



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

JUN 15 2007

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

Dear Secretary Torres:

Thank you for the timely submission of Puerto Rico's Annual Performance Report (APR) and revised State Performance Plan (SPP) under Part B of the Individuals with Disabilities Education Act (IDEA), as amended in 2004.

As you know, under IDEA section 616, each State has an SPP that evaluates the State's efforts to implement the requirements and purposes of Part B of the IDEA and describes how the State will improve its implementation of Part B. In the revised SPP due by February 1, 2007, States were required to provide information on: (1) specific new indicators; and (2) correction of any deficiencies identified in the Office of Special Education Programs' (OSEP's) SPP response letter sent to Puerto Rico last year. States were also required to submit by February 1, 2007, an APR for Federal fiscal year (FFY) 2005 that describes the State's: (1) progress or slippage in meeting the measurable and rigorous targets established in the SPP; and (2) any revisions to the State's targets, improvement activities, timelines or resources in the SPP and justifications for the revisions. We appreciate Puerto Rico's efforts in preparing the FFY 2005 APR and revised SPP.

The Department has reviewed the information provided in the Puerto Rico Department of Education's (PRDE) FFY 2005 APR and revised SPP, other State-reported data, information obtained through monitoring visits, and other public information and has determined that, under IDEA section 616(d), Puerto Rico needs intervention in meeting the requirements of Part B of the IDEA. Puerto Rico should review IDEA section 616(e) regarding the potential future impact of the Department's determination.

The Department's determination is based on the totality of PRDE's data in its SPP/APR and other publicly available information, including any compliance issues. The factors in States' FFY 2005 APR and February 1, 2007 SPP submissions that affected the Department's determinations were whether the State: (1) provided valid and reliable FFY 2005 data that reflect the measurement for each indicator, and if not, whether the State provided a plan to collect the missing or deficient data; and (2) for each compliance indicator that was not new (a) demonstrated compliance or timely corrected noncompliance, and (b) in instances where it did not demonstrate compliance, had nonetheless made progress in ensuring compliance over prior performance in that area. We also considered whether the State had other IDEA compliance issues that were identified previously through the Department's monitoring, audit or other activities, and

the State's progress in resolving those problems. See the enclosure entitled "How the Department Made Determinations under Section 616(d) of the IDEA in 2007" for further details.

The specific factors affecting OSEP's determination of needs intervention for Puerto Rico were that PRDE: 1) reported 13.17% compliance for Indicator 12 (and did not provide FFY 2004 compliance data); 2) reported 14.2% compliance data for Indicator 15; 3) continues to not provide timely initial evaluations and reevaluations to large numbers of students; 4) continues to have waiting lists for assistive technology evaluations, equipment and services; 5) reported 2.78% compliance data for Indicator 16; 6) reported 67% compliance data for Indicator 17; 7) is not complying with the requirement at 34 CFR §300.510 related to resolution sessions; 8) has not corrected financial management issues, including addressing use of funds requirements related to transportation contracts; and 9) did not provide data for Indicators 1, 5 and 7. OSEP will carefully review Puerto Rico's compliance in these areas. Failure to demonstrate correction of this noncompliance in Puerto Rico's FFY 2006 APR will affect OSEP's determination of Puerto Rico's status under section 616(d) of the IDEA, and will likely result in a finding of needs substantial intervention.

With respect to Indicator 12, PRDE was required to report the percent of children referred by Part C prior to age 3, who are found eligible for Part B, and who have an individualized education program implemented by their third birthdays. PRDE did not report FFY 2004 data and reported 13.17% compliance for FFY 2005. PRDE's very low level of compliance on this critical indicator demonstrates that it is not ensuring that all eligible children transitioning from Part C to Part B are receiving special education and related services by their third birthdays. In addition, Puerto Rico has not demonstrated progress in this area and submitted more recent data that suggest potential slippage.

With respect to Indicator 15, Puerto Rico's exercise of general supervision, PRDE was required to report the percent of noncompliance corrected within one year of identification, broken down by the number of findings of noncompliance and the number of corrections completed as soon as possible but in no case later than one year from identification. Because failure to ensure compliance has been an area of longstanding concern, under a Department-wide Compliance Agreement, PRDE also was required to report on the status of findings dating from 2002 and 2003, that had not been timely corrected and other areas of longstanding noncompliance. PRDE's FFY 2005 reported data for this indicator are 14.2%, down from 56.7% reported last year. PRDE reported that 11 findings of noncompliance from 2002 and 2003 have not yet been corrected. Puerto Rico reported that as of November 1, 2006, 2,539 students were awaiting an evaluation or reevaluation; 145 students were awaiting assistive technology evaluations; and 164 were awaiting assistive technology equipment and/or services. Puerto Rico's very low level of compliance on this indicator; the persistence of longstanding noncompliance including noncompliance related to initial evaluations and reevaluations and assistive technology, all support the conclusion that Puerto Rico has failed to demonstrate compliance with the requirements of 20 USC 1232d(b)(3)(E), and 34 CFR §§300.149 and 300.600.

With respect to Indicator 16, PRDE reported 2.78% compliance with the requirement for timely resolution of State complaints for FFY 2005, but reported some progress in

resolving complaints from previous years. When PRDE improperly stopped processing and investigating all complaints several years ago, a substantial backlog of complaints accumulated. While PRDE reported progress by eliminating the backlog of State complaints, it is still reporting low levels of compliance with the requirements of 34 CFR §300.152 (previously 34 CFR §300.661) for timeliness of complaint decisions for FFY 2005 and also reported that it has reduced the size of its complaint investigation staff. Because investigating and resolving State complaints is an important part of general supervision, OSEP believes that continued efforts are required to ensure compliance.

With respect to Indicator 17, PRDE reported slippage in its compliance level and appears to be counting as timely, due process hearing decisions issued within extensions that are not made at the request of a party consistent with 34 CFR §300.515(c).

With respect to Indicator 18, PRDE reported that it was not in compliance with 34 CFR §300.510 because it did not have a system to offer and conduct resolution sessions whenever a parent requests a due process hearing. PRDE did include a plan to come into compliance. Based on this noncompliance, PRDE could not report data for Indicator 18.

With respect to financial management issues, PRDE is currently under a Compliance Agreement that will end on October 25, 2007. Under that agreement, PRDE has agreed to address numerous programmatic and financial issues. The Department has raised concerns because PRDE has not met many of the timelines in that agreement. In addition, to resolve audit findings related to transportation contracts in the Bayamon region, OSEP's October 12, 2006 letter required that PRDE implement four specific steps regarding financial controls and the Bayamon transportation contracts and to report in the FFY 2005 APR the steps taken to implement these corrective actions. PRDE has not submitted its final report demonstrating correction and has sought an extension of time.

Finally, PRDE did not report data for Indicators 1, 5 and 7, although PRDE included a plan to provide data in the next APR. We hope that PRDE will be able to demonstrate that it meets requirements in its next APR.

The table enclosed with this letter provides OSEP's analysis of PRDE's FFY 2005 APR and revised SPP and identifies, by indicator, OSEP's review and acceptance of any revisions made by PRDE to its targets, improvement activities (timelines and resources) and baseline data in PRDE's SPP. It also identifies, by indicator, PRDE's status in meeting its targets, and whether PRDE's data reflect progress or slippage, and whether PRDE corrected noncompliance and provided valid and reliable data. The table also lists, by indicator, any additional information PRDE must include in the FFY 2006 APR or, as needed, the SPP due February 1, 2008, to address the problems OSEP identified in the revised SPP or FFY 2005 APR. PRDE must provide this required information. We plan to factor into our determinations next year whether or not States provided the additional information requested in this table in their FFY 2006 APR, due February 1, 2008, and may take other actions as well, if the State's data, or lack of data, regarding these issues indicates continuing noncompliance.

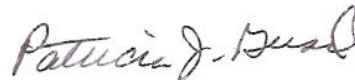
We hope that Puerto Rico found helpful, and was able to benefit from, the monthly technical assistance conference calls conducted by this Office, ongoing consultation with OSEP State Contacts and OSEP-funded Technical Assistance Center staff, materials found on the IDEA 2004 website, and attendance at OSEP-sponsored conferences. OSEP

will continue to provide technical assistance opportunities to assist PRDE as it works to improve performance under Part B of the IDEA. If you have any feedback on our past technical assistance efforts or the needs of States for guidance, we would be happy to hear from you as we work to develop further mechanisms to support State improvement activities.

As noted above, Puerto Rico has been determined to Need Intervention. Pursuant to section 616(d)(2)(B) of the IDEA and 34 CFR §300.603(b)(2), a State that is determined to Need Intervention or Need Substantial Intervention, and does not agree with this determination, may request an opportunity to meet with the Assistant Secretary for Special Education and Rehabilitative Services to demonstrate why the Department should change its determination. To request a hearing, submit a letter to John H. Hager, Assistant Secretary, Office of Special Education and Rehabilitative Services, 400 Maryland Avenue SW, Room 5107, Potomac Center Plaza, Washington, DC 20202-2600 within 30 days of the date of this letter and provide in the letter the basis for your request.

OSEP is committed to supporting Puerto Rico's efforts to improve results for children with disabilities and looks forward to working with PRDE over the next year. If you have any questions, would like to discuss this further, or want to request technical assistance, please do not hesitate to call Gregg Corr, your OSEP State Contact, at 202-245-7309.

Sincerely,



Patricia J. Guard
Acting Director
Office of Special Education Programs

Enclosures

cc: State Director of Special Education