

July 1, 2017

Honorable Julia Keleher
Secretary
Puerto Rico Department of Education
P.O. Box 190759
San Juan, Puerto Rico 00919

Dear Secretary Keleher:

We have conditionally approved Puerto Rico's application for Federal fiscal year (FFY) 2017 funds under Part B of the Individuals with Disabilities Education Act (IDEA Part B). Our conditional approval is based on our review of the IDEA Part B application submitted by the Puerto Rico Department of Education (PRDE) to the U.S. Department of Education (Department), Office of Special Education Programs (OSEP), on May 15 and June 8, 2017, including the assurances provided in Section II and incorporated by reference to this letter as noted in Enclosure A.

In addition, the Commonwealth provided specific assurances that it will:

1. Operate throughout the period of the FFY 2017 grant award 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, 2018. Within Section II of its application, the State has included, for each assurance it cannot meet at this time, 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 IDEA Part B.

As set forth in Enclosure D, on June 29, 2017, 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. These Department-wide Special Conditions were imposed to 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 reasons for doing so and the specific conditions are detailed in Enclosure D.

PRDE has not achieved compliance with the requirements related to: (1) early childhood transition (IDEA section 612(a)(9) and 34 CFR §300.124(b)); (2) timeliness of due process

hearing decisions (34 CFR §300.515(a) and (c)); (3) assistive technology (section 612(a)(1) and 34 CFR §300.105); and (4) financial management (34 CFR §§76.530, 300.162(a), 300.202(a)(1) and Subpart E of the Office of Management and Budget (OMB) Uniform Guidance, codified in 2 CFR Part 200). Therefore, as described in Section II.E. of the Department-wide Special Conditions, the Department is requiring PRDE to: (1) develop, and submit to OSEP, a corrective action plan (CAP) that addresses the actions it will take to demonstrate compliance with these four remaining areas of longstanding noncompliance, that were previously identified in the 2007 Agreement; and (2) submit two CAP progress reports noting the progress on the activities detailed in the CAP.

PRDE has provided a specific assurance related to transportation costs for students with disabilities in the Bayamón Educational Region on each of PRDE's IDEA Part B grant awards since FFY 2007. The Commonwealth provided the following specific assurances, received on May 15, 2017, with revised assurances received on June 8, 2017, related to transportation costs for students with disabilities in the Bayamón Educational Region:

1. Throughout the period of fund availability for Puerto Rico's grant awards under Part B of the IDEA for FFY 2017, Puerto Rico assures that until such time as Puerto Rico has demonstrated to the 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)¹, for all transportation costs for students with disabilities in the Bayamón Region, no IDEA funds will be used to fund the transportation costs of students with disabilities in the Bayamón Region and that any Commonwealth funds used to fund the transportation costs of students with disabilities in the Bayamón 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 State fiscal year or the preceding State fiscal years from 2002 to 2016;
2. PRDE must 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 Bayamón 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 Bayamón 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 CFR 34 §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 Bayamón Region; and

¹ Please note that effective July 1, 2015, for FFY 2015 IDEA Part B grant awards, IDEA part B funds are subject to Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, codified in 2 CFR Part 200 and commonly referred to as the Uniform Guidance. The Uniform Guidance provisions in 2 CFR Part 200 replace provisions previously found in the Educational Department General Administrative Regulations or EDGAR in 34 CFR Parts 74 and 80 and prior Office of Management and Budget (OMB) Circulars A-87 and A-133. The Uniform Guidance provisions in 2 CFR §§200.302(a); 200.302(b)(3); 200.302(b)(4); 200.303; and 200.317 replace the provision previously found in 80.20(a)(2); 80.20(b)(3) and (6); and 80.36(a). Please review the Department's technical assistance resources on the Uniform Guidance at <http://www2.ed.gov/policy/fund/guid/uniform-guidance/index.html>.

3. 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 Bayamón 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 Bayamón 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 2017, the Commonwealth has provided a certification, pursuant to 34 CFR §76.104, that its application meets the requirements of IDEA Part B and that the Commonwealth will operate its Part B program in accordance with all of the required assurances and certifications. Any changes made by the Commonwealth, after OSEP approval, to information that is a part of the Commonwealth's Part B application, must meet the public participation requirements in 34 CFR §300.165.

Enclosed are the Commonwealth's FFY 2017 grant awards for funds currently available under the Consolidated Appropriations Act, 2017, P.L. 115-31, 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, 2017, through September 30, 2019, 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 2017. Of the \$12,002,848,000 appropriated for Section 611 in FFY 2017, \$2,719,465,000 is available for awards on July 1, 2017, and \$9,283,383,000 will be available for awards on October 1, 2017. Under the Section 611 formula, in a year in which the amount available for allocations to States increases from the prior year, subject to certain maximum and minimum funding requirements, State allocations are based on the amount that each State received under section 611 for FFY 1999, the relative population of children in the age range for which each State ensures the availability of a free appropriate public education (FAPE) to children with disabilities, and the relative population of children living in poverty in the age range for which each State ensures the availability FAPE to children with disabilities.²

² The amount that a State's allocation may increase from one year to the next is capped at the amount the State received in the prior year multiplied by the sum of 1.5 percent and the percentage increase in the total amount appropriated for Part B of IDEA from the prior year. Additionally, the maximum amount that a State may receive in any fiscal year is calculated by multiplying the number of children with disabilities ages 3 through 21 served during the 2004-2005 academic year in that State by 40 percent of the annual per pupil expenditure (APPE), adjusted by the rate of annual change in the sum of 85 percent of the children aged 3 through 21 for whom that State ensures the availability of FAPE and 15 percent of the children living in poverty. Because there are multiple caps, in any year the "effective cap" on a State's allocation is the lowest cap for that State.

In FFY 2017, the appropriation for the Preschool Grants program is \$368,238,000. Under the Section 619 formula, in a year in which the amount available for allocation to States remains the same or increases from the prior year, State allocations, subject to certain maximum and minimum funding requirements, are based on the amount that each State received under Section 619 for FFY 1997, the relative population of children aged three through five, and the relative population of children aged three through five living in poverty.

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 State shall certify to the Secretary that the arrangements to establish responsibility for services pursuant to [S]ection 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 State may not expend funds available to the State 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 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.

In Section V of its IDEA Part B application, pursuant to the authority in IDEA Section 618(a)(3), the State 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) 2015 and SFY 2016. If OSEP receives information through audits, fiscal monitoring or other means that raises questions about the data your State has provided in Section V, OSEP will follow-up with your State.

Section 604 of the IDEA provides that “[a] State shall not be immune under the 11th 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 the 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, your State is expressly agreeing as a condition of 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 awards of FFY 2017 funds are made with the continued understanding that this Office may, from time to time, require clarification of information within your application, if

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necessary. These inquiries may be necessary to allow us to appropriately carry out our administrative responsibilities related to IDEA Part B.

As a reminder, all prime recipients of IDEA Part B 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/rconferencesms-web-.html>. Please contact your State'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,

/S/

Ruth E. Ryder
Acting Director
Office of Special Education Programs

Enclosures

Enclosure A
Enclosure B
Enclosure C
Enclosure D

cc: State Director of Special Education