

March 1, 2019

By E-Mail

DEMAND FOR IMMEDIATE PARTIAL PAYMENT

Honorable Julia Keleher
Secretary of Education
Puerto Rico Department of Education
San Juan, Puerto Rico

Dear Madam Secretary,

As I have not received a response to my February 17, 2019 letter requesting documents you say justify your decision to withhold payment of the Department of Education's (DE) long overdue debt to the Josephson Institute of Ethics, I write once again to urge you to resolve this dispute before it escalates.

Though we are committed to exhausting all other options prior to resorting to litigation, our attorneys have suggested that, given DE's current unresponsiveness and intransigence, we may have no alternative. We do not contemplate this option lightly. As a former law professor and litigator, I understand more than most the likelihood that a public battle will be costly to both parties and may delay further ultimate payment. Please understand, however, that as a nonprofit charitable organization, we have a fiduciary duty to our unpaid vendors and those we serve to do whatever is necessary to protect our reputation and collect what is owed.

I was told by Eric Huertas, DE's former legal counsel, that if we file suit the federal funds allocated to our contract will be unavailable. If this is true, under the terms of our contract, the full liability will shift to the Commonwealth. In view of shrinking federal dollars and major budget challenges for the DE, this can't be in the best interest of the people of Puerto Rico.¹

Though this option is beginning to appear inevitable, we retain hope that the DE can be induced to pay its debt from the allocated and approved federal funds. To that end, we will be urging both the Governor and the Puerto Rican Senate to intervene if you continue to ignore your legal and ethical duty.

We have seen your public statements asserting that you suspect that one or more persons in the Department are working against you. If this is true, you may want to consider whether DE staffer Yanin Dieppa has maliciously subjected you and the DE to this unnecessary controversy and criticism. From our point of view, she has played an obstructive role, resulting in the premature demise of the !Desarrollando Carácter! program as well as this controversy wherein the DE is seen to be cheating an ethics institute commissioned to teach character to Puerto Rico's children.²

¹ The contract provides: "Should the U.S. Department of Education not fund the work under this Agreement, the FIRST PART [DE] agrees to immediately notify the SECOND PART [JI] of the need to stop work. Regardless of funding received, the FIRST PART shall pay the SECOND PART for all work completed by the SECOND PART through the date of termination." [Emphasis added]

² You are aware of our long-standing objection to Ms. Dieppa's participation and our well-documented complaint against her filed with both the Puerto Rico Inspector General and the Office of Government Ethics. Her recent declaration that if payments are not made for the !Desarrollando Carácter! program the funds will be available for other DE projects reveals her motive to sabotage payment to JI.

We are skeptical about your claim that “irregularities” supposedly revealed in the October 31, 2018 report of DE’s internal auditor because I was assured by Mr. Huertas that no impropriety attributed to JI was found. Thus, if there were irregularities, they must relate to errors by DE staff which should have no impact on JI’s right to compensation.

The following table reveals the amount due JI under the contract, the amount offered JI in June by Mr. Huertas and the amount proposed by Mr. Huertas in October. DE has placed huge pressure on JI to accept less than the contract price due to Ms. Dieppa ‘s commitment to alter the contract (though the contract explicitly states it must be enforced as written unless an amendment is executed). To coerce acceptance of less than the contract amount, DE has withheld all payments even though they acknowledge at least \$5,846,880 is duly owed.

	Amount owed under contract			Amount proposed by DE in June			Proposed by DE in October		
	Units	Price	Total	Units	Price	Total	Units	Price	Total
Champion training		\$900	\$6,449,400	7,166	\$510	\$3,654,660	7,166	\$510	\$3,654,660
On-site support hours	9,374	\$180	\$1,687,320	9,374	\$180	\$1,687,320	9,374	\$180	\$1,687,320
Parent trainings	459	\$1,100	\$504,900	459	\$1,100	\$504,900	459	\$1,100	\$504,900
Resources delivered									\$905,100
TOTAL			\$8,641,620			\$5,846,880			\$6,751,980

The above table reveal that there is no disagreement as to the amount of services rendered or the price of on-site support hours and parent trainings. There is also no disagreement as to the number of Champions trained, but the DE is seeking to unilaterally reduce the \$900 contract price to \$510, purportedly on the theory that the differential is attributed to resource materials. This violates the express terms of the contract which does not attribute costs or payments to materials. Moreover, JI has presented you with irrefutable evidence that it was instructed by top officials at DE to embed costs of materials and other extra services within the tuition amount.

It is critical to note that the DE is not disputing the right of JI to collect the value of support materials. Instead, Ms. Dieppa is simply arguing that it was not proper to include this in the federal grant (though it was explicitly approved). If Ms. Dieppa’s contention prevails, she has simply succeeded in shifting the cost of materials to the Commonwealth.³

Duty to Pay Undisputed Sum. As a result of more than a year of vague and baseless concerns raised by Ms. Dieppa, the !Desarrollando Carácter! contract was subjected to multiple audits and investigations including the one completed by DE’s internal auditor in October. After all this, there is no dispute that JI trained 7,166 Champions, provided 9,374 hours of on-site support, and 459 parent training workshops.

As we’ve proposed before, we ask the DE to promptly pay at least \$5,846,880 while we seek a fair and final determination on the amount in dispute. Withholding payment of the indisputably due funds to bludgeon us to accept less is unethical and unfair.

Unverified and Unspecified Irregularities as an Excuse for Nonpayment. We cannot ignore your recent communication containing a curt unexplained assertion that an October 31, 2018 report of your auditor found

Thus, we demand that she be removed from involvement in efforts to negotiate a settlement of our claim. Our distrust for Ms. Dieppa was enhanced this week as a result of recent nonresponsive and disrespectful interactions with our attorney in Puerto Rico.

³ In a February 14, 2018 interview in *Metro PR*, Ms. Dieppa falsely declared that JI was seeking \$5 million for resource materials.

irregularities which caused you to refer the matter to the U.S Department of Education Inspector General. Since this action was used to justify continued refusal to pay JI even the undisputed amounts owed JI, we requested copies of the report and referral documents. You have refused. We hereby once again demand the information or an adequate explanation on why it is being withheld.

It is worth reiterating that if there were any irregularities in the formation of the contract, they are attributable to conduct of DE employees, not JI. After all, you were intimately involved with the inception and formation of the contract and you personally signed it only after it was thoroughly reviewed and approved by Jose A. Lizascain Santiago, DE's legal counsel and Felix Aviles Medina, Undersecretary of Education.

I am willing to come to San Juan at our earliest mutual convenience to meet with you or a designee (other than Ms. Dieppa) empowered by you to agree to a settlement.

Sincerely,

A handwritten signature in black ink that reads "Michael Josephson". The signature is fluid and cursive, with a long horizontal stroke at the end.

Michael Josephson

President

Joseph & Edna Josephson Institute of Ethics

CHARACTER COUNTS! and ¡Desarrollando Carácter!

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