

Commonwealth of Puerto Rico Department of Education
FFY 2017 Departmental Special Conditions

PREAMBLE: These special conditions are imposed on the Puerto Rico Department of Education's (PRDE's) Federal fiscal year (FFY) 2017 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 former 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 that required corrective action by PRDE. These programs included Titles I, II, and IV of the Elementary and Secondary Education Act (ESEA), as amended by the No Child Left Behind Act, 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 continue to 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 2016 and 2017 and our assessment of this information; (ii) our evaluation of PRDE's progress under its corrective action plans; (iii) reports issued by the IAO; (iv) 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 (v) an ED-OIG Hotline notification regarding professional service contracts, the Department is imposing the following special conditions.

II. SPECIAL CONDITIONS

A. Impact of the Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA) on Federal Education Programs and Funds

The Department is concerned with the fiscal and economic impact on PRDE resulting from the Puerto Rico Governor's Fiscal Plan, developed in accordance with the Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA), the resulting budget cuts, and the potential impact on successful implementation of Federal Education programs. In particular, the Department is concerned with fiscal and economic challenges that could put at risk PRDE's compliance with Federal requirements such as matching, maintenance of effort, and supplement not supplant (i.e. shifting of local expenses to Federal funds). The Department is also concerned about Puerto Rico's ability to promptly pay vendors for services provided and approved by PRDE as allowable uses of Federal funds. Based on these concerns, within the next 60 days, PRDE must submit a report outlining the steps and internal controls being implemented to help ensure that the bankruptcy or factors that led to the bankruptcy do not affect the implementation of Federally-funded activities. The report should also include a summary level budget comparison, by program, showing the PRDE's 2016-17 budget compared to the PRDE 2017-18 budget, with any differences highlighted, especially those differences resulting from proposed PROMESA budget cuts. PRDE is asked to describe and explain the differences and how these changes will or will not impact Federal programs and requirements. Based on the results of the report, the Department may determine that additional special conditions may or may not be required.

B. Sustainability of Critical Systemic Improvements for Federal Grants Administration

1. In response to a request from the Department in March of 2015, the IAO began a process to reexamine recommendations of completed assessments of the 2004 Compliance Agreement and the 2007 Memorandum of Agreement.

The April 2016, IAO semiannual report identified 16 recommendations (see attached copy of recommendations) targeting payroll, property management, planning and evaluation, reporting, information technology and accountability. As a result of this assessment, PRDE was required to develop a management corrective action plan addressing the recommendations.

In October 2016, the IAO reported that 16 recommendations identified by the IAO are still open. However, progress has been made addressing individual tasks under each of the recommendations. The IAO, in coordination with PRDE's management, initiated transition efforts in anticipation of the November 2016 Puerto Rico gubernatorial election. The process required each unit in PRDE to formally document the work plans to preserve efforts achieved addressing the recommendations and ensure proper transition and continuity of corrective actions. In April 2017, the IAO reported that PRDE's new leadership had evaluated the work plans prepared to address the corrective actions under each of the 16 recommendations. After PRDE's new administration evaluated the work plans, it identified and proposed adjustments to the corrective actions without altering the outcome. The IAO is working closely with the new administration and will continue to monitor and evaluate efforts to address successful execution and sustainable efforts towards established corrective actions.

The Department will monitor implementation and execution of the management corrective action plan through subsequent site visits and in coordination with the IAO.

C. Enhance and Develop a System or Systems to Capture Information on Personal Services Contracts (PSC) and Professional Services Contracts (ProSCs) 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 capability.

During the March 2015 site visit to PRDE, the Department observed a demonstration of continued enhancements made to the SEPI system. This represented PRDE's commitment to ensure adequacy of internal controls over the administration of PSC contracts. However, the Department required PRDE to ensure that policies and procedures governing SEPI reflect any updated changes made to the system.

In February, 2016, PRDE requested an extension to submit evidence that it had updated the procedures of the SEPI system to reflect current enhancements. The extension was approved and in April 2016 PRDE submitted documentation as evidence. In subsequent site visits, the Department will verify that the evidence submitted reflects enhancements made to the SEPI system.

The Department will continue to monitor proper implementation and sustainable efforts over the administration of PSC contracts through subsequent site visits and in coordination with the IAO.

Improvement of Pre-SEPI Process

During the demonstration of the SEPI system functionalities in March 2015, the Department identified weak internal controls over the administration and management of the pre-SEPI planning process. Specifically, weak internal controls in the pre-SEPI planning process prevent the timely delivery of services and the proper allocation of Federal funds in a timely and effective manner.

In October 2015 PRDE submitted a plan to improve the pre-SEPI process to maximize the capability of the SEPI system by eliminating the current manual process. During the April 2016 site visit to PRDE, the Department was presented with a plan and design process for pre-SEPI.

As required by the FY 2016 special conditions, on October 31, 2016, PRDE submitted a status report on its progress in developing and implementing the pre-SEPI process. The status report identified challenges for implementation of the pre-SEPI system. On July 25, 2016, the Puerto Rico Legislature had approved Law Number 89 of 2016, known as "Temporary Employment in Public Service Law". As reported by PRDE, this law prohibited the hiring of temporary employees in the government, with certain exceptions. In addition, it eliminated the nomenclature of "irregular" employees as well as "part-time-employees" in the language of the law. PRDE stated that Law 89 had a direct

impact on the hiring of irregular and part-time employees. As stated previously, the SEPI is the system used to manage the process of contracting for irregular and part-time personnel services in PRDE. This law could have effectively shut down the entire SEPI system. PRDE requested time to consult with Puerto Rico government agencies in charge of overseeing the implementation of Law 89. In March 2017, after the new administration received clarification regarding implementation of Law 89, it concluded that PRDE implements personal service contracts under Law 49-1999, which allows for the contracting of personnel outside of the regular service hours and during their vacation periods. PRDE will contract personal services contracts under exceptional situations and for special programs that could not be implemented during the regular program hours. Therefore, PRDE has determined that it can continue with the development and implementation of the pre-SEPI system. PRDE has evaluated the implementation process and has created a plan to deploy and fully execute the pre-SEPI system.

By November 30, 2017, PRDE must provide a status report of the progress to develop and implement the pre-SEPI system. The Department will monitor expansion in the development and execution of the process during subsequent site visits.

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.

PRDE has implemented all 20 of these recommendations. The Department will continue to monitor sustainable efforts through subsequent site visits and in coordination with the IAO.

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.B.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.B.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, 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. In March 2015, PRDE provided evidence that it has completed recommendations # 6 and #26. PRDE has made progress towards completing recommendation #5, which requires the development and implementation of a mechanism to measure the effectiveness of the professional development activities. However, the fully operational platform to capture specific professional development activities was not expected to be fully operational until July 2016. The Department has not seen sufficient evidence to determine that this recommendation has been fully implemented. The Department will assess evidence of a fully operational platform in subsequent visits to PRDE and in coordination with the IAO.

In January 2017 RMS discussed with PRDE leadership and members of the Puerto Rico government the importance of having strong internal controls in the contracting and procurement process to reduce vulnerabilities that can lead to fraud, waste and abuse of Federal education funds.

In March of 2017, PRDE initiated the assessment and evaluation of the ProSCs overall process. The assessment includes the overall contracting and procurement process in PRDE.

By November 30, 2017, PRDE must submit a status report of its assessment and corrective action plan.

D. 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. PRDE has taken corrective measures to ensure that implementation of Federally funded programs can commence upon receipt of grant award notifications.

During the May 2017 site visit to PRDE, PRDE stated that it is reviewing and evaluating policies and procedures related to work plans.

By January 31, 2018 PRDE must submit a chart listing all policies and procedures related to grants management operations. In addition, it must submit electronic copies of revised policies and procedures documents.

The Department will continue to monitor changes and implementations through subsequent site visits and in coordination with the IAO.

E. 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. PRDE will also provide periodic training to staff regarding the requirements of Section 504 of the Rehabilitation Act of 1973 as they pertain to the provision of a free appropriate public education, related aids and services, and transportation services to students with disabilities. The PRDE will also provide OCR with documentation demonstrating that the training has been conducted during FY 2017

F. Continued Reporting on Implementation of Activities under the 2007 Agreement

2007 Agreement -- Special Education and Related Services

The June 29, 2016 Department-wide Special Conditions noted that certain specific compliance issues previously addressed in the 2007 Agreement would be addressed through the Annual Performance Report (APR) required under section 616 of the IDEA. Additional reporting was also required by the Special Conditions in the form of Corrective Action Plan (CAP) Progress Reports. Through those processes, PRDE reported the following data and information:

Requirements and Data

1. *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 data for the Early Childhood Transition Requirements both through its APR and the two Special Conditions CAP reports. The following tables summarize the reported data:

FFY 2015 APR: July 1 2015-June 30, 2016 (Submitted on February 1, 2017)		
# of children referred to Part C prior to age three, who were found eligible for Part B, had an IEP developed and implemented by their third birthdays	# of children referred to Part C prior to age three (minus those not found eligible, those for whom parents did not provide consent, and those that were referred to Part C less than 90 days before their third birthday	% of children referred to Part C prior to age three, who were found eligible for Part B, had an IEP developed and implemented by their third birthdays
1,499	1,561	96.03%

FFY 2016 Special Conditions CAP Reports-		
December 1, 2016 CAP Report (July 1, 2016- October 31, 2016)		
# of children referred to Part C prior to age three, who were found eligible for Part B, had an IEP developed and implemented by their third birthdays	# of children referred to Part C prior to age three (minus those not found eligible, those for whom parents did not provide consent, and those that were referred to Part C less than 90 days before their third birthday)	% of children referred to Part C prior to age three, who were found eligible for Part B, had an IEP developed and implemented by their third birthdays
315	552	57.07%
May 1, 2017 CAP Report (July 1, 2016- March 31, 2017)		
# of children referred to Part C prior to age three, who were found eligible for Part B, had an IEP developed and implemented by their third birthdays	# of children referred to Part C prior to age three (minus those not found eligible, those for whom parents did not provide consent, and those that were referred to Part C less than 90 days before their third birthday)	% of children referred to Part C prior to age three, who were found eligible for Part B, had an IEP developed and implemented by their third birthdays
750	978	76.69%

Although the PRDE reported data for the FFY 2015 APR indicates substantial progress, the subsequent data reported in the CAP indicates that the compliance level for Early Childhood Transition remains unstable and warrants further monitoring. Therefore, PRDE has not achieved compliance with the early childhood transition requirements in IDEA section 612(a)(9) and 34 CFR §300.124(b).

2. *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 2015 reported data under section 618 of the IDEA are that 73.48% (787/1,071) of due process hearing decisions were issued in a timely manner. In its December 1, 2016 CAP Progress Report, PRDE reported that, for the period of July 1, 2016 through October 31, 2016, of 273 hearing requests that were fully adjudicated, a total of 250 (91.58%) 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.

In its May 1, 2017 CAP Progress Report, PRDE reported data for the period of July 1, 2016 through March, 2017. PRDE reported that, as of April 7, 2017, of the 610 hearing requests that were fully adjudicated, a total of 536 (87.87%) 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).

3. *Assistive Technology (AT) 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 December 1, 2016 CAP Progress Report, PRDE reported the following as of November 21, 2016, for the period of July 1, 2015 through June 30, 2016, 93.29% (903/968) requests for assistive technology devices and services have been verified as delivered. In the same report, PRDE also reported for the period of July 1, 2016 through October 31, 2016, 16.33% (16/98) requests for assistive technology devices and services have been verified as delivered.

In its May 2, 2017 CAP Progress Report, PRDE proposed a new methodology for reporting on the timeliness of the provision of AT devices. Previously the timeline started from the date a student was referred for an AT evaluation by the IEP team. The Commonwealth is proposing to calculate from the date that the IEP team determines that the student needs the AT. OSEP agrees that this is a reasonable methodology and accepts the change. However, we cannot compare data under the new methodology to data reported under the previous methodology under prior CAPs.

Using the new methodology, PRDE reported the following updated data as of April 27, 2017: (1) for the period of July 1, 2015 through June 30, 2016, 100% (968/968) requests for assistive technology devices and services have been

verified as delivered; (2) as of April 25, 2017, for the period of July 1, 2016 through October 31, 2016, 90.4% (266/294) requests for assistive technology devices and services have been verified as delivered; (3). In its May 1, 2017 CAP Progress Report, PRDE also reported that, as of April 25, 2017, for the period of November 1, 2016 through March 31, 2017, 21.7% (80/369) of requests for assistive technology devices and services have been verified as delivered.

PRDE has not achieved compliance with the assistive technology requirements in IDEA section 612(a)(1) and 34 CFR §300.105.

During OSEP's March 2017 onsite DMS monitoring visit, PRDE indicated that their challenges in providing assistive technology devices is the result of voucher delays; concerns with access to vendors; and delays in shipping from mainland States. PRDE is continuing to address these challenges and analyzing how to improve the reporting of these data to reflect the provision of AT services/equipment to children with disabilities in a timely manner.

4. *Financial Management Requirements:* PRDE must resolve financial management issues in accordance with the fiscal requirements in 34 CFR §§76.530, 300.162(a), 300.202(a)(1) and Subpart E of the Office of Management and Budget (OMB) Uniform Guidance, codified in 2 CFR Part 200.

- a. *Financial Management Generally*

Data: In its May 1, 2017 CAP Progress Reports, PRDE reported that it finalized the PRDE Associate Secretary of Special Education's (SAEE) Manual of Policies and Procedures in Accordance with Uniform Grants Guidance. In addition, PRDE reported that the SAEE Administration Unit is carrying out monitoring visits to the CSEE Administration Units across the island to review and verify compliance with established purchasing procedures including those related to PRDE's Financial Information System (SIFDE), PCards, and Invoice Pre-Intervention. The initial visits are being conducted from March through June of 2017. In order to carry out these visits, SAEE developed a guide to establish the uniform process to be employed during these visits to the CSEEs.

The development of the final manual and the creation of fiscal monitoring systems represent progress. However, particularly in light of the PROMESA Title III bankruptcy and possible resulting budget cuts, the Department will continue to monitor the implementation of these policies and procedures, as reflected in the corrective actions listed below.

In addition significant progress has been made with SIFDE which is a critical system that supports all the financial processes of PRDE. PRDE has continued to enhance the capabilities of SIFDE operations. These capabilities include interfaces with other data base systems, e.g. transportation and human resources management in order to achieve an efficient administrative process. During the March 2017 Differentiated

Monitoring and Support site visit to PRDE, OSEP and RMS had an opportunity to observe many of the fiscal improvements including the development of specific policies and procedures that address critical needs for the provision of services and goods for the special education population.

However, OSEP is concerned with the invoicing process, which provides payment to providers of special education and related services for children with disabilities eligible under the IDEA. The invoicing process for professional services is not fully automated. The validation of services for eligible students with disabilities resides in the electronic special education platform Mi Portal Especial (MiPE). OSEP recognizes that PRDE SAEE has been working to enhance the MiPE system and create an interface with SIFDE that will ensure growth of the system's capability to capture information, while at the same time, allow for full automatization of the invoicing process. Over the years, PRDE has made systemic changes to ensure its operations have strong internal controls. In order to achieve adequate controls PRDE SAEE must enhance the MiPE or some other system or implement other solution, to achieve proper fiscal management controls.

Although PRDE has made progress, the Commonwealth has not demonstrated that it has resolved its financial management issues related to ensuring that IDEA Part B funds are expended in accordance with IDEA Part B requirements and Subpart E of the OMB Uniform Guidance, codified in 2 CFR Part 200.

b. Transportation Contracts

Data: During OSEP's March 2017 onsite DMS monitoring visit and in its December 1, 2016 and May 1, 2017 Special Conditions CAP Progress Reports, PRDE reported that:

- i. New regulations governing the management of school transportation, including contract services, were approved on May 17, 2016. One of the key conditions under the new regulations (Reglamento #8752, Reglamento para la Transportacion de Escolares, in Spanish), is that payment is made on the basis of the daily operation of the established bus route in its entirety, rather than on a per student basis.
- ii. A new online School Transportation System, (the Sistema de Manejo de Transportacion Escolar (SMTE) in Spanish) was initiated to improve internal controls by electronically recording all activities related to transportation services for children with disabilities on the island. SMTE interfaces with PRDE's financial tracking system (SIFDE) and records contracts, invoices purchase orders and transportation activities to ensure proper payment to transportation contractors. PRDE reported that it has held training for contractors as well as staff and has begun monitoring the

process throughout the Commonwealth. During the monitoring visit and on April 6, 2017, PRDE provided OSEP with copies of the SMTE User Manuals for School Directors, Service Providers, and Supervisors, as well as a School Transportation Rate Study. During 2017 DMS monitoring visit, PRDE personnel also provided an oral demonstration of its SMTE system to Department personnel.

- iii. The PRDE reported that it has begun regional monitoring for special education transportation contracts. Monitoring visits for this year are being conducted between March and June of 2017

c. Transportation for Students with Disabilities in Bayamon

Data: PRDE has provided a specific assurance related to transportation costs for students with disabilities in the Bayamon Education Region on each of PRDE's IDEA Part B grant awards since FFY 2007. With its FFY 2016 application for IDEA Part B funds, PRDE provided an assurance that Puerto Rico would not use IDEA funds for transportation costs for students with disabilities in the Bayamon Region until the Commonwealth submits an audit report that clearly demonstrates full compliance with the requirements of 34 CFR §76.702 and 2 CFR §§200.302(a); 200.302(b)(3); 200.302(b)(4); 200.303; and 200.317 for all transportation costs of students with disabilities in the Bayamon Region.

PRDE reported that PRDE's Internal Audit Office will perform an independent review to determine the effectiveness and adequacy of the controls and procedures over the Transportation Management System (SMTE). The review is included as part of the Audit Work Plan and it is scheduled to begin the planning phase in the second quarter of 2017. It is unclear whether this audit will be specific enough to demonstrate full compliance in the transportation of students with disabilities in the Bayamon region, as required under these special conditions.

Nature of FFY 2017 Special Conditions

1. Corrective Action Plan (CAP):

Within 60 days from the date of this letter, PRDE must develop, and submit to OSEP, a CAP that addresses the actions it will take to demonstrate compliance with the four remaining areas of longstanding noncompliance noted in D.1 through D.4, above, that were previously identified in the 2007 Agreement. In the CAP, PRDE must include a description of: (1) the activities to be completed for each item in D.1 through D.4, 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.

2. 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:

	Progress Report Due Date	Reporting Period
First Progress Report	December 1, 2017	July 1, 2017–October 31, 2017
Second Progress Report	May 1, 2018	November 1, 2017–March 31, 2018

- a. *Required Reporting on Early Childhood Transition Requirement:* PRDE must report the required data under Indicator 12 in the FFY 2016 SPP/APR, due February 1, 2018. In addition, PRDE must report on updated data from the reporting periods specified above in each CAP Progress Report.
- b. *Required Reporting on Timely Due Process Hearing Decision Requirement:* PRDE must report the required section 618 data for FFY 2016. In addition, PRDE must report on updated data from the reporting periods specified above in each CAP Progress Report.
- c. *Required Reporting on Assistive Technology Requirement:* In its first CAP Progress Report, PRDE must report the data for the FFY 2016 APR reporting period (July 1, 2016 through June 30, 2017). In addition, PRDE must report on updated data from the reporting periods specified above in each CAP Progress Report.
- d. *Required Reporting on Financial Management Requirements:*
 - i. *Fiscal Management Generally:* In each CAP Progress Report, PRDE must report on the activities it conducted during the reporting period to implement the fiscal management procedures and monitoring processes it has developed to ensure IDEA Part B funds are spent in accordance with IDEA Part B requirements and Subpart E of the OMB Uniform Guidance. With its first CAP progress report, due December 1, 2017, and the second CAP progress report, due May 1, 2018, PRDE must provide evidence that the fiscal management procedures and monitoring processes were implemented during FFY 2017 (July 1, 2017 – June 30, 2018)

- ii. *Automation of special education invoicing:* With the CAP Progress Report due on December 1, 2017, PRDE must provide a plan to address the automatization of the invoicing process for special education services. With the CAP Progress Report due on May 1, 2018, PRDE must report on progress made in the implementation of the plan.
- iii. *Transportation Contracts:* With each CAP Progress Report, PRDE must report on the activities it conducted during the reporting period to implement its new regulations governing the management of school transportation and its on-line School Transportation Management System. Further, PRDE must provide evidence that the formal monitoring referenced in its May 1, 2017 CAP has been conducted and the results of that monitoring.
- iv. *Transportation for Students with Disabilities in Bayamon:* Before Puerto Rico can use IDEA Part B funds for transportation in the Bayamon Region, PRDE must submit to OSEP an audit report clearly demonstrating that PRDE is in full compliance with the requirements of 34 CFR §76.702 and 2 CFR §§200.302(a); 200.302(b)(3); 200.302(b)(4); 200.303; and 200.317 for all transportation costs of students with disabilities in the Bayamon Region. PRDE must also comply with all other requirements listed in its FFY 2017 IDEA Part B grant award letter prior to using IDEA Part B funds for transportation in the Bayamon Region.

G. Internal Audit Office and Audit Oversight Committee

Full implementation of the IAO organizational structure, and the Audit Oversight Committee (AOC) will ensure independence, objectivity and transparency of the IAO operations. The Department recognizes the commitment of the Puerto Rico Government by issuing Executive Order No. 2013-067, which established the AOC. Successful implementation of this action requires an active engagement of the Puerto Rico Governor's Office as mandated by the Executive Order. During the March 2015 site visit, the IAO provided evidence of a fully staffed and operational AOC composed of 3 members appointed by the Governor. Charters for the IAO and AOC have been adopted and approved. The Charters define the purpose and authority of the IAO and the AOC.

Although significant progress has been made in this area, the Department will continue to monitor sustainable efforts through future site visits. Specifically, the Department will seek evidence of a fully supported IAO work plan and budget and a fully staffed IAO. Having a fully staffed IAO is essential to perform audits, evaluations and investigations. Moreover, recruitment and retention of Level III

auditors with the authority to supervise junior auditors is crucial to the operations of the IAO.

In the November 2015 status report, the IAO reported challenges in achieving a fully staffed office due to staff turnover. The IAO took measures to address recruitment efforts to fill vacant positions. The April 2016 semiannual report indicated that the IAO continues the process of filling the vacancy positions. This process has been affected by the July 20, 2015 OMB Circular Letter 125-15, which establishes that resources to fill vacancies for all the Commonwealth of Puerto Rico government agencies will first be evaluated to establish the feasibility of filling positions with candidates transferred from other government agencies. On May 20, 2016, the IAO informed the Department that it received communication from OMB indicating that approval for vacancies requested is in the final stages.

The Department recognizes the efforts to achieve a fully staffed IAO. However, the Department is concerned with the IAO's ability to execute their audit plan with the current staff levels.

The Department will monitor recruitment efforts through the IAO reporting requirements and subsequent visits.

The IAO will continue to submit semiannual reports on all outstanding evaluations, audits, and investigations 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

In April 2017, the IAO informed the Department of two new Puerto Rico laws that could impact recruitment efforts and organizational structure of the IAO.

- 1) Law 8, “Empleador Unico” signed into law February 4, 2017--it creates a concept for inter-agency personnel movement to fulfill the needs and vacancies of government agencies. This law has the potential to support IAO efforts in recruiting Level III auditors.
- 2) Law 15, “Oficina del Inspector General de Puerto Rico” signed into law February 28, 2017--it creates the Government of Puerto Rico-Office of Inspector General.

The IAO stated that it has not been notified of any changes related to Law 15. The IAO will continue with its normal course of operations. PRDE will notify the Department in writing of the transition process for implementation of Law 15 when applicable, and any potential impact on reporting requirements. In addition, PRDE will submit a work plan that addresses management, implementation and follow up on outstanding IAO 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 IAO, specifically concerning:
 - a. Personal Service Contracts (PSCs);
 - b. Professional Service Contracts (ProSCs);
 - c. Reassessment of completed recommendations of the 2004 Compliance Agreement and the 2007 Memorandum of Agreement
 - d. Independent Audit Review to determine the effectiveness and adequacy of the controls and procedures over the Transportation Services for students, including the School Transportation Management System (STMS)

H. 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.

I. Program-Specific Conditions

Additional special conditions may be imposed on FFY 2017 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 2 CFR §§ 200.207 and 3474.10

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 2017 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 the 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 30, 2017