



**UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF THE DEPUTY SECRETARY**

June 24, 2013

Honorable Alejandro García Padilla
Governor
Commonwealth of Puerto Rico
PO Box 9020082
San Juan, Puerto Rico 00902-0082

Honorable Rafael Román Meléndez
Secretary of Education
Puerto Rico Department of Education
Post Office Box 190759
San Juan, Puerto Rico 00919-0759

Dear Governor García Padilla and Secretary Román Meléndez:

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) 2013, 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 in September 2012 and March 2013 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.

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.

On July 16, 2009, the Department issued a determination concluding 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, but that further work remained to be performed on certain action steps under the MOA. On March 11, 2010, the Department issued a letter that addressed further follow-up work that Puerto Rico and PRDE needed to perform concerning certain MOA action steps and provided an assessment of the status of Puerto Rico's and PRDE's progress on the 2007 Agreement, in light of the then-impending December 2010 deadline for completion of work under the 2007 Agreement. And on June 14, 2011, the Department issued a determination concluding that Puerto Rico and PRDE were now in compliance with the requirements in the 2007 Agreement, although some issues remained to be resolved in the IDEA program and would be addressed through the State Performance Plan and Annual Performance Report processes.

Despite progress achieved over the years, the Department is concerned about Puerto Rico's and PRDE's efforts and ability to sustain improvements that they achieved through the 2004 and 2007 Agreements and the MOA, as described in Section II of the enclosed Department-wide special conditions.

Specifically, with respect to PRDE's procedures and controls to effectively carry out aspects of its general grants management process, the Department is concerned by the lack of timely approval of work plans and the associated risk involved. It is critical that work plans are approved in a timely manner to ensure full implementation of Federally funded programs, that Federal funds are properly drawn down from the appropriate Federal account, and that funds are properly obligated and liquidated.

The Department has observed substantial progress in the procurement process as demonstrated in the enhancements made to the Part Time and Irregular Employees System (SEPI) and the centralized registry for Professional Service Contracts (ProSCs). Considerable work remains to be addressed to ensure transparency and internal accountability within the procurement practices.

The 2007 Agreement addressed the progress and effectiveness of the full implementation of the PRDE Internal Audit Office (IAO) and the Audit Committee. The IAO and the Audit Committee were considered crucial to correct deficiencies in PRDE's internal audit practices, working in an independent, objective and transparent manner. In the June 24, 2011 determination letter concerning the 2007 Agreement, the Department acknowledged a report from PRDE about a new law (Law 42-2010) creating the Puerto Rico Office of the Inspector General (PROIG), which would replace the functions of the Audit Committee. The PROIG would oversee all auditors in Puerto Rico's agencies and result in additional resources for PRDE's IAO and increased independence. In mid-May 2013, the Department was informed of pending legislation to repeal Law 42-2010. Although the bill has not been enacted, PROIG has begun a transition of its operations. The Department is concerned about ensuring that PRDE achieves timely coordination of, and planning for, continuous implementation of audit activities; that it maintains the appropriate level of independence, objectivity and transparency; and that it mitigates the overall disruption of audit operations.

Finally, as noted above, upon the Department's June 11, 2011 determination that Puerto Rico and PRDE were now in compliance with the requirements of the 2007 Agreement, there were remaining issues to be resolved in the Individuals with Disabilities Education Act (IDEA) program. The Department's Office of Special Education Programs (OSEP) has been monitoring PRDE's progress on these requirements through the State Performance Plan and Annual Performance Report processes. Based on substantial progress the Department has removed some

action items from this year's special conditions. However, there are still remaining actions that need to be addressed as specified under Section II.D.1 and II.D.2 of the special conditions. OSEP will continue to monitor progress utilizing reporting methods consistent with the Annual Performance Report and, if necessary, through other grant-specific actions.

PRDE has demonstrated 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 results were evident when, in 2011, the Department determined that Puerto Rico and PRDE were in compliance with the requirements in the 2007 Agreement, with some exceptions. However, as previously stated, the Department has serious concerns that must be addressed as required in the attached special conditions. We encourage you to continue to promote high levels of accountability and sustain efforts supporting proper management and administration of Department funds while balancing change, in order to create systemic improvements 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: Ramón L. de Azúa, Director of the PRDE Office of Federal Affairs
Manolo Nuñez, Governors Advisor on Educational Matters
Glanidsa Castro, Audit Manager, PROIG-IAO

Enclosure

Commonwealth of Puerto Rico Department of Education
FFY 2013 Departmental Special Conditions

PREAMBLE: These special conditions are imposed on the Puerto Rico Department of Education's (PRDE's) Federal fiscal year (FFY) 2013 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 on the date of these special conditions. 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 2002 special conditions, as well as all special conditions imposed by the Department in the years since, and in working with the Department, first in conjunction with its Cooperative Audit Resolution and Oversight Initiative (CAROI) and continuing with its Risk Management Service and various program offices, 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.

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 were considered to be 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 required 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 on June 14, 2011 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 continue to be reflected and incorporated in special conditions imposed upon grants awarded by the Department to PRDE.

Based on (i) information gathered during the Department's site visit to Puerto Rico and PRDE in September 2012 and March 2013 and our assessment of this information; (ii) 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 (iii) an ED-OIG Hotline notification regarding professional service contracts, the Department is imposing the following special 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), 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, because of concerns that insufficient information was being captured and stored for review, either in SEPI or some other system, to assist PRDE and the Department in properly monitoring and auditing PSCs, and to address the ED-OIG findings regarding PSCs in the ED-OIG audit and alert memo, the Department required PRDE, by September 30, 2012, to 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).

During the September 2012 site visit to PRDE, the Department observed a live, step-by-step demonstration of the capacity and functionality of the SEPI system and concluded that PRDE has enhanced the system to capture the information provided under section II.A.1, except for section II.A.1.m – modifications of the original contracts, dates of modification, description of the modification, and names of approving official(s) – because the system was in a testing phase.

The Department recognizes the progress that PRDE has made to enhance the system; however, the overall internal control system over the administration of PSCs continues to need improvement. PRDE must continue to enhance the system as necessary to facilitate proper accounting for, and reconciliation of, Department grant funds for PSCs and to ensure proper implementation of policies and procedures for effective implementation of the process.

By December 6, 2013 PRDE must provide evidence to the Department that the SEPI system is able to capture, at a minimum, all of the information provided under section II.A.1.

In addition, by March 31, 2014 PRDE must submit evidence to the Department that policies and procedures governing PSCs include the enhancements that PRDE has already made to the SEPI system.

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 included 20 recommendations for improving the effectiveness and adequacy of the controls and procedures for PSCs. In addition to the action that PRDE was required to take under section II.A.1 above, the Department required that PRDE provide evidence by September 30, 2012 that it has implemented the recommendations listed in the IAO report.

During the September 2012 site visit to PRDE, PRDE provided evidence of the progress made under the 20 recommendations issued by the IAO. The Department determined that of the 20 recommendations, PRDE has fully implemented 11, partially completed six, and not yet completed three.

In January, 2013, the IAO provided an updated progress report of the corrective actions taken by PRDE. The IAO report shows that PRDE has not made any progress since the September 2012 site visit. The IAO progress report, a copy of which is attached to these special conditions, provides the corrective action steps necessary for PRDE to complete the remaining recommendations.

In addition to the actions that PRDE must take under section II.A.1, by March 31, 2014, PRDE must provide evidence to ED that it has fully completed and implemented the remaining nine recommendations issued by the IAO.

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. Given the concerns raised by the complaint, RMS required the IAO to conduct a review

to audit internal controls governing ProSCs and submit findings and recommendations to the Department by December 1, 2011. The review disclosed issues with the internal control environment within the Institute; and control weaknesses over the professional development services procurement award and contract processes. The report included 29 recommendations for improving the effectiveness and adequacy of the controls and procedures for ProSCs.

As a result of these concerns, the Department required that, 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 could utilize a set of data elements similar to those listed in Section II.A.1. Further, PRDE could 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 the Department on an as requested basis.

During the September 2012 site visit to PRDE, the Department observed a live, step-by-step execution of the centralized registry for the ProSC process. The live demonstration provided evidence of the process, using the SIFDE system, from contract award through contract closeout. The enhancements encompass recommendations made by the IAO through inspections and audits. PRDE provided evidence of the progress made under the 29 recommendations issued by the IAO. The Department determined that of the 29 recommendations, PRDE has fully implemented 22, partially completed four, and not completed three.

In January, 2013, the IAO provided an updated progress report of the status of the corrective actions taken by PRDE. The IAO report shows that PRDE has partially completed the three incomplete recommendations. The IAO progress report, a copy of which is attached to these special conditions, provides the corrective action steps necessary for PRDE to complete the remaining recommendations.

By March 31, 2014 PRDE must provide evidence to the Department that it has fully completed and implemented the remaining seven recommendations issued by the IAO.

B. Compliance with Grants Management System

Based on the September 2012 site visit to PRDE and drawdown monitoring reports, the Department has determined that PRDE is not allocating grant funds in a timely and effective manner. During the March 2013 Technical Assistance visit to PRDE, the Department met with PRDE leadership to discuss proper grants management, which includes an effective pre-award planning process and an effective grant application, evaluation, and approval process.

Evidence shows that internal controls processes developed under the 2004 Agreement Task 1.0, "Improving PRDE General Grants Management," and implemented under the MOA, are 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.

By December 6, 2013, PRDE must submit a corrective action plan to address the deficiencies in the grants management system – specifically, PRDE must strengthen its pre-award planning process and its application, evaluation and approval process to ensure that implementation of Federally funded programs can commence upon receipt of grant award notifications, which occurs in July of each year, and that funds can be allocated in a timely and effective manner.

C. Compliance with Regulations Enforcement

PRDE must ensure that it complies with the regulations enforced by the Department's Office for Civil Rights (OCR) and cooperates with OCR's investigations including: responding to requests for data in a timely manner; addressing compliance concerns cited by OCR in a timely manner; and submitting complete and timely monitoring reports. Specifically, PRDE must respond to data requests, including scheduling staff interviews, within 15 days of receiving OCR's request. PRDE will also take the appropriate actions specified by OCR to address all compliance concerns cited by OCR and resulting from a complaint or compliance review investigation, within the timeframes specified by OCR. PRDE will also provide documentation in its monitoring reports demonstrating that actions have been taken within the timeframes specified by OCR.

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

1. MOA.

a. Procurement Strategies for Special Education Related Purchases:

In the FFY 2011 APR, submitted on February 15, 2013, PRDE reported on the implementation of its written procurement procedures in order to improve its financial management processes. Specifically, PRDE reported that the procurement strategy in its written procedures is composed of three distinct and manageable options, which include: (1) Global Contracts; (2) Open Market Procurement; and (3) Purchasing Cards (Pcard). PRDE further reported that its successful implementation of these strategies has contributed to reducing the overall procurement cycle. Based upon PRDE's development and implementation of written procurement procedures, PRDE has met the requirements of this FFY 2012 action item and the Department is not including this action item in the FFY 2013 special conditions. PRDE must continue to monitor implementation of the procurement procedures to ensure compliance.

b. Special Education – Timely Correction of Noncompliance:

PRDE's FFY 2011 reported data for Indicator B15 addressing the timely correction of noncompliance are 100%. PRDE reported in its FFY 2011 APR that it corrected all 81 findings of noncompliance identified in FFY 2010 in a timely manner. The FFY 2012 Special Conditions also required that PRDE report on correction of noncompliance for: 1) the period from January 1, 2012 through June 30, 2012; and (2) from July 1, 2012 through December 31, 2012. PRDE reported that seven of eight findings of noncompliance identified in the first half of FFY 2011 (July 1, 2011 through December 31, 2011)¹ were corrected within one year of identification. For the one remaining finding, the San Juan region started the sanction process and was referred to PRDE's Legal Division. PRDE also reported that all findings of noncompliance identified through the State Complaint process in FFY 2011 were already corrected within one year of identification. PRDE must continue to implement its procedures to ensure the timely correction of noncompliance, and must, in its FFY 2012 APR, due February 2014, report on the timely correction of findings identified in FFY 2011 (July 1, 2011 through June 30, 2012). PRDE must also report, in its FFY 2012 APR, on the status of the outstanding finding of noncompliance identified in FFY 2009.

2. 2007 Agreement.

¹PRDE explained that reporting on the correction of noncompliance identified between July 1, 2011 and December 31, 2011 complies with the Special Conditions requirement that it report on correction for the periods of: 1) the period from January 1, 2012 through June 30, 2012; and (2) from July 1, 2012 through December 31, 2012.

a. Special Education and Related Services –The June 21, 2012 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 PRDE reported the following data and information:

- i. *Requirement:* PRDE develops individualized education programs (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:* PRDE's FFY 2011 reported data for Indicator B12 are 91.2%. PRDE also reported that for the period from July 1, 2012 through December 31, 2012, of 533 children with disabilities served under Part C that were referred to Part B (including two children exited and 39 who were determined ineligible), 390 had IEPs in place and implemented by their third birthday, with 89 additional children being served after their third birthday and 4 children who had not had their third birthday as of May 17, 2013. PRDE also reported that there were nine children pending status verification as of May 17, 2013.
- 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:* PRDE's FFY 2011 reported data for Indicator B11 are 89.2%. PRDE also reported that, for the period from July 1, 2012 through December 31, 2012, 8,061 of 8,785 (112 adjusted for exiting) children with parental consent for initial evaluations were evaluated within the PRDE-established timeline. PRDE also reported that there were no children pending status verification as of May 17, 2013.
- iii. *Requirement:* PRDE completes all due process hearings, as set forth under 34 CFR §300.515, within the required timelines. *Data:* PRDE's FFY 2011 reported data under section 618 of the IDEA are 82.0%. PRDE reported that, for the period of July 1, 2012 through December 31, 2012, 80.9% of 509 hearing requests were resolved within the 45-day timeline or a timeline that was properly extended by the hearing officer at the request of either party.
- 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 2011, reporting that 100% of 18,412 requests for reevaluations were completed as of February 15, 2013. PRDE also reported that for the period from July 1, 2012 through December 31, 2012, 100% of 8,438 requests for reevaluations were completed as of May 17, 2013. Based on PRDE's very substantial progress in conducting reevaluations in a timely manner (100% for FFY 2011 and 100% for the first half of FFY 2012), PRDE has met the requirements of this FFY 2012 action item and the Department is not including this action item in the FFY 2013 special conditions.

- 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:*
 - a. PRDE reported that, as of May 17, 2013, for evaluations for FFY 2010, 100% of 1,363 requests were completed; for FFY 2011 100% of 1,491 requests were completed; and for the period from July 1, 2012 through December 31, 2012, 100% of 692 requests were completed. Based on PRDE's very substantial progress in conducting evaluations for assistive technology in a timely manner (100% for FFY 2010, 100% for FFY 2011, and 100% for the first half of FFY 2012), PRDE has met the requirements of this FFY 2012 action item and the Department is not including this action item in the FFY 2013 special conditions.
 - b. PRDE reported that, as of May 17, 2013, for devices and services for FFY 2008, 100% of 897 were delivered; for FFY 2009, 100% of 759 were delivered; for FFY 2010, 98.4% of 1,089 were delivered, and 17 remained pending; for FFY 2011, 86.4% of 1,226 were delivered, and 148 remained pending; and for the period from July 1, 2012 through December 31, 2012, 27.7% of 602 were delivered, and 215 remained pending as of May 17, 2013.
- 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, PRDE must report in the FFY 2012 APR, due February 2014, data for FFY 2012 (July 1, 2012 through June 30, 2013). For item iii (timely due process hearing decisions), PRDE must, as part of its reporting under IDEA section 618, report data on the timeliness of decisions in impartial due process hearings for FFY 2012 (July 1, 2012 through June 30, 2013). In addition, for each of the items previously addressed in the 2007 Agreement (early childhood transition, initial evaluations, timely due process hearing decisions, the delivery of assistive technology devices and/or services, and financial management issues, including addressing and resolving the use of funds requirements related to transportation contracts), PRDE must, with the FFY 2012 APR, due February 2014, report data for: (1) the period from July 1, 2012 through June 30, 2013; and (2) the period from July 1, 2013 through December 31, 2013. In addition, those sections of the FFY 2011 APR response table addressing indicators B11 and B12 and reporting under IDEA section 618 are incorporated herein by reference.

E. Internal Audit Office and Audit Oversight Committee

Law 42 of 2010 – Law of the Office of Inspector General of the Government of Puerto Rico (PROIG) dated April 16, 2010 – establishes that the IAO will report to the PROIG. Previously, the IAO responded operationally and administratively to the Audit Committee and the Secretary of Education. However, current pending legislation exists to repeal Law 42 and, although this legislation has not been enacted, PROIG has begun making changes to its operations.

The 2007 Agreement required the full implementation of PRDE's IAO and Audit Committee. PRDE must ensure progress and effectiveness of the IAO.

By September 30, 2013, PRDE must submit to the Department a corrective action plan to address the structure of the IAO, to include the following:

1. Organizational alignment and reporting Structure that provides assurances of independence, objectivity and transparency of IAO operations.
2. Office charter that clearly delineates duties and responsibilities.
3. Budget source to support and carry out functions, including risk assessments, audits, investigations and other needs as required.
4. Staffing resources to adequately conduct duties and responsibilities.

In addition, PRDE must submit a work plan that addresses management implementation and follow up on outstanding PROIG evaluations, audits and investigations, including:

1. Reports on in-progress audits and investigations;
2. Summary reports detailing status of the implementation and execution of recommendations issued by the PROIG, specifically concerning:
 - a. Personal Service Contracts (PSCs);
 - b. Professional Service Contracts (ProSCs);
 - c. Training Centre of Mathematics Ponce's Education Region, Coamo's Center (CAM-4 Coamo's Center);
 - d. IAO Independent evaluation of the 2007 Agreement (MOA) and Compliance Agreement (CA) implementation report issued to PRDE on May 6, 2013.

The IAO must submit all summary reports to the Department in the English language and must be submitted on a quarterly basis, no later than thirty days after each quarterly period. Therefore, quarterly reports must be submitted to the Department as follows:

Quarterly Period	Report Due
Q1-October, November, December	January 31
Q2-January, February, March	May 1
Q3-April, May, June	July 31
Q4-July, August, September	October 31

F. Prompt Response to Request for Records

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

G. Program-Specific Conditions

Additional special conditions may be imposed on FFY 2013 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 2013 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)