



the same conclusions of law. In the second section, the court addresses the White Hat Defendants' objections to the Plaintiff Schools' modified discovery requests.

I. *Jurisdiction and R.C. 3314.024*

A. Summary of the Issues

Plaintiffs Hope Academy Broadway Campus, et al. ("the Plaintiff Schools") entered into management contracts with defendants White Hat Management, LLC, et al. ("the White Hat Defendants") to operate community schools.<sup>3</sup> The Plaintiff Schools are funded entirely with state and federal tax dollars through the Ohio Department of Education. The management contracts require the Plaintiff Schools to pay 96% of the state funds (and 100% of the federal funds) they receive to the White Hat Defendants; the other 4% is split between the Plaintiff Schools (3.5%) and their sponsor (0.5%), the Ohio Consortium of Community Schools.<sup>4</sup>

Shortly after this lawsuit was filed, the Plaintiff Schools asked the White Hat Defendants to provide specific financial information about each school. Although the White Hat Defendants disclosed some information, the Plaintiff Schools claim it is not detailed enough to allow them to fulfill their duties as the schools' governing authorities. When the parties were unable to resolve their disagreement, the Plaintiff Schools asked the court to order the White Hat Defendants to turn over the requested financial records.<sup>5</sup>

The White Hat Defendants contend ordering them to produce more records is unwarranted for two reasons. First, the White Hat Defendants insist the public funds that the Plaintiff Schools receive from the Department of Education are no longer public funds when the

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<sup>3</sup> Also known as charter schools.

<sup>4</sup> The Ohio Consortium of Community Schools is not a party to this case.

<sup>5</sup> When this case was filed the Plaintiff Schools sought a temporary restraining order. Given the nature of the request, which was made shortly before the management contracts were to expire, the court stated that it may be necessary to appoint a receiver to manage the schools until the dispute could be resolved. Later that day, the parties executed a standstill agreement that extended the management contracts for one year and asked for time to resolve this matter without further court involvement. After those efforts failed, on March 23, 2011 the parties extended the standstill agreement for another year and sought the court's involvement.

Plaintiff Schools pay them to the White Hat Defendants as a "monthly continuing fee" under the management contracts. Second, as the Auditor of State has accepted the Plaintiff Schools' financial reports (which include the financial disclosures required from the White Hat Defendants) and has not made a finding that anything is improper, it would be unduly burdensome to require the White Hat Defendants to produce more detailed information and respectfully suggest that the court lacks jurisdiction to require them to do so.

"Whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action." Civ.R. 12(H)(3). After an October 26, 2011 status conference, the court ordered the parties to submit briefs on the extent of its jurisdiction by December 5, 2011. At the court's invitation the Auditor of State submitted a brief as an amicus curia, which includes an overview of R.C. 3314.024.

B. Scope of the Court's Jurisdiction

"Jurisdiction connotes the power to hear and decide a case on its merits." *New York Chicago & St. Louis Rd. Co. v. Matzinger*, 136 Ohio St. 271, 276 (1940). By statute, a "court of common pleas is a court of general jurisdiction. It embraces all matters at law and in equity that are not denied to it." *Schucker v. Metcalf*, 22 Ohio St.3d 33, 34 (1986), quoting *Saxton v. Seiberling*, 48 Ohio St. 554, 558-559 (1891). R.C. 2721.03 permits any person whose rights are affected by a statute or a contract to ask a court to determine its meaning or validity. *Victory Academy of Toledo v. Zelman*, 10<sup>th</sup> Dist. No. 07AP-1067, 2008-Ohio-3561, ¶8. Clearly, this court has jurisdiction to declare the Plaintiff Schools' rights under R.C. 3314.024 and under the management contracts with the White Hat Defendants. The only real question is whether ordering the White Hat Defendants to produce more detailed financial information impermissibly interferes with the duties of the Auditor of State, which are established by the legislature.

The legislature provides that "the Auditor of State *shall* audit each public office at least once every two fiscal years," unless federal law or another Ohio law requires an annual audit. R.C. 117.10(A). The Auditor of State "*may* conduct an audit of a public office at any time when so requested by the public office or upon the Auditor of State's own initiative if the Auditor of State has reasonable cause to believe that an additional audit is in the public interest." R.C. 117.11(B) (Emphasis added).

A "public office" is an organized body or entity "established by the laws of this state for the exercise of any function of government." R.C. 117.01(D). In *Cordray v. International Preparatory School*, 128 Ohio St.3d 50, 2010-Ohio-6136, the Supreme Court of Ohio held that community schools are public offices because they are "legislatively created as part of Ohio's constitutionally required system of common schools[.]". *Id.*, ¶22. Because the Plaintiff Schools are public offices, they are subject to mandatory audits by the Auditor of State.

Although the White Hat Defendants operate public schools, which are a function of government, they are Nevada limited liability companies.<sup>6</sup> Because they were not established by the laws of Ohio, the White Hat Defendants are not public offices subject to mandatory audits by the Auditor of State.

The Auditor of State *may* audit private institutions, associations, boards, and corporations "receiving public money for their use" and may require them to file annual reports. R.C. 117.10(B). As private corporate entities, the White Hat Defendants are only subject to audit by the Auditor of State if they receive public money for their use. More importantly, the decision to

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<sup>6</sup> Answer of Defendants White Hat Management, LLC and WHLS of Ohio, LLC, ¶11; Answer and Counterclaim of Defendants HA Broadway, LLC, HA Lincoln Park, LLC, HA Chapelside, LLC, HA University, LLC, HA Cathedral, LLC, HA Brown Street, LLC, LS Cleveland, LLC, LS Akron, LLC, LS Lake Erie, LLC and HA West, LLC, ¶11-21.

audit private corporate entities belongs exclusively to the Auditor of State; no provision in the Revised Code allows a court to order the Auditor of State to conduct a non-mandatory audit.

C. Analysis of R.C. 3314.024

A management company that provides services to a community school that amounts to more than twenty per cent of the annual gross revenues of the school shall provide a detailed accounting including the nature and costs of the services it provides to the community school. This information shall be included in the footnotes of the financial statements of the school and be subject to audit during the course of the regular financial audit of the community school.

R.C. 3314.024 ("Detailed accounting by management company; audits").

The White Hat Defendants contend R.C. 3314.024 only requires them to provide a detailed accounting to the Auditor of State, which is to be submitted in the footnotes of the Plaintiff Schools' financial statements. The Plaintiff Schools and the Department of Education insist R.C. 3314.024 requires the White Hat Defendants to provide the Plaintiff Schools with a detailed accounting, which the Plaintiff Schools shall submit to the Auditor of State in the footnotes of their financial statements. The question is whether the legislature intended R.C. 3314.024 to benefit the Plaintiff Schools and the Auditor of State, or the Auditor of State alone.

According to the Auditor of State, "the *sole* purpose of the required 'accounting' is to allow the school to prepare the Footnote for the Auditor's review, *not* to aid the school in conducting an independent evaluation of how the management company is using its resources." Auditor's Brief, p. 5 (Emphasis sic). The Auditor further states that R.C. 3314.024 does not provide a community school with a basis to demand additional financial information from a management company beyond what it has already furnished to the Auditor. "Despite the use of the phrase in the statute, R.C. 3314.024 does not actually require a management company to provide a 'detailed accounting' to the schools it serves." *Id.*

Long-standing rules of statutory construction mandate the opposite result. With very few exceptions, and this is not one of them, when the legislature enacts a statute it says what it means and means what it says.

A court's paramount concern in construing a statute is giving full effect to the legislature's intent. *State Farm Mut. Auto. Ins. Co. v. Grace*, 123 Ohio St.3d 471, 2009-Ohio-5934, ¶25. To determine the legislature's intent, a court looks to the language it used in the statute. *Rice v. CertainTeed Corp.*, 84 Ohio St.3d 417, 419, 1999-Ohio-361. A statute's language must be considered in context; its words and phrases must be construed according to customary rules of grammar and common usage. *State ex rel. Stoll v. Logan Cty. Bd. of Elections*, 117 Ohio St.3d 76, 2008-Ohio-1288, ¶34. No words may be disregarded; every word must be given its usual and ordinary meaning unless the legislature supplied a different definition. *Carter v. Youngstown Div. of Water*, 146 Ohio St. 203 (1946), paragraph one of the syllabus. A court must apply a statute as the legislature wrote it unless it is ambiguous. *Summerville v. City of Forest Park*, 128 Ohio St.3d 221, 2010-Ohio-6280, ¶18. A statute is ambiguous only if it is subject to more than one reasonable interpretation. *Clark v. Scarpelli*, 91 Ohio St.3d 271, 274, 2001-Ohio-39. R.C. 3314.024 is not ambiguous.

R.C. 3314.024 states a management company "shall provide" a detailed accounting; this information "shall be included" in the community school's financial statements and submitted to the Auditor of State. If the legislature intended the detailed accounting to benefit the Auditor of State exclusively, it need only have stated the detailed accounting "shall be included" in the community school's financial statements. That is simply not what the legislature said.

The language of R.C. 3314.024 clearly requires two actions. First, a management company receiving more than twenty percent of a community school's annual revenues must

provide a detailed accounting including the nature and costs of the services it provides. Second, the information must be included in a footnote to the community school's financial statements and be subject to audit during the course of the community school's regular financial audit.

The Supreme Court holds that a community school is a public office; it is accountable for how public funds are spent. *Cordray*, ¶12-22. The legislature requires a community school to keep the same financial records as other public schools. R.C. 3314.03(A)(8). A community school that does not hire a management company does not need to be provided with a detailed accounting; it spent those funds itself. However, when a community school pays a management company more than twenty percent of the public funds it receives from the Department of Education, that management company must provide the community school with a detailed accounting of how those funds were spent because the community school must account to the Auditor of State for them.<sup>7</sup>

The White Hat Defendants argue that because they provided the summary information to the Plaintiff Schools in the form required by the Auditor of State, and the Plaintiff Schools included it in their financial reports, and the Auditor of State accepted the Plaintiff Schools' financial reports, R.C. 3314.024 does not require them to provide the Plaintiff Schools with more detailed financial information. This view is flatly incorrect.

Certainly, to date there is no basis to suggest there is anything improper in the Plaintiff Schools' financial reports or in the information the White Hat Defendants provided in the footnote. However, as the Auditor's acceptance letter attached to each financial report makes clear, his acceptance means just that and nothing more:

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<sup>7</sup> Nothing prevents a community school from hiring more than one management company and paying more than twenty percent of its annual gross revenues to each. Thus, there is no question that the detailed accounting required by R.C. 3314.024 must be provided to the community school, because it can file only one financial statement with the Auditor of State.

We have reviewed the *Independent Auditor's Report* of the [Plaintiff School], \* \* \* for the audit period July 1, 2009 through June 30, 2010. Based upon this review, we have accepted these reports in lieu of the audit required by Section 117.11, Revised Code. The Auditor of State did not audit the accompanying financial statements and, accordingly, we are unable to express, and do not express an opinion on them.

Our review was made in reference to the applicable sections of legislative criteria, as reflected by the Ohio Constitution, and of the Revised Code, policies, procedures, and guidelines of the Auditor of State, regulations and grant requirements. The [Plaintiff School] is responsible for compliance with these laws and regulations. (Emphasis added).

The parties responsible for compliance with laws and regulations on how public funds are spent and for the information in the Plaintiff Schools' financial reports submitted to the Auditor of State, are the Plaintiff Schools, not the White Hat Defendants. From this it necessarily follows that the White Hat Defendants must provide a detailed accounting to the entity legally responsible for spending those funds only as the law allows – the Plaintiff Schools.

The Auditor of State's Advisory Bulletin 2004-0009 defines how this "information shall be included in the footnotes of the financial statements of the [community] school[.]" However, R.C.3314.024 does not mean a community school cannot also use that information, or any other financial or non-financial information it requires, to independently review the performance of the management company. There is absolutely no reason for a community school or a management company to involve the Auditor of State in a dispute over how a contract has been performed. The Auditor of State's sole mission is to be sure public funds are spent *legally*. However, a community school, its sponsor and the Department of Education are additionally charged with making sure public funds are spent *properly* to provide a quality education to Ohio's children.

D. Summary of Section One

The White Hat Defendants receive more than twenty percent of the Plaintiff Schools' annual gross revenues. Therefore, R.C. 3314.024 requires the White Hat Defendants to provide the Plaintiff Schools with a detailed accounting of the funds it received including the nature and costs of the services it provides. Moreover, the Plaintiff Schools have an absolute right to all information the White Hat Defendants used to prepare the required footnote to their financial statements, and any other financial or non-financial information the plaintiff schools require to determine that public money was spent properly to educate the children who attend these schools.

While the Auditor of State has accepted the Plaintiff Schools' financial reports, including the information the White Hat Defendants supplied for the required footnote, the Auditor of State's acceptance letter makes it crystal clear that the Plaintiff Schools remain legally responsible for all financial information. The Auditor of State's acceptance of the reports including the required footnotes does not mean the information used to prepare them is no longer relevant or subject to discovery.

*II. The White Hat Defendants' Objections to Discovery Requests*

The White Hat Defendants' objections to the Plaintiff Schools' discovery requests fall into two general categories: (1) they are unduly burdensome, and (2) the information they seek is proprietary or confidential.

Generally, parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject involved in the pending action if the information sought appears reasonably calculated to lead to the discovery of admissible evidence. Civ.R. 26(B)(1). While the scope of discovery is broad, it is not unlimited; the court may make any order that justice

requires to protect a party from undue burden or expense, including limiting the methods of discovery or requiring confidential information to be disclosed only in a designated manner. Civ.R. 26(C). In order to rule on the White Hat Defendants' objections, it is important to note the legal context in which the Plaintiff Schools' discovery requests are made.

A. The Legislative Framework of Community Schools

At the February 2, 2012 hearing, the White Hat Defendants highlighted two sentences from this court's twelve-page August 2, 2011 decision and entry. At the end of a two-page discussion on the framework authorizing community schools, the court stated: "Beyond these parameters, the law is largely silent on an operator's duties and on the role of an operator, if any, in the relationship between a community school's governing authority and its sponsor. In the absence of any law on the subject, that relationship is defined only by the contract between the operator and the governing authority."

The White Hat Defendants incorrectly take these sentences to mean this court has already ruled their relationship with the Plaintiff Schools is governed exclusively by their contracts. In the two quoted sentences, "that relationship" refers to "the role of an operator, if any, in the relationship between a community school's governing authority and its sponsor." This case has nothing to do with the relationship between a community school's governing authority and its sponsor, which is governed by R.C. 3314.03. (The Plaintiff Schools' sponsor is not a party to this case.)

This case is about management contracts between the Plaintiff Schools and the White Hat Defendants, which are authorized by R.C. 3314.01(B). A community school may "contract for any services necessary for the operation of the school," which means the duties of those who provide services are defined by their contract. However, the freedom to contract is not absolute

and these contracts do not exist in a vacuum; they can only exist within the comprehensive framework the legislature established for community schools:

1. The Department of Education administers the state's program of public education. R.C. 3301.13.
2. A community school is a public school and is part of the state's program of public education. R.C. 3314.01(B).
3. A community school must have a contract with a sponsor approved by the Department of Education. The contents of that contract are extensive and mandatory. R.C. 3314.03(A)(1)-25), (B)(1)-(5), (C), (D)(1)-(6), (E), (F).
4. A sponsor is charged with monitoring a community school's compliance with the contract, all applicable laws, and its academic and fiscal performance. R.C. 3314.03(D).
5. The Department of Education is charged with overseeing sponsors and with providing community schools and sponsors with technical assistance to help them comply with the terms of their contracts and applicable laws. R.C. 3314.015.
6. A community school is funded entirely by state and federal revenues administered by the Department of Education. R.C. 3314.08(D).
7. Any entity established by the laws of this state for the exercise of any function of government is a "public office." R.C. 117.01(D).
8. A community school is a public office. *Cordray*, ¶22.
9. Any officer, employee, or duly authorized representative or agent of a public office is a "public official." R.C. 117.01(E).

B. Independent Contractors or Public Officials

The White House Defendants continue to insist they are not public officials based on language in their management contracts with the Plaintiff Schools:

14. Relationship of the Parties. The parties hereto acknowledge that their relationship as that of an *independent contractor*. No employee of either party shall be deemed an employee of the other party. Nothing contained herein shall be construed to create a partnership or joint venture between the parties. (Emphasis added.)

Laws in effect when a contract is made automatically become part of that contract. *Doe v. Ronan*, 127 Ohio St.3d 188, 2010-Ohio-5072, ¶18, fn. 3, citing *Eastman Machinery Co. v. Peck*, 161 Ohio St. 1, 6-7 (1954); *Palmer & Crawford v. Tingle*, 55 Ohio St. 423 (1896), paragraph three of the syllabus. See also, *Bell v. Northern Ohio Tel. Co.*, 149 Ohio St. 157, 158 (1948) (“It is elementary that no valid contract may be made contrary to statute, and that valid, applicable statutory provisions are part of every contract.”). When a provision of a contract conflicts with a statute, the statute prevails. *Holdeman v. Epperson*, 111 Ohio St.3d 551, 2006-Ohio-6209, ¶18.

The Plaintiff Schools are governing authorities for community schools. The Plaintiff Schools are accountable for the performance of community schools through their sponsor and the Department of Education. The Plaintiff Schools may operate community schools themselves or may hire a management company to do so. The Plaintiff Schools entered into management contracts with the White Hat Defendants to operate community schools on their behalf.

Absent these management contracts, the White Hat Defendants have no legal authority to operate community schools, which are public schools; they can only operate them as the Plaintiff Schools' "duly authorized representative or agent." Therefore, the White Hat Defendants are public officials as R.C. 117.10(E) defines the term, notwithstanding the language in the management contracts characterizing them as independent contractors.

C. Public or Private Money

Section 8a of the management contracts requires the Plaintiff Schools to pay the White Hat Defendants a monthly "continuing fee" of ninety-six percent (96%) of the revenue received from the Department of Education. Joseph Weber, a vice-president of a number of White Hat corporate entities, testified extensively about how this payment structure evolved over time due

to the lack of start-up funding for community schools and their inability to borrow money or issue bonds against anticipated tax revenues. He also testified that the management contracts require the White Hat Defendants to pay all costs associated with operating each Plaintiff School, including salaries, textbooks, computers and supplies along with building payments, maintenance and capital improvements.

However, when Mr. Weber was asked how much a particular EMO spent for these items he declined to itemize those costs, stating only that they were "included in the continuing fee." The White Hat Defendants maintain that the public money the Plaintiff Schools receive from the Department of Education is no longer public money when they pay it to the White Hat Defendants as a monthly "continuing fee."

"Public money' means *any* money received, collected by, or due a public official under color of office, as well as any money collected by any individual on behalf of a public office or as a purported representative or agent of the public office." R.C. 117.01(C) (Emphasis added). By definition, public money is not limited to funds from the state's general revenue fund; it includes any money from any source received by a public official under the color of office.

"Color of office' means actually, purportedly or allegedly done under any law, resolution, order, or other pretension to official right, power, or authority." R.C. 117.01(A). The legislature authorized the Plaintiff Schools to operate schools as part of the state's public education program. R.C. 3314.03. The legislature authorized the Plaintiff Schools to contract for any services necessary for the operation of the school. R.C. 3314.01(B). The White Hat Defendants operate public schools as the Plaintiff Schools' duly authorized representatives under contracts issued pursuant to a legislative grant of authority. The White Hat Defendants operate the Plaintiff Schools under color of office.

The Plaintiff Schools receive public money from the Department of Education under color of office. *Cordray*, ¶27. The White Hat Defendants operate public schools under color of office, as duly authorized representatives of the Plaintiff Schools. Public money includes any money received by public officials under color of office. Therefore, the money the White Hat Defendants receive from the Plaintiff Schools is public money, regardless of how the White Hat Defendants choose to characterize it under the management contracts.

Public property and public money in the hands or control of public officials "'constitute[s] a trust fund, for which the official as trustee should be held responsible to the same degree as the trustee of a private trust.'" *Cordray*, ¶12, quoting *Crane Twp. ex rel. Stalter v. Secoy*, 103 Ohio St. 258, 259-260 (1921). Although the White Hat Defendants are private corporate entities, under Ohio law they are also public officials who received money under color of office, i.e., public money, for which they are accountable. R.C. 9.39.

D. Proprietary Information

Mr. Weber also testified the White Hat Defendants have a proprietary interest in their business model and the White Hat corporate structure. The White Hat Defendants formed a separate limited liability company ("LLC") as an Education Management Organization ("EMO") for each school: HA Broadway, LLC; HA Lincoln Park, LLC; HA Chapelside, LLC; HA University, LLC; HA Cathedral, LLC; HA Brown Street, LLC; LS Cleveland, LLC; LS Akron, LLC; LS Lake Erie, LLC; and HA West, LLC. WHLS of Ohio, LLC owns each EMO (and other Ohio-based EMOs that are not parties to this case). White Hat Management, LLC provides administrative services to each EMO (and other Ohio-based EMOs that are not parties to this case). White Hat Ventures, LLC owns WHLS of Ohio, LLC and White Hat Management, LLC. See Defendants' Exhibit 5 (Condensed Organization Chart). Mr. Weber stated that transactions

between the EMOs and other White Hat entities were part of the White Hat Defendants' business model that had been developed with years of hard work.

This "business model" appears to be an organization of corporate entities affiliated with each other, which have many of the same persons as owners or beneficiaries, and which receive public money from the Plaintiff Schools either directly or indirectly. This type of corporate organization is not at all uncommon, is in no way proprietary and is in no way related to providing a quality education to the children enrolled in the schools operated by the defendants. Accordingly, the request to withhold or limit the disclosure of transactions between the EMOs and other White Hat affiliates and entities is not well taken.

E. Information from Non-Parties

Mr. Weber was asked about transactions between the EMOs and a number of other corporate entities, including White Hat Realty, LLC; Teragram Realty, LLC; Lumen Chapelside Realty; Hope Realty, LLC; WHM Realty, LLC; Lumen Lincoln Park Realty; Lumen West Realty; Lumen West 41 Realty, LLC; Lumen University Realty; Lumen Cathedral Realty; Lumen Neo Realty, LLC; Lumen Broadway Realty; Lumen Arlington Realty, LLC; Brennan Holdings, LLC; Brennan Holdings, Inc.; and David L. Brennan. Neither David L. Brennan nor any of these corporate entities are parties to this lawsuit.

Mr. Weber's testimony suggests the EMOs paid public money to at least some of these non-parties for expenses such as school building rents and other services. The testimony also suggests that these non-parties may be affiliated with the White Hat Defendants, or that principals or officers of some or all of the White Hat Defendants may have a financial interest in them. There is reason to believe that disclosure of this information may be forthcoming voluntarily with the White Hat Defendants' discovery responses. If this information is not

forthcoming voluntarily, the Plaintiff Schools may obtain deposition testimony, the production of documents and inspection of records (including electronically stored information) and tangible things through the procedures in Civ.R. 45.

F. Specific Discovery Objections

1. Transactions with affiliates, subsidiaries or related entities

The White Hat Defendants shall provide the Plaintiff Schools with copies of general ledger accounts that represent transactions between each EMO and any White Hat affiliates, subsidiaries or related entities, along with any requested supporting documentation. Questions about the meaning of "affiliates, subsidiaries, or related entities" will be resolved pursuant to R.C. 1336.01(G).

2. Building Leases

The White Hat Defendants shall provide the Plaintiff Schools with copies of the documents that entitle each Plaintiff School to present possession of the school premises, including the amount each Plaintiff School is charged for the right to present possession, the entity/entities which those payments are made, and whether the entity/entities is/are a White Hat affiliate(s), subsidiary(ies) or related entity(ies).

3. Footnote Disclosures

The White Hat Defendants shall identify for the Plaintiff Schools how the amounts the White Hat Defendants submitted in the footnotes to the Plaintiff Schools' financial statements were determined.<sup>8</sup> The White Hat Defendants' argument that this request seeks to "usurp the authority of the Auditor of State" is wholly unfounded and devoid of legal merit.

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<sup>8</sup> Merely providing the Plaintiff Schools with a computer print-out stating "it's all in there" is patently unacceptable.

4. Individual School Accounts

The White Hat Defendants shall disclose all purchases made by each EMO for the benefit of each Plaintiff School, any depreciation schedules or other documents showing valuation including the method used to determine the respective amount, and records reflecting the efforts to improve the performance of each Plaintiff School, including but not limited to training, operating strategies, and staffing levels, and whether the purchased property is still located at the Plaintiff School for which the EMO purchased it.

5. Tax Returns

The White Hat Defendants shall provide the Plaintiff Schools with the requested tax returns under seal. The information is for attorneys' eyes only; its disclosure in any form without prior written leave of court is strictly prohibited.

6. Deadline

This information shall be provided within thirty days.

7. Reciprocal Obligations

Neither the Plaintiff Schools nor the Department of Education has objected to the White Hat Defendants' discovery requests. Therefore, the Plaintiff Schools and the Department of Education shall provide complete responses to the White Hat Defendants discovery as soon as practicable, and in any event within thirty days.

E. Summary of Section Two

The framework the legislature established to govern community schools, which are public schools in all respects, includes the Department of Education, their sponsors, and their governing boards (in this case, the Plaintiff Schools). The legislature did not include management companies in that framework. A management company operates a community

school as its governing board's duly authorized representative or agent; thus, it is a public official. A management company operates a community school under contract from its governing board pursuant to a grant of authority from the legislature, thus, it operates under color of office. The money a management company is paid to operate a community school is received under color of office; thus, it is public money.

Public money must be accounted for. The Auditor of State, who is charged with seeing that public money is spent legally, has accepted the Plaintiff Schools' financial reports and has not made any findings that any money has been spent illegally. However, the Plaintiff Schools, their sponsor and the Department of Education are also charged with spending public money properly. Moreover, as public officials who receive public money under color of office, the White Hat Defendants are charged with showing how they spent the public money they received.

It is hard to imagine a case where the parties could disagree more strongly. In that light, the parties and their respective counsel are to be commended for the professionalism with which they have conducted themselves during this lawsuit. This case will next come before the court on March 7, 2012 at 1:30 p.m. to review the progress made in discovery and to set a new case management order.

**SO ORDERED.**

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Franklin County Court of Common Pleas

**Date:** 02-06-2012  
**Case Title:** HOPE ACADEMY BROADWAY CAMPUS -VS- WHITE HAT  
MANAGEMENT LLC  
**Case Number:** 10CV007423  
**Type:** ORDER

It Is So Ordered.

The image shows a handwritten signature in cursive that reads "J. Bender". To the right of the signature is a circular official seal, which is partially obscured by the signature. The seal appears to be the official seal of the Franklin County Court of Common Pleas.

/s/ Judge John F. Bender