



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

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

OCT -7 2005

Dear Secretary Aragunde:

The purpose of this letter is to respond to Puerto Rico's April 16, 2003 submission of its Federal Fiscal Year (FFY) 2002 Annual Performance Report (APR) under the Individuals with Disabilities Education Act (IDEA) Part B during the grant period July 1, 2002 through June 30, 2003. The APR reflects actual accomplishments made by the Puerto Rico Department of Education (PRDE) during the reporting period, compared to established objectives. The Office of Special Education Programs (OSEP) designed the APR under the IDEA to provide uniform reporting from States and result in high-quality information across States. The APR is a significant data source for OSEP utilized in the Continuous Improvement and Focused Monitoring System (CIFMS).

PRDE's APR should reflect the collection, analysis and reporting of relevant data, and document data-based determinations regarding performance and compliance in each of the cluster areas. This letter responds to the following submissions from PRDE: FFY 2002 APR, March 2004 revised Improvement Plan (IP), April 9, 2004 data updates to the March 2004 IP, August 13, 2004 verification visit response, and December 10, 2004 and July 1, 2005 submissions. OSEP has set out its comments, analysis and determinations by cluster area.

Background

OSEP conducted a visit to Puerto Rico during the week of September 8, 2003 to verify the effectiveness of PRDE's systems for general supervision, data collection under section 618 of IDEA and statewide assessment. OSEP's December 24, 2003 letter, in response to PRDE's draft IP, requested additional data. PRDE submitted some of the requested data to OSEP on February 27, 2004. PRDE submitted its March 2004 IP to OSEP on March 31, 2004. PRDE provided additional data relating to the March 2004 IP on April 9, 2004. Puerto Rico remains under a consent decree related to the Rosa Lydia Velez et al., v. Awilda Aponte Roque et al., (hereafter, *Velez*)¹ that relates to many of the issues identified in the March 2004 IP.

¹ Rosa Lydia Velez et al., v. Awilda Aponte Roque et al., *Settlement Agreement of Class Action*, November 21, 2000, addressed the following obligations with respect to the provision of services: scope of services; deadline for the provision of the services; maintenance of public information; changes to laws or regulation; maintenance of the level of effort and resources; registration procedures; referral for evaluation to determine eligibility; eligibility determination; preparation of the Individualized Education Program (IEP); placement; provision of related services; evaluations; transportation; transportation allowances; transportation services through carriers; architectural barriers; administrative dispute procedure; technological assistance; and secondary transition.

OSEP visited Puerto Rico during the week of March 15, 2004 to collect additional data, provide technical assistance and to verify PRDE's monitoring system. OSEP provided the results of its September 8, 2003 and March 15, 2004 visits to PRDE both orally and in a letter dated August 13, 2004. In a September 3, 2004 follow-up letter to PRDE, OSEP requested PRDE to provide monthly reports regarding complaints, the provision of assistive technology devices and services, the status of the administrative, educational and fiscal autonomy², and additional data regarding the monitoring system. On December 10, 2004, PRDE submitted its first and only monthly report to date to OSEP.

On October 25, 2004, the U.S. Department of Education (Department) and PRDE entered into a three-year Compliance Agreement. Both PRDE and the Department are working cooperatively towards addressing many systemic and long-standing grant management and accountability issues that PRDE has been facing with regard to the administration of Federal education grants. Many of these efforts have occurred under the Department's Cooperative Audit Resolution and Oversight Initiative (CAROI). The IDEA issues incorporated into the Compliance Agreement and the related Grant Management Work Plan addressed PRDE's failure to ensure the identification and timely correction of noncompliance through its monitoring system and the failure to provide accurate child count data for children with disabilities. Under the Department-wide Compliance Agreement, PRDE is required to report quarterly on its progress. PRDE's first report was submitted July 2005.

In addition to the conditions imposed on all grants from the Department, OSEP determined that Special Conditions regarding State-wide assessment under the IDEA, that are not otherwise addressed, needed to be imposed on Puerto Rico's FFY 2005 Part B Grant Awards, pursuant to the Department's authority under 34 CFR §80.12 to designate "high-risk" grantees. OSEP determined that PRDE was not reporting 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)(17) (1997) and 20 U.S.C. 1412(a)(16) (2004).³

² PRDE reported that Puerto Rico Law No. 51, Section 5, states, "The Secretaria Auxiliar De Sevicios Educativos Integrales para Personas con Impedimentos (SASEIPI); is hereby granted the administrative, educational, and fiscal autonomy to operate effectively." The law further states that Office shall have autonomy in the areas of: (1) administration, to plan and implement the processes for the attainment of effective education, and select and appoint the teaching and classified personnel who shall render services; (2) education, to identify and select teams of personnel and special indispensable teaching materials so that the children with disabilities will be provided with a continuum of educational options; and (3) fiscal management, to draft, administer, and supervise its budget, allocate appropriated funds according to the priorities of needs including purchasing services, materials, books, equipment and supplies without the intervention of the Office of the Assistant Secretary of Administrative Services of the Department of Education, or its equivalent.

³ 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.

Furthermore, in a July 5, 2005 letter, PRDE assured OSEP that, as soon as possible but no later than July 1, 2006, Puerto Rico would: (1) revise and finalize the interagency agreement between the Department of Health and the Department of Education to coordinate, under Parts C and B of the IDEA, early childhood transition procedures and requirements; (2) ensure that the revisions to the interagency agreement fully address the requirements of 34 CFR §300.142; and (3) provide the Secretary with a copy of the revised document.

General Supervision

Identification and timely correction of noncompliance

Based upon the data and information submitted and described herein, OSEP is requiring PRDE to clarify the number of entities monitored in each of the following school years 2002-2003, 2003-2004 and 2004-2005 and to clarify whether PRDE requires correction of all identified noncompliance including findings for those entities that are in “substantial compliance” and findings where PRDE’s ten percent threshold for systemic noncompliance is not reached. In addition to the information required under the State Performance Plan (SPP) due December 2, 2005, PRDE must continue its periodic reporting under the Department-wide Compliance Agreement including updating the status of entities with outstanding noncompliance and providing OSEP with copies of all relevant documentation of monitoring and correction for two entities, to be identified by OSEP.

Regulations at 34 CFR §300.600 and 20 U.S.C. 1412(a)(11)(2004) require that each educational program for children with disabilities administered within the State, including each program administered by any other State or local agency: (1) is under the general supervision of the persons responsible for educational programs for children with disabilities in the State educational agency; and (2) meets the education standards of the State educational agency (including the requirements of this part). (See also proposed §300.149.) Under 20 U.S.C. 1232d(b)(3), each State educational agency must monitor Federal programs under its authority and ensure compliance with the requirements of that program, including correction of deficiencies. Under 20 U.S.C. 1416(a)(1)(C) of IDEA, States are required to monitor implementation of Part B by local educational agencies (LEAs).

As set forth in OSEP’s September 27, 1991 and September 29, 1995 Monitoring Reports, OSEP determined that PRDE did not meet its responsibility to monitor public agencies responsible for carrying out special education programs (per the requirements of §441(b)(3)(A) of the General Education Provisions Act (GEPA)). The proposed Puerto Rico September 2002 IP and the December 2003 and March 2004 revisions, included PRDE’s acknowledgement that it was not in compliance with the requirements of Part B of IDEA and GEPA related to the monitoring of special education programs, including: the identification of program deficiencies; timeliness in the correction of deficiencies; and follow-up monitoring activities to ensure that deficiencies had been corrected.

On page 7 of the March 2004 IP, PRDE reported that ten of 28 (37%) of the entities monitored for 2002-2003 “did not provide sufficient documentation of eligibility.” On page 8, PRDE

reported that four of 28 entities monitored failed to provide related services, as required by children's IEPs. On page 10a and 11a of the FFY 2002 APR, PRDE reported that nine of 19 entities monitored during the 2002-2003 school year were noncompliant under "IEPs" and that one of 19 entities monitored were noncompliant in the area of "disciplinary actions."

On page 9a of the FFY 2002 APR, PRDE reported that in the Fall 2002, it completed a targeted monitoring of seven districts⁴ and schools, pursuant to *Velez* to determine if the schools complied with requirements regarding the reimbursement of funds for transportation. PRDE determined that all seven schools did not comply and as a remedy, ordered each school to reimburse parents for transportation expenses. PRDE completed follow-up visits at each of the seven sites and determined that appropriate payments had been made.

OSEP's December 24, 2003 letter requested that, by February 27, 2004, PRDE submit its monitoring instruments or monitoring procedures. In the February 27, 2004 submission to OSEP, PRDE provided four new monitoring guides for schools, school districts, regions and related service providers that it had developed. On page 27, PRDE stated that it monitored 24 entities and issued reports of noncompliance to 22 of the 24 entities during the 2002-2003 school year. On page 23, PRDE reported that it monitored eight school districts and 15 schools, or 23 entities. The submission also included a chart reporting on 19 monitored entities. In the FFY 2002 APR, PRDE provided the same chart. Based on information in this chart, PRDE found noncompliance with Part B requirements in 17 of the 19 entities. Given the discrepancies between the various submissions, OSEP is unable to determine the exact number of entities monitored or the number of entities monitored where PRDE identified noncompliance with Part B requirements. In the next quarterly submission, under the Department-wide Compliance Agreement (due with the SPP on December 2, 2005), in addition to the required reporting, PRDE must clarify the number of entities monitored in each of the three years, 2002-2003, 2003-2004, 2004-2005, including whether the entities are schools or districts.

As part of the CAROI process, during the week of March 14, 2004, OSEP staff accompanied PRDE staff to the Adjuntas District Office and the Domingo Pietri Ruiz School. After observing the monitoring process, OSEP requested the following information: (1) copies of the most current forms used for special education monitoring; (2) clarification on the threshold process for determining systemic noncompliance; (3) monitoring documents from three districts, including copies of the monitoring reports sent to each district, copies of the districts' correction plans, documentation of correction submitted by each district, and close-out letters to those districts from PRDE; and (4) the process for imposing sanctions on districts or schools, when necessary, and for tracking the results of those sanctions. PRDE responded to this request on December 10, 2004.

As part of the October 2004 Department-wide Compliance Agreement, PRDE agreed to ensure that all findings identified under its Part B monitoring system were corrected in a timely manner. The Compliance Agreement included a reporting provision on the status of correction of findings of noncompliance that were made during the 2002-2003 and 2003-2004 school years as well as reporting on correction for findings made in subsequent covered years. Under the Compliance

⁴ Puerto Rico has a unitary system for purposes of Part B of the IDEA. That is, "school districts" in the Commonwealth do not meet the IDEA's definition of local educational agencies (LEAs).

Agreement, PRDE agreed to submit quarterly reports. These reports are to include documentation of the correction of noncompliance in a timely manner, i.e., within a reasonable period of time not to exceed one year from identification. PRDE submitted its first quarterly report on July 1, 2005.

PRDE also agreed to provide ongoing training and technical assistance in a comprehensive and systematic manner to staff in regions, districts and other recipients of Part B funds to ensure: (1) the correction of all noncompliance; (2) the development and implementation of corrective action plans that address all areas of identified noncompliance; (3) that PRDE provides feedback on the corrective action plans submitted and provides follow-up activities; and (4) that, where appropriate, sanctions are imposed for persistent noncompliance.

In the July 2005 submission, PRDE reported implementation of training for over 2000 leadership personnel and/or teachers. In both the December 2004 and July 2005 submission, PRDE provided the monitoring guides and a description of the 21 IDEA compliance areas that PRDE monitors, including the “threshold process for determining systemic noncompliance.” PRDE provided the following chart:

Level of Compliance	Measurement
Minimal noncompliance	If an entity is identified as being in noncompliance or partial compliance for 0-7 indicators
Partial noncompliance	If an entity is identified as being in noncompliance or partial compliance for 7-14 indicators
Severe noncompliance	If an entity is identified as being in noncompliance or partial compliance for 14-21 indicators

PRDE stated that monitored entities were required to correct only partial or severe noncompliance. Based on the information presented, it is unclear what corrective actions, if any, PRDE required for entities that have “minimal noncompliance” (also described as “substantial compliance”). PRDE reported that, when findings were made at the school level, they were integrated into the district’s findings and its corrective action plan. In order to identify systemic noncompliance, the monitoring staff analyzed how frequently monitoring findings in the 21 identified areas occurred in the monitoring visits conducted during a cycle. Any violation that occurred in more than 10% of the entities monitored, was then considered to be systemic noncompliance. PRDE stated that, for example, in the 2002-2003 monitoring cycle, the following areas of noncompliance were identified as systemic: procedural safeguards (40%); timely evaluations (10%); eligibility determinations (50%); provision of related services (20%); least restrictive environment (20%); and secondary transition requirements (20%). As noted above, under the IDEA and GEPA, PRDE must monitor and ensure that public agencies correct noncompliance. OSEP cannot determine whether, by establishing these thresholds, PRDE is fully meeting the requirements of GEPA and the IDEA. In the next quarterly update report under the Compliance Agreement, due with the SPP on December 2, 2005, PRDE must clarify whether it requires the timely correction of findings of noncompliance in districts that are in “substantial compliance” and the correction of noncompliance that does not meet the 10% threshold for systemic noncompliance.

PRDE also reported the following procedures for tracking compliance and potentially sanctioning persistent, long-standing noncompliance:

Monitoring Schedule to Ensure Compliance is corrected within One Year of Identification

Month 1 to 3	Evaluation of compliance Development of Corrective Action Plans (CAP) Training on identified noncompliance issues
End of Month 3	Evaluation of Compliance Status Submit Progress Reports
Month 4-6	Possible addition of specialized conditions to CAP Monitoring visits and reports Provide mandatory training; including training regarding legal consequences
Month 6-9	Evaluation level of progress; adjust compliance levels
Month 9-12	Close out compliance reports Issue letter to districts (For continued non-compliance), plan for serious compliance issues for following year

Level of Compliance and Sanctions

Level of Compliance	Available Sanctions
Minimal noncompliance	Add additional objectives to corrective action plan (CAP), involving stakeholders and evidence Letter from Special Education Director Mandatory Training, including legal consequences Require to utilize partner with best practice models
Partial noncompliance	Appointment of Special Monitor/increased monitoring visits Progress Reports Hold Public Meetings; that involve stakeholders, modifications of the CAP and provide proof of the meeting
Severe noncompliance	Letter from the Secretary with a copy to the personnel file Refer to State complaint procedure Personnel; refer for disciplinary action Schools/Districts; condition of approval of consolidated plans (all Federal funds) Condition of Approval for proposals under other programs Identify school or district to court Publish grades

In the July 2005 submission, PRDE included the following monitoring data in a chart for 23 entities monitored during the 2002-2003 school year and 37 entities monitored during the 2003-2004 school year: (1) dates of visits; (2) dates of reports (3) numbers of findings; (4) dates of follow-up activities; (5) numbers of findings corrected within one year (6) reasons for non-correction of findings within one year; and (6) actions taken by PRDE to ensure correction as soon as possible. Of the entities monitored during the 2002-2003 school year, PRDE was working with 11 entities that did not correct noncompliance within one year from identification.

Of those monitored during the 2003-2004 school year, PRDE was working with six entities that did not correct noncompliance. PRDE reported that the sanctions system was being used with these entities.

Based on its review of issues identified through monitoring and the new IDEA requirements, PRDE reported implementation of training for over 2000 leadership personnel and/or teachers.

Under indicator 15 in the SPP, due December 2, 2005, PRDE must submit data and analysis demonstrating that the findings of noncompliance identified through monitoring are being corrected in a timely manner. In addition to the data required under Indicator 15, PRDE also must submit information required in the quarterly update charts (the next report is due with the SPP) under the Department-wide Compliance Agreement. The quarterly reporting must continue to include the following information by entity: (1) the date of monitoring visit or activity; (2) the date of the report or other document identifying noncompliance; (3) the number of findings; (4) the dates of any follow-up activities; (5) the number of findings corrected within one year; (6) the number of findings not corrected within one year including reasons for non-correction; and (7) actions taken by PRDE to ensure correction as soon as possible. This submission also must include an update on the status of those entities monitored during the 2002-2003 (11 entities) and 2003-2004 (six entities) that failed to correct identified noncompliance within one year and the additional actions taken, including an analysis of the effectiveness of any sanctions that PRDE imposed upon these entities. For each entity with a finding of noncompliance that, as of the quarterly report, has not been corrected, PRDE must also identify any further actions that are planned to ensure correction of the noncompliance as soon as possible. Finally, PRDE needs to provide copies of the documentation of monitoring and correction for two entities, to be identified by OSEP. The documentation is to include monitoring reports or other documentation of findings, approved correction plans, documentation of correction submitted to PRDE, and all related correspondence including, where applicable, close-out letters.

Formal written complaints

The Part B regulations at 34 CFR §300.661(a) require that, within 60 days after a complaint is filed, the State educational agency (SEA) must: (1) carry out an independent on-site investigation, if the SEA determines that an investigation is necessary; (2) give the complainant the opportunity to submit additional information, either orally or in writing, about the allegations in the complaints; (3) review all relevant information and make an independent determination as to whether the public agency is violating a requirement of Part B; and (4) issue a written decision to the complainant that addresses each allegation in the complaint and contains findings of fact and conclusion and the reasons for the SEA's final decision. Under §300.661(b), an extension of the 60 calendar-day timeline is allowed only if exceptional circumstances exist with respect to a particular complaint. (See also, proposed §300.152.)

On page 19 of the March 2004 IP, PRDE indicated that, for the period between August 1, 2002 and December 31, 2003, PRDE received 97 complaints, investigated 35, but issued no written decisions, including findings of fact and conclusions. The December 2004 submission indicated that 91 complaints from the 2003-2004 school year had not been resolved within the timelines required at 34 CFR §300.661. On pages 3 and 3a and Attachment 1 of the FFY 2002 APR,

PRDE also reported that no written decisions were issued resolving formal written complaints. OSEP's September 2004 letter required PRDE to submit monthly updates on the status of complaint resolution. PRDE submitted one monthly report in December 2004. In this update, PRDE stated that it "continues to experience significant delays in resolution of its State complaints." The data identify continued noncompliance with the requirements of 34 CFR §300.661 to ensure that written complaint decisions are issued within 60 days of the receipt of a formal complaint, unless the timeline is extended due to exceptional circumstances that exist with respect to a particular complaint.

The March 2004 IP and December 2004 submission included strategies to correct this noncompliance. OSEP has reviewed and accepts these strategies. To the extent that PRDE remains out of compliance with the requirements of 34 CFR §300.661, it must implement this plan immediately and ensure correction as soon as possible, not to exceed one year from the date of this letter. OSEP believes that the strategies in the March 2004 IP and December 2004 submission are designed to correct existing noncompliance in this area. OSEP accepts these strategies.

Under Indicator 16 of the SPP submission, PRDE must submit data and analysis regarding State complaints. With the SPP, PRDE must submit updated data and analysis that updates the status of compliance. In addition, PRDE must submit two additional progress reports on or before April 1, 2006 and 30 days after one year from the date of this letter. The information with the SPP and two additional progress reports must include: (1) the date each complaint was filed; (2) the status of the complaint; (3) whether the complaint was resolved consistent with Federal requirements including timelines and written decisions; (4) the number of pending complaints that are still within the Federal timelines or extensions as of the last day of the reporting period; and (5) the number of pending complaints that are beyond the Federal timelines as of the last day of the reporting period. The submission with the SPP must include data and analysis covering the period from August 1, 2002 through June 30, 2003. The SPP covers the period from July 1, 2003 through June 30, 2004 and data for that period should be reported through the SPP. The progress report, due by April 1, 2006, must include data and analysis covering the period from July 1, 2004 through February 28, 2006. The progress report, due 30 days following one year from the date of this letter, must include data and analysis for the period from March 1, 2006 through one year from the date of this letter.

Mediation

On page 3a and Attachment 1 of the FFY 2002 APR, PRDE reported that, for the period between July 2002 and June 2003, it conducted 387 mediations related to hearing requests and 30 mediations not related to hearing requests. Of those, 192 and 27, respectively, resulted in mediation agreements. OSEP appreciates PRDE's efforts in this area and looks forward to reviewing data and information from PRDE in the SPP, under indicator 19, related to the percent of mediations resulting in mediation agreements.

Due process hearings

Regulations at 34 CFR §300.511 require that a public agency ensure that a final decision is reached in the hearing and a copy of the decision is mailed to each of the parties within 45 days of the receipt of a request for a hearing. A hearing officer may grant specific extensions of time beyond 45 days, at the request of either party. Under the 2004 Amendments to the IDEA, additional procedures regarding resolution meetings are required prior to the scheduling of a due process hearing. See 20 U.S.C. 1415(f)(1)(B) and proposed 34 CFR §§300.510 and 300.515.

On page 3a and Attachment 1 of the FFY 2002 APR, PRDE reported that, for the period between July 2002 and June 2003, 360 of 969 due process hearing decisions were issued after timelines and extensions expired. On page 20 of the March 2004 IP, PRDE reported that, for the 2002-2003 school year, 361 of the 951⁵ hearing officer decisions were reached after 45 days. On page 20 of the March 2004 IP, PRDE's proposed evidence of change stated that PRDE would ensure the timely implementation of hearing officer decisions. This does not fully address the requirements of 34 CFR §300.511. Because the Federal requirements have changed to include resolution meetings, the plan must be revised to address the requirements of 20 U.S.C. 1415(f)(1)(B).

With the SPP, PRDE must provide a plan, including strategies, proposed evidence of change, targets and timelines to ensure that due process hearing decisions are reached in a timely manner under the new IDEA requirements. The plan must be designed to ensure compliance as soon as possible, but no later than one year from the date OSEP accepts the plan and must provide for two progress reports to OSEP.

Personnel

On pages 16 and 17 of the March 2004 IP and pages 9 through 12 of the FFY 2002 APR, PRDE reported data on the current number of staff employed, by position, including contracted related services providers. PRDE indicated that it "does not implement a CSPD [comprehensive system of personnel development] that ensures sufficient numbers of qualified personnel." The March 2004 IP and FFY 2002 APR included strategies to address the CSPD requirements. The IDEA requirements regarding the CSPD and personnel standards (see §§612(a)(14) and (15) (1997)) were removed from the statute and replaced by statutory provisions related to States' establishment and maintenance of personnel qualifications for special education teachers that align Part B with the highly qualified teacher provisions in §1119(a)(2) of the Elementary and Secondary Education Act, and that also address personnel qualifications for related services providers and paraprofessionals (see §612(a)(14), effective July 1, 2005). OSEP appreciates the State's efforts in this area and encourages PRDE to continue its long-term planning related to personnel needs for special education and related services. OSEP also notes that current areas of noncompliance, such as timely evaluations, may be directly impacted by PRDE's ability to maintain sufficient personnel to meet Federal requirements including applicable timelines.

⁵ PRDE did not address this apparent discrepancy in its reporting on the total number of hearings.

Collection and timely reporting of accurate data

Section 618 of the IDEA requires that each participating State provide yearly data to the Secretary of Education and the public in specific areas related to children with disabilities and certain Federal requirements. OSEP's August 2004 letter noted that PRDE was implementing an automated, web-based data system intended to include infants, toddlers, children and youth with disabilities from birth through age 21. OSEP noted that WESTAT, the Department's contractor for compiling §618 data, had reported missing data from PRDE and that inaccurate data may have been reported by PRDE relating to placement in educational settings. During the verification visit and in its August 2004 letter, OSEP expressed its concern as to whether PRDE was fully meeting the requirements of §618. While OSEP could not determine whether the transition from the "paper-and-pencil" system to the automated data system would improve the reliability, validity and accuracy of the §618 data collection process, OSEP concluded that the automated, web-based system, if properly implemented and supported by ongoing training and guidance, has the potential to be a reasonable approach to the collection and reporting of §618 data. On page 14 of the FFY 2002 APR, PRDE reported on its automated database. PRDE reported that it trained over 135 employees to utilize and maintain the new database. PRDE reported that it used this information to prepare its child count report and planned to use the database as part of its monitoring process.

OSEP has had ongoing concerns about PRDE's data reporting. PRDE submitted the 2003 personnel data and the 2003-2004 exiting and discipline data via email on October 29, 2004, before the due date. PRDE also submitted the 2004 child count data via email on January 31, 2005, again before the due date. However, PRDE's 2004 educational environments data were received approximately 5 months late. Due to the late submission, WESTAT had to make special arrangements, to accept PRDE's data into the database. The contractor reported that, although there were a few discrepancies between the totals reported on the child count and the totals reported on the educational environments report, this error did not prevent the data from successfully entering the database and from being published. In both 2002 and 2003, PRDE did not submit educational environments data.

In the SPP, under indicator 20, PRDE is required to report on the timeliness and accuracy of its §618 data. On pages 21 and 22 of the Compliance Agreement, the issue of child count data is further addressed. Puerto Rico agreed that, by "December 1, 2005, PRDE will ensure that the child count report reflects a complete and accurate count of all children served." The March 2004 IP also contains an issue, documentation of eligibility, related to §618 data collection and the accuracy of child count data. On page 7 of the March 2004 IP, PRDE indicated that 10 of 28 entities did not provide sufficient documentation of eligibility and included strategies in the March 2004 IP to address this issue. OSEP has reviewed and accepts this plan, and looks forward to receiving documentation under the Compliance Agreement and the SPP regarding the timeliness and accuracy of its §618 data, including its child count data.

Early Childhood Transition

Regulations at 34 CFR §300.132(a)-(b) require that children participating in early intervention programs assisted under Part C and who will participate in preschool programs assisted under

Part B, experience a smooth and effective transition to those preschool programs and that by the third birthday of such a child, an IEP or, if consistent with 34 CFR §300.342(c) and §636(d), an IFSP, has been developed and is being implemented for the child. Regulations at 34 CFR §300.132(c) require that each local educational agency (LEA) participate in transition planning conferences arranged by the designated lead agency under §637(a)(8) of IDEA. (See also proposed §300.124.)

Puerto Rico's 2005 Part B Grant Award was conditionally approved based upon the assurance that, by no later than July 1, 2006, it would revise and finalize the interagency agreement with the Department of Health 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 IDEA, and will provide the Secretary with a copy of the revised, signed document showing those changes.

On pages 18 and 19 of the FFY 2002 APR, PRDE reported that, as of October 2003, "only 30% of infants and toddlers participating in Part C continued to receive services under an IEP under Part B by their 3rd birthday" and "to obtain this baseline data, PRDE conducted a brief survey of children identified in Part C to determine if those children continued to receive services under an IEP. The survey results indicated that at the most 30% of children eligible under Part C received services under an IEP after their 3rd birthday."

On page 1 of the March 2004 IP, PRDE reported that, it does not ensure a smooth transition for all children with disabilities transitioning from Part C to Part B. PRDE reported that "30% of [children with disabilities] receive services or have been evaluated for continuing services by their [third] birthday." The data was "gathered by the service coordinators in October 2003." In the March 2004 IP, PRDE planned to utilize its new data system to determine compliance with 34 CFR §300.132. OSEP has reviewed and accepts this plan. Within one year from the date of this letter, PRDE must ensure correction of noncompliance with the Federal requirements at 34 CFR §300.132. In addition to the data reported under Indicator 12 in the SPP, PRDE must submit two progress reports, one by April 1, 2006, and one no later than 30 days following one year from the date of this letter. The progress reports must include: data and information demonstrating correction of all identified noncompliance with 34 CFR §300.132.

Parental Involvement

PRDE reported the "inclusion of parents in all aspects of their children's education as an inquiry in the new monitoring process." According to PRDE, the results of the new monitoring process produced very positive results regarding parental involvement in special education. On page 23 and 24 of FFY 2002 APR, PRDE reported that only one of 28 entities monitored was cited for failure to ensure appropriate parental participation in IEP meetings or other meetings related to the identification, evaluation and placement of children. On page 3 of the March 2004 IP, PRDE reported that only one of 28 entities was "cited for inappropriate parental involvement in special education." OSEP appreciates PRDE's efforts in this area.

The SPP instructions establish a new indicator in this area, for which States must provide baseline data in the FFY 2005 APR, due February 1, 2007. PRDE should carefully review the

instructions to the SPP in developing its plans for this collection. OSEP looks forward to reviewing PRDE's plan to collect this data, in the SPP.

Free Appropriate Public Education (FAPE) in the Least Restrictive Environment (LRE)

Disproportionality

On pages 30 and 31 of the APR, the PRDE reported data and analysis concluding that the population of Puerto Rico was homogeneous and did not report any specific areas of disproportionality by disability category or by educational environment. PRDE reported that the percent of the total school population is 100% (rounded up from 99.73%) Hispanic. The special education population ranges from .02% (American Indian) to .2% (Black) against 99.73% Hispanic. Therefore, there was no disproportionate representation by disability category or setting using the Federal race/ethnicity categories.

Graduation and drop-out rates

Under §618(a)(1)(A)(v) of IDEA '97, States were required to report, for each year of age from age 14 through 21, the number and percentage of children with disabilities, by race, ethnicity, and disability category, who stopped receiving special education and related services because of program completion or other reasons and the reasons why those children stopped receiving special education and related services, and, at §618(a)(2), any other information that may be required by the Secretary.

The instructions to the FFY 2002 APR, required the State to provide data on whether graduation and drop-out rates for children with disabilities, are comparable to graduation and drop-out rates for children without disabilities. On page 34 of the FFY 2002 APR, PRDE reported that it did not have current data comparing graduation and drop-out rates for children with and without disabilities.

The SPP instructions establish two new indicators in this area, for which States must provide baseline data in the FFY 2005 APR due February 1, 2007. Absence of this information at that time will be considered in OSEP's annual determination on the status of the State's performance and compliance required under section 616(d) of the IDEA. The State should carefully review the instructions to the SPP in developing its plans for this collection.

Suspension and expulsion

The Part B regulations, at 34 CFR §300.146, require that the State examine data to determine if significant discrepancies are occurring in the rate of long-term suspensions and expulsions of children with disabilities: (1) among LEAs in the State; or (2) compared to the rates for children without disabilities within the agencies. If the discrepancies are occurring, the SEA must review and, if appropriate, revise (or require the affected State agency or LEA to revise) its policies, procedures and practices relating to the development and implementation of IEPs, the use of behavioral interventions and procedural safeguards, to ensure that these policies, procedures and practices comply with IDEA. (See also 20 U.S.C. 1412(a)(22) and 1418(d) (2004) and proposed 34 CFR §§300.170 and 300.646.) The instructions to the FFY 2002 APR required States to

provide data on whether suspension and expulsion rates for children with disabilities are comparable among LEAs within the State, or to the rates for children without disabilities among the agencies. The instructions directed States to describe which of these comparisons it used, as well as the method the State used to determine possible discrepancies, what constituted a discrepancy, the number of agencies with significant discrepancies and, if significant discrepancies occurred, a description of those discrepancies and how the State planned to address them.

On page 36 of the FFY 2002 APR, PRDE reported that it collected baseline data regarding suspension and expulsion rates for children with disabilities for the April 2004 data submission required by OSEP during its September 2003 on-site visit. PRDE reported that the PRDE Office of Academic Affairs did not track numbers of children suspended but did track expulsions. PRDE reported that 31 children without disabilities were expelled and that there were no expulsions of children with disabilities. Because of the lack of data noted above, PRDE only provided suspension data on children with disabilities, reporting that 15 were suspended for less than ten days and 20 were suspended for more than ten days. Based upon this submission, OSEP cannot determine whether PRDE has ensured compliance with 34 CFR 300.146.

This is Indicator 4(a) in the SPP, under §616, that is due December 2, 2005. In preparation for the submission of the SPP on December 2, 2005, PRDE should carefully consider its current data collection against the requirements related to this indicator in the SPP packet to ensure that data will be responsive to those requirements. In the SPP, PRDE must submit responsive baseline data regarding significant discrepancy in the rates of suspensions and expulsions of children with disabilities for greater than ten days a school year in its unitary system. The absence of baseline data in this area will be considered in OSEP's decision about approval of the State's SPP.

On page 10 of the March 2004 IP, PRDE reported that one of 28 entities was cited for noncompliance in the area of discipline. This represents approximately 96% compliance with the discipline requirements of IDEA. The IP included proposed strategies to ensure that positive behavioral supports and behavioral intervention plans are considered for those children with disabilities whose behavior impedes their learning or that of others. OSEP has reviewed and accepts these strategies. As part of PRDE's quarterly reporting under the Compliance Agreement, PRDE must report on the correction of this finding of noncompliance, or if not corrected, the additional actions that have been taken to achieve compliance.

Statewide assessments

Regulations at 34 CFR §300.138 require that States have on file with the Secretary information to demonstrate that: (1) children with disabilities are included in general statewide and districtwide assessment programs, with appropriate accommodations and modifications in administration, if necessary; and (2) as appropriate, the State or local educational agency (LEA) develops guidelines for the participation of children with disabilities in alternate assessments for those children who cannot participate in State or district-wide assessment programs, develops alternate assessments in accordance with those guidelines, and conducts the alternate assessments developed. Regulations at 34 CFR §300.139(a)(2) require that the performance results of children with disabilities must be reported if doing so would be statistically sound and

would not result in the disclosure of performance results identifiable to individual children: (1) on regular assessments; (2) on alternate assessments; (3) aggregating the performance of children with disabilities together with all other children; and (4) disaggregating data on the performance of children with disabilities.⁶

PRDE has programmatic Special Conditions attached to its FFY 2005 Grant Award regarding the reporting of assessment data to the public and to the Secretary. OSEP determined that PRDE was not reporting publicly and to the Secretary on the participation and performance of children with disabilities in broad-based (State and district-wide) assessments, including alternate assessments, as required by 20 U.S.C. 1412(a)(17) (IDEA 1997) and 20 U.S.C. 1412(a)(16) (IDEA 2004). The Special Conditions require that, by December 3, 2005, PRDE submit a written plan detailing the steps and timelines for reporting publicly and to the Secretary on the participation and performance of children with disabilities on alternate assessments by May 30, 2006. The plan must ensure that students with disabilities who take the alternate assessment, are assessed in the same grades as students taking the regular assessment and that their participation in such assessments and the results of their assessments are reported with the same frequency and in the same detail as nondisabled students

On page 39 of the FFY 2002 APR, PRDE reported that 2,122 children took the alternate assessment and reported that, for the FFY 2002 reporting period, "1306 of the 2122 students who took the alternate assessment did not provide sufficient demographic information to make the scores comparable for AYP calculation purposes." The data submitted in Attachment 3 to the FFY 2002 APR indicated that the alternate assessment participation rate at the third grade level was 6% (327 children); at the sixth grade level was 8% (429 children); at seventh grade level was 0.6% (36 children); and at the eleventh grade level was 0.6% (24 children). Additionally, PRDE was not able to report the number of children that participated in out-of-grade-level assessments.

OSEP's August 2004 letter identified issues regarding the provision of modifications and accommodations that were reported to OSEP during its January and March 2002 visits. These issues appear to have been largely resolved. Under *Velez*, PRDE provided island-wide training, at the school level, for regular education teachers, regarding classroom modifications and accommodations, as well as how those modifications and accommodations apply to broad-based assessments. OSEP appreciates PRDE's effort to improve compliance and performance in this area.

⁶ Effective July 1, 2005, §612(16)(D) of the IDEA requires that this reporting also include the number of children participating in regular assessments who were provided accommodations in order to participate in those assessments. This section also requires that the number of children with disabilities participating in alternate assessments be reported as either taking alternate assessments aligned with the State's challenging academic content standards and challenging student academic achievement standards or assessed against alternate academic achievement standards permitted under §1111(b)(1) of the Elementary and Secondary Education Act of 1965 (ESEA). The performance of children with disabilities on regular assessments and on alternate assessments will be reported *if the number of children with disabilities participating in those assessments is sufficient to yield statistically-reliable information and reporting that information will not reveal personally identifiable information about an individual student*. This performance must compare the performance of children with disabilities on regular assessments and on alternate assessment with the achievement of all children, including children with disabilities, on those assessments. (See also proposed 34 CFR §300.160.)

On page 42 of the FFY 2002 APR, PRDE reported that a large population of special education students in private schools, juvenile institutions, ungraded classes, separate special education schools and separate special education classes did not participate in the Commonwealth-wide assessments because their IEPs did not call for administration. According to the data reported in Attachment 3 of the APR, the non-participation rate, in the assessment process for the third grade, was 20%; for the sixth grade, was 35%; for the eighth grade, was 62%; and for the eleventh grade, was 80%. Participation data indicated that a large majority of children with disabilities did not participate in the assessments.⁷ OSEP's August 2004 letter noted PRDE's admission that, as a general matter, children with disabilities in nonpublic schools or who were incarcerated did not participate in Commonwealth-wide assessments. This practice is not fully consistent with the requirements of Part B.

Under 34 CFR §§300.2(c) and 300.401, children with disabilities placed in private schools by a public agency, in order to provide FAPE, retain their rights under Part B, including the right to participate in broad-based assessments. Likewise, with the exception of students with disabilities who are convicted as adults under Commonwealth law and are incarcerated in adult prisons, see 34 CFR §300.311(b) and proposed §300.324(d), students with disabilities in correctional facilities (e.g., juvenile facilities) also must participate in the assessment system. See 34 CFR §§300.2(b)(1)(iv) and 300.347(a)(5) and proposed §§300.2(b)(1)(iv) and 300.320(a)(6). PRDE's practice of excluding all individuals with disabilities in nonpublic school settings and in correctional settings from participating in its assessment system, is inconsistent with Part B requirements.

In addition to the plan required under the Special Conditions, with the SPP, PRDE must provide a plan, including strategies, proposed evidence of change, targets and timelines to ensure that special education students in private schools, juvenile institutions, ungraded classes, separate special education schools and separate special education classes participate in the Commonwealth-wide assessments. The plan must be designed to ensure compliance as soon as possible, but no later than one year from the date OSEP accepts the plan and must include no less than two progress reports to OSEP.

Indicator 3 in the SPP requires that PRDE report on the participation and performance of children with disabilities on Commonwealth-wide assessments. In preparation for the submission of the SPP on December 2, 2005, PRDE should carefully consider its current data collection against the requirements related to this indicator in the SPP packet to ensure that data will be responsive to those requirements. PRDE must submit accurate and responsive baseline data regarding participation and performance on broad-based assessments in the SPP. The absence of baseline data in this area will be considered in OSEP's decision about approval of PRDE's SPP.

⁷ The regulations under the No Child Left Behind Act (NCLB) provide, at 34 CFR §200.20(c), that in order to make adequate yearly progress (AYP), a school or LEA must ensure that not less than 95 percent of its children with disabilities in the grades tested participate in the State assessments under 34 CFR §200.2.

Least restrictive environment

The Part B regulations, at 34 CFR §300.550(b), require that each public agency ensure: (1) that to the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are nondisabled; and (2) that special classes, separate schooling or other removal of children with disabilities from the regular educational environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. (See also proposed §300.114.)

On page 48 of the FFY 2002 APR, PRDE reported that it maintains a continuum of placement alternatives for children with disabilities, aged 6 through 21, and eligible preschool children with disabilities, aged 3 to 5. PRDE reported that 82.03% of children with disabilities, aged 6 through 21, are served in a regular education setting with resource services, as appropriate. PRDE reported percentages for all the required educational environments. OSEP appreciates the State's efforts to collect and report this data.

On page 48 of the FFY 2002 APR, PRDE reported that it maintained a continuum of alternative placements for preschool children, aged 3 to 5; however, on this same page, it reported that it did not ensure that an appropriate continuum of alternative placements was available for preschool children with disabilities. OSEP is unable to determine which statement is accurate. In the SPP, under Indicator 6, PRDE must report on the percent of preschool children with IEPs who received special education and related services in settings with typically developing peers. If PRDE determines that a continuum of alternative placements is not available for preschool children, PRDE must submit a plan with the SPP, including strategies, proposed evidence of change, targets and timelines designed to ensure compliance with the requirements at 34 CFR §300.550-300.556 and 20 U.S.C. 1412(a)(5), as soon as possible. The plan must provide for the collection of data to make evidenced-based compliance determinations and ensure correction within a reasonable period of time, not to exceed one year from the date OSEP accepts the plan and must provide for two progress reports to OSEP. OSEP looks forward to reviewing this plan, if appropriate, and to reviewing the data required to be submitted in the SPP under indicators 5 and 6, due December 2, 2005.

On page 9 of the March 2004 IP, PRDE reported that it did not ensure that children with disabilities in correctional facilities received FAPE. (See 34 CFR §§300.2(b)(iv), 300.300, 300.121 and 300.122 and proposed §§300.2(b)(iv), 300.101 and 300.102.) The March 2004 IP reported, as baseline data, that the Juvenile Corrections office reported 178 students with IEPs and that PRDE was "validating that figure against the child count." In its April 2004 data submission, PRDE reported that there were 128 children with disabilities enrolled in juvenile institutions, 39 eligible children who did not have IEPs and 11 children with IEPs that were not implemented. PRDE included some strategies in the IP, focused primarily on data collection and monitoring. OSEP has reviewed and accepts the strategies included in the IP. OSEP also encourages PRDE to review whether interagency agreements or other procedures are needed to facilitate compliance.

As soon as possible, but in no case later than one year from the date of this letter, PRDE must ensure compliance with the requirements, at 34 CFR §§300.2(b)(iv), 300.300, 300.121 and 300.122, that children with disabilities in correctional facilities have FAPE available. PRDE must submit two progress reports, one by April 1, 2006 and one no later than 30 days after one year from the date of this letter. In the progress report, due by April 1, 2006, PRDE must submit data and analysis demonstrating progress toward compliance for the period from August 1, 2002 through February 28, 2006 and in the final report, submit data and analysis demonstrating full compliance with these requirements for the period from March 1, 2006 through one year from the date of this letter.

Preschool outcomes

Under the Government Performance and Results Act of 1993, 31 U.S.C. 1116, the effectiveness of the IDEA §619 program is being measured based on the extent to which early language/communication, pre-reading, and social-emotional skills of preschool children with disabilities receiving special education and related services are improving. On pages 52 through 53 of the APR, PRDE reported that it was not collecting data in any of these areas and that it did not track the progress of individual children through the school year.

The SPP instructions establish a new indicator in this area, for which States must provide entry data in the FFY 2005 APR due February 1, 2007. The State should carefully review the instructions to the SPP in developing its plans for this collection. OSEP looks forward to reviewing the State's plan for collecting this data, in the SPP.

Evaluations and reevaluations conducted in a timely manner

On page 5 of the March 2004 IP, PRDE reported that, as part of *Velez*, a review of all files of children with disabilities determined a need for 15,782 reevaluations. Almost 95% of these were completed, the remainder were delayed due to parents' absences for the evaluation appointments. No date was provided for the review conducted under *Velez*. Five percent of 15,782 represents 789 overdue reevaluations for children with disabilities. PRDE's February 2004 submission confirmed the totals reported in the March 2004 IP, and provided additional data indicating the numbers reported did not include data from three regions (Arecibo, Morovis, and San Juan), and that some of the other regions did not include data from all constituent districts. OSEP requested that PRDE provide accurate data by April 2004.

In its April 2004 submission, PRDE reported that, as of December 31, 2003, 1,413 children had been referred for an initial evaluation that had not been provided. Of the 1,413 children, 1,098 were overdue under Puerto Rico's timeline of 30 calendar days for evaluations.⁸ Of the 1,098 overdue evaluations, 720 were overdue for the period from September 1, 2003 through December 31, 2003. PRDE also reported that 3,041 children with disabilities, as of December

⁸ Under 20 U.S.C. 1414(a) (2004), initial evaluations must be completed within Federal timelines (60 days) unless the State has a different timeline that applies. In addition, under 20 U.S.C. 1412(a)(11), the SEA is responsible for ensuring that educational programs for children with disabilities meet the educational standards of the State. Here, Puerto Rico reports that it has a 30-day timeline for initial evaluations.

31, 2003, had not been provided a timely reevaluation. Of the 3,041 children, 524 were overdue from September 1, 2003 through December 31, 2003.

On pages 5 and 6 of the March 2004 IP, PRDE indicated that it planned to: (1) revise the existing evaluation and reevaluation procedures to simplify the existing paperwork requirements as part of the autonomy pilot; (2) refine and replicate the autonomy pilot model for integrated special education services in five additional regions by December 2004; (3) utilize the new management system to track timelines for evaluations and reevaluations; (4) develop and conduct training in the use of monitoring protocols; implement monitoring procedures to track timelines for completion of evaluations and reevaluations; and (5) identify personnel shortages and strategies to resolve the shortages. OSEP has reviewed and accepts these strategies.

As soon as possible, but in no case later than one year from the date of this letter, PRDE must demonstrate compliance with the requirements at 34 CFR §§300.531 and 300.600 and 20 U.S.C. 1414(a) (IDEA 2004) to complete initial evaluations in a timely manner (30 days in PRDE's case) and 34 CFR §300.536 and 20 U.S.C. 1414(a)(2) that reevaluations be conducted when conditions warrant or when the child's parent or teacher requests a reevaluation, but in no case less than once every three years. With the SPP and in the two additional progress reports, PRDE must report data and analysis related to initial evaluations and reevaluations as follows:

(1) Initial Evaluations

- (a) The children who, as of the end of the previous reporting period, had been referred for, but not provided, a timely initial evaluation;
- (b) The number of children referred for an initial evaluation whose initial evaluation became overdue during the reporting period;
- (c) The number of children, from (a) and (b) above, who were provided an initial evaluation during the reporting period;
- (d) The number of children who had not been provided a timely initial evaluation at the conclusion of the reporting period; and
- (e) The percentage of timely initial evaluations provided to children with disabilities whose initial evaluation deadlines fell within the reporting period.

(2) Reevaluations

- (a) The children who, as of the end of the previous reporting period, had not been provided a timely triennial reevaluation;
- (b) The number of children whose triennial reevaluation became overdue during the reporting period;
- (c) The number of children, from (a) and (b) above, who had been provided a triennial reevaluation during the reporting period;
- (d) The number of children who had not been provided a timely triennial reevaluation at the conclusion of the reporting period; and
- (e) The percentage of timely triennial reevaluations provided to children with disabilities whose reevaluation deadline fell during the reporting period.

The data and analysis submitted with the SPP, must report on the period from December 31, 2003 through October 31, 2005. The first progress report, due by April 1, 2006, must report on the period from November 1, 2005 through February 28, 2006. The final progress report, due by

no later than 30 days following one year from the date of this letter, must report on the period from March 1, 2006 through one year from the date of this letter.

Timely provision of assistive technology devices and services

On page 7 of the March 2004 IP and in its February 2004 submission, PRDE reported that 349 children in the Caguas and Bayamon Regions of Puerto Rico did not have the assistive technology devices and services required by their IEPs, pursuant to 34 CFR §300.308. PRDE's April 2004 submission reported that, as of December 31, 2003, the number of children with disabilities waiting for assistive technology devices ranged from five in Ponce to 236 in Caguas. The time period from when it was determined the devices or services were needed to receipt of those devices or services ranged from a low of 4.8 months in Ponce to over 14 months in Caguas. OSEP's September 2004 letter required updated information that PRDE provided in its December 2004 submission. As of December 10, 2004, PRDE reported that, of 933 evaluations for assistive technology requested throughout Puerto Rico, only 357 were completed. PRDE also reported that of 1,113 requests for assistive technology devices, only 550 such devices had been provided Island-wide.

PRDE is not complying with the requirements of 34 CFR §300.308 (proposed §300.105), that each public agency ensure that assistive technology devices or services are made available to a child with a disability if required as part of the child's special education, related services or supplementary aids and services. The March 2004 IP strategies included: (1) identifying and allocating funding sources for assistive technology; (2) revising purchasing procedures to expedite the acquisition of assistive technology devices and the implementing those procedures in the autonomy pilot; (3) addressing the lack of qualified professionals to evaluate assistive technology needs; and (4) conducting training for teachers and other personnel providing assistive technology. OSEP has reviewed and accepts these strategies. PRDE must ensure correction of this noncompliance by no later than one year from the date of this letter.

With the SPP and in two additional progress reports, PRDE must report the following data and analysis: (1) the number of children with disabilities awaiting evaluations for assistive technology needs; (2) the number of children awaiting needed assistive technology devices or services; (3) for children awaiting evaluations for assistive technology needs, the range of days since the evaluation was requested; and (4) for children awaiting needed assistive technology devices or services, the range of days since the request for the device(s) or service(s). The data and analysis submitted with the SPP, must report on the period from December 31, 2003 through October 31, 2005. The first progress report, due by April 1, 2006, must report on the period from November 1, 2005 through February 28, 2006. The final progress report, due by no later than 30 days following one year from the date of this letter, must report on the period from March 1, 2006 through one year from the date of this letter.

Procedural safeguards notice to parents

Regulations at 34 CFR §300.504 require that a copy of the procedural safeguards available to the parents of a child with a disability must be given to the parents, at a minimum: (1) upon initial referral for evaluation; (2) upon each notification of an IEP meeting; (3) upon reevaluation of the

child; and (4) upon receipt of a request for due process under §300.507. Under 20 U.S.C. 1415(d), effective July 1, 2005, a copy of the procedural safeguards must be given to the parents only one time a year, except that a copy also shall be given to the parents: (1) upon initial referral or parental request for evaluation; (2) upon the first occurrence of the filing of a request for a due process hearing; and (3) upon request by a parent.

On page 24 of the FFY 2002 APR, PRDE reported that it had taken steps to ensure that school districts had sufficient copies of the Parental Rights document. Also on page 24, PRDE reported that, as part of *Velez*, it was required to revise the Parental Rights document and conduct training regarding the content of *Velez*. PRDE developed a manual regarding the compliance requirements of *Velez*, as well as the IDEA compliance requirements. PRDE reported that “a copy of the manual was issued to every parent on the Island.” PRDE stated that it conducted trainings at the regional and State levels regarding necessary compliance requirements and how to involve parents in training. PRDE also met regularly with parent representatives under *Velez* to monitor progress under the agreement.

On page 23 of the FFY 2002 APR, PRDE stated that, during the 2002-2003 monitoring cycle, seven of 28 entities were cited for failure to document appropriate provisions of procedural safeguards to parents. On page 4 of the March 2004 IP, PRDE reported that seven of 28 (25%) entities monitored failed to “comply with procedural safeguards standards” in 2002-2003. On page 12a of the FFY 2002 APR, PRDE reported that, for 2002-2003, 46% of the entities “did not provide evidence that parents were informed of procedural safeguards.” On pages 10a and 11a, PRDE reported that seven of 19 (37%) entities monitored for “procedural safeguards” were noncompliant. As noted previously, PRDE must clarify the inconsistency in the number of entities monitored during the 2002-2003 school year.

In the March 2004 IP, PRDE included strategies designed to ensure compliance. Because the legal requirements related to the procedural safeguards notice have changed, along with the SPP submission, PRDE must submit a revised plan that provides for no less than two reports to OSEP and that ensures compliance with 20 U.S.C. 1415(d) within a reasonable period of time not to exceed one year from when OSEP accepts the plan.

Secondary Transition

Changes made by the IDEA Amendments of 2004, which took effect on July 1, 2005, eliminate the requirement to include a statement of transition service needs for students beginning at age 14 (See 34 CFR §300.347(b)(1)). Under 20 U.S.C. 1414(d)(1)(A)(i)(VIII), effective July 1, 2005, beginning not later than the first IEP to be in effect when the child is 16, and updated annually thereafter, the child’s IEP must include appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment, and where appropriate, independent living skills and the transition services (including courses of study) needed to assist the child in reaching those goals.

On page 54 of the FFY 2002 APR, PRDE reported that it used the following indicators to determine compliance with secondary transition requirements: (1) students with disabilities aged 14 and older were included in the IEP team meeting; (2) pre-vocational centers were available

for students beginning at age 14; (3) transition skills were calculated to develop functional skills to enable the student to obtain and maintain employment and other adult life skills; (4) transition skills were calculated to develop daily life skills; and (5) the vocational evaluation process was calculated to provide information about the student's interests, aptitudes and skills related to employment.

On pages 14 and 15 of the March 2004 IP, PRDE reported that four of 28 monitored entities "did not provide appropriate transition services." On pages 56 and 57 of the FFY 2002 APR, PRDE reported that four of 28 monitored entities were not in compliance with transition requirements. PRDE reported that, "[t]his noncompliance was due primarily to difficulty understanding the requirements for transition. For example, ...one monitored entity was only implementing transition requirements for students in full-time special education classes, rather than all students with disabilities. In another instance, the student's participation in the process was not enforced and monitored." PRDE also reported that schools were not documenting the secondary transition process appropriately in IEPs. Some schools provided transition activities such as instructional, community and related services, but did not update the IEP accordingly. On page 56 of the FFY 2002 APR, PRDE reported that it, "sensed the need to increase the participation of other agencies in provision of services," but did not specifically identify whether the noncompliance identified in the IP and FFY 2002 APR were related to the requirement at 34 CFR §300.344(b)(3).

In the March 2004 IP and in the FFY 2002 APR, PRDE included strategies designed to ensure compliance with the transition requirements. However, because the transition requirements for children with disabilities beginning at age 14 are no longer in effect, the plan must be revised to address the current transition requirements beginning with the first IEP in effect at age 16. With the SPP, PRDE must submit a revised plan to ensure compliance with 20 U.S.C. 1414(d)(1)(A)(i)(VIII) within a reasonable period of time not to exceed one year from the date that OSEP accepts the plan. The plan must provide for two progress reports to OSEP.

The SPP instructions establish two new indicators in this area (#13 and #14), for which PRDE must provide baseline data in the FFY 2005 APR due February 1, 2007. Absence of this information at that time will be considered in OSEP's annual determination on the status of PRDE's performance and compliance required under §616(d) of the IDEA. PRDE should carefully review the instructions to the SPP in developing its plans for this collection.

Conclusion

For the reasons set out above, PRDE must address the following areas of noncompliance with Part B requirements.

Identification and timely correction of noncompliance

With the next quarterly submission due with the SPP under the Department-wide Compliance Agreement, PRDE must clarify:

- (1) the number of entities monitored in each of the three years, 2002-2003, 2003-2004, 2004-2005, including whether the entities are schools or districts; and

- (2) whether it requires the timely correction of findings of noncompliance in districts that are in “substantial compliance” and the correction of noncompliance that does not meet the 10% threshold for systemic noncompliance.

In addition to the data required under Indicator 15, PRDE also must submit information required in the quarterly update charts (the next report is due with the SPP) under the Department-wide Compliance Agreement. The quarterly reporting must continue to include the following information by entity: (1) the date of monitoring visit or activity; (2) the date of the report or other document identifying noncompliance; (3) the number of findings; (4) the dates of any follow-up activities; (5) the number of findings corrected within one year; (6) the number of findings not corrected within one year including reasons for non-correction; and (7) actions taken by PRDE to ensure correction as soon as possible.

This submission also must include an update on the status of those entities monitored during the 2002-2003 (11 entities) and 2003-2004 (six entities) that failed to correct identified noncompliance within one year and the additional actions taken, including an analysis of the effectiveness of any sanctions that PRDE imposed upon these entities. For each entity with a finding of noncompliance that, as of the quarterly report, has not been corrected, PRDE must also identify any further actions that are planned to ensure correction of the noncompliance as soon as possible.

Finally, PRDE needs to provide copies of the documentation of monitoring and correction for two entities, to be identified by OSEP. The documentation is to include monitoring reports or other documentation of findings, approved correction plans, documentation of correction submitted to PRDE, and all related correspondence including, where applicable, close-out letters.

Formal written complaints

With the SPP, PRDE must submit updated data and analysis that updates the status of compliance with the State complaint requirements. In addition to the data submitted with the SPP, PRDE must submit two additional progress reports on or before April 1, 2006 and 30 days after one year from the date of this letter. The information with the SPP and two additional progress reports must include: (1) the date each complaint was filed; (2) the status of the complaint; (3) whether the complaint was resolved consistent with Federal requirements including timelines and written decisions; (4) the number of pending complaints that are still within the Federal timelines or extensions as of the last day of the reporting period; and (5) the number of pending complaints that are beyond the Federal timelines as of the last day of the reporting period. The submission with the SPP must include data and analysis covering the period from August 1, 2002 through June 30, 2003. The SPP covers the period from July 1, 2003 through June 30, 2004 and data for that period should be reported through the SPP. The progress report, due by April 1, 2006, must include data and analysis covering the period from July 1, 2004 through February 28, 2006. The progress report, due 30 days following one year from the date of this letter, must include data and analysis for the period from March 1, 2006 through one year from the date of this letter.

Due process hearings

With the SPP, PRDE must provide a plan, including strategies, proposed evidence of change, targets and timelines to ensure that due process hearing decisions are reached in a timely manner under the new IDEA requirements at 20 U.S.C. 1415(f)(1)(B). The plan must be designed to ensure compliance as soon as possible, but no later than one year from the date OSEP accepts the plan and must provide for two progress reports to OSEP.

Early childhood transition

Within one year from the date of this letter, PRDE must ensure correction of noncompliance with the Federal requirements at 34 CFR §300.132. In addition to the data reported in the SPP, PRDE must submit two progress reports, one by April 1, 2006, and one no later than 30 days following one year from the date of this letter. The progress reports must include: data and information demonstrating correction of all identified noncompliance with 34 CFR §300.132.

Discipline

As part of PRDE's quarterly reporting under the Compliance Agreement, PRDE must report on the status of correction of the finding of noncompliance in the area of discipline, or if not corrected, the additional actions that have been taken to achieve compliance.

Statewide assessments

The Special Conditions attached to Puerto Rico's FFY 2005 Part B grant award require that, by December 3, 2005, PRDE submit a written plan detailing the steps and timelines for reporting publicly and to the Secretary on the participation and performance of children with disabilities on alternate assessments by May 30, 2006. The plan must ensure that students with disabilities who take the alternate assessment, are assessed in the same grades as students taking the regular assessment and that their participation in such assessments and the results of their assessments are reported with the same frequency and in the same detail as nondisabled students

In addition, PRDE must provide a plan, including strategies, proposed evidence of change, targets and timelines to ensure that special education students in private schools, juvenile institutions, ungraded classes, separate special education schools and separate special education classes participate in the Commonwealth-wide assessments. The plan must be designed to ensure compliance as soon as possible, but no later than one year from the date OSEP accepts the plan and provide for two progress reports to OSEP.

FAPE in correctional facilities

As soon as possible, but in no case later than one year from the date of this letter, PRDE must ensure compliance with the requirements, at 34 CFR §§300.2(b)(iv), 300.300, 300.121 and 300.122, that children with disabilities in correctional facilities have FAPE available. PRDE must submit two progress reports, one by April 1, 2006 and one no later than 30 days after one year from the date of this letter. In the progress report, due by April 1, 2006, PRDE must submit

data and analysis demonstrating progress toward compliance for the period from August 1, 2002 through February 28, 2006 and in the final report, submit data and analysis demonstrating full compliance with these requirements for the period from March 1, 2006 through one year from the date of this letter.

Least restrictive environment

In the SPP, under Indicator 6, PRDE must report on the percent of preschool children with IEPs who received special education and related services in settings with typically developing peers. If PRDE determines that a continuum of alternative placements is not available for preschool children, PRDE must submit a plan with the SPP, including strategies, proposed evidence of change, targets and timelines designed to ensure compliance with the requirements at 34 CFR §300.550-300.556 and 20 U.S.C. 1412(a)(5), as soon as possible. The plan must provide for the collection of data to make evidenced-based compliance determinations and ensure correction within a reasonable period of time, not to exceed one year from the date OSEP accepts the plan and must provide for two progress reports to OSEP.

Timely initial and reevaluations and assistive technology devices and services

With the SPP and in the two additional progress reports, PRDE must report data and analysis related to initial evaluations, reevaluations and assistive technology devices and services as follows:

(1) Initial Evaluations:

- (a) The children who, as of the end of the previous reporting period, had been referred for, but not provided, a timely initial evaluation;
- (b) The number of children referred for initial evaluation whose initial evaluation became overdue during the reporting period;
- (c) The number of children, from (a) and (b) above, who were provided an initial evaluation during the reporting period;
- (d) The number of children who had not been provided a timely initial evaluation at the conclusion of the current reporting period; and
- (e) The percentage of timely initial evaluations provided to children with disabilities whose initial evaluation deadlines fell within the current reporting period.

(2) Reevaluations:

- (a) The children who, as of the end of the previous reporting period, had not been provided a timely triennial reevaluation;
- (b) The number of children whose triennial reevaluation became overdue during the reporting period;
- (c) The number of children, from (a) and (b) above, who had been provided a triennial reevaluation during the reporting period;
- (d) The number of children who had not been provided a timely triennial reevaluation at the conclusion of the reporting period; and

(e) The percentage of timely triennial reevaluations provided to children with disabilities whose reevaluation deadline fell during the reporting period.

(3) Assistive Technology Devices And Services:

- (a) The number of children with disabilities awaiting evaluations for assistive technology needs;
- (b) The number of children awaiting needed assistive technology devices or services;
- (c) For children awaiting evaluations, the range of days since the evaluation was requested; and
- (d) For children awaiting needed assistive technology devices or services, the range of days since the request for the device(s) or service(s) were requested.

The data and analysis submitted with the SPP, must report on the period from December 31, 2003 through October 31, 2005. The first progress report, due by April 1, 2006, must report on the period from November 1, 2005 through February 28, 2006. The final progress report, due by no later than 30 days following one year from the date of this letter, must report on the period from March 1, 2006 through one year from the date of this letter.

Procedural safeguards

With the SPP submission, PRDE must submit a revised plan that provides for no less than two reports to OSEP and that ensures compliance with 20 U.S.C. 1415(d) within a reasonable period of time not to exceed one year from when OSEP accepts the plan.

Secondary transition

Because the transition requirements for children with disabilities beginning at age 14 are no longer in effect, PRDE must revise its plan to address the current transition requirements beginning at age 16. With the SPP, PRDE must submit a revised plan to ensure compliance with 20 U.S.C. 1414(d)(1)(A)(i)(VIII) within a reasonable period of time not to exceed one year from the date that OSEP accepts the plan. The plan must provide for two progress reports to OSEP.

IDEA 2004, §616, requires each State to submit a State Performance Plan (SPP) that measures performance on monitoring priorities and indicators established by the Department. These priorities and indicators are, for the most part, similar to clusters and probes in the APR. OSEP encourages the State to carefully consider the comments in this letter as it prepares its SPP, due December 2, 2005.

OSEP recognizes that the APR and its related activities represent only a portion of the work in your State and looks forward to collaborating with you as you continue to improve results for children and youth with disabilities and their families. If you have questions, please contact Paul Steenen at (202) 245-7397.

Sincerely,

A handwritten signature in black ink, appearing to read "Troy R. Justesen". The signature is fluid and cursive, with a long, sweeping underline that extends to the right.

Troy R. Justesen
Acting Director
Office of Special Education Programs

cc: Mytra Reyes