

## ENCLOSURE C

### CROSS-CUTTING ISSUES SPECIAL CONDITIONS

PREAMBLE: These special conditions are imposed on Puerto Rico Department of Education's grants under Part B of the Individuals with Disabilities Education Act (IDEA) for the Federal fiscal year (FFY) 2001. These program grant awards from the U.S. Department of Education (Department) to the Puerto Rico Department of Education (PRDE) are made in accordance with the Department's regulations governing "high risk" grantees in 34 CFR §80.12. The special conditions are imposed to help ensure that the PRDE award is expended in accordance with applicable legal requirements and with appropriate fiscal accountability measures and management practices and controls.

#### I. EXPLANATION OF HIGH-RISK STATUS

Under the authority of the Education Department General Administration Regulations (EDGAR), 34 CFR §80.12, the Department has determined that PRDE is a "high-risk" grantee for purposes of these grant awards because of problems in PRDE's fiscal and program accountability and related areas. Our conclusion is based on the following findings:

- A. Puerto Rico has not been in compliance with the Single Audit Act. Over a period of many years, PRDE has submitted its single audits significantly late. While some progress is being made, PRDE continues to be late with these submissions.
- B. The single audits of PRDE have consisted of many findings that show areas that need significant improvements. We are working with PRDE officials in getting additional information in connection with findings made by PRDE auditors to resolve the FFY 1997, 1998, 1999, and 2000 single audits and audits before FFY 1997.
- C. The Deputy Secretary's letter dated May 29, 2002 outlining many problem areas with PRDE's administration of its federally funded programs.
- D. While the corrective action plan aims to address many problem areas, the statements in the plan along with statements of officials from PRDE confirm that there remain many problem areas to be addressed.
- E. Based on the audits of the US Department of Education, Office of Inspector General, including Audit Control Nos.: A0190006 A0190007 A01A0004, A02B0012, and A02B0014, certain agencies of Puerto Rico have been found to have systemic financial weaknesses such as: (a) failure to adhere to procurement regulations and procedures, and (b) lack of proper internal controls necessary to safeguard Federal funds. These weaknesses affected grant funds awarded by the Department to PRDE.

- F. The actions leading to the indictments of the former Secretary of Education of Puerto Rico and other associated individuals showed the lack of proper controls to ensure the appropriate handling of Federal funds and other funds that were to be spent for appropriate educational purposes.

## II. SPECIAL CONDITIONS

### A. Oversight Agent

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. Due to the high-risk status of PRDE and the conditions that contributed to that status, PRDE shall provide the Department timely confirmation of progress on its corrective action plans presented to the Department on June 27, 2002, and of appropriate expenditures through the services of an independent oversight agent that will provide extra monitoring of its expenditures and progress on the plan. The Agent will be selected by PRDE with the approval of the Department in a fair and competitive process consistent with applicable procurement procedures. The Agent will be paid from administrative funds from appropriate federally-funded programs. The Department will work with PRDE in developing a procurement request for proposals soliciting responses from prospective agents. Selection criteria for the oversight Agent will include a proposal submitted by the prospective Agent as to methods to be used in satisfying the responsibilities of the agent. Responsibilities of the Agent will include:

1. Timely independent, and reliable monitoring of the implementation of fiscal and programmatic management improvements conducted by PRDE including those under PRDE's corrective action plan.
2. Timely independent, and reliable monitoring of the expenditure of Department funds by PRDE including items listed in section *II.B, Reporting Requirements: Liquidations and Purpose of Expenditures*, below.
3. Filing quarterly reports with the Department, and the Secretary of PRDE concerning the status and progress of items one and two above.

The work of the Agent shall be covered in a contract developed by PRDE and approved by the Department that will build on, and not duplicate, the work PRDE is doing with other contracts to help reform the PRDE system, and with the work of the new Internal Audit Office that is being established within PRDE. To help ensure that there is no duplication, PRDE or the Internal Audit Office will submit to the Department more information on the proposed monitoring activities of the Internal Audit Office.

The Agent must have full access to all PRDE staff, all financial transaction records, program administration reports, reports generated by PRDE's Internal Audit Office, contractor-related documentation, and any other documentation pertaining to programs using funds allocated to PRDE by the Department.

The Agent must be in place within six months from the awarding of the grants. The Agent will perform its duties until such time as proper internal controls are in place and functioning for a period sufficient to assure the Department that they will continue to function and that they are effective in protecting Federal funds.

B. Reporting Requirements: Liquidations and Purpose of Expenditures

PRDE will submit the following documentation for each program to show that the funds are being spent for allowable purposes, that sufficient progress is being made in the program, and that the funds drawn down are being spent in a timely manner with appropriate certifications. These expenditures and the documentation will also be subject to further monitoring, auditing, and review. PRDE will provide the following (see also section III B below):

1. A detailed quarterly report for each program on the administration of the program by PRDE, the expenditures made by PRDE in the program that will satisfy the accountability needs of the Department, and descriptions of the progress of each significant aspect of the program at school, "district" and PRDE levels. Expenditures (or liquidations) may be grouped by category (e.g., purchase of computers, professional development, etc.) but they must be in sufficient detail for the Department to match against the program application or spending plan, if applicable, and allow the Department to determine the allowability of the expenditures (or liquidation). The descriptions on progress must also provide enough detail on program activities to determine if sufficient progress is being made in the program. The reports shall also include the information required in section II D below.
2. A certification signed by an authorized official of PRDE, attesting, under penalty of Federal law, to the accuracy and completeness of the report, including verification that all of the expenditures are being made for authorized purposes under the program.
3. PRDE shall consider adopting a "transparent" budgeting and expenditure reporting system that would be readily available to the public, the Agent, and the Department and its representatives so that all of these parties can easily understand the expenditures that are planned and carried out under each of the federally-funded grant programs. In each of the quarterly reports, PRDE shall report on its consideration of and progress in adopting such a system.

The reports and certifications must be submitted no later than two weeks after the end of each quarter (for example, the first quarter ends on December 31, 2002, so the first report will be due on January 14, 2003). If a report is not timely or is not considered acceptable (for example, it does not show substantial progress as set forth in the cover letter), it may result in one or more remedies including the following for that program: the lack of authority for PRDE to draw down the rest of the funds; the imposition of further conditions; the recovery of misspent funds; or the implementation of a contract with a third party to provide the services.

C. Single Audits

PRDE shall submit to the Department the delinquent single audit for FFY 2001 by August 30, 2002. All single audits required thereafter by the independent auditors shall be completed and the report published within nine months after the end of each fiscal year as required by the Single Audit Act of 1984 and subsequent amendments.

D. Resolving Audit Findings

1. PRDE shall report to the Department, as part of the quarterly reports, on progress towards resolving applicable audits on all matters affecting funds under these grant programs. Including the resolution of all pending findings resulting from single audits and from findings made by the Internal Audit Office
2. If any other federal agencies issue findings on cross-cutting issues (e.g., procurement, property, financial management) affecting the administration of these program funds, or that cover funds under this grant program, PRDE shall promptly report such findings to the Department and outline the corrective actions to be taken.

E. Prompt Access to Records

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

F. Failure to Comply with Conditions

In addition to the remedies described in Section II B 3 above, if the U.S. Department of Education determines that the PRDE has not made substantial progress in meeting the objectives of the program, or has not met program requirements or the Special Conditions contained in paragraphs A-F above, then the U.S. Department of Education may consider not continuing the grant or taking further enforcement action steps, or apply additional conditions such as the following:

1. PRDE would receive no further funds under this grant award or only on a reimbursement basis; and
2. PRDE would contract with a third party, who must be approved by the U.S. Department of Education, to provide the services or financial management under this grant award. The third party would, at a minimum, assist in preparing the vouchers to be submitted to the U.S. Department of Education for reimbursement, and will verify their accuracy and legitimacy as an appropriate expenditure under this grant award.

### III. OTHER TERMS

#### A. Enforcement

If PRDE fails to meet any of the above 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:

Dr. Gregory Corr  
US Department of Education  
330 C. Street SW, Room 3622  
Washington, DC 20202

#### C. Reconsideration and Modifications

At any time, PRDE may request reconsideration of the above special conditions by contacting Assistant Secretary Robert H. Pasternack and stating 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.

