Enclosure D

UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF THE DEPUTY SECRETARY
RISK MANAGEMENT SERVICE

June 27, 2014

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) 2014, 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 PRDE in May 2014 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 Individuals with Disabilities Education Act (IDEA) program and would be addressed through the State Performance Plan and Annual Performance Report processes.

The Department recognizes the progress PRDE has made in strengthening the internal control environment over the administration of personal service contracts (PSCs) and professional service contracts (ProSCs). Proper oversight of implementation practices of policies and procedures will help reduce potential risk. However, the special conditions require the Department to continue monitoring sustainable efforts practices within the procurement area related to PSCs and ProSCs.

PRDE has strengthened its grants management operations to ensure that Federally funded programs can commence upon receipt of grant award notifications. However, the special conditions indicate that the Department will continue monitoring PRDE’s capacity to implement sustainable efforts in the area of grants management.

In addition, the Department strongly recommends that PRDE develop retention strategies to manage turnover of personnel at the central level to ensure continuity and reduce disruption of operations. The Department is concerned with sustainability and continuity of efforts as a result of employee turnover in the organizational structure. A recent example is the area of Career and Technical Education, where the turnover of staff has severely jeopardized program performance and implementation, which are fundamental to ensuring PRDE’s compliance with Federal program requirements.

In mid-May 2013, the Department was informed of pending legislation to repeal Puerto Rico Office of Inspector General (PROIG), Law 42-2010, which raised concerns regarding disruption of audit operations. On July 1, 2013, Law 62-2013 was enacted. The law disbanded PROIG and charged the Puerto Rico Office of Management and Budget with operational oversight of functions previously held by PROIG. In September 2013, the Department was informed that the Puerto Rico Governor via Executive Order 2013-067, created the Puerto Rico Department of Education Audit Oversight Committee (AOC or Committee). The Department is pleased to learn that the Puerto Rico Government recognizes the importance of the creation of an Audit Oversight Committee that will ensure transparency of the administrative and fiscal operations of the PRDE Internal Audit Office. The Department expects the full commitment of the Governor’s Office in ensuring the Executive Order is implemented as intended, given that this transparency and oversight are critical to proper and effective management of PRDE’s grant funds from the Department.

Finally, as noted above, upon the Department’s June 11, 2011 determination that Puerto Rico and PRDE were 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. In its June 23, 2014 APR determination letter and response table, OSEP determined that Puerto Rico needs assistance in implementing the requirements of Part B of the IDEA. Based on substantial progress the Department has removed one action item from this year’s special conditions. However, there are still remaining actions that need to be addressed as specified under Section II.D.3 and II.D.6 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, and these FFY 2014 Department-wide Special Conditions.

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.
Significant progress to address deficiencies stated in the FFY 2013 special conditions was evident during the May 2014 site visit to PRDE. However, PRDE must continue to improve overall grants management practices and proper oversight of operations as stated in the attached special conditions. The Department will continue to closely monitor operations of PRDE’s Federal grant funds to ensure that changes are sustainable. 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,

[Signature]

cc: Ramón L. de Azúa, Director of the PRDE Office of Federal Affairs
Manolo Nuñez, Governors Advisor on Educational Matters
Diana Morales, PRDE Internal Audit Office Director

Enclosure
Commonwealth of Puerto Rico Department of Education
FFY 2014 Departmental Special Conditions

PREAMBLE: These special conditions are imposed on the Puerto Rico Department of Education’s (PRDE’s) Federal fiscal year (FFY) 2014 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 May 2014 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, and other documents.

The SEPI is the system used to manage the process of contracting for irregular and part-time personnel services in PRDE. The 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 May 2014 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 this section II.A.1. PRDE also provided evidence of updated policies and procedures that govern the enhancement of the SEPI system. Further, PRDE has developed a web-based application system called RECLUTA, which is a system designed to standardize the employment application process for PSCs. In addition, PRDE has created a fully operational contract unit. This unit is responsible for the implementation of policies and procedures, technical assistance and for monitoring compliance of PSCs. This work represents PRDE’s commitment to strengthen the overall internal control environment over the administration of PSC contracts. The Department will continue to monitor proper implementation and sustainable efforts through future site visits and in coordination with the IAO.

2. On May 23, 2011, in response to a request from the Department, the IAO delivered a report to ED containing 20 recommendations for improving the effectiveness and adequacy of the controls and procedures for PSCs.
Prior to the May 2014 site visit to PRDE, the Department had determined that PRDE had fully implemented 11 of the recommendations, partially completed six, and not yet completed three. During the May 2014 site visit, PRDE provided evidence of progress made under the nine recommendations that it had not yet fully implemented. Through a live demonstration, the Department validated the implementation of the recommendations and concluded that all have been implemented except for recommendation # 11.

By January 30, 2015, PRDE must provide evidence to ED that it has fully completed and implemented recommendation # 11.

3. In the FFY 2013 special conditions, we noted that ED-OIG had 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.

Prior to the May 2014 site visit, the Department had concluded that PRDE had fully implemented 22 of the 29 recommendations. During the May 2014 site visit
visit, PRDE provided evidence of the progress made under the remaining seven recommendations issued by the IAO. The Department determined that PRDE has made further progress, fully implementing another four recommendations. PRDE presented a step-by-step execution of a new system developed as part of the IAO recommendations. The system called “Electronic Platform for Professional Development” captures the registration process of professional development activities. Although, progress has been made, three recommendations remain to be fully implemented.

By January 30, 2015 PRDE must provide evidence to the Department that it has fully completed and implemented recommendations # 5, 6 and 26.

B. Compliance with Grants Management System

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

During the May 2014 site visit to PRDE, PRDE provided an overview of its grants management operations. PRDE provided evidence of steps taken to strengthen its pre-award planning process and its application, evaluation and approval process. Although PRDE has taken corrective measures to ensure that implementation of Federally funded programs can commence upon receipt of grant award notifications, the Department remains concerned with PRDE’s capacity to implement sustainable change in this area. Therefore, the Department will continue to closely monitor efficiency and effectiveness in the administration of Federal program funds through information gathering by the Department’s program offices, future site visits and collaboration with the IAO.

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.

**Special Education – Timely Correction of Noncompliance:**

PRDE’s FFY 2012 reported data for Indicator B15 addressing the timely correction of noncompliance are 100%. PRDE reported in its FFY 2012 APR that it corrected all 80 findings of noncompliance identified in FFY 2011 in a timely manner. PRDE reported that the one remaining finding of noncompliance identified in FFY 2009 was corrected. PRDE also reported that all findings of noncompliance identified through the State Complaint process in FFY 2012 were corrected within one year of identification. In addition, in its FFY 2011 APR, PRDE reported that 100% of findings of noncompliance identified in FFY 2010 were corrected in a timely manner. Based on the data reported in its FFY 2011 and FFY 2012 APRs, the Department has determined that PRDE has met the requirements of this FFY 2013 action item. Therefore, the Department is not including this action item in the FFY 2014 Special Conditions. PRDE must continue to implement its procedures to ensure the timely correction of findings of noncompliance.

2. 2007 Agreement.

Special Education and Related Services – The June 24, 2013 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. **Timely Initial Evaluation Requirement:** An initial evaluation must be completed within 60 days of receiving parental consent for the initial evaluation or, if the State establishes a timeframe within which the evaluation must be conducted, within that timeframe. Under PRDE’s State-established timeline, an initial evaluation must be completed
within 30 days of receiving parental consent for the initial evaluation. See IDEA section 614(a)(1)(C)(i)(I) and 34 CFR §300.301(c)(1).

Data: PRDE reported under Indicator 11 of its FFY 2012 APR that 91.7% of children were evaluated within the required timeline. In its FFY 2012 APR Supplemental Report initially submitted on February 3, 2014 and updated on April 30, 2014, PRDE reported that, for the period from July 1, 2013 through December 31, 2013, 6,515 of 6,749 (96.9% of requests were initial received but the number was adjusted to 6,749 because 44 children exited) 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 April 28, 2014. PRDE has not achieved compliance with the initial evaluation timeline requirements in IDEA section 614(a)(1)(C)(i)(I) and 34 CFR §300.301(c)(1).

ii. Early Childhood Transition Requirement: Children referred to Part C prior to age three who are found eligible for Part B, must have an individualized education program (IEP) developed and implemented by their third birthdays. See IDEA section 612(a)(9) and 34 CFR §300.124(b). Data: PRDE reported under Indicator 12 of its FFY 2012 APR that 77.5% of children referred to Part C prior to age three, who are found eligible for Part B, had an IEP developed and implemented by their third birthdays. In its FFY 2012 APR Supplemental Report initially submitted on February 3, 2014 and updated on April 30, 2014, PRDE reported that for the period from July 1, 2013 through December 31, 2013, of 955 children with disabilities served under Part C that were referred to Part B (including 77 children who exited and one who was determined ineligible), 330 had IEPs in place and implemented by their third birthdays, with 70 additional children being served after their third birthdays and 346 children who had not had their third birthday as of February 3, 2014. PRDE also reported that there were 34 children pending status verification as of February 3, 2014. PRDE has not achieved compliance with the early childhood transition requirements in IDEA section 612(a)(9) and 34 CFR §300.124(b).

iii. Timely Due Process Hearing Decision Requirement: A final due process hearing decision must be reached no later than 45 days after the expiration of the 30 day period under §300.510(b), or the adjusted time periods described in §300.510(c), or a timeline that is properly extended by the hearing officer at the request of either party. See 34
CFR §300.515(a) and (c). Data: PRDE’s FFY 2012 reported data under section 618 of the IDEA are 81.94% of due process hearing decisions were issued in a timely manner. PRDE reported that, for the period of July 1, 2013 through December 31, 2013, of 652 hearing requests that were fully adjudicated, a total of 575 (88.2%) due process hearing decisions were issued within the required timeline or a timeline that was properly extended by the hearing officer at the request of either party. PRDE has not achieved compliance with the timely due process hearing decision requirement in 34 CFR §300.515(a) and (c).

iv. Assistive Technology Requirement: Each public agency must ensure that assistive technology devices or assistive technology services, or both, are made available to a child with a disability if required as part of the child’s IEP. PRDE must provide needed assistive technology devices and services in a timely manner, and eliminate the backlog, if any, of students needing such devices and services who have not received them. See IDEA section 612(a)(1) and 34 CFR §300.105. Data: In its FFY 2012 APR Supplemental Report initially submitted on February 3, 2014 and updated on April 30, 2014, PRDE reported that, as of April 28, 2014, for FFY 2012, 88.5% of 1,174 requests for assistive technology devices and services were verified as delivered, and 97 remained pending for delivery. For the period from July 1, 2013 through December 31, 2013, 61% of 454 requests were verified as delivered, and 119 remained pending for delivery. PRDE has not achieved compliance with the assistive technology requirements in IDEA section 612(a)(1) and 34 CFR §300.105.

v. Financial Management Requirements: PRDE must resolve financial management issues in accordance with the fiscal requirements in 34 CFR §§ 76.530, 80.22, 300.162(a), 300.202(a)(1) and OMB Circular A-87, Cost Principles for State, Local and Indian Governments, codified at 2 CFR Part 225. PRDE must also specifically address and resolve the use-of-funds requirements related to transportation contracts. PRDE has provided a specific assurance related to transportation costs for students with disabilities in the Bayamon Educational Region on each of PRDE’s IDEA Part B grant awards since FFY 2007. Data: In its FFY 2012 APR Supplemental Report initially submitted on February 3, 2014 and updated on April 30, 2014, PRDE only reported on the activity involving use-of-funds for special education transportation contracts, specifically that a Transportation
Management System was developed, though implementation was put on hold and that the regulations governing contract procedures and the model transportation contracts were finalized and approved. PRDE has not resolved its financial management issues.

3. Nature of Special Conditions

a. Corrective Action Plan (CAP):

a. Within 60 days from the date of this letter, PRDE must develop and submit a CAP to OSEP that addresses the actions the Commonwealth will take to demonstrate compliance with the five areas of longstanding noncompliance noted in 2.a. - 2.e. above that were previously identified in the 2007 Agreement. In the CAP, the Commonwealth must include a description of: (1) the activities to be completed for each item in 2.a. - 2.e. above; (2) a timeline for each of the activities; (3) persons responsible for completing each of the activities; (4) the supporting evidence which may be referenced regarding each of the activities; and (5) any other pertinent information to track progress on the actions PRDE will take to be in compliance with these requirements.

b. Progress Reports: Additionally, PRDE must submit two CAP progress reports noting the progress on the activities detailed in the CAP in accordance with the schedule specified below:

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<tr>
<th>Progress Report Due Date</th>
<th>Reporting Period</th>
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<tr>
<td>First Progress Report</td>
<td>December 1, 2014 – July 1, 2014</td>
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<td></td>
<td>October 31, 2014</td>
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<tr>
<td>Second Progress Report</td>
<td>May 1, 2015 – November 1, 2015</td>
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<td>– March 31, 2015</td>
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c. *Required Reporting on Assistive Technology Requirement:* In its first CAP Progress Report, PRDE must report the data for the FFY 2013 APR reporting period (July 1, 2013 through June 30, 2014). In addition, PRDE must report on updated data from the reporting periods specified above in each CAP Progress Report.

f. *Required Reporting on Financial Management Requirements:* With each CAP Progress Report, PRDE must report on the activities conducted to resolve financial management issues during the reporting period specified. This includes, but is not limited to, activities conducted to resolve issues related to transportation contracts.

E. **Internal Audit Office and Audit Oversight Committee**

During the May 2014 site visit to PRDE, PRDE IAO provided evidence of the actions taken to establish full implementation of the Audit office organizational structure, and the Audit Oversight Committee (AOC). The Department recognizes the commitment of the Puerto Rico Government by issuing Executive Order No. 2013-067, which established the AOC. With appropriate controls, the AOC structure will ensure independence, objectivity and transparency of IAO operations. Successful implementation of this action requires an active engagement of the Puerto Rico Governor’s Office as mandated by the Executive Order. Although significant progress has been made in this area, a number of corrective actions remain open. Implementation of all corrective actions is necessary to have a fully functional Internal Audit Office.
By February 13, 2015 PRDE must provide evidence to the Department that it has fully completed and implemented the following actions:

1. Evidence of a fully staffed Audit Oversight Committee;
2. Evidence of adoption and endorsement of the charter governing operations of the AOC;
3. Endorsement of the IAO charter governing the operations of the IAO;
4. Evidence of full support of the IAO work plan and budget;
5. Evidence of a fully staffed IAO.

In addition, PRDE IAO has provided evidence of an operational plan to follow up and report on outstanding PROIG evaluations, audits and investigations.

The IAO will submit all summary reports to the Department in the English language no later than thirty days after the end of each semiannual period. Therefore, semiannual reports shall be submitted as follows:
- For the semiannual reporting period October 1st to March 31st – due April 30th
- For the semiannual reporting period April 1st to September 30th – due October 31st

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 2014 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 2014 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 11063
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: June 27, 2014