



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS
32 OLD SLIP, 26TH FLOOR
NEW YORK, NEW YORK 10005

TIMOTHY C. J. BLANCHARD
DIRECTOR
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July 5, 2016

Neil Lederer
Superintendent of Schools
Hauppauge Public Schools
P.O. Box 6006
Hauppauge, New York 11788

Re: Case No. 02-13-1185
Hauppauge School District

Dear Superintendent Lederer:

This letter is to notify you of the determination made by the U.S. Department of Education, New York Office for Civil Rights (OCR) regarding the above-referenced complaint filed against the Hauppauge School District. The complainant alleged that the District failed to respond appropriately to complaints that students at the Hauppauge High School (the School) subjected his daughter (the Student) to harassment on the bases of her disability, national origin (Jewish ancestry/ethnicity), and sex, beginning in school year 2010-2011, and continuing through school year 2012-2013.

OCR is responsible for enforcing Section 504 of the Rehabilitation Act of 1973 (Section 504), as amended, 29 U.S.C. § 794, and its implementing regulation at 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability in programs and activities receiving financial assistance from the U.S. Department of Education (the Department). OCR also is responsible for enforcing Title II of the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. § 12131 *et seq.*, and its implementing regulation at 28 C.F.R. Part 35. Under the ADA, OCR has jurisdiction over complaints alleging discrimination on the basis of disability that are filed against certain public entities. In addition, OCR is responsible for enforcing Title VI of the Civil Rights Act of 1964 (Title VI), as amended, 42 U.S.C. § 2000d *et seq.*, and its implementing regulation, at 34 C.F.R. Part 100, which prohibit discrimination on the basis of race, color, or national origin in programs and activities receiving financial assistance from the Department. Additionally, OCR is responsible for enforcing Title IX of the Education Amendments of 1972 (Title IX), as amended, 20 U.S.C. § 1681 *et seq.*, and its implementing regulation at 34 C.F.R. Part 106, which prohibit discrimination on the basis of sex in programs and activities receiving financial assistance from the Department. The District is a recipient of financial assistance from the Department, and is a public elementary and secondary education system. Therefore, OCR has jurisdictional authority to investigate this complaint under Section 504, the ADA, Title VI and Title IX.

The regulation implementing Title IX, at 34 C.F.R. § 106.8(a), requires a recipient to designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under Title IX and its implementing regulation, including the investigation of any complaint communicated to such recipient alleging its noncompliance with Title IX or alleging any actions that would be prohibited by Title IX. The recipient must notify all of its students and employees of the name, office address, and telephone number of the employee or employees appointed. Additionally, OCR policy states that recipients should provide the electronic mail (email) address of the designated Title IX coordinator.

Similarly, the regulation implementing Section 504, at 34 C.F.R. §104.7(a), states that a recipient that employs fifteen or more persons shall designate at least one person to coordinate its efforts to comply with the requirements of Section 504 and its implementing regulation. The regulation implementing the ADA has similar provisions, at 28 C.F.R. § 35.107(a).

The regulation implementing Title IX, at 34 C.F.R. § 106.9(a), also requires each recipient to implement specific and continuing steps to notify applicants for admission and employment, students, employees, sources of referral of applicants for admission and employment, and all unions and professional organizations holding collective bargaining or professional agreements with the recipient that it does not discriminate on the basis of sex in the educational programs or activities that it operates and that it is required by Title IX not to discriminate in such a manner. Such notification shall state at least that the requirement not to discriminate in the education program or activity extends to employment therein, and to admission thereto unless Subpart C does not apply to the recipient, and that inquiries concerning the application of Title IX and this part to such recipient may be referred to the employee designated pursuant to § 106.8, or to OCR's Assistant Secretary. The regulation implementing Title IX, at 34 C.F.R. § 106.9(b), requires each recipient to include this notice of non-discrimination in each announcement, bulletin, catalog, or application form that it makes available to applicants for admission and employment, students, employees, sources of referral of applicants for admission and employment, and all unions and professional organizations holding collective bargaining or professional agreements, or which is otherwise used in connection with recruitment of students or employees.

The regulation implementing Section 504, at 34 C.F.R. § 104.8(a), also requires a recipient to take appropriate and continuing steps to notify participants, beneficiaries, applicants, employees, and unions or professional organizations holding collective bargaining or professional agreements with the recipient that it does not discriminate on the basis of disability; and, that this notice should also include the identity of its designated coordinator(s). The regulation, at 34 C.F.R. § 104.8(b), requires recipients to publish this notice in any recruitment materials or publications containing general information that it makes available to participants, beneficiaries, applicants, or employees. The regulation implementing the ADA has similar provisions, at 28 C.F.R. §§ 35.106 and 35.107.

Further, the regulation implementing Title IX, at 34 C.F.R. § 106.8(b), requires a recipient to adopt and publish procedures that provide for the prompt and equitable resolution of student and employee complaints alleging any actions prohibited by Title IX and its implementing regulation. Similarly, the regulation implementing Section 504, at 34 C.F.R § 104.7(b), requires

that a recipient adopt grievance procedures that incorporate appropriate due process standards and that provide for the prompt and equitable resolution of complaints alleging any action prohibited by Section 504 and its implementing regulation. The regulation implementing the ADA has similar provisions, at 28 C.F.R. § 35.107(b). OCR has identified a number of elements in evaluating whether a recipient's grievance procedures are prompt and equitable, including whether the procedures provide for: (1) notice of the procedures, including where complaints may be filed, that is easily understood, and easily located; (2) application of the procedures to discrimination/harassment by employees, students, and third parties; (3) designated and reasonably prompt timeframes for the major stages of the grievance process; (4) adequate, reliable, and impartial investigation of complaints, including an opportunity to present witnesses and other evidence; (5) notice to the parties of the outcome; and (6) assurance that the institution will take steps to prevent further harassment and to correct its effects, if appropriate.

Title IX and Section 504/ADA Coordinator(s)

During the course of OCR's investigation, OCR determined that on an annual basis for school years from 2010-2011 through 2015-2016, the District's Board of Education (the Board) designated Title IX Coordinator(s) at the District and building levels (e.g. high school, middle school and elementary school). OCR determined that for school years 2010-2011 through 2015-2016, the District identified the coordinators in the annual school calendar, but did not publish the specific office address and telephone number for each coordinator, as required by 34 C.F.R. § 106.8(a), nor did the District publish the email address for each coordinator. Additionally, although the District identified a Section 504/ADA Coordinator for each school year from 2010-2011 through 2015-2016, the District did not provide contact information for the 504/ADA Coordinator that included the 504 Coordinator's email address.

On June 14, 2016, the District agreed to implement the enclosed resolution agreement, which addresses the compliance concerns identified with respect to the District's Title IX and Section 504/ADA Coordinator(s). OCR will monitor the implementation of the resolution agreement.

Non-Discrimination Notice

OCR requested that the District provide copies of announcements, bulletins, catalogs or application forms or other such documents in which it has included a notice of non-discrimination. In response, the District provided copies of its Policies and Regulations as published on its website and the Section 504/ADA non-discrimination notices for school years 2010-2011, 2011-2012, 2012-2013 and 2013-2014 that appeared in the District Events calendars for those school years. OCR noted that the District Events Calendar for 2015-2016 also includes a notice of non-discrimination.¹ OCR also noted that the District has an Equal Opportunity and

¹ The 2015-2016 Calendar states that the District "does not discriminate on the basis of disabling conditions in the educational programs or activities which it operates. It is required by Section 504 of the Rehabilitation Act of 1973 not to discriminate in such a manner." This notice of nondiscrimination includes the following areas: recruitment and appointment of employees, employment pay and benefits, counseling services for students, access by students to educational programs, course offerings, and student activities. It contains specific information about the Section 504/ADA Coordinator's name, contact information and telephone number, but no email information for that person. Additionally the notice does not state that it extends to admission. A link to the Calendar is published on the District's web site at <http://hauppauge.schoolwires.net/Page/1>.

Nondiscrimination notice set forth at District Policy 0100, published on its website.² The notice states that the “Board of Education, its officers and employees, shall not discriminate in its programs and activities on the basis of race, color, national origin, creed, religion, marital status, sex, age, sexual orientation, disability or predisposing genetic characteristic.” The notice of non-discrimination does not state that it extends to employment and admission, or that inquiries concerning Title IX can be referred to the Title IX Coordinator or OCR. OCR noted that the District also has a notice of non-discrimination that is contained in its Dignity for All Student’s Act (DASA) Policy 0115 and Regulation 0115R, published on its website.³ This notice of non-discrimination states that the District does not discriminate on the bases of sex, race, national origin, and disability, among other bases. Although this notice of non-discrimination states that the District does not discriminate on the basis of disability, the notice does not include the identity of the District’s designated coordinator(s).

On June 14, 2016, the District agreed to implement the enclosed resolution agreement, which addresses the compliance concerns OCR noted with respect to the District’s non-discrimination notice. OCR will monitor the implementation of the resolution agreement.

Grievance Procedures

The District advised OCR that it has several grievance procedures to address complaints of discrimination and harassment.

a) DASA Regulation

The DASA Policy and Regulation (Policy 0115 and Regulation 0115-R) are published on the District’s website and are easily located.⁴ The DASA Policy and Regulation prohibit harassment or discrimination on the bases of race, color, national or ethnic origin, disability, sex, and gender (including gender identity and expression).⁵ The DASA Regulation covers the conduct of all District employees and students, as well as third parties, and applies to all areas of District programs and activities, both on and off-campus.⁶ The DASA Regulation requires targets and persons with knowledge of alleged harassment to report such behavior to the principal, the principal’s designee, or the Dignity Act Coordinator, or by use of a form available on the District’s website. The DASA regulation includes an initial (Building-level) Procedure and a District-level Procedure.

i. Initial (Building-level) Procedure:

With regard to the Building-level Procedure of the DASA Regulation, the principal/designee or “Bullying Prevention Coordinator” is required to make all reasonable efforts to resolve complaints informally at the school level. No later than five working days following receipt of a

² See <http://www.hauppauge.k12.ny.us/domain/602> for the District’s policies and regulations.

³ *Id.*

⁴ See <http://www.hauppauge.k12.ny.us/domain/602> for the District’s policies and regulations.

⁵ The policy also covers harassment or discrimination on the basis of weight, religion, religious practice, sexual orientation or any other characteristic protected by state or federal law.

⁶ See <http://www.hauppauge.k12.ny.us/domain/602>.

complaint, the principal, the principal’s designee or the Dignity Act Coordinator is required to begin the investigation of the complaint. Pursuant to the DASA Regulation, the investigator is required to: review any written documentation provided by the targets; conduct interviews of the targets, alleged perpetrators and witnesses, and document these conversations; provide the alleged perpetrator a chance to respond and notify him/her that if objectionable behavior has occurred, it must cease immediately and also make that individual aware of remediation opportunities and of potential disciplinary consequences; and make appropriate accommodations for each individual situation. Additionally, the DASA Regulation requires that follow-up discussion and/or meetings be scheduled, as needed, to ensure that safety concerns have been adequately addressed and to determine when and if accommodations need to be changed or discontinued. The DASA Regulation requires notice to both parents of student targets and accused students of allegations that are serious or involve repeated conduct. The investigator also is required to report back to both the target and the accused within five school days regarding the outcome of the investigation and the actions taken to resolve the complaint; however, the DASA Regulation does not specifically state that this notice should be in writing. If a complaint contains evidence or allegations of serious or extreme bullying, or a civil rights violation, the complaint shall be referred promptly to the Superintendent. A party who is not satisfied with the outcome of the initial investigation at the building level may submit a written complaint to the Superintendent to request a District-level investigation within 30 days.

ii. District-level Procedure:

The District-level Procedure of the DASA Regulation requires the Superintendent/designee to promptly investigate and equitably resolve all bullying complaints referred to him/her, as well as those appealed to the Superintendent following an initial investigation. Further, in the event that the complaint involves the Superintendent, the complaint shall be filed with or referred to the Board President, who shall refer the complaint to an appropriate independent individual for investigation. The District-level investigation should begin within five working days following receipt of the complaint by the Superintendent or Board President and be conducted by a person with formal training regarding such investigations or previous investigatory experience concerning such complaints. The DASA Regulation provides for prompt corrective action if the District-level investigation results in a determination that bullying occurred. Such corrective action includes disciplinary action and remedial responses designed to correct the problem behavior and prevent another occurrence of the behavior, and protect the target of the act.⁷ The DASA Regulation further states that if the “reported behavior constitutes a civil rights violation, the complaint procedure associated with that policy will be followed, as applicable.” The DASA Regulation further states that appropriate disciplinary action will be taken by the administration in accordance with the District’s Code of Conduct, the collective bargaining agreement or state law.⁸ Students, employees, volunteers, vendors and other third parties are subject to disciplinary measures under the DASA Regulation. The Superintendent (or the Board-appointed investigator) is required to notify the target and alleged perpetrator in writing of the outcome of

⁷ Corrective action also includes environmental remediation such as school and community surveys; modifications of schedules, hallway traffic, and routes of travel; monitors; parent education seminars/workshops; and peer support groups.

⁸ The policy also provides that if the behavior rises to the level of criminal activity, law enforcement will be contacted.

the investigation. A party who is not satisfied with the outcome of the District-level investigation may appeal to the Board by submitting a written request within 30 days. The DASA Regulation provides that the hearing will be held within 15 school days of the receipt of the request of the complainant. The Board is required to render a decision in writing within 15 days after the hearing has been concluded. Further, OCR determined that the DASA Regulation provides assurances that the District will take steps to prevent further harassment and to correct its effects, if appropriate, with a list of examples of remediation for both the individual student and the community as a whole.

Based on the above, OCR determined that while the District’s DASA Regulation provides most of the elements required for a prompt and equitable resolution of complaints of discrimination or harassment on the bases of disability and sex, it does not provide for an equitable resolution in that it does not provide that the notice of outcome at the building level will be provided to both parties in writing.

b) Student Title IX/Section 504 Regulation (Regulation 5311.3-R)

OCR determined that the District has another grievance procedure specifically for students to file complaints of discrimination on the basis of disability or sex; Regulation 5311.3-R “Student Complaints and Grievances Regulation” (the Student Title IX/Section 504 Regulation). This procedure is published on the District’s website and is easily located.⁹ This procedure provides for a three-stage process to investigate complaints filed by students alleging that there is an action affecting him/her that is prohibited by Section 504 or Title IX. The Student Title IX/Section 504 Regulation provides that the Compliance Officer will conduct an investigation, but does not specifically state that the parties will have the opportunity to present witnesses and other evidence at this stage. The Student Title IX/Section 504 Regulation also requires the Compliance Officer to make a finding in writing, within 15 days, but does not specifically state that notice of the outcome will be provided to both parties in writing. Pursuant to the Student Title IX/Section 504 Regulation, the grievant may appeal to the Superintendent, who may request a written statement describing the facts of the complaint and will conduct a hearing; however, it does not state that the accused also has a right of appeal. The Student Title IX/Section 504 Regulation further states that the grievant may then appeal to the Board, which may request written statements and materials, conduct a hearing at which all parties have the right to present further statements and testimony, and make a determination within 15 days after the hearing has been concluded; however, it does not state that the accused also has a right of appeal. OCR determined that the Student Title IX/Section 504 Regulation also does not provide an assurance that the institution will take steps to prevent further harassment and to correct its effects, if appropriate.

Based on the above, OCR determined that the District’s Student Title IX/Section 504 Regulation does not provide for a prompt and equitable resolution of complaints of discrimination or harassment on the bases of disability and sex; specifically, it does not provide that the accused also has a right of appeal and additionally does not provide an assurance that the District will take steps to prevent further harassment and to correct its effects, if appropriate.

⁹ See <http://www.hauppauge.k12.ny.us/domain/602> for the District’s policies and regulations.

c) Sexual Harassment Regulation (Regulation 0110-R)

OCR determined that in addition to the grievance procedures outlined above, the District has a grievance procedure that students and employees may use to file complaints of sexual harassment: Regulation 0110-R (the Sexual Harassment Regulation).¹⁰ The Sexual Harassment Regulation is published on the District’s website and is easily located. Students or employees who believe that they have been subjected to harassment on the basis of sex or gender are encouraged to make a written or oral complaint to the Dignity Act Coordinator. OCR determined that the Sexual Harassment Regulation includes an initial (Building-level) procedure, consisting of an investigation by the Dignity Act Coordinator within three working days of receiving the complaint, with certain exceptions for allegations of serious or extreme harassment that instead are referred immediately to the Superintendent for investigation.¹¹ The Sexual Harassment Regulation provides that “[t]he investigator is required to report back to both the target and the accused, notifying them in writing, and also in person as appropriate regarding the outcome of the investigation and the action taken to resolve the complaint. The investigator shall instruct the target to report immediately if the objectionable behavior occurs again or if the alleged harasser retaliates against him/her.” Any party who is dissatisfied with the outcome of the initial investigation may request a District-level investigation by submitting a written complaint to the Superintendent within 30 days. The Sexual Harassment Regulation provides for the District-level investigation to begin no later than three working days following receipt of the complaint, and for the results to be reported back to the target and the alleged accused. It further provides at the District level that “[t]he Superintendent (or in cases involving the Superintendent, the Board appointed investigator) will notify the target and alleged harasser, in writing, of the outcome of the investigation.” The Sexual Harassment Regulation also contains a prohibition against retaliation and provides for assurances that the District will take interim measures and steps to correct the discriminatory effects of any harassment on the complainant, if appropriate. OCR determined that neither the Building-level nor District-level Procedures specifically provide that the parties have the opportunity to present witnesses and other evidence during the investigation. Additionally, the Sexual Harassment Regulation does not specifically identify the name, address, telephone number, and e-mail address of the person with whom the complaint should be filed.

Based on the above, OCR determined that the District’s Sexual Harassment Regulation does not provide for a prompt and equitable resolution of complaints of discrimination or harassment on the basis of sex; specifically, it does not provide that the parties have the opportunity to present witnesses and other evidence during the investigation and does not specifically identify the name, address, telephone number, and e-mail address of the person with whom the complaint should be filed.

OCR notes that having the multiple procedures for filing, investigating and reviewing complaints of discrimination/harassment on the bases of sex, disability and other protected bases is confusing to both complainants and alleged targets of an investigation and may result in a claim not being pursued on all bases (i.e., Title IX and Section 504, in addition to any state-based

¹⁰ *Id.*

¹¹ *E.g.*, employee to student harassment, criminal touching, and quid pro quo harassment.

investigation such as DASA) that are appropriate for consideration by all personnel who should properly be involved in an investigation (e.g., a Section 504 Coordinator and/or Title IX Coordinator in addition to a DASA Coordinator) to the extent that their roles and responsibilities are not synonymous. OCR’s review of the information provided by the District indicates that the policies and procedures that address how a student/employee or third party would file a complaint at a minimum may lead to confusion and the potential for claims to not be made to appropriate personnel or fully addressed by the District.

On June 14, 2016, the District agreed to implement the enclosed resolution agreement, which addresses the compliance concerns OCR noted with respect to the District’s grievance procedures. OCR will monitor the implementation of the resolution agreement.

The Complainant’s Allegation

In its investigation of the complainant’s allegation, OCR reviewed documentation that the complainant and the District provided. OCR also interviewed the complainant, District staff, and the District’s Special Compliance Officer (the SCO). OCR made the following determinations.

OCR determined that the Student began in the School as a XXXXX during school year 2010-2011. The Student is of Jewish ancestry, and XXX XXX XXXXXXXX XXXXXXXX XXXXX, pursuant to XXX XXXXXXXX XXX XXXXXXXX XXXXXXXX.

The complainant alleged that the District failed to respond appropriately to the following complaints that students at the School subjected the Student to harassment on the bases of her disability, national origin (Jewish ancestry/ethnicity),¹² and sex during school years 2010-2011 through 2012-2013:¹³

- On or about XXXX XXX, and XXXX XXX, 2011, the Student and XXX parents reported to School staff that two male students (Students 1 and 2) sent anti-Semitic text messages to the Student, which included comments such as, “How’s Hitler?,” “Your father should have died in the ovens,” and “Hitler should have gotten your whole family” (Incidents 1 and 2).
- On XXXXXX XX, 2011, the complainant complained to an XXXXX XXXXX (X1) that Student 1 and other students had pointed at the Student and made anti-Semitic jokes about her (Incident 3).
- During school year 2010-2011, the Student complained to School staff that Student 1 and other unnamed students directed disability, sex, and national origin-related slurs at the Student, such as “retarded,” “slow,” “whore,” and “Jew Bitch” (Incident 4).

¹² While Title VI does not cover discrimination based solely on religion, discrimination on the basis of actual or perceived shared ancestry or ethnic characteristics is protected under Title VI. Thus, harassment against students who are members of any religious group triggers a recipient’s Title VI responsibilities when the harassment is based on the group’s actual or perceived shared ancestry or ethnic characteristics.

¹³ The complainant alleged to OCR that incidents that occurred during school years 2010-2011, 2011-2012 and 2012-2013 that were more than 180 days from the date of the filing of this complaint were nonetheless timely filed because these were part of an alleged continuing pattern and practice of harassment of the student on the bases of disability, national origin (Jewish ancestry), and sex.

- On XXXXX XX, 2011, the Student and her parents complained to School staff that students had posted comments about the Student on Facebook related to the Student’s disability, sex, and national origin (Incident 5).
- During summer 2012, the complainant complained to the District that Student 1 had harassed the Student off school grounds (Incident 6).
- On XXXXXX XX, 2012, the Student complained to an XXXXXXXX that Student 1 had stated to her in the lunchroom that “he wanted the Student dead,” called the Student “retarded” and a “fucking whore,” and told her to “go fuck herself and “fuck off” (Incident 7).
- On XXXXXXXX XX, 2012, the Student reported to an XXXXXXXX (X2) that while she and Student 1 were in the cafeteria, Student 1 pointed his finger directly at the Student and made comments about the Student to his friends (Incident 8).
- On XXXXXXXX XX, 2012, the Student’s mother complained to X2 and another XXXXXXXX (X3) that Student 1 had entered the Student’s gym class and sat with his friends in the bleachers; made sex- and disability-related comments about the Student, including calling the Student “stupid,” “ugly,” and “retarded”; and raised his middle finger toward the Student (Incident 9).
- On XXXXXX XX, 2013, the Student complained to X3 that Student 1 had bumped her shoulder in the School hallway (Incident 10).
- On XXXXXXXX XX, 2013, the Student complained to School staff, an XXXXXXXX (X4) and/or X3 that she had observed Student 1 in the hallways near her classroom on approximately two occasions that day, when he should have been in class, and Student 1 had blocked the Student from entering the testing center to take an exam XXX XX XXXXX XXXXXXXX XXXXXXXX pursuant to XXX XXXXX (Incident 11).
- On XXXXXXXX XX, 2013, Student 1 “stared” at the Student in the hallway, between the Student’s first and second periods, and a security guard was not present at the Student’s 2nd period class (Incident 12).
- On XXXXXXXX XX, 2013, the Student complained to X3 that Student 1 had impermissibly entered the cafeteria during the Student’s lunch period, and “stared” at the Student (Incident 13).
- In a letter from an attorney representing the Student (the complainant’s attorney) to the District’s counsel, dated XXXXXX XX, 2013, the complainant’s attorney reported that Student 1 had bullied and harassed the Student during school years 2010-2011 and 2012-2013, referencing Incidents 1-2 and 4-13.

Title IX and its implementing regulation prohibit discrimination based on sex, including sexual harassment. National origin harassment is a form of discrimination prohibited by Title VI, and its implementing regulation. Disability harassment is a form of discrimination prohibited by Section 504, Title II and their implementing regulations. Harassment based on sex, national origin, and/or disability can include verbal, written, graphic, physical, or other conduct by an employee, a student, or a third party. Harassment can create a hostile environment if it is sufficiently serious to limit an individual's ability to participate in, or receive benefits, services, or opportunities in the recipient's program. If OCR determines that harassing conduct occurred and that the recipient had actual or constructive notice of the harassment, OCR will examine additional factors to make a determination as to whether a hostile environment existed and whether the recipient took prompt and effective action to stop the harassment, prevent its recurrence, and as appropriate, remedy its effects.

Incidents 1 and 2:

With respect to Incidents 1 and 2, the complainant alleged that the District discriminated against the Student, on the bases of national origin/Jewish ancestry, sex and disability, by failing to respond to complaints the complainant, the Student and the Student's mother made to District staff on or about XXXXX XX, and XX, 2011, that Students 1 and 2 had sent anti-Semitic text messages to the Student,

OCR determined that Student 1 was not involved in the text message incident on XXXX XXX, 2011. OCR determined that on or about XXXXX XX, 2011, the Student reported to X1 that she had received a text message from Student 2; however, she did not state that the message was anti-Semitic. The Student showed X1 her phone, and X1 recorded the words of the text. OCR determined that on that same date, X1 interviewed the Student and Student 2, and reviewed the text message sent on XXXXX XXX, 2011. X1 transcribed the text message of XXXXXXX XXX, 2011, in both contemporaneous handwritten notes and typewritten notes set forth in an email dated XXXXXX XXX, 2013, from X1 to the XXXXX XXXXX(XXXX XXXXX), which the District provided to OCR during the course of the investigation.¹⁴ OCR reviewed X1's notes regarding the text message dated XXXXXXX XXX, 2011, and determined that these did not mention that the text message contained any anti-Semitic language. X1's notes stated that the text message dated XXXXX XXX, 2011, contained language that was "inappropriate," and noted that Student 2 had made fun of the Student, calling her "bitch," "slut," "dick," "dumbass," and stating, "Your face looks weird."

OCR determined that School staff investigated Incident 1 on the day it occurred, by interviewing the Student and Student 2 and reviewing pertinent evidence, namely, the text message string at issue. X1 noted that there were no prior incidents between Student 2 and the Student; that the content of the text message was a violation of the Code of Conduct (the Code); and that X1 and the XXXXXXX had determined that Student 2's text message to the Student was a form of harassment (cyber bullying), as defined by the District's School Year 2010 – 2011 Code of Conduct. OCR determined that the School disciplined Student 2 for this incident by imposing a XXX XXX XXX XXX XXXXX (XXX), in accordance with its Code.

¹⁴ The District produced a copy of X1's transcription of the text message of XXXXX XX, 2011, from Student 2 to the Student.

OCR determined that on or about XXXXX XX, 2011, the Student reported to AP1 that she had received an anti-Semitic text message from Student 1. OCR determined that AP1 conducted an investigation of Incident 2 on that same day, by interviewing the Student and Student 1 and reviewing the alleged text message on the Student's phone. The District confirmed that the text message was sent from Student 1's phone to the Student and was "anti-Semitic." District witnesses did not remember the text of the message, in sum or substance, and the District did not transcribe the message or maintain a copy of it. The complainant also did not provide to OCR a copy of the alleged text message sent to the Student on XXXXX XX, 2011.

School staff informed OCR that during the investigation of the text message sent on XXXX XX, 2011, Student 1 admitted that another student, whom he did not identify, had used his cell phone to send the anti-Semitic text message to the Student. X1 determined that since the offensive text message was sent from Student 1's cell phone, Student 1 had violated the cyber bullying portion of the Code as it relates to inappropriate text messaging and harassment. X1 documented that Student 1 had used inappropriate language toward the Student and was directed to avoid the Student. X1 recommended and the XXXXXXXX supported a XXX XXX XXX for Student 1, which Student 1 XXXXX on XXXXX XX, 2011. The XXXXXXXX stated that this was the first report of an incident between the Student and Student 1.

The XXXXXXXX stated that she did not report the incident of XXXXXXXX, 2011, to the Assistant Superintendent (the District's Dignity Act Officer) because it was the first instance of an issue between the Student and Student 1, and she treated it as an isolated incident to be handled at the building level, through the Code. OCR determined that the District handled the incidents in accordance with the School's Code in effect at the time. The XXXXXXXX further stated that school officials are particularly concerned about ethnic, racial or religious slurs or comments used by students against one another; however, when it is a one-time issue, such as the incident that occurred via texting between the Student and Student 1 on XXXXX XX, 2011, she would not bring it to the attention of the Assistant Superintendent, and it would be the responsibility of administrators as the school level to correct the behavior of the students. The Principal stated that she would bring issues to the immediate attention of the Assistant Superintendent if they related to the health and safety of students. The XXXXXXXX stated that, at that time, the incident on XXXXX XX, 2011, in the XXXXXXXX determination, did not rise to that level.

OCR determined that the discipline given to Students 1 and 2 was consistent with the range of disciplinary options given to students for a first-offense incident. School officials denied receiving any other complaints regarding discriminatory conduct by Student 2 toward the Student after XXXXX XX, 2011, or during school years 2011-2012 and 2012-2013. Based on the above, OCR determined that the District responded appropriately to the alleged incidents of cyber bullying when School staff investigated Incidents 1 and 2 promptly and consistent with its policies, and imposed discipline-in accordance with the School's Code of Conduct.

Incident 3:

With respect to Incident 3, the complainant alleged that the District discriminated against the Student on the bases of her nation origin/Jewish ancestry, sex, and disability, by failing to

respond to the complaint he made on XXXXX XX, 2011, that Student 1 and other students had pointed at the Student and made anti-Semitic jokes about her.

OCR determined that on the morning of February 7, 2011, the complainant contacted X1, stating that Student 1 and other students had pointed at the Student and made anti-Semitic jokes about the Student at lunch. That same morning, X1 met with the complainant and the Student. X1 stated that during the meeting, the Student denied that any anti-Semitic remarks were made, but stated that she believed Student 1 and the other students were talking about her, pointing a cell phone at her, and whispering. OCR determined that on that day, X1 also interviewed five other students the Student identified, and conducted an intervention with the Student and the students involved.

Based on OCR's review of contemporaneous documentation, and witness interviews, OCR determined that the evidence indicated that the District promptly investigated the incident on XXXXX XX, 2011, by interviewing witnesses, including the Student, who denied at the time that any anti-Semitic remarks were made. School staff determined that no anti-Semitic comments or remarks were made about the Student; Student 1 and the other students were not speaking about the Student; and the cell phones of the other students did not contain anything inappropriate directed to the Student or related to national origin/Jewish ancestry, disability or sex. OCR determined that none of the students, including Student 1, were disciplined for the event. X1 advised OCR that he XXXXX XXX XXXXX, which included the Student and Student 1 and other relevant students. X1 further stated that on or about XXXXX XX, 2011, he advised the complainant by telephone of the findings of his investigation and the results of XXX XXXXXXXX, and the complainant expressed that he was satisfied with the way X1 handled the situation.

Based on the above, OCR determined that the District responded appropriately to Incident 3 when School staff investigated Incident 3 promptly and consistent with its policies.

Incident 4:

With respect to Incident 4, the complainant alleged that the District discriminated against the Student, by failing to respond appropriately to the Student's complaints to School staff that during school year 2010-2011, Student 1 and other unnamed students directed disability-, sex-, and national origin-related slurs at the Student, such as "retarded," "slow," "whore," and "Jew Bitch." The complainant did not provide any documentation to support that the Student made complaints to School staff, and he did not specify dates for these alleged incidents during school year 2010-2011.

District staff stated that following XXX XXXXXXXX held on or about XXXXX XX, 2011, District staff were not notified of any other allegedly harassing conduct by Student 1 or any other student, on the bases of the Student's national origin/Jewish ancestry, sex and/or disability. District staff stated that they therefore believed that any alleged harassment had stopped.

Based on the above, OCR determined that there was insufficient evidence to establish that the District received any other complaints that students, including Student 1, directed harassing

national-origin/anti-Semitic, disability, and/or sex-related comments, such as “retarded,” “slow,” “whore,” and “Jew Bitch,” toward the Student during school year 2010-2011.

Incident 5:

With respect to Incident 5, the complainant alleged that on XXXXX XX, 2011, the Student and the Student’s parents complained to School staff that students had posted comments about the Student on Facebook related to the Student’s disability, sex, and national origin/Jewish ancestry. Specifically, the complainant asserted that on or about XXXXX XX, 2011, he and the Student’s mother notified the School that several students, including Student 1, had posted anti-Semitic comments about the Student on Facebook, and provided copies of the relevant Facebook pages to School staff. The complainant asserted that the Facebook exchange demonstrated the anti-Semitic remarks and sentiment that Student 1 and some of his friends directed toward the Student. The complainant further asserted that although Student 1’s name was blocked, other students in the Facebook chat room referred to Student 1 by name within the postings. The Complainant stated that the Facebook postings were hand delivered to a School official.

School staff denied that the complainant and/or the Student’s mother notified them on XXXXXXXX XXX, 2011, that students, including Student 1, had made anti-Semitic remarks about the Student on Facebook, and/or provided the School with copies of any Facebook pages. AP1, who was the XXXXXXXX XXXXXXXX XXXXXXXX XXX XXXXX XXX XXXXX XXXXXXX XXX during school year 2011-2012, denied that the Student’s parents or the Student reported any anti-Semitic behavior toward the Student that occurred during summer 2011 or anytime during the following school year, 2011-2012. X1 stated that he did not receive and does not have copies of any Facebook exchanges with the Student from XXXXX 2011, and was not aware of anyone else who had received such documents. X1 further stated that XXX XX XXX XXXXX XXXXX XXX XXXXXXXX XXXXX, the Student’s mother was frequently in his office during school year 2011-2012, and at no time during that period did she ever raise the issue of anti-Semitic comments, or any other discriminatory statements, including about the Student’s sex or disability. Additionally, X2 and X4 denied ever receiving the alleged Facebook postings from the Student, the complainant or the Student’s mother during school years 2010-2011 or 2011-2012. The XXXXXXXX denied that she or XXXXX XXX XXX XXXXXXXX Office ever received Facebook postings on or about XXXXX XX, 2011, that contained any anti-Semitic remarks, and asserted that consistent with the District’s cyber bullying policy, any such postings that came to the District’s attention would have been investigated at that time to determine if Student 1 or other students from the School were involved, especially because there had been a previous incident with the text message of XXXXX XX, 2011 (Incident 2 above).

During the course of OCR’s investigation, the complainant provided to OCR a copy of Facebook pages, dated XXXXX XX and XX, 2011, and identified Student 1 as the individual whose name and photo were blocked out on the copy. OCR determined that the printout was of a private chatroom conversation among Facebook participants, and included a list of participants by name. Student 1 is not identified by name as participating in the chat, although the Student and several other individuals are indicated by name. The comment of each participant in the chat is recorded next to his/her photo along with the month/day and time of the comment. The comments of one of the participants appear beside a blank image, and are not attributable to a named individual or

a person identified by photo. In reviewing the postings, OCR determined that the blank image is referred to by others in the chat room specifically by name, which OCR determined is Student 2, not Student 1. OCR's review also indicated that there are no comments directly attributable to someone by the name of Student 1; however his name is twice mentioned beside the blank image attributable to Student 2. The first statement is "XXXX XX, XX Report It's like reverse Auschwitz – [Student 1's name]"; and the second statement is "XXXX XX at XX Report there's a block party at [surname of Student 1] this year." There is no way, from the copy of the Facebook postings provided to OCR, to definitively attribute either of these statements to Student 1 solely because they include his name or surname in the body of the comment. OCR also determined that there were a series of comments, which concern Hitler, lockers, and ovens, and one that specifically mentions a girl with the Student's first name:

- Comment attributed to "[Participant 1]," stating, "XXXX XX at XXX Reply. Report I got shoved in my oven and a janitor had to unlock it."
- Comment attributed to "[Participant 1]," stating "XXXX XX at XXX. Reply. Report hitler."
- Comment attributed to "[Participant 2]," stating "XXXX XX at XXX. Reply. Report How did this invoke Hitler and isn't someone here jewish y did hitler come up and weres [Participant 3] it says he is in her too."
- Comment attributed to "Blank image," stating "XXXX XX at XXX. Reply. Report turn on oven button."
- Comment attributed to "Blank image," stating "XXXXXX at XXXX Report 1000 degrees."
- Comment attributed to "Blank image," stating "XXXXXX at XXXX Report. [Participant 4] do not talk to that girl whose name starts with [first three letters of Student's first name] and ends with [last two letters of Student's first name]."
- Comment attributed to "Blank image," stating "XXXX at XXX. Report. we are all chosen."
- Comment attributed to "Blank image," stating "XXXX at XXX. Report. I will post a picture of hitler."
- Comment attributed to "Blank image," stating "XXXXXX at XXXX Report. just so she sees it."
- Comment attributed to "Blank image," stating "XXXX at XXX. Report. SOMEONE INVITE [STUDENT-IDENTIFIED BY FIRST AND LAST NAME]."

Although the complainant asserted that the comments attributable to "Blank image" were the comments of Student 1, OCR did not find any evidence to substantiate that Student 1 made any of the comments in the Facebook postings dated XX X and X, 2011. Additionally, OCR did not find any evidence indicating that the complainant notified School personnel or provided copies of these Facebook postings to them in XXXXX 2011 or during school year 2011-2012. The complainant stated that the Student's mother had provided a copy of the Facebook postings to unspecified School staff during summer 2011, but did not provide OCR with a copy of any transmittal document to School personnel of the Facebook pages. OCR was not able to corroborate School staff's receipt of such documents. The complainant provided a copy of the Facebook postings to OCR; however, there was no evidence that the complainant ever transmitted the same postings to School/District officials despite his statements to OCR that the

Student brought a copy of the Facebook pages to an unspecified School official during summer 2011. Accordingly, OCR determined that there was insufficient evidence that the School was on notice of the allegation that students had posted harassing comments about the Student on Facebook related to the Student’s disability, sex, and national origin, on or about XXXXX XX and XX, 2011, or at any time during school year 2011-2012.

Incident 6:

With respect to Incident 6, the complainant alleged that the District discriminated against the Student on the bases of her national origin/Jewish ancestry, sex, and/or disability, by failing to respond appropriately to a complaint from the complainant that Student 1 harassed the Student on the bases of her national origin/Jewish ancestry, sex, and disability, off School grounds during summer 2012. The complainant did not provide a specific date or dates when this complaint was allegedly made, or the specific individuals to whom this complaint was made during summer 2012, or any specifics regarding the nature of the alleged harassment.

The District denied and OCR did not find any evidence indicating that the complainant ever complained of alleged harassment on the bases of national origin/Jewish ancestry, sex, and/or disability, and/or provided specific documentation or details relating to an incident involving Student 1 and the Student off School grounds during summer 2012. OCR determined that there was insufficient evidence to substantiate that the District knew or should have known of an off-campus incident between the Student and Student 1 during summer 2012.

Incident 7:

With respect to Incident 7, the complainant alleged that the District discriminated against the Student on the bases of her national origin/Jewish ancestry, sex, and disability, by failing to respond to complaints from the Student and the complainant that Student 1 stated to the Student in the lunchroom on XXXXX XXX, 2012, that “he wanted the Student dead,” called the Student “retarded” and a “fucking whore,” and told her to “go fuck herself” and “fuck off.” The complainant asserted that after the Student complained about the incident to X2 on December XX, 2012, he met with School staff on XXXX XX, 2012. The complainant asserted that he also reported the incident to the Superintendent, by email dated XXXXXXX XXX, 2012.

OCR determined that on XXXXXX XX, 2012, the Student and Student 1 had a verbal altercation during lunch in the cafeteria. School staff immediately investigated the incident at the scene, and interviewed the Student and Student 1 in the main office.¹⁵ Initially, X2 met with the Student, and X4 met with Student 1; thereafter, X4 took over the investigation of the incident and X2 assisted in interviewing student witnesses. X2 and X4 interviewed the Student and Student 1, and obtained written witness statements from four student witnesses (Students 3, 4, 5, and 6) on the day of the incident. According to a statement obtained by X4, Student 1 denied saying that he was going to inflict any physical harm on the Student. X4 reported that during his investigation of the incident, Student 1 stated that his anger toward the Student stemmed from a Facebook posting he received in XXXX 2012 from a friend of the Student, who attended another

¹⁵ The Student and Student 1 were taken to the office because they were screaming and cursing at each other in the cafeteria.

school out of the District and who had insulted Student 1, and from ongoing family problems that existed between his and the Student's families outside of school. X2 stated that the Student admitted that she yelled and cursed at Student 1 in their exchange.

According to Student 3's witness statement, Student 1 asked her to tell the Student "that he said he hated [the Student] and wanted her to die," which Student 3 reported to the Student. Afterwards, the Student confronted Student 1 in the cafeteria and they engaged in a yelling match, each cursing at the other. Students 3, 4, 5, and 6 each reported that, thereafter, Student 1 picked up the Student's identification card from the lunch table, and said aloud that he hated her and wanted her to die. Two of the four student witnesses stated that Student 1 called the Student a "bitch." One of the four student witnesses reported that Student 1 called the Student a "bitch" and "cunt." None of the written witness statements from the witnesses indicated that Student 1 used any slurs related to disability. X2, X4, and the XXXXXX denied that any of the witnesses or Student 1 made any reference to the Student's national origin/Jewish ancestry during the incident on XXXX XX, 2012. OCR determined that the witness statements did not indicate that Student 1 stated that he was going to personally physically harm or commit violence against the Student.

The District determined that Student 1 had used inappropriate language toward the Student, for which he previously had been warned and disciplined in XXXXXX 2011. School officials stated that they viewed Student 1's behavior as the second contact with the Student involving inappropriate language under the Code, and disciplined Student 1 with one-day of OSS and one-day of in-school suspension (ISS). School staff further directed Student 1 to make every effort to avoid contact with the Student.

OCR determined that the District promptly investigated this incident by interviewing the Student, Student 1 and other witnesses in the cafeteria, and promptly disciplined Student 1 in accordance with the Code for a second offense involving inappropriate language.¹⁶

Incident 8:

With respect to Incident 8, the complainant alleged that the District discriminated against the Student by failing to respond to complaints the Student and the Student's parents made to the District on XXXXX XX, 2012, that Student 1 harassed the Student, on the bases of national origin/Jewish ancestry, sex, and disability, when, in the cafeteria, he "pointed his finger directly at the Student and made [unspecified] 'comments' to his 'friends'." According to the complainant, the Student reported the incident to X2, and X2 informed the Student's parents that he would handle the matter.

¹⁶ The District's Code of Conduct in effect for school year 2012-2013 provided for a range of penalties within the discretion of authorized school personnel and did not specifically provide for sanctions based upon multiple occurrences of an offense. District personnel "authorized to impose disciplinary penalties will consider the following: (1) the Student's age; (2) the nature of the offense; (3) the student's prior disciplinary record; (4) the effectiveness of other forms of discipline; (5) information from parents, teachers and/or others, as appropriate; and, (6) other extenuating circumstances." (See Section VII. Disciplinary Penalties).

The District denied that the Student, the complainant or anyone else reported an incident on XXXXX XX, 2012, concerning the Student and Student 1 in the cafeteria. X2 informed OCR that he had no recollection or documentation of a report by the Student of an alleged incident on or about XXXX XX, 2012. None of the XXXXX XXX or the XXXXXXXX recalled receiving a complaint concerning the Student and Student 1 in the cafeteria on XXXXXXXX XX, 2012. The complainant did not provide and OCR did not find any documentation to support that the District was on notice of an incident that allegedly occurred on XXXXX XX or XXXXXXXX XX, 2012.

Incident 9:

With respect to Incident 9, the complainant alleged that the District discriminated against the Student on the bases of her national origin/Jewish ancestry, sex, and/or disability, by failing to respond to the complaints the Student's mother made to X2 and X3 on XXXXXXXX XX, 2012, that Student 1 entered the Student's gym class and sat with his friends in the bleachers; made sex- and disability-related comments about the Student, including calling the Student "stupid," "ugly," and "retarded"; and raised his middle finger toward the Student.

OCR determined that on XXXXX XX, 2012, the Student sent a text to her mother stating that while she was in her assigned XX XXXX physical education (PE) class, she saw Student 1 come into the gym and sit with his friends at the top of the bleachers. The Student's mother then reported the incident to X3, who immediately went to the gym. X3 stated that he determined that there were over 100 students (representing two or three classes) in the gym sitting in their regular clothes on the bleachers; the bleachers were 12 rows high. He observed the Student sitting on the bottom row, left, and Student 1 sitting at the top row, right, with his friends. X3 stated that the two teachers in the gym (Teachers 1 and 2) were engaged in some type of administrative or instructional information session with the class, and that it was noisy at the time X3 walked into the gym. X3 stated that he was aware that Student 1 did not belong in that particular PE class, and after speaking with Teacher 1 and Teacher 2, pointed up to Student 1 and asked him to come down and follow him out of the gym. X3 reported that he escorted Student 1 out of the gym.

In the course of investigating the incident, on XXXXX XX, 2012, X3 interviewed the Student and her mother. The Student reported that Student 1 had made an obscene hand gesture with his middle finger towards her as he left the gym with X3, but did not state that Student 1 made any insulting remarks or said anything to the Student prior to the time X3 arrived at the gym. X3 interviewed Student 1, who said he was in the gym on XXXX XX, 2012, because he had XXX XXX XXXXX XXX period to be with his friends. X3 also interviewed Teacher 1 and Teacher 2, neither of whom reported seeing or hearing any interaction between the Student and Student 1. Teacher 1 stated that he was initially unaware that Student 1 did not belong in the PE class, as there were three classes brought together in the gym. Based on his investigation, X3 determined that the incident involved Student 1's XXXXXXXX XXXXX, and was unrelated to the Student. X3 stated that he did not observe Student 1 making any lewd hand gestures at the Student, or hear him make a comment about the Student's disability, as he escorted Student 1 out of the gym. Since Student 1 previously had been directed to avoid the Student and since he chose to be in the gym at the same time as the Student, X3 determined that Student 1 had again violated a directive to avoid the Student; however, X3 concluded that Student 1 had not engaged in any

contact with the Student, given their respective locations in the gym. X3 recommended to the XXXXX that Student 1 receive XX XX XX XXX, and XX XX XXXX XXXXXX, for XXXXX XXXXX and for XXXXX XX XXXXX to avoid the Student. The sanctions were implemented beginning on XXXXX XX, 2012.

OCR was unable to substantiate that Student 1 engaged in any conduct constituting discrimination on the bases of national origin, sex, and/or disability in connection with the incident on XXXXX XX, 2012, or that Student 1 made hand gestures of any kind to the Student. OCR determined that the evidence indicated that the District promptly addressed this incident, conducting an investigation and disciplining Student 1 in accordance with the District's Code.

During the course of investigating Incident 9, OCR learned that in an electronic mail message (email) to the Superintendent, dated XXXX XX, 2012, the complainant complained, “[The Student] has been bullied by [Student 1] for the past 2 years...and Student 1's bullying now has escalated to physical intimidation. The bullying has now escalated to the point where [Student 1] threatened to kill my daughter.” In the email, the complainant demanded that Student 1 be XXXXX XXXX XX XXXX. On XXXX XX, 2012, the complainant met with School staff and advised the District that he had obtained an order of protection (OP) on XXXX XX, 2012, and requested that the District keep the Student safe. OCR determined that on XXXXX XX, 2012, the complainant provided School officials including the XXXXXXXX, X2, X3, and the Assistant Superintendent copies of the OP the complainant had obtained against Student 1.

OCR determined that in an immediate effort to implement the OP, the XXXXXXXX and X3, with the assistance of X2, developed a plan that would minimize the contact between the Student and Student 1. X3 immediately notified all XXXXX XXXXX and teachers about the OP, made available pictures of the Student and Student 1 to the XXXX XXX and advised them to “keep an eye out” for any interaction between Student 1 and the Student, particularly during passing. In an email dated XXXX XX, 2012, the Assistant Superintendent notified the complainant that Student 1's lunch period had been changed; Student 1 “had been encouraged” to ride a different bus; Student 1's 2nd period class had been changed so that he would not be in the same hallway as the Student during that period; all of the Student's and Student 1's teachers had been notified of the OP; the school's XXXXX team had been alerted of the OP; and Student 1 and the Student had been given maps, so that they could stay away from each other's locations during the school day.

The complainant asserted that providing Student 1 a map of the Student's whereabouts was inappropriate, as it would make it easier for Student 1 to know where the Student would be located throughout the day. OCR determined that in the presence of the Student and her mother on XXXXX XX, 2013, X2 acknowledged that because they were in the same grade at the same school, the Student and Student 1 were going to see each other; however, there were ways for the students to avoid each other by using different staircases and traveling in different corridors. X2 took the Student's schedule and on the reverse side, drew a rough sketch of the Student's classrooms and where her locker was, and showed her where the XXXXX XXXX would be and where there was a possibility that she might see Student 1. X2 also suggested to her that she use a particular staircase. X3, on the same date, in a separate meeting with Student 1, reviewed the requirements of the OP and directed that Student 1 use different corridors and stairways when

exiting his classrooms. X3 did not do a line drawing of corridors for Student 1 and denied showing Student 1 any type of map as to the location of the Student's classes. Both X2 and X3 denied providing either the Student or Student 1 a copy of the other's class schedule. According to X3, the sketch that X2 made for the Student was not copied, and was returned to the Student. OCR's review of X2's files that the District provided to OCR indicated that a copy of a rough sketch of a corridor was attached to a copy of the Student's class schedule printed on XXXXX XX, 2013.

The complainant asserted that he requested in XXXXXX 2013 that a XXXXX XXX be present in the School's hallways, including every time the Student changed classes. The complainant asserted that the Student received a XXXX XXXX for only a couple of days in XXXXXX 2013, but did not have a XXXX XXXX with her when she was in the hallways and other areas where Student 1 could be present. The complainant asserted that he also informed School personnel that he believed that XXXX staff should have been shadowing Student 1 rather than the Student.

The XXXXXX reported that shortly after the OP was issued, the complainant requested that a school XXXXX XXXXX be present in the hallways, particularly when students changed classes. The XXXX reported to OCR that she rejected the complainant's request for a XXXXX XXXXX to be present every time the Student changed classes, stating to OCR that XXXX XXXX must be available in all parts of the School and the XXXXXXXX could not commit a XXXXX XXXXX to be individually assigned to the Student. Instead, as of XXXXX XX, 2013, one XXX XXXX was posted in the "XX" hallway where both the Student and Student 1 were likely to be at the end of the school day when Student 1 was exiting his class and the Student would be going to her locker. According to documentation the District provided, the XXXX XXXX was posted in the "XX" corridor from on or about XXXXX XX, 2013, through XXXXX XX, 2013, when X3 informed the XXXXXXXX and other staff that the Student was on the XXXX XXX list; therefore, the Student was XX XX XX XX XX XX XX XX period each day, and accordingly, a special detail was no longer needed when Student 1 departed during the X period. Additionally, in early XXXX 2013, when the spring schedule was put into effect, the school posted a XXXXX XXXXX in the "XX" corridor where both students had XXXXX during the second period.

OCR was unable to corroborate the complainant's assertion that the District had agreed that a XXXX XXXXX would be assigned to follow the Student from class to class. All documentation OCR reviewed indicated that XXXX XXXX was made aware of the existence of the OP, but the District had determined that staff resources were not sufficient to allow a XXXXX XXXXX to follow the Student as she went from class to class. OCR further determined that the OP did not prohibit Student 1 from being on the School premises, and School staff appropriately attempted to minimize and eliminate contact between Student 1 and the Student on School premises.¹⁷

¹⁷ Additionally, the District's counsel, in a letter dated XXXXX XX, 2013, informed the complainant that the District lacked legal authority to remove Student 1 from the School unless he were suspended pursuant to the Education Law, and offered to have the Student and Student 1 participate in XXXX if the complainant was interested. The complainant did not elect to pursue XXXX.

Incident 10:

With regard to Incident 10, the complainant alleged that the District discriminated against the Student on the bases of her national origin/Jewish ancestry, sex, and/or disability, by failing to respond to complaints the Student made to X3 on XXXX XX, 2013, that Student 1 had bumped the Student’s shoulder in the School hallway.

OCR determined that on XXXX XX, 2013, the Student complained to X3 that as she and Student 1 were changing classes in the “XX” hallway, Student 1 crossed the center line of the hallway and purposefully bumped her into the wall.¹⁸ X3 informed X2, so that he could investigate the incident with Student 1, while X3 remained with the Student. The Student’s mother came to the School and demanded that the police be called, alleging that Student 1 had violated the OP. The police were called and the XXXXXXX and the Assistant Superintendent were present at the time the police arrived. X3, the XXXXX, and the police officers responding to the incident reviewed the video recorded by security cameras in the hallway. The Student told the police officers in the presence of X3 that she was not sure if it was Student 1 who pushed/bumped her and that she did not want to press charges. The police determined that the incident was unfounded, as did X2 and the XXXXXXX. Student 1 was XXX XXXXX for the incident.

OCR interviewed several School officials who viewed the hallway videotape. They stated that Student 1, who is very tall, was walking with other students on the right side of the hallway during the changing of classes, and when he saw his girlfriend coming up the stairs, he crossed the hallway midline to greet her and take her hand. The Student was walking on the same side of the hallway, navigating her way through the crowd of other students, and when she found herself near Student 1, she moved out of the way. The School officials whom OCR interviewed stated that it appeared that Student 1 had no recognition that the Student was walking toward him at the time he was holding his girlfriend’s hand, and that Student 1 did not make any physical contact with anyone in the hallway, including the Student, with any part of his body. School officials advised OCR that Student 1 was where he was supposed to be at the time. Based on the above, OCR determined that there was insufficient evidence to substantiate that the incident occurred as alleged, and/or was related to or motivated by the Student’s national origin, sex or disability.

Incident 11:

With respect to Incident 11, the complainant alleged that the District discriminated against the Student on the bases of her national origin/Jewish ancestry, sex, and/or disability, by failing to respond to complaints the Student made to School staff, X3 and/or X4 on XXXXX XX, 2013, that she had observed Student 1 in the hallways near her classroom on approximately two occasions that day, when he should have been in class, and that Student 1 blocked the Student from entering the Testing Center to XX XX XX XXX XXX XXX XXX XXX XXX XXX XXX XXX.

¹⁸ In addition, in an email to the Assistant Superintendent, dated XXXX XX, 2013, the complainant stated, “Today, I understand that [Student 1] confronted [the Student] in the hallway and pushed her with his shoulder. He went out of his way as illustrated on the school’s security camera. The school’s XXXXX XXXXX assigned to protect [the Student] was nowhere to be found.” The complainant demanded that Student 1 “XXXXXXXXXXXXXXXXXXXX.” The complainant forwarded the email to the Superintendent on January XX, 2013. In an email from the Superintendent to the complainant, dated XXXXXXX XX, 2013, the Superintendent informed the complainant that she was in receipt of his email of XXXXXXX XX, 2013, and had referred it to the District’s legal counsel for response.

The complainant also alleged that School staff inappropriately told the Student that she should not leave her class during fourth period, and thereby denied the Student X XX XX XX XXXXX, in violation of XXX XXXXX XXXXXXXX XXX XXX XXX.

OCR determined that on XXX X, 2013, the Student was going to the Testing Center when she saw Student 1 in the hallway, as he had a lavatory pass. The Student went to the main office and spoke with either X3 or XXXXXXXXXXXX for X3 and X4, and wanted to know why Student 1 was in the hallway so much. The Student reported seeing Student 1 two or three times on that date in the hallway when he should have been in class. X4 reported the incident to X3. School officials stated that the Student never told them that Student 1 had blocked her entrance to the testing center at the time of the incident. Rather, School staff informed OCR that the Student was too upset by Student 1's presence in the hallway to take her test on the scheduled day. Therefore, she was given the choice to take her test in the Testing Center on the following day, which she did.

OCR further determined that on the day of this incident, X3 wrote an email to all of Student 1's teachers, copying the XXXXX and the other XX XX, advising that the goal was to minimize the opportunity for the two students to run into each other in the hallway. X3 asked Student 1's teachers to be mindful when issuing him bathroom passes, in the event that Student 1 would not use the bathroom and instead go to his girlfriend's classrooms. OCR further determined that Student 1 was not disciplined for being in the hallway on XXXXX XX, 2013. OCR did not find any evidence indicating that either the complainant or the Student notified School officials at the time of the incident that Student 1 allegedly prevented the Student from going to the Testing Center on XXX XX, 2013. Further, the complainant did not provide and OCR did not find any evidence that Student 1 prevented the Student from entering the Testing Center or that she was not permitted to take a scheduled exam on XXXXX XX, 2013. Rather, OCR determined that the Student was too upset on XXXXX XX, 2013, to take the exam, and was permitted to take it the following day with no consequences.

During the course of investigating Incident 11, District staff stated to OCR that either on XXXX XX or XXXX XX, 2013, at the beginning of the change of semester schedules, the Student's mother reported to X3 that the Student and Student 1 had XXXXX classes across from each other in the "XXX" corridor. School officials advised the complainant and Student that because of class scheduling, the Student and Student 1 would be in the same "XX" corridor during their XX period XXXXX classes. X3 spoke with the Student's mother to assure her that School staff was fully aware of the locations of both the Student and Student 1 during the XXX period and that a XXXXX XXXX would be posted in that corridor to make certain there was no interaction between the Student and Student 1. Neither the complainant nor School officials reported the occurrence of any incident on XXXX XX, 2013. The complainant did not provide and OCR did not find any evidence of any conduct between Student 1 and the Student related to the Student's sex, disability or national origin in connection with the scheduling of these classes in proximity to each other. Additionally, School staff promptly posted a XXXX XXXX in the corridor where these classrooms were located.

The complainant also asserted that the School had restricted the Student's actions and activities, e.g., not using the bathroom or walking in the hallways between classes, thereby causing her to

feel unsafe in School. OCR determined that District staff repeatedly met with the Student and her parents to address their concerns about the Student’s safety and access in School following the Student’s obtaining an OP against Student 1 on XXXXX XX, 2012, and developed a plan to address the Student’s safety at School. OCR determined that when the administrative staff met with the Student and the complainants on or about XXXX XX, 2013, to discuss the potential for the Student encountering Student 1 in the corridor during the XXXXX period, the Student stated that she would like to leave class three minutes early for the XXX and XXXXX periods.

OCR determined that during meetings on or about XXX XX, 2013, the Student, her parents and School staff discussed the possibility of the Student leaving her classes three minutes early, at her election, to avoid any contact with Student 1. X2 advised the Student’s teachers that she had permission to leave her classes three minutes early and that at any time she should be permitted to meet with her XXXXX XXXXX XXXXX XXXXX or an XXXXX XXXXX. OCR did not find any evidence indicating that the Student was restricted from using the bathroom. Further, the evidence indicated that any restrictions on the Student’s movements were due to the District’s efforts to implement the OP at the School. To the extent that the Student may have availed herself of a three-minute early release, it was voluntary and at her request.

Incident 12:

With respect to Incident 12, the complainant alleged that the District discriminated against the Student, on the bases of her national origin/Jewish ancestry, sex, and/or disability, by failing to respond to a complaint made on XXXXX XX, 2013, that Student 1 “stared” at the Student in the hallway, between the Student’s XXX and XXX periods, and a XXXX XXXX was not present at the Student’s XXXXX period class.

OCR was unable to substantiate that this incident occurred. The complainant did not provide any information or documentation to indicate that he made such a complaint, and there is no contemporaneous documentation that any School personnel received a complaint of such an incident. Accordingly, OCR could not establish that the District was on notice of any such alleged incident at the time it allegedly occurred.

Incident 13:

With respect to Incident 13, the complainant alleged that the District discriminated against the Student, on the bases of her national origin/Jewish ancestry, sex, and/or disability, by failing to respond to a complaint the Student made on XXXXX XX, 2013, that Student 1 impermissibly entered the cafeteria during the Student’s lunch period, and “stared” at the Student.

OCR determined that on XXXX XX, 2013, the Student was having lunch in the XXXX XXXXX at about XXXXX, when Student 1 walked through the cafeteria corridor, which is adjacent to the cafeteria where the Student was seated, and went with his girlfriend to her XXXXX class. The Student reported the incident to X2, and requested that she contact the Student’s mother, who then requested that the police be called. Prior to viewing the hallway video, the XXXXXXXX and X3 questioned Student 1 and his girlfriend about the incident. Student 1 denied staring at the Student as he was passing the double entrance doors that were swung open for the XXXXXXXX

XXXX. The XXXXXXX and X3 determined that on the hallway video, it is apparent that Student 1 glanced into the XXXXX XXXXX to see who was there, kept walking through the corridor, and did not stop or make any gestures. Police officials also reviewed the hallway video and interviewed both the Student and Student 1; they determined that there was no violation of the OP. The XXXXXXX and X3 concluded that Student 1 did not approach the Student or say anything to her. The XXXXXXX and X3 determined that Student 1 XX his XXX period class to escort his girlfriend to her XX class. X3 recommended, and the XXXXX agreed, that Student 1 should be XXXXX XXX XXXXX XXXXX XXXXX to avoid the Student. Student 1 received a XX XX XXX, based on the fact that Student 1 had been previously XX XX XXXX the Student, and that by cutting through the commons corridor, he XXXXX the previous directive. This XXXXX XXX XXX was supported at a Superintendent's hearing; and, Student 1 was XXX XXX XXXXX XX XXXXX XX, 2013.

Letter of XXXXX XX, 2013

On XXXXX XX, 2013, the complainant's attorney sent a letter to the District's counsel, complaining about Incidents 1-2 and 4-13 above. OCR determined that in response to the letter, on XXXXX XXX, 2013, the District's Board of Education retained and referred the allegations to an independent special compliance officer (SCO), pursuant to the District-Level Procedures of the DASA Regulation. OCR determined that the SCO was formerly a XXXXXXX XXX XXXXX XXXXX XXXXX who had relevant experience in conducting independent investigations of allegedly harassing and discriminatory conduct on behalf of other school districts. The SCO was charged with investigating the allegations raised in the Letter of XXXXX XX, 2013, developing a report and recommendations to the District, and providing notice of her findings to the parents of the Student and the parents of Student 1.

In the course of her investigation, the SCO reviewed relevant documentation, including: correspondence among the complainant, District employees and the District's attorney, the Letter of XXXXX XX, 2013, correspondence between the District's attorney and the Student's attorney, documents pertaining to the disciplinary proceedings regarding Student 1, the OP procured by the complainant against Student 1, the disciplinary file for Student 1, incident reports, witness statements, and District policies and procedures. The SCO also interviewed relevant School administrators and staff including the XXXXX, the XXX XXX for school years 2010-2011, 2011-2012 and 2012-2013 (X1, X2, X3 and X4), a XXXX XXXX, the XX XXXX XXXX, the complainant, the Student's mother, the Student, Student 1, and Student 1's parents.

Based upon her investigation and review of the alleged incidents, the SCO determined that the allegations set forth in the XXXXX XX letter were not substantiated; she memorialized her findings and determinations in a report to the District, dated XXXXX XX, 2013. The SCO notified the complainant and the Student's mother of her findings, by letter dated XXXXX XX, 2013. Additionally, by letter dated XXXXX XX, 2013, the SCO similarly notified Student 1's father of her determination.

The SCO did not find any evidence to substantiate that the Student's education had been restricted. She noted that the Student was offered the opportunity to leave classes three minutes

early to avoid seeing Student 1. The Student did not report to the SCO that she was unhappy with this arrangement.

Conclusion:

Based on all of the above, OCR determined that prior to receipt of the Letter of XXXXX XX, 2013, there was insufficient evidence to substantiate that the District was on notice of Incidents 4, 5, 6, 8, and 12, as there was insufficient evidence that the Student, her parents or anyone else reported these incidents. With respect to Incident 1, OCR found insufficient evidence to substantiate that this incident was reported as harassment on the basis of national origin, disability, or sex. With respect to the remaining incidents (2, 3, 7, 9, 10, 11, and 13), OCR determined that once on notice of these alleged incidents of harassment on the basis of national origin, disability, and/or sex, the District promptly investigated the incidents. OCR determined that the District conducted thorough investigations by interviewing relevant witnesses, viewing video recordings, and reviewing other evidence that was submitted. Based on these investigations, the District determined that there was insufficient evidence to substantiate that Incidents 3, 9, 10, 11 or 13 occurred as alleged. For the only incidents that could be corroborated (Incidents 1, 2, and 7), the District took disciplinary action against the students involved consistent with the District's Code of Conduct. Additionally, the District took other actions to address the effects of the alleged harassment and to prevent recurrence, including changing Student 1's lunch period, class schedule, and bus; directing him to use specific routes to avoid contact with the Student; and telling him to refrain from verbal, written, electronic or physical contact with the Student. As of XXXX 2013, the District posted XXXXX XXXXX at locations at which the Student and Student 1 could encounter each other due to class scheduling.

Further, OCR determined that after the complainant's attorney sent the Letter of XXXXX XX, 2013, the District promptly retained the SCO, who investigated the incidents raised in the XXXXX 2013 letter. The SCO developed an investigative report in which she concluded that, when informed about incidents, the District promptly investigated and took appropriate administrative actions, including directing Student 1 to refrain from contact with the Student, detailing specific routes to and from each of Student 1's classes, and changing his schedule and his bus routes to minimize the possibility of contact between the Student and Student 1. When the students' schedules could not be altered, XXXXX XXXXX were assigned to hallways where both students were scheduled to have a class. In addition, teachers of both students were informed about the problems between the two students, as well as the OP, and were asked to monitor the situation. The SCO concluded the Student was not subjected to harassment due to her disability, national origin, sex, or religion; and that the allegation that District officials failed to appropriately address incidents brought to their attention could not be substantiated.

In sum, OCR determined that there was insufficient evidence to substantiate the complainant's allegation that the District failed to respond appropriately to complaints that students at the School subjected the Student to harassment on the bases of her disability, national origin (Jewish ancestry/ethnicity), and sex, beginning in school year 2010-2011, and continuing through school year 2012-2013.

As set forth above, on June 14, 2016, the District agreed to implement the enclosed resolution agreement, which addresses the compliance concerns with respect to the District's procedural violations.

This letter should not be interpreted to address the District's compliance with any other regulatory provision or to address any issues other than those addressed in this letter. This letter sets forth OCR's determination in an individual OCR case. This letter is not a formal statement of OCR policy and should not be relied upon, cited, or construed as such. OCR's formal policy statements are approved by a duly authorized OCR official and made available to the public.

The complainant may have the right to file a private suit in federal court whether or not OCR finds a violation.

Please be advised that the District may not harass, coerce, intimidate, or discriminate against any individual because he or she has filed a complaint or participated in the complaint resolution process. If this should occur, the complainant may file a separate complaint alleging such harassment or intimidation.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. In the event that OCR receives such a request, it will seek to protect, to the extent provided by law, personally identifiable information, which, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

If you have any questions, please contact Jane Tobey Momo, Senior Compliance Team Attorney, at (646) 428-3914 or jane.momo@ed.gov; or Nadja Allen Gill, Compliance Team Leader, at (646) 428-3801 or nadja.r.allen.gill@ed.gov.

Sincerely,

/s

Timothy C.J. Blanchard

cc: XXXXX XXXXX, Esq.