



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

Honorable Carlos Chardon
Secretary of Education
Puerto Rico Department of Education
PO Box 190759
San Juan, PR 00919-0759

JUN - 7 2009

Dear Secretary Chardon:

Thank you for the timely submission of Puerto Rico's Federal fiscal year (FFY) 2007 Annual Performance Report (APR) and revised State Performance Plan (SPP) under Part B of the Individuals with Disabilities Education Act (IDEA). We also acknowledge the revisions to Puerto Rico's APR and SPP received on April 7, 2009. We appreciate the State's efforts in preparing these documents.

The Department has determined that, under IDEA section 616(d), Puerto Rico needs assistance in meeting the requirements of Part B of IDEA. The Department's determination is based on the totality of the State's data and information including the State's FFY 2007 APR and revised SPP, other State-reported data, information obtained through the Department's quarterly risk management visits, and other publicly available information. See the enclosure entitled "How the Department Made Determinations under Section 616(d) of the IDEA in 2009" for further details.

The specific factors affecting the Office of Special Education Programs' (OSEP's) determination of needs assistance for Puerto Rico were that the Commonwealth: (1) reported 50.7% for Indicator 15; (2) reported 50.06% for Indicator 17; and (3) reported 88% for Indicator 20.

OSEP also considered Puerto Rico's failure to correct prior noncompliance under Indicators 12 and 13, and its report of 1,285 pending reevaluations from FFY 2007 and failure to fully report on the status of assistive technology, under the December 17, 2007 Compliance Agreement.

Puerto Rico has failed to correct prior noncompliance under Indicator 13 for FFY 2005 and FFY 2006.

Under the 2007 Compliance Agreement, in relevant part, Puerto Rico agreed that by February 1, 2010 it will address the deficiencies, submit data, and otherwise demonstrate its compliance with the relevant requirements by showing that it has: (1) developed individualized education programs (IEPs) for all children transitioning from Part C to Part B of the IDEA and provided special education and related services by each child's third birthday; (2) provided children with disabilities with needed assistive technology devices and services in a timely manner and eliminated the backlog of students needing such devices and services; and (3) completed reevaluations within required timelines.

For Indicator 12, Puerto Rico reported 42.4% and failed to correct prior noncompliance related to early childhood transition from FFY 2005 and FFY 2006. This is a core indicator that measures whether young children initially receive a free appropriate public education through a timely transition from Part C to Part B. Puerto Rico previously

reported 13.17% compliance for FFY 2005 and 30.27% compliance for FFY 2006. Therefore, the vast majority of students eligible for a timely transition in those years did not receive it and Puerto Rico has not demonstrated that it has developed and implemented an IEP for such children, although late.

Puerto Rico did not report more current information on the number of students awaiting assistive technology services and equipment as required by the 2007 Compliance Agreement. Instead, Puerto Rico reported that, as of July 1, 2008, it had eliminated the backlog for FFY 2005 and FFY 2006 and that 418 students with disabilities were still awaiting an assistive technology evaluation. With its FFY 2006 APR submission, Puerto Rico previously reported that as of April 30, 2007, 220 students were awaiting assistive technology evaluations. Therefore, the number of students awaiting an assistive technology evaluation nearly doubled during this time period. Also, of the 619 children who received an assistive technology evaluation by July 1, 2008, 289 received it after more than 120 days. The failure to report on the number of students awaiting assistive technology services and equipment after the evaluation is completed also raises serious concerns about Puerto Rico's performance under the 2007 Compliance Agreement.

Although it reported eliminating the backlogs for FFY 2005 and FFY 2006, Puerto Rico reported that, for FFY 2007, there were 1,285 children with disabilities for whom a reevaluation was still pending as of November 1, 2008. Without a current reevaluation, a student's disability status and the appropriateness of educational goals and progress remain in question.

For this reason, we were unable to determine that Puerto Rico met requirements under section 616(d). We hope that the State will be able to demonstrate that it meets requirements in its next APR.

The enclosed table provides OSEP's analysis of the State's FFY 2007 APR and revised SPP and identifies, by indicator, OSEP's review of any revisions made by the State to its targets, improvement activities (timelines and resources) and baseline data in the State's SPP. The table also identifies, by indicator, the State's status in meeting its targets, whether the State's data reflect progress or slippage, and whether the State corrected noncompliance and provided valid and reliable data.

Your State 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 SPP/APR Planning Calendar website at <http://spp-apr-calendar.rfcnetwork.org/>. 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.

As you included revisions to baseline, targets or improvement activities in your APR submission, and OSEP accepted those revisions, please ensure that you update your SPP accordingly and that the updated SPP is made available to the public.

In its October 17, 2008 Memorandum 09-02, "Reporting on Correction of Noncompliance in the Annual Performance Report Required under Sections 616 and 642 of the IDEA," OSEP provided Chief State School Officers and Lead Agency Directors

with important information regarding: (1) requirements for identifying noncompliance and reporting on the correction of noncompliance in States' APRs; and (2) how OSEP will, beginning with the FFY 2008 APR, due February 1, 2010, consider the correction of noncompliance in making annual determinations for States pursuant to section 616(d) of the IDEA. Most significantly, beginning with our 2010 determinations:

1. OSEP will no longer consider a State to be in substantial compliance relative to a compliance indicator based on evidence of correction of the previous year's noncompliance if the State's current year data for that indicator reflect a very low level of compliance (generally 75% or below); and
2. OSEP will credit a State with correction of noncompliance relative to a child-specific compliance indicator only if the State confirms that it has addressed each instance of noncompliance identified in the data for an indicator that was reported in the previous year's APR, as well as any noncompliance identified by the Department more than one year previously. The State must specifically report, for each compliance indicator, whether it has corrected all of the noncompliance identified in its data for that indicator in the prior year's APR as well as that identified by the Department more than one year previously.

It is important for each State to review the guidance in the memorandum, and to raise any questions with your OSEP State Contact. The memorandum may be found at: <http://spp-apr-calendar.rfcnetwork.org/explorer/view/id/656>.

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 State 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,



Patricia J. Guard
Acting Director
Office of Special Education Programs

Enclosures

cc: State Director of Special Education