



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF THE SECRETARY

June 28, 2007

The Honorable Adrian M. Fenty
Mayor of the District of Columbia
John A. Wilson Building
1350 Pennsylvania Avenue, NW
Washington, DC 20004

Dear Mayor Fenty:

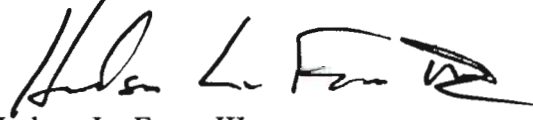
We appreciate the efforts and progress made during federal fiscal year (FFY) 2006 by the DC State Educational Agency, District of Columbia Public Schools (DCPS), toward improving the administration of federal education grants. The U.S. Department of Education (Department) recognizes that the development of the plans for the reorganization of the DC State Educational Agency and school district has taken considerable effort, as will the transition to the new governance structure.

As we have discussed, the Department is concerned that the rate of implementation of the corrective actions which DCPS has undertaken is not sufficiently aggressive to allow DCPS to reach its goals and achieve compliance with the legal requirements of the Department's grant programs. We expect to see an accelerated rate of reform in the coming year. In April, 2006, the Department designated DCPS as a high-risk grantee under 34 C.F.R. §80.12. DCPS's status as a "high-risk" grantee under 34 C.F.R. §80.12 will continue and, therefore, special conditions will be applied to program grants and funds awarded to DCPS by the Department. Enclosed are the special conditions that will be incorporated in the FFY 2007 grant awards made by the Department to DCPS for all of the federal education programs it administers. We understand that the Public Education Reform Amendment Act of 2007 (Act) went into effect on June 12, 2007, and that it requires a number of changes in the governance structure of DCPS, including changes in the DC entities that will be responsible for administering federal education grants. The enclosed special conditions will apply to all grants issued by the Department to DCPS and to any other entity to which administrative or spending authority for federal education grants is transferred. Certain of the FFY 2007 grant awards will contain additional special conditions that are specific to the programmatic requirements of those grants.

We look forward to seeing DC establish strong state and local educational agencies with the capacity and knowledge necessary to successfully administer the programs supported by Department grants. The Department remains committed to working closely with DCPS and the DC Government to improve the delivery of federally supported education services.

The Department is available to help you and other DC officials during the schools governance transition. I encourage you and your colleagues to seek the advice and assistance of the Department in implementation of the corrective action plan and the administration of Department grant programs.

Sincerely,

A handwritten signature in black ink, appearing to read "Hudson La Force III". The signature is fluid and cursive, with a prominent initial "H" and a long, sweeping underline.

Hudson La Force III
Senior Counselor to the Secretary

CC: Deputy Secretary Ray Simon
Assistant Secretary Kerri Briggs (OESE)
Assistant Secretary John H. Hager (OSERS)
Assistant Secretary Troy Justesen (OVAE)
Acting Assistant Secretary Jim Manning (OPE)
Assistant Deputy Secretary Kathleen Leos (OELA)
Assistant Deputy Secretary Deborah A. Price (OSDFS)
Assistant Deputy Secretary Morgan Brown (OII)

DC Deputy Mayor for Education Victor Reinoso
DC State Education Officer Deborah Gist
DC Public Schools Chancellor Michelle Rhee

Enclosure

District of Columbia Public Schools – Special Conditions
Federal Fiscal Year 2007

PREAMBLE: These special conditions are imposed on all existing grants for which funds are still available for obligation and to all grants issued on or after the date of these special conditions issued by the U.S. Department of Education (the Department) to the District of Columbia Public Schools (DCPS). These special conditions will apply to all grants issued by the Department to each entity to which the DC Government transfers administrative or spending authority for DCPS grants. These special conditions are applied in accordance with the Department's regulations governing "high-risk" grantees in 34 CFR §80.12. The special conditions are imposed to help ensure that funds granted to DCPS 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 DCPS to improve its implementation of financial, record-keeping, and internal control systems and procedures sufficient to satisfy the applicable accountability requirements.

BACKGROUND:

- A. In April, 2006, the Department designated DCPS a "high-risk" grantee under 34 CFR §80.12. At that time, special conditions were placed on all Department grants awarded to DCPS because of its history of unsatisfactory performance, as indicated by findings of audits performed under the Single Audit Act, which repeated over numerous years, and Department program reviews conducted in March, 2006. 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 reoccur. Revised special conditions were placed on all grants on July 1, 2006, when new grants were awarded for Federal Fiscal Year (FFY) 2006.

- B. The core requirements of the special conditions were that DCPS must (1) develop a comprehensive corrective action plan 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 on the corrective actions in this plan. Since the initial high-risk designation, the Department has worked with DCPS to support its development and refinement of this plan. DCPS has produced an action plan and made progress on some of the actions. The plan includes 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 Improvement Act of 2006 (Perkins Act). The current version of the corrective action plan has a moderate likelihood of resolving most of the control weaknesses and

incidences of non-compliance with applicable legal requirements. However, (1) DCPS has made changes to the plan and the revised version is still in draft form; (2) the timelines for action extend beyond one year; and (3) DCPS has 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 DC 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 transfers 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 IDEA Part C Early Intervention Program. The transfer of authority for these grants to an agency that has not previously administered them will create an additional risk factor for DC administration of Department grants that can be mitigated only with the development of capacity in the new agency and the alleviation of deficiencies in the grants management process. The DC Government must establish an SEA with an appropriate structure and sufficient grant and fiscal management capacity to carry out the state agency responsibilities of Department grants. This includes: establishing a management system that meets the standards for financial management systems (34 CFR 80.20 et. seq.), preventing further lapses in internal controls, ensuring expenditures are made only for allowable costs, adhering to procurement rules, and maintaining proper documentation of expenditures.

I. EXPLANATION OF HIGH-RISK STATUS

Under the authority of the Education Department General Administrative Regulations (EDGAR), 34 CFR §80.12, the Department has determined that DCPS is a "high-risk" grantee because of problems in its fiscal and program accountability, management systems, and related areas. The Department concludes that DCPS is a "high-risk" grantee based on the following.

- A. Based on the repeat findings of audits performed under the Single Audit Act for fiscal year 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, the Department concludes that DCPS has systemic weaknesses in its internal controls over grant funds and grant expenditures. The systemic problems identified are:
- (1) Finance and accounting systems and procedures that do not adequately allocate personnel and other costs to programs nor provide DCPS with the capacity to monitor compliance with requirements to set aside funds for required activities (i.e., earmarking) and limit certain expenditures (e.g., indirect costs);
 - (2) Inadequate processes for review and approval of grant expenditures to ensure expenditures are allowable costs;

- (3) Inadequate processes to obtain and retain documentation in grant files to demonstrate compliance with applicable program rules and regulations;
 - (4) Inadequate processes to obtain and retain in contract files documentation of compliance with procurement policies;
 - (5) Inadequate documentation of the amount and disposition of federal funds disbursed; and
 - (6) Payroll and personnel systems that do not adequately document time and effort of employees who work on activities supported by federal grants.
- B. Based on findings of audits performed under the Single Audit Act for fiscal year 2004 and the 2006 Title I Part A program review, the Department concluded that DCPS had inadequate control over equipment purchased with federal funds and inadequate policies and procedures to ensure LEA compliance with inventory control. The fiscal year 2005 single audit did not contain a repeat finding on inventory control. However, DCPS developed a corrective action plan to address this, which has not been fully implemented. DCPS cannot yet ensure that LEAs are complying with its equipment policy. LEA misuse of federally funded equipment will continue to be a risk to federal funds until DCPS completes its implementation for oversight of LEA management of equipment.
- C. DCPS is not correcting audit findings in a timely manner. Based on the fact that many findings of the fiscal year 2005 single audit are repeat findings that were also found in prior years' audits, the Department concludes that DCPS has not ensured that appropriate corrective action is taken on audit findings within six months of the audit report, as required by 34 CFR §80.26(b)(3). DCPS developed a corrective action plan to address audit findings of deficiencies in the documentation of grant expenditures (including time and effort records), documentation of proper contracting procedures, and accounting for earmarks and reserves; however, the corrective actions were not fully implemented.
- D. Based on audit findings and program reviews, the Department found that DCPS was not adequately monitoring its federally funded programs and services, and corrective action is still in progress. The single audits for fiscal years 2001 through 2003 and the 2006 program reviews raised questions regarding the adequacy of DCPS's monitoring of charter schools and found insufficient documentation of the reviews and corrective actions taken. DCPS developed a corrective action plan to improve internal controls and LEA adherence to policies and procedures, such as time and effort documentation; however, the corrective actions were not fully implemented.
- E. The Department found, based on the range of findings of LEA lack of adherence to policies and procedures, that ambiguous separation of the DC LEA and SEA staff and functions resulted in inadequate oversight of Department grant programs. DCPS agreed, and developed a corrective action plan to separate and articulate the functions of the SEA and the LEA in order to support improved oversight and monitoring of the LEAs, including the

charter schools. However, the corrective actions were not fully implemented. The DC Mayor's Office is developing a plan for a different reorganization in accordance with the DC Public Education Reform Act. Implementation of this reorganization is not expected to occur until after FFY 2007 grant funds become available.

- F. DCPS is not fully in compliance with the requirements of Part B of IDEA. DCPS developed a corrective action plan to address the deficiencies; however, corrective action is still in progress. The Department's review of the DCPS FFY 2005 Annual Performance Report (APR) and FFY 2006 Progress Report under IDEA Part B, dated February 1, 2007, found that DCPS continues to demonstrate noncompliance with the requirements to: provide timely initial evaluations and reevaluations; implement due process hearing decisions in a timely manner; ensure placement of students with disabilities in the least restrictive environment; and identify and correct noncompliance with the requirements of IDEA Part B. The IDEA Part C program is not currently administered by DCPS; however, it is scheduled to be transferred to the DC SEA in accordance with the DC Public Education Reform Act. The Department's review of DC's FFY 2005 APR on IDEA Part C shows that DC is not timely providing early intervention services to infants and toddlers with disabilities and their families, and is not monitoring to ensure compliance with the requirements of IDEA Part C.
- G. DCPS is not fully in compliance with the Highly Qualified Teacher requirements of ESEA. DCPS developed a corrective action plan to address this; however, the corrective action is still in progress. The Department's review of teacher qualification data found that DCPS is not meeting its goals established under the ESEA for Highly Qualified Teachers. In addition, the Department is concerned that high proportions of LEAs and schools are not meeting the state's goals established under the ESEA for adequate yearly progress.
- H. Based on the March, 2006 monitoring of Title I, Part A and Title III of the ESEA, the Department found that the DCPS SEA had not ensured a timely subgrant application review and approval or release of federal grant funds to LEAs. As a result, LEAs must utilize other funds to carry out activities under the ESEA. DCPS developed a corrective action plan to address this; however, the corrective actions have not been implemented.
- I. DCPS has not reported to the Department its plans for and the status of major changes to DCPS financial management, procurement, payroll, human resources, or record-keeping systems or procedures that are in progress or necessary to achieve compliance with applicable legal requirements of federal grants, as required by the FFY 2006 special conditions.

Overall, the Department acknowledges the development of plans for significant corrective actions and progress in some areas. However, plans are not sufficient, nor have enough corrective actions been taken, to demonstrate that DCPS has successfully implemented financial, record-keeping, and internal control systems and procedures sufficient to satisfy the accountability requirements in administering grants issued by the Department, including the administrative requirements for financial management, procurement, internal controls, and other matters pertaining to proper grants management set forth in Part 80 of EDGAR and the cost principles in OMB Circular A-87, including those governing payroll costs charged to federal programs. The Department further concludes that DCPS is not in full compliance with some major provisions of Department programs, including programs under the ESEA and IDEA.

II. SPECIAL CONDITIONS

A. Corrective Action Plan

DCPS shall maintain a current, comprehensive high-risk corrective action plan (CAP), which will be the basis for tracking DCPS's progress in resolving its fiscal management deficiencies, grants management deficiencies, and program non-compliance. The CAP 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 and failure to maintain proper documentation of expenditures.

The plan must include at a minimum corrective actions needed 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 financial management, procurement, payroll, human resources, or record-keeping systems or procedures are in progress or are necessary to achieve this, DCPS shall incorporate these actions in the CAP. If any other audits, such as those conducted by DC Inspector General and by independent auditors at the request of city agencies, contain findings regarding the administration of Department programs, DCPS shall incorporate actions to address such findings in the CAP. The CAP shall be revised to address any new findings from audits and program and management reviews within 60 days of the issuance of such findings. DCPS shall conduct an annual, comprehensive review and update of the CAP and submit a revised CAP to the Department by May 30, 2008.

If at any time during the review or implementation of the CAP, DCPS determines that implementation of the corrective actions necessary to come into compliance with applicable legal requirements will extend past July 1, 2008, DCPS should notify the Department that the DCPS needs to enter into a compliance agreement. 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 CAP. DC officials shall notify the Department of any change in the DC CSSO, The new DC CSSO or another authorized official shall review the CAP and certify to the Secretary of Education that the corrective action plan is adopted. The Department must received a certification of the adopting of the existing plan (or a revised plan for review) within 60 days of this letter.

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

It is essential that DCPS achieve adequate progress in implementing its CAP in order for DCPS to build the capacity to responsibly manage its federal grants. To ensure progress, DCPS must provide the Department with quarterly reports, beginning with the next scheduled report, which is due on or before August 31, 2007. The parties may modify the schedule for the reports by mutual, written agreement.

In general, each quarterly report will include (1) a description of activities and progress for each action during the reporting period, (2) the status of each action that is scheduled to be completed during the reporting period, (3) 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), (4) documentation of measures of performance and results, and (5) 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 DCPS shall certify to the completeness and accuracy of the reports.

In addition, DCPS shall ensure that it timely and fully meets all Department program reporting requirements, including the reports required herein, the ESEA Consolidated State Performance Report, and the IDEA Annual Performance Reports.

C. Prompt Access to Records

DCPS shall promptly provide the Department or its representatives access to any requested staff, locations, records, and information associated with the affected grant funds.

D. Compliance With Program Requirements

In addition to the special conditions contained in this document, special conditions to address areas in which DCPS is out of compliance with program requirements, including those of ESEA Title I and Title II; IDEA Part B; and the Perkins Act, are specified on the FFY 2007 grant awards.

III. FAILURE TO COMPLY WITH SPECIAL CONDITIONS

If a plan, report or documentation required under Section II above is not provided by DCPS 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.

If the Department determines that DCPS 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-D above, then the Department may take further action such as the following:

- (1) The Department would not continue one or more grants (and DCPS 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) DCPS would only receive further funds under one or more grant awards on a reimbursement basis.
- (4) The Department would recover misspent funds from DCPS.
- (5) The Department would require DCPS 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 DCPS 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. State Educational Agency Transition

In order to ensure proper allocation and oversight of Department grants awarded to all educational agencies in DC, the Mayor of the District of Columbia or his designee shall notify the Secretary of Education in writing, in advance of the effective date, of

any changes affecting Department grants that may be required by implementation of the DC Public Education Reform Act of 2007 (DC Council Act 17-0038) or administrative action. The initial notification should be sent as soon as possible and shall include: (1) the legal name of the entity that will be designated to receive grants from the Department, (2) the effective date of the change, and (3) the name of the individual responsible for receiving the grants. The Department will provide DCPS and the Mayor of the District of Columbia or his designee guidance on further information and assurances that the Department will require prior to making funds available to a new state agency. A delay in the appointment of and Department notification of a change in the official authorized to receive Department grants can result in an interruption of the availability of grant funds.

B. Submission of Reports

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

Cynthia L. Brown
Deputy Director, Management Improvement Team
Office of the Secretary
U.S. Department of Education
400 Maryland Avenue, SW, Room 7E214
Washington, DC 20202
cynthia.brown@ed.gov

C. Reconsideration and Modifications

At any time, DCPS may request reconsideration of the above special conditions by contacting the Department and providing in writing the reasons why DCPS thinks 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 DCPS meets, to the Department's satisfaction, the conditions mentioned above.

Dated: June 28, 2007