



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

AUG 19 2005

Dr. Rafael Aragunde Torres
Secretary of Education
Puerto Rico Department of Education
P.O. Box 190759
San Juan, Puerto Rico 00919-0759

Dear Secretary Torres:

This is to inform you that we have conditionally approved Puerto Rico's Eligibility Documents, including assurances and certifications, for Federal Fiscal Year (FFY) 2005 under Part B of the Individuals with Disabilities Education Act (IDEA). Our determination that you are eligible for conditional approval is based on our receipt of the State's application submitted by the Puerto Rico Department of Education (PRDE) to the U.S. Department of Education, Office of Special Education Programs (OSEP), on May 19, 2005 and as amended on June 17 and June 28, 2005 (Use of Funds and Assurances) in which it assures that it will:

1. Operate consistent with all requirements of PL 108-446 and applicable regulations; and
2. Make such changes to existing policies and procedures as are necessary to bring those policies and procedures into compliance with the requirements of Part B of the IDEA, as amended, as soon as possible, and not later than July 1, 2006. Section II of the State's application (which is incorporated by reference and enclosed with this grant letter) identifies the IDEA statutory sections for which the State needs to amend policies and procedures and the timelines by which the State will amend its policies and procedures in order to comply with Part B of the IDEA. Within Section II, the State has included the date by which it expects to complete necessary changes associated with any policies and procedures that are not yet in compliance with the requirements of Part B of the IDEA, as amended.

Our determination that you are eligible for a conditional approval is also based on our receipt of the July 5, 2005 letter to OSEP, in which PRDE assures that:

1. As soon as possible, but no later than July 1, 2006, Puerto Rico will revise and finalize the interagency agreement between the Department of Health and the Department of Education to coordinate Parts C and B of the IDEA to address early childhood transition requirements and the requirements of 34 CFR §300.142 of the Individuals with Disabilities Education Act (IDEA) and its implementing regulations, and will provide the Secretary with a copy of the revised documents showing those changes.
2. Throughout the period of the Puerto Rico's grant awards for federal fiscal year 2005 under Part B of the IDEA, the State will ensure that all public agencies in the State will comply with all of the requirements of Parts A and B of the IDEA and its implementing regulations; and

3. The State 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 Documents for FFY 2005, 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 policies and procedures needed to comply with Part B of the IDEA, must meet the applicable public participation requirements, including those in 20 U.S.C. 1232d(b)(7).

As set forth in Enclosure D, on August 8, 2005, the Department wrote to Puerto Rico and indicated that the Department was imposing conditions on all its grants to Puerto Rico based upon the lack of progress under the 2004 Compliance Agreement. Therefore, the Puerto Rico FFY 2005 IDEA Part B grant awards are being released subject to Department-wide FFY 2005 Special Conditions.

In addition to the Department-wide conditions, OSEP has determined that Special Conditions regarding specific programmatic requirements in the area of assessment under Part B of the IDEA that are not addressed in the Compliance Agreement also must be imposed on Puerto Rico's FFY 2005 Part B grant awards pursuant to the Department's authority under 34 CFR §80.12 to designate "high-risk" grantees. The reasons for doing so and the specific conditions are detailed in Enclosure E. With regard to specific programmatic requirements, OSEP determined that PRDE is not reporting publicly and to the Secretary on the participation and performance of children with disabilities in State and district-wide assessments, including alternate assessments, as required by 20 U.S.C. §1412(a)(17) (1997) and 20 U.S.C. §1412(a)(16) (2004).¹ PRDE must administer these awards both in keeping with the applicable provisions of Federal law and regulations and the Special Conditions attached to the grant award document. Acceptance by Puerto Rico of these grant awards constitutes an agreement by the State to comply with the Special Conditions.

Enclosed are grant awards for funds currently available under the Department of Education FFY 2005 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 2005-2006 and are available for obligation by States from July 1, 2005 through September 30, 2007.

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 2005. Of the \$10,589,745,824 appropriated for Section 611 in FFY 2005, \$5,176,745,824 is available for awards on July 1, 2005, and \$5,413,000,000 will be available on October 1, 2005.

Under the Section 611 formula, subject to certain maximum and minimum funding requirements, State allocations are based on the amount that each State received from FFY 1999 funds, the

¹ Title I of the Elementary and Secondary Education Act, as amended by the No Child Left Behind Act of 2001, also includes a number of requirements related to including children with disabilities in State assessment programs and reporting on their participation and performance on regular and alternate assessments that in many instances are more specific than requirements in the IDEA. For example, the Title I regulations require, at 34 CFR §200.2(b)(3) and (4), that all State assessments must, "(3)(i) Be aligned with the State's challenging academic content and student academic achievement standards; and (ii) Provide coherent information about student attainment of those standards. (4)(i) Be valid and reliable for the purposes for which the assessment system is used; and (ii) Be consistent with relevant, nationally recognized professional and technical standards." This letter does not, and should not be interpreted to, address Puerto Rico's compliance with requirements of Title I.

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. Section 619 funds are allocated to States subject to certain maximum and minimum funding requirements, based on the amount that each State received from FFY 1997 funds, the general population of children age 3 to 5, and the number of children living in poverty in the age range 3 to 5.

Enclosure B provides a short description of how Section 611 funds were allocated and how those funds can be used. In addition, Table I in Enclosure B shows funding levels for distribution of Section 611 funds and the parameters for within-State allocations. Table II in Enclosure B shows your State-specific information for within-State distribution of 611 funds based on your State's application. If you disagree with the information in Enclosure B Table II, notify your State contact immediately.

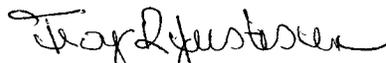
Enclosure C provides a short description of how Section 619 funds were allocated and how those funds can be used. In addition, Table III in Enclosure C shows State-by-State funding levels for distribution of Section 619 funds.

Section 604 of the IDEA provides that "[a] State shall not be immune under the eleventh amendment to the Constitution of the United States from suit in Federal court for a violation of this Act." Therefore, by accepting this grant a State is expressly agreeing to a waiver of Eleventh Amendment immunity as a condition of IDEA funding.

Our records show in FFY 2001, PRDE failed to spend a significant portion of its grant award. As noted in the January 2005 communication to Chief State School Officers from former Deputy Secretary Eugene Hickok, "Your vigilance is crucial to ensuring that all federal funds under your management are used to help America's neediest children do well in the classroom..." We urge you to take the steps necessary to ensure that the State fully expends the available funds in the attached FFY 2005 Part B grant awards to meet the needs of the State's children with disabilities. If by July 1, 2006 you anticipate that the State will not be able to obligate all of the funds from the FFY 2005 grant awards by September 30, 2007, please notify OSEP immediately of the amount that the State will not be using to carry out the Part B program so that we can reallocate the remaining funds to other States for use in better serving children with disabilities.

We appreciate your ongoing commitment to the provision of quality educational services to children with disabilities.

Sincerely,



Troy R. Justesen
Acting Director
Office of Special Education
Programs

Enclosures

cc: Myrta Reyes