

## **Puerto Rico Part B Continuous Improvement Visit**

### **Enclosure – Verification Component**

#### **Scope of Review**

During the verification component of the Continuous Improvement Visit (CIV), OSEP reviewed critical elements of the Commonwealth's general supervision and fiscal systems.<sup>1</sup> We also reviewed the Commonwealth's policies and procedures for ensuring the appropriate tracking, reporting and use of IDEA funds made available under the American Recovery and Reinvestment Act of 2009 (ARRA).

#### **Methods**

In reviewing the Commonwealth's systems for general supervision, including the collection of Commonwealth-reported data<sup>2</sup>, and fiscal management, and the Commonwealth's systems for improving child and family outcomes and protecting child and family rights, OSEP:

- Analyzed the components of the Commonwealth's general supervision and fiscal systems to ensure that the systems are reasonably calculated to demonstrate compliance and improved performance
- Reviewed the Commonwealth's systems for collecting and reporting data the Commonwealth submitted for selected indicators in the Commonwealth's Federal fiscal year (FFY) 2009 State Performance Plan (SPP)/Annual Performance Report (APR)
- Reviewed the following–
  - Previous APRs
  - The Commonwealth's application for funds under Part B of the IDEA
  - Previous OSEP monitoring reports
  - The Commonwealth's Web site
  - Other pertinent information related to the Commonwealth's systems<sup>3</sup>
- Gathered additional information through surveys, focus groups or interviews with–
  - The Commonwealth Director of Special Education
  - Commonwealth personnel responsible for implementing the general supervision, data and fiscal systems
  - The Commonwealth Advisory Panel on Special Education
  - Parents and Advocates
  - The Puerto Rico Protection and Advocacy office

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<sup>1</sup> As explained in the cover letter, OSEP will respond to the fiscal component of the review under separate cover.

<sup>2</sup> For a description of the Commonwealth's general supervision system, including the collection of Commonwealth reported data, see the State Performance Plan (SPP) on the Commonwealth's Web site.

<sup>3</sup> Documents reviewed as part of the verification process were not reviewed for legal sufficiency, but rather to inform OSEP's understanding of your Commonwealth's systems.

## **General Supervision System**

### ***Critical Element 1: Identification of Noncompliance***

*Does the State have a general supervision system that is reasonably designed to identify noncompliance in a timely manner using its different components?*

To effectively monitor the implementation of Part B of the IDEA, as required by IDEA sections 612(a)(11) and 616, 34 CFR §§300.149 and 300.600, and 20 U.S.C. 1232d(b)(3)(E), the Commonwealth must have a general supervision system that identifies noncompliance in a timely manner. As part of this system, if the State educational agency (SEA) collects compliance data or information through a database or self-review and those data or that information represents evidence of noncompliance, it may not ignore such evidence and generally must issue a finding of noncompliance unless the noncompliance is verified as corrected prior to issuing the finding.

PRDE reported that it makes findings of noncompliance only through on-site monitoring visits, State complaints, and due process hearings. As further explained below, PRDE acknowledged that although it also receives compliance information from districts through both its SEASWeb database and annual self-assessments, PRDE does not make findings of noncompliance unless it finds the noncompliance through an on-site monitoring visit, State complaint, or due process hearing.

Beginning with the FFY 2009 APR, submitted on February 1, 2011, the Commonwealth used data collected through its SEASWeb database to collect the data for Compliance Indicators 11 (timely initial evaluation), 12 (early childhood transition), and 13 (secondary transition). The Commonwealth acknowledged that although the data collected for a district<sup>4</sup> through SEASWeb may show a level of compliance less than 100%, the Commonwealth has not made findings of noncompliance based on those data. Rather, the Commonwealth has only made findings of noncompliance related to these requirements if identified through an on-site visit (all districts do not receive an on-site visit each year), or through a State complaint or due process hearing. The Commonwealth's failure to consider the noncompliance data in the SEASWeb database as sufficient evidence, and the resulting failure to issue findings of noncompliance, is inconsistent with the requirements in IDEA sections 612(a)(11) and 616, 34 CFR §§300.149 and 300.600, and 20 U.S.C. 1232d(b)(3)(E).

Further, beginning in FFY 2009, the Commonwealth implemented a self-assessment process, requiring each district to complete a self-assessment each year. As part of that self-assessment, each district must self-evaluate its compliance with specific requirements and submit the self-assessment to PRDE. PRDE then scores each self-assessment, assigning points depending on the district's level of compliance with the various requirements. PRDE totals the district's scores and derives an over-all percentage. The district then receives an over-all score as follows:

- 95%-100%: Excellent and Substantial
- 85%-94%: Partial
- 84% or lower: Minimum

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<sup>4</sup> Although the Commonwealth implements Part B of the IDEA through a unitary system and does not have separate local educational agencies, the Commonwealth uses its district and regional structures for monitoring purposes.

PRDE reported that a district could report less than 100% compliance on a Part B requirement, and receive a score of “Excellent and Substantial.” PRDE explained that all districts with a score of “Minimum” received an on-site monitoring visit, and that districts with a “Partial” or “Excellent and Substantial” score may, at the discretion of PRDE, receive an on-site monitoring visit. PRDE acknowledged that PRDE does not issue any findings of noncompliance to districts based on the self-assessment, even if a district reported less than 100% compliance in the self-assessment. That is, even if the self-assessment contains evidence of noncompliance, if PRDE does not conduct an on-site monitoring visit, then it will not make a finding of noncompliance based on the self-assessment. The failure to make findings when the SEA has evidence of noncompliance is inconsistent with the requirements in IDEA sections 612(a)(11) and 616, 34 CFR §§300.149 and 300.600, and 20 U.S.C. 1232d(b)(3)(E).

### **OSEP Conclusion**

To effectively monitor the implementation of Part B of the IDEA, as required by IDEA sections 612(a)(11) and 616, 34 CFR §§300.149 and 300.600, and 20 U.S.C. 1232d(b)(3)(E), the Commonwealth must issue written findings when data and information (e.g., from a database or self-assessment) represent evidence of noncompliance, and must issue written findings for all noncompliance, regardless of the level of noncompliance and even in the absence of an on-site monitoring visit. Based on the review of documents, analysis of data, and interviews with PRDE personnel, as described above, OSEP concludes that the Commonwealth does not have a general supervision system that is reasonably designed to identify noncompliance in a timely manner using its different components, because the Commonwealth has not made findings of noncompliance when data from its database or information from a self-assessment showed noncompliance, and when the district or region with noncompliance was not subject to an on-site monitoring visit.

### **Required Actions/Next Steps**

Within 90 days from the date of this letter, the Commonwealth must submit: (1) updated procedures regarding identification of noncompliance that require findings of noncompliance when data in its database, self-assessments, or other monitoring data show noncompliance, regardless of the level of noncompliance; (2) documentation that PRDE has made findings of noncompliance based on the data it collects through SEASWeb and based on data provided in self-assessments; and (3) an assurance that it will include data regarding the correction of all findings of noncompliance (including the correction of findings it makes in FFY 2011 (July 1, 2011-June 30, 2012) based on PRDE’s database and self-assessments in its data for Indicator 15 in the FFY 2012 APR (due February 1, 2014).

### ***Critical Element 2: Correction of Noncompliance***

*Does the State have a general supervision system that is reasonably designed to ensure correction of identified noncompliance in a timely manner?*

To effectively monitor the implementation of Part B of the IDEA, as required by IDEA sections 612(a)(11) and 616, 34 CFR §§300.149 and 300.600, and 20 U.S.C. 1232d(b)(3)(E), the Commonwealth must have a general supervision system that corrects noncompliance in a timely manner. In addition, as noted in OSEP Memorandum 09-02, Reporting on Correction of Noncompliance in the Annual Performance Report Required under Sections 616 and 642 of the Individuals with Disabilities Education Act, dated October 17, 2008 (OSEP Memo 09-02), in

order to verify that previously identified noncompliance has been corrected, the Commonwealth must verify that the LEA (in the case of the Commonwealth, district or region): (1) is correctly implementing the specific regulatory requirements (i.e., achieved 100% compliance) based on a review of updated data such as data subsequently collected through on-site monitoring or a Commonwealth data system; and (2) has corrected noncompliance for each child, unless the child is no longer within the jurisdiction of the Commonwealth.

OSEP confirmed through the review of records and interviews with PRDE staff that PRDE is verifying correction of findings in a manner that is consistent with the requirements of OSEP Memo 09-02. However, the Commonwealth reported under Indicator 15 in its FFY 2009 APR that it timely corrected (i.e., within one year from identification) only 85.6% of the findings of noncompliance that it made in FFY 2008 (July 1, 2008-June 30, 2009). Further, the Commonwealth's timely correction of noncompliance under IDEA Part B has been a longstanding issue, and is the subject of Department-wide Special Conditions on the Commonwealth's FFY 2011 grant awards.

### **OSEP Conclusion**

Based on the review of documents, analysis of data, and interviews with PRDE personnel, OSEP concludes that the Commonwealth has components of a general supervision system that are reasonably designed to verify the correction of noncompliance in a timely manner. However, because the data for Indicator 15 in the FFY 2009 APR were 85.6% and given the Special Conditions on the Commonwealth's FFY 2011 Part B grant award regarding the timely correction of noncompliance, OSEP cannot conclude that the State's systems are fully effective in correcting noncompliance in a timely manner.

### **Required Actions/Next Steps**

The measurement for SPP/APR Part B Indicator 15 requires the Commonwealth to report, in its FFY 2010 APR, due February 1, 2012, on the timely correction (i.e., within one year from identification) of noncompliance identified in FFY 2009 (July 1, 2009-June 30, 2010). Further, the Special Conditions on Puerto Rico's FFY 2011 Part B grant award require that, in addition to reporting on data for FFY 2010 (i.e., the timely correction of noncompliance identified in FFY 2009), with the FFY 2010 APR, due February 1, 2012, PRDE also report on correction of noncompliance for the period from July 1, 2011 through December 31, 2011. OSEP will review the information that the Commonwealth submits in its FFY 2010 APR, and determine what, if any, further action is required.

### ***Critical Element 3: Dispute Resolution***

*Does the State have procedures and practices that are reasonably designed to implement the dispute resolution requirements of IDEA?*

The Commonwealth must have reasonably designed dispute resolution procedures and practices if it is to effectively implement: (1) the State Complaint procedure requirements in IDEA sections 612(a)(11) and 615(a), 34 CFR §§300.151 through 300.153, and 20 U.S.C. 1221e-3; (2) the mediation requirements in IDEA section 615(e) and 34 CFR §300.506; and (3) the due process complaint requirements in IDEA sections 615(b)(6) – (8), 615(c)(2), 615(f) – (i) and (o) and 34 CFR §§300.507, 300.508, and 300.510 through 300.517.

The Commonwealth reported under Indicator 17 in its FFY 2009 APR that 69.2% of adjudicated due process hearing requests were adjudicated within the timeline in 34 CFR §300.515(a). Further, the timeliness of special education due process hearing decisions has been a longstanding issue, and is the subject of Department-wide Special Conditions on the Commonwealth's FFY 2011 grant award.

### **OSEP Conclusion**

Based on the review of documents and interviews with PRDE personnel, OSEP concludes that, with the exception of ensuring that due process hearing decisions are reached and mailed to the parties within the timeline specified in 34 CFR §300.515(a), the Commonwealth has procedures and practices that are reasonably designed to implement the dispute resolution requirements of IDEA. Given the low level of compliance for Indicator 17 in the Commonwealth's FFY 2009 APR (69.2%) and the Special Conditions on the Commonwealth's FFY 2011 Part B grant award regarding timely due process hearing decisions, OSEP concludes that the Commonwealth's systems are not fully effective in ensuring timely hearing decisions.

### **Required Actions**

The measurement for SPP/APR Part B Indicator 17 requires the Commonwealth to report, in its FFY 2010 APR, due February 1, 2012, on the percent of adjudicated due process hearing requests that were adjudicated, in FFY 2010 (July 1, 2010-June 30, 2011), within the 45-day timeline or a timeline that is properly extended by the hearing officer at the request of either party or in the case of an expedited hearing, within the required timelines. OSEP will review the information that the Commonwealth submits in its FFY 2010 APR, and determine what, if any, further action is required.

#### ***Critical Element 4: Data System***

*Does the State have a data system that is reasonably designed to timely collect and report data that are valid and reliable and reflect actual practice and performance?*

To meet the requirements of IDEA sections 616 and 618, and 34 CFR §§300.601(b) and 300.640 through 300.646, the Commonwealth must have a data system that is reasonably designed to timely collect and report data that are valid and reliable and reflect actual practice and performance.

### **OSEP Conclusion**

Based on the review of documents and interviews with Commonwealth personnel, OSEP concludes that the Commonwealth has a data system that is reasonably designed to timely collect and report data that are valid and reliable and reflect actual practice and performance.

### **Required Actions/Next Steps**

No action is required.

#### ***Critical Element 5: Implementation of Grant Assurances***

*Does the State have procedures and practices that are reasonably designed to implement selected grant application assurances, i.e., monitoring and enforcement related to LEA determinations and significant disproportionality/CEIS?*

Because the Puerto Rico Department of Education is a unitary system that does not include separate LEAs, the selected grant assurances addressed in Critical Element 5 (i.e., LEA determinations and significant disproportionality/CEIS) do not apply to the Commonwealth.