UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF THE DEPUTY SECRETARY

June 21, 2012

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

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

Dear Governor Fortuño and Secretary Moreno:

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) 2012, as well as on all grants previously awarded by the Department to PRDE that are still available for obligation or liquidation on the date of these special conditions. We are imposing the enclosed special conditions based on information gathered during the Department's site visit to Puerto Rico and PRDE from April 19-20, 2012 and our assessment of this information; and our review of certain findings by the Department's Office of the Inspector General (ED-OIG) in the final audit report Control Number ED-OIG/A04J0005 and Final Alert Memorandum, Control Number ED-OIG/L04K0018 concerning personal service contracts and an ED-OIG Hotline notification regarding professional service contracts.

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 entered into a Memorandum of Agreement (MOA) with Puerto Rico and PRDE, which 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. On that date, the Department also entered into a new three-year Compliance Agreement with Puerto Rico and PRDE (2007 Agreement) because the Department determined that 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 and PRDE's Office of Management and Budget.

As a result of the 2004 Agreement and the MOA, Puerto Rico and PRDE developed and implemented several new grants management, administrative, and fiscal management processes. In June 2009, the Department determined that Puerto Rico and PRDE had substantially satisfied requirements in the 2004 Agreement and had substantially completed the action steps under the MOA in the areas of grants management, payroll, and procurement.

However, as you are aware, shortly thereafter, events in Puerto Rico, including a serious economic downturn, a proposed reorganization of PRDE, and layoffs of over 6,000 PRDE employees pursuant to Puerto Rico Law 7 (Law 7),[1] led the Department to have concerns that PRDE would not be able to complete work on corrective actions for uncompleted MOA Tasks, that PRDE would not be able to continue its implementation of some MOA action steps, and that some of the work PRDE had done to greatly improve its administration of Department programs covered in the 2007 Agreement, might not be continued and completed by December 17, 2010.

The Governor and the PRDE Secretary of Education took several immediate actions to provide additional fiscal, administrative and program support to PRDE to address our concerns as documented in an August 21, 2009 letter. Subsequent to our August 2009 letter and our September 2009 site visit, PRDE entered into a Memorandum of Understanding (MOU) with several fiscal and oversight Puerto Rico agencies, including the Puerto Rico Department of Treasury, the Government Development Bank and the Puerto Rico Office of Management and Budget. The MOU provided for a team of fiscal, administrative and compliance staff, referred to as the "Monitoring Committee" to be embedded on site at PRDE to provide day-to-day support. The MOU also provided for an Oversight Committee to monitor and oversee the implementation of the Department's agreements with PRDE. During the January 2010 site visit, the Department worked closely with both the Oversight Committee and the Monitoring Committee and was very encouraged by the focus, commitment, and expertise that both groups bring to addressing PRDE's administrative, grants management and program implementation issues.

The 2007 Agreement contained tasks addressing several programs under which PRDE receives funds from the Department, and in which corrective action was deemed necessary, including 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 addressed the progress and effectiveness of the PRDE Internal Audit Office (IAO) 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. The Department had concluded that successful operation of both the IAO and the Audit Committee would help PRDE provide these needed assurances. Accordingly, Task 16 of the 2007 Agreement required the full implementation of PRDE's IAO and Audit Committee.

By the end of the three-year 2007 Agreement, PRDE was expected to be in full compliance with all applicable program requirements delineated in the 2007 Agreement 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, were to have developed and implemented solutions to PRDE's program performance and implementation problems.

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[1] Law 7 is the Puerto Rico statute requiring a government-wide reduction-in-force and hiring freeze as part of the Commonwealth's fiscal stabilization and restructuring plan in response to a $3.2 billion deficit in its operating budget.

During the week of February 14, 2011, the Department conducted a site visit to Puerto Rico and PRDE to gather further information to determine whether Puerto Rico and PRDE were in compliance with the requirements in the 2007 Agreement. Based on the information received during the site visit, along with other information and reports provided to Department program offices and in the quarterly status reports required by the 2007 Agreement, the Department determined that Puerto Rico and PRDE were now in compliance with the requirements in the 2007 Agreement. There are still remaining issues to be resolved in the IDEA program; however, the Department's Office of Special Education Programs (OSEP) will address PRDE's progress on these requirements through the State Performance Plan and Annual Performance Report processes and, if necessary, through other grant-specific actions.

The results of the 2007 Agreement demonstrate your commitment to ensuring that Federal education program funds are used appropriately and effectively to educate children and students in the Commonwealth of Puerto Rico. The outcome of the 2007 Agreement is evidence that you as key officials of the Commonwealth, and officials of other entities within and outside the government, continue to recognize the need for coordination and cooperation and are working collaboratively to effect the continued 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: Carmen Denton, Director, PRDE Office of Federal Affairs
Rina Gonzalez Gelpi

Enclosure

Commonwealth of Puerto Rico Department of Education
FFY 2012 Departmental Special Conditions

PREAMBLE: These special conditions are imposed on the Puerto Rico Department of Education's (PRDE's) Federal fiscal year (FFY) 2012 grants made available by the U.S. Department of Education (Department) on or after the date of these special conditions, and are also imposed on all grants previously awarded by the Department that are still available for obligation or liquidation by PRDE. The special conditions are imposed to help ensure that Department grant awards are expended by PRDE in accordance with applicable legal requirements, 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, 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 grant 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 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 determined that Puerto Rico and PRDE had substantially satisfied requirements in the 2004 Agreement and had substantially completed the action steps under the MOA in the areas of grants management, payroll, and procurement. PRDE had proposed a reorganization, which would impact how it continues implementation of action steps in the areas of program implementation, monitoring and technical assistance, and schoolwide programs, under the Office of Federal Affairs (OFA) Grants Management section of the MOA. During the Department's May 2010 site visit, PRDE reported that the reorganization would be complete on July 1, 2010 and would result in increased and improved support to schools. The Department continues to monitor the impact of the reorganization.

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 would 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 and Puerto Rico'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 addressed the progress and effectiveness of the PRDE Internal Audit Office (IAO) 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 IAO and Audit Committee.

G. At the end of the three-year period, PRDE was to be in full compliance with all applicable program requirements in order to continue to receive Federal education funds under the covered Federal programs. During the week of February 14, 2011, the Department conducted a site visit to Puerto Rico and PRDE to gather further information to determine whether Puerto Rico and PRDE were in compliance with the requirements in the 2007 Agreement. Based on the information received during the site visit, along with other information and reports provided to Department program offices before and during the visit, and in the quarterly status reports required by the 2007 Agreement, the Department determined that Puerto Rico and PRDE were in compliance with the requirements in the 2007 Agreement. While there were still remaining issues to be resolved in the IDEA program, the Department's Office of Special Education Programs (OSEP) determined it would address PRDE's progress on these requirements through the State Performance Plan and Annual Performance Report (APR) processes and, if necessary, through other grant-specific actions.

While actions taken by Puerto Rico and PRDE during the term of the 2007 Agreement have resulted in significant improvements in PRDE's program performance and implementation, which are fundamental to ensuring PRDE's compliance with Federal program and fiscal management requirements applicable to the Department grants that it receives, PRDE must continue its work on improving the effectiveness and outcomes of its Federal education programs. In support of this objective, the Department will follow up with PRDE on its ongoing improvement efforts and is committed to providing ongoing and robust technical assistance as required. Many of PRDE's ongoing efforts in both programmatic and fiscal administration of Department grants will be reflected and incorporated in future special conditions imposed upon grants awarded by the Department to PRDE. Section II.A. includes two such conditions.

II. SPECIAL CONDITIONS

A. Enhance and Develop a System or Systems to Capture Information on Personal Services Contracts (PSC) and Professional Services Contracts (ProSC) in Order to Better Account for and Reconcile Federal Expenditures

1. The FY 2011 U.S. Department of Education-Office of the Inspector General (ED-OIG) audit, *Puerto Rico Department of Education's Award and Administration of Personal Services Contracts* (ED-OIG/A04J0005) and Alert Memo, *Insufficient Controls for the Puerto Rico Department of Education's Use of Education Funds for Personal Services Contracts* (ED-OIG/L04K0018), have identified weaknesses in PRDE's controls over expenditures for PSCs. The Department is aware that PRDE has attempted to implement an electronic system to capture PSC information known as the Part Time and Irregular Employees System (SEPI). PRDE has indicated previously that it planned to enhance the system or implement a new one that would have the ability to upload supporting documentation such as attendance sheets, signed contracts, etc.

   The SEPI system contains data including contract control numbers, a code that identifies the place where the services are going to be provided, and other useful information. However, the Department is concerned that insufficient information is captured and stored for review, either in SEPI or some other system, to assist PRDE and the Department in properly monitoring and auditing PSCs. As a result of this concern and to address the ED-OIG findings regarding PSCs in the ED-OIG audit and alert memo, by September 30, 2012, PRDE must either enhance the existing SEPI system, or implement another solution if warranted, to capture at a minimum the information listed below and any other information deemed appropriate to facilitate proper accounting for, and reconciliation of, Department grant funds for PSCs:

   a. Contract approval dates.
   b. Obligation number and/or Purchase Order number.
   c. Vendor name, address and vendor ID number.
   d. Name of the PRDE program/unit that requested the services and the name of the PRDE unit that received the services.
   e. Grant award number and account number (in some cases PRDE uses consolidated Federal funds accounts. In those cases, the system should be able to account for each funding source and the amount provided by each).
   f. Registration form numbers, attendance sheet numbers, etc.
   g. Contract amendment numbers.
   h. Amount of hours contracted.
   i. Number of training sessions to be provided or number of teachers or students to be served.
   j. The name of the final approving authority in the Central Procurement Office and Budget Office.
   k. Description of services to be provided.
   l. The expected dates of the deliverables.
   m. Modifications to the original contracts, dates of modification, description of the modification, and names of approving official(s).

n. Names of all persons/contracting officers responsible for monitoring the PSC and the results to be delivered (outcomes).
o. Contract number or Registration Form Number.
p. Award amount.
q. Award date.
r. ED grant award(s) to which the PSC is charged.
s. Name of Person or Location receiving the services (school or office name, location).

2. On March 8, 2011, in response to the ED-OIG audit and alert memo, the Department conducted a conference call with PRDE staff and the Director of the PRDE IAO. During the call, the Department requested that the IAO perform an independent review (report) of the effectiveness and adequacy of the controls and procedures for PSCs and deliver a report to the Department by April 15, 2011. In order to ensure a comprehensive and complete report, the IAO requested, and RMS granted, an extension to deliver the report on May 20, 2011. The IAO requested an additional small extension, and the report was delivered to ED on May 23, 2011. The report, a copy of which is attached to these special conditions, included a set of recommendations starting on page 10 of the report for improving the effectiveness and adequacy of the controls and procedures for PSCs. In addition to the action that PRDE must take under section II.A.1 above, by September 30, 2012, PRDE must provide evidence to ED that it has implemented the recommendations listed in the IAO report.

   During the April 19-20, 2012 site visit to PRDE, ED was briefed on the progress made on implementing the required changes. PRDE stated during the briefing that it was on schedule to enhance the existing SEPI system to capture at a minimum the information listed in section II.A.1 above and any other information deemed appropriate to facilitate proper accounting for, and reconciliation of, Department grant funds for PSCs.

3. ED-OIG also recently forwarded to the Department's Risk Management Service (RMS) a complaint that it received regarding possible control weaknesses concerning Professional Services contracts (ProSCs) in PRDE's Institute for the Teachers' Professional Development. The Department is aware that PRDE does have a centralized registry for ProSCs, required by the Puerto Rico Comptroller's office. However, it is unclear whether or not the registry is adequate to capture sufficient information on ProSCs, whether the data is maintained in electronic or another format, or whether the data elements in the registry are those necessary to ensure sufficient controls and accountability for Department grant funds used for ProSCs.

   As a result of these concerns, by September 30, 2012, PRDE must either enhance the existing centralized registry for ProSCs as necessary, or

implement another solution if warranted, to ensure that all data required by the Puerto Rico Comptroller's office is being captured, as well as any other information deemed appropriate to facilitate proper accounting for, and reconciliation of, Department grant funds for ProSCs. PRDE may utilize a set of data elements similar to those listed in Section II.A.1. PRDE may elect to develop separate systems or an integrated single system to capture all contracts or registration forms related to both personal and professional services and all necessary data, including the data elements listed above in Section II.A.1, and must make this information available to PRDE's IAO for bi-annual inspection and audit, as well as to ED on an as requested basis.

During the April 19-20, 2012 site visit to PRDE, ED was briefed on the progress made on implementing the required changes. PRDE stated during the briefing that it was on schedule to enhance the existing centralized registry for ProSCs as necessary, and to implement other changes as necessary, to ensure that all data required by the Puerto Rico Comptroller's office is being captured, as well as any other information deemed appropriate to facilitate proper accounting for, and reconciliation of, Department grant funds for ProSCs.

B. Continued Reporting on Implementation of Activities under the MOA and the 2007 Agreement

1. MOA.

a. Procurement Strategies for Special Education Related Purchases:
PRDE reported on the implementation of strategies to identify requisitions for regional contracts and the implementation of PCards (purchasing cards) at the Service Centers with its FFY 2010 APR submitted on February 1, 2012. Since PRDE continues to be in the beginning phases of implementing these new procurement strategies, the Department is requiring PRDE to continue reporting on: (1) the implementation of its strategy to identify those items in Special Education requisitions that can be included as part of the regional contracts already in place and which items should be included in new contracts; and (2) implementation of the use of PCards (purchasing cards) for special education related purchases initiated at the Special Education Service Centers. PRDE must submit this information with the FFY 2011 APR, due February 1, 2013.

b. Special Education – Timely Correction of Noncompliance:
The Commonwealth's FFY 2010 reported data for Indicator B15 addressing the timely correction of noncompliance are 88.5%. The FFY 2011 Special Conditions also required that PRDE report on correction of noncompliance for the period from July 1, 2011 through December 31, 2011. The Commonwealth reported that all findings of noncompliance identified through the State Complaint process in FFY 2010 were corrected within one year of

identification and that no findings based on on-site monitoring were issued in the first half of FFY 2010, but did not report on findings made through due process hearing decisions in the first half of FFY 2010. In addition, as noted in OSEP's February 8, 2012 Continuous Improvement Visit (CIV) letter, the Commonwealth was not making findings of noncompliance when data from its statewide database or information from a self-assessment showed noncompliance, if the district or region with noncompliance was not subject to an on-site monitoring visit.

PRDE must report on the status of compliance with the requirements for timely correction of previously-identified noncompliance, that is, report on the status of ensuring correction no later than one year from identification. 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 Commonwealth's monitoring system, through the Commonwealth's data system and by the Department); and (2) consistent with Memo 09-02[1] issued by the Department's Office of Special Education Programs (OSEP), 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. In addition to reporting on data for FFY 2011 (for the period from July 1, 2011 through June 30, 2012), with the FFY 2011 APR, due February 1, 2013, PRDE must report separately on correction of noncompliance for: (1) the period from January 1, 2012 through June 30, 2012; and (2) for the period from July 1, 2012 through December 31, 2012. PRDE should continue to report this information using the worksheet for Indicator B15 with the APR documentation. In addition, those sections of the APR response table addressing timely correction under Indicator B15 are incorporated herein by reference.

2. 2007 Agreement.

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[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 important information regarding: (1) requirements for identifying noncompliance and reporting on the correction of noncompliance in States' APRs; and (2) how OSEP would, 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 PRDE to review the guidance in the memorandum, and to raise any questions with your OSEP State Contact. The memorandum is located at: http://therightidea.tadnet.org/assets/497

a. Special Education and Related Services –The June 20, 2011 Department-wide Special Conditions noted that certain specific compliance issues previously addressed in the 2007 Agreement would be addressed through the APR process and would require additional reporting consistent with that process. Through that process the Commonwealth reported the following data and information:

i. *Requirement*: PRDE develops IEPs for all children transitioning from Part C to Part B of IDEA, and provides special education and related services by each child's third birthday. *Data*: The Commonwealth's FFY 2010 reported data for Indicator B12 are 75.0%. The Commonwealth also reported that for the period from July 1, 2011 through December 31, 2011, of 615 children with disabilities served under Part C that were referred to Part B (including 11 children exited and 25 who were determined ineligible), 458 had IEPs in place and implemented by their third birthday, with 68 additional children being served after their third birthday and 52 children who had not had their third birthday as of April 13, 2012. The Commonwealth also reported that there were no children pending status verification as of April 13, 2012.

ii. *Requirement*: PRDE completes all initial evaluations within required timelines and eliminates backlogs, if any, of students with disabilities needing evaluations to determine eligibility for special education and related services who have not been evaluated (this is the initial evaluation subset of the action item related to both initial evaluations and reevaluations). *Data*: The Commonwealth's FFY 2010 reported data for Indicator B11 are 92.02%. The Commonwealth also reported that for the period from July 1, 2011 through December 31, 2011, that 9,765 of 9,919 (129 adjusted for exiting) children with parental consent for initial evaluations were evaluated within the Commonwealth-established timeline. The Commonwealth also reported that there were still 25 children pending status verification as of April 13, 2012.

iii. *Requirement*: PRDE completes all due process hearings, as set forth under 34 CFR §300.515, within the required timelines. *Data*: The Commonwealth's FFY 2010 reported data for indicator B17, as of January 31, 2012, are 77.7%.

iv. *Requirement*: PRDE completes all reevaluations within required timelines and eliminates backlogs, if any, of students with disabilities needing evaluations to determine eligibility for special education and related services who have not been evaluated (this is the reevaluation subset of the action item related to both initial evaluations and reevaluations). *Data*: PRDE reported the required information for

FFY 2010, reporting that 98.08%, or 23,039 of the 23,489 requests for reevaluations, were completed, and that 450 remained pending as of February 1, 2012.

v. *Requirement*: PRDE provides children served under the IDEA with needed assistive technology devices and services in a timely manner, and eliminates backlogs, if any, of students needing such devices and services who have not received them. *Data*: PRDE reported that: 99.1%, or 1,354 of the 1,365 requests for evaluations were completed, and that 11 remained pending as of February 1, 2012; 80.6% of the 1,141 requests for devices and services were confirmed as purchased, and that 43.7% of the completed purchases were verified as delivered; and, as of February 1, 2012, there were 221 pending purchase requests and 496 pending deliveries.

vi. *Requirement*: PRDE resolves financial management issues, including addressing and resolving the use-of-funds requirements related to transportation contracts; *Data*: PRDE reported on the activity involving use of funds for special education transportation contracts; financial accounting and reporting; and procurement strategies for special education and related services, specifically as it relates to global contracts, open market purchases, and purchasing cards.

The Department will continue to utilize reporting methods, consistent with the APR process, to address these areas. For items i (early childhood transition) and ii (initial evaluation), above, the Commonwealth must report in the FFY 2011 APR, due February 1, 2013, data for FFY 2011 (July 1, 2011-June 30, 2012). For item iii (timely due process hearing decisions), the State must, as part of its reporting under IDEA section 618, report data on the timeliness of decisions in impartial due process hearings for FFY 2011 (July 1, 2011-June 30, 2012). In addition, for each of the items previously addressed in the 2007 Agreement (early childhood transition, initial evaluations, timely due process hearing decisions reevaluations, assistive technology evaluations, assistive technology services and/or equipment, and financial management issues, including addressing and resolving the use of funds requirements related to transportation contracts), the Commonwealth must, with the FFY 2011 APR, due February 1, 2013, report data for: (1) the period from January 1, 2012 through June 30, 2012; and (2) for the period from July 1, 2012 through December 31, 2012. In addition, those sections of the APR response table addressing indicators B11, B12, B15 and B17 are incorporated herein by reference.

C. Internal Audit Office and Audit Oversight Committee Status Reports

1. The IAO shall provide to ED:

- Copies of IAO reports as they are issued.

- A report on accomplishments of the PRDE IAO and the Audit Committee every six months.

D. Prompt Response to Request for Records

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

E. Program-Specific Conditions

Additional special conditions may be imposed on FFY 2012 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.

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, 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 maintain the improvements that they have instituted under the 2004 Agreement, the MOA, and 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 2012 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. 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.

C. Submission of Reports

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

Lorena Amaya-Dickerson
Risk Management Service, Management Improvement Team
Office of Deputy Secretary
U.S. Department of Education

550 12th Street, SW
PCP, Room 7092
Washington, DC 20202

D. 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: (Insert date of program special conditions)