

**Puerto Rico Monitoring and Support Visit Summary and Next Steps  
March 13-17, 2017**

<b>DMS Area: Compliance</b>	<b>DMS Designation: Intensive</b>
<p><b>Background:</b></p> <p>On October 19, 2016, the Office of Special Education Programs (OSEP) issued the Puerto Rico Department of Education (PRDE) a Differentiated Monitoring and Support (DMS) notice that specified the monitoring and support activities that OSEP would conduct with PRDE across five areas: results, compliance, State Systemic Improvement Plan (SSIP), correctional education, and fiscal. Under compliance, OSEP gave PRDE a DMS designation of intensive due to their Department-wide Special Conditions.</p> <p>Special conditions were imposed on PRDE’s Federal fiscal year (FFY) 2016 grants made available by the U.S. Department of Education (Department) and on all grants previously awarded by the Department that were still available for obligation or liquidation by PRDE on the date of the FFY 2016 special conditions. The special conditions are designed 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 among Puerto Rico, PRDE, and the Department, signed on December 17, 2007. Specific programmatic requirements of Part B of the Individuals with Disabilities Education Act (IDEA) addressed by the special conditions included Early Childhood Transition, Timely Due Process Hearing Decisions, and Assistive Technology. PRDE addresses its progress on meeting these requirements through the OSEP State Performance Plan/Annual Performance Report (SPP/APR) and Corrective Action Plan (CAP) Progress Reports.</p>	
<p><b>Visit Summary</b></p> <p>The major focus of the monitoring activities related to compliance was to address the areas related to the IDEA programmatic requirements in PRDE’s FFY 2016 Special Conditions:</p> <p><b>1. Early childhood transition</b></p> <p><u>Requirement:</u> Children referred to Part C prior to age three who are found eligible for Part B must have an individualized education program (IEP) developed and implemented by their third birthdays. See IDEA section 612(a)(9) and 34 CFR §300.124(b).</p> <p>PRDE reported under Indicator 12 of its FFY 2014 APR that, for the period from July 1, 2014 through June 30, 2015, 90.78% of children referred to Part C prior to age three, who were found eligible for Part B, had an IEP developed and implemented by their third birthday. PRDE reported under Indicator 12 of its FFY 2015 APR that, for the period from July 1, 2015 through June 30, 2016, 96.03% of children referred to Part C prior to age three, who were found eligible for Part B, had an IEP developed and implemented by their third birthday. Further, in the December 1, 2016 CAP progress report submitted under the FFY 2016 special conditions, PRDE reported in its data for July 1, 2016 to October 31, 2016 that 57.07% of children referred to Part C prior to age three, who were found eligible for Part B, had an IEP developed and implemented by their third birthdays. In the May 1, 2017 CAP progress report submitted under the FFY 2016 special conditions, PRDE reported in its data for July 1, 2016 to March 31, 2017 that 76.69% of children referred to Part C prior to age three, who were found eligible for Part B, had an IEP developed and implemented by their third birthdays.</p> <p>OSEP used an Early Childhood Transition Protocol when interviewing the officials from PRDE. During the interview, PRDE reported that during FFY 2015, trehe Government of Puerto Rico established an initiative to positively impact the timely transition of young children from the Part C</p>	

Early Intervention program to the Part B program. Under this initiative, staff from the Puerto Rico Department of Health, who work on the Part C program, are physically located on the same premises as Part B staff, at two of the Integrated Services Centers (Centro de Servicios Integrados), in order to aid in efficiency, communication and collaboration of the transition process. The initiative started as a pilot project in the Caguas Region in November 2015; the second center was opened at the Fajardo Service Center in 2016. PRDE reported that the pilot has been successful, and reported an increase in parental satisfaction. PRDE described how the pilot program has helped improve the transition process, ensuring a smooth and timely movement from Part C to Part B services. PRDE has provided OSEP with updates regarding this initiative and, during a visit to PRDE in April 2016, OSEP visited the facility in Caguas. OSEP also visited the facility in Farjardo during its DMS visit in March 2017.

PRDE's 619 Coordinator has multiple duties, in addition to those of the coordinator; however, staff indicated that they continue to work closely with Part C to improve timeliness of referrals and establish interagency guidance. PRDE issues monthly status/follow-up reports to the Centros De Servicios De Educacion Especial (CSEE or Centers for Special Education Services) regarding compliance with the early childhood transition indicator, which includes the status of each student in the transition process, to improve determination for eligibility by the third birthday. Social workers are trained to follow-up on cases referred from Part C in order to improve the understanding of all processes and procedures related to timely early childhood transition.

Staff from PRDE (Part B) and the Part C Early Intervention program plan to meet and review the established transition processes, including current transition agreements, and evaluate the pilot projects to determine the impact on collaboration between the two programs.

Although PRDE reported data for FFY 2015 indicates substantial progress, the subsequent data reported in the December 1, 2016 and May 1, 2017 CAP progress reports indicate that the compliance level for early childhood transition remains unstable and warrants further monitoring. Therefore PRDE has not achieved compliance with the early childhood transition requirements in IDEA section 612(a)(9) and 34 CFR §300.124(b).

**Data Reviewed:** Prior to the visit, OSEP shared the Early Childhood Transition Protocol with PRDE and reviewed the Commonwealth's FFYs 2014 and 2015 SPP/APR Indicator 12 early childhood transition data, and December 1, 2015, May 2, 2016, and December 1, 2016 CAP progress reports. Subsequent to the visit, OSEP reviewed the May 1, 2017 CAP progress report.

**Challenges and Barriers:** Education Regions and Early Intervention Regions in the Commonwealth are not geographically aligned. This challenge impacts the ability of PRDE to meet transition timelines because parents may not have convenient access to service centers in order to initiate the transition process. In addition, families are not always able to attend the transition meetings due to other priorities (i.e. caring for sick or hospitalized children) and sometimes will not provide consent for evaluations or the initiation of services under Part B. Therefore, it can be difficult to ensure timely transition.

**Outcome of Engagement Activity:** PRDE reported that the SEA has collected parent satisfaction data from the Integrated Service Center Pilot. PRDE plans to meet with the Part C Program to review the data; analyze transition agreements; and determine the future of the Integrated Service Center Pilots. OSEP shared with PRDE transition resources from the Early Childhood Technical Assistance Center (ECTA), an OSEP-funded TA center.

## 2. Timely due process hearing decisions

**Requirement:** A final due process hearing decision must be reached no later than 45 days after the expiration of the 30 day period under §300.510(b), or the adjusted time periods described in §300.510(c), or a timeline that is properly extended by the hearing officer at the request of either party.

See 34 CFR §300.515(a) and (c).

OSEP questioned PRDE officials about its progress in issuing timely due process hearing decisions. OSEP used the Dispute Resolution protocol and also asked questions about data in PRDE's FFY 2014 section 618 and CAP reports. PRDE staff shared how they have had inconsistent progress in meeting the timely due process hearing decision requirement.

For the FFY 2014 reported data for section 618 of the IDEA, which covers the period from July 1, 2014 through June 30, 2015, PRDE reported that 62.35% (1,015/1,628) of due process hearing decisions were issued within the required timeline or a timeline that was properly extended by the hearing officer at the request of either party. Further, for the FFY 2015 reported data for section 618 of the IDEA, which covers the period from July 1, 2015 through June 30, 2016, PRDE reported that 73.76% (779/1,056) of due process hearing decisions were issued within the required timeline or a timeline that was properly extended by the hearing officer at the request of either party.

In the December 1, 2016 Progress Report under the FFY 2016 special conditions, PRDE reported in its data for July 1, 2016 to October 31, 2016, that 91.58% of due process hearing decisions were issued within the required timeline or a timeline that was properly extended by the hearing officer at the request of either party. Further, in the May 2, 2017 CAP Progress Report, PRDE reported that, for the period of July 1, 2016 through March 31, 2017, that 87.87% of due process hearing decisions were issued within the required timeline or a timeline that was properly extended by the hearing officer at the request of either party.

This demonstrates progress from the reported FFY 2015 data. However, PRDE has not achieved compliance with the timely due process hearing decision requirements in IDEA in 34 CFR §300.515(a) and (c).

Finally, based on the interviews with PRDE staff, OSEP cannot determine whether PRDE permits parties to a due process hearing to agree in writing to continue the mediation at the end of the 30-day resolution period in accordance with 34 CFR §300.510(c)(3). Therefore, OSEP also cannot determine whether PRDE ensures that if both parties to a due process hearing agree in writing to continue the mediation at the end of the 30-day resolution period, the 45-day timeline for issuing final due process decisions starts the day after the parent or public agency withdraws from the mediation process in accordance with 34 CFR §§300.510(c)(3) and 300.515(a). Based on the interviews with PRDE staff, OSEP identified two areas of noncompliance which are discussed on page five of this summary.

**Data Reviewed:** Prior to the visit, OSEP shared the Dispute Resolution Protocol with PRDE and reviewed their FFY 2014 and 2015 SPP/APR data on timeliness of due process decisions, December 1, 2015, May 2, 2016 and December 1, 2016 CAP progress reports. OSEP requested copies of PRDE's Dispute Resolution policies and procedures. PRDE provided these documents to OSEP prior to the visit. However, they were in Spanish, and OSEP is working on getting the documents translated. Subsequent to the visit, OSEP reviewed the May 1, 2017 CAP progress report.

**Challenges and Barriers:** PRDE has challenges related to training of hearing officers on IDEA requirements; data collection; and reporting. It plans to seek assistance from OSEP-funded technical assistance providers to address these issues.

**Outcome of Engagement Activity:** PRDE plans to work closely with OSEP and the Center for Appropriate Dispute Resolution in Special Education to pursue technical assistance related to due process hearing decisions and data management.

### 3. Assistive technology

**Requirement:** Each public agency must ensure that assistive technology devices or assistive technology services, or both, are made available to a child with a disability if required as part of the

child's IEP. PRDE must provide needed assistive technology devices and services in a timely manner, and eliminate the backlog, if any, of students needing such devices and services who have not received them. See IDEA section 612(a)(1) and 34 CFR §300.105.

OSEP questioned PRDE staff about the SEA's efforts to ensure that assistive technology devices or assistive technology services, or both, are made available to a child with a disability if required as part of the child's IEP. OSEP discussed with PRDE the data they provided in their CAP Reports regarding this issue and the progress they have made in meeting this requirement since the submission of their May 2 and December 1, 2016 CAP Progress Report.

In its May 2, 2017 CAP Progress Report, PRDE proposed a new methodology for reporting on the timeliness of the provision of assistive technology (AT) devices. Previously the timeline started from the date a student was referred for an AT evaluation by the IEP team. The Commonwealth proposed to calculate from the date that the IEP team determines that the student needs the AT. OSEP agreed that this is a reasonable methodology and accepts the change. Using the new methodology, PRDE reported the following updated data as of April 27, 2017: (1) for the period of July 1, 2015 through June 30, 2016, 100% (968/968) requests for assistive technology devices and services have been verified as delivered; (2) as of April 25, 2017, for the period of July 1, 2016 through October 31, 2016, 90.4% (266/294) requests for assistive technology devices and services have been verified as delivered; and (3) in its May 1, 2017 CAP Progress Report, PRDE also reported that, as of April 25, 2017, for the period of November 1, 2016 through March 31, 2017, 21.7% (80/369) of requests for assistive technology devices and services have been verified as delivered.

PRDE has not achieved compliance with the assistive technology requirements in IDEA section 612(a)(1) and 34 CFR §300.105.

**Data Reviewed:** Prior to the visit, OSEP reviewed PRDE's December 1, 2015, May 2, 2016 and December 1, 2016 CAP Reports. Subsequent to the visit, OSEP reviewed the May 1, 2017 CAP progress report.

**Challenges and Barriers:** PRDE attributed their challenges in providing assistive technology devices to voucher delays; concerns with access to vendors; and delays in shipping from mainland States. PRDE is continuing to address these challenges. Currently equipment is purchased using State and local funds with purchase cards; however, PRDE is also coordinating with OSEP to ensure that approval for equipment exceeding \$5,000, and for which Federal funds are used to make purchases, is requested in a timely manner to also avoid delays in equipment purchases.

**Outcome of Engagement Activity:** PRDE will continue to address the challenges regarding vendors and equipment purchases that negatively impact its ability to provide assistive technology to children with disabilities in a timely manner.

### Next Steps and Required Actions

**Use of Technical Assistance and Professional Development Resources:** During FFY 2017, OSEP will continue to be available for TA calls with PRDE regarding Department-wide Special Conditions specific to special education. In addition, OSEP will share TA resources and materials with PRDE that may be most helpful for addressing noncompliance related to the Commonwealth's dispute resolution and its early childhood transition systems. PRDE plans to continue to work with NCSI and will begin discussions with CADRE for assistance with dispute resolution requirements.

**Required Actions:** As indicated in our cover letter, OSEP recognizes that the Commonwealth is under tremendous distress given the recent impact of the hurricanes, and that many staff resources at PRDE are dedicated to recovery efforts. Further, we acknowledge that additional time may be needed to address some of the next steps outlined in this summary. For the two areas listed below in which OSEP

identified noncompliance, we will work collaboratively with PRDE to develop a corrective action plan and establish appropriate implementation timelines that take into consideration the Commonwealth's need to prioritize its recovery efforts. In addition we will work with PRDE to clarify whether: (1) it permits parties to a due process hearing to agree in writing to continue the mediation at the end of the 30-day resolution period in accordance with 34 CFR §300.510(c)(3); and (2) whether it ensures that if both parties to a due process hearing agree in writing to continue the mediation at the end of the 30-day resolution period, the 45-day timeline for issuing final due process decisions starts the day after the parent or public agency withdraws from the mediation process in accordance with 34 CFR §§300.510(c)(3) and 300.515(a).

### Findings of Noncompliance

1. Based on interviews with PRDE personnel, OSEP determined that PRDE permits a hearing officer to consider a motion for reconsideration 15 days after the hearing officer has issued findings of fact and a final decision in a due process hearing.

*Citation:* Under 34 CFR §300.514(a), a decision made in a due process hearing conducted by the SEA is final, except that a party aggrieved by that decision may appeal the decision by bringing a civil action in any State court of competent jurisdiction or in a district court of the United States under 34 CFR §300.516.

Once a final decision has been issued, no motion for reconsideration is permissible. While a State can allow motions for reconsideration prior to issuing a final decision, the final decision must be issued within the 45-day timeline or a properly extended timeline. For example, motions for reconsideration of interim orders made during the hearing would be permissible as long as the final decision is issued within the 45-day timeline or a properly extended timeline. Proper notice should be given to parents if State procedures allow for amendments, and a reconsideration process may not delay or deny parents' right to a decision within the time periods specified for hearings and appeals. 64 FR 12614 (March 12, 1999). See also *Questions and Answers on IDEA Part B Dispute Resolution Procedures*, Question C-25.

2. Based on interviews with PRDE personnel, OSEP determined that PRDE does not have policies and procedures in place that ensure the findings and decisions issued in due process hearings conducted pursuant to the IDEA are available to the public consistent with 34 CFR §300.513(d)(2) and the record retention requirements in 2 CFR §200.333. PRDE stated that due process hearing decisions are made available to the public as required by the judgment entered on February 14, 2002, in the case of *Rosa Lydia Velez et al. v. Department of Education*, Superior Court, San Juan, Case #KPE1980-1738 (804). However, once the decision is provided to the required locations ("the special education offices of the school districts, the Central Office of the Assistant Secretary for Comprehensive Educational Services, the libraries of Puerto Rico's Law Schools, the Supreme Court, the Circuit Courts of Appeal, the Office of the Public Prosecutor for Persons with Disabilities (OPPI), the Association of Parents of Children with Disabilities (APNI) and other organizations of community interest and the Puerto Rican Bar Association") PRDE does not ensure that due process hearing decisions are retained and are accessible to the public for the length of time required in 2 CFR §§200.333 and 200.343(a).

*Citation:* Under 34 CFR §300.513(d)(2), the public agency, after deleting any personally identifiable information, must make the findings and decisions issued in due process hearings available to the public. The SEA must ensure that records under Part B of the IDEA are retained under the three-year period set forth in the record retention requirements in 2 CFR §200.333. Further, under 2 CFR §200.343(a), the three-year period runs from when the final expenditure

### **Findings of Noncompliance**

report is submitted on a grant (and it is due 90 days from the end of the performance period, which is typically when specific Federal fiscal year (FFY) funds are no longer available for obligation under a grant). Given that the State generally submits its final expenditure report two and a half years after it receives its IDEA Part B grant, the record retention period can extend to five and a half years from the date the record was created. Therefore, a five and a half year time period is the minimum time period during which States must make due process findings and decisions available to the public under 34 CFR §300.513(d)(2). See OSEP's Letter to Anonymous, dated February 27, 2017.