



ADMINISTRATIVE COMMUNICATIONS SYSTEM
U.S. DEPARTMENT OF EDUCATION

DEPARTMENTAL DIRECTIVE

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Distribution:
All Department of Education Employees

Approved by: ____/s/_____
Margaret Spellings
U.S. Secretary of Education

Improving Administration and Management of Department Programs

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For general questions concerning information found in this ACS document, please contact the Risk Management Service at RMSCommunications@ed.gov or on 202-205-9500.

I. Purpose

This document is intended to help implement the principles for improving program administration that were included in the Secretary's memorandum to Senior Officers dated February 7, 2007, entitled "Strengthening the Management and Administration of Our Programs."¹

II. Policy

This document will cover the U.S. Department of Education (ED)'s management and administration of the programs it administers.

III. Authorization

The information in this document and associated appendices is authorized by the Department of Education Organization Act (DEOA) and the General Education Provisions Act (GEPA).

IV. Applicability

This document applies to all ED employees.

V. Definitions

There are no special definitions for this document.

VI. Responsibilities

All ED officers, managers, and staff share in the responsibility of implementing this document.

VII. Procedures and Requirements

The Government Accountability Office (GAO) and ED's Office of Inspector General (OIG) recently issued reports raising concerns and making recommendations regarding the early administration of the Reading First program. In response, ED committed to implementing those recommendations and taking additional actions to improve program operations throughout ED. All ED employees should consider the Directives in this document when administering ED programs.

¹ Virtually all of the text of this memorandum has been incorporated into this Directive; for this reason, it is not attached as an Appendix.

Objectivity and Professionalism: With the goals that every child in America has the opportunity for a quality education, and that no child is left behind, a key element of all ED programs is ensuring that ED employees carry out the duties that are assigned to them under the Department of Education Organization Act (DEOA), the General Education Provisions Act (GEPA), and other relevant statutes objectively and professionally. ED employees must ensure that they employ the highest standards for objectivity and professionalism in their work. Whether it is in selecting grantees or contractors in a competition, monitoring grantees' or contractors' activities, providing technical assistance, or in performing any other roles, ED staff and officials must be objective and professional.

Identifying a Conflict of Interest: Conflicts may arise in the following situations:

1. Unequal access to information - a potential contractor, subcontractor, employee or consultant has access to nonpublic information through its performance on a government contract.
2. Biased ground rules - a potential contractor, subcontractor, employee or consultant has worked, in one government contract, or program, on the basic structure or ground rules of another government contract.
3. Impaired objectivity - a potential contractor, subcontractor, employee or consultant, or member of their immediate family (spouse, parent or child) has financial or other interests that would impair, or give the appearance of impairing, impartial judgment in the evaluation of government programs, in offering advice or recommendations to the government, or in providing technical assistance or other services to recipients of Federal funds as part of its contractual responsibility. "Impaired objectivity" includes but is not limited to the following situations that would cause a reasonable person with knowledge of the relevant facts to question a person's objectivity:
 - financial interests or reasonably foreseeable financial interests in or in connection with products, property, or services that may be purchased by an educational agency, a person, organization, or institution in the course of implementing any program administered by the Department; and
 - significant connections to a teaching methodology or significant identification with a specific pedagogical or philosophical viewpoint that might require, encourage, or give unfair advantage or disadvantage to the use of a specific curriculum, or to a specific product, property or service.

Employees must disclose actual or potential conflicts of interest regardless of their opinion that such a conflict or potential conflict would not impair their objectivity. In a case in which an actual or potential conflict (or apparent conflict of interest) is disclosed, the Department will take appropriate actions to eliminate or address the actual or potential conflict (or apparent conflict of interest), including but not limited to mitigating

or neutralizing the conflict, when appropriate, through such means as ensuring a balance of views, disclosure with the appropriate disclaimers, or by restricting or modifying the work to be performed to avoid or reduce the conflict. If an ED employee is unsure whether a conflict of interest exists, the ED employee should consult the Office of the General Counsel (OGC). See Appendix C.

Prohibitions Against Controlling and Directing Curriculum and Instruction: It is essential that ED employees implement all programs in full compliance with the applicable statutory provisions. Furthermore, ED employees must remain completely objective in the implementation of all programs, and may in no way control, endorse, or direct a particular instructional approach or curriculum. To assist in these efforts, the attached guidance highlights the requirement of impartiality in the performance of ED employee duties, and the importance of adhering to all relevant provisions in program statutes and in DEOA and GEPA (Appendix A). It is especially important that ED employees not construe the statutes ED administers to authorize the direction, supervision, or control over the curriculum, program of instruction, or personnel of any educational institution or school system, except to the extent specifically authorized by law. If an ED employee has questions regarding what constitutes a curriculum or program of instruction in a particular circumstance, the employee should contact the Risk Management Service (RMS) at RMSCommunications@ed.gov or on 202-205-9500. RMS will consult the appropriate Program Office, OGC, and/or other offices in providing guidance to ED employees.

Controls for the Proper Use of Peer-review Processes: ED recently updated the internal *Handbook for the Discretionary Grant Process*, which includes considerable guidance to help ensure objectivity in the issuance of discretionary grants, including information on the proper use of the peer-review process. The Handbook is available on ConnectED at http://connected.ed.gov/doc_img/acs_hb_ocfo_04.doc. This guidance, built on many years of experience, has been very helpful in establishing appropriate controls to ensure fair, objective, and transparent processes as the peer reviewers help ED evaluate discretionary grant applications.

When peer reviews are used in formula grant programs, similar controls must be used by ED employees to ensure objectivity and fairness in the selection and use of peer reviewers. While the purpose for which peer reviews are used may differ in various program contexts, it is vital that the peer-review process be fair and objective. Guidance is provided in Appendix B that extends to formula grants (when appropriate) the required controls for the peer-review process established in discretionary grant programs, including the use of protocols for reviewing and handling potential conflicts of interest when ED uses non-Federal peer reviewers. This guidance also should apply to contracts where contractor support is used for peer reviews. Peer reviews have been a helpful tool in several formula grant programs and, with effective controls for fairness and objectivity, can be very helpful in other programs.

Early and Ongoing Consultation with OGC: In implementing the matters discussed above, legal questions may arise. All ED employees are strongly encouraged to consult

early and regularly with the OGC to help identify and resolve any legal issues involved, including matters of legal ambiguity, interpretations of statutory or regulatory provisions, and addressing potential conflicts of interest. OGC will advise on the law and regulations as applied to the particular circumstances. To make consultation with OGC as effective as possible, OGC developed a “rules of the road” document (See Appendix C).

Cooperation with the Office of Inspector General (OIG): The OIG has a serious responsibility to advise ED in implementing proper controls and procedures that will help ED employees ensure that ED programs are run effectively and efficiently. OIG provides independent and objective audits, reviews, investigations and inspections that provide information and advice to assist ED in implementing proper controls. OIG also advises ED to help ensure that employees operate at the highest levels of performance and with the utmost integrity. The Secretary recently issued guidance on the need to cooperate with the OIG in helping it carry out its important role (See Appendix D).

Annual Training and Internal Controls: To help ensure that standards for internal control are implemented properly, ED employees are required to participate in annual internal control training, similar to existing annual training requirements for ethics and computer security. The training addresses the general standards for internal controls, each of which apply to the programmatic, compliance, and financial aspects of ED’s operations and the statutory prohibitions against the control and direction of curriculum and programs of instruction. The following is a summary of the government-wide standards for internal control, as established by the GAO:

- Management and employees should establish and maintain an environment throughout the organization that sets a positive and supportive attitude toward internal control and conscientious management.
- Internal control should provide for an assessment of the risks the agency faces from both external and internal sources.
- Internal control activities help ensure that management’s directives are carried out. The control activities should be effective and efficient in accomplishing the agency’s control objectives.
- Information should be recorded and communicated to management and others within the entity who need it and in a form and within a time frame that enables them to carry out their internal control and other responsibilities.
- Internal control monitoring should assess the quality of performance over time and ensure that the findings of audits and other reviews are promptly resolved.

Further information on the GAO Standards for Internal Control in the Federal Government can be found in GAO/AIMD-00-21.3.1 (11/99) titled “Standards for Internal Control in the Federal Government” at <http://www.gao.gov/special.pubs/ai00021p.pdf>. Additionally, GAO issued a Management and Evaluation Tool to assist agencies in

maintaining or implementing effective internal control. This publication can be found in GAO-01-1008G (8/01) titled "Internal Control Management and Evaluation Tool" at <http://www.gao.gov/new.items/d011008g.pdf>.

The above items help to ensure that ED systems, processes, and behaviors are in full compliance with laws and regulations, promote professional responsibility, and support effective and efficient operations.

General Issues: Supervisors, program managers, and their staffs should discuss the information in this Directive and its appendices. If an ED employee has any issues, feedback, suggestions for improvement, or needs further guidance, the ED employee should contact RMS at RMSCommunications@ed.gov or on 202-205-9500. RMS will consult with OCFO, OGC, and/or other offices to respond to the ED employee.

The public's trust and confidence is paramount to ED's work. The Secretary expects the highest standards of integrity and excellence from ED staff. The material discussed above and in the appendices should guide ED's actions with regard to all ED activities.

Appendix A: Prohibitions on Directing Curriculum and on Endorsements

Statutory Prohibitions on Interpreting ED Laws

Education is primarily a State and local responsibility in the United States, and the Federal role in education is limited. States and communities, as well as public and private organizations, establish schools and colleges, develop curricula, and determine requirements for enrollment and graduation. The structure of education finance in America reflects this predominant State and local role. Of the amounts being spent each year nationwide on education at all levels, about 90 percent comes from State, local, and private sources; that means the Federal contribution to national education expenditures is about 10 percent.

The Federal role is set forth in the Department of Education Organization Act (DEOA), the General Education Provisions Act (GEPA), and in other statutes such as the Elementary and Secondary Education Act (ESEA), as amended by the No Child Left Behind Act, and other program statutes. There are provisions in the DEOA, GEPA, and the ESEA that direct ED employees not to interpret ED statutes in a manner that results in the control, direction, or supervision of school systems and educational institutions, unless a specific statute specifically provides otherwise.

These provisions relating to ED's limited role in these matters are as follows:

Section 103 of the *Department of Education Organization Act* (20 U.S.C. § 3403) provides the following:

(a) Rights of local governments and educational institutions

It is the intention of the Congress in the establishment of the Department to protect the rights of State and local governments and public and private educational institutions in the areas of educational policies and administration of programs and to strengthen and improve the control of such governments and institutions over their own educational programs and policies. The establishment of the Department of Education shall not increase the authority of the Federal Government over education or diminish the responsibility for education which is reserved to the States and the local school systems and other instrumentalities of the States.

(b) Curriculum, administration, and personnel; library resources

No provision of a program administered by the Secretary or by any other officer of the Department shall be construed to authorize the Secretary or any such officer to exercise any direction, supervision, or control over the curriculum, program of instruction, administration, or personnel of any educational institution, school, or school system, over any accrediting agency or association, or over the selection or content of library resources, textbooks, or other instructional materials by any educational institution or school system, except to the extent authorized by law.

Section 438 of the *General Education Provisions Act* (20 U.S.C. § 1232a) provides the following:

No provision of any applicable program shall be construed to authorize any department, agency, officer, or employee of the United States to exercise any direction, supervision, or control over the curriculum, program of instruction, administration, or personnel of any educational institution, school, or school system, or over the selection of library resources, textbooks, or other printed or published instructional materials by any educational institution or school system, or to require the assignment or transportation of students or teachers in order to overcome racial imbalance.

Section 9527 of the *Elementary and Secondary Education Act of 1965*, as amended by the *No Child Left Behind Act* (20 U.S.C. § 7907), provides the following:

(a) General Prohibition

Nothing in this Act shall be construed to authorize an officer or employee of the Federal Government to mandate, direct, or control a State, local educational agency, or school's curriculum, program of instruction, or allocation of State or local resources, or mandate a State or any subdivision thereof to spend any funds or incur any costs not paid for under this Act.

(b) Prohibition on Endorsement of Curriculum

Notwithstanding any other prohibition of Federal law, no funds provided to the Department under this Act may be used by the Department to endorse, approve, or sanction any curriculum designed to be used in an elementary school or secondary school.

(c) Prohibition on Requiring Federal Approval or Certification of Standards

(1) In General - Notwithstanding any other provision of Federal law, no State shall be required to have academic content or student academic achievement standards approved or certified by the Federal Government, in order to receive assistance under this Act.

(2) Rule of Construction - Nothing in this subsection shall be construed to affect requirements under title I or part A of title VI.

(d) Rule of Construction on Building Standards - Nothing in this Act shall be construed to mandate national school building standards for a State, local educational agency, or school.

Additionally, government-wide standards in 5 C.F.R. § 2635.702(c) prohibit a Federal employee from endorsing any product, service, or enterprise (except in furtherance of a specific statutory authority). This subsection provides the following:

(c) Endorsements.

An employee shall not use or permit the use of his Government position or title or any authority associated with his public office to endorse any product, service or enterprise except:

- (1) In furtherance of statutory authority to promote products, services or enterprises;
or
- (2) As a result of documentation of compliance with agency requirements or standards or as the result of recognition for achievement given under an agency program of recognition for accomplishment in support of the agency's mission.

If you have any questions about the statutory or regulatory provisions set out above, please contact attorneys in the OGC.

Responding to Requests on These Prohibitions and the Use of Disclaimers

ED often receives written requests from parents, teachers, students, and others for assistance in resolving problems in their school systems. Unless a specific law provides for an ED role in this matter, the response should indicate that ED has no jurisdiction or role in this issue, and suggest that they contact their State and local officials for assistance and resolution, if they have not already done so, and thanking them for their interest in education issues. An example that has been used by ED officials in responding to such a request is shown below.

SAMPLE LETTER

Dear _____:

I am responding to your letter dated _____ to the Secretary, regarding your concerns with teaching _____ in the schools located in your school district. You specifically requested assistance on how to get your school district to modify the teaching of _____ in your local schools.

The U.S. Department of Education provides assistance under various program statutes to help ensure that every child in America has the opportunity to get a high-quality education, and that no child is left behind. The Federal government, including this Department, however, generally does not have the authority to determine what should be taught in the schools, unless these matters are specifically and directly related to particular requirements in Federal education statutes. Indeed, because education is primarily the responsibility of State and local governments, the law establishing the Department of Education generally prohibits the Department from construing any provision relating to the programs it administers to authorize Department officials and staff to exercise any direction, supervision, or control over

such matters as curriculum and the teaching of particular subjects. Additionally, in 20 U.S.C. § 3403, the law states:

The establishment of the Department of Education shall not increase the authority of the Federal Government over education or diminish the responsibility for education which is reserved to the States and the local school systems and other instrumentalities of the States.

Thus, you may wish to discuss your concerns with appropriate State and local officials to get their views on the issue you raised in your letter.

I hope this information is helpful to you. Thank you for your interest in education and for sharing your views on this topic.

Sincerely,

Additionally, ED offices often provide technical assistance to grantees, students, educators, and the general public by disseminating examples of publications or other documents that may be of assistance. In doing so, ED employees must ensure balance and objectivity in the identification of these items, and must make clear that ED is not endorsing any particular approach or materials. A standard disclaimer is shown below.

EXAMPLE OF A DISCLAIMER

The _____ contains information from other public and private organizations that may be useful to the reader; these materials are merely examples of resources that may be available. Inclusion of this information does not constitute an endorsement by the U.S. Department of Education of any products or services offered or views expressed. This publication also contains hyperlinks and URLs created and maintained by outside organizations and provided for the reader's convenience. The Department is not responsible for the accuracy of this information.

It is important that ED employees adhere to these limitations and carry out their roles objectively. If there are issues related to the prohibition on directing or endorsing curricula for which an ED employee believes additional guidance would be helpful, that ED employee should contact the OGC. Every ED employee's cooperation in carrying out ED roles and responsibilities in full compliance with the law is greatly appreciated.

Appendix B: Use of Peer Reviewers in Formula Grant Programs

One of the most important contributions to maintaining the integrity of ED's grant process is a system for reviewing applications and other proposals that is complete, accurate, objective, impartial, and consistent with legal requirements. In programs where decisions are informed by a peer review process, generally, ED program staff are responsible for obtaining such reviews from persons who are qualified by training and experience. Not only is it important that such persons possess the requisite skills and qualifications, but ED employees must ensure that the peer-review process is fair and objective, and that any potential conflict of interest is addressed effectively and expeditiously to ensure that the review achieves the highest level of integrity. In addition, ED must communicate the reviewers' findings to applicants and other interested parties in a way that is effective, and demonstrates ED's commitment to integrity and transparency in the peer review and grant award process.

Historically, discretionary grant programs have used peer reviewers as part of the selection process to obtain independent evaluations before deciding what applications should be funded in a competition. The *Handbook for the Discretionary Grant Process* provides procedural requirements for choosing reviewers and managing those reviewers during the selection of discretionary grantees.

Recently, Congress required a process of peer review for some aspects of administering formula grant programs. In light of that development and because some formula grant programs have chosen on a voluntary basis to evaluate certain proposals and documents using a peer-review process, it is essential that these Department formula grant programs also have a fair and objective process in place for selecting and using peer reviewers.

Building on the success of the *Handbook for the Discretionary Grant Process*, the Office of the Chief Financial Officer and the OGC reviewed the procedures in the *Handbook for the Discretionary Grant Process* and highlighted the most relevant provisions for peer reviews in formula grant programs. Thus, ED program managers who manage formula grant programs and use a peer-review process should use these procedures (to the extent feasible, and consistent with any other applicable statutory and regulatory requirements) in the administration of those programs. Program managers also must adhere to any statutory or regulatory requirements that pertain to the specific peer review. These principles also apply to contracts where contractor support is used for peer reviews.

As guidance, please use the following provisions from the *Handbook for the Discretionary Grant Process* for work on formula grant programs that use peer reviewers:

- **Section 3.4 (Application Reviewers)** -- This section includes a discussion on the selection of reviewers, their roles and responsibilities, and a process for the replacement of reviewers in the rare instances when that may be necessary.
- **Section 3.5 (Conflict of Interest)** -- This section includes information on identifying potential conflicts of interest and ways to address these issues.

These sections discuss issues of real or perceived conflict of interest among those individuals selected to review applications, whether such persons are Federal or non-Federal reviewers. In reviewing the experience of potential peer reviewers, please also examine resumes and

other available information to ensure that their interests do not raise conflict of interest issues. The appendices of the *Handbook* noted below help implement sections 3.4 and 3.5.

- **Appendix D (Conflict of Interest Questions for Application Reviewers)** -- This list provides examples of questions to ask to identify potential conflicts of interests.
- **Appendix E.1 (Department of Education Agreement for Grant Application Reviewers Who Receive Compensation)** -- This document provides an example of an agreement to be signed by a reviewer who receives compensation; the agreement includes a certification that the reviewer has no conflict of interest.
- **Appendix E.2 (Department of Education Agreement for Grant Application Reviewers Who Serve Without Compensation)** -- This document provides an example of an agreement to be signed by a reviewer who does not receive compensation; the agreement includes a certification that the reviewer has no conflict of interest.
- **Appendix I.1 (Request for Approval of a Conflict of Interest Waiver) and Appendix I.2 (Department of Education Certification for a Grant Application Reviewer with a Conflict of Interest)** -- These appendices provide information on when a waiver may be granted (e.g., when a determination has been made that a person's financial interest is not so substantial as to affect the integrity of his or her services).
- **Appendix J (e-Reader)** -- This document provides requirements for being an electronic reader.
- **Appendix K (Sample Application Reviewer Evaluation Form)** -- A sample form is provided to evaluate reviewers for future use and to help ensure that program staff use reviewers who carry out their duties effectively.
- **Section 4.7** -- The material in this section describes information that may be provided to successful and unsuccessful applicants. In the case of formula grant programs, in notifying unsuccessful applicants or other interested parties, program staff should provide the verbatim text of reviewers' comments on the application or other documents being reviewed (with reviewer names deleted), unless there are compelling reasons for not doing so (e.g., legislative prohibitions, national security issues, FOIA requirements, etc.). Absent these latter considerations, it is not acceptable practice to send summaries, paraphrases, or edited versions of reviewers' evaluations to applicants. Program staff may provide to the applicant additional commentary or analysis of their own to supplement the reviewers' statements where that would be helpful to the applicant in carrying out program purposes or in improving project design or activities.

The full text of the *Handbook for the Discretionary Grant Process* can be found on ConnectED at: http://connected.ed.gov/doc_img/acs_hb_ocfo_04.doc

The relevant provisions of the *Handbook* should be used (to the extent feasible) for peer-review processes as of the date of this memorandum. ED is also considering developing additional internal guidance that would, at minimum, establish procedures for the selection and use of peer reviewers in formula grant programs. Program offices will have an opportunity to comment on any proposed guidance before such guidance becomes final.

If an ED employee has any questions about the use of these materials in any specific context, or any questions about whether any portion of these materials is consistent with any applicable

statutory or regulatory provision affecting individual ED program(s), the employee should contact the appropriate program attorney in the OGC.

Appendix C: Legal Advice: Rules of the Road – Office of the General Counsel

The goal of the Office of the General Counsel (OGC) is to provide clear, timely, and effective legal advice. To do that, the employees of OGC seek to be responsive, objective, and forthright, work with ED employees to achieve their goals, and identify and address issues before they become problems.

LEGAL ADVICE

In providing legal advice, OGC employees take into account:

- the facts presented;
- the time available to answer ED employee questions, including the time for completing the research of applicable law and other relevant material (statutes, regulations, guidance documents, case law, and legislative history);
- the complexity, sensitivity, and novelty of the questions presented;
- the amount and level of coordination, consultation, and review that is needed within OGC, among OGC and Principal Offices, and outside ED (e.g., as appropriate, the Department of Justice, White House Counsel, the Office of Management and Budget, the Office of Personnel Management, or other federal agencies);
- the risks of litigation; and
- the impact on the policies, goals, and resources of the Department.

Some questions may lend themselves to instant legal advice. If OGC employees can reliably answer ED employee questions on the spot, they will. However, many questions require more thorough analysis of the relevant facts, and applying the statutory and regulatory provisions (including committee reports, managers' language, and other legislative history or related material), and court and agency precedents and interpretations to those facts.*

Policy and other considerations. OGC's advice and recommendations often include policy and practical considerations, including potential reaction by the Congress, the press, or the public. OGC employees have a duty to make clear the distinction between advice based on legal considerations (including statutory and Constitutional limitations on Departmental actions) and policy or administrative concerns.

* The purpose of this memorandum is to provide useful information related to requesting and receiving informal and formal legal advice on a broad range of issues. OGC also represents ED in administrative and court litigation, and has other legal advisory roles and responsibilities, including the drafting and review of legislation, the development of regulations, and the administration of ED's ethics program. This document is not designed to directly address those functions. Contact OGC with any questions about the principles and responsibilities related to any of those other functions.

HOW ED EMPLOYEES CAN HELP

OGC's ability to help ED employees reach their goals and objectives may be affected by the completeness of the facts that ED employees give to OGC, the time OGC has to address the issues presented, and how early in the process the ED employee gets OGC involved. In addition, to serve employees most effectively, it is critical for OGC to have background information about the particular question the employee is asking, the set of services the employee is requesting, and the employee's goals and objectives. Not only does this information help OGC analyze the ED employee's legal issues more precisely, it allows OGC to consider and suggest to the employee alternative means of accomplishing the employee's goals if it turns out that there are legal obstacles to the course of action that the ED employee proposes.

- **The earlier the ED employee involves OGC, the better.** The sooner the ED employee communicates the situation to OGC, and the more details you provide, the better OGC can serve the ED employee in providing timely and effective advice.
- **Give OGC all the facts up front.** The quality and effectiveness of OGC's response depends directly on the facts the ED employee provides to them. OGC is here to help ED employees and the Department. If OGC only has part of the story, OGC employees cannot be as effective in providing ED employees with the best advice, or in identifying potential legal or policy ramifications. Advice based on incomplete information does not serve anyone well. With the facts in hand, OGC employees will be equipped to identify any concerns and discuss them with the ED employee.

While it may not always be possible -- for legal, policy, or other reasons -- to reach the desired result, receiving the type of advice or services the ED employee would like is significantly increased by a thorough and timely discussion of the issues.

UNDERSTANDING OGC'S ADVICE (or THE NUANCES OF OGC ADVICE)

Some questions do not have a clear answer -- the court decisions may be murky or conflicting, the statute may be ambiguous, and the legislative history may be nonexistent or not helpful. There may be a range of possible "reasonable" answers, with varying degrees of legal support.

Where the answer is clear (i.e., "strong legal ground" or "not legally defensible"), OGC will give ED employees the answer and tell them it is clear. However, where the answer depends on interpretation and other factors that cannot fully be defined, calculated, or predicted, OGC will tell them that, too, pointing out uncertainty and potential legal, policy, and political risks.

More often than not, the answer lies in shades of gray that depend on facts and circumstances of the case at hand, and involve some degree of risk. In those circumstances, OGC employees will try to be as clear as possible about the most legally supportable options and the degrees of risk of the options (e.g., if an option is "legally permissible," it means there is a supportable legal argument for the position, but there may be substantial legal or other risks), as well as the likelihood of a legal challenge based on what OGC knows and what the ED employee tells OGC.

Finally, because the facts and circumstances may be critical to OGC's response, the ED employee must advise OGC when the facts or circumstances change.

ED employees should feel free to consult OGC early and often. Key telephone numbers for reaching OGC employees are listed below. OGC is here to help.

Key Telephone Numbers

- Immediate Office & Deputy General Counsels (202) 401-6000
- Business & Administrative Law Division (202) 401-6700
- Educational Equity and Research Division (202) 401-8316
- Elementary, Secondary, Adult, & Vocational Education Division (202) 401-8292
- Ethics Division (202) 401-8309
- Legislative Counsel Division (202) 401-8313
- Postsecondary Education Division (202) 401-8302
- Regulatory Services Division (202) 401-8300
- Operations Management Staff (202) 401-8340

Appendix D: Cooperation with the Office of Inspector General

-----Original Message-----

From: Spellings, Margaret

Sent: Tuesday, January 16, 2007 12:34 PM

To: All Exchange Users

Subject: Cooperation with the Office of Inspector General

January 16, 2007

MEMORANDUM TO DEPARTMENT EMPLOYEES

The Office of Inspector General (OIG) performs the critical tasks of conducting audits, investigations and inspections related to the programs and operations of the U.S. Department of Education. Many of you may not have worked closely with the OIG, and may not be familiar with the OIG's processes. I would like to take a moment to note the important role all employees have in assisting the OIG to carry out investigations, audits or inspections. All employees should provide their full cooperation with any OIG inquiry.

The OIG often needs information from Department offices in order to conduct its work effectively. The Inspector General Act provides that the OIG has access to records of the Department. ED employees must respond promptly and completely to requests from the OIG for information and records. Failure to cooperate causes unnecessary delays for the OIG in completing its work, and may raise questions as to whether full disclosure is being provided. If you are asked to provide information to the OIG, and there are any operational or practical reasons you cannot promptly respond to this request, you should immediately discuss these issues with the OIG requester, rather than delay the response. If you have legal concerns about the request, please consult with the Office of the General Counsel promptly, so that they can help you resolve the matter expeditiously with the OIG. When the OIG conducts audits within the Department itself, the OIG will ask the manager of the affected program to provide a "management representation" letter affirming that to the best of the manager's knowledge, information, and belief, all requested information has in fact been provided.

Withholding or providing misleading information to the OIG undermines the Department's credibility, and can have serious consequences for an individual employee as provided in the Department's Table of Penalties, or under federal criminal statutes. Employees are permitted to have an attorney or union representative present when they are being interviewed by the OIG. Cooperation with the OIG also includes promptly reporting allegations of fraud or criminal conduct in Department programs and operations. You can contact the OIG hotline confidentially by phone at 1-800-MISUSED or by email at oig.hotline@ed.gov.

The senior leadership team and I are committed to maintaining the Department's culture of accountability. We appreciate the assistance and cooperation of all ED employees in supporting the OIG's efforts to identify and prevent misuse of federal funds. For more information on the OIG's procedures, please refer to the directive "Cooperation With and Reporting to the Office of Inspector General," OIG: 1-102, available on connectED at http://wdcrobiis09/doc_img/acs_oig_1_102.doc.

Thank you for your attention to this important matter.

Margaret Spellings