



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

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REGION VI  
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November 26, 2014

Dr. Soner Tarim  
Superintendent/Chief Executive Officer  
Harmony Public Schools Central Office  
9321 West Sam Houston Pkwy. South  
Houston, TX 77099

Re: OCR Docket No. 06-11-5004

Dear Dr. Tarim:

This letter is to advise you of the resolution of the above-referenced compliance review by the U.S. Department of Education's Office for Civil Rights (OCR) of the Harmony Public Schools (HPS), a public charter school system in Texas. The review was initiated under Title VI of the Civil Rights Act of 1964 (Title VI), 42 U.S.C. § 2000d *et seq.*, Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. § 794, and Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. § 12132. Title VI and its implementing regulation, 34 C.F.R. Part 100, prohibit discrimination on the basis of race, color or national origin; Section 504 and its implementing regulation, 34 C.F.R. Part 104, prohibit discrimination on the basis of disability in education programs operated by recipients of Federal financial assistance; and Title II and its implementing regulation, 28 C.F.R. Part 35, prohibit discrimination on the basis of disability by public entities. HPS receives Federal funds from the Department, and its schools are public educational entities. Therefore, OCR has jurisdictional authority to investigate HPS and initiate this compliance review under Title VI, Section 504, Title II and their implementing regulations.

This review generally examined whether HPS discriminates on the basis of national origin or disability by failing to provide national origin minority English Language Learner (ELL) students and students with disabilities equal access to and equal opportunity to participate in its charter schools. OCR's review specifically focused on HPS' compliance, under Title VI, Section 504, and Title II, with respect to equal opportunity in admissions, the provision of alternate language services to ELL students, communications with national origin minority limited English proficient (LEP) parents and guardians, the provision of a free appropriate public education (FAPE) to students with disabilities, HPS' notice of nondiscrimination on the basis of disability, HPS' designation of Section 504/Title II coordinators, and HPS' grievance procedures for complaints of disability discrimination.

Prior to the conclusion of OCR's investigation, HPS expressed an interest in voluntarily resolving the review. HPS voluntarily submitted the enclosed Resolution Agreement (Agreement) to resolve the compliance issues examined in this review on October 30, 2014.

*The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.*

OCR has determined that the provisions of the Agreement are aligned with OCR's compliance concerns regarding the specific civil rights issues examined in the review and will appropriately resolve them. OCR will monitor HPS' completion of the steps outlined in the Agreement to ensure that they have fully implemented the provisions of the Agreement and are in compliance with the above-referenced regulations.

This letter summarizes the applicable legal standards, the information gathered during the review, and how the review was resolved.

### **Background**

The Cosmos Foundation Inc. (CF), a non-profit charter management organization, established in Houston, Texas, operates HPS. HPS is headquartered in Houston, Texas, and as of October 2014, information from the HPS website indicated that the HPS system enrolled 28,500 students. Based on data from HPS, in the 2011-2012 school year, HPS served 20,239 students, which included 2,372 ELL students (11.72% of total),<sup>1</sup> 656 students with disabilities (3.24% of total), identified under the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §§ 1400 *et seq.*, and its implementing regulations at 34 C.F.R. Part 300 (2014), and 198 students with disabilities identified under Section 504 (0.98% of total).

The HPS system contains 15 individual districts opened under separate charter documents. Each individual district is considered a separate local education agency (LEA) by the Texas Education Agency (TEA). There are 43 individual charter schools within the 15 HPS districts. According to HPS' website, HPS charter schools are "high performing K-12 college preparatory charter schools focusing on math, science, engineering, and computer technologies." The website cites HPS' high graduation and college acceptance rates (both at 100%) and low student-to-teacher ratio (14-to-1). HPS describes its mission as preparing "each student for higher education by providing a safe, caring, and collaborative atmosphere featuring a quality, student-centered educational program with a strong emphasis on Science, Technology, Engineering, and Mathematics."

In the course of this investigation, OCR reviewed HPS' policies and procedures for student recruitment and admission, the provision of alternative language program services to ELL students, and the provision of a FAPE to students with disabilities. The policies and procedures generally applied to all of HPS' 15 LEAs, including all 43 HPS charter schools. OCR also analyzed comprehensive data regarding the implementation of the policies and procedures in four of HPS "districts" with the largest student enrollments. These districts included the following 18 schools as of the 2010-2011 school year:

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<sup>1</sup> For the Harmony Districts that were the focus of OCR's review, the three most common home languages of ELL students were Spanish (52%), Turkish (14%), and Vietnamese (7%).

1. Harmony Public Schools - Harmony School of Excellence (Houston-North)<sup>2</sup>  
(TEA District #101858) -- *hereinafter, District #1*
  - Harmony Science Academy – Houston Northwest (located in Cypress-Fairbanks Independent School District (ISD))
  - Harmony School of Excellence (located in Cypress-Fairbanks ISD)
  - Harmony School of Excellence—Endeavor (located in Aldine ISD)
  - Harmony School of Advancement High (located in Aldine ISD)
  - Harmony School of Discovery (located in Cypress-Fairbanks ISD)
  - Harmony Science Academy—Bryan/College Station (located in Bryan ISD)
2. Harmony Public Schools—Harmony School of Science (Houston-West)  
(TEA District #101862) -- *hereinafter, District #2*
  - Harmony School of Science (located in Fort Bend ISD)
  - Harmony School of Science-High (located in Fort Bend ISD)
3. Harmony Public Schools—Harmony Science Academy (Houston-South)  
(TEA District #101846) -- *hereinafter, District #3*
  - Harmony School of Innovation-Houston (located in Alief ISD)
  - Harmony School of Ingenuity-Houston (located in Houston ISD)
  - Harmony Science Academy-Houston High (located in Alief ISD)
  - Harmony Science Academy-Houston (K-8) (located in Houston ISD)
  - Harmony School of Fine Arts and Technology (located in Houston ISD)
  - Harmony Science Academy-Beaumont (located in Beaumont ISD)
4. Harmony Public Schools - Harmony Science Academy (Fort Worth)  
(TEA District #220813) -- *hereinafter, District #4*
  - Harmony Science Academy-Fort Worth (located in Fort Worth ISD)
  - Harmony Science Academy-Grand Prairie (located in Grand Prairie ISD)
  - Harmony Science Academy-Euless (located in Hurst-Euless-Bedford ISD)
  - Harmony School of Nature and Athletics (located in Duncanville ISD)

OCR conducted on-site visits at seven of the above schools, including one elementary school (grades K-5), three elementary-middle schools (grades K-7 or K-8) and three elementary-middle-high schools (grades K-9, K-10, or K-11).<sup>3</sup> During the on-site activities, OCR conducted interviews with HPS central office and school administrators, English-as-a-second language (ESL) and special education (SPED) teachers and program coordinators, teachers of core subjects, and school personnel involved in the admission process. OCR also conducted an extensive review of student files for ELL students and students with disabilities who were selected for admission to examine the language assistance and/or special education and related aids and services provided to students.

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<sup>2</sup> TEA names the charter LEA after the first school opened under that particular charter.

<sup>3</sup> As the grade configuration of each Harmony campus changed each school year, OCR used the grade levels for the above campuses for the 2011-2012 school year.

## **Legal Authority**

The statutes and regulations at issue in this review, Title VI, Section 504 and Title II, are the same as those that apply to other public schools.<sup>4</sup> These laws extend to all operations of a charter school, including recruiting, admissions, academics, educational services and testing, school climate (including prevention of harassment), disciplinary measures (including suspensions and expulsions), athletics and other nonacademic and extracurricular services and activities, and accessible buildings and technology.

## **Admissions**

The fact that students choose to attend a charter school and are not simply assigned to attend a charter school underscores the need to be mindful of the rights of children and parents in the community when publicizing the school to attract students and when evaluating their applications for admission. Charter schools may not discriminate in admission on the basis of race, color, national origin or disability. As a general rule, a school's eligibility criteria for admission must be nondiscriminatory on their face and must be applied in a nondiscriminatory manner. In addition, charter schools may not use admissions criteria that have the effect of excluding students on the basis of race, color, or national origin from the school without proper justification. Charter schools also may not categorically deny admission to students on the basis of disability.

The Title VI regulation at 34 C.F.R. § 100.3(a) states that no person shall, on the grounds of race, color or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program receiving Federal financial assistance. Section 100.3(b)(1)(i)-(vi) further states that a recipient may not, on the grounds of race, color or national origin, deny an individual any service or benefit of its programs; provide any services or benefits to an individual which are different or provided in a different manner; subject an individual to separate treatment; restrict an individual in the enjoyment of any benefits of its programs; treat an individual differently in determining enrollment in its programs; or, deny an individual an opportunity to participate in a program through the provision of services or otherwise or afford an opportunity to do so which is different from that afforded others under the program.

The Title VI implementing regulation at 34 C.F.R. § 100.3(b)(2) states that a recipient, in determining the types of services, facilities or other benefits to be provided, or the situations in which such services or benefits will be provided, may not directly or through contractual or other arrangements, utilize criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program with respect to individuals of a particular national origin.

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<sup>4</sup> See OCR Dear Colleague Letter on Charter Schools (May 14, 2014), <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201405-charter.pdf> (reminding charter schools of their legal obligations under Federal civil rights laws and briefly addressing a few subjects that have arisen in the charter school context).

The regulations implementing Section 504 at 34 C.F.R. § 104.4(a) and (b), and Title II at 28 C.F.R. § 35.130(a), provide, in pertinent part, that no qualified individual with a disability shall, on the basis of disability, be excluded from participation in, be denied the benefits of the services, programs, or activities of the recipient or public entity, or otherwise be subjected to discrimination under any program or activity of the recipient or public entity. In general, the Title II regulations applicable to the FAPE issues raised in this compliance review do not provide greater protection than the applicable Section 504 regulations. Therefore, in accordance with the Title II regulation at 28 C.F.R. § 35.103, OCR applied the Section 504 standards in examining the issues raised in this compliance review.

In determining whether a recipient subjected students to different treatment on the basis of race, color or national origin in violation of Title VI, or on the basis of disability in violation of Section 504 and Title II, OCR looks to whether there were any apparent differences in the treatment of similarly situated students on the basis of national origin. If different treatment is found, OCR evaluates the recipient's explanation for any differences in the treatment of similarly situated students to determine if the explanation is a legitimate, nondiscriminatory explanation and whether it is merely a pretext for unlawful discrimination. Additionally, OCR examines whether the recipient treated the students in a manner that was consistent with its established policies and procedures and whether there is any other evidence of discrimination based on national origin. In addition to different treatment of students on the basis of race, color, national origin, and disability, a recipient violates Title VI when it evenhandedly implements facially neutral policies or practices that have a disproportionate and unjustified effect on students of a particular race, color or national origin or on students with disabilities; this form of discrimination is known as disparate impact.

Like all traditional public schools, public charter schools must ensure that language-minority parents who are not proficient in English receive meaningful access to the same admissions information and other school-related information provided to English-proficient parents in a manner and form they can understand, such as by providing free interpreter and/or translation services. Under OCR policy, school districts have the responsibility to adequately notify national origin minority group parents of information that is called to the attention of other parents. Such notice, in order to be adequate, may have to be provided in a language other than English.<sup>5</sup>

### ELL Students

Like all public schools, charter schools must take affirmative steps to help ELL students overcome language barriers so that they can participate meaningfully in their schools' educational programs.<sup>6</sup> A charter school must timely identify language-minority students who have limited proficiency in

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<sup>5</sup> See OCR May 25, 1970, memorandum, "Identification of Discrimination and Denial of Services on the Basis of National Origin," reprinted in 35 Fed. Reg. 11,595 (July 18, 1970). See also Executive Order 13166, "Improving Access for Persons with Limited English Proficiency," reprinted at 65 Fed. Reg. 50,121 (August 16, 2000) (requiring recipients of Federal financial assistance to "take reasonable steps to ensure meaningful access to their programs and activities by LEP persons.") and U.S. Department of Justice Policy Guidance, "Enforcement of Title VI of the Civil Rights Act of 1964 - National Origin Discrimination Against Persons With Limited English Proficiency (LEP)" (June 18, 2002), (provides guidance to recipients of Federal financial assistance from DOJ about the method and manner (including translation and interpretation) for delivering information to LEP persons).

<sup>6</sup> OCR's policies governing the treatment of ELL students are available at <http://www.ed.gov/ocr/ellresources.html>.

reading, writing, speaking, or understanding English, and must provide those students with an effective language instruction educational program that also affords meaningful access to the school's academic content. Federal civil rights laws do not, however, require any school, including a charter school, to adopt or implement any particular educational model or program of instruction for ELLs; schools have substantial flexibility to determine how they will satisfy their legal obligations to meet these students' needs.

According to OCR policy, where inability to speak and understand the English language excludes national origin minority group children from effective participation in the educational program offered by a school district, the district must take affirmative steps to rectify the language deficiency in order to open its instructional program to these students. These compliance standards require schools to select a sound educational theory for their programs for ELL students that are likely to meet the educational needs of language-minority students effectively. A school must use practices, resources and personnel reasonably calculated to implement its educational theory. Schools have a dual responsibility to teach students English and to provide them with access to the curriculum, taking steps to ensure that students are not left with academic deficits. Schools must demonstrate that their programs for ELL students are successful in meeting these responsibilities, or modify them if necessary. Unless the specialized program requires proficiency in English, the recipient must ensure that evaluation and testing procedures do not screen out LEP students on the basis of their limited English proficiency. Tests used to select students for specialized programs should not be of the type that the student's limited proficiency in English will prevent the student from qualifying for a program for which the student would otherwise be qualified.

In instances where parents refuse to enroll their children in an ELL program, the school district should inform parents about the purpose and benefits of the ELL program in a language they understand and, if a student who has been opted out of ELL services is unable to perform at grade level without receiving ELL services, the school district should periodically remind the parent that the student remains eligible for such services. School districts must also provide language services to students whose parents have declined or opted out of the ELL program by monitoring students' academic progress and providing other language support services for such students.

#### Students with Disabilities

Under Section 504, every student with a disability enrolled in a public school, including a public charter school, must be provided a FAPE – that is, regular or special education and related aids and services that are designed to meet his or her individual educational needs as adequately as the needs of students without disabilities are met. Evaluation and placement procedures are among the requirements that must be followed if a student needs, or is believed to need, special education or related services due to a disability. Charter schools may not ask or require students or parents to waive their right to a FAPE in order to attend the charter school. Additionally, charter schools must provide nonacademic and extracurricular services and activities in such a manner that students with disabilities are given an equal opportunity to participate in these services and activities.

The regulation implementing Section 504 at 34 C.F.R. § 104.33 provides that (a) a recipient that operates a public elementary or secondary education program or activity shall provide a FAPE to each qualified person with a disability who is in the recipient's jurisdiction, regardless of the nature or severity of the person's disability; and (b)(1) the provision of an appropriate education is the provision of regular or special education and related aids and services that (i) are designed to meet individual educational needs of handicapped persons as adequately as the needs of nondisabled persons are met and (ii) are based upon adherence to procedures that satisfy the Section 504 requirements of §§ 104.34, 104.35 and 104.36. Implementation of an individual education plan (IEP) or a Section 504 plan is a means by which to meet this requirement.

The Section 504 regulation at 34 C.F.R. § 104.34 states that a recipient shall educate, or shall provide for the education of, each qualified person with a disability in its jurisdiction with persons who are not disabled to the maximum extent appropriate to the needs of the person with a disability.

The regulation implementing Section 504 at 34 C.F.R. § 104.35(a)-(c) requires a recipient to conduct an evaluation of any person who, because of a disability, needs or is believed to need special education or related services before taking any actions with respect to the initial placement of the person in regular or special education and any subsequent significant change in placement.

The regulation implementing Section 504 at 34 C.F.R. § 104.36 requires a recipient to establish and implement, with respect to actions regarding the identification, evaluation, or educational placement of persons who, because of disability, need or are believed to need special instruction or related services, a system of procedural safeguards that includes notice, an opportunity for the parents or guardian of the person to examine relevant records, an impartial hearing with opportunity for participation by the person's parents or guardian and representation by counsel, and a review procedure.

Section 504 at 34 C.F.R. § 104.8 requires recipients to notify participants, beneficiaries, applicants, employees and unions or professional organizations holding collective bargaining or professional agreement with the recipient that the recipient does not discriminate on the basis of disability in violation of Section 504. The regulation implementing Title II at 28 C.F.R. § 35.106 requires a public entity to make available to applicants, participants, beneficiaries, and other interested parties information regarding the provisions of Title II and its applicability to the services, programs, or activities of the public entity, and make such information available to them in such a manner as the head of the entity finds it necessary to apprise such persons of the protections against discrimination assured them by Title II.

In addition, the Section 504 regulation requires a recipient to designate at least one person to coordinate its efforts to comply with Section 504, and to publish the identity of that individual and his or her contact information. *See* 34 C.F.R. §§ 104.7(a) and 104.8(a). The regulation implementing Title II at 28 C.F.R. § 35.107(a) requires a public entity to coordinate its efforts to comply with and carry out its responsibilities under Title II. The public entity shall make available to all interested individuals the name (or title), office address, and telephone number of the designated employee.

Finally, the Section 504 regulation at 34 C.F.R. § 104.7(b) states in part that a recipient shall adopt grievance procedures that incorporate appropriate due process standards and that provide for the prompt and equitable resolution of complaints alleging any action prohibited by Section 504. The regulation implementing Title II at 28 C.F.R. § 35.107(b) similarly requires a recipient to adopt and publish grievance procedures that provide for the prompt and equitable resolution of complaints alleging any actions prohibited by Title II.

### **Admissions**

OCR examined the admissions and recruitment policies applicable to HPS charter schools currently and throughout OCR's investigation. HPS provided OCR with a copy of its non-discrimination policy stating that its charter schools do not discriminate on the basis of race, color, national origin and disability in providing educational services, activities and programs. The investigation revealed that HPS has written policies and procedures for student admission, which include the use of a random lottery. The policies and procedures provide that admission and enrollment are open to all students who reside within the geographic boundaries stated in the open-enrollment charter of each HPS school, and who are eligible for admission based on criteria identified in the charter and state law. The geographic boundaries for HPS schools within a HPS district include the traditional public school district in which the HPS school is located with some schools encompassing other surrounding public school districts as well. The geographical boundaries are approved by the TEA, including any changes to geographic boundaries.

As required by the TEA, the policies provide that when making admission decisions, HPS does not discriminate against students based on national origin, ethnicity, or disability, or the district the child would otherwise attend under state law (*e.g.*, a predominantly minority school district or low performing school district). State law provides that charter schools may exclude from admission students with a documented history of a criminal offense, juvenile court adjudication or discipline problems. HPS' application specifically asks whether a student has any documented history of a criminal offense or juvenile court adjudication and notes that HPS' decision to admit a student may be withdrawn if the charter school's later review of the student's disciplinary records indicates that the student is disqualified from admissions eligibility. OCR did not obtain information about how many students were denied admission because of a documented history of a criminal offense or juvenile court adjudication or had their admissions decisions withdrawn due to the student's disciplinary records.

The above policies and procedures also provide that to be eligible for participation in the random lottery for admission, applicants are first required to submit a completed application form. Individual school websites include the application form for their schools, although the content is the same for all HPS charter schools. OCR noted that the websites for some schools specifically describe the information required for enrollment, including the student's birth certificate, last report card, standardized test scores, copy of social security card, copy of special education records, immunization records, proof of residency and proof of withdrawal from former school. The required enrollment information is also listed in the admissions packets mailed to students



after selection and in student handbooks.<sup>7</sup> In a joint Dear Colleague Letter issued on May 8, 2014, OCR and the Civil Rights Division of the U.S. Department of Justice (DOJ) reminded all schools that they must ensure that they do not discriminate on the basis of race, color, or national origin, and that students are not barred from enrolling in public schools at the elementary and secondary level on the basis of their own citizenship or immigration status or that of their parents or guardians.<sup>8</sup> OCR and DOJ emphasized that certain enrollment practices may chill or discourage the participation of students based on their or their parents' or guardian's citizenship or immigration status in contravention of Title VI and other laws. Specifically, the letter stated that a school district may not bar a student from enrolling in its schools because he or she lacks a birth certificate or has records that indicate a foreign place of birth, such as a foreign birth certificate. In addition, the letter explained that a district may not deny enrollment to a student if he or she (or his or her parent or guardian) chooses not to provide a social security number.

OCR determined that parents could apply to HPS online at individual school websites or fill out paper application forms and submit them before the application deadline. They also could submit hard copy applications by mail, in person, and by fax. Regarding the selection process for admission, OCR determined that prior to the spring 2012 application period, HPS lottery procedures provided that each applicant was assigned a number, and each number was placed in a container and randomly drawn one number at a time by the Principal or designee. However, documentation revealed that for the spring 2012 applicant period, TEA approved HPS' request to conduct a random lottery by computer software. HPS provided OCR with documentation of the TEA's approval of the above change in procedure as well as information regarding the type of random software program used. In addition, OCR reviewed a video of the admissions lottery for Harmony School of Innovation on March 31, 2012, which included a demonstration to lottery attendees showing that the above software randomly selected student names.

For both prior school years (2010-2011 and 2011-2012) and the Spring 2012 application period, HPS lottery procedures provided that applicants whose numbers were drawn while open-enrollment slots remained available were offered admission. Once all enrollment spots were filled by the lottery, the remaining numbers were to be drawn and the applicants assigned to these numbers were placed on a waiting list in the order in which they were drawn. According to written procedures, if a vacancy arose before the commencement of the school year, the individual on the waiting list with the lowest number assignment was offered admission. HPS admission policies provided that if an application was received after the application period had passed, the applicant's name would be added to the waiting list behind the names of applicants who timely applied in the order of the date received. Documentation from student records and interviews with HPS administrators at the system-wide and school levels showed that no information regarding students' race/ethnicity, ELL status, or disability status was obtained during the application or lottery process.

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<sup>7</sup> See 2014-2015 Student/Parent Handbook, at [http://harmonytx.org/WebShare/DOWNLOAD\\_CENTER/pdf/handbooks/HPS\\_Student\\_Handbook\\_English.pdf](http://harmonytx.org/WebShare/DOWNLOAD_CENTER/pdf/handbooks/HPS_Student_Handbook_English.pdf).

<sup>8</sup> <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201405.pdf>

HPS admission policies and procedures provided that notification of parents of applicants selected by lottery would be made by telephone, e-mail, or the U.S. Postal Service. According to these policies and procedures, failure of an applicant to respond within 48 hours of the date of the telephone call or e-mail, or within three business days of a post-marked letter, would result in the forfeiture of his or her position in the application process. OCR reviewed a copy of an English-language letter to notify parents of students selected for admission provided by HPS. Based on interviews with school personnel, OCR found that the seven schools visited by OCR were more lenient than the policy and allowed 10 days to two weeks for parents to respond to notice of selection.

OCR determined that students were recruited for admission to schools via mass mailings of cover letters and standard application forms and HPS brochures. The brochures included school names, grades, addresses, telephone and fax numbers, and website addresses. The brochures stated that applications were being accepted, and that parents may review the attached application and submit an application by mail, fax, or online at any of the schools. Also included were the dates, times, and locations of open houses at individual schools during the application period. OCR determined that HPS obtained mailing lists of addresses from the traditional public school districts in which the HPS schools were located and the contiguous school districts for a fee. HPS hired mailing companies to distribute bulk mail (school brochure, application form, open house letter) in January of each year. In the event that a traditional public school district did not provide HPS with a timely list, HPS purchased lists from a mailing company.

In addition, interview evidence showed that students were recruited via open house recruiting activities conducted at individual schools during the application period and via dissemination of paper application forms and HPS brochures to parents visiting individual schools.

### **ELL Students - Admissions**

OCR obtained enrollment data for ELL students at HPS charter schools from HPS and for the traditional public school districts from TEA for the 2008-2009, 2009-2010, 2010-2011, and 2011-2012 school years.<sup>9</sup> Based on the statistical analysis, OCR determined that ELL students were underrepresented to a statistically significant extent at many of the schools in the four Districts as compared to the enrollment of ELL students in the traditional public school district in which each respective HPS school is located.<sup>10</sup> The chart below illustrates this for the 2011-2012 school year.

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<sup>9</sup> Note that some of the above schools were not in operation for all of the above four school years.

<sup>10</sup> HPS reported that it did not obtain data on the ELL status or national origin of student applicants until after their selection for admission. Thus, OCR was unable to obtain the composition of the applicant pool to compare to the composition of the pool of students selected for admission regarding ELL status and national origin. OCR therefore compared the national origin ELL composition of the student enrollment at individual schools in the four Districts to that of the traditional public school districts in which HPS schools were physically located. OCR expected that the ELL and national origin composition of the HPS schools would generally reflect that of the traditional public districts in which they were located.

<b>HARMONY PUBLIC SCHOOLS (DISTRICTS #1, #2, #3, and #4)</b>							
<b>ENROLLMENT OF ELL STUDENTS (2011-12 school year)</b>							
<i>(Schools with Statistically Significant Under-representation of ELL Students Shaded)</i>							
<b>HPS DISTRICTS</b>					<b>LOCAL SCHOOL DISTRICT</b>		
<b>DISTRICT</b>	<b>SCHOOL</b>	<b>ELL STUDENTS</b>		<b>TOTAL</b>	<b>ELL STUDENTS</b>		<b>TOTAL</b>
<b>#1 Houston North</b>	<b>Northwest</b>	63	9.9%	636	12,205	18.9%	64,560
	<b>Excellence</b>	38	4.7%	806	12,617	17.4%	76,627
	<b>Endeavor</b>	102	18.4%	555	16,234	36.8%	44,076
	<b>Advancement HS</b>	9	1.9%	482	1,629	8.3%	19,273
	<b>Discovery</b>	79	15.2%	520	13,061	16.1%	81,336
	<b>Bryan/CS</b>	57	17.5%	326	2,490	16.8%	14,809
	<b>Total</b>	<b>348</b>	<b>10.5%</b>	<b>3,325</b>	<b>32,970</b>	<b>11.0%</b>	<b>300,681</b>
<b>#2 Houston West</b>	<b>Science</b>	159	25.4%	626	7,080	24.1%	29,416
	<b>Science High</b>	14	2.7%	527	1,349	6.0%	22,467
	<b>Total</b>	<b>173</b>	<b>15.0%</b>	<b>1,153</b>	<b>8,429</b>	<b>16.2%</b>	<b>51,883</b>
<b>#3 Houston South</b>	<b>Innovation</b>	101	17.4%	579	12,860	46.6%	27,629
	<b>Ingenuity</b>	113	19.4%	583	51,086	31.1%	164,372
	<b>Houston High</b>	25	4.5%	556	1,734	11.4%	15,151
	<b>Houston K-8</b>	69	22.0%	314	48,077*	34.9%*	137,668*
	<b>Fine Arts/Tech</b>	75	12.5%	598			
	<b>Beaumont</b>	43	8.9%	486	1,268	6.9%	18,296
	<b>Total</b>	<b>426</b>	<b>13.7%</b>	<b>3,116</b>	<b>113,757</b>	<b>33.0%</b>	<b>344,820</b>
<b>#4 Fort Worth</b>	<b>Fort Worth</b>	26	4.4%	589	20,761	26.5%	78,405
	<b>Grand Prairie</b>	72	13.3%	540	6,232	25.9%	24,038
	<b>Eules</b>	56	9.2%	610	2,165	12.2%	17,803
	<b>Nature/Athletics</b>	51	7.8%	657	1,526	15.4%	9,910
	<b>Total</b>	<b>205</b>	<b>8.6%</b>	<b>2,396</b>	<b>30,684</b>	<b>23.6%</b>	<b>130,156</b>
<b>TOTAL</b>		<b>1,152</b>	<b>11.5%</b>	<b>9,990</b>	<b>185,840</b>	<b>22.5%</b>	<b>827,540</b>

*\*Houston K-8 and Fine Arts/Tech are located in the same traditional school district.*

Regarding the mailed recruiting materials described above, the applications and cover letters were in English and Spanish and the brochures in English. HPS provided OCR with a copy of the English and Spanish brochures. In addition to the information in the English-language brochure described above, the brochures included a Spanish-language statement, on the back of the brochure, indicating that a Spanish version of the brochure was available online or at individual schools.

Based on interviews with school personnel, OCR determined that the four identified Districts had Spanish-language-proficient personnel (*e.g.*, ESL teachers, administrative assistants) who were available to assist with translation/interpretation (generally, oral interpretation) in the recruiting and enrollment process. The investigation revealed, however, that not all schools had a staff member available to assist with translation or interpretation to Spanish at open house recruiting events, but schools usually had staff proficient in other languages such as Vietnamese or Turkish at open house recruiting events. Additionally, OCR could not confirm, due to conflicting information from interviews with school personnel and/or documentation, that all schools informed parents at open house orientations that the schools offered ESL services.

During the on-site investigation, the various schools OCR visited provided copies of a paper HPS application form with English on one side and Spanish on the opposite side, which did not include any inquiries as to student ELL status or race/ethnicity. Various school personnel stated that the schools received the above dual-language applications from the HPS central office. Interviews with school personnel revealed that four of the seven schools had Spanish and English language application forms available at each school. However, at the remaining three schools (District #2's Science and District #3's Innovation and Ingenuity schools), there was conflicting interview information regarding whether Spanish application forms and brochures were available for walk-in ELL parents.

At the time of the on-site investigation, OCR reviewed the school websites for the seven selected sites, all of which were essentially identical (had similar formats and included the same types of information), and had a Google Translate function to translate the website homepage into Spanish and many other languages. OCR was unable to translate any of the online application forms or instructions. For two schools, OCR was able to successfully download a Spanish-language version of the HPS brochure, but the Google Translate function was unable to translate an HPS catalog or the student handbook on any of the websites. For the remaining five schools, OCR was unable to access the Spanish HPS brochure, catalog, or handbook. The review identified a webpage on the websites for all seven schools with a description of the school's ESL program; however, OCR was unable to translate the website page describing the ESL program with the Google Translate function.

On August 22 and August 25, 2014, OCR again reviewed the school websites. At that time, only five of the seven school websites utilized the Google Translate function. Information on how to apply was available in English at all of the seven schools; however, the Google Translate function did not work on the application instructions. Only two schools had functioning links to the above documents. Six of the seven schools had links to a student-parent handbook but only one of the six schools had a Spanish-language version of the handbook online.

### **Students with Disabilities – Admissions**

OCR obtained the enrollment data for students with disabilities at the HPS schools from HPS and for the public school districts from the TEA for the 2008-2009, 2009-2010, and 2011-2012 school years. Based on the statistical analysis, OCR determined that students with disabilities were underrepresented to a statistically significant extent at many of the schools of the four HPS

Districts as compared to the enrollment of students with disabilities in the public school district in which each respective HPS school is located.<sup>11</sup> The chart below illustrates this for the 2011-12 school year.

<b>HARMONY PUBLIC SCHOOLS (DISTRICTS #1, #2, #3, and #4)</b>							
<b>ENROLLMENT OF STUDENTS WITH DISABILITIES</b>							
<b>(2011-12 school year)</b>							
<i>(Schools with Statistically Significant Under-representation of Students with Disabilities Shaded)</i>							
<b>HPS DISTRICTS</b>					<b>LOCAL SCHOOL DISTRICT</b>		
<b>DISTRICT</b>	<b>SCHOOL</b>	<b>STUDENTS WITH DISABILITIES</b>		<b>TOTAL</b>	<b>STUDENTS WITH DISABILITIES</b>		<b>TOTAL</b>
<b>#1 Houston North</b>	<b>Northwest</b>	28	4.4%	636	4,599	7.1%	64,560
	<b>Excellence</b>	11	1.4%	806	5,132	7.1%	76,627
	<b>Endeavor</b>	16	2.9%	555	2,865	6.4%	44,076
	<b>Advancement HS</b>	15	3.1%	482	1,617	8.2%	19,273
	<b>Discovery</b>	7	1.4%	520	5,723	7.0%	81,336
	<b>Bryan/CS</b>	20	6.1%	326	1,020	6.9%	14,809
	<b>Total</b>	<b>97</b>	<b>2.9%</b>	<b>3,325</b>	<b>20,956</b>	<b>7.0%</b>	<b>300,681</b>
<b>#2 Houston West</b>	<b>Science</b>	8	1.3%	626	1,709	5.8%	29,416
	<b>Science High</b>	6	1.1%	527	1,404	6.3%	22,467
	<b>Total</b>	<b>14</b>	<b>1.2%</b>	<b>1,153</b>	<b>3,113</b>	<b>6.0%</b>	<b>51,883</b>
<b>#3 Houston South</b>	<b>Innovation</b>	8	1.4%	579	1,826	6.6%	27,629
	<b>Ingenuity</b>	10	1.7%	583	12,903	7.9%	164,372
	<b>Houston High</b>	15	2.7%	556	1,339	9.2%	15,151
	<b>Houston K-8</b>	8	2.6%	314	10,221*	7.4%*	137,668*
	<b>Fine Arts/Tech</b>	9	1.5%	598			
	<b>Beaumont</b>	40	8.2%	486	1,343	7.3%	18,296
	<b>Total</b>	<b>90</b>	<b>2.9%</b>	<b>3,116</b>	<b>27,632</b>	<b>8.0%</b>	<b>344,820</b>
<b>#4 Fort Worth</b>	<b>Fort Worth</b>	20	3.4%	589	4,331	5.5%	78,405
	<b>Grand Prairie</b>	21	3.9%	540	2,130	8.9%	24,038
	<b>Eules</b>	10	1.6%	610	1,580	8.9%	17,803
	<b>Nature/Athletics</b>	21	3.2%	657	893	9.0%	9,910
	<b>Total</b>	<b>72</b>	<b>3.0%</b>	<b>2,396</b>	<b>8,934</b>	<b>6.9%</b>	<b>130,156</b>
<b>TOTAL</b>		<b>273</b>	<b>2.7%</b>	<b>9,990</b>	<b>60,635</b>	<b>7.3%</b>	<b>827,540</b>

*\*Houston K-8 and Fine Arts/Tech are located in the same traditional school district.*

<sup>11</sup> Again, as noted above, some of the schools were not in operation for all of the above four school years and for the same reason stated above regarding the unavailability of data concerning applicants to HPS charter schools, OCR's analysis compared the charter school enrollment of students with disabilities to the enrollment of students with disabilities at individual schools in the four Districts to that of the traditional public school districts in which HPS schools were physically located.

As noted above, HPS selects students for admission based on a random lottery. HPS did not collect any information regarding student disability status until after the application and selection process when selected students registered and enrolled. As noted above, HPS recruited students through mailing materials, including applications and brochures, and holding open house events. These materials, as well as the school websites, included HPS's nondiscrimination statement regarding disability as well as the HPS "Child Find" policy (policy to identify and locate students who contact or enroll in HPS and may have a disability). OCR determined that both parents of students with and without disabilities attending open house events were informed that the schools offered special education and Section 504 services.

Students with disabilities and their parents received the same information about the school and how to apply as students without disabilities and their parents, and both were provided the same application materials, which did not include any requests for information regarding student disability status. OCR determined that no information is requested regarding disability status on the application form or during the admission or selection process, and students are randomly selected for admission through lottery. HPS did not categorically deny admission to any students on the basis of disability.

### **ELL Students - Alternative Language Program**

As described above, Title VI requires that charter school recipients take affirmative steps to help ELL students overcome language barriers so that they can participate in their school's educational program. Therefore, during the course of the investigation, OCR examined evidence related to the following areas: the ELL program model used by HPS charter schools, the identification, assessment and placement of ELL students, ELL program staffing, ELL student access to special education and gifted and talented programs, and the exiting criteria and monitoring of exited ELL students.

The investigation revealed that HPS has established an ALP designed to meet the academic needs of ELL students based on a sound educational theory (ESL program). Documentation and interviews revealed that HPS offered content-based and pullout ESL services at all seven schools in the four Districts examined by OCR. In the content-based ESL program, a certified full time ESL teacher provided supplemental instruction to ELL students for all content area classes while in the pull-out program, ELL students spent part of the day in mainstream classrooms and were pulled out part of each day to receive specialized ESL instruction. Based on enrollment numbers and students' schedules, ESL pull-out programs included individual or small group instruction. At the time of OCR's investigation, HPS had applied for a waiver from the TEA regarding the requirement to provide bilingual education for the 2011-2012 school year, and was in the process of implementing a BE program for the 2012-2013 school year. However, OCR determined that as of the 2014-2015 school year, HPS has not implemented a BE program, and has continued to operate under a TEA waiver to offer only the ESL program.

HPS had policies and procedures for the identification, assessment, and placement of ELL students, which included the use of a home language survey (HLS), English language proficiency (ELP) testing, and language proficiency assessment committees (LPAC) as required by the TEA. Schools

used HLSs to identify students with a primary home language other than English for ELL testing. In addition, as noted above, HPS charter schools asked for the student's ELL status on the enrollment forms submitted after selection for admission. Generally, student records reflected timely ELL identification. However, in its investigation, OCR identified delays in the assessment of five students (out of 333 student files randomly sampled at the seven schools visited by OCR), including:

- District #1 (Northwest): One ELL student showed a three month delay in ESL placement because the student's enrollment form did not indicate that the student was an ESL student, and there was also a delay in receiving records from the previous district.
- District #3 (Ingenuity): One special education student showed a three year delay in testing for ELL status due to the District delaying ELL testing until the student was re-evaluated for speech. The student's initial enrollment form indicated previous BE/ESL status.
- District #4 (Grand Prairie):
  - One ELL student showed over a one semester delay in testing because the student was not identified until the District's Special Programs Coordinator (SPC) conducted a folder audit.
  - One student showed approximately a two and a half year delay because the student was enrolled with a HLS including Spanish, but was not tested for ELL due to the student's previous school records indicating he was "non-LEP." The student was not assessed for ELL until a later re-evaluation.
  - One special education student with "Somalic" identified on the student's HLS was not tested for ELL because the student's previous school reported that the student was "non-LEP."

With respect to ELL students whose parents denied placement in an ESL program following ELL identification, documentation and interviews revealed that parents at the seven selected schools who denied ESL placement were informed of the benefits of the ESL through English or Spanish versions of a HPS letter and/or orally from the school SPC and/or ESL teacher. However, at District #1's Northwest school, interviews revealed that some regular education teachers were not notified of students in their classes whose parents had denied ELL placement, and one teacher had been advised that these students could not be assisted due to the parent denying services.

Regarding ESL program staffing, HPS provided OCR with a list of ESL teachers for the four selected Districts with the type of state ESL teaching certification held. Based on interviews with school personnel and a review of the documentation submitted by HPS, OCR confirmed that ESL teachers at all schools except District #1's Excellence school had state ESL teaching certifications. OCR received conflicting information regarding whether all ESL teachers at Excellence were ESL certified.

Based on interviews with ESL coordinators and teachers, OCR determined that HPS had procedures for exiting students from the ESL program and/or ELL status based on TEA requirements for proficiency criteria for ELL exit specific to student grade level. However, OCR identified the following concerns regarding two ESL students exited from the ESL program in our file review sample of 333 students:

- District #3 (Innovation): A third grade student who was exited from ESL had been previously retained in third grade by his previous school district and had also repeated third grade at HPS.
- District #4 (Eules): An ELL student who scored “Advanced High” on the Texas English Language Proficiency Assessment System (TELPAS) in all four language modalities and her composite school was not exited from ELL status as the teacher’s recommendation was in favor of keeping the student in the ESL program to make sure her progress was stable.

HPS policies also provided that the academic progress of exited ELL students be monitored for two school years. However, OCR identified a concern regarding the monitoring of students exited from the ESL program. The investigation revealed that, in general, the only documentation of monitoring of students exited from the ESL program was a form indicating an end-of-year review by school LPACs. Furthermore, the evidence indicated that monitoring of exited students was informal.

OCR also investigated whether ELL students were allowed to participate in special opportunity programs: gifted and talented and special education programs. Based on interviews with school administrators and school SPCs/ESL coordinators, OCR determined that students in the ESL program were permitted to participate in the gifted and talented program, if qualified. OCR’s review of records and interviews of HPS officials established that students in the ESL program identified with disabilities pursuant to the IDEA were permitted to participate in the special education program.

OCR determined that schools in the four Districts submitted an end-of-the-year survey to the ESL departments to evaluate the effectiveness of their ESL programs. In addition, interview information revealed that at Northwest (District #1), Science (District #2), Innovation (District #3), and Grand Prairie and Eules (District #4), principals, school SPCs/ESL coordinators, and/or cluster SPCs conducted informal assessments of the ESL program through periodic meetings, review of implementation of services, and obtaining ESL teacher and/or parent input. Additionally, the principals at Ingenuity (District #3) and Excellence (District #1) reported that they were first year principals, but indicated they would create a report on the ESL program's effectiveness.



### **Students with Disabilities – FAPE**

The evidence showed that HPS had written policies and procedures for the identification, referral, evaluation, placement, and periodic re-evaluation of students with disabilities in accordance with the provisions of Section 504. HPS did not require students or parents to waive their right to a FAPE.

Documentation and interviews revealed that HPS provided special education and/or related aids and services to students with disabilities with IEPs and/or Section 504 plans. OCR determined that HPS offered special education and related services that included but were not limited to speech and language therapy, occupational therapy, physical therapy, dyslexia services, counseling services, and assistive technology. The investigation revealed that for related services and evaluations, generally outside service providers were contracted. HPS provided OCR with a list of special education staff, which indicated that the individuals were certified in their appropriate areas. The investigation revealed that Section 504 services were offered at all HPS schools.

Based on a file review of students' special education and Section 504 folders, OCR identified the following concerns regarding record keeping for evaluation data for Section 504 students and evaluation and testing for some ELL students:

- Pertinent Section 504 documentation (*i.e.*, evaluation data used for placement decisions), while existing in the student's general academic records and/or administrators' records, was not always included in students' Section 504 folders.
- OCR could not confirm the validity of orally interpreted special education evaluation testing for some ELL students (*i.e.*, several students were given the Woodcock-Johnson III and Bilingual Verbal Ability Tests, which were orally interpreted into Turkish and Arabic by HPS personnel because it was not available in written format from the test publisher).

OCR determined that HPS has developed systems of special education and Section 504 procedural safeguards that included notice, an opportunity for parents/guardians to examine relevant records, an impartial hearing with opportunity for participation by the student's parents or guardians and representation by counsel, and a review procedure. However, during the course of the investigation, OCR identified concerns regarding the sufficiency of HPS' internal procedures for Section 504 due process hearings and HPS' Section 504 procedural safeguards form for parents. The procedural safeguards form did not provide notice of the name/title, office address, and telephone number for the Section 504 coordinator, or information on how to obtain an impartial Section 504 hearing. However, after informing HPS of the above concerns, OCR reviewed copies of revised procedures and forms provided by HPS, and determined that these concerns had been resolved. Thus, OCR determined that HPS is in compliance with the applicable Section 504 regulation at 34 C.F.R. § 104.36.

### **Students with Disabilities – Grievance Procedures**

HPS informed OCR that it notified parents and students about its Section 504 grievance procedure, which was available in the student-parent handbook. OCR's review of the student-parent handbook showed that it included a complaint procedure for discrimination and harassment allegations, including disability discrimination and harassment, which referred parents to contact the Section 504/ADA coordinator (identified as "contact front office"). In addition, HPS reported that employees were informed of grievance procedures prohibiting disability discrimination in its staff handbook. OCR's review of the staff handbook also showed that it included separate complaint procedures for sexual harassment allegations (and other harassment allegations including disability harassment) and a general complaint procedure. However, the staff handbook did not specifically indicate which procedure staff should use for grievances alleging disability discrimination other than disability harassment. Moreover, although the harassment complaint procedure referred once to disability harassment, it mainly discussed sexual harassment complaints and referenced the Title IX coordinator. After informing HPS of the above concerns, OCR reviewed copies of revised grievance procedures in the current staff handbook and student-parent handbook. Based on the above review, OCR determined that the identified concerns had been resolved. Thus, OCR determined that HPS is in compliance with the applicable Section 504 regulation at 34 C.F.R. § 104.7(b) and Title II regulation at 28 C.F.R. § 35.107(b).

### **Students with Disabilities – Notice of Nondiscrimination and Designation of Responsible Employee**

As noted above, HPS provided OCR with a copy of its nondiscrimination policy stating that its schools do not discriminate on the basis of disability in providing educational services, activities and programs. However, the notices in the student-parent and staff handbooks did not include sufficient information regarding the identities and contact information for the school and District Section 504/ADA compliance coordinators (for example, both handbooks did not include the office address and telephone numbers of the Section 504 Coordinator). Based on the above, OCR determined that there was sufficient evidence to support a finding of violations of Section 504 at 34 C.F.R. §§ 104.7(a) and 104.8(a), and Title II at 28 C.F.R. § 35.107(a) with respect to the notice of nondiscrimination and contact information for its Section 504/ADA coordinators.

### **Conclusion**

On October 30, 2014, prior to the conclusion of OCR's investigation, HPS voluntarily submitted the enclosed Resolution Agreement (Agreement) to resolve the compliance issues identified in this review.

OCR's investigation revealed that HPS' admissions policies and procedures are non-discriminatory on their face with respect to race/national origin, ELL status, and disability status. HPS selected students for admission to its charter schools through a random lottery. HPS did not request information regarding race/national origin, ELL status, or disability status on the

application form or during the admission or selection process. In addition, ELL students, students with disabilities, and their parents received the same information about the application procedures and how to apply as non-ELL students, students without disabilities, and their parents.

However, as described above, OCR's investigation revealed that ELL students and students with disabilities are significantly underrepresented in their enrollment in HPS charter schools within the four Districts compared to the enrollment of ELL students and students with disabilities in the public school districts in the same geographic area. In the 2011-2012 school year, ELL students made up only 11.5% of the students at the four HPS Districts examined by OCR, compared to 22.5% of the students at the corresponding public school districts. Similarly, students with disabilities represented only 2.7% of the students at the four HPS Districts, compared to 7.3% of the students at the corresponding public school districts. The disparities between enrollment of ELL students and students with disabilities in the HPS Districts compared to their enrollment in the corresponding traditional school district were statistically significant in 15 (for ELL students) and 16 (for students with disabilities) of the 18 schools in the Districts.

Prior to the conclusion of OCR's investigation, HPS requested to resolve the compliance review with a resolution agreement. Thus, OCR did not make any compliance determinations under Title VI, Section 504, or Title II as to whether HPS discriminated against students on the basis of race/national origin, ELL status or disability in the admission processes by failing to apply its eligibility criteria in a nondiscriminatory manner or using policies or by using policies and practices that resulted in an unlawful disparate impact on ELL students or students with disabilities. OCR is concerned, however, that the exclusion from admission and enrollment in HPS charter schools of students with a documented history of a criminal offense, juvenile court adjudication or discipline problems may improperly contribute to the lower enrollment of students with disabilities or ELL students in the HPS charter schools. Statistics show that students with disabilities and ELL students tend to be overrepresented among students subject to school discipline in Texas. In addition, the published enrollment procedures (which require students to provide their birth certificates and social security numbers, among other documents) may chill or lead to the exclusion of students based on their or their parents' citizenship or immigration status. OCR is also concerned that the publication of these procedures alone may dissuade some parents of ELL students from applying to HPS charter schools. OCR also did not make a compliance determination under Title VI regarding HPS' communications with LEP parents with respect to the admissions process, but noted concerns regarding the adequacy of these communications, including that interpreters or written translations were not available for admissions documents for LEP parents. The evidence was conflicting as to whether the HPS charter schools examined made clear to LEP parents that ESL services were available for ELL students at the schools.

OCR also did not make Title VI compliance determinations regarding HPS' alternative language program for ELL students. However, OCR identified concerns regarding identification delays, the exiting and monitoring of students who were exited from the ESL program, HPS' evaluation of its alternative language program, and whether notice of continuing eligibility and available academic support was provided to students whose parents denied ESL placement.

OCR did not make compliance determinations as to whether HPS complies with the applicable Section 504 requirements relating to standards and procedures for initial evaluations and periodic reevaluations of students who need or are believed to need special education services and/or related services because of a disability and providing a FAPE to students with disabilities. OCR's investigation identified concerns with respect to evaluation and placement documentation for students receiving Section 504 services and the validity of special education evaluation testing for some ELL students based on the use of orally interpreted tests.

Finally, based on a review of the employee and student-parent handbooks, OCR determined that the evidence supported that the notice of nondiscrimination did not include the required contact information for HPS' Section 504/ADA coordinators and thus did not comply with the applicable Section 504 regulations at 34 C.F.R. §§ 104.7(a) and 104.8(a), and Title II regulations at 28 C.F.R. § 35.107(a). However, OCR also determined that HPS had taken steps to ensure that it complies with the applicable regulations relating to procedural safeguards and grievance procedures.

As part of the Agreement, HPS has committed to ensuring that it takes effective measures to promote and ensure equal opportunities for all students, including ELL students and students with disabilities, to enroll and participate in its schools and programs. The Agreement requires HPS to take specific steps and actions to:

- Review its admissions policies, procedures, and practices to identify any potential barriers to increased participation by ELL students and students with disabilities and, as needed and following OCR review and approval, modify its admission policies, procedures, and practices to ensure equal access and equal opportunity for ELL students and students with disabilities to HPS charter schools; OCR expects that HPS will specifically examine whether its published enrollment requirements (requiring students to provide a copy of their birth certificates and social security numbers) pose barriers to increased participation by ELL students and whether its exclusion from admissions and enrollment of students with a documented history of a criminal offense, juvenile court adjudication, or discipline problems improperly contributes to the lower enrollment of some students in the HPS charter schools;
- Develop an "ELL Communication Plan" to ensure meaningful access to limited English proficient (LEP) parents with respect to student admissions and enrollment in HPS charter schools, including through interpretation and translation services;
- Implement a comprehensive plan for all HPS charter schools regarding the provision of services to ELL students that appropriately identifies and assesses ELL students for language development services, provides these services to the students, appropriately staffs and provides instructional resources to HPS' English-as-a-second-language (ESL) program, ensures that its ESL students are appropriately exited and monitored, and evaluates the overall HPS alternative language program;

- Review and revise existing evaluation and placement procedures for students with disabilities to ensure that students are evaluated with appropriate evaluation materials and that schools properly document the educational needs of students in their records;
- Collect and evaluate data on an ongoing basis to assess data related to the acceptance of students for admission to its charter schools in order to determine whether ELL students and students with disabilities are accepted at lower rates than other students and, if so, take necessary action to ensure that its admissions policies and procedures are fair and equitable; and
- Provide training to administrators and relevant staff at all HPS charter schools regarding revisions to its admissions and enrollment policies and procedures, communications with LEP parents, and language assistance services for ELL students, and communication and outreach to LEP students and parents/guidance about admission to the HPS charter schools.

Based on the commitments HPS has made in the Agreement, OCR has determined that it is appropriate to close the investigative phase of this compliance review. HPS has agreed to provide data and other information, demonstrating implementation of the Agreement, in a timely manner in accordance with the reporting requirements of the Agreement. OCR may conduct additional visits and request additional information as necessary to determine whether HPS has fulfilled the terms of the Agreement and is in compliance with Title VI, Section 504, or Title II with regard to the issues in the review. OCR will not close the monitoring of the Agreement until it has determined that HPS has complied with the terms of the Agreement and is in compliance with Title VI, Section 504, and Title II. Should the HPS fail to fully implement the Agreement, OCR will take appropriate action to ensure HPS' compliance with Title VI, Section 504, and Title II including possibly initiating administrative enforcement or judicial proceedings to enforce the specific terms and obligations of the Agreement. Before initiating administrative enforcement (34 C.F.R. §§ 100.9, 100.10), or judicial proceedings to enforce the Agreement, OCR shall give HPS written notice of the alleged breach and a minimum of sixty calendar days to cure the alleged breach.

This review did not attempt to investigate or address HPS' compliance with all of the issues that may arise under Title VI, Section 504, and Title II. Instead, this review addressed the specific issues described above. In addition, this review did not address HPS' compliance with any other statutes or regulations other than the specific statutes and regulations listed above. This letter sets forth OCR's determination in an individual OCR case. This letter is not a formal statement of OCR policy and should not be relied upon, cited, or construed as such. OCR's formal policy statements are approved by a duly authorized OCR official and made available to the public.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. In the event that OCR receives such a request, it will seek to protect, to the extent provided by law, personally identifiable information, which, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

OCR appreciates the cooperation and assistance of HPS in coordinating the compliance review activities. If you have any questions or concerns, please contact Ms. Page Baird, the assigned investigator, at (214) 661-9604, or Mr. John Stephens, Team Leader, at (214) 661-9651.

Sincerely,

/s/

Taylor D. August  
Director  
Dallas Office

Enclosure

cc: Mr. Robert A. (Bob) Schulman,  
Schulman, Lopez, & Hoffer, LLP

Mr. Ihsan Kara, Curriculum Director,  
HPS Department of Special Programs