

September 4, 2002

Honorable Cesar Rey-Hernandez
Secretary of Education
Puerto Rico Department of Education
Post Office Box 190759
San Juan, Puerto Rico 00919-0759

Dear Secretary Rey-Hernandez:

The purpose of this letter is to follow up on a meeting that various representatives of the Department had with you on August 15, 2002, and to inform you that the Office of Special Education and Rehabilitative Services of the United States Department of Education (Department) has conditionally approved Puerto Rico's Eligibility Document Submission for Federal Fiscal Year (FFY) 2002 under Part B of the Individuals with Disabilities Education Act (IDEA). Puerto Rico FFY 2002 IDEA Part B grant awards are being released subject to FFY 2002 Special Conditions as set forth in Enclosures C and D that are being imposed pursuant to the Department's authority in 34 CFR §80.12.

Our determination that you are eligible for a conditional approval is based on our receipt of the following documents submitted by Puerto Rico to the Office of Special Education Programs:

1. The Part B Eligibility Document Submission for FFY 2002 including the Eligibility Documents submitted October 3, 2000, subsequent revisions to those Eligibility Documents and the Submission Statement submitted May 23, 2002; and
2. The June 25, 2002 letter, received by facsimile transmission on July 1, 2002, from Puerto Rico to OSEP, in which Puerto Rico assures that as soon as possible, but no later than July 1, 2003, Puerto Rico will complete all of the changes set forth in the June 21, 2002 issues chart including 34 CFR §§300.123, 300.124, 300.135, 300.381, 300.382 and 300.142.

In the June 25, 2002 letter, received by OSEP on July 1, 2002, Puerto Rico also assures that it will take steps to ensure that, throughout the period of this grant award, all public agencies in the State that provide special education and related services to children with disabilities will operate their programs in a manner fully consistent with Part B. Puerto Rico further assures that it will provide OSEP with a copy of a memorandum notifying all public agencies of the changes that impact on public agencies' provision of special education and related services that OSEP requires as a result of its review of the State's eligibility documents.

Please note that as part of your Eligibility Document Submission for FFY 2002, your State has made an assurance, under 34 CFR §80.11(c), that it will comply with all applicable Federal statutes and regulations in effect with respect to the periods for which it receives grant funding. Any changes made by the State, after OSEP approval, to information that is a part of a State's eligibility documentation, must meet the public participation requirements of the IDEA and must be approved by OSEP before implementation.

While the Department has determined that the PRDE has demonstrated some progress in the administration of this program, we remain very concerned about the need to more fully address cross-cutting issues that affect the operation of the programs, as noted in Enclosure C, as well as program-specific issues related to alternate assessments, as noted in Enclosure D.

Special Conditions Related to Cross-Cutting Issues: Enclosure C

Deputy Secretary William Hansen alerted PRDE to the Department's concerns in the letter, dated May 29, 2002, which designated PRDE a high-risk grantee, and stated that special conditions would be imposed at a later date, after giving PRDE the opportunity to submit a plan to address the concerns. PRDE submitted a corrective action plan in response to the letter that outlined steps already taken and those to be taken to address the problems. As outlined in the corrective action plan, we recognize that your agency is committed to ensuring compliance with all of the requirements applicable to these programs. However, we are concerned about the magnitude of the administrative and other related problems that PRDE continues to have, which have been brought to your attention by this Department in various communications and of which you are well aware. Thus, because of these concerns, pursuant to 34 C.F. R. §80.12, the Department is imposing a set of Special Conditions on these Part B grant awards primarily specific to fiscal and program accountability. The terms of this set of Special Conditions and the reasons for imposing them are detailed further in Enclosure C. In addition, as you know, our Department is working with your agency in an attempt to resolve many of the cross-cutting and program-specific problems identified in various audits.

As indicated in the Special Conditions, we are requiring quarterly reports for each program with regard to expenditures and progress in implementing the grant, and a quarterly report on your progress in implementing the corrective action plan that you submitted in response to Deputy Secretary Hansen's letter. If a report is not satisfactory, or does not show substantial progress, the Department may modify the Special Conditions or impose remedies such as one or more of the following: the lack of authority for PRDE to draw down the rest of the funds; the imposition of further conditions; the recovery of misspent funds; or the implementation of a contract with a third party to provide the services, or a combination of those remedies. We will consider "substantial progress" to have been made if the report demonstrates that there are sufficient results and steady progress at each quarterly reporting point, so that by the end of the twelve-month period ending on June 30, 2003, PRDE will have carried out all proposed project activities and met all program objectives and goals in accordance with all applicable requirements.

At the meeting on August 15, 2002, Department officials discussed with you that the Special Conditions include PRDE's use of an "independent" third party to monitor and provide an on-

going assessment of the implementation of Department programs in Puerto Rico. In this regard, I would like to reiterate the following key statements made by Department officials at the meeting: (1) that the inclusion of an independent third party will be one of the most important components of our new agreement; and (2) that the third party will not take over or operate PRDE's programs, but will serve as a resource for objective and more extensive monitoring and technical assistance on the reform of Federal program operation and implementation in your agency. On the basis of discussions and your submission of requested information after the meeting, we understand that your agency is planning to or has entered into other contracts to help reform your system. Your agency is also implementing a new Internal Audit Unit about which you sent some information. We will make an effort to ensure that the independent third party will build on and not duplicate the activities under these other efforts.

Special Conditions Related to Alternate Assessments: Enclosure D

The Biennial Performance Report for Part B of the IDEA for grant years 1999-2000 and 2000-2001 was due on May 31, 2002. Among other information, the Biennial Performance Report required that States submit information regarding children with disabilities' participation in and performance on Statewide assessments. 34 CFR §300.138 requires that children with disabilities participate in general State and district-wide assessment programs with appropriate accommodations and modifications in administration, if necessary. In addition, States are required to develop alternate assessments for those children with disabilities who cannot participate in State and district-wide assessment programs, even with appropriate accommodations and modifications in administration. States also must report on the progress of children with disabilities in the State toward meeting the established performance goals and indicators for children with disabilities on assessment, dropout rates and graduation rates, at a minimum (34 CFR §300.137).

The requirements that States establish performance goals and indicators on performance of children with disabilities on assessments, drop-out rates and graduation rates and report publicly and to the Secretary every two years on the progress of the State and of children with disabilities within the State toward meeting those goals, ensure that children with disabilities participate in State and district-wide assessment systems; develop and administer alternate assessments, if necessary; and report publicly on the participation and performance of children with disabilities in State and district-wide assessments are crucial to ensuring that children with disabilities are provided access to high-quality instruction in the general curriculum, and that States and districts are held accountable for the progress of these children. 20 U.S.C. 1412(a)(16)-(17); 34 CFR §§300.137-300.139. The requirements regarding the participation of children with disabilities in, and reporting on participation and performance of children with disabilities in regular assessments have been in effect since July 1, 1998; the same requirements regarding alternate assessments have been in effect since July 1, 2000. The information reported to the Department in Puerto Rico's Biennial Performance Report for the 2000-2001 school year demonstrates that Puerto Rico has not developed and administered alternate assessments, if necessary and is not reporting publicly, and to the Secretary, on the participation and performance of children with disabilities on alternate assessments as required by Part B.

Your State's failure to develop and administer alternate assessments, if necessary, and to report publicly, and to the Secretary, on the participation and performance of children with disabilities on alternate assessments has resulted in the Department imposing the FFY 2002 Special Conditions contained in Enclosure D of this letter. The reasons for doing so and the specific conditions are detailed in Enclosure D.

Grant Awards

Enclosed are grant awards for funds currently available under the Department of Education FFY 2002 Appropriations Act for the Part B Section 611 (Grants to States) and Section 619 (Preschool Grants) programs. These funds are for use primarily in school year 2002-2003 and are available for obligation by States from July 1, 2002 through September 30, 2004.

The amount in your award for Section 619 represents the full amount of funds to which you are entitled. However, the amount shown in your award for the Section 611 program is only part of the total funds that will be awarded to you for FFY 2002. Of the \$7,528,533,000 appropriated for Section 611 in FFY 2002, \$2,456,533,000 is available for awards on July 1, 2002, and \$5,072,000,000 will be available on October 1, 2002.

The funding formula for the Section 611 program is the same as was implemented for FFY 2000. Subject to certain maximum and minimum funding requirements, State allocations are based on the amount that each State received from FFY 1999 funds, the general population in the age range for which each State ensures a free appropriate public education (FAPE) to all children with disabilities, and the number of children living in poverty in the age range for which each State ensures FAPE to all children with disabilities.

Enclosure A provides a short description of how Section 611 funds were allocated and how those funds can be used. In addition, Table I in Enclosure A shows funding levels for distribution of Section 611 funds.

Enclosure B provides a short description of how Section 619 funds were allocated and how those funds can be used. In addition, Table II in Enclosure B shows State-by-State funding levels for distribution of Section 619 funds.

These awards are based on submission of a complete eligibility document package, a signed assurance statement regarding resolution of issues identified in OSEP's review of that eligibility document package, and implementation of the provisions of the Individuals with Disabilities Education Act. The complete eligibility document package and assurances must be made available for public inspection.

Puerto Rico must administer these awards both in keeping with the applicable provisions of Federal law and regulations and the Special Conditions in Enclosures C and D attached to the grant award document. Acceptance by Puerto Rico of these grant awards constitutes an agreement by the State to comply with these Special Conditions.

While we have been pleased with the dedication of you and your staff in your efforts to address some of the problem areas, much work remains to be done. We know that you share our view that meeting these requirements and standards is critical to ensuring positive educational outcomes for all children in Puerto Rico so that no child is left behind. We will work with your agency to monitor progress in meeting the applicable requirements of the grant awards, including the Special Conditions in Enclosures C and D, while also working with other Department of Education program offices to ensure that PRDE adheres to both fiscal and programmatic accountability standards. We appreciate your personal attention in giving these matters their high priority.

Sincerely,

Robert H. Pasternack, Ph.D.

Enclosures

cc: Sonia Rosario
Myrta Reyes

