



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

JUL - 1 2009

Honorable Jaime Rivera Dueño, MD  
Secretary  
Puerto Rico Department of Health  
P.O. Box 70184  
San Juan, Puerto Rico 00936-8184

Dear Dr. Rivera Dueño:

This is to inform you that we have conditionally approved the Commonwealth of Puerto Rico's application for Federal Fiscal Year (FFY) 2009 funds under Part C of the Individuals with Disabilities Education Act (IDEA or Part C). Our conditional approval is based on our review of the application submitted by the Puerto Rico Department of Health (PRDH) to the U.S. Department of Education, Office of Special Education Programs (OSEP), on May 8, 2009, including policies, procedures, methods, descriptions, assurances, certifications, and submission statement provided in Section II, which is incorporated by reference to this letter as Enclosure A. In addition, the Commonwealth provided the following specific assurances that it will:

1. Operate consistently with the Part C requirements in 20 U.S.C. 1431 through 1444 and applicable regulations in 34 CFR Part 303;
2. Ensure that the statewide system of early intervention services required by Part C and its implementing regulations is in effect throughout the FFY 2009 grant period; and
3. Make such changes to, and submit, as necessary, for OSEP's approval, the Commonwealth's policies, procedures, methods, and descriptions as are necessary to bring those policies, procedures, methods and descriptions into compliance with the requirements of Part C of the IDEA, and applicable regulations, as soon as possible, and not later than the earlier of the date indicated by the Commonwealth in Section II of its application or June 30, 2010. Section II of the State's application identifies the IDEA requirements for which the Commonwealth needs to amend any policies, procedures, methods and descriptions and the timelines by which the Commonwealth will amend its policies, procedures, methods and descriptions in order to comply with Part C and applicable regulations. Within Section II, PRDH has included for each requirement that it cannot meet at this time, the date by which it expects to complete necessary changes associated with any policies, procedures, methods and descriptions that are not yet in compliance with the requirements of Part C and applicable regulations.

Please note that as part of the Commonwealth's application for FFY 2009, PRDH has made an assurance, pursuant to 34 CFR §80.11(c), that it will comply with all applicable Federal statutes and regulations in effect with respect to the FFY 2009 grant period. Any changes made by the Commonwealth to its FFY 2009 application or Part C policies or procedures that are application requirements, after OSEP approval, must meet the applicable public participation requirements

under Part C in 34 CFR §§303.110 through 303.113 and, if they are requirements under Section II.A, must also be submitted to, and approved by, OSEP prior to the Commonwealth's implementation of its new or revised application, policies and procedures.

Enclosed is the Commonwealth's regular grant award for funds currently available under the Omnibus Appropriations Act, 2009 for the Part C program. These funds are for use primarily in 2009-2010 and are available for obligation by States from July 1, 2009 through September 30, 2011 in accordance with 34 CFR §76.709.

In addition to these regular FFY 2009 Part C funds, the American Recovery and Reinvestment Act of 2009 (ARRA) provided a one-time large increment in IDEA Part C funding. The ARRA IDEA Part C grants are a supplemental appropriation to the regular IDEA Part C appropriation. The first 50 percent of the ARRA IDEA Part C funds were awarded to States on April 1, 2009 and the second 50 percent will be available to States by September 30, 2009. Please note that the Commonwealth will be required to submit additional information that addresses how it will meet the accountability and reporting requirements in section 1512 of the ARRA before it will be considered eligible to receive the second 50 percent of its ARRA IDEA Part C funds. Together, a State's regular FFY 2009 IDEA funds and a State's ARRA IDEA Part C funds constitute a State's total FFY 2009 Part C allocation. Given the increased IDEA Part C FFY 2009 allocation to each State, the Commonwealth may wish to review carefully the guidance on the ARRA IDEA Part C grant awards, available at <http://www.ed.gov/fund/data/award/idea/arra/index.html>.

Section IV.B of the FFY 2009 application for Part C funds requested updated information about each grant recipient's indirect costs. In Section IV.B, PRDH indicated that it has a restricted indirect cost rate that expired on June 30, 2009 and that the agency is in the process of negotiating a new restricted indirect cost rate that will be in effect for the period from July 1, 2009 until amended. In Section IV.B of its application, PRDH indicated it will continue to bill its IDEA Part C FFY 2009 grant funds based on this previously approved restricted indirect cost rate until a final restricted indirect cost rate is approved for FFY 2009, which may result in an adjustment of the final audited expenditures allowed to the Part C FFY 2009 grant funds. As noted in the Department's guidance to States, applying the proposed restricted indirect cost rate to the increased FFY 2009 Part C funds due to the ARRA (which may not have been considered in the rate proposal) could result in an over-recovery of indirect costs in the current period. Please carefully review the responses to questions B-1 and B-2 in the guidance available at <http://www.ed.gov/fund/data/award/idea/arra/index.html> and direct questions regarding any adjustments to your cognizant agency or our Indirect Cost Unit. When a final restricted rate indirect cost rate is approved for FFY 2009, please forward to our Indirect Cost Unit and to your OSEP State contact: (1) a copy of the final restricted rate agreement; and (2) details of adjustments made to GAPS liquidations from the provisional or prior billing rate after approval of the final rate.

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." Section 606 provides that each recipient of assistance under IDEA make positive efforts to employ and advance in employment qualified individuals with disabilities in programs assisted under the IDEA. Therefore, by accepting this grant a State is expressly agreeing as a condition of

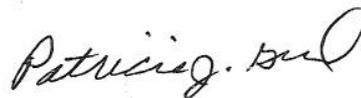
Page 3 – Lead Agency Director

IDEA funding to a waiver of Eleventh Amendment immunity and to ensuring that positive efforts are made to employ and advance employment of qualified individuals with disabilities in programs assisted under the IDEA.

The enclosed grant award for FFY 2009 is made with the continued understanding that this Office may, from time to time, require clarification of information within your application, if necessary. These inquiries are needed to allow us to appropriately carry out our administrative responsibilities related to Part C.

We appreciate your ongoing commitment to the provision of quality early intervention services to infants and toddlers with disabilities and their families.

Sincerely,

A handwritten signature in cursive script, appearing to read "Patricia J. Guard".

Patricia J. Guard  
Acting Director  
Office of Special Education Programs

Enclosures

Enclosure A

cc: Part C Coordinator