

Enclosure E

IDEA-Specific Special Conditions and Modifications to the Department-wide Special Conditions

1. Basis for Requiring these Special Conditions and Modifications

Pursuant to IDEA section 616(g) and 34 CFR §80.12, the Office of Special Education Programs (OSEP) is imposing IDEA-Specific Special Conditions and Modifications to the Department-wide Special Conditions related to the outstanding IDEA action steps from the 2007 Memorandum of Agreement (hereafter, “IDEA-Specific Conditions and Modifications”). These IDEA-Specific Conditions and Modifications are imposed on Puerto Rico’s Federal Fiscal Year (FFY) 2009 grant awards under Part B of the IDEA including additional Federal funds available under the American Recovery and Reinvestment Act of 2009 (ARRA).

The December 17, 2007 Memorandum of Agreement (MOA), entered into by the Commonwealth of Puerto Rico and the U.S. Department of Education expired on April 30, 2009. The Department-wide Special Conditions, issued on June 12, 2009, state that PRDE has substantially satisfied the majority of the requirements of the MOA, but that “it is critical that [the Puerto Rico Department of Education (PRDE)] complete its work on all action steps under the MOA that remain unfinished.” As noted in the Department-wide Special Conditions, the Department has reserved the right to make modifications to these special conditions and has the ability to impose additional program-specific special conditions. This document is intended to, and does, impose special conditions and modifications to the Department-wide Special Conditions only as specifically related to Part B of the IDEA. This document is not intended to, and does not, affect, amend, alter or modify any or all Department-wide Special Conditions that are not related to IDEA-specific requirements or that are not specifically referenced herein.

A. Timely Correction of Noncompliance

In order to effectively monitor implementation of Part B of the IDEA, as required by IDEA sections 612(a)(11) and 616, 34 CFR §§300.149 and 300.600, and 20 U.S.C. 1232d(b)(3), each State must adopt and use proper methods to monitor agencies, enforce statutory obligations and ensure the correction of noncompliance identified through monitoring and other means. Under section 3(C), the 2007 MOA with Puerto Rico included the following IDEA-specific action steps: (1) Develop and implement procedures for ensuring that all noncompliance with IDEA requirements is identified and corrected within one year; and (2) Develop and, where appropriate, implement effective sanctions when noncompliance has not been corrected within one year. The quarterly MOA determination letters (issued on June 20, 2008; September 2, 2008; December 30, 2008; and April 13, 2009) identified that PRDE had not demonstrated compliance with the requirements to ensure timely correction of noncompliance, i.e., no later than one year from identification, including, if appropriate, the use of sanctions. Based on OSEP’s review of PRDE’s May 31, 2009 quarterly report under the MOA and the on-site visit conducted the week of June 15-

17, 2009, OSEP concludes that PRDE has not completed the above-referenced action steps.

OSEP notes that Puerto Rico has developed procedures for ensuring that noncompliance with IDEA requirements are identified and corrected within one year but has not fully implemented them. PRDE has developed a Monitoring Manual that includes a component to address sanctions and incentives and has created a monitoring unit within PRDE to address this MOA action step. However, PRDE has not completed its implementation of these processes, did not begin to issue findings of noncompliance until March 2009, and the one-year timeline for correction for those findings runs through March 2010. Therefore, OSEP is imposing IDEA-Specific Conditions and Modifications in order for PRDE to demonstrate that it has properly implemented all IDEA-specific action steps related to timely correction of noncompliance.

B. Equitable Participation

Various Department programs provide for the equitable participation of parentally-placed private school children. Part B of the IDEA contains specific requirements related to the equitable participation of parentally-placed private school children with disabilities at 34 CFR §§300.130-300.144. Under section 6, the 2007 MOA with Puerto Rico included the following action step: Implement any additional corrective actions that the Department determines are necessary based on PRDE's report and the Department's assessment of PRDE's progress in providing equitable services. OSEP's June 20, 2008 response to PRDE's MOA quarterly report for the period ending March 31, 2008 identified specific weaknesses related to the following IDEA-specific requirements for equitable participation: (1) child-find activities, i.e. locating, identifying and evaluating all parentally-placed private school children with disabilities (34 CFR §300.131); (2) timely and meaningful consultation including consultation on proportionate share of funds to be spent for services to parentally-placed private school children with disabilities (34 CFR §§300.133-300.134); and (3) conducting a meeting and developing a services plan for each parentally-placed private school child with disabilities designated to receive services (34 CFR §§300.132(b), 300.137(c) and 300.138(b)).

Based on OSEP's review of PRDE's May 31, 2009 quarterly report under the MOA and the on-site visit conducted the week of June 15-17, 2009, OSEP concludes that PRDE has not demonstrated that it has fully met the following IDEA-specific equitable participation requirements: (1) child-find activities; (2) timely and meaningful consultation including consultation on the proportionate share of Part B funds (including additional Federal funding received under the ARRA) to be spent for services for parentally-placed private school children with disabilities; and (3) conducting a meeting and developing a services plan for each parentally-placed private school child with disabilities designated to receive services. OSEP notes that PRDE has developed the consultation working group and has begun conducting consultation meetings in collaboration with the Equitable Services Unit under the Office of Federal Affairs, but has not demonstrated full compliance with these IDEA-specific requirements. Therefore, OSEP is imposing IDEA-Specific Conditions and

Modifications in order for PRDE to demonstrate that it has properly implemented the action steps related to IDEA-specific requirements for equitable participation of parentally-placed private school children with disabilities.

2. **Nature of these Conditions and Modifications**

A. Timely Correction of Noncompliance

Along with the FFY 2008 APR, due February 1, 2010, PRDE must report on the status of compliance with the requirements for timely correction of identified compliance, that is, report on the status of ensuring correction no later than one year from identification. PRDE also must include updated information with the APR on the status of correction of any noncompliance identified subsequent to the APR reporting period, i.e., noncompliance identified from July 1, 2008 to December 31, 2008, where correction was due between July 1, 2009 and December 31, 2009. In addition, by May 14, 2010, PRDE must submit a final report of updated information regarding timely correction of noncompliance identified from January 1, 2009 to April 30, 2009, where correction was due between January 1, 2010 and April 30, 2010. In its reports, to the extent appropriate, PRDE must include documentation regarding any action taken against entities that did not correct noncompliance within one year of identification including, as appropriate, enforcement actions or sanctions taken against those entities with continuing noncompliance.

In reporting on the timely correction of noncompliance, Puerto Rico must report that it has: (1) corrected all instances of noncompliance (including noncompliance identified through the State's monitoring system, through the State's data system and by the Department); and (2) consistent with OSEP Memo 09-02¹, verified that the PRDE school, agency, or entity with identified noncompliance is correctly implementing the specific regulatory requirements that resulted in the finding of noncompliance.

B. Equitable Participation

PRDE must submit a report on December 31, 2009 demonstrating compliance with the IDEA-specific equitable participation requirements related to: (1) child-find activities, i.e. locating, identifying and evaluating all parentally-placed private school children with disabilities (34 CFR §300.131); (2) timely and meaningful consultation including consultation on proportionate share of funds (including additional Federal funding received under the ARRA) to be spent for services to parentally-placed private school children with disabilities (34 CFR §§300.133-300.134); and (3)

¹ In its October 17, 2008 Memorandum 09-02, "Reporting on Correction of Noncompliance in the Annual Performance Report Required under Sections 616 and 642 of the IDEA," OSEP provided Chief State School Officers and Lead Agency Directors with important information regarding: (1) requirements for identifying noncompliance and reporting on the correction of noncompliance in States' APRs; and (2) how OSEP will, beginning with the FFY 2008 APR, due February 1, 2010, consider the correction of noncompliance in making annual determinations for States pursuant to section 616(d) of the IDEA. It is important for each State to review the guidance in the memorandum, and to raise any questions with your OSEP State Contact. The memorandum may be found at: <http://spp-apr-calendar.rrfcnetwork.org/explorer/view/id/656>.

conducting a meeting and developing a services plan for each parentally-placed private school child with disabilities designated to receive services (34 CFR §300.132(b), 34 CFR §300.137(c) and 34 CFR §300.138(b)).

3. Evidence Necessary for Conditions and Modifications To Be Removed

The Department will remove these IDEA-Specific Special Conditions and Modifications if, at any time prior to the expiration of the grant year, Puerto Rico provides documentation, satisfactory to the Department, that it has fully met the requirements and conditions set forth above related to timely correction of noncompliance and equitable participation.

4. Method of Requesting Reconsideration

The State can write to the Office of Special Education Programs Acting Director, Patricia J. Guard, at the address below, if it wishes the Department to reconsider any aspect of these IDEA-Specific Special Conditions and Modifications. The request must describe in detail the changes to these IDEA-Specific Special Conditions and Modifications sought by the State and the reasons for those requested changes.

5. Submission of Reports

All reports that are required to be submitted by Puerto Rico to the Department under these IDEA-Specific Special Conditions and Modifications should be submitted to:

U.S. Department of Education
Office of Special Education and Rehabilitative Services
Attn: Diana Chang
400 Maryland Ave., SW
Washington, DC 20202-2550