



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

Honorable Johnny V. Rullan,
Secretary
Commonwealth of Puerto Rico Department of Health
P.O. Box 70184
San Juan, Puerto Rico 00936-8184

FEB 27 2004

Dear Secretary Rullan:

The purpose of this letter is to inform you of the results of the Office of Special Education Programs' (OSEP's) recent verification visit to Puerto Rico. As indicated in my letter to you of June 28, 2003, OSEP is conducting verification visits to a number of States as part of our Continuous Improvement and Focused Monitoring System (CIFMS) for ensuring compliance and improving performance with Parts B and C of the Individuals with Disabilities Education Act (IDEA). OSEP staff conducted a verification visit to Puerto Rico during the week of September 8, 2003.

The purpose of our verification reviews of States is to determine how they use their general supervision, State-reported data collection, and Statewide assessment systems to assess and improve State performance; and to protect child and family rights. The purposes of the verification visits are to: (1) understand how the systems work at the State level; (2) determine how the State collects and uses data to make monitoring decisions; and (3) determine the extent to which the State's systems are designed to identify and correct noncompliance.

As part of the verification visit to the Puerto Rico Department of Health (PRDH) (the Commonwealth's Part C Lead Agency), OSEP staff met with Dr. Naydamar Perez Otero (the Lead Agency Coordinator), and members of PRDH's early intervention staff responsible for the Commonwealth's general supervision activities (including monitoring, mediation, complaint resolution, and impartial due process hearings), and the collection and analysis of State-reported data. Prior to the visit, OSEP staff reviewed a number of documents, including the Commonwealth's Part C Application, Self-Assessment, and Improvement Plan, portions of Puerto Rico's proposed monitoring system for the Part C program, and data submitted under Section 618 of the IDEA.¹ On July 23, 2003, OSEP conducted a conference call with members of the Part C Steering Committee to hear their perspectives on the strengths and weaknesses of the Commonwealth's systems for general supervision and data collection and reporting. Dr. Otero also participated in the call and assisted us by inviting the participants.

The information that Dr. Otero and her staff provided during the OSEP visit, together with the information that OSEP staff reviewed in preparation for the visit, greatly enhanced our understanding of PRDH's systems for general supervision, and data collection and reporting, for the Puerto Rico Early Intervention System (PREIS).

¹ Documents reviewed as part of the verification process were not reviewed for legal sufficiency but rather to inform OSEP's understanding of your State's systems.

OSEP conducted a monitoring review of PRDH's Part C system during the weeks of January 21, 2002 and March 18, 2002, and a monitoring report was issued on December 18, 2002. The report listed the following areas of noncompliance:

Puerto Rico has not developed and implemented a monitoring system that ensures compliance with Part C, provides for the correction of deficiencies, and results in improved results for infants and toddlers with disabilities.

Puerto Rico has not ensured that (1) the decision-making process at Individualized Family Service Plan (IFSP) meetings is individualized and results in infants and toddlers receiving services in natural environments and (2) each IFSP contains a justification statement when services are not provided in natural environments.

Puerto Rico has not ensured that transportation is identified and provided as an early intervention service to enable an eligible child and the child's family to receive early intervention services.

Puerto Rico has not ensured that services are provided in a timely manner.

On June 30, 2003 PRDH submitted an Improvement Plan (IP), in combination with its Annual Performance Report (APR), to address the areas of noncompliance. The IP/APR are being responded to separately in an attached letter.

General Supervision:

As a part of its review of the Commonwealth's general supervision system, OSEP collected information regarding a number of elements, including whether the Commonwealth: (1) has identified any barriers (e.g., limitations on authority, insufficient staff or other resources, etc.) that impede the State's ability to identify and correct noncompliance; (2) has systemic, data-based, and reasonable approaches to identifying and correcting noncompliance; (3) utilizes guidance, technical assistance, follow-up, and -- if necessary -- sanctions, to ensure timely correction of noncompliance; (4) has dispute resolution systems that ensure the timely resolution of complaints and due process hearings; and (5) has mechanisms in place to compile and integrate data across systems (e.g., 618 State-reported data, due process hearings, complaints, mediation, large-scale assessments, previous monitoring results, etc.) to identify systemic issues and problems.

OSEP believes that PRDH's systems for general supervision do not constitute a reasonable approach to the identification and correction of noncompliance.

In 2000 PRDH began developing monitoring activities as part of its self-assessment. At that time OSEP reviewed the proposed monitoring activities and determined that they did not address all the areas of an early intervention system and did not provide for the correction of deficiencies. In January of 2002, PRDH staff reported to OSEP that they were in the process of developing monitoring tools. At the time of OSEP's September 2003 verification visit PRDH had not yet begun monitoring all programs that provide early intervention services to infants and toddlers with disabilities and their families, for compliance with all of the Part C regulations. During the verification visit, OSEP learned through interviews with staff and a review of documents that

PRDH is still in the process of developing a formal monitoring system (still developing forms and procedures). PRDH staff reported that PRDH was planning on conducting the first onsite monitoring visits with its new system in the fall of 2003. They also reported a plan to conduct annual monitoring visits to all seven regional pediatric centers and their contract vendors. OSEP was informed that PRDH is also planning on conducting one or two follow up visits each year to each center. OSEP staff was told that the goal of the PRDH monitoring system would be to ensure compliance with the Part C requirements and to improve the performance of infants and toddlers with disabilities and their families.

OSEP reminds PRDH that it is responsible through its general supervision and monitoring systems for compliance with all of the Part C requirements. In improving its general supervision system and in developing its formal monitoring system, PRDH should ensure that it is monitoring for all Part C requirements including those areas where PRDH was cited as being noncompliant in the monitoring report issued by OSEP on December 18, 2002.

In the attached letter, OSEP is providing PRDH with OSEP's response to PRDH's Annual Performance Report and proposed Improvement Plan (IP) submitted June 30, 2003. In order to address PRDH's lack of a complete and active monitoring system, PRDH must submit to OSEP within 60 days of issuance of these letters, or by March 31, 2004, whichever date occurs first, a revised IP addressing all of the information and actions required in the attached letter (OSEP's response to PRDH's APR/IP).

OSEP also reviewed PRDH's systems for the resolution of complaints, due process hearings and mediation. PRDH has contracted with the Office of the Ombudsman for Persons with Disabilities (Puerto Rico's Protection and Advocacy organization) to provide for any needed due process hearings under 34 CFR §303.420 (at the time of our verification visit there had been no requests for due process hearings within the Part C program), to provide for a mediation process, and to investigate any complaints under 34 CFR §§303.510 through 303.512. Prior to the verification visit, OSEP had requested copies of complaints that PRDH had received along with copies of the letters of findings that were issued for these complaints. None of the letters of findings were issued within the 60-day time period required by Part C under 34 CFR §303.511 and no extensions were given due to exceptional circumstances.

While onsite for the verification visit, OSEP interviewed staff from PRDH as well as staff from the Office of the Ombudsman. Staff from the Office of the Ombudsman shared with OSEP staff that the complaints were typically resolved through informal mediation with the parties. They reported that when a complaint was received in their office, they talked to the complainant as well as the public agency to resolve the complaint. They said that they were successful in most instances and that only one of the Part C complaints went to what they called a formal "mediation/complaint" process. They reported that although some of the complaints may have been resolved within the 60-day time period, letters documenting the resolution of the complaints were usually not written until many months later. During the interview it was obvious to OSEP staff that the staff from the Office of Ombudsman were unaware of the complaint procedures under 34 CFR §§303.510 through 303.512, particularly the requirement to investigate and resolve complaints within 60 days, unless an extension is granted when exceptional circumstances exist with regard to a particular complaint. Staff from PRDH reported that staff at both the regional pediatric centers and at APNI (Puerto Rico's Parent Training Institute) attempt to resolve informally any complaints they received.

PRDH staff reported that they were concerned that in trying to resolve the complaints informally, regional center and APNI staff may not have made parents fully aware of their rights under 34 CFR §303.403(b) including the complaint procedures under 34 CFR §§303.510 through 303.512, and a description of how to file a complaint and the timelines under those procedures. During this interview PRDH staff said that a new interagency agreement would be developed with the Office of The Ombudsman, and that in the future PRDH would be responsible for its own complaint investigations.

The staff stated that PRDH would continue to contract with the Office of The Ombudsman for mediations and due process hearings. To fulfill the due process procedure requirements under 34 CFR §303.420, PRDH has chosen to develop procedures that meet the requirements in 34 CFR §303.419 and §§303.421 through 303.425; and to provide parents with a means of filing a complaint. Although the Commonwealth has adopted due process hearing procedures, OSEP cannot determine whether the lack of requests for due process hearings is due to a high degree of family satisfaction with Part C services, or whether parents have not been sufficiently informed regarding the State's Part C dispute resolution procedures. PRDH must review its prior written notice to see if it meets all the requirements under 34 CFR §303.403. If PRDH determines that its written prior notice meets the requirements, PRDH must submit its review to OSEP. If PRDH determines that its written prior notice does not meet the requirements, PRDH must revise its written prior notice and must submit its review and its revised written prior notice to OSEP. The review, and if needed the revised written prior notice must be submitted to OSEP within 60 days of the date of this letter.

OSEP finds that PRDH is in noncompliance with the 60-day timeline for resolution of State complaints under 34 CFR §303.512(a). PRDH must review, and revise if necessary, its written procedures and its prior written notice content that address the resolution of State complaints to ensure that PRDH is able to issue findings within 60 days of the complaint being filed and that the requirements of 34 CFR §303.403(b) and §303.510 through §303.512 are met. In addition, PRDH must within 60 days of this letter submit to OSEP for its review and approval PRDH's written procedures and notice under 34 CFR §303.403(b).

Data Collection under Section 618 of the IDEA:

In its review of the State's system for data collection and reporting, OSEP collected data regarding a number of elements, including whether the State: (1) provides clear guidance and ongoing training to local programs/public agencies regarding requirements and procedures for reporting data under section 618 of the IDEA; (2) implements procedures to determine whether the individuals who enter and report data at the local and/or regional level do so accurately and in a manner that is consistent with the State's procedures, OSEP guidance, and section 618; (3) implements procedures for identifying anomalies in data that are reported, and correcting any inaccuracies; and (4) has identified any barriers, (e.g., limitations on authority, sufficient staff or other resources, etc.) that impede the State's ability to accurately, reliably and validly collect and report data under section 618.

OSEP believes that PRDH' system for collecting and reporting data is designed to be a reasonable approach to ensuring the accuracy of the data that PRDH reports to OSEP under section 618.

However, the system has not been in place long enough for OSEP to make any determinations regarding its effectiveness.

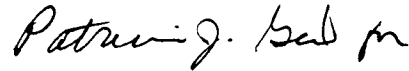
PRDH staff informed OSEP that they are in the process of transferring from a paper and pencil data system to an electronic data system. OSEP learned that two years ago a pilot study gathering demographic data electronically was conducted in Mayaguez. OSEP also learned that in July 2003 PRDH acquired its server and a computer for each pediatric center, and the process of implementing the system in each of the pediatric centers began. PRDH is presently collecting information from the pediatric centers in an electronic format as well as a paper and pencil format (PRDH staff reported that this is being done as a cross check.) OSEP was informed that all the links between the units should be complete and that the system should be fully operational by the end of December 2003 and that at that time a staff member at the Commonwealths office will be able to pull up the name of any infant and family in the Part C program to see where they are in the process and what services they are receiving. PRDH staff reported that all of the data entry staff at the pediatric centers have been trained and that PRDH disseminates the annual OSEP data collection policy letters and memoranda to pediatric center staff as guidance on how to collect and report all required data consistent with Federal data reporting requirements. PRDH staff reported that they also distribute the guidance that they receive from WESTAT. They also reported that data entry staff at the pediatric centers train the service coordinators at the pediatric centers. PRDH staff reported that the service coordinators review the records of the infants and families with whom they work and record the data on paper forms. The information is then submitted to data entry staff to be entered electronically into the data system. The information is aggregated at the pediatric centers and diskettes as well as paper reports are sent to PRDH. PRDH compares the information on the paper reports with the data on the diskettes and aggregates the data from all the pediatric centers. PRDH staff informed OSEP that the monitors also would be conducting spot checks on the data system at the pediatric center level. PRDH reported that there was a low turn over among data entry staff and expressed an overall confidence in the 618 data that they report to OSEP. The pediatric centers are presently submitting quarterly reports to PRDH.

OSEP learned that PRDH data staff are developing an electronic infrastructure for additional data elements not required by Section 618. OSEP encouraged PRDH data and programmatic staff to work together to develop a system that could support and guide PRDH's efforts in monitoring, training, and improving services and outcomes for infants and families in the Part C system. OSEP also encouraged the use of the newly developed data system for collecting data needed for the Annual Performance Report and Improvement Plan.

PRDH must submit to OSEP: (1) with the APR due on March 31, 2004, a revised Improvement Plan that addresses all of the noncompliance identified in OSEP's 2002 Monitoring Report, including PRDH's monitoring system and updated data on its monitoring progress (copies of findings etc.); and (2) within 60 days of this letter, submit (a) its revised State complaint procedures to ensure compliance with the 60-day timeline under 34 CFR §303.511; and (b) its prior written notice that PRDH is required to provide to parents under 34 CFR §303.403(b).

We appreciate the cooperation and assistance provided by your staff during our visit. We look forward to collaborating with Puerto Rico as you continue to work to improve results for children with disabilities and their families.

Sincerely,

A handwritten signature in black ink, appearing to read "Stephanie Smith Lee". The signature is written in a cursive style with a large initial 'S' and a long, sweeping tail.

Stephanie Smith Lee
Director
Office of Special
Education Programs

cc: Dr. Naydamar Perez Otero