



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

JUL 1 - 2011

Honorable Jesús Rivera Sánchez
Secretary of Education
Puerto Rico Department of Education
Post Office Box 190759
San Juan, Puerto Rico 00919-0759

Dear Secretary Rivera Sánchez:

Thank you for the timely submission of Puerto Rico's Federal fiscal year (FFY) 2009 Annual Performance Report (APR) and revised State Performance Plan (SPP) under Part B of the Individuals with Disabilities Education Act (IDEA).

As noted in the June 14, 2011 letter from the U.S. Department of Education (Department) on the status of your progress on the most recent Compliance Agreement (which is no longer in effect) and the Memorandum of Agreement, Puerto Rico has made significant progress in the many areas covered by these agreements, and has shown improvement in several of the indicators included in this APR review, but it still has further improvements to make. We are hopeful that these further improvements can be made in the near future, and we stand ready to provide technical assistance to help your agency make these needed improvements.

Although there have been some improvements and Puerto Rico has shown progress in several respects, based on the areas mentioned below in which further progress is needed, the Department has determined that, under IDEA section 616(d), Puerto Rico "needs intervention" in implementing the requirements of Part B of IDEA. This will help Puerto Rico focus its attention on making more progress in the areas that need further attention. Since this is your first year in this category after being in the status of "needs assistance" for two years, there are no immediate enforcement consequences under section 616 of the IDEA. However, there will be a special condition on your FFY 2011 grant award requiring additional reporting by Puerto Rico. While the determinations under section 616(d) are not made by comparing one State's data with another, we note that under Part B, Puerto Rico is one of five State entities that is in the status of needs intervention.

The Department's determination is based on the totality of the Commonwealth's data and information including the Commonwealth's FFY 2009 APR and revised SPP (including targets and improvement activities for each year through FFY 2012), other State-reported data, information obtained through the Commonwealth's submissions under any Special Conditions on the Commonwealth's FFY 2010 Part B grants, and other publicly available information.

We did not consider whether a State was in compliance with the requirement in section 612(a)(18)(A) to maintain State financial support for special education and related services. This is a key component of a State's eligibility for a grant under Part B of the IDEA. Because the statute provides a specific remedy when a State is not in compliance with this provision

(and the Department is taking action consistent with the statute) and recognizing that this is the first time that a number of States have failed to meet this requirement, the Department decided not to include compliance with this provision in the determinations process this year. The Department is actively considering including a State's compliance with this requirement in the 2012 determinations. See the enclosure entitled "How the Department Made Determinations under Section 616(d) of the IDEA in 2011: Part B" for further details.

The specific factor affecting the Office of Special Education Programs' (OSEP's) determination of needs intervention for Puerto Rico was continuing and longstanding noncompliance with key Part B requirements that were previously addressed under Departmental enforcement actions and for which the Commonwealth's data indicate continued noncompliance. Again, while there is some progress, we look forward to more being done to correct these longstanding issues.

First, OSEP notes the Commonwealth's longstanding noncompliance with the requirement that it timely correct noncompliance (20 USC 1232d(b)(3)(E), 34 CFR §§300.149 and 300.600(e)). The issue of timely correction of noncompliance was initially addressed under the Department's enforcement authority in 2004 in the Compliance Agreement between the Department and Puerto Rico. Because the issue was not fully resolved under the Compliance Agreement, subsequent enforcement action on timely correction was included in the 2007 Memorandum of Agreement between the Department and Puerto Rico, and the FFY 2010 Special Conditions to the Part B grant award. The Commonwealth reported 85.6% compliance under Indicator 15, and as noted in the attached table, the goal for this indicator for FFY 2009 was 100%. This issue is significant because it is a major way in which States demonstrate effectiveness at ensuring compliance with the requirements of Part B.

Second, OSEP also considered the status of other longstanding noncompliance in the following areas that were initially addressed as part of the three-year Compliance Agreement reached in 2007 between Puerto Rico and the Department: timely initial evaluations: currently 89.7% under Indicator 11; timely early childhood transition from Part C to Part B: currently 53.9% under Indicator 12; timely reevaluations (167 overdue from FFY 2009); and the provision of assistive technology services and equipment to students who require them (302 students from FFY 2008 and 635 from FFY 2009 without services and equipment as of December 31, 2010). Timely initial evaluations, consistent with 34 CFR §300.301(c)(1), and timely early childhood transition consistent with 34 CFR §300.124(b), are the primary ways that States ensure that students with disabilities who may be eligible for special education and related services under Part B are identified as eligible and are provided a free appropriate public education (FAPE) in a timely manner. The timely reevaluation requirements at 34 CFR §§300.303-300.306 ensure that the determinations of disability and of the needs of students with disabilities are current. The assistive technology requirements at 34 CFR §§300.105 and 300.324(a)(2)(v), ensure that students with disabilities who need assistive technology as part of a FAPE, receive them. Again, there is progress by Puerto Rico in some of these matters, and we are hopeful that Puerto Rico will be able to demonstrate that it meets requirements in its next APR.

The enclosed table provides OSEP's analysis of the Commonwealth's FFY 2009 APR and revised SPP and identifies, by indicator, OSEP's review of any revisions made by the

Commonwealth to its targets, improvement activities (timelines and resources) and baseline data in the Commonwealth's SPP. The table also identifies, by indicator: (1) the Commonwealth's reported FFY 2009 data; (2) whether such data met the Commonwealth's FFY 2009 targets and reflect progress or slippage from the prior year's data; (3) if applicable, that the Commonwealth's data are not valid and reliable; and (4) whether the Commonwealth corrected findings of noncompliance.

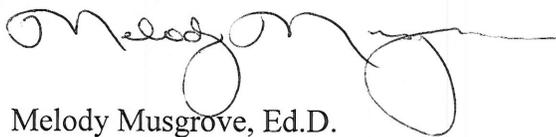
Your Commonwealth may want to consider taking advantage of available sources of technical assistance. A list of sources of technical assistance related to the SPP/APR indicators is available by clicking on the "Technical Assistance Related to Determinations" box on the opening page of "The Right IDEA" Web site at: <http://therightidea.tadnet.org/technicalassistance>. You will be directed to a list of indicators. Click on specific indicators for a list of centers, documents, Web seminars and other sources of relevant technical assistance for that indicator.

Please ensure that your updated SPP is posted on the State educational agency's Web site and made available to the public, consistent with 34 CFR §300.602(b)(1)(i)(B).

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 to demonstrate why the Department should change the Commonwealth's determination. To request a hearing, submit a letter to Dr. Alexa Posny, Assistant Secretary, United States Department of Education, 400 Maryland Avenue SW, Washington, DC 20202 within 15 days of the date of this letter. The letter must include the basis for your request for a change in the Commonwealth's determination.

OSEP is committed to supporting Puerto Rico's efforts to improve results for children and youth with disabilities and looks forward to working with your Commonwealth over the next year. If you have any questions, would like to discuss this further, or want to request technical assistance, please contact Diana Chang, your OSEP State Contact, at 202-245-6061.

Sincerely,



Melody Musgrove, Ed.D.
Director
Office of Special Education Programs

Enclosures

cc: State Director of Special Education