



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

OCT 30 2007

Honorable Rafael Aragunde Torres
Secretary of Education
Puerto Rico Department of Education
PO Box 190759
San Juan, PR 00919-0759

Dear Secretary Aragunde:

This is to inform you that we have conditionally approved Puerto Rico's application for Federal Fiscal Year (FFY) 2007 under Part B of the Individuals with Disabilities Education Act (IDEA). Our conditional approval is based on review of your application submitted by the Puerto Rico Department of Education (PRDE) to the U.S. Department of Education, Office of Special Education Programs (OSEP), on April 30, 2007, and the revisions submitted on May 25, 2007, October 11, 2007 and October 19, 2007, including assurances provided in Section II, and incorporated by reference to this letter as noted in Enclosure A. In addition, the State provided specific assurances that it will:

1. Operate consistent with the applicable Part B regulations; and
2. Make such changes to existing policies and procedures as are necessary to bring those policies and procedures into compliance with the requirements of Part B of the IDEA, as amended, as soon as possible, and not later than June 30, 2008. Section II of the State's application identifies the IDEA statutory sections for which the State needs to amend policies and procedures and the timelines by which the State will amend its policies and procedures in order to comply with Part B of the IDEA. Within Section II, the State has included the date by which it expects to complete necessary changes associated with any policies and procedures that are not yet in compliance with the requirements of Part B of the IDEA, as amended.

As set forth in Enclosure D, on June 28, 2007, the Department wrote to Puerto Rico and indicated that the Department was imposing Special Conditions on all its grants to Puerto Rico based upon the lack of progress under the 2004 Compliance Agreement. Therefore, the Puerto Rico FFY 2007 IDEA Part B grant awards are being released subject to Department-wide FFY 2007 Special Conditions.

As set out in detail in Enclosure E, OSEP is imposing additional program-specific Special Conditions on the State's FFY 2007 grant awards under Part B, pursuant to the Department's authority, at 34 CFR §80.12, to designate "high-risk" grantees. The basis for this designation is PRDE's continued lack of progress in complying with the requirements of 34 CFR §300.152 to ensure that written complaint decisions are issued within 60 days of the receipt, unless the timeline is extended due to exceptional circumstances that exist with respect to a particular complaint. OSEP also is imposing a new program-specific Special Condition on the State's FFY 2007 grant awards based on

PRDE's failure to demonstrate that it has established and implemented proper fiscal controls, as required under 34 CFR §76.702, related to transportation services and contracts paid for with Federal funds under the Part B program.

In making this determination, OSEP relied, in part, on PRDE's FFY 2005 Annual Performance Report (APR), submitted on February 1, 2007, a final progress report submitted on May 30, 2007, and a July 11, 2007 Internal Audit Report. In addition, in OSEP's June 15, 2007 APR response letter to PRDE's FFY 2005 APR submission, OSEP noted that although PRDE had made progress in reducing the backlog of unresolved complaints, it had not fully met the FFY 2006 Special Conditions. The specific reasons for this designation and the specific conditions are further detailed in Enclosure E.

In its June 15, 2007 APR response letter, OSEP noted that Puerto Rico met one of the Special Conditions imposed on its FFY 2006 grant award. Puerto Rico was able to demonstrate that it reports publicly and to the Secretary on the participation and performance of children with disabilities in State and district-wide assessments, including alternate assessments, as required by 20 U.S.C. §1412(a)(16). We appreciate Puerto Rico's efforts to achieve compliance for this important requirement.

Please note that as part of your application for FFY 2007, your State has made an assurance, in 34 CFR §80.11(c), that it will comply with all applicable Federal statutes and regulations in effect with respect to the periods for which it receives grant funding. Any changes made by the State, after OSEP approval, to information that is a part of a State's application, must meet the public participation requirements in 34 CFR §300.165.

The amount in your award for Section 619 represents the full amount of funds to which you are entitled. However, the amount shown in your award for the Section 611 program is only part of the total funds that will be awarded to you for FFY 2007. Of the \$10,782,961,000 appropriated for Section 611 in FFY 2007, \$5,358,761,000 is available for awards on July 1, 2007, and \$5,424,200,000 will be available on October 1, 2007.

Under the Section 611 formula, subject to certain maximum and minimum funding requirements, State allocations are based on the amount that each State received from FFY 1999 funds, the general population in the age range for which each State ensures a free appropriate public education (FAPE) to all children with disabilities, and the number of children living in poverty in the age range for which each State ensures FAPE to all children with disabilities. At the level of the decrease in the appropriation for the Preschool Grant program compared to that for prior years, each State is first allocated the amount it received for FFY 1997. The remaining funds are allocated based on the relative amount of the increase in funding that the State received between FFYs 1997 and 2006, as compared to the total of such increases for all States.

Enclosure B provides a short description of how Section 611 funds were allocated and how those funds can be used. In addition, Table I in Enclosure B shows funding levels for distribution of Section 611 funds and the parameters for within-State allocations. Table II in Enclosure B shows your State-specific information for within-State distribution of 611 funds based on your State's application. If you disagree with the information in Enclosure B Table II, notify your State contact immediately.

Enclosure C provides a short description of how Section 619 funds were allocated and how those funds can be used. In addition, Table III in Enclosure C shows State-by-State funding levels for distribution of Section 619 funds.

Section 611(e)(1)(C) of the IDEA provides that "[p]rior to expenditure of funds under this paragraph [section 611(e)(1) concerning funds for State administration], the State shall certify to the Secretary that the arrangements to establish responsibility for services pursuant to section 612(a)(12)(A) are current." We read this provision to mean that if a State does not have interagency agreements or other arrangements in place to establish responsibility for the provision of services, the State may not expend funds available to the State under section 611(e)(1) [State administration funds] until the State has these agreements or arrangements in place.

Under section 608(a)(2) of the IDEA, each State that receives funds under Part B is required to inform in writing local educational agencies located in the State of any State-imposed rule, regulation, or policy that is not required by IDEA or Federal regulations. A State may use the same list of State-imposed rules, regulations and policies that it was required to submit to the Department in Section IV of its Part B application for this purpose. In general, because Puerto Rico is a unitary system, this requirement would not specifically apply.

The enclosed grant award for FFY 2007 is made with the continued understanding that this Office may, from time to time, require clarification of information within your application, if necessary. These inquiries are needed to allow us to appropriately carry out our administrative responsibilities related to Part B.

Section 606 provides that each recipient of assistance under IDEA make positive efforts to employ and advance in employment qualified individuals with disabilities in programs assisted under the IDEA. Therefore, by accepting this grant a State is expressly agreeing as a condition of IDEA funding to ensuring that positive efforts are made to employ and advance employment of qualified individuals with disabilities in programs assisted under the IDEA.

We appreciate your ongoing commitment to the provision of quality educational services to children with disabilities.

Sincerely,

A handwritten signature in cursive script, appearing to read "Patricia J. Guard".

Patricia J. Guard
Acting Director
Office of Special Education
Programs

Enclosures

- Enclosure A
- Enclosure B
- Enclosure C
- Enclosure D
- Enclosure E

cc: Prof. Miriam Merced Cruz