



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

July 1, 2021

Honorable Eliezer Ramos Perez
Interim Secretary of Education
Puerto Rico Department of Education
P.O. Box 190759
San Juan, Puerto Rico 00919
ramospr@de.pr.gov

Dear Interim Secretary Ramos Perez:

We have approved the Puerto Rico Department of Education's (PRDE's) grant application for Federal fiscal year (FFY) 2021 funds under Part B of the Individuals with Disabilities Education Act (IDEA Part B). Our approval is based on our review of the IDEA Part B grant application submitted by PRDE to the U.S. Department of Education (Department), Office of Special Education Programs (OSEP), on May 19, 2021, including the assurances provided in Section II and incorporated by reference to this letter as noted in Enclosure A. Our approval is also based on the PRDE's certification in Section II.D of its FFY 2021 IDEA Part B grant application (Enclosure B), signed by you on May 19, 2021, that PRDE's provisions meet the requirements of IDEA Part B as found in Public Law 108-446, and that PRDE will operate its Part B program in accordance with all of the required assurances and certifications, consistent with 34 C.F.R. § 76.104¹.

Please note that OSEP Memorandum 21-01, dated January 21, 2021, explained the impact of recent amendments to the Copyright Act, 17 U.S.C. § 121, on certain terms relevant to Assurance 23a or 23b related to accessible instructional materials as reflected in PRDE's FFY 2021 application for funds under IDEA Part B. As a result, the term "blind and other persons with print disabilities" has been removed from the Copyright Act and replaced with "eligible person," and the term "specialized format" has been removed and replaced with the term "accessible format." Although at this time Congress has not made conforming amendments to Section 612(a)(23) of IDEA, the Department construes Assurances 23a and 23b as incorporating the terms "eligible person" and "accessible format."

PRDE's enclosed IDEA Part B grant awards are also being released subject to Department-wide and Programmatic Specific Conditions (which are represented in Enclosures E and F, respectively, to this letter and incorporated in this grant letter by this reference). These Specific Conditions are being imposed pursuant to the Department's authority in IDEA Section 616(g) and 2 C.F.R. §§ 200.208 and 3474.10. In addition to the Department-wide specific conditions set

¹ Along with the FFY 2021 grant application, PRDE also included assurances, dated May 20, 2021, related to the Specific Condition regarding the Transportation of Students with Disabilities in the Bayamón Region. The IDEA specific condition regarding transportation in the Bayamón Region has been satisfied and PRDE may now use IDEA funds for transportation in the Bayamón Region.

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

forth in Enclosure E, Enclosure F identifies the Specific Conditions imposed on the enclosed grant awards to ensure: 1) Assistive Technology devices and services are received by children with disabilities in a timely manner in accordance with IDEA section 612(a)(1) and 34 C.F.R. § 300.105; and 2) activities are implemented to safeguard protected personally identifiable information and other information the Federal awarding agency or pass-through entity designates as sensitive or the non-Federal entity considers sensitive in accordance with 2 C.F.R. § 200.303(e). Therefore, as described in Section III of Enclosure F regarding the FFY 2021 Programmatic Specific 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 two remaining areas of noncompliance. By accepting these grant awards, PRDE expressly agrees to comply with the Specific Conditions identified in Enclosures E and F throughout the period PRDE uses its IDEA Part B funds under the enclosed grant awards.

Please note that as part of PRDE's grant application for FFY 2021 IDEA Part B funds, PRDE has provided a certification, pursuant to 34 C.F.R. § 76.104, that its application meets the requirements of IDEA Part B and that the PRDE will operate its Part B program in accordance with all of the required assurances and certifications. Any changes made by PRDE, after OSEP approval, to information that is a part of a PRDE's IDEA Part B grant application, must meet the public participation requirements in 34 C.F.R. § 300.165.

Enclosed are two separate grant award notification (GAN) documents. The first GAN represents the PRDE's FFY 2021 IDEA Part B Section 611 (Grants to States) and Section 619 (Preschool Grants) grant award for funds currently available under the Consolidated Appropriations Act, 2021 (Public Law 116-260) (CAA). The second GAN represents PRDE's grant award for IDEA Part B (Section 611 and Section 619) funds under Section 2014 of the American Rescue Plan Act of 2021 (Public Law 117-02) (ARP). Both grant awards are subject to all the terms and conditions of PRDE's FFY 2021 IDEA Part B grant application. The funds under both of these grant awards are available for obligation by States from July 1, 2021 through September 30, 2023, in accordance with 34 C.F.R. § 76.709.

The amounts of Section 619 funds shown in both grant awards represent the full amount of Section 619 funds to which PRDE is entitled under the CAA and the ARP. In addition, the amount of Section 611 funds shown in PRDE's ARP IDEA Part B grant award represents the full amount of Section 611 funds to which PRDE is entitled under the ARP. However, the amount of Section 611 funds shown in PRDE's CAA FFY 2021 IDEA Part B grant award is only part of the total Section 611 funds that will be awarded to PRDE under the CAA for FFY 2021. Of the \$12,937,457,000 appropriated for Section 611 in FFY 2021 under the CAA, \$3,654,074,000 is available for awards on July 1, 2021, and \$9,283,383,000 will be available for awards on October 1, 2021. 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 of FAPE to children with disabilities.²

For FFY 2021, the appropriation for the Preschool Grants program is \$597,620,000. Under the Section 619 formula in a year in which the amount available for allocations 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 all children aged three through five living in poverty.

Enclosure C provides a short description of how Section 611 funds were allocated and how those funds can be used. In addition, Table I in Enclosure C shows funding levels for distribution of Section 611 funds and the parameters for within-State allocations.

Enclosure D provides a short description of how Section 619 funds were allocated and how those funds can be used. In addition, Table II in Enclosure D 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, PRDE may not expend funds available to PRDE under Section 611(e)(1) [State administration funds] until PRDE has these agreements or arrangements in place.

Under IDEA Section 605, the Office of Management and Budget Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (OMB Uniform Guidance) in 2 C.F.R. Part 200, and 34 C.F.R. § 300.718, States must request prior approval from OSEP for certain State-level activities or expenses. On October 29, 2019, the Office of Special Education and Rehabilitative Services released a Frequently Asked Questions document (2019 FAQs) on prior approval.³ PRDE did not submit a prior approval request with its grant application. If the PRDE plans to use its FFY 2021 IDEA Part B grant funds for such costs, and

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.

³ Prior approval must be obtained under IDEA for the following direct costs: (1) equipment (defined generally as \$5,000 or more per item of equipment) (2 C.F.R. § 200.1 and 34 C.F.R. § 300.718); (2) participant support costs (such as training or travel costs for non-employees) (2 C.F.R. § 200.1); and (3) construction or alteration of facilities (34 C.F.R. § 300.718). Under the 2019 FAQs, OSERS granted prior approval for participant support costs under IDEA that: are associated with State Advisory Panels; are incurred during the provision of services under IDEA; do not exceed \$5000 per individual participant per training/conference; and are incurred by local educational agencies under IDEA Part B. In addition, the 2019 FAQs provide prior approval for equipment that is identified on or directly related to the implementation of an individualized education program for youth and children with disabilities.

those costs fall outside of the scope of the 2019 FAQs, it must submit a request for prior approval to which OSEP will respond separate from the grant letter.

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.A of its IDEA Part B grant application, pursuant to the authority in IDEA Section 618(a)(3), PRDE 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) 2019 and SFY 2020. If OSEP receives information through audits, fiscal monitoring or other means that raises questions about the data your State has provided in Section V.A, OSEP will follow up with PRDE.

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, PRDE 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 are made with the continued understanding that this Office may, from time to time, require clarification of information within your application, if 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 <https://www.fsr.gov/>. Please contact PRDE’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,



David Cantrell, Ph.D.
Delegated the authority to perform the
functions and duties of the Assistant
Secretary for the Office of Special
Education and Rehabilitative Services

Enclosures

Enclosure A (Sections II.A-C. of the State's application)

Enclosure B (Section II.D. of the State's application)

Enclosure C

Enclosure D

Enclosure E (Department-wide Specific Conditions)

Enclosure F (IDEA Part B Programmatic Specific Conditions)

cc: State Director of Special Education

Enclosure A

Section II

A. Assurances Related to Policies and Procedures

The State makes the following assurances that it has policies and procedures in place as required by Part B of the Individuals with Disabilities Education Act. (20 U.S.C. 1411-1419; 34 CFR §§300.100-300.174)

<p>Yes <i>(Assurance is given.)</i></p>	<p>No <i>(Assurance cannot be given. Provide date on which State will complete changes in order to provide assurance.)</i> <i>Check and enter date(s) as applicable</i></p>	<p>Assurances Related to Policies and Procedures</p>
<p>X</p>		<p>1. A free appropriate public education is available to all children with disabilities residing in the State between the ages of 3 and 21, inclusive, including children with disabilities who have been suspended or expelled, in accordance with 20 U.S.C. 1412(a)(1); 34 CFR §§300.101-300.108.</p>
<p>X</p>		<p>2. The State has established a goal of providing a full educational opportunity to all children with disabilities and a detailed timetable for accomplishing that goal. (20 U.S.C. 1412(a)(2); 34 CFR §§300.109-300.110)</p>
<p>X</p>		<p>3. All children with disabilities residing in the State, including children with disabilities who are homeless or are wards of the State and children with disabilities attending private schools, regardless of the severity of their disabilities, and who are in need of special education and related services, are identified, located, and evaluated and a practical method is developed and implemented to determine which children with disabilities are currently receiving needed special education and related services in accordance with 20 U.S.C. 1412(a)(3); 34 CFR §300.111.</p>
<p>X</p>		<p>4. An individualized education program, or an individualized family service plan that meets the requirements of section 636(d), is developed, reviewed, and revised for each child with a disability in accordance with 34 CFR §§300.320 through 300.324, except as provided in §§300.300(b)(3) and 300.300(b)(4). (20 U.S.C. 1412(a)(4); 34 CFR §300.112)</p>
<p>X</p>		<p>5. To the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are not disabled, and special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability of a child is such that education in regular</p>

		classes with the use of supplementary aids and services cannot be achieved satisfactorily in accordance with 20 U.S.C. 1412(a)(5)(A)-(B); 34 CFR §§300.114-300.120.
X		6. Children with disabilities and their parents are afforded the procedural safeguards required by 34 CFR §§300.500 through 300.536 and in accordance with 20 U.S.C. 1412(a)(6); 34 CFR §300.121.
X		7. Children with disabilities are evaluated in accordance with 34 CFR §§300.300 through 300.311. (20 U.S.C. 1412(a)(7); 34 CFR §300.122)
X		8. Agencies in the State comply with 34 CFR §§300.610 through 300.626 (relating to the confidentiality of records and information). (20 U.S.C. 1412(a)(8); 34 CFR §300.123)
X		9. Children participating in early intervention programs assisted under Part C, and who will participate in preschool programs assisted under this part, experience a smooth and effective transition to those preschool programs in a manner consistent with section 637(a)(9). By the third birthday of such a child, an individualized education program or, if consistent with 34 CFR §300.323(b) and section 636(d), an individualized family service plan, has been developed and is being implemented for the child. The local educational agency will participate in transition planning conferences arranged by the designated lead agency under section 635(a)(10). (20 U.S.C. 1412(a)(9); 34 CFR §300.124)
X		10. Agencies in the State, and the SEA if applicable, comply with the requirements of 34 CFR §§300.130 through 300.148 (relating to responsibilities for children in private schools), including that to the extent consistent with the number and location of children with disabilities in the State who are enrolled by their parents in private elementary schools and secondary schools in the school district served by a local educational agency, provision is made for the participation of those children in the program assisted or carried out under this part by providing for such children special education and related services in accordance with the requirements found in 34 CFR §§300.130 through 300.148 unless the Secretary has arranged for services to those children under subsection (f) [By pass]. (20 U.S.C. 1412(a)(10); 34 CFR §§300.129-300.148)
X		11. The State educational agency is responsible for ensuring that the requirements of Part B are met including the requirements of 34 CFR §§300.113, 300.149, 300.150 through 300.153, and 300.175 and 300.176 and that the State monitors and enforces the requirements of Part B in accordance with 34 CFR §§300.600-300.602 and 300.606-300.608. (20 U.S.C. 1412(a)(11); 34 CFR §300.149)
X		12. The Chief Executive Officer of a State or designee of the officer shall ensure that an interagency agreement or other mechanism for interagency coordination is in effect between each public agency described in subparagraph (b) of 34 CFR §300.154 and the State educational agency, in order to ensure that all services described in paragraph (b)(1)(i) that are needed to ensure a free appropriate public education are provided, including the provision of such services during the pendency of any dispute under §300.154(a)(3). Such agreement or

		mechanism shall meet the requirements found in 20 U.S.C. 1412(a)(12)(A)-(C); 34 CFR §300.154.
N/A		13. The State educational agency will not make a final determination that a local educational agency is not eligible for assistance under this part without first affording that agency reasonable notice and an opportunity for a hearing. (20 U.S.C. 1412(a)(13); 34 CFR §300.155)
X		14. The State educational agency has established and maintains qualifications to ensure that personnel necessary to carry out this part are appropriately and adequately prepared and trained, including that those personnel have the content knowledge and skills to serve children with disabilities as noted in 20 U.S.C. 1412(a)(14)(A)-(E); 34 CFR §300.156.
X		15. The State has established goals for the performance of children with disabilities in the State that meet the requirements found in 20 U.S.C. 1412(a)(15)(A)-(C); 34 CFR §300.157.
X		16. All children with disabilities are included in all general State and districtwide assessment programs, including assessments described under section 1111 of the Elementary and Secondary Education Act of 1965, with appropriate accommodations and alternate assessments where necessary and as indicated in their respective individualized education programs as noted in 20 U.S.C. 1412(a)(16)(A)-(E); 34 CFR §300.160.
X		17. Funds paid to a State under this part will be expended in accordance with all the provisions of Part B including 20 U.S.C. 1412(a)(17)(A)-(C); 34 CFR §300.162.
X		18. The State will not reduce the amount of State financial support for special education and related services for children with disabilities, or otherwise made available because of the excess costs of educating those children, below the amount of that support for the preceding fiscal year, unless a waiver is granted, in accordance with 20 U.S.C. 1412(a)(18)(A)-(D); 34 CFR §§300.163 through 300.164.
X		19. Prior to the adoption of any policies and procedures needed to comply with this section (including any amendments to such policies and procedures), the State ensures that there are public hearings, adequate notice of the hearings, and an opportunity for comment available to the general public, including individuals with disabilities and parents of children with disabilities. (20 U.S.C. 1412(a)(19); 34 CFR §300.165)
X		20. In complying with 34 CFR §§300.162 and 300.163, a State may not use funds paid to it under this part to satisfy State-law mandated funding obligations to local educational agencies, including funding based on student attendance or enrollment, or inflation. (20 U.S.C. 1412(a)(20); 34 CFR §300.166)
X		21. The State has established and maintains an advisory panel for the purpose of providing policy guidance with respect to special education and related services for children with disabilities in the State as found in 20 U.S.C. 1412(a)(21)(A)-(D); 34 CFR §§300.167-300.169.
X		22. The State educational agency examines data, including data disaggregated by race and ethnicity, to determine if significant

		discrepancies are occurring in the rate of long-term suspensions and expulsions of children with disabilities in accordance with 20 U.S.C. 1412(a)(22)(A)-(B); 34 CFR §300.170.
X		23a. The State adopts the National Instructional Materials Accessibility Standard for the purposes of providing instructional materials to blind persons or other persons with print disabilities, in a timely manner after the publication of the National Instructional Materials Accessibility Standard in the Federal Register in accordance with 20 U.S.C. 1412(a)(23)(A) and (D); 34 CFR §300.172.
		23b. <i>(Note: Check either "23b.1" or "23b.2" whichever applies.</i>
X		23b.1 The State educational agency coordinates with the National Instructional Materials Access Center and not later than 12/03/06 the SEA as part of any print instructional materials adoption process, procurement contract, or other practice or instrument used for purchase of print instructional materials enters into a written contract with the publisher of the print instructional materials to: <ul style="list-style-type: none"> • require the publisher to prepare and, on or before delivery of the print instructional materials, provide to the National Instructional Materials Access Center, electronic files containing the contents of the print instructional materials using the National Instructional Materials Accessibility Standard; or • purchase instructional materials from the publisher that are produced in, or may be rendered in, specialized formats. (20 U.S.C. 1412(a)(23)(C); 34 CFR §300.172)
		23b.2 The State educational agency has chosen not to coordinate with the National Instructional Materials Access Center but assures that it will provide instructional materials to blind persons or other persons with print disabilities in a timely manner. (20 U.S.C. 1412(a)(23)(B); 34 CFR §300.172)
X		24. The State has in effect, consistent with the purposes of the IDEA and with section 618(d) of the Act, policies and procedures designed to prevent the inappropriate overidentification or disproportionate representation by race and ethnicity of children as children with disabilities, including children with disabilities with a particular impairment described in 34 CFR §300.8. (20 U.S.C 1412(a)(24); 34 CFR §300.173)
X		25. The State educational agency shall prohibit State and local educational agency personnel from requiring a child to obtain a prescription for a substance covered by the Controlled Substances Act (21 U.S.C. 812(c)) as a condition of attending school, receiving an evaluation under 34 CFR §§300.300 through 300.311, or receiving services under the IDEA as described in 20 U.S.C. 1412(a)(25)(A)-(B); 34 CFR §300.174.

B. Other Assurances

The State also makes the following assurances:

Yes	Other Assurances
X	1. The State shall distribute any funds the State does not reserve under 20 U.S.C. 1411(e) to local educational agencies (including public charter schools that operate as local educational agencies) in the State that have established their eligibility under section 613 for use in accordance with this part as provided for in 20 U.S.C. 1411(f)(1)-(3); 34 CFR §300.705.
X	2. The State shall provide data to the Secretary on any information that may be required by the Secretary. (20 U.S.C. 1418(a)(3); 34 CFR §§300.640-300.645.)
X	3. The State, local educational agencies, and educational service agencies shall use fiscal control and fund accounting procedures that insure proper disbursement of and accounting for Federal funds. (34 CFR §76.702)
X	4. As applicable, the assurance in OMB Standard Form 424B (Assurances for Non-Construction Programs), relating to legal authority to apply for assistance; access to records; conflict of interest; merit systems; nondiscrimination; Hatch Act provisions; labor standards; flood insurance; environmental standards; wild and scenic river systems; historic preservation; protection of human subjects; animal welfare; lead-based paint; Single Audit Act; and general agreement to comply with all Federal laws, executive orders and regulations.

C. Certifications

The State is providing the following certifications:

Yes	Certifications
X	<p>1. The State certifies that ED Form 80-0013, <i>Certification Regarding Lobbying</i>, is on file with the Secretary of Education.</p> <p>With respect to the <i>Certification Regarding Lobbying</i>, the State recertifies that no Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making or renewal of Federal grants under this program; that the State shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," when required (34 CFR Part 82, Appendix B); and that the State Agency shall require the full certification, as set forth in 34 CFR Part 82, Appendix A, in the award documents for all sub awards at all tiers.</p>
X	2. The State certifies that certification in the Education Department General Administrative Regulations (EDGAR) at 34 CFR §76.104 relating to State eligibility, authority and approval to submit and carry out the provisions of its State application, and consistency of that application with State law are in place within the State.
X	3. The State certifies that the arrangements to establish responsibility for services pursuant to 20 U.S.C. 1412(a)(12)(A)-(C); 34 CFR §300.154 (or 20 U.S.C. 1412(a)(12)(A); 34 CFR §300.154(a) are current. This certification must be received prior to the expenditure of any funds reserved by the State under 20 U.S.C. 1411(e)(1); 34 CFR §300.171.

Enclosure C
IDEA Grants to States Program
(Part B, Section 611)

Explanation of the Federal Fiscal Year (FFY) 2021 Allocation Table

Total Grant Award (Column B)

Column B shows your total grant award for the Grants to States program for FFY 2021 under the Consolidated Appropriations Act, 2021 (Public Law 116-260) (CAA) and section 2014 of the American Rescue Plan Act of 2021 (Public Law 117-02) (ARP Act).

State total grants are calculated in accordance with several factors. First, each State is allocated an amount equal to the amount that it received for fiscal year 1999. If the total program appropriation increases over the prior year, 85 percent of the remaining funds are allocated based on the relative population of children aged 3 through 21 who are in the age range for which the State ensures the availability of a free appropriate public education (FAPE) to children with disabilities. Fifteen percent of the remaining funds are allocated based on the relative population of children aged 3 through 21 living in poverty who are in the age range for which the State ensures the availability of FAPE to children with disabilities. The statute also includes several maximum and minimum allocation requirements when the amount available for distribution to States increases.

If the amount available for allocation to States remains the same from one year to the next, States receive the same level of funding as in the prior year. If the amount available for allocation to States decreases from the prior year, any amount available for allocation to States above the fiscal year 1999 level is allocated based on the relative increases in funding that the States received between fiscal year 1999 and the prior year. If there is a decrease below the amount allocated for 1999, each State's allocation is ratably reduced from the fiscal year 1999 level.

Outlying Areas, Freely Associated States, and the U.S. Department of the Interior

The Department used its discretion under section 611(b)(1)(A) of the IDEA to increase the amount of funding reserved for Part B programs in the outlying areas for 2021, consistent with the increased IDEA section 611 funding provided by the ARP Act. As a result, the outlying areas will receive a separate allocation of ARP Act IDEA section 611 funds. Funding increases were not consistent across the outlying areas because, pursuant to section 611(b)(1)(A) of the IDEA, funds were allocated to those entities on the basis of their relative populations of individuals aged 3 through 21.

The IDEA Part B funding level for the freely associated States is defined in section 611(b)(1)(A)(ii) of the IDEA. The Department has no discretion over this funding level, and each freely associated State receives level funding until reauthorization. As such, the freely associated States were not eligible for IDEA ARP Act funds.

For the Department of the Interior (the Bureau of Indian Education (BIE)), the amount of the IDEA Part B grant is determined under the terms of the relevant appropriations act, which, for 2021, establishes the BIE's funding level as what the BIE received in FFY 2020 increased by the lesser of the increase in the appropriation under section 611(i) of the IDEA or inflation, but in no case less than the what the BIE received in FFY 2020. CAA, 134 Stat. 1182, at 1601. As a result of the regularly appropriated IDEA Part B funds for FFY 2021, the BIE received the maximum

amount of IDEA Part B funds that it could receive under the terms of the appropriations act (that is, its allocation was determined by inflation), and additional increases in FFY 2021 funding would have no effect on the BIE's IDEA Part B allocation. As such, the BIE was not eligible for additional IDEA Part B funding through the ARP Act.

Section 611 Base Allocation to LEAs (Column C)

Column C is the portion of the local educational agency (LEA) flow-through amount that must be distributed to LEAs based on the amounts that the LEAs would have received from FFY 1999 funds had the State educational agency (SEA) flowed through 75 percent of the State award to LEAs. Note that this amount is less than the minimum amount that States were required to provide to LEAs from FFY 1999 funds. The Part B regulations at 34 C.F.R. §300.705(b)(2) clarify how adjustments to the base payment amounts for LEAs are made.

IDEA funds awarded under the ARP Act are not a separate grant program but serve as a supplement to the FFY 2021 IDEA funds. As a result, the ARP Act IDEA Part B funds do not affect LEAs' base payment amounts under section 611 of the IDEA. Under 34 CFR. § 300.705(b)(1), the amount of an LEA's section 611 base payment is the amount the LEA would have received under section 611 for fiscal year 1999 if the State had distributed 75 percent of its grant for that year under section 611(d) of the IDEA as that section was then in effect. After making these base payments, States must allocate the remaining IDEA section 611 funds based on population and poverty (i.e., 85% population and 15% poverty), in accordance with 34 C.F.R. § 300.705(b)(3).

Maximum Set-Aside for Administration (Column D)

Column D includes the maximum State set-aside amount for administration. A State may reserve for State administration up to the greater of the maximum amount the State could reserve for State administration from fiscal year 2004 funds, or \$800,000, increased by inflation as reflected by the Consumer Price Index for All Urban Consumers (CPIU). The maximum State set-aside amount available for administration for FFY 2020 is a 2.0 percent increase over the maximum amount that was available for FFY 2019. Each outlying area may reserve for each fiscal year not more than 5 percent of the amount the outlying area receives under this program or \$35,000, whichever is greater.

Under 34 C.F.R. § 300.704(a) and (b), the amounts that States may reserve for State administration and other State-level activities are set in accordance with section 611(e) of the IDEA and therefore impacted by inflation and not increases in grant award amounts. As a result, the additional IDEA section 611 funds made available through the ARP Act do not increase the amount of IDEA section 611 funds that can be reserved for State administration and other State-level activities.

Part B programs in the outlying areas have been provided an increase in the maximum amount available for State administration as a result of the ARP Act IDEA section 611 funds. This is because, under 34 C.F.R. § 300.704(a)(1)(ii), the maximum amount that each outlying area may reserve for State administration is 5% of the amount the outlying area receives under 34 C.F.R. § 300.701(a) for the fiscal year or \$35,000, whichever is greater. Because the ARP Act appropriated additional funds for grants to States under IDEA section 611, the amount that each outlying area receives under 34 C.F.R. § 300.701(a) for FFY 2021 includes both the regular IDEA section 611 funds and the ARP Act IDEA section 611 funds, and 5% of that aggregate amount represents the maximum amount that each outlying area may reserve for State administration.

Maximum Set-Aside Available for Other State-Level Activities (Columns E - H)

The maximum level of funding that may be set aside from a State's total allocation for State-level activities, other than administration, is contingent upon the amount that the State actually sets aside for administration and whether the State opts to establish a LEA high-risk pool under IDEA, section 611(e)(3). For FFY 2021:

- (1) If the actual amount a State will set aside for State administration is over \$850,000 and the State will use funds from its award to support a high-risk pool, the maximum amount the State may set aside of its total award for State-level activities (other than administration) is 10.0 percent of its FFY 2006 award as adjusted for inflation based on the CPIU.
- (2) If the actual amount a State will set aside for State administration is over \$850,000 and the State will not use funds from its award to support a high-risk pool, the maximum amount the State may set aside of its total award for State-level activities (other than administration) is 9.0 percent of its FFY 2006 award as adjusted for inflation based on the CPIU.
- (3) If the actual amount a State will set aside for State administration is \$850,000 or less and the State will use funds from its award to support a high-risk pool, the maximum amount the State may set aside of its total award for State-level activities (other than administration) is 10.5 percent of its FFY 2006 award as adjusted for inflation based on the CPIU.
- (4) If the actual amount a State will set aside for State administration is \$850,000 or less and the State will not use funds from its award to support a high-risk pool, the maximum amount the State may set aside of its total award for State-level activities (other than administration) is 9.5 percent of its FFY 2006 award as adjusted for inflation based on the CPIU.

SEAs are required to use some portion of these State set-aside funds on monitoring, enforcement, and complaint investigation and to establish and implement the mediation process required by section 615(e), including providing for the costs of mediators and support personnel. In addition, States setting aside funds for a high-risk pool, as provided for under section 611(e)(3), must reserve at least 10 percent of the amount the State reserved for State-level activities for the high-risk pool.

SEAs also may use State set-aside funds: (1) for support and direct services, including technical assistance, personnel preparation, and professional development and training; (2) to support paperwork reduction activities, including expanding the use of technology in the individualized education program process; (3) to assist LEAs in providing positive behavioral interventions and supports and mental health services to children with disabilities; (4) to improve the use of technology in the classroom by children with disabilities to enhance learning; (5) to support the use of technology, including technology with universal design principles and assistive technology devices, to maximize accessibility to the general education curriculum for children with disabilities; (6) for development and implementation of transition programs, including coordination of services with agencies involved in supporting the transition of students with disabilities to postsecondary activities; (7) to assist LEAs in meeting personnel shortages; (8) to support capacity building activities and improve the delivery of services by LEAs to improve results for children with disabilities; (9) for alternative programming for children with disabilities who have been expelled from school, and services for children with disabilities in correctional facilities, children enrolled in State-operated or State-supported schools, and children with disabilities in charter schools; (10) to support the development and provision of appropriate accommodations for children with disabilities, or the development and provision of alternate assessments that are valid and reliable for assessing the performance of children with disabilities, in accordance with sections 1111(b) and 1201 of the Elementary and Secondary Education Act

of 1965 (ESEA); and (11) to provide technical assistance to schools and LEAs, and direct services, including direct student services described in section 1003A(c)(3) of the ESEA to children with disabilities, in schools or LEAs implementing comprehensive support and improvement activities or targeted support and improvement activities under section 1111(d) of the ESEA on the basis of consistent underperformance of the disaggregated subgroup of children with disabilities, including providing professional development to special and regular education teachers, who teach children with disabilities, based on scientifically based research to improve educational instruction, in order to improve academic achievement based on the challenging academic standards described in section 1111(b)(1) of the ESEA.

Section 611 Population/Poverty

The minimum amount that a State must flow through to LEAs based on population/poverty equals the total award (Column B) minus the LEA base allocation (Column C), the maximum amount available for administration (Column D), and the maximum amount available for other State-level activities (Column E, F, G, or H). Of this amount, 85 percent must be distributed on a pro-rata basis to LEAs according to public and private elementary and secondary school enrollment, and 15 percent on a pro-rata basis to LEAs according to the number of children in LEAs living in poverty, as determined by the State.

Separate Grant Award Notices (GANs) and identifiers have been issued to States for the regular IDEA Part B funds made available under the CAA and the additional IDEA Part B funds made available under the ARP Act. Therefore, States must ensure that allocations to LEAs – both the regular IDEA Part B funds under the CAA and the additional ARP Act IDEA Part B funds – meet the Federal award identification requirements in 2 C.F.R. § 200.332(a)(1).

Enclosure D
IDEA Preschool Grants Program
(Part B, Section 619)

Explanation of the Federal Fiscal Year (FFY) 2021 Allocation Table

Total Grant Award (Column B)

Column B shows your total grant award for the Preschool Grants program for FFY 2021 under the Consolidated Appropriations Act, 2021 (Public Law 116-260) (CAA) and section 2014 of the American Rescue Plan Act of 2021 (Public Law 117-02) (ARP Act).

State total grants are calculated in accordance with several factors. First, each State is allocated an amount equal to its fiscal year 1997 allocation. For any year in which the appropriation is greater than the prior year level, 85 percent of the funds above the fiscal year 1997 level are distributed based on each State's relative population of children aged 3 through 5. The other 15 percent is distributed based on each State's relative population of children aged 3 through 5 who are living in poverty. The formula provides several minimums and maximums regarding the amount a State can receive in any year.

If the amount available for allocation to States remains the same from one year to the next, States receive the same level of funding as in the prior year. If the amount available for allocation to States decreases from the prior year, any amount available for allocation to States above the fiscal year 1997 level is allocated based on the relative increases in funding that the States received between fiscal year 1997 and the prior year. If there is a decrease below the amount allocated for fiscal year 1997, each State's allocation is ratably reduced from the fiscal year 1997 level.

Maximum State Set-Aside (Column E)

States may reserve funds for State-level activities up to an amount equal to 25 percent of the amount they received for fiscal year 1997 under the Preschool Grants program, adjusted upward each year by the lesser of either the rate of increase in the State's allocation or the rate of inflation as reflected by the Consumer Price Index for All Urban Consumers (CPIU).

There were slight increases in the maximum amounts States may reserve for State-level activities under the Federal fiscal year (FFY) 2021 IDEA (regular under CAA plus additional under ARP Act) section 619 grants. Specifically, under 34 C.F.R. §§ 300.812(b) and 300.813, the maximum amount of FFY 2021 section 619 funds a State may set aside for State administration and other State-level activities is based on what the State could reserve in FFY 2020 adjusted by the lesser of: (1) the percentage increase from the preceding year in the State's section 619 allocation or (2) the rate of inflation (i.e., 0.99%). Based on the regular IDEA section 619 funds made available under the CAA and the additional IDEA section 619 funds made available under the ARP Act, States had a total section 619 allocation increase in excess of 0.99% and, as a result, every State's maximum State reservation under section 619 was 0.99% more than the amount each was allowed to reserve under the FFY 2020 IDEA section 619 grants.

State educational agencies (SEAs) may use State set-aside funds: (1) for administration (limited to no more than 20 percent of the maximum State set-aside – Column C); (2) for support services (including establishing and implementing the mediation process required under section 615(e) of the IDEA and 34 CFR §300.506), which may benefit children with disabilities younger than 3 or older than 5, as long as those services also benefit children with disabilities aged 3 through 5; (3)

for direct services for children with disabilities who are eligible for services under section 619; (4) for activities at the State and local levels to meet the performance goals established by the State under section 612(a)(15) of the IDEA; (5) to supplement other funds used to develop and implement a statewide coordinated services system designed to improve results for children and families, including children with disabilities and their families (but not more than up to 1 percent of the amount received under this program); (6) to provide early intervention services (which shall include an educational component that promotes school readiness and incorporates preliteracy, language, and numeracy skills) in accordance with Part C to children with disabilities who are eligible for services under section 619 and who previously received services under Part C until such children enter, or are eligible under State law to enter, kindergarten; or (7) at the State's discretion, to continue service coordination or case management for families who receive services under Part C, consistent with number 6.

Maximum Set-Aside Available for Administration (Column F)

Column F indicates the maximum portion of the total State set-aside amount (Column E) that may be used to administer this program. The amount that may be used for administration is limited to 20 percent of the maximum amount available to a State for State-level activities. These funds may also be used, at the State's discretion, for the administration of the Grants for Infants and Families program (IDEA Part C).

Section 619 Base Payment for LEAs (Column G)

Column G is the portion of the LEA flow-through amount that must be distributed to LEAs based on the amounts that the LEAs would have received from the FFY 1997 funds had the SEA flowed through 75 percent of the State award to LEAs. Note that this amount is less than the minimum amount that States were required to provide LEAs from the FFY 1997 funds. The IDEA Part B regulations at 34 C.F.R. § 300.816(b) clarify how adjustments to the base payment amounts for LEAs are made. If, after the State set-aside is subtracted from the total award, the State determines that the amount available for base payments is less than 75 percent of the State's FFY 1997 section 619 grant, the State must ratably reduce each LEA's base payment by the percentage of the reduction in the total amount actually available for making base payments in FFY 2021. For example, if the total amount in the "Base Payment for LEAs" column is \$100 and the total amount available for making base payments in FFY 2021 is \$90, the reduction in the total base payment amount is 10 percent, and each LEA's base payment for FFY 2021 must be reduced by 10 percent. The State, if necessary, must make base payment adjustments in accordance with 34 C.F.R. § 300.816(b) based on the ratably reduced base payments.

IDEA funds awarded under the ARP Act are not a separate grant program but serve as a supplement to the FFY 2021 IDEA funds. As a result, the ARP Act IDEA Part B funds do not affect LEAs' base payment amounts under section 619 of the IDEA. Under 34 C.F.R. § 300.816(a), the amount of an LEA's section 619 base payment is the amount the LEA would have received under section 619 for fiscal year 1997 if the State had distributed 75 percent of its grant for that year under section 619(c)(3) of the IDEA as that section was then in effect. After making these base payments, States must allocate the remaining IDEA section 619 funds based on population and poverty (i.e., 85% population and 15% poverty), in accordance with 34 C.F.R. § 300.816(c).

Section 619 Population/Poverty Factors (Column H)

Column H shows the minimum amount a State must allocate to LEAs based on population and poverty factors if a State chooses to set aside the maximum amount of FFY 2021 section 619 funds for State-level activities. After a State sets aside funds for State-level activities and makes

the required base payments, 85 percent of the remaining amount must be distributed on a pro-rata basis to LEAs according to public and private elementary and secondary school enrollment, and 15 percent on a pro-rata basis to LEAs according to the number of children in LEAs living in poverty, as determined by the State.

Total State Minimum Flow-Through to LEAs (Column I)

The minimum flow-through to LEAs (Column I) is the difference between the Total Grant Award (Column B) and the Maximum State Set-Aside (Column E). If States do not choose to retain the maximum amount available under the State set-aside (Column E), the remaining funds flow through to LEAs in addition to the funds in Column I.

Separate Grant Award Notices (GANs) and identifiers have been issued to States for the regular IDEA Part B funds made available under the CAA and the additional IDEA Part B funds made available under the ARP Act. Therefore, States must ensure that allocations to LEAs – both the regular IDEA Part B funds under the CAA and the additional ARP Act IDEA Part B funds – meet the Federal award identification requirements in 2 C.F.R. § 200.332(a)(1).



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF FINANCE AND OPERATIONS

OFFICE OF ACQUISITION AND GRANTS ADMINISTRATION

June 29, 2021

The Honorable Pedro Pierluisi
Governor
Commonwealth of Puerto Rico
PO Box 9020082
San Juan, Puerto Rico 00902-0082

Honorable Eliezer Ramos
Interim Secretary of Education
Puerto Rico Department of Education
PO Box 190759
San Juan, Puerto Rico 00919-0759

Dear Governor Pierluisi and Interim Secretary Ramos:

The U.S. Department of Education (Department) is committed to continuing to work and strengthen collaborative ties with Puerto Rico and the Puerto Rico Department of Education (PRDE) to achieve its educational goals. The Department has witnessed the challenges Puerto Rico and PRDE have faced over the past years as a result of the natural disasters and the COVID-19 pandemic. We recognize your efforts during this uncertain and difficult time to provide a safe learning environment for the students of Puerto Rico.

We also acknowledge and appreciate Puerto Rico and PRDE's efforts to implement greater fiscal accountability as demonstrated by the signing of the third-party fiduciary agent (TPFA) contract on March 24, 2021.

Enclosed are Federal fiscal year (FFY) 2021 Departmental Specific Conditions that the Department is imposing on all grants awarded by the Department to Puerto Rico and to PRDE, on or after the date of these specific conditions, including grants pursuant to the: Coronavirus Aid, Relief, and Economic Security Act (CARES Act); Governor's Emergency Education Relief Fund (GEER Fund); Coronavirus Response and Relief Supplemental Appropriations Act, 2021 (CRRSA Act); and the American Rescue Plan (ARP). These conditions are also imposed on all grants previously awarded by the Department to Puerto Rico and PRDE that are still available for obligation or liquidation by Puerto Rico or PRDE on the date of these specific conditions, including any funds awarded by the Department to Puerto Rico or PRDE under the CARES Act, GEER Funds, CRRSA Act and ARP. These specific conditions do not apply to funds awarded by the Department to Puerto Rico institutions of higher education (IHEs) under the CARES Act

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Higher Education Emergency Relief Fund or to other funds awarded by the Department's Office of Postsecondary Education to Puerto Rico.

We are imposing the specific conditions based on information provided to the Department over time by the PRDE Internal Audit Office, audits and investigations conducted by the Department's Office of Inspector General, and evidence collected by the Department's Risk Management Services Division during its provision of technical assistance. This information demonstrates that PRDE has not maintained improvements accomplished under the 2004 Compliance Agreement among Puerto Rico, PRDE, and the Department; the 2007 Memorandum of Agreement among Puerto Rico, PRDE, and the Department; and the 2007 Compliance Agreement among Puerto Rico, PRDE, and the Department.

The Department acknowledges and appreciates the commitment demonstrated by Puerto Rico and PRDE to ensure compliance with Federal grant requirements and fiscal accountability as demonstrated when on March 24, 2021, PRDE entered into a contract with Alvarez and Marsal (A&M) Public Sector Services, LLC to serve as the third-party fiduciary agent. Pursuant to this contract, A&M will perform financial management duties currently performed by Puerto Rico and PRDE, and required under EDGAR at 34 CFR Parts 75 and 76, and the Uniform Guidance at 2 CFR Part 200. Attachment A of these Specific Conditions describe the responsibilities and requirements of Puerto Rico and PRDE to work with A&M and Attachment B describes the requirements and responsibilities of A&M. A prime responsibility of A&M is to conduct a comprehensive assessment of PRDE's fiscal and administrative processes related to the administration of Federal education grants. This will serve as a road map for PRDE to develop and implement adequate internal controls and best practices to manage Department grant funds effectively and efficiently in the future.

The Department stands committed to continue to work with Puerto Rico and PRDE to develop opportunities for technical assistance in the administration of funds and implementation of federal education programs for the children, students, and youth of the Commonwealth.

Sincerely,

Phillip R. Juengst
Deputy Assistant Secretary for
Acquisition and Grants Administration

cc: Hector J. Sánchez Álvarez, Associate Secretary/PRDE
Jesus Gonzalez Cruz, Secretary of Administration/PRDE
Miguel A. Negron Ramos, Auxiliary Secretary of Federal Affairs/PRDE
Glanidsa Castro, Internal Audit Office/PRDE
Norma Rolon, Director of Procurement/PRDE
Evelyn Rodriguez, Director of Finance/PRDE
Carmen Feliciano, Executive Director/Puerto Rico Federal Affairs Administration
Martín E. Rivera, Director of Government Affairs/Puerto Rico Federal Affairs Administration
Ramón Correa-Colón, Legal & Policy Advisor/Puerto Rico Federal Affairs Administration
Javier Tirado, Puerto Rico Federal Affairs Administration

Enclosure F
Specific Conditions

I. Basis for Requiring Specific Conditions

The Office of Special Education Programs (OSEP) is imposing Specific Conditions on the Puerto Rico Department of Education's (PRDE's) Federal fiscal year (FFY) 2021 Sections 611 and 619 grant awards under Part B of the Individuals with Disabilities Education Act (IDEA). OSEP is imposing these Specific Conditions pursuant to the Department's authority in IDEA section 616(g) and 2 C.F.R. § 200.208, to ensure that PRDE corrects its longstanding noncompliance with certain IDEA requirements.

Please note that, in addition to these programmatic Specific Conditions related to IDEA Part B the award of IDEA Part B grant funds to PRDE for FFY 2021 is also subject to the FFY 2021 Departmental Specific Conditions placed on all Departmental grants awarded to PRDE to ensure that PRDE is managing and administering Department funds in accordance with applicable Federal requirements and the appropriate fiscal accountability measures and management practices and controls. The reasons for the Departmental Specific Conditions are detailed in Enclosure E of PRDE's FFY 2021 IDEA Part B grant award letter.

Also note that, as part of its FFY 2021 application for IDEA Part B funds, PRDE has provided a certification, pursuant to 34 C.F.R. § 76.104 and 34 C.F.R. § 300.100, that its application meets the requirements of IDEA Part B and that PRDE will operate its Part B program in accordance with all of the required assurances and certifications. Any changes made by PRDE, after OSEP approval, to information that is a part of PRDE's IDEA Part B grant application, must meet the public participation requirements in 34 C.F.R. § 300.165 and the prior approval requirements in 2 C.F.R. § 200.308.

II. Requirements and PRDE's Data Submissions

A. Assistive Technology (AT)

Legal Requirements: At the beginning of each school year, in accordance with 34 C.F.R. § 300.323(a) and (c)(2), respectively, each public agency must have in effect, for each child with a disability within its jurisdiction, an individualized education program (IEP), as defined in 34 C.F.R. § 300.320; and each public agency must ensure that, as soon as possible following development of the IEP, special education and related services are made available to the child in accordance with the child's IEP. In developing each child's IEP, the IEP Team must consider whether the child needs AT devices and services in accordance with 34 C.F.R. § 300.324(a)(2)(v). Each public agency must ensure that AT devices or AT services, or both, are made available to a child with a disability if required as part of the child's IEP. 34 C.F.R. § 300.105. PRDE must provide needed AT 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 consistent with their IEPs. See IDEA section 612(a)(1) and 34 C.F.R. § 300.105.

Data Submitted by PRDE in Response to FFY 2020 Specific Conditions:

1. *FFY 2019 APR reporting period (July 1, 2019 through June 30, 2020)*

OSEP's July 1, 2020 IDEA Specific Condition for AT Reporting Requirement required PRDE to report in its first CAP Progress Report due December 1, 2020 on the percentage of requests for AT devices and services that have been verified as completed for the FFY 2019 APR reporting period (July 1, 2019 through June 30, 2020). PRDE reported the following data in its December 1, 2020 and May 1, 2021 CAP Progress Reports respectively:

- a. As of November 24, 2020, 94.69% (1016/1073) of requests made for AT devices during the period of July 1, 2019 through June 30, 2020 were verified completed.
- b. As of April 22, 2021, 99.81% (1071/1073) of requests made for AT devices during the period of July 1, 2019 through June 30, 2020 were verified as completed. This represents improvement from the 99.10% PRDE reported for the period of July 1, 2018 – June 30, 2019.

2. *Updated data from July 1, 2020- October 30, 2020 and November 1, 2020-March 31, 2021*

- a. OSEP's July 1, 2020 IDEA Specific Condition for AT Reporting Requirement required PRDE to report the following (due December 1, 2020 for the reporting period of July 1, 2020 – October 31, 2020, and due May 1, 2021 for the reporting period of November 1, 2020 – March 31, 2021): Updated data on the percentage of requests for AT devices and services that have been verified as completed from the reporting periods specified above in each CAP Progress Report.

PRDE reported the following data in its December 1, 2020 and May 1, 2021 CAP Progress Reports respectively:

- i. As of December 1, 2020, 57.30% (259/452) of requests made for AT devices during the period of July 1, 2020 through October 31, 2020, were verified as completed.
- ii. As of April 22, 2021, 59% (529/898) of requests made for AT devices during the period of November 1, 2020 through March 31, 2021 were verified as completed. This represents improvement in the number of devices verified as completed from the 42% reported for the period of November 1, 2019 – March 31, 2020.

PRDE noted that, while AT equipment delivery is ordinarily made to the Special Education Service Centers (CSEEs by its Spanish

acronym), which are responsible for implementing property management requirements and delivery of assistive technology to the respective schools, timely delivery was interrupted by school closures resulting from damaging earthquakes in January 2020, subsequently followed by the COVID-19 pandemic in March 2020.

3. *Timeliness of AT.*

OSEP’s July 1, 2020 IDEA Specific Condition for Timeliness of AT required PRDE to report:

- a. Updated data on the percentage of AT devices and services that were: (a) received within 30 days of ordering; (b) received more than 30 days after ordering; and (c) have not yet been received, in order to ensure compliance with the AT requirement under IDEA that AT devices and services are received by children with disabilities in a timely manner.
- b. For those cases where AT was received more than 30 days after the item was ordered, or in the cases where the AT device or service has not yet been received, updated data on the actual number of days beyond the order date, and the reason for the delay (describe the barriers, e.g., delivery schedules, administrative, child-related, etc., to timely delivery and how PRDE is addressing those barriers); and
- c. Report an update on the status of full implementation of the AT process in Mi Portal Especial (MiPE by its Spanish acronym). PRDE reported the following:

Reporting Period	Total Items Verified as Completed	Delivery within 30 days	Delivery within 31-60 days	Delivery within 61-90 days	Delivery within 91-120 days	Delivery in more than 120 days	Equipment not yet delivered
July 1, 2020 to October 31, 2020	450	141 31.33%	63 14%	9 2%	98 21.77%	80 17.77%	58 12.88%
November 1, 2020 – March 31, 2021	529	328 62.19%	82 15.50%	39 7.37%	42 7.94%	38 7.18%	369

Despite the challenges experienced by the earthquakes in 2020 and the COVID-19 pandemic, OSEP is encouraged by PRDE’s efforts to ensure timely delivery of AT equipment and services and a free appropriate education to students with disabilities in Puerto Rico. In the May 1, 2021 Specific Conditions Progress Report, PRDE reported that in FFY 2020 it continued to implement previously established activities (e.g., monthly status reports are sent to personnel in charge of the requisitions in the CSEE and the purchasing unit at the PRDE Office of Special Education central level (SAEE by its Spanish acronym); and SAEE personnel made follow-up phone calls to

vendors with pending AT orders to ensure compliance with Part B requirements under IDEA). In addition, PRDE reported that the AT coordinator conducted periodic visits to each CSEE as needed to investigate pending purchase and delivery issues and to provide technical assistance. Finally, PRDE reported that the implementation of the AT process in PRDE's Special Education Information System was fully operational as of the May 1, 2021 Specific Conditions Corrective Actions Report.

Nonetheless, as seen above, the data from November 1, 2020 – March 31, 2021 representing the percentage of students whose IEPs require AT devices and services who: (1) received the AT within 30 days of the implementation of the IEP; (2) received the AT more than 30 days after the implementation of the IEP; and (3) have not yet received AT show an increase in the number of days equipment is delivered to a student. PRDE reported a significant increase in the delivery timelines beyond 60 days. Specifically, PRDE reported that 369 of 412 (16.74%) AT items required for the period of November 1, 2020 to March 31, 2021, were pending delivery. As PRDE noted, this can be attributed to the massive disruptions due to the earthquakes and pandemic. However, without demonstrating significant improvements for a full year, OSEP cannot remove these Specific Conditions at this time.

In addition, OSEP continues to be concerned that most of the AT equipment is procured in the latter part of the school year, instead of at the beginning, when most IEP meetings are normally held to determine the need for AT.

4. *Summary of Timeliness of AT Equipment and Services to Students with Disabilities*

Based on the factors noted above, while OSEP recognizes the devastating impact of recent earthquakes and the COVID-19 pandemic on the delivery of services, we cannot determine that PRDE achieved compliance with the AT requirements in IDEA section 612(a)(1) and 34 C.F.R. § 300.105.

B. Financial Management

Legal Requirements: PRDE must resolve financial management issues in accordance with the fiscal requirements in 34 C.F.R. §§ 300.162(a), 300.202(a)(1), and 76.530, and Subpart E of the OMB Uniform Guidance.

1. *Financial Management Generally*

a. *Data Submitted by PRDE in Response to FFY 2020 Specific Conditions:*

OSEP's July 1, 2020 IDEA Specific Condition for Financial Management Generally required PRDE to report, in each CAP Progress Report, on the activities it conducted during the reporting

period to follow-up on the fiscal management monitoring processes it has developed to ensure IDEA Part B funds are spent in accordance with IDEA Part B requirements and Subpart E of the OMB Uniform Guidance. With its first CAP progress report, due December 1, 2020, and the second CAP progress report, due May 1, 2021, PRDE was required to provide evidence that the fiscal monitoring processes were completed during the corresponding reporting period (July 1, 2020–October 31, 2020; and November 1, 2020–March 31, 2021). PRDE was also required to provide a summary of any fiscal monitoring corrective actions taken for the findings made in the FFY 2020 reporting period to ensure compliance.

In its December 1, 2020 CAP Progress Report, PRDE reported that it continued to implement fiscal management procedures and monitoring processes to ensure that IDEA funds are spent in accordance with requirements under Part B of IDEA, Subpart E of the OMB Uniform Guidance, and the internal procedures established in the SAEE Manual of Policies and Procedures. PRDE also reported that fiscal monitoring visits were conducted in three CSEEs from November 2020 through April 2021. Two phases of monitoring were carried out in all 11 CSEEs. During Phase 1 PRDE reviewed a sample of all the expenses incurred by the CSEE with federal IDEA funds during the period from July 1, 2018 to June 30, 2020; and Phase 2 covered the period of July 1, 2020 through March 24, 2021. As of April 30, 2021, PRDE issued the following reports:

- CSEE Arecibo (Phases 1 & 2)
- CSEE Bayamón (Phase 1)
- CSEE Caguas (Phases 1 & 2)
- CSEE San Juan (Phase 1)

PRDE reported that it found that the CSEEs are carrying out the fiscal processes in accordance with the manuals and guidelines established by the SAEE, and although the reports identified certain recommendations, no findings of noncompliance were identified. PRDE indicated in its May 1, 2021 CAP Progress Report that the SAEE Administration Unit anticipated issuing all remaining monitoring reports by May 2021. PRDE submitted copies of the final monitoring reports issued as of April 21, 2021 with its May 1, 2021 CAP Progress Report as evidence of the completion of these monitoring activities with the Arecibo CSEE. Specifically, PRDE submitted a total of six documents – three documents related to each phase of the monitoring: (1) the monitoring report Notification Letter, (2) the Monitoring Report, and (3) the completed Monitoring Protocol.

PRDE further reported in the May 1, 2021 CAP Progress Report that the SAEE has been working to establish a new SAEE Fiscal Monitoring Guide to ensure appropriate use of funds that the SAEE

administers in compliance with applicable State and Federal law. Two special education fiscal monitoring processes are highlighted in the guide – 1) the Fiscal Monitoring Process of the CSEEs and the SAEE Administration Unit; and 2) the Transportation Services Monitoring of the PRDE Regional Educational Offices (OREs by its Spanish acronym). PRDE included a draft copy of the fiscal monitoring guide with its May 1, 2021 CAP Progress Report and noted that the final guide was expected to be implemented with the 2021-2022 school year.

b. Summary of Fiscal Management Generally:

OSEP recognizes that hard work and commitment PRDE has demonstrated in following up on the general fiscal Specific Condition despite the impact of weather delays and the COVID-19 pandemic on PRDE's ability to follow-up on the fiscal monitoring conducted in the last reporting period. PRDE has provided sufficient evidence to demonstrate fiscal monitoring has been implemented in each of its SAEEs, and therefore ensuring that IDEA Part B funds are expended in accordance with IDEA Part B requirements, Subpart E of the OMB Uniform Guidance, and the procedures established in PRDE's SAEE Manual of Policies and Procedures. Therefore, OSEP is releasing PRDE from this IDEA Specific Condition. However, OSEP expects PRDE to follow-up with its future monitoring plans.

2. Automation of Special Education Invoicing

Data Submitted by PRDE in Response to FFY 2020 Specific Conditions:

OSEP's July 1, 2020 IDEA Specific Condition for Automation of Special Education Invoicing required PRDE to provide an update of the progress of the new portal in the MiPE invoicing system during the reporting periods specified above in each CAP Progress Report. In its December 1, 2020 and May 1, 2021 CAP Progress reports, respectively, CAP Progress Reports, PRDE reported that it continues to successfully implement the use of the dedicated portal for related services providers to document the detail of each intervention/service provided to a student, as well as upload related licensing documentation, evaluation reports, admissions processes, intervention plans, and any therapy sessions provided to a student. This portal is linked to PRDE's MiPE data system. MiPE's functionality allows PRDE to validate that the services are provided in accordance with a student's IEP. In addition to the controls PRDE has put in place to automate its invoicing system, PRDE reported that it also continues to maintain an active help desk to provide technical assistance to the providers as needed. PRDE further reported that the platform provides readily available data access to ensure billing, collection, management, and payment processes are properly handled and in a timely manner.

PRDE also reported that the automated invoicing platform ensures there are no conflicts between students, specialists, and providers.

a. *Summary of Automation of Special Education Invoicing:*

OSEP recognizes the improvements PRDE has demonstrated in automating its special education invoicing system. Based on the information provided in the December 1, 2020 and May 1, 2021 CAP Progress Reports that the automated invoicing system continues to function successfully at 100%, OSEP is releasing PRDE from this Specific Condition.

3. *Transportation Contracts Data Submitted by PRDE in Response to FFY 2020 Specific Conditions:*

OSEP's July 1, 2020 IDEA Specific Condition for Transportation Contracts required PRDE to provide evidence that it conducted formal monitoring related to the Transportation Management System referenced in its May 1, 2018, 2019 and 2020 CAP Progress Reports, and the results of that monitoring during the reporting periods specified in each CAP Progress Report. To satisfy this Specific Condition, PRDE was required to provide OSEP with a summary of the results from the monitoring visits conducted during the specified reporting period and actions PRDE took to address any identified noncompliance.

Due to the school closures resulting from the COVID-19 pandemic, PRDE did not report on a formal monitoring in its December 1, 2020 as required under this Specific Condition. However, in its May 1, 2021 CAP Progress Report, PRDE reported, as it had in previous progress reports, that the SAEE Administration Unit conducted administrative monitoring visits to the educational regions regarding school transportation services during the 2017-2018 school year. Since there was no noncompliance identified in any of the regions, PRDE indicated that, instead of a formal monitoring report, PRDE issued a report for each region containing observations and recommendations. As previously noted in the May 1, 2019 CAP Progress Report, PRDE conducted follow-up visits February-May 2019 to review actions taken regarding the observations and recommendations made as a result of its 2017-2018 monitoring of the regions. PRDE provided OSEP with a summary the 2018 results from the monitoring visits (Attachment D).

OSEP also notes that PRDE's Internal Audit Office conducted an independent audit of PRDE's student transportation system, and while the results of the audit were primarily based on the broader aspect of the system, PRDE indicated that the overall enhancements to the School Transportation System will have an impact on the recommendations made in SAEE's 2017-2018 transportation monitoring. Also, as previously noted above, SAEE is developing a new SAEE Fiscal Monitoring Guide, "Guia de Monitoria Fiscal," that will include monitoring of PRDE's OREs.

a. Summary of Transportation Contracts:

OSEP recognizes the improvements PRDE has demonstrated in monitoring transportation contracts. As required, PRDE provided OSEP with a summary of the results from the formal monitoring visits referenced in PRDE's May 1, 2018 and May 1, 2019 CAP Progress Reports and the actions taken as a result of those monitoring visits. Based on the information provided in the May 1, 2021 CAP Progress Report, OSEP is releasing PRDE from this Specific Condition.

4. Transportation for Students with Disabilities in the Bayamón Region

Data Submitted by PRDE in Response to FFY 2020 Specific Conditions:

OSEP's July 1, 2020 IDEA Specific Condition for Transportation for Students with Disabilities in the Bayamón Region required that, before it can use IDEA Part B funds for transportation in the Bayamón Region, PRDE must submit to OSEP an independent audit report clearly demonstrating that PRDE is in full compliance with the requirements of 34 C.F.R. § 76.702 and 2 C.F.R. §§ 200.302(a), 200.302(b)(3), 200.302(b)(4), 200.303, and 200.317 for all transportation costs of students with disabilities in the Bayamón Region. In addition, OSEP indicated that PRDE must also comply with all other requirements listed in its FFY 2020 IDEA Part B grant award letter prior to using IDEA Part B funds for transportation in the Bayamón Region.

In the December 1, 2020 CAP Progress Report, PRDE reported that it contracted with a private agency to conduct an audit and issue a report on its findings related to PRDE's compliance with the requirements of 34 C.F.R. § 76.702 and 2 C.F.R. §§ 200.302(a), 200.302(b)(3), 200.302(b)(4), 200.303, and 200.317 for all transportation costs of students with disabilities in the Bayamón Region. In its May 1, 2021 CAP Progress Report, PRDE submitted to OSEP a final audit report issued by NMA Certified Public Accountants, PSC, of San Juan, Puerto Rico. In the April 28, 2021 audit report, the auditor indicated that all invoices for transportation services provided to PRDE for fiscal years (FY) 2018-2019 and 2019-2020 were reviewed. Of the seven procedures performed by the auditor, one finding was reported. Specifically, the auditor found that, for the period under review, PRDE did not take reasonable measures to safeguard protected personally identifiable information (PII) consistent with Federal, State, local and tribal laws regarding privacy and responsibility over confidentiality. The auditor found that, although PRDE presented policies regarding this procedure, the functions needed to be performed by promoting information access and government transparency to protect the privacy and confidentiality of data according to the law.

a. Summary of Transportation for Students with Disabilities in the Bayamón Region:

OSEP recognizes the improvements PRDE has demonstrated in monitoring transportation for students with disabilities in the Bayamón Region and completing the required audit. Therefore, based on the actions PRDE has taken, and in accordance with its assurance dated May 20, 2021, which PRDE submitted to OSEP with its FFY 2021 IDEA grant award application, OSEP is releasing PRDE of the condition specific to the transportation for students with disabilities in the Bayamón Region. Effective with the FFY 2021 IDEA Part B grant award allocation, PRDE may resume using IDEA funds for the transportation of students with disabilities in the Bayamón Region.

However, OSEP sustains the auditor's finding and requires a new Specific Condition regarding the specific finding made by the auditor as described below.

Under 2 C.F.R. § 200.303(e), the non-Federal entity must take reasonable measures to safeguard protected personally identifiable information and other information the Federal awarding agency or pass-through entity designates as sensitive or the non-Federal entity considers sensitive consistent with applicable Federal, State, local, and tribal laws regarding privacy and responsibility over confidentiality. PRDE must implement internal controls that ensure PRDE is meeting the requirements set forth under 2 C.F.R. § 200.303(e) as cited by the auditor.

III. Nature of FFY 2021 Specific Conditions:

A. Corrective Action Plan (CAP):

Within 60 days from the date of this letter, PRDE must develop, and submit to OSEP, a CAP that addresses the actions it will take to demonstrate compliance with the two remaining areas of noncompliance noted above. In the CAP, PRDE must include a description of: (1) the activities to be completed for Items II.A (Assistive Technology) and II.B4 (Audit Finding specific to 2 C.F.R. § 200.300(e)) above; (2) a timeline for each of the activities; (3) persons responsible for completing each of the activities; (4) the supporting evidence which may be referenced regarding each of the activities; and (5) any other pertinent information to track progress on the actions PRDE will take to be in compliance with these requirements.

B. Progress Reports

Additionally, PRDE must submit two CAP progress reports describing the progress on the activities detailed in the CAP in accordance with the schedule specified below:

1. Required Reporting on Timeliness of AT

In its first CAP Progress Report due December 1, 2020, and in subsequent reports as indicated, PRDE must report:

- a. Updated data on the percentage of AT devices and services that were: (a) received within 30 days of ordering; (b) received more than 30 days after ordering; and (c) have not yet been received, in order to ensure compliance with the AT requirement under IDEA that AT devices and services are received by children with disabilities in a timely manner; and
- b. For those cases where AT was received more than 30 days after the item was ordered, or in the cases where the AT device or service has not yet been received, updated data on the actual number of days beyond the order date, and the reason for the delay (describe the barriers, e.g., delivery schedules, administrative, child-related, etc., to timely delivery and how PRDE is addressing those barriers).

2. Required Reporting on Financial Management Requirements

- a. Audit Finding Related to PII (New Specific Condition):

PRDE must demonstrate that corrective actions have been implemented in response to the auditor's finding related to 200.303(e). Specifically, PRDE must demonstrate that it has implemented activities to safeguard protected personally identifiable information and other information the Federal awarding agency or pass-through entity designates as sensitive or the non-Federal entity considers sensitive consistent with applicable Federal, State, local, and tribal laws regarding privacy and responsibility over confidentiality.

IV. Method of Requesting Reconsideration

PRDE can write to OSEP's Acting Director, David Cantrell, at the address below, if it wishes the Department to reconsider any aspect of these Specific Conditions. The request must describe in detail the changes to the Specific Conditions sought by PRDE and the reasons for those requested changes.

U.S. Department of Education
Office of Special Education Programs
Attn: David Cantrell
550 12th Street, SW, Room 5138-B
Washington, DC 20202
Or by email to: David.Cantrell@ed.gov

V. Submission of Reports

The State Superintendent of Education or other authorized official of the SEA shall certify the completeness and accuracy of each report. PRDE must submit all reports required under these Specific Conditions to:

Lynne Fairfax
U.S. Department of Education

Office of Special Education and Rehabilitative Services
Office of Special Education Programs – MSIP
550 12th Street, SW, Room 5174
Washington, DC 20202
Or by email to: Lynne.Fairfax@ed.gov