

June 12, 2009

Honorable Luis Fortuño  
Governor  
Commonwealth of Puerto Rico  
PO Box 9020082  
San Juan, Puerto Rico 00902-0082

Honorable Carlos Chardón  
Secretary of Education  
Puerto Rico Department of Education  
Post Office Box 190759  
San Juan, Puerto Rico 00919-0759

Dear Governor Fortuño and Secretary Chardón:

Enclosed are special conditions that the U.S. Department of Education (Department) is imposing on all grants awarded to the Puerto Rico Department of Education (PRDE) for Federal fiscal year (FFY) 2009, including grants awarded under the American Recovery and Reinvestment Act of 2009 (ARRA). These special conditions incorporate by reference requirements of the current 2007 Compliance Agreement (2007 Agreement) entered into by the Commonwealth of Puerto Rico (Puerto Rico), PRDE, and the Department on December 17, 2007.

As you know, over the past several years, the Department and Puerto Rico have worked cooperatively toward addressing many systemic and longstanding grant management and accountability issues that PRDE has been facing with regard to the administration of Federal education grants. On October 25, 2004, the Department entered into a Compliance Agreement with Puerto Rico and PRDE to address systemic improvements that were needed in PRDE's management of Department grants to ensure compliance with Federal program and fiscal management requirements applicable to those grants (2004 Agreement). On December 17, 2007, the Department also entered into a Memorandum of Agreement (MOA) with Puerto Rico and PRDE that governed the implementation, review, and oversight of activities conducted by Puerto Rico and PRDE in compliance with, and in follow up to, certain terms and conditions of the 2004 Agreement. As a result of the 2004 Agreement and the 2007 MOA, Puerto Rico and PRDE developed, and implemented, several new grants management, administrative, and fiscal management processes. At this time, the Department has determined that Puerto Rico and PRDE have substantially satisfied requirements in the 2004 Agreement and have substantially completed the action steps under the MOA in the areas of grants management, payroll, and procurement. These action steps have resulted in significant improvements in these areas, and it is critical that PRDE complete its work on all action steps under the MOA that remain unfinished as of the date of this letter. The Department will follow up with PRDE as to final implementation of these action steps.

In addition, the Department entered into the 2007 Agreement with Puerto Rico and PRDE because the Department determined it would take PRDE more than one year to completely address several programmatic issues requiring corrective action, and to establish the continued cooperation of other parts of the Puerto Rico government in this effort, such as the Puerto Rico Department of the Treasury (Hacienda) and PRDE's Office of Management and Budget. The programs under which PRDE

receives funds from the Department, and in which corrective action is necessary, include Titles I, II, and IV of the Elementary and Secondary Education Act (ESEA), Title IV of the Higher Education Act of 1965, and the Individuals with Disabilities Education Act (IDEA) (covered Federal programs). The 2007 Agreement also addresses the progress and effectiveness of the PRDE Internal Audit Office (Audit Office) and the independent Audit Oversight Committee (Audit Committee). Grant recipients are required to provide assurances that grant funds are being spent in accordance with Federal program and legislative requirements. The Department relies on these assurances to approve grant applications. Successful operation of both the Audit Office and the Audit Committee will help PRDE provide these needed assurances. Their operations are especially important during this time of fiscal and programmatic concern. Accordingly, Task 16 of the 2007 Agreement requires the full implementation of PRDE's Audit Office and Audit Committee.

At the end of the three-year 2007 Agreement, PRDE must be in full compliance with all applicable program requirements in order to continue to receive Federal education funds under the covered Federal programs. Through the 2007 Agreement, Puerto Rico and PRDE, with technical assistance from the Department, agreed, and are working, to develop and implement solutions to PRDE's program performance and implementation problems. These programmatic issues are being carefully examined and addressed from the perspective of PRDE and other Puerto Rico agencies with management responsibility for resources or programs that have an impact on education in Puerto Rico and on PRDE's administration of Federal education funds.

The implementation of the MOA and the 2007 Agreement, as well as other steps taken by PRDE prior to these Agreements, demonstrate PRDE's initiative and commitment to resolving the systemic problems originally identified by the Department in 2002. However, additional work remains to be done by Puerto Rico and PRDE to fully and effectively implement all action steps outlined in the 2007 Agreement, including the corrective action plans (2007 CAPs) developed in conjunction with, and incorporated into, the 2007 Agreement. Therefore, we are imposing upon all grants awarded by the Department to PRDE for FFY 2009, the enclosed Departmental special conditions.

We know that you take seriously our mutual responsibilities to ensure that Federal program funds are being spent properly to educate children and students in the Commonwealth of Puerto Rico. It is the Department's hope that PRDE, you, as key officials of the Commonwealth, and officials of other entities within and outside the government will recognize the need for coordination and cooperation and thus work more closely together to effect the necessary change and improvement in PRDE education program administration for the benefit of Puerto Rico's students.

We look forward to continuing to work with you and other Puerto Rico officials to improve the delivery of Federal education services for the students throughout the Commonwealth.

Sincerely,

Philip A. Maestri, Director  
Risk Management Service

cc: William Ubiñas, Director, PRDE Office of Federal Affairs

Enclosure

**Commonwealth of Puerto Rico Department of Education**  
**FFY 2009 Departmental Special Conditions**

PREAMBLE: These special conditions are imposed on the Puerto Rico Department of Education's (PRDE's) Federal fiscal year (FFY) 2009 grants made available by the U.S. Department of Education (Department) on or after the date of these special conditions, and will affect all funds under all other grants still available for obligation by PRDE, including grants awarded under the American Recovery and Reinvestment Act of 2009 (ARRA). These FFY 2009 grant awards from the Department to PRDE are made in accordance with the terms of the Compliance Agreement (2007 Agreement) among the Commonwealth of Puerto Rico (Puerto Rico), PRDE, and the Department, signed on December 17, 2007. The special conditions are imposed to help ensure that Department grant awards are expended by PRDE in accordance with applicable legal requirements, the 2007 Agreement, and the appropriate fiscal accountability measures and management practices and controls, including those established by PRDE under the Memorandum of Agreement (MOA) among Puerto Rico, PRDE, and the Department, also signed on December 17, 2007.

I. BACKGROUND

A. In 2002, the Department designated PRDE a "high-risk" grantee, under the Education Department General Administrative Regulations (EDGAR) (at 34 CFR § 80.12). At that time, special conditions were placed on all Department grants awarded to PRDE because of its history of unsatisfactory performance, as uncovered by audits dating back to 1994. The Department's 2002 special conditions were intended to bring about necessary changes to Federal program administration and appropriate fiscal oversight in Puerto Rico that would ultimately bring it into compliance with all Federal education program requirements. The special conditions were intended to result in important improvements to Federal grants administration in Puerto Rico so that the systemic problems uncovered by the auditors would be corrected and would not reoccur. In addressing the special conditions, and in conjunction with the Department's Cooperative Audit Resolution and Oversight Initiative (CAROI), as outlined below, PRDE has taken numerous steps to address underlying problems.

B. As a result of PRDE's demonstrated initiative and commitment to resolving the problems that led to the 2002 "high-risk" designation, and in recognition of PRDE's progress in that regard, the Department removed PRDE's "high-risk" grantee designation, on a probationary basis, upon the October 25, 2004 signing of a Compliance Agreement among Puerto Rico, PRDE, and the Department (2004 Agreement).

C. Starting in September 2003, the Department and PRDE worked together in a collaborative effort under the CAROI process, to jointly resolve the backlog of unresolved PRDE audits, which contained over six hundred audit findings dating back to 1994. As a result of this effort, PRDE has taken steps and established controls to improve its payroll and procurement processes and its management of grants to address numerous recurring audit issues and make systemic changes. It has assigned knowledgeable staff to this task

and has employed expert contractors to assist in this effort. PRDE has sought to come into compliance with Federal requirements through the implementation of corrective action plans in the areas of grants management, procurement, and payroll, with the ultimate goal of improving educational services to all students in Puerto Rico.

D. The 2004 Agreement primarily addressed systemic problems in PRDE's program administration and management of Federal education funds. Under the 2004 Agreement, Puerto Rico and PRDE developed, and began to implement, several new grants management, administrative, and fiscal management processes. At the conclusion of the 2004 Agreement, the Department determined that these new processes would satisfy requirements in the 2004 Agreement if the processes were implemented fully and effectively, as approved by the Department, throughout Puerto Rico's school system, and if PRDE implemented the 2004 corrective action plans developed in conjunction with the 2004 Agreement (2004 CAPs) in the areas of grants management, payroll, and procurement. Accordingly, on December 17, 2007, Puerto Rico and PRDE entered into a Memorandum of Agreement (MOA) with the Department that governed the implementation, review, and oversight of certain activities that Puerto Rico and PRDE committed to conducting, in compliance with, and in follow up to, certain terms and conditions of the 2004 Agreement. The MOA expired on April 30, 2009. The Department has determined that Puerto Rico and PRDE have substantially satisfied requirements in the 2004 Agreement and have substantially completed the action steps under the MOA in the areas of grants management, payroll, and procurement.

E. As a result of monitoring of PRDE's Federal programs, the Department identified several program areas requiring corrective action by PRDE. The programs under which PRDE receives funds from the Department, and in which the Department determined corrective action was necessary, include Titles I, II, and IV of the Elementary and Secondary Education Act (ESEA), Title IV of the Higher Education Act of 1965, and the Individuals with Disabilities Education Act (IDEA) (covered Federal programs). The Department determined that it will take more than one year for PRDE to completely address the identified program compliance issues under those covered Federal programs and to establish the continued cooperation of other parts of the Puerto Rico government in this effort, such as the Puerto Rico Department of the Treasury (Hacienda) and PRDE's Office of Management and Budget. Therefore, on December 17, 2007, under the authority of section 457 of the General Education Provisions Act (GEPA), the Department entered into a comprehensive, three-year Compliance Agreement (2007 Agreement) with Puerto Rico and PRDE.

F. In addition to programmatic issues, the 2007 Agreement also addresses the progress and effectiveness of the PRDE Internal Audit Office (Audit Office) and the independent Audit Oversight Committee (Audit Committee), both of which are critical in assuring the Department that grant funds it awards to PRDE are being spent in accordance with Federal program requirements. Accordingly, Task 16 of the 2007 Agreement requires the full implementation of PRDE's Audit Office and Audit Committee.

G. The 2007 Agreement is allowing PRDE time to develop and implement significant changes and improvements necessary to address the deficiencies that the Department has identified in PRDE's implementation of the covered Federal programs and to come into full compliance with identified Federal program requirements. PRDE has begun implementing these changes and improvements in its implementation of the covered Federal programs over the past several months. At the end of the three-year period, PRDE must be in full compliance with all applicable program requirements in order to continue to receive Federal education funds under the covered Federal programs.

## II. SPECIAL CONDITIONS

### A. Required Completion of Unfinished MOA Action Steps, Required Adequate Progress in Implementing 2007 Agreement Corrective Action Plans (2007 CAPs) and Related Reporting Requirements

Through the MOA and the 2007 Agreement, Puerto Rico and PRDE, with technical assistance from the Department, agreed to complete integrated, coordinated and systemic solutions to problems they have had over a period of many years in the management of Federal education funds and programs and to address deficiencies that the Department has identified in its implementation of the covered Federal programs. PRDE committed to meeting specific goals and objectives aimed at correcting these problems through (1) action steps in the MOA designed to result in full implementation of the processes initiated by Puerto Rico and PRDE under the 2004 Agreement in the areas of grants management, payroll, and procurement; and (2) action steps in the 2007 CAPs designed to implement the 16 Tasks outlined in the 2007 Agreement to address deficiencies in program implementation under the covered Federal programs, as well as result in the full implementation of PRDE's Audit Office and Audit Committee. It is essential that PRDE complete unfinished MOA action steps and that steady progress continue in PRDE's implementation of all corrective actions under the 2007 CAPs in order for PRDE to meet fully the requirements of both the MOA and the 2007 Agreement.

For purposes of the MOA, as previously stated, the Department has determined that Puerto Rico and PRDE have substantially satisfied requirements in the 2004 Agreement and have substantially completed the action steps under the MOA in the areas of grants management, payroll, and procurement. However, as documented in PRDE's final MOA quarterly report dated May 31, 2009, there remain action steps for which some work is still in progress. Therefore, PRDE is required to submit to the Department no later than December 31, 2009 a report on its completion of all MOA action steps for which work remained incomplete as of the May 31, 2009 quarterly report. In general, the report will include the following: (1) a description of activities completed for each unfinished action step; (2) documentation related to the activities completed for each unfinished action step; and (3) other data or documentation the Department may request in order to verify the completion and full implementation of the unfinished MOA action steps.

For purposes of the 2007 Agreement, as specified in Section IV of the 2007 Agreement, PRDE is required to submit to the Department on a quarterly basis, in English, detailed written descriptions of the extent to which agreed-upon target dates, goals, and measures are being met. The reporting requirements specified in the 2007 Agreement, including any requirements for meetings or conference calls prior to submission by PRDE of written reports, are incorporated herein by reference. In general, each quarterly report will include information such as: (1) a description of activities and progress for each task and its related sub-tasks during the reporting period; (2) the status of each critical action step required to be taken during the reporting period; (3) documentation of critical action step completion for those steps required to be completed during the reporting period (including explanations of delays for all steps not completed that were scheduled to be completed during the period, and expected completion dates for all unimplemented steps); (4) documentation of measures of performance and results; and (5) other data or documentation as specified within the action steps for each task or related sub-task in the 2007 Agreement, and/or discussed in the pre-report meeting or conference call among the Department, Puerto Rico, and PRDE.

The Puerto Rico Secretary of Education or other authorized official of PRDE shall certify to the completeness and accuracy of the reports. The PRDE Internal Audit Office shall verify the accuracy of the reports and audit the implementation of the action steps in the action plans and issue a report to PRDE and the Department within four weeks after PRDE submits its quarterly report to the Department.

#### B. Internal Audit Office and Audit Oversight Committee Status Report

All Department grant recipients are required to provide assurances that grant funds are being spent according to program and legislative requirements. The Department relies on these assurances to approve grant applications. The successful implementation of PRDE's initiative to strengthen the PRDE Audit Office and independent Audit Committee are critical to helping PRDE provide the required assurances.

In the quarterly reports required by these special conditions and the 2007 Agreement, PRDE shall provide the Department updates on the implementation and activities of the Audit Office and the independent Audit Committee. In addition to the regular quarterly reporting specified in Section II.A above, the Department also requires PRDE to provide:

- Copies of Audit Office reports as they are issued.
- A report on accomplishments of the PRDE Audit Office and the Audit Committee every six months.

#### C. Prompt Response to Request for Records

PRDE shall promptly provide the Department or its representatives any requested records and information.

#### D. Program-Specific Conditions

Additional special conditions may be imposed on FFY 2009 grant awards made under one or more Department programs, in addition to the special conditions that are contained in this document. Each such program-specific special condition will be contained in an attachment to the final grant award notification document that is provided by the Department to PRDE.

#### E. ARRA-Specific Conditions

ARRA-specific special conditions were contained in attachments to the final ARRA grant notification documents provided by the Department to PRDE. They remain in effect for PRDE's ARRA grant awards, and the special conditions contained in this document are in addition to the ARRA-specific special conditions.

### III. FAILURE TO COMPLY WITH SPECIAL CONDITIONS:

#### A. Enforcement Action Steps or Additional Conditions

If a plan, report or documentation under Section II above is not provided by PRDE on a timely basis or is not considered acceptable to the Department (i.e., it does not demonstrate that PRDE is making substantial progress toward the full implementation of any or all corrective actions outlined in the 2007 Agreement, or one or more of the 2007 CAPs), the Department may consider it a failure to comply with the special conditions contained in Section II above and, therefore, 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 PRDE has not made substantial progress in meeting program objectives, or has not met program requirements or the special conditions contained in Section II above, the Department may consider not continuing PRDE's grants, taking further enforcement action steps, or applying additional conditions, including:

1. Conditions under which 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 PRDE; or
3. Conditions requiring PRDE to contract (on a competitive basis) with a third party, who must be approved by the Department, to provide the program services, financial management, or both, under one or more PRDE grant awards, in which case the third party would, at a minimum, assist in preparing the vouchers to be submitted to the Department for reimbursement, and would verify their accuracy and legitimacy as appropriate expenditures under one or more grant awards.

B. Reinstatement of “High-Risk” Status Under 34 CFR § 80.12

In the event that PRDE and Puerto Rico fail to continue their efforts toward correcting the systemic problems uncovered by the auditors between 1994 and 2006, and are not making sufficient progress toward meeting the terms of the 2007 Agreement, the Department retains the authority to reinstate the “high-risk” designation that it removed from PRDE and Puerto Rico in 2004. If the Department determines that such reinstatement becomes necessary, additional special 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 PRDE to obtain technical or management assistance, including the designation of a third-party fiduciary to administer all or part of PRDE’s grants from the Department (the third party fiduciary would, at a minimum, assist in preparing the vouchers to be submitted to the Department for reimbursement, and would verify their accuracy and legitimacy as an appropriate expenditure under one or more grant awards); (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.

IV. OTHER TERMS

A. Enforcement

If PRDE fails to meet any of the above FFY 2009 special conditions, the Department is authorized to take other appropriate enforcement action. These terms and conditions do not preclude the Department from taking any otherwise authorized enforcement or other actions at any time.

B. Submission of Reports

All reports that are required to be submitted by PRDE to the Department under these special conditions shall be submitted to:

Susan Benbow  
U.S. Department of Education  
400 Maryland Avenue, SW  
LBJ, Room 7E208  
Washington, DC 20202

C. Reconsideration and Modifications

At any time, PRDE may request reconsideration of one or more of the above special conditions contained in Section II above by contacting the Department and providing in writing the reasons why PRDE believes one or more particular conditions are no longer needed. Additionally, the Department may impose additional special conditions or

modify these special conditions, as appropriate. The Department will remove one or more of the special conditions contained in Section II above at such time as PRDE meets, to the Department's satisfaction, these conditions and other applicable requirements.

Dated (Same as Program Special Conditions, if any, or date of grant award):

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