



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS, REGION II

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NEW JERSEY  
NEW YORK  
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VIRGIN ISLANDS

March 18, 2014

Greg Macaluso, Ed.D.  
Superintendent of Schools  
Williamson Central School District  
P.O. Box 900  
Williamson, New York 14589

Re: Case No. 02-11-1209  
Williamson Central School District

Dear Superintendent Macaluso:

This letter is to notify you of the determination made by the U. S. Department of Education, New York Office for Civil Rights (OCR) in the above-referenced complaint filed against the Williamson Central School District. The complainant alleged that beginning in XXXXXXXX 2XXX, the District failed to respond appropriately to her complaints that students at Williamson High School (the School) subjected her daughter (the Student) to sexual harassment (Allegation 1) and harassed the Student because they perceived her to have a disability (Allegation 2). The complainant also alleged that on or about XXXXXXXX XX, 2XXX, and on two occasions in XXXXX 2XXX, teachers at the School harassed the Student because they perceived her to have a disability (Allegation 3). The complainant further alleged that the District failed to evaluate the Student in a timely manner to determine whether she was qualified for special education and/or related aids and services (Allegation 4).

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 U.S. Department of Education (the Department). OCR also 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 Department. Further, OCR 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. 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 Title IX, Section 504 and the ADA.

Sexual harassment that creates a hostile environment is a form of sex discrimination prohibited by Title IX. Sexual harassment is unwelcome conduct of a sexual nature. Sexual harassment can include unwelcome

sexual advances; requests for sexual favors; and other verbal, nonverbal, or physical conduct of a sexual nature, such as sexual assault or acts of sexual violence. Sexual harassment of a student creates a hostile environment if the conduct is sufficiently serious that it denies or limits a student's ability to participate in or benefit from the recipient's program.

Disability harassment is a form of discrimination prohibited by Section 504, the ADA and their implementing regulations. Disability harassment under Section 504 and the ADA is intimidation or abusive behavior toward a student based on disability that creates a hostile environment by interfering with or denying a student's participation in or receipt of benefits, services or opportunities in the institution's program. Harassing conduct may take many forms, including verbal acts and name-calling, as well as non-verbal behavior, such as graphic and written statements, or conduct that is physically threatening, harmful or humiliating. When harassing conduct is sufficiently severe, persistent or pervasive that it creates a hostile environment, it can violate a student's rights under Section 504 and the ADA.

In its investigation, OCR interviewed the complainant, and District staff and administrators. OCR also reviewed documentation that the complainant and the District submitted. OCR made the following determinations.

### Allegation 1

The complainant alleged that beginning in XXXXXXXX 2XXX, the District failed to respond appropriately to her complaints that students at the School subjected the Student to sexual harassment. The complainant alleged that she made the following complaints to District personnel during school year 2XXX-2XXX:

- In XXXXXXXX 2XXX, the complainant reported to the Principal, Assistant Principal and XXXXXXXX XXXXXXXX that female students in XXXXX of the Student's classes and her XXXXX XXXXXXX called the Student a "XXXXX" (Complaint 1).
- In XXXXXXXX 2XXX, the complainant reported to the Assistant Principal and XXXXXXXX XXXXXXXX that other students were bullying the Student on the XXXXXXXX (Complaint 2).
- In XXXXXXXX 2XXX, the complainant reported to the XXXXXXXX XXXXXXXX that a student had XXXXXXX the Student's XXXX, XXXXXXX her XXXX and called her names (Complaint 3).
- In XXXXXXXX 2XXX, the complainant reported to the XXXXXXXX XXXXXXXX that the same student who was the subject of Complaint 3 had again XXXXXXX the Student's XXXX, XXXXXXX her XXXX and called her names (Complaint 4).
- On XXXXX XX, 2XXX, the complainant reported to the Principal that another student had called the Student a "XXXXX" (Complaint 5).

### Complaint 1

With respect to Complaint 1, the complainant alleged that in XXXXXXXX 2XXX, she reported to the Principal, Assistant Principal and XXXXXXXX XXXXXXXX that female students in XXXXX of the Student's classes and her XXXXX XXXXXXX called the Student a "XXXXX."

The Principal denied that the complainant reported to him that students were calling the Student a “XXXXX.”<sup>1</sup> The XXXXXXXX XXXXXXXXXXXX did not recall the complainant reporting to her that students were calling the Student a “XXXXX.” The complainant did not provide and OCR did not find any evidence to substantiate the complainant’s allegation that she reported to the Principal or the XXXXXXXX XXXXXXXXXXXX in XXXXXXXX 2XXX that students were calling the Student a “XXXXX.”

OCR determined that in early XXXXXXXX 2XXX, the complainant reported to the Assistant Principal that a student (Student 1) was harassing/bullying the Student in school.<sup>2</sup> The Assistant Principal informed OCR that the complainant did not provide her with any specific information about the nature of the bullying, or report that any students had called the Student a “XXXXX”. The Assistant Principal stated that she spoke with both the Student and Student 1 individually. The Assistant Principal denied that the Student reported to her that Student 1 had called her a “XXXXX”. The Assistant Principal stated that the Student reported that Student 1 was not “XXXXX XXXX to her”, did not XXXXX XX XX XXX XXXXXXX, and that Student 1 was telling other students that she XX XXXXXXX XXXXXXX XX XX XXX XXXXXXX’s XXXXXXX. In response, the Assistant Principal referred the Student and Student 1 for XX XXXXXXXX XXXXXXXX XXXXXXXX with the XXXXXXXX XXXXXXXX, but the Student XXXXXXXX to XXXXXXXX. The Assistant Principal stated that neither the Student nor the complainant reported at this time that Student 1 had subjected the Student to sexual harassment, or had participated in any conduct that could be construed to be sexual harassment.

Based on the above, OCR determined that there was insufficient evidence to substantiate the complainant’s allegation that in XXXXXXXX 2XXX she reported to the Principal, XXXXXXXX XXXXXXXX, or Assistant Principal that other students were calling the Student a “XXXXX.”

### Complaint 2

With respect to Complaint 2, the complainant alleged that in XXXXXXXX 2XXX, she reported to the Assistant Principal and XXXXXXXX XXXXXXXX that students were bullying the Student on the XXXXXXXX.

The Assistant Principal stated that the XXXXXXXX XXXXXXXX, not the complainant, told her about Complaint 2. OCR determined that on or about XXXXXXXX X, 2XXX, the complainant and the Student met with the XXXXXXXX XXXXXXXX and told her that Student 1 and another student (Student 2) had made harassing comments to the Student XX XXXXXXXX. The XXXXXXXX XXXXXXXX informed OCR that neither the complainant nor the Student reported the alleged conduct as sexual harassment or described the allegedly harassing XXXXXXXX in any detail; rather, the XXXXXXXX XXXXXXXX stated that the complainant and Student referred to the conduct generally as “bullying” or “harassment.” OCR determined that the complainant later provided the XXXXXXXX XXXXXXXX with copies of the Student’s XXXXXXXX XXXX; however, Student 1’s and Student 2’s XXXXXXXX had been XXXXXXXX and the XXXXXXXX XXXXXXXX could not determine from the documentation provided the nature of the XXXXXXXX XXXXXXXX. The complainant did not provide and OCR did not find any evidence that the conduct described in Complaint 2 constituted sexual harassment, or that the complainant or the Student reported it to the District as such.

In response to the complaint, the XXXXXXXX XXXXXXXX advised the Student to remove Students 1 and 2 XX XXXXXXXX on XXXXXXXX; and changed Student 2’s class schedule so that she and the Student were

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<sup>1</sup> The Principal acknowledged that the complainant told him during an informal conversation early in the school year that the Student was having a “tough transition” to high school and was trying to “figure out XXX her XXXXXXX XXXX”; but denied that the complainant reported that these students were XXXXXXX the Student a “XXXXX”.

<sup>2</sup> The complainant alleged that she reported that XXXXX students were harassing the Student. The Assistant Principal stated that the complainant may have identified a second student, but advised OCR that Student 1 said that the other student was not involved.

no longer in any classes together. The XXXXXXXX XXXXXXXX also XXXXXXXX to XXXX a XXXXXXXX XXXXXXXX with the Student, Student 1 and Student 2; but the complainant and the Student XXXXXXXX XXX XXXXX. OCR determined that there were no further incidents involving the Student and Students 1 or 2.

Based on the above, OCR determined that there was insufficient evidence to substantiate the complainant's allegation that in XXXXXXXX 2XXX she reported to the Assistant Principal and XXXXXXXX XXXXXXXX that students were subjecting the Student to sexual harassment.

### Complaint 3

With respect to Complaint 3, the complainant alleged that in XXXXXXXX 2XXX, she reported to the XXXXXXXX XXXXXXXX that another student (Student 3) had XXXXXXXX the Student's XXXX, XXXXXXXX her XXXX and called her "XXXXXX XXXX."

The XXXXXXXX XXXXXXXX acknowledged that the complainant complained about Student 3 in XXXXXXXX 2XXX; but denied that either the complainant or the Student reported this incident as sexual harassment. OCR determined that complainant also complained to the XXXXXXXX XXXXXXXX about the incident. The XXXXXXXX XXXXXXXX advised OCR that she witnessed the incident. The XXXXXXXX XXXXXXXX stated that she saw Student 3 approach the Student, XXXXXXXX XXXXXXXX her XXXX and XXX XX XXX, "XXX'XX XX XXXXXXX, XXX XXXXXXXXXX XXXX XX XXXX XXXXXXXX." The XXXXXXXX XXXXXXXX stated that she did not see Student 3 XXXXXXX or XXX the Student's XXXX or hear her call the Student "XXXXXX XXXX", as the complainant alleged. The XXXXXXXX XXXXXXXX stated that immediately afterward, she instructed Student 3 not to XXXXXXX the Student.

The XXXXXXXX XXXXXXXX stated that she spoke with the Student about the incident; and during that meeting, she explained to the Student that Student 3 has difficulty communicating her thoughts. The XXXXXXXX XXXXXXXX stated that she advised the Student to report any further incidents directly to any teacher or staff member. Additionally, the XXXXXXXX XXXXXXXXXX and the Assistant Principal spoke with Student 3 about appropriate behavior toward other students. The complainant did not provide and OCR did not find evidence that the conduct described in Complaint 3 constituted sexual harassment, or that the complainant reported it to the District as such.

Based on the above, OCR determined that there was insufficient evidence to substantiate the complainant's allegation that in XXXXXXXX 2XXX she reported to the XXXXXXXX XXXXXXXX that Student 3 was subjecting the Student to sexual harassment.

### Complaint 4

With respect to Complaint 4, the complainant alleged that in XXXXXXXX 2XXX, she complained to the XXXXXXXX XXXXXXXX that Student 3 again XXXXXXXX the Student's XXXX and XXXXXXXXXX on her XXXXXXXX. The XXXXXXXX XXXXXXXX acknowledged that the complainant complained about Student 3 again in XXXXXXXX 2XXX; but denied that either the complainant or the Student reported this incident as sexual harassment. Following this incident, the XXXXXXXX XXXXXXXXXX XXXXXXXX XXXXXXXXXX X XXXXXXXXXX XXXXXXXX XXXX the XXXXXXXXXX, XXX XXXXXXX, XXXXXXXX X XXX XXXXXXXXXX XXX XXXXXXXX. The complainant XXXXXXXX XX XXXXXXXXXX XX XXXXXXXXXX, and would not permit the School to XXXXXXXX XXXXXXXXXX with the XXXXXXXX and XXXXXXXX X. OCR determined that there were no further incidents reported involving the Student and Student X. The complainant did not provide and OCR did not find evidence that the conduct

described in Complaint 4 constituted sexual harassment, or that the complainant reported it to the District as such.

Based on the above, OCR determined that there was insufficient evidence to substantiate the complainant's allegation that in January 2011 she reported to the XXXXXXXX XXXXXXXX that Student 3 was subjecting the Student to sexual harassment.

#### Complaint 5

With respect to Complaint 5, the complainant alleged that on XXXXX XX, 2XXX, she reported to the Principal that another student (Student 4) had called the Student a "XXXXX". OCR determined that the complainant reported this incident to the Principal in an electronic mail message (email) sent on XXXXXX XX, 2XXX. OCR further determined that the Principal responded the same day, with an email stating that the School would investigate the incident.

The District stated that shortly after receiving the complainant's report, the Assistant Principal commenced an investigation by speaking with Student 4.<sup>3</sup> Student 4 denied making the comment, but admitted that he had made "XXXXX XXX XXXXXXXX." The Assistant Principal also spoke with other students and staff members who were in the room at the time; these witnesses stated that they did not hear Student 4 call the Student a "XXXXX." The student witnesses confirmed that Student 4 "XXXX XXXXX and XXXXXXXX" on a regular basis, although they did not indicate that these were sexual in nature. The Assistant Principal notified the School's XXXXXX XXXXXX about the complaint, and the XXXXXX XXXXXX counseled Student 4 against such behavior. The School advised OCR that due to confidentiality concerns, it did not notify the complainant regarding the specific actions taken with respect to Student 4. OCR determined that there were no further incidents between the Student and Student 4.

Based on the above, OCR determined that the complainant complained to the School that Student 4 had XXXXXXXX the Student a "XXXXX." OCR also determined that the School responded appropriately to this complaint by interviewing Student 4, and student and staff witnesses. OCR further determined that based on its investigation, the School was unable to substantiate the complainant's allegation. Accordingly, OCR determined that there was insufficient evidence to substantiate the complainant's allegation that the School failed to respond appropriately to Complaint 5.

Based on the foregoing, with respect to Complaints 1, 2, 3 and 4, the complainant did not provide and OCR did not find evidence that the conduct described in these complaints constituted sexual harassment, or that the complainant or the Student reported it to the District as such.<sup>4</sup> With respect to Complainant 5, OCR determined that upon notice of the alleged harassment, the District responded by having the Assistant Principal conduct an investigation of the alleged incident of sexual harassment. OCR determined that the District promptly initiated the investigation; but after interviewing several witnesses, did not substantiate that the conduct occurred as alleged. Accordingly, OCR found insufficient evidence to substantiate the complainant's allegation that the

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<sup>3</sup> The District stated that the complainant had previously instructed the Assistant Principal not to speak with the Student; therefore, the Assistant Principal did not interview the Student regarding this allegation.

<sup>4</sup> The complainant further alleged that throughout school year 2010-2011, she left voicemail messages for School personnel and complained "constantly" that a group of older students made sexually suggestive and explicit comments to the Student; called her "XXXXXX XXXX"; and told her that she looked like a "XXXXX." District staff informed OCR that the complainant often called and "vented" about bullying and her belief that the school was unsafe; but denied that she ever reported in these voicemails that students were calling the Student a "XXXXX" or otherwise reported that these incidents constituted sexual harassment. The complainant did not provide, and OCR did not find evidence that the complainant complained of sexual harassment during these voicemail messages.

District failed to respond appropriately to her complaints that students at the School subjected the Student to sexual harassment.

During the course of its investigation, OCR reviewed the District's grievance procedures to determine whether these provide for the prompt and equitable resolution of complaints of discrimination on the basis of sex. OCR reviewed whether the District had: (a) a designated Title IX coordinator; (b) provided notification of the name, office address, and telephone number of the Title IX coordinator; (c) provided notice that it does not discriminate on the basis of sex; and, (d) adopted and published grievance procedures providing for the prompt and equitable resolution of student and employee complaints of discrimination/harassment on the basis of sex.

#### *Designation of Title IX Coordinator*

The regulation implementing Title IX, at 34 C.F.R. § 106.8(a), requires that each recipient designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under Title IX. The District identified the Assistant Superintendent as its "Title IX Compliance Officer." Accordingly, OCR determined that the District has designated at least one person to coordinate its efforts to comply with and carry out its responsibilities under Title IX, as required at 34 C.F.R. § 106.8(a).

#### *Notification of the Name, Office Address, and Telephone Number of the Title IX Coordinator*

The regulation implementing Title IX, at 34 C.F.R. § 106.8(a), requires the recipient to notify all students, employees, and beneficiaries of the name, office address, and telephone number of the designated Coordinator(s). OCR determined that the District has notified these individuals of the name and telephone number of its designated Title IX Coordinator by publishing this information on its website; however, the website does not contain the Coordinator's physical office address. OCR further determined that the District calendar states that students may report incidents of harassment to the "District's designated complaint officer," but the calendar does not identify or provide any contact information for that person. On January 29, 2014, the District agreed to implement the enclosed resolution agreement to address OCR's compliance concerns regarding the notification of the name, office address, and telephone number of the Title IX Coordinator.

#### *Non-Discrimination Notice*

The regulation implementing Title IX, at 34 C.F.R. § 106.9(a), requires that a recipient implement specific and continuing steps to notify applicants for employment, students, parents of elementary and secondary school students, employees, and all unions or professional organizations holding collective bargaining or professional agreements with the recipient that it does not discriminate on the basis of sex in the education programs or activities it operates; that the prohibition against discrimination extends to employment; and that inquiries to recipients concerning the application of Title IX and its implementing regulation may be referred to the Title IX coordinator or to OCR. The regulation implementing Title IX, at 34 C.F.R. § 106.9(b), requires recipients to include the notice of nondiscrimination in each announcement, bulletin, catalog, or application form that it makes available to the persons described above, or which is otherwise used in the recruitment of students or employees.

OCR determined that the District has a non-discrimination notice that appears in several publications, including the High School Student Handbook and the District's calendar; however, the non-discrimination notice does not state that inquiries concerning the application of Title IX and its implementing regulation may be referred to the

Title IX coordinator<sup>5</sup> or to OCR, and the non-discrimination notice as it appears in the calendar does not state that the prohibition against discrimination extends to employment, as required by Title IX, at 34 C.F.R. § 106.9. On January 29, 2014, the District agreed to implement the enclosed resolution agreement to address OCR's compliance concerns regarding the non-discrimination notice.

### Grievance Procedures

The regulation implementing Title IX, at 34 C.F.R. § 106.8(b) requires that each recipient adopt and publish grievance procedures providing for prompt and equitable resolution of student, employee, and third party complaints that allege any action which would be prohibited by the regulation. OCR has identified a number of elements in determining if grievance procedures are prompt and equitable, including whether the procedures provide for: (a) notice to students and employees of procedures, including where complaints may be filed; (b) application of the procedures to discrimination by employees, students, and third parties; (c) adequate, reliable, and impartial investigation, including an opportunity to present witnesses and evidence; (d) designated and reasonably prompt timeframes for major stages of the grievance process; (e) notice to parties of the outcome; and (f) assurance that the institution will take steps to prevent further harassment and to correct its effects if appropriate.

OCR determined that the District has two general grievance procedures for complaints of discrimination on the basis of sex; "Policy 3420: Anti-Harassment in the School District" (the General Procedure), and "By-Laws 1800P: Title IX of the Education Act of 1972 – Complaint Procedure" (By-Laws Procedure). Additionally, the District has grievance procedures specifically for complaints of sexual harassment; "Sexual Harassment Policy for Students" (the Student Procedure); and "Policy 6170/Regulation 6170R: Sexual Harassment" (the Employee Procedure). The District also has separate procedures designed to comply with New York State's "Dignity for All Students Act" (DASA Procedures). OCR's analysis of each procedure is set forth below.

### The General Procedure

OCR reviewed the General Procedure, which specifies that it applies to "dealings between or among all community members," including employees, students, vendors, contractors, volunteers, visitors, guests and other third parties. It applies to all complaints alleging discrimination based on sex and other protected bases. The General Procedure is published in the High School Student Handbook, and is also available on the District's website. OCR determined that the version of the General Procedure that is published on the District's website directs individuals to report incidents to the District's complaint officer, and further states that the name and contact information of that individual can be found elsewhere on the website. The version of the General Procedure that appears in the Student Handbook does not contain this additional information for identifying the "complaint officer." OCR further determined that the General Procedure states that the District will conduct a thorough investigation and report back to complainant within 10 school days, but it does not specify whether such report will be in writing, or whether/how the accused will be notified of the outcome (other than in situations where the outcome of the investigation warrants discipline of the accused). Although it is not specifically stated in the General Procedure, the District informed OCR that both the complainant and the accused are afforded the opportunity to name witnesses during the investigation of any harassment complaint. OCR also determined that the General Procedure does not provide for an assurance that the District will take steps to prevent recurrence of harassment and to correct the effects of the discrimination on the complainant and others, if appropriate.

### The By-Laws Procedure

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<sup>5</sup> The non-discrimination notice in the District's calendar states that incidents of harassment should be reported to the District's "designated complaint officer," and the notice in the Student handbook does not provide any information regarding where to direct inquiries, though such information is provided elsewhere in the handbook, as described above.

OCR determined that the By-Laws Procedure is not published on the District’s website and does not otherwise appear in any regularly disseminated District publication. The procedure states that it applies to complaints made by students and employees. The procedure includes a “Level One” and “Level Two” procedure. Level One specifies that the complainant should submit a written complaint to the District’s Title IX and/or 504 Compliance Officer, who will then conduct an investigation within one week, and render a decision within two weeks. The procedure does not state whether either party to the complaint has a right to present witnesses. The procedure states that the Compliance Officer will notify the complainant of the outcome of the investigation and permit the complainant to “react” to the investigation by either accepting it or disagreeing with it in writing; however, the accused is not afforded these same rights.

The “Level Two” procedure states that the compliance officer can request that the Superintendent review the complaint, and that the Superintendent will then schedule a meeting with the complainant and the compliance officer. The procedure does not permit the accused the opportunity to meet with the Superintendent. The procedure further states that the Superintendent will issue a final decision within one week of the meeting and send copies of that decision to the complainant and the compliance officer, and that the complainant has a right to appeal the decision to the Board of Education. The procedure does not allow for the accused to receive a copy of the decision, nor does it provide the accused a right to appeal.

#### *The Student Procedure*

OCR determined that the Student Procedure is published in the High School Student Handbook, which is distributed to all students at the start of each school year. The Student Procedure states that it applies to students making complaints of harassment on the basis of sex. It further states that students should file informal complaints with the School Principal and formal complaints with the complaint officer, though the procedure neither indicates the identity of the complaint officer nor indicates that the complaint officer is also the Title IX Coordinator. The procedure also does not state any timeframes for investigating either informal or formal complaints. The “formal complaint” process detailed in the Student Procedure provides for the complainant to receive a copy of the investigatory report and to appeal any findings in the report; the accused is not afforded these same rights.

#### *The Employee Procedure*

OCR determined that the Employee Procedure, which is published on the District’s website, applies to District employees making complaints of harassment on the basis of sex. The procedure states that employees should file both informal complaints and formal complaints with the complaint officer, though the procedure neither indicates the identity of the complaint officer nor indicates that the complaint officer is also the Title IX Coordinator. The Employee Procedure does not set forth a timeframe for the complaint officer to complete his or her investigation, other than stating that the investigation of a formal complaint must be “prompt and thorough.” The procedure states that for both informal and formal complaints, the complaint officer will notify the complainant in writing of the outcome of the investigation; it does not indicate whether or how the accused will be notified.<sup>6</sup> The Employee Procedure also provides the opportunity for the complainant but not the accused to appeal the outcome of a formal complaint investigation.

#### *The DASA Procedures*

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<sup>6</sup> The informal complaint process indicates that the complainant will also be provided with a copy of the complaint officer’s written report of the incident.

OCR determined that the DASA Procedures, which are published on the District’s website and summarized in several District publications, apply to students making complaints of bullying, discrimination or harassment on the bases of “actual or perceived race, color, weight, national origin, ethnic group, religion, religious practice, disability, sexual orientation, gender, or sex”. OCR determined that the DASA Procedures apply to complaints of discrimination by students and employees, but not discrimination by third parties.

OCR determined that the DASA Procedures state that students may file complaints with one of the District’s DASA Coordinators, whose names and email addresses are listed in the Procedures. OCR further determined that the DASA Procedures provide for an adequate, reliable, and impartial investigation, including an opportunity to present witnesses and evidence; reasonably prompt timeframes for major stages of the grievance process; notice to both parties of the outcome; appeal rights to both parties; and assurance that the District will take steps to prevent further harassment and to correct its effects if appropriate.

The District informed OCR that it follows the DASA Procedures to address students’ complaints of discrimination and harassment; however, OCR determined that the General Procedures and Student Procedures are inconsistent with the DASA Procedures, and students may be confused as to which procedure applies when they file a complaint of sexual harassment.<sup>7</sup>

On January 29, 2014, the District agreed to implement the enclosed resolution agreement to address OCR’s compliance concerns regarding its grievance procedures.

## Allegation 2

With respect to Allegation 2, the complainant alleged that beginning in XXXXXXXXXX 2XXX, the District failed to respond appropriately to her complaints that students at the School harassed the Student because they perceived her to have a disability. OCR determined that beginning in approximately late XXXXXXXXXX, 2XXX, the Student suffered from severe XXXXXXXXXX while at school. The complainant alleged that because of the XXXXXXXXXX, other students regarded the Student as disabled. The complainant further alleged that the District failed to respond to her complaints that other students harassed the Student because she had severe XXXXXXXXXX by calling her a “XXXXXXXXXXXXXXXX XXXXX” and saying that she was “XXXX XX of XXXX.”

OCR determined that in or around XXXXXXXXXX 2XXX, the complainant reported to the XXXXXXXXXX XXXXXXXXXX over the telephone that unidentified students were generally making fun of the Student for XXXXXXXXXXXXXXX XXXX XXXXXXX; but not that they were calling her “XXXXXXXXXXXXXXXX XXXXX” or saying that she was “XXXXX XX XXXX.” The XXXXXXXXXX XXXXXXXXXX stated that she questioned the Student. The XXXXXXXXXX XXXXXXXXXX stated that the Student advised her that some students referred to her as “XXX XXXX XXX XXXX XXXXXXXXXXXXXXX”; but the Student could not identify these students. The XXXXXXXXXX XXXXXXXXXX also stated that the Student advised her that her friends would ask about her XXXXXXXXXX and she did not like talking about it. The XXXXXXXXXX XXXXXXXXXX denied that the Student reported that any students had called her a “XXXXXXXXXXXXXXXX XXXXX” and said that she was “XXXXX XX XXXX.” The XXXXXXXXXX XXXXXXXXXX advised OCR that in response, she offered to meet with the other students, but the Student said that she would talk to them herself.

OCR determined that the complainant also occasionally mentioned to the XXXXXXXXXX XXXXXXX that students had made comments to the Student about her XXXXXXXXXX. The XXXXXXXXXX denied that the complainant reported that any students had called the Student a “XXXXXXXXXXXXXXXX XXXXX” or said that the Student was

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<sup>7</sup> Students may also be unsure whether they should file a complaint with the DASA Coordinator, the School Principal, the District’s Title IX Coordinator, or the District’s “complaint officer”.

“XXXXXX XX XXXX”. Further, the XXXXXXX XXXXX advised OCR that with the exception of one student, neither the complainant nor the Student could identify the other students involved, or otherwise provide specific information that would have enabled the District to investigate the alleged incidents. The XXXXXXX XXXXX stated that the Student once told her in XXXXXXX or XXXXXXX 2XXX, that a friend of hers had made comments during lunch about her XXXXXXX. The XXXXXXX XXXXX stated that she spoke with the other student, who reported that he and the Student would banter about their respective XXXXXXX XXXXXXX. The XXXXXXX XXXXX advised OCR that she told him to stop because he might hurt the Student’s feelings.<sup>8</sup>

OCR determined that even though these complaints could not be corroborated, the District took various actions, including introducing the Student to staff with whom she could comfortably talk; arranging for an XXXXX XXXXXXX to walk with the Student in the hallways; providing enhanced staff supervision in the cafeteria; and, providing the Student with strategies to help herself.

Based on the above, OCR determined that the complainant made several generalized complaints to School staff about other students making comments to the Student about her XXXXXXX; however, neither the complainant nor the Student provided the District with specific descriptions of the harassing conduct, identified the students involved, or named potential witnesses to enable the District to conduct an investigation. The complainant did not provide, and OCR found no evidence to substantiate that the complainant ever reported to the District that any students had called the Student a “XXXXXXXXXXXX XXXXX” or said that she was “XXXXXX XX XXXX.” Therefore, OCR determined that there was insufficient evidence to substantiate the complainant’s allegation that the District failed to respond appropriately to complaints that other students were subjecting the Student to harassment on the basis of her disability.

### Allegation 3

With respect to Allegation 3, the complainant alleged that teachers harassed the Student because they regarded her as disabled as a result of her XXXXXXX. OCR determined that the complainant reported four incidents alleging that District staff members made comments regarding the Student’s XXXXXXX:

- On an unspecified date early in school year 2XXX-2XXX, when the Student was leaving school early, the School’s XXXXXXX XXXXXXX asked the Student in a hostile tone why she was having XXXXXXX (Incident 1);
- On or about XXXXXXX XX, 2XXX, when the Student was having a XXXXXXX, the Student’s XXXXXXX XXXXXXX teacher (the XXXXXXX Teacher) told the Student to “XX XXXXX to XXXXX XXXXXXX XXXX” (Incident 2);
- In XXXXXXX 2XXX, a XXXXX XXXX (XXXXX XXXX) referred to the Student as the “student XXX XXXXXXX X XXX” in front of the XXXXXXX XXXXX and another student while in the XXXXXXX office (Incident 3); and,
- On or about XXXXXXX XX, 2XXX, the XXXXX XXXX told the Student that she should pray and attend church in order to stop her XXXXXXX (Incident 4).

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<sup>8</sup> The XXXXXL XXXXX informed OCR that on one occasion when the Student was in her office following a XXXXXXX she witnessed the other student ask the Student, “XXXXXX you XXXXXXX you’re XXXXX to XXXX XXX XXXX XXXXX?” The XXXXXXX. She told that student to drop the conversation immediately.

Regarding Incident 1, OCR determined that early in school year 2XXX-2XXX, the complainant reported to the Assistant Principal that the School's XXXXXXXXXXXX XXXXXXXX asked the Student about her XXXXXXXXXXXX in a hostile manner, while the Student was XXXXXXXX XXX to XXXXX school XXXXX. The Assistant Principal stated that on the same day, she spoke to the XXXXXXXXXXXX XXXXXXXX, who admitted that she asked the Student about her XXXXXXXXXXXX but asserted that she did so in a concerned manner.<sup>9</sup> OCR determined that the Assistant Principal counseled the XXXXXXXXXXXX XXXXXXXX to be more aware of her choice of words to ensure that her statements could not be misinterpreted. OCR determined that for the remainder of the school year, neither the Student nor the complainant reported that the XXXXXXXXXXXX XXXXXXXX made any additional comments.

Regarding Incident 2, the complainant alleged that she reported to the Principal, Assistant Principal, and XXXXXXXXXXXX XXXXXXXX that on or about XXXXXXXXXXXX XX, 2XXX, the XXXXXXXX Teacher told the Student as she was having a XXXXXXXXXXXX and leaving class to "XX XXXXX XX XXXXX XXXXXXXXXXXX XXXX." The XXXXXXXXXXXX XXXXXXXX could not recall the exact date on which she received notice about the alleged comment,<sup>10</sup> but stated that immediately afterward, at the Assistant Principal's direction, she spoke with the XXXXXXXX Teacher. The XXXXXXXX Teacher denied making the comment and stated that he was upset that the Student believed he made such a comment.

OCR determined that on XXXXXXXXXXXX X, 2XXX, the XXXXXXXXXXXX XXXXXXXX met with the complainant, the Student's XXXXXXXX, the XXXXXXXX Teacher, another teacher, and the Assistant Principal. At that meeting, the XXXXXXXX Teacher denied that he made the comment; apologized to the Student's XXXXXXXX if the Student believed he had; and, agreed to meet with the Student and the XXXXXXXX XXXXXXXX and apologize directly to the Student. On XXXXXXXXXXXX X, 2XXX, the XXXXXXXX Teacher met with the Student in the presence of the XXXXXXXXXXXX XXXXXXXX; apologized for what the Student thought he said; and stated that he understood that the Student's XXXXXXXXXXXX condition made school more difficult for her. OCR determined that after the meeting on XXXXXXXXXXXX X, 2XXX, there were no additional reports from the Student or the complainant that the XXXXXXXX Teacher made comments to the Student.

Regarding Incident 3, the complainant alleged that in mid-XXXXXXXX 2XXX, the XXXXX XXXX referred to the Student as the "student XXX XXXXXX a lot," in front of the XXXXXXX XXXXX and another student while near the XXXXXXX office. The XXXXX informed OCR that the XXXXX XXXX visited her office after the XXXXX period, seeking to identify some students who sat with Student during XXXXX and had not XXXXXXX XX XXXXX XXXXXXXXXXXX. The XXXXX stated that the XXXXX XXXX said, "What's that XXXXXXX XXXX XXXXX, XXX XXXX, XXX XXXXXXXXXXXX?" The XXXXX stated that she reported this incident to the Assistant Principal.

Regarding Incident 4, on or about XXXXXXXXXXXX XX, 2XXX, the complainant called the Principal to report that the XXXXX XXXX told the Student that she should pray and attend church in order to stop her XXXXXXXXXXXX. The Assistant Principal stated that shortly after the complainant called her regarding Incident 4, the XXXXX reported to her the XXXXX XXXXXXX comments described in Incident 3. The Assistant Principal stated that in response to these reports, on XXXXXXXXXXXX XX or XX, 2XXX, she interviewed the XXXXX XXXX, who admitted to making both comments. The Assistant Principal stated that she told the XXXXX XXXX that her comments were inappropriate, and the XXXXX XXXX apologized and asked for and

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<sup>9</sup> The XXXXXXXXXXXX XXXXXXXX told the Assistant Principal that she asked the Student, "Are you okay? Did you XXX XXXXXXXXXXXX XXXXXXXXXXXX?"

<sup>10</sup> The District's records indicate that the complainant reported the comment to the XXXXXXXXXXXX XXXXXXXX on or about XXXXXXXXXXXX XX, 2XXX and that the complainant did not advise the District that there were any witnesses aside from the Student and the XXXXXXXX Teacher. The complainant also emailed the Assistant Principal about the comment on XXXXXXXXXXXX XX, 2XXX; and the complainant emailed another District staff member about the comment on XXXXXXXXXXXX XX, 2XXX, but did not mention that there were any witnesses.

received the Assistant Principal's permission to call the complainant to apologize. The Assistant Principal also disciplined the XXXXX XXXX by XXXXXXXXXXXX her from XXXXX XXXX for XXX weeks. The Assistant Principal stated that she also discussed the matter with the Principal and advised the complainant that she had followed up on the allegations and taken action to ensure that similar incidents would not occur in the future. For the remainder of the school year, there were no reported complaints regarding the XXXXX XXXX making inappropriate comments about the Student's XXXXXXXXXXXX.

Based on the foregoing, OCR determined that upon receiving notice of each incident, the District promptly investigated by interviewing the alleged harasser and any identified witnesses. OCR determined that there was insufficient evidence to substantiate that Incidents 1 and 2 occurred as alleged. OCR found that although the District did not substantiate that the conduct described in connection with Incidents 1 and 2 occurred as alleged, the District took further action, including informally counseling one employee and facilitating a meeting with the XXXXXXXX Teacher during which he apologized to the Student. With respect to Incidents 3 and 4, OCR determined that after concluding that the XXXXX XXXX had made inappropriate comments,<sup>11</sup> the District counseled the XXXXX XXXX about the inappropriateness of her comments and disciplined her by XXXXXXXXXXXX her XXXXXXXX for XXX XXXXX. OCR determined that the District's actions regarding Incidents 3 and 4 were effective to stop the harassment because for the remainder of the school year, there were no reports of any subsequent incidents. Additionally, OCR determined that the District's actions were effective in remedying the effects of the harassment, because the District continued to provide the Student with counseling services. Accordingly, OCR will take no further action with respect to Allegation 3.

#### Allegation 4

With respect to Allegation 4, the complainant alleged that the District failed to evaluate the Student in a timely manner to determine whether she qualified for special education and related aids and services. The regulation implementing Section 504, at 34 C.F.R. § 104.35(a), provides that school districts must conduct an evaluation, in accordance with the requirements of 34 C.F.R. §104.35(b), of any student who needs or is believed to need special education or related aids or services because of a disability.<sup>12</sup> Section 504 does not require districts to evaluate all students with academic underperformance or diagnosed medical conditions. Rather, in determining whether a district has an obligation to evaluate a student, OCR considers the indicia of disability available to the district that might reasonably lead district personnel to suspect that the student needed special education or related aids and services due to a disability.

The complainant stated that early in school year 2010-2011, she reported to the District that the Student was experiencing severe XXXXXXXX due to peer harassment and difficulty with the transition to high school; and that these were causing frequent episodes of XXXXXXXXXXXX and problems with her school work. The complainant asserted that in XXXXXXXX 2XXX, she made an oral request to the Assistant Principal that the District evaluate the Student pursuant to Section 504. Neither the Principal nor the Assistant Principal recalled that the complainant made such a request. The complainant did not provide, and OCR did not find evidence to substantiate the complainant's assertion that she requested that the District evaluate the Student. District staff acknowledged that the Student experienced intermittent periods of frequent XXXXXXXXXXXX, but denied that they were informed of a diagnosed medical condition.

The complainant further stated that by XXXXX XXXX, the Student had failing grades and needed additional help academically, particularly in mathematics. The complainant asserted that on XXXXX XX, 2XXX, she

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<sup>11</sup> OCR determined that the comment that was the subject of Incident 3 was not made in the presence of the Student; however, it was made in the presence of another student and ultimately came to the attention of the Student.

<sup>12</sup> In accordance with the regulation implementing Section 504, at 34 C.F.R. §104.3(j), an individual with a disability is a person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment. The regulation implementing the ADA has a similar definition at 28 C.F.R. §35.104.

requested to the Superintendent that the Committee on Special Education (CSE) evaluate the Student to determine her eligibility for special education related aids and services, but that as of XXX XX, 2XXX, the District had not completed a full evaluation.

OCR determined that at a meeting on XXXXX XX, 2XXX, the Superintendent suggested to the complainant that the Student be evaluated by the CSE. OCR determined that the complainant initially provided consent for a comprehensive CSE evaluation of the Student on XXXXX XX, 2XXX, but then withdrew her consent for certain components of the evaluation. The District subsequently conducted the evaluations for which it had consent; and during a meeting, held on XXX XX, 2XXX, the CSE classified the Student as XXXXXXXX XXXXXXXX and developed an individualized education plan (IEP). The complainant then provided her consent for the social-emotional and speech-language components of the evaluation. The District completed the remaining evaluations in XXX-XXXX 2XXX. The CSE was scheduled to convene again on XXXX XX, 2XXX, but as the complainant could not attend, the meeting was postponed until XXXXXX X, 2XXX. At a meeting on XXXXXX X, 2XXX, the CSE added speech services to the Student's IEP based upon the remaining evaluation results; and determined that the Student would continue receiving counseling services.

Based on the foregoing, OCR determined that the District did not unreasonably delay evaluating the Student to determine whether she qualified for special education and/or related aids and services. Specifically, OCR determined that once the District received consent to evaluate the Student, it conducted each assessment; and thereafter, scheduled CSE meetings within a reasonable timeframe. Therefore, OCR determined that there was insufficient evidence to substantiate the complainant's allegation that the District failed to evaluate the Student in a timely manner to determine whether she qualified for special education and/or related aids and services. Accordingly, OCR will take no further action with regard to Allegation 4.

OCR will monitor the implementation of the enclosed resolution agreement. If the District fails to comply with the terms of the resolution agreement, OCR will resume its investigation.

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 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 happens, the complainant may file another complaint alleging such treatment.

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 regarding OCR's determination, please contact Tracey R. Beers, Senior Compliance Team Attorney, at (646) 428-3804 or [tracey.beers@ed.gov](mailto:tracey.beers@ed.gov); or Felice Bowen, Compliance Team Leader at (646) 428-3806 or [felice.bowen@ed.gov](mailto:felice.bowen@ed.gov).

Very truly yours,

Timothy C.J. Blanchard

Encl.

cc: XXXXXX X XXXXXXXXXXX, XXX.