

## 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) 2006 grant awards under Part B of the Individuals with Disabilities Education Act (Part B), related to reporting on the participation and performance of students with disabilities on State assessments and State complaint resolution.

##### A. Reporting on the Participation and Performance of Students With Disabilities on State Assessments

The requirements that States ensure that children with disabilities participate in State- and district-wide assessment systems; develop and administer alternate assessments, if necessary; and report publicly on the participation and performance of children with disabilities in State- and district-wide assessments, are crucial to ensuring that children with disabilities are provided access to high-quality instruction in the general curriculum, and that States and districts are held accountable for the progress of these children. 20 U.S.C. 1412(a)(15)-(16)(effective July 1, 2005).<sup>1</sup> 34 CFR §§300.137-300.139 (2004). The requirements regarding performance goals and indicators and the participation of children with disabilities in, and reporting on participation and performance of children with disabilities in regular assessments have been in effect since July 1, 1998; the requirements regarding reporting on alternate assessments have been in effect since July 1, 2000.

Under the FFY 2005 Special Conditions attached to PRDE's grant award under Part B, by May 30, 2006, PRDE was required to demonstrate that it is reporting publicly and to the Secretary on the participation and performance of children with disabilities on alternate assessments, as required by 20 U.S.C. 1412(a)(16). In a May 31, 2006 email submission to OSEP, PRDE provided a link to the website it is using to report and provide information to the public related to both regular and alternate assessments. PRDE's website is intended to report aggregate percentages under basic, proficient, and advanced for all students in a school who participated in the regular assessments. It also is intended to report percentages under basic, proficient, and advanced for children with disabilities on alternate assessments. OSEP staff reviewed sample reports from the PRDE web site on June 14, 2006 and had a discussion with PRDE staff to verify what was and was not reported and to voice concerns regarding the lack of data on the number of students with disabilities participating in the regular assessments with and without accommodations and on those participating in the alternate assessments as well as that absence of disaggregated data on the performance of children with disabilities compared to nondisabled

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<sup>1</sup> Title I of the Elementary and Secondary Education Act, as amended by the No Child Left Behind Act of 2001, also includes a number of requirements related to including children with disabilities in State assessment programs and reporting on their participation and performance on regular and alternate assessments that in many instances are more specific than requirements in the IDEA. For example, the Title I regulations require, at 34 CFR §200.2(b)(3) and (4), that all State assessments must, "(3)(i) Be aligned with the State's challenging academic content and student academic achievement standards; and (ii) Provide coherent information about student attainment of those standards. (4)(i) Be valid and reliable for the purposes for which the assessment system is used; and (ii) Be consistent with relevant, nationally recognized professional and technical standards." This enclosure does not, and should not be interpreted to, address Puerto Rico's compliance with requirements of Title I.

students. Based upon this review, OSEP has determined that PRDE is not reporting publicly and to the Secretary on the participation and performance of children with disabilities on the regular assessments and alternate assessments in a manner that meets the requirements of Part B. Specifically, PRDE has failed to report the following required information:

- 1) The number of children with disabilities participating in regular assessments, and the number of those children who were provided accommodations in order to participate in those assessments. 20 U.S.C. 1412(a)(16)(D)(i).
- 2) The number of children with disabilities participating in alternate assessments. 20 U.S.C. 1412(a)(16)(D)(ii) and (iii).
- 3) The performance of children with disabilities on regular assessments and on alternate assessments (if the number of children with disabilities participating in those assessments is sufficient to yield statistically reliable information and reporting that information will not reveal personally identifiable information about an individual student), compared with the achievement of all children, including children with disabilities, on those assessments. U.S.C. 1412(a)(16)(D)(iv).

#### B. Complaints

Part B contains State Complaint Procedures at 34 CFR §300.660-300.662, that require the State Educational Agency to resolve complaints that a public agency has violated a requirement of Part B, including an on-site investigation, if necessary, and the issuing of a written decision, generally within 60 days of receipt of the complaint, that addresses all allegations in the complaint. 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. For the reasons set out below, OSEP concludes that PRDE has repeatedly failed to meet these requirements, has made negligible progress, and has not demonstrated good faith efforts to correct the noncompliance.

The history of this issue is set out in OSEP's August 13, 2004 verification letter and in Table B attached to OSEP's April 4, 2006 response to PRDE's State Performance Plan (SPP), both are incorporated here by reference. Most recently, in a January 13, 2006 submission, PRDE reported no data for 2002-2003, indicating that it was unable to "provide disaggregated data for the period of August 1, 2002 through December 31, 2002." For the school year 2003-2004, PRDE reported that, of 60 complaints received, 51 exceeded required timelines and were still pending. Nine complaints were dismissed. For the school year 2004-2005, PRDE reported that, of 50 complaints, 42 exceeded required timelines and were still pending. Eight complaints were dismissed. For the school year 2005-2006 (up to 11/30/05), PRDE reported that, out of eight complaints received, all eight exceeded timelines and were still pending. The data reported on December 2, 2005 under Indicator 16 in the SPP on page 42, indicated 50 complaints for FFY 2004-2005, with 8 withdrawn or dismissed and 42 still pending.

On page 43 of the SPP, PRDE proposed improvement activities to address this noncompliance. Specifically, PRDE would, by December 2005, transfer the responsibility for complaint oversight, which had been the responsibility of the Legal Division, to the Office of Special Education Secretarial Unit, implement a system to process complaints, retrain personnel, design and implement a tracking system, and monitor the status of complaints. On pages 17-18 of the January 13, 2006 submission, PRDE proposed these same activities, but with a January 2006

timeline for the transfer of complaint responsibility, previously scheduled in the SPP for December 2005. These proposed activities appeared much the same as those that had been proposed in PRDE's March 2004 Improvement Plan, where the proposed date for transfer of complaint responsibility was November 2004.

In OSEP's April 4, 2006 response to the SPP, OSEP raised serious concerns about PRDE's inability to report any reduction of the significant backlog of complaints that are pending and the failure to report data on those complaints pending prior to 2003 that were never reported as resolved. Because PRDE did not report data on the status of complaints filed for 2002-2003, OSEP concluded that PRDE could not demonstrate that it has investigated and issued findings and decisions for the complaints that were pending from that time period. It also appears that PRDE had made little to no progress in reducing its current backlog of complaints from 2003 forward. PRDE reported that these complaints were not resolved within the 60-day timeline, and that over 100 complaints were still pending with approximately half of those dating to 2003-2004. PRDE did not report any complaints that were investigated and for which findings and a decision were issued.

In the April 4, 2006 response letter, OSEP also noted that the activities PRDE proposed appear to repeat previously proposed activities, implying that these activities have never been implemented. For example, In March 2004, PRDE proposed relocating the Legal Division so that it reported directly to the special education office by November 2004. This remained a proposed activity and as of the writing of the SPP, that transfer had not occurred. In addition, PRDE was again proposing to design and implement a tracking system, albeit an electronic one. Notably absent from its proposal was any specific reduction of the backlog.

In a May 26, 2006 Progress Report, PRDE reported that, of 68 complaints received between July 1, 2004 and February 28, 2006, only three written decisions were issued; 50 were still pending and beyond timelines and the remaining 15 complaints had been "dismissed." Based upon this latest data, the number of complaints not resolved within Federal timelines that PRDE has reported is 101, when the 51 complaints exceeding timelines and still pending from the 2003-2004 school year are added to the 50 unresolved complaints exceeding timelines from the May 26, 2006 submission. To the extent that the 2002-2003 complaints remain unresolved, this number is even greater. Therefore, OSEP concludes that PRDE has made negligible progress and has not demonstrated that it is making good faith efforts in complying with the complaint requirements of Part B. Specifically, PRDE remains out of compliance with the requirements, at 34 CFR §300.661, that PRDE issue a written decision to the complainant that addresses each allegation in the complaint within 60 days after a complaint is received unless an extension of time is permitted due to exceptional circumstances with respect to a particular complaint.

## **2. Nature of the Special Conditions**

### **A. Reporting on the Participation and Performance on State Assessments**

By May 30, 2007, PRDE must demonstrate that it is reporting publicly and to the Secretary on the participation and performance of children with disabilities on regular and alternate assessments, as required by 20 U.S.C. 1412(a)(16) (effective July 1, 2005).

In the Annual Performance Report (APR), due February 1, 2007, in addition to addressing the issues identified in OSEP's April 4, 2006 SPP letter under Table A, PRDE must submit a Progress Report identifying all progress it has made in reporting publicly and to the Secretary on the participation and performance of children with disabilities on regular and alternate assessments, in a manner consistent with the requirements of Part B as detailed in these Special Conditions.

### **B. Complaints**

1) On or before November 30, 2006, PRDE must reduce by 60%, the backlog of all unresolved complaints, including the backlog previously reported and noted in these Special Conditions. PRDE must report on the status of this correction as a submission with the APR, due February 1, 2007. In its submission, PRDE must report: (a) the date each complaint was filed; (b) the status of the complaint; and (c) where applicable, the date the complaint was resolved.

2) On or before April 30, 2007, PRDE must reduce by 100%, the backlog of all unresolved complaints, including the backlog previously reported and noted in these Special Conditions. PRDE must report on the status of this correction as a Progress Report submission due to OSEP on or before May 30, 2007. In its submission, PRDE must report: (a) the date each complaint was filed; (b) the status of the complaint; and (c) where applicable, the date the complaint was resolved.

3) PRDE must demonstrate that 50% or more of the new complaints, filed between February 28, 2006 and November 30, 2006, were issued a timely decision during the reporting period, except for those complaints where the 60-day timeline has not yet expired. With the APR, due February 1, 2007, PRDE must submit a report with the following: (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.

4) PRDE must demonstrate that all new complaints, filed between December 1, 2006 and April 30, 2007, were issued a timely decision during the reporting period, except for those complaints where the 60-day timeline has not yet expired. In a Final Report, due May 30, 2007, PRDE must to report: (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 have exceeded Federal timelines as of the last day of the reporting period.

### **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, PRDE provides documentation, satisfactory to the Department, that it has fully met the requirements to report publicly and to the Secretary on the participation and performance of children with disabilities on assessments and that it has reduced the backlog of overdue complaints and that it ensures that 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.

### **4. Method of Requesting Reconsideration**

The State can write to the Office of Special Education Programs Director, Alexa Posny, 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 the State 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: Paul Steenen  
400 Maryland Ave, SW  
Washington, DC 20202-2550