



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

JUN 28 2012

Honorable Edward Moreno Alonso
Secretary of Education
Puerto Rico Department of Education
Post Office Box 190759
San Juan, Puerto Rico 00919-0759

Dear Secretary Moreno Alonso:

Thank you for the timely submission of Puerto Rico's Federal fiscal year (FFY) 2010 Annual Performance Report (APR) and revised State Performance Plan (SPP) under Part B of the Individuals with Disabilities Education Act (IDEA).

The Department has determined that, under IDEA section 616(d)(2)(A)(iii), Puerto Rico needs intervention in implementing the requirements of Part B of IDEA. The Department's determination is based on the totality of the Commonwealth's data and information including the Commonwealth's FFY 2010 APR and revised SPP, other Commonwealth-reported data, and the Commonwealth's submissions under the Special Conditions on the Commonwealth's FFY 2011 Part B grants, and other publicly available information. See the enclosure entitled "How the Department Made Determinations under Section 616(d) of the IDEA in 2012: Part B" for further details.

The Commonwealth's determination for the FFY 2009 APR was also needs intervention. The Commonwealth should review IDEA section 616(e)(2) and 34 CFR §300.604(b) regarding the potential impact of the Department's determination should the Commonwealth be determined to need intervention in implementing the requirements of IDEA Part B for three consecutive years.

The specific factor affecting the Office of Special Education Programs' (OSEP's) determination of needs intervention for Puerto Rico was continuing and longstanding noncompliance with key Part B requirements that were previously addressed under Departmental enforcement actions and for which the Commonwealth's data indicate continued noncompliance.

First, OSEP notes the Commonwealth's longstanding noncompliance with the requirement that it timely correct noncompliance (20 USC 1232d(b)(3)(E), 34 CFR §§300.149 and 300.600(e)). The issue of timely correction of noncompliance was initially addressed under the Department's enforcement authority in 2004 in the Compliance Agreement between the Department and Puerto Rico. Because the issue was not fully resolved under the Compliance Agreement, subsequent enforcement action on timely correction was included in the 2007 Memorandum of Agreement between the Department and Puerto Rico, and the FFY 2011 Special Conditions on the Part B grant award. The Commonwealth reported 88.5% compliance under Indicator 15, and as noted in the attached table, the target for this indicator for FFY 2010 was 100%. This issue is significant because it is a major way in which States demonstrate effectiveness at ensuring compliance with the requirements of Part B.

400 MARYLAND AVE. S.W., WASHINGTON, DC 20202-2600

www.ed.gov

The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

Second, OSEP also considered the status of other longstanding noncompliance in the following areas that were initially addressed as part of the three-year Compliance Agreement reached in 2007 between Puerto Rico and the Department: (1) timely initial evaluations: 92.2% under Indicator 11; (2) timely early childhood transition from Part C to Part B: 75% under Indicator 12; (3) timely reevaluations (450 pending); and (4) the provision of assistive technology services and equipment to students who require them (1,141 students required services and equipment of which 221 students were awaiting purchase requests and 496 were awaiting delivery). Timely initial evaluations, consistent with 34 CFR §300.301(c)(1), and timely early childhood transition, consistent with 34 CFR §300.124(b), are the primary ways that States ensure that students with disabilities who may be eligible for special education and related services under Part B are identified as eligible and are provided a free appropriate public education (FAPE) in a timely manner. The timely reevaluation requirements at 34 CFR §§300.303-300.306 ensure that the determinations of disability and of the needs of students with disabilities are current. The assistive technology requirements in 34 CFR §§300.105 and 300.324(a)(2)(v) ensure that students with disabilities who need assistive technology as part of a FAPE receive them. We hope that Puerto Rico will be able to demonstrate that it meets requirements in its next APR.

The enclosed table provides OSEP's analysis of the Commonwealth's FFY 2010 APR and revised SPP and identifies, by indicator, OSEP's review of any revisions made by the Commonwealth to its targets, improvement activities (timelines and resources) and baseline data in the Commonwealth's SPP. The table also identifies, by indicator: (1) the Commonwealth's reported FFY 2010 data; (2) whether such data met the Commonwealth's FFY 2010 targets and reflect progress or slippage from the prior year's data; (3) if applicable, that the Commonwealth's data are not valid and reliable; and (4) whether the Commonwealth corrected findings of noncompliance.

Your Commonwealth may want to consider taking advantage of available sources of technical assistance. A list of sources of technical assistance related to the SPP/APR indicators is available by clicking on the "Technical Assistance Related to Determinations" box on the opening page of "The Right IDEA" Web site at: <http://therightidea.tadnet.org/technicalassistance>. You will be directed to a list of indicators. Click on specific indicators for a list of centers, documents, Web seminars and other sources of relevant technical assistance for that indicator.

As you know, pursuant to IDEA section 616(b)(2)(C)(ii)(I) and 34 CFR §300.602(b)(1)(i)(A), each State must report annually to the public on the performance of each local educational agency (LEA) located in the State on the targets in the SPP as soon as practicable, but no later than June 1, 2012. Because your jurisdiction is a unitary entity (i.e., the SEA is the only LEA), you may meet this public reporting requirement by posting your FFY 2010 APR on Puerto Rico's educational agency's Web site and making it available to the public, consistent with 34 CFR §300.602(b)(1)(i)(B). For further information regarding these requirements, see "The Right IDEA" Web site at: <http://therightidea.tadnet.org/determinations>. Finally, please ensure that your updated SPP is posted on the Puerto Rico educational agency's Web site and made available to the public, consistent with 34 CFR §300.602(b)(1)(i)(B).

Pursuant to section 616(d)(2)(B) of the IDEA and 34 CFR §300.603(b)(2), a State that is determined to need intervention or need substantial intervention, and does not agree with this

determination, may request an opportunity to meet with the Assistant Secretary to demonstrate why the Department should change the Commonwealth's determination. To request a hearing, submit a letter to Alexa Posny, Assistant Secretary, United States Department of Education, 400 Maryland Avenue SW, Washington, DC 20202 within 15 days of the date of this letter. The letter must include the basis for your request for a change in the Commonwealth's determination.

OSEP is committed to supporting Puerto Rico's efforts to improve results for children and youth with disabilities and looks forward to working with your Commonwealth over the next year. If you have any questions, would like to discuss this further, or want to request technical assistance, please contact Diana Yu, your OSEP State Contact, at 202-245-6061.

Sincerely,

A handwritten signature in black ink, appearing to read "Melody Musgrove", with a large, stylized flourish extending to the right.

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

Enclosures

cc: Commonwealth Director of Special Education