UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF THE SECRETARY

June 15, 2009

The Honorable Victor Reinoso
Deputy Mayor for Education
Office of the Deputy Mayor for Education
District of Columbia
John A. Wilson Building
1350 Pennsylvania Avenue, NW, Suite 303
Washington, DC 20004

Dear Deputy Mayor Reinoso:

Enclosed are special conditions that the U.S. Department of Education (Department) is imposing on all grants awarded to the District of Columbia, Office of the State Superintendent of Education (DC OSSE) for Federal Fiscal Year (FFY) 2009, including all grants awarded under the American Recovery and Reinvestment Act of 2009 (ARRA). Certain FFY 2009 grant awards will contain additional special conditions that are specific to the programmatic requirements of those grants, and the ARRA grant awards also contain additional special conditions specific to those grants.

The Department and DC OSSE have worked cooperatively over the last few years to address the longstanding financial and grants management and program compliance issues that confronted the DC Public Schools (DCPS) with regard to the administration of Federal education grants. As expressed before to DC OSSE, the Department recognizes the challenges that it has faced since October 2007 in establishing a new governance structure to assume the responsibility of a high performing state education agency for administering Federal education grant programs. The Department appreciates DC OSSE's efforts to address all deficiencies identified by the Department and other sources related to administering Federal grant programs. DC OSSE has made progress in implementing numerous corrective actions over the last year to address and correct several deficiencies identified in the comprehensive high-risk corrective action plan (HRCAP).

However, more progress is needed for DC OSSE to achieve the action steps identified in the HRCAP that will enable it to fully implement sustainable financial, record-keeping, and internal control systems and procedures sufficient to satisfy the accountability requirements for administering Federal education grants. Accordingly, the designation of DCPS as a "high-risk" grantee in April 2006 under 34 CFR § 80.12 (transferred to DC OSSE effective October 1, 2007) remains in effect until such time as the Department is

able to determine that DC OSSE has shown significant progress toward meeting this objective.

The Department looks forward to the continued work with DC OSSE and the DC Government to improve the delivery of Federally-supported education services. We encourage you and other DC officials to continue to seek the advice and assistance of the Department in your continued work under the HRCAP and administration of Department grant programs.

Sincerely,

Philip A. Maestri, Director
Risk Management Service

Enclosure

cc: Catherine Freeman, DC OSSE

D.C. Office of the State Superintendent of Education
Special Conditions
Federal Fiscal Year (FFY) 2009

PREAMBLE: These special conditions are imposed on all Federal fiscal year (FFY) 2009 grants made available by the U.S. Department of Education (Department) to the D.C. Office of the State Superintendent of Education (DC OSSE) on or after the date of these special conditions and on all grants previously awarded by the Department to DC OSSE (or to its predecessor D.C. Public Schools) that are still available for obligation or liquidation on the date of these special conditions, including grants awarded under the American Recovery and Reinvestment Act of 2009 (ARRA). These special conditions are applied in accordance with the Department's regulations governing "high-risk" grantees. *See* 34 CFR § 80.12. The special conditions are imposed to help ensure that Department funds granted to DC OSSE are expended in accordance with applicable legal requirements and the appropriate fiscal accountability measures and management practices and controls. They are also intended to help DC OSSE to improve its implementation of financial, record-keeping, and internal control systems and procedures sufficient to satisfy the applicable grant accountability requirements.

I. BACKGROUND:

A. In April 2006, the Department designated DC Public Schools (DCPS) a "high-risk" grantee under the authority in 34 CFR § 80.12 based on systemic problems identified through repeat findings of audits performed under the Single Audit Act for fiscal years 2003 through 2005, the fiscal year 2006 DC Government Consolidated Annual Financial Report audit, and unresolved findings of non-compliance from program reviews conducted in 2006. At that time, special conditions were placed on all Department grants awarded to DCPS. The Department concluded that DCPS had significant problems meeting some of the most fundamental program accountability requirements, including implementing appropriate financial, record-keeping, and internal control systems and procedures. The special conditions were intended to result in important improvements to Federal grants administration by DCPS so that the systemic problems identified by audits and reviews would not recur. On July 1, 2006, the Department imposed revised special conditions on all grants it awarded to DCPS for FFY 2006.

B. The core requirements of the FFY 2006 special conditions were that DCPS was required to (1) develop a comprehensive high-risk corrective action plan (HRCAP) to resolve applicable audit findings on all matters affecting funds under Department grant programs and unresolved program review findings, and (2) report every six months on the progress of the corrective actions in the HRCAP. Since the initial high-risk designation, the Department has worked with D.C.'s State educational agency (SEA), DCPS (now DC OSSE), to support its development and refinement of the HRCAP. DCPS produced an HRCAP and made progress on some of the actions included therein. The HRCAP included actions to address weaknesses in financial management, procurement, and

property management; and areas of non-compliance with the requirements of the Elementary and Secondary Education Act of 1965, as amended (ESEA), the Individuals with Disabilities Education Act (IDEA), and the Perkins Career and Technical Education Act of 2006 (Perkins Act). The initial version of the HRCAP had a moderate likelihood of resolving most of the control weaknesses and incidences of non-compliance with applicable legal requirements. However, (1) DCPS had made changes to the plan and the revised version was delayed in reaching final form; (2) the timelines for action extended beyond one year; and (3) DCPS had not maintained sufficient progress on the planned actions to correct within one year the major deficiencies in its Federal programs.

C. On June 1, 2007, the President signed H.R. 2080 (P.L. 110-33) effectively permitting the Mayor and City Council of the District of Columbia to assume responsibility for D.C. schools in accordance with the DC Public Education Reform Act of 2007 (DC Act 17-0038), approved by the City Council and signed into law by the Mayor on April 23, 2007. The legislation transferred authority to the Mayor's Office for the purpose of administering Federal grants, the functions of the State Educational Agency (SEA), the Local Educational Agency (LEA), and the state agencies responsible for Adult Education and Literacy and the IDEA Part C Early Intervention Program. The transfer became effective October 1, 2007. The D.C. Government established DC OSSE as the SEA with an appropriate structure and sufficient grant and fiscal management capacity to carry out the State agency responsibilities of Department grants.

D. On July 1, 2007, the Department imposed revised special conditions on all of its grants awarded to D.C. for FFY 2007. The core elements of the special conditions required DCPS (the functions of which were transferred to DC OSSE, effective October 1, 2007) to maintain a current, comprehensive HRCAP, which would be the basis for tracking DCPS's progress in resolving its fiscal management deficiencies, grants management deficiencies, and program non-compliance. The HRCAP was to be sufficiently detailed to demonstrate that the corrective actions would adequately address the problems that have a high likelihood of preventing further lapses in internal controls, expenditures for unallowable costs, or failure to maintain proper documentation of expenditures. The HRCAP needed to include, at a minimum, corrective actions to correct the problems specified in all Single Audit program determination letters, program monitoring reports, and notifications of non-compliance with other provisions of law that are issued by the Department. If major changes to DCPS's financial management, procurement, payroll, human resources, or record-keeping systems or procedures were in progress or were necessary to achieve this, DCPS was required to incorporate these actions in the HRCAP. If any other audits, such as those conducted by the D.C. Inspector General or by independent auditors at the request of city agencies, contained findings regarding the administration of Department programs, DCPS was required to incorporate actions to address such findings in the HRCAP. The HRCAP was to be revised to address any new findings from audits and program and management reviews within 60

days of the issuance of such findings. DCPS was required to conduct an annual, comprehensive review and update of the HRCAP and submit a revised HRCAP to the Department by May 30, 2008. If at any time during the review or implementation of the HRCAP, DCPS determined that implementation of the corrective actions necessary to come into compliance with applicable legal requirements would extend past July 1, 2008, DCPS was required to notify the Department that the DCPS needs to enter into a compliance agreement, as authorized by section 457 of the General Education Provisions Act, 20 U.S.C. § 1234f.

E. On June 16, 2008, the Department imposed revised special conditions on all grants awarded for FFY 2008. The core elements of the special conditions required DC OSSE to continue to maintain a current, comprehensive HRCAP, to be used as the basis for tracking DC OSSE's progress in resolving its fiscal management deficiencies, grants management deficiencies, and program non-compliance. The Department acknowledged the progress that DC OSSE had made in some areas of the HRCAP. However, DC OSSE had failed to provide sufficient evidence that it had taken all of the corrective actions necessary to demonstrate that it had successfully implemented financial, record-keeping, and internal control systems and procedures sufficient to satisfy the accountability requirements in administering grants issued by the Department. These accountability requirements included those relating to Office of Management and Budget (OMB) Circulars A-102 and A-110 governing procurement, and the cost principles in OMB Circular A-87, including those governing payroll costs charged to Federal programs. The Department further concluded that DC OSSE had not demonstrated full compliance with some major provisions of Department ESEA and IDEA programs.

II. SPECIAL CONDITIONS

DC OSSE continues to make progress under the HRCAP, as detailed in its quarterly reports on the HRCAP and acknowledged in correspondence from program and other offices in the Department during this past year. However, DC OSSE has yet to complete all of the necessary corrective actions to demonstrate that it has fully implemented sustainable financial, record-keeping, and internal control systems and procedures sufficient to satisfy the accountability requirements in administering grants issued by the Department. These accountability requirements include those relating to Office of Management and Budget (OMB) Circulars A-102 and A-110 governing procurement and property management, the cost principles in OMB Circular A-87, including those governing payroll costs charged to Federal programs, and other financial accountability requirements, including those relating to indirect costs and cash management. The Department further concludes that DC OSSE has not demonstrated full compliance with some major provisions of Department ESEA, IDEA, Adult Education, and Perkins programs.

A. Corrective Action Plan

OSSE shall continue to maintain a current, comprehensive HRCAP, to be used as the basis for tracking DC OSSE's progress in resolving its fiscal management deficiencies, grants management deficiencies, and program non-compliance, as well as ARRA-specific implementation and oversight requirements. The HRCAP shall be sufficiently detailed to demonstrate that the corrective actions will adequately address the problems and have a high likelihood of preventing further lapses in internal controls, expenditures for unallowable costs, or failure to maintain proper documentation of expenditures.

The HRCAP must continue to include, at a minimum, corrective actions needed to correct the problems specified in all Single Audit program determination letters, program monitoring reports, program-specific special conditions, and notifications of non-compliance with other provisions of law that are issued by the Department to date and during FFY 2009. If major changes to DC OSSE's financial management, procurement, payroll, human resources, or record-keeping systems or procedures are in progress or are necessary to correct these issues, DC OSSE shall incorporate these actions in the HRCAP. If any other audits, such as those conducted by the DC Inspector General or by independent auditors at the request of city agencies, contain findings regarding the administration of Department programs, DC OSSE shall incorporate actions to address such findings in the HRCAP.

DC OSSE shall revise the HRCAP to address any new findings from audits and program and management reviews within 60 days of the issuance of such findings, and shall submit these updates beginning with the next scheduled reporting period. DC OSSE shall conduct a quarterly, comprehensive review and update of the HRCAP. Each revised HRCAP shall include an analysis and justification of each change made from the previous version, and shall be submitted to the Department with each quarterly report beginning with the next scheduled reporting period. If at any time during the review or implementation of the HRCAP, DC OSSE determines that implementation of the corrective actions necessary to come into compliance with applicable legal requirements will extend past July 1, 2010, DC OSSE shall notify the Department that DC OSSE needs to enter into a compliance agreement with the Department. An approved compliance agreement can extend the corrective action period up to three years, as necessary.

The District of Columbia's Chief State School Officer (DC CSSO) is the individual responsible for the development and implementation of the HRCAP. In the event that a new DC CSSO is appointed or elected, DC shall provide timely notification to the Department of the identity of the authorized official. The new DC CSSO or other authorized official shall review the HRCAP and certify to the Secretary of Education that the plan is still valid or shall submit a revised plan for review by the Department. A revised plan or

certification of the validity of the existing plan must be received by the Department within 60 days of a change in DC CSSO.

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

It is essential that DC OSSE maintain steady progress in implementing its HRCAP in order for DC OSSE to build the capacity to responsibly manage its Federal grants. To ensure progress, and to enable the Department to assess progress, DC OSSE must continue to provide the Department with quarterly reports that include the HRCAP and any revisions thereto as required by section II.A above, beginning with the next quarterly report due within 30 days after the period ending September 30, 2009 (FFY 2009 1st quarterly report). The quarterly reporting schedule shall continue as follows:

FFY 2009 2nd Quarterly Report – period ending December 31, 2009. Due by no later than January 30, 2010.

FFY 2009 3rd Quarterly Report – period ending March 31, 2010. Due by no later than April 30, 2010.

FFY 2009 4th Quarterly Report – period ending June 30, 2010. Due by no later than July 30, 2010.

The parties may modify the schedule for the reports by mutual, written agreement.

In general, each quarterly report shall include (1) a complete and accurate description of the finding or deficiency that requires correction, (2) a description of activities and progress for each action during the reporting period, (3) the status of each action that is scheduled to be completed during the reporting period, (4) documentation of completion for those actions that are completed during the reporting period (including explanation of delays for all actions not completed that were scheduled to be completed during the period, and expected completion dates for all unimplemented actions), (5) documentation of measures of performance and results, and (6) other data or documentation as specified for each action, or as requested by the Department in order to verify action or assess the impact of the action.

The DC CSSO or other authorized official of DC OSSE shall certify to the completeness and accuracy of the reports.

In addition, DC OSSE shall ensure that it timely and fully meets all Department program reporting requirements, including the reports required herein, the ESEA Consolidated State Performance Report, the IDEA Part B and Part C Annual Performance Reports, and the IDEA Part B and Part C Special Conditions Progress Reports (which require additional separate reporting on the programmatic requirements under Parts B and C of the IDEA). The program-

specific Special Conditions imposed on DC OSSE's FFY 2009 grant awards under Parts B and C of the IDEA are in addition to the enforcement actions taken by the Department based on the Department's 2009 Determinations under IDEA sections 616(d) and 642.

C. Prompt Access to Records and Records Retention

DC OSSE shall promptly provide the Department or its representatives access to any requested staff, locations, records, and information associated with the affected grant funds. In addition to other applicable records retention requirements, DC OSSE must retain and maintain all records and information associated with all Department grants for the duration of the period of implementation of the HRCAP (including any revised version thereof).

D. Compliance With Program Requirements

In addition to the special conditions contained in this document, special conditions to address areas in which DC OSSE is out of compliance with program requirements, including those of ESEA, Title I and Title II; IDEA, Part B and Part C; and the Adult Education and Perkins Acts, are specified in grant notification documents accompanying those awards for FFY 2009. DC OSSE must continue to separately and directly report to the program office in the Department on its progress in meeting the program-specific Special Conditions in accordance with the reporting periods and timelines specified in the grant notification documents accompanying those awards for FFY 2009.

E. ARRA-Specific Conditions

ARRA-specific special conditions were contained in the attachments to the final ARRA grant notification documents provided by the Department to DC OSSE. They remain in effect for DC OSSE's ARRA grant awards, and the special conditions contained in this document are in addition to the ARRA-specific special conditions.

III. FAILURE TO COMPLY WITH SPECIAL CONDITIONS

If a plan, report or documentation required under Section II above is not provided by DC OSSE on a timely basis or is not considered acceptable to the Department (for example, does not show substantial promise of correcting the problems identified in audit and program review findings), it may be considered as a failure to comply with the special conditions.

The Department has informed DC OSSE in a letter dated June 1, 2009 that pursuant to section 616(e) (2) (B) (iii) of the IDEA and 34 CFR §300.604(b) (2) (iii), the Department intends to withhold 20 percent of DC's FFY 2009 Part B funds reserved for State-level activities under section 611(e) of the IDEA until DC has sufficiently addressed the areas in which it "needs intervention." The Department is taking this enforcement action based on the Office of Special Education Program's (OSEP's) determination that DC OSSE "needs intervention" in meeting the requirements of Part B of the IDEA for three consecutive years. DC OSSE has been notified in the June 1, 2009 letter that in accordance with section 616(d) (2) (B) of the IDEA and 34 CFR §300.603(b) (2) if it does not agree with its determination of "needs intervention", it may request an opportunity to meet with the Assistant Secretary for Special Education and Rehabilitative Services to demonstrate why the Department should change the State's determination.

DC OSSE has also been notified in the letter dated June 1, 2009 that in accordance with section 616(e) (4) (A) of the IDEA and 34 CFR §300.605(a), it may request a hearing pursuant to the procedures in 34 CFR §§300.180 through 300.183 to appeal the Department's decision to withhold 20 percent of DC's FFY 2009 Part B funds reserved for State-level activities under section 611(e) of the IDEA. In addition, the Department has informed DC OSSE in the June 1, 2009 letter that pursuant to section 616(e) (4) (B) of the IDEA and 34 CFR §300.605(b), pending the outcome of any hearing to withhold payments, the Department intends to suspend payment of 20 percent of D.C.'s FFY 2009 funds reserved for State-level activities under section 611(e) of the IDEA. DC OSSE was informed that it has the opportunity to show cause in writing why future payments should not be suspended.

If the Department determines that DC OSSE has not made substantial progress in meeting the objectives of the grant program, or has not met program requirements or the special conditions contained in paragraphs A-E of Section II above, then the Department may take further action, such as the following:

1. The Department would not continue one or more grants (and DC OSSE would receive no further funds under those grants).
2. The Department would delay award of or withhold all or part of one or more grant awards.

3. The Department would only award further funds to DC OSSE under one or more grant awards on a reimbursement basis.
4. The Department would recover misspent funds from DC OSSE.
5. The Department would require DC OSSE to contract with a third party, who must be approved by the Department, to assist in financial management and other administrative responsibilities for one or more grant awards. The third party would, at a minimum, assist in preparing the documents to be submitted to the Department for reimbursement, and would verify the accuracy and legitimacy of the expenditures as appropriate under one or more grant awards.

If DC OSSE fails to meet any of the special conditions above or any other applicable legal requirements, the Department is authorized to take any other appropriate enforcement action at any time.

IV. OTHER TERMS

A. Submission of Reports

All reports required to be submitted to the Department under these Department-wide special conditions should be sent electronically or hand-delivered to:

Cynthia Bond-Butler, Senior Analyst
Risk Management Service, Management Improvement Team
Office of the Secretary
U.S. Department of Education
400 Maryland Avenue, SW, Room 7E226
Washington, DC 20202
cynthia.bond@ed.gov

B. Reconsideration and Modifications

At any time, DC OSSE may request reconsideration of the above special conditions by contacting the Department and providing in writing the basis for DC OSSE's belief that particular conditions are no longer needed.

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 DC OSSE meets, to the Department's satisfaction, the conditions set forth above.

Dated: June 15, 2009