



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

July 1, 2022

Honorable Eliezer Ramos Perez  
Secretary  
Puerto Rico Department of Education  
P.O. Box 190759  
San Juan, Puerto Rico 00919-0759

Dear Secretary Ramos Perez:

We have approved Puerto Rico's application for Federal Fiscal Year (FFY) 2022 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 application submitted by the Puerto Rico Department of Education (PRDE) to the U.S. Department of Education (Department), Office of Special Education Programs (OSEP), on May 26, 2022, June 13, 2022, and June 24, 2022, 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 PRDE's certification in Section II.D of its FFY 2022 application (Enclosure B) 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. § 76.104. The effective date of this grant award is July 1, 2022.

Please note that OSEP Memorandum 22-07, dated February 3, 2022, 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 2022 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 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 forth in Enclosure E, Enclosure F identifies the Programmatic Specific Conditions imposed on the enclosed grant awards to ensure 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. Therefore, as described in Section III of Enclosure F regarding the FFY 2022 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 the IDEA requirements related to Assistive Technology devices

and services; and (2) submit two CAP Progress Reports, one on December 1, 2022 and the other on May 1, 2023, in which PRDE will include required reporting information on the timeliness of the delivery of Assistive Technology devices and services. 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 your PRDE's application for FFY 2022 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 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 the PRDE's Part B application, must meet the public participation requirements in 34 C.F.R. § 300.165.

Enclosed are PRDE's FFY 2022 grant awards for funds currently available under the Consolidated Appropriations Act, 2022 (Public Law 117-103) for the IDEA Part B Section 611 (Grants to States) and Section 619 (Preschool Grants) programs. These funds are available for obligation by States from July 1, 2022, through September 30, 2024, in accordance with 34 C.F.R. § 76.709.

The amount in PRDE's award for Section 619 represents the full amount of funds to which PRDE is entitled. However, the amount shown in PRDE's award for the Section 611 program is only part of the total funds that will be awarded to PRDE for FFY 2022. Of the \$13,343,704,000 appropriated for Section 611 in FFY 2022, \$4,060,321,000 is available for awards on July 1, 2022, and \$9,283,383,000 will be available for awards on October 1, 2022. 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.<sup>1</sup>

For FFY 2022, the appropriation for the Preschool Grants program is \$409,549,000. 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.

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<sup>1</sup> 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.

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, the State may not expend funds available to the State under Section 611(e)(1) [State administration funds] until the State 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.<sup>2</sup> PRDE did not submit a participant support costs request with its grant application. If PRDE plans to use its FFY 2022 IDEA Part B grant funds for such costs, and 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 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) 2020 and SFY 2021. If OSEP receives information through audits, fiscal monitoring or other means that raises questions about the data PRDE has provided in Section V.A, OSEP will follow up with PRDE.

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<sup>2</sup>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.

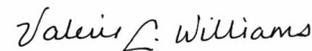
Section 604 of the IDEA provides that “[a] State shall not be immune under the 11th amendment to the Constitution of the United States from suit in Federal court for a violation of this [Act].” Section 606 provides that each recipient of assistance under the IDEA make positive efforts to employ and advance in employment qualified individuals with disabilities in programs assisted under the IDEA. Therefore, by accepting this grant, Puerto Rico 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 of FFY 2022 funds 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.fsrs.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,



Valerie C. Williams  
Director  
Office of Special Education Programs

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 – 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><b>Yes</b> <i>(Assurance is given.)</i></p>	<p><b>No</b> <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><b>Assurances Related to Policies and Procedures</b></p>
X		<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>
X		<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>
X		<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>
X		<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>
X		<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"> <li>• 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</li> <li>• 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)</li> </ul>
		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.

**D. Statement**

I certify that the State of Puerto Rico can make the assurances checked as 'yes' in Section II.A and II.B and the certifications required in Section II.C of this application. These provisions meet the requirements of the Part B of the Individuals with Disabilities Education Act as found in PL 108-446. The State will operate its Part B program in accordance with all of the required assurances and certifications.

If any assurances have been checked 'no', I certify that the State will operate throughout the period of this grant award consistent with the requirements of the IDEA, as found in PL 108-446 and any applicable regulations, and will make such changes to existing policies and procedures as are necessary to bring those policies and procedures into compliance with the requirements of the IDEA, as amended, as soon as possible, and not later than June 30, 2022. (34 CFR § 76.104)

I, the undersigned authorized official of the

Secretary of the Department of Education of Puerto Rico, Eliezer Ramos Parés, Esq.

*(Name of State and official name of State agency)*

am designated by the Governor of this State to submit this application for FFY 2021 funds under Part B of the Individuals with Disabilities Education Act (IDEA).

Printed/Typed Name of Authorized Representative of the State:  Eliezer Ramos Parés, Esq.
Title of Authorized Representative of the State:  Secretary of the Puerto Rico Department of Education
Signature: 
Date: June 23, 2022

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

**Explanation of the Federal Fiscal Year (FFY) 2022 Allocation Table**

**Total Grant Award (Column B)**

Column B shows your total grant award for the Grants to States program for FFY 2022 under the Consolidated Appropriations Act, 2022 (Public Law 117-103).

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.

**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 CFR §300.705(b)(2) clarify how adjustments to the base payment amounts for LEAs are made.

**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 2022 is a 6.0 percent increase over the maximum amount that was available for FFY 2021. 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.

**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 2022:

- (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.

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

**Explanation of the Federal Fiscal Year (FFY) 2022 Allocation Table**

**Total Grant Award (Column B)**

Column B shows your total grant award for the Preschool Grants program for FFY 2022 under the Consolidated Appropriations Act, 2022 (Public Law 117-103).

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 C)**

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). If a State chooses to set aside the maximum amount of FFY 2022 section 619 funds for State-level activities, the amount available for making local educational agency (LEA) base payments in Column E may be below 75 percent of the State's FFY 1997 section 619 grant.

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 D)**

Column D indicates the maximum portion of the total State set-aside amount (Column C) 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 E)**

Column E 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 2022 is \$90, the reduction in the total base payment amount is 10 percent, and each LEA's base payment for FFY 2022 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.

The IDEA requirements for allocations to LEAs under the IDEA section 611 and 619 programs continue to be separate under 34 C.F.R. §§ 300.704 and 300.816. Therefore, the IDEA section 611 funds must be allocated to LEAs in accordance with 34 C.F.R. § 300.705, separate from the IDEA section 619 funds, which must be allocated to LEAs in accordance with 34 C.F.R. § 300.816.

### **Section 619 Population/Poverty Factors (Column F)**

Column F 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 2022 section 619 funds for State-level activities. As noted above, if a State chooses to set aside the maximum amount of FFY 2022 section 619 funds for State-level activities, the amount available for LEA subgrants could be below the base payment amount in Column E, and the State will not have any remaining section 619 funds available after making base payments. Therefore, the State would be unable to make a population or poverty payment. If States with no funds in Column F reserve the maximum amount of FFY 2022 section 619 funds for State-level activities, they would be unable to make a population or poverty payment.

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 G)**

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

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 E

UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE OF FINANCE AND OPERATIONS  
OFFICE OF ACQUISITION, GRANTS, AND RISK MANAGEMENT

June 29, 2022

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

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

Dear Governor Pierluisi and Secretary Ramos:

Enclosed are Federal fiscal year (FFY) 2022 specific conditions that apply to U.S. Department of Education (Department) grants awarded to Puerto Rico and the Puerto Rico Department of Education (PRDE) on or after the date of these specific conditions. 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. These specific conditions do not apply to funds awarded by the Department to Puerto Rico institutions of higher education (IHEs) under the CARES Act Higher Education Emergency Relief Fund or to other funds awarded by the Department's Office of Postsecondary Education to Puerto Rico.

The Department recognizes the continuing challenge Puerto Rico and PRDE have faced over the past years as a result of the COVID-19 pandemic. Your efforts during this time have helped provide resources to support educators in finding innovative ways of teaching to provide a safe learning environment for the students of Puerto Rico.

The Department's Puerto Rico Education Sustainability (PRES) Team has worked with Puerto Rico and PRDE to strengthen our partnership and build collaboration and trust. Together, we worked on the development of a comprehensive technical assistance (TA) plan targeting specific areas of need. The execution of this TA plan aims to assist PRDE in building its internal capacity to effectively manage federal education funds that will contribute to providing high-quality education for the students of Puerto Rico.

Our immediate TA delivery has focused on working closely with Puerto Rico and PRDE to address the timely obligation of federal funds, specifically the extraordinary funding

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available through the Coronavirus Aid, Relief, and Economic Security (CARES) Act, the Coronavirus Response and Relief Supplemental Appropriations (CRRSA) Act, and the American Rescue Plan (ARP), the purpose of which is to provide immediate relief.

We recognize your commitment to implementing fiscal accountability as demonstrated in your collaborative work with PRDE's Third-Party Fiduciary Agent (TPFA), Alvarez and Marsal (A&M). The lack of adequate internal controls in critical operations prevents the effective management of federal education funds and the proper implementation of federal education programs. The completion of A&M scope of work (SOW) #3 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 near future. At the conclusion of the assessment under SOW #3, A&M SOW #4 will support PRDE's efforts to develop and implement the Comprehensive Corrective Action Plan (CCAP) as described in these specific conditions, providing specific areas of improvement in critical operations of PRDE, such as grants management, procurement, and payroll.

The Department stands committed to continuing to work with Puerto Rico and PRDE to improve the delivery of Federal education and related services for the children, students, and youth throughout the Commonwealth.

Sincerely,

A handwritten signature in blue ink, appearing to read "Phillip R. Juengst".

Phillip R. Juengst  
Deputy Assistant Secretary for  
Acquisition, Grants, and Risk Management

cc: Jesus Gonzalez Cruz, Undersecretary of Administration/PRDE  
Naitzabes Martinez, Director for the Office of Federal Affairs/PRDE  
Norma Rolon, Director of PRDE's Central Purchasing Office  
Noelia García Bardales, Chief of Staff/Office of the Governor  
Carlos Yamin Rivera, Deputy Chief of Staff/Office of the Governor  
Carmen Feliciano, Executive Director/Puerto Rico Federal Affairs Administration

**Commonwealth of Puerto Rico**  
**Puerto Rico Department of Education**  
**Federal Fiscal Year (FFY) 2022 Departmental Specific Conditions**

PREAMBLE: These specific conditions are imposed on all Federal fiscal year (FFY) 2022 grants issued by the U.S. Department of Education (Department) to Puerto Rico and to the Puerto Rico Department of Education (PRDE) on or after the date of these specific conditions. These conditions are also imposed on all grants previously awarded by the Department to Puerto Rico or PRDE that are still available for obligation or liquidation by Puerto Rico or PRDE on the date of these specific conditions. These specific conditions do not apply to funds awarded by the Department to Puerto Rico institutions of higher education (IHEs) under the Coronavirus Aid, Relief, and Economic Security (CARES) Act Higher Education Emergency Relief Fund or to other funds awarded by the Office of Postsecondary Education to Puerto Rico.

These FFY 2022 Departmental Specific Conditions, as well as previous annual Departmental Special Conditions, are imposed to help ensure that grant funds awarded by the Department to Puerto Rico or PRDE are expended in accordance with applicable legal requirements and the appropriate fiscal accountability measures and management practices and controls.

I. BACKGROUND

The FFY 2019 Departmental Specific Conditions required PRDE to enter into a contract with a third-party fiduciary agent (TPFA), to perform the financial management duties performed by PRDE relating to Department funds.

The Department subsequently determined that, given the central management of Department funds through the Puerto Rico Treasury Department (Hacienda), the significant amount of Federal funds awarded to Puerto Rico and PRDE, and the history of financial instability in Puerto Rico, the risk associated with PRDE's fiscal management of Department funds extends beyond PRDE to the management of funds awarded to the Commonwealth's other offices and agencies. Accordingly, because PRDE had not finalized the contracting process with the TPFA and to provide reasonable assurance that Department funds are managed and accounted for properly, in the FFY 2020 Departmental Specific Conditions, the Department required both Puerto Rico and PRDE to enter into a contract with the TPFA to perform financial management duties performed by Puerto Rico and PRDE.

On March 4, 2021, officials of the Puerto Rico Government raised concerns regarding the Department's requirement that the Government of Puerto Rico also be a party to the contract with the TPFA. Puerto Rico Government officials stated that PRDE is an agency of the Puerto Rico Government, therefore, the Government of Puerto Rico is its legal agency.

On March 10, 2021, the Department determined that although Puerto Rico is not required to be a party to the TPFA contract, all funds awarded to Puerto Rico must be administered by the TPFA, and Puerto Rico must be subject to these specific conditions.

On March 24, 2021, PRDE entered into a contract with Alvarez and Marsal (A&M) Public Sector Services, LLC. A&M has been performing financial management duties previously performed by Puerto Rico and PRDE.

## II. SPECIFIC CONDITIONS

### 1. Responsibilities of Puerto Rico and PRDE and the Third-Party Fiduciary Agent Concerning Administration of Grant Funds

Puerto Rico and PRDE must continue to retain the services of a TPFA and work effectively with the TPFA to perform financial management functions in support of the delivery of Federal education programs. The specific responsibilities and requirements of Puerto Rico and PRDE in working with the TPFA are set forth in Attachment A to these specific conditions. The responsibilities and requirements of the TPFA in carrying out the financial management duties for Puerto Rico's and PRDE's Department grants are set forth in Attachment B to these specific conditions. Any request for proposals, statement of work, or other related documents used in Puerto Rico's and PRDE's procurement process, and any contract among Puerto Rico, PRDE and the TPFA, must comply with the procurement provisions in 2 CFR §§ 200.318-200.327 and must include the provisions set forth in Attachments A and B.

### 2. Internal Controls Over Payroll

Puerto Rico and PRDE must establish and maintain an effective and accurate process for tracking and reporting time and effort spent by all employees whose salaries are paid under Department grants, including, but not limited to, maintaining accurate and up-to-date employee staffing lists and notices of personnel actions, distributing time among different funding sources for split-time employees, and properly allocating salary costs among Department grants, based on records that accurately and properly record the distribution of each employee's work on multiple cost objectives, the time the employee attends work, and, for those employees who work on a single cost objective, semiannual certifications. In addition, the TPFA in its capacity as described in Attachment B.10, Responsibilities and Requirements for the Third-Party Fiduciary Agent, is responsible for establishing and maintaining a process for tracking and reporting time and effort spent by all employees whose salaries are paid under Department grants, including distribution of time among different funding sources for split-time employees, and for properly allocating salary costs among Department grants, based on records that accurately and properly record the

distribution of each employee’s work on multiple cost objectives, the time the employee attends work, and, for those employees who work on a single cost objective, semiannual certifications consistent with Federal requirements.

The forensic and data integrity validation audit launched by the Financial Oversight and Management Board (FOMB) identified deficiencies in payroll that potentially include disbursement of Federal education funds to individuals who are inactive or absent. As a result of this audit, the Time & Attendance (“T&A”) Project with PRDE, the Puerto Rico Fiscal Agency and Financial Advisory Authority (“AAFAF”), and the Puerto Rico Department of Treasury (Hacienda) was created.

On December 6, 2021, as required by the FFY 2021 Departmental Specific Conditions, PRDE submitted to the Department a status of the implementation of the project of Integration between TAL (Time, Attendance and Leaves) System and Payroll (RHUM). The corrective actions required that execution of payroll for all PRDE employees be based on validation of attendance at work as captured and recorded by the TAL system. On December 2021, PRDE issued a public policy applicable to all PRDE’s personnel. The public policy covers duties and responsibilities of PRDE’s employees, including disciplinary actions and consequences. It defines the procedures required to record attendance by using the biometric system or have authorized leave and documentation in the system in order to get paid for work completed. In addition, as part of these controls, PRDE will work with personnel from central, region and school levels to ensure implementation and enforcement of this policy.

By December 5, 2022, PRDE must submit a status report on its progress implementing FOMB’s recommendations. The Department requires PRDE to include any remaining recommendations issued by FOMB in the Comprehensive Corrective Action Plan (CCAP). This requirement is in addition to the recommendations as a result of the TPFAs Process, Assessments, Models, and Implementation Plan.

3. Internal Controls Over Procurement and Contracting—Including Continued Work on Enhancing and Developing a System or Systems to Capture Information on Personal Services Contracts (PSC) and Professional Services Contracts (ProSCs) in Order to Better Account for and Reconcile Federal Expenditures

The Department continues to be concerned with the risk associated with PRDE’s procurement and contracting process. There are significant challenges in procurement that are impacting the timely obligation of Federal education funds. The Department is particularly concerned with PRDE’s ability to timely obligate and spend pandemic relief funds. PRDE’s Central Procurement Office (CPO), lacks a proper governance structure, including but not limited to, the lack of an adequate number of staff to manage the volume of transactions it has to execute for purchases of both goods and nonprofessional and professional services. Over the years, PRDE has attempted to make changes to mitigate this risk but it has been unable to sustain improvements. The lack of adequate internal controls over the professional services

contracts has been at the center of investigations by the Department's Office of Inspector General (ED OIG) and has resulted in indictments.

The Department recognizes that many of the current challenges are the result of requirements outside PRDE's control. These challenges include the requirement of PRDE to comply with Puerto Rico Act 73 of July 19, 2019, as amended, also known as the General Services Administration (GSA) for the Centralization of Government of Puerto Rico Purchasing Act of 2019 (Act 73-2019). Law 73-2019 was created to standardize the processes of goods, works and nonprofessional services of the Government of Puerto Rico. The Department understands that Law 73-2019 does not govern professional services contracts.

The law requires PRDE's CPO to follow PR GSA-specific procurement policies and procedures, and the transfer of personnel to PR GSA headquarters. The lack of a strategic plan for PRDE's CPO to transition to PR GSA has compromised the PRDE CPO's ability to expeditiously complete the procurement process needed to implement Federal education programs. The lack of a carefully developed plan that accounts for the unique needs of PRDE has contributed to the already complex procurement and contracting process of PRDE. PRDE has received an unprecedented amount of pandemic relief funds, and without adequate internal controls to ensure timely execution, PRDE could find itself unable to obligate these funds in a timely manner. In addition, PRDE's CPO is responsible for the oversight of professional services contracts. Once PRDE's CPO is transferred to the PR GSA offices, professional services contracts will be left without any oversight and without a support structure that currently is offered by the PRDE's CPO. This lack of adequate controls increases the risk for vulnerability to fraud, inefficiency of operations and the risk that PRDE will be unable to spend Federal education funds in a timely manner.

In addition to the PR GSA requirement, PRDE's CPO must also submit purchase requisitions to the Puerto Rico Management and Budget Office (OGP by its Spanish acronym) and the Puerto Rico Innovation and Technology Service (PRITS) for approval.

Given the significant increase in the volume of transactions for purchases of goods and nonprofessional and professional services contracts managed by PRDE's CPO, the Department worked with PRDE's Office of Federal Affairs (OFA) to examine the purchase requisition process. In May 2022, the Department conducted a targeted technical assistance visit to follow up on the purchase requisition process and assist PRDE in identifying factors causing delays in the overall procurement process. The Department identified a lack of adequate controls around the purchase requisition process when routed to approval of purchase requisitions by OGP and PRITS.

- PRDE's CPO does not have visibility over the purchase requisitions sent to OGP and PRITS
- Lack of visibility makes it challenging for PRDE's CPO to manage and account for purchase requisitions submitted to OGP and PRITS for approval

- Lack of adequate controls does not allow for proper oversight and accountability
- Lack of accountability to meet established timelines and lack of enforcement to meet established deadlines

The lack of adequate controls over purchase requisition involving OGP and PRITS is significantly impacting PRDE's ability to spend Federal funds in a timely manner and, therefore, implement educational services and programs.

The Department requires Puerto Rico to immediately engage PRDE, OGP and PRITS to develop standard operating procedures (SOP) that outline specific key timelines to review and approve purchase requisitions submitted for approval by PRDE's CPO, and the compensating controls or actions when timelines are not met. In the development of the SOP, Puerto Rico must ensure proper coordination with A&M. Given the time sensitive nature for obligation of the Federal education funds, the Department requires that for purchase requisitions with Federal education funds, the timelines for approval by OGP and PRITS be within no more than 30 business days from submission. This will improve PRDE's CPO ability to promptly process procurement of goods and nonprofessional services with Federal education funds.

By September 2, 2022, Puerto Rico must submit to the Department a copy of the SOP developed with PRDE, OGP, and PRITS in coordination with A&M to accomplish approval of purchase requisitions consistent with the timeline described above.

Puerto Rico must continue to work with PRDE and PR GSA in the development of a transition plan that addresses PRDE's specific procurement needs. As required under these specific conditions, any request for proposals, statement of work, or other related documents used in Puerto Rico's and PRDE's procurement process, and any contract among Puerto Rico, PRDE and PRDE's third-party fiduciary agent Alvarez and Marsal (A&M), must comply with the procurement provisions in 2 CFR §§ 200.318-200.326. This transition plan must be done in coordination with A&M, to ensure that the results of the Process Assessments, Models, and Implementations Plan of the Procurement and Contracting process address PRDE's needs and are incorporated as part of the CCAP.

In addition, over the years, PRDE has worked to enhance the capacity and functionality of the SEPI system, demonstrating commitment to ensure adequacy of internal controls over the administration of PSCs. The Department requires that as PRDE makes enhancements to the SEPI system, it ensures that policies and procedures governing the system reflect any updated changes. In previous site visits, the Department identified weak internal controls over the administration of the pre-SEPI planning process. The weak internal controls in the pre-SEPI planning process prevent the timely delivery of services and the proper, timely, and effective disbursement of Federal funds. PRDE has worked to improve the pre-SEPI process to maximize the capability of the SEPI system by eliminating the current manual process.

The results of the TPFAs Process Assessments, Models, and Implementations Plan of the SEPI system must be incorporated as part of the CCAP.

#### 4. Continued Work Regarding Grants Management System

This section outlines the status of PRDE's efforts to improve its grants management system.

Evidence shows that internal controls processes developed under the 2004 Compliance Agreement Task 1.0, "Improving PRDE General Grants Management," and implemented under the 2007 Memorandum of Agreement are still weak.

PRDE must ensure that adequate controls are in place to fully implement its grants management system. Specifically, weak internal controls in the pre-award planning process and in the grant application, evaluation, and approval process prevent the timely approval of work plans, further preventing PRDE from commencing implementation of Federal programs upon receipt of grant award notification and from allocating funds in a timely and effective manner.

The results of the TPFAs Process Assessments, Models, and Implementations Plan of the Grants Management System "Work Plans" must be incorporated as part of a CCAP. The Department will monitor PRDE progress towards implementing and executing the corrective actions to address deficiencies in the Work-Plan process.

#### 5. Compliance Office and its Audit Oversight Committee

The Department recognizes PRDE's commitment to continue to implement proper internal controls for an effective implementation of Federal education programs. PRDE acknowledges the importance of the functions and responsibilities of having a full operational governance structure of compliance and its role in the review and oversight of these specific conditions.

With the implementation of Law No. 15-2017, as amended, known as the Puerto Rico Inspector General's Law, PRDE experienced challenges in maintaining its auditors and it is currently without the organizational structure formerly known as the Internal Audit Office (IAO), which the Department considers critical to ensure that the Federal funds that are awarded are used in accordance with Federal requirements.

The Department continues to require that PRDE maintain the same functions and responsibilities as established under the IAO, including the necessary staff and an Audit Committee, to ensure independent, objective and transparent oversight of PRDE operations and performance.

On October of 2021, as required by the FFY 2021 Departmental Specific Conditions, PRDE submitted its plan on how it intended to continue to maintain the same

functions and responsibilities as established under the IAO. PRDE stated that it has submitted for approval to OGP, which is the Puerto Rico agency in charge of approving government organizational structures, its request to establish a Compliance Office. This Compliance Office will have the same functions and responsibilities as the former IAO. On May 2022, PRDE informed the Department that it had put in place a transition plan that will allow them to start the recruitment of personnel for the Compliance Office while they continue to work with OGP in the final approval of the organizational structure that creates the Compliance Office. It is important that PRDE promptly establishes a fully staffed office that could immediately start operating. The Compliance Office is responsible for the review and validation of areas of these specific conditions.

By October 3, 2022, PRDE must submit to the Department a status report on its transition plan and recruitment process; and an update on OGP's approval process.

6. Comprehensive Corrective Action Plan (CCAP)

Puerto Rico, PRDE, the TPFA, and the Department must work together to develop a CCAP designed to address the fiscal deficiencies in administering Department grant awards that led to the requirement for Puerto Rico and PRDE to procure the services of the TPFA. The CCAP will contain tasks with measurable objectives and completion dates and must address specific deficiencies, which will be determined in accordance with the TPFA's assessment and incorporate the status and next steps for addressing the issues outlined in sections II.2, II.3, and II.4 of these specific conditions.

Upon the Department's approval of the CCAP, Puerto Rico and PRDE will be required to provide quarterly reports to the Department on their progress in implementing measures required under the CCAP. Puerto Rico and PRDE agree that the TPFA will play a critical role in assessing their progress in meeting the objectives of the CCAP, and PRDE also agrees that it will obtain the assistance of the PRDE Compliance Office in reviewing and validating the quarterly reports for accuracy prior to their submission.

III. FAILURE TO COMPLY WITH SPECIFIC CONDITIONS:

A. Enforcement Action Steps or Additional Conditions

If a plan, report, or documentation under Section II above is not provided by Puerto Rico or PRDE on a timely basis or is not considered acceptable, the Department may consider it a failure to comply with the specific conditions contained in Section II above, and such a failure may be subject to the remedies outlined below or to the terms in Section IV.A below. If the Department determines that Puerto Rico or PRDE have not made substantial progress in meeting program objectives, or have not met program requirements or the specific

conditions contained in Section II above, the Department may consider not continuing Puerto Rico's or PRDE's grants, taking further enforcement action steps, or applying additional conditions, including:

1. Conditions under which Puerto Rico or PRDE would receive no further funds under one or more grant awards or would receive funds only on a reimbursement basis;
2. Conditions providing for the Department's recovery of misspent funds from Puerto Rico or PRDE; or
3. Conditions placing Puerto Rico on high-risk status and reinstating PRDE's "high-risk" status as described below.

B. Reinstatement of "High-Risk" Status Under 2 CFR §§ 200.207 and 3474.10

In the event that Puerto Rico or PRDE fails to comply with these specific conditions, as described above in section III.A, the Department retains the authority to reinstate the "high-risk" designation that it removed from PRDE in 2004 and to issue a high-risk designation for Puerto Rico or PRDE. The Department will evaluate Puerto Rico's and PRDE's progress annually to determine whether it is necessary to designate either Puerto Rico or PRDE as a "high-risk grantee." If the Department determines that a high-risk designation becomes necessary, additional specific conditions or restrictions may include, but will not necessarily be limited to: (1) payment of Federal funds on a reimbursement basis; (2) withholding authority to proceed to next phase until receipt of evidence of acceptable performance within a given funding period; (3) requiring additional, more detailed financial reports; (4) requiring additional project monitoring; (5) requiring Puerto Rico or PRDE to obtain further technical or management assistance; (6) establishing additional prior approvals; or (7) recovery of misspent funds. The use of a condition for one covered Federal program does not require or preclude its use for a different covered Federal program.

These terms and conditions do not preclude the Department from taking any otherwise authorized enforcement or other actions at any time.

C. Prompt Response to Request for Records

Puerto Rico and PRDE shall promptly provide the Department or its representatives any requested records and information related to funds made available to Puerto Rico or PRDE

IV. OTHER TERMS

A. Severability

The Department intends that if any provision or requirement of this document is later found to be invalid or unenforceable, it will not affect the validity or enforceability of the entire document or of the remaining provisions and requirements.

B. Program-Specific Conditions

Additional specific conditions may be imposed on FFY 2022 grant awards made under one or more Department programs, in addition to the specific conditions that are contained in this document. Each such program-specific condition will be contained in an attachment to the final grant award notification document that is provided by the Department to Puerto Rico or PRDE.

C. Submission of Reports

All reports that are required to be submitted by Puerto Rico or PRDE to the Department under these specific conditions shall be submitted to:

Lorena Dickerson  
[Lorena.dickerson@ed.gov](mailto:Lorena.dickerson@ed.gov)  
U.S. Department of Education  
400 Maryland Avenue, SW  
Washington, DC  
Grants Risk Management Services Division  
Office of Acquisition, Grants, and Risk Management  
Office of Finance and Operations

D. Reconsideration and Modifications

At any time, Puerto Rico or PRDE may request reconsideration of one or more of the above specific conditions contained in Section II above by contacting the Department and providing in writing the reasons why Puerto Rico or PRDE believes one or more particular conditions are no longer needed. Additionally, the Department may impose additional specific conditions or modify these specific conditions, as appropriate. The Department will remove one or more of the specific conditions contained in Section II above at such time as Puerto Rico or PRDE meets, to the Department's satisfaction, these conditions and other applicable requirements.

Dated: June 29, 2022

Attachment A to the Puerto Rico and PRDE FFY 2022 Departmental Specific  
Conditions

Responsibilities and Requirements of Puerto Rico and PRDE  
(to be incorporated into any contract for services with the TPF A)

The responsibilities and requirements of Puerto Rico and PRDE in working with the TPF A are as follows:

1. Puerto Rico and PRDE must work cooperatively and in a timely manner with the TPF A to implement the activities and responsibilities described in these specific conditions and must ensure that Hacienda also works cooperatively with Puerto Rico, PRDE, and the TPF A. Puerto Rico and PRDE acknowledge that regular communication among Puerto Rico, PRDE, the Department, and the TPF A is necessary to ensure proper financial management of grant funds, consistent with approved grant applications, budgets, and applicable program statutes, regulations and the cost principles in 2 CFR Part 200, Subpart E. Therefore, Puerto Rico and PRDE agree that, as the Department deems necessary and appropriate, the Department shall include the TPF A in communications, both written and oral, between or among Puerto Rico, PRDE, and the Department.
2. Puerto Rico and PRDE, working with Hacienda, as appropriate, must permit, in a timely manner, the TPF A's personnel to have access to all financial books, records, and reports related to funds made available to Puerto Rico and PRDE by the Department, or used to meet matching requirements, and access to Puerto Rico, PRDE, and Hacienda personnel for discussion regarding the services the TPF A must perform under these specific conditions, as provided for in the contract among Puerto Rico, PRDE and the TPF A.
3. Puerto Rico and PRDE must notify the Department when any dispute arises and remains unresolved between or among the TPF A, Puerto Rico, and PRDE concerning the implementation or continuation of the contract with the TPF A, or the implementation of activities supported by Department grants, including the financial management of grant funds. Puerto Rico and PRDE agree to the Department's assistance in the resolution of any such unresolved dispute and agree that this assistance may require compliance with the Department's requests for additional information from Puerto Rico, PRDE, and Hacienda, as appropriate, and from the TPF A, conference calls among representatives from these entities, and decisions or advice from the Department in resolution of the unresolved dispute. This does not preclude Puerto Rico, PRDE, and the TPF A from including formal dispute resolution mechanisms in their contract.

4. Puerto Rico and PRDE, working with Hacienda, as appropriate, must comply with all Federal laws and regulations that apply to the receipt and use of funds awarded under Department grants, including requirements that apply under the Uniform Guidance at 2 CFR Part 200, Parts 75 and 76 of EDGAR, and applicable Federal program statutes and regulations.
6. Puerto Rico and PRDE remain responsible for the provision of program services under the respective grants, including the review and approval (where applicable) of local educational agency (LEA) or other subgrantee applications for subgrants under State formula grant programs, determination of LEA or other subgrantee allocations, and notification to the LEAs or other subgrantees regarding their allocations under the grants.
7. Puerto Rico and PRDE, prior to any drawdowns or disbursements, in a timely manner, must provide the TPFAs with a line item budget for the total amount of each grant and subgrant, if applicable, that has been approved and verified by the Department. The line item budget must include amounts for State administration, State-level program activities, and LEA program activities.
8. Puerto Rico and PRDE are responsible for: (i) executing drawdowns of funds under the grants from the Department's Grants Management System (G5) so that funds are deposited into the separate bank account established and maintained by the TPFAs; and (ii) providing to the TPFAs, for deposit into the separate bank account established by the TPFAs, any matching funds required for the grants. Puerto Rico and PRDE understand and agree that they must draw down funds and provide any applicable matching funds to the TPFAs within 24 hours of receipt of the written notice from the TPFAs. Failure by Puerto Rico or PRDE to comply with this condition concerning the time within which it must draw down funds may result in the Department requiring the transfer of drawdown authority to the TPFAs. In the event of Puerto Rico's or PRDE's failure to draw down funds in accordance with this condition, the TPFAs must notify the Department, and the Department will determine whether drawdown authority must be transferred to the TPFAs. If so, then immediately upon written notice of this decision from the Department, Puerto Rico or PRDE must take all steps necessary to provide the TPFAs with full authority to perform drawdowns, including providing any information and authorization that the Department needs to recognize the TPFAs as the entity with drawdown authority.
9. Puerto Rico and PRDE must coordinate with the Agent the timing of drawdowns and disbursements to ensure that payments to staff, vendors and providers are prompt and timely. To the greatest extent feasible, Puerto Rico and PRDE must draw down funds in a timely manner so that funds under the grants are deposited to the separate bank account(s) maintained by the Agent on the same day that funds are drawn from the account(s) to liquidate obligations under the grants. Puerto Rico and PRDE, as appropriate and at

the Agent's direction, must draw down sufficient funds under a grant to cover each approved request for payment.

10. Puerto Rico and PRDE must expend Federal and matching funds only for costs that are allowable under the respective grant programs, in accordance with the regulations and cost principles in 2 CFR Part 200, Subpart E. Puerto Rico and PRDE acknowledge that the TPFA also has the duty to ensure that Department funds are used only for allowable costs, including costs that are necessary, reasonable, and allocable to the respective grants as required by 2 CFR Part 200, Subpart E, and that are procured in accordance with applicable procurement requirements in 2 CFR §§ 200.318-200.327. Where there is a question as to whether a cost is allowable, the TPFA must raise this question with Puerto Rico or PRDE and, if the TPFA deems it necessary, may also request assistance from the Department in determining the allowability of any expenditure.
11. Puerto Rico and PRDE must charge grants only for costs resulting from obligations that were properly made during the period of availability for the funds, including any carryover period. To ensure against the lapsing of Department funds, Puerto Rico and PRDE must provide the TPFA with the amount and nature of all obligations in a timely manner to ensure that the obligations are liquidated no later than 90 days after the end of the funding period or during any extension of that period authorized by the Department, in accordance with 2 CFR § 200.344(b).
12. Puerto Rico and PRDE must establish and maintain an effective and accurate process for tracking and reporting time and effort spent by all employees whose salaries are paid under Department grants, including, but not limited to, maintaining accurate and up-to-date employee staffing lists and notices of personnel actions, distributing time among different funding sources for split-time employees, and properly allocating salary costs among Department grants, based on records that accurately and properly record the distribution of each employee's work on multiple cost objectives, the time the employee attends work, and, for those employees who work on a single cost objective, semiannual certifications. Puerto Rico and PRDE must carry out these responsibilities consistent with Federal requirements in 2 CFR Part 200, Subpart E, and more specifically, 2 CFR §§ 200.430 and 200.431.
13. Puerto Rico and PRDE must work with the TPFA to ensure that the charging of direct and indirect costs against the respective Department grants is consistent with the applicable restricted and unrestricted indirect cost rates negotiated with, and approved by, the U.S. Department of Education (Puerto Rico's cognizant Federal agency), and that copies of any indirect cost rate proposals or agreements are provided to the TPFA and comply with the applicable requirements of 2 CFR Part 200, Subpart E, and 34 CFR §§ 75.560-564 (discretionary grants) and 34 CFR §§ 76.560-569 (formula grants).

14. Puerto Rico and PRDE, working with Hacienda, as appropriate, must provide effective oversight for proposed procurements, including, but not limited to, training all staff on, and reviewing all requisitions against, local and Department requirements for procuring goods and services, to facilitate the review and approval by the TPFAs in a timely manner of purchase orders and to reduce the number of requisitions that are disallowed by the TPFAs for not meeting these requirements.
15. Puerto Rico and PRDE must ensure that within 24 hours of receipt of a vendor's invoice from the TPFAs, staff must (i) accept or reject the goods or services, and, if accepted, (ii) draw down funds for the vendor payment for deposit into the separate bank account(s) maintained by the TPFAs.
16. Puerto Rico and PRDE must work with the TPFAs to ensure that all tangible personal property procured under Department grants is managed in accordance with the requirements of 2 CFR §§ 200.313(a) and (c)-(e) to ensure that such property with a purchase price meeting the thresholds as agreed between Puerto Rico and Hacienda and PRDE and Hacienda is properly inventoried, maintained, and stored to prevent loss, damage, or theft of such property. Puerto Rico and PRDE, or another agency designated by the Governor, each must conduct a physical inventory of its equipment (as defined in 2 CFR § 200.1) with a purchase price meeting the thresholds as agreed between Puerto Rico and Hacienda and PRDE and Hacienda that was acquired with Department grant funds at any time and provide a copy of the inventory to the TPFAs upon completion. A copy of the inventory report shall be provided to the Department upon request.
17. Puerto Rico and PRDE, working with Hacienda, as appropriate, shall avoid any actions that may impact the TPFAs's role and responsibilities under these specific conditions, which do not include oversight of any current and/or proposed fiscal initiatives of Puerto Rico. The TPFAs may assist Puerto Rico, PRDE, and Hacienda with financial management capacity building efforts, to the extent that this assistance does not compromise the autonomous execution of its responsibilities under these specific conditions.
18. Except as noted herein, Puerto Rico and PRDE, working with Hacienda, as appropriate, shall comply with all applicable provisions of EDGAR.
19. Puerto Rico and PRDE may include any other terms in the contract with the TPFAs, consistent with those above, as are necessary to ensure timely liquidation of all Department funds, timely payment to staff, providers and vendors, and general financial management consistent with applicable Federal regulations, under the Department's grants.

Attachment B to the Puerto Rico and PRDE FFY 2022 Departmental Specific  
Conditions

Responsibilities and Requirements for the Third-Party Fiduciary Agent  
(to be incorporated into any contract for services with the TPFA)

The responsibilities and requirements for the TPFA are as follows:

1. The TPFA must work cooperatively and in a timely manner with Puerto Rico and PRDE to implement the activities and responsibilities described in these specific conditions. The TPFA acknowledges that regular communication among Puerto Rico, PRDE, the Department, and the TPFA is necessary to ensure proper financial management of grant funds, consistent with approved grant applications, budgets, and applicable program statutes, regulations and the cost principles in 2 CFR Part 200, Subpart E. Therefore, the TPFA understands and agrees that, as the Department deems necessary and appropriate, the Department shall include the TPFA in communications, both written and oral, between and among Puerto Rico, PRDE, and the Department.
2. The TPFA's role encompasses financial management responsibilities concerning the grants, including, but not limited to, processing payments and disbursements, maintaining financial records, financial reporting, instituting and applying procurement, inventory, and payroll procedures that comply with applicable Federal requirements, and other duties as more fully described below.
3. Puerto Rico and PRDE, prior to any drawdowns or disbursements, in a timely manner, must provide the TPFA with a line item budget for the total amount of each grant and subgrant, if applicable, that has been approved and verified by the Department. The line item budget must include amounts for State administration, State-level program activities, and LEA program activities. The TPFA must use this line item budgets to track projected and actual expenditures for the programs under the grants. The TPFA must ensure that the expenditures proposed are only for allowable costs under each grant. The TPFA will also receive from the Department copies of the applications, budgets, and budget narratives that the Department has approved for Puerto Rico's and PRDE's grant awards to ensure that the TPFA has these documents for purposes of executing its financial management responsibilities on behalf of Puerto Rico and PRDE under these grants.
4. The TPFA must establish, maintain, and manage a separate bank account for all of the funds under the grants from the Department. The TPFA must provide Puerto Rico or PRDE, as appropriate, with written notice (e.g., copy of invoice) of when funds are needed for a disbursement under a particular grant.
5. The TPFA must acknowledge that Puerto Rico and PRDE have drawdown authority and that Puerto Rico and PRDE understand and agree that they must

- draw down funds and provide any applicable matching funds to the TPFA within 24 hours of receipt of the written notice from the TPFA. Failure by Puerto Rico or PRDE to comply with this condition concerning the time within which it must draw down funds may result in the Department requiring the transfer of drawdown authority to the TPFA. In the event of Puerto Rico's or PRDE's failure to draw down funds in accordance with this condition, the TPFA must notify the Department, and the Department will determine whether drawdown authority must be transferred to the TPFA. If so, then immediately upon written notice of this decision from the Department, Puerto Rico or PRDE must take all steps necessary to provide the TPFA with full authority to perform drawdowns, including providing any information and authorization that the Department needs to recognize the TPFA as the entity with drawdown authority.
6. The TPFA must expend funds only for costs that are allowable under the respective grant programs, in accordance with 2 CFR Part 200, Subpart E. If the TPFA questions whether an expenditure is allowable, the TPFA must raise this question with Puerto Rico or PRDE, as appropriate. If the TPFA deems it necessary, the TPFA may also request assistance from the Department in determining the allowability of any expenditure.
  7. The TPFA must determine the value of any in-kind property or services donated to or provided by Puerto Rico or PRDE that are used to meet cost sharing or matching requirements as required by 2 CFR § 200.306 and must maintain records sufficient to document the bases for those valuations.
  8. The TPFA must take steps to prevent the lapsing of funds available under the grants, including ensuring timely disbursement of funds through the use of methods and procedures for payment that minimize the time elapsing between the transfer of funds and disbursement of those funds as specified in Puerto Rico's or PRDE's Treasury-State agreement, as required under the Cash Management Improvement Act and Treasury regulations at 31 CFR Part 205. For grant funds not included in Puerto Rico's or PRDE's Treasury-State agreement, the TPFA must meet the requirements in 2 CFR § 200.305(b). Puerto Rico or PRDE and the TPFA must coordinate the timing of drawdowns and disbursements to ensure that payments to staff, vendors and providers are prompt and timely. To the greatest extent feasible, Puerto Rico and PRDE, or the TPFA, if it has undertaken drawdown responsibility, must draw down funds in a timely manner so that funds under the grants are deposited to the separate bank account maintained by the TPFA on the same day that funds are drawn from the account to liquidate obligations under the grants. The TPFA must ensure that any interest earned on grant funds not subject to the Treasury-State agreement is repaid annually, as required by 2 CFR § 200.305(b)(9).
  9. The TPFA must charge Department grants only for costs resulting from obligations that were properly made during the period of availability for the funds, including any carryover period. To ensure against the lapsing of

Department funds, the Agent must liquidate obligations no later than 90 days after the end of the funding period or during any extension of that period authorized by the Department, in accordance with 2 CFR § 200.344(b).

10. The TPFA must establish and maintain a process for tracking and reporting time and effort spent by all employees whose salaries are paid under Department grants, including distribution of time among different funding sources for split-time employees, and for properly allocating salary costs among Department grants, based on records that accurately and properly record the distribution of each employee's work on multiple cost objectives, the time the employee attends work, and, for those employees who work on a single cost objective, semiannual certifications. The TPFA must carry out these responsibilities consistent with Federal requirements in 2 CFR Part 200, Subpart E, and more specifically, 2 CFR §§ 200.430 and 200.431.
11. In disbursing funds for allowable costs under the grants, the TPFA must distinguish between direct and indirect costs and use accurate methods to allocate funds correctly between these two cost categories. The TPFA must ensure that the charging of direct and indirect costs against the respective Department grants is consistent with the applicable restricted and unrestricted indirect cost rates negotiated with, and approved by, the U.S. Department of Education (Puerto Rico's cognizant Federal agency) and that copies of any indirect cost rate proposals or agreements are provided to the TPFA and comply with the applicable requirements of 2 CFR Part 200, Subpart E, and 34 CFR §§ 75.560-564 (discretionary grants) and 34 CFR §§ 76.560-569 (formula grants).
12. Within 24 hours of the TPFA's receipt of a vendor invoice, the TPFA must provide a copy of the invoice to Puerto Rico or PRDE, as appropriate, and ensure that the goods or services delivered are available for inspection and acceptance or rejection by the appropriate Puerto Rico or PRDE staff requesting the goods or services. The TPFA must pay vendors for the delivered goods or services and must, to the extent reasonably possible, disburse funds to the vendors on the same day that funds are deposited into the separate bank account(s) maintained by the TPFA. The TPFA must make payments by electronic funds transfer (EFT) or by paper draft only if EFT is not available or possible for a particular vendor.
13. The TPFA must manage all tangible personal property procured under the grants, with a purchase price meeting the thresholds as agreed between Puerto Rico and Hacienda or PRDE and Hacienda, in accordance with the requirements of 2 CFR §§ 200.313(a) and (c)-(e). In particular, the TPFA must establish and maintain a process for managing such property consistent with the requirements of 2 CFR § 200.313(d), including reconciling the inventory conducted by Puerto Rico and PRDE under paragraph 18 in Attachment A to these specific conditions with existing property records; developing a system for maintaining property records and for identifying property acquired with Department grant funds; and establishing a control system to prevent loss, damage, or theft of the property.

14. The TPFA must maintain records that fully show the amount of funds made available under each of the grants; how Puerto Rico and PRDE use the funds; the total cost of each project; the share of that cost provided from other sources; and other records to facilitate an effective audit, in accordance with 34 CFR § 75.730 (discretionary grants) and § 76.730 (formula grants). The TPFA, acting on behalf of Puerto Rico and PRDE must retain records in accordance with the provisions of 2 CFR § 200.334.
15. The Agent must maintain insurance as required under the terms of the contract.
16. The Agent must comply generally with the requirements of 2 CFR § 200.328. More specifically, the Agent should produce quarterly reports concerning financial transactions of Puerto Rico and PRDE for submission to Puerto Rico, PRDE, and the Department, detailing for each grant awarded to Puerto Rico and PRDE: a) the date of receipt, and the amount, of each approved payment request; b) the date and amount of each draw down deposit; c) the date and amount of each payment or disbursement by the Agent; and d) any interest or other funds remaining in the account at the end of the quarter. These amounts must also be grouped by and comparable with the projections in the line item budgets described in paragraph 7 in Attachment A to these specific conditions and must be reconciled with the Department's G5 system. This reconciliation must include drawdown dates, drawdown amounts and available balances, by award. These reports shall be due within 10 working days after the end of each quarter.
17. The Agent recognizes that, except as noted herein, Puerto Rico and PRDE must comply with all applicable provisions of EDGAR, and all actions that the Agent takes on their behalf in accordance with services provided under these specific conditions, must be in compliance with all applicable provisions of EDGAR.

## **Enclosure F**

### **Specific Conditions**

#### **I. Basis for Requiring Specific Conditions**

The Office of Special Education Programs (OSEP) within the U.S. Department of Education (the Department) is imposing Specific Conditions on the Puerto Rico Department of Education's (PRDE's) Federal fiscal year (FFY) 2022 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 IDEA requirements regarding assistive technology.

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 2022 is also subject to the FFY 2022 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 2022 IDEA Part B grant award letter.

Also note that, as part of its FFY 2022 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 2021 Specific Conditions:*

1. *Assistive Technology (AT) Corrective Action Plan (CAP)*

OSEP's FFY 2021 IDEA Specific Condition for the AT Reporting Requirement required PRDE, within 60 days of the July 1, 2021 Specific Condition letter, to develop, and submit to OSEP, a CAP that addresses the actions it will take to demonstrate compliance with the requirements related to AT. In the CAP, PRDE was required to include a description of the activities to be completed, specifically: (1) the activities to be completed for this item; (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 this requirement.

PRDE submitted an e-mail to OSEP on August 27, 2021 detailing the required information.

2. *FFY 2020 AT Reporting Period (July 1, 2020 through June 30, 2021)*

OSEP's FFY 2021 IDEA Specific Condition for AT Reporting Requirement required PRDE to report in its first CAP Progress Report due December 1, 2021, on the percentage of requests for AT devices and services that have been verified as completed for the FFY 2020 AT reporting period (July 1, 2020 through June 30, 2021). PRDE reported the following data in its December 1, 2021 and May 2, 2022 CAP Progress Reports respectively:

- a. As of November 24, 2021, 98.22% (1,470/1,497) of requests made for AT devices during the period of July 1, 2020 through June 30, 2021 were verified completed.
- b. As of April 26, 2022, 100% (1,497/1,497) of requests made for AT devices July 1, 2020 through June 30, 2021 were verified as completed. This represents improvement from the 99.81% PRDE reported for the period of July 1, 2019 through June 30, 2020.

3. *Updated data from July 1, 2021 through October 31, 2021 and November 1, 2021 through March 31, 2022*

OSEP's FFY 2021 IDEA Specific Condition for AT Reporting Requirement required PRDE to report updated data on the percentage of requests for AT devices and services that have been verified as completed in the CAP Progress Reports, due December 1, 2021 (for

the reporting period July 1, 2020 through October 31, 2021) and May 2, 2022 (for the reporting period November 1, 2021 through March 31, 2022).

PRDE reported the following data in its December 1, 2021 and May 2, 2022 CAP Progress Reports respectively:

- a. As of November 24, 2021, 79.57% (522/656) of requests made for AT devices during the period of July 1, 2021 through October 31, 2021, were verified as completed. PRDE also noted that, as of April 26, 2022, 95.12% (624/656) of requests for the same reporting period were verified as completed.
- b. As of April 26, 2022, 69.17% (561/811) of requests made for AT devices during the period of November 1, 2021 through March 31, 2022 were verified as completed. This represents improvement in the number of devices verified as completed from the 59% reported for the period of November 1, 2020 – March 31, 2021.

#### Required Reporting on Timeliness of AT

OSEP's FFY 2021 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; 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).

PRDE reported the following data<sup>1</sup>:

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, 2021 to October 31, 2021	624	342 54.80%	107 17.14%	69 11.05%	43 6.89%	63 10.09%	32 5.12%
November 1, 2021 – March 31, 2022	561	405 72.19%	112 19.96%	19 3.39%	21 3.74%	4 .71%	250 44.56%

Despite the ongoing challenges from the earthquakes that devastated the island in 2020 and the COVID-19 pandemic that continues to impact systems universally, OSEP is encouraged by PRDE’s efforts to demonstrate improvement and timely deliver AT equipment and services to ensure a free appropriate public education to students with disabilities in Puerto Rico.

In the May 2, 2022 CAP Progress Report, PRDE reported that in FFY 2021 it continued to implement previously established activities and mechanisms, including full implementation of the AT module in Mi Portal Especial (MIPE),<sup>2</sup> to track and follow-up on the status of the delivery of AT requests.

PRDE also reported that the implementation of the AT process in PRDE’s MIPE was fully operational as of the May 1, 2021 CAP Progress Report.

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

In the May 2, 2022 CAP Progress Report, PRDE noted that it, “ensures each child with a disability has an [IEP] at the beginning of each school year and ensures that special education and related services are made available to the child in accordance with the child’s IEP in accordance with 34 C.F.R. § 300.323 (a) and (c)(2),” based on IEP decisions made at annual review meetings held at the end of the prior school year. However, OSEP continues to be concerned that most of the AT equipment is procured in the latter part of the school year, instead of coinciding with the implementation of students’ IEPs at the beginning of the school year. Therefore, OSEP cannot determine that PRDE achieved compliance with the AT requirements in IDEA section 612(a)(1) and 34 C.F.R. § 300.105. To ensure PRDE’s sustainability in its improvement in the timely delivery of AT and services, OSEP will

<sup>1</sup> These data reflect delivery timelines as of April 26, 2022.

<sup>2</sup> PRDE’s electronic special education information system.

continue to enforce this specific condition for the FFY 2022 grant year. OSEP will also continue to work with PRDE through the Department's Puerto Rico Education Sustainability Team technical assistance efforts to support PRDE in this area.

### **B. Financial Management - Audit Finding Related to Personally Identifiable Information (PII)**

OSEP's FFY 2021 IDEA Specific Condition for the audit finding related to PII required PRDE to demonstrate that corrective actions have been implemented in response to the auditor's finding related to 2 C.F.R. § 200.303(e). Specifically, PRDE was required to demonstrate that it has implemented activities to safeguard protected PII 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.

In a letter dated August 25, 2021, PRDE requested OSEP's reconsideration of this specific condition based on a misinterpretation of the auditor's finding. PRDE provided OSEP with a letter of clarification from the auditor. Based on the information provided, in a letter to PRDE dated November 16, 2021, OSEP accepted the auditor's clarification, and released PRDE from the specific condition item regarding the audit finding related to PII. Therefore, no further information was required regarding this specific condition.

### **III. Nature of FFY 2022 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 IDEA requirements related to AT devices and services noted above. In the CAP, PRDE must include a description of: (1) the activities to be completed; (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 CAP Progress Reports due December 1, 2022 and May 1, 2023, PRDE must report:

- a. Data on the percentage of requests for AT devices and services that have been verified as completed for the FFY 2021 reporting period (July 1, 2021 through June 30, 2022). This reporting requirement is only applicable to the December 1, 2022 CAP Progress Report;
- b. The following (due December 1, 2022 for the reporting period of July 1, 2022 through October 31, 2022; and due May 1, 2023 for the reporting period of November 1, 2022 through March 31, 2023):
  - i. 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;
  - ii. 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
  - iii. 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).

#### **IV. Evidence Necessary for Conditions to be Removed**

OSEP will consider removing the Specific Conditions if, at any time prior to the expiration of the FFY 2022 grant year, PRDE provides documentation, satisfactory to OSEP, that it has fully met the requirements and conditions set forth above.

#### **V. Method of Requesting Reconsideration**

PRDE can write to OSEP's Director, Valerie C. Williams, at the address below, if it wishes the Department to reconsider any aspect of this Specific Condition. 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: Valerie C. Williams  
550 12th Street, SW, Room 5138-B  
Washington, DC 20202

Or by email to: [Valerie.Williams@ed.gov](mailto:Valerie.Williams@ed.gov)

## **VI. 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 Programs – MSIP  
550 12th Street, SW, Room 5174  
Washington, DC 20202

Or by email to: [Lynne.Fairfax@ed.gov](mailto:Lynne.Fairfax@ed.gov)