



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

July 1, 2020

Honorable Elgio Hernández Perez, Ph.D.  
Secretary of Education  
Puerto Rico Department of Education  
P.O. Box 190759  
San Juan, Puerto Rico 00919

Dear Secretary Hernandez:

We have approved the Commonwealth of Puerto Rico (Puerto Rico)'s application for Federal Fiscal Year (FFY) 2020 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 14, 2020, including the assurances provided in Section II and incorporated by reference to this letter as noted in Enclosure A. Our approval is also based on Puerto Rico's certification in Section II.D of its FFY 2020 application (Enclosure B), signed by you on May 14, 2020, that PRDE's provisions meet the requirements of IDEA Part B as found in Public Law 108-446, and that Puerto Rico will operate its Part B program in accordance with all of the required assurances and certifications, consistent with 34 C.F.R. §76.104.

Please note that OSEP Memorandum 20-01, dated January 23, 2020, explained the impact of recent amendments to the Copyright Act, 17 U.S.C. § 121, on certain terms relevant to Assurance 23a or 23b related to accessible instructional materials as reflected in your State's FFY 2020 application for funds under IDEA Part B. As a result, the term "blind and other persons with print disabilities" has been removed from the Copyright Act and replaced with "eligible person," and the term "specialized format" has been removed and replaced with the term "accessible format." Although at this time Congress has not made conforming amendments to section 612(a)(23) of IDEA, the Department construes Assurances 23a and 23b as incorporating the terms "eligible person" and "accessible format."

As set forth in Enclosure E, on June 30, 2020, pursuant to the Department's authority in 2 C.F.R. § 200.207, Departmental 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 Departmental Specific Conditions were imposed to ensure that Department grant awards are expended by PRDE, with the use of a third-party fiduciary agent, 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. The reasons for doing so and the Departmental specific conditions are detailed in Enclosure E.

In addition, PRDE's FFY 2020 IDEA Part B grant awards are being released subject to FFY 2020 Programmatic Specific Conditions, as set forth in Enclosure F, pursuant to the Department's authority in IDEA section 616(g) and 2 C.F.R. § 200.207. PRDE has not achieved compliance with the requirements related to: (1) assistive technology (IDEA section 612(a)(1) and 34 C.F.R. §300.105); and (2) financial management (34 C.F.R. §§ 300.162(a), 300.202(a)(1), and 76.530, and Subpart E of the Office of Management and Budget (OMB) Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, codified in 2 C.F.R. Part 200). Therefore, as described in Section III of Enclosure F regarding the FFY 2020 Programmatic 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 MOA; and (2) submit two CAP progress reports describing the progress on the activities detailed in the CAP.

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. PRDE has provided the following specific assurances with its FFY 2020 IDEA Part B grant application, which the Department received on May 14, 2020, related to transportation costs for students with disabilities in the Bayamón Educational Region:

- Until such time as PRDE has demonstrated to the Department that it is in full compliance with the requirements of 34 C.F.R. § 76.702 and 2 C.F.R. §§ 200.302(a), 200.302(b)(3), 200.302(b)(4), and 200.303 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.
- PRDE will submit documentation (including an audit report demonstrating compliance with the above requirements) 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.
- PRDE will provide OSEP with a copy of the memorandum notifying the appropriate finance personnel in Puerto Rico 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.

Please note that as part of your application for FFY 2020, Puerto Rico has provided a certification, pursuant to 34 C.F.R. §76.104, that its application meets the requirements of IDEA Part B and that the State will operate its Part B program in accordance with all of the required assurances and certifications. Any changes made by Puerto Rico, after OSEP approval, to information that is a part of a State's application, must meet the public participation requirements in 34 C.F.R. § 300.165.

Enclosed are Puerto Rico's FFY 2020 grant awards for funds currently available under Title III of Division A of the Further Consolidated Appropriations Act, 2020 (Public Law 116-94) 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, 2020, through September 30, 2022, in accordance with 34 C.F.R. § 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 2020. Of the \$12,764,392,000 appropriated for Section 611 in FFY 2020, \$3,481,009,000 is available for awards on July 1, 2020, and \$9,283,383,000 will be available for awards on October 1, 2020. 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.<sup>1</sup>

For FFY 2020, the appropriation for the Preschool Grants program is \$394,120,000. 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 C provides a short description of how Section 611 funds were allocated and how those funds can be used. In addition, Table I in Enclosure C shows funding levels for distribution of Section 611 funds and the parameters for within-State allocations.

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

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 [S]ection 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.

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<sup>1</sup> 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.

In Section V of its IDEA Part B application, pursuant to the authority in IDEA Section 618(a)(3), Puerto Rico 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) 2018 and SFY 2019. If OSEP receives information through audits, fiscal monitoring or other means that raises questions about the data Puerto Rico has provided in Section V, OSEP will follow-up with PRDE.

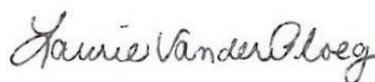
Section 604 of the IDEA provides that “[a] State shall not be immune under the 11th amendment to the Constitution of the United States from suit in Federal court for a violation of this [Act].” Section 606 provides that each recipient of assistance under the IDEA make positive efforts to employ and advance in employment qualified individuals with disabilities in programs assisted under the IDEA. Therefore, by accepting this grant, Puerto Rico 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 2020 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 OSEP Fiscal Accountability Facilitator if you have further questions.

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

Sincerely,



Laurie VanderPloeg  
Director  
Office of Special Education Programs

Enclosures

- Enclosure A (Sections II.A-C. of the State’s application)
- Enclosure B (Section II.D. of the State’s application)
- Enclosure C
- Enclosure D
- Enclosure E (Department-wide Specific Conditions)
- Enclosure F (IDEA Part B Programmatic Specific Conditions)

cc: State Director of Special Education

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><b>Yes</b> <i>(Assurance is given.)</i></p>	<p><b>No</b> <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><b>Assurances Related to Policies and Procedures</b></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, 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</p>

		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 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.
N/A		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 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 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"> <li>• 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</li> <li>• 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)</li> </ul>
		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
	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.
	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.)
	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)
	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	Certifications
	<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>
	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.
	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 C**  
**IDEA Grants to States Program**  
**(Part B, Section 611)**

**Explanation of the Federal Fiscal Year (FFY) 2020 Allocation Table**

**Total Grant Award (Column B)**

Column B shows your total grant award for the Grants to States program for FFY 2020 under Title III of Division A of the Further Consolidated Appropriations Act, 2020 (Public Law 116-94).

State total grants are calculated in accordance with several factors. First, each State is allocated an amount equal to the amount that it received for fiscal year 1999. If the total program appropriation increases over the prior year, 85 percent of the remaining funds are allocated based on the relative population of children aged 3 through 21 who are in the age range for which the State ensures the availability of a free appropriate public education (FAPE) to children with disabilities. Fifteen percent of the remaining funds are allocated based on the relative population of children aged 3 through 21 living in poverty who are in the age range for which the State ensures the availability of FAPE to children with disabilities. The statute also includes several maximum and minimum allocation requirements when the amount available for distribution to States increases.

If the amount available for allocation to States remains the same from one year to the next, States receive the same level of funding as in the prior year. If the amount available for allocation to States decreases from the prior year, any amount available for allocation to States above the fiscal year 1999 level is allocated based on the relative increases in funding that the States received between fiscal year 1999 and the prior year. If there is a decrease below the amount allocated for 1999, each State's allocation is ratably reduced from the fiscal year 1999 level.

**Section 611 Base Allocation to LEAs (Column C)**

Column C is the portion of the local educational agency (LEA) flow-through amount that must be distributed to LEAs based on the amounts that the LEAs would have received from FFY 1999 funds had the State educational agency (SEA) flowed through 75 percent of the State award to LEAs. Note that this amount is less than the minimum amount that States were required to provide to LEAs from FFY 1999 funds. The Part B regulations at 34 CFR §300.705(b)(2) clarify how adjustments to the base payment amounts for LEAs are made.

**Maximum Set-Aside for Administration (Column D)**

Column D includes the maximum State set-aside amount for administration. A State may reserve for State administration up to the greater of the maximum amount the State could reserve for State administration from fiscal year 2004 funds, or \$800,000, increased by inflation as reflected by the Consumer Price Index for All Urban Consumers (CPIU). The maximum State set-aside amount available for administration for FFY 2020 is a 2.0 percent increase over the maximum amount that was available for FFY 2019. Each outlying area may reserve for each fiscal year not more than 5 percent of the amount the outlying area receives under this program or \$35,000, whichever is greater.

## Maximum Set-Aside Available for Other State-Level Activities (Columns E - H)

The maximum level of funding that may be set aside from a State's total allocation for State-level activities, other than administration, is contingent upon the amount that the State actually sets aside for administration and whether the State opts to establish a LEA high-risk pool under IDEA, section 611(e)(3). For FFY 2020:

- (1) If the actual amount a State will set aside for State administration is over \$850,000 and the State will use funds from its award to support a high-risk pool, the maximum amount the State may set aside of its total award for State-level activities (other than administration) is 10.0 percent of its FFY 2006 award as adjusted for inflation based on the CPIU.
- (2) If the actual amount a State will set aside for State administration is over \$850,000 and the State will not use funds from its award to support a high-risk pool, the maximum amount the State may set aside of its total award for State-level activities (other than administration) is 9.0 percent of its FFY 2006 award as adjusted for inflation based on the CPIU.
- (3) If the actual amount a State will set aside for State administration is \$850,000 or less and the State will use funds from its award to support a high-risk pool, the maximum amount the State may set aside of its total award for State-level activities (other than administration) is 10.5 percent of its FFY 2006 award as adjusted for inflation based on the CPIU.
- (4) If the actual amount a State will set aside for State administration is \$850,000 or less and the State will not use funds from its award to support a high-risk pool, the maximum amount the State may set aside of its total award for State-level activities (other than administration) is 9.5 percent of its FFY 2006 award as adjusted for inflation based on the CPIU.

SEAs are required to use some portion of these State set-aside funds on monitoring, enforcement, and complaint investigation and to establish and implement the mediation process required by section 615(e), including providing for the costs of mediators and support personnel. In addition, States setting aside funds for a high-risk pool, as provided for under section 611(e)(3), must reserve at least 10 percent of the amount the State reserved for State-level activities for the high-risk pool.

SEAs also may use State set-aside funds: (1) for support and direct services, including technical assistance, personnel preparation, and professional development and training; (2) to support paperwork reduction activities, including expanding the use of technology in the individualized education program process; (3) to assist LEAs in providing positive behavioral interventions and supports and mental health services to children with disabilities; (4) to improve the use of technology in the classroom by children with disabilities to enhance learning; (5) to support the use of technology, including technology with universal design principles and assistive technology devices, to maximize accessibility to the general education curriculum for children with disabilities; (6) for development and implementation of transition programs, including coordination of services with agencies involved in supporting the transition of students with disabilities to postsecondary activities; (7) to assist LEAs in meeting personnel shortages; (8) to support capacity building activities and improve the delivery of services by LEAs to improve results for children with disabilities; (9) for alternative programming for children with disabilities who have been expelled from school, and services for children with disabilities in correctional facilities, children enrolled in State-operated or State-supported schools, and children with disabilities in charter schools; (10) to support the development and provision of appropriate accommodations for children with disabilities, or the development and provision of alternate assessments that are valid and reliable for assessing the performance of children with disabilities,

in accordance with sections 1111(b) and 1201 of the Elementary and Secondary Education Act of 1965 (ESEA); and (11) to provide technical assistance to schools and LEAs, and direct services, including direct student services described in section 1003A(c)(3) of the ESEA to children with disabilities, in schools or LEAs implementing comprehensive support and improvement activities or targeted support and improvement activities under section 1111(d) of the ESEA on the basis of consistent underperformance of the disaggregated subgroup of children with disabilities, including providing professional development to special and regular education teachers, who teach children with disabilities, based on scientifically based research to improve educational instruction, in order to improve academic achievement based on the challenging academic standards described in section 1111(b)(1) of the ESEA.

### **Section 611 Population/Poverty**

The minimum amount that a State must flow through to LEAs based on population/poverty equals the total award (Column B) minus the LEA base allocation (Column C), the maximum amount available for administration (Column D), and the maximum amount available for other State-level activities (Column E, F, G, or H). Of this amount, 85 percent must be distributed on a pro-rata basis to LEAs according to public and private elementary and secondary school enrollment, and 15 percent on a pro-rata basis to LEAs according to the number of children in LEAs living in poverty, as determined by the State.

**Enclosure D**  
**IDEA Preschool Grants Program**  
**(Part B, Section 619)**

**Explanation of the Federal Fiscal Year (FFY) 2020 Allocation Table**

**Total Grant Award (Column B)**

Column B shows your total grant award for the Preschool Grants program for FFY 2020 under the Title III of Division A of the Further Consolidated Appropriations Act, 2020 (Public Law 116-94).

State total grants are calculated in accordance with several factors. First, each State is allocated an amount equal to its fiscal year 1997 allocation. For any year in which the appropriation is greater than the prior year level, 85 percent of the funds above the fiscal year 1997 level are distributed based on each State's relative population of children aged 3 through 5. The other 15 percent is distributed based on each State's relative population of children aged 3 through 5 who are living in poverty. The formula provides several minimums and maximums regarding the amount a State can receive in any year.

If the amount available for allocation to States remains the same from one year to the next, States receive the same level of funding as in the prior year. If the amount available for allocation to States decreases from the prior year, any amount available for allocation to States above the fiscal year 1997 level is allocated based on the relative increases in funding that the States received between fiscal year 1997 and the prior year. If there is a decrease below the amount allocated for fiscal year 1997, each State's allocation is ratably reduced from the fiscal year 1997 level.

**Maximum State Set-Aside (Column C)**

States may reserve funds for State-level activities up to an amount equal to 25 percent of the amount they received for fiscal year 1997 under the Preschool Grants program, adjusted upward each year by the lesser of either the rate of increase in the State's allocation or the rate of inflation as reflected by the Consumer Price Index for All Urban Consumers (CPIU). If a State chooses to set-aside the maximum amount of FFY 2020 section 619 funds for State-level activities, the amount available for making local educational agency (LEA) base payments in Column E may be below 75 percent of the State's FFY 1997 section 619 grant.

State educational agencies (SEAs) may use State set-aside funds: (1) for administration (limited to no more than 20 percent of the maximum State set-aside – Column C); (2) for support services (including establishing and implementing the mediation process required under section 615(e) of the IDEA and 34 CFR §300.506), which may benefit children with disabilities younger than 3 or older than 5, as long as those services also benefit children with disabilities aged 3 through 5; (3) for direct services for children with disabilities who are eligible for services under section 619; (4) for activities at the State and local levels to meet the performance goals established by the State under section 612(a)(15) of the IDEA; (5) to supplement other funds used to develop and implement a statewide coordinated services system designed to improve results for children and families, including children with disabilities and their families (but not more than up to 1 percent of the amount received under this program); (6) to provide early intervention services (which shall include an educational component that promotes school readiness and incorporates preliteracy, language, and numeracy skills) in accordance with Part C to children with disabilities who are eligible for services under section 619 and who previously received services under Part

C until such children enter, or are eligible under State law to enter, kindergarten; or (7) at the State's discretion, to continue service coordination or case management for families who receive services under Part C, consistent with number 6.

#### **Maximum Set-Aside Available for Administration (Column D)**

Column D indicates the maximum portion of the total State set-aside amount (Column C) that may be used to administer this program. The amount that may be used for administration is limited to 20 percent of the maximum amount available to a State for State-level activities. These funds may also be used, at the State's discretion, for the administration of the Grants for Infants and Families program (Part C).

#### **Section 619 Base Payment for LEAs (Column E)**

Column E is the portion of the LEA flow-through amount that must be distributed to LEAs based on the amounts that the LEAs would have received from the FFY 1997 funds had the SEA flowed through 75 percent of the State award to LEAs. Note that this amount is less than the minimum amount that States were required to provide LEAs from the FFY 1997 funds. The Part B regulations at 34 CFR §300.816(b) clarify how adjustments to the base payment amounts for LEAs are made. If after the State set-aside is subtracted from the total award, the State determines that the amount available for base payments is less than 75 percent of the State's FFY 1997 section 619 grant, the State must ratably reduce each LEA's base payment by the percentage of the reduction in the total amount actually available for making base payments in FFY 2017. For example, if the total amount in the "Base Payment for LEAs" column is \$100 and the total amount available for making base payments in FFY 2019 is \$90, the reduction in the total base payment amount is 10 percent, and each LEA's base payment for FFY 2020 must be reduced by 10 percent. The State, if necessary, must make base payment adjustments in accordance with 34 CFR §300.816(b) based on the ratably reduced base payments.

#### **Section 619 Population/Poverty Factors (Column F)**

Column F shows the minimum amount a State must allocate to LEAs based on population and poverty factors if a State chooses to set aside the maximum amount of FFY 2020 section 619 funds for State-level activities. As noted above, if a State chooses to set aside the maximum amount of FFY 2020 section 619 funds for State-level activities, the amount available for LEA subgrants could be below the base payment amount in Column E, and the State will not have any remaining section 619 funds available after making base payments. Therefore, the State would be unable to make a population or poverty payment. If States with no funds in Column F reserve the maximum amount of FFY 2020 section 619 funds for State-level activities, they would be unable to make a population or poverty payment.

However, if a State does not set aside the maximum amount for State-level activities and additional funds are available after making base payments, 85 percent of the remaining amount must be distributed on a pro-rata basis to LEAs according to public and private elementary and secondary school enrollment, and 15 percent on a pro-rata basis to LEAs according to the number of children in LEAs living in poverty, as determined by the State.

#### **Total State Minimum Flow-Through to LEAs (Column G)**

The minimum flow-through to LEAs (Column G) is the difference between the Total Grant Award (Column B) and the Maximum State Set-Aside (Column C). If States do not choose to retain the maximum amount available under the State set-aside (Column C), the remaining funds flow through to LEAs in addition to the funds in Column G.

Enclosure E



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

June 30, 2020

Honorable Wanda Vázquez Garced  
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 Vázquez Garced and Secretary Hernández Pérez:

The U.S. Department of Education (Department) appreciates your continued support to build a strong partnership and work cooperatively with us in support of Puerto Rico's students. As the Department prepares to award Fiscal year (FY) 2020 grant funds to the Commonwealth of Puerto Rico (Puerto Rico) and the Puerto Rico Department of Education (PRDE), we are mindful of the challenges still facing the Commonwealth as a result of Hurricanes Irma and Maria in 2017 and the 2018-19 earthquakes, and the new challenges caused by the COVID-19 global pandemic.

Enclosed are Federal fiscal year (FFY) 2020 Departmental Specific Conditions that the Department is imposing on all grants awarded by the Department to Puerto Rico and to PRDE, on or after the date of these specific conditions, including grants pursuant to the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), including the Governor's Emergency Education Relief Fund (GEER Fund). These conditions are also imposed on all grants previously awarded by the Department to PRDE that are still available for obligation or liquidation by PRDE on the date of these specific conditions, including any funds awarded by the Department to PRDE under the CARES Act Elementary and Secondary School Emergency Relief Fund (ESSER Fund). These specific conditions do not apply to funds awarded by the Department to Puerto Rico institutions of higher education (IHEs) under the CARES Act Higher Education Emergency Relief Fund.

We are imposing the specific conditions based on information provided to the Department over time 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

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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.

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 (TPFA). Further, because the deficiencies in fiscal management of Department grant funds extend beyond PRDE, in light of the central management of funds through the Puerto Rico Department of Treasury (Hacienda) and the recent history of financial instability in Puerto Rico, the TPFA is also necessary to ensure compliance with Federal grant requirements and fiscal accountability for Department funds awarded to Puerto Rico offices and agencies in addition to PRDE. This was indicated in a June 16, 2020 letter from the Department to you regarding Puerto Rico's GEER funds. The FFY 2019 specific conditions required PRDE to procure the services of a TPFA, acceptable to the Department, to perform financial management duties required under Federal regulations for all Department grant awards made to PRDE. The Department recognizes the level of commitment exercised by PRDE leadership and the Procurement Office to develop and meet its procurement deadlines to award a TPFA contract. In finalizing the contract, Puerto Rico and PRDE must ensure that Puerto Rico is also a party to the contract with the TPFA and that they incorporate into the contract the task of managing Department grants awarded to Puerto Rico agencies and offices in addition to PRDE.

The Department will continue to work with Puerto Rico and PRDE to ensure that they comply with the specific conditions, including the procurement of the TPFA. This process will assist the Commonwealth and PRDE in building their capacity to develop and implement adequate internal controls and management practices to effectively manage Department grant programs in the future. We encourage you to maintain high levels of accountability to ensure that the Commonwealth and PRDE create and sustain systemic improvements in Puerto Rico's educational system.

We stand committed to work with you and other Puerto Rico officials in these challenging times so together we improve the delivery of Federal education and related services for the children, students, and youth throughout the Commonwealth.

Sincerely,



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

cc: Francisco J. Martinez Oronoz, Auxiliary Secretary of Federal Affairs  
Glanidsa Castro, Director of Internal Audit Office  
Ivette M. Trujillo, TPFA Senior Project Manager  
Norma Rolon, Director of Procurement

**Commonwealth of Puerto Rico**  
**Puerto Rico Department of Education**  
**Federal Fiscal Year (FFY) 2020 Departmental Specific Conditions**

PREAMBLE: These specific conditions are imposed on all Federal fiscal year (FFY) 2020 grants issued by the U.S. Department of Education (Department) to Puerto Rico and to the Puerto Rico Department of Education (PRDE), on or after the date of these specific conditions, including grants pursuant to the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), including the Governor's Emergency Education Relief Fund (GEER Fund). These conditions are also imposed on all grants previously awarded by the Department to PRDE that are still available for obligation or liquidation by PRDE on the date of these specific conditions, including any funds awarded by the Department to PRDE under the CARES Act Elementary and Secondary School Emergency Relief Fund (ESSER Fund). These specific conditions do not apply to funds awarded by the Department to Puerto Rico institutions of higher education (IHEs) under the CARES Act Higher Education Emergency Relief Fund.

Under Section III.A of the FFY 2019 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 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. Further, because the deficiencies in fiscal management of Department grant funds extend beyond PRDE, given, for instance, the central management of funds through the Puerto Rico Department of Treasury (Hacienda) and the recent history of financial instability in Puerto Rico, the third-party fiduciary agent is also necessary to ensure compliance with Federal grant requirements and fiscal accountability for Department funds awarded to Puerto Rico offices and agencies in addition to PRDE.

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 2019 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 or 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 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 Department 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 Federal funds for disaster recovery and CARES Act funds. 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 PRDE to resolve and stabilize respectively the fiscal management issues and environment. To provide reasonable assurance that Department funds are managed and accounted for properly, in the FFY 2019 Departmental Specific Conditions, the Department required 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 remain and 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.

K. The Department further recognizes that, given the central management of Department funds through Hacienda, the significant amount of Federal funds awarded to Puerto Rico and PRDE, and the recent history of financial instability in Puerto Rico, the risk associated with PRDE's current fiscal management of Department funds extends beyond PRDE to the management of funds awarded to the Commonwealth's other offices and agencies. Accordingly, to provide reasonable assurance that Department funds are managed and accounted for properly, the Department is further requiring that Puerto Rico and PRDE ensure that the third-party fiduciary agent procured as required under paragraph J above and Section II.A below also perform the financial management duties required under Federal regulations for all Department grant awards made to Puerto Rico and its offices and agencies, in addition to PRDE. These specific conditions also require Puerto Rico 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 Puerto Rico and PRDE to Use a Third-Party Fiduciary Agent

Puerto Rico and 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 Puerto Rico and 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 Puerto Rico or PRDE on or after the date of these specific conditions, including funds awarded under the CARES Act GEER Fund, 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, including funds awarded under the CARES Act ESSER Fund.<sup>1</sup> PRDE agrees that by accepting grant

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<sup>1</sup> As noted earlier, these specific conditions do not apply to funds awarded to Puerto Rico IHEs under the HEER Fund.

awards subject to the terms of these specific conditions, it will draw down funds and charge costs against its grant awards, other than its CARES Act funds, only in accordance with the first in-first out (FIFO) accounting procedure, therefore charging costs first against its FY 2018 grant awards, then against FY 2019 grant awards, and then against FY 2020 grant awards 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 is selected 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 Puerto Rico and 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 Puerto Rico and PRDE;
3. Be able to, and agree to, increase operational capacity to accommodate increases in workload as a result of the contract with Puerto Rico and PRDE; and
4. Be approved by the Department before Puerto Rico and PRDE enter into a contract with the entity.

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

The responsibilities and requirements of Puerto Rico and 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 Puerto Rico's and 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 Puerto Rico's and PRDE's procurement process, and any contract among Puerto Rico, 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 selected Agent must be approved by the Department. Prior to entering into the contract for financial

management services, Puerto Rico and PRDE must submit to the Department for approval: 1) evidence that they 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 Puerto Rico and PRDE and the Agent in Attachments A and B.

In accordance with the FFY 2019 Departmental Specific Conditions, which were applicable to PRDE, on February 26, 2020, PRDE submitted for approval evidence to the Department of its third-party fiduciary agent selection. On February 27, 2020, the Department notified PRDE of the approval of the selected Agent. PRDE and Puerto Rico must both be parties to the contract and must work to finalize the contract with the Agent, including incorporating into the contract the task of managing Department grants awarded to Puerto Rico agencies and offices in addition to PRDE.

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.

In subsequent site visits, the Department will monitor PRDE progress towards developing corrective actions to address deficiencies in the pre-SEPI process. Implementation and execution of the corrective action plan will be managed through the Comprehensive Corrective Action Plan (CCAP).

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.

In subsequent site visits, the Department will monitor PRDE progress towards developing corrective actions to address deficiencies in the contract and procurement process. Implementation and execution of the corrective action plan will be managed through the CCAP.

#### 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.

In subsequent site visits, the Department will monitor PRDE progress towards developing corrective actions to address deficiencies in the workplan process. Implementation and execution of the corrective action plan will be managed through the CCAP.

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 2019.

H. 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 “Transición 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 Transición 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.

By December 7, 2020, 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 November 2019, the Department met with the PROIG Inspector General to discuss Federal requirements associated with the FFY 2019 Departmental specific conditions; PRDE longstanding systemic challenges; and RMSD concerns regarding independence, transparency, objectivity and accountability of the current IAO structure. PROIG Inspector General expressed its commitment to work with the Department. PROIG is working with PRDE on a memorandum of understanding (MOU) to address roles and responsibilities under its legal authority. The Department will continue to monitor this work to ensure independence, transparency and objectivity in the work of the IAO.

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)

#### I. Comprehensive Corrective Action Plan (CCAP)

1. Puerto Rico, 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 Puerto Rico and 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.H of these specific conditions.
2. Upon the Department’s approval of the CCAP, Puerto Rico and PRDE will be required to provide quarterly reports to the Department on their progress in

implementing measures required under the CCAP. Puerto Rico and PRDE agree that the Agent will play a critical role in assessing their progress in meeting the objectives of the CCAP, and PRDE also agree that it will obtain the assistance of the PRDE internal auditor in reviewing and validating the quarterly reports for accuracy prior to their submission.

J. Prompt Response to Request for Records

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

K. Program-Specific Conditions

Additional specific conditions may be imposed on FFY 2020 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 Puerto Rico or 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 Puerto Rico or 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 Puerto Rico or PRDE have not made substantial progress in meeting program objectives, or have not met program requirements or the specific conditions contained in Section II above, the Department may consider not continuing Puerto Rico's or PRDE's grants, taking further enforcement action steps, or applying additional conditions, including:

1. Conditions under which Puerto Rico or 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 Puerto Rico or PRDE; or
3. Conditions placing Puerto Rico on high-risk status and 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 Puerto Rico or 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 in 2004 and to issue a high-risk designation for Puerto Rico. The Department will evaluate Puerto Rico’s and PRDE’s progress annually to determine whether it is necessary to designate either Puerto Rico or PRDE as a “high-risk grantee.” If the Department determines that a high-risk designation 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 Puerto Rico or 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 Puerto Rico or PRDE to the Department under these specific conditions shall be submitted to:

Lorena Dickerson  
[Lorena.dickerson@ed.gov](mailto:Lorena.dickerson@ed.gov)  
Risk Management Services Division  
Office of Finance and Operations  
Office of Grants Administration

### C. Reconsideration and Modifications

At any time, Puerto Rico or 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 Puerto Rico or 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 Puerto Rico or PRDE meets, to the Department's satisfaction, these conditions and other applicable requirements.

Dated: June 30, 2020

Attachment A to the Puerto Rico and PRDE FFY 2020 Departmental Specific  
Conditions

Responsibilities and Requirements of Puerto Rico and PRDE  
(to be incorporated into any contract for services with the Agent)

The responsibilities and requirements of Puerto Rico and PRDE in working with the Agent under these FFY 2020 specific conditions are as follows:

1. Puerto Rico and 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 Hacienda also works cooperatively with Puerto Rico, PRDE, and the Agent. Puerto Rico and PRDE acknowledge that regular communication among Puerto Rico, 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, Puerto Rico and PRDE agree that, as the Department deems necessary and appropriate, the Department shall include the Agent in communications, both written and oral, between or among Puerto Rico, PRDE, and the Department.
2. Puerto Rico and 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 Puerto Rico and PRDE by the Department, or used to meet matching requirements, and access to Puerto Rico, PRDE, and Hacienda personnel for discussion regarding the services the Agent must perform under these specific conditions, as provided for in the contract among Puerto Rico, PRDE and the Agent.
3. Puerto Rico and PRDE must notify the Department when any dispute arises and remains unresolved between or among the Agent, Puerto Rico, 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. Puerto Rico and PRDE agree to the Department's assistance in the resolution of any such unresolved dispute and agree that this assistance may require compliance with the Department's requests for additional information from Puerto Rico, 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 Puerto Rico, PRDE, and the Agent from including formal dispute resolution mechanisms in their contract.

4. Puerto Rico and 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. Puerto Rico and PRDE must approve of the change of bank routing and account number information in the Department's G5 grants management system from the Puerto Rico and PRDE bank routing and account number(s) to the Agent's bank's non-interest bearing account routing and account number(s) established by the Agent to receive Department grant funds drawn down by Puerto Rico and PRDE.
6. Puerto Rico and PRDE remain 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. Puerto Rico and 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. Puerto Rico and PRDE are 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. Puerto Rico and PRDE understand and agree that they 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 Puerto Rico or 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 Puerto Rico's or 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, Puerto Rico or 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. Puerto Rico and 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, Puerto Rico and 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. Puerto Rico and 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. Puerto Rico and 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. Puerto Rico and 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. Puerto Rico and PRDE acknowledge 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 Puerto Rico or PRDE and, if the Agent deems it necessary, may also request assistance from the Department in determining the allowability of any expenditure.
12. Puerto Rico and 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, Puerto Rico and 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. Puerto Rico and 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. Puerto Rico and 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. Puerto Rico and 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 Education (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, Puerto Rico or PRDE, working with Hacienda, as appropriate, must grant the Agent authority to enter into contracts with vendors on behalf of Puerto Rico or PRDE, and in doing so, Puerto Rico and PRDE must comply with the provisions for procurement set forth in 2 CFR §§ 200.318-200.326.
16. Puerto Rico and 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. Puerto Rico and 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. Puerto Rico and 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 Puerto Rico and Hacienda and PRDE and Hacienda is properly inventoried, maintained, and stored to prevent loss, damage, or theft of such property. Puerto Rico and PRDE, or another agency designated by the Governor, each 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 Puerto Rico and Hacienda and 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 among Puerto Rico, 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. Puerto Rico and 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 Puerto Rico, 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, Puerto Rico and PRDE, working with Hacienda, as appropriate, shall comply with all applicable provisions of EDGAR.
22. Puerto Rico and 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 Puerto Rico and PRDE FFY 2020 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 Puerto Rico and PRDE to implement the activities and responsibilities described in these specific conditions. The Agent acknowledges that regular communication among Puerto Rico, 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 and among Puerto Rico, 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. Puerto Rico and 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 this 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 Puerto Rico's and PRDE's grant awards to ensure that the Agent has these documents for purposes of executing its financial management responsibilities on behalf of Puerto Rico and 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 Puerto Rico or PRDE, as appropriate, 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 Puerto Rico and PRDE have drawdown authority and that Puerto Rico and PRDE understand and agree that they 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 Puerto Rico or 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 Puerto Rico's or 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, Puerto Rico or 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 Puerto Rico or PRDE, as appropriate. 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 Puerto Rico or 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 Puerto Rico's or 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 Puerto Rico's or PRDE's Treasury-State agreement, the Agent must meet the requirements in 2 CFR § 200.305(b). Puerto Rico or 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, Puerto Rico and 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 Education (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).
13. The Agent must establish contacts and working relationships with prospective vendors that can provide goods and services that Puerto Rico and PRDE need under the grants. Puerto Rico and PRDE must each 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 Puerto Rico or PRDE, as appropriate, and ensure that the goods or services delivered are available for inspection and acceptance or rejection by the appropriate Puerto Rico or 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 Puerto Rico and Hacienda or 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 Puerto Rico and 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 Puerto Rico and PRDE use 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 Puerto Rico and 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 among Puerto Rico, 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 Puerto Rico and PRDE for submission to Puerto Rico, PRDE, and the Department, detailing for each grant awarded to Puerto Rico and 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, Puerto Rico and 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.

## **Enclosure F**

### **Specific Conditions**

#### **I. Basis for Requiring Specific Conditions**

The Office of Special Education Programs (OSEP) is imposing Specific Conditions on the Puerto Rico Department of Education's (PRDE's) Federal fiscal year (FFY) 2020 Sections 611 and 619 grant awards under Part B of the Individuals with Disabilities Education Act (IDEA). OSEP is imposing these Specific Conditions pursuant to the Department's authority in IDEA section 616(g) and 2 C.F.R. § 200.207, to ensure that PRDE corrects its longstanding noncompliance with certain IDEA requirements.

Please note that programmatic Specific Conditions related to IDEA Part B were incorporated into the Departmental Specific Conditions on PRDE's FFY 2019 grant awards. With PRDE's FFY 2020 IDEA Part B grant awards, OSEP is issuing programmatic Specific Conditions regarding IDEA Part B separately. However, in addition to these programmatic Specific Conditions, the award of IDEA Part B grant funds to PRDE for FFY 2020 is still subject to the FFY 2020 Departmental Specific Conditions placed on all Departmental grants awarded to PRDE, in order to ensure that PRDE is managing and administering Department funds in accordance with applicable Federal requirements and the appropriate fiscal accountability measures and management practices and controls. The reasons for the Departmental Specific Conditions are also detailed in Enclosure E of PRDE's FFY 2020 IDEA Part B grant award letter. Because the services of a third-party fiduciary agent (TPFA) continue to be necessary to ensure that PRDE is managing and administering Department funds in accordance with applicable Federal requirements, the Department, through the FFY 2020 Departmental Specific Conditions, is continuing to require the PRDE to use a TPFA to perform the financial management duties required under the Office of Management and Budget Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Guidance), codified at 2 C.F.R. Part 200, for all Department grant awards.

Also note that, as part of its FFY 2020 application for IDEA Part B funds, PRDE has provided a certification, pursuant to 34 C.F.R. § 76.104 and 34 C.F.R. § 300.100, that its application meets the requirements of IDEA Part B and that PRDE will operate its Part B program in accordance with all of the required assurances and certifications. Any changes made by PRDE, after OSEP approval, to information that is a part of PRDE's IDEA Part B grant application, must meet the public participation requirements in 34 C.F.R. § 300.165 and the prior approval requirements in 2 C.F.R. § 200.308.

#### **II. Requirements and PRDE's Data Submissions**

## A. Assistive Technology (AT)

*Legal Requirements:* At the beginning of each school year, in accordance with 34 C.F.R. § 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 C.F.R. § 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 AT devices and services in accordance with 34 C.F.R. § 300.324(a)(2)(v). Each public agency must ensure that AT devices or AT services, or both, are made available to a child with a disability if required as part of the child's IEP. 34 C.F.R. § 300.105. PRDE must provide needed AT 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 consistent with their IEPs. See IDEA section 612(a)(1) and 34 C.F.R. § 300.105.

*Data Submitted by PRDE in Response to FFY 2019 Specific Conditions:*

### 1. *FFY 2018 APR reporting period (July 1, 2018 through June 30, 2019)*

In its May 1, 2020 CAP Progress Report, PRDE reported that as of April 22, 2020, for requests made for AT devices during the period of July 1, 2018 through June 30, 2019, 99.10% (3209/3238) were verified as completed. This represents improvement from the 86.10% PRDE reported for the period of July 1, 2017 – June 30, 2018.

### 2. *Updated data from July 1, 2019- October 30, 2019 and November 1, 2019-March 31, 2020*

In the same report, PRDE reported that as of April 22, 2020, for requests made for AT devices during the period of July 1, 2019 through October 31, 2019, 81.48% (198/243) were verified as completed. PRDE also reported that, as of April 22, 2020, for requests made for AT devices during the period of November 1, 2019 through March 31, 2020, 42.00% (412/981) were verified as completed. PRDE noted that, while AT equipment delivery is ordinarily made to the Special Education Service Centers (CSEEs), timely delivery was interrupted because schools and CSEEs remained closed as a result of the damaging earthquakes in January 2020, subsequently followed by the COVID-19 pandemic in March 2020.

### 3. *Timeliness of AT*

To demonstrate compliance with the AT requirement under IDEA, that AT devices and services are received by children with disabilities in a timely manner, in the June 28, 2019 Specific Conditions, OSEP required PRDE to report in the CAP report for each reporting period

(July 1, 2019- October 31, 2019 and November 1, 2019 – March 31, 2020) data representing the percentage of students whose IEPs require AT devices and services who: (1) received the AT within 30 days of the implementation of the IEP; (2) received the AT more than 30 days after the implementation of the IEP; and (3) have not yet received AT. PRDE reported the following:

Reporting Period	Total Items Verified as Completed	Delivery within 30 days	Delivery within 31-60 days	Delivery within 61-90 days	Delivery within 91-120 days	Delivery in more than 120 days	Equipment not yet delivered
July 1, 2019 to October 31, 2019	198	89 44.94%	39 19.69%	9 4.54%	39 19.69%	22 1.01%	45 22.72%
November 1, 2019 – March 31, 2020	412	231 56.06%	62 15.04%	81 19.66%	38 9.22%	0 0%	569

4. *Summary Reports on Monitoring of CSEEs on AT Monitoring*

To address this required action, PRDE included AT monitoring in the fiscal monitoring it conducted and reported in the summary reports provided in response to the Fiscal Management requirements of the Specific Conditions. Based on the understanding that PRDE will continue to ensure compliance with the AT requirements through fiscal monitoring, OSEP is releasing PRDE from this specific required action in the Specific Conditions.

OSEP is encouraged by PRDE’s improved data for FFY 2018 and for the period up to October 31, 2019. PRDE attributes its improvement in delivering AT devices in a timely manner for the period of July 1, 2018 through June 30, 2019; and July 1, 2019 through March 31, 2020, to the implementation of internal controls and improved electronic systems to refer, procure, track and report on the status of AT devices. PRDE also reported in the December 1, 2019 and May 1, 2020 CAP Progress Reports, that it continues to provide monthly status reports to the: 1) personnel in charge of the requisitions in the CSEEs; and 2) purchasing unit at the central level. In addition, Central office personnel made follow up phone calls to vendors with pending AT orders to ensure compliance, and the AT coordinator conducted visits to each affected CSEE to investigate pending purchase and delivery issues and to provide technical assistance as needed. Copies of the referenced reports were included with the May 1, 2020 CAP submission. Finally, PRDE reported that in October 2019, a tutorial video was published to guide users in the proper use of the AT System, which was replaced with a *Technology Assistance Manual* (published August 6, 2019); and all personnel in charge of the process for securing AT devices were trained in December 2019.

As seen above, the data from November 1, 2019 – March 31, 2020 regarding the timeliness of AT is significantly lower than the prior reporting period. PRDE reported that 569 of 981 (58%) AT items required for the period of November 1, 2019 to March 31, 2020, were pending delivery. As PRDE noted, this can be attributed to the massive disruptions due to the earthquakes and pandemic. However, without demonstrating significant improvements for a full year, OSEP cannot remove these Specific Conditions at this time.

In addition, OSEP continues to be concerned that the majority of the AT equipment is procured in the latter part of the school year, instead of at the beginning, when most IEP meetings are normally held to determine the need for AT. Finally, PRDE reported that the implementation of the AT process in PRDE's Mi Portal Especial (MiPE) Special Education Information System was still in progress at the time of the submitted FFY 2018 CAP. PRDE anticipated this process would be implemented by June 2020.

Based on all of these factors, while OSEP recognizes the devastating impact of recent earthquakes and the COVID-19 pandemic on the delivery of services, we cannot determine that PRDE achieved compliance with the AT requirements in IDEA section 612(a)(1) and 34 C.F.R. § 300.105.

## **B. Financial Management**

*Legal Requirements:* PRDE must resolve financial management issues in accordance with the fiscal requirements in 34 C.F.R. §§ 300.162(a), 300.202(a)(1), and 76.530, and Subpart E of the OMB Uniform Guidance. As noted above, this grant is subject to the Departmental Specific Conditions. OSEP notes that in light of major weaknesses in PRDE's overall fiscal management identified in the Background section of the Department's *Commonwealth of Puerto Rico Department of Education FFY 2020 Departmental Specific Conditions* (Enclosure E to PRDE's FFY 2020 IDEA Part B grant award letter), the IDEA Part B Programmatic Specific Conditions related to financial management must stay in place until such time as these weaknesses are corrected.

### **1. Financial Management Generally**

*Data Submitted by PRDE in Response to FFY 2019 Specific Conditions:* In its December 1, 2019 CAP Progress Report, PRDE reported that it has continued to implement fiscal management procedures and monitoring processes to ensure that IDEA funds are spent in accordance with requirements under Part B of IDEA and Subpart E of the OMB Uniform Guidance. PRDE conducted fiscal monitoring visits using procedures established in the PRDE Office of Special Education (SAEE) Manual of Policies and Procedures for CSEEs in Ponce, Humacao, Fajardo, Arecibo, Caguas, Morovis, Mayagüez and Aguada. As required, PRDE attached a summary of the

findings and the actions it took to ensure correction. PRDE determined that, generally, the CSEEs implemented fiscal processes in accordance with the manuals and guidelines established by the SAEE. PRDE further reported that it identified noncompliance on issues such as: (1) a lack of supporting purchase documentation; (2) incorrect AT items purchased based on student's IEPs; and (3) missing report data and samples as required by the SAEE. However, in its May 1, 2020 CAP Progress report, PRDE reported that the SAEE's follow-up on corrective actions have not been completed due to the school closures during 2020, which resulted from the natural disasters and COVID-19 pandemic.

OSEP recognizes that the devastating impact of recent earthquakes and the COVID-19 pandemic has impeded PRDE's ability to follow-up on the fiscal monitoring conducted in the last reporting period. Although PRDE has demonstrated improvements in achieving proper fiscal controls, PRDE has not provided 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. The nature of the noncompliance identified by PRDE and its inability to demonstrate correction require OSEP to maintain these Specific Conditions.

In addition, the Departmental Specific Conditions issued on June 28, 2019, required PRDE to procure the service of a TPFA, acceptable to the Department, to perform financial management duties required under federal regulations for all Department grant awards made to PRDE. As noted in the Departmental Specific Conditions, the Department recognizes the level of commitment exercised by the PRDE leadership and the Procurement Office to develop and meet its procurement deadlines to award a TPFA contract. However, that contract has not been awarded. Therefore, the specific conditions related to the requirement to procure a TPFA remains in effect for all Department grant awards, including PRDE's FFY 2020 IDEA Part B grant award.

## 2. *Automation of Special Education Invoicing*

*Data Submitted by PRDE in Response to FFY 2019 Specific Conditions:* In its December 1, 2019 and May 1, 2020 CAP Progress reports, PRDE confirmed that it has successfully created and implemented the new invoicing system in MiPE to document the provision of services to students with IEPs. In its December 1, 2019 CAP Progress Report, PRDE reported that, "by the December 1, 2020<sup>1</sup> report, PRDE achieved its goal of having 100% of providers

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<sup>1</sup> OSEP interpreted this to mean that as of December 1, 2019, PRDE's invoicing system was fully automated.

submitting their billing electronically through MiPE.” Special education and related service providers are required to document the detail of each intervention/service provided to a student, as well as upload related documentation, evaluation reports, documentation of the admissions process, the intervention plan, and any therapy sessions provided to a student. In addition, MiPE’s functionality allows PRDE to validate that the services are provided in accordance with a student’s IEP. PRDE noted that a copy of the Manual Procedure Guide for the invoice procedure (Attachment C) was included in the documents provided to OSEP. Although the revised (November 2019) Procedures Manual, Administration and Transportation Unit (Attachment B) was included in PRDE’s submission, which provides instruction related to Evaluation of Professional and Consulting Services invoices, OSEP did not find PRDE’s Attachment C, and, therefore, cannot determine whether the referenced attachment was intended to be a separate document. In addition to the controls PRDE has put in place to automate its invoicing system, PRDE reported that it also continues to maintain an active help desk to provide technical assistance to the providers as needed.

OSEP recognizes the improvements PRDE has demonstrated in automating its special education invoicing system. However, given that PRDE has only recently fully implemented this system, and it has not yet awarded a contract to a TPFA, OSEP cannot determine that PRDE has fully achieved compliance in accordance with financial management, internal controls and procurement requirements under the OMB Uniform Guidance.

### 3. *Transportation Contracts*

*Data Submitted by PRDE in Response to FFY 2019 Specific Conditions:* In response to item 4, discussed below, on August 15, 2019, PRDE’s Internal Audit Office (IAO) submitted an audit report to OSEP on the provision of transportation for students with disabilities in Bayamón Region. 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 PRDE. In its December 1, 2019 CAP Progress Report, PRDE reported that, as a result of the audit conducted by IAO, it has focused on overhauling its entire transportation system. Specifically, PRDE reported that it has been collaborating with other PRDE offices to address the findings of the audit report through changes to the School Transportation System (SMTE) and other internal systems such as MiPE. PRDE reported that, since August 2019, activities have been underway to integrate systems and establish controls to ensure that transportation is properly provided for eligible students. In addition, PRDE has integrated SMTE with its financial information system to

ensure monthly reconciliation of expenses and automatic data integration to minimize system errors.

While OSEP recognizes the enhancements PRDE has implemented to improve transportation contracts, these corrective actions do not meet the requirements stipulated in the IDEA-related Specific Conditions on PRDE's FFY 2018 and FFY 2019 grant awards in this area.

Specifically, OSEP required PRDE to provide evidence that the formal monitoring related to the Transportation Management System referenced in its May 1, 2018 and May 1, 2019 CAP Progress Reports had been conducted and to report on the results of that monitoring during the reporting periods specified in the December 1, 2019 and May 1, 2020 CAP Progress Reports. To satisfy this specific condition, PRDE was required to provide OSEP with a copy of any of the monitoring reports demonstrating the results from the visits conducted during the specified reporting period. Although PRDE, as discussed above, conducted fiscal monitoring visits, these visits do not appear to satisfy the requirement for formal monitoring related to the Transportation Management System.

4. *Transportation for Students with Disabilities in Bayamón Region*

*Data Submitted by PRDE in Response to FFY 2019 Specific*

*Conditions:* PRDE reported that it has conducted meetings with the Central Level Transportation Unit Director and the Bayamón Region Transportation Supervisor to discuss corrective actions regarding this specific condition. Specifically, PRDE noted two meetings have been held: (1) on October 30, 2019 with the Director of the Central Transportation Office and all transportation supervisors; and 2) on October 30, 2019 with the Associate Secretary for Special Education and the Director of the Central Transportation Office. A meeting with the Bayamón Region Transportation Supervisor is expected to be arranged in the next school year. Meanwhile, PRDE indicated that the Request for Proposal (RFP) process was completed, two companies submitted proposals, and PRDE recently selected the winning proposal and is currently in the process of contracting with the company selected to carry out the internal audit in the Bayamón Region.

Consistent with the requirement that PRDE must submit to OSEP an independent audit report clearly demonstrating that PRDE is in full compliance with the requirements of 34 C.F.R. § 76.702 and 2 C.F.R. §§ 200.302(a), 200.302(b)(3), 200.302(b)(4), and 200.303 for all transportation costs of students with disabilities in the Bayamón Region, with the May 14, 2020 submission of its FFY 2020 IDEA Part B grant application, PRDE provided assurances that:

- Until such time as PRDE has demonstrated to the Department that it is in full compliance with the above requirements for all transportation costs for students with disabilities in the Bayamón Region, no IDEA

Part B funds will be used to fund the transportation costs of students with disabilities in the Bayamón Region.<sup>2</sup>

- PRDE will submit documentation (including an audit report demonstrating compliance with the above requirements) 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.
- PRDE will provide OSEP with a copy of the memorandum notifying the appropriate finance personnel in Puerto Rico 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.

For the foregoing reasons, OSEP has determined that PRDE has not satisfied the terms and conditions of its FFY 2019 IDEA Part B grant awards, and therefore is imposing the following programmatic Specific Conditions on PRDE's FFY 2020 IDEA Part B grant awards.

### **III. Nature of FFY 2020 Specific Conditions:**

#### **A. 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 two remaining areas of longstanding noncompliance noted 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 Items 1 and 2 (a)-(d) above; (2) a timeline for each of the activities; (3) persons responsible for completing each of the activities; (4) the supporting evidence which may be referenced regarding each of the activities; and (5) any other pertinent information to track progress on the actions PRDE will take to be in compliance with these requirements.

#### **B. Progress Reports**

Additionally, PRDE must submit two CAP progress reports describing the progress on the activities detailed in the CAP in accordance with the schedule specified below:

##### **1. Required Reporting on AT Requirement**

In its first CAP Progress Report due December 1, 2020, and in subsequent reports as indicated, PRDE must:

- a. report data on the percentage of requests for AT devices and services that have been verified as completed for the FFY 2019 APR reporting period (July 1, 2019 through June 30, 2020). This reporting

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<sup>2</sup> PRDE also provided a specific assurance that any Commonwealth funds used to pay the transportation costs of students with disabilities in the Bayamón Region would not be included in the total amount used to calculate or measure PRDE's compliance with the maintenance of State financial support requirements at 20 U.S.C. 1412(a)(18) and 34 C.F.R. § 300.163.

requirement is only applicable to the December 1, 2020 CAP Progress Report;

- b. report the following (due December 1, 2020 for the reporting period of July 1, 2020–October 31, 2020, and due May 1, 2021 for the reporting period of November 1, 2020–March 31, 2021):
  - i. updated data on the percentage of requests for AT devices and services that have been verified as completed from the reporting periods specified above in each CAP Progress Report;
  - ii. updated data on the percentage of AT devices and services that were:
    - (a) received within 30 days of ordering;
    - (b) received more than 30 days after ordering;
    - (c) have not yet been received, in order to ensure compliance with the AT requirement under IDEA that AT devices and services are received by children with disabilities in a timely manner;
  - iii. for those cases where AT was received more than 30 days after the item was ordered, or in the cases where the AT device or service has not yet been received, updated data on the actual number of days beyond the order date, and the reason for the delay ( describe the barriers, e.g., delivery schedules, administrative, child-related, etc., to timely delivery and how PRDE is addressing those barriers); and report
  - iv. an update on the status of full implementation of the AT process in MiPE.

## 2. Required Reporting on Financial Management Requirements

- a. Fiscal Management Generally: In each CAP Progress Report, PRDE must report on the activities it conducted during the reporting period to follow-up on the fiscal management 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, 2020, and the second CAP progress report, due May 1, 2021, PRDE must provide evidence that the fiscal monitoring processes were completed during the corresponding reporting period (July 1, 2020–October 31, 2020; and November 1, 2020–March 31, 2021). PRDE must also provide a summary of any fiscal monitoring corrective actions taken for the findings made in the FFY 2020 reporting period to ensure compliance.
- b. Automation of Special Education Invoicing: PRDE must provide an update of the progress of the new portal in the MiPE invoicing system during the reporting periods specified above in each CAP Progress Report.
- c. Transportation Contracts: PRDE must provide evidence that it has conducted the formal monitoring related to the Transportation Management System referenced in its May 1, 2018 and May 1, 2019

CAP Progress Reports, 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 summary of the results from the monitoring visits conducted during the specified reporting period and actions PRDE took to address any identified noncompliance.

- d. Transportation for Students with Disabilities in Bayamón: Before PRDE can use IDEA Part B funds for transportation in the Bayamón Region, PRDE must submit to OSEP an independent audit report clearly demonstrating that PRDE is in full compliance with the requirements of 34 C.F.R. § 76.702 and 2 C.F.R. §§ 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. PRDE must also comply with all other requirements listed in its FFY 2020 IDEA Part B grant award letter prior to using IDEA Part B funds for transportation in the Bayamón Region.

#### **IV. Method of Requesting Reconsideration**

PRDE can write to OSEP's Director, Laurie VanderPloeg, at the address below, if it wishes the Department to reconsider any aspect of these Specific Conditions. The request must describe in detail the changes to the Specific Conditions sought by PRDE and the reasons for those requested changes.

U.S. Department of Education  
Office of Special Education Programs  
Attn: Laurie VanderPloeg  
550 12th Street, SW, Room 4109  
Washington, DC 20202

#### **V. Submission of Reports**

The State Superintendent of Education or other authorized official of the SEA shall certify the completeness and accuracy of each report. PRDE must submit all reports required under these Specific Conditions to:

Lynne Fairfax  
U.S. Department of Education  
Office of Special Education and Rehabilitative Services  
Office of Special Education Programs – MSIP  
550 12th Street, SW, Room 5174  
Washington, DC 20202  
Or by email to: [Lynne.Fairfax@ed.gov](mailto:Lynne.Fairfax@ed.gov)