

## Enclosure D



### UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF THE SECRETARY

June 28, 2007

Honorable Aníbal Acevedo Vilá  
Governor  
Commonwealth of Puerto Rico  
PO Box 9020082  
San Juan, Puerto Rico 00902-0082

Honorable Rafael Aragunde Torres  
Secretary of Education  
Puerto Rico Department of Education  
Post Office Box 190759  
San Juan, Puerto Rico 00919-0759

Dear Governor Acevedo Vilá and Secretary Aragunde Torres:

Over the past several years, our agency and the Commonwealth have worked cooperatively towards addressing many systemic and longstanding grant management and accountability issues that the Puerto Rico Department of Education (PRDE) has been facing with regard to the administration of Federal education grants. Many of these efforts have occurred under the U.S. Department of Education (Department) Cooperative Audit Resolution and Oversight Initiative (CAROI) as well as activities identified in special conditions for Federal fiscal years (FFY) 2002 through 2006 that have been incorporated into the grant awards made by the Department in those years to PRDE for all the Federal education programs it administers.

In addressing past special conditions, and in conjunction with CAROI, PRDE has taken a number of steps to address the underlying problems. On October 24, 2004, the Department entered into a comprehensive, three-year Compliance Agreement (Agreement) with the Commonwealth of Puerto Rico (Puerto Rico) and PRDE, in recognition of the need for additional time to make necessary improvements in grants management and accountability. Through this Agreement, Puerto Rico and PRDE, with assistance from the Department, have developed and implemented integrated, coordinated, and systemic solutions to some of the long-term problems Puerto Rico and PRDE have had in the management of Federal education funds and programs. The implementation of this Agreement, as well as other steps taken by PRDE prior to the Agreement, demonstrated PRDE's initiative and commitment to resolving the problems that led the Department, in 2002, to designate PRDE a "high-risk" grantee under the Education Department General Administrative Regulations (EDGAR) at 34 CFR §80.12. In recognition of the progress shown by PRDE at that time, and with the signing of the Agreement on October 25, 2004, the Department removed PRDE's Department-wide "high-risk" grantee designation, on a probationary basis and with the specific expectation of continued progress.

During the first year of the Agreement, PRDE was faced with many challenges in progressing with the goals, measures, and target dates under the Compliance Agreement, including the effects of turnover and the impact of delays in installing PRDE leadership due to the Commonwealth's 2004 elections. These challenges affected PRDE's ability to implement the corrective action plans to which the Governor and PRDE had committed themselves and raised concerns about PRDE's ability to meet the

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goals, measures, and target dates for the first year of the Agreement. PRDE was requested to provide evidence during the Departmental risk management site visit in January 2006 that it had overcome these circumstances and was able to get “back on track” in accordance with the Agreement’s schedules and tasks. The results of the trip indicated that while PRDE still had much work to do to address the many programmatic and fiscal issues before it, to demonstrate that lost momentum had in fact been regained and PRDE had caught up with and completed scheduled tasks in order to get back on schedule. Unfortunately, events surrounding the ongoing fiscal crisis in the Commonwealth, in particular the closing in May 2006 of parts of the government, including PRDE and the school system, converged to once again create significant challenges to PRDE’s ability to continue the progress necessary on the Compliance Agreement and to give the Department significant cause for concern. While certain matters were resolved successfully during the week of May 8, 2006, resulting in only a shut down of the schools for approximately ten days, what at first appeared to have been only a minimal disruption to PRDE operations has instead created lingering effects including low employee moral and retention, that continue to impact PRDE.

As you are aware, the three-year period of the Agreement will end on October 25, 2007, during the timeframe for both these FFY 2007 Department-level special conditions and any FFY 2007 program specific special conditions. In anticipation of this date, the Department, in February of this year, reviewed PRDE’s progress on the Agreement. The preliminary results from this review have been mixed. While PRDE has shown some progress in some areas, most notably Special Education and the provision of supplemental education services (SES), in other areas PRDE has not demonstrated the level of improvement expected when the Agreement was initiated, including the areas of property and inventory management, procurement, financial management, and interagency cash and accounting records management. Though the corrective action plans developed for these specific areas indicate that nearly all of their tasks have been “completed” to date, and are anticipated by PRDE to be fully completed by the end of the Agreement, the improvements resulting from the outcomes of these tasks are not yet evident. In addition, there are many areas of programmatic non-compliance which continue to negatively impact PRDE’s ability to effectively execute Department programs, including Title I, Title II, Title III, Special Education, Highly Qualified Teachers (HQT), Assessments, and timely Adequate Yearly Progress (AYP) reporting. With respect to the Title III program, the Department notes PRDE’s acknowledgement, during the recent site visit to Washington on April 24-25, 2007 of its inability to implement and sustain an effective and viable Title III program. During the visit, PRDE also candidly discussed with Department staff its intention to explore possibly “outsourcing” the development and implementation of a viable Title III program. The recently completed monitoring by the Department of the Title I program, and the resulting report, have identified numerous deficiencies with the program to the extent that PRDE is significantly out of compliance with “No Child Left Behind” (NCLB) requirements.

Many of these concerns were to have been addressed, at a strategic level, as part of the Agreement, specifically the grants management corrective action plan. At the time of the start of the current Agreement, it was believed that a more systemic approach to improvements by PRDE in grants management would yield the desired outcomes necessary to bring specific program areas into compliance with grants program requirements. Based on the Department’s assessment of these programs during programmatic monitoring visits conducted over the past year, the systemic approach to improving grants management and program execution has failed to produce the desired outcomes. This conclusion by the Department means that PRDE will apparently continue to remain out of compliance with many of the systemic, fiscal, and programmatic requirements that were to have been addressed by the Agreement during the past three years. *This situation will exist during the current*

FFY 2007 grant award cycle, as well as beyond the end of the current Agreement, due to expire on October 25, 2007.

As you may be aware, several of the programs have begun to take steps to address this situation. Specifically, administrative actions may be taken in Title I, Part A, and similar actions may occur in other programs, most notably Title III, during the FFY 2007 grant cycle, and may continue until the programmatic deficiencies are rectified and the programs come into compliance.

Given the magnitude and time it will take for this to occur, the Department is exploring a number of alternatives, one of which would be to work with PRDE to develop an additional compliance agreement to focus specifically on the programmatic non-compliance issues. Such an Agreement, focused on the details of non-compliance with programmatic requirements, would provide an instrument for addressing these issues in a more comprehensive manner. The Department anticipates starting formal discussions with PRDE leadership in the very near future, well ahead of the ending date of the current Agreement, to identify "next steps" and a further course of action.

As set out in this letter, and in the enclosure, much work remains. Therefore, we are imposing upon all Department grants awarded to PRDE for FFY 2007 the enclosed Departmental special conditions. Though the time left under the Agreement is short, you will note that the Department continues to place much emphasis in these FFY 2007 special conditions on the corrective action plans that are currently in effect under the Compliance Agreement, as well as on assessing the progress PRDE is making in implementing and achieving the goals outlined in these corrective action plans. It is essential that any future modifications of these plans continue to fully address the problems cited in audit findings in the subject areas covered by the plans, and that these plans are implemented on a timely basis.

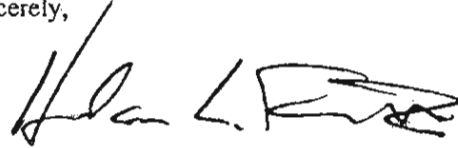
In connection with the concerns identified above and addressed in the enclosed FFY 2007 Departmental special conditions, the Department on April 24, 2007 notified PRDE of its concerns regarding the progress and effectiveness of the PRDE Internal Audit Office (Audit Office) and the independent Audit Oversight Committee (Audit Committee). The Department requested a response to the April 24, 2007 letter from PRDE within 30 days of the date of the letter outlining what steps would be taken to the Department's concerns. The response was received timely and is now under review. Grant recipients are required to provide assurances that grant funds are being spent in accordance with Federal program and legislative requirements. The Department relies on these assurances to approve grant applications. Successful operation of both the Audit Office and the Audit Committee will help PRDE provide these needed assurances. Their operations are especially important during this time of fiscal and programmatic concern. Accordingly, the attached Departmental special conditions again address the ongoing activities and reporting of the Audit Office and the Audit Committee.

We know that you take seriously our mutual responsibilities to ensure that Federal program funds are being spent properly to educate children and students in the Commonwealth of Puerto Rico. The Department recognizes that the presence of continuing issues outside of PRDE's control has hindered some of PRDE's efforts at meeting its Compliance Agreement commitments during the past three years. However, it is the Department's hope that PRDE, you, as key officials of the Commonwealth, and officials of other well-meaning entities within and outside the government will recognize the need for coordination and cooperation and thus work more closely together to effect the necessary change and improvement in PRDE education program administration for the benefit of Puerto Rico's students.

Letter to Governor Acevedo Vilá and Secretary Aragunde Torres – Page 4

We look forward to continuing to work with you and other Puerto Rico officials to improve the delivery of Federal education services so that no child in Puerto Rico is left behind.

Sincerely,

A handwritten signature in black ink, appearing to read "Hudson La Force III". The signature is stylized with a large initial "H" and a long horizontal stroke at the end.

Hudson La Force III  
Senior Counselor to the Secretary

Cc: Mariemma Lopez, Director, PRDE Office of Federal Affairs

Enclosure

**Commonwealth of Puerto Rico Department of Education**  
**FFY 2007 Departmental Special Conditions**

PREAMBLE: These special conditions are imposed on the Puerto Rico Department of Education's (PRDE's) Federal fiscal year (FFY) 2007 program grants made available by the U.S. Department of Education (Department) on or after the date of these special conditions, and will affect other funds under all other grants still available for obligation by PRDE. These FFY 2007 program grant awards from the Department to PRDE are made in accordance with the terms of the Compliance Agreement (Agreement) among the Commonwealth of Puerto Rico (Puerto Rico), PRDE, and the Department, signed on October 25, 2004. The special conditions are imposed to help ensure that the PRDE awards are expended in accordance with applicable legal requirements, the Agreement, 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 34 C.F.R. 80.12). At that time, special conditions were placed on all Department grants awarded to PRDE because of its history of unsatisfactory performance, as uncovered by audits dating back to 1994. The Department's 2002 special conditions were intended to bring about necessary changes to Federal program administration and appropriate fiscal oversight in Puerto Rico that would ultimately bring it into compliance with all Federal education program requirements. The special conditions were intended to result in important improvements to Federal grants administration in Puerto Rico so that the systemic problems uncovered by the auditors would be corrected and would not reoccur. In addressing the special conditions, and in conjunction with the Department's Cooperative Audit Resolution and Oversight Initiative (CAROI), as outlined below, PRDE has taken numerous steps to address underlying problems.

B. As a result of PRDE's demonstrated initiative and commitment to resolving the problems that led to the 2002 "high-risk" designation, and in recognition of the progress shown by PRDE in the period leading up to the October 25, 2004 Agreement, the Department removed PRDE's "high-risk" grantee designation, on a probationary basis, upon the signing of the Agreement.

C. Since September 2003, the Department and PRDE have been working together in a collaborative effort under the CAROI process, to jointly resolve the backlog of unresolved PRDE audits, which contain over six hundred audit findings dating back to 1994. As a result of this effort, PRDE has taken steps and established controls to improve its payroll and procurement processes and its management of grants to address numerous recurring audit issues and make systemic changes. It has assigned knowledgeable staff to this task and has employed expert contractors to assist in this effort. PRDE has sought to come into compliance with Federal requirements through the implementation of corrective action plans in the areas of grants management, procurement, and payroll, with the

ultimate goal of improving educational services to all students in Puerto Rico. During the first year of the Agreement, PRDE was faced with many challenges in progressing with the goals, measures, and target dates under the Agreement, including the effects of turnover and the impact of delays in installing PRDE leadership due to the 2004 elections. The delays resulted in a lack of progress in implementing the corrective action plans to which the Governor and PRDE committed themselves in October 2004. These circumstances raised concerns about PRDE's ability to meet the goals, measures, and target dates for the first year of the Agreement. PRDE was therefore requested to provide evidence during the Departmental risk management site visit in January 2006 that it had overcome these circumstances and was able to get "back on track" with the Agreement's schedules and tasks. The results of the trip indicated that PRDE still has much work to do to address the many programmatic and fiscal issues, yet was able to regain some lost momentum, catch up with and complete scheduled tasks, and get back on schedule. While the fiscal crisis was resolved successfully during the week of May 8, 2006, resulting in a shut down of the schools for approximately ten days before this date, and while it at first appeared that there had been minimal disruption to PRDE operations, there still nevertheless remained lingering effects of the shutdown including low employee moral and retention, that impacted PRDE at that time and continue today.

D. The three-year period of the Agreement will end on October 25, 2007, during the timeframe for both these FFY 2007 Department-level special conditions and the FFY 2007 program specific special conditions. In anticipation of this date, the Department began in February of this year to review PRDE's progress on the Agreement. The preliminary results from this review have been mixed. While PRDE has begun to show progress in some areas, most notably Special Education and supplemental education services (SES), other areas are far from demonstrating the level of improvement expected when the Agreement was initiated, including property and inventory management, procurement, financial management, and interagency cash and accounting records management. In addition, there are many areas of programmatic non-compliance which continue to negatively impact PRDE ability to effectively execute Department programs, including Title I, Title III, Special Education, Highly Qualified Teachers (HQT), Assessments, and timely Adequate Yearly Progress (AYP) reporting. With respect to the Title III program, the Department notes PRDE's acknowledgement, during the recent site visit to Washington on April 24-25, 2007 of its inability to implement and sustain an effective and viable Title III program. During the visit, PRDE also candidly discussed with Department staff its intention to explore possibly "outsourcing" the development and implementation of a viable Title III program. The recently completed monitoring by the Department of the Title I program, and the resulting report, have identified numerous deficiencies with the program to the extent that PRDE is significantly out of compliance with "No Child Left Behind" (NCLB) requirements.

E. Many of the programmatic concerns were to have been addressed, at a strategic level, as part of the Agreement, specifically the grants management corrective action plan. At the time of the start of the current Agreement, it was believed that a more systemic approach to improvements by PRDE in grants management would yield the desired outcomes necessary to bring specific program areas back into compliance with NCLB

requirements. Based on the Department's assessment of these programs during programmatic monitoring visits conducted over the past year, the systemic approach to improving grants management and program execution has failed to produce the desired outcomes. This conclusion by the Department means that PRDE may continue to remain out of compliance with many of the systemic, fiscal, and programmatic requirements that were to have been addressed by the Agreement during the past three years. This situation will exist during the current FFY 2007 grant award cycle, as well as beyond the end of the current Agreement, due to expire on October 25, 2007. If adequate progress is not made, during this grant cycle, we may have to reinstate the "high risk" designation with regard to PRDE, and take other administrative action.

F. Several Department program offices have begun to take steps in response to this situation, most notably Title III, including applying program-specific special conditions to their FFY 2007 grants. Similar actions may occur in other programs during the FFY 2007 grant cycle as well, and may continue until the programmatic deficiencies are rectified and the programs come back into compliance.

G. Given the magnitude and time it will take for this to occur, the Department is exploring several alternatives, one of which would be to work with PRDE to develop a compliance agreement to focus specifically on the programmatic non-compliance issues. Such an Agreement, may be more focused on the details surrounding the programmatic non-compliance, would provide an instrument for addressing these issues in a more comprehensive manner. The Department has held several internal preliminary discussions about the "next steps" and will begin formal discussions with PRDE leadership in the very near future, well ahead of the ending date of the current Agreement, to identify a course of action.

## II. SPECIAL CONDITIONS

### A. Required Adequate Progress in Implementing Corrective Action Plans and Related Reporting Requirements

Through the comprehensive, three-year Agreement, Puerto Rico and PRDE, with assistance from the Department, have agreed to complete integrated, coordinated and systemic solutions to problems they have had over a period of many years in the management of Federal education funds and programs. PRDE has committed to meeting specific goals and objectives aimed at correcting these systemic problems through specific steps in its corrective action plans covering grants management, payroll, and procurement. It is essential that steady progress continue in PRDE's implementation of those corrective action plans in order for PRDE to meet fully the Agreement's requirements by the Agreement's termination date in October 2007. Therefore, as specified in the Agreement, PRDE is required to submit to the Department on a quarterly basis, a detailed description of the extent to which agreed-upon target dates, goals, and measures are being met.

The Agreement requires regular progress reporting on all issues, and the reporting requirements specified in the Agreement are incorporated herein by reference. Generally, Puerto Rico and PRDE must provide the Department with progress reports on a quarterly basis. The submission of each written report will be preceded by a meeting or conference call among representatives of Puerto Rico, including possibly representatives of various Puerto Rico agencies other than PRDE referenced in the Agreement [Section I. Overview of Issues Addressed by this Agreement], PRDE, and the Department, within five business days (according to PRDE's business calendar) of the end of the quarter. The purpose of the call or meeting will be to discuss Puerto Rico and PRDE's progress and to discuss the level of detail the Department will require for the quarterly report. The parties may modify the schedule for such conference calls or meetings by mutual agreement.

Subject to the meeting or call above, in general, each quarterly report will include information such as: (1) a description of activities and progress for each task and its related sub-tasks during the reporting period, (2) the status of each critical action step required to be taken during the reporting period, (3) documentation of critical action step completion for those steps required to be completed during the reporting period (including explanations of delays for all steps not completed that were scheduled to be completed during the period, and expected completion dates for all unimplemented steps), (4) documentation of measures of performance and results, and (5) other data or documentation as specified within the action steps for each task or related sub-task in the Agreement, and/or discussed in the pre-report meeting or conference call among the Department, Puerto Rico, and PRDE.

The Puerto Rico Secretary of Education or other authorized official of PRDE shall certify to the completeness and accuracy of the reports. The PRDE Internal Audit Office shall verify the accuracy of the reports and audit the implementation of the action steps in the action plans and issue a report to PRDE and the Department within four weeks after the call or meeting.

#### B. Reporting Requirements Beyond Compliance Agreement Termination

Given that the Agreement will end on October 25, 2007, during the period of these special conditions, PRDE is required to continue beyond this date to submit to the Department on a quarterly basis, a detailed description of the extent to which agreed-upon target dates, goals, and measures are being met in the same format and timeframes as described in Section II.A. PRDE efforts on the corrective action plans and other related deliverables under the Agreement shall continue under these special conditions until such time as determined by the Department.

#### C. Internal Audit Office and Audit and Financial Oversight Committee Status Report

All Department grant recipients are required to provide assurances that grant funds are being spent according to program and legislative requirements. The Department relies on these assurances to approve grant applications. The successful implementation of PRDE's initiative to strengthen the PRDE Internal Audit Office (Office) and the establishment of



an independent Audit Oversight Committee (Committee) are critical to helping PRDE provide the required assurances.

In the quarterly reports required by these special conditions and the Agreement, PRDE shall provide the Department updates on the activities of the Office and the independent Committee. In addition to the regular quarterly reporting specified in section II.A, the Department also requires PRDE to provide:

- Copies of Internal Audit Office reports as they are issued.
- A report on accomplishments of the PRDE Internal Audit Office and the Audit Oversight Committee every six months.

D. Prompt Response to Request for Records

PRDE shall promptly provide the Department or its representatives any requested records and information.

E. Program-Specific Conditions

Additional special conditions may be imposed on FFY 2007 grant awards made under one or more Department programs, in addition to the special conditions that are contained in this document. Each such program-specific special condition will be contained in an attachment to the final grant award notification document that is provided by the Department to PRDE.

III. FAILURE TO COMPLY WITH SPECIAL CONDITIONS:

A. Enforcement Action Steps Or Additional Conditions

If a plan, report or documentation under Section II above, is not provided by PRDE on a timely basis or is not considered acceptable to the Department (for example, it does not show substantial promise of correcting the problems uncovered by the auditors between 1994 and 2003), it may be considered as a failure to comply with the special conditions and be subject to the remedies outlined below or to the terms in Section IV.A below. If the Department determines that PRDE has not made substantial progress in meeting program objectives, or has not met program requirements or the special conditions contained in Section II, the Department may consider not continuing PRDE's grants, taking further enforcement action steps, or applying additional conditions, including:

1. Conditions under which PRDE would receive no further funds under one or more grant awards or would receive funds only on a reimbursement basis;
2. Conditions providing for the Department's recovery of misspent funds from PRDE; or

3. Conditions requiring PRDE to contract (on a competitive basis) with a third party, who must be approved by the Department, to provide the services or financial management under one or more PRDE grant awards. The third party would, at a minimum, assist in preparing the vouchers to be submitted to the Department for reimbursement, and would verify their accuracy and legitimacy as appropriate expenditures under one or more grant awards.

B. Reinstatement Of "High-Risk" Status Under 34 CFR §80.12

In the event that PRDE and Puerto Rico fail to continue their efforts toward correcting the systemic problems uncovered by the auditors between 1994 and 2003, and are not making sufficient progress to meet the terms of the Agreement, the Department retains the authority to reinstate the "high-risk" designation that was removed in 2004. If the Department determines that such reinstatement becomes necessary, additional special conditions or restrictions may include, but will not necessarily be limited to: (1) payment of Federal funds on a reimbursement basis; (2) withholding authority to proceed to next phase until receipt of evidence of acceptable performance within a given funding period; (3) requiring additional, more detailed financial reports; (4) requiring additional project monitoring; (5) requiring PRDE to obtain technical or management assistance, including the designation of a third-party fiduciary to administer all or part of PRDE's grants from the Department (the third party fiduciary would, at a minimum, assist in preparing the vouchers to be submitted to the Department for reimbursement, and would verify their accuracy and legitimacy as an appropriate expenditure under one or more grant awards); (6) establishing additional prior approvals; or (7) recovery of misspent funds. The use of a condition for one covered Federal program does not require or preclude its use for a different covered Federal program.

IV. OTHER TERMS

A. Enforcement

If PRDE fails to meet any of the above FFY 2007 special conditions, the Department is authorized to take other appropriate enforcement action. These terms and conditions do not preclude the Department from taking any otherwise authorized enforcement or other actions at any time.

B. Submission of Reports

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

Mark Robinson  
400 Maryland Avenue, SW  
FB-6, Room 7E208  
Washington, DC 20202

C. Reconsideration and Modifications

At any time, PRDE may request reconsideration of the above special conditions by contacting the Department and providing in writing the reasons why PRDE believes particular conditions are no longer needed. Additionally, the Department may impose additional special conditions or modify these special conditions as appropriate. The Department will remove the special conditions at such time as PRDE meets to the Department's satisfaction, the conditions mentioned above and other applicable requirements.

Dated (Same as Program Special Conditions, if any, or date of grant award):

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