



**UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS, REGION XV**

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MICHIGAN
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January 16, 2015

David R. Vance, Esq.
Zashin & Rich, Co., L.P.A.
55 Public Square, 4th Floor
Cleveland, Ohio 44113

Re: OCR Docket No. 15-11-5004

Dear Mr. Vance:

This is to advise you of the resolution of the above-referenced compliance review that was initiated by the U.S. Department of Education (Department), Office for Civil Rights (OCR). The compliance review was initiated pursuant to Title VI of the Civil Rights Act of 1964 (Title VI), 42 U.S.C. § 2000d *et seq.*, and its implementing regulation at 34 C.F.R. Part 100; Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. § 794, as amended, and its implementing regulation at 34 C.F.R. Part 104; and Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. § 12131 *et seq.*, and its implementing regulation at 28 C.F.R. Part 35. The review focused on whether Ohio charter schools contracting with White Hat Management (White Hat) discriminated, on the basis of national origin, against students who are English language learners (ELL) and parents/guardians who are limited-English proficient (LEP). Additionally, the review focused on whether the charter schools discriminated against students with disabilities.

OCR had authority to conduct this compliance review under Title VI, which prohibits discrimination on the basis of race, color, or national origin, and Section 504, which prohibits discrimination on the basis of disability, in programs or activities that receive financial assistance from the Department. OCR also had jurisdiction under Title II, which prohibits discrimination on the basis of disability by certain public entities. As recipients of financial assistance from the Department and as public educational entities, the charter schools contracting with White Hat are subject to Title VI, Section 504, Title II, and their implementing regulations.

Background

Ohio law provides for the creation of community schools, more commonly known as charter schools.¹ The law states that a charter school is a public school, independent of any school district, and is part of the state's program of education. Additionally, it states that a charter school may sue and be sued, acquire facilities as needed, contract for any services necessary for the operation of the school, and enter into contracts. Each charter school is considered a separate and independent local education agency by the Ohio Department of Education (ODE).

White Hat, a for-profit corporation, established in Akron, Ohio, contracts directly or through affiliated entities to provide educational and management services to charter schools in Ohio.² At the time this review was initiated, White Hat provided services to a group of 14 kindergarten through eighth grade charter schools in Ohio that were collectively known as the Hope Academies; each charter school in the group was a separate and independent LEA and maintained no formal affiliations with each other as each had its own charter and board.

During the investigation of this review, OCR reviewed the policies and procedures applicable to Ohio charter schools affiliated with White Hat relating to the provision of alternative language program services to ELL students, and the provision of a free appropriate education (FAPE) to students with disabilities. OCR interviewed White Hat administrators responsible for implementing these policies and procedures at White Hat's charter schools as well as an advocate for ELL and special education students. OCR also reviewed relevant documents available on the Ohio Department of Education (ODE) website and the website for the "Hope Academies."³

OCR also conducted on-site visits at three White Hat charter schools located in Cleveland, Ohio: Hope Academy Northwest, Hope Academy Lincoln Park Intermediate, and Hope Academy West. OCR interviewed central office and school administrators, English-as-a-second language (ESL) and special education teachers and program coordinators, teachers of core subjects, and school personnel involved in the admission and recruitment process at these schools. OCR also examined the files of all 990 students enrolled at these schools.

In the 2013-2014 school year, the Hope Academies served at least 4,128 students, 596 of whom have been identified as students with disabilities, and 238 of whom have been identified as ELL students. During the 2013-2014 school year: Hope Academy Northwest had a total enrollment of 283 students, with 39 students with disabilities and 22 ELL students; Hope Academy West had a total enrollment of 205 students, with 31 students with disabilities and 48 ELL students; and Hope Academy Lincoln Park had a total enrollment of 182 students, with 31 students with disabilities and 20 ELL students.

¹ See Ohio Revised Code, Chapter 3314.

² In addition to the kindergarten through eighth grade charter schools in Ohio that were the subject of this review, White Hat is affiliated with 15 Life Skills charter high schools and a virtual charter school providing services for students in kindergarten through twelfth grade in Ohio.

³ <http://the-academies.com/Who-We-Are>.

Prior to the conclusion of OCR's investigation, White Hat expressed an interest in resolving the compliance review with a resolution agreement. At this point, Hope Academy Lincoln Park Intermediate Campus and Hope Academy West Campus schools had ceased contracting with White Hat and contracted with another educational management organization (EMO), Cambridge Education Group (Cambridge), which is a subsidiary of Newpoint Education Partners (Newpoint). Cambridge and Newpoint thereafter coordinated representation for these two charter schools. To resolve the present review, White Hat provided signed agreements from 13 schools it currently contracts with in the state of Ohio, including Hope Academy Northwest; Newpoint provided signed agreements for the schools formerly known as Hope Academy West (now known as West Preparatory School) and Hope Academy Lincoln Park (now known as Lincoln Preparatory School).⁴

OCR has determined that the provisions of the 15 Agreements 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 the charter schools' completion of the steps outlined in the Agreements to ensure that they have fully implemented the provisions of the Agreements 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.

Legal Standards

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.⁵ 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

⁴ In total, OCR received signed agreements from the following 15 Ohio charter schools: Broadway Academy; Chapelside Cleveland Academy; East Academy; Garfield Academy; Northcoast Academy; Northwest Academy; Lincoln Park Academy; Pearl Academy; Riverside Academy; Southside Academy; University Academy; West Park Academy; Woodland Academy; Lincoln Preparatory School; and, West Preparatory School.

⁵ 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).

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 regulation implementing Title VI, 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 regulation implementing Title VI, 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.

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 regulation implementing Title II applicable to the FAPE issues raised in this compliance review do not provide greater protection than the applicable regulation implementing Section 504. Therefore, in accordance with the regulation implementing Title II, 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 or disability. 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 or 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, Section 504 or Title II 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.

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.⁶ A charter school must timely identify language-minority students who have limited proficiency in 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.

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 ELL 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.

⁶ OCR's policies governing the treatment of ELL students are available at <http://www.ed.gov/ocr/ellresources.html>. For an overview of the legal obligations of school districts to ELL students and LEP parents under the civil rights laws, see Joint OCR/DOJ Dear Colleague Letter on Schools' Obligations to English Language Learner Students and Limited English Proficient Parents (January 7, 2015), <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-el-201501.pdf>.

LEP Parents

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. 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.

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; i.e., 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 disabled 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 regulation implementing Section 504, 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.

The regulation implementing 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 agreements 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 is necessary to apprise such persons of the protections against discrimination assured them by Title II.

In addition, the regulation implementing Section 504 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. Both the Section 504 and Title II regulations require public notice of the identification of the employee designated to coordinate the compliance efforts.

Finally, the regulation implementing Section 504, 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

The “academies” publish a non-discrimination statement on its website, which states:

Enrollment will not be denied to any eligible applicant based on the basis of sex, race, religion, national origin, ancestry, pregnancy, marital or parental status, sexual orientation, or physical, mental, emotional or learning disability. The School will not discriminate in its pupil admissions policies or practices whether on the basis of intellectual or athletic ability, measures of achievement or aptitude, or any other basis that would be illegal if used by any public school.⁷

⁷ <http://the-academies.com/Notices-Policies/Non-Discrimination-Notice>.

OCR specifically examined the admissions and recruitment policies used by the three Cleveland charter schools visited by OCR as part of its investigation: Hope Academy Lincoln Park Campus, Hope Academy Northwest Campus, and Hope Academy West Campus. OCR's investigation confirmed that these schools accepted for enrollment any student who applied for admission, regardless of ELL or disability status. The schools recruit students in a variety of ways, including posting billboards and banners by the schools. The schools also host community events at the individual schools to boost enrollment. These events have titles such as "Feed the Children," "Community Day," and "Social Services Fair." The charter schools offer incentives to the public for participation in their community events, such as free food and school supplies. They publicize their community events using Facebook, flyers, newsletters, post cards mailed to students' homes, and radio and print media. The charter schools advertise using banners and flyers that are on occasion translated into Spanish.

Based on the 2008-2009 enrollment data collected at the outset of this review, the three charter schools served approximately 990 students, 47 (4.7%) of whom were identified ELL students and 126 (12.7%) students identified as students with disabilities. For the same school year, the Cleveland Metropolitan School District, the school district from which the three charter schools pulled students, served a population in which 5% of students were identified as ELL students and 21.8% were identified as students with disabilities.

Based on interviews with school personnel, OCR determined that the charter schools had Spanish-language-proficient personnel (*e.g.*, administrative assistants) who were available to assist with translation/interpretation (generally, oral interpretation) in the recruiting and enrollment process. The schools did not offer assistance in other languages. None of the three charter schools' websites had a means of translation.

According to the current website for Ohio academies, upon completion of registration, new students need to provide the following documents to their school: proof of residency, valid identification, parent photo identification, student immunization records, student withdrawal papers from previous school/district, transcripts, special education documents and other documents.⁸ OCR's investigation of the three charter schools visited by OCR also revealed that, upon enrollment, the schools provided all families with an enrollment packet that included several forms to be completed for the student, such as an enrollment/registration application; a student information card; an emergency medical authorization; and a home language survey.

The Charter Schools' ELL Program and LEP Parent Communications

With respect to the services provided to ELL students, the evidence indicated that all of the charter schools contracting with White Hat used the same ELL policies and procedures, referred to as the charter schools' English as a Second Language (ESL) program. Specifically, an ELL consultant for White Hat (who implemented ELL policies and procedures in a charter school managed by White Hat) advised OCR that all of the schools managed by White Hat maintained

⁸ <http://the-academies.com/Enrollment>. OCR noted that the website now includes registration links in English and Spanish.

similar policies and procedures related to the provision of alternative language services for ELL students; as this area was managed by White Hat, and policies and procedures were uniform. The policies contained a general non-discrimination policy, a home language survey, a parent notification letter, and *Guidelines for the Identification and Assessment of Limited English Proficient Students/English Language Learners* (ODE) (Sept. 2010). The documents reviewed also showed that the charter schools contracted with a third-party vendor to provide services to ELL students. Generally, the contractors provided pull-out services to ELL students 1-3 hours per week; although there was no consistent plan describing how those services were provided. In addition, no third-party vendor contractor interviewed by OCR during the review was familiar with the ODE policies provided in the charter schools' document responses.

To identify and evaluate ELL students, all of the charter schools used the same home language survey (HLS), which was included in enrollment packets. The HLS asked parents to identify: (1) what language their student spoke when he/she first learned to talk; (2) what language their student used most frequently at home; (3) what language they used most frequently to speak to the student; (4) what language the adults at home most often spoke; and (5) how long the student had attended school in the United States. Any student whose survey indicated a second language received ELL testing. Students could also be referred to testing by their teachers. The testing was done through a commercially available test that is consistent with the standards set by the state of Ohio, and varies by grade level. Reading, oral comprehension, and writing were all tested. As necessary, the charter schools began providing ELL services within 30 days of testing, and ELL students were formally assessed once a year using a standardized Ohio language acquisition assessment.

OCR also examined the implementation of the language assistance program at the three Cleveland schools visited as part of the review. With respect to staffing the ELL program, OCR determined that each school had at least one Teaching English to Students of Other Languages (TESOL) certified contractor to provide pull-out services to ELL students. Although a TESOL contractor at one school was able to identify to OCR the program or methodology used for teaching ELL students, and a particular curriculum, the contractors at the other two charter schools were not.

The instructional materials and instructional settings for ELL students varied at the three Cleveland charter schools. At one school, when OCR asked to see where students receive ELL services, the contractor led OCR to the church located next door to the school building. The contractor identified the stage housing the altar as the location where she and a colleague provided pull-out services to ELL students. The contractor said pull-out services were also provided in an adjacent room that appeared to be a closet for prayer benches. Another room used in that school for ELL services was a narrow shared office. At another school, ELL students received services wherever space was available when needed; including in a modular unit, the gymnasium, the cafeteria, or even on the front steps of the building. Because the charter schools were relying on pull-out services, ELL students remained with their non-ELL peers for the majority of the school day, being separated only for ELL instruction, which did not typically go beyond three one-hour sessions per week.

In assessing ELL students' access to special education services at the three schools, OCR reviewed the list of students identified as ELL, enrollment information, and all of the Individualized Education Programs (IEPs) and Section 504 plans in place at the charter schools during the 2011-2012 school year. OCR reviewed the files of the 47 ELL students and the 126 students with IEPs or Section 504 plans. Enrollment documents - including the HLS - indicated that several students' primary home language was one other than English, and that some of those students received IEPs providing for speech and language assistance but were not identified as ELL. Additionally, it was unclear if interpreter services were being provided at ELL students' Section 504 or IEP meetings.

With respect to opportunities to participate in special programs and extracurricular activities, representatives from two of the three charter schools asserted that such opportunities were not available to any students, and therefore no student was being excluded based on his or her status as an ELL student. In the remaining charter school, the building administrator stated that all students were welcome to participate in extracurricular basketball, cheerleading, and a Saturday enrichment program.

ELL students at each of the three charter schools exited the program based, at least in part, on their scores on a standardized language assessment test. No one interviewed at any of the charter schools could describe a formal system in place to monitor ELL students who exited the ESL program.

With respect to LEP parent communication, witnesses at each of the three charter schools indicated that staff was generally available to help interpret between English and Spanish, and some documents were available in both English and Spanish. However, at the time OCR conducted its investigation, the schools' websites, parent/student manuals, and nearly all other documents used to communicate with parents were available only in English; and it was unclear how services would be provided to LEP parents who speak neither English nor Spanish.

The Charter Schools' Policies and Procedures Regarding Students with Disabilities

OCR's investigation revealed that, generally, the policies and procedures of the charter schools affiliated with White Hat relating to the provision of FAPE to students with disabilities were the same or substantially similar throughout the state. The Special Education Director for White Hat (who implemented special education policies and procedures in all of the charter schools managed by White Hat) specifically advised OCR that all of the schools managed by White Hat maintained similar policies and procedures related to the provision of services for students with disabilities; as each of these areas was managed by White Hat, and policies and procedures were uniform.

As noted above, the current website for Ohio Hope Academies states that, upon completion of registration, new students are required to provide special education documents to their new charter school. OCR's investigation of the three charter schools identified above revealed that, upon enrollment, the schools provided all families with an enrollment packet that included an enrollment/registration application, on which the schools asked parents to disclose whether their

students had Section 504 plans or IEPs. In completing the enrollment materials, parents also had an opportunity to state whether they had any particular concerns about their student on the student information card and emergency medical authorizations. OCR's review of the approximately 990 students' information cards and the emergency medical authorizations found that parents used these cards to notify the charter schools of students' food allergies and other physical health conditions, such as asthma. OCR could not determine from the documents obtained whether the information parents recorded on these documents was consistently communicated to the charter schools' administrators, general education teachers, special education staff, intervention specialists, nurses, or any other individuals responsible for coordinating IEP or Section 504 services.

The Special Education Director stated that students at all of the charter schools were required to go through the school's intervention process prior to being evaluated, regardless of whether the schools already had sufficient information to indicate that a student might have a disability under Section 504 or the Individuals with Disabilities Education Act (IDEA). Staff at the three charter schools confirmed that students first needed to go through the intervention assistance team (IAT) process and undergo a response-to-interventions process before being evaluated under Section 504 or IDEA.

The Special Education Director told OCR that, unlike with IEPs, the charter schools had little experience with Section 504 plans and that the charter schools had a difficult time training their staff members to understand Section 504 because they were more familiar with the IEP process. Witnesses from the three charter schools visited by OCR gave inconsistent criteria for understanding when a student qualified for services pursuant to Section 504, but generally indicated that they believed that learning would need to be affected in some way for a student to be identified under Section 504 as a student with a disability. The regulation implementing Section 504, at 34 C.F.R. § 104.3, does not limit the definition of a student with a disability only to students whose learning is affected.

The Charter Schools' Section 504/Title II Coordinator and Grievance Procedures

OCR found no published information indicating that the three charter schools in Cleveland that were the subject of OCR's on-sites had designated a person to coordinate their efforts to comply with the regulations implementing Section 504 and Title II. Additionally, no member of the charter schools' staff was able to identify anyone designated to do so. The nondiscrimination notices included in the student manuals did not include identification of the employee designated to coordinate its efforts to comply with Section 504 or Title II, as required by Section 504 and Title II.

Regarding grievance procedures, the student manuals of these schools included a "Complaint Policy and Procedure" (the complaint procedure). OCR reviewed the complaint procedure and noted that it required complainants to first resolve any complaints with the school teacher. The complaint procedure appeared only to apply to complaints on behalf of students; it did not provide redress for employees or third parties. The complaint procedure did not: (1) designate timeframes for the major stages of the complaint process; (2) include a process for adequate,

reliable, and impartial investigation of complaints, including the opportunity to present witnesses and other evidence; (3) include an assurance that the school would take steps to prevent recurrence of any harassment and to correct discriminatory effects on the complainant and others, if appropriate; or (4) provide contact information, such as a phone number, name or title, or address, for the school's compliance officer, with whom the notice of nondiscrimination directed individuals to file complaints. Accordingly, OCR determined that the grievance procedures did not incorporate appropriate due process standards which provided for the prompt and equitable resolution of complaints alleging any action prohibited by Section 504 or Title II, as required by the regulations.

Conclusion

OCR's investigation determined that the White Hat's 15 "academies" (13 current and 2 former) had open admissions policies. During its investigation, OCR found that all of the White Hat "academies" had similar policies and procedures for the provision of services for ELL students, LEP parents, and students with disabilities. However, the implementation of these policies and procedures varied from school to school and raised significant compliance concerns under Title VI and Section 504/Title II, respectively. With respect to ELL students, OCR's investigation indicated that the White Hat schools did not ensure that students were appropriately assessed and identified as ELL students, provided appropriate and sufficient ELL services, appropriately exited from the school's language assistance program and then monitored, or provided comparable and adequate learning facilities. For LEP parents, OCR's investigation revealed that the White Hat charter schools provided limited interpretation and translation of information to LEP parents and only into Spanish.

For students with disabilities, OCR's investigation revealed concerns with the schools' evaluation and placement practices, including that the schools used an overly limited definition of a student with a disability and inappropriately required all students to go through an intervention process regardless of whether the school already had enough information to indicate that the student had a disability under Section 504 or IDEA and needed special education or related services.

OCR's investigation also revealed that the charter schools did not comply with the Section 504 and Title II regulations with respect to the designation and notice of coordinators, nondiscrimination notices and grievance procedures. OCR found that staff members interviewed at the schools were unable to identify at least one employee to coordinate its efforts to comply with Section 504 and Title II, and the notice of non-discrimination did not provide the necessary information about the coordinators. In addition, the schools grievance procedures did not incorporate appropriate due process protections providing for the prompt and equitable resolution of complaints under Section 504 and Title II.

Prior to the conclusion of OCR's investigation, White Hat expressed an interest in resolving the compliance review with a resolution agreement. The enclosed resolution agreements were submitted on August 6, 2014, by the 13 charter schools currently managed by White Hat, and on and September 26, 2014, by the two former White Hat charter schools known as Hope Academy West (now known as West Preparatory School) and Hope Academy Lincoln Park (now known as Lincoln Preparatory School).

The resolution agreements require all 15 charter schools to take the following steps: adopt and implement a comprehensive, written plan, subject to OCR review and approval, to provide instruction to ELL students that will specifically address articulated criteria for eligibility and level of language development services, appropriate instructional materials, comparable facilities, and program monitoring; adopt and implement a comprehensive, written plan, subject to OCR review and approval, to ensure meaningful communication with LEP parents; develop and implement Section 504 policies and procedures, subject to OCR review and approval, for the identification, evaluation, and placement of students with disabilities; ensure that ELL students receive special education and related services as appropriate to their disabilities, if any, and not because of their English language proficiency; develop prompt and equitable Section 504 grievance procedures; identify and publish the contact information for designated Section 504/Title II coordinators; and provide relevant Title VI, Section 504, and Title II training to all staff at the charter schools.

This letter should not be interpreted to address the charter schools' compliance with any other regulatory provision or to address any issues other than those addressed in this letter. This compliance review does not address the charter schools' compliance with any other statutes or regulations other than the specific statutes and regulations listed above.

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.

Please be advised that the charter schools may not harass, coerce, intimidate, or discriminate against any individual because he or she has participated in the compliance review resolution process. If this happens, that person may file a complaint alleging such treatment.

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.

Thank you for the cooperation extended to OCR during this compliance review. If you have any questions regarding this letter, please contact Daniel Scharf of my staff at (216) 522-7627 or at Daniel.Scharf@ed.gov. Karla Ussery will be the OCR staff person monitoring the implementation of the agreements for the 13 schools that contract with White Hat. Ms. Ussery can be contacted at (216) 522-4970 or Karla.Ussery@ed.gov. Vanessa Coterel will be the OCR

staff person monitoring the implementation of the agreements for the 2 schools that contract with Newpoint. Ms. Coterel can be contacted at (216) 522-4974 or Vanessa.Coterel@ed.gov. Should you choose to submit monitoring reports electronically, please send them to OCRCleMonitoringReports@ed.gov

Sincerely,

/s/ Meena Morey Chandra
Director

Enclosures