



Corporation For National And Community Service

Office of Inspector General News Flash!

St. HOPE, Principals Suspended

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**Office of Inspector General
Corporation for National and Community Service**

FOR IMMEDIATE RELEASE

Contact:

William Hillburg, Director of Communications
(202) 606-9368

WASHINGTON, DC (September 25, 2008) - The Federal agency in charge of the AmeriCorps volunteer program on Wednesday (September 24) suspended St. HOPE Academy, Kevin Johnson, its founder and former president, and Dana Gonzalez, executive director of St. HOPE's Neighborhood Corps, from all access to Federal grants and contracts for up to one year.

The decision of the Corporation for National and Community Service ("Corporation") resulted from a recommendation made by the Office Inspector General ("OIG"), which was based on information developed in an investigation of St. HOPE and its principals, which is ongoing. The suspension, which immediately went into effect September 24, bars St. HOPE Academy, Johnson and Gonzalez from receiving or using funds from any Federal agency for up to one year, or pending completion of the OIG investigation.

The OIG, in its recommendation for suspension, cited numerous potential criminal and grant violations, including diversion of Federal grant funds, misuse of AmeriCorps members, and false claims made against a taxpayer-supported Federal agency.

"I appreciate the Corporation's action in implementing our recommendation and in supporting our ongoing investigation," said Inspector General Gerald Walpin. "Given that there exists evidence to suspect improper and fraudulent misuse of grant funds and AmeriCorps members, it is important that immediate action be taken. Between now and the completion of the OIG's investigation, we must protect the public interest from the potential repetition of this conduct by this grantee and its principals."

In its written suspension decision, the Corporation cited numerous AmeriCorps grant violation and diversions of Federal funds. It stressed that "the diversion of grant funds is so serious a violation of the terms of the grant agreement that immediate action via suspension is required to protect the public interest and restrict the offending parties' involvement with other Federal programs and activities."

Under the terms of its Corporation grant, St. HOPE officials agreed to deploy their Neighborhood Corps AmeriCorps members to tutor students at its charter schools, redevelop one building per year in Sacramento's Oak Park neighborhood and coordinate marketing and logistics for St. HOPE's Guild Theater and Art Gallery.

The cited violations of St. HOPE's grant agreement included:

- Misusing AmeriCorps members, financed by Federal grant funds, to personally benefit Kevin Johnson, including driving him to personal appointments, washing his car and running personal errands.
- Unlawfully supplementing St. HOPE staff salaries with Federal grant funds by enrolling two employees in the AmeriCorps program and giving them Federally funded Corporation living allowances and education awards.
- Improperly using members to engage in banned political activities, namely supporting the election of Sacramento School Board candidates.
- Improperly taking members assigned to serve in Sacramento to New York City to promote St. HOPE's establishment of a Harlem charter school.
- Misusing AmeriCorps members, who, under the grant, were supposed to be tutoring elementary and high school students, to instead serve in clerical and janitorial positions at St. HOPE's charter schools.
- Misusing AmeriCorps members to recruit students for St. HOPE's charter schools.

St. HOPE Academy, Johnson and Gonzalez each has the opportunity to challenge the suspensions, and has 30 days to respond to the Corporation.

During the suspension period, St. HOPE Academy, Johnson and Gonzalez will be included in the Excluded Parties List System, a database maintained by the U.S. General Services Administration (www.epls.gov). The list is used by all Federal agencies to determine the eligibility of individuals and organizations to receive Federal grants and contracts.

THE SACRAMENTO BEE sacbee.com

This story is taken from *Sacbee* / Our Region

Kevin Johnson: Probe concerns 'absurd'

mlvellinga@sacbee.com

Published Saturday, Sep. 27, 2008

Mayoral candidate Kevin Johnson returned to Sacramento Friday and immediately went on the offensive, saying it was "absurd" to suggest his placement this week on a list of people who can't do business with the federal government could hurt his ability to act as Sacramento mayor.

Johnson whipped through a hefty schedule of appearances and events, several of them with NBA star Shaquille O'Neal. O'Neal was keynote speaker at an evening fundraiser for St. HOPE Academy, the Oak Park-based nonprofit founded by Johnson. About 700 people attended the dinner at the Hyatt Regency hotel downtown.

Along with Johnson, St. HOPE Academy this week was placed on a list of people and organizations barred from receiving federal funds or contracts. The suspension could last up to a year or until completion of a federal probe into St. HOPE's management of federal funds used in its volunteer Hood Corps program.

Johnson insisted Friday his placement on the list would not hinder the city's ability to receive and spend federal dollars if he is elected mayor.

"That's absurd," he said. "As mayor, I'm going to go out there and shake down as many resources as I can for Sacramento."

City Attorney Eileen Teichert, after a day researching the matter, offered a similar assessment Friday. "We are still digging further to try to achieve some sort of finality to our opinion," she said. "I can tell you at this point in time we do not believe it should impact the city's ability to obtain any federal funding."

Teichert said it remains uncertain whether Johnson could vote on federal funding matters while suspended. Out of town on a family matter, Teichert said she would be reviewing the question further when she returns next week.

Frederic Levy, a Washington attorney who specializes in federal contracting, said cities applying for federal funding are required to disclose if a top official or board member is barred from receiving federal funding. That disclosure, Levy said, "doesn't mean the federal

government won't make the award. It's discretionary."

The city likely would need to include a footnote in grant applications saying that appropriate measures would be taken "to ensure no improprieties in the use of the funds," Levy said.

Mayor Heather Fargo has remained mum on the topic of Kevin Johnson all week. She was installed Friday as president of the League of California Cities, and was busy with events surrounding that installation, said her campaign manager, Dale Howard.

"She's been pretty much under lock and key," he said.

Johnson spent the last few days in New York City, where he attended a fundraiser for his mayoral campaign. He returned Friday morning, in time to introduce Caroline Kennedy at a luncheon fundraiser for presidential candidate Barack Obama at Mason's Restaurant downtown.

He also appeared on a radio show and attended an event to promote green energy at California State University, Sacramento. He watched as dozens of excited children mobbed O'Neal during an appearance at the Boys & Girls Club in downtown Sacramento.

After O'Neal left in his stretch Hummer limousine, Johnson held a press conference in the club's sweltering gym to address questions about St. HOPE's Hood Corps program.

The federal funding suspension was triggered by a months-long investigation into Hood Corps' use of AmeriCorps funds. Federal agents recently turned over findings from their investigation to the U.S. attorney's office in Sacramento, where prosecutors will decide whether to file charges or seek restitution.

On Thursday, the federal AmeriCorps agency cited numerous violations of St. HOPE's grant for its urban Peace Corps-style program. In its contract with AmeriCorps, federal investigators said, St. HOPE agreed that volunteers would tutor students, redevelop one building a year in Oak Park and help in marketing and operations at the organization's theater and art gallery.

Among the grant violations federal agents cited:

- Supplementing St. HOPE school staff salaries with federal grant funds by enrolling two employees in the AmeriCorps program.
- Using AmeriCorps members, financed by federal grant funds, to drive Johnson to personal appointments, wash his car and run personal errands.
- Using AmeriCorps members to campaign for school board candidates.
- Using AmeriCorps members to serve in clerical and janitorial positions at St. HOPE's charter schools.

Johnson did not dispute that most of the activities took place, but took issue with whether it constituted misuse of federal money, and said it did not constitute "gross negligence."

"I'm very confident the U.S. attorney is not going to find that these allegations are

egregious," he told The Bee in an interview between events.

"From an administrative standpoint, could we have dotted our i's and crossed our t's better? Certainly. And we should be held accountable for whatever those things are."

St. HOPE runs an array of nonprofit endeavors, including public charter schools in Sacramento and New York, a development company, an art gallery and Hood Corps.

Johnson ran all the St. HOPE programs until he stepped down from his official positions early this year. He said St. HOPE Academy, which runs Hood Corps, is separate from the schools and the development company, and that those operations won't be affected by the federal suspension of funds.

The federal government has declined to provide clarification on whether that is the case.

The suspension of Johnson and St. HOPE was trumpeted in huge red headlines Thursday on the Web site of Gerald Walpin, inspector general of the Corporation for National & Community Service. It was Walpin's office that conducted the investigation.

Matt Jacobs, a former federal prosecutor who is representing Johnson, questioned why Walpin's office publicized the suspension rather than waiting for the U.S. attorney to decide whether the case merited criminal or civil charges, or a fine. He speculated that the federal agency was trying to pressure the U.S. attorney's office.

"You don't see the FBI or the IRS doing this," Jacobs said. "They turn in their report to the U.S. attorney and let the process work. I've seen these little Podunk agencies get excited about their cases. They've come to me when I was in U.S. attorney's offices. And you say, 'I don't think so.' They get very mad about it."

Walpin did not respond to a request for comment Friday.

On his Web site, in a description of his role, Walpin says rooting out misuse of federal funds is one of his priorities. "The reality is that such misconduct takes precious resources away from deserving people, the same way the theft of a welfare check hurts a single mother who needs that money to buy milk for her children," Walpin wrote.

Johnson supporters contacted Friday said the federal actions have not dissuaded them from backing Johnson for mayor.

"It certainly doesn't affect my support," said Sacramento City Councilman Steve Cohn. "I'm puzzled by the federal government wanting to release this information before they decide what they're going to do."

Local architect Ron Vrilakas said he could understand how such violations could happen.

"I'm not whatsoever alarmed by what I've read," Vrilakas said. "It's not surprising that in a small nonprofit doing a lot of things, there could be minor variations on what they had these young people doing. I know that as a small-business owner you wear a lot of hats, and I imagine that's the way things operated there as well."

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Call The Bee's Mary Lynne Vellinga, (916) 321-1094.

THE SACRAMENTO BEE sacbee.com

This story is taken from Sacbee / Opinion

My View: The federal aid ball is in Johnson's court

Special to The Bee

Published Tuesday, Mar. 31, 2009

Your March 24 editorial, without basis, attacks my Inspector General office for "dragging on" with our investigation of St. HOPE Academy and its principals so that the city of Sacramento may be precluded "from getting federal funds" due to the fact that on Sept. 24, 2008, Mr. Kevin Johnson was suspended "from receiving federal funds."

The relevant law – which I would have thought that you would have researched before writing your editorial – demonstrates that you are targeting the wrong entity for any delay of the determination of whether Johnson's suspension was appropriate.

Some background: As inspector general, I am duty-bound to take action to uncover and to prevent fraud and waste in the almost \$1 billion of taxpayers' money that is disbursed by the Corporation for National and Community Service.

Under controlling regulations, suspension from receiving or controlling federal funds is one of the tools available, where there "exists ... adequate evidence to suspect ... commission of fraud ... making false claims ... or commission of any other offense indicating a lack of business integrity or business honesty that seriously and directly affects (the person's) present responsibility ... or violation of the terms of a public agreement or transaction so serious as to affect the integrity of an agency program, such as willful failure to perform in accordance with the terms of one or more public agreements or transactions."

For a suspension to occur, my office must recommend the suspension to the deciding official (who is not in my office) and provide adequate evidence to support the suspension to the deciding official. That was done here. The suspending official there- after notified Johnson of the suspension.

Most important is that the regulations give any person or entity suspended – including Johnson – the right "to contest a suspension" by "provid(ing) the suspending official with information in opposition to the suspension ... within 30 days after (receipt of) the Notice of Suspension." The opposition submission cannot rely on "a general denial"; instead, it must include "specific facts that contradict the statements made in the Notice of Suspension."

Thus, contrary to your editorial, the ball on the suspension has been in Johnson's court since

the order of suspension was issued.

Apparently, he made the decision not to appeal the suspension by providing specific facts that would show to the neutral suspension official that the suspension was not warranted. If, as you charge (without basis), that suspension in these circumstances was an "unusual step," the procedures allowed Johnson to seek to lift the suspension. He decided not to do so.

Your editorial also refers to a criminal investigation or civil monetary recovery or settlement. I do not comment on such matters unless they are public.

But, in any event, those legal avenues are irrelevant here as they are in no way connected with the ability of the city of Sacramento to obtain federal funds – only the suspension order has that effect.

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Gerald P. Walpin is the inspector general of the Corporation for National and Community Service.

Attachment B

SETTLEMENT AGREEMENT

I. PARTIES

This Settlement Agreement ("Settlement Agreement") is entered into by and between the United States of America ("United States"), acting through the United States Attorney's Office for the Eastern District of California, on behalf of the Corporation for National and Community Service, an agency of the United States Government (the "Corporation") (hereafter collectively referred to as the "United States"); and St. HOPE Academy ("St. HOPE"), through its authorized representatives, Kevin Johnson, individually ("Johnson"), and Dana Gonzalez, individually ("Gonzalez"), through their authorized representatives. Hereinafter, the United States, St. HOPE, Johnson and Gonzalez are jointly referred to as "the Parties."

II. PREAMBLE

As a preamble to this Settlement Agreement, the Parties agree to the following:

A. AmeriCorps grant funds were awarded by the State of California to and administered by St. HOPE under grant award numbers 03AFHCA002Y11-F102, 03AFHY12-F102, and 06AFHY13-F102 ("AmeriCorps Grants"). Additionally, AmeriCorps members were entitled to Education Awards if they fulfilled their service requirements for St. HOPE pursuant to the terms of the grant requirements. The Education Awards and grants awarded to St. HOPE (collectively the "Grant Awards") totaled \$847,673.00.

B. During the majority of the relevant time period herein, Johnson was the President and Chief Executive Officer of St. HOPE, and Gonzalez was the Executive Director of St. HOPE.

C. The United States contends that St. HOPE did not appropriately spend the Grant Awards pursuant to the terms of the grant requirements, and did not adequately document its expenditures of the Grant Awards.

D. By letters dated September 24, 2008, the Debarment and Suspension Official for the Corporation, notified St. HOPE, Johnson and Gonzalez that they were suspended from participation in Federal procurement and nonprocurement programs for a temporary period of time pending the completion of an investigation by the United States Attorney's Office, or the conclusion of any legal or debarment proceedings resulting from the investigation, of the alleged misuse of Federal funds provided in support of the AmeriCorps Grants.

E. This Settlement Agreement is not an admission of liability or fault by St. HOPE, Johnson or Gonzalez, nor a concession by the United States that its claims are not well founded. However, as acknowledged below and in the attached Stipulation for Judgment, St. HOPE acknowledges that it did not adequately document a portion of its expenditures of the Grant Awards.

F. To avoid the delay, uncertainty, inconvenience, and expense of further litigation, the Parties mutually desire to reach a full and final settlement of the Parties' claims with respect to the AmeriCorps Grants and Grant Awards and the related claims and investigation, pursuant to the Terms and Conditions set forth below.

G. Although issues of suspension and possible debarment are ordinarily addressed by the Corporation separately from resolution of any civil claims, at the request of St. HOPE, Johnson and Gonzalez for a global resolution of all matters related to the AmeriCorps Grants and

Grant Awards, this Settlement Agreement also addresses the resolution of suspension issues and further proceedings, if any, related to debarment proceedings.

NOW, THEREFORE, in consideration of the mutual promises, covenants, conditions, terms, and obligations set forth in this Settlement Agreement, the Parties agree to settle this matter as follows:

III. TERMS AND CONDITIONS

I. In consideration of the obligations of the Parties set forth in this Settlement Agreement, St. HOPE agrees to pay the total sum of Four Hundred Twenty-Three Thousand Eight Hundred Thirty-Six Dollars and Fifty Cents (\$423,836.50) (the "Settlement Amount"). St. HOPE shall pay the Settlement Amount to the United States as follows:

a. An initial payment of Seventy-Three Thousand Eight Hundred Thirty-Six Dollars and Fifty Cents (\$73,836.50) (the "Initial Payment") by electronic funds transfer pursuant to written instructions to be provided by the United States Attorney's Office for the Eastern District of California. St. HOPE agrees to make this electronic funds transfer within 5 business days of this Settlement Agreement being signed by all parties.

b. Johnson believes that St. HOPE has played a significant role in the community and he believes that it will continue to do so. Johnson has decided to assist St. HOPE in paying the settlement amount and agrees to pay Seventy-Two Thousand Eight Hundred Thirty-Six Dollars and Fifty Cents (\$72,836.50) of the Initial Payment by paying such amount to St. HOPE in time for St. HOPE to make the Initial Payment to the United States pursuant to the terms of this Settlement Agreement. Johnson and St. HOPE may enter into an agreement

whereby St. HOPE agrees to repay Johnson when St. HOPE has the financial ability to do so while still meeting all of its other financial obligations.

c. Gonzalez believes that St. HOPE has played a significant role in the community and she believes that it will continue to do so. Gonzalez has decided to assist St. HOPE in paying the settlement amount and agrees to pay One Thousand Dollars (\$1,000.00) of the Initial Payment by paying such amount to St. HOPE in time for St. HOPE to make the Initial Payment to the United States pursuant to the terms of this Settlement Agreement.

d. St. HOPE shall enter into a stipulated judgment for the remainder of the Settlement Amount, Three Hundred and Fifty Thousand Dollars (\$350,000.00), plus 5% annual interest. Such amount shall be paid by certified check payable to the United States Department of Justice in the amount of Thirty-Five Thousand Dollars (\$35,000.00) annually for ten years, each payment being due on or before April 15th of each year. The first payment pursuant to the Stipulated Judgment is due on or before April 15, 2010. The final payment shall be in the amount of Thirty-Five Thousand Dollars (\$35,000.00), plus the interest due and owing on the stipulated judgment, and shall be due on or before April 15, 2019.

2. Within 5 business days of this Settlement Agreement being signed by all parties, Johnson and Gonzalez shall register to take an on-line course offered by Management Concepts titled "Cost Principles", and shall provide written proof to the Corporation, through its counsel, of having registered for the course. Johnson and Gonzalez agree to complete the course within 120 days of this Settlement Agreement being signed by all parties, and shall provide written verification under oath of having completed the course.

3. The Corporation shall terminate the suspension of St. HOPE, Johnson and Gonzalez from participation in Federal procurement and nonprocurement programs upon all of the following:

- a. This Settlement Agreement having been signed by all parties;
- b. St. Hope having made the Initial Payment pursuant to the terms of Paragraph 1a-c above;
- c. St. HOPE having signed the Stipulated Judgment in accordance with Paragraph 1d above;
- d. Johnson and Gonzalez having made the payments in accordance with Paragraph 1b-c above; and
- e. Johnson and Gonzalez having provided verification of having registered for the course in accordance with Paragraph 2 above.

4. The Corporation agrees not to institute debarment proceedings against St. HOPE with respect to the AmeriCorps Grants and Grant Awards so long as it complies with the terms of this Settlement Agreement. The Corporation also agrees not to institute debarment proceedings against Johnson and Gonzalez with respect to the AmeriCorps Grants and Grant Awards so long as they comply with their obligations under this Settlement Agreement, including the certification of course completion pursuant to Paragraph 2 above.

5. Once the Corporation has terminated the suspension against St. HOPE, Johnson and Gonzalez, nothing herein is intended as a prohibition against their applying for federal grants. However, St. HOPE agrees that it may be considered a high-risk grantee by the Corporation for a period of two years, until April 15, 2011. After April 15, 2010, and upon the

request of St. HOPE and its submission of any supporting documents, the Corporation agrees to reconsider this high-risk designation to determine if it should be rescinded.

6. Subject to the exceptions in Paragraph 7 below, in consideration of the obligations of St. HOPE, Johnson and Gonzalez in this Settlement Agreement, and conditioned upon the full payment by St. Hope of the Settlement Amount, the United States (on behalf of itself, its officers, agents, agencies, and departments) hereby releases St. HOPE and its current and former directors, officers, agents, shareholders, and employees (including Johnson and Gonzalez), from all liability for any civil claims, demands, obligations, actions, causes of action, damages, costs, losses, attorneys' fees, and expenses, which the United States has or may have relating to the application and handling of the AmeriCorps Grants and payment of the Grant Amounts, investigation and litigation of this matter (including public statements), and matters related to the suspension and possible debarment of St. HOPE, Johnson and Gonzalez, including under the False Claims Act, 31 U.S.C. §§ 3729-3733, or the Program Fraud Civil Remedies Act and its implementing regulations, 31 U.S.C. §§ 3801-3812, 45 CFR Part 2554.

7. Notwithstanding any term of this Settlement Agreement, specifically reserved and excluded from the scope and terms of this Settlement Agreement as to any entity or person are the following claims of the United States:

- a. Any civil, criminal, or administrative liability arising under Title 26, United States Code (Internal Revenue Code);
- b. Any criminal liability; and
- c. Any liability to the United States (or its agencies) for any conduct other than that explicitly released in this Settlement Agreement.

8. In consideration of the obligations of the United States set forth in this Settlement Agreement, St. HOPE and its current and former directors, officers, agents, shareholders, and employees (including Johnson and Gonzalez), hereby release the United States and its employees, former employees, agents, agencies, and departments from all liability for any civil claims, demands, obligations, actions, causes of action, damages, costs, losses, attorneys' fees, and expenses, which they have or may have as of the Effective Date of this Settlement Agreement relating to the application and handling of the AmeriCorps Grants, payment of the Grant Awards, investigation and litigation of this matter (including public statements), and matters related to the suspension and possible debarment of St. HOPE, Johnson and Gonzalez.

9. The Parties to this Settlement Agreement shall bear their own costs, attorneys' fees, and expenses incurred in any manner in connection with the investigation, litigation, and resolution of this matter.

10. This Settlement Agreement is binding upon St. HOPE's successors, transferees and assigns. Otherwise, this Settlement Agreement is intended to be for the benefit of the Parties only. The Parties do not release any claims against any other person or entity not expressly released by this Settlement Agreement.

11. The individual signing this Settlement Agreement on behalf of St. HOPE represents and warrants that he or she has the power, consent, and authorization of St. HOPE to execute this Settlement Agreement.

12. The individuals signing on behalf of the United States represent that they are signing this Settlement Agreement in their official capacities and that they are authorized to execute this Settlement Agreement.

13. Each Party represents and warrants that it has not transferred anything being released under this Settlement Agreement, and is not aware of any such transfer, and that the Party is not aware of any prohibition of any type that prevents the Party from performing the terms of this Settlement Agreement.

14. St. HOPE warrants that it has reviewed its financial situation and that it is currently solvent within the meaning of 11 U.S.C. §§ 547(b)(3) and 548(a)(1)(B)(ii)(I), and will remain solvent following payment to the United States of the Settlement Amount.

15. The Parties warrant that, in evaluating whether to execute this Settlement Agreement, they (i) have intended that the mutual promises, covenants, and obligations set forth herein constitute a contemporaneous exchange for new value given to St. HOPE, Johnson and Gonzalez, within the meaning of 11 U.S.C. § 547(c)(1), and (ii) conclude that these mutual promises, covenants, and obligations do, in fact, constitute such a contemporaneous exchange. Further, the Parties warrant that the mutual promises, covenants, and obligations set forth herein are intended and do, in fact, represent a reasonably equivalent exchange of value which is not intended to hinder, delay, or defraud any entity to which St. HOPE, Johnson or Gonzalez was or became indebted on or after the date of this transfer, within the meaning of 11 U.S.C. § 548(a)(1).

16. Nothing in this Settlement Agreement constitutes an agreement by the United States concerning the characterization of the Settlement Amount for purposes of Title 26, United States Code (Internal Revenue Code).

17. Each Party warrants that it has been represented by, and has sought and obtained the advice of, independent legal counsel with regard to the nature, purpose, and effect

of this Settlement Agreement. This Settlement Agreement was negotiated by the Parties and their respective counsel, each of whom had the opportunity to participate in the drafting thereof. The Parties hereby declare that the terms of this Settlement Agreement have been completely read, fully understood, and voluntarily accepted following opportunity for review by legal counsel of their choice.

18. Each Defendant warrants and represents that it is freely and voluntarily entering into this Settlement Agreement without any degree of duress or compulsion whatsoever, after having been apprised of all relevant information and data by its legal counsel. Defendants further warrant and represent that no other party or its representative has made any promise, representation or warranty, express or implied, except as expressly set forth in this Settlement Agreement, and that the Defendants have not relied on any inducements, promises, or representations made by any Party to this Settlement Agreement, or its representatives, or any other person, except as expressly set forth herein.

19. The Parties understand and acknowledge that if the facts relating to the application and handling of the subject grants and payment of the grant amounts are found hereafter to be different from facts now believed by any Party described herein to be true, each Party expressly accepts and assumes the risks of such possible difference in facts and agrees that this Settlement Agreement shall remain effective, notwithstanding any such differences.

20. The Parties expressly recognize that the United States may publicly disclose this Settlement Agreement, and information about the case and this Settlement Agreement.

21. This Settlement Agreement constitutes the complete agreement between the Parties, and supercedes and replaces all prior negotiations and agreements, whether written or

oral, relating to the application and handling of the subject grants and payment of the grant amounts

22. This Settlement Agreement may be executed in counterparts, and each of the counterparts taken together shall constitute one valid and binding Settlement Agreement between the Parties.

23. This Settlement Agreement may not be altered, amended, or modified, except by a writing duly executed by authorized representatives of all of the Parties.

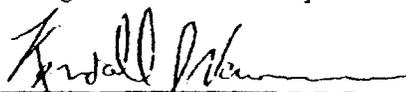
24. This Settlement Agreement is governed by the laws of the United States. The Parties agree that, should any judicial action be required to enforce or interpret this Settlement Agreement, or to resolve any dispute hereunder, the exclusive jurisdiction and venue for such action shall be in the United States District Court for the Eastern District of California.

25. This Settlement Agreement is effective, final, and binding as of the date of signature of the last signatory to the Settlement Agreement ("Effective Date"). Facsimiles of signatures shall constitute acceptable, binding signatures for purposes of this Settlement Agreement.

UNITED STATES OF AMERICA

Dated: April 9, 2009

LAWRENCE G. BROWN
Acting United States Attorney

By: 

KENDALL J. NEWMAN
Assistant United States Attorney
Chief, Civil Affirmative Section

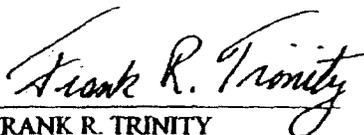
Attorneys for
United States of America

Dated: April 9, 2009



WILLIAM ANDERSON
Acting Chief Financial Officer and
Debarment and Suspension Official
on behalf of the Corporation for National
and Community Service

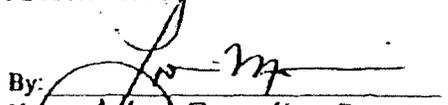
Dated: April 9, 2009



FRANK R. TRINITY
General Counsel
on behalf of the Corporation for National
and Community Service

ST. HOPE ACADEMY

Dated: 4/9/09

By: 
Name: Acting Executive Director
Title: Lori Mills

Approved as to form:

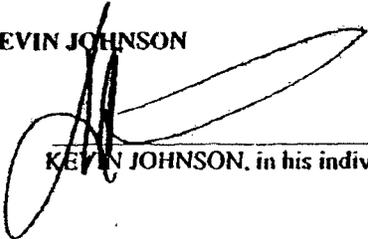
Dated: _____

SEGAL & KIRBY

MALCOLM S. SEGAL, Esq.
Attorneys for St. HOPE Academy

KEVIN JOHNSON

Dated: 4/9/09


KEVIN JOHNSON, in his individual capacity

Approved as to form:

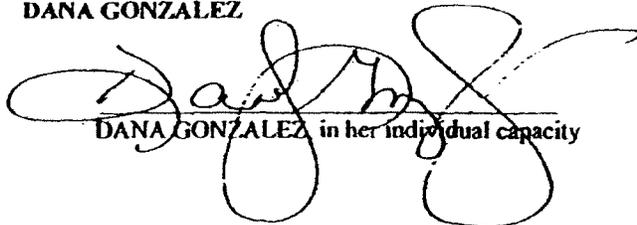
Dated: _____

STEVENS, O'CONNELL & JACOBS LLP

MATTHEW G. JACOBS, Esq.
Attorneys for Kevin Johnson

DANA GONZALEZ

Dated: 4/9/09


DANA GONZALEZ, in her individual capacity

Approved as to form:

Dated: _____

THE LAW OFFICES OF RICHARD PACTHER

RICHARD PACTHER, Esq.
Attorney for Dana Gonzalez

ST. HOPE ACADEMY

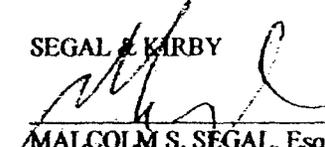
Dated: _____

By: _____
Name:
Title:

Approved as to form:

Dated: 04-09-09

SEGAL & KIRBY


MALCOLM S. SEGAL, Esq.
Attorneys for St. HOPE Academy

KEVIN JOHNSON

Dated: _____

KEVIN JOHNSON, in his individual capacity

Approved as to form:

Dated: _____

STEVENS, O'CONNELL & JACOBS LLP

MATTHEW G. JACOBS, Esq.
Attorneys for Kevin Johnson

DANA GONZALEZ

Dated: _____

DANA GONZALEZ, in her individual capacity

Approved as to form:

Dated: _____

THE LAW OFFICES OF RICHARD PACHTER

RICHARD PACHTER, Esq.
Attorney for Dana Gonzalez

ST. HOPE ACADEMY

Dated: _____

By: _____
Name:
Title:

Approved as to form:

Dated: _____

SEGAL & KIRBY

MALCOLM S. SEGAL, Esq.
Attorneys for St. HOPE Academy

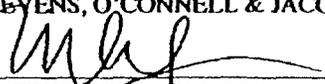
KEVIN JOHNSON

Dated: _____

KEVIN JOHNSON, in his individual capacity

Approved as to form:

Dated: 4/9/09

STEVENS, O'CONNELL & JACOBS LLP


MATTHEW G. JACOBS, Esq.
Attorneys for Kevin Johnson

DANA GONZALEZ

Dated: _____

DANA GONZALEZ, in her individual capacity

Approved as to form:

Dated: _____

THE LAW OFFICES OF RICHARD PACHTER

RICHARD PACHTER, Esq.
Attorney for Dana Gonzalez

1 LAWRENCE G. BROWN
Acting United States Attorney
2 KENDALL J. NEWMAN
Assistant U.S. Attorney
3 501 I Street, Suite 10-100
Sacramento, California 95814
4 Telephone: (916) 554-2821
5 Attorneys for Plaintiff
United States of America
6
7
8

9 IN THE UNITED STATES DISTRICT COURT
10 FOR THE EASTERN DISTRICT OF CALIFORNIA
11

12 UNITED STATES OF AMERICA,)	
)	Case No:
13 Plaintiff,)	
)	
14 v.)	
)	COMPLAINT
15 ST. HOPE ACADEMY,)	
)	
16 Defendant.)	
)	
17)	

18
19 Plaintiff United States of America, by and through its
20 undersigned counsel, complains of defendant and alleges as follows:

21 Jurisdiction and Venue

- 22 1. This Court has jurisdiction over this action pursuant to
23 28 U.S.C. § 1345.
24 2. Venue is proper in the Eastern District of California
25 pursuant to 28 U.S.C. § 1391(b).

26 The Parties

- 27 3. Plaintiff is the United States of America ("United
28 States"), acting through the United States Attorney's Office for the

1 Eastern District of California, on behalf of the Corporation for
2 National and Community Service, an agency of the United States
3 Government (the "Corporation") (hereafter collectively referred to
4 as the "United States").

5 4. Defendant St. HOPE Academy ("St. HOPE"), is a nonprofit
6 corporation doing business in Sacramento, California.

7 Allegations

8 5. AmeriCorps grant funds were awarded by the State of
9 California to and administered by St. HOPE under grant award numbers
10 03AFHCA002Y11-F102, 03AFHY12-F102, and 06AFHY13-F102 ("AmeriCorps
11 Grants"). Additionally, AmeriCorps members were entitled to
12 Education Awards if they fulfilled their service requirements for
13 St. HOPE pursuant to the terms of the grant requirements. The
14 Education Awards and grants awarded to St. HOPE (collectively the
15 "Grant Awards") totaled \$847,673.00.

16 6. The United States contends that St. HOPE did not
17 appropriately spend the Grant Awards pursuant to the terms of the
18 grant requirements, and did not adequately document its expenditures
19 of the Grant Awards.

20 7. The United States and St. HOPE have reached a settlement in
21 this matter wherein St. HOPE acknowledges that it did not adequately
22 document a portion of its expenditures of the Grant Awards.

23 8. In settlement, St. HOPE has agreed to repay the total sum
24 of Four Hundred Twenty-Three Thousand Eight Hundred Thirty-Six
25 Dollars and Fifty Cents (\$423,836.50) (the "Settlement Amount"). As
26 part of the settlement of this matter, St. HOPE will have made an
27 initial payment of Seventy-Three Thousand Eight Hundred Thirty-Six
28 Dollars and Fifty Cents (\$73,836.50). St. HOPE agrees to entry of a

1 Stipulated Judgment for the remainder of the Settlement Amount,
2 Three Hundred and Fifty Thousand Dollars (\$350,000.00), plus 5%
3 annual interest.

4 FIRST CLAIM FOR RELIEF

5 (Unjust Enrichment)

6 9. Plaintiff reasserts and realleges, as if fully set forth
7 herein, paragraphs 1-8 above.

8 10. The United States alleges that St. HOPE has been unjustly
9 enriched to the extent that it received and did not appropriately
10 spend the Grant Awards.

11 WHEREFORE, Plaintiff requests judgment against Defendant
12 St. HOPE:

13 1. In accordance with the terms of the Stipulation for
14 Consent Judgment as part of the parties' settlement of this action;
15 and

16 2. For other costs and fees to the extent that Defendant does
17 not fully comply with the terms of the Stipulation for Consent
18 Judgment; and

19 3. For such other and further relief as the Court deems just
20 and proper.

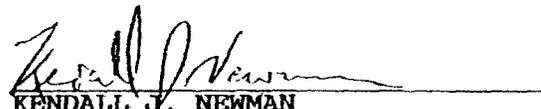
21
22

23 Dated: April 9, 2009

LAWRENCE G. BROWN
Acting United States Attorney

24
25
26
27
28

By:


KENDALL J. NEWMAN
Assistant United States Attorney
Chief, Civil Affirmative Section
Attorneys for Plaintiff United States

1 LAWRENCE G. BROWN
Acting United States Attorney
2 KENDALL J. NEWMAN
Assistant U.S. Attorney
3 501 I Street, Suite 10-100
Sacramento, California 95814
4 Telephone: (916) 554-2821
5 Attorneys for Plaintiff
United States of America
6
7
8

9 IN THE UNITED STATES DISTRICT COURT
10 FOR THE EASTERN DISTRICT OF CALIFORNIA
11

12 UNITED STATES OF AMERICA,)
13 Plaintiff,) Case No:
14 v.)
15 ST. HOPE ACADEMY,) STIPULATION FOR CONSENT JUDGMENT
16 Defendant.)
17)

18
19 It is hereby stipulated and agreed between the United States of
20 America ("United States"), acting through the United States Attorney's
21 Office for the Eastern District of California, on behalf of the
22 Corporation for National and Community Service, an agency of the United
23 States Government (the "Corporation") (hereafter collectively referred
24 to as the "United States"); and St. HOPE Academy ("St. HOPE"), through
25 its authorized representatives, as follows:

26 1. AmeriCorps grant funds were awarded by the State of
27 California to and administered by St. HOPE under grant award numbers
28 03AFHCA002Y11-F102, 03AFHY12-F102, and 06AFHY13-F102 ("AmeriCorps

1 Grants"). Additionally, AmeriCorps members were entitled to Education
2 Awards if they fulfilled their service requirements for St. HOPE
3 pursuant to the terms of the grant requirements. The Education Awards
4 and grants awarded to St. HOPE (collectively the "Grant Awards")
5 totaled \$847,673.00.

6 2. The United States contends that St. HOPE did not
7 appropriately spend the Grant Awards pursuant to the terms of the grant
8 requirements, and did not adequately document its expenditures of the
9 Grant Awards.

10 3. The United States and St. HOPE have reached a settlement in
11 this matter wherein St. HOPE acknowledges that it did not adequately
12 document a portion of its expenditures of the Grant Awards.

13 4. In settlement, St. HOPE has agreed to repay the total sum of
14 Four Hundred Twenty-Three Thousand Eight Hundred Thirty-Six Dollars and
15 Fifty Cents (\$423,836.50) (the "Settlement Amount"). As part of the
16 settlement of this matter, St. HOPE will have made an initial payment
17 of Seventy-Three Thousand Eight Hundred Thirty-Six Dollars and Fifty
18 Cents (\$73,836.50). St. HOPE herein agrees to the entry of this
19 Stipulated Judgment for the remainder of the Settlement Amount, Three
20 Hundred and Fifty Thousand Dollars (\$350,000.00), plus 5% annual
21 interest.

22 5. The United States herein agrees to a payment schedule for St.
23 HOPE in order to cure this debt. St. HOPE shall pay Thirty-Five
24 Thousand Dollars (\$35,000.00) annually for ten years, each payment
25 being due on or before April 15th of each year. The first payment
26 pursuant to this Stipulated Judgment is due on or before April 15,
27 2010. The final payment shall be in the amount of Thirty-Five Thousand
28 Dollars (\$35,000.00), plus the interest due and owing on this

1 10. Payments pursuant to this Stipulated Judgment are to be made
2 by certified check payable to the UNITED STATES DEPARTMENT OF JUSTICE
3 and mailed to:

4 United States Attorney's Office
5 Financial Litigation Unit
6 501 I Street, Suite 10-100
7 Sacramento, CA 95814

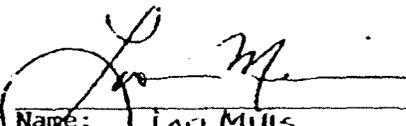
8 Dated: April __, 2009

LAWRENCE G. BROWN
Acting United States Attorney

10
11 By:

KENDALL J. NEWMAN
Assistant United States Attorney
Chief, Civil Affirmative Section
Attorneys for Plaintiff United States

12
13
14
15 Dated: April 9, 2009


Name: Lori Mills
Title: Acting Executive Director
On behalf of Defendant St. HOPE Academy

16
17
18
19 Dated: April __, 2009

SEGAL & KIRBY

20
21 MALCOLM S. SEGAL, Esq.
Attorneys for Defendant St. HOPE Academy
22
23
24
25
26
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28

1 Stipulated Judgment, and shall be due on or before April 15, 2019.

2 6. Notwithstanding the payment schedule set forth above, the
3 United States may record the Consent Judgment herein as a lien against
4 any of St. HOPE's real properties until such judgment is satisfied.

5 7. Upon receipt of all the payments pursuant to the payment
6 schedule above, the final installment will constitute satisfaction of
7 this debt, and the United States shall file a satisfaction of judgment
8 and release all liens related to this Stipulated Judgment.

9 8. If St. HOPE fails for any reason to timely make the payments
10 as prescribed above, the entire balance of the Stipulated Judgment is
11 immediately due and owing, and the United States may pursue all legal
12 remedies to collect the balance of the Stipulated Judgment, including
13 court costs, accrued interest, and any additional fees assessed in
14 order to collect this debt. Enforcement actions may be initiated
15 without prior notice.

16 9. This Stipulated Judgment is binding upon St. HOPE's
17 successors, transferees and assigns.

18 ///

19 ///

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1 LAWRENCE G. BROWN
Acting United States Attorney
2 KENDALL J. NEWMAN
Assistant U.S. Attorney
3 501 I Street, Suite 10-100
Sacramento, California 95814
4 Telephone: (916) 554-2821
5 Attorneys for Plaintiff
United States of America
6
7
8

9 IN THE UNITED STATES DISTRICT COURT
10 FOR THE EASTERN DISTRICT OF CALIFORNIA
11

12 UNITED STATES OF AMERICA,)
) Case No: 2:09-cv-00965 JAM/KJM
13 Plaintiff,)
)
14 v.)
) CONSENT JUDGMENT PURSUANT TO
15 ST. HOPE ACADEMY,) STIPULATION
)
16 Defendant.)
)
17)

18
19 Pursuant to the Stipulation for Consent Judgment filed herewith,
20 judgment is entered in favor of the plaintiff United States of America
21 and against defendant St. HOPE Academy in the principal amount of Three
22 hundred and Fifty Thousand Dollars (\$350,000.00), plus 5% annual
23 interest until paid.

24 IT IS SO ORDERED.

25
26 DATED: April 9, 2009

/s/ John A. Mendez

UNITED STATES DISTRICT COURT JUDGE

27
28

For Your Inspection

"Mission First, People and Occasionally, Integrity Why Not?"

Volume III, Issue 17

May 2008

www.cncoig.gov



Office Of Inspector General, Corporation For National And Community Service

OIG Profile

Wallis Procures Permanent Leisure Status

Spitzer Vies to Succeed Wallis

Former New York Governor Eliot Spitzer has emerged as a leading candidate to succeed the retired Linda Wallis as head of procurement for the Office of Inspector General.

Spitzer was most recently associated with Emperor's Club VP, a New York based firm that specializes in the procurement of blondes, brunettes and redheads.

"If selected for this important post, I plan to bring a high level of service and satisfaction to the procurement process," Spitzer said in a phone interview from his field office at the Mayflower Hotel in Washington, DC. "My policy is, vendors either put out or get out."

Spitzer also promised to fulfill every possible fantasy for OIG investigators and auditors.

Audit Manager Rick Sampson, when told that Spitzer specializes in redheads, vowed to immediately order a red, fine-point pen from Spitzer if he is selected for the post.

"I can't think of a better man for the job," said veteran procurer Heidi Fleiss. "He's no babe in the woods when it comes to being discrete and moving funds around."

Linda Wallis, the OIG's stalwart Assistant Inspector General for Support, announced today that she has finally procured her Federal retirement. The name of Linda's GSA-approved retirement vendor was not immediately revealed, but it is known to be owned and operated by a qualified minority-female-veteran-disabled person.

Under the terms of her retirement, the vendor will supply Linda with endless sunny days (not to exceed 24 hours each), lazy mornings (ending not later than 11 a.m., GMT), stary nights (exclusions may be granted, in writing, for periods of cloudiness) and bliss (strictly allocated according to the Federal schedule).

Linda said she plans to spend a lot of time doling out hugs and kisses to her adored grandchildren, "but they are going to have to follow my rules to the T."

To that end, Linda has enrolled each grandchild in the General Services Administration's approved vendor list. Several tots will have to wait for Grandma's hugs and kisses for up to three years. They are currently under debarment from procurement and non-procurement programs for spilling chocolate milk on Linda's prized sofa.

Also, to gain access to Grandma's cookie jar and candy drawer, the kids must first obtain a signed and certified Treat Order (Form M&M, as established under the Federal Munchies Control Act of 1972) and

may make withdrawals limited to 100 percent of the established per diem.

Linda's legendary knowledge of Federal procurement, and financial regulations and strategies, has served her well in her retirement planning. For example, she and her husband Dale will be retiring to an oceanfront mansion in Palm Beach, Florida. The Wallis's recent home purchase appears as a line item in the OIG budget titled "post-service domicile acquisition positioned for first responder coastal homeland defense."

Linda and Dale will buzz around their retirement estate in a new 2008 Cadillac Escalade with armor plating and 30-inch stereo subwoofers. It was purchased with funds from an OIG account labeled "Hair Gel Expenses, Senior Special Agent Jeff Morales."

Linda's retirement income will be enhanced with the assistance of the innovative "Zero-Based, Post-Service Compensation System" she developed for the OIG. Whenever she and Dale run short of cash, they can merely add a few zeros to their retirement checks.

"There might be something funny going on with Linda's retirement," said Inspector General Gerald Walpin. "But I'll be damned if any of us can figure it out, and we probably never will. We're up against the master Federal procurer and budgeter of all time in Linda Wallis."

Panic is Widespread in Linda Wallis's Wake

Inspector General Gerald Walpin reacted calmly to Linda Wallis's imminent retirement, declaring a state of OIG emergency and ordering all department heads to procure enough office supplies to last 10 years. That effort began in earnest today, as Paola Merino took delivery of 2,000 cartons of Post-Its.

Walpin also announced that, henceforth, the Semiannual Report to Congress, a project expertly shepherded by Linda, would be renamed the Triennial Report to Congress and be issued once every three years. He further stated that future OIG budgeting challenges would be reconciled through "creative use of the petty cash account."

With Linda's last day approaching, Audit Chief Carol Bates arranged for Wallis to write and issue 1,500 RFPs for future contract audits, including a planned "Applied-Procedures Evaluation of Costs Incurred by the Corporation for Festivities Marking the 100th Anniversary of AmeriCorps in 2095."

Investigations guru R.J. Walters, facing travel-cost uncertainties, immediately ordered all of his agents

into the field to "round up the usual suspects" before Linda retired and to hold them in the OIG evidence room pending adjudication.

"She was always tough, but fair," recalled a former OIG vendor. "At first I was bitter when she had me abducted, flown to a Syrian prison and water-boarded after I had sought an extension on our audit contract. "I'll probably never walk again, but I know the importance of Federal procurement regulations thanks to Linda."

Former Deputy Inspector General Robert Shadowens wished Linda well in a call from his Florida fish camp. He also said he would not attend any retirement celebrations unless compelled to do so by an IG subpoena.

"What's Her Name was a valuable part of my team," said former Inspector General J. Russell George, who was reached by phone at his home, where he was awaiting a termite inspection. "But I'm still mystified why she refused to approve my acceptance of a freebie golf trip to Scotland with that nice Jack Abramoff. C'mon, what harm would it have done?"



OIG Hotline!
Phone:
E-Mail:

Trinity, Frank

From: Trinity, Frank
Sent: Tuesday, June 17, 2008 12:31 PM
To: Wasilisin, Andrew
Cc: Minor, Wilsie; Limon, Raymond A; Honnoll, Liz
Subject: Referral of For Your Inspection parody to IG
Attachments: FYIparodyJune08.pdf

This is to memorialize that I provided a copy of a May 2008 parody entitled For Your Inspection to Gerald Walpin in his office this morning. PDF file attached.

I pointed out the language in column 1, paragraph 1, as an example of language that would be problematic under our agency's policy against workplace harassment. I told him that, under our policy, it was up to him to review and take appropriate action. I asked that he notify you if/when he took corrective action.

Frank R. Trinity
General Counsel

6/18/2008

OCR1

CEO/IG correspondence

Trinity, Frank

From: Eisner, David
Sent: Monday, July 07, 2008 6:01 PM
To: Walpin, Gerald
Subject: Generation Awareness Series

This is in response to your email dated June 24 regarding the Generation Awareness Series under the Office of Human Capital. I appreciate your feedback on the particulars of this series and have underscored with the appropriate managers the need for accuracy and attribution of sources in such awareness-building programs. Your point about the potential for stereotyping is well-taken, and should be guarded against in any diversity initiative.

However, I do not agree with your characterization of the series as a “wasteful use of Corporation assets for an insufficient, if any, Corporation purpose.” Building awareness about generational diversity in the workforce is in line with programs sponsored by the U.S. Department of Labor and the Office of Personal Management. The Department of Labor’s Office of the 21st Century Workforce – established by President Bush by executive order signed on June 20, 2001 -- has sponsored workshops entitled “Understanding Generational Differences in the Workplace”. OPM, charged with ensuring that the Federal government has an effective civilian workforce, includes in its leadership development program a two-day course entitled “Leading Across Generations”. And here at the Corporation, I have benefited from the insights and ideas offered by our Office of Civil Rights and Inclusiveness and our Diversity Advisory Council, among other groups, including their efforts to build awareness around generational diversity. With the exception of your feedback, CNCS staff has at all levels expressed support for this program.

The purposes of such awareness-building are to (1) meet the needs of the 21st century workforce, including understanding the effects of demographic trends, as noted in President Bush’s executive order; (2) maintain an environment that is inclusive of individual differences and responsive to the needs of diverse groups of employees, a critical success factor established by OPM in its government-wide Human Capital Assessment and Accountability Framework; (3) reduce conflict and increase productivity in the workplace, as noted in OPM’s leadership program materials; and (4) build a diverse, energized, and high-performing workforce, as articulated in our Strategic Plan.

During my tenure as CEO I have encouraged staff and stakeholders at all levels to engage with each other in sharing their perspectives about how we can better accomplish our mission. Our diversity awareness efforts are a good example of how such dialogue can engage our colleagues in ways that build our sense of teamwork and common goals, despite our individual differences. The success of such efforts is reflected in the Federal Human Capital Survey results for the Corporation, which show significant improvements during my tenure not just in the areas of diversity and leadership, but in areas I believe are related – job satisfaction and fulfillment. For these reasons, the CNCS diversity program has my full support.

1

Trinity, Frank

From: Mercedes P. Merino [m.merino@cncsoig.gov] on behalf of Walpin, Gerald
Sent: Tuesday, June 24, 2008 11:32 AM
To: Eisner, David
Cc: Goren, Nicola; Trinity, Frank; Limon, Raymond A
Subject: Generation Awareness Series from Human Capital

On behalf of Gerald Walpin:

I write to communicate to you various reasons why I am troubled by the issuance, by a Corporation Department with the Corporation's implicit stamp of approval, of the Generation Awareness Series to date.

First, even if valuable, accurate, and non-controversial, are the Corporation's limited assets -- money and staff -- best spent on this project? I am well aware that the budgetary crunch has imposed limitations on the Corporation's main purpose, service, with the need to reduce or, at least, not hire otherwise needed staff. That at least one staff person in Human Capital is assigned to spend time on this project warrants the question whether, if payroll cutting is required, should Human Capital be considered rather than other areas more directed to service.

Second, what is the value to the Corporation's purpose of these simplistic collections of events that occurred during the lives of different generations? I note that this project is produced out of the Diversity unit of Human Capital. The purpose of this series supposedly is to show that all individuals born during a certain grouping of years can be categorized (i.e., stereotyped) into identified personality traits. (e.g., The "Builders" are characterized as "hard worker, respects authority, practical, team player, dedicated, saves [money]" etc.). It seems to me that is not only untrue (because each individual is an individual), but is also contrary to the purpose of diversity understanding: that each individual is different and should not be stereotyped by age, sex, race, religion, etc, but must, instead, be recognized for that person's individual attributes.

I have been told by Ray that this generation series is important to permit supervisors to know how to deal with staff from different generations. Of course, a supervisor should take into account the age, along with other personal circumstances of a staff member, in deciding the most diplomatic and successful way to interact. But that axiomatic recognition is unrelated to whether Benny Goodman or Elvis Presley was popular in a given year (even older persons -- labeled as the Builders generation -- enjoyed and were affected by Elvis Presley, who is listed as a defining event for Baby Boomers).

Third, it is at best simplistic and at worst erroneous. This apparently was created as a cut and paste job by locating information on the internet that someone has written, without any assurance of the accuracy of the substance of the writing. Examples: I am a chronological member of the Builders, as are my many contemporaries. I might be said to fit into the "disciplined, dutiful, conformist, loyal, conservative, experienced and patriotic," which

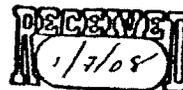
are the words used to describe my generation. But most contemporaries with whom I am friendly do not fit into all those categories. And I am friendly with people of other generations who would be accurately described by such labels.

Statements are made that are simply wrong. I met no American Soldiers (and I met many) who "came home" from service in World War II "questioning the ideals for which they fought" and who didn't view the war as "a patriotic crusade." "Berlin Wall Dismantled" is listed as a determinative event for Generation X (born between 1965-1976). Why was that more determinative of the current personalities of "Generation X" (born between 1965-76) than those of "the Builders" (born 1922-1946) or the Baby Boomers (1946-64), all of whom lived through the same experience? But, as important, the specification of "contributing actions" leading to the opening of the Berlin Wall as "many pro-democracy demonstrations in East Germany and many East Germans migrating into West Germany through Hungary" ignores and demeans American foreign policy which led to the downfall of Communist Russia, which led to Gorbachov's notice to the East German government that Russia would no longer support the East German government, which resulted in the opening of East Germany. People may disagree in degree on the cause of East Germany's collapse, but the Corporation should not be put in the position of posturizing on it.

Finally, the writing is sloppy and internally inconsistent. Passing grammatical and spelling errors, how does describing the Baby Boomers generation as "workaholics" and with a "driven work ethic" fit with the subsequent description of Baby Boomers as "flower children" and "a generation in revolt?"

I could spend pages dissecting the series and specifying many more parts. But the bottom line is that it is wasteful use of Corporation assets for an insufficient, if any, Corporation purpose. I recommend that a careful review be made before this and this type of distribution continue.

Corporation for
**NATIONAL &
COMMUNITY
SERVICE** ★★ ★



OFFICE OF INSPECTOR GENERAL

MEMORANDUM

TO: Nicola Goren
Acting Chief Executive Officer

CC: Frank Trinity
General Counsel

FROM: Gerald Walpin
Inspector General 

DATE: January 6, 2009

RE: Equal Opportunity Complaint Procedures

During the discussion yesterday that I, Jack and Vince had with you and Frank, we all agreed on the objective in processing Equal Employment Opportunity complaints: a fair and impartial investigation. The issue on which we appeared to seek further guidance is the responsibility of the agency head to ensure and direct the procedure to attain that objective. Therefore, following that discussion, we reviewed the controlling regulations. We believe the following cited regulations impose that responsibility on the Corporation itself and, of necessity, on you as the agency head.

29 C.F.R. §1614.102 (a)(2) mandates that “the agency shall . . . provide for the prompt, fair and impartial processing of complaints in accordance with this part and the instructions contained in the Commission’s Management Directives.” Subsection (a)(4) requires the agency to “designate a Director of Equal Employment Opportunity. . . to carry out the functions” who “shall be under the immediate supervision of the agency head.”

Section 1614.104(a) requires the “agency” to “adopt procedures for processing . . . complaints of discrimination” -- again imposing on the agency, not the EEO Director, that responsibility.

As to procedures to be used in investigating complaints, §1614.108(a) requires that the “investigations . . . shall be conducted by the agency against which the complaint has been filed” -- again a reiteration of the delegation of this responsibility to the “agency.” Subsection (b) gives the agency the discretion to use “any . . . fact-finding methods that efficiently and thoroughly address the matters at issue.”



1201 New York Avenue, NW ★ Suite 830, Washington, DC 20525
202-606-9390 ★ Hotline: 800-452-8210 ★ www.cncoig.gov

Senior Corps ★ AmeriCorps ★ Learn and Serve America



The Equal Employment Opportunity Management Directive EEO MD-110, referred to above, specifies that you, as head of the agency, have the responsibility to supervise the work on such complaints, in expressly providing that the **"Heads of federal agencies are responsible for ensuring that employment discrimination complaints are processed fairly, promptly, and in strict accordance with" 29 C.F.R. Part 1614. Chapter 6, ¶VI(c) of that Directive contains the only limitation of agency involvement in the investigations, and that proscribes only that the "person assigned to investigate shall not occupy a position in the agency that is directly or indirectly under the jurisdiction of the head of that part of the agency in which the complaint arose" -- thus making clear that, for example, you, as head of the Corporation, have the duty properly to supervise the person investigating a complaint against OIG.**

This duty is consistent with the undeniable interest of the Corporation in a fair, impartial, and thorough investigation, no matter how it turns out: if management is found to be right, its decisions should be vigorously defended; if wrong, management should take remedial action.

I welcome further discussion of this subject.

Corporation for
**NATIONAL &
COMMUNITY
SERVICE**

January 26, 2009

MEMORANDUM FOR GERALD WALPIN, INSPECTOR GENERAL

FROM: Nicola Goren *ng*
Acting Chief Executive Officer

SUBJECTS: Response to your concerns regarding the investigation of an Equal Employment Opportunity complaint involving the Office of Inspector General.

You have raised several concerns about the conduct of an Equal Employment Opportunity (EEO) investigation being overseen by the agency's Office of Civil Rights and Inclusiveness (OCR). The investigation involves the Office of Inspector General and you are a fact witness in the matter.

In our meeting on January 5, 2009, you expressed the following concerns:

1. The Complainant's affidavit seems to have been written by her attorney. It is written in the third-person and includes legal citations.
2. When reviewing a draft affidavit, the OIG noted that some portions did not appear to be accurate. When a request was made to listen to the tape of the investigative session that preceded the affidavit's drafting, the OIG was informed that the tape had been destroyed.
3. You suggested that the OIG and the Complainant be given an opportunity to review the investigation and add to its completeness.¹

As agreed in our meeting on January 5, I have followed up with OCRI on your concerns. With regard to your first concern, OCRI advises that there is nothing improper about a Complainant receiving assistance in drafting an affidavit which is signed by the Complainant. With regard to your second concern, OCRI agrees that interview materials should be kept until all affidavits have been signed and returned to the investigator. I am advised that, because that was not done in this matter, the OIG affiant was given an opportunity (and additional time) to make any corrections desired before signing the affidavit. With regard to your third concern, OCRI has provided assurances that it will review the entire record for fairness and legal sufficiency at the conclusion of the official inquiry. If OCRI determines that the official record is deficient, a supplemental investigation will be ordered, in keeping with standard operating procedures for processing Federal sector EEO complaints of discrimination under EEOC regulations and directives.

In our meeting on January 21, 2009, you expressed an additional concern that the process for obtaining affidavits from OIG agency witnesses may have differed from the process for

¹ You also sent a memorandum to me dated January 6, 2009, referring to legal authorities for Federal agency heads to supervise the Director of Equal Employment Opportunity.



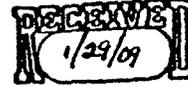
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obtaining an affidavit from the Complainant, and specifically that OIG agency witnesses may not have had an opportunity to provide information in their affidavit beyond the scope of questions posed by the OCRI contract investigator. In addition, you suggested that OCRI contract investigators would benefit from Standard Operating Procedures to ensure fairness and consistency.

As agreed in our meeting on January 21, I have followed up with OCRI on your additional concern. OCRI has provided assurances that it will review the entire record for fairness and legal sufficiency at the conclusion of the official inquiry and will take appropriate action if warranted to correct inconsistencies or omissions. OCRI notes that it holds contractors to the industry standards for processing and investigating EO complaints based on the regulations and guidance set out in 29 CFR 1614, MD-110, and applicable case law.

I have fully considered your concerns, followed up directly with OCRI, and I am satisfied that OCRI is properly carrying out the prompt, fair, and impartial processing of this matter. Mindful that the investigative process is not adversarial in nature, I now consider the matter of your above-referenced concerns to be closed.

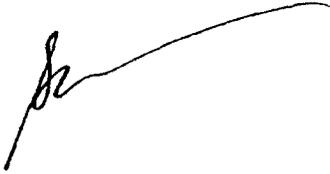


OFFICE OF INSPECTOR GENERAL

MEMORANDUM

TO: Nicola Goren
Acting Chief Executive Officer

CC: Frank Trinity
General Counsel

FROM: Gerald Walpin
Inspector General 

DATE: January 29, 2009

SUBJECT: EEOC Procedures

I write to reply to your Memorandum of January 26, 2009, in which you responded to concerns that I have expressed regarding the Corporation's processing of EEO complaints. I appreciate your following up with OCRI regarding the concerns that I expressed with respect to the handling of an ongoing investigation. Even so, I am afraid that treating my concerns as relating solely to the ongoing investigation gives them short shrift; the concerns that I expressed have systemic implications that I hope that you and the Corporation will address. While, of necessity, my comments about the EEO complaint procedure were based on my Office's experience in the outstanding complaint against my Office, some of my staff, and me – I had no prior experience and therefore no knowledge of the procedure – I made it clear that my comments were aimed at future EEO complaints, whether against the Corporation or my Office, and were not intended to affect the currently outstanding complaint against my Office.

Because some of the confusion may stem from the fact that I am generalizing from a single experience with a process that has had its problems and is not complete, I will attempt to clarify the systemic aspects of my concerns.

In my Memorandum of January 6, 2009, I pointed out that the agency head has ultimate responsibility for the agency's processing of EEO complaints. I do not question the Corporation's decision to retain investigators with appropriate qualifications to do the investigation and make recommendations to OCRI. It is, rather, the instructions (or lack thereof) to the investigators, the apparent absence of enunciated procedures ensuring due process and efficient investigative methods, and the role (or lack thereof) of management in the process that concern me.



Before addressing those concerns, I am certain that you would agree that the goal of the process should be to get to the bottom of the facts, not to vindicate management nor pave the way for an employee's lawsuit. As I wrote in my Memorandum of January 6, 2009, management has an undeniable interest in fair, impartial, and thorough investigations, no matter how they turn out. If corrective action is warranted, management has an undeniable interest in taking that action as soon as appropriately possible. Conversely, if management's decision was justified, that decision should be vigorously defended.

Indeed, given the training and experience of managers and the availability of advice from counsel and the Office of Human Capital, management might well presume that its decisions are defensible and not discriminatory. That does not mean that there may not be exceptions. Nor should the process be weighted against the complainant; neither should the process be weighted for the complainant. Rather, it means that the process should be fair and complete to allow for the defense of defensible decisions and for a complainant with a meritorious claim to be able to sustain it.

In that regard,

1. Defensible decisions can be defended by giving management the right to state its position just as the employee does. That can be done by having the investigator present a list of questions to both parties and ask for a response in writing to those questions. The investigator should also allow both sides to suggest questions each believes to be relevant to a determination for the investigator to ask if he/she believes them warranted. That could remedy the concern that I expressed that a key fact relating to the allegations against me was not elicited by the investigator or addressed in the investigator's questioning of the complainant.

Then, after review of both parties' submissions, the investigator might choose to interview key persons, ask additional questions, or ask for the production of documents.

You state that OCRI will review the entire record for fairness and completeness, and, if it concludes that the record is deficient, it will order a supplemental investigation. It is far more efficient to make a complete record from the start, and the process should be changed to accomplish that. That can be accomplished by setting forth required "fairness" procedures for an investigator to follow.

2. I expressed concern about the fact that, while the respondent received the assistance of counsel in drafting her affidavit, the investigator limited OIG to the draft that she prepared, which was flawed. I believe that the process should be balanced and that, if one side gets the assistance of counsel, so should the other. That can be accomplished if the process outlined in paragraph 1 above is followed. In any event, though, the procedures should be modified to require equal treatment by the investigator.

3. I expressed concern about the investigator's destruction of the tapes of interviews of OIG personnel, and, presumably, although we do not know for certain, of interviews of the complainant. The procedures should be modified to require that the investigator preserve all physical evidence, including any and all audio tapes.

The bottom line of OIG's interest in the Corporation's EEO procedures is (1) the clear reticence of the CEO to perform his/her supervisory role over the process, and (2) the absence of fair due process procedural instructions to investigators – not the outcome of any specific EEO complaint.

Trinity, Frank

From: Trinity, Frank
Sent: Thursday, October 02, 2008 12:57 PM
To: Trinity, Frank
Cc: Minor, Wilsie
Subject: Memo to File, Mtg with IG re personnel matter

Memorandum of meeting with Inspector General to discuss [REDACTED] matter
October 2, 2008

Jerry Walpin (via Jack Park) sent me a copy of his removal opinion dated September 25, 2008. I reviewed it and asked to meet with him to discuss my concerns. I met with Jerry Walpin and Jack Park today in Jerry's office.

I told him that if an action was filed, it would be against the agency, and the OGC presumptively would handle the matter. This raised issues around OIG independence. Jerry indicated he had spoken with another larger agency OIG and believed they would offer their legal services.

I told him that I had reviewed only his opinion and not the underlying exhibits or the record as a whole.

I told him that, in my view, he had a winnable position on removal, based on the use of government resources for for-profit endeavor in an OIG setting.

I told him that the opinion's repeated references to [REDACTED] protected EO activity, the IG's statements on the merits and motivations of that protected EO activity, and the negative inferences he draw against [REDACTED] in connection with her protected EO activity, are likely to be deemed direct, per se evidence of reprisal discrimination. I told him that his self-disclosed obtaining of the EO counselor report would likely be viewed as interfering with the EO process.

I told him I saw three likely outcomes:

1. MSPB finds discrimination and orders [REDACTED] reinstatement.
2. Outside agency makes (or informs management that it will make) a finding of discrimination.
3. EEOC agency makes a finding of discrimination and order [REDACTED] reinstatement.

In all cases, it is likely that substantial attorney's fees will be paid to [REDACTED] counsel, as well as compensatory damages.

I told him that it was my advice that he retract the decision and restore the status quo ante.

I told him that he would be leaving this matter for his successors and that he would have no ability to control the outcome. I told him that his removal opinion would likely be relied upon by itself in a summary judgment decision, so he would have no opportunity to add any future explanation or argument.

He said he disagreed with me. He said that if the law says he engaged in reprisal "then the law is an

ass." He said that he had the right to challenge [REDACTED] invocation of discrimination in his role as deciding official and that he could not accept that she had laid a trap for him.

We agreed that HC would not effectuate the 52 that had been prepared until further instruction.

My understanding is that he will consult with the other OIG office to get their counsel on this matter.

Minor, Wilsie

Not sent --

From: Trinity, Frank
Sent: Saturday, January 31, 2009 6:45 PM
To: Minor, Wilsie; Hilton, Doug

Discussed w/
Jack Park

Subject: DISCUSSION DRAFT memo on OCRI matter -- no response needed, let's talk Monday

DISCUSSION DRAFT

I write to ask the Council's assistance in addressing our Inspector General's repeated actions that could be having the effect of interfering with our agency's equal opportunity (EO) investigative process while compromising the perceived integrity of our agency's Office of Inspector General.

Background

Our agency EO office is currently handling an EO complaint filed by a former OIG employee. The matter is currently in the investigation phase. The IG is one of several fact witnesses.

Since December, the IG has repeatedly complained to our agency head and our Board's Management Committee that the EO investigative process is not providing fair procedures or due process. While the only facts asserted by the IG relate to the pending EO complaint, the IG advises that his concerns relate to our EO office's standard operating procedures.

Our agency head promptly followed up on the facts presented by the IG. The EO office had already addressed one error that had been made in the matter under investigation and gave assurances that it would, at the conclusion of the investigation, review the record for fairness and legal sufficiency in accordance with its standard EO office procedures. Our agency head so advised the IG.

The IG responded with a memorandum reiterating his concerns about the EO office standard procedures and criticizing the agency head's "reticence." The IG also informed our Board Management Committee that if the agency head did not adequately address his concerns he would "report" on it.

My request

I am not in a position to judge the IG's representations that his he is not trying to influence the EO matter involving his office. However, regardless of the IG's intent, his repeated complaints during a pending EO investigation involving OIG are having the effect of chilling our EO office's independence.

I have attempted to convey to the IG the sensitivities associated with a pending EO investigation. The IG seems not to perceive the potential impropriety in his repeated complaints about the EO office while that EO office is conducting an investigation involving the OIG.

If an agency manager other than an OIG employee conducted himself in this manner, in my capacity as General Counsel I would intervene to stop it. Because this involves an Inspector General, out of respect for the independence of that office and out of a desire to avoid an outcome that will reflect poorly on this agency, this IG, and the IG community generally, I am asking you to review this situation and provide whatever counsel you can offer the IG, or take whatever action you deem appropriate.

Tab 3

Corporation for
**NATIONAL &
COMMUNITY
SERVICE** 

OFFICE OF INSPECTOR GENERAL

May 20, 2009

TO: Nicola Goren
Acting Chief Executive Officer

Stuart Axenfeld for

FROM: Gerald Walpin
Inspector General

SUBJECT: Management Alert — Additional Funding for Grants Awarded to The Research Foundation for The City University of New York (RFCUNY)

Pending resolution of the subject finding and recommendation transmitted to you on April 2, 2009, we recommend that the Corporation suspend any additional funding to RFCUNY, including RFCUNY's January 2009 application (09ED096130) or any other direct or indirect applications.

We strongly believe that significant issues, raised both in the draft AUP report and in OIG's separate draft letter report, should be resolved before additional grants are made to RFCUNY. As you know, those issues involve the basic eligibility of the RFCUNY program for grants, as discussed in the OIG letter report, and various issues identified in the AUP, including the misstatements in RFCUNY's grant applications and the significant noncompliances prior to making any awards.

Providing further funding, in the face of these issues, would be, in our view, inappropriate.

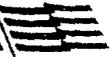
If you have questions pertaining to this report, please call Stuart Axenfeld, Assistant Inspector General for Audit, at (202) 606-9360 or me at (202) 606-9366.

cc: Frank Trinity, General Counsel
Kristin McSwain, Chief of Program Operations
Margaret Rosenberry, Director, Office of Grants Management



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May 4, 2009

MEMORANDUM FOR NICOLA GOREN, ACTING CHIEF EXECUTIVE OFFICER

FROM: Frank R. Trinity 
General Counsel

SUBJECT: Inspector General's Letter to the Corporation and RFCUNY, dated April 2, 2009

A. Background

This memorandum concerns the Corporation's AmeriCorps Education Award Program grants to the Research Foundation for the City University of New York (RFCUNY) to operate the New York City Teaching Fellows and Teaching Opportunity programs (hereinafter "RFCUNY teacher corps program"). In a letter dated April 2, 2009, the Inspector General concludes that "the AmeriCorps grant was merely 'icing on the cake' for a program that already existed and that RFCUNY was not conducting an AmeriCorps program." The Inspector General's letter¹ recommends that the Corporation –

- terminate our current grant relationship with RFCUNY;
- recover from RFCUNY all grant funds spanning a five-year period, or \$4.2 million;
- recover from RFCUNY all payments made from the National Service Trust to cover program participants' student loan interest, or \$917,000; and
- recover from RFCUNY all payments made from the National Service Trust to provide education awards to program participants, or \$40 million.

The total amount recommended for recovery from RFCUNY in the Inspector General's April 2 letter is approximately \$45.1 million.

The Inspector General states that his recommendations are made "in conjunction with and as a supplement to" a draft Agreed-Upon Procedures Report also provided to the Corporation on April 2, 2009. The Agreed-Upon Procedures Report identifies issues of costs and compliance, including documentation of member eligibility and member service hours -- appropriate for resolution by the Corporation's normal audit resolution procedures.

B. Summary

This memorandum provides my legal opinion that the RFCUNY teacher corps program qualifies for AmeriCorps grant funding as a professional corps program model as recognized by Congress in law, and identifies what I believe to be certain methodological and analytical flaws

¹ The first sentence of the Inspector General's letter describes his letter as conveying "the Office of Inspector General's ("OIG") draft of its finding and recommendation" regarding the Corporation's two grants to RFCUNY (emphasis added).



in the Inspector General's April 2, 2009 letter. Those flaws, in my view, counsel against accepting the Inspector General's recommendations.

In developing my opinion, I reviewed applicable provisions of the national service legislation and other laws, publicly-available reports issued by other Federal agencies concerning the national teacher shortage, RFCUNY's applications and progress reports, information from our National Service Trust, results from a 2006 random survey of AmeriCorps members, correspondence provided by RFCUNY to the Office of Inspector General prior to the issuance of the draft AUP report and the IG letter of April 2, and the April 2 OIG documents. I requested but was not provided the work papers supporting the draft AUP report and, by extension, the IG letter of April 2.

C. The professional corps program model is categorically eligible for AmeriCorps funding.

To be eligible for AmeriCorps funding, an applicant organization must assure the Corporation that the program will (1) address, among other things, unmet educational needs through services that provide a direct benefit to the community in which the service is performed and (2) comply with applicable nonduplication requirements. 42 U.S.C. 12583(a). For teacher corps programs, the unmet educational need is primarily the national gap in education achievement and the shortage of high-quality teachers for low-income public school students. Congress has sought to address the well-documented and long-standing educational gap and high-quality teacher shortage in many ways, including through explicitly including the professional corps as an eligible program model within AmeriCorps.

Section 122(a)(8) of the National and Community Service Act of 1990 specifically endorses funding for a professional corps program that recruits and places qualified participants in positions as teachers in communities with an inadequate number of such professionals. Further, this section expressly permits such individuals to receive a salary in excess of the otherwise-applicable limit on living allowances, under the sponsorship of public or private nonprofit employers who agree to pay 100 percent of the salaries and benefits (other than an education award) of the participants. 42 U.S.C. 12572(a)(8).

The Edward M. Kennedy Serve America Act, enacted as Public Law 111-13 on April 21, 2009, reaffirmed the inclusion of professional corps programs, including teacher corps programs, within AmeriCorps.

D. RFCUNY's grant is designed to expand and strengthen a professional corps program that addresses an unmet need for high-quality teachers in New York City's public schools.

In an effort to address a well-documented shortage of qualified, certified teachers in New York City public schools,² the RFCUNY teacher corps program facilitates an alternative

² RFCUNY's applications for funding each year have identified the teacher shortage areas in NYC in which members are placed, including mathematics, science, Spanish, bilingual education, ESL, and special education.

certification program through which participants teach full-time while remaining enrolled in a teacher education program leading to a Master's degree in the content area of the certification. The program provides for all salaries and benefits of participants and, upon the successful completion of a term of service, participants are eligible to earn an education award.

RFCUNY's applications for AmeriCorps support articulate how the program recruits, trains, and supports highly-qualified new teachers for high-need schools in New York City. The applications describe a rigorous selection process designed to identify individuals with the potential to complete the program and succeed as teachers in a challenging environment. The applications describe how the State of New York and New York City support most of the program's costs. The applications describe the provision of AmeriCorps education awards as critical to attracting and retaining members.

RFCUNY's applications for AmeriCorps funding reflect the judgments of the City University of New York, the New York City Department of Education, and the New York State Education Department -- like that of Congress -- that there is a need for financial incentives above and beyond regular teacher salary and benefits to attract and retain highly-qualified teachers for New York City public schools. In my opinion, the program has been properly classified by the Corporation as a professional corps program model and is legally permitted to operate its AmeriCorps program. The program clearly meets the statutory definition of professional corps, recruiting and placing individuals in positions as teachers in a city that has an unmet need for certified teachers.

Progress reports indicate that the program is achieving one of its primary goals of members continuing to teach in New York City public schools after completing the program, with more than three-quarters of members deciding to continue into their third year. The program also reports progress in increasing the diversity of New York City's classroom teachers, with nearly half of members who are people of color.

Information available from the National Service Trust shows that more than 90% of participants in the RFCUNY teacher corps program successfully completed their terms of service and earned education awards and nearly 87% of those education awards have already been used to defray the member's educational expenses. These figures are significantly higher than those for AmeriCorps programs generally.

My review of the record indicates that there was a strong basis for the Corporation having approved RFCUNY's applications for AmeriCorps support to expand and strengthen a professional corps program designed to address the unmet need³ for highly-qualified teachers in

These shortage areas correlate with those identified by the Department of Education's publication on Teacher Shortage Areas 1999-2000 – 2009-2010, available at <http://www.ed.gov/about/offices/list/ope/pol/tsa.doc>.

³ In examining the requirement that an AmeriCorps program address an "unmet need" the Inspector General focuses on whether the RFCUNY program would exist in the absence of AmeriCorps support. I do not believe that is the appropriate inquiry. Congress has identified the unmet need to be met by professional corps programs – the shortage of teaching and other professionals in a community. 42 U.S.C. 12583(a)(8). In this matter, there is ample evidence that New York City has an unmet need for high-quality teachers in its public schools.

New York City's public schools. Given the express authority for teacher corps programs in the national service legislation, and the articulated nexus between AmeriCorps support and increasing the number of highly-qualified teachers in New York City public schools, the Corporation was well within its authority to approve RFCUNY's applications for grant funds and to make education award and student loan interest payments from the National Service Trust to defray the educational expenses of the teachers who successfully completed the program.⁴

E. The premises for the Inspector General's recommendation are flawed.

Having concluded that the Corporation's support for the RFCUNY teacher corps program is authorized under applicable law, I now turn to the specific bases for the Inspector General's recommended sanction of recovering \$45 million from RFCUNY.

The Inspector General does not dispute that New York City has a need for certified teachers in its public schools or that the RFCUNY teacher corps program addresses that need. The Inspector General states, however, that AmeriCorps grant funds and National Service Trust payments "merely support an existing activity that is already adequately funded in amounts sufficient to attract recruits to become qualified teachers" (emphasis added).

In support of his opinion that AmeriCorps funding is "not necessary", the Inspector General relies on several premises:

1. *Demand for the RFCUNY's program is high, with space available for only 10% of applicants (page 7).*
2. *Five of the six members contacted during the AUP engagement stated that they were not aware of the AmeriCorps education award when they initially applied for the Fellows program (pages 6-7).*
3. *The relatively small amount of the education award is not enough to make a difference in recruiting Fellows (page 7).*
4. *A generalized objection, expressed in various ways:*
 - *The program "does no more than" provide education awards to members who had, prior to becoming an AmeriCorps member, volunteered for this "identical" service (page 1).*
 - *There is no "convincing evidence" that the RFCUNY program's significant benefits to the community are "in any way attributable to AmeriCorps activities" (page 6).*
 - *Because the program already existed, AmeriCorps support is "merely icing on the cake" (page 8).*

⁴ RFCUNY's implementation of the grants is appropriately examined in the upcoming audit resolution process.

None of these premises is a sufficient basis for the Corporation to assert a claim against RFCUNY for \$45 million in previously-awarded grant funds and previous payments from the National Service Trust to program participants.

IG Premise Number 1:

Demand for the RFCUNY's programs is high, with space available for only 10% of applicants.

The Inspector General's view that a program's success in increasing the number of applicants jeopardizes its eligibility for funding has no basis in the national service legislation and runs counter to the ability of teacher corps programs to close the educational gap by recruiting and retaining the best-qualified teachers. A highly-competitive process allows RFCUNY to select the individuals deemed most likely to overcome the many challenges associated with teaching careers in under-resourced schools.

The Inspector General overlooks the fact that a higher number of applicants can strengthen the diversity and professional attributes from which to choose Fellows, ultimately resulting in a higher retention rate, better quality teaching, and better educational outcomes. Increased applicant pools is a positive program attribute, a point repeatedly made in bi-partisan House and Senate colloquies made as recently as March 2009, as well as by Senator Kennedy himself who lauded the Teach for America professional corps program for having received 35,000 applications for just 4,000 positions.⁵

Moreover, the Inspector General renders his opinion about a highly-selective program not needing AmeriCorps support without reference to any objective standard or criterion, and the record does not include any basis for determining that a given number of applicants should trigger a disqualification for funding. The arbitrariness of the Inspector General's recommendation to recoup \$45 million from RFCUNY is further reinforced by the fact that RFCUNY's applications for funding clearly informed the Corporation that the program would rigorously screen applicants and admit only a small percentage.

By expressly authorizing participants to receive an education award in addition to the salaries and benefits otherwise provided to teachers, Congress recognized that additional financial incentives may be necessary to recruit and place qualified participants, and included no basis for requiring disgorgement of grant funds and imposing liability for education award payments because a program is successful in increasing the number of applicants.

IG Premise Number 2: *Five of the six members interviewed were not initially aware of the education award.*

The Inspector General also relies on the fact that five of the six members contacted during the AUP engagement "stated that they were not aware of the AmeriCorps education Award [sic] when they signed up for the Fellows Program." During the five year grant period

⁵ 155 Cong. Rec. H3543, H3549 (March 18, 2009); 155 Cong. Rec. S3822, S3837 and S3842 (March 26, 2009).

under the Inspector General's scrutiny, more than 14,000 individuals enrolled in the program. A sample size of six, on its face, cannot support the inferences drawn by the Inspector General.⁶

Moreover, a brief set of inquiries into other information regarding the RFCUNY programs show that, notwithstanding the interview responses of five of six members interviewed during the AUP engagement, there are documented reasons to believe that the availability of AmeriCorps benefits is, in fact, a substantial factor in recruitment for RFCUNY's teacher corps program. In a survey conducted for the Corporation by the Urban Institute, 81% of the participants interviewed at the RFCUNY program stated that the education award was a factor in their decision to join the AmeriCorps program. This level is significantly higher than the 71 percent of AmeriCorps members across all types of programs who reported that the education award was a factor in deciding to join AmeriCorps.

Finally, the Inspector General's sole focus on initial recruitment is unnecessarily restrictive. The goal of the RFCUNY program -- mirroring the statutory authority for all professional corps programs -- is to recruit and place highly-qualified teachers in New York City public schools. The five members' initial recruitment provides no evidence to question that AmeriCorps benefits support the placement of high-quality teachers by easing their student loan debt and defraying a portion of their educational expenses. A New York State Department of Education report dated May 2, 2008, confirms the need to "offer financial incentives to attract and retain public school teachers because we are competing with other states for the available supply of teachers and with other industries that are attractive to young professionals" (emphasis added).⁷

IG Premise Number 3: *The relatively small amount of the education award is not enough to make a difference in recruiting Fellows.*

The Inspector General views the amount of an AmeriCorps education award to be too small (in comparison to the salaries and benefits available to professional corps participants) to provide an economic incentive for prospective participants to enroll in the program. However, the National and Community Service Act permits participants in a professional corps program to receive a salary in excess of the maximum authorized for other AmeriCorps members -- an amount often comparable to that received by other similarly situated professionals in that community. Thus, the program model expressly provided by Congress acknowledges that the available salary and benefits of these positions are insufficient to attract or retain an adequate number of such professionals, and that the education award would be used as an additional tool to address the shortage.

⁶ The Inspector General's decision not to share the workpapers relating to the sample size of six limits our ability to respond. Without the workpapers, the record available to the Corporation does not show whether the six members were representative of the entire five-year period under the Inspector General's scrutiny, or the questions asked. Without the workpapers, the record does not indicate how the auditors chose a sample size of 20 or the parameters for that decision. There is a serious question in my mind whether the use of that sample for the purposes of the Inspector General's April 2 finding and recommendations is outside the scope of the auditors' determination.

⁷ New York State Department of Education, Progress Report on Teacher Supply and Demand, May 2, 2008, page 6.

Congress has fixed in law the specific amount of the education award and has expressly authorized the education award to be provided to professional corps members in addition to salaries and benefits otherwise provided as part of their position. The Inspector General provides no authority in his letter for substituting his opinion for the judgment of Congress.

IG Premise Number 4:

A generalized objection, expressed in various ways:

- *The program “does no more than” provide education awards to members who had, prior to becoming an AmeriCorps member, volunteered for this “identical” service (page 1).*
- *There is no “convincing evidence” that the RFCUNY program’s significant benefits to the community are “in any way attributable to AmeriCorps activities” (page 6).*
- *Because the program already existed, AmeriCorps support is “merely ‘icing on the cake’” (page 8).*

The Inspector General focuses solely on the relationship between the education award and the initial recruitment of participants and, perceiving an insufficient nexus, he questions the legality of providing AmeriCorps support to the program. As pointed out above, the purpose of the AmeriCorps program is not simply to recruit individuals into teacher corps positions – it is also to support those individuals in completing the program and graduating into permanent teacher positions in New York City public schools serving low-income children.

RFCUNY’s relatively high completion and education award usage rates suggest that the availability of the education award in this case does, in fact, play a critical role in ensuring participants complete the program and become qualified, certified teachers. The Inspector General’s letter does not address that, by design, tuition for the required Master’s degree courses does not become due until the end of the year, enabling participants who successfully complete a year of service to use their education award towards their tuition expenses. The Inspector General’s letter also does not take into account that RFCUNY participants qualify for forbearance in the payment of the student loans while they serve and payment of the accrued interest upon their successful completion of the program. It is reasonable to infer that this additional benefit advances Congress’s goal of promoting the retention of high-quality teachers in communities with a shortage of such teachers. Thus, the AmeriCorps education award does more than provide support to individuals who have entered the program; the education award is a means to increase the number of such individuals who complete the program and become highly-qualified teachers after leaving the program.

The Inspector General sees no “specific identifiable service or improvement that otherwise would not be done with existing funds” because he does not see the RFCUNY teacher corps program, in its entirety, as “an AmeriCorps activity”. But the specific statutory design of professional corps programs allows the entirety of the program to be considered “an AmeriCorps activity.” It is Congress’ intent that AmeriCorps support be provided to salaried professionals if the funded program recruits and places the professionals in communities with a shortage of such professionals. Congress has determined – and recently reaffirmed -- that “AmeriCorps activities” may include a professional corps like RFCUNY’s teacher corps program. Consistent

with Congress' determination, the undisputed success of the RFCUNY program in increasing the number of highly-qualified teachers in New York City schools is properly attributable, in part, to the AmeriCorps support.

The Inspector General's concern on this point re-surfaces OIG's previous argument that teaching professionals should earn service hour credit towards an AmeriCorps education award only for uncompensated service, that is, outside of regular teaching duties in the case of a teaching professional. Under the professional corps authority in the national service legislation, as I have previously opined, the teaching undertaken by professional corps members is an AmeriCorps activity. Therefore, the RFCUNY teacher corps programs' benefits to the students and community -- acknowledged by the Inspector General -- are properly attributable to AmeriCorps activities.

Finally, the Inspector General notes that the program "already existed" and expresses the view that AmeriCorps funding violates the statutory prohibition on duplication. However, one of the purposes of the NCSA is to "expand and strengthen existing service programs with demonstrated experience in providing structured service opportunities with visible benefits to the participants and the community." 42 U.S.C. 12501(b)(6)) (emphasis added). CUNY provided the Inspector General a written summary dated February 10, 2009 which showed that the program has, with support from AmeriCorps, expanded from a pilot of 300 participants to a program that is a major pipeline for thousands of certified teachers to enter the New York City public school system. However, the Inspector General's letter of April 2, 2009 does not acknowledge the specific evidence that RFCUNY's AmeriCorps grant has been instrumental in expanding and strengthening this program.

Congress, the New York State Department of Education, the New York City Department of Education, and the City University of New York, have all determined that additional financial incentives -- including the AmeriCorps education award and payment of student loan interest -- are an important tool in addressing the long-documented shortage of high-quality teachers for low-income children.

F. Conclusion

The findings in the outside auditors' draft report are appropriate for resolution by Corporation management through the standard audit resolution process which will begin at the issuance of the final audit report.

However, the Inspector General's separate letter dated April 2, 2009, fails to make the case for his recommendation that the Corporation recoup \$45 million from RFCUNY. The letter expresses a misunderstanding of the applicable legal framework and rests on flawed methodology. For these reasons, I advise the Corporation not to take any action on the basis of the Inspector General's April 2 letter and instead focus its efforts on the specific findings in the draft audit report.

The Chancellor

OVERNIGHT MAIL

April 30, 2009

Mr. Gerald Walpin
Inspector General
Corporation for National & Community Service
1201 New York Avenue
Suite 830
Washington, DC 20525

Dear Mr. Walpin:

I am the Chancellor of the City University of New York ("CUNY" or the "University") and Chairperson of the Board of Directors of the Research Foundation of The City University of New York ("RFCUNY"). I have received a copy of two documents sent by you on April 2, 2009: (1) the draft report on the Agreed-Upon Procedures for the Corporation for National and Community Service (the "Corporation") Education Award Program Grants Awarded to RFCUNY (the "Draft Report") and (2) the Inspector General's Letter to RFCUNY and the Corporation (the "IG's Letter"). The Program Director for the grants in question will respond separately to the Draft Report. I am writing personally to respond to the IG's Letter because of the extraordinary and unprecedented nature of its contents. My response is based on a factual investigation and legal research undertaken at my direction by staff at both RFCUNY and the University.

The IG's Letter concludes that the Education Award Program ("EAP") Grants made by AmeriCorps to RFCUNY are inconsistent with the statutory provisions governing the Corporation's mission and the purpose of its funding. It further recommends that the Corporation should terminate those grants and recover all education awards and accrued interest awards paid and all grant costs in an amount in excess of \$45 million, and possibly in excess of \$75 million. For the reasons set forth below, that conclusion is not supported by the language or history of the statute or the facts relating to RFCUNY's execution of the program. Nor is there any legal basis for the recovery of such sums.

At the outset, I wish to express my surprise at the IG's Letter. These EAP Grants were first awarded to RFCUNY in 2001 and have been renewed twice. RFCUNY, in partnership with the New York City Department of Education ("NYC DOE"), has executed the Teaching Fellows Program and the University's much smaller Teaching Opportunity Program as described in the grant applications. At no point during the past eight years has any representative of the Corporation ever raised a question about whether these programs were consistent with its statutory purposes. Indeed, if the Corporation had had any doubts on this score, it would not have funded them in the first place or would have terminated them. Instead, the Corporation renewed the grants in 2004 and again in 2007. Moreover, it is my understanding, that the Corporation and Congress regard these professional corps programs as very successful and a high priority for further funding. To be sure, there are some administrative and recordkeeping issues raised by the Draft

Report that need to be addressed and that RFCUNY will address. However, none of these affect the core purpose of the programs. In short, the IG's letter is a challenge to the legality of the Corporation's decision to fund and to continue funding these programs (and other similar programs such as Teach for America), not to anything that RFCUNY has done or not done. As such, it seems inappropriate to place on RFCUNY the burden of justifying the legality of the Corporation's actions and to recommend the recovery of funds spent in accordance with the Corporation's awards to RFCUNY. Nevertheless, I do not want the IG's letter to stand un rebutted until such time as the Corporation takes up this matter. Accordingly, I will answer each of the points raised in the IG's letter.

I also want to state RFCUNY's objection to the procedures followed by the IG. The IG's Letter followed an agreed-upon-procedures ("AUP") engagement regarding these grants. At the outset of that engagement, the parties agreed to and set forth in writing the issues to be considered. The issue of whether the purposes and execution of the grants were consistent with the statute governing the Corporation was not included. As the IG's Letter acknowledges, that issue was not raised until the exit conference on January 28, 2009, several months after the engagement began. It seems rather late in the engagement for such a critical issue to be raised, without prior notice, especially when the issue relates not to the AUP engagement itself, but to an interpretation of law.

In any event, I shall proceed to the respond to conclusions and recommendations contained in the IG's Letter.

FACTUAL BACKGROUND

The New York City Teaching Fellows Program was established as a pilot program in 2000 as a result of collaboration between CUNY, NYC DOE and the New York State Education Department (NYSED). This pilot placed a small cohort of New York City Teaching Fellows into an intensive, summer semester of education course work. Those individuals who successfully completed this intensive experience were granted alternative certification by the NYSED and allowed to teach full-time in underserved schools as long as they remained enrolled in a CUNY teacher education program leading to a Master's degree in the content area of the certification.

The pilot program's first cohort was recruited with the promise of a fully subsidized Master's degree and a full-time teaching job. The pilot proved to be successful in opening a new pipeline of certified teachers for the teaching profession in New York City. However, the need for certified teachers in the New York City public school system was far greater than the 300 teachers produced by this initial pilot. The lack of qualified and certified teacher in NYC public schools was at such a crisis point that the Teaching Fellows Program was called upon to scale-up immediately to meet this need and tripled in size the following year. The development of the partnership between AmeriCorps and the New York City Teaching Fellows Program addressed this staffing crisis and was critical in supporting this scale-up.

Evidence of the unmet need for certified teachers is provided by information collected by the NYC DOE Office of Teacher Recruitment and Quality. The New York City public schools have long suffered from an undersupply of fully credentialed teachers and many educational experts have identified this as one of the most critical needs of the school system. The supply problem has been particularly acute in schools serving high-poverty neighborhoods, including those in the Bronx, Upper Manhattan, and Brooklyn. In 2000, 60% of the 9,000 teachers hired in the New York City school district held only emergency credentials.

Seventeen percent of all teachers lacked full credentials and were concentrated in critical fields, including science (35%), mathematics (23%), special education (22%), and bilingual education (30%). The chronic, and severe, shortage of credentialed teachers hindered school improvement plans and efforts to create educational equity across the district.

Before the inception of the New York City Teaching Fellows Program, existing teacher education programs had failed to meet this need for qualified teachers. The Teaching Fellows Program is targeted at hard-to-staff subject areas and schools and at promoting teacher quality by expanding the pool of fully credentialed teachers. Ninety percent of all New York City Teaching Fellows teach in subject areas that have shortages and work in hard-to-staff schools.

AmeriCorps has provided indispensable help in turning the Teaching Fellows Program into a significant and reliable source of fully qualified and capable teachers for New York City's highest need schools. It was recognized from the beginning that it was not enough to offer a more intensive, alternate, route to qualifying as a teacher; financial incentives would be important for defraying the associated educational costs in order to attract the most talented candidates to teaching.

The AmeriCorps and New York City Teaching Fellows partnership has been a striking success. Since 2005 ninety-two percent of the Teaching Fellows have also enrolled as AmeriCorps members. Today, one out of nine certified teachers in the New York City public school system came through the Teaching Fellows Program.

The financial incentives offered through AmeriCorps are critical for attracting the best candidates and in maintaining tough admissions standards. Indeed, the NYSED has consistently identified financial incentives as one of four key strategies for addressing the teacher shortage and ensuring that school systems can compete for talented individuals, both with other professions and with other states (www.nysed.gov, 2008). The New York City Teaching Fellows Program recruits college graduates who have not had any prior experience as professional teachers. Seventy percent of the Teaching Fellows are career changers who likely incur a salary decrease when switching to a career in teaching. Forty four percent of the Teaching Fellows are between the ages 21-24, and an additional twenty-nine percent are between the ages of 25-29; both groups are likely to enter the program with outstanding student loans.

The New York City Teaching Fellows are recruited and retained with a media campaign designed to call on their sense of civic and national service in addressing this vital need. Our advertisements permeate the New York City subways and are designed to reach career changers with slogans such as, "your most important clients will carry backpacks, not briefcases" and "no one ever goes back 10 years later to thank a middle manager." These advertisements are in line with the spirit of an AmeriCorps program that asks citizens to serve their country, often at the sacrifice of greater financial rewards in other professional fields. AmeriCorps and the educational awards are also featured during recruitment calls to prospective Teaching Fellows. Most importantly, the educational awards allow us to attract and retain the most qualified and diverse applicant pool.

While it is true that the New York City Teaching Fellows received nearly 19,200 applications last year from across the nation, only fifteen percent of those applicants made it through our rigorous vetting process, which includes a lengthy application, transcripts of all college work, and two essays. All materials are screened by a team comprised of experts in the field. This is only the first step in narrowing the applicant pool to a smaller group whose members are selected for in-person interviews and demonstration lessons.

As a result of this interview and demonstration lesson, the applicant group is narrowed even further. This rigorous application and selection process is essential as research shows that teacher quality is the biggest single determinant of student achievement, especially for children from poverty who rely on the public schools to give them the opportunity to gain the skills and knowledge necessary to be successful and productive adults.

Once admitted, the New York City Teaching Fellows enter into an intensive summer "pre-service" program that includes, among others, the requirements that (i) they pass the challenging New York State-mandated Liberal Arts and Science Test (LAST) and the Content Specialty Test (CST); (ii) achieve a 3.0 GPA in their summer college coursework; and (iii) interview and accept a teaching position in a high-needs, New York City public school.

RFCUNY calls this first summer semester "pre-service" in its materials because it is prior to the hiring of the Teaching Fellows as public school teachers and their enrollment as AmeriCorps members.

Upon acceptance into the pre-service semester, information about AmeriCorps is provided to all New York City Teaching Fellow. They receive a personalized web site, MyNYCTF, with an AmeriCorps page through which they can access all pertinent AmeriCorps information. Once the Teaching Fellows have passed their pre-service, summer semester, they receive an AmeriCorps orientation as part of the mid-August ceremonies that celebrate their impressive achievement and success. The call to service is a constant theme throughout these ceremonies and AmeriCorps orientations.

As part of its recruitment efforts, RFCUNY "markets" the AmeriCorps Education Awards as a way for the Teaching Fellows to afford this call to service in New York City. The starting salary of \$45,530 is better than it used to be, but in New York City it does not go far. The Teaching Fellows rely on AmeriCorps education awards to help repay student loans and cover new educational expenses, thereby enabling them to save their salaries for meeting the very high cost of living in New York City.

Without AmeriCorps, it is doubtful that the Teaching Fellows Program would be able to recruit as many highly qualified candidates to come and teach in New York City. The lack of financial incentives would also hamper its ability to recruit from the most diverse pool of candidates. Diversity is one of our major goals. RFCUNY listed increased diversity as a targeted goal in our 2007 AmeriCorps reapplication, and it met and surpassed the targeted percentage goal in 2007 and in 2008.

Hence the partnership with AmeriCorps is vital to the Teaching Fellows Program by enabling it to offer education awards to those candidates who successfully make it through the rigorous application and vetting process, complete the intensive, pre-service summer program, and pass the NYSED required teacher certification exams. These talented individuals have formed the heart of this new program serving hundreds of thousands of students in high need schools and neighborhoods of New York City.

APPLICABLE LAW

The National and Community Service Act of 1990, as amended by the National and Community Service Trust Act of 1993 (hereinafter referred to collectively as the "Act")¹ governs the Teaching Fellows Program.

¹ 42 U.S.C. §§12501 et seq.