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**MEMORANDUM OF AGREEMENT**

**RE: THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT**

This Memorandum of Agreement (Agreement) is hereby entered into between the U.S. Department of Education (Department) and the District of Columbia Office of the State Superintendent of Education (the OSSE) as of the 16th day of November, 2009 (the Effective Date).

**I. BACKGROUND**

**A. *OSSE***

The District of Columbia has one geographic local educational agency (LEA), the District of Columbia Public Schools (DCPS) which serves approximately 62% of District public school students and 57 public charter school LEAs which together serve approximately 38% of District public school students. Under local law, any charter school LEA can elect to have DCPS serve as its LEA for purposes of the Individuals with Disabilities Education Act (IDEA). Currently, 16 charter LEAs elect to have DCPS serve as their LEA while 41 remain independent LEAs for purposes of the IDEA. The OSSE was established in October 2007 as the District's first stand-alone state education agency under the Public Education Reform Amendment Act of 2007.

The IDEA requires each State receiving Part B funds to satisfy certain requirements and requires the Department to make a determination of each State's status of compliance on an annual basis. The Office of Special Education Programs (OSEP) within the Office of Special Education and Rehabilitative Services is the office within the Department that administers Part B of the IDEA.

**B. *The Department's "Needs Intervention" Determination***

On June 1, 2009, OSEP issued a letter to OSSE informing them of the Department's intent to withhold 20 percent of OSSE's Federal Fiscal Year (FFY) 2009 funds reserved for State-level activities under section 611(e) of the IDEA based on its determination that OSSE "needs intervention" in implementing the requirements of the IDEA for the third consecutive year [the Department's determination letter is attached hereto as Exhibit 1].<sup>1</sup>

Specific factors affecting OSEP's June 1, 2009 determination of "needs intervention" under Part B of the IDEA included that the District of Columbia: (1) did not provide any FFY 2007 data for compliance Indicators 9 and 10 (disproportionate representation), and 17 (timeliness of due process decisions); (2) reported 29.15% compliance for Indicator 13 (secondary transition), which represented slippage from the 54% compliance rate last year, and did not demonstrate correction of the noncompliance; and (3) failed to meet the longstanding Special Conditions imposed on its FFY 2008 grant under Part B of the IDEA related to the following key requirements for providing a free appropriate public education to children with disabilities: timely initial evaluations and reevaluations, timely implementation of hearing officer determinations (HODs), placement in the least restrictive environment, and identification and

<sup>1</sup> That is, the 2005-2006, 2006-2007 and 2007-2008 school years.

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correction of noncompliance. The Department provided OSSE the opportunity to contest the Department's determination of "needs intervention," to request a hearing to appeal the Department's decision to withhold funds, and to show cause in writing why funds should not be suspended pending the outcome of the hearing.

### **C. OSSE's Response and Status of Department's Determination**

On June 16, 2009, the OSSE responded to the Department's June 1, 2009 determination letter [OSSE's responsive letter is attached hereto as Exhibit 2]. The OSSE did not contest the Department's determination of "needs intervention. The response requested a hearing to appeal the Department's decision to withhold State-level funds and included information intended to show cause why the Department should not suspend payment of those funds pending the outcome of the hearing. In its June 16, 2009 letter and subsequent correspondence, the OSSE documented several initiatives that it has undertaken to correct deficiencies, presented interim data demonstrating progress and noted the District's institutional commitment to reform its special education programs.

In a June 30, 2009 letter, the Department confirmed that it had granted the OSSE's request for a hearing to appeal the Department's decision to withhold 20 percent of the OSSE's FFY 2009 State-level funds under IDEA section 611(e) [the Department's letter is attached hereto as Exhibit 3]. The Department acknowledged that improvements have been made, but concluded that the OSSE did not provide sufficient cause why the Department should not suspend payment of these funds pending the outcome of the hearing. Therefore, the FFY 2009 Part B grant award to the District of Columbia notified the State that the Department suspended payment on July 1, 2009 of \$479,959, out of the OSSE's total State set-aside of \$2,399,795 under IDEA section 611(e) and out of its total regular and American Recovery and Reinvestment Act of 2009 (ARRA) FFY 2009 section 611 and section 619 grants of \$33,922,108. In addition, the grant award included Special Conditions requiring that the OSSE address the areas of longstanding noncompliance and two additional areas of noncompliance that were factors in OSEP's determination of "needs intervention."

### **D. OSSE's Steps to Improve Compliance**

Since the OSSE's inception in October 2007, the Department recognizes that the OSSE has taken the following steps to improve IDEA compliance:

- OSSE implemented and administered a new, electronic docketing system in the District of Columbia's Student Hearing Office.
- OSSE issued a state-level Inclusion Policy to its LEAs regarding the IDEA's requirements that children be educated in the least restrictive environment.
- OSSE successfully piloted a nonpublic placement review policy in school year (SY) 2008-2009 which, through technical assistance and formal recommendations to LEAs about how to serve children in the least restrictive environment within the LEA resulted in more children being served in LEAs rather than in nonpublic settings.

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- OSSE procured a new state-level Special Education Data System (SEDS) in its first year as an independent SEA, has developed the system with input from LEAs and other key stakeholders and now requires all LEAs and nonpublic schools to use SEDS and certify the accuracy of the LEA's data submissions beginning with SY 2009-2010.
- OSSE, after funding a multi-million dollar contract for evaluation services to supplement LEA capacity in SY 2007-2008, recognized that helping LEAs come into compliance with the evaluation and reevaluation requirements of the IDEA required taking a multi-faceted approach beyond mere increases in funding and resources, and therefore issued a new state policy on evaluations and reevaluations; redesigned SEDS modules related to evaluations to align with the new policy; and provided significant technical assistance to LEAs on evaluation and reevaluation compliance requirements starting in SY 2008-2009.
- OSSE overhauled hearing officer recruitment, selection, training, evaluation and accountability systems – successfully replacing the hearing officer corps and contracting a new independent Chief Hearing Officer.
- OSSE pro-actively sought technical assistance from the Department regarding the collection, maintenance and reporting of accurate data and the creation and implementation of an effective system of general supervision over the District's LEAs.
- OSSE disclosed in its FFY 07 APR that the measurements for Indicators 9 and 10 inherited from the OSSE's predecessor did not allow the State to accurately report valid data to ensure equity and the protection of all children's student rights – primarily because more than 80% of children attending public schools in the District of Columbia are African-American and an overwhelming number of the District's LEAs predominantly serve African American students – and simultaneously accessed technical assistance from the Department to remedy the problem upon determining that the current definitions would not produce valid data.

## II. PURPOSE OF AGREEMENT

The Department and the OSSE enter into this Agreement: (a) to establish benchmarks and reporting requirements for actions to be taken by the OSSE to bring the OSSE into substantial compliance with the IDEA in those areas cited by the Department as a basis for its determination that the OSSE "needs intervention," and (b) to resolve their dispute over the status of State-level funds withheld by the Department from the FFY 2009 Part B grant award to the OSSE.

In addition, on the effective date of this Agreement, the OSSE hereby agrees to file a motion to dismiss with prejudice its hearing request currently pending before the Department's Office of Administrative Hearings and Appeals. The OSSE further acknowledges that the Department intends to continue to designate the District of Columbia as a "high risk" grantee during the term of this Agreement. However, the Department agrees that the FFY 2009 Special Conditions on Part B funds will be modified to align with the reporting under this Agreement to avoid

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duplication and reduce the burden of the reporting. The modified FFY 2009 Special Conditions on Part B funds will require the OSSE to submit the benchmark target reports required under this Agreement in addition to the October 1, 2009 FFY 2009 Special Conditions Progress Report already submitted by the OSSE.

OSEP staff has provided extensive technical assistance and guidance on Part B of the IDEA to the OSSE staff through on-site visits, and telephone consultation and electronic mail (email) correspondence. On average, OSEP responds to the OSSE's telephone and email requests for guidance at least weekly. In addition, OSEP has made technical assistance available through the OSEP-funded technical assistance network, in particular, the Data Accountability Center, Mid-South Regional Resource Center, and National Early Childhood Technical Assistance Center. Given the OSSE's continued designation as needing intervention in implementing the requirements of Part B of the IDEA, the Department will continue to provide on-site technical assistance, advise the State of sources of available technical assistance, and make reasonable efforts to respond to the OSSE's requests for technical assistance. Nothing in this Agreement is intended to prohibit or restrict the OSSE's ability to obtain technical assistance from other sources, as it determines appropriate and necessary, to achieve compliance with the requirements of Part B of the IDEA.

### III. BENCHMARKS AND EVIDENCE TO ESTABLISH SUBSTANTIAL COMPLIANCE

As reflected in its June 1, 2009 letter, the Department based its determination on the following areas of the OSSE's noncompliance with IDEA requirements:

- Timely performance of initial evaluations and reevaluations.
- Timely implementation of hearing officer decisions.
- Timely identification and correction of noncompliance and effective monitoring to ensure placement in the least restrictive environment.
- Valid and reliable data for Indicators 9 and 10 (disproportionate representation) and Indicator 17 (timeliness of due process hearings).
- Compliance with secondary transition requirements.

This Agreement sets out the specific benchmarks that the OSSE must meet by certain dates. The OSSE must report on those dates, consistent with the terms below, whether it has met the benchmarks.

The OSSE shall, pursuant to this Agreement, provide six reports (in addition to its Annual Performance Report or APR). The OSSE shall include data from all LEAs, including charter school LEAs, and provide the required content related to each benchmark. In addition, each report shall be submitted to the Department in accordance with the reporting periods and timelines specified below.

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<b>Report</b>	<b>Reporting Period</b>	<b>Report Due Date</b>
First Report	September 4, 2009 – December 4, 2009	January 11, 2010
Second Report	December 5, 2009 – March 5, 2010	April 1, 2010
Third Report	March 6, 2010 – June 6, 2010	July 1, 2010
Fourth Report	June 7, 2010 - September 1, 2010	October 1, 2010
Fifth Report	September 2, 2010 – December 1, 2010	January 10, 2011
Sixth Report	December 2, 2010 – February 1, 2011	March 1, 2011

**A. Initial Evaluations and Reevaluations**

- With respect to initial evaluations, the OSSE shall meet the benchmarks set forth below.

<b>Benchmark Target Date</b>	<b>Evidence Standard</b>
01/11/2010	<ul style="list-style-type: none"> <li>• Seventy-five percent of initial evaluations and placements provided to children with disabilities whose initial evaluation deadlines fell within the reporting period were conducted in a timely manner.</li> <li>• Forty-five percent of children (a) who as of the end of the previous reporting period (September 3, 2009), had not been provided a timely initial evaluation and placement (backlog) and (b) whose initial evaluation and placement became overdue during the reporting period, were provided initial evaluations and placements during the reporting period. (See section 2.A 1. (a),(b), and (c) of Enclosure E of the July 1, 2009 FFY 2009 Part B grant award letter. To calculate the percentage: (c) divided by (a) + (b) times 100).</li> </ul>
04/01/2010	<ul style="list-style-type: none"> <li>• Eighty percent of initial evaluations and placements provided to children with disabilities whose initial evaluation deadlines fell within the reporting period were conducted in a timely manner.</li> </ul>

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<b>Benchmark Target Date</b>	<b>Evidence Standard</b>
	<ul style="list-style-type: none"> <li>• Fifty-five percent of children (a) who, as of the end of the previous reporting period, had not been provided a timely initial evaluation and placement (backlog) and (b) whose initial evaluation and placement became overdue during the reporting period, were provided initial evaluations and placements during the reporting period.</li> </ul>
<p>07/01/2010</p>	<ul style="list-style-type: none"> <li>• Eighty-five percent of initial evaluations and placements provided to children with disabilities whose initial evaluation deadlines fell within the reporting period were conducted in a timely manner.</li> <li>• Sixty-five percent of children (a) who, as of the end of the previous reporting period, had not been provided a timely initial evaluation and placement (backlog) and (b) whose initial evaluation and placement became overdue during the reporting period, were provided initial evaluations and placements during the reporting period.</li> <li>• The average number of days the initial evaluations and placements that had not been provided in a timely manner were overdue decreases from the reporting period of April 19, 2009-September 3, 2009.</li> </ul>
<p>10/01/2010</p>	<ul style="list-style-type: none"> <li>• Ninety percent or more of initial evaluations and placements provided to children with disabilities whose initial evaluation deadlines fell within the reporting period were conducted in a timely manner.</li> <li>• Seventy-five percent of children (a) who, as of the end of the previous reporting period, had not been provided a timely initial evaluation and placement (backlog) and (b) whose initial evaluation and placement became overdue during the reporting period, were provided initial evaluations and placements during the reporting period.</li> <li>• The average number of days the initial evaluations and placements that had not been provided in a timely manner were overdue decreases from the previous reporting period.</li> </ul>
<p>1/10/2011</p>	<ul style="list-style-type: none"> <li>• Ninety-five percent or more of initial evaluations and placements provided to children with disabilities whose initial evaluation deadlines fell within the reporting period were conducted in a timely manner.</li> <li>• Eighty-five percent or more of children (a) who, as of the end of the previous reporting period, had not been provided a timely initial</li> </ul>

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<b>Benchmark</b>  <b>Target Date</b>	<b>Evidence Standard</b>
	<p>evaluation and placement (backlog) and (b) whose initial evaluation and placement became overdue during the reporting period, were provided initial evaluations and placements during the reporting period.</p> <ul style="list-style-type: none"> <li>• The average number of days the initial evaluations and placements that had not been provided in a timely manner were overdue decreases from the previous reporting period.</li> </ul>
<p>3/1/2011</p>	<ul style="list-style-type: none"> <li>• Ninety-five percent or more of children (a) who, as of the end of the previous reporting period, had not been provided a timely initial evaluation and placement (backlog) and (b) whose initial evaluation and placement became overdue during the reporting period, were provided initial evaluations and placements during the reporting period.</li> </ul>

- With respect to reevaluations, the OSSE shall meet the benchmarks set forth below.

<b>Benchmark</b>  <b>Target Date</b>	<b>Evidence Standard</b>
<p>01/11/2010</p>	<ul style="list-style-type: none"> <li>• Seventy percent of triennial reevaluations provided to children with disabilities whose reevaluation deadlines fell within the reporting period were conducted in a timely manner.</li> <li>• Forty-five percent of children (a) who, as of the end of the previous reporting period (09/03/2009), had not been provided a timely triennial reevaluation (backlog) and (b) whose triennial reevaluation became overdue during the reporting period, were provided triennial reevaluations during the reporting period. (See section 2.A 2. (a),(b), and (c) of Enclosure E of the July 1, 2009 FFY 2009 Part B grant award letter. To calculate the percentage: (c) divided by (a) + (b) times 100).</li> </ul>
<p>04/01/2010</p>	<ul style="list-style-type: none"> <li>• Seventy-five percent of triennial reevaluations provided to children with disabilities whose reevaluation deadlines fell within the reporting period were conducted in a timely manner.</li> <li>• Fifty-five percent of children (a) who, as of the end of the previous</li> </ul>

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<b>Benchmark</b>  <b>Target Date</b>	<b>Evidence Standard</b>
	<p>reporting period, had not been provided a timely triennial reevaluation (backlog) and (b) whose triennial reevaluation became overdue during the reporting period, were provided triennial reevaluations during the reporting period.</p>
<p>07/01/2010</p>	<ul style="list-style-type: none"> <li>• Eighty percent of triennial reevaluations provided to children with disabilities whose reevaluation deadlines fell within the reporting period were conducted in a timely manner.</li> <li>• Sixty-five percent of children (a) who, as of the end of the previous reporting period, had not been provided a timely triennial reevaluation (backlog) and (b) whose triennial reevaluation became overdue during the reporting period, were provided triennial reevaluations during the reporting period.</li> <li>• The average number of days the reevaluations that had not been provided in a timely manner were overdue decreases from the reporting period of April 19, 2009-September 3, 2009.</li> </ul>
<p>10/01/2010</p>	<ul style="list-style-type: none"> <li>• Eighty-five percent or more of triennial reevaluations provided to children with disabilities whose reevaluation deadlines fell within the reporting period were conducted in a timely manner.</li> <li>• Seventy-five percent of children (a) who, as of the end of the previous reporting period, had not been provided a timely triennial reevaluation (backlog) and (b) whose triennial reevaluation became overdue during the reporting period, were provided triennial reevaluations during the reporting period.</li> <li>• The average number of days the reevaluations that had not been provided in a timely manner were overdue decreases from the previous reporting period.</li> </ul>
<p>1/10/2011</p>	<ul style="list-style-type: none"> <li>• Ninety percent or more of triennial reevaluations provided to children with disabilities whose reevaluation deadlines fell within the reporting period were conducted in a timely manner.</li> <li>• Eighty-five percent or more of children (a) who, as of the end of the previous reporting period, had not been provided a timely triennial reevaluation (backlog) and (b) whose triennial reevaluation became overdue during the reporting period, were provided triennial</li> </ul>

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<b>Benchmark</b>  <b>Target Date</b>	<b>Evidence Standard</b>
	reevaluations during the reporting period. <ul style="list-style-type: none"> <li>The average number of days the reevaluations that had not been provided in a timely manner were overdue decreases from the previous reporting period.</li> </ul>
3/1/2011	<ul style="list-style-type: none"> <li>Ninety-five percent or more of triennial reevaluations provided to children with disabilities whose reevaluation deadlines fell within the reporting period were conducted in a timely manner.</li> <li>Ninety-five percent or more of children (a) who, as of the end of the previous reporting period, had not been provided a timely triennial reevaluation (backlog) and (b) whose triennial reevaluation became overdue during the reporting period, were provided triennial reevaluations during the reporting period.</li> </ul>

**B. *Implementation of Hearing Officer Decisions***

- The OSSE shall meet the benchmarks set forth below.

<b>Benchmark</b>  <b>Target Date</b>	<b>Evidence Standard</b>
01/11/2010	<ul style="list-style-type: none"> <li>Fifty percent of hearing officer determinations<sup>2</sup> were implemented in a timely manner during the reporting period.</li> <li>Eighty percent of children whose hearing officer determinations, as of the end of the previous reporting period (September 3, 2009), had not been implemented within the required time frame (backlog) and whose hearing officer determinations had not been implemented within the required time frame during the reporting period had hearing officer determinations implemented during the reporting period. (See section 2.B.1. (a),(b), and (c) of Enclosure E of the July 1, 2009 FFY 2009 Part B grant award letter. To calculate the percentage: (c) divided by (a) + (b) times 100).</li> </ul>

<sup>2</sup> For purposes of this benchmark, "hearing officer determinations" does not include settlement agreements and the benchmark is calculated on a per child basis, not per hearing officer determination in cases where the same child has more than one hearing officer determination.

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<b>Benchmark Target Date</b>	<b>Evidence Standard</b>
04/01/2010	<ul style="list-style-type: none"> <li>• Sixty percent of hearing officer determinations were implemented in a timely manner during the reporting period.</li> <li>• Eighty-five percent of children whose hearing officer determinations, as of the end of the previous reporting period, had not been implemented within the required time frame (backlog) and whose hearing officer determinations had not been implemented within the required time frame during the reporting period had hearing officer determinations implemented during the reporting period.</li> </ul>
07/01/2010	<ul style="list-style-type: none"> <li>• Seventy percent of hearing officer determinations were implemented in a timely manner during the reporting period.</li> <li>• Ninety percent of children whose hearing officer determinations, as of the end of the previous reporting period, had not been implemented within the required time frame (backlog) and whose hearing officer determinations had not been implemented within the required time frame during the reporting period had hearing officer determinations implemented during the reporting period.</li> </ul>
10/01/2010	<ul style="list-style-type: none"> <li>• Eighty percent or more of hearing officer determinations were implemented in a timely manner during the reporting period.</li> <li>• Ninety-five percent or more of children whose hearing officer determinations, as of the end of the previous reporting period, had not been implemented within the required time frame (backlog) and whose hearing officer determinations had not been implemented within the required time frame during the reporting period had hearing officer determinations implemented during the reporting period.</li> </ul>
1/10/2011	<ul style="list-style-type: none"> <li>• Ninety percent or more of hearing officer determinations were implemented in a timely manner during the reporting period.</li> </ul>
3/1/2011	<ul style="list-style-type: none"> <li>• Ninety-five percent or more of hearing officer determinations were implemented in a timely manner during the reporting period.</li> </ul>

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**C. Identification and Correction Of Noncompliance And Ensuring Placement In The Least Restrictive Environment (LRE)**

- The OSSE shall meet the benchmarks set forth below.

<b>Benchmark</b>  <b>Target Date</b>	<b>Evidence Standard</b>
01/11/2010 04/01/2010 07/01/2010 10/01/2010 1/10/2011 3/1/2011	<ul style="list-style-type: none"> <li>• Monitoring reports and/or other documents issued by the OSSE to individual LEAs during the reporting period identify areas of noncompliance with the IDEA, including if appropriate, noncompliance with the LRE requirements, and the basis for the OSSE's conclusion that there is noncompliance with the applicable requirements.</li> <li>• LEAs are notified in writing of any identified noncompliance no later than three months from the OSSE's discovery of the noncompliance.</li> <li>• LEAs are notified in writing of corrective actions required to remedy the noncompliance and that the noncompliance must be corrected as soon as possible and in no case later than one year from identification (i.e., the date on which the State provided written notification to the LEA of the noncompliance).</li> <li>• The OSSE shall, based on reporting it shall require from the District's LEAs, report on each LEA's provision of the continuum of services mandated by IDEA.</li> <li>• The OSSE shall report on January 11, 2010 whether each LEA has executed the OSSE mandated form certifying its participation in SEDS in order to meet the District's federal reporting requirements.</li> <li>• Starting with the April 1, 2010 report, the OSSE shall report whether each LEA has timely certified to the OSSE that the LEA has provided within SEDS the accurate, complete and up to date data required by the OSSE for IDEA compliance and federal reporting requirements.</li> </ul>

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**D. Data for SPP/APR Indicators 9 and 10 (Disproportionate Representation Due to Inappropriate Identification) and 17 (Timeliness of Due Process Decisions)**

- The OSSE shall meet the benchmarks set forth below.

<b>Benchmark Target Date</b>	<b>Evidence Standard</b>
4/1/2010	<ul style="list-style-type: none"> <li>• The State timely reported on its APR due February 1, 2010, consistent with the required measurement and instructions, FFY 2008 data for Indicators 9 and 10 and FFY 2008 data from August 11, 2008 through June 30, 2009 for Indicator 17.</li> </ul>

**E. Secondary Transition**

- The OSSE shall meet the benchmarks set forth below.

<b>Benchmark Target Date</b>	<b>Evidence Standard</b>
01/11/2010	<ul style="list-style-type: none"> <li>• The OSSE shall provide a detailed plan and timeline for completion of a random sampling of at least 100 individualized education programs (IEPs) of youth aged 16 and above to be reviewed for IEP secondary transition content during each of the subsequent reporting periods (which may include a procurement of these services from a vendor). The OSSE shall provide a copy of its communication to LEAs regarding the conduct of this sampling.</li> </ul>
04/01/2010	<ul style="list-style-type: none"> <li>• The OSSE selects a new random sample of at least 100 IEPs of youth aged 16 and above to be reviewed for IEP secondary transition content during the reporting period.</li> <li>• Of the IEPs randomly selected for review, seventy-five percent of youth aged sixteen and above had IEPs that included the required secondary transition content.</li> </ul>
07/01/2010	<ul style="list-style-type: none"> <li>• The OSSE selects a new random sample of at least 100 IEPs of youth aged 16 and above to be reviewed for IEP secondary transition content during the reporting period.</li> </ul>

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<b>Benchmark Target Date</b>	<b>Evidence Standard</b>
	<ul style="list-style-type: none"> <li>• Of the student records reviewed, eighty percent of youth aged sixteen and above had IEPs that included the required secondary transition content.</li> </ul>
10/01/2010	<ul style="list-style-type: none"> <li>• The OSSE selects a new random sample of at least 100 IEPs of youth aged 16 and above to be reviewed for IEP secondary transition content during the reporting period.</li> <li>• Of the student records reviewed, eighty-five percent or more of youth aged sixteen and above had IEPs that included the required secondary transition content.</li> </ul>
1/10/2011	<ul style="list-style-type: none"> <li>• The OSSE selects a new random sample of at least 100 IEPs of youth aged 16 and above to be reviewed for IEP secondary transition content during the reporting period.</li> <li>• Of the student records reviewed, ninety percent or more of youth aged sixteen and above had IEPs that included the required secondary transition content.</li> </ul>
3/1/2011	<ul style="list-style-type: none"> <li>• The OSSE selects a new random sample of at least 100 IEPs of youth aged 16 and above to be reviewed for IEP secondary transition content during the reporting period.</li> <li>• Of the student records reviewed, ninety-five percent or more of youth aged sixteen and above had IEPs that included the required secondary transition content.</li> </ul>

**IV. RELEASE OF FUNDS WITHHELD FROM FFY 2009 PART B GRANT AWARD**

The parties agree that the funds withheld from the FFY 2009 Part B grant award (the “Withheld Funds”) will be released into the Department’s GAPS/G5 account for the District of Columbia (i.e., subject to drawdown) upon execution of this Agreement. The Withheld Funds will be deposited into a separate account in GAPS/G5. However, the OSSE shall only drawdown those Withheld Funds after it has reported on the specified dates, consistent with the terms of this Agreement and the Department has provided written notice to the OSSE that it has successfully met the corresponding benchmarks for the reporting period. If the OSSE draws down Withheld Funds before the Department has provided written notice to the OSSE that the funds are released consistent with the terms of this Agreement or draws down funds in excess of the corresponding scheduled amounts on the table below, the Department will immediately terminate the


  
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Agreement and terminate any Withheld Funds drawn down in violation of this Agreement and terminate any remaining Withheld Funds not previously released. The OSSE waives its right to request an administrative or judicial hearing to challenge the Department’s authority to recover or terminate these funds.

<b>Report</b>	<b>Reporting Period</b>	<b>Report Due Date</b>	<b>Corresponding Scheduled Percentage of Withheld Funds</b>
First Report	September 4, 2009 – December 4, 2009	January 11, 2010	25%
Second Report	December 5, 2009 – March 5, 2010	April 1, 2010	25%
Third Report	March 6, 2010 – June 6, 2010	July 1, 2010	20%
Fourth Report	June 7, 2010 - September 1, 2010	October 1, 2010	10%
Fifth Report	September 2, 2010 – December 1, 2010	January 10, 2011	10%
Sixth Report	December 2, 2010 – February 1, 2011	March 1, 2011	10%

If the Department determines that the OSSE has submitted a complete report that demonstrates that the OSSE meets all of the corresponding benchmarks by the target date, the Department will notify the OSSE that it may draw down the corresponding scheduled amount of Withheld Funds. The OSSE agrees not to draw down Withheld Funds from the GAPS/G5 system until it receives such notification from the Department. If the OSSE disagrees with the Department’s determination regarding whether the OSSE has met the benchmarks, it may request a hearing with the Assistant Secretary for Special Education and Rehabilitative Services to show that the OSSE has met all of the corresponding benchmarks by the target date. The Assistant Secretary shall render a written decision within a reasonable time of the hearing. The OSSE waives any other administrative or judicial hearing regarding the decision of the Assistant Secretary on whether the OSSE has met all of the corresponding benchmarks for each reporting period.

*Compliance in Advance of the Target Date.* If the Department determines that the OSSE meets all of the benchmarks for any reporting period earlier than the corresponding target date, the Department will authorize the OSSE to draw down the corresponding scheduled amount of



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Withheld Funds at such time as the Department determines that the OSSE has demonstrated compliance.

*Compliance after the Target Date.* If the Department determines that the OSSE does not meet the benchmarks in one or more of the areas by the corresponding scheduled target date, the Department may notify the OSSE that the Department determines that it is releasing the corresponding scheduled amount of Withheld Funds if the OSSE subsequently reports and the Department determines that the OSSE has met the benchmarks in those areas. For example, if the Department determines that OSSE meets all of the benchmarks except for initial evaluations that were due on January 11, 2010, but meets the January 11<sup>th</sup> benchmark for initial evaluations on February 1, 2010, the Department may notify OSSE that it may draw down the corresponding scheduled amount of Withheld Funds when the Department's determination is made.

*Substantial Compliance.* In the event that the Department determines that the OSSE has achieved ninety-five percent or better compliance with one or more of the benchmarks that contain percentages, the Department shall notify the OSSE that it is in substantial compliance with the corresponding requirement and that it is no longer necessary to report on that requirement under the Agreement.

### V. MODIFICATION

This Agreement may be modified by mutual consent of the parties and must be made in writing and signed by both parties to be effective. This requirement may be satisfied by an e-mail exchange between the parties or their designated agents that includes the substance of the modification and both parties' electronic signatures (e.g., "/s/ John Smith on behalf of the OSSE"). For purposes of this Agreement, the designated agents shall be:

For the Department:

Director of OSEP's Division of Monitoring and State Improvement Planning

For OSSE:

Assistant Superintendent for Special Education

Copies of all correspondence amending this Agreement shall be sent to the General Counsels of the Department and of the OSSE.

### VI. AUTHORITY

This Memorandum of Agreement is entered into pursuant to the Secretary's authority under 34 C.F.R. §80.12 which authorizes the Secretary to impose special conditions and/or restrictions on a grantee whom the Department has determined has failed to comply with the terms and conditions of prior grant awards.

**EXECUTION COPY**

**FOR THE DISTRICT OF COLUMBIA:**

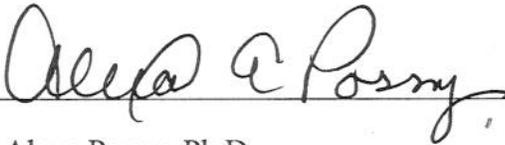


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Kerri L. Briggs, Ph.D.  
State Superintendent of Education

Dated: the 2 day of December, 2009

**FOR THE UNITED STATES DEPARTMENT OF EDUCATION:**



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Alexa Posny, Ph.D.  
Assistant Secretary for Special Education and Rehabilitative Services

Dated: the 7 day of December, 2009