

**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 USC 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 USC 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 USC 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 USC 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 USC 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

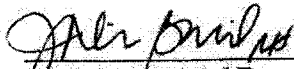
- A. This Compliance Agreement is executed in two original counterparts in order to provide each party with an original.
- B. ED agrees to coordinate available Technical Assistance (TA) through the Technical Assistance and Dissemination Network (TA&D) and make TA available on IDEA Part C to ODH through 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

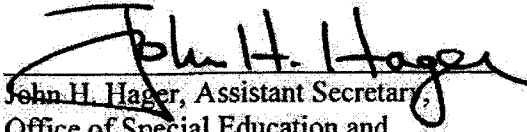
Signed for the Ohio Department of Health:



Nick Baird, M.D.
Director of Health

Date: 10/18/06

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: 11/8/06

Date this Compliance Agreement Becomes Effective: 11/8/06
(Date on which Written Findings of Fact and Decision are Signed)