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June 18, 2009

The Honorable Harry Reid, Senate Majority Leader
Office of the Senate Majority Leader
528 Hart Senate Office Building
Washington, DC 20510

Dear Senator Reid:

On May 12, 2009, we transmitted our agency Inspector General's Special Report on the settlement of United States of America v. St. HOPE Academy. The Inspector General complains that his office was not consulted as the specific terms of a settlement agreement (which was executed on April 9, 2009), were being finalized. The Inspector General also objects to the terms of that settlement agreement.

In our initial comments on the Special Report, we provided a copy of an announcement of the settlement made by the Acting United States Attorney for the Eastern District of California, stating as follows: "The agreement reached strikes a proper balance between accountability and finality." We also alluded to the Acting United States Attorney's letter of commendation praising our Office of General Counsel for its outstanding work in resolving the matter.

We declined to comment further in our initial letter, citing the fact that the Acting United States Attorney had formally communicated concerns to the Chair of the Integrity Committee of the Council of Inspectors General on Integrity and Efficiency concerning the Inspector General's conduct in the St. HOPE matter. Because the President notified Congress on June 11, 2009, of his decision to remove Gerald Walpin as Inspector General and because Members of Congress have asked for additional information relating to the St. HOPE Academy Settlement Agreement, this supplemental response provides additional background.

This supplemental response demonstrates that our agency proceeded appropriately, in cooperation with the United States Attorney for the Eastern District of California, in negotiating a global settlement. We limited the Inspector General's involvement in management deliberations during the final week of negotiations for good reasons. We carefully considered the terms of the agreement within the agency's management and governance structure. And contrary to the Inspector General's erroneous assertions in his Special Report, St. HOPE Academy entered into a Stipulation for Consent Judgment giving the United States a fully-enforceable judgment for the full outstanding amount.

The fundamental concern of the Inspector General appears to be that he was not consulted during the final week of the settlement discussions. As fully reflected in the referral of Mr. Walpin's conduct to the Integrity Committee by the Acting United States Attorney, and as further documented by the attachments to this letter, Mr. Walpin's limited involvement in management's deliberative process in the final stages of settlement discussions was the direct



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result of his own conduct during the course of the St. HOPE matter. Specifically, Mr. Walpin had a marked propensity to make questionable comments on this matter in the media (against the specific direction of the United States Attorney), and to fail to disclose pertinent information to officials who must make decisions on behalf of the federal government.

Attached are memoranda from the Corporation's General Counsel, Frank R. Trinity, (Attachment A) and Acting Chief Financial Officer, William A. Anderson, (Attachment B). Mr. Trinity (in his capacity as General Counsel), and Mr. Anderson (in his capacity both as Acting CFO and as the Corporation's Debarment and Suspension Official) were the Corporation's signatories on the Settlement Agreement. Their respective memoranda detail the basis of their decisions.

The General Counsel's memorandum details why the Corporation's management directly supported the Office of the United States Attorney in the final week of settlement discussions. The General Counsel, in the same manner as the career professional staff of the Office of the United States Attorney, concluded that Mr. Walpin's own actions called his objectivity into serious question. Specifically, Mr. Walpin had engaged in questionable public and media commentary on a pending matter, and had failed to disclose material information to Corporation officials while they were exercising their statutory responsibilities to act on behalf of the federal government.

The Acting Chief Financial Officer's memorandum describes how the recommendation from the OIG to suspend St. HOPE, Kevin Johnson and Dana Gonzales, was a close question, and that the deciding factor was to protect the government's interests while the United States Attorney was considering what action to take. At the time of settlement, the record before the agency, as developed by the Office of Inspector General, did not include a full cost-incurred audit. Thus, there was no evidence upon which to disallow all costs incurred under the grant. The Acting CFO also describes how the St. HOPE settlement was higher than the amount independently determined appropriate by Corporation career professional staff in reviewing the investigatory file. Finally, he explains that the training requirements required under the settlement were a reasonable means to address the matters that had led to the individuals' suspensions.

I would also like to point out that a comment attributed to me in the Special Report is not accurate. I conveyed to Mr. Walpin that, because Federal funding to the City of Sacramento was at risk, we would give serious consideration to a global settlement agreement on appropriate terms.

I would also recommend that you give the Acting United States Attorney for the Eastern District of California an opportunity to respond, as the Inspector General's Special Report attributes statements and motives to that office as well.

In conclusion, the notion that the Corporation was unduly influenced by outside political or media pressure is not true. The two senior agency officials who approved the Settlement Agreement, our General Counsel and Acting CFO, have been with the agency for roughly 30 years collectively. They worked within our agency's management and governance structure in

approving the terms of the Settlement Agreement, and their decision was and is supported by me and our bi-partisan Board of Directors appointed by the President, with the advice and consent of the Senate.

Sincerely,

A handwritten signature in black ink, appearing to read "Nicola Goren", followed by a long horizontal line extending to the right.

Nicola Goren
Acting Chief Executive Officer

Attachments

Additional Distribution
Response of the Corporation for National and Community Service
to the
Special Report to the Congress From the Office of the Inspector General of the
Corporation for National and Community Service

The Honorable Edward M. Kennedy
Chairman, Committee on Health,
Education, Labor, and Pensions
U.S. Senate
428 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Michael B. Enzi
Ranking Member, Committee on Health,
Education, Labor, and Pensions
U. S. Senate
835 Hart Senate Office Building
Washington, DC 20510

The Honorable Tom Harkin
Chairman, Subcommittee on Labor, Health and
Human Services, Education and Related Agencies
Committee on Appropriations
U. S. Senate
131 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Thad Cochran
Ranking Member, Subcommittee on Labor, Health and
Human Services, Education and Related Agencies
Committee on Appropriations
U. S. Senate
156 Hart Senate Office Building
Washington, DC 20510

The Honorable Joseph I. Lieberman
Chairman, Committee on Homeland Security
and Governmental Affairs
U. S. Senate
340 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Susan M. Collins
Ranking Member, Committee on Homeland Security
and Governmental Affairs
U. S. Senate
350 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Charles E. Grassley
U. S. Senate
135 Hart Senate Office Building
Washington, DC 20510

May 18, 2009

MEMORANDUM FOR NICOLA GOREN, ACTING CHIEF EXECUTIVE OFFICER

FROM: Frank R. Trinity *Frank R. Trinity*
General Counsel

SUBJECT: Settlement Agreement in St. HOPE Academy matter.

This memorandum addresses the Corporation's involvement in settlement negotiations in United States v. St. HOPE Academy and responds to the Inspector General's objections to the process and substance of the Settlement Agreement in that matter as expressed in his Special Report.

A. Corporation's involvement in settlement negotiations

On April 2, 2009, the United States Attorney's Office for the Eastern District of California contacted me and asked our agency to participate in settlement discussions in this matter. At all times thereafter, the Corporation acted in support of the U.S. Attorney's negotiations. As General Counsel, I coordinated the Corporation's involvement in those negotiations and communicated the Corporation's views to the U.S. Attorney's office.

Federal funding for the City of Sacramento was at risk because Kevin Johnson -- two months before being elected Mayor -- had been placed on the Excluded Parties List based on information provided to the Corporation by the Inspector General. Other Federal agencies were actively considering whether to suspend funding to the City of Sacramento. Accordingly, we gave due consideration to a global settlement, including lifting the suspension, if the terms of the settlement were appropriate. On April 9, 2009, the matter was settled, the terms of which are a matter of public record.

While an Inspector General has no statutory entitlement to participate in an agency's deliberative process, including the settlement of a civil matter or a suspension, it has been our practice for the Inspector General's Office to serve as point of contact with the United States Attorney's Office on pending civil recovery matters until settlement is actively discussed. At that point, I am usually asked to participate on behalf of the agency to communicate the agency's approval of the terms of any settlement agreement. Because St. HOPE Academy, Kevin Johnson, and Dana Gonzalez were in serious discussions with the United States Attorney's Office about possible settlement, my communications with the U.S. Attorney's Office were not unusual.

The Inspector General objects to his not being included in the discussions between the United States Attorney's Office and Corporation management, as our

agency considered settlement terms. In normal circumstances we would have involved the Inspector General to a greater extent, as our agency considered the settlement terms under discussion. However, in this particular matter, I concluded that the Inspector General was not likely to serve as a productive participant in the agency's deliberative process. I shared the same concerns that were expressed to me by the Assistant United States Attorney about the Inspector General's public commentary on the matter and the Inspector General's failure to disclose material relevant to considering possible settlement terms.

B. The Inspector General's public commentary on a pending matter

The Inspector General repeatedly provided commentary about this matter in the media, including, among other statements:

- While the Inspector General's suspension recommendation was pending within Corporation management, the Inspector General's spokesman publicly branded those subject to suspension as "pariahs".
- For months following management's suspension decision, the Inspector General posted a press release announcing the suspension on his website, including having the words "NEWS FLASH!" in large red letters repeatedly flash on the top portion of the Inspector General's home page, just above a photograph of the Inspector General.
- While settlement discussions were underway, the Inspector General authored a detailed op-ed published in the Sacramento Bee on March 31, 2009.

See Attachment A.

In connection with the March 31, 2009, op-ed, the Special Report says that "[m]isstatements" in a Sacramento Bee editorial "prompted the IG to respond to defend the OIG." (page 24, note 13, and Exhibit 32 to the Special Report.) The Inspector could have corrected any misstatement with a factual note of correction. Instead, the Inspector General's personal op-ed, published on March 31, 2009, goes well beyond any factual corrections and makes the following comment:

...contrary to your editorial, the ball on the suspension has been in Johnson's court since the order of suspension was issued.

Apparently, he made the decision not to appeal the suspension by providing specific facts that would show to the neutral suspension official that the suspension was not warranted. If, as you charge (without basis), that suspension in these circumstances was an 'unusual step,' the procedures allowed Johnson to seek to lift the suspension. He decided not to do so.

I generally defer to the Inspector General's choices on how to communicate with the public on any matter of his interest. However, I considered the Inspector General's public commentary while decisions were pending within the Corporation and the United States Attorney's office to be inappropriate. The nature of the public commentary caused me to question the Inspector General's objectivity in this matter.

C. The Inspector General's selective disclosure of information

When Corporation management became involved in settlement discussions, the Inspector General's conduct deepened my concern about his objectivity and judgment, specifically his producing documents to support his position while not producing documents to present the other side's position.

On or about Wednesday, April 1, 2009, the Inspector General requested that our Grants Management Director review certain documents to help evaluate a settlement offer made by St. HOPE Academy, Kevin Johnson, and Dana Gonzalez.

At a meeting conducted in the Office of Inspector General on Thursday, April 2, 2009, OIG staff provided two OIG documents to our Grants Management Director (and an Associate General Counsel representing my office). I was not at the meeting but I was briefed by the Grants Management Director and my OGC colleague. The OIG documents (provided to CNCS for review) stated that "no tutoring" was performed by the St. HOPE Academy program. OIG staff did not provide a document in its possession recently prepared by St. HOPE Academy's counsel. The St. HOPE Academy counsel document (not provided to CNCS for review) stated that substantial tutoring was performed, based on statements attributed to former program participants.

Whether tutoring was in fact performed by the program was a material fact in evaluating potential settlement terms. On Monday, April 6, in the presence of the Grants Management Director, Special Assistant to the IG Jack Park, and Assistant IG for Audit Stuart Axenfeld, I expressed concern to the Inspector General about OIG not having provided the St. HOPE Academy counsel letter representing that tutoring had in fact been performed. The Inspector General initially expressed uncertainty as to whether he had the St. HOPE Academy counsel letter at the time of the April 2 meeting. Assistant IG for Audit Axenfeld said to the Grants Management Director, "I gave you everything I had." Mr. Walpin, at meeting's end, stated that even if he had the letter he wouldn't have provided it.

On Tuesday morning, April 7, I visited the Inspector General in his office. I told him that I was not accusing him of withholding or concealing documents, but that I believed that he had shown a lack of candor in not producing the St. HOPE Academy counsel letter for our review in connection with the settlement discussions.

In the Special Report, the Inspector General acknowledges that OIG received the St. HOPE Academy letter on March 26, 2009, a week before the April 2 meeting with the CNCS Grants Management Director. Given these facts, the Special Report's explanation for OIG not providing the letter -- (management "had only to ask" for the document) -- confirms my earlier conclusion that the Inspector General actions fall short of the fairness and candor that I believe is necessary for an Inspector General to work effectively with agency management. I lost confidence in the Inspector General's being able to provide an objective view of the matter and to be fair in participating in the agency deliberative process.

D. The Inspector General's complaints about the settlement terms are without basis.

The Inspector General calls the Settlement Agreement with St. HOPE Academy a "worthless judgment" and a "farce." The Special Report criticizes the security -- not the amount -- of the payment required under the Settlement Agreement.

On the issue of security for the settlement amount, the Assistant United States Attorney, who has substantial experience in resolving civil matters on behalf of the United States, specifically negotiated the security terms. We discussed the issue prior to executing the agreement and I was fully satisfied that the terms provided an appropriately high level of security to the United States in connection with the required payment.

The Inspector General's Special Report omits a material term of the Settlement Agreement on this point. As part of the Settlement Agreement, St. HOPE Academy also entered into a Stipulation for Consent Judgment giving the United States an enforceable judgment against St. HOPE Academy in the full amount of \$350,000. See Attachment B.

The Inspector General claims that the Agreement would allow St HOPE Academy to repay Kevin Johnson the amount he has paid on St. HOPE's behalf, with no recourse to the government if that repayment makes St. HOPE Academy insolvent. In fact, there is substantial recourse to the Government even under the scenario posited by the Inspector General. First, the Inspector General overlooks that a repayment to Mr. Johnson that would make St. HOPE Academy insolvent would place both St. HOPE and Mr. Johnson in violation of the Settlement Agreement. The Government would have direct recourse against Kevin Johnson

in that event. Second, any such payment by St. HOPE Academy officials would give the Government recourse against those officials in their personal capacities under section 3713 of Title 31 of the U.S. Code.

Finally, regarding the type of training course required for respondents to satisfy their obligations under the Agreement, I note that our Debarment and Suspension Official, like the authority cited by the Inspector General, is a Certified Public Accountant, and that he determined that the course included the appropriate elements for the two individual respondents.

Conclusion

The Settlement Agreement results in one-half of all awarded funds repaid to the Government, participation in the financial settlement by the two individual respondents, required coursework in grants management by the two individual respondents, and high-risk grantee designation of St. HOPE Academy. I believe that these terms, which are a matter of public record, are fair and just.

The fact that the Inspector General was not fully involved in the final negotiations of this matter was the result of (1) the Inspector General's questionable public commentary prior to settlement and (2) the Inspector General's selective disclosure of relevant material when management was considering settlement terms.

As General Counsel on behalf of the Corporation, I worked with senior agency officials to provide timely and effective input to the United States Attorney's Office in resolving a very important matter. We carefully considered the issues, worked closely with the Assistant United States Attorney handling the matter, deliberated within the agency's management and governance structure, and determined that entering into the Settlement Agreement was the right thing to do. Nothing in the Special Report causes me to change my view that we proceeded in the interest of our agency, the Government, and the public.

Attachment A

THE SACRAMENTO BEE sacbee.com

This story is taken from Sacbee / Our Region

Hood Corps probe expands

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Published Monday, Jun. 30, 2008

The continuing federal investigation into St. HOPE's Hood Corps has expanded to more deeply scrutinize the volunteer program's use of public dollars, say those familiar with the probe.

Agents Jeffrey Morales and Wendy Wingers made a second visit to Sacramento in late May, after extending their initial stay in April by several weeks. They interviewed teen volunteers, parents, teachers and administrators affiliated with St. HOPE, the nonprofit that operates Hood Corps. They traveled to Humboldt County and West Point.

Initially, the agents were dispatched to Sacramento on April 24 to examine allegations of sexual misconduct, Hood Corps' mandatory church attendance and compulsory physical training – activities prohibited on the federal dime.

Federal officials would not talk about the Hood Corps investigation but said their rules are clear.

"No church on our time, and it cannot be required," said William O. Hillburg, a spokesman for the inspector general's office conducting the investigation. "No political activity at all on our time, and it can't be required. No residential requirement at all."

At issue is \$807,000 in federal AmeriCorps money that Hood Corps collected from 2004 to 2007. Though funding for the program was not renewed last year, if theft of public funds is found, fines could be assessed and other federal funding withheld from every program administered by St. HOPE, according to Hillburg.

Kevin Johnson, former NBA star and current mayoral candidate, is St. HOPE's founder and served as CEO until this month. Johnson has built his political campaign on his efforts to improve Oak Park, from redevelopment to charter schools to the Hood Corps, which he has compared to an urban Peace Corps.

Neither St. HOPE nor Johnson responded to questions from The Bee about the investigation. Instead, they issued one-paragraph statements saying they were cooperating with the agents but could not comment on specifics until the probe is complete.

At a televised candidate forum in early May, Johnson was asked about the investigation. "I

feel very confident in what St. HOPE has done," he said. "If St. HOPE did not do something as well as it should have, we would certainly rectify that immediately, but we'd have to hear back from them."

The federal investigation was sparked by a report of alleged sexual misconduct last year involving Johnson and two teen volunteers. That report, filed by a teacher at Sacramento High School, was found to be without merit by police – but still became the catalyst for the investigation because it was not reported to AmeriCorps.

AmeriCorps currently has 75,000 volunteers – called "members" – serving in 4,100 nonprofits nationwide. Members are paid a small living allowance and, if they put in a specified number of hours, earn an education award for college: \$4,725 for 1,700 hours over the course of a year.

About 100 programs currently are under investigation, according to Hillburg. His office is part of the federal Corporation for National and Community Service, one of AmeriCorps' umbrella organizations.

Agents are checking whether St. HOPE's Sacramento High School used Hood Corps funds to augment employee salaries, sources close to the investigation told The Bee.

Among those interviewed by the federal agents was Sheila Coleman, a dance teacher at Sac High and a Hood Corps member in 2005.

That year, Coleman received a salary of \$20,225 from St. HOPE public schools plus a \$13,000 living stipend for her Hood Corps work, according to documents obtained by The Bee through a public information act request.

Coleman did not return calls for comment.

Allen Young, Coleman's former principal, said the teacher worked full time in 2005 and her salary would have been approximately \$35,000.

Young said he learned about St. HOPE's decision to tap into funds for Hood Corps volunteers during a budget meeting when an employee from St. HOPE Human Resources told him of the plan.

"She said we had 'X' amount of money to hire staff. She said some of Sheila Coleman's salary would be paid for from some other tab – Hood Corps," said Young, who also has been in contact with agent Morales. "I didn't give it a second thought. I thought it must be OK to do that."

Allison Alair, a former St. HOPE teacher and administrator, said she met with agent Morales in May and has exchanged e-mails with him since then.

Alair said Morales questioned her about her allegation that Johnson and Dana Gonzalez, a top St. HOPE executive, directed Hood Corps members to help her sell school uniform shirts. "From Day One, Kevin and Dana told me to use Hood Corps students if I needed anything done," she said.

Alair said Morales also asked questions about Johnson's role in Hood Corps.

"He wanted information on Kevin, on his position, on his power," Alair said. "He wanted me to tell him the chain of command and specific examples about how Kevin himself directed certain activities."

Such questions – aimed at nailing down who is responsible – are crucial in every investigation, according to Hillburg.

Hood Corps – short for "Neighborhood Corps – was founded in 1998 by Johnson as a cornerstone of his St. HOPE organization. He continued in an active role in the program during the AmeriCorps years, according to Hood Corps participants and St. HOPE documents.

In its original contract with AmeriCorps, Hood Corps said its volunteers would perform a range of community service including tutoring, public relations for the Guild Theater and art gallery, and managing "redevelopment of one building per year in Oak Park."

Some volunteers said those things were among their duties. But Jonathan Beacham, a full-time Hood Corps fellow in 2004, told The Bee that his main duty was to be assistant manager for Uncle Jed's Cut Hut, a barbershop operated by St. HOPE.

Others told investigators that their tasks differed greatly from the contract, including chauffeuring Johnson, washing a St. HOPE van and scrubbing the toilets at the nonprofit's Guild Theater, according to four former members who spoke to The Bee after talking to the agents.

Changing duties in that way is prohibited, according to Hillburg, because it can undermine the very aspects of a program that won it funding. "You must abide by the contract," he said.

In addition to conducting interviews, Morales and Wingers also are reportedly combing through documents – including timecards – gathered under federal subpoena.

Agents always look hard at volunteers' timecards, Hillburg said, considering them the only true measure of work done.

"They have to be signed by the member and by a supervisor," he said. "If you sign a wrong time sheet, that's fraud and a federal charge.

Tamara Shelton, a full-time 2005 member, said she told the agents she never filled out a time sheet.

"We never kept track – they did that for us," according to Shelton, who dropped out of the program after struggling with the physical training.

Depending on the agents' findings, AmeriCorps investigations can have heavy consequences.

If warranted, Hillburg said, the agency can place a nonprofit or individual employees under a temporary federal suspension, cutting off all federal funding until the probe is completed. After the conclusion of the case, federal officials also can yank federal funding for up to three years – a punishment known as "debarment."

Under debarment, Hood Corps and other St. HOPE programs – including Sacramento Charter High School and PS 7, which last year received \$1.3 million in federal funds – could be placed

on a national list barring them from receiving any type of federal money, including student lunch funding, student loans - even federally backed mortgages.

"I call it the 'pariah list,' " Hillburg said.

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Meet Inspector General Gerald Walpin



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**Office of Inspector General
Corporation for National and Community Service**

FOR IMMEDIATE RELEASE

Contact:

William Hillburg, Director of Communications
(202) 606-9368

WASHINGTON, DC (September 25, 2008) - The Federal agency in charge of the AmeriCorps volunteer program on Wednesday (September 24) suspended St. HOPE Academy, Kevin Johnson, its founder and former president, and Dana Gonzalez, executive director of St. HOPE's Neighborhood Corps, from all access to Federal grants and contracts for up to one year.

The decision of the Corporation for National and Community Service ("Corporation") resulted from a recommendation made by the Office Inspector General ("OIG"), which was based on information developed in an investigation of St. HOPE and its principals, which is ongoing. The suspension, which immediately went into effect September 24, bars St. HOPE Academy, Johnson and Gonzalez from receiving or using funds from any Federal agency for up to one year, or pending completion of the OIG investigation.

The OIG, in its recommendation for suspension, cited numerous potential criminal and grant violations, including diversion of Federal grant funds, misuse of AmeriCorps members, and false claims made against a taxpayer-supported Federal agency.

"I appreciate the Corporation's action in implementing our recommendation and in supporting our ongoing investigation," said Inspector General Gerald Walpin. "Given that there exists evidence to suspect improper and fraudulent misuse of grant funds and AmeriCorps members, it is important that immediate action be taken. Between now and the completion of the OIG's investigation, we must protect the public interest from the potential repetition of this conduct by this grantee and its principals."

In its written suspension decision, the Corporation cited numerous AmeriCorps grant violation and diversions of Federal funds. It stressed that "the diversion of grant funds is so serious a violation of the terms of the grant agreement that immediate action via suspension is required to protect the public interest and restrict the offending parties' involvement with other Federal programs and activities."

Under the terms of its Corporation grant, St. HOPE officials agreed to deploy their Neighborhood Corps AmeriCorps members to tutor students at its charter schools, redevelop one building per year in Sacramento's Oak Park neighborhood and coordinate marketing and logistics for St. HOPE's Guild Theater and Art Gallery.

The cited violations of St. HOPE's grant agreement included:

- Misusing AmeriCorps members, financed by Federal grant funds, to personally benefit Kevin Johnson, including driving him to personal appointments, washing his car and running personal errands.
- Unlawfully supplementing St. HOPE staff salaries with Federal grant funds by enrolling two employees in the AmeriCorps program and giving them Federally funded Corporation living allowances and education awards.
- Improperly using members to engage in banned political activities, namely supporting the election of Sacramento School Board candidates.
- Improperly taking members assigned to serve in Sacramento to New York City to promote St. HOPE's establishment of a Harlem charter school.
- Misusing AmeriCorps members, who, under the grant, were supposed to be tutoring elementary and high school students, to instead serve in clerical and janitorial positions at St. HOPE's charter schools.
- Misusing AmeriCorps members to recruit students for St. HOPE's charter schools.

St. HOPE Academy, Johnson and Gonzalez each has the opportunity to challenge the suspensions, and has 30 days to respond to the Corporation.

During the suspension period, St. HOPE Academy, Johnson and Gonzalez will be included in the Excluded Parties List System, a database maintained by the U.S. General Services Administration (www.epls.gov). The list is used by all Federal agencies to determine the eligibility of individuals and organizations to receive Federal grants and contracts.

THE SACRAMENTO BEE sacbee.com

This story is taken from [Sacbee / Our Region](#)

Kevin Johnson: Probe concerns 'absurd'

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Published Saturday, Sep. 27, 2008

Mayoral candidate Kevin Johnson returned to Sacramento Friday and immediately went on the offensive, saying it was "absurd" to suggest his placement this week on a list of people who can't do business with the federal government could hurt his ability to act as Sacramento mayor.

Johnson whipped through a hefty schedule of appearances and events, several of them with NBA star Shaquille O'Neal. O'Neal was keynote speaker at an evening fundraiser for St. HOPE Academy, the Oak Park-based nonprofit founded by Johnson. About 700 people attended the dinner at the Hyatt Regency hotel downtown.

Along with Johnson, St. HOPE Academy this week was placed on a list of people and organizations barred from receiving federal funds or contracts. The suspension could last up to a year or until completion of a federal probe into St. HOPE's management of federal funds used in its volunteer Hood Corps program.

Johnson insisted Friday his placement on the list would not hinder the city's ability to receive and spend federal dollars if he is elected mayor.

"That's absurd," he said. "As mayor, I'm going to go out there and shake down as many resources as I can for Sacramento."

City Attorney Eileen Teichert, after a day researching the matter, offered a similar assessment Friday. "We are still digging further to try to achieve some sort of finality to our opinion," she said. "I can tell you at this point in time we do not believe it should impact the city's ability to obtain any federal funding."

Teichert said it remains uncertain whether Johnson could vote on federal funding matters while suspended. Out of town on a family matter, Teichert said she would be reviewing the question further when she returns next week.

Frederic Levy, a Washington attorney who specializes in federal contracting, said cities applying for federal funding are required to disclose if a top official or board member is barred from receiving federal funding. That disclosure, Levy said, "doesn't mean the federal

government won't make the award. It's discretionary."

The city likely would need to include a footnote in grant applications saying that appropriate measures would be taken "to ensure no improprieties in the use of the funds," Levy said.

Mayor Heather Fargo has remained mum on the topic of Kevin Johnson all week. She was installed Friday as president of the League of California Cities, and was busy with events surrounding that installation, said her campaign manager, Dale Howard.

"She's been pretty much under lock and key," he said.

Johnson spent the last few days in New York City, where he attended a fundraiser for his mayoral campaign. He returned Friday morning, in time to introduce Caroline Kennedy at a luncheon fundraiser for presidential candidate Barack Obama at Mason's Restaurant downtown.

He also appeared on a radio show and attended an event to promote green energy at California State University, Sacramento. He watched as dozens of excited children mobbed O'Neal during an appearance at the Boys & Girls Club in downtown Sacramento.

After O'Neal left in his stretch Hummer limousine, Johnson held a press conference in the club's sweltering gym to address questions about St. HOPE's Hood Corps program.

The federal funding suspension was triggered by a months-long investigation into Hood Corps' use of AmeriCorps funds. Federal agents recently turned over findings from their investigation to the U.S. attorney's office in Sacramento, where prosecutors will decide whether to file charges or seek restitution.

On Thursday, the federal AmeriCorps agency cited numerous violations of St. HOPE's grant for its urban Peace Corps-style program. In its contract with AmeriCorps, federal investigators said, St. HOPE agreed that volunteers would tutor students, redevelop one building a year in Oak Park and help in marketing and operations at the organization's theater and art gallery.

Among the grant violations federal agents cited:

- Supplementing St. HOPE school staff salaries with federal grant funds by enrolling two employees in the AmeriCorps program.
- Using AmeriCorps members, financed by federal grant funds, to drive Johnson to personal appointments, wash his car and run personal errands.
- Using AmeriCorps members to campaign for school board candidates.
- Using AmeriCorps members to serve in clerical and janitorial positions at St. HOPE's charter schools.

Johnson did not dispute that most of the activities took place, but took issue with whether it constituted misuse of federal money, and said it did not constitute "gross negligence."

"I'm very confident the U.S. attorney is not going to find that these allegations are

egregious," he told The Bee in an interview between events.

"From an administrative standpoint, could we have dotted our i's and crossed our t's better? Certainly. And we should be held accountable for whatever those things are."

St. HOPE runs an array of nonprofit endeavors, including public charter schools in Sacramento and New York, a development company, an art gallery and Hood Corps.

Johnson ran all the St. HOPE programs until he stepped down from his official positions early this year. He said St. HOPE Academy, which runs Hood Corps, is separate from the schools and the development company, and that those operations won't be affected by the federal suspension of funds.

The federal government has declined to provide clarification on whether that is the case.

The suspension of Johnson and St. HOPE was trumpeted in huge red headlines Thursday on the Web site of Gerald Walpin, inspector general of the Corporation for National & Community Service. It was Walpin's office that conducted the investigation.

Matt Jacobs, a former federal prosecutor who is representing Johnson, questioned why Walpin's office publicized the suspension rather than waiting for the U.S. attorney to decide whether the case merited criminal or civil charges, or a fine. He speculated that the federal agency was trying to pressure the U.S. attorney's office.

"You don't see the FBI or the IRS doing this," Jacobs said. "They turn in their report to the U.S. attorney and let the process work. I've seen these little Podunk agencies get excited about their cases. They've come to me when I was in U.S. attorney's offices. And you say, 'I don't think so.' They get very mad about it."

Walpin did not respond to a request for comment Friday.

On his Web site, in a description of his role, Walpin says rooting out misuse of federal funds is one of his priorities. "The reality is that such misconduct takes precious resources away from deserving people, the same way the theft of a welfare check hurts a single mother who needs that money to buy milk for her children," Walpin wrote.

Johnson supporters contacted Friday said the federal actions have not dissuaded them from backing Johnson for mayor.

"It certainly doesn't affect my support," said Sacramento City Councilman Steve Cohn. "I'm puzzled by the federal government wanting to release this information before they decide what they're going to do."

Local architect Ron Vrilakas said he could understand how such violations could happen.

"I'm not whatsoever alarmed by what I've read," Vrilakas said. "It's not surprising that in a small nonprofit doing a lot of things, there could be minor variations on what they had these young people doing. I know that as a small-business owner you wear a lot of hats, and I imagine that's the way things operated there as well."

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Call The Bee's Mary Lynne Vellinga, (916) 321-1094.

THE SACRAMENTO BEE sacbee.com

This story is taken from Sacbee / Opinion

My View: The federal aid ball is in Johnson's court

Special to The Bee

Published Tuesday, Mar. 31, 2009

Your March 24 editorial, without basis, attacks my Inspector General office for "dragging on" with our investigation of St. HOPE Academy and its principals so that the city of Sacramento may be precluded "from getting federal funds" due to the fact that on Sept. 24, 2008, Mr. Kevin Johnson was suspended "from receiving federal funds."

The relevant law – which I would have thought that you would have researched before writing your editorial – demonstrates that you are targeting the wrong entity for any delay of the determination of whether Johnson's suspension was appropriate.

Some background: As inspector general, I am duty-bound to take action to uncover and to prevent fraud and waste in the almost \$1 billion of taxpayers' money that is disbursed by the Corporation for National and Community Service.

Under controlling regulations, suspension from receiving or controlling federal funds is one of the tools available, where there "exists ... adequate evidence to suspect ... commission of fraud ... making false claims ... or commission of any other offense indicating a lack of business integrity or business honesty that seriously and directly affects (the person's) present responsibility ... or violation of the terms of a public agreement or transaction so serious as to affect the integrity of an agency program, such as willful failure to perform in accordance with the terms of one or more public agreements or transactions."

For a suspension to occur, my office must recommend the suspension to the deciding official (who is not in my office) and provide adequate evidence to support the suspension to the deciding official. That was done here. The suspending official there- after notified Johnson of the suspension.

Most important is that the regulations give any person or entity suspended – including Johnson – the right "to contest a suspension" by "provid(ing) the suspending official with information in opposition to the suspension ... within 30 days after (receipt of) the Notice of Suspension." The opposition submission cannot rely on "a general denial"; instead, it must include "specific facts that contradict the statements made in the Notice of Suspension."

Thus, contrary to your editorial, the ball on the suspension has been in Johnson's court since

the order of suspension was issued.

Apparently, he made the decision not to appeal the suspension by providing specific facts that would show to the neutral suspension official that the suspension was not warranted. If, as you charge (without basis), that suspension in these circumstances was an "unusual step," the procedures allowed Johnson to seek to lift the suspension. He decided not to do so.

Your editorial also refers to a criminal investigation or civil monetary recovery or settlement. I do not comment on such matters unless they are public.

But, in any event, those legal avenues are irrelevant here as they are in no way connected with the ability of the city of Sacramento to obtain federal funds – only the suspension order has that effect.

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Gerald P. Walpin is the inspector general of the Corporation for National and Community Service.

Attachment B

SETTLEMENT AGREEMENT

I. PARTIES

This Settlement Agreement (“Settlement Agreement”) is entered into by and between the United States of America (“United States”), acting through the United States Attorney’s Office for the Eastern District of California, on behalf of the Corporation for National and Community Service, an agency of the United States Government (the “Corporation”) (hereafter collectively referred to as the “United States”); and St. HOPE Academy (“St. HOPE”), through its authorized representatives, Kevin Johnson, individually (“Johnson”), and Dana Gonzalez, individually (“Gonzalez”), through their authorized representatives. Hereinafter, the United States, St. HOPE, Johnson and Gonzalez are jointly referred to as “the Parties.”

II. PREAMBLE

As a preamble to this Settlement Agreement, the Parties agree to the following:

A. AmeriCorps grant funds were awarded by the State of California to and administered by St. HOPE under grant award numbers 03AFHCA002Y11-F102, 03AFHY12-F102, and 06AFHY13-F102 (“AmeriCorps Grants”). Additionally, AmeriCorps members were entitled to Education Awards if they fulfilled their service requirements for St. HOPE pursuant to the terms of the grant requirements. The Education Awards and grants awarded to St. HOPE (collectively the “Grant Awards”) totaled \$847,673.00.

B. During the majority of the relevant time period herein, Johnson was the President and Chief Executive Officer of St. HOPE, and Gonzalez was the Executive Director of St. HOPE.

C. The United States contends that St. HOPE did not appropriately spend the Grant Awards pursuant to the terms of the grant requirements, and did not adequately document its expenditures of the Grant Awards.

D. By letters dated September 24, 2008, the Debarment and Suspension Official for the Corporation, notified St. HOPE, Johnson and Gonzalez that they were suspended from participation in Federal procurement and nonprocurement programs for a temporary period of time pending the completion of an investigation by the United States Attorney's Office, or the conclusion of any legal or debarment proceedings resulting from the investigation, of the alleged misuse of Federal funds provided in support of the AmeriCorps Grants.

E. This Settlement Agreement is not an admission of liability or fault by St. HOPE, Johnson or Gonzalez, nor a concession by the United States that its claims are not well founded. However, as acknowledged below and in the attached Stipulation for Judgment, St. HOPE acknowledges that it did not adequately document a portion of its expenditures of the Grant Awards.

F. To avoid the delay, uncertainty, inconvenience, and expense of further litigation, the Parties mutually desire to reach a full and final settlement of the Parties' claims with respect to the AmeriCorps Grants and Grant Awards and the related claims and investigation, pursuant to the Terms and Conditions set forth below.

G. Although issues of suspension and possible debarment are ordinarily addressed by the Corporation separately from resolution of any civil claims, at the request of St. HOPE, Johnson and Gonzalez for a global resolution of all matters related to the AmeriCorps Grants and

Grant Awards, this Settlement Agreement also addresses the resolution of suspension issues and further proceedings, if any, related to debarment proceedings.

NOW, THEREFORE, in consideration of the mutual promises, covenants, conditions, terms, and obligations set forth in this Settlement Agreement, the Parties agree to settle this matter as follows:

III. TERMS AND CONDITIONS

I. In consideration of the obligations of the Parties set forth in this Settlement Agreement, St. HOPE agrees to pay the total sum of Four Hundred Twenty-Three Thousand Eight Hundred Thirty-Six Dollars and Fifty Cents (\$423,836.50) (the "Settlement Amount"). St. HOPE shall pay the Settlement Amount to the United States as follows:

a. An initial payment of Seventy-Three Thousand Eight Hundred Thirty-Six Dollars and Fifty Cents (\$73,836.50) (the "Initial Payment") by electronic funds transfer pursuant to written instructions to be provided by the United States Attorney's Office for the Eastern District of California. St. HOPE agrees to make this electronic funds transfer within 5 business days of this Settlement Agreement being signed by all parties.

b. Johnson believes that St. HOPE has played a significant role in the community and he believes that it will continue to do so. Johnson has decided to assist St. HOPE in paying the settlement amount and agrees to pay Seventy-Two Thousand Eight Hundred Thirty-Six Dollars and Fifty Cents (\$72,836.50) of the Initial Payment by paying such amount to St. HOPE in time for St. HOPE to make the Initial Payment to the United States pursuant to the terms of this Settlement Agreement. Johnson and St. HOPE may enter into an agreement

whereby St. HOPE agrees to repay Johnson when St. HOPE has the financial ability to do so while still meeting all of its other financial obligations.

c. Gonzalez believes that St. HOPE has played a significant role in the community and she believes that it will continue to do so. Gonzalez has decided to assist St. HOPE in paying the settlement amount and agrees to pay One Thousand Dollars (\$1,000.00) of the Initial Payment by paying such amount to St. HOPE in time for St. HOPE to make the Initial Payment to the United States pursuant to the terms of this Settlement Agreement.

d. St. HOPE shall enter into a stipulated judgment for the remainder of the Settlement Amount, Three Hundred and Fifty Thousand Dollars (\$350,000.00), plus 5% annual interest. Such amount shall be paid by certified check payable to the United States Department of Justice in the amount of Thirty-Five Thousand Dollars (\$35,000.00) annually for ten years, each payment being due on or before April 15th of each year. The first payment pursuant to the Stipulated Judgment is due on or before April 15, 2010. The final payment shall be in the amount of Thirty-Five Thousand Dollars (\$35,000.00), plus the interest due and owing on the stipulated judgment, and shall be due on or before April 15, 2019.

2. Within 5 business days of this Settlement Agreement being signed by all parties, Johnson and Gonzalez shall register to take an on-line course offered by Management Concepts titled "Cost Principles", and shall provide written proof to the Corporation, through its counsel, of having registered for the course. Johnson and Gonzalez agree to complete the course within 120 days of this Settlement Agreement being signed by all parties, and shall provide written verification under oath of having completed the course.

3. The Corporation shall terminate the suspension of St. HOPE, Johnson and Gonzalez from participation in Federal procurement and nonprocurement programs upon all of the following:

- a. This Settlement Agreement having been signed by all parties;
- b. St. Hope having made the Initial Payment pursuant to the terms of Paragraph 1a-c above;
- c. St. HOPE having signed the Stipulated Judgment in accordance with Paragraph 1d above;
- d. Johnson and Gonzalez having made the payments in accordance with Paragraph 1b-c above; and
- e. Johnson and Gonzalez having provided verification of having registered for the course in accordance with Paragraph 2 above.

4. The Corporation agrees not to institute debarment proceedings against St. HOPE with respect to the AmeriCorps Grants and Grant Awards so long as it complies with the terms of this Settlement Agreement. The Corporation also agrees not to institute debarment proceedings against Johnson and Gonzalez with respect to the AmeriCorps Grants and Grant Awards so long as they comply with their obligations under this Settlement Agreement, including the certification of course completion pursuant to Paragraph 2 above.

5. Once the Corporation has terminated the suspension against St. HOPE, Johnson and Gonzalez, nothing herein is intended as a prohibition against their applying for federal grants. However, St. HOPE agrees that it may be considered a high-risk grantee by the Corporation for a period of two years, until April 15, 2011. After April 15, 2010, and upon the

request of St. HOPE and its submission of any supporting documents, the Corporation agrees to reconsider this high-risk designation to determine if it should be rescinded.

6. Subject to the exceptions in Paragraph 7 below, in consideration of the obligations of St. HOPE, Johnson and Gonzalez in this Settlement Agreement, and conditioned upon the full payment by St. Hope of the Settlement Amount, the United States (on behalf of itself, its officers, agents, agencies, and departments) hereby releases St. HOPE and its current and former directors, officers, agents, shareholders, and employees (including Johnson and Gonzalez), from all liability for any civil claims, demands, obligations, actions, causes of action, damages, costs, losses, attorneys' fees, and expenses, which the United States has or may have relating to the application and handling of the AmeriCorps Grants and payment of the Grant Amounts, investigation and litigation of this matter (including public statements), and matters related to the suspension and possible debarment of St. HOPE, Johnson and Gonzalez, including under the False Claims Act, 31 U.S.C. §§ 3729-3733, or the Program Fraud Civil Remedies Act and its implementing regulations, 31 U.S.C. §§ 3801-3812, 45 CFR Part 2554.

7. Notwithstanding any term of this Settlement Agreement, specifically reserved and excluded from the scope and terms of this Settlement Agreement as to any entity or person are the following claims of the United States:

- a. Any civil, criminal, or administrative liability arising under Title 26, United States Code (Internal Revenue Code);
- b. Any criminal liability; and
- c. Any liability to the United States (or its agencies) for any conduct other than that explicitly released in this Settlement Agreement.

8. In consideration of the obligations of the United States set forth in this Settlement Agreement, St. HOPE and its current and former directors, officers, agents, shareholders, and employees (including Johnson and Gonzalez), hereby release the United States and its employees, former employees, agents, agencies, and departments from all liability for any civil claims, demands, obligations, actions, causes of action, damages, costs, losses, attorneys' fees, and expenses, which they have or may have as of the Effective Date of this Settlement Agreement relating to the application and handling of the AmeriCorps Grants, payment of the Grant Awards, investigation and litigation of this matter (including public statements), and matters related to the suspension and possible debarment of St. HOPE, Johnson and Gonzalez.

9. The Parties to this Settlement Agreement shall bear their own costs, attorneys' fees, and expenses incurred in any manner in connection with the investigation, litigation, and resolution of this matter.

10. This Settlement Agreement is binding upon St. HOPE's successors, transferees and assigns. Otherwise, this Settlement Agreement is intended to be for the benefit of the Parties only. The Parties do not release any claims against any other person or entity not expressly released by this Settlement Agreement.

11. The individual signing this Settlement Agreement on behalf of St. HOPE represents and warrants that he or she has the power, consent, and authorization of St. HOPE to execute this Settlement Agreement.

12. The individuals signing on behalf of the United States represent that they are signing this Settlement Agreement in their official capacities and that they are authorized to execute this Settlement Agreement.

13. Each Party represents and warrants that it has not transferred anything being released under this Settlement Agreement, and is not aware of any such transfer, and that the Party is not aware of any prohibition of any type that prevents the Party from performing the terms of this Settlement Agreement.

14. St. HOPE warrants that it has reviewed its financial situation and that it is currently solvent within the meaning of 11 U.S.C. §§ 547(b)(3) and 548(a)(1)(B)(ii)(I), and will remain solvent following payment to the United States of the Settlement Amount.

15. The Parties warrant that, in evaluating whether to execute this Settlement Agreement, they (i) have intended that the mutual promises, covenants, and obligations set forth herein constitute a contemporaneous exchange for new value given to St. HOPE, Johnson and Gonzalez, within the meaning of 11 U.S.C. § 547(c)(1), and (ii) conclude that these mutual promises, covenants, and obligations do, in fact, constitute such a contemporaneous exchange. Further, the Parties warrant that the mutual promises, covenants, and obligations set forth herein are intended and do, in fact, represent a reasonably equivalent exchange of value which is not intended to hinder, delay, or defraud any entity to which St. HOPE, Johnson or Gonzalez was or became indebted on or after the date of this transfer, within the meaning of 11 U.S.C. § 548(a)(1).

16. Nothing in this Settlement Agreement constitutes an agreement by the United States concerning the characterization of the Settlement Amount for purposes of Title 26, United States Code (Internal Revenue Code).

17. Each Party warrants that it has been represented by, and has sought and obtained the advice of, independent legal counsel with regard to the nature, purpose, and effect

of this Settlement Agreement. This Settlement Agreement was negotiated by the Parties and their respective counsel, each of whom had the opportunity to participate in the drafting thereof. The Parties hereby declare that the terms of this Settlement Agreement have been completely read, fully understood, and voluntarily accepted following opportunity for review by legal counsel of their choice.

18. Each Defendant warrants and represents that it is freely and voluntarily entering into this Settlement Agreement without any degree of duress or compulsion whatsoever, after having been apprised of all relevant information and data by its legal counsel. Defendants further warrant and represent that no other party or its representative has made any promise, representation or warranty, express or implied, except as expressly set forth in this Settlement Agreement, and that the Defendants have not relied on any inducements, promises, or representations made by any Party to this Settlement Agreement, or its representatives, or any other person, except as expressly set forth herein.

19. The Parties understand and acknowledge that if the facts relating to the application and handling of the subject grants and payment of the grant amounts are found hereafter to be different from facts now believed by any Party described herein to be true, each Party expressly accepts and assumes the risks of such possible difference in facts and agrees that this Settlement Agreement shall remain effective, notwithstanding any such differences.

20. The Parties expressly recognize that the United States may publicly disclose this Settlement Agreement, and information about the case and this Settlement Agreement.

21. This Settlement Agreement constitutes the complete agreement between the Parties, and supercedes and replaces all prior negotiations and agreements, whether written or

oral, relating to the application and handling of the subject grants and payment of the grant amounts

22. This Settlement Agreement may be executed in counterparts, and each of the counterparts taken together shall constitute one valid and binding Settlement Agreement between the Parties.

23. This Settlement Agreement may not be altered, amended, or modified, except by a writing duly executed by authorized representatives of all of the Parties.

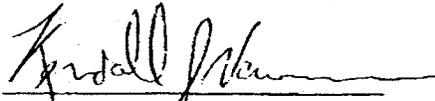
24. This Settlement Agreement is governed by the laws of the United States. The Parties agree that, should any judicial action be required to enforce or interpret this Settlement Agreement, or to resolve any dispute hereunder, the exclusive jurisdiction and venue for such action shall be in the United States District Court for the Eastern District of California.

25. This Settlement Agreement is effective, final, and binding as of the date of signature of the last signatory to the Settlement Agreement ("Effective Date"). Facsimiles of signatures shall constitute acceptable, binding signatures for purposes of this Settlement Agreement.

UNITED STATES OF AMERICA

Dated: April 9, 2009

LAWRENCE G. BROWN
Acting United States Attorney

By: 

KENDALL J. NEWMAN
Assistant United States Attorney
Chief, Civil Affirmative Section

Attorneys for
United States of America

Dated: April 9, 2009



WILLIAM ANDERSON
Acting Chief Financial Officer and
Debarment and Suspension Official
on behalf of the Corporation for National
and Community Service

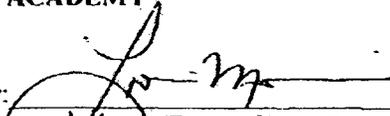
Dated: April 9, 2009



FRANK R. TRINITY
General Counsel
on behalf of the Corporation for National
and Community Service

ST. HOPE ACADEMY

Dated: 4/9/09

By: 
Name: Acting Executive Director
Title: Lori Mills

Approved as to form:

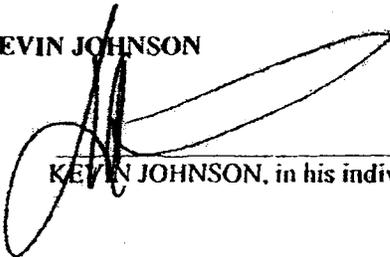
Dated: _____

SEGAL & KIRBY

MALCOLM S. SEGAL, Esq.
Attorneys for St. HOPE Academy

KEVIN JOHNSON

Dated: 4/9/09



KEVIN JOHNSON, in his individual capacity

Approved as to form:

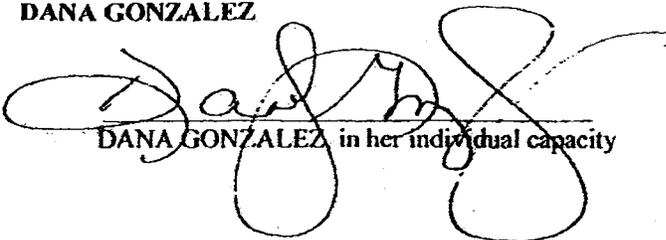
Dated: _____

STEVENS, O'CONNELL & JACOBS LLP

MATTHEW G. JACOBS, Esq.
Attorneys for Kevin Johnson

DANA GONZALEZ

Dated: 4/9/09



DANA GONZALEZ, in her individual capacity

Approved as to form:

Dated: _____

THE LAW OFFICES OF RICHARD PACHTER

RICHARD PACHTER, Esq.
Attorney for Dana Gonzalez

ST. HOPE ACADEMY

Dated: _____

By: _____

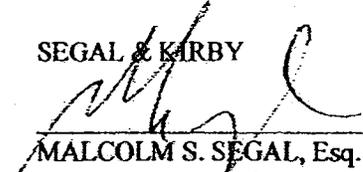
Name:

Title:

Approved as to form:

Dated: 04.09.09

SEGAL & KIRBY



MALCOLM S. SEGAL, Esq.
Attorneys for St/HOPE Academy

KEVIN JOHNSON

Dated: _____

KEVIN JOHNSON, in his individual capacity

Approved as to form:

Dated: _____

STEVENS, O'CONNELL & JACOBS LLP

MATTHEW G. JACOBS, Esq.
Attorneys for Kevin Johnson

DANA GONZALEZ

Dated: _____

DANA GONZALEZ, in her individual capacity

Approved as to form:

Dated: _____

THE LAW OFFICES OF RICHARD PACTER

RICHARD PACTER, Esq.
Attorney for Dana Gonzalez

ST. HOPE ACADEMY

Dated: _____

By: _____
Name:
Title:

Approved as to form:

Dated: _____

SEGAL & KIRBY

MALCOLM S. SEGAL, Esq.
Attorneys for St. HOPE Academy

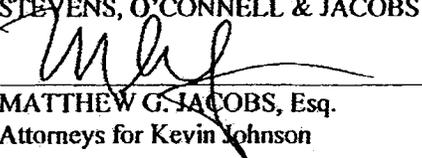
KEVIN JOHNSON

Dated: _____

KEVIN JOHNSON, in his individual capacity

Approved as to form:

Dated: 4/9/09

STEVENS, O'CONNELL & JACOBS LLP

MATTHEW G. JACOBS, Esq.
Attorneys for Kevin Johnson

DANA GONZALEZ

Dated: _____

DANA GONZALEZ, in her individual capacity

Approved as to form:

Dated: _____

THE LAW OFFICES OF RICHARD PACTER

RICHARD PACTER, Esq.
Attorney for Dana Gonzalez

1 LAWRENCE G. BROWN
Acting United States Attorney
2 KENDALL J. NEWMAN
Assistant U.S. Attorney
3 501 I Street, Suite 10-100
Sacramento, California 95814
4 Telephone: (916) 554-2821
5 Attorneys for Plaintiff
United States of America
6
7
8

9 IN THE UNITED STATES DISTRICT COURT
10 FOR THE EASTERN DISTRICT OF CALIFORNIA
11

12 UNITED STATES OF AMERICA,)	
)	Case No:
13 Plaintiff,)	
)	
14 v.)	
)	COMPLAINT
15 ST. HOPE ACADEMY,)	
)	
16 Defendant.)	
)	
17)	

18
19 Plaintiff United States of America, by and through its
20 undersigned counsel, complains of defendant and alleges as follows:

21 Jurisdiction and Venue

22 1. This Court has jurisdiction over this action pursuant to
23 28 U.S.C. § 1345.

24 2. Venue is proper in the Eastern District of California
25 pursuant to 28 U.S.C. § 1391(b).

26 The Parties

27 3. Plaintiff is the United States of America ("United
28 States"), acting through the United States Attorney's Office for the

1 Eastern District of California, on behalf of the Corporation for
2 National and Community Service, an agency of the United States
3 Government (the "Corporation") (hereafter collectively referred to
4 as the "United States").

5 4. Defendant St. HOPE Academy ("St. HOPE"), is a nonprofit
6 corporation doing business in Sacramento, California.

7 Allegations

8 5. AmeriCorps grant funds were awarded by the State of
9 California to and administered by St. HOPE under grant award numbers
10 03AFHCA002Y11-F102, 03AFHY12-F102, and 06AFHY13-F102 ("AmeriCorps
11 Grants"). Additionally, AmeriCorps members were entitled to
12 Education Awards if they fulfilled their service requirements for
13 St. HOPE pursuant to the terms of the grant requirements. The
14 Education Awards and grants awarded to St. HOPE (collectively the
15 "Grant Awards") totaled \$847,673.00.

16 6. The United States contends that St. HOPE did not
17 appropriately spend the Grant Awards pursuant to the terms of the
18 grant requirements, and did not adequately document its expenditures
19 of the Grant Awards.

20 7. The United States and St. HOPE have reached a settlement in
21 this matter wherein St. HOPE acknowledges that it did not adequately
22 document a portion of its expenditures of the Grant Awards.

23 8. In settlement, St. HOPE has agreed to repay the total sum
24 of Four Hundred Twenty-Three Thousand Eight Hundred Thirty-Six
25 Dollars and Fifty Cents (\$423,836.50) (the "Settlement Amount"). As
26 part of the settlement of this matter, St. HOPE will have made an
27 initial payment of Seventy-Three Thousand Eight Hundred Thirty-Six
28 Dollars and Fifty Cents (\$73,836.50). St. HOPE agrees to entry of a

1 Stipulated Judgment for the remainder of the Settlement Amount,
2 Three Hundred and Fifty Thousand Dollars (\$350,000.00), plus 5%
3 annual interest.

4 FIRST CLAIM FOR RELIEF

5 (Unjust Enrichment)

6 9. Plaintiff reasserts and realleges, as if fully set forth
7 herein, paragraphs 1-8 above.

8 10. The United States alleges that St. HOPE has been unjustly
9 enriched to the extent that it received and did not appropriately
10 spend the Grant Awards.

11 WHEREFORE, Plaintiff requests judgment against Defendant
12 St. HOPE:

13 1. In accordance with the terms of the Stipulation for
14 Consent Judgment as part of the parties' settlement of this action;
15 and

16 2. For other costs and fees to the extent that Defendant does
17 not fully comply with the terms of the Stipulation for Consent
18 Judgment; and

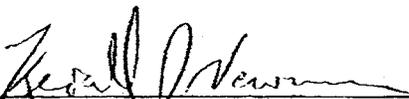
19 3. For such other and further relief as the Court deems just
20 and proper.

21
22

23 Dated: April 9, 2009

LAWRENCE G. BROWN
Acting United States Attorney

24
25
26
27
28

By: 
KENDALL J. NEWMAN
Assistant United States Attorney
Chief, Civil Affirmative Section
Attorneys for Plaintiff United States

1 LAWRENCE G. BROWN
Acting United States Attorney
2 KENDALL J. NEWMAN
Assistant U.S. Attorney
3 501 I Street, Suite 10-100
Sacramento, California 95814
4 Telephone: (916) 554-2821
5 Attorneys for Plaintiff
United States of America
6
7
8

9 IN THE UNITED STATES DISTRICT COURT
10 FOR THE EASTERN DISTRICT OF CALIFORNIA
11

12 UNITED STATES OF AMERICA,)
13 Plaintiff,) Case No:
14 v.)
15 ST. HOPE ACADEMY,) **STIPULATION FOR CONSENT JUDGMENT**
16 Defendant.)
17)

18
19 It is hereby stipulated and agreed between the United States of
20 America ("United States"), acting through the United States Attorney's
21 Office for the Eastern District of California, on behalf of the
22 Corporation for National and Community Service, an agency of the United
23 States Government (the "Corporation") (hereafter collectively referred
24 to as the "United States"); and St. HOPE Academy ("St. HOPE"), through
25 its authorized representatives, as follows:

26 1. AmeriCorps grant funds were awarded by the State of
27 California to and administered by St. HOPE under grant award numbers
28 03AFHCA002Y11-F102, 03AFHY12-F102, and 06AFHY13-F102 ("AmeriCorps

1 Grants"). Additionally, AmeriCorps members were entitled to Education
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3 pursuant to the terms of the grant requirements. The Education Awards
4 and grants awarded to St. HOPE (collectively the "Grant Awards")
5 totaled \$847,673.00.

6 2. The United States contends that St. HOPE did not
7 appropriately spend the Grant Awards pursuant to the terms of the grant
8 requirements, and did not adequately document its expenditures of the
9 Grant Awards.

10 3. The United States and St. HOPE have reached a settlement in
11 this matter wherein St. HOPE acknowledges that it did not adequately
12 document a portion of its expenditures of the Grant Awards.

13 4. In settlement, St. HOPE has agreed to repay the total sum of
14 Four Hundred Twenty-Three Thousand Eight Hundred Thirty-Six Dollars and
15 Fifty Cents (\$423,836.50) (the "Settlement Amount"). As part of the
16 settlement of this matter, St. HOPE will have made an initial payment
17 of Seventy-Three Thousand Eight Hundred Thirty-Six Dollars and Fifty
18 Cents (\$73,836.50). St. HOPE herein agrees to the entry of this
19 Stipulated Judgment for the remainder of the Settlement Amount, Three
20 Hundred and Fifty Thousand Dollars (\$350,000.00), plus 5% annual
21 interest.

22 5. The United States herein agrees to a payment schedule for St.
23 HOPE in order to cure this debt. St. HOPE shall pay Thirty-Five
24 Thousand Dollars (\$35,000.00) annually for ten years, each payment
25 being due on or before April 15th of each year. The first payment
26 pursuant to this Stipulated Judgment is due on or before April 15,
27 2010. The final payment shall be in the amount of Thirty-Five Thousand
28 Dollars (\$35,000.00), plus the interest due and owing on this

1 Stipulated Judgment, and shall be due on or before April 15, 2019.

2 6. Notwithstanding the payment schedule set forth above, the
3 United States may record the Consent Judgment herein as a lien against
4 any of St. HOPE's real properties until such judgment is satisfied.

5 7. Upon receipt of all the payments pursuant to the payment
6 schedule above, the final installment will constitute satisfaction of
7 this debt, and the United States shall file a satisfaction of judgment
8 and release all liens related to this Stipulated Judgment.

9 8. If St. HOPE fails for any reason to timely make the payments
10 as prescribed above, the entire balance of the Stipulated Judgment is
11 immediately due and owing, and the United States may pursue all legal
12 remedies to collect the balance of the Stipulated Judgment, including
13 court costs, accrued interest, and any additional fees assessed in
14 order to collect this debt. Enforcement actions may be initiated
15 without prior notice.

16 9. This Stipulated Judgment is binding upon St. HOPE's
17 successors, transferees and assigns.

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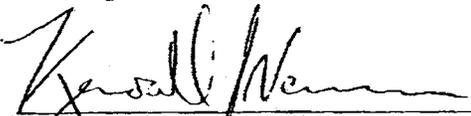
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1 10. Payments pursuant to this Stipulated Judgment are to be made
2 by certified check payable to the UNITED STATES DEPARTMENT OF JUSTICE
3 and mailed to:

4 United States Attorney's Office
5 Financial Litigation Unit
6 501 I Street, Suite 10-100
7 Sacramento, CA 95814

8 Dated: April 9, 2009

LAWRENCE G. BROWN
Acting United States Attorney

9
10
11 By: 
12 KENDALL J. NEWMAN
13 Assistant United States Attorney
14 Chief, Civil Affirmative Section
15 Attorneys for Plaintiff United States

16 Dated: April __, 2009

Name: _____
Title:
On behalf of Defendant St. HOPE Academy

19 Dated: April __, 2009

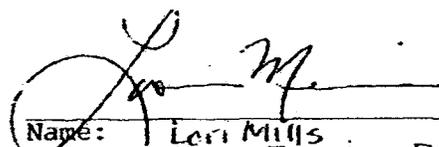
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21 SEGAL & KIRBY
22 MALCOLM S. SEGAL, Esq.
23 Attorneys for Defendant St. HOPE Academy
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8 Dated: April __, 2009 LAWRENCE G. BROWN
9 Acting United States Attorney

10
11 By: KENDALL J. NEWMAN
12 Assistant United States Attorney
13 Chief, Civil Affirmative Section
14 Attorneys for Plaintiff United States

15 Dated: April 9, 2009
16 
17 Name: Lori Mills
18 Title: Acting Executive Director
19 On behalf of Defendant St. HOPE Academy

20
21 Dated: April __, 2009 SEGAL & KIRBY
22 MALCOLM S. SEGAL, Esq.
23 Attorneys for Defendant St. HOPE Academy
24
25
26
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LAWRENCE G. BROWN
Acting United States Attorney

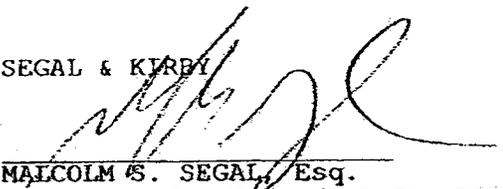
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10
11 By:

KENDALL J. NEWMAN
Assistant United States Attorney
Chief, Civil Affirmative Section
Attorneys for Plaintiff United States

12
13
14
15 Dated: April __, 2009

Name:
Title:
On behalf of Defendant St. HOPE Academy

16
17
18 Dated: April 9, 2009

SEGAL & KIRBY

MALCOLM S. SEGAL, Esq.
Attorneys for Defendant St. HOPE Academy

1 LAWRENCE G. BROWN
Acting United States Attorney
2 KENDALL J. NEWMAN
Assistant U.S. Attorney
3 501 I Street, Suite 10-100
Sacramento, California 95814
4 Telephone: (916) 554-2821
5 Attorneys for Plaintiff
United States of America
6
7
8

9 IN THE UNITED STATES DISTRICT COURT
10 FOR THE EASTERN DISTRICT OF CALIFORNIA
11

12 UNITED STATES OF AMERICA,)
13 Plaintiff,) Case No: 2:09-cv-00965 JAM/KJM
14 v.)
15 ST. HOPE ACADEMY,) **CONSENT JUDGMENT PURSUANT TO**
16 Defendant.) **STIPULATION**
17)
18

19 Pursuant to the Stipulation for Consent Judgment filed herewith,
20 judgment is entered in favor of the plaintiff United States of America
21 and against defendant St. HOPE Academy in the principal amount of Three
22 Hundred and Fifty Thousand Dollars (\$350,000.00), plus 5% annual
23 interest until paid.

24 IT IS SO ORDERED.

25
26 DATED: April 9, 2009

/s/ John A. Mendez _____
UNITED STATES DISTRICT COURT JUDGE

28

MEMORANDUM

DATE: June 16, 2009

TO: Nicola Goren,
Acting Chief Executive Officer

FROM: William Anderson,
Acting Chief Financial Officer



SUBJECT: St. HOPE Academy Settlement

This memorandum discusses my involvement as the Corporation's Debarment and Suspension Official and Acting Chief Financial Officer in the matter of the global settlement that was reached on April 9, 2009, regarding the Corporation's grants to St. HOPE Academy. Specifically, this memorandum details the bases for my decision to suspend the parties, and my subsequent decision to approve the final settlement.

Basis of Suspensions

On September 24, 2008, in my role as the Corporation's Debarment and Suspension Official, I suspended Kevin Johnson, President, St. HOPE Academy; Dana Gonzalez, Director, New Site and School Development at St. HOPE Academy; and St. HOPE Academy from participation in Federal procurement and nonprocurement programs and activities. The suspension was based on a May 21, 2008 referral from the Corporation's Inspector General, which cited eight separate recommended bases for suspension. After reviewing the OIG's recommendation, I concluded that two of the eight asserted bases of suspension did not warrant further consideration.

For the remaining six bases, the decision on whether or not to suspend was close. Suspensions are unusual for the Corporation; we usually wait for conviction and then directly debar. Between the time of the initial referral and issuance of the suspension letters, I carefully reviewed the documents and had numerous discussions with the Corporation's Associate General Counsel assigned to the case, and also followed up with the OIG. The Corporation no longer had active grants with St. HOPE Academy and the referral was based on investigative work that was

ongoing. Moreover, the suspension process does not allow the affected parties to present facts in opposition to the action prior to the suspension taking affect. Based on these factors, at that point, I was not prepared to suspend without further fact finding on which to base my decision.

My decision to move forward with the suspension regardless of the need for additional fact finding was influenced by a letter from the U.S. Attorney for the Eastern District of California.¹ On September 18, 2008, I was notified that the U.S. Attorney was carefully reviewing the OIG's referral of possible criminal or civil action in regard to St. HOPE, and that substantial interests of the U.S. Government would be prejudiced if I conducted fact finding in connection with the suspension. I understood this to mean that the U.S. Attorney's Office was actively considering a potential criminal or civil case, and that an office other than the Corporation's OIG had reviewed the allegations. This letter was the determining factor. Absent the letter from the U.S. Attorney, I would not have proceeded with suspension but would have waited for a complete record and pursued the matter through the normal debarment process, if appropriate at that time.

Subsequent to issuing the suspension letter, attorneys for the suspended parties requested several extensions of time to respond to my letter. The reasons given for the extension requests were (1) they were responding to a subpoena for records in connection with this matter issued by the Corporation's OIG on October 1, 2008; and (2) to prepare a coordinated response to the suspension. Through the Office of General Counsel, I reminded the parties that fact finding could not be conducted at that time because the U.S. Attorney was still investigating and reviewing the matter and had not decided whether to institute legal proceedings. I approved a series of extensions between December 15, 2008, through April 30, 2009. The parties remained in the Excluded Parties List System from September 24, 2008 through April 9, 2009.

Settlement Factors

On page one of my September 24, 2008 suspension letter, I noted that the suspension was "for a temporary period pending the completion of an investigation, or the conclusion of any legal or debarment proceedings resulting from the investigation." In any suspension or debarment proceeding, there is the potential for settlement if it is in the best interests of the U.S. Government. On or about April 2, 2009, I was informed by the Corporation's General Counsel that the Acting U.S Attorney had begun settlement discussions with the suspended parties and that he asked whether I would consider including the suspension as part of the settlement. I

¹ September 9, 2008, letter from McGregor W. Scott, United States Attorney, Eastern District of California (see attachment 1).

agreed that the suspension could be a part of a settlement if it was in the best interests of the Government. After reviewing the final proposal, I approved the settlement on April 9, 2009.

St. HOPE Academy received \$677,310 as the Federal share of three AmeriCorps grants covering the period July 1, 2004 through December 31, 2007. AmeriCorps members earned another \$170,363 in education awards for their service under the grants (together totaling the \$847,673 cited in the Inspector General's Special Report to the Congress).

Based on my review of the exhibits to the Inspector General's Special Report to the Congress, OIG auditors did not perform an audit of the Federal assistance provided to St. HOPE Academy; rather, they performed a review of information in the investigative files and formed their conclusions based on that limited record.² In my opinion, while there was evidence that there would be some level of disallowed costs related to these awards, there was also evidence in OIG's investigative files that appropriate grant activities had taken place including tutoring, and therefore, it would be inappropriate and unsustainable to disallow all costs incurred under the grants. An incurred cost audit, and significant follow up by the Corporation's Office of Grants Management, would be needed to determine the total amount of costs that would ultimately be disallowed by the Corporation.

The Corporation's Office of Grants Management reviewed information in OIG's investigative files and estimated that a settlement in the range of \$250,000 to \$335,000 would be appropriate.³ Under the terms of the actual settlement reached by the Acting U.S. Attorney, St. HOPE agreed to repay \$423,836.50, or 50 percent of the funds awarded (inclusive of education awards). Of this amount, \$73,836.50 was due upon settlement with the balance of \$350,000 to be repaid over a period of 10 years with interest (at a five percent interest rate). In my experience at the Corporation, only about 25 percent of the costs questioned in such an audit are ultimately disallowed. Moreover, St. HOPE Academy entered into a Stipulation for Consent Judgment giving the Government an enforceable judgment against St. HOPE Academy in the amount of \$350,000, providing reasonable assurance that the balance of the settlement would ultimately be paid.

In addition, under the settlement, the two principal officers of St. HOPE Academy – Kevin Johnson and Dana Gonzalez – are required to complete a course on Federal cost principles

² March 18, 2009, letter from Stuart Axenfeld, Assistant Inspector General for Audit, to Kendall Newman, Acting U.S. Attorney, Eastern District of California (see attachment 2).

³ April 3, 2009, email from Margaret Rosenberry, Director, Office of Grants Management, to Frank Trinity, General Counsel (see attachment 3).

for grants. The course is one of the most comprehensive on grant compliance available and covers the kind of issues which invariably find themselves being expressed as a questioned cost under the applicable cost principles. The topics dealt with in depth include the factors affecting the allowability of costs, such as ensuring that activities carried out are within the scope of the grant (e.g. recruiting students for St. HOPE Academy) or are not for otherwise prohibited activities (e.g. carrying out political activities). In my opinion, the course covers the types of issues identified in my suspension letters to Kevin Johnson and Dana Gonzalez, and is an appropriate means to address concerns about their potential involvement in future Federal grant programs.

Under the settlement, St. HOPE Academy also agreed to be considered a high-risk grantee should it apply for Corporation funds within the next two years and gave up its appeal rights under audit resolution. Finally, throughout the six and a half month period, the parties were suspended from participation in Federal procurement and nonprocurement programs and activities.

In my professional opinion, the settlement reached in this matter was fair and equitable and in the best interest of the U.S. Government.

Attachments (3)

OFFICE OF INSPECTOR GENERAL

MEMORANDUM

TO: William Anderson
Debarring and Suspending Official

FROM: John J. Park, Jr. *JP*

DATE: September 18, 2008

SUBJECT: Recommendation for Suspension – St. HOPE Academy,
Kevin Johnson, President / CEO St. HOPE, and Dana Gonzalez,
AmeriCorps Executive Director, St. HOPE (08-027)

Further to the Recommendation for Suspension of May 21, 2008, I attach a letter dated September 9, 2009, from the United States Attorney for the Eastern District of California for your consideration.

Mr. Walpin asks that you do whatever you need to do to prepare to act, but take no action until he has a chance to talk with you. He will be back in the office on Tuesday, September 23, 2008.



**U.S. DEPARTMENT OF JUSTICE**

*United States Attorney
Eastern District of California*

McGregor W. Scott United States Attorney

Robert T. Matsui
United States Courthouse
501 I Street, Suite 10-100
Sacramento, CA 95814

Phone 916/554-2700
Fax 916/554-2900
TTD 916/554-2855

September 9, 2008

William Anderson
Debarment and Suspension Official
Corporation for National and Community Service
1201 New York Avenue, NW
Washington, D.C. 20525

Re: Suspension Matter Involving St. HOPE Academy, Kevin Johnson, and Dana Gonzalez

Dear Mr. Anderson:

I understand that the Corporation for National and Community Service ("Corporation") is considering suspending St. HOPE Academy of Sacramento, CA and two individuals associated with that organization, Kevin Johnson and Dana Gonzalez. The Office of Inspector General ("OIG") of the Corporation, which has responsibility to investigate violations of law involving Corporation grants, has prepared and submitted to my office a referral for criminal and/or civil proceedings against the above-identified entity and individuals.

This office has made no decision on whether any such proceeding should be commenced, and will make no such decision until careful study of the OIG referral. I am informed, however, that the investigation by and referral from OIG involves facts on which you are relying in your potential suspension.

I am advising you that substantial interests of the Government in legal proceedings contemplated by the OIG referral would be prejudiced if you conduct fact-finding in connection with any suspension until this office has had time to make a determination on the

William Anderson
p. 2

legal proceedings recommended by the OIG referral. Hence, should you choose to suspend, I request, as provided under 2 CFR 180.735(a) (4), that you not conduct fact-finding under 2 CFR 180.735 until this office completes review of the referral.

Thank you for your consideration. If you have any questions please do not hesitate to contact Assistant United States Attorney John K. Vincent at (916) 554-2795.

Sincerely,

A handwritten signature in black ink, appearing to read 'mws', written in a cursive style.

McGREGOR W. SCOTT
United States Attorney

MWS/mw

cc. Gerald Walpin, Inspector General
Corporation for National and Community Service



OFFICE OF INSPECTOR GENERAL

March 18, 2009

Kendall Newman, Esq.
Office of Assistant U.S. Attorney
U.S. Department of Justice
For the Eastern District of California
501 I Street
Suite 10-100
Sacramento, CA 95814

Subject: Corporation for National and Community Service ("Corporation") Grant No.
03AFHCA002, awarded to California Volunteers, and Subgrant No.
03AFHCA0020032 awarded to St. HOPE Academy ("St. HOPE")

Dear Mr Newman:

At your request, we reviewed the investigator files and data subpoenaed from Saint HOPE Academy to determine the amount of Corporation funds that were allowable, allocable and in compliance with the subgrant terms. We believe that none of the costs charged to the grant are allowable, primarily because the AmeriCorps members' service activities were not consistent with the grant requirements. The following chart shows the grant cost paid to St. HOPE and the Education Awards paid to AmeriCorp members. All of the costs should be disallowed:

Costs for the grant period (8/31/04 through 9/30/07)	<u>Costs</u>
Member Living Allowance	\$447,009
Member Fringe Benefits	61,486
Staff Personnel Expenses	104,479
Staff Personnel Fringe Benefits	13,667
Other Cost	<u>50,669</u>
Total Federal Share Claimed	677,310
Education Awards	<u>170,363</u>
Total	<u>\$847,673</u>

Grant applications by St. HOPE were approved by California Volunteers, the California State Commission, for each of the three grant periods and all three applications were nearly identical.



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202-606-9390 * Hotline: 800-452-8210 * www.cnscs.org

Senior Corps * AmeriCorps * Learn and Serve America



St. HOPE, in its grant applications, which are part of the grant provisions, agreed that the grant funds were to be used for the following purposes:

- "providing one-on-one tutoring to elementary and high school students;"
- "managing the redevelopment of one building per year in Oak Park [the Sacramento neighborhood in which St. HOPE operates];"
- "coordinating logistics, public relations, and marketing for the Guild Theater and Art Gallery events, as well as hands-on workshops, guest artist lectures, and art exhibitions for Sacramento High School of the Arts and PS7 Elementary School;" and
- "recruit and train 500 volunteers to complete 10,000 hours of service in Oak Park."

Additionally, the applications, which are part of the grant terms, authorize training for members in tutoring, leadership, first aid, newsletter production, recruiting volunteers, St. HOPE history and the AmeriCorps program.

AmeriCorps members, funded by grant funds, are assigned to a grantee to provide services as specified in the grant applications. Members are not permitted to be used by grantees to subsidize themselves, reduce the administrative costs of the grantee, or displace or pay part of the cost of grantee employees.

Contrary to those grant requirements and prohibitions, we found that St. HOPE AmeriCorps members performed little, if any, of the service agreed to and stipulated under the grant. Instead, they were used for non-authorized and prohibited activities, including service that displaced St. HOPE employees, a violation of 42 U.S.C. § 12637 *Nonduplication and nondisplacement*. We also found instances where AmeriCorps living allowances and benefits were unlawfully used to supplement the salaries of St. HOPE employees.

Another grant requirement is that all allowable cost must "be adequately documented" see OMB Circular A-122 *Cost Principles for Non-Profit Organizations, Attachment A., General Principles, Section 2.g. Factors affecting allowability of costs*. We found an almost total lack of documentation to support St. HOPE's performance of the grant, despite our repeated requests to St. HOPE for grant-related documents.

Specific grant issues, based on the Office of Inspector General's ("OIG") investigation and audit review, are as follows:

Member living allowances and fringe benefits.

We reviewed the 21 interviews conducted by OIG investigators. The total included 9 former AmeriCorps members, 7 Sacramento High School personnel, 4 St. HOPE personnel and 1 official of California Volunteers. The interviews of the members and staff reported that members were performing clerical work at the high school and recruiting students to attend the high school. Recruiting students is different from recruitment of volunteers described in the grant applications. The purpose of recruiting volunteers is to increase the impact of the AmeriCorps programs, while student recruitment is to increase student enrollment, which assists the financial position of the subgrantee's chartered high school. The redevelopment of one building a year in Oak Park, an objective specified in the grant, was not mentioned by any of the interviewees as a service performed.

Regarding service in support of the arts, the only indication of such activity involved a St. HOPE dance teacher. She was a school employee whose salary was illegally supplemented by an AmeriCorps living allowance.

Only three members interviewed mentioned tutoring as part of their service, with one member stating that they performed limited tutoring, but not everyday. Another member said tutoring was rarely a part of service while a third said tutoring consisted of helping students with homework during study hall, which did not meet the grant requirement of one-on-one tutoring. Interviews with four teachers and two principals at the high school reported no knowledge of the members tutoring students.

Based on St. HOPE's approved applications, which are included in and are part of the grant terms, we conclude that the member activities were inconsistent with the program descriptions in those applications.

Staff Personnel Expenses and Fringe Benefits

The budgets approved by California Volunteers included two staff positions to support the grant effort: a Program Director, at 100 percent of salary for each of the three years; and a Program Coordinator, at 50 percent of salary the first year and 100 percent for the remaining two grant years. Two employees of St. HOPE occupied these positions the first two years. Other individuals held these positions the third year. The only timesheets we could locate to support their roles covered four and a half months for the Program Director in 2004 and one month for the Program Coordinator, also in 2004. Timesheets are necessary to support labor costs and are required by OMB Circular A-122 *Cost Principles for Non-Profit Organizations*, Attachment B., *Selected Items of Cost*, Section 8. *Compensation for personal services*.

The Program Director for the first two years of St. HOPE's AmeriCorps program was concurrently employed full time as a teacher at Sacramento High School. The only timesheets that existed for the Program Director were four and a half months of work and included a high of 58 hours a week, but usually 40 hours a week. The absence of timesheets for most of the months of the grant (all but four and a half months) itself requires rejection of the expense for the Program Director for the non-documented period. But even the four and a half months with timesheets must realistically be rejected. The Program Director was budgeted at 100% to the grant and was thus required to work full time on the grant. As a full time teacher at the subgrantee's high school, the Program Director must have worked significant hours each day at the high school. As the AmeriCorps members' work primarily was required to involve tutoring of students in school, most of the work that the Program Director was required to direct would have been performed during the same hours he was working full time as a teacher. Even assuming -- contrary to reality -- his work as Program Director could have been performed only outside of school hours, and considering the 40 hours per week low listing in the time sheets, it would mean that the Program Director would have performed those duties before or after school, each day, occurring when school was out and beyond the normal hours for any AmeriCorps service work. Thus, we cannot find any basis to conclude that the Program Director was giving 100 percent of his effort to the grant-funded position while concurrently teaching at the high school. Instead, we conclude that the Program Director was illegally charging his teaching time to the grant.

Overall, we conclude that all salaries charged to the grant by St. HOPE's program staff should be reimbursed to the Corporation. These individuals were responsible for managing the AmeriCorps members and the program. By directing member service that was not in compliance with grant terms, and directing the enrollment of St. HOPE employees to

supplement salaries with Federal grant funds, subgrantee management violated the grant provisions.

Other Costs

We were not able to locate any support for the other costs charged to the grant. We questioned these costs based on OMB Circular A-122 *Cost Principles for Non-Profit Organizations*, Attachment A., *General Principals*, Section 2.g. Factors affecting allowability of costs, requires that to be allowable under an award, costs must "be adequately documented."

Education Awards

St. HOPE AmeriCorps members received more than \$170,000 in education awards, based on eligibility information submitted to the Corporation by St. HOPE program officials. The awards, given to members upon the successful completion of service, are not funded by the grant, but by the taxpayer-supported National Service Trust that is administered by the Corporation. The members should not have been given the awards because their service was not consistent with the grant. However, the responsibility for this unallowable service lies with the St. HOPE officials who managed the grant, directed the members to perform non-grant services and who despite these facts, attested to the members' award eligibility to the Corporation. St. HOPE should therefore reimburse the Corporation for all education awards.

On October 1, 2008 a subpoena was issued to St. HOPE, requiring production of all documentation relevant to use of AmeriCorps Federal funds to the OIG. Despite repeated follow-up requests, the following documentation was never furnished to OIG.

- Source documentation for costs charged to the grant.
- Complete general ledger (only partial was produced).
- Reconciliation of costs charged on the Financial Status Report to the general ledger, including match funds.
- Explanation of the methodology for allocating costs between match and Federal share.
- Identification of the accounting system used.

We also reviewed the St. HOPE Academy Independent Auditor's Report and Consolidated Financial Statements for the years ended June 30, 2005, 2006 and 2007. These audits expressed an opinion that the financial statements were presented fairly. However, these audits were conducted to assess conformity with generally accepted accounting principals and did not test for compliance with grant terms. The applicable criteria for Corporation grant funds to St. HOPE Academy, which generated our conclusions in this letter, are:

- OMB A-122 *Cost Principles for Non-Profit Organizations*, and the Corporations A-122 *Compliance supplement*,
- 45 C.F.R. §§ 2520-2543,
- *AmeriCorps Provisions*,
- *Notice of Grant Award* and
- the approved grant applications and budgets.

Conclusion

Our review of documentation and witnesses established that St. HOPE's use of grant funds did not comply with the word or the intent of the grant. We conclude all of the Federal funds should be returned to the Corporation.

-----Original Message-----

From: Rosenberry, Peg
 Sent: Fri 4/3/2009 5:45 PM
 To: Trinity, Frank; Abdal-Haqq, Irshad
 Cc:
 Subject:

Hi, Frank,

You have requested my analysis of what an appropriate settlement amount in the St. Hope case would be based on review of the grant documents and other documents available on the case. I have finished my review of the documents provided by both the OIG and St. Hope related to the investigation. Without conducting a full-scope audit, I can only provide an estimate of an amount within a range based on what we can deduce from all of the documents.

Some of the hand-written notes on conversations OIG staff had with St. Hope AmeriCorps members indicate that members were engaged in some activities not within the scope of the grant, but some of the activities were also within the scope, such as serving as teaching assistants. The St. Hope attorneys also interviewed six AmeriCorps members, at least one of whom was also interviewed by the OIG staff. All six members provided evidence that they were tutoring children, serving in the community art space, and rehabilitating community buildings, all as described in the grant documents. Six members is about 10% of the members in the program over the two year period (12 full-time and 20 part-time each year). In addition, the attorneys interviewed staff and others who supervised members. All three of those individuals confirmed that members were doing service within the scope of the grant activities.

There was a staff position included in the grant budget for a director spending 100% time on the AmeriCorps program. The person serving as director was also a teacher which would have made it impossible to spend 100% time on the AmeriCorps program.

Based on my review and understanding of similar programs and how we resolve similar audits, it is my opinion that some of the funds should be returned. However, the documentation also demonstrates members were involved in legitimate service activities. Total grant costs claimed were \$677,310. In addition, the Corporation Trust will pay out \$170,363 in education awards to members who earned the award. If we estimated that 50% of the member activities were unallowable, St. Hope should return 50% of the member costs - \$223,505; and 50% of the education awards - \$85,182. In addition, a portion of the director's salary should also be returned, since the director could not have spent 100% on the AmeriCorps program. The Corporation share of the salary each year was \$17,500 for the two years the teacher served as the director. If we also assumed the individual could only spend 25% time on the program, St. Hope should return \$26,250.

Based on this, the amount for settlement could be about \$335,000 as follows:

Member Costs -	\$223,505
Education Awards -	85,182
Staff Salaries -	<u>26,250</u>
Total	\$334,937

If we were able to interview more members and staff, I think we would find that the percentage of time spent on allowable service activities might be higher. Since that is the case, I would suggest a range for the settlement of between \$250,000 and \$335,000. These numbers don't take into account any penalties that might be levied.

Peg