

COMPLAINT SUPPLEMENT TO TEXAS EDUCATION AGENCY COSMOS FOUNDATION, INC., D/B/A HARMONY PUBLIC SCHOOLS

On May 24, 2016, Amsterdam & Partners LLP ("Amsterdam") submitted a complaint with a brief in support to the Texas Education Agency ("TEA") against Cosmos Foundation, Inc., d/b/a Harmony Public Schools, (collectively "Harmony") with a request for a comprehensive investigation and sanctions as appropriate. Amsterdam & Partners hereby submits this supplemental brief in support of the May 24 complaint, containing new information regarding 1) concerns and irregularities in Harmony's leasing, financing, and bond arrangements for new facilities; 2) Harmony's business relationships with related charter school networks; and 3) Harmony's public refutations of the May 24 complaint.

I. Harmony's Leasing, Financing, and Bond Arrangements for New Facilities

Harmony is required by state law to use open and fair competitive bidding processes for large-scale construction projects; avoid conflicts of interest; and utilize state education funds for appropriate purposes. Harmony, however, is utilizing an external yet related corporation, Charter School Solutions, to acquire property and construct its schools on its behalf—followed by a lease-back of the facility to Harmony at inflated rental amounts. Harmony's arrangement with Charter School Solutions is unorthodox and problematic, particularly in light of the proposed compensation structure for Charter School Solutions and concerning ties between Harmony, Charter School Solutions, and an Oklahoma charter network currently under investigation for similar leasing and construction arrangements. In light of these issues, TEA should promptly investigate to ensure that the same abuses documented in the Oklahoma charter school network are not also at play with Harmony and Charter School Solutions.

A. Statement of Facts

According to its filed Articles of Incorporation, Charter School Solutions (hereinafter "CSS") was incorporated as a Texas non-profit corporation on April 10, 2015.¹ CSS was formed by Harmony's bond counsel for the purpose of supporting Harmony and other charter schools and educational organizations located in Arizona, Arkansas, Kansas, New Mexico, Mississippi, Missouri, New Mexico, Louisiana, Oklahoma, Tennessee and Texas.² Three directors are listed: Bilal Erturk, Gokturk Tunc, and Robert A. Schulman.³ Hakan Yagci, formerly the budget director for all of Harmony, left that position to serve as the founding CEO of CSS in 2015.⁴ In its first year of operation, CSS secured a large, lucrative property development arrangement with Harmony to construct and/or expand five Harmony campuses in Grand Prairie, Plano, El Paso, Sugar Land, and Euless at an ultimate cost of over \$102 million.⁵ This extensive investment in a newly formed entity for the purchasing and construction of school facilities is reminiscent of

¹ See Charter School Solutions Articles of Incorporation, Exhibit 1, taken from the Texas Secretary of State website.

² See pg 57 of the CSS 2016a bond, available at: <http://emma.msrb.org/Home/Index> using search "Charter School Solutions" (last accessed June 30, 2016).

³ See Exhibit 1.

⁴ See LinkedIn profile of Hakan Yagci, available at <https://www.linkedin.com/in/hakan-yagci-51334423> (last accessed 6/27/2016). See also CSS 2016a Bond at A-1.

⁵ See CSS 2016A bond at 30. \$102 million is the ultimate price of the bonds with interest and with the purposeful overpayment to CSS.

Harmony's suspect use of Solidarity Contracting, operated by former Harmony business manager, for over \$22 million worth of school construction, also in the first year of Solidarity's operations.⁶ CSS is leasing the Harmony Science Academy-Eules property to Harmony, as well.

In order to finance the development of the five new properties, CSS in conjunction with Harmony issued a series of bonds in the total amount of \$44,175,000 through the Industrial Development Authority of La Paz, Arizona on April 4, 2016 (hereinafter the "CSS bond").⁷ According to the CSS bond disclosure, CSS will use the bond funds to acquire land and construct/expand five Harmony campuses thereon, and then lease those campuses to Harmony.⁸ According to the CSS bond, these publically financed leases are CSS' sole source of revenues for repayment of the bond debt. The lease rates paid by Harmony to CSS will be 115% of the annual debt service payments owed on each property, except for the Eules property with lease rates between 134% -161% of the debt service payments owed for that property.⁹ According to the CSS bond disclosure, the excess lease payments will be applied toward funding CSS's operations and for use as student scholarships.¹⁰ Over the term of the bond repayment and leasing arrangements, CSS will receive over \$18 million in excess lease payments to use for its operations and scholarships.¹¹ CSS' purpose is not limited to the support of Harmony, and there are no apparent restrictions on how CSS may use the excess lease payments in its operations, so as structured, CSS could use Harmony's publically financed lease payments to support other charter schools and educational organizations located in Arizona, Arkansas, Kansas, New Mexico, Mississippi, Missouri, New Mexico, Louisiana, Oklahoma, Tennessee and Texas.

While Harmony will have the option to purchase each of the participating campuses, the price is already set as the greater of \$3 million or the debt amount outstanding for that particular property.¹² Thus, if Harmony purchases a campus after the bond debt is paid, Harmony will pay an additional \$3 million to CSS over and above the lease payments, even though the lease payments well exceeded the cost of the acquisition and construction of the campus.

CSS was designed by Harmony to be a supporting organization for Harmony primarily to replicate the Harmony school model, acquire land and develop new facilities for charter schools, and manage the I-SWEEP student competition (formerly managed by Harmony).¹³ As CSS was designed, Harmony appoints one director, the related Texas charter network Riverwalk Education d/b/a School of Science and Technology (hereinafter "Riverwalk") appoints a second director, while the third director is a permanent director for CSS.¹⁴ All three of CSS's directors have close and concerning ties to Harmony, the Sky Foundation out of Oklahoma, and/or various Turkish cultural organizations affiliated with Fethullah Gülen:

⁶ See May 24 complaint for additional detail.

⁷ See CSS 2016A Bond

⁸ See CSS 2016A Bond at pg 1.

⁹ See CSS 2016A Bond at pg 2.

¹⁰ See id.

¹¹ See CSS 2016A Bond at pg 30.

¹² See CSS 2016A Bond at pg 26.

¹³ See CSS 2016A Bond at pg A-1.

¹⁴ See id.

- Harmony's appointed director is Robert A. Schulman, Harmony's general legal counsel. Schulman serves as CSS's Board president.¹⁵
- Riverwalk's appointed director is Gokturk Tunc. While Tunc is slated to represent the interests of Riverwalk, Tunc has strong ties to Harmony, as well. Tunc previously served as a director and Vice President of Harmony's governing board, the Cosmos Foundation, from at least 2002-2008 according to Harmony's 990 tax documents.¹⁶ Tunc also has Gülenist affiliations as he served as the President for the Rain Drop Foundation, a Turkish cultural organization affiliated with Fethullah Gülen.¹⁷
- Bilal Erturk is the permanent CSS director. Most concerning of the three directors, Erturk also serves as President of the Dove Science Academy charter network and the Sky Foundation based in Oklahoma,¹⁸ which are both currently under investigation by the Oklahoma Department of Education and State Auditor for misuse of Oklahoma state education funds, systematic overcharging in lease agreements with the Dove Science Academy charter schools, and illegal payments to Harmony.¹⁹ Furthermore, Erturk has served as a director for the Institute of Interfaith Dialog,²⁰ yet another Turkish cultural organization strongly associated with Gülen.²¹

Like Harmony, the Dove Science Academy network shares many of the Gülen Organization commonalities including a Turkish-dominated board,²² use of H-1B visas to bring in Turkish teachers and employees,²³ and STEM instruction with Turkish language.²⁴ As discussed in the May 24 complaint, Dove's managing non-profit, the Sky Foundation, is currently under scrutiny and investigation by the Oklahoma State Auditor for misuse of state education funds, systematic overcharging on leases to Dove Science Academy schools, and for making an illegal payment of \$175,000.00 of Oklahoma state funds to Harmony Public Schools.²⁵ According to the Oklahoma audit, the Sky Foundation bought properties and then in turn leased them to the Dove Science Academy board for use as schools.²⁶ While the Sky Foundation and Dove Science Academy claim they are separate entities, the Oklahoma State Auditor found that they were in reality one

¹⁵ See CSS 2016A Bond at pg 58, A-1.

¹⁶ See Harmony/Cosmos 990 tax forms for 2002, 2003, 2004, 2006, 2007, 2008 at <http://tinyurl.com/hu9wqcl> (last accessed June 30, 2016).

¹⁷ See Rain Drop 990 tax form for 2002, available at <http://tinyurl.com/zcvgskm> (last accessed June 30, 2016).

¹⁸ See Sky Foundation 990 tax forms, available at <http://tinyurl.com/z7xxxk6> (last accessed June 30, 2016).

¹⁹ See Dove Science Academy Audit, available at <http://tinyurl.com/ja634lk> (last accessed June 30, 2016).

²⁰ "Dr. Bilal Erturk... serves as a director and volunteer for the Institute of Interfaith Dialog." See article regarding Rain Drop Turkish House panel discussion featuring Bilal Erturk, available at: <http://tinyurl.com/hhnktjm> (last accessed June 30, 2016).

²¹ "Many participants of the Institute's activities are inspired by the life and vision of the Turkish Muslim scholar and peace advocate Fethullah Gülen." See Mission statement of Institute of Interfaith Dialog, available at: <http://tinyurl.com/gm8xkc5> (last accessed June 30, 2016).

²² Board of Education, Dove Science Academy, <http://bit.ly/1Tjsqlu> (last visited Mar. 30, 2016) (listing a four member board of education with all Turkish nationals).

²³ See Dove Science Academy - Tulsa, MyVisaJobs.com, <http://bit.ly/1RkoVC9> (last visited Mar. 30, 2016); Dove Science Academy - Oklahoma City, MyVisaJobs.com, <http://bit.ly/1MU35le> (last visited Mar. 30, 2016).

²⁴ Megan Rolland, *Dove Science Academy in OKC Celebrates 10 Years of Success*, The Oklahoman (Mar. 28, 2011), <http://bit.ly/1Y1fFuZ> (reporting that Dove Science Academy provides a Turkish-language program).

²⁵ See Dove Science Academy Audit, available at <http://tinyurl.com/ja634lk> (last accessed June 30, 2016).

²⁶ *Id.*

and the same.²⁷ As such, the Sky Foundation was in effect on both sides of the transaction—buying the property and then leasing it to itself with rental prices far in excess of the purchase price of the property—cumulatively over \$3 million more.²⁸ The State Auditor also uncovered an illegal payment of \$175,000.00 from the Sky Foundation to Harmony Public Schools to sponsor the I-SWEEP competition in Texas, even though no Dove Science students participated or attended the event.²⁹ Note that this is the same Texas competition that CSS now manages according to both the bond disclosure and its website.³⁰

Beyond receiving illegal payments, Harmony shares other ties to the Sky Foundation and Dove Science Academy, as well. Harmony provides "support services" to Dove Science Academy, sometimes charged at an hourly rate³¹ or at 3% of the Dove Science Academy network's total state funds.³² Harmony additionally receives licensing fees from Dove Science Academy for use of Harmony's intellectual property, between \$15,000 and \$147,000 per school.³³ With regards to employment, several individuals in Harmony's top leadership first worked at Dove Science Academy schools, including Harmony Regional Superintendent Zekeriya Yuksel and Harmony Associate Superintendent/Chief Financial Officer Yalcin Akdilyiz. Notably, Akdilyiz signed on behalf of Harmony on the 2016 CSS bond documents.³⁴

According to the Sky Foundation's 990 tax documents, Erturk has been a director of the Sky Foundation since 2010.³⁵ Erturk remains President on the board of the Sky Foundation and now also serves on the board of CSS. The Sky Foundation and CSS have similar business models: acquire land for use as schools and lease to their related Turkish charter school networks. In the case of the Sky Foundation, those leases were found to be egregiously overpriced in light of the original purchase price of the leased properties and a misuse of state funds.³⁶ Like Sky, CSS also plans to reap millions in Texas taxpayer dollars beyond the actual price of financing the five new Harmony properties.

B. Concerns regarding Harmony and Charter School Solutions

The suspect relationship between Harmony and CSS and its potential for abuse and lack of transparency regarding Harmony's procurement of land and new facilities should be closely scrutinized by the TEA. Harmony appears to be using CSS as an arm of Harmony Public Schools, with CSS existing primarily to service Harmony as a middleman entity in land, construction, and development deals. In fact, CSS even uses Harmony's address as its official address on several of its earliest land deals, including the buying of the Euless property that it

²⁷ *Id.*; See also The Sky Foundation 990 tax forms showing that the Foundation does business as Dove Science Academy, available at <http://tinyurl.com/jp8lcr3> (last accessed June 30, 2016).

²⁸ See Dove Science Academy Audit, available at <http://tinyurl.com/ja634lk> (last accessed June 30, 2016).

²⁹ *Id.*

³⁰ See <http://www.charterschoolsolutionstx.org/about.html> (last accessed June 27, 2016). A PDF copy of this information is also available.

³¹ See CSS 2016A Bond at pg A-10.

³² See <http://emma.msrb.org/Home/Index>, search "Cosmos Foundation" and select the 2011 Fort Bend bond.

³³ See CSS 2016A Bond at pg A-10.

³⁴ See CSS 2016A Bond at pg 60.

³⁵ See the Sky Foundation 990 tax forms, available at <http://tinyurl.com/jp8lcr3> (last accessed June 30, 2016).

³⁶ See Dove Science Academy Audit, available at <http://tinyurl.com/ja634lk> (last accessed June 30, 2016).

now rents to Harmony.³⁷ The motivation for using CSS as its arm to procure bond financing for land acquisition and school construction is unclear, however, when such an arrangement will cost Harmony, and the state of Texas by proxy, an additional \$18.4 million in state education funds than if Harmony secured the bond financing for these properties itself. Harmony has over \$330 million in bonds already, and issued an additional \$55 million on May 1, 2016.³⁸

Acceptable rationales for creating a middleman such as CSS that will cost an additional \$18.4 million are lacking. Note that the additional \$18.4 million Harmony will spend on this arrangement will proportionately decrease the amount of state and federal funds spent on Harmony's students at large.

Harmony may be utilizing CSS as a middleman and related party to secure this additional bond financing because Harmony has already reached its bond limitations with the Texas guaranteed bond program.³⁹ TEA should investigate whether it is appropriate for Harmony to use CSS as an extension of Harmony to secure bonds with a lower investment grade and thus, higher interest rate, that lack the state's school bond guarantee and ultimately cost Harmony and the state of Texas more money, even beyond the \$18.4 million Harmony is purposefully overspending.

Furthermore, the additional \$18.4 million is slated to fund CSS's operations and student scholarships by way of grants to charter schools. The charter school in question will submit an application, along with criteria for how the scholarship will be awarded, and CSS will distribute funds to that charter school accordingly. These scholarship funds will be derived from the excess lease payments Harmony will be paying CSS for use of these properties, and as the bond disclosures state, those lease payments will be made from Harmony's adjusted revenues, inclusive of both state and federal education funds. This mechanism for Harmony to purposefully overpay on leases with state and federal funds into a related entity who will then disburse those funds in the form of scholarships is highly problematic. Texas law has strict guidelines for the use of state education funds, and allowable expenses do not include scholarships to select individual students.⁴⁰ Harmony cannot effectively circumvent Texas law by funneling its funds into a related entity staffed with its former employees and board members to spend its funds however it wishes. Furthermore, Harmony's funds are for use in educating Texas students, but according to the bond disclosure, CSS can funnel Harmony's funds to charter schools and educational organizations in a number of states outside of Texas. CSS isn't even held responsible for ensuring that the distributed funds are used by the receiving charter schools for student scholarships. The potential for abuse, lack of oversight, and lack of transparency with this proposed use of state and federal education funds is extensive.

Harmony may also be using CSS as a middleman to avoid open and competitive bidding requirements for large-scale construction projects. Being that CSS is essentially an arm of Harmony, funded almost entirely by Harmony and staffed/overseen by individuals with strong ties to Harmony, TEA should hold CSS to the same legal requirements that Harmony itself is subject to in how it spends its state and federal funds. TEA should examine CSS's bidding and

³⁷ See <http://www.tad.org/search-property>, enter "Charter School Solutions" into the search for "owner name." The CSS address listed is the same as Harmony's main address, 9321 W Sam Houston Parkway S, Houston, TX.

³⁸ See <http://emma.msrb.org/Home/Index>, search "Harmony Public Schools." Also, see the CSS Bond at A-17.

³⁹ Tex. Educ. Code 45.0532

⁴⁰ Tex. Educ. Code 45.105(c) (stating that funds must be used for purposes necessary to conducting public schools).

procurement practices for its construction projects that are already ongoing on Harmony's behalf to ensure that the appropriate laws are being followed.

In addition, Harmony's own bond statement issued on May 1, 2016 states that Harmony "caused (CSS) to be created", and identifies certain risks with the CSS ownership of schools.⁴¹ Specifically, should CSS fail to pay taxes, maintenance, or insurance, it could lead to the closure of the schools.⁴² If the facilities have defects, Harmony will still be obligated to continue paying on the lease payments, even if the leased facilities are defective or not habitable.⁴³ Harmony will also pay a "membership fee" to CSS to access its "services," but the amount of that additional fee is not disclosed.⁴⁴

Furthermore, Bilal Erturk's involvement in CSS should be examined closely. Erturk's tenure as the permanent member of CSS is highly problematic in light of Erturk's involvement with the related Sky Foundation and Dove Science Academy network in Oklahoma currently under investigation by the Oklahoma Department of Education and State Auditor. Both Sky and CSS operate as landlord entities for their related charter school networks, and as discussed previously, Sky's operations in Oklahoma are under scrutiny for systemic misuse of state funds and for operating in its own best interests rather than the students of Oklahoma. Furthermore, the fact that the Sky Foundation under Erturk's leadership made an illegal \$175,000.00 payment to Harmony to sponsor the very same student competition that Erturk now manages on behalf of Harmony is very concerning. Dove Science and the Sky Foundation's ties to Harmony and the numerous business arrangements between Erturk-controlled entities that ultimately profit Harmony raise questions whether Harmony is operating appropriately at arms' length with the Sky Foundation, Dove Science Academy, and Erturk. Investigation into these entities is warranted further when considering the fact that Harmony's CFO and Associate Superintendent, Akdilyiz, entered into the unfavorable CSS bond agreements with his former colleagues from both Harmony and Sky on Harmony's behalf.

II. Harmony's Business Relationships with Out-of-State Charter Networks

Harmony derives millions in revenues⁴⁵ from its business arrangements with out-of-state charter networks, but only those networks that share its fundamental characteristics: a Turkish-dominated governing board; routine, extensive use of the H-1B visa program to employ Turkish nationals; preference for Turkish males in leadership positions through all levels of the charter school and/or charter school network; and a focus on STEM curriculum with Turkish language instruction. These revenues result from two main types of agreements: 1) support service agreements, either paid for by an hourly rate for consultation or a set percentage of state funds (3-5%) received by each charter school in the participating network; and 2) intellectual property licensing agreements, for which Harmony is paid between \$15,000 - \$147,000 annually for each

⁴¹ See <http://emma.msrb.org/Home/Index>, search "Harmony Public Schools" and click through to the 2016A bond with Arlington Higher Education Finance.

⁴² *Id.*

⁴³ *Id.*

⁴⁴ See Exhibit 1.

⁴⁵ See Harmony 2014 990 tax form, available at: <http://tinyurl.com/hu9wqcl> (last accessed June 30, 2016).

school in the charter network.⁴⁶ Additionally, Harmony often includes these related networks in its procurement bids.⁴⁷

According to the CSS bond disclosure, Harmony currently has at least seven of these mentoring business arrangements with Turkish charter school networks around the country. These include:

- 1) Sky Foundation, d/b/a the Dove Science Academy charter network in Oklahoma
 - This network is currently under state investigation for misuse of state funds, illegal payment to Harmony for no public educational purpose, and systematic overcharging of rent to its own Dove Science Academy schools.
 - The President of Sky Foundation/Dove Science Academy is Bilal Erturk, also serving as the permanent director for CSS as previously discussed.
- 2) Frontier Schools, Inc., d/b/a Millenium [sic] Education Foundation or Millennium Education Foundation, in Missouri
 - In addition to a support service agreement and an intellectual property licensing agreement, Harmony also provides procurement services to Frontier.⁴⁸
- 3) Pelican Educational Foundation, Inc. in Louisiana
 - This network operates Kenilworth Science and Technology in Baton Rouge, which was investigated by the FBI, and also Abramson Science and Technology in New Orleans, which was also investigated and later taken over by the Recovery school district in 2013.
 - The Vice President of one of Harmony's highest paid vendors, Atlas Texas Construction and Trading, was reported as attempting to bribe a Louisiana auditor to keep Abramson open.⁴⁹
 - Nihat Bayhan, CEO of Pelican during its troubled years, now serves as the Harmony Chief Internal Auditor.⁵⁰
- 4) Albuquerque School of Excellence in New Mexico
 - CSS also recently entered into a bond agreement with this school and entity through the same bond issuer, approved at the same time as CSS's bond with Harmony was approved.
 - Harmony also provides procurement services to this school.⁵¹
- 5) Read Foundation, d/b/a Memphis School of Excellence in Tennessee

⁴⁶ See CSS 2016A Bond at pg A-10.

⁴⁷ See 2015 Harmony Bid for Uniforms, pg 34, 37 at <http://tinyurl.com/jje2mqd> (last accessed June 29, 2016).

⁴⁸ See 2015 Harmony Bid for Uniforms, pg 34, 37 with references to Frontier at <http://tinyurl.com/jje2mqd> (last accessed June 29, 2016).

⁴⁹ Letter from Penny Dastugue, President of State Board of Elementary and Secondary Education, to Tevfik Eski, CEO of Pelican Educational Foundation (July 15, 2011), available at <http://bit.ly/1UF3Oft>; see also, Andrew Vanacore, *Abramson Charter in Eastern New Orleans Shut Down*, Times-Picayune (July 15, 2011), <http://bit.ly/1PHJQtl>.

⁵⁰ See <http://www.zoominfo.com/p/Nihat-Bayhan/1509067295> (last visited April 1, 2016).

⁵¹ See 2015 Harmony Bid for Uniforms, pg 34, 37 at <http://tinyurl.com/jje2mqd> (last accessed June 29, 2016).

- Using Texas education funds, Harmony has guaranteed a significant ten-year lease on the school property used by the Read Foundation, with monthly payments of \$42,282.⁵²
 - In addition to the support service agreement and intellectual property agreement, Harmony also provides procurement services to this foundation.⁵³
- 6) LISA Foundation, d/b/a LISA Academy charter network in Arkansas
- Harmony has guaranteed the \$1.9 million bond debt for LISA academy using Texas state funds, apparently in contravention of the requirements of the Texas Public Funds Investment Act.⁵⁴
 - In addition to the support service agreement and intellectual property agreement, Harmony also provides procurement services to this foundation.⁵⁵
 - Harmony employs several former LISA Academy employees, all Turkish.
- 7) Harmony DC Public Schools in Washington, D.C.
- In addition to the support service agreement and intellectual property agreement, Harmony also licensed use of its name to this organization.⁵⁶

While it is unclear how much each of these networks is paying Harmony for each type of service received, Harmony reports annual program service revenues of \$12.4 million in 2014 alone,⁵⁷ totaling more than \$100 million over the last ten years. Harmony serves both as vendor and guarantor of large debt for at least two of these networks, which may put Harmony in violation of the Texas law prohibition against acting as a surety for an external entity that is currently contracting with the charter holder (Harmony).⁵⁸ Furthermore, Harmony's use of Texas state funds to guarantee external debt may be in violation of the Texas Public Funds Investment Act, which carefully regulates how entities in charge of public funds may use those funds. As charter networks are not allowed to waive these provisions, the TEA should closely examine Harmony's use of state funds to benefit external charter networks at the expense of Texas students to ensure it is not in violation of these laws.

These "program services" with million-dollar revenues coming from out-of-state charter networks raise additional questions about who is doing the work for these out-of-state entities. An analysis of 2015-16 data from the TEA shows that all Harmony teachers and administrators reported to TEA through the PEIMS system are full-time employees and are paid for full-time work (note that a small percentage of teachers work part-time as teachers and part-time in other administrative positions but together both jobs total 1 FTE).⁵⁹ If these employees are paid with Texas education funds, are there additional employees at Harmony who are paid with out-of-state revenue to perform work benefitting out-of-state entities, or are full-time Harmony employees paid with Texas education funds working for these out-of-state entities?

⁵² See CSS 2016A Bond at pg A-17.

⁵³ See 2015 Harmony Bid for Uniforms, pg 34, 37 at <http://tinyurl.com/jje2mqd> (last accessed June 29, 2016).

⁵⁴ See CSS 2016A Bond at pg A-17.

⁵⁵ See 2015 Harmony Bid for Uniforms, pg 34, 37 at <http://tinyurl.com/jje2mqd> (last accessed June 29, 2016).

⁵⁶ See CSS 2016A Bond at pg A-10.

⁵⁷ See Harmony 2014 990 tax form, available at: <http://tinyurl.com/hu9wqcl> (last accessed June 30, 2016).

⁵⁸ TAC §100.1135. Acting as Surety and other Conflicts; Criminal Penalties.

⁵⁹ Master File of Teachers and Non-Teachers for 2015-16; Texas Education Agency

Harmony may also be in violation of CFR 80.34 and the terms of its Race to the Top grant with regards to licensing its intellectual property. For example, Harmony entered into a licensing agreement that permitted LISA Academy to license a project-based learning curriculum and software from Harmony for \$24,000 per LISA academy district.⁶⁰ Harmony, however, used its Race to the Top federal grant to "expand on a successful pilot of a STEM Project-Based Learning curriculum to implement a cross-disciplinary, multi-sensory, technology-enabled project-based learning (PBL) curriculum that integrates STEM, social studies, and English language arts."⁶¹ As part of its assurances to the U.S. Department of Education, Harmony agreed to abide by the requirements of 34 CFR 80.34,⁶² which requires grantees to make available grant-funded content and software royalty-free to both the federal government and other entities. Being that Harmony continues to license its intellectual property to other networks for significant fees, TEA should examine those licensing agreements and the content shared to ensure that Harmony is not violating federal law and the terms of its Race to the Top grant by charging other educational institution fees for federally-funded content that must be shared freely.

III. Harmony's Refutations of the May 24, 2016 Complaint

In the press coverage resulting from the filing of the May 24, 2016 complaint, Harmony released a number of statements attempting to refute the facts contained in the complaint. Harmony's statements, however, are misleading and contain inaccurate information. Because we deem Harmony's misleading and inaccurate responses to the May 24, 2016 complaint further evidence of their systemic lack of transparency and illegal behavior, we have included them below along with evidence of their inaccuracy.

In a statement released to a Fox local news network,⁶³ Harmony stated the following:

Harmony Statement

"The allegations filed today (May 24) with the Texas Education Agency by an agent of the President of Turkey are nothing more than a politically-motivated re-hash of old claims and complaints that have been heard and investigated previously and found to be without merit." [emphasis added].

Amsterdam Response

The May 24 complaint puts forward new evidence to support the need for investigations into continued wrongdoing by Harmony in the areas of employment discrimination, illegal procurement practices, discrimination against certain student populations, and immigration fraud. In each of these areas, Harmony has either 1) not yet been investigated; or 2) has been investigated, found at fault, and required to improve. In each of those cases requiring

⁶⁰See LISA Academy Board minutes for approval of licensing agreement, available at <http://tinyurl.com/gs2t7s5> (last accessed June 29, 2016).

⁶¹ See Harmony Race to the Top grant at pg A-7, available at <http://tinyurl.com/zryyfto> (last accessed June 29, 2016).

⁶² See Harmony Race to the Top grant at pg 10, available at <http://tinyurl.com/zryyfto> (last accessed June 29, 2016).

⁶³ <http://www.fox5dc.com/news/local-news/150578984-story>

improvement, the May 24 complaint provided new evidence to show that Harmony remains out of compliance. Please see below for specific responses.

- Harmony was sued by the Equal Employment Opportunity Commission in 2014 for employment discrimination based on gender (favoring males) and national origin (favoring Turkish). Harmony settled the lawsuit, promising to remedy its practices to eliminate employment discrimination, however 2015-2016 salary data from the TEA shows that Turkish males still dominate positions of leadership and are often paid more than their colleagues with similar degrees and years of experience. This previous investigation was settled because of its merit, and the latest year's data shows that Harmony has not complied with the mandates of its settlement agreement with the EEOC.
- Harmony has never been investigated for its procurement practices to ensure that fair and open bidding requirements are being met. Because Harmony routinely and throughout its history has shown favoritism to Turkish-owned/operated businesses for its largest contracts, many of which are owned by former Harmony employees, this circumstantial evidence points to a need to investigate Harmony's procurement. This is particularly necessary in light of Harmony's documented preference for Turkish employees and the fact that the Harmony bidding review committee is comprised of all Turkish males.
- Harmony's use of the H-1B visa program to facilitate the immigration of large numbers of Turkish nationals to Texas has never been investigated. Harmony classifies itself as H-1B dependent,⁶⁴ a federal designation required when 15% or more of its workforce has been obtained through the H-1B program. As an H-1B dependent employer, Harmony is required to attest that it could not find qualified U.S. citizens to fill the jobs later hired through the H-1B program. Since Harmony has used the H-1B program to hire positions where there are not documented shortages, such as physical education teachers, budget analysts, legal counsel, counselors, English teachers, and more, Harmony may be in violation of the H-1B program's requirements.
- Harmony has been investigated by the Office of Civil Rights for discrimination against students because of the significant underrepresentation of students with special needs and English-language learners. Harmony voluntarily entered into a consent decree to conclude the investigation and agreed to remove barriers to these students' entry into Harmony schools. Since this settlement, Harmony has not been investigated to ensure that these discriminatory barriers were in fact removed.

Harmony Statement

"Harmony Public Schools have no affiliation of any kind with any religious or social organizations or movements."

Amsterdam Response

Harmony's leadership and the leadership of Harmony's preferred Turkish vendors have numerous ties with individuals and cultural organizations affiliated with Fethullah Gulen.⁶⁵ Furthermore,

⁶⁴ See Department of Labor data, available at <http://tinyurl.com/zm5dvec> and click on tab for Annual Performance Reports, search for "Harmony" (last accessed June 30, 2016).

⁶⁵ See Chart of Harmony Business and Gulen Cultural connections, Exhibit 2.

Harmony's leadership and the leadership of Harmony's preferred Turkish vendors have numerous affiliations within the Turkish community in Texas which brings into question whether Harmony is using its state and federal tax dollars to support Turkish-owned/operated businesses due to their cultural connections in violation of open and competitive bidding requirements.

Harmony Statement

"Harmony's procurement process is done according to Texas state law and is, in fact, outsourced and managed by the Harris County Department of Education."

Amsterdam Response

We disagree and portions of this statement are inaccurate. The circumstantial evidence provided in the May 24 complaint shows numerous affiliations between individuals in Harmony's leadership and the leadership of Harmony's preferred Turkish vendors. These affiliations in conjunction with the fact that Harmony has paid over \$150 million to Turkish-owned/operated businesses out of the \$200 million spent on major contracts in the last fifteen years indicates a strong preference for vendors of the same national origin as Harmony's leadership, which is in violation of Texas' open and competitive bidding requirements. Furthermore, Harmony's statement regarding Harris County is misleading as Harmony utilized the Harris County Department of Education for a limited term of procurement consulting services from January through August 31, 2015.⁶⁶ According to the results of our Public Information Request to Harris County, no other agreements have been entered into since the expiration of that agreement.

Harmony Statement

"In Texas, no state or taxpayer funds are used to acquire or build school facilities for any charter school – that money is raised in the bond market, where Harmony enjoys a AAA rating, the highest rating possible - and awarded only after intense financial scrutiny."

Amsterdam Response

This statement is misleading and inaccurate. Money obtained through bonds is not free. Harmony repays those bonds with its revenues earned from state and federal tax dollars, a fact acknowledged by Harmony in its own bond disclosures. Harmony cannot circumvent Texas law's requirements to utilize state tax dollars in open, competitive bidding processes by stating that the money Harmony uses to enrich its affiliated Turkish construction companies were not tax funds but instead bond money, when that bond money will later be paid back with tax funds. Furthermore, all bonds backed by the Texas Permanent School Fund Guarantee receive the AAA rating—Harmony did not earn this rating itself. Notably, the bond issued for Harmony in conjunction with its newest arm, CSS, received a BBB rating.

Harmony Statement

"Harmony's rate of teachers under H-1B visas, which are authorized and issued by the U.S. federal government after extensive vetting, is seven (7) percent and decreasing every year."

Amsterdam Response

⁶⁶ See Harris County Agreement, Exhibit 3.

This statement is both misleading and false. First, Harmony purposefully limited the above statement to only address teachers, ignoring the fact that the May 24 complaint highlights Harmony's use of the H-1B program for a wide variety of administrative positions (including legal counsel, budget analysts, human resources professionals, principals, superintendents, counselors, etc.). When taking all of these other roles into account, Harmony's percentage of H-1B employees increases dramatically. In fact, Harmony identifies itself to the federal government as H-1B dependent, which means that at least 15% of its workforce was hired through the H-1B program. Harmony routinely claims it uses the H-1B program to hire for math and science positions that it cannot find qualified Texan educators for despite the fact that Harmony uses the program to hire for a multitude of non-math/science positions of which no documented shortages exist. In fact, TEA data show that at least 42% of Harmony's Turkish teachers do not teach math or science.⁶⁷ This is in violation of the H-1B program's requirements for H-1B dependent employers such as Harmony, which state that Harmony must ensure that no qualified U.S. citizens are available to staff a position before utilizing the H-1B program. Also, Harmony's statement that the H-1B program is closely monitored is false—employers attest to the federal government that the H-1B program's requirements have been followed, but the federal government does not independently check those attestations unless the employer is reported.

IV. Conclusion

In addition to the information put forth in the May 24, 2016 complaint, the additional information contained in this supplemental brief highlights how Harmony manipulates Texas law and regulations to control large sums of money to benefit itself, its affiliated Turkish vendors, and other Turkish-controlled charter networks within its region. The TEA and the State of Texas have made a massive investment thus far into Harmony, one which continues to increase each year. In light of that investment and how it affects Texas families, students, and the state's public education system, TEA should scrutinize this organization and its dealings to ensure that continued investment is warranted and sound.

⁶⁷ Master File of Teachers 2015-16 from Texas Education Agency