



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

July 1, 2013

Honorable Rafael Román Meléndez  
Secretary of Education  
Puerto Rico Department of Education  
Post Office Box 190759  
San Juan, Puerto Rico 00919-0759

Dear Secretary Román Meléndez:

We have approved the Commonwealth of Puerto Rico's (Commonwealth's) application for Federal Fiscal Year (FFY) 2013 funds under Part B of the Individuals with Disabilities Education Act (IDEA Part B). Our approval is based on our review of the 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 10, 2013, including the assurances provided in Section II and incorporated by reference to this letter as noted in Enclosure A. In addition, with regard to Assurance 12 relating to the requirements in 20 U.S.C. 1412(a)(12)(A)-(C) and 34 CFR §300.154, the Commonwealth provided a specific assurance that it will:

1. Operate consistently with IDEA Part B 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 IDEA Part B as soon as possible, and not later than June 30, 2014. Within Section II of its application, the Commonwealth has included, for Assurance 12, the date by which it expects to complete necessary changes to any policies and procedures that are not yet in compliance with the requirements of 20 U.S.C. 1412(a)(12)(A)-(C) and 34 CFR §300.154.

The Commonwealth checked no to Assurance 12, because the Commonwealth does not yet have policies and procedures in place to meet the new requirements related to children with disabilities who are covered by public benefits or insurance (e.g., Medicaid), resulting from the amendments to 34 CFR §300.154(d)(2)(iv) and (v), which the Department published in the *Federal Register* on February 14, 2013. See 78 Fed. Reg. 10525, 10537-10538. These final regulations became effective on March 18, 2013. OSEP required States to submit their applications for their Part B FFY 2013 grant awards on May 10, 2013. However, 34 CFR §76.704(b) provides that a State plan (in this case, the Part B application) must meet the requirements that were in effect for the program three months before the application due date (in this case, February 10, 2013) and any additional requirements known on that date that are scheduled to become effective by the expected grant award date (for most States, July 1, 2013). Ordinarily, States that check no to any assurance in Section II.A receive a conditional approval, but the new requirements in 34 CFR §300.154, which caused the Commonwealth to check no to Assurance 12, were not published in the *Federal Register* as final regulations three months prior to May 10, 2013, the submission due date of your Part B application. Your Commonwealth has assured that it will operate consistently with all requirements in 20 U.S.C. 1412(a)(12)(A)-(C) and 34 CFR §300.154 during the period of your FFY 2013 Part B grant award, and will make such changes to existing policies and procedures as are necessary to bring those policies and procedures into compliance with the requirements of the IDEA, as amended, as soon as possible, and not later than June 30, 2014. Further, the Commonwealth has checked yes to every other

assurance in Section II.A. Therefore, we have fully approved the Commonwealth's Part B grant application for FFY 2013.

As set forth in Enclosure D, on June 24, 2013, Department-wide Special Conditions were placed on all Department grants awarded to PRDE, as well as on all grants previously awarded by the Department to PRDE that currently are still available for obligation or liquidation on the date of those special conditions, to help ensure that Department grant awards are expended by PRDE in accordance with applicable legal requirements, and the appropriate fiscal accountability measures and management practices and controls, including those established by PRDE under the Memorandum of Agreement (MOA) among Puerto Rico, PRDE, and the Department, signed on December 17, 2007, and ensure continued progress in meeting the programmatic requirements of Part B of the IDEA. The reason for doing so and the specific conditions are detailed in Enclosure D.

One of the Department-wide Special Conditions related to the programmatic requirements of Part B of the IDEA requires PRDE to resolve financial management issues, including addressing and resolving the use-of-funds requirements related to transportation contracts. See Section II. D.2.vi of Enclosure D. The Commonwealth's FFY 2007 Part B grant awards were issued subject to programmatic Special Conditions, including a Special Condition specifically related to the use, designation and accounting of transportation costs for students with disabilities in the Bayamon Educational Region. See Enclosure E of PRDE's October 30, 2007 Part B grant award letter. In its May 17, 2013, FFY 2011 APR Supplemental Report (Report), PRDE reported that it continues its efforts to improve the internal controls in place for special education transportation contracts. PRDE reported that it has developed a Transportation Management System that will improve the administration of contracts between bus drivers and PRDE, and allow for the recording of activities from the date the contract is awarded through payment of services.

Additionally, the regulations governing contracting procedures and the model transportation contracts were revised to incorporate the new system, as well as prospective processes that would allow PRDE to improve its controls and monitoring of services. PRDE reported that the new system "would be set for full implementation for school year 2013-14." See pages 17-18 of the Report. On May 10, 2013, the Commonwealth provided the following specific assurances related to transportation costs for students with disabilities in the Bayamon Educational Region:

1. Throughout the period of fund availability for Puerto Rico's grant awards under Part B of the IDEA for FFY 2013, Puerto Rico assures that until such time as Puerto Rico has demonstrated to the U.S. Department of Education (Department) that it is in full compliance with the requirements of 34 CFR §§76.702; 80.20(a)(2); 80.20(b)(3) and (6); and 80.36(a) for all transportation costs for students with disabilities in the Bayamon Region, no IDEA funds will be used to fund the transportation costs of students with disabilities in the Bayamon Region and that any Commonwealth funds used to fund the transportation costs of students with disabilities in the Bayamon Region will not be included in the total amount used to calculate or measure Puerto Rico's compliance with the State maintenance of effort requirement at 20 U.S.C. 1412(a)(18) and 34 CFR §300.163 in either the current Federal fiscal year or the preceding Federal fiscal years from 2002 to 2012;

1. PRDE will submit documentation to OSEP at least 60 days prior to any use, allocation, accounting, or designation of IDEA Part B funds to pay for the transportation costs of students with disabilities in the Bayamon Region or of any use, allocation, accounting, or designation to include Commonwealth funds used to pay the transportation costs of students with disabilities in the Bayamon Region in the total amount used to calculate or measure Puerto Rico's compliance with the State maintenance of effort requirement at 20 U.S.C. 1412(a)(18) and 34 CFR §300.163. The documentation to be submitted must include an audit report that clearly demonstrates that PRDE is in full compliance with the requirements of 34 CFR §§76.702; 80.20(a)(2); 80.20(b)(3) and (6); and 80.36(a) for all transportation costs of students with disabilities in the Bayamon Region; and
2. The Commonwealth will provide OSEP with a copy of the memorandum notifying the appropriate finance personnel in Puerto Rico and providing any needed instructions for implementation, so that funds received under Part B of the IDEA will not be used to fund transportation services of students with disabilities in the Bayamon Region until such time as Puerto Rico has submitted, and the Department has approved, documentation, including an audit report, demonstrating compliance with the requirements of 34 CFR §§76.702; 80.20(a)(2); 80.20(b)(3) and (6); and 80.36(a) and that any Commonwealth funds used to pay the transportation costs of students with disabilities in the Bayamon Region may not be included in the total amount used to calculate or measure Puerto Rico's compliance with the State maintenance of effort requirements at 20 U.S.C. 1412(a)(18) and 34 CFR §300.163.

Please note that as part of your application for FFY 2013, the Commonwealth has made an assurance, pursuant to 34 CFR §80.11(c), that it will comply with all applicable Federal statutes and regulations in effect during the FFY 2013 grant period. Any changes made by the Commonwealth, after OSEP approval, to information that is a part of a State's application, must meet the public participation requirements in 34 CFR §300.165.

Enclosed are the Commonwealth's grant awards for funds currently available under the Consolidated and Further Continuing Appropriations Act, 2013 -- P.L. 113-6 for the IDEA Part B Section 611 (Grants to States) and Section 619 (Preschool Grants) programs. These funds are available for obligation by States from July 1, 2013 through September 30, 2015 in accordance with 34 CFR §76.709.

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 2013. Of the \$10,974,865,803 appropriated for Section 611 in FFY 2013, \$1,691,482,803 is available for awards on July 1, 2013, and \$9,283,383,000 will be available for awards on October 1, 2013. Under the Section 611 formula, in a year in which the amount available for allocations to States decreases from the prior year, but is greater than 1999 level, any amount available for allocations to States above the 1999 level is allocated based on the relative increases in funding that the States received between 1999 and the prior year.

In FFY 2013, the appropriation for the Preschool Grants program is \$353,237,522. Under the Section 619 formula, in a year in which the amount available for allocation to States decreases from the prior year and is less than the amount allocated to the States for FFY 1997, State allocations are based on the amount that each State received under Section 619 for FFY 1997, ratably reduced.

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.

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

Section 611(e)(1)(C) of the IDEA provides that “[p]rior to expenditure of funds under this paragraph [section 611(e)(1) concerning funds for State administration], the Commonwealth shall certify to the Secretary that the arrangements to establish responsibility for services pursuant to section 612(a)(12)(A) are current.” We read this provision to mean that if a State does not have interagency agreements or other arrangements in place to establish responsibility for the provision of services, the Commonwealth may not expend funds available to the Commonwealth under section 611(e)(1) [State administration funds] until the State has these agreements or arrangements in place.

Under section 608(a)(2) of the IDEA, each State that receives funds under IDEA Part B is required to inform in writing to local educational agencies located in the State of any State-imposed rule, regulation, or policy that is not required by IDEA or Federal regulations. A State may use the same list of State-imposed rules, regulations and policies that it was required to submit to the Department in Section IV of its IDEA Part B application for this purpose.

The enclosed grant awards of FFY 2013 funds are made with the continued understanding that this Office may, from time to time, require clarification of information within your application, if necessary. These inquiries may be necessary to allow us to appropriately carry out our administrative responsibilities related to IDEA Part B.

In Section V of its IDEA Part B application, pursuant to the authority in IDEA section 618(a)(3), the Commonwealth was required to submit data on the total amount of State financial support made available for special education and related services for children with disabilities in State fiscal year (SFY) 2011 and SFY 2012. If OSEP receives information through audits, fiscal monitoring or other means that raises questions about the data the Commonwealth has provided in Section V, OSEP will follow-up with the Commonwealth.

As a reminder, all prime recipients of IDEA (Part B or Part C) funds, must report subaward information as required by the Federal Funding Accountability and Transparency Act of 2006 (FFATA), as amended in 2008. First-tier subaward information must be reported by the end of the following month from when the award was made or obligated. FFATA guidance is found at <http://www2.ed.gov/policy/gen/leg/recovery/rms-web-conferences.html>. Please contact your Commonwealth’s Fiscal Accountability Facilitator if you have further questions.

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

Sincerely,

A handwritten signature in black ink that reads "Melody Musgrove Ed.D." in a cursive style.

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

Enclosures

- Enclosure A
- Enclosure B
- Enclosure C
- Enclosure D

cc: State Director of Special Education