

Table B – Part B
Previously-Identified Issues

Issue	State Submission	OSEP Analysis	Required Action
<p><u>SPP Indicator 3: Assessment (Special Conditions).</u></p> <p>The Special Conditions attached to PRDE’s FFY 2005 Grant Award require that 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.</p>	<p>See Table A, also.</p> <p>On pages 21 and 22 of the January 13, 2006 submission¹, PRDE submitted the plan to address the Special Condition around reporting on children with disabilities who take the alternate assessment by May 30, 2006.</p> <p>On page 21, PRDE reported that scoring on the alternate assessment by the contractor will take place in April 2006 and that the scores will be provided to PRDE in a format appropriate for reporting to the public by May 20, 2006. PRDE stated that it will be able to report the results for the students who took the alternate assessment prior to May 30, 2006.</p>	<p>See Table A, also.</p> <p>OSEP previously communicated to PRDE that the plan provided by PRDE, will address the Special Condition on PRDE’s FFY 2005 grant award and is acceptable.</p>	<p>Under the Special Conditions, a final progress report is due by May 30, 2006. PRDE 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. Failure to demonstrate compliance with 20 U.S.C. 1412(a)(16)(C) by May 30, 2006 will affect OSEP’s determination of Puerto Rico’s status under section 616(d) of the IDEA, which may include the continuation of high-risk status with Special Conditions and/or other enforcement options provided under law.</p>
<p><u>SPP Indicator 3: Assessment.</u></p> <p>In the October 7, 2005 letter in response to the FFY 2002 Annual Performance Report (APR), OSEP determined that the data provided by PRDE on page 42 of the APR indicated 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</p>	<p>See Table A, also.</p> <p>On page 22 and 23 of the January 13, 2006 submission, PRDE activities and dates for reports to OSEP. The activities include monitoring of participation in the assessment for May 2006 and training on participation requirements in November 2006.</p>	<p>See Table A, also.</p> <p>OSEP believes that this plan is insufficient to demonstrate compliance within one year because the proposed training is scheduled after the administration of the May 2006 assessment and the plan does not provide for PRDE to notify administrative</p>	<p>As soon possible, but prior to the May 2006 assessment, PRDE must notify or otherwise train responsible personnel in the administrative districts of the requirements and/or relevant policies, procedures and practices to ensure that students</p>

¹ Although OSEP had requested that the progress report under the Special Conditions and in those required in the October 7, 2005 letter in response to the FFY 2002 Annual Performance Report (APR), be submitted with the SPP, PRDE requested and was granted an extension of time.

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<p>assessments because their IEPs did not address administration of the assessments. 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 many children with disabilities did not participate in the assessments.² 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. 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. PRDE was to 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 as appropriate under the IDEA.</p>		<p>districts of the requirements and/or relevant policies, procedures and practices prior to the May 2006 administration. OSEP believes that it is vitally important for PRDE to notify responsible personnel of federal requirements and its policies regarding participation in the regular and alternate assessment by students with IEPs who are publicly-placed in nonpublic schools (see 34 CFR §§300.2(c) and 300.401) and who are incarcerated but eligible to participate. See 34 CFR §300.2(b)(1)(iv), 300.347(a)(5) and 300.311(b).</p>	<p>with IEPs who are publicly-placed in nonpublic schools and who are incarcerated but eligible to participate, do participate in the assessment system as appropriate. PRDE must implement the proposed monitoring activities to determine whether such students participated in the May 2006 assessment. To the extent needed, PRDE may implement additional training activities for those administrative districts that did not ensure participation of these students in the assessment system. PRDE must submit a progress report showing some progress to OSEP prior to the FFY 2006 grant award period and a final report with the FFY 2005 APR, due February 1, 2007. By no later than February 1, 2007, PRDE must demonstrate full compliance with the requirements at 34 CFR §§300.2(c) and 300.401 to include children with disabilities placed in private schools by a public agency in Commonwealth-wide assessments. Likewise, PRDE must demonstrate that, with the exception of students with disabilities who are convicted as adults under Commonwealth law and are incarcerated in adult prisons, students with disabilities in correctional facilities (e.g., juvenile facilities) also must</p>

² 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.

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			participate in the assessment system. See 34 CFR §300.2(b)(1)(iv), 300.347(a)(5) and 300.311(b). Failure to demonstrate compliance at that time may affect OSEP's determination of Puerto Rico's status under section 616(d) of the IDEA
<p><u>SPP Indicator 6: LRE.</u></p> <p>OSEP's October 7, 2005 letter required that in the SPP, under Indicator 6, PRDE report on the percent of preschool children with IEPs who received special education and related services in settings with typically developing peers. Further, if PRDE determined that a continuum of alternative placements is not available for preschool children, PRDE was to 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 provide for two reports to OSEP.</p>	<p>On page 23, PRDE reported its conclusion that there is a continuum of alternative placements available for preschool children with disabilities. As per the December 2004 Child Count, PRDE reported serving 8,185 preschool IEP students aged 3 -5, and of those, 5,927 (72.4%) received special education services with typically developing peers. On page 24, PRDE included a placement chart, displaying the number of preschool children with disabilities in each setting.</p>	<p>PRDE reported that it has a continuum of alternative placements for children with disabilities aged 3 through 5 and that these children are served in a variety of settings. PRDE reported on the percentage of children with disabilities who are served in settings with typically developing peers.</p>	<p>OSEP looks forward to PRDE continued reporting each year under Indicator 6, beginning with the FFY 2005 APR, due February 1, 2007.</p>
<p><u>SPP Indicator 12: Early Childhood Transition.</u></p> <p>In the October 7, 2005 letter in response to the FFY 2002 APR, OSEP noted that the data provided on pages 18 and 19 of the FFY 2002 APR indicated 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</p>	<p>PRDE did not submit any student-level data in its January 16, 2006 submission or under Indicator 12 in the SPP. PRDE reported the development of a system for a common database between the Part C and Part B program designed to share information on infants and toddlers ages 2 and above to determine eligibility under Part B.</p>	<p>See Table A, also.</p> <p>PRDE failed to report any progress data and has not demonstrated progress toward full compliance with the early childhood transition requirements at 34 CFR §300.132 (20 U.S.C. 1412(a)(9)).</p>	<p>See Table A, also.</p> <p>PRDE must submit two reports to OSEP, a progress report demonstrating some progress prior to the FFY 2006 grant award period and a final report demonstrating full compliance with the FFY 2005 APR due February 1, 2007. In the FFY</p>

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<p>brief survey of children identified in Part C to determine if those children continued to receive services under an IEP.” PRDE continued that “the survey results indicated that, at the most, 30% of children eligible under Part C received services under an IEP after their 3rd birthday.”</p> <p>OSEP noted that PRDE was out of compliance and required that, by October 7, 2006, PRDE has to ensure compliance with 34 CFR §300.132. In addition to the data reported in the SPP, PRDE was to submit two reports, a progress report and a final report. The reports are to include: data and information demonstrating progress and full compliance with 34 CFR §300.132, respectively.</p>			<p>2005 APR, PRDE must demonstrate full compliance with the requirement at 34 CFR §300.132 (20 U.S.C. 1412(a)(9)). Failure to demonstrate progress or full compliance may affect OSEP’s determination of Puerto Rico’s status under section 616(d) of the IDEA. See also Table A.</p>
<p><u>SPP Indicator 13: Secondary Transition.</u></p> <p>In the October 7, 2005 letter in response to the FFY 2002 APR, OSEP noted that the data provided by PRDE on pages 14 and 15 of the March 2004 IP indicated 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</p>	<p>On page 29 of the January 13, 2006 submission, PRDE submitted a revised plan that identified specific dates to submit reports. PRDE also proposed activities to collect and report on data for related Indicator 13, which is a new Indicator.</p>	<p>PRDE provided a plan that appears reasonably calculated to correct the identified noncompliance with the transition requirements at 20 U.S.C. 1414(d)(1)(A)(i)(VIII) and OSEP accepts the plan. In addition, PRDE proposed planned activities to report data for new Indicator 13.</p>	<p>OSEP looks forward to PRDE’s submission under Indicator 13. In addition, PRDE must submit a progress report to OSEP showing some progress prior to the FFY 2006 grant award period and the final report either with FFY the 2005 APR, due February 1, 2007 or prior to the FFY 2007 grant award period. In the final report, PRDE must demonstrate full compliance with the requirements of 20 U.S.C. 1414(d)(1)(A)(i)(VIII). Failure to demonstrate compliance at that time may affect OSEP’s determination of Puerto Rico’s status under section 616(d) of the IDEA.</p>

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<p>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).</p> <p>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 was to be revised to address the current transition requirements beginning with the first IEP in effect at age 16. With the SPP, PRDE was to submit a revised plan to ensure compliance with 20 U.S.C. 1414(d)(1)(A)(i)(VIII). The plan was to provide for two progress reports to OSEP.</p>			
<p>General Supervision/Monitoring Background: 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) and 34 CFR §300.600). Puerto Rico's September 2002 proposed 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. 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 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.</p>			
<p><u>SPP Indicator 15: Monitoring.</u></p> <p>In the October 7, 2005 FFY 2002 APR response letter, pursuant to 20 U.S.C. 1232d(b)(3), OSEP required PRDE to submit data and analysis demonstrating that the findings of noncompliance identified through monitoring were being corrected in a timely manner. In addition to the data required under Indicator 15 in the State Performance Plan (SPP), OSEP required:</p>			

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<ul style="list-style-type: none"> 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 required correction of all identified noncompliance including findings for those entities that were in “substantial compliance” and findings where PRDE’s ten-percent threshold for systemic noncompliance was not reached. 	<p>On page 4 of the January 13, 2006 progress report, PRDE clarified the number of entities monitored in the school years 2002-2003, 2003-2004 and 2004-2005. On page 4, PRDE reported that it requires districts that are in “substantial compliance” to correct any issues identified in a timely manner. PRDE reported that the 10% threshold for “systemic noncompliance” refers to how the monitoring staff identifies Island-wide problems or issues. It does not apply to individual entities. As set out in the December 2004 submission, when PRDE identifies a violation that occurs in more than 10% of the entities monitored in a cycle, then that specific area is considered to be an Island-wide compliance issue.</p>	<p>PRDE submitted the required documentation.</p>	<p>No further action required on this specific issue.</p>
<ul style="list-style-type: none"> PRDE to continue the periodic reporting under the Department-wide Compliance Agreement including updating the status of entities with outstanding noncompliance. 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. 	<p>In the January 13, 2006 submission, PRDE provided an updated quarterly report on the status of entities monitored during 2002-2003, 2003-2004 and 2004-2005, including entities with outstanding noncompliance.</p>	<p>PRDE’s January 13, 2006 submission included the required documentation, but in none of the charts provided did PRDE identify the reasons for failing to correct noncompliance within one year from identification.</p>	<p>Under the Department-wide Compliance Agreement, PRDE must continue the quarterly reporting on the requirements at 20 U.S.C. 1232d(b)(3) until PRDE effectively demonstrates that it is able to ensure the correction of all identified noncompliance within one year. In the first 2006 quarterly report, PRDE must update the status of entities monitored with outstanding identified noncompliance, including the number of findings not corrected within one year and the reasons for the non-correction.</p>
<ul style="list-style-type: none"> PRDE to provide 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 	<p>On pages 5 and 6 of the January 13, 2006 submission, PRDE reported that two of 11 entities monitored during 2002-2003 corrected the identified noncompliance. For the remaining nine entities monitored in 2002-2003 and for all six entities monitored in 2003-2004, PRDE took additional enforcement actions. PRDE reported that districts received a letter from the PRDE</p>	<p>In the documentation on pages 5 and 6, PRDE identified the additional action taken with districts that failed to correct identified noncompliance within one year, but it failed to include an analysis of the effectiveness of the imposed sanctions. PRDE reported</p>	<p>Under the Department-wide Compliance Agreement, PRDE must continue the quarterly reporting on the requirements at 20 U.S.C. 1232d(b)(3) until PRDE effectively demonstrates that it is able to ensure the correction of all identified</p>

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upon these entities.	Secretary of Education, the appointment of a monitor, as well as additional corrective actions.	that 15 of 17 entities monitored between 2002-2004 remained out of compliance. The 17 entities reported are included in the 63 total entities monitored during 2002 - 2004 school years. (See the row below.)	noncompliance within one year. In the First 2006 quarterly report, PRDE must submit data and analysis demonstrating that the findings of noncompliance identified through monitoring are being corrected in a timely manner. PRDE must provide an update on the status of the 15 entities monitored between 2002-2004 that failed to correct noncompliance, even with the additional enforcement actions taken by PRDE. In this update, PRDE must include an analysis of the effectiveness of imposed enforcement actions, including any <u>additional</u> enforcement actions and sanctions it imposed on the entities that remain noncompliant.
<ul style="list-style-type: none"> PRDE to identify any further actions that are planned to ensure correction of the noncompliance as soon as possible for each entity with a finding of noncompliance that, as of the quarterly report, had not been corrected. 	<p>In the January 13, 2006 submission, for 2002-2003, PRDE reported that of 24 entities monitored, 14 had corrected the identified noncompliance (closed) and 10 remain noncompliant. For 2003-2004, of 39 entities monitored, 16 were closed and 23 remain noncompliant. For 2005, of 4 monitored, 4 remain noncompliant. This data indicates that currently there are 37 entities out of 67 monitored by PRDE between 2002-2005 that remain noncompliant under IDEA. (These 67 include the 17 entities mentioned in the row above.) In all entities that were not "closed," PRDE took further action with the assignment of a monitor.</p>	<p>PRDE reported on the additional actions taken but did not report on their effectiveness. (See above.)</p>	<p>Under the Department-wide Compliance Agreement, PRDE must continue the quarterly reporting on the requirements at 20 U.S.C. 1232d(b)(3) until PRDE effectively demonstrates that it is able to ensure the correction of all identified noncompliance within one year. PRDE must continue to include an analysis of the effectiveness of enforcement actions taken, including any additional enforcement actions and sanctions it imposes on the entities.</p>
<ul style="list-style-type: none"> PRDE 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 	<p>On January 23, 2006, PRDE submitted documentation of corrective actions for one district, Toa Baja School District for the period from December 2004 to December 2005 and for one school, Nueva Urbana Elementary School</p>	<p>PRDE submitted documentation of findings and CAPs for one district and one school. For the Tao Baja School district, PRDE included a close-out letter acknowledging</p>	<p>In the progress report, PRDE must submit documentation or an explanation of the corrections submitted to PRDE for Tao Baja School District and the Nueva</p>

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<p>documentation of findings, approved corrective action plans (CAPs), documentation of correction submitted to PRDE, and all related correspondence including, where applicable, close-out letters.</p>	<p>within the Lajas School District for the period from November 2004 to September 2005. PRDE provided a December 7, 2005 letter from the Office of the Assistant Secretary for Special Education regarding a meeting to report on and close out the monitoring findings in Toa Baja. PRDE also provided a September 13, 2005 Follow-up report on the CAP in Nueva Urbana School, closing out the finding identified through monitoring and referencing that a letter closing the CAP would be sent.</p>	<p>correction of the identified noncompliance within one year. For Nueva Urbana School, PRDE included a follow-up CAP which reported correction of monitoring finding within one year from identification. For both entities, PRDE did not submit to OSEP documentation of correction submitted to PRDE to close-out the findings.</p>	<p>Urbana Elementary School. PRDE must also provide copies of the documentation of monitoring and correction for two additional entities. From the 2003-2004 monitoring charts provided to OSEP, OSEP requests monitoring and correction data for Violanta Jimenez and Luis Munoz Rivera (Dorado). The documentation must include monitoring reports or other documentation of findings, CAPs, documentation of correction submitted to PRDE, and all related correspondence including, where applicable, close-out letters.</p>
<p>Monitoring - Discipline: In the October 7, 2005 letter in response to the FFY 2002 APR, OSEP determined that the data provided by PRDE on page 10a and 11a of the APR indicated that one of 28 entities was cited for noncompliance in the area of discipline. As part of PRDE's quarterly reporting under the Department-wide 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.</p> <p>(Also related to Indicator 4A)</p>	<p>On page 21 of the January 13, 2006 submission, PRDE reported that the compliance unit will examine the three suspended students' records in order to determine if the process implemented for each of the suspensions was consistent with the PRDE Manual of Procedures. The compliance unit will identify any noncompliance and provide technical assistance to the appropriate personnel to address noncompliance issues and implement the sanctions system accordingly. PRDE also proposed activities under Indicator 4A of the SPP.</p>	<p>Under Indicator 4A, PRDE proposed strategies that include the yearly review of the files of all students suspended or expelled. However, PRDE's January 13, 2006 submission does not appear to address the previously-identified noncompliance in the area of discipline, does not identify the specific entity with this finding, and does not provide any evidence that the identified noncompliance was corrected.</p>	<p>OSEP looks forward to PRDE's continued submissions under Indicator 4A. In addition, as part of the quarterly report under the Department-wide Compliance Agreement, PRDE must identify the entity and report on the status of correction of the finding of noncompliance in the area of discipline for this specific entity. If not corrected, PRDE must report this information under the Compliance Agreement regarding correction of noncompliance. Failure to report at that time may affect OSEP's determination of Puerto Rico's status under section 616(d) of the IDEA.</p>

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<p><u>SPP Indicator 16: Complaints.</u></p> <p>In the August 13, 2004 verification letter, OSEP noted the history on this issue. To reiterate, the September 27, 1991 Monitoring Report found that PRDE had not met its responsibility to adopt written procedures for complaint management. PRDE's due process system, as implemented, had subsumed the Commonwealth complaint procedures. One PRDE official indicated that PRDE had no procedure for informing individuals or organizations in writing of the resolution of the complaints they filed. Despite corrective actions, OSEP once again found in the September 29, 1995 Monitoring Report that PRDE had not met its responsibility to establish complaint procedures consistent with requirements under 34 CFR §§300.660 - 300.662. The proposed Puerto Rico Improvement Plan acknowledged that PRDE had not implemented a complaint management system that resolves complaints within 60 days (except where exceptional circumstances exist with respect to a particular complaint). OSEP reviewed complaint logs during the March 2004 visit and determined that timelines for complaints did not meet the requirements of 34 CFR §300.661. In the October 7, 2005 letter in response to the FFY 2002 APR, OSEP determined that PRDE's data submission identified 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. Specifically, 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</p>	<p>On page 7 of the January 13, 2006 submission, PRDE reported that it was unable to "provide disaggregated data for the period of August 1, 2002 through December 31, 2002." PRDE reported no data for 2002-2003.</p> <p>For the school year 2003-2004, PRDE reported that, of 60 complaints received, 51 were beyond timelines and still pending. Nine complaints were dismissed.</p> <p>For the school year 2004-2005, PRDE reported that, of 50 complaints, 42 were beyond timelines and still pending. Eight complaints were dismissed.</p> <p>For the school year 2005-2006 (up to 11/30/05), PRDE reported that, out of eight complaints, eight were beyond timelines and still pending. The data reported under Indicator 16 in the SPP on page 42, indicated 50 complaints for FFY 2004-2005 with 8 withdrawn or dismissed and 42 still pending.</p> <p>On page 43 of the SPP, PRDE proposed activities. Specifically, the transfer of complaint oversight, now out of the Legal Division and into the Office of Special Education Secretarial Unit, implement a system to process complaints, retraining of personnel, design and implement a tracking system., and monitor the status of complaints. On pages 17-18 of the January 13, 2006 submission, PRDE again proposed these same activities but with January 2006 timeline for the transfer of complaint responsibility, previously scheduled in the SPP for December 2005.</p>	<p>See Table A, also.</p> <p>OSEP is very concerned about PRDE's inability to report any reduction of the significant backlog of complaints that are pending. Because PRDE did not report data on the status of complaints filed for 2002-2003, OSEP must conclude that PRDE cannot demonstrate that it has investigated and issued findings and decisions for the complaints that were pending from that time period. It also appears that PRDE has made no progress in reducing its current backlog of complaints from 2003 forward. PRDE is not only reporting that these complaints were not resolved within the 60-day timeline, but also that over 100 complaints are still pending with approximately half of those dating to 2003-2004. PRDE did not report any complaints that were investigated and where findings and a decision was issued.</p> <p>On page 43 of the SPP, PRDE proposed activities that appear similar to the activities previously proposed in 2004. On pages 17-18 of the January 13, 2006 submission, PRDE again proposed these same activities with new dates for some. OSEP is also concerned that the activities that PRDE has proposed appear to repeat the previously proposed activities, implying that these activities have not been implemented. For example, PRDE proposed relocating the</p>	<p>See Table A, also.</p> <p>OSEP's October 2005 letter required PRDE to submit a progress report and final report. In the progress report, due prior to the FFY 2006 grant award period, PRDE must correctly report on the status of its pending complaints (that is, the progress it has made in implementing its plan and in reducing the current backlog of complaints) as well as the status and timeliness of new complaints filed on or between December 1, 2005 and February 28, 2006. PRDE must continue to report: (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. Failure to report some progress in implementing the plan and in reducing the backlog of complaints, may affect Puerto Rico's FFY 2006 grant award. With the FFY 2005 APR, due February 1, 2007, PRDE must submit the final report</p>

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<p>complaints, investigated 35, but issued no written decisions, and 62 were pending without investigation. The December 2004 submission updated the status as 40 "still pending," 38 "closed" and 19 "misclassified." None were resolved within the timelines as required at 34 CFR §300.661 and PRDE reported overall, eight complaints were pending two years or more, 18 were pending between one and two years, 40 were pending more than six months, and 25 were pending less than six months.</p> <p>The March 2004 Improvement Plan included strategies to correct the noncompliance. Specifically, PRDE proposed to reduce the existing backlog of complaints, create a tracking system, hire additional personnel, conduct training and modify procedures including enforcement and sanction procedures. The December 2004 submission proposed to "create a Legal Division composed of 10 attorneys that would report directly to the SAEE office" and reported the following progress: the authorization of 10 positions; filling six of those positions; recruitment for the other four positions and the hiring of two investigators. The relocation of the Legal Division was proposed for the end of November 2004. OSEP reviewed and accepted these strategies. OSEP directed that to the extent that PRDE remained out of compliance with the requirements of 34 CFR §300.661, it was required to implement this plan immediately and ensure correction as soon as possible, not to exceed one year from October 7, 2005. PRDE was required to submit updated data and analysis regarding the status of compliance. In addition, PRDE was required to submit two progress reports and a final report. The reports were to include: (1) the date each complaint was filed; (2) the status of the complaint; (3)</p>		<p>Legal Division so that it reported directly to the special education office for November 2004. As of the writing of this report, the transfer has not occurred. PRDE is still proposing to design and implement a tracking system, albeit an electronic one. Notably absent from its proposed activities is any specific reduction of the backlog. PRDE must specifically address this issue.</p>	<p>demonstrating elimination of the backlog of complaints and demonstrating full compliance with the timelines requirement at 34 CFR §300.661.</p>

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<p>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 first progress report was to include data and analysis covering the period from August 1, 2002 through June 30, 2004. The SPP data reported under Indicator 16 was to cover the period from July 1, 2004 through June 30, 2005. The second progress report is to include data and analysis covering the period from July 1, 2004 through February 28, 2006. The final report, due November 7, 2006, was to include data and analysis for the period from March 1, 2006 through October 7, 2006.</p>			
<p><u>SPP Indicator 17: Due Process Hearings.</u></p> <p>In the October 7, 2005 letter in response to the FFY 2002 APR, OSEP reported that 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 951³ 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 did not address the timeliness requirements of 34 CFR §300.511. OSEP required PRDE to revise its plan to address the requirements of 20 U.S.C. 1415(f)(1)(B).</p>	<p>On pages 19 and 20 of the January 13, 2006 submission, PRDE included a plan. PRDE also submitted data on pages 44-45 of the February 6, 2006 revised State Performance Plan (SPP). For the 2004-2005 school year PRDE reports that 94.93% of the 1362 fully adjudicated hearings were completed within federal timelines. PRDE reports that out of 433 due process hearings with decisions that were issued after the 45 day timeline, approximately:</p> <ul style="list-style-type: none"> ● 75 percent were extended at complainant's request; ● 20 percent were extended due to the need for a continuation; ● three percent were extended due to calendar [i.e., scheduling] difficulties; and ● two percent were extended at the Agency's 	<p>See Table A, also.</p> <p>As noted in Table A, OSEP has concerns about the percentages reported. PRDE reported 94.9 percent compliance including all such decisions. OSEP's calculation, excluding all decisions with extended timelines that appear to be granted for reasons other than at the request of a party, is 87 percent compliance. Either percentage constitutes significant improvement over previous levels, but also represents some continuing noncompliance.</p> <p>The plan submitted by PRDE is acceptable in that it includes improvement strategies to address</p>	<p>See Table A, also.</p> <p>In implementing its plan, PRDE must ensure that it is addressing the use of resolution sessions. PRDE must submit a progress report to OSEP showing some progress prior to the FFY 2006 grant award period and the final report either with FFY 2005 APR, due February 1, 2007 or prior to the FFY 2007 grant award period. In the final report, PRDE must demonstrate full compliance with the requirements at 34 CFR §300.511 and 20 U.S.C. 1415(f)(1)(b). Failure to demonstrate compliance at that time may affect OSEP's</p>

³ PRDE did not address this apparent discrepancy in the reporting on the total number of hearings.

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	request.	the timeliness of hearing decisions. However, the plan does not specifically address the new resolution session requirement, as provided at 20 U.S.C. 1415(f)(1)(B). OSEP accepts this plan. However, PRDE must ensure that, in carrying out such activities and strategies, the use of resolution sessions is properly implemented.	determination of Puerto Rico's status under section 616(d) of the IDEA.
<p>FAPE in Correctional Facilities: In the October 7, 2005 letter in response to the FFY 2002 APR, OSEP documented that the data provided by PRDE on page 9 of the March 2004 Improvement Plan (IP), indicated 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 reviewed and accepted the strategies included in the IP. OSEP also encouraged PRDE to review whether interagency agreements or other procedures are needed to facilitate compliance. By October 7, 2006, 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.</p>	<p>No submission due at this time. On page 30 of the January 13, 2006 submission, PRDE identified specific dates to submit the progress and final reports.</p>		<p>PRDE must submit a progress report to OSEP showing some progress prior to the FFY 2006 grant award period and the final report either with FFY 2005 APR, due February 1, 2007 or prior to the FFY 2007 grant award period. In the final report, PRDE must demonstrate full compliance with the requirements of 34 CFR §§300.2(b)(iv), 300.300, 300.121 and 300.122. Failure to demonstrate compliance at that time may affect OSEP's determination of Puerto Rico's status under section 616(d) of the IDEA</p>

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<p>Initial Evaluations and Reevaluations: In the October 7, 2005 letter in response to the FFY 2002 APR, OSEP documented that the data provided by PRDE on page 5 of the March 2004 IP indicated five percent of 15,782, or 789, overdue reevaluations for children with disabilities. PRDE's February 2004 submission confirmed the totals reported in the March 2004 IP, and reported that the previous figures 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.</p> <p>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.⁴ Of the 1,098 overdue evaluations, 720 were overdue for the period from September 1, 2003 through December 31, 2003. PRDE also reported that as of December 31, 2003, 3,041 children with disabilities had not been provided a timely reevaluation. Of the 3,041 children, 524 were overdue from September 1, 2003 through December 31, 2003. By October 7, 2006, PRDE must demonstrate compliance with the requirements at 34 CFR §§300.531 and 300.600 and 20 U.S.C. 1414(a)(1), 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</p>	<p>PRDE has a 30-day timeline from referral to evaluation and another 30 days from evaluation to placement. In the chart on page 26 of the January 13, 2006 submission, PRDE provided the following data:</p> <p>Initial Evaluations: For the 2003-2004 school year, PRDE reported that 3,643 students were not provided a timely initial evaluation and 67.6% of initial evaluations were timely at the end of the reporting period.</p> <p>For the 2004-2005 school year, 5,837 students not provided a timely initial evaluation. 67.3% were provided a timely evaluation at the end of the reporting period.</p> <p>For the 2005-2006 school year (data through 10/31/05), 1,675 students were not provided a timely initial evaluation and 63.9% were provided a timely evaluation at the end of the period.</p> <p>Reevaluations: For the 2003-2004 school year, 904 students were not provided a timely reevaluation and 83% of reevaluations were timely.</p> <p>For the 2004-2005 school year, 2,319 students were not provided a timely reevaluation and 76.1% of reevaluations were timely.</p> <p>For the 2005-2006 school year (data through 10/31/05), 576 students were not provided a timely reevaluation and 81.2% of reevaluations were timely.</p>	<p>PRDE continues to report noncompliance with these federal requirements. OSEP requested PRDE to report data in 5 areas. It appears that PRDE did not provide the first calculation—the number of children, as of the end of the previous reporting period, who had not been provided a timely initial or reevaluation. Therefore, it appears that PRDE has not reported data on the existing backlog of evaluations.</p>	<p>The October 2005 letter required two additional reports. With its next progress reports, PRDE must also provide the first reporting calculation referenced in OSEP's October 7, 2005 letter, i.e., the number of students at the end of the reporting period who had not been provided a timely initial evaluation or reevaluation. This group of students represents the backlog of overdue evaluations and must be accounted for from one reporting period to the next reporting period.</p> <p>In the progress report, PRDE must submit the required data using the calculations prescribed in OSEP's October 2005 APR letter for the reporting period from November 1, 2005 through February 28, 2006.</p> <p>OSEP's October 2005 letter directed PRDE to submit a final report demonstrating full compliance with the requirements at 34 CFR §§300.531 and 300.600 and 20 U.S.C. 1414(a)(1) and 34 CFR §300.536 and 20 U.S.C. 1414(a)(2). In the final report, PRDE must include data from March 1, 2006 through October 2006. PRDE may submit the final report to OSEP with the FFY 2005 APR, due February 1,</p>

⁴ 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.

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<p>or teacher requests a reevaluation, but in no case less than once every three years. In the October 2005 APR letter, OSEP required PRDE to report evaluation data using specific reporting calculations.</p>			<p>2007. Failure to demonstrate compliance at that time may affect OSEP's determination of PRDE's status under section 616(d) of the IDEA.</p>
<p>Procedural Safeguards: In the October 7, 2005 letter in response to the FFY 2002 APR, OSEP documented that the data provided by PRDE on page 23 of the APR 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.</p> <p>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 was to 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.</p>	<p>On pages 28 and 29 of the January 13, 2006 submission, PRDE submitted a plan that identified specific dates to submit the two reports.</p>	<p>PRDE provided a plan that appears reasonably calculated to correct identified noncompliance with 20 U.S.C. 1415(d). OSEP accepts the plan.</p>	<p>PRDE must submit a progress report to OSEP showing some progress prior to the FFY 2006 grant award period and the final report either with FFY 2005 APR, due February 1, 2007 or prior to the FFY 2007 grant award period. In the final report, PRDE must demonstrate full compliance with the requirements of 20 U.S.C. 1415(d). Failure to demonstrate compliance at that time may affect OSEP's determination of Puerto Rico's status under section 616(d) of the IDEA</p>
<p>Assistive Technology: In the October 7, 2005 letter in response to the FFY 2002 APR,</p>	<p>On pages 27 and 28 of the January 13, 2006 submission, PRDE submitted data, referenced the</p>	<p>OSEP is unable to determine the reporting period from the data</p>	<p>PRDE is required to submit two reports. In the progress report,</p>

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<p>OSEP noted PRDE's December 10, 2004 report 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. 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, was to report on the period from December 31, 2003 through October 31, 2005. The first report must report on the period from November 1, 2005 through February 28, 2006. The final report must report on the period from March 1, 2006 through October 7, 2006.</p>	<p>March 2004 Improvement Plan strategies and included additional strategies to address its failure to comply with the requirements of 34 CFR §300.308, 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. On page 28 of the January 13, 2006 submission, PRDE identified specific dates for submitting the two reports.</p>	<p>provided in the chart on page 27. PRDE reported that 363 children with disabilities waited 30 days or longer to get assistive technology evaluation. PRDE reported that 215 children waited over 120 days to receive required assistive technology devices and services. PRDE provided data in its January 13, 2006 submission demonstrating continuing noncompliance with the requirements.</p>	<p>PRDE must submit the required data using the calculations prescribed in OSEP's October 2005 APR letter for the reporting period from November 1, 2005 through February 28, 2006 and clarify the reporting period in the January 13, 2006 submission to OSEP.</p> <p>OSEP's October 2005 letter directed PRDE to submit a final report with data that includes the period from March 1, 2006 through October 2006 and demonstrating full compliance with the requirements at 34 CFR §300.308, 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. PRDE may submit the final report with the FFY 2005 APR, due February 1, 2007. Failure to demonstrate compliance at that time may affect OSEP's determination of PRDE's status under section 616(d) of the IDEA.</p>