



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

Honorable César Rey-Hernández
Secretary of Education
Puerto Rico Department of Education
P.O. Box 190759
San Juan, Puerto Rico 00919-0759

AUG 13 2004

Dear Secretary Rey:

The purpose of this letter is to inform you of the results of the Office of Special Education Programs' (OSEP's) recent verification visit to Puerto Rico. As indicated in my letter to you of June 18, 2003, OSEP is conducting verification visits to a number of States as part of our Continuous Improvement and Focused Monitoring System (CIFMS) for ensuring compliance with and improving performance under Part B of the Individuals with Disabilities Education Act (IDEA). We conducted our visit to Puerto Rico during the week of September 8, 2003. A second visit was made to Puerto Rico during the week of March 15, 2004.

The purpose of our verification reviews of States, including the Estado Libre Asociado de Puerto Rico, is to determine how they use their general supervision, State-reported data collection, and Commonwealth-wide assessment systems to assess and improve State performance; and to protect child and family rights. The purposes of the verification visits are to: (1) understand how the systems work at the State level; (2) determine how the State collects and uses data to make monitoring decisions; and (3) determine the extent to which the State's systems are designed to identify and correct noncompliance.

As part of the verification visit to the Puerto Rico Department of Education (PRDE), Secretaria Auxiliar De Servicios Educativos Integrales para Personas con Impedimentos (SASEIPI), the OSEP staff met with Dr. Sonia Rosario (the Commonwealth's Director of Special Education), and members of SASEIPI's staff who are responsible for: (1) the oversight of general supervision activities (including monitoring, mediation, complaint resolution, and impartial due process hearings); (2) the collection and analysis of State-reported data; and (3) ensuring participation in, and the reporting of student performance on, Commonwealth-wide assessments. Prior to and during the visit, OSEP staff reviewed a number of documents¹, including the following: (1) the proposed Puerto Rico Part B State Improvement Plan with the December 2003 revisions; (2) the Commonwealth's Biennial Performance Report for grant years 1999-2000 and 2000-2001; (3) the consent decree in the *Velez* class action case²; (4) the OSEP

¹ Documents reviewed as part of the verification process were not reviewed for legal sufficiency but rather to inform OSEP's understanding of your State's systems.

² *Rosa Lydia Velez et al., vs. Awilda Aponte Roque et al. Settlement Agreement of Class Action*, November 21, 2000. As reported by PRDE, Velez addressed the following general and specific obligations with respect to the provision of special education and related services: scope of services; deadlines for the provision of services; maintenance of public information; changes to laws and regulations; maintenance of the level of effort and resources; school registration procedures; referrals for evaluation to determine eligibility under Part B; eligibility

Monitoring Report, issued September 29, 1995; (5) SASEIPI's Manual of Procedures for Special Education; (6) the July 27, 1993 publication, in the Federal Register, of written findings and the substance of the Compliance Agreement between the U. S. Department of Education and PRDE; (7) SASEIPI's 2003-2004 Monitoring Manual; (8) the Commonwealth Assessment Manual for Special Populations; and (9) other information from the Commonwealth's website³. On August 6, 2003, OSEP conducted a conference call with several of Puerto Rico's State Advisory Panel members on Special Education to hear their perspectives on the strengths and weaknesses of the Commonwealth's systems for general supervision, data collection, and Commonwealth-wide assessment. In addition, OSEP is in receipt of PRDE's April 16, 2004 submission, including additional revisions to the Improvement Plan (IP) and the Annual Performance Report (APR). Those documents are currently being reviewed and will be addressed under separate cover. To the extent that issues in this letter overlap with issues in the IP and/or the APR, those issues will be addressed in OSEP's responses to those documents.

The information that Dr. Rosario and her staff provided during the OSEP visit, together with the information that OSEP staff reviewed in preparation for the visit, greatly enhanced our understanding of SASEIPI's systems for general supervision, data collection and reporting, and Commonwealth-wide assessment.

General Supervision

In reviewing the Commonwealth's general supervision system, OSEP collected information regarding a number of elements, including whether the Commonwealth: (1) has identified any barriers, (e.g., limitations on authority, insufficient staff or other resources, etc.) that impede the Commonwealth's ability to identify and correct noncompliance; (2) has systemic, data-based, and reasonable approaches to identifying and correcting noncompliance; (3) utilizes guidance, technical assistance, follow-up, and -- if necessary -- sanctions, to ensure timely correction of noncompliance; (4) has dispute resolution systems that ensure the timely resolution of complaints and due process hearings; and (5) has mechanisms in place to compile and integrate data across systems (e.g., 618 State-reported data, due process hearings, complaints, mediation, Commonwealth-wide assessments, previous monitoring results, etc.) to identify systemic issues and problems.

As set forth in OSEP's September 27, 1991 and September 29, 1995 Monitoring Reports, OSEP made findings that PRDE had not met its responsibility to monitor public agencies responsible for carrying out special education programs (per the requirements of Section 441(b)(3)(A) of the General Education Provisions Act). The proposed Puerto Rico Improvement Plan, submitted to OSEP September 2002 and its revision, submitted December 2003, included PRDE's acknowledgement that it was not in compliance with the requirements of Part B of IDEA and GEPA related to the monitoring of special education programs including: the identification of

determinations; preparation of individualized education programs (IEPs); placements; provision of related services; evaluations; transportation services including transportation allowances and transportation services through contractors; architectural barriers; administrative dispute resolution procedures; assistive technology; and transition services.

³It is OSEP's understanding that all of the Commonwealth's government-related web sites were removed in January 2004, pending review under a new regulation requiring review of all government web pages during this election year.

program deficiencies; timeliness in the correction of deficiencies; and follow-up monitoring activities to ensure that deficiencies had been corrected. SASEIPI revised its monitoring system to incorporate district-based self-assessments, onsite cyclical and targeted monitoring, corrective action plans, and consistent follow-up to determine correction of noncompliance. The new cycle consists of selecting 30 schools from five of the ten regions during a semester, conducting on-site monitoring activities, issuing a report, receiving and approving a corrective action plan (CAP), and following up each CAP within six months (during the following semester) to determine correction. In addition, during the follow-up semester, an additional 30 schools are monitored from the other five regions.

During OSEP's visit to Puerto Rico during the week of March 15, 2004, OSEP staff accompanied PRDE staff on an on-site visit to a local district. OSEP reviewed PRDE's record review and interview protocols, specifically to ensure that PRDE was collecting data around issues identified in PRDE's revised Improvement Plan, submitted to OSEP on March 31, 2004. OSEP observed PRDE reviewing records and interviewing local school staff and discussed the process with PRDE staff following the visit. Based on this review and follow-up discussions with PRDE, OSEP concludes that PRDE's record review and interview protocols, within PRDE's monitoring system, constitute reasonable components for the identification of noncompliance. However, PRDE has not yet demonstrated that it effectively corrects the noncompliance within one year of identification or that it has effective sanctions in place where there is persistent or long-standing noncompliance. OSEP cannot, without also collecting data at the local level, determine whether PRDE's monitoring system is fully effective in identifying and correcting noncompliance in the Commonwealth.

PRDE reported that four SASEIPI staff members are responsible for reviewing self-assessments, implementing the cyclical monitoring, and conducting focused monitoring activities across the island's 1500 schools. For the next budget cycle, SASEIPI requested a monitoring supervisor for each of the ten regions and three staff at the central office level (making a total of seven staff at the central office). Secretary Rey indicated to OSEP that funds for these positions are available. The regional staff would be responsible for providing guidance and direct technical assistance to the schools in the regions, as well as reviewing self-assessments, directing central office staff toward the identification of potential noncompliance, and providing support to districts and schools in correcting identified noncompliance. Staff indicated that central office positions would enhance SASEIPI's capacity to conduct focused monitoring in support of correcting noncompliance identified through the *Velez* activities as well as systemic issues identified through analysis of dispute resolution mechanisms. It is OSEP's understanding that if the positions are not approved and personnel are not hired, SASEIPI would have to significantly scale back efforts to identify and correct noncompliance. It is OSEP staff's understanding that these positions have not been filled at the time of this letter.

PRDE has general regulatory authority to implement sanctions for failure to correct noncompliance. However, staff indicated that it has no direct authority to impose any of these sanctions. In order to impose sanctions, SASEIPI must submit its case to the PRDE legal office, which investigates the situation, decides whether sanctions are warranted, and makes a further recommendation to the Secretary of Education -- the only PRDE official with authority to impose sanctions. To date, the only actions taken by SASEIPI are letters describing the

continuation of noncompliance, which generally are not considered to be sanctions or disciplinary actions.

PRDE indicated that due process hearings are conducted by administrative law judges (ALJs) for the Commonwealth. Through the *Velez* settlement agreement, SASEIPI works with the ALJs to identify systemic issues across the island. As a result of this analysis, SASEIPI reported that it may conduct targeted monitoring in schools, districts, or regions, and that it routinely utilizes the information as part of the cyclical monitoring process. SASEIPI reported that it has a dispute resolution unit responsible for monitoring the timeliness of due process hearings, as well as the timely implementation of hearing officer decisions. As set forth in OSEP's September 27, 1991 and September 29, 1995 Monitoring Reports, OSEP made findings that PRDE had not met its responsibility to resolve due process hearing decisions within timelines. The proposed Puerto Rico Improvement Plan acknowledged that PRDE still was not ensuring that hearing officer decisions were implemented in a timely manner. As a result of reviewing the due process hearing logs during the March 2004 visit to Puerto Rico, OSEP determined that timelines for due process hearings do not meet the requirements of 34 CFR § 300.511(a). This issue will be addressed through the IP and APR.

Staff reported that formal written complaints are submitted to PRDE's legal division for investigation and resolution. Subsequent to OSEP's visit to the Commonwealth in January and March of 2002, SASEIPI requested that the legal division provide documentation that complaints involving IDEA are resolved within 60 calendar days of the receipt of the complaint and that the procedures used to address the complaint are in compliance with IDEA requirements. OSEP set forth in its September 27, 1991 Monitoring Report that PRDE had not met its responsibility to adopt written procedures for complaint management. PRDE's due process system, as implemented, had subsumed the Commonwealth complaint procedures. One PRDE official indicated that PRDE had no procedure for informing individuals or organizations in writing of the resolution of the complaints they filed. OSEP set forth in the September 29, 1995 Monitoring Report that PRDE had not met its responsibility to establish complaint procedures consistent with requirements under 34 CFR §§300.660 - 300.662. The proposed Puerto Rico Improvement Plan acknowledged that PRDE had not implemented a complaint management system that resolves complaints within 60 days (except where exceptional circumstances exist with respect to a particular complaint). OSEP reviewed complaint logs during the March 2004 visit and determined that timelines for complaints did not meet the requirements of 34 CFR §300.661. This issue will be addressed through the IP and APR.

While SASEIPI reviews section 618 data, due process hearing data, summaries of Commonwealth-wide assessment participation and performance, and previous monitoring results, several factors prevent it from integrating this information across systems to identify systemic issues. Staff reported that many of PRDE's data systems are stand-alone systems and are not compatible with one another, thereby hampering automated compilation and integration. The proposed automated data system is intended to integrate all the existing data systems. The automated data system is just beginning to move from the pilot stage to full implementation. However, as noted below, further improvement and refinement of the system will be needed to ensure that data (e.g., section 618 data) are accurate, reliable and valid. In addition, OSEP believes that the inaccessibility of complaint resolution information continues to represent a

significant barrier. PRDE reported that it plans to assign ten attorneys to SASEIPI to address this issue, and plans to report to OSEP on the status of its progress in making those assignments.

In summary, while OSEP is encouraged by the progress made by SASEIPI in the design and implementation of the new monitoring system, OSEP is unable to determine its effectiveness. Additionally, OSEP believes that SASEIPI's issues related to the timely resolution of due process hearings and complaints, the delays in the creation and implementation of an automated data system, the problems with complaint resolutions, as well as the limitations related to sanctions (as described above) have hampered the Commonwealth's ability to effectively identify and correct noncompliance. As noted previously, OSEP intends to address these issues through the IP and APR processes.

Collection of data under section 618 of the IDEA.

As a part of its review of the Commonwealth's system for data collection and reporting, OSEP collected information regarding a number of elements, including whether the Commonwealth: (1) provides clear guidance and ongoing training to local programs/public agencies regarding requirements and procedures for reporting data under section 618 of the IDEA; (2) implements procedures to determine whether the individuals who enter and report data at the local and/or regional level do so accurately and in a manner that is consistent with the Commonwealth's procedures, OSEP guidance, and section 618; (3) implements procedures for identifying anomalies in data that are reported, and correcting any inaccuracies; and (4) has identified any barriers, (e.g., limitations on authority, sufficient staff or other resources, etc.) that impede the state's ability to accurately, reliably and validly collect and report data under section 618.

The PRDE Secretaria Auxiliar De Sevicios Educativos Integrales para Personas con Impedimentos (SASEIPI) revises OSEP's section 618 data collection forms before distributing them to school administrators and teachers. Annual guidance and training are provided to teachers and building administrators through written instructions, as well as through direct training provided by regional supervisors of special education. Forms are completed by teachers, certified by building administrators and submitted to PRDE.

Through a General Supervision Enhancement Grant (GSEG) provided by OSEP, SASEIPI has created a new, web-based data system for infants, toddlers, children and youth with disabilities from birth through age 21. This system is currently in the pilot phase in a sample of six districts. All regions, districts, and schools were expected to be on-line to provide the December 1, 2003 electronic Child Count data, including placement data. Discipline, exiting, and personnel data are expected to be fully on-line by May 2004. Training has been provided to all data-entry personnel island-wide and a written manual was distributed to supplement the direct training. In addition, a help desk was created to provide "real-time" assistance.

Under the "paper-and-pencil" system, data is checked manually and compared, on a random-sampling basis, with data from the same district(s) submitted the previous year, to determine if the data received is valid and reliable. Under the automated system, PRDE will continue to mandate the "paper/pencil" system for at least the first year in order to compare automated data with manual data to check for reliability and validity. The PRDE staff identifies anomalies in the

data report with the local district personnel responsible for entering and certifying the data. Corrections to the identified inaccuracies are required.

WESTAT has indicated that it believes that there are missing data and that inaccurate data may have been reported by PRDE relating to placement in education settings. OSEP is concerned as to whether PRDE is fully meeting the requirements of 34 CFR §300.754. While OSEP cannot yet determine whether the transition from the “paper-and-pencil” system to the automated data system will improve the reliability, validity and accuracy of the section 618 data collection process, OSEP believes that the proposed automated web-based system, if properly implemented and supported by ongoing training and guidance, has the potential to be a reasonable approach to the collection and reporting of section 618 data.

Broad-based assessments

As a part of its review of the Commonwealth’s system for broad-based assessments, OSEP collected information regarding a number of elements, including whether the Commonwealth: (1) establishes procedures for Commonwealth-wide assessment that meet the participation, alternate assessment, and reporting requirements of Part B, including ensuring the participation of all students, including students with disabilities, and the provision of appropriate accommodations; (2) provides clear guidance and training to public agencies regarding those procedures and requirements; (3) monitors local implementation of those procedures and requirements; and (4) reports on the performance of children with disabilities on those assessments, in a manner consistent with those requirements. In order to better understand Puerto Rico’s system for Commonwealth-wide assessment, OSEP also discussed with your staff how the alternate assessment is aligned with grade-appropriate content standards.

Issues regarding the provision of modifications and accommodations that were identified to OSEP during our visits in January and March of 2002 appear to have been largely resolved. Under the *Velez* agreement, PRDE provided island-wide training at the school level for regular education teachers regarding classroom modifications and accommodations, as well as how those modifications and accommodations apply to Commonwealth-wide assessments.

The Assessment Office of PRDE changed the participating grades for Commonwealth-wide assessment last year from 3, 6, 9 and 11 to 3, 6, 8 and 11 without realizing the implications for the alternate, portfolio assessment. This had an impact on the reporting of alternate assessment data because the regular assessment was conducted and reported for grade 8 while the alternate assessment was conducted and reported for students with disabilities at the age equivalent to grade 9. While SASEIPI was made aware of the change, it occurred after the school year had begun and the portfolios were in process. SASEIPI indicated that it was not possible to go back to collect data for students with disabilities in grade 8. This practice is inconsistent with 34 CFR §300.139⁴ because the Commonwealth is not reporting the results of the alternate assessment

⁴ 34 CFR §300.139 requires, in part, that the SEA report to the Department, make available to the public, and report to the public with the same frequency and in the same detail as it reports on the assessment of nondisabled children, the following information:

- (1) The number of children with disabilities participating—(i) In regular assessments; and (ii) In alternate assessments

with same frequency and detail as the regular assessment. PRDE indicated that the Commonwealth-wide assessments will be conducted for all grades 3-8 and grade 11 for the 2003-2004 school year. This issue will be addressed in the IP and APR.

Based upon discussions with staff, OSEP believes that SASEIPI's lack of permanent representation on the "accountability team"⁵ interferes with communication between the Assessment Office and SASEIPI. In addition, decisions are often made at a higher level than the accountability team and there is no consultation with SASEIPI regarding those decisions and their impact on children with disabilities. However, staff reported that the evaluation division has undertaken some initiatives with SASEIPI, intended to improve communication and to ensure that the requirements of Part B will be met. Staff reported a schedule of training for school personnel involved in test administration on an annual basis. In addition, SASEIPI reported that it provides training for interpreters and individuals working with deaf-blind and blind students. PRDE reported that lists of accommodations are available and, as indicated above, training has been conducted, and will be ongoing annually, on the use of modifications and provision of accommodations to children with disabilities, both in the classrooms and on the Commonwealth-wide assessments.

PRDE also reported that, as a general matter, children with disabilities in nonpublic schools or who are incarcerated, do not currently participate in Commonwealth-wide assessments. This practice is not fully consistent with the requirements of Part B. Under 34 CFR §§300.2(c) and 300.401, children with disabilities placed in nonpublic schools by a public agency in order to provide a free appropriate public education, retain their rights under Part B, including the right to participate in broad-based assessments. Likewise, with the exception of students with disabilities who are convicted as adults under State law and are incarcerated in adult prisons, students with disabilities in correctional facilities (e.g., juvenile facilities) also must participate in the assessment system. PRDE's practice of excluding all individuals with disabilities in nonpublic school settings and in correctional settings from participating in the assessment system, is inconsistent with Part B requirements. This issue will be addressed in the IP and APR.

On an annual basis, each school provides SASEIPI with a list of children who participate in the regular assessment with and without accommodations, and provides information regarding the accommodations provided to each child. This information is used in the monitoring process and SASEIPI ensures that the required accommodations are provided. The IEP team is responsible for decision-making regarding participation in the regular assessment, with and without accommodations, and in the alternate assessment.⁶ In addition, SASEIPI monitors the

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- (2) The performance results of the children described in paragraph (a)(1) of this section if doing so would be statistically sound and would not result in the disclosure of performance results identifiable to individual children—
- (i) On regular assessments (beginning not later than July 1, 1998); and
 - (ii) On alternate assessments (not later than July 1, 2000)."

⁵ The PRDE Commonwealth-wide assessment accountability team is comprised of participants from various offices within PRDE. SASEIPI does not have permanent representation on the accountability team.

⁶ Title I of the Elementary and Secondary Education Act, as amended by the No Child Left Behind Act of 2001, also includes a number of requirements related to including children with disabilities in State assessment programs and reporting on their participation and performance on regular and alternate assessments that in many instances are more specific than requirements in the IDEA. For example, the Title I regulations require, at 34 CFR §200.2(b)(3)

participation of children with disabilities in regular and alternate assessments during the cyclical monitoring review procedures.

OSEP also discussed with your staff the extent to which the alternate assessment is aligned with grade-appropriate content standards. SASEIPI and the evaluation division of PRDE report difficulty in attempting to align the alternate assessment with grade-appropriate content standards. The evaluation division is seeking technical assistance from the OSEP-sponsored National Center for Educational Outcomes regarding this alignment. PRDE assessment staff questioned the statistical reliability and validity as well as the educational appropriateness of this alignment. OSEP believes that it is important that SASEIPI be included in all discussions and activities undertaken with the National Center.

PRDE's federal fiscal year (FFY) 2003 grant awards under Part B of the IDEA included Special Conditions related to the reporting of student performance on the alternate assessment. Under the Special Conditions, PRDE was required to submit documentation that it reported to the public, on the performance of children with disabilities on that assessment, in accordance with 34 CFR §§300.138 and 300.139. PRDE reported that assessment data for both children with and without disabilities were reported to the public through PRDE's web site. The reports included aggregated and disaggregated data and data on both the alternate and regular assessment for children with disabilities. However, it is OSEP's understanding that all of the Commonwealth's government-related web sites were removed in January 2004, pending review under a new regulation requiring review of all government web pages during an election year. On May 12, 2004, SASEIPI provided OSEP with a copy of the data that had been posted on the web site prior to January 2004 (from approximately September 2003, for the 2002-2003 school year data). The reports covered students with disabilities taking the alternate assessment and, in some instances, due to the format and the small number of children reported for some schools, appeared to allow the identification of results for individual children. Therefore, OSEP is concerned that requirements of 34 CFR §300.139 have not been fully met. That is, PRDE's disaggregated reporting of results on the alternate assessment for very small numbers of students at certain schools appears to allow the identification of individual student performance.

Conclusions

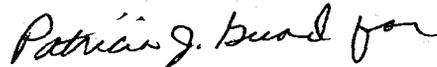
The Commonwealth has identified numerous areas of noncompliance through self-assessment, improvement planning and annual reporting, that overlap with the issues raised in this verification letter. Although some additional issues have been identified, such as the participation in broad-based assessments of children with disabilities placed by PRDE in nonpublic schools or incarcerated in juvenile correctional facilities, these issues also overlap with the issues covered in the IP and APR. Therefore, OSEP will continue to work with PRDE on ensuring that the strategies, targets, and timelines identified through the IP and APR processes properly address all identified noncompliance, including the newly-identified noncompliance set out above.

and (4), that all State assessments must, "(3)(i) Be aligned with the State's challenging academic content and student academic achievement standards; and (ii) Provide coherent information about student attainment of those standards. (4)(i) Be valid and reliable for the purposes for which the assessment system is used; and (ii) Be consistent with relevant, nationally recognized professional and technical standards." This letter does not, and should not be interpreted to, address Puerto Rico's compliance with requirements of Title I.

The Commonwealth submitted additional information to OSEP on February 27, 2004, with a supplemental submission on April 9, 2004, regarding the PRDE Improvement Plan that included: (1) documentation that there is a plan to correct the noncompliance noted in this letter relating to the timeliness of due process hearing decisions; (2) the required information regarding hearing determinations; (3) the required information regarding complaint resolutions, including a plan to address the timeliness of complaint resolutions; and (4) the required special education compliance monitoring data including reporting on sanctions imposed, or an explanation of why no sanctions were imposed. Additional data was submitted by PRDE to OSEP on April 16, 2004 in the Annual Performance Report. As previously noted, OSEP will review these submissions and respond under separate cover.

We appreciate the cooperation and assistance provided by your staff during our visit. As noted above, we request that you keep us informed concerning your progress in ensuring correction in those districts with persistent noncompliance findings. We look forward to our continued collaboration with Puerto Rico to support your work to improve results for children with disabilities and their families. If there are any questions, please call the OSEP contact for Puerto Rico, Hugh Reid at 202-245-7491.

Sincerely,



Stephanie Smith Lee
Director
Office of Special
Education Programs

cc: Dr. Sonia Rosario
Myrta Reyes