



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

JUL — 3 2006

Dr. Rafael Aragunde Torres  
Secretary of Education  
Puerto Rico Department of Education  
P.O. Box 190759  
San Juan, Puerto Rico 00919-0759

Dear Secretary Torres:

This is to inform you that we have conditionally approved Puerto Rico's Eligibility Documents, including assurances and certifications, for Federal Fiscal Year (FFY) 2006 under Part B of the Individuals with Disabilities Education Act (IDEA). Our determination that you are eligible for conditional approval is based on our receipt of the State's 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 21, 2006 and as amended on June 1, 2006 (Use of Funds Form) in which it assures that it will:

1. Operate consistent with the Part B requirements of PL 108-446 and applicable 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 July 1, 2007. Section II of the State's application (which is incorporated by reference and enclosed with this grant letter) 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.

In a July 5, 2005 letter to OSEP, PRDE assured OSEP that as soon as possible, but no later than July 1, 2006, Puerto Rico would revise and finalize the interagency agreement between the Department of Health and the Department of Education to coordinate Parts C and B of the IDEA to address early childhood transition requirements and the requirements of 34 CFR §300.142 of the Individuals with Disabilities Education Act (IDEA) and its implementing regulations, and provide the Secretary with a copy of the revised documents showing those changes. On December 24, 2005, OSEP received the October 14, 2005 revised and signed Interagency Agreement amendments from the Puerto Rico Department of Health and PRDE. The documentation submitted demonstrates that PRDE has met the assurances provided in the July 5, 2005 letter.

As set forth in Enclosure D, on June 2, 2006, 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 2006 IDEA Part B grant awards are being released subject to Department-wide FFY 2006 Special Conditions.

OSEP is also imposing programmatic Special Conditions on the State's FFY 2006 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 continuing failure to report 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) (2004)<sup>1</sup> and by the FFY 2005 Special Conditions attached to PRDE's August 19, 2005 Part B grant awards. OSEP also is imposing new programmatic Special Conditions on the State's FFY 2006 grant awards based on PRDE's continued lack of progress in complying with the requirements of 34 CFR §300.661 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. In making this determination, OSEP relied, in part, on PRDE's December 2005 State Performance Plan (SPP) submission and the progress reports submitted on January 13, 2006 and May 26, 2006.<sup>2</sup> In addition, in OSEP's April 4, 2006 response to PRDE's SPP submission, OSEP noted that PRDE's failure to demonstrate compliance with the FFY 2005 Special Conditions and that a failure to report progress in reducing the backlog of unresolved complaints, could affect Puerto Rico's FFY 2006 grant award. The specific reasons for this designation and the specific conditions are further detailed in Enclosure E.

PRDE must administer these awards both in keeping with the applicable provisions of Federal law and regulations and the Special Conditions in Enclosures D and E, attached to the grant award document. Acceptance by PRDE of these grant awards constitutes an agreement by the State to comply with these Special Conditions.

Enclosed are grant awards for funds currently available under the Department of Education FFY 2006 Appropriations Act for the Part B Section 611 (Grants to States) and Section 619 (Preschool Grants) programs. These funds are for use primarily in school year 2006-2007 and are available for obligation by States from July 1, 2006 through September 30, 2008.

Please note that as part of your Eligibility Documents for FFY 2006, your State has made an assurance, under 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

<sup>1</sup> Title I of the Elementary and Secondary Education Act, as amended by the No Child Left Behind Act of 2001, also includes a number of requirements related to including children with disabilities in State assessment programs and reporting on their participation and performance on regular and alternate assessments that in many instances are more specific than requirements in the IDEA. For example, the Title I regulations require, at 34 CFR §200.2(b)(3) and (4), that all State assessments must, "(3)(i) Be aligned with the State's challenging academic content and student academic achievement standards; and (ii) Provide coherent information about student attainment of those standards. (4)(i) Be valid and reliable for the purposes for which the assessment system is used; and (ii) Be consistent with relevant, nationally recognized professional and technical standards." This letter does not, and should not be interpreted to, address Puerto Rico's compliance with requirements of Title I.

<sup>2</sup> In our April 4, 2006 letter, OSEP required that PRDE submit a Progress Report on previously-identified areas of noncompliance prior to the FFY 2006 Grant Award. OSEP will address the other data included in PRDE's May 26, 2006 Progress Report under separate cover.

made by the State, after OSEP approval, to policies and procedures needed to comply with Part B of the IDEA, must meet the applicable public participation requirements, including those in 20 U.S.C. 1232d(b)(7).

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 2006. Of the \$10,582,960,540 appropriated for Section 611 in FFY 2006, \$5,158,760,540 is available for awards on July 1, 2006, and \$5,424,200,000 will be available on October 1, 2006.

For FFY 2006, the final appropriations for the Grants to States program and the Preschool Grants program represent a slight decrease below the amounts for FFY 2005. The IDEA specifies how funds are allocated under these programs when the amounts appropriated are less than for the prior Federal fiscal year. At the level of decrease for the Grants to States program, each State is first allocated the amount it received for FFY 1999. The remaining funds are allocated based on the relative amount of the increase in funding that the State received between FFYs 1999 and 2005, as compared to the total of such increases for all States. At the level of decrease for the Preschool Grants program, 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 2005, 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.

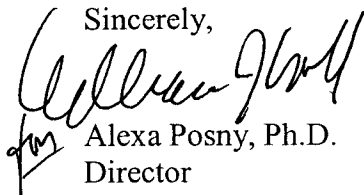
Under section 608(a) of the IDEA, each State that receives funds under Part B is required to inform in writing local educational agencies located in the State of any State-imposed rule, regulation, or policy that is not required by IDEA or Federal regulations (20 U.S.C. 1407(a)(2)). A State may use the 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.

The enclosed grant award for FFY 2006 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 604 of the IDEA provides that “[a] State shall not be immune under the eleventh amendment to the Constitution of the United States from suit in Federal court for a violation of this Act.” Section 606 provides that each recipient of assistance under IDEA make positive efforts to employ and advance in employment qualified individuals with disabilities. Therefore, by accepting this grant a State is expressly agreeing as a condition of IDEA funding to a waiver of Eleventh Amendment immunity and to ensuring that positive efforts are made to employ and advance employment of qualified individuals with disabilities.

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

Sincerely,

A handwritten signature in black ink, appearing to read "Alexa Posny". The signature is written in a cursive style and is positioned above the typed name.

Alexa Posny, Ph.D.

Director

Office of Special Education Programs

Enclosures

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

cc: Myrta Reyes  
Acting Director