



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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January 29, 2015

Mr. Lee Allinger
Superintendent
Appleton Area School District
P.O. Box 2019
Appleton, Wisconsin 54911

Re: OCR #05-11-5001

Dear Mr. Allinger:

This is to advise you of the resolution of the above-referenced compliance review that was initiated by the U.S. Department of Education, Office for Civil Rights (OCR). The compliance review assessed whether the District's charter schools discriminate, 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 District's charter schools discriminate against students with disabilities.

OCR conducted this review under Title VI of the Civil Rights Act of 1964 (Title VI), 42 U.S.C. § 2000d, 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, 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. § 12132, and its implementing regulation at 28 C.F.R. Part 35. Title VI prohibits discrimination on the basis of race, color, or national origin in programs or activities operated by recipients of Federal financial assistance. Section 504 and Title II prohibit discrimination on the basis of disability by recipients of Federal financial assistance and public entities, respectively. As a recipient of Federal financial assistance and a public entity, the District is subject to Title VI, Section 504, and Title II and their respective implementing regulations.

The District currently operates 15 charter schools in the 2014-15 school year. Each charter school is an instrumentality of the District that is governed in accordance with the terms of a charter school contract. Therefore, the District is responsible for ensuring compliance with the civil rights statutes and regulations at issue in this review, Title VI, Section 504 and Title II. The requirements of these statutes and regulations are the same for the District's public charter schools as those that apply to other public schools in the District.¹ These laws extend to all operations of a charter school.

¹ 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).

The review examined whether the District discriminates on the basis of national origin or disability by failing to provide national origin minority ELL students and students with disabilities equal access to and equal opportunity to participate in its charter schools. OCR's review specifically focused on the District's compliance, under Title VI, Section 504, and Title II, with respect to the provision of alternative language services to ELL students, communications with national origin minority LEP parents and guardians, the evaluation, placement and provision of a free appropriate public education (FAPE) to students with disabilities, notice of nondiscrimination on the basis of race, national origin, color, and disability, and the accessibility of the facilities and technology used by the charter schools.

OCR examined data concerning the charter schools operated by the District from the 2010-11 school year through the 2013-14 school year. OCR also conducted interviews of central administrators, the principals and administrators of each charter school, and special education case managers of each charter school and special education staff from District non-charter schools. OCR also reviewed special education files and conducted multiple onsite visits to evaluate the accessibility of the charter school facilities.

Based on its investigation, OCR found that the District had established standards and procedures in compliance with the applicable Section 504 and Title II regulations regarding initial evaluations and periodic reevaluations and placement and the provision of a FAPE to students with disabilities. OCR also determined that the evidence was insufficient to support a conclusion of noncompliance with respect to the availability and use of technology for students with disabilities.

However, OCR found that the District violated Title VI by failing to ensure that the selective criteria used for admissions to one charter school do not screen out ELL students on the basis of their limited English proficiency. OCR also found that the District failed to ensure that its communications with LEP parents were effective, including its communications relating to admission and enrollment at the charter school. OCR also concluded that the District violated Section 504 and Title II with respect to the accessibility of the District's charter school facilities and the programs, services and activities located within those facilities. OCR further determined that the District failed to comply with the applicable Section 504 and Title II provisions requiring that a district's notice of nondiscrimination be included on its application materials.

Prior to the conclusion of OCR's investigation, the District expressed an interest in voluntarily resolving the review. Discussions between OCR and the District resulted in the District's execution of the enclosed resolution agreement on December 16, 2014. The agreement addresses the compliance issues addressed above as well as the remaining Title VI issues.

This letter summarizes the applicable legal standards, the information gathered during the review, how the review was resolved and steps since taken by the District to implement the agreement.

Background

During the 2011-12 school year, the District enrolled 15,119 students in its 22 traditional public schools, of which approximately 1,369 (9.1%) were identified as ELL students and 1,889 (12.5%) as students with disabilities. During the same school year, the District enrolled 2,688 students in its 15 charter schools. Of these 2,688 students, there were 120 ELL students (4.5%) and 153 students with disabilities (5.7%). During the 2013-14 school year, the District enrolled 16,224 students in its 22 traditional public schools, of which approximately 1,299 (8.0%) were identified as ELL students and 2,265 (14.0%) as students with disabilities. During the same year, the District enrolled 3,026 students in its 15 charter schools. Of these 3,026 students, there were 129 ELL students (4.3%) and 155 students with disabilities (5.1%).

During the start of its investigation, OCR obtained detailed information about the home language of ELL students in the charter schools. For the 2010-11 school year, the majority of ELL students identified their home language as Hmong or Spanish, while the remaining ELL students represented approximately twenty-five other languages, including Mandarin, Punjabi, Vietnamese, Arabic, Tagalog, Filipino, Russian, Urdu, Nepali, and Tamil. The majority of the ELL students enrolled in charter schools in the 2010-11 school year identified Hmong as their home language while the remaining ELL students identified Spanish or another language, other than Hmong, as their home language.

The enrollment of ELL students attending one of the District's charter schools during the 2013-14 school year ranged from 0 ELL students at 6 schools to 70 ELL students at Stephen Foster Elementary Charter School. The enrollment of students with disabilities attending one of the District's charter schools during the 2013-14 school year ranged from X students at 2 schools (Appleton eSchool and Valley New School) to 46 students at Foster. The types of disabilities of students enrolled at the charter schools during OCR's investigation included: Autism, Learning Disability, Speech and Language, Other Health Impairment, Hearing Disability, Emotional or Behavioral Disorder, Significant Developmental Delay, Visual Disability.

During the course of OCR's review, the District opened one new charter school (Appleton Bilingual School) and closed another charter school (Appleton Community Learning Center).² The District's charter schools offer specialized curricula and/or alternative methods of delivery. Several charter schools offer part-time enrollment and students may jointly enroll in the charter school and a traditional public school. The following are the 16 charter schools that operated between the 2010-11 and 2013-14 school years:

1. **Appleton Bilingual School (Bilingual):** Dual language (Spanish/English) bilingual school that opened in 2011-12 and serves grades K-6; Enrollment: 95 students in 2013-14, including 33 ELL students (34.7%) and X students with disabilities (XX%);

² For the 2014-15 school year, the District opened one new charter school (Appleton Technical Academy) and closed one charter school (United Public Montessori). Technical Academy's curriculum prepares students for manufacturing careers. The Appleton Technical Academy serves grades 9-12. Technical Academy was not included in OCR's review.

2. **Appleton Career Academy (ACA):** School focuses on career exploration and innovative learning opportunities in business marketing, health and design and serves grades 9-12; Enrollment: 108 students in 2013-14, including X ELL students (XX%) and X students with disabilities (XX%);
3. **Appleton Central High School (Central):** School for at-risk high school students that serves grades 9-12; Enrollment: 105 students in 2013-14, including X ELL students (XX%) and X students with disabilities (XX%);
4. **Appleton Community Learning Center (ACLC):** Former school for at-risk middle school students (grades 6-8); Enrollment: X students in 2010-2011; school closed after 2010-11 school year;
5. **Appleton eSchool (eSchool):** Online school that offers individualized learning and serves grades 9-12; Enrollment: 28 students in 2013-14, including X ELL students and X students with a disability or disabilities (XX%);
6. **Appleton Public Montessori (APM):** Montessori education program that serves grades 1-6; Enrollment: 152 students in 2013-14, including X ELL students (XX%) and X students with disabilities (XX%);
7. **Classical School (Classical):** School follows curriculum known as the official *Core Knowledge* program and serves grades K-8; Enrollment: 486 students in 2013-14, including X ELL students (XX%) and 12 students with disabilities (2.5%);
8. **Fox River Academy (Fox River):** School has environment education and serves grades 1-8; Enrollment: 93 students in 2013-14, including 0 ELL students and X students with disabilities (XX%);
9. **Kaleidoscope Academy (Kaleidoscope):** School has curriculum that focuses on technology, fine arts and closing achievement gap and serves grades 6-8; Enrollment: 338 students in 2013-14, including X ELL students (XX%) and 29 students with disabilities (8.6%);
10. **Odyssey-Magellan Charter School (Odyssey-Magellan):** School has faced-paced, vigorous curriculum for highly gifted students. Odyssey serves grades 3-6; Magellan serves grades 7-8; Enrollment: 159 students in 2013-14, including 0 ELL students and 13 students with disabilities (8.2%). Odyssey and Magellan campuses are located at two different District schools;
11. **Renaissance School for the Arts (Renaissance):** Arts-based high school that serves grades 9-12; Enrollment: 200 students in 2013-14, including X ELL students (XX%) and X students with disabilities (XX%);
12. **Stephen Foster Elementary Charter School (Foster):** School has center-based instruction and individualized learning plans and serves grades K-6; Enrollment: 308 students in 2013-14, including 70 ELL students (22.7%) and 46 students with disabilities (14.9%);
13. **Tesla Engineering Charter School (Tesla):** School provides college level science, technology, engineering and math (STEM) education and serves grades 9-12; Enrollment: 114 students in 2013-14, including 0 ELL students and X students with disabilities (XX%);
14. **United Public Montessori (UPM):** School has Montessori curriculum and serves grades 7-12; Enrollment: 26 students in 2013-14, including 0 ELL students and X students with disabilities (XX%); school closed after 2013-14 school year;

15. **Valley New School (Valley New):** School has student-driven, project-based curriculum and serves grades 7-12; Enrollment: 65 students in 2013-14, including 0 ELL students and X students with a disability or disabilities (XX%); and
16. **Wisconsin Connections Academy (WCA):** Virtual charter school that serves grades K-12; Enrollment: 749 students in 2013-14 (increased from 417 students in 2010-2011), including X ELL student (XX%) and X students with disabilities (XX%).

Ten of the District's 16 charter schools – Bilingual, ACA, eSchool, APM, Fox River, Kaleidoscope, Odyssey-Magellan, Renaissance, Tesla, and UPM – were located in buildings that also have a traditional public school. The principals in these buildings serve as the administrator for both the traditional school and the charter school. Additionally, in most instances, the ELL and special education personnel assigned to the traditional school provide services to charter school students. Two charter schools, Classical School and Foster, are located in their own buildings. The remaining four charter schools – ACLC, Central, Valley New, and WCA – were located within or administered from the District's administrative building.

Admissions

The review examined the District's policies, procedures and practices with respect to admissions of ELL students and students with disabilities to its charter schools.

Legal Standards

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 status.

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. 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.³ OCR policy (described below) requires, for specialized programs, that the recipient ensure that evaluation and testing procedures for participation in a specialized program do not screen out

³ 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.

ELL students on the basis of their limited English proficiency, unless the recipient legitimately requires proficiency in English for meaningful participation. 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.⁴

The Title VI regulation, at 34 C.F.R. § 100.6(d), requires recipients to notify participants, beneficiaries, and other interested persons of the Title VI regulatory provisions in a manner that a responsible Department official would find necessary to apprise such persons of their protections against discrimination under Title VI. The Section 504 regulation, 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. If a recipient publishes or uses recruitment materials or publications containing general information that it makes available to participants, beneficiaries, applicants, or employees, it shall include in those materials or publications a statement of the nondiscrimination policy. 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.

Factual Summary

Admission and enrollment in the Appleton charter schools are open to all students who reside in the District and who are eligible for admission based on criteria identified by the charter school. Students must apply to and be accepted by an individual charter school. Students who are accepted to the District through the Wisconsin inter-district open enrollment program are eligible to attend a traditional public school or apply for admission to one or more of the charter schools.

The District's nondiscrimination policies, which apply to all charter schools per the terms of each charter school contract, are available on the District's website.⁵ The Student Nondiscrimination Policy expressly prohibits, in relevant part, discrimination on the bases of race, color, national origin, and physical, cognitive, emotional or learning disability.

⁴ In determining whether a recipient has improperly excluded ELL students from specialized programs, OCR will carefully examine the recipient's explanation for the lack of participation by ELL students. Educational justifications for excluding a particular ELL student from a specialized program should be comparable to those used in excluding non-ELL students and include: "(1) that time for the program would unduly hinder his/her participation in an alternative language program; and (2) that the specialized program itself requires proficiency in English language skills for meaningful participation." If a recipient believes that there is an educational justification for requiring proficiency in English in a specialized program, OCR will consider the recipient's proffered rationale to assess whether it constitutes a substantial educational justification and, if so, to determine whether a school could use comparably effective alternative policies or practices that would have less of an adverse impact on ELL students.

⁵ <https://www1.aasd.k12.wi.us/sp/district/BOE/Policies%20%20Procedures/Series%20400.pdf>

The admissions process for enrollment in the District charter schools is not standardized; each school is responsible for establishing its own policies and procedures governing admission and enrollment (i.e., admission criteria, application materials, deadlines). None of the charter schools require English proficiency for admission. Admissions and recruiting materials are provided to ELL and non-ELL students and to students with and without disabilities, without distinction.

All students who apply for admission to the District charter schools (with the exception of Odyssey-Magellan and Renaissance discussed below) are admitted if the number of applications does not exceed available space. After space is given to students eligible for certain preferences (e.g., siblings, children of founders or staff), and if the number of qualified applicants exceeds the remaining space available, a lottery is employed to arrive at the desired enrollment for each grade.

Odyssey-Magellan, a school for gifted and talented students, selects students identified as gifted in intellectual ability based on standardized test scores. The administrators explained that Odyssey-Magellan recruits gifted and talented students from traditional public schools based upon the student's MAP test scores. Students accepted into Odyssey (grades 3-6) are automatically accepted into Magellan (grades 7-8) should they choose to continue in the charter school program.

The District's ELL Coordinator believed that to be considered for admission to Odyssey-Magellan, ELL students are administered the Naglieri, a non-verbal ability test that does not require English proficiency. However, the administrators of both the Odyssey and the Magellan locations were uncertain as to whether the test was administered in languages other than English, or how the District selects tests that will not prevent a student with limited proficiency in English from qualifying for a program for which they are otherwise qualified. Odyssey-Magellan did not enroll any ELL students during the review time period.

Renaissance requires applicants to provide one recommendation from one of the applicant's recent teachers of English, Math, Science or other academic subjects, one recommendation from one of the applicant's recent creative arts teachers, as well as responses to essay questions. The Principal stated that, although the school resorted to a lottery in 2009-10 and 2010-11, all qualified students on the waitlist were eventually admitted. OCR did not obtain any anecdotal evidence to indicate that the artistic evaluation, essay or recommendations needed for admissions tend to screen out ELL students. Renaissance enrolled ELL students throughout the time period reviewed by OCR, including enrolling X ELL students in the 2013-14 school year.

At the start of its investigation, OCR reviewed each charter school's admissions applications. The 2011-12 applications to Central, ACLC, APM, Classical, Renaissance, UPM, and Valley New included a statement of nondiscrimination that expressly states that the charter school does not discriminate on the basis of race, national origin, and disability, among other protected bases. No other charter school included a nondiscrimination statement on the application.

Three charter schools – Bilingual, APM, and Kaleidoscope – included questions about the student's ELL status in the application. However, staff at these schools reported that this

information is used only to coordinate services and not for admission as students are selected by lottery. The ELL Coordinator for the District told OCR that, in most cases, staff members at charter schools are unaware of the student's ELL status until after the student is admitted and the Home Language Survey (HLS) is completed during registration.⁶ He added that, in some instances, the HLS is completed before registration because the District attempts to locate newcomers and ELL students who are zoned into neighborhood schools without ELL programs before the start of school so that programming and transportation to an appropriate ELL program can be arranged in advance of the school year. The remaining charter schools did not inquire as to a student's English proficiency and the administrators indicated that they are generally unaware of the student's home language or ELL status at the time of admission.

When OCR commenced its review, most of the charter school applications inquired as to the student's disability status by asking if the student is receiving special education or other services. During interviews, administrators and staff stated that this information was used for planning purposes only and did not in any way impact the students' selection or admission into the charter school. Staff at all of the charter schools reported using the same recruiting methods for all students, including participation in the charter school fair, print advertisements (local newspapers, flyers, brochures, etc.), radio and television advertisements, and prospective student events such as open houses and tours. No staff at the charter schools indicated that their school specifically recruits or categorically excludes ELL students or students with disabilities.

The District publishes admission and enrollment information for each charter school on its website and holds an annual charter school fair at City Center Plaza in downtown Appleton. The charter school fair is publicized on the District's website and a flyer containing information about each charter school (i.e., name, location, contact information, description of the charter school's program and curriculum) is mailed to every home in Appleton. Representatives from each charter school are present at the charter fair to answer questions and provide information and application materials for their respective schools. The District also advertises the charter school fair on television and radio.

In addition to the charter school fair, each charter school provides admission and enrollment information on its website and engages in a variety of independent recruiting efforts. Odyssey-Magellan's recruiting efforts differ from other charter schools' in that the program recruits only students whom the school identifies as gifted; students are recruited from neighborhood gifted and talented programs and staff review annual standardized test scores of District students who qualify and then initiate contact with those students.

Analysis

OCR's investigation revealed that, with the exception of Odyssey-Magellan and Renaissance, which have selective admissions criteria, the District's charter schools are open to all students in the District, as well as to those students accepted to the District under the state's open enrollment

⁶ The District advised OCR that staff at traditional schools and charter schools identify ELL students and LEP parents through the use of a HLS, which is completed during registration.

law. The charter schools admit all students who apply for admission if the number of applications does not exceed available space. After certain preferences are given (e.g., for siblings, children of founders or staff), the charter schools select students for admission based on a lottery if the number of applicants exceeds the remaining space available. With the exception of Odyssey-Magellan which specifically recruits only students it has identified as gifted, staff at the District's charter schools used the similar recruitment methods for all students. 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. OCR's investigation revealed that the eligibility criteria for admission to all of the charter schools were nondiscriminatory on their face.

OCR's investigation revealed that some of the charter schools inquire about ELL or disability status on their application forms. However, administrators and staff at charter schools indicated that they use this information to plan services for these students and OCR's file review did not indicate otherwise. Thus, the evidence was insufficient to establish that this information was used as selection criteria or to deny admission to the students. OCR did not find evidence to indicate that the charter schools categorically denied any students enrollment based on ELL or disability status.

However, OCR's investigation revealed that the numbers and proportions of ELL students and students with disabilities in the District's charter schools were significantly lower than the numbers and proportions of ELL students and students with disabilities in the District's traditional schools. In the 2013-14 school year, the District's charter schools enrolled 129 ELL students, 4.3% of the total charter school enrollment and 155 students with disabilities, 5.1% of the total charter school enrollment. The District's traditional schools enrolled 1,299 ELL students, 8.0% of the total enrollment at these schools, and 2,265 students with disabilities in the District's traditional schools, 14% of the enrollment at these schools.

OCR concluded that the District has failed to comply with Title VI with respect to the admissions criteria used for ELL students who seek to enroll at Odyssey-Magellan, the District's charter school for gifted and talented students. The District has not ensured that the test used to evaluate students was administered in languages other than English and thus has not ensured that the test does not screen out ELL students on the basis of their limited English proficiency. OCR noted that no ELL students had enrolled in Odyssey-Magellan during the time period examined by OCR.

Finally, although the District's non-discrimination policy, which applies to charter schools, prohibits discrimination on the basis of race, color, national origin and disabilities is available on the District's website, OCR found that the District did not notify applicants of its obligation not to discriminate on the basis of disability on all applications to charter schools. Specifically, only seven charter schools included a statement of nondiscrimination on the application or enrollment form. Thus, OCR determined that the District failed to comply with Section 504, at 34 C.F.R. § 104.8, and Title II regulations, at 28 C.F.R. § 35.106. OCR found that the District's non-discrimination policy was sufficient to meet the requirements of the regulations implementing Title VI, at 34 C.F.R. § 100.6(d), which do not specify the method by which a District is required

to notify participants, beneficiaries, and other interested persons of their protections against discrimination under Title VI.

Prior to OCR's completion of its investigation, the District requested to resolve the compliance review; OCR made no further compliance determinations under this section.

Language Assistance for ELL Students and LEP Parents

This review examined the District's provision of language assistance services for ELL students. The review also investigated whether the District provides effective methods of communication with national origin minority limited LEP parents and students regarding its charter schools.

Legal Standards

Like all traditional public schools, public charter schools must take affirmative steps to help ELL students overcome language barriers so that they can participate meaningfully in their schools' educational programs.⁷ 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 must demonstrate that their programs for ELL students are successful in meeting these responsibilities, or modify them if necessary. Unless a specialized program requires proficiency in English for meaningful participation, the recipient must ensure that evaluation and testing procedures for participation in a specialized program 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.⁸

⁷ 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>.

⁸ In determining whether a recipient has improperly excluded ELL students from specialized programs, OCR will carefully examine the recipient's explanation for the lack of participation by ELL students. Educational

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.

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.

Factual Summary

ELL Students

The District advised OCR that staff at charter schools follow the District's procedure to identify ELL students and LEP parents through the use of a HLS, which includes the following six questions: (1) what language did your child speak when he or she first began to talk; (2) what language does your child speak most often at home; (3) what language does your child speak most often with his or her friends; (4) what language do you use most often when speaking to your child; (5) is there an adult in the home who can read English; and (6) do you want a translator available at school conferences. The HLS is available in English, Hmong, and Spanish. Except in cases where enrollment takes place online (WCA) or through referral from the Building Consultation Team (BCT) (Central), Hmong and Spanish interpreters are generally available to each charter school to assist with registration. The charter schools that are located in a building with traditional public school conduct registration on the same day as the traditional school so that interpreters are present. Classical School uses a bilingual Spanish teacher for interpretation and Valley New School officials reported that they could request assistance from interpreters from nearby schools or through the District. As to low incidence languages, the District's guidelines instruct that, if it is evident that neither the registering adult nor student understands sufficient English to complete the HLS, registration is suspended until an interpreter can provide assistance in the native language.

justifications for excluding a particular ELL student from a specialized program should be comparable to those used in excluding non-ELL students and include: "(1) that time for the program would unduly hinder his/her participation in an alternative language program; and (2) that the specialized program itself requires proficiency in English language skills for meaningful participation." If a recipient believes that there is an educational justification for requiring proficiency in English in a specialized program, OCR will consider the recipient's proffered rationale to assess whether it constitutes a substantial educational justification and, if so, to determine whether a school could use comparably effective alternative policies or practices that would have less of an adverse impact on ELL students.

According to District procedures, if a response to the HLS indicates a language other than English, registration officials are directed to contact the ELL/bilingual staff assigned to the school to conduct testing to determine the student's English proficiency. If the school has no assigned ELL/bilingual staff, the initial determination of English proficiency will be made by either the ELL/bilingual staff from a nearby public school or by an itinerant ELL diagnostician. Administrators of the charter schools that are located in a building with a traditional public school told OCR that they use the ELL/bilingual staff from the traditional ELL program to conduct the testing. The administrators of the charter schools that are not located in a building with a neighborhood ELL program, namely Classical School and Valley New School, told OCR that they contact the District ELL Coordinator who arranges for an itinerant ELL/bilingual staff member to evaluate the student. Staff members at every charter school were aware of the District's written procedures for evaluating ELL students.

The District reported that all but four charter schools (Central, Classical, Valley New and WCA) currently offer an ELL program at the school. ACLC also did not offer ELL services prior to its closure. The District's ELL Coordinator told OCR that the ELL services provided by the charter schools are comparable, though not identical, to ELL services provided by the traditional public schools. He explained that elementary and middle schools provide content-based ELL services with a pull-out model as the primary method of delivery and the high schools provide scheduled language development classes for ELL students. Students with test scores of 2 or below are recommended for placement into special newcomer programs, which are located at designated public schools. All ELL teachers are certified in English as a Second Language and interpreters undergo training regarding interpretation, including the ethics of interpreting.

The charter school administrators, and teachers who were interviewed, stated that ELL students who attend the ten charter schools located in buildings with traditional public schools receive services from ELL staff from the traditional school. Those services, they indicated, typically consisted of pull-out services with some modification to accommodate the student's charter school programming. The District's ELL Coordinator told OCR that ELL staffing is determined by the total number of ELL students enrolled in the building, which includes both neighborhood students and charter students when two schools share a building. At the high school level, the staffing formula takes into account the total number of students as well as their level of English proficiency.

The remaining six schools that are not located in buildings with traditional public schools included: Classical and Foster, which have their own buildings, and Central, ACLC (now closed), Valley New and WCA, which are located within or administered from the District's administrative building. The District reported that of these schools, only Foster offers its own ELL program. The principal of Foster reported that it retained a large number of ELL students from the neighborhood when it converted to a charter school and therefore continues to provide ELL services in Hmong and Spanish through the co-teaching model that was in place prior to Foster converting to a public charter school.

The data obtained by OCR indicates that four of the District's charter schools did not enroll any ELL students during the 2010-11 to 2013-14 school years: Fox River, Odyssey-Magellan, Valley New, and UPM. Tesla and eSchool did not enroll any ELL students in 2013-14, but enrolled ELL students in previous years (Tesla enrolled X ELL students in 2010-11; eSchool enrolled X ELL students in 2012-13; and X ELL students in 2011-12).

As noted, four charter schools do not offer ELL programs: Classical, Central, Valley New and WCA. The ELL Coordinator and the Dean of Classical School told OCR that ELL services are not offered at Classical and that, if a student is identified as ELL, the student is either placed into another school with an ELL program or the parent waives in writing ELL services so the parent's child can remain in the program. The Director explained that the school has had a few students who have qualified for ELL services, but their parents declined services because the students were fairly proficient in English and the parents either wanted immersion or the *Core Knowledge* curriculum. She added that there has not been a situation where a student did not have the language skills necessary to remain in the school. Further, she noted that, when parents have waived ELL services and the student remained at Classical, teachers have made modifications for the student. Lastly, the Dean stated that Classical would be receptive to an ELL program, but indicated that the District determines whether a charter school has an ELL program based on ELL enrollment. In the 2013-14 school year, Classical enrolled X ELL students.

The principal of Central, which enrolls "at risk" students based on a referral from the BCT told OCR that the programs have successfully enrolled former ELL students, but have not yet received a referral of a student who still requires ELL services while enrolled in the charter school. The Principal told OCR that the ELL students who were referred to Central were successful at these schools without ELL services due to their level of English language skills and the nature of the programming at the alternative school (small number of students, high student/staff ratio and intense individualized programming). In the 2013-14 school year, Central enrolled X ELL students.

Valley New did not offer an ELL program or enroll any ELL students during the review time period, but the co-founder of the school indicated that, if such services were required, they could be obtained through Columbus Elementary School, Wilson Middle School or West High School, which are nearby. Valley New did not enroll any ELL students in the 2013-14 school year or in any other school year examined during OCR's review.

According to the ELL Coordinator, WCA does not offer an ELL program and requires parents of ELL students to sign a form acknowledging that there are no ELL services provided through WCA. However, WCA students can get ELL services from traditional schools while attending WCA. The principal reported that the school reviews the HLS and would work with a district to provide necessary services as the District makes ELL services available to students at who enroll in the charter school. The data for 2013-14 indicates that there X X ELL students enrolled at WCA.

As noted, Fox River and UPM (now closed) also did not enroll any ELL students during the review time period. Tesla and eSchool did not enroll any ELL students in the 2013-14 school year, but enrolled students in earlier years.

Parent Communication

The District advised OCR that staff at traditional schools and charter schools use responses to the HLS to determine the parental need for oral interpretation and written translations. The ELL Coordinator told OCR that teachers are provided a list of their ELL students at the beginning of the school year and can view an ELL student's English proficiency level (even when parents decline services) via the District's homepage. The District's data response did not, however, establish how it makes administrators, teachers and staff aware of the parents'/guardians' language preference and interviews of school teachers and staff revealed that some were not aware the language preference.

The District reported that most oral interpretation is done by interpreters who are employees of the District. When the District does not have internal capacity to interpret (e.g., low incidence languages and dialects, after hour meetings, etc.), the District locates an interpreter through another community agency or contracts with an outside company to provide interpretation. The District provided a list of contracted interpreter services provided in the 2009-10 and 2010-11 school years. The District reported that it also utilizes School Messenger, a software system that can send messages (telephone, text, email, etc.) to parents in over 50 languages, to communicate with LEP parents.

The District provided OCR with a list of interpreters and bilingual staff assigned to charter schools. All but four charter schools – Central, Classical, Valley New, and WCA – have assigned Hmong and Spanish interpreters that are shared with an ELL program in a traditional public school. Central does not have assigned interpreters, but uses other District high school interpreters on an as-needed basis. The Dean of Classical stated that one of her teachers is bilingual and interprets for Spanish-speaking parents and she is aware that she can request an interpreter for other languages through the District's ELL Coordinator. The District also provides charter schools with a list of Hmong and Spanish interpreters that can be used on an as-needed or emergency basis, including contacts in the community for lower incidence languages such as Mandarin, Vietnamese, and Bosnian. Staff at most charter schools reported that they were aware that they could request an interpreter through the ELL Coordinator and several charter school administrators interviewed (e.g., Odyssey-Magellan, eSchool) also mentioned using assistive technology such as headsets and automated telephone messages in other languages.

The data provided by the District suggest that parents are not notified that interpreters and translators are available. The District reported that principals, teachers, and other ELL and bilingual staff "build awareness of interpreters and interpretive services to parents and guardians"; however, the District did not specify how parents are made aware of interpreter or translator services and provided OCR with documents advising only teachers and staff about interpreter services. Moreover, OCR was unable to locate information on the District's website regarding how a parent or guardian can request interpreter or translation services.

With respect to written translations, the District advised OCR that the ELL Coordinator is responsible for translating District-wide documents and forms (*e.g.*, policy manuals, code of conduct, report cards, etc.) and school administrators are responsible for interpreting documents that are specific to each individual charter school. The ELL Coordinator told OCR that the District employs two professional translators to provide quality, consistent translations of District-wide documents in Hmong and Spanish, which are made available to all schools, including charter schools, on a shared drive. Most charter school administrators used the translated documents on the District's shared drive and were aware of the District's resources for assisting in the translation of school-based documents. However, the extent to which the charter schools actually translated school-based documents varied. The elementary schools and schools with high ELL populations reported frequent translations of report cards, individualized education plans (IEPs), test scores, and notes to parents. Staff at a few charter schools indicated that they did not routinely translate school-based documents because they have not received a request for translation or the students were high school age and proficient in English.

The District ELL Coordinator reported that he is responsible for hiring and training interpreters and translators, but does not directly supervise them. Interpreters and translators are supervised and evaluated by the school administrator. The ELL Coordinator told OCR that the District provides annual training concerning the role of interpreters and translators, ethics, and confidentiality. The District provided copies of training materials used during the 2009-10 and 2010-11 school years. School administrators evaluate interpreters and translators every three years unless they move to a position in another school. The District provided the most recent evaluations for interpreters working in charter schools and OCR noted no concerns were raised as to breaches of ethical duties, confidentiality or competence.

With respect to admissions, OCR's investigation revealed that in the 2011-12 school year, only three charter schools had applications in a language other than English; the Appleton Bilingual School and APM translated application forms into Spanish, and Fox River translated application forms in Hmong and Spanish. District administrators were uncertain if the television and radio advertisements about the District's charter school fair were in languages other than English.

The District's charter school flyer containing information about each charter school is published in English, Hmong, and Spanish. One school, Kaleidoscope, reported that it had interpreters make recruiting calls to non-English speaking parents during the first few years of its operation, but stopped recruiting students after enrollment increased. Kaleidoscope enrolled X ELL students in 2011-12, X ELL students in 2012-13 and X ELL students in 2013-14.

The District provided information indicating that it provided notice to parents that interpreters can be requested for prospective student events (*e.g.*, open houses, informational meetings, and tours). Tesla participates in East High School's showcase, which uses Spanish and Hmong interpreters for the event. Appleton Bilingual told OCR that it has Spanish and Hmong interpreters available and eSchool uses translation headsets for open houses. The remaining schools reported that interpreters are not usually present at prospective student events. Most school administrators told OCR that they have not received any requests for an interpreter at one

of these events. Only one charter school administrator recalled the presence of an interpreter at the charter school fair. Several charter school administrators told OCR that they were uncertain or did not believe that interpreters were available, but indicated that they would have contacted the District's ELL Coordinator if they had been approached by a parent with limited English proficiency.

Odyssey-Magellan stated that interpreters call parents to inform them that their child's test scores qualify them for admission into the school. At the time of OCR's review, all of the individual charter school websites, except for the Appleton Bilingual, were in English and none contained information in other languages. Appleton Bilingual's website is fully translated into Spanish. Valley New and APM created brochures in English and Spanish; however, staff at none of the other charter schools reported advertising in print (e.g., newspapers, brochures, flyers, posters, postcards, email) in a language other than English. Similarly, although APM told OCR that it used radio advertisements in Hmong, no other charter school reported the use of radio or television advertisements in a language other than English. The Dean of Classical told OCR that it ran newspaper and radio ads in Spanish and Hmong in previous years, but received little response.

Analysis

Based on the above, OCR determined that the District may not be providing effective language instruction to ELL students enrolled in its charter schools. Four of the 16 charter schools reviewed do not provide an ELL program: Central, Classical, Valley New and WCA. Although administrators of three of these schools (Central, Valley New, and WCA) indicated that they would provide ELL services to ELL students if needed, two of the schools (WCA and Classical) require parents to acknowledge in writing that there are no ELL services offered by the charter school in order to attend the schools. OCR noted that in the 2013-14 school year, the four schools enrolled 12 ELL students: Central (X), Classical (X), Valley New (0) and WCA (X). OCR also noted that six of the District's charter schools (Fox River, Odyssey-Magellan, Valley New, UPM, eSchool and Tesla) did not enroll any ELL students during the 2013-14 school year, and four schools (Fox River, Odyssey-Magellan, Valley New, UPM) did not enroll any ELL students during the 2010-11 to 2013-14 school years.

Based on the evidence obtained, OCR determined that the District failed to comply with Title VI by not ensuring that its communications were adequate with national origin minority LEP parents and ELL students, including through the provision and notice to staff and parents of the availability of interpretation and translation services. The District lacks a cohesive plan to ensure that it effectively communicates with national origin-minority LEP parents and ELL students in its communications, including in communications regarding opportunities to apply for and attend charter schools.

Prior to the completion of OCR's investigation, the District expressed an interest in voluntarily resolving the review; OCR did not make further compliance determinations under this section.

Section 504 and Title II: FAPE

The review assessed whether the District's charter schools have standards and procedures in place for initial evaluations and periodic reevaluations of charter school students who need or are believed to need special education services and/or related services because of a disability.

Legal Standards

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.

Factual Summary

Evaluation Procedures and FAPE

All of the charter schools follow the District's special education policies, which are available on the District's website.⁹ OCR reviewed the District's special education and Section 504 procedures and found them to be consistent with the procedural requirements of Section 504, including 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. Due process and notice of procedural safeguards are provided to charter school students. OCR did not find any evidence that parents were required to waive their child's right to FAPE as a prerequisite to attending District charter schools.

OCR interviewed the special education case managers assigned to each of the charter schools. The case managers are primarily assigned to a traditional public school and work with charter school students with IEPs and Section 504 plans. OCR reviewed files of more than 50 special education students attending charter schools. According to the case managers, students who attend a charter school located in a building with a traditional public school receive services from the traditional school's special education staff and students who are jointly enrolled in a part-time charter school usually receive services from the traditional public school. Further, the evidence shows that although individual special education teachers may not be permanently assigned to some of the individual charter schools, staff can be reassigned to provide services as needed and as required by an IEP or Section 504 Plan, and case managers are still able to provide services either through a monitoring system or by working directly with teachers at the individual charter schools to provide regular or special education and related aids and services that are designed to meet individual educational needs of students with disabilities as adequately as the needs of students without disabilities.

OCR's investigation revealed that qualified students with disabilities were in all of the District's charter schools in the 2013-14 school year. Classical and Foster, which are located in their own buildings, employ their own special education staff to conduct evaluations, including reevaluations, and to provide special education services to students. Classical reported that it employs a speech-language teacher and a learning disabilities teacher, along with six other teachers with special education backgrounds. The referral process at Classical begins with the building team, which includes parents, and a pre-referral intervention process. When a student is evaluated or reevaluated for special education services, the eligibility team meeting is held at Classical. Classical case managers reported that pull-out services are provided during the school day. Foster also has its own referral system and special education staff to conduct evaluations and routinely provides classes for students with various cognitive and learning disabilities. In 2013-14, Classical enrolled 12 students with disabilities and Foster enrolled 46 students with disabilities.

⁹ <http://www1.aasd.k12.wi.us/sp/district/BOE/Pages/policies.aspx>.

The principal of Bilingual reported that evaluations and reevaluations are conducted by staff at Columbus Elementary Middle School where Bilingual is located and that, during the 2013-14 school year, X students enrolled in Bilingual had IEPs and were receiving services pull-out services from the full-time special education teacher assigned to Columbus Elementary School.

Central, which serves at-risk students, does not have special education teachers specifically assigned to the schools. If a student is identified as possibly in need of special education services, the student's referring school would initiate the evaluation process. If the student has been identified as disabled, the student's case manager from the referring school continues to serve as the student's case manager even after the student enrolls at Central. The District reported that special education staff could go to the Administration Building where both schools are located to provide services. Central has one social worker assigned for a portion of the day and has enrolled and provided services to students with 504 plans and IEPs without issue. In 2013-14, Central enrolled X students with disabilities.

ACA students attend a traditional public school in the morning and ACA classes in the afternoon. Evaluations, including periodic reevaluations, are conducted by the student's traditional public school, and ACA teachers participate in the IEP meetings. According to case managers interviewed by OCR, students generally receive pull-out special education services during morning classes in accordance with their IEP or 504 plan and ACA teachers provide necessary related aids and modifications to students in the afternoon ACA classes. When necessary, ACA teachers can implement IEP and 504 plans or special education staff can be provided to implement a student's IEP or 504 plan. The case manager maintains regular contact with ACA teachers, and the resource room is available all day for students attending ACA afternoon classes. In 2013-14, ACA enrolled X students with disabilities.

According to case managers for APM, if a student is referred for an evaluation or reevaluation, Johnston Elementary School staff conducts the evaluation. Pull-out services are provided during the academic day. Case managers reported that there are few supports available during actual classroom time because there is not a special education teacher assigned directly to the school. However, since APM is housed at Johnston Elementary School, special education staff members are available to provide services as needed. In 2013-14, ACA enrolled X students with disabilities.

Case managers for Fox River report that evaluations and reevaluations are conducted by the school that the student would attend based on attendance boundaries and special education services are provided by staff at Jefferson Elementary School. The Principal of Fox River indicated that push-in and pull-out services are available and would modify the program to the extent possible to fit the student's needs. In 2013-14, Fox River enrolled X students with disabilities.

Kaleidoscope case managers reported that evaluations and reevaluations are conducted by staff at Roosevelt Middle School where Kaleidoscope is located and that pull-out services were provided by a full-time special education teacher assigned to Kaleidoscope. Similarly, Odyssey-Magellan students receive evaluations and reevaluations through Highland Elementary School, where

Odyssey is located. Since the program is located in two traditional public schools with a special education staff available to provide services to students enrolled in the charter school, both push-in and pull-out services are available when needed. In 2013-14, Kaleidoscope enrolled 29 students with disabilities and Odyssey-Magellan enrolled 13 students with disabilities.

Since Renaissance is located at West High School, which has special education teachers available to provide services to students enrolled in the charter school, evaluation and special education services for students who attend Renaissance are provided by West High School. Case managers for Renaissance reported that students usually receive special education and related services during the first part of the school day when students are attending traditional school classes, usually at West High School, and Renaissance provides modifications as needed during the student's afternoon charter school classes. The case managers added that students' schedules are arranged to minimize the need for services to be provided during the Renaissance portion of the day. In 2013-14, Renaissance enrolled X students with disabilities.

Tesla case managers reported that the evaluation and reevaluation process for Tesla students is conducted at East High School where Tesla is located. Tesla teachers are invited to the initial evaluation and IEP/504 meetings to assist with drafting IEP goals for the Tesla program. The case managers reported having no issues implementing modifications and providing services at Tesla. In 2013-14, Tesla enrolled X students with disabilities.

Valley New has no special education teachers; however, since the school is located in the District's administration building, special education staff can and do provide services to students with IEPs and Section 504 plans. Evaluations and reevaluations are provided by the school where the student resides and Valley New case managers reported that they coordinate with the teachers who provide the modifications and services directly to the students. In 2013-14, Valley New enrolled X students with a disability or disabilities.

Evaluations and reevaluations at WCA are provided at the school where the student resides, and WCA consults with that school to coordinate which services can be provided by WCA. According to the Principal for WCA, in 2010-11, students with speech or language disabilities, learning disabilities and a student with an emotional behavior disorder were enrolled successfully in WCA. In 2013-14, ACA enrolled X students with disabilities.

In 2013-14, the eSchool enrolled X students with a disability or disabilities and UPM enrolled X students with disabilities.

Analysis

OCR determined that qualified students with disabilities were enrolled, and participated in all of the District's charter schools during the 2013-14 school year. OCR's review of student files confirmed that the District provided students with disabilities at charter schools with special education and related aids and services. District administrators asserted that additional staff could be assigned to serve students attending each of the District charter schools as the need arises. The case managers interviewed by OCR also confirmed that regular or special education

and related aids and services that are designed to meet individual educational needs of students with disabilities are routinely provided at the charter schools.

OCR concluded that the District had established standards and appropriate procedures in compliance with the applicable Section 504 and Title II regulations including providing notice of the standards and procedures for initial evaluations and periodic reevaluations and placement, 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.¹⁰ Due process and notice of procedural safeguards are provided to charter school students. OCR did not find any evidence that parents were required to waive their child's right to FAPE as a prerequisite to attending District charter schools.

Section 504 and Title II: Accessibility

The compliance review examined whether the District's charter school facilities, and the programs, services and activities located within those facilities, are accessible to students and members of the public with physical disabilities. The review also investigated whether students with disabilities have access to the technology provided by the District's virtual charter schools.

Legal Standards

The implementing regulation of Section 504, at 34 C.F.R. § 104.21, and the implementing regulation of Title II, at 28 C.F.R. § 35.149, state that no qualified person with a disability shall, because a recipient's facilities are inaccessible to or unusable by persons with a disability, be denied the benefits of, excluded from participation in, or otherwise be subjected to discrimination under any program or activity to which the regulation applies. The May 2014 DCL confirms that public charter schools must adhere to Section 504 and Title II requirements regarding accessible buildings.

Existing facilities: The Section 504 regulation, at 34 C.F.R. § 104.22(b), and the Title II regulation at 28 C.F.R. § 35.150(b), require institutions to operate programs, services (for Title II) and activities offered in "existing facilities" so that, when viewed in their entirety, they are readily accessible to persons with disabilities.¹¹ In general, an institution may comply with this requirement, called "program access," through the redesign of equipment, reassignment of classes or other services to accessible buildings, assignment of aides to beneficiaries, alteration of existing facilities and construction of new facilities, or any other method that results in making each of its programs and activities accessible to persons with disabilities. The institution is not required to make structural changes to existing facilities where other methods are effective in achieving compliance with this section. In choosing among available methods for providing

¹⁰ This determination does not address whether the District failed to provide FAPE to individual students (i.e., whether a student's individualized education plan (IEP) was implemented).

¹¹ Under Section 504, an "existing facility" is a building, or part thereof, where construction was commenced on or before June 2, 1977. Under Title II, an "existing facility" is a building, or part thereof, where construction was commenced on or before January 25, 1992."

program access, the institution shall give priority to those methods that offer programs and activities to disabled persons in the most integrated setting appropriate.

New construction: The Section 504 regulation, at 34 C.F.R. § 104.23, and the Title II regulation at 28 C.F.R. § 35.151, apply to "new construction" and the altered portion of existing facilities are termed, "alterations." The regulations require that each such facility or part of a facility constructed by, on behalf of, or for the use of a recipient shall be designed and constructed in such manner that the facility or part of the facility is readily accessible to and usable by persons with disabilities.¹²

Notice: The implementing regulation of Section 504, at 34 C.F.R. § 104.22(f) (under "existing facilities") also provides that "the recipient shall adopt and implement procedures to ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of services, activities, and facilities that are accessible to and usable by persons with disabilities." The implementing regulation of Title II, at 28 C.F.R. § 35.163(a) provides that public entities must also ensure that interested persons, including persons with impaired vision or hearing, can obtain information about the existence and location of accessible services, activities and facilities. If a recipient or public entity utilizes the relocation option of program accessibility, it must provide reasonable notice to students, parents and others who may have a disability and require relocation of programs, activities or services.

Technology: The Section 504 regulation, 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. On June 29, 2010,

¹² The Section 504 and Title II regulations, respectively at 34 C.F.R. § 104.23(b) and 28 C.F.R. §35.151(b), provide that when an existing facility or part thereof is altered in a manner that affects or could affect the usability of the facility or part of the facility, it shall, to the maximum extent feasible, be altered in such manner that the altered portion of the facility is readily accessible to and usable by persons with disabilities. The Section 504 regulation, at 34 C.F.R. § 104.23(c), designates the *American National Standards Specifications for Making Buildings and Facilities Accessible to, and Usable by, the Physically Handicapped* [ANSI 117.1-1961 (1971)(ANSI)] as a minimum standard for determining accessibility for facilities constructed or altered on or after June 3, 1977, and before January 18, 1991, and the Uniform Federal Accessibility Standards (UFAS) for facilities constructed or altered on or after January 18, 1991. The Title II regulation, at 28 C.F.R. §35.151(c), designates the UFAS or the Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities (ADAAG) as a minimum standard for determining accessibility for facilities constructed, or altered on or after January 26, 1992. The regulations implementing Title II and the ADAAG standards were amended in September 2010. Title II adopted new accessibility guidelines, 2010 ADA Standards for Accessible Design (ADA Standards), which became effective March 15, 2011. 28 C.F.R. § 35.151(c)(3) now provides, "If physical construction or alterations commence on or after March 15, 2012, then new construction and alterations subject to this section shall comply with the 2010 Standards." OCR Notice of Interpretation, Federal Register, Vol. 77, No. 50, pages 14972-14976 (March 14, 2012) allows use of the ADA Standards under Section 504.

OCR issued a Dear Colleague Letter that outlines recipients' responsibility to provide accessible technology.¹³

Factual Summary

Physical Accessibility and Program Access

During multiple onsite visits, OCR evaluated the physical accessibility of the 16 charter schools operated by the District during the 2010-11 – 2013-14 school years. Appleton Public Montessori is located in an existing facility. Bilingual, Central, ACLC, eSchool, Classical, Fox River, Kaleidoscope, Odyssey-Magellan, Renaissance, Foster, Tesla, UPM, and WCA are located in existing facilities that have been renovated. Valley New is located on the second floor of a municipal building leased from the city; OCR generally applies an existing facility standard for leased facilities. The program access standards apply to the original existing facilities and the renovated sections that are new construction are subject to the new construction standard.

The Odyssey and Fox River charter schools are located in Wilson Middle School (Wilson). Wilson is an existing facility that has been renovated; the program access standards apply to the facility and the renovations are subject to the new construction standard. While there are inaccessible features in the older existing portion of the facility, Wilson, when viewed in its entirety, is readily accessible to and usable by persons with disabilities. The new construction portions of the facility meet the applicable accessibility standards.

At the other existing facilities, there are accessibility concerns that may create barriers to access for individuals with mobility impairments, such as inaccessible parking, entrances, restrooms, internal routes to classrooms, specialty classrooms (e.g., science classrooms), ramps to portions of facilities and auditoriums, and other features. OCR determined, based on the identified accessibility concerns, that the programs, services and activities in the above-specified charter schools, when viewed in their entirety, are not readily accessible to and usable by persons with disabilities. In addition, as specified above, certain portions of the renovated facilities, such as absence of signage, parking, restrooms, classrooms and ramps, do not meet the applicable accessibility standards. The specific accessibility issues for each program and building are described in Attachment A.

For the new construction facilities, OCR determined if the facility met the specific accessibility standard for the facility based on the date of construction of the facility. ACA is located in North

¹³ OCR Dear Colleague Letter dated June 29, 2010 (June 2010 DCL) states that, under Section 504 and Title II, educational institutions cannot require the use of emerging technologies, in particular electronic book readers, in a classroom setting if the technology is not fully accessible to individuals with disabilities, including individuals who are blind or have low vision, unless those individuals are provided accommodations or modifications to enable them to acquire the same information, engage in the same interactions, and enjoy the same services as non-disabled students with substantially equivalent ease of use and thereby receive all the educational benefits provided by the technology in an equally effective and equally integrated manner. <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-20100629.html>. The May 2014 DCL confirms that public charter schools must adhere to Section 504 and Title II requirements regarding technology.

High School. North was constructed in 1995 (with renovations in subsequent years) and is subject to the new construction standard. The facilities at North meet the appropriate standards; as such, the facility and the ACA are readily accessible to and usable by persons with disabilities.

District Notice Provisions

District staff indicated that they have not received any requests from parents or students to move charter programs or activities to accessible locations; however, the District indicated that, upon request, it would move charter programs, services and activities to accessible locations. OCR reviewed the written materials as well as the District's and individual charter school websites, and was unable to locate a notice that the District will move programs, services or activities to accessible locations upon request.

Technology

According to the District's Director of Special Education, students with disabilities who attend charter schools are provided the same access to technology as students without disabilities who attend charter schools. If there are identified or suspected disability-related issues, the charter school or the student's parent or guardian can request a consultation or evaluation with the District's Assistive Technology Team (AT team). The AT team assesses the needs for adaptive or alternative devices and/or services, and provides such services to the student as needed. None of the charter school administrators or case managers interviewed by OCR reported any concerns about the availability of assistive technology for use by students with disabilities. Interviews with staff and supporting documentation revealed that students participate in eSchool, a virtual charter school, through a web-based system, which is accessible and usable by students with disabilities. The eSchool has provided a screen-reader to one student, but otherwise has not received any IEP, 504 plan, or student request for specific equipment. The information obtained during the investigation did not provide evidence to suggest that the availability and use of technology for students with disabilities were not equal to that afforded to students without disabilities.

Analysis

Based on the evidence gathered during the investigation, OCR found violations of Section 504 and Title II with respect to the accessibility of the District's charter school facilities, and the programs, services and activities located within those facilities. Regarding existing facilities, when each school is viewed in its entirety, the 15 facilities are not readily accessible to and usable by persons with disabilities due to some inaccessible parking, restrooms classrooms, internal routes and an auditorium. Wilson Middle School that houses Odyssey-Magellan and Fox River is an existing facility that, when viewed in its entirety, is readily accessible and useable to persons with disabilities. Therefore, OCR determined that the District was not in compliance with 34 C.F.R. § 104.22, and Title II, at 28 C.F.R. § 35.150. OCR also determined that certain portions of the charter school facilities that have been renovated, and thus constitute new construction facilities, were not readily accessible to and usable by persons with disabilities. Therefore, OCR determined that the District was not in compliance with 34 C.F.R. § 104.23, and Title II, at 28 C.F.R. § 35.151. OCR also found that the District fails to provide the required

notice that it will move programs, services or activities to accessible locations upon request. The District also did not identify to OCR any general notice of the right to request movement of programs, services or activities to accessible locations. Therefore, OCR determined that the District was not providing notice in conformity with Section 504, at 34 C.F.R. § 104.22(f), and Title II, at 28 C.F.R. § 35.163(a). Finally, for new technology afforded to charter schools, the evidence did not indicate that the availability and use of technology for students with disabilities was not equal to that afforded students without disabilities.

Conclusion

OCR's investigation found that students with disabilities were enrolled at all of the District's charter schools during 2013-14 school year, but that ELL students were not enrolled in six charter schools. OCR's investigation revealed that the District charter schools' admissions policies and procedures are non-discriminatory on their face with respect to race/national origin, ELL status, and disability status. 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. With the exception of Odyssey-Magellan and Renaissance, the charter schools admit all students who apply for admission if space is available and, if not, select students for admission through a lottery process (after other preferences were taken into account). OCR did not find evidence that the District categorically excluded ELL students or students with disability from admission to its charter schools. Although some District charter schools did request information on ELL and disability status during the admissions and selection process, the evidence was insufficient to establish that the information was used to exclude ELL students or students with disabilities, and instead indicated that the District uses the information to plan for services for these students.

Based on its investigation in this review, OCR found that parents were not required to waive their child's right to FAPE as a prerequisite to attend District charter schools and that special education and related services were available for students with disabilities at all of the District's charter schools. OCR also found that the District had established standards and procedures in compliance with the applicable Section 504 and Title II regulations regarding the standards and procedures for initial evaluations and periodic reevaluations and placement, 34 C.F.R. §§ 104.35-104.36, and regarding the provision of FAPE, 34 C.F.R. §§ 104.33-104.34. The evidence was insufficient to conclude that the District failed to comply with the applicable Section 504 and Title II regulations regarding the availability and use of technology for students with disabilities as compared to that afforded students without disabilities.

OCR concluded that the District failed to comply with Title VI by failing to ensure that the selective criteria used for admissions to Odyssey-Magellan do not screen out ELL students on the basis of their limited English proficiency. The District could not establish that the admission eligibility test that Odyssey-Magellan used was administered in languages other than English, or that the District selects tests for this school that will not prevent a student with limited proficiency in English from qualifying for a program for which they are otherwise qualified. No ELL students were enrolled in Odyssey-Magellan during the review period.

OCR also concluded that the District failed to comply with Title VI because did not effectively communicate with national origin-minority LEP parents and ELL students, including in communications regarding opportunities to apply for and attend charter schools. The District did not make interpreters readily available for recruiting events, and that admissions information and the charter schools' websites generally were not available in languages other than English.

With respect to the publication of nondiscrimination notices and accessibility of the charter school facilities, OCR found that the District failed to comply with the Section 504 and Title II regulations; OCR found that the District complied with the Title VI notification requirements.

Prior to the conclusion of OCR's investigation, the District expressed an interest in voluntarily resolving the review with a resolution agreement. Accordingly, OCR did not make compliance determinations under Title VI, Section 504, or Title II other than those noted above.

OCR noted that in 2013-14, ELL students and students with disabilities were significantly underrepresented in their enrollment in the District's charter schools compared to the enrollment of ELL students and students with disabilities in the District's traditional schools. The District's charter schools enrolled 129 ELL students, 4.3% of the total charter school enrollment of 3,026 students compared to 1,299 ELL students in the District's traditional schools, 8.0% of the enrollment at these schools. The District's charter schools enrolled 155 students with disabilities, 5.1% of the total charter school enrollment, compared to 2,265 students with disabilities in the District's traditional schools, 14% of the enrollment at these schools.

OCR recognizes that the District offers ELL students and students with disabilities the opportunity to receive ELL services and special education and related services in its traditional school programs, but remains concerned about the disproportionately low enrollment of ELL students and students with disabilities in the District's charter schools. The resolution agreement seeks to ensure that ELL students and students with disabilities have equal access and an equal opportunity to participate in the charter schools. In addition to the specific steps outlined in the resolution agreement, OCR encourages the District to examine and monitor all of its policies, procedures, and practices relating to the admission and enrollment of ELL students and students with disabilities to identify any potential barriers to increased participation by these students in its charter schools and adjust these policies, procedures, and practices to ensure equal access and equal opportunity for ELL students and students with disabilities to participate in its charter schools.

OCR's investigation also revealed that four schools do not offer an ELL program for ELL students (Central, Classical, Valley New and WCA), six charter schools (eSchool, Tesla, Fox River, Odyssey-Magellan, Valley New, and UPM) did not enroll any ELL students in the 2013-14 school year and four of these schools (Fox River, Odyssey-Magellan, Valley New, and UPM) did not enroll any ELL students in the three previous school years examined in OCR's review. OCR also has concerns regarding the District's requirements that ELL students sign a waiver regarding the provision ELL services by Classical and WCA to enroll in these charter schools, including whether the notice to parents was sufficient and whether ELL services were otherwise available for the ELL students. As noted below, the agreement requires the District to provide

ELL services for all ELL students in its charter schools and to provide clear notice of the availability of these services for parents who choose to opt-out of ELL services for their children. The resolution agreement, signed by the District on December 16, 2014, requires the District to submit a plan to provide equal access to and equal opportunity of participation of ELL students in the District charter schools. The District has since provided its plan to OCR for review and approval and has committed to provide ELL services to ELL students at all of its charter schools, including those schools that previously did not offer ELL programs.

Based on the commitments the District has made in the agreement, OCR has determined that it is appropriate to close the investigative phase of this compliance review. The provisions of the resolution agreement are aligned with OCR's compliance concerns regarding the specific civil rights issues examined in the review. The agreement requires the following:

- The District must develop and implement a plan to ensure equal access and equal opportunity for ELL students to participate in the District's charter schools.
- The District will provide language support services for students whose parents have opted the students out of the ELL services and notify parents of the available ELL services.
- The District will also appropriately identify and assess potential ELL students, provide sufficient qualified ELL staffing, maintain records of the services provided to all ELL students enrolled in charter schools, provide appropriate and adequate ELL instructional materials and facilities that are comparable to those provided to other students, monitor the academic progress of ELL students, ensure that ELL students are not separated from non-ELL peers except as necessary to serve the goals of the ELL program, provide special education services for ELL students, appropriately exit ELL students from the ELL program and monitor their progress after exiting, and annually evaluate the effectiveness of its program and modify its program as necessary.
- The District must review and revise as necessary the admissions and enrollment policies and procedures for its charter schools with selective admissions criteria (Odyssey-Magellan, Renaissance) to ensure that ELL students have equal opportunities to qualify for and participate in these schools; Specifically, referral and admission to these schools must be based on a student's ability and not the student's language proficiency.
- The District will revise its charter school application and recruiting materials to contain an appropriate notice of nondiscrimination.
- The District must provide training to all charter school administrators and teachers, bilingual/ELL program teachers, gifted and talented teachers, guidance counselors and any other staff involved in charter school recruiting, enrollment, and programming regarding the plan, any related changes to the District's policies and procedures relating to ELL students.
- The District must review, and revise as necessary, its policies and procedures to ensure effective communication with LEP parents of students seeking to be enrolled, in the District's charter schools. The policies and procedures will ensure that LEP parents are notified, in a language understood by the parents, of admissions and other school-related information and of the benefits and services of charter schools that are called to the attention of other non-LEP parents. This will be accomplished by providing free interpreter and/or translation services to LEP parents.

- The District has agreed that effective immediately, it will ensure that no student is denied access to its charter school programs, activities and services because of the inaccessibility of existing facilities. By September 30, 2015, the District must ensure that its charter school programs and activities are readily accessible to and usable by individuals with disabilities.
- The District must provide notice of the existence and location of services, activities, and facilities that are accessible to and usable by persons with disabilities.
- Each District charter school must publish notices in its application and recruiting materials that it will not discriminate on the basis of race, national origin, color or disability.

All plans, policies and procedures that are newly developed or revised are subject to OCR review and approval.

The District 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, the District submitted in late December 2014 and January 2015 documentation required by the agreement. In addition to the plan submitted by the District to provide equal access to and equal opportunity for participation of ELL students in the District charter schools, the District provided documentation of the HLS results and enrollment, and evaluation and monitoring information of ELL students in the District charter schools. In addition, the District provided revised policies and procedures relating to communications with LEP parents. Finally, the District provided plans for providing program access and physical modifications as required in the resolution agreement to ensure all charter schools in the District are accessible and usable by individuals with mobility impairments.

The documentation provided by the District indicates that the District has already made the following improvements for ELL students and LEP parents: the majority of the charter schools' applications now include a nondiscrimination statement; all charter school applications have been translated into Hmong and Spanish, the two most common languages other than English for the 2014-15 school year. Some recruiting materials have been translated into Hmong and Spanish and the Home Language Survey has been translated into Hmong and Spanish. The District also provided documentation that it has taken steps to address concerns relating to the accessibility of its facilities, including by correcting deficiencies relating to its restrooms and parking lots. In addition, the District indicated that it has relocated programs to accessible locations, and is providing accessible laboratory tables. The District has also published notice of the availability of accessible facilities to ensure that interested persons can obtain information as to the existence and location of services, activities, and facilities that are accessible to and usable by persons with disabilities.

OCR is reviewing the information provided and will promptly notify the District as to whether the information submitted complies with the agreement.

OCR may conduct additional visits and request additional information as necessary to determine whether the District has fulfilled the terms of the agreement and is in compliance with Title VI

and Section 504/Title II with regard to the issues in the review. OCR will not close the monitoring of this agreement until it has determined that the District has complied with the terms of the agreement and is in compliance with Title VI and Section 504/Title II. If the District fails to implement the agreement, OCR may initiate 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 the District written notice of the alleged breach and a minimum of sixty (60) calendar days to cure the alleged breach.

This letter sets forth OCR's determination in an individual OCR compliance review. It 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.

It is unlawful to harass or intimidate an individual who has filed a complaint, assisted in a compliance review, or participated in actions to secure protected rights.

OCR greatly appreciates the ongoing cooperation received from the District during the investigation and resolution of this case. We particularly appreciate the cooperation of Ms. Mary Gerbig, Counsel for the District, during the investigation and settlement discussions. If you have any questions, please contact Dawn Matthias, Team Leader, at 312-730-1593 or by e-mail at dawn.matthias@ed.gov.

Sincerely,

/s/

Adele Rapport
Director

cc: Ms. Mary Gerbig, Esq.

Enclosure