

Enclosure E

Special Conditions

1. Basis for Requiring Special Conditions

Pursuant to 34 CFR §80.12, the Office of Special Education Programs (OSEP) is imposing Special Conditions on PRDE's Federal Fiscal Year (FFY) 2007 grant award under Part B of the Individuals with Disabilities Education Act (Part B), related to State complaints and to fiscal controls on transportation contracts. These Special Conditions are in addition to, and in no way limit the Department's authority to pursue, any remedy available to address and resolve outstanding noncompliance identified through audits or otherwise.

State Complaints

Under 34 CFR §300.152(a), the State education agency must investigate each State complaint and issue a written decision to the complainant within 60 days after the complaint is filed, unless a specific extension of time is granted pursuant to 34 CFR §300.152(b)(1). This system has proven to be a cost-effective alternative for many States in resolving parental concerns and disputes without resorting to lengthy and costly litigation.

Puerto Rico's FFY 2006 Part B grant award contained Special Conditions related to the State complaint management process and required full compliance with 34 CFR §300.152(a). The prior history of this issue is set out in those Special Conditions and is incorporated here by reference. In summary, at the time of the FFY 2006 grant award, OSEP had concluded that PRDE had repeatedly failed to meet the relevant requirements, had made negligible progress, and had not demonstrated good faith efforts to correct the noncompliance.

The FFY 2006 programmatic Special Conditions required that by November 30, 2006, PRDE reduce by 60%, the backlog of all unresolved complaints and report on this correction. PRDE was required to reduce by 100%, the backlog of all unresolved complaints by April 30, 2007. PRDE also had to demonstrate that a timely decision was issued in 50% or more of State complaints, filed between February 28, 2006 and November 30, 2006, and that a timely decision was issued for all (100%) of the State complaints, filed between December 1, 2006 and April 30, 2007.

With the FFY 2005 APR, Puerto Rico reported that it had exceeded its November 2006 benchmarks -- that it reduced the backlog by 72.48% and that for the period between February 28, 2006 and November 30, 2006, 58.9% of complaints had a timely decision. In the May 30, 2007 report, Puerto Rico reported it had completely eliminated the backlog of complaints. However, for those complaints filed between December 1, 2006 and April 30, 2007 and where a decision was due, only 45% had timely decisions. Puerto Rico reported that in focusing on eliminating the backlog, it was not able to ensure sufficient resources for timely resolution of the newer State complaints. It also reported that the complaint investigation staff had been reduced from two persons to one.

Therefore, Puerto Rico did not demonstrate full compliance with the requirements at 34 CFR §300.152 (previously 34 CFR §300.661) for those State complaints filed between December 1, 2006 and April 30, 2007. Given the long history of this issue and the failure to demonstrate full compliance with two staff persons, OSEP believes that by reducing staffing levels in this way and absent the allocation of other resources for this process, Puerto Rico will be unable to demonstrate full compliance with this requirement.

In its June 15, 2007 APR response letter, OSEP required that Puerto Rico review its improvement activities and revise them, as appropriate, to ensure that Puerto Rico can include data in the FFY 2006 APR, due February 1, 2008, that demonstrate compliance with the requirements at 34 CFR §300.152 (previously 34 CFR §300.661) to resolve formal, written complaints within Federal timelines. Given the fact that Puerto Rico did not demonstrate full compliance, the Department is continuing Special Conditions on this issue.

Controls on Transportation Contracts

Pursuant to 34 CFR §76.702, "A State ... shall use fiscal control and fund accounting procedures that insure proper disbursement of and accounting for Federal funds." Although Puerto Rico operates as a unitary system, for administrative purposes, the Bayamón Educational Region is composed of nine school districts. Transportation for all students in the nine districts is coordinated by the Bayamón Educational Region. In its December 14, 2004 audit report, the Department's Office of the Inspector General found that PRDE provided IDEA Part B funds for transportation services without verifying whether such services were actually provided to special education students. Specifically, the audit found that PRDE made unsupported payments pursuant to transportation contracts in the Bayamón Region and did not implement adequate controls to request the schools' attendance lists of special education students to verify the accuracy of transportation invoices prior to making payments. It also found that PRDE also did not implement adequate controls to review the attendance lists and make the appropriate payment adjustments based on student absences.

In a letter dated March 30, 2005, the Department granted PRDE's request to resolve this audit in the context of the Department's Cooperative Audit Resolution Oversight Initiative (CAROI) and worked with PRDE to that end during 2005. In June 2006, OSEP conducted monitoring on this issue including a review of documentation for three of the transportation contracts in the Bayamon Region and an interview with a responsible official. OSEP concluded that the activities and procedures agreed upon through CAROI were not being implemented. To address the failure to implement proper controls, OSEP's October 12, 2006 letter to PRDE required that Puerto Rico implement four specific steps and report in the FFY 2005 APR the status and results of implementing those corrective actions. Specifically, OSEP required that by February 1, 2007 PRDE complete the following:

- (1) Conduct a thorough internal audit of Bayamón Region's transportation records for 2005-2006, reconcile the recoveries received against the actual absences and either collect additional funds from the contractors or provide reimbursement to the contractors to reflect accurate contractual payments;

- (2) Conduct a thorough internal audit of Bayamón Region's transportation records for the 2006-2007 school year to ensure that the agreed-upon procedures (as agreed upon through the CAROI process), were accurately and consistently implemented;
- (3) If the 2006-2007 audit were to find that the procedures were not being implemented, then institute sanctions and provide documentation to OSEP of actions taken; and
- (4) If the audit found that the procedures were not being appropriately and consistently implemented, continue to audit the Bayamón Region's transportation contracts and related documentation.

With its FFY 2005 Annual Performance Report, submitted on February 1, 2007, PRDE submitted a Special Report on the Bayamón Region Transportation Contracts. In this report, PRDE indicated that the Internal Audit Office (IAO) was in the process of conducting the required audits described in items 1 and 2, above. PRDE stated that it would need additional time to complete the required audits and expected that it would be able to provide a complete response to items 1 through 3 by April 15, 2007. PRDE did not submit the audit in April and instead requested additional extensions.

On July 12, 2007 PRDE submitted a copy of a Special Audit Report on School Transportation for students with disabilities in the Bayamón Region. The audit was conducted by PRDE's IAO and covered the period from August 1, 2005 to December 31, 2006. The IAO report, which is incorporated here by reference, made numerous findings, including but not limited to:

- (1) Established procedures were not followed, including that school directors did not submit the names of students who qualify for transportation services;
- (2) A variety of irregularities with lists and record-keeping were reported, including student lists that were not up to date, that included names of students who were not receiving transportation, students who had transferred to a different school or district, students located outside of Puerto Rico, and students who had withdrawn;
- (3) Schools were properly recording and reporting absences of the students receiving transportation services and payments were not properly adjusted to reflect student absences; and
- (4) Officials failed to verify the accuracy and validity of the documents submitted by the Transportation Unit resulting in errors in compensation, over-payment to drivers, and other irregularities that were not detected in a timely manner.

In its cover letter to the Department's Office of Special Education Program, PRDE acknowledged that, "[t]he report noted instances of significant control failures which we take very seriously and have placed immediate safeguards into effect to protect federal funds." In the letter, PRDE stated that it had ceased the allocation of IDEA funds to support the Bayamón Region special education transportation contracts during the 2006-07 school year; intended to not allocate 2007-2008 IDEA funds for Bayamón Region special education transportation contracts; intended to seek collections and reimburse the 2005-06 IDEA grant; and was analyzing appropriate sanctions and improved controls to address issues raised in the Special Audit Report.

On August 20, 2007 PRDE submitted to OSEP a Corrective Action Plan addressing the findings and recommendations discussed in IAO's Special Report. This plan contains various activities including the review of the processes of other regions related to transportation contracts. However, it does not establish specific benchmarks to demonstrate that the needed fiscal controls are in place and implemented consistent with 34 CFR §76.702.

2. Nature of the Special Conditions

Complaints

- (1) On or before November 30, 2007, PRDE must ensure that there is no backlog of State complaint decisions for complaints filed prior to May 1, 2007.
- (2) For State complaints filed between May 1, 2007 and November 30, 2007, PRDE must demonstrate improvement over the previous reporting period in compliance (i.e., over 45% compliance) with the timeliness requirements of 34 CFR §300.152;
- (3) On or before April 30, 2008, PRDE must ensure that there is no backlog of State complaint decisions for complaints filed prior to November 30, 2007; and
- (4) For State complaints filed between December 1, 2007 and April 30, 2008, PRDE must demonstrate full compliance with the timeliness requirements of 34 CFR §300.152.

Along with the Annual Performance Report (APR), due February 1, 2008, PRDE must report on items 1 and 2, above. In a final report due May 30, 2008, PRDE must report on items 3 and 4, above. In its reporting, PRDE must continue to include: (1) the date each complaint was filed; (2) the status of the complaint; (3) whether the complaint was resolved consistent with Federal requirements including timelines and written decisions; (4) the number of pending complaints that are still within the Federal timelines or extensions as of the last day of the reporting period; and (5) the number of pending complaints that exceed Federal timelines as of the last day of the reporting period.

Controls on Transportation Contracts

To the extent that IDEA Part B funds are allocated or provided to pay for transportation costs in the Bayamon Region and other regions, PRDE must do the following:

- (A) On or before December 31, 2007, PRDE must implement its corrective action plan, including but not limited to a review of other Regions to ensure that proper fiscal controls are in place and are being utilized for all transportation contracts;
- (B) On or before December 31, 2007, PRDE must conduct monitoring of the Bayamon Region to ensure that proper fiscal controls are in place and are being utilized for all transportation contracts; and
- (C) Along with the Annual Performance Report (APR), due February 1, 2008, PRDE must report on items A and B, above.
- (D) On or before May 30, 2008, Puerto Rico must conduct and submit an audit of the Bayamon Region transportation contracts covering the period from January 1, 2007 through December 31, 2007.

To the extent that the Bayamon Region or other regions are not allocated or provided IDEA Part B funds to pay for transportation costs, PRDE must provide documentation of this fact. To the extent that the Bayamon Region is not being allocated or provided IDEA Part B funds to pay for transportation costs, prior to any future allocation or provision of IDEA Part B funds to the Bayamon Region for transportation costs, PRDE must monitor or audit the region to ensure that proper fiscal controls are in place and are being utilized for all transportation contracts in the region. To the extent that the Bayamon Region is allocated or provided IDEA Part B funds to pay for transportation costs at any point during this grant period, PRDE must submit documentation to the Department within 30 days of any such allocation or provision, demonstrating full compliance with 34 CFR § 76.702 for such transportation contracts and services.

3. Evidence Necessary for Conditions To Be Removed

The Department will remove the special conditions if, at any time prior to the expiration of the grant year, Puerto Rico provides documentation, satisfactory to the Department, that it has fully met the requirements that a written complaint decisions are issued within 60 days of the receipt of a formal complaint, unless the timeline is extended due to exceptional circumstances that exist with respect to a particular complaint and the requirements that proper fiscal controls are in place and implemented consistent with 34 CFR §76.702 for transportation contracts and services paid for with IDEA Part B funds.

4. Method of Requesting Reconsideration

Puerto Rico can write to the Office of Special Education Programs Acting Director, Patricia J. Guard, at the address below, if it wishes the Department to reconsider any aspect of these Special Conditions. The request must describe in detail the changes to the Special Conditions sought by Puerto Rico and the reasons for those requested changes.

5. Submission of Reports

All reports that are required to be submitted by PRDE to the Department under the Special Conditions should be submitted to:

U.S. Department of Education
Office of Special Education and Rehabilitative Services
Attn: Tomas Gabaldon
400 Maryland Ave, SW
Washington, DC 20202-2550