



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

July 1, 2019

Honorable Eligio Hernández
Interim Secretary
Puerto Department of Education
Office of the Secretary
PO Box 190759
San Juan, Puerto Rico 00919-0759

Dear Honorable Hernández:

We have approved Puerto Rico's application for Federal Fiscal Year (FFY) 2019 funds under Part B of the Individuals with Disabilities Education Act (IDEA Part B). Our approval is based on our review of the IDEA Part B application submitted by the Puerto Rico Department of Education (PRDE) to the U.S. Department of Education (Department), Office of Special Education Programs (OSEP), on May 20, 2019, and the revision on June 25, 2019, including the assurances provided in Section II and incorporated by reference to this letter as noted in Enclosure A.

As set forth in Enclosure D, on June 28, 2019, Department-wide Specific Conditions were placed on all Department grants awarded to PRDE, as well as on all grants previously awarded by the Department to PRDE that currently are still available for obligation or liquidation on the date of those specific conditions. These Department-wide Specific Conditions were imposed to 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, and ensure continued progress in meeting the programmatic requirements of Part B of the IDEA. The reasons for doing so and the specific conditions are detailed in Enclosure D.

PRDE has not achieved compliance with the requirements related to: (1) assistive technology (Section 612(a)(1) and 34 CFR §300.105); and (2) financial management (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). Therefore, as described in Section II.H. of the FFY 2019 Department-wide Specific Conditions, the Department is requiring PRDE to: (1) develop, and submit to OSEP, a corrective action plan (CAP) that addresses the actions it will take to demonstrate compliance with these two remaining areas of longstanding noncompliance, that were previously identified in the 2007 Agreement; and (2) submit two CAP progress reports noting the progress on the activities detailed in the CAP. Based on information PRDE provided in its May 1, 2019 Special Conditions progress report, OSEP concluded that PRDE has satisfied the Special Condition related to the timeliness of due process hearing decisions. We appreciate the steps the PRDE has taken to correct noncompliance related to this key IDEA requirement and expect that PRDE will continue to monitor this area to ensure a high degree of compliance is

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sustained.

PRDE has provided a specific assurance related to transportation costs for students with disabilities in the Bayamón Educational Region on each of PRDE's IDEA Part B grant awards since FFY 2007. The Commonwealth provided the following specific assurances, received on May 20, 2019, related to transportation costs for students with disabilities in the Bayamón Educational Region:

1. Throughout the period of fund availability for Puerto Rico's grant awards under Part B of the IDEA for FFY 2018, Puerto Rico assures that until such time as Puerto Rico has demonstrated to the Department that it 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 for students with disabilities in the Bayamón Region, no IDEA funds will be used to fund the transportation costs of students with disabilities in the Bayamón Region and that any Commonwealth funds used to fund the transportation costs of students with disabilities in the Bayamón Region will not be included in the total amount used to calculate or measure Puerto Rico's compliance with the State maintenance of effort requirement at 20 U.S.C. 1412(a)(18) and 34 CFR §300.163 in either the current State fiscal year or the preceding State fiscal years from 2002 to 2018.
2. PRDE must submit documentation to OSEP at least 60 days prior to any use, allocation, accounting or designation of IDEA Part B funds to pay for the transportation costs of students with disabilities in the Bayamón Region; or of any use, allocation, accounting, or designation to include Commonwealth funds used to pay the transportation costs of students with disabilities in the Bayamón Region, in the total amount used to calculate or measure Puerto Rico's compliance with the State maintenance of effort requirement at 20 U.S.C. 1412(a)(18) and CFR 34 §300.163. The documentation to be submitted must include an audit report that clearly demonstrates 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 Bayamón Region; and
3. The Commonwealth will provide OSEP with a copy of the memorandum notifying the appropriate finance personnel in Puerto Rico and providing any needed instructions for implementation, so that funds received under Part B of the IDEA will not be used to fund transportation services of students with disabilities in the Bayamón Region until such time as Puerto Rico has submitted, and the Department has approved, documentation, including an audit report, demonstrating 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, and that any Commonwealth funds used to pay the transportation costs of students with disabilities in the Bayamón Region may not be included in the total amount used to calculate or measure Puerto Rico's compliance with the State maintenance of effort requirements at 20 U.S.C. 1412(a)(18) and 34 CFR §300.163.

Please note that as part of your application for FFY 2019, the Commonwealth has provided a certification, pursuant to 34 CFR §76.104, that its application meets the requirements of IDEA

Part B and that the Commonwealth will operate its Part B program in accordance with all of the required assurances and certifications. Any changes made by the Commonwealth, after OSEP approval, to information that is a part of its application, must meet the public participation requirements in 34 CFR §300.165.

Enclosed are the Commonwealth's FFY 2019 grant awards for funds currently available under the Department of Education Appropriations Act, 2019 (Title III of Division B, Public Law 115-245), for the IDEA Part B Section 611 (Grants to States) and Section 619 (Preschool Grants) programs. These funds are available for obligation by States from July 1, 2019, through September 30, 2021, in accordance with 34 CFR §76.709.

The amount in your award for Section 619 represents the full amount of funds to which you are entitled. However, the amount shown in your award for the Section 611 program is only part of the total funds that will be awarded to you for FFY 2019. Of the \$12,364,392,000 appropriated for Section 611 in FFY 2019, \$3,081,009,000 is available for awards on July 1, 2019, and \$9,283,383,000 will be available for awards on October 1, 2019. Under the Section 611 formula, in a year in which the amount available for allocations to States increases from the prior year, subject to certain maximum and minimum funding requirements, State allocations are based on the amount that each State received under Section 611 for FFY 1999, the relative population of children in the age range for which each State ensures the availability of a free appropriate public education (FAPE) to children with disabilities, and the relative population of children living in poverty in the age range for which each State ensures the availability of FAPE to children with disabilities.¹

For FFY 2019, the appropriation for the Preschool Grants program is \$391,120,000. Under the Section 619 formula in a year in which the amount available for allocations to States remains the same or increases from the prior year, State allocations, subject to certain maximum and minimum funding requirements, are based on the amount that each State received under Section 619 for FFY 1997, the relative population of children aged three through five, and the relative population of all children aged three through five living in poverty.

Enclosure B provides a short description of how Section 611 funds were allocated and how those funds can be used. In addition, Table I in Enclosure B shows funding levels for distribution of Section 611 funds and the parameters for within-State allocations.

Enclosure C provides a short description of how Section 619 funds were allocated and how those funds can be used. In addition, Table II in Enclosure C shows State-by-State funding levels for distribution of Section 619 funds.

¹ The amount that a State's allocation may increase from one year to the next is capped at the amount the State received in the prior year multiplied by the sum of 1.5 percent and the percentage increase in the total amount appropriated for Part B of IDEA from the prior year. Additionally, the maximum amount that a State may receive in any fiscal year is calculated by multiplying the number of children with disabilities ages 3 through 21 served during the 2004-2005 academic year in that State by 40 percent of the annual per pupil expenditure (APPE), adjusted by the rate of annual change in the sum of 85 percent of the children aged 3 through 21 for whom that State ensures the availability of FAPE and 15 percent of the children living in poverty. Because there are multiple caps, in any year the "effective cap" on a State's allocation is the lowest cap for that State.

Section 611(e)(1)(C) of the IDEA provides that “[p]rior to expenditure of funds under this paragraph [Section 611(e)(1) concerning funds for State administration], the State shall certify to the Secretary that the arrangements to establish responsibility for services pursuant to Section 612(a)(12)(A) are current.” We read this provision to mean that if a State does not have interagency agreements or other arrangements in place to establish responsibility for the provision of services, the State may not expend funds available to the State under Section 611(e)(1) [State administration funds] until the State has these agreements or arrangements in place.

Under Section 608(a)(2) of the IDEA, each State that receives funds under IDEA Part B is required to inform in writing local educational agencies located in the State of any State-imposed rule, regulation, or policy that is not required by IDEA or Federal regulations. A State may use the same list of State-imposed rules, regulations, and policies that it was required to submit to the Department in Section IV of its IDEA Part B application for this purpose.

In Section V of its IDEA Part B application, pursuant to the authority in IDEA Section 618(a)(3), the State was required to submit data on the total amount of State financial support made available for special education and related services for children with disabilities in State fiscal year (SFY) 2017 and SFY 2018. If OSEP receives information through audits, fiscal monitoring or other means that raises questions about the data your State has provided in Section V, OSEP will follow-up with your State.

Section 604 of the IDEA provides that “[a] State shall not be immune under the 11th amendment to the Constitution of the United States from suit in Federal court for a violation of this [Act].” Section 606 provides that each recipient of assistance under the IDEA make positive efforts to employ and advance in employment qualified individuals with disabilities in programs assisted under the IDEA. Therefore, by accepting this grant, your State is expressly agreeing as a condition of IDEA funding to a waiver of Eleventh Amendment immunity and to ensuring that positive efforts are made to employ and advance employment of qualified individuals with disabilities in programs assisted under the IDEA.

The enclosed grant awards of FFY 2019 funds are made with the continued understanding that this Office may, from time to time, require clarification of information within your application, if necessary. These inquiries may be necessary to allow us to appropriately carry out our administrative responsibilities related to IDEA Part B.

As a reminder, all prime recipients of IDEA Part B funds must report subaward information as required by the Federal Funding Accountability and Transparency Act of 2006 (FFATA), as amended in 2008. First-tier subaward information must be reported by the end of the following month from when the award was made or obligated. FFATA guidance is found at <https://www.fsrs.gov/>. Please contact your State’s Fiscal Accountability Facilitator if you have further questions.

Page 5 - Chief State School Officer

We appreciate your ongoing commitment to the provision of quality educational services to children with disabilities.

Sincerely,

/S/

Laurie VanderPloeg
Director
Office of Special Education Programs

Enclosures

Enclosure A

Enclosure B

Enclosure C

Enclosure D – Specific Conditions

cc: State Director of Special Education

State Name: Puerto Rico

Enclosure A

Section II

A. Assurances Related to Policies and Procedures

The State makes the following assurances that it has policies and procedures in place as required by Part B of the Individuals with Disabilities Education Act. (20 U.S.C. 1411-1419; 34 CFR §§300.100-300.174)

<p>Yes <i>(Assurance is given.)</i></p>	<p>No <i>(Assurance cannot be given. Provide date on which State will complete changes in order to provide assurance.)</i> <i>Check and enter date(s) as applicable</i></p>	<p>Assurances Related to Policies and Procedures</p>
<p>X</p>		<p>1. A free appropriate public education is available to all children with disabilities residing in the State between the ages of 3 and 21, inclusive, including children with disabilities who have been suspended or expelled, in accordance with 20 U.S.C. 1412(a)(1); 34 CFR §§300.101-300.108.</p>
<p>X</p>		<p>2. The State has established a goal of providing a full educational opportunity to all children with disabilities and a detailed timetable for accomplishing that goal. (20 U.S.C. 1412(a)(2); 34 CFR §§300.109-300.110)</p>
<p>X</p>		<p>3. All children with disabilities residing in the State, including children with disabilities who are homeless or are wards of the State and children with disabilities attending private schools, regardless of the severity of their disabilities, and who are in need of special education and related services, are identified, located, and evaluated and a practical method is developed and implemented to determine which children with disabilities are currently receiving needed special education and related services in accordance with 20 U.S.C. 1412(a)(3); 34 CFR §300.111.</p>
<p>X</p>		<p>4. An individualized education program, or an individualized family service plan that meets the requirements of section 636(d), is developed, reviewed, and revised for each child with a disability in accordance with 34 CFR §§300.320 through 300.324, except as provided in §§300.300(b)(3) and 300.300(b)(4). (20 U.S.C. 1412(a)(4); 34 CFR §300.112)</p>
<p>X</p>		<p>5. To the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are not disabled, and special classes,</p>

Yes <i>(Assurance is given.)</i>	No <i>(Assurance cannot be given. Provide date on which State will complete changes in order to provide assurance.)</i> <i>Check and enter date(s) as applicable</i>	Assurances Related to Policies and Procedures
		separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily in accordance with 20 U.S.C. 1412(a)(5)(A)-(B); 34 CFR §§300.114-300.120.
X		6. Children with disabilities and their parents are afforded the procedural safeguards required by 34 CFR §§300.500 through 300.536 and in accordance with 20 U.S.C. 1412(a)(6); 34 CFR §300.121.
X		7. Children with disabilities are evaluated in accordance with 34 CFR §§300.300 through 300.311. (20 U.S.C. 1412(a)(7); 34 CFR §300.122)
X		8. Agencies in the State comply with 34 CFR §§300.610 through 300.626 (relating to the confidentiality of records and information). (20 U.S.C. 1412(a)(8); 34 CFR §300.123)
X		9. Children participating in early intervention programs assisted under Part C, and who will participate in preschool programs assisted under this part, experience a smooth and effective transition to those preschool programs in a manner consistent with section 637(a)(9). By the third birthday of such a child, an individualized education program or, if consistent with 34 CFR §300.323(b) and section 636(d), an individualized family service plan, has been developed and is being implemented for the child. The local educational agency will participate in transition planning conferences arranged by the designated lead agency under section 635(a)(10). (20 U.S.C. 1412(a)(9); 34 CFR §300.124)
X		10. Agencies in the State, and the SEA if applicable, comply with the requirements of 34 CFR §§300.130 through 300.148 (relating to responsibilities for children in private schools), including that to the extent consistent with the number and location of children with disabilities in the State who are enrolled by their parents in private elementary schools and secondary schools in the school district served by a local educational agency, provision is made for the participation of those children in the program assisted or carried out under this part by providing for such children special education and related services in accordance with the requirements found in 34 CFR §§300.130 through 300.148 unless the Secretary has arranged for services to those

Yes <i>(Assurance is given.)</i>	No <i>(Assurance cannot be given. Provide date on which State will complete changes in order to provide assurance.)</i> <i>Check and enter date(s) as applicable</i>	Assurances Related to Policies and Procedures
		children under subsection (f) [By pass]. (20 U.S.C. 1412(a)(10); 34 CFR §§300.129-300.148)
X		11. The State educational agency is responsible for ensuring that the requirements of Part B are met including the requirements of 34 CFR §§300.113, 300.149, 300.150 through 300.153, and 300.175 and 300.176 and that the State monitors and enforces the requirements of Part B in accordance with 34 CFR §§300.600-300.602 and 300.606-300.608. (20 U.S.C. 1412(a)(11); 34 CFR §300.149)
X		12. The Chief Executive Officer of a State or designee of the officer shall ensure that an interagency agreement or other mechanism for interagency coordination is in effect between each public agency described in subparagraph (b) of 34 CFR §300.154 and the State educational agency, in order to ensure that all services described in paragraph (b)(1)(i) that are needed to ensure a free appropriate public education are provided, including the provision of such services during the pendency of any dispute under §300.154(a)(3). Such agreement or mechanism shall meet the requirements found in 20 U.S.C. 1412(a)(12)(A)-(C); 34 CFR §300.154.
X		13. The State educational agency will not make a final determination that a local educational agency is not eligible for assistance under this part without first affording that agency reasonable notice and an opportunity for a hearing. (20 U.S.C. 1412(a)(13); 34 CFR §300.155)
X		14. The State educational agency has established and maintains qualifications to ensure that personnel necessary to carry out this part are appropriately and adequately prepared and trained, including that those personnel have the content knowledge and skills to serve children with disabilities as noted in 20 U.S.C. 1412(a)(14)(A)-(E); 34 CFR §300.156.
X		15. The State has established goals for the performance of children with disabilities in the State that meet the requirements found in 20 U.S.C. 1412(a)(15)(A)-(C); 34 CFR §300.157.
X		16. All children with disabilities are included in all general State and districtwide assessment programs, including assessments described under section 1111 of the Elementary and Secondary Education Act of 1965, with appropriate accommodations and alternate assessments where necessary and as indicated in their respective individualized

Yes <i>(Assurance is given.)</i>	No <i>(Assurance cannot be given. Provide date on which State will complete changes in order to provide assurance.)</i> <i>Check and enter date(s) as applicable</i>	Assurances Related to Policies and Procedures
		education programs as noted in 20 U.S.C. 1412(a)(16)(A)-(E); 34 CFR §300.160.
X		17. Funds paid to a State under this part will be expended in accordance with all the provisions of Part B including 20 U.S.C. 1412(a)(17)(A)-(C); 34 CFR §300.162.
X		18. The State will not reduce the amount of State financial support for special education and related services for children with disabilities, or otherwise made available because of the excess costs of educating those children, below the amount of that support for the preceding fiscal year, unless a waiver is granted, in accordance with 20 U.S.C. 1412(a)(18)(A)-(D); 34 CFR §§300.163 through 300.164.
X		19. Prior to the adoption of any policies and procedures needed to comply with this section (including any amendments to such policies and procedures), the State ensures that there are public hearings, adequate notice of the hearings, and an opportunity for comment available to the general public, including individuals with disabilities and parents of children with disabilities. (20 U.S.C. 1412(a)(19); 34 CFR §300.165)
X		20. In complying with 34 CFR §§300.162 and 300.163, a State may not use funds paid to it under this part to satisfy State-law mandated funding obligations to local educational agencies, including funding based on student attendance or enrollment, or inflation. (20 U.S.C. 1412(a)(20); 34 CFR §300.166)
X		21. The State has established and maintains an advisory panel for the purpose of providing policy guidance with respect to special education and related services for children with disabilities in the State as found in 20 U.S.C. 1412(a)(21)(A)-(D); 34 CFR §§300.167-300.169.
X		22. The State educational agency examines data, including data disaggregated by race and ethnicity, to determine if significant discrepancies are occurring in the rate of long-term suspensions and expulsions of children with disabilities in accordance with 20 U.S.C. 1412(a)(22)(A)-(B); 34 CFR §300.170.
X		23a. The State adopts the National Instructional Materials Accessibility Standard for the purposes of providing instructional materials to blind persons or other persons with print disabilities, in a timely manner after the publication of the National Instructional Materials Accessibility

Yes <i>(Assurance is given.)</i>	No <i>(Assurance cannot be given. Provide date on which State will complete changes in order to provide assurance.)</i> <i>Check and enter date(s) as applicable</i>	Assurances Related to Policies and Procedures
		Standard in the Federal Register in accordance with 20 U.S.C. 1412(a)(23)(A) and (D); 34 CFR §300.172.
		23b. <i>(Note: Check either "23b.1" or "23b.2" whichever applies.</i>
X		23b.1 The State educational agency coordinates with the National Instructional Materials Access Center and not later than 12/03/06 the SEA as part of any print instructional materials adoption process, procurement contract, or other practice or instrument used for purchase of print instructional materials enters into a written contract with the publisher of the print instructional materials to: <ul style="list-style-type: none"> • require the publisher to prepare and, on or before delivery of the print instructional materials, provide to the National Instructional Materials Access Center, electronic files containing the contents of the print instructional materials using the National Instructional Materials Accessibility Standard; or • purchase instructional materials from the publisher that are produced in, or may be rendered in, specialized formats. (20 U.S.C. 1412(a)(23)(C); 34 CFR §300.172)
		23b.2 The State educational agency has chosen not to coordinate with the National Instructional Materials Access Center but assures that it will provide instructional materials to blind persons or other persons with print disabilities in a timely manner. (20 U.S.C. 1412(a)(23)(B); 34 CFR §300.172)
X		24. The State has in effect, consistent with the purposes of the IDEA and with section 618(d) of the Act, policies and procedures designed to prevent the inappropriate overidentification or disproportionate representation by race and ethnicity of children as children with disabilities, including children with disabilities with a particular impairment described in 34 CFR §300.8. (20 U.S.C 1412(a)(24); 34 CFR §300.173)
X		25. The State educational agency shall prohibit State and local educational agency personnel from requiring a child to obtain a prescription for a substance covered by the Controlled Substances Act (21 U.S.C. 812(c)) as a condition of attending school, receiving an evaluation under 34 CFR §§300.300 through 300.311, or receiving services under the IDEA as described in 20 U.S.C. 1412(a)(25)(A)-(B); 34 CFR §300.174.

B. Other Assurances

The State also makes the following assurances:

Yes	Other Assurances
X	1. The State shall distribute any funds the State does not reserve under 20 U.S.C. 1411(e) to local educational agencies (including public charter schools that operate as local educational agencies) in the State that have established their eligibility under section 613 for use in accordance with this part as provided for in 20 U.S.C. 1411(f)(1)-(3); 34 CFR §300.705.
X	2. The State shall provide data to the Secretary on any information that may be required by the Secretary. (20 U.S.C. 1418(a)(3); 34 CFR §§300.640-300.645.)
X	3. The State, local educational agencies, and educational service agencies shall use fiscal control and fund accounting procedures that insure proper disbursement of and accounting for Federal funds. (34 CFR §76.702)
X	4. As applicable, the assurance in OMB Standard Form 424B (Assurances for Non-Construction Programs), relating to legal authority to apply for assistance; access to records; conflict of interest; merit systems; nondiscrimination; Hatch Act provisions; labor standards; flood insurance; environmental standards; wild and scenic river systems; historic preservation; protection of human subjects; animal welfare; lead-based paint; Single Audit Act; and general agreement to comply with all Federal laws, executive orders and regulations.

C. Certifications

The State is providing the following certifications:

Yes	
X	<p>1. The State certifies that ED Form 80-0013, <i>Certification Regarding Lobbying</i>, is on file with the Secretary of Education.</p> <p>With respect to the <i>Certification Regarding Lobbying</i>, the State recertifies that no Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making or renewal of Federal grants under this program; that the State shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," when required (34 CFR Part 82, Appendix B); and that the State Agency shall require the full certification, as set forth in 34 CFR Part 82, Appendix A, in the award documents for all sub awards at all tiers.</p>
X	2. The State certifies that certification in the Education Department General Administrative Regulations (EDGAR) at 34 CFR §76.104 relating to State eligibility, authority and approval to submit and carry out the provisions of its State application, and consistency of that application with State law are in place within the State.
X	3. The State certifies that the arrangements to establish responsibility for services pursuant to 20 U.S.C. 1412(a)(12)(A)-(C); 34 CFR §300.154 (or 20 U.S.C. 1412(a)(12)(A); 34 CFR §300.154(a) are current. This certification must be received prior to the expenditure of any funds reserved by the State under 20 U.S.C. 1411(e)(1); 34 CFR §300.171.

Enclosure D



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF FINANCE AND OPERATIONS
OFFICE OF GRANTS ADMINISTRATION

June 28, 2019

Honorable Ricardo Rosselló
Governor
Commonwealth of Puerto Rico
PO Box 9020082
San Juan, Puerto Rico 00902-0082

Honorable Eligio Hernández Pérez
Secretary of Education
Puerto Rico Department of Education
PO Box 190759
San Juan, Puerto Rico 00919-0759

Dear Governor Rosselló and Secretary Hernández Pérez:

Thank you very much for your continued partnership in supporting Puerto Rico's educational programs, especially in the wake of two national disasters. We know what you have faced and overcome in recent years is truly unprecedented. Your continued support in developing our children for future opportunities is most appreciated by the Department of Education. We also appreciate your honest assessment of your current capacity and desire to work cooperatively with us in support of Puerto Rico's students. To support your goals of developing the educational capabilities within the Commonwealth of Puerto Rico, enclosed are specific 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) 2019, 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 specific conditions.

We are imposing the enclosed specific conditions based on information provided to the Department by the PRDE Internal Audit Office through the specific conditions, audits and investigations conducted by the Department's Office of the Inspector General, and evidence collected by the Department's Risk Management Services Division during its provision of technical assistance. This information demonstrates that PRDE has failed to maintain improvements accomplished under the 2004 Compliance Agreement among Puerto Rico, PRDE, and the Department; the 2007 Memorandum of Agreement among Puerto Rico, PRDE, and the Department; and the 2007 Compliance Agreement among Puerto Rico, PRDE, and the Department. Therefore, in accordance with regulations

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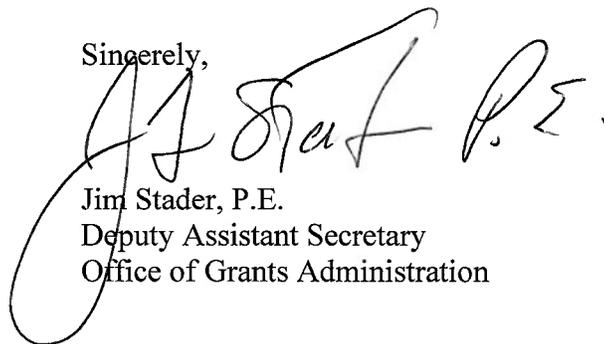
governing specific conditions in 2 CFR § 200.207 in the Office of Management and Budget Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Guidance) and Section III.A of the FFY 2018 PRDE Departmental Specific Conditions, the Department is imposing additional specific conditions, which include the requirement that PRDE must procure the services of a third-party fiduciary agent, acceptable to the Department, to perform the financial management duties required under Federal laws and regulations for all Department grant awards made to PRDE by the Department. The intent of these specific conditions is to ensure effective implementation of Department programs in Puerto Rico through appropriate fiscal management and accountability. The Department appreciates your support in using a third-party fiduciary agent which will align to your goal of assisting PRDE in building its capacity to implement proper internal controls and management practices that will ensure compliance with Department grant requirements regarding the administration and management of Federal education funds.

The Department will continue to work with your staff to support your goal of ultimately having PRDE regain fiscal management responsibilities for, and effectively management of Department grant programs in the future.

Please also note that the specific conditions maintain, with appropriate changes, certain provisions from the FFY 2018 Departmental Specific Conditions with respect to PRDE's implementation of Part B of the Individuals with Disabilities Education Act, full implementation of the Internal Audit Office and Audit Oversight Committee, and other matters.

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,

A handwritten signature in black ink, appearing to read "Jim Stader, P.E.", is written over the typed name and title. The signature is fluid and cursive.

Jim Stader, P.E.
Deputy Assistant Secretary
Office of Grants Administration

cc: Yanin M. Dieppa Perea, Director of the PRDE Office of Federal Affairs
Eliezer Ramos Pares, PRDE Associate Secretary for Special Education
Glanidsa Castro, Director of the Internal Audit Office

Commonwealth of Puerto Rico Department of Education
FFY 2019 Departmental Specific Conditions

PREAMBLE: These specific conditions¹ are imposed on the Puerto Rico Department of Education's (PRDE's) Federal fiscal year (FFY) 2019 grants awarded by the U.S. Department of Education (Department) on or after the date of these specific 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 specific conditions.

Under Section III.A of the FFY 2018 Departmental Specific Conditions, as well as previous annual Departmental Special Conditions, the Department has the authority to take appropriate enforcement action at any time if PRDE fails to meet the specific conditions imposed. The Department has determined that PRDE has not made substantial progress towards meeting the specific conditions, and it has not maintained the improvements instituted under the October 25, 2004 Compliance Agreement among the Commonwealth of Puerto Rico (Puerto Rico), PRDE, and the Department (2004 Agreement); the December 17, 2007, Memorandum of Agreement among Puerto Rico, PRDE, and the Department (2007 MOA); and the December 17, 2007 Compliance Agreement among Puerto Rico, PRDE, and the Department (2007 Agreement). As a result, PRDE has not been able to demonstrate that it has the capacity to ensure fiscal management of Department grant funds to ensure compliance with Federal grant requirements and fiscal accountability without the use of a third-party fiduciary agent.

Therefore, in accordance with regulations governing specific conditions in 2 CFR § 200.207 in the Office of Management and Budget (OMB) Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Guidance) and Section III.A of the FFY 2018 Departmental Specific Conditions, as well as previous annual Departmental Special Conditions, these specific conditions are imposed to help ensure that grant funds awarded by the Department to Puerto Rico and PRDE are expended in accordance with applicable legal requirements and the appropriate fiscal accountability measures and management practices and controls.

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

¹ Consistent with 2 CFR §§ 200.207 and 3474.10, the term "specific" conditions replaces the previously used term "special" conditions." In this document, the term "Special Conditions" is used when referencing grant awards and required reporting associated with the receipt of those funds for years prior to FFY 2018.

ultimately bring it into compliance with all Federal education program requirements.

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 Cooperative Audit Resolution and Oversight Initiative (CAROI) process, to jointly resolve the backlog of unresolved PRDE audits, which contained over six hundred audit findings dating back to 1994.

D. The 2004 Agreement primarily addressed systemic problems in PRDE's program administration and management of Federal education funds. At that time, PRDE began to implement several new grants management, administrative, and fiscal processes. At the conclusion of the 2004 Agreement, the Department determined that these new processes would satisfy requirements in the 2004 Agreement if 1) the processes were implemented fully and effectively, as approved by the Department, throughout Puerto Rico's school system, and 2) 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 (2007 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 2007 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 2007 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 the monitoring of PRDE's Federal programs, the Department identified issues in several programs 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 with the IDEA Part B program, the Department's Office of Special Education Programs (OSEP) determined that it would address PRDE's progress on these requirements through the IDEA Part B State Performance Plan and Annual Performance Report (APR) processes and, if necessary, through other grant-specific actions.

H. While actions taken by Puerto Rico and PRDE during the term of the 2007 Agreement 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, continued work was required by PRDE to improve the effectiveness and outcomes of its Federal education programs. In support of this objective, the Department continued to follow up with PRDE annually from 2011 until the present time on its ongoing improvement efforts and remained committed to providing ongoing and robust technical assistance as required. At this time, based on its regular monitoring of PRDE's administration of Department programs and funds, the Department has concluded that the improvements that PRDE had made in response to the 2004 Agreement, the 2007 MOA, and the 2007 Agreement have not been sustained and have significantly eroded. While some of this can be attributed to the impact of the 2017 hurricanes,

the root causes and reasons for this erosion were present and known for many years and were the primary impetus behind the signing into law on June 30, 2016 of the Puerto Rico Oversight, Management, and Economic Stability Act of 2016 (PROMESA) followed by Puerto Rico filing for bankruptcy relief in federal court on May 3, 2017.

I. Puerto Rico has had longstanding challenges implementing Federal education programs consistent with the requirements of law, regulation, and financial and administrative guidelines. Moreover, these challenges are paired with the continuing poor educational outcomes demonstrated by PRDE over many decades. Based on review of documentation submitted by PRDE, as well as Department monitoring and site visits to PRDE, it appears that structural issues lie at the core of PRDE's administrative and educational underperformance, including insufficient numbers of experienced and trained staff charged with administering state and local programs and funding and the near-absence of rigorous procurement practices and staffing based on best practices. The procurement practices and controls, in particular, have caused significant problems for PRDE and have resulted in numerous findings in the annual OMB A-133 Single Audit, reports from the Department's Office of the Inspector General (OIG), and reports from PRDE's Internal Audit Office. Several recent high visibility federal indictments of PRDE contracting staff, and other staff from agencies within the Commonwealth for improper use of federal education funds, also indicate potential major weaknesses in PRDE's overall fiscal management.

J. The Department recognizes the risk associated with PRDE's current fiscal management of federal funds and the impact this is having on effective federal education program implementation. Based on information gathered during site visits to Puerto Rico since 2011, our evaluation of PRDE's ongoing improvement progress, reports issued by PRDE's Internal Audit Office, the Department's review of certain findings by the Department's OIG, recent high visibility federal indictments of PRDE contracting staff, and major weaknesses in PRDE's fiscal management controls, the Department is very concerned about PRDE's ability to effectively manage the significant amounts of funds that have been awarded in recent years including new federal funds for disaster recovery. The Department considered the history of PRDE's fiscal management challenges and our efforts over many years to address them. For the last two decades, the Department has worked closely with the PRDE to resolve and stabilize respectively the fiscal management issues and environment. However at this time, to provide reasonable assurance that federal education funds are managed and accounted for properly, the Department is imposing these specific conditions that, among other things, require PRDE to procure the services of a third-party fiduciary agent, acceptable to the Department, to perform the financial management duties required under federal regulations for all Department grant awards made to PRDE. These conditions are set forth in further detail below. Because PRDE has not met the requirements in the Uniform Guidance at 2 CFR Part 200, regarding the management of Department funds by States, these specific conditions require

PRDE to comply with the provisions of the Uniform Guidance in 2 CFR Part 200 that apply to grantees other than States.

II. SPECIFIC CONDITIONS

A. Requirement for PRDE to Use a Third-Party Fiduciary Agent

PRDE must enter into a contract with a third-party fiduciary agent (Agent) that meets the qualifications below. The Agent will perform financial management duties currently performed by PRDE, and required under EDGAR at 34 CFR Parts 75 and 76, and the Uniform Guidance at 2 CFR Part 200, for all Department grants awarded by the Department to PRDE on or after the date of these specific conditions, and for all grants previously awarded by the Department to PRDE that are still available for obligation or liquidation on the date of these specific conditions. PRDE agrees that by accepting grant awards subject to the terms of these specific conditions, it will draw down funds and charge costs against its grant awards only in accordance with the first in-first out (FIFO) accounting procedure, therefore charging costs first against its FY 2017 grant awards, then against FY 2018 grant awards, and then against FY 2019 grant awards, at least until it has procured the services of an Agent that is under contract to carry out the duties and responsibilities described in Attachment B to these specific conditions.

B. Qualifications of Third-Party Fiduciary Agent

The entity that PRDE selects to serve as the Agent must:

1. Have a demonstrated, track record in successfully performing the types of financial management services required for Department grants awarded to PRDE;
2. Have a sufficient number of personnel available with the skills and expertise in financial management functions necessary to perform the required financial management services for Department grants awarded to PRDE;
3. Be able to, and agree to, increase operational capacity to accommodate increases in workload as a result of the contract with PRDE; and
4. Be approved by the Department before PRDE enters into a contract with the entity.

C. Responsibilities of PRDE and the Third-Party Fiduciary Agent Concerning Administration of Grant Funds

The responsibilities and requirements of PRDE in working with the Agent are set forth in Attachment A to these specific conditions. The responsibilities and requirements of the Agent in carrying out the financial management duties for

PRDE's Department grants are set forth in Attachment B to these specific conditions. Any request for proposals, statement of work, or other related documents used in PRDE's procurement process, and any contract between PRDE and the Agent, must comply with the procurement provisions in 2 CFR §§ 200.318-200.326 and must include the provisions set forth in Attachments A and B.

D. Approval of Contract with Third-Party Fiduciary Agent

As stated in section II.B.4 of these specific conditions, the Agent selected by PRDE must be approved by the Department. Prior to entering into the contract for financial management services, PRDE must submit to the Department for approval: 1) evidence that it followed applicable procurement procedures; 2) the name of the proposed Agent; 3) the fee or rate that the proposed Agent will charge for the third-party fiduciary services; and 4) the proposed contract provisions, which must be consistent with the responsibilities of PRDE and the Agent in Attachments A and B.

E. Continued Work on Enhancing and Developing 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

This section outlines the status of PRDE's efforts to improve its PSC and ProSC systems pursuant to previous specific conditions and the work that remains to be performed. To improve and sustain its progress in this area, PRDE must obtain assistance from the Agent whose services it procures as required by section II.A of these specific conditions.

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 subsequent site visits, the Department will verify that policies and procedures reflect the enhancements made to the SEPI system.

The Department will continue to monitor proper implementation and progress related to 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, timely and effective disbursement of Federal funds.

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.

In April 2017, PRDE implemented a pilot project of the pre-SEPI system with a selected number of programs. PRDE has indicated that once adjustments and modifications are completed, it will expand implementation to other programs. The improvements to the pre-SEPI process aim to maximize the capability of the SEPI system by eliminating the current manual process.

In the February 22, 2019 status report to the Department, PRDE stated its commitment to develop, implement and expand the capabilities of the pre-SEPI system to all education programs. PRDE indicated that it recognizes the benefits of the pre-SEPI capabilities identified as a result of the 2017 pilot project and stated that it will extend the capabilities to other programs in 2019. Based on this report and information collected during the January 2019 RMSD visit to PRDE, the Department has determined that PRDE has not made substantial progress in the implementation of the pre-SEPI system.

By January 31, 2020, PRDE must provide to the Department a corrective action plan design to assist PRDE rollout implementation of the pre-SEPI system. At a minimum, the corrective action plan must include the following:

- Clearly define each phase needed for implementation
- Define deadlines for each phase
- Identify individuals and areas who will be accountable for implementation and results
- Identify and allocate resources necessary to achieve desired results
- Development of policies and procedures
- Development of training tools and deployment to users
- Measures to track and monitor progress

The Department will monitor expansion in the development and execution of the process during subsequent site visits.

2. In the FFY 2013 special conditions, the Department 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 had 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 had been made, three recommendations remained to be fully implemented. In March 2015, PRDE provided evidence that it had 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. To date, 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.

The February 22, 2019 status report to the Department states that PRDE is going through a re-organization of its operations and organizational structure. It states that part of this process will be the creation of a contract office expected to be operational during the 2019-2020 fiscal year. In addition, PRDE states that it is in the process of assessing the effectiveness of the professional development services. Through technical assistance site visits, the Department has been working with PRDE to address deficiencies identified in the processes established for ProSCs.

PRDE must obtain assistance from the Agent whose services it procures as required by section II.A of these specific conditions.

F. Continued Work Regarding Grants Management System

This section outlines the status of PRDE's efforts to complete remaining actions to improve its grants management system pursuant to the 2004 Agreement.

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. In 2017, PRDE started the process of reviewing and evaluating policies and procedures related to work plans.

In a May 1, 2018 report, PRDE stated that, during the process of reviewing and evaluating the work plan policies and procedures, it identified other weaknesses in the work plan platform.

In the April 30, 2019 status report to the Department, PRDE stated that in the process of evaluating grants management policies and procedures it identified

areas that require modifications to strengthen the cycle of the pre-award planning process.

Based on these reports and information collected during the January 2018-19 RMSD visits to PRDE, the Department has determined that PRDE has not maintained adequate internal controls in the pre-award planning process, grant application, evaluation, and approval process through workplans.

The Department will continue to work with PRDE to identify weaknesses in the process. In addition, to improve and sustain its progress in this area, PRDE must obtain assistance from the Agent whose services it procures as required by section II.A of these specific conditions.

By February 2020, PRDE must submit a corrective action plan to the Department establishing adequate controls in all steps of the workplan process. This must include grants management steps for the internal and external entities involved in the workplan process.

G. 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. PRDE will also provide OCR with documentation demonstrating that the training has been conducted during FY 2018.

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

Special Education and Related Services

The June 30, 2018 Department-wide Specific Conditions noted that additional reporting was required by the Special Conditions addressed in the 2007 Agreement in the form of Corrective Action Plan (CAP) and CAP Progress Reports. Through those processes, PRDE reported the following data and information:

Requirements and Data

1. *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 2017 reported data under section 618 of the IDEA show that 99.82% (547/548) of due process hearing decisions were issued in a timely manner. In its May 1, 2019 CAP Progress Report, PRDE reported data for the period of July 1, 2018 through March 31, 2019. Specifically, PRDE reported that, as of April 16, 2019, 95.59% (412/431) of due process hearing decisions that were fully adjudicated were issued within the required timeline, or a timeline that was properly extended by the hearing officer at the request of either party.

PRDE attributes its progress in issuing timely due process hearing decisions to the immediate actions the PRDE Office of Special Education (SAEE is the Spanish acronym) leadership took to address the causes attributing to noncompliance in this area. Such actions include encouraging the use of resolution and mediation options available to parents under IDEA. In addition, PRDE implemented the Information System of the Special Education Due Process Hearing (SiPAEE by its Spanish acronym) which allows Conciliators (State educational agency staff assigned to represent PRDE in resolution cases), hearing officers and administrative judges direct access to case information, including timelines. PRDE further reported the SiPAEE produces automatic alerts to staff regarding approaching deadlines to ensure decision timelines are met in accordance with IDEA. In addition, PRDE attributes regular meetings among Conciliators, legal teams and other staff; training; survey feedback; and improved relationships with parents to the improvement in meeting due process hearing timelines.

As noted above, PRDE has continued to report data showing significant progress in meeting the due process hearing decision timeline requirements of the IDEA over time. In addition to the above reported data, PRDE's FFY 2015 SPP/APR data for this indicator was 96.03%. Based on these data, OSEP has determined that PRDE has satisfied the IDEA Part B specific condition related to timely due process hearing decisions, and the Department is removing this specific condition. We appreciate the steps PRDE has taken to correct noncompliance related to this IDEA requirement and expect that PRDE will continue to monitor this area to ensure a high degree of compliance is sustained.

2. *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 May 1, 2019 CAP Progress Report, PRDE reported that as of April 25, 2019, for the period of July 1, 2017 through June 30, 2018, 100% (1723/1723) of requests for assistive technology devices and services have been verified as delivered. In the same report, PRDE also reported that for the period of July 1, 2017 through March 31, 2018, 34.33% (287/836) of requests for assistive technology devices and services have been verified as delivered.

In presenting its data, PRDE indicated the improvement in timeliness of the delivery of assistive technology devices for the period of July 1, 2017 through June 30, 2018 was the result of its improved reporting methodology implemented in 2017 and the “Guide for the Provision of Assistive Technology Experiment and Services,” issued in 2017. In addition, PRDE reported that it provides regular training and reinforcement to school personnel regarding their roles and responsibilities in requesting AT equipment; and conducts regular follow-up and monitoring activities to ensure timely delivery and proper use of AT devices in the Commonwealth’s schools. PRDE also reported that a dedicated e-mail address was established to receive and respond to correspondence regarding AT services and devices including purchase requests, delivery status, evaluations, referrals and other specifically related communication. Further, PRDE noted in its 2018-2019 CAP² that specific actions (e.g., follow-up status reports to the CSEEs regarding pending delivery cases; reports to CSSEs regarding compliance with AT requirements; letters to vendors regarding pending delivery of equipment, etc.) had been completed to address the specific condition; however, none of those items were included with PRDE’s May 1, 2019 CAP Report. In addition, PRDE indicated that a supplier bidding process was implemented to allow more efficiency in purchasing frequently requested equipment which helped improve delivery timelines of AT equipment.

At the beginning of each school year, in accordance with 34 CFR §300.323(a) and (c)(2), respectively, each public agency must have in effect, for each child with a disability within its jurisdiction, an Individualized Education Program (IEP), as defined in 34 CFR §300.320; and each public agency must ensure that, as soon as possible following development of the IEP, special education and related services are made available to the child in accordance with the child's IEP. In developing each child's IEP, the IEP Team must consider whether the child needs assistive technology devices and services in accordance with 34 CFR §300.324(a)(2)(v).

While PRDE’s FFY 2017 data show improvement in the delivery of AT equipment, OSEP is concerned that PRDE is only able to validate that 86.10%

² In addition to the May 1, 2019 Corrective Action Progress (CAP) Report, PRDE included a copy of its 2018-2019 CAP in its response to OSEP.

of the assistive technology and services ordered have been received at a period of time so close to the end of the school year. In addition, based on the reported data, OSEP can only determine what percentage of AT required in students' IEPs has been delivered, not whether or not it has been provided in a timely manner.³

Therefore, OSEP cannot determine that PRDE achieved compliance with the assistive technology requirements in IDEA section 612(a)(1) and 34 CFR §300.105.

3. *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. In addition, OSEP notes that in light of major weaknesses in PRDE's overall fiscal management identified in the background section above, the specific conditions related to financial management must stay in place until such time as these weaknesses are corrected.

- a. *Financial Management Generally*

OSEP's FFY 2018 Required Actions: PRDE reported in the May 1, 2018 CAP Progress Report that a new portal had been developed in Mi Portal Especial (MiPE), PRDE's special education electronic data platform, designated specifically for use by service providers and full implementation was expected by fiscal year 2018-2019 in which 100% of the service providers would bill for their services through MiPE. OSEP required PRDE to report on its progress in the December 1, 2018 and May 1, 2019 progress reports, and provide evidence that: a) fiscal management procedures and monitoring processes were implemented during the reporting period; and b) implementation of the new portal in the MiPE invoicing system occurred during the same reporting periods.

Data: In its May 1, 2019 CAP Progress Reports, PRDE reported effective with the 2018-2019 school year, 100% of service providers for children with disabilities are documenting their services through the Mi Portal Especial (MiPE), PRDE's special education electronic data platform. In addition, PRDE reported that 100% of the providers also bill electronically through MiPE for services provided to children with disabilities. PRDE indicated that each service provider is required to record in detail each intervention/service with students with disabilities and upload all supporting documentation into MiPE; PRDE is then able to verify the services were provided through the students' electronic IEP.

PRDE also reported that, as of April 25, 2019, 80% (867/1088) of the bills submitted through MiPE were paid. Internal controls have also been

³ OSEP notes that beginning with its May 2, 2017 CAP Progress Report, PRDE reported the AT data using a methodology that started from the date the IEP team determines that the student needs the AT.

implemented to ensure funds are used to pay for the appropriate services as assigned in students' IEPs. Additionally, PRDE reported that it continues to enhance the system and present new features; and a help desk was set-up to provide technical assistance to users.

Additionally, PRDE reported that it conducted monitoring visits to Special Education Service Centers (CSEE is the Spanish acronym) to review and verify compliance with the procedures established in the SAEE Manual of Policies and Procedures. While monitoring visits to the CSEEs of Ponce, Humacao, Fajado, Arecibo, Caguas, Morovis, Mayaguez and Aguada have been completed, visits to San Germán, San Juan and Bayamón were scheduled for June 2019. PRDE also noted in its May 1, 2019 CAP that samples of the visit reports were available, however, PRDE did not provide evidence that fiscal management procedures and monitoring processes were implemented during the reporting period.

OSEP recognizes that, while PRDE has demonstrated improvements in achieving proper fiscal control, PRDE has not provided the appropriate evidence to demonstrate it has fully 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

OSEP's FFY 2018 Required Actions: In the FFY 2018 Specific Conditions, OSEP required PRDE to provide evidence that the formal monitoring related to the Transportation Management System referenced in its May 1, 2017 and May 1, 2018 CAP was conducted, and to provide the results of that monitoring, during the reporting periods specified above.

Data: In the May 1, 2018 Progress Report, PRDE reported that significant changes and improvements have been implemented over the years to improve the management and control of its overall transportation system. Specifically, PRDE reported in its CAP that the SAEE Administration Unit conducted monitoring visits to each educational region to follow-up on actions taken in 2017-2018. As of this reporting period, PRDE had completed monitoring visits to the regions of Bayamón, San Juan, Humacao and Caguas. Visits to three remaining regions were scheduled for May and June 2019. However, PRDE did not provide OSEP with a copy of any of the monitoring reports demonstrating the results from the visits conducted during the specified reporting period.

c. Transportation for Students with Disabilities in Bayamon

OSEP's FFY 2018 Required Actions: In the FFY 2018 Specific Conditions, OSEP specified that, 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 Bayamón Region. OSEP further indicated that 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.

Data:

- 1) On August 15, 2018, PRDE's Internal Audit Office (IAO) submitted an audit report to OSEP in response to the required corrective action. The audit report reflected the review of the Transportation Services for students' administration process. Specifically, the report was an evaluation of "the adequacy and effectiveness of the internal controls over the management of school transportation to determine compliance with fiscal control and fund allocation accounting procedures to ensure proper disbursement and accounting" for all educational regions throughout the Commonwealth. Therefore, of the numerous findings made by the IAO, OSEP could not determine which findings were specific to children with disabilities receiving special education and related services under the IDEA Part B program in the Bayamón region. Furthermore, although PRDE ensured that the required audit was conducted, they did not clearly demonstrate 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 Bayamón Region. However, PRDE reported in its May 1, 2019 CAP and Progress Report that it is collaborating with other offices, including its Purchasing Unit, to address the 31 recommendations and observations identified in the IAO audit. OSEP looks forward to updates on PRDE's progress in addressing the related findings.
- 2) With its May 16, 2019 IDEA Part B grant award application submission, PRDE provided a specific assurance that Puerto Rico would not use IDEA funds for transportation costs for students with disabilities in the Bayamón 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 Bayamón Region.

Nature of FFY 2019 Specific 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 three remaining areas of longstanding noncompliance noted in H.2 and H.3, 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 H.2 and H.3, 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, 2019	July 1, 2019–October 31, 2019
Second Progress Report	May 1, 2020	November 1, 2019–March 31, 2020

- a. *Required Reporting on Assistive Technology Requirement:* In its first CAP Progress Report, PRDE must:
 - i. report data on the percentage of requests for assistive technology devices and services that have been verified as completed for the FFY 2018 APR reporting period (July 1, 2018 through June 30, 2019);
 - ii. report updated data on the percentage of requests for assistive technology devices and services that have been verified as completed from the reporting periods specified above in each CAP Progress Report;
 - iii. in order to ensure compliance with the assistive technology requirement under IDEA that AT devices and services are received by children with disabilities in a timely manner PRDE must also report the following data: For each reporting period specified above, in each CAP Progress Report, report the percentage of students whose IEPs require AT devices and services who: (i) received the AT within 30 days of the implementation of the IEP;

- (ii) received the AT more than 30 days after implementation of the IEP; (iii) have not yet received AT;
- iv. for each reporting period specified above, in each CAP Progress Report for those cases where AT was received more than 30 days after implementation of the IEP or for those that have not yet received AT, report the actual number of days beyond the date of implementation of the IEP and the reason for the delay. In addition, describe the barriers to timely delivery and how PRDE is addressing those barriers; and
- v. provide copies of summary reports of monitored CSEEs that demonstrate compliance with the processes established in PRDE's Assistive Technology Guide and address pending AT delivery cases.

b. *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, 2019, and the second CAP progress report, due May 1, 2020, PRDE must provide evidence that the fiscal management procedures and monitoring processes were implemented during the reporting period. PRDE must also provide a summary of any fiscal monitoring findings and the actions taken to ensure compliance.
- ii. *Automation of special education invoicing:* PRDE must provide evidence of implementation of the new portal in the MiPE invoicing system during the reporting periods specified above in each CAP Progress Report.
- iii. *Transportation Contracts:* PRDE must provide evidence that the formal monitoring related to the Transportation Management System referenced in its May 1, 2018 and May 1, 2019 CAP has been conducted and the results of that monitoring during the reporting periods specified above in each CAP Progress Report. To satisfy this specific condition PRDE must provide OSEP with a copy of any of the monitoring reports demonstrating the results from the visits conducted during the specified reporting period.
- 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.

I. 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.

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.

In the April 30, 2018 semiannual report, IAO reported challenges in retaining a fully staffed IAO. The Puerto Rico Fiscal Agency and Financial Advisory and Authority (FAFAA), the entity in charge of collaboration, communication and cooperation efforts between the Government of Puerto Rico and the Fiscal Oversight Board, created under the Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA), established a program called "Transicion Voluntaria". This program promotes the voluntary resignation of government employees to seek work in the private sector. In February 2018, three IAO staff auditors took advantage of the Transicion Voluntaria program. The IAO stated that it is working with the Office of Human Resources to address the challenge and identify potential resources to fill the vacancies.

In the October 31, 2018 status report to the Department, the IAO reported that it had obtained approval to begin a new process of recruiting auditors. The report states that in August 2018, the IAO requested 10 internal auditors that included Levels I, II, and III. The IAO considers the recruitment and retention of Level III

auditors with the authority to supervise junior auditors crucial to its operations. However, in the April 30, 2019 status report, the IAO stated that no candidates were available through the August 17, 2018 process. In March of 2019, the IAO started another recruitment process and it is currently reviewing application to identify potential candidates.

The Department is concerned with the challenges the IAO has faced to achieve a fully staffed IAO. A fully staffed IAO is essential to continue successful operations and accountability requirement associated with audits, evaluations and investigations.

PRDE shall work with the IAO Director to address and take corrective actions to ensure adequate resources are allocated to the IAO to attract and retain the qualified staff needed to successfully implement all the functions of the IAO.

By November 11, 2019, PRDE must submit a status report on the corrective actions it has taken to address the IAO staffing needs.

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

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 (PROIG)

In the April 30, 2018 semiannual report, IAO stated that it had not been notified of any changes related to Law 15. On April 30, 2019 the IAO reported that the Puerto Rico Inspector General was confirmed by the Puerto Rico Senate on February 2019. However, no agenda has yet been established between the PROIG and the IAO that would alter the responsibilities of the IAO as it is currently implemented. The IAO will notify the Department of the transition process and any changes as a result of the implementation of Law 15.

The IAO will continue to submit a work plan that addresses management implementation and follow up on outstanding IAO evaluations, audits and investigations, including:

- 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
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)

J. Comprehensive Corrective Action Plan (CCAP)

1. PRDE and the Department must work together to develop a CCAP designed to address the fiscal deficiencies in administering Department grant awards that led to the requirement for PRDE to procure the services of an Agent. The CCAP will contain tasks with measurable objectives and completion dates and must address specific deficiencies, which will be determined in accordance with the third-party fiduciary agent's assessment, and incorporate the status and next steps for addressing the issues outlined in sections II.E, II.F, and II.I of these specific conditions.
2. Upon the Department's approval of the CCAP, PRDE will be required to provide quarterly reports to the Department on its progress in implementing measures required under the CCAP. PRDE agrees that the Agent will play a critical role in assessing PRDE's progress in meeting the objectives of the CCAP and also agrees that it will obtain the assistance of the PRDE internal auditor in reviewing and validating the quarterly reports for accuracy prior to their submission.

K. 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.

L. Program-Specific Conditions

Additional specific conditions may be imposed on FFY 2019 grant awards made under one or more Department programs, in addition to the specific conditions that are contained in this document. Each such program-specific 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 SPECIFIC 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 specific conditions contained in Section II above, and 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 specific 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 reinstating PRDE's "high-risk" status as described below.

B. Reinstatement of "High-Risk" Status Under 2 CFR §§ 200.207 and 3474.10

In the event that PRDE fails to comply with these specific conditions, as described above in section III.A, the Department retains the authority to reinstate the "high-risk" designation that it removed from PRDE and Puerto Rico in 2004. The Department will evaluate PRDE's progress annually to determine whether it is necessary to reinstate the "high-risk" designation. If the Department determines that such reinstatement becomes necessary, additional specific 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 further technical or management assistance; (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.

These terms and conditions do not preclude the Department from taking any otherwise authorized enforcement or other actions at any time.

IV. OTHER TERMS

A. 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.

B. Submission of Reports

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

Lorena Dickerson
Risk Management Services Division
Office of Finance and Operations
Office of Grants Administration
U.S. Department of Education
550 12th Street, S.W.
PCP, Room 6053
Washington, D.C. 20202

C. Reconsideration and Modifications

At any time, PRDE may request reconsideration of one or more of the above specific 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 specific conditions or modify these specific conditions, as appropriate. The Department will remove one or more of the specific 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 28, 2019

Attachment A to the PRDE FFY 2019 Departmental Specific Conditions

Responsibilities and Requirements of PRDE

(to be incorporated into any contract for services with the Agent)

The responsibilities and requirements of PRDE in working with the Agent under these PRDE FFY 2019 specific conditions are as follows:

1. PRDE must work cooperatively and in a timely manner with the Agent to implement the activities and responsibilities described in these specific conditions and must ensure that the Puerto Rico Department of Treasury (Hacienda) also works cooperatively with PRDE and the Agent. PRDE acknowledges that regular communication among PRDE, the Department, and the Agent is necessary to ensure proper financial management of grant funds, consistent with approved grant applications, budgets, and applicable program statutes, regulations and the cost principles in 2 CFR Part 200, Subpart E. Therefore, PRDE agrees that, as the Department deems necessary and appropriate, the Department shall include the Agent in communications, both written and oral, between PRDE and the Department.
2. PRDE, working with Hacienda, as appropriate, must permit, in a timely manner, the Agent's personnel to have access to all financial books, records, and reports related to funds made available to PRDE by the Department, or used to meet matching requirements, and access to PRDE and Hacienda personnel for discussion regarding the services the Agent must perform under these specific conditions, as provided for in the contract between PRDE and the Agent.
3. PRDE must notify the Department when any dispute arises and remains unresolved between the Agent and PRDE concerning the implementation or continuation of the contract with the Agent, or the implementation of activities supported by Department grants, including the financial management of grant funds. PRDE agrees to the Department's assistance in the resolution of any such unresolved dispute and agrees that this assistance may require compliance with the Department's requests for additional information from PRDE and Hacienda, as appropriate, and from the Agent, conference calls among representatives from these entities, and decisions or advice from the Department in resolution of the unresolved dispute. This does not preclude PRDE and the Agent from including formal dispute resolution mechanisms in their contract.
4. PRDE, working with Hacienda, as appropriate, must comply with all Federal laws and regulations that apply to the receipt and use of funds awarded under Department grants, including requirements that apply under the

Uniform Guidance at 2 CFR Part 200, Parts 75 and 76 of EDGAR, and applicable Federal program statutes and regulations.

5. PRDE must approve of the change of bank routing and account number information in the Department's G5 grants management system from the PRDE bank routing and account number(s) to the Agent's bank non-interest bearing account routing and account number(s) established by the Agent to receive Department grant funds drawn down by PRDE.
6. PRDE remains responsible for the provision of program services under the respective grants, including the review and approval (where applicable) of local educational agency (LEA) or other subgrantee applications for subgrants under State formula grant programs, determination of LEA or other subgrantee allocations, and notification to the LEAs or other subgrantees regarding their allocations under the grants.
7. PRDE, prior to any drawdowns or disbursements, in a timely manner, must provide the Agent with a line item budget for the total amount of each grant and subgrant, if applicable, that has been approved and verified by the Department. The line item budget must include amounts for State administration, State-level program activities, and LEA program activities.
8. PRDE is responsible for: (i) executing drawdowns of funds under the grants from the Department's Grants Management System (G5) so that funds are deposited into the separate bank account established and maintained by the Agent; and (ii) providing to the Agent, for deposit into the separate bank account established by the Agent, any matching funds required for the grants. PRDE understands and agrees that it must draw down funds and provide any applicable matching funds to the Agent within 24 hours of receipt of the written notice from the Agent. Failure by PRDE to comply with this condition concerning the time within which it must draw down funds may result in the Department requiring the transfer of drawdown authority to the Agent. In the event of PRDE's failure to draw down funds in accordance with this condition, the Agent must notify the Department, and the Department will determine whether drawdown authority must be transferred to the Agent. If so, then immediately upon written notice of this decision from the Department, PRDE must take all steps necessary to provide the Agent with full authority to perform drawdowns, including providing any information and authorization that the Department needs to recognize the Agent as the entity with drawdown authority.
9. PRDE must coordinate with the Agent the timing of drawdowns and disbursements to ensure that payments to staff, vendors and providers are prompt and timely. To the greatest extent feasible, PRDE must draw down funds in a timely manner so that funds under the grants are deposited to the separate bank account(s) maintained by the Agent on the same day that funds are drawn from the account(s) to liquidate obligations under the

grants. PRDE, as appropriate and at the Agent's direction, must draw down sufficient funds under a grant to cover each approved request for payment.

10. PRDE must use fiscal control and accounting procedures that ensure proper disbursement of, and accounting for, Federal funds, in accordance with 34 CFR § 75.702 (discretionary grants) and § 76.702 (formula grants), and that meet the requirements imposed on non-Federal entity grantees in 2 CFR §§ 200.302, 200.303, and 200.305(b).
11. PRDE must expend Federal and matching funds only for costs that are allowable under the respective grant programs, in accordance with the regulations and cost principles in 2 CFR Part 200, Subpart E. PRDE acknowledges that the Agent also has the duty to ensure that Department funds are used only for allowable costs, including costs that are necessary, reasonable, and allocable to the respective grants as required by 2 CFR Part 200, Subpart E, and that are procured in accordance with applicable procurement requirements in 2 CFR §§ 200.318-200.326. Where there is a question as to whether a cost is allowable, the Agent must raise this question with PRDE and, if the Agent deems it necessary, may also request assistance from the Department in determining the allowability of any expenditure.
12. PRDE must charge grants only for costs resulting from obligations that were properly made during the period of availability for the funds, including any carryover period. To ensure against the lapsing of Department funds, PRDE must provide the Agent with the amount and nature of all obligations in a timely manner to ensure that the obligations are liquidated no later than 90 days after the end of the funding period or during any extension of that period authorized by the Department, in accordance with 2 CFR § 200.343(b).
13. PRDE must establish and maintain an effective and accurate process for tracking and reporting time and effort spent by all employees whose salaries are paid under Department grants, including, but not limited to, maintaining accurate and up-to-date employee staffing lists and notices of personnel actions, distributing time among different funding sources for split-time employees, and properly allocating salary costs among Department grants, based on records that accurately and properly record the distribution of each employee's work on multiple cost objectives, the time the employee attends work, and, for those employees who work on a single cost objective, semiannual certifications. PRDE must carry out these responsibilities consistent with Federal requirements in 2 CFR Part 200, Subpart E, and more specifically, 2 CFR §§ 200.430 and 200.431.
14. PRDE must work with the Agent to ensure that the charging of direct and indirect costs against the respective Department grants is consistent with the applicable restricted and unrestricted indirect cost rates negotiated with, and approved by, the U.S. Department of Interior (Puerto Rico's cognizant

Federal agency), and that copies of any indirect cost rate proposals or agreements are provided to the Agent and comply with the applicable requirements of 2 CFR Part 200, Subpart E, and 34 CFR §§ 75.560-564 (discretionary grants) and 34 CFR §§ 76.560-569 (formula grants).

15. When necessary, PRDE, working with Hacienda, as appropriate, must grant the Agent authority to enter into contracts with vendors on behalf of PRDE, and in doing so, PRDE must comply with the provisions for procurement set forth in 2 CFR §§ 200.318-200.326.
16. PRDE, working with Hacienda, as appropriate, must provide effective oversight for proposed procurements, including, but not limited to, training all staff on, and reviewing all requisitions against, local and Department requirements for procuring goods and services, to facilitate the review and approval by the Agent in a timely manner of purchase orders and to reduce the number of requisitions that are disallowed by the Agent for not meeting these requirements.
17. PRDE must ensure that within 24 hours of receipt of a vendor's invoice from the Agent, staff must (i) accept or reject the goods or services, and, if accepted, (ii) draw down funds for the vendor payment for deposit into the separate bank account(s) maintained by the Agent.
18. PRDE must work with the Agent to ensure that all tangible personal property procured under Department grants is managed in accordance with the requirements of 2 CFR §§ 200.313(a) and (c)-(e) to ensure that such property with a purchase price meeting the thresholds as agreed between PRDE and Hacienda is properly inventoried, maintained, and stored to prevent loss, damage, or theft of such property. PRDE, or another agency designated by the Governor, must conduct a physical inventory of its equipment (as defined in 2 CFR § 200.33) with a purchase price meeting the thresholds as agreed between PRDE and Hacienda that was acquired with Department grant funds at any time and provide a copy of the inventory to the Agent upon completion. A copy of the inventory report shall be provided to the Department upon request.
19. All transactions under the contract between PRDE and the Agent must be consistent with all applicable Federal requirements, including those in the Uniform Guidance at 2 CFR Part 200 and EDGAR at 34 CFR 75 or 76, as appropriate.
20. PRDE, working with Hacienda, as appropriate, shall avoid any actions that may impact the Agent's role and responsibilities under these specific conditions, which do not include oversight of any current and/or proposed fiscal initiatives of Puerto Rico. The Agent may assist PRDE and Hacienda with financial management capacity building efforts, to the extent that this

assistance does not compromise the autonomous execution of its responsibilities under these specific conditions.

21. Except as noted herein, PRDE, working with Hacienda, as appropriate, shall comply with all applicable provisions of EDGAR.
22. PRDE may include any other terms in the contract with the Agent, consistent with those above, as are necessary to ensure timely liquidation of all Department funds, timely payment to staff, providers and vendors, and general financial management consistent with applicable Federal regulations, under the Department's grants.

Attachment B to the PRDE FFY 2019 Departmental Specific Conditions

Responsibilities and Requirements for the Third-Party Fiduciary Agent
(to be incorporated into any contract for services with the Agent)

The responsibilities and requirements for the Agent under these specific conditions are as follows:

1. The Agent must work cooperatively and in a timely manner with PRDE to implement the activities and responsibilities described in these specific conditions. The Agent acknowledges that regular communication among PRDE, the Department, and the Agent is necessary to ensure proper financial management of grant funds, consistent with approved grant applications, budgets, and applicable program statutes, regulations and the cost principles in 2 CFR Part 200, Subpart E. Therefore, the Agent understands and agrees that, as the Department deems necessary and appropriate, the Department shall include the Agent in communications, both written and oral, between PRDE and the Department.
2. The Agent's role encompasses financial management responsibilities concerning the grants, including, but not limited to, processing payments and disbursements, maintaining financial records, financial reporting, instituting and applying procurement, inventory, and payroll procedures that comply with applicable Federal requirements, and other duties as more fully described below.
3. PRDE, prior to any drawdowns or disbursements, in a timely manner, must provide the Agent with a line item budget for the total amount of each grant and subgrant, if applicable, that has been approved and verified by the Department. The line item budget must include amounts for State administration, State-level program activities, and LEA program activities. The Agent must use these line item budgets to track projected and actual expenditures for the programs under the grants. The Agent must ensure that the expenditures proposed are only for allowable costs under each grant. The Agent will also receive from the Department copies of the applications, budgets, and budget narratives that the Department has approved for PRDE's grant awards to ensure that the Agent has these documents for purposes of executing its financial management responsibilities on behalf of PRDE under these grants.
4. The Agent must establish, maintain, and manage a separate bank account for all of the funds under the grants from the Department. The Agent must provide PRDE with written notice (e.g., copy of invoice) of when funds are needed for a disbursement under a particular grant.
5. The Agent must acknowledge that PRDE has drawdown authority and that PRDE understands and agrees that it must draw down funds and provide any applicable matching funds to the Agent within 24 hours of receipt of the written notice from

the Agent. Failure by PRDE to comply with this condition concerning the time within which it must draw down funds may result in the Department requiring the transfer of drawdown authority to the Agent. In the event of PRDE's failure to draw down funds in accordance with this condition, the Agent must notify the Department, and the Department will determine whether drawdown authority must be transferred to the Agent. If so, then immediately upon written notice of this decision from the Department, PRDE must take all steps necessary to provide the Agent with full authority to perform drawdowns, including providing any information and authorization that the Department needs to recognize the Agent as the entity with drawdown authority.

6. The Agent must use fiscal control and accounting procedures that meet the requirements imposed on non-Federal entity grantees in accordance with 2 CFR §§ 200.302, 200.303, and 200.305(b).
7. The Agent must expend funds only for costs that are allowable under the respective grant programs, in accordance with 2 CFR Part 200, Subpart E. If the Agent questions whether an expenditure is allowable, the Agent must raise this question with PRDE. If the Agent deems it necessary, the Agent may also request assistance from the Department in determining the allowability of any expenditure.
8. The Agent must determine the value of any in-kind property or services donated to or provided by PRDE that are used to meet cost sharing or matching requirements as required by 2 CFR § 200.306 and must maintain records sufficient to document the bases for those valuations.
9. The Agent must take steps to prevent the lapsing of funds available under the grants, including ensuring timely disbursement of funds through the use of methods and procedures for payment that minimize the time elapsing between the transfer of funds and disbursement of those funds as specified in PRDE's Treasury-State agreement, as required under the Cash Management Improvement Act and Treasury regulations at 31 CFR Part 205. For grant funds not included in the PRDE's Treasury-State agreement, the Agent must meet the requirements in 2 CFR § 200.305(b). PRDE and the Agent must coordinate the timing of drawdowns and disbursements to ensure that payments to staff, vendors and providers are prompt and timely. To the greatest extent feasible, PRDE, or the Agent, if it has undertaken drawdown responsibility, must draw down funds in a timely manner so that funds under the grants are deposited to the separate bank account maintained by the Agent on the same day that funds are drawn from the account to liquidate obligations under the grants. The Agent must ensure that any interest earned on grant funds not subject to the Treasury-State agreement is repaid annually, as required by 2 CFR § 200.305(b)(9).
10. The Agent must charge Department grants only for costs resulting from obligations that were properly made during the period of availability for the

funds, including any carryover period. To ensure against the lapsing of Department funds, the Agent must liquidate obligations no later than 90 days after the end of the funding period or during any extension of that period authorized by the Department, in accordance with 2 CFR § 200.343(b).

11. The Agent must establish and maintain a process for tracking and reporting time and effort spent by all employees whose salaries are paid under Department grants, including distribution of time among different funding sources for split-time employees, and for properly allocating salary costs among Department grants, based on records that accurately and properly record the distribution of each employee's work on multiple cost objectives, the time the employee attends work, and, for those employees who work on a single cost objective, semiannual certifications. The Agent must carry out these responsibilities consistent with Federal requirements in 2 CFR Part 200, Subpart E, and more specifically, 2 CFR §§ 200.430 and 200.431.
12. In disbursing funds for allowable costs under the grants, the Agent must distinguish between direct and indirect costs and use accurate methods to allocate funds correctly between these two cost categories. The Agent must ensure that the charging of direct and indirect costs against the respective Department grants is consistent with the applicable restricted and unrestricted indirect cost rates negotiated with, and approved by, the U.S. Department of Interior (PRDE's cognizant Federal agency), and that copies of any indirect cost rate proposals or agreements comply with the applicable requirements of 2 CFR Part 200, Subpart E, and 34 CFR §§ 75.560-564 (discretionary grants) and 34 CFR §§ 76.560-569 (formula grants).
13. The Agent must establish contacts and working relationships with prospective vendors that can provide goods and services that PRDE needs under the grants. PRDE must give the Agent authority to enter into contracts with vendors on its behalf and in doing so, must comply with the provisions for procurement set forth in 2 CFR §§ 200.318-200.326.
14. Within 24 hours of the Agent's receipt of a vendor invoice, the Agent must provide a copy of the invoice to PRDE and ensure that the goods or services delivered are available for inspection and acceptance or rejection by the appropriate PRDE staff requesting the goods or services. The Agent must pay vendors for the delivered goods or services and must, to the extent reasonably possible, disburse funds to the vendors on the same day that funds are deposited into the separate bank account(s) maintained by the Agent. The Agent must make payments by electronic funds transfer (EFT) or by paper draft only if EFT is not available or possible for a particular vendor.
15. The Agent must manage all tangible personal property procured under the grants, with a purchase price meeting the thresholds as agreed between PRDE and Hacienda, in accordance with the requirements of 2 CFR §§ 200.313(a) and (c)-

- (e). In particular, the Agent must establish and maintain a process for managing such property consistent with the requirements of 2 CFR § 200.313(d), including reconciling the inventory conducted by PRDE under paragraph 18 in Attachment A to these specific conditions with existing property records; developing a system for maintaining property records and for identifying property acquired with Department grant funds; and establishing a control system to prevent loss, damage, or theft of the property.
16. The Agent must maintain records that fully show the amount of funds made available under each of the grants; how PRDE uses the funds; the total cost of each project; the share of that cost provided from other sources; and other records to facilitate an effective audit, in accordance with 34 CFR § 75.730 (discretionary grants) and § 76.730 (formula grants). The Agent, acting on behalf of PRDE must retain records in accordance with the provisions of 2 CFR § 200.333.
 17. In general, the Agent must use fiscal control and fund accounting procedures that ensure proper disbursement of, and accounting for, Federal funds, in accordance with 34 CFR § 75.702 (discretionary grants), § 76.702 (formula grants), and 2 CFR §§ 200.302, 200.303, and 200.305(b).
 18. The Agent must maintain insurance as required under the terms of the contract.
 19. All transactions under the contract between PRDE and the Agent must be consistent with all applicable Federal requirements, including the Uniform Guidance at 2 CFR Part 200 and EDGAR at 34 CFR Parts 75 or 76, as appropriate.
 20. The Agent must comply generally with the requirements of 2 CFR § 200.327. More specifically, the Agent should produce quarterly reports concerning financial transactions of PRDE for submission to PRDE and the Department, detailing for each grant awarded to PRDE: a) the date of receipt, and the amount, of each approved payment request; b) the date and amount of each draw down deposit; c) the date and amount of each payment or disbursement by the Agent; and d) any interest or other funds remaining in the account at the end of the quarter. These amounts must also be grouped by and comparable with the projections in the line item budgets described in paragraph 7 in Attachment A to these specific conditions and must be reconciled with the Department's G5 system. This reconciliation must include drawdown dates, drawdown amounts and available balances, by award. These reports shall be due within 10 working days after the end of each quarter.
 21. The Agent recognizes that, except as noted herein, PRDE must comply with all applicable provisions of EDGAR, and all actions that the Agent takes on their behalf in accordance with services provided under these specific conditions, must be in compliance with all applicable provisions of EDGAR.

