within three years of the date of this decision. Therefore, the Secretary determines that it is appropriate for the Department to enter into a compliance agreement with ODH. Under the terms of 20 U.S.C. 1234f, this compliance agreement becomes effective the date these Written Findings and Decision are signed by the Secretary.

Dated: November 8, 2006.

John H. Hager,
Assistant Secretary, Office of Special
Education and Rehabilitative Services, U.S.
Department of Education.

On behalf of: Margaret Spellings, Secretary,
U.S. Department of Education.

Appendix A: Ohio Part C Compliance Agreement

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 Ohio Department of Health

I. Background—Areas of Noncompliance

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 Ohio through the Ohio Department of Health (ODH) 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 1444) and its applicable 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 (ODH) 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 Agreement and Written Findings. 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.

The Department's February 27, 2006 letter responding to Ohio's December 2005 State Performance Plan (SPP) indicated that ODH had yet to ensure compliance with the following four noncompliance findings originally identified in the Department's March 30, 2001 Ohio Part C Monitoring Report:

- (1) *Monitoring*: the lead agency's responsibility to monitor (identifying and timely correcting any noncompliance by all programs and activities used to implement the statewide early intervention system as required by 34 CFR 303.501(b));
- (2) *45-day Timeline*: evaluations and assessments in all five developmental areas and the initial Individualized Family Service Plan (IFSP) meetings are held within 45 days after a referral is received as required by 34 CFR 303.321(e)(2), 303.322(e)(1) and 303.342(a);
- (3) *Timely Service Provision*: early intervention services on the child's IFSP are timely provided as required by 34 CFR 303.340(c), 303.342(e) and 303.344(f)(1); and
- (4) *Timely Transition Planning*: 90-day conferences are held as required by 34 CFR 303.148(b)(2)(i) and IFSPs include the early

childhood transition plan as required by 34 CFR 303.148(b)(4) and 303.344(h).

On March 10, 2006, ODH requested that the Department consider entering into a Compliance Agreement with ODH under Part C of the IDEA because, although ODH had addressed five of the original findings from OSEP's 2001 monitoring report, ODH indicated that it would need additional time (not to exceed three years) to make systemic changes in its monitoring, data, service delivery, and other systems in order to ensure correction of these four findings. ODH invited the Department's Office of Special Education Programs (OSEP) to conduct a public hearing in Ohio as required by GEPA prior to the establishment of a Compliance Agreement. On May 9, 2006, OSEP conducted a public hearing in Columbus, Ohio regarding ODH's ability to meet the four Part C requirements identified above. The testimony and materials either presented at the hearing, or provided in relation to the hearing, by ODH representatives, other Ohio participating agencies, Part C providers, parents of infants, toddlers and children with disabilities, and other affected or interested individuals confirmed that, as required under 20 U.S.C. 1234f, full compliance with Part C requirements by ODH is genuinely not feasible until a future date, but that ODH 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 ODH into compliance with Part C as soon as feasible and allow continuation of Part C funding by OSEP to Ohio during this process. As indicated in the attached Secretary's Written Findings and Decision of the 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 Department and ODH. ODH is the lead agency under Part C of the IDEA designated under the authority of IDEA Section 635(a)(10) as codified at 20 U.S.C. 1435(a)(10) and 34 CFR 303.500. The Bureau of Early Intervention Services (BEIS) is the office within ODH that is responsible for the daily administration and oversight of Ohio's early intervention program for infants and toddlers with disabilities and their families under Part C of the IDEA. The Ohio Part C program referred to herein as Help Me Grow (HMG) includes the following participating state agencies: ODH; Ohio Department of Mental Retardation/ Developmental Disabilities (ODMRDD); Ohio Department of Job and Family Services (ODJFS); Ohio Department of Education (ODE); Ohio Family and Children First (OFCF); County Family and Children First Councils (FCFCs); and providers of early intervention services (whether contractors of ODH or other state or local agency entities). The Help Me Grow program is administered in each of Ohio's eighty-eight (88) counties by the county Family and Children First Council (FCFC). The Council receives federal and state funds to implement all requirements of the program serving pregnant

women, newborns, infants and toddlers at risk for or with developmental delays and disabilities. See Attachment A (Work Plan).

III. Areas of Identified Non-compliance

Under the terms of this Compliance Agreement, entered into pursuant to 20 U.S.C. 1234f, ODH 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, ODH 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 as follows:

1. *General Supervision—Monitoring:* ODH will meet its general supervision responsibilities and monitoring for compliance with all requirements of Part C under IDEA Section 635(a)(10) as codified at 20 U.S.C. 1435(a)(10) and 34 CFR 303.501(b), including: (1) Monitoring participating state and recognized local agencies, organizations and providers who deliver or contract to deliver Part C services in Ohio; (2) enforcing contractual and/or legal obligations regarding Part C compliance; (3) providing training and technical assistance as needed to providers and governmental participants in the Part C program; and (4) correcting within one year of identification, any Part C noncompliance identified through ODH's general supervision and monitoring systems.

2. *Timely Evaluation, Assessment and Development of the IFSP:* ODH will meet the requirement that infants and toddlers referred to Part C and suspected of having a disability receive timely and comprehensive evaluations in all five developmental areas (cognitive, physical, communication, social/emotional, and adaptive skills) as required by 34 CFR 303.321(e)(2) and 303.322(e)(1). 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 Ohio Part C HMG program to contact the family as required by 34 CFR 303.342(a).

3. *Timely Provision of All Early Intervention Services Specified in IFSPs:* ODH will ensure all early intervention services identified on the child's IFSP will be made available on a timely basis to an eligible infant or toddler with a disability and the child's family under 34 CFR 303.340(c), 303.342(e) and 303.344(f)(1).

4. *Transition Planning:* ODH will ensure that timely transition planning is provided and transition conferences are held within required timelines as required by 34 CFR 303.148(b)(2)(i). Also IFSPs with transition plans will be developed to assist all children and their families as they exit Part C as required by 34 CFR 303.148(b)(4) and 303.344(h).

IV. Funding and Work Plan

During the term of the Compliance Agreement, ODH 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.

In the attached Work Plan (General Supervision, Early Intervention Services in the Natural Environment, and Timely Transition Planning), this Compliance Agreement specifies the goals and timetables required for ODH to come into full compliance with its Part C obligations in the following areas: (1) General Supervision and Monitoring; (2) Timely Evaluation, Assessment and Development of the IFSP; (3) Timely Provision of All Early Intervention Services Specified in IFSPs; and (4) Transition Planning. ODH is required to submit verification of its compliance with enumerated activities, goals and timetables. This Work Plan includes measurable outcomes, goals/objectives, and activities to achieve the goals, target completion dates for each activity and goal, and ways to verify progress to ensure compliance with the goals and objectives during the three-year term of this Agreement. A report on progress made under this Work Plan, reflecting activities/goals met, any obstacles and other information as to progress shall be submitted by ODH quarterly to ED through OSEP. The first report shall be submitted on the final day of the fourth month following the effective date of this Agreement. The report will include verification items required during the first three months of this Agreement. Subsequent reports shall continue quarterly throughout the term of this Agreement.

V. Current Status, Outcomes, Goals and Verification

AREA 1: General Supervision (GS)

Current Status: OSEP's 2001 Monitoring Report found that ODH did not have a method for identifying and correcting noncompliance with Part C requirements. Following its December verification monitoring visit to the State, OSEP confirmed in a letter dated May 1, 2005 that, "ODH's systems for general supervision constitute a reasonable approach to the identification and correction of noncompliance". However, the May 2005 letter also indicated that "OSEP cannot determine whether ODH/HMG's monitoring system is identifying and correcting noncompliance". Data in ODH's December 2005 SPP indicated that ODH did not have an adequate monitoring system that identified and corrected noncompliance.

Outcome: ODH utilizes effective monitoring and general supervision procedures to ensure the identification and correction of noncompliance with Part C.

Measurable Goals:

Goal 1: ODH monitors all public or private early intervention service programs (including FCFC in its 88 counties) that provide Part C services in Ohio, for compliance with all Part C requirements under IDEA Section 635(a)(10)(A) [codified at 20 U.S.C. 1435(a)(10)] and 34 CFR 303.501(b).

Goal 2: ODH ensures that noncompliance with Part C identified through its general supervision and monitoring systems are corrected within one year of identification under IDEA Section 635(a)(10)(A) [codified at 20 U.S.C. 1435(a)(10)] and 34 CFR 303.501(b)(4).

Strategies:

GS. 1: ODH will develop, revise or update an Interagency Agreement(s) with the Ohio Department of Mental Retardation/Developmental Disabilities (ODMRDD), the Ohio Department of Education (ODE), and other Part C participating State agencies to ensure monitoring and correction of Part C noncompliance.

GS. 2: ODH will review its authorizing authority, including its Governor's Executive Order, state statutes, regulations, and other appropriate documents (e.g., State Interagency Agreement), as needed, to determine how to strengthen its single line of responsibility under IDEA Section 635(a)(10) [codified at 20 U.S.C. 1435(a)(10)] as the Part C lead agency in Ohio.

GS. 3: ODH will implement and utilize effective monitoring and general supervision procedures to ensure the identification and timely correction of noncompliance with Part C.

Verification: In its quarterly reports to OSEP, ODH shall submit an Interagency Agreement(s), revised monitoring procedures, monitoring data, monitoring reports, and the status of correction of identified noncompliance and include summaries of the status of each of the goals, strategies, tasks, activities and timelines.

AREA 2: Early Intervention Services (EIS)

Current Status: OSEP's 2001 monitoring report found that ODH had not ensured that evaluations and assessments were completed in all developmental areas, including the family assessment, within 45 days after a referral is received. OSEP's 2006 SPP response letter confirmed that initial IFSP meetings were also not held within the 45-day timeline. OSEP's 2001 monitoring report found that ODH has not ensured that IFSPs are developed based on the child's unique needs and that required early intervention services are provided due to waiting lists, lack of availability of personnel, and lack of payment sources. OSEP's 2006 SPP response letter confirmed that ODH has yet to provide data demonstrating compliance with the timely provision of early intervention services.

Outcomes: The evaluation and assessment and initial IFSP meeting are conducted within 45 days of the child's referral to the Part C early intervention program. All Part C early intervention services identified on the child's IFSP are provided in a timely manner to all eligible infants and toddlers with disabilities and their families.

Measurable Goals:

Goal 1: The evaluations (including vision and hearing screenings) and assessments of children referred to Part C are conducted within 45 days of the child's referral under 34 CFR 303.321(e)(2) and 303.322(e)(1).

Goal 2: Initial IFSP meetings are held within 45 days of the child's referral for eligible infants and toddlers with disabilities referred to Part C under 34 CFR 303.342(a).

Goal 3: Eligible infants and toddlers with disabilities and their families receive the Part C early intervention (EI) services identified on the child's IFSP in a timely manner under 34 CFR 303.340(c), 303.342(e) and 303.344(f)(1).

Strategies:

EIS. 1: ODH's Help Me Grow (HMG) program guidance will be revised and implemented in accordance with Part C. ODMRDD and other HMG participating State agencies' policies will be aligned to ensure that evaluations and assessments and the initial IFSP meeting are conducted within the 45-day timeline and that EI services are provided timely to eligible infants and toddlers with disabilities and their families.

EIS. 2: ODH will develop and implement its guidance on vision and hearing (including its hearing tool) and documentation procedures to ensure vision and hearing status is assessed and present level of functioning (including vision and hearing status) are documented on a child's IFSP for infants and toddlers referred to Part C.

EIS. 3: ODH will revise and implement its monitoring system to identify and correct any findings on 45-day timeline and timely EI service provision.

EIS. 4: ODH, ODMRDD, ODE, ODJFS, OFCF and other providers will collaborate to develop a plan to redesign the EI system to increase system capacity for EI service providers.

Verification: In its quarterly reports to OSEP, ODH shall submit its revised evaluation and assessment policies and procedures, including vision and hearing, align its policies across State agencies (including ODMRDD), provide monitoring and correction data, implement strategies to increase system capacity and maximize funding sources and include a summary of the status of each of the goals, strategies, tasks, activities and timelines.

AREA 3: Transition Planning (TP)

Current Status: OSEP's 2001 monitoring report found that ODH had not ensured timely transition planning and implementation under 34 CFR 303.148(b)(2)(i) and (b)(4) and 303.344(h).

Outcome: ODH ensures timely transition planning for eligible children who are receiving Part C services and exiting Part C at age three to preschool or other programs by ensuring for such children that: (1) A transition plan will be included on the IFSP under 34 CFR 303.148(b)(4) and 303.344(h); and (2) for children potentially eligible for Part B, transition planning conferences are held, with the approval of the family, at least ninety days (and at the discretion of the parties, no more than nine months) prior to the child's third birthday under 34 CFR 303.148(b)(2)(i).

Measurable Goals:

Goal 1: All IFSPs shall include transition plans to support the transition of the child to Part B or other services as needed as required by 34 CFR 303.148(b)(4) and 303.344(h).

Goal 2: For Part C children receiving services and potentially eligible for Part B, transition planning conferences are held, with the approval of the family, at least ninety days (and at the discretion of the parties, no more than nine months) prior to the child's third birthday under 34 CFR 303.148(b)(2)(i).

Goal 3: ODH will implement transition policies and procedures in partnership with the Ohio Department of Education that comply with Part C.

Strategies:

TP. 1: ODH will, through its monitoring and general supervision procedures, identify and timely correct findings to ensure: (1) A transition plan on the IFSP for each eligible child who is receiving Part C services and exiting Part C at age three and (2) timely transition planning conferences for all children exiting Part C at age three and who are potentially eligible for Part B.

TP. 2: ODH will revise its transition policies and procedures to ensure documentation of transition planning is aligned across participating State agencies (ODH, ODMRDD, and ODE) and in all 88 counties to ensure compliance with timely transition conferences and transition planning requirements under Part C.

TP. 3: ODH will update its Interagency Agreement with ODE to include all IDEA transition planning requirements (Parts B and C) and data-sharing protocols. ODH and ODE will develop more specific transition timelines for both Part B and Part C that will be part of the Interagency Agreement. Transition Agreements between the Family and Children First Council in each of the 88 counties and LEAs will be developed, updated, or revised to ensure compliance with the timely transition conferences and transition planning requirements under IDEA.

Verification: In its quarterly reports to OSEP, ODH shall submit its revised transition timeline and monitoring policies and procedures, IFSP transition content form, provide monitoring and correction transition data, verification of its implementation of transition strategies between Part C and Part B and include a summary of the status of each of the goals, strategies, tasks, activities and timelines.

VI. Other Terms and Conditions

A. This Compliance Agreement is executed in two original counterparts in order to provide each party with an original.

B. ED agrees to coordinate available Technical Assistance (TA) through the Technical Assistance and Dissemination Network (TA&D) and make TA available on IDEA Part C to ODH through conference calls, videoconferencing, and/or onsite visits.

C. ODH 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.

D. *Amendments:* ODH may not amend the strategy requirements to execute the interagency agreements identified in the work plan, as well as strategies in section GS. 1., EIS. 1C. and EIS. 1D., and TP. 3., and strategies to develop and implement data and monitoring systems that identify and correct noncompliance. ODH may modify the activities in the work plan as needed to ensure implementation of goals and provided that ODH: (1) Informs OSEP in writing of such modifications in the next quarterly progress report due under the Compliance Agreement; and (2) continues to provide the data/verification (in the timelines set forth in the attached work plan, sections GS. 1., EIS. 1., EIS. 3. and TP. 1.) that demonstrate

progress in ensuring compliance with the goals during the period of the Compliance Agreement. Any other amendments to strategies or verification under this Compliance Agreement must be made in writing. ODH may also request an amendment to the Compliance Agreement, pursuant to the requirements above, due to acts of God, riots, strikes, or unforeseen circumstances resulting from changes in Ohio's executive leadership.

If ODH wishes to amend any of the provisions of the Compliance Agreement, ODH will promptly submit to OSEP in writing any requests for changes to the terms of this Compliance Agreement (which includes the Introduction and Attachment A, the Work Plan). Within two 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 review and respond in writing within forty-five (45) days of receipt of ODH's written request for amendment. ODH is not required to implement the activities under any proposed modifications to strategies that are pending review by OSEP until OSEP has provided its response regarding those proposed modifications to strategies. Any request for modification does not release ODH from complying with the goals of the Compliance Agreement.

E. In the event, Ohio determines that it cannot participate in the Part C program due to a lack of available funds (which are certified as available for the purposes of this Agreement by the Ohio Director of Management and Budget under Ohio Statute R.C. 127.06), ODH may terminate its participation in the Part C program and this Compliance Agreement voluntarily upon a ninety (90) day written notice to OSEP. Subject to the applicable fiscal, parental notice and service provision requirements of Part C and EDGAR identified in this paragraph, the agreement shall terminate the earlier of 90 days from the Department's receipt of written notice from Ohio of voluntary termination or the date on which Ohio has obligated any remaining Federal Part C funds available to Ohio following such notice. The Ohio Part C lead agency must submit to the Department a final fiscal report under EDGAR and annual performance report under IDEA Section 616 for each fiscal year in which Ohio obligated and expended Federal Part C funds. In addition, notice of termination of provision of early intervention services to infants and toddlers with disabilities and their families must be provided as required by applicable Federal and State laws. Any funds not obligated as of the date of termination may not be used by Ohio and must remain in the Federal treasury. Liquidation of any obligations incurred by Ohio under Part C through the termination date must occur within the 90-day period provided for under EDGAR.

F. Subject to Article VI, paragraph D of this Agreement, any failure by ODH to comply with the terms and provisions of this Compliance Agreement, including the reporting requirements, will authorize the Department to consider the agreement no longer in effect. If ODH 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 1431 through 1444) and applicable regulations in 34 CFR Part 303. Such actions may include withholding of funds under Part C of the IDEA, referral to the Department of Justice, and other enforcement mechanisms.

Attachment A: Work plan
Signed for the Ohio Department of Health:
J. Nick Baird,
Director of Health.
Date: October 18, 2006.
Signed for the U.S. Department of
Education:

John H. Hager,
*Assistant Secretary, Office of Special
Education and Rehabilitative Services.*
On behalf of: Margaret Spellings, Secretary.
Date: November 8, 2006.
[FR Doc. E7-3400 Filed 2-26-07; 8:45 am]
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