

July 26, 2016

Chancellor Carmen Fariña
New York City Department of Education
Tweed Courthouse
52 Chambers Street
New York, New York 10007

Re: Case No. 02-16-1110
New York City Department of Education

Dear Chancellor Fariña:

This letter is to notify you of the determination made by the U.S. Department of Education, Office for Civil Rights (OCR) regarding the above-referenced complaint filed against the New York City Department of Education (the NYCDOE). The complainant alleged that the NYCDOE discriminated against his son (the Student), on the basis of his national origin, by failing to provide him 180 minutes per week of English as a Second Language (ESL) instruction during school year 2015-2016 (Allegation 1). Additionally, the complainant alleged that the NYCDOE discriminated against the Student on the basis of his disability, or in the alternative, retaliated for the complainant's national origin and sex-based advocacy, by denying the Student's request for a xxxxxxxx xxxxxxxx from the Xxxxx xx Xxxxx school (the School) to the Xxx Xxxx Xxxx Xxxxxx Xxxxxx (School 2) (Allegation 2). Further, the complainant alleged that the NYCDOE retaliated for the complainant's national origin and sex-based advocacy by terminating the Student's working relationship with x xxxxxx xxxx xxxxxx on November 6, 2015, and providing an unacceptable replacement (Allegation 3); and xxxxxxxxxx xxx complainant to the xxxxxxxxxxxxxxxxxx xxx xxxxxxxxxxxxxx xxxxxxxxxx (XXX), in or around January 2016 (Allegation 4).

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 U.S. Department of Education (the Department). OCR is also 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. Further, 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 Department. In addition, 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 NYCDOE 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 VI, Title IX, Section 504 and the ADA.

The regulation implementing Title IX, at 34 C.F.R. § 106.71, incorporates by reference 34 C.F.R. § 100.7(e) of the regulation implementing Title VI, which provides that:

No recipient or other person shall intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by regulations enforced by OCR or because one has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing held in connection with a complaint.

In its investigation, OCR interviewed the complainant, the Student, and NYCDOE and School staff. OCR also reviewed documentation that the NYCDOE submitted. OCR made the following determinations.

With respect to Allegation 1, the complainant alleged that the NYCDOE discriminated against the Student, on the basis of his national origin, by failing to provide him 180 minutes per week of ESL instruction, during school year 2015-2016.

The regulation implementing Title VI, at 34 C.F.R. § 100.3(a) and (b)(1)(i)-(ii), provides that a recipient may not, directly or through contractual or other arrangements, on the ground of race, color, or national origin, exclude persons from participation in its programs, or provide any service or benefit which is different or provided in a different manner from that provided to others. Section 100.3(b)(2) provides that in determining the types of services or benefits that will be provided, recipients may not utilize criteria or methods of administration that have the effect of subjecting individuals to discrimination because of their race, color, or national origin. Title VI requires school districts to provide equal educational opportunity to English Language Learner (ELL) students, and to take affirmative steps to address the language needs of ELL students.¹

OCR determined that the School is located in District 2 in Manhattan. During school year 2015-

¹ See *Lau v. Nichols*, 414 U.S. 653 (1974). On January 5, 2015, OCR and the U.S. Department of Justice adopted and promulgated a “Dear Colleague Letter” entitled, “English Learner Students and Limited English Proficient Parents”, to clarify the responsibilities of recipients vis-à-vis Title VI and Limited English Proficient persons. The joint guidance provides an outline of the legal obligations of SEAs and school districts to ELL students under the civil rights laws. As applied to Title VI, the guidance is consistent with and clarifies previous Title VI guidance in this area.

2016, the School enrolled 658 students, of whom 42% are Hispanic, 24% are white, 22% are black, and 9% are Asian. Of these, there are 18 students (3%) who have been identified as eligible for and are receiving ELL language acquisition services.² OCR reviewed the School's language assistance plan (LAP)³, including (1) the School's ELL profile; (2) the School's language assistance team; (3) teacher qualifications; (4) ELL student demographics; (5) the School's home language breakdown; (6) the School's ELL student identification process; (8) the School's parent communication requirements; and (9) the School's ELL program model, a free-standing English as a New Language (ENL) push-in, pull-out model.⁴

OCR determined that the School administers the New York State English as a Second Language Achievement Test (NYSESLAT) annually to all ELL students, as part of its annual testing to identify and monitor the progress of ELL students. In accordance with New York State Education Department (NYSED) guidance, the School uses a student's NYSESLAT score to determine the level and amount of ESL instruction a student requires. OCR determined that in May 2015, the Student scored a 65 on the NYSESLAT, placing him at the "expanding" level of English language acquisition mastery. Based on this score, for school year 2015-2016, the Student was therefore entitled to 180 minutes per week (one unit of study) in ENL,⁵ integrated into English Language Arts (ELA) or other content areas, such as dual certification instruction in ELA, or push-in co-teaching by a certified ESL teacher in another content area. According to the School's LAP, ELLs at the expanding level in the high school "receive direct ENL instruction for 1 period a week and receive push in instruction for 2 periods a week."

OCR determined that during fall 2015, the length of each instructional period at the School was 51 minutes. The Student was scheduled to receive ESL services for three periods a week, for a total of 153 minutes of ESL services per week, fewer than the 180 minutes required by the Commissioner's regulation. OCR also determined that the Student received "pull-out" or "stand-alone" ENL services over this period of time, instead of the integrated ENL services required for a student at the expanding level of mastery, under the applicable NYSED guidance.

The Student's ESL teacher advised OCR that he provided pull-out instruction (stand-alone ENL) to the Student, on three days per week (once during physical education, on either Monday, Tuesday or Wednesday, and on both Thursday and Friday, during the Student's advisory period) over the period from September 2015 until the Student's xxxxxxxx xxx xx xxx xxxxxx, xx xx xxxxxx Xxxxxxx xx xxxx. The ESL teacher advised OCR that he "tried" to deliver the required ESL services to the Student over the period from September 2015 to January 2016. The Student

² This includes the Student.

³ This plan is found in the School's Department of English Language Learners and Student Support, Grades K-12 Language Allocation Policy 2015-2017, Part 154 Plan Requirements form. This form is completed pursuant to the Regulations of the Commissioner of the New York State Department of Education, Part 154, which require LEAs to develop a Comprehensive Plan to meet the educational needs of ELL students; submit an annual Data/Information Report; maintain the completed Comprehensive Plans on file in the LEAs' main office and make the plans available for review upon request by the New York State Education Department.

⁴ Pursuant to this model, the ENL teachers are supposed to pull students out of non-core classes to deliver ENL instruction, and also push-in to core classes to support ELLs and meet the mandated number of minutes.

⁵ NYSED issued guidance on May 15, 2015, interpreting the New York State Education Commissioner's regulations Part 154-2, ENL, which specifies that school districts in New York State must provide certain units of study and staffing requirements for students who achieve particular scores on the NYSESLAT. Students such as the Student, scoring at the "expanding" level of mastery, are entitled to one unit of study per week, or 180 minutes per week.

advised OCR that during some weeks he received ESL instruction, and during other weeks he did not. The Student stated that on 15 of approximately 30 occasions on which ESL instruction was scheduled from September 2015 to January 2016, the ESL teacher cancelled class or was absent from class, and no substitute ESL teacher was provided.

OCR determined that the ESL teacher did not maintain attendance records. The Xxxxxx Xxxxxx, who led the Student's advisory period on Thursdays and Fridays, informed OCR that she did not recall the Student being pulled out of advisory period for ESL instruction. The ESL teacher conceded that although the School's principal advised him that the complainant had requested that he sign the Student's planner each time he delivered ESL instruction, he frequently forgot to do so. The ESL teacher also conceded that on a certain number of occasions, he was absent,⁶ and no substitute teacher provided ESL instruction to the Student or other ESL students for his instructional period(s) on those occasions.⁷

The Principal of the School informed OCR that when the complainant contacted her with his concern that the Student was not receiving his required minutes of ESL instruction, she obtained confirmation from the ESL teacher via electronic mail (email) that the instruction was provided. OCR reviewed the email that allegedly served to confirm that the required services were provided. In the email, the ESL teacher asserted that the Student received the requisite instruction, either from him or from ESL teacher 2.⁸ However, both the ESL teacher and ESL teacher 2 stated that ESL teacher 2 did not provide any ESL instruction to the Student during school year 2015-2016.

OCR further determined that the following services outlined in the School's LAP as part of the School's alternative language program, were not provided to the Student and other students at the School in fall 2015: ongoing formative assessments that are analyzed to find areas of strength and weakness and to differentiate instruction; summative language assessments each semester to ensure that ELLs are appropriately evaluated in their home languages and in all four modalities of English acquisition throughout the school year; and maintenance of records of ELL family communication in the form of hard copies of meeting minutes, attendance, and contact logs in the ESL Coordinator's log.

On July 22, 2016, the NYCDOE agreed to implement the enclosed resolution agreement in order to resolve Allegation 1 without further investigation. OCR will monitor the implementation of the resolution agreement, which addresses the compliance concerns identified above.

With respect to Allegations 2-4, in analyzing whether retaliation occurred, OCR must first determine: (1) whether the complainant engaged in a protected activity; (2) whether the recipient was aware of the complainant's protected activity; (3) whether the complainant/alleged injured

⁶ OCR determined that the ESL teacher was absent on seven days during the time in which the Student attended the School.

⁷ OCR determined that there were three ESL teachers present in the School to provide services to the 18 ELL students during school year 2015-2016; however, two of the three ESL teachers also served as the School's "deans," and were responsible for discipline. Two ESL teachers advised OCR that they provided ESL during four instructional periods per day, and served as deans during other periods of the instructional day. The schedule for the Student's ESL teacher reflected only one period designated for ESL instruction.

⁸ The email stated, "He is getting his minutes, he just has to see [ESL teacher 2] and I, 3 periods a week."

party was subjected to an adverse action contemporaneous with, or subsequent to, the recipient’s learning of the complainant’s involvement in the protected activity; and (4) whether there is a causal connection between the protected activity and the adverse action from which a retaliatory motivation reasonably may be inferred. When there is evidence of all four elements, OCR then determines whether the recipient has a legitimate, non-retaliatory reason for the challenged action or whether the reason adduced by the recipient is a pretext to hide its retaliatory motivation.

OCR determined that the complainant engaged in protected activity during school year 2014-2015, when he complained to the Principal of the School about the Student’s ESL instruction, and what he perceived to be xxxxxxxxxx at the School. OCR determined that agents of the NYCDOE, including the Director of Enrollment, the School’s Principal, and the School’s xxxxxx xxxxxx were aware of the complainant’s protected activity.

With respect to Allegation 2, the complainant alleged that the NYCDOE discriminated against the Student on the basis of his disability, or in the alternative, retaliated against the Student for the complainant’s national origin and sex-based advocacy, by denying the Student’s request for a xxxxxxxx xxxxxxxx from the School.

Pursuant to the NYCDOE’s Chancellor’s Regulation A-101, IV.B, parents may request xxxxxxxx xxxxxxxxxx “xx xxxxxx xx xxxxxxxx xxxxxxxxxx xxxxx xxxx xxx xx xxxxxxxxxx xx x xxxxxx xx xxxxxx.” Xxxxxxxx xxxxxxxxxx xxxxxxxx xxxxxxxxxx “xxxx xxxxxxxx xxxxxxxxxxxxxxxx xxxxxx xx x xxxxxx xx xxx xxxxxxxx xxxxxxxxxxxxxx xxxxxxxxxx xxxxxxxx xxx xxxxxxxx xxxxxxxxxx xxx xxx xxxxxxxx xxx xxx xxxxxxxxxx xx xxxxxxxxxxxxxx.” The Director of Enrollment for the NYCDOE’s Manhattan Family Welcome Center (the Director) explained that in deciding whether to grant or deny a request for a xxxxxxxx xxxxxxxxxx xx xx xxxxxxxx xx xxxxxxxxxx xxxxxxxx xxx xxxxxxxx xxxxxxxx xxx xxxxxx xx xxxxxxxxxxxxxx xxxxxxxxxx xx x xxxxxxxx xx xxxxxxxxxx.

OCR determined that on December 4, 2015, the complainant made a request by email, that the NYCDOE grant the Student a xxxxxxxx xxxxxxxx from the School to School 2, based on xxxxxxxxxx xx xxxxxxxxxx xx xxxxx xxxxxxxxxxxxxx xxx Xxxxxxxx Xxxxxxxx Xxxxxxxx Xxxxxxxx (XXXX), and included a xxxxxxxxxxxxxx xxxxxx in support of the request. By email dated December 10, 2015, the Director notified the complainant that he had denied the request. In his email to the complainant, the Director stated, “Xxxx xxxxxxxxxxxxxx xxx xx xxxxxxxx xxxxxxxxxx, and do not necessitate . . . a xxxxxxxx xxxxxxxxxx.” The Director further advised the complainant that he would follow up with the Student’s xxxxxxxx to determine whether the xxxxxxxx could provide any additional information to support the request, as the documentation supporting it was insufficient at the time. The NYCDOE also asserted that the Director denied the xxxxxxxx because School 2 is a “screened school” with admission requirements, and the Student did not meet the admission requirements for School 2.⁹

⁹ OCR determined that in determining whether a student is eligible for admission, School 2 uses a matrix of grades (between 80-100 in core subject areas, namely ELA, mathematics, social studies and science), state administered ELA/Math test scores, attendance, and other factors. OCR further determined that the Student’s grades were in the 70th percentile range for all four core subject areas, and his test scores did not meet School 2’s requirements. The Director informed OCR that he had previously explained to the complainant during telephone calls on multiple occasions that the Student could not obtain a xxxxxxxx xxxxxxxx to a screened school whose admissions criteria the Student could not meet.

OCR determined that on or about January 15, 2016, the complainant renewed his request for a xxxxxxxx xxxxxxxx for the Student. The NYCDOE stated that on January 13, 2016, the complainant asserted that the Student had been xxxxxxxxxxxxxx and submitted corroborating documentation. Upon its review, the Office of Student Enrollment determined that a xxxxxxxx xxxxxxxx was warranted and invited the complainant to attend a meeting regarding high school placement options. The meeting was held on January 26, 2016. Based on the Student's academic interests and record, the Director offered four high school transfer options. The complainant selected the Xxxxxxxx Xxxxxxxxxxxx Xxxxxxxx (School 3). On or about January 26, 2016, the NYCDOE granted the Student a xxxxxxxx xxxxxxxx to School 3. The Director informed OCR that the second xxxxxxxx xxxxxxxx request was approved because the Student's xxxxxxxx xxxxxxxxxx xxx xxxxxxxx xx xxx xxxxxx xxxxx xx xxxxxxxxxxxxxx xxxxx xx xxxxxxxxxxxx. Specifically, the Director stated that since the initial request, the Student had been xxxxxxxxxxxxxxxxxx xxx xxxxxxxxxx xxxxxxxxxx xxxxxxxxxxxxxx xxxxx xxx xxxxxxxxxx xxxxxxxxxxxxxx xx xxxxxxxxxxxxxx xxx xxxxxxxxxx x xxxxx xxxxxx xxxxxxxxxxxxxx xxxxx xxxxxxxxxx xxx xxxxxxxxxx xx xxxxx xxxxxxxx. Accordingly, the Director determined that a xxxxxxxxxx xxxxxxxxxxxxxx was appropriate at that time.

OCR determined that during school year 2015-2016, of the 28 requests made for xxxxxxxxxxxxxxxxxxxxxx for high school students enrolled in District 2, the NYCDOE denied the requests of seven students who had not been determined to be eligible to receive special education and related aids and services, and whose parents had not engaged in protected activity. For all seven requests, the NYCDOE determined that the documentation submitted did not indicate that the student had a xxxxxxxxxx xxxxx that could be addressed through a xxxxxxxx xxxxxxxxxx and/or the requestor did not submit the required medical documentation. The Director informed OCR that at least one of the requestors (Student 2) requested a xxxxxxxxxx specifically to a screened school for which he did not meet the admissions criteria, and as a result, his request is still pending.¹⁰

Based on the foregoing, OCR determined that the NYCDOE proffered legitimate non-discriminatory and non-retaliatory reasons for denying the Student's request for a xxxxxxxx xxxxxxxxxx from the School to School 2; namely, the Student did not meet the admissions requirements for School 2 and the Student's reported xxxxxxxxxx xxxxxxxxxx would not have been addressed by approving the xxxxxxxxxx xxxxxxxxxx. OCR determined that the proffered reasons were not pretextual because the NYCDOE's actions were consistent with its policies, and other students who had not been determined to be eligible to receive special education and related aids and services and whose parents had not engaged in protected activity were treated similarly. Moreover, the NYCDOE subsequently granted the complainant's request for a xxxxxxxx xxxxxxxxxx for the Student to School 3, as the documentation submitted supported the need for such a xxxxxxxxxx and the Student met the admissions requirements for the school to which he sought to xxxxxxxxxx. Therefore, OCR determined that there was insufficient evidence to substantiate the complainant's allegation that the NYCDOE discriminated against the Student on the basis of his disability, or in the alternative, retaliated for the complainant's national origin

¹⁰ Unlike the Student, Student 2's xxxxxxxxxx xxxxxxxxxx request was supported by documentation sufficient to support a xxxxxxxxxx xxxxxx xx xxxxxxxxxx xxxxx; however, his request is pending because his parent(s) would not accept transfer xxxxxxxxxx to the receiving school offered by the Family Welcome Center.

and sex-based advocacy, by denying the Student’s request for a xxxxxxxx xxxxxxxx from the School to School 2. Accordingly, OCR will take no further action with respect to Allegation 2.

With respect to Allegation 3, the complainant alleged that the NYCDOE retaliated for the complainant’s national origin and sex-based advocacy by terminating the Student’s working relationship with a xxxxxx xxxx xxxxxx on November 6, 2015, and providing an unacceptable replacement. The complainant provided an email to OCR, dated November 6, 2015, from the School’s xxxxxx xxxxxx, stating that “per [the complainant’s] meeting earlier this week the principal has requested that I communicate with you rather than [the xxxxxx xxxx xxxxxx]. You may contact me if you wish for Xxxxxx Xxxxxx intervention or feedback regarding yourself or [the Student]. Moving forward please be aware that [the social work intern] has been told that she may not be in contact with you.”

The Student, the Principal, the School’s xxxxxx xxxxxx and the xxxxxx xxx xxxxxx all advised OCR that the xxxxxx xxx xxxxxx provided counseling services to the Student from September 2015 until he transferred to School 3 on or about January 26, 2016. OCR also reviewed the xxxxxx xxxx xxxxxx’ s contemporaneous notes, which corroborate the testimony of the witnesses.

OCR determined that on or about November 6, 2015, the Principal learned from the xxxxxx xxxxxx that the complainant was leaving inappropriate, extremely long voicemail messages on the xxxxxx xxx xxxxxx’ s cellphone in the middle of the night and calling her a “baby”. The Principal then directed the complainant not to communicate with the xxxxxx xxxx xxxxxx, and to contact the School’s xxxxxx xxxxxx, an employee of the School, regarding any further questions.

OCR must often weigh conflicting evidence in light of the facts and circumstances of each case and determine whether the preponderance of the evidence substantiates the allegation. Here, the preponderance of the evidence did not substantiate the complainant’s allegation that the NYCDOE terminated the Student’s working relationship with a xxxxxx xxxx xxxxxx on November 6, 2015, and provided an unacceptable replacement. To the contrary, the preponderance of the evidence indicated that the xxxxxx xxxx xxxxxx continued to provide counseling services to the Student until the Student transferred from the School on January 26, 2016.

Based on the above, OCR could not conclude that the NYCDOE terminated the Student’s working relationship with a xxxxxx xxxx xxxxxx alleged. Therefore, OCR determined that there was insufficient evidence to substantiate the complainant’s allegation that the NYCDOE retaliated for the complainant’s national origin and sex-based advocacy by terminating the Student’s working relationship with a xxxxxx xxxx xxxxxx on November 6, 2015, and providing an unacceptable replacement. Accordingly, OCR will take no further action regarding Allegation 3.

With respect to Allegation 4, the complainant alleged that the NYCDOE retaliated for the complainant’s national origin and sex-based advocacy by xxxxxxxxxxxx xxx xxxxxxxxxxxxxx xx XXX, in or around January 2016. Specifically, the complainant asserted that the School’s

xxxxxx xxxxxx manipulated the Student into saying xxxxxxxx xxxxxx about his xxxxxxxxxxxxxx
xxxx xxx xxxxxxxxxxxxxx in retaliation for the complainant’s advocacy.

The NYCDOE acknowledged that on or about January 8, 2016, the School xxxxxxxxxxx xxx
xxxxxxxxxxxxxxxx xx XXX for xxxxxxxxxxx xxxxx xxxxx, but asserted that it did so because
NYCDOE staff members had reason to xxxxxxx xxxxx xxxxx, and are mandated by the
Chancellor’s Regulation and applicable New York state law to xxxxxx xxx xxxxxxxxxxx xx
xxxxxxxx xxxxx xxxxx. NYCDOE staff advised OCR that on or about January 8, 2016, the
xxxxxx xxx xxxxxx providing counseling services to the Student noticed a xxx xxxxxx xx xxx
Xxxxxxxxx xxx and asked the Student about it. The Student responded that the xxxxxxxxxxx
xxx xxx xxx xxx xxx xxxxxxxxxxx xxx xxx xxxxxxxxxxxxxx xxx xxxxxxx xxx xx xxx xxx
xxxx xx xxxxx xxxxxxxx. The xxxxxx xxx xxxxxxx contacted the School’s xxxxxx xxxxxx,
who also interviewed the Student and obtained the same xxxxxx. Accordingly, consistent with
the requirement of the Chancellor’s Regulation X-XXX and New York State Xxxxxx Xxxxxxxxx
Law § XXX, the School xxxxxxxxxxx the xxxxxxxxxxx xxxxx xxxxx to the State of New York.¹¹

In support of his allegation, the complainant stated that there had never xxx x xxx xx xxx
Xxxxxxxxx’x xxx, but if xxxxx xxx xxx xxx, (a) it would have xxx xxx xxx Xxxxxxxxx’x
xxxxxxxxxxxxxxxx xx xxxxxxxxxxx xxxxx xxxxxx, and (b) it was inappropriate for the NYCDOE to
make the xxxxxx to XXX xxxxx xx xxxxxxxxxxx xxx xxxxxxxxxxxxxxxxxxx xx xxxxx xxx x xxxxxx xx
xxxxxxxx.

OCR determined that during school year 2015-2016, the School made xxxxxxx to XXX for
xxxxxxxxxxxxxxxx xxxxx xx xxxxxxx regarding 19 students. The Principal asserted that none of the
parents in those xxxxxxx had engaged in protected activity. OCR did not find any evidence to
contradict the Principal’s assertion.

Based on the foregoing, OCR determined that the NYCDOE proffered a legitimate non-
retaliatory reason for xxxxxxxxxxx xxx xxxxxxxxxxxxxx xx XXX, in or around January 2016;
namely, staff xxxxxxx x xxx xxxxxx xx xxx Xxxxxxxxx’x xxx, and when questioned, the
Student xxxxxxx Xxxxxx xxxxx xxx xxxxxxxxxxxxxx xxx xxxxxxx xxx. OCR determined
that the proffered reason was not a pretext for retaliation, because the NYCDOE acted in
accordance with its policies and state law, and had xxxxxxx other, similarly situated xxxxxxx
xx XXX, none of whom had engaged in protected activity. Therefore, OCR determined that
there was insufficient evidence to substantiate the complainant’s allegation that the NYCDOE
retaliated for the complainant’s national origin and sex-based advocacy, by xxxxxxxxxxx xxx
xxxxxxxxxxxxxxxx xx XXX, in or around January 2016. Accordingly, OCR will take no further
action with respect to Allegation 4.

¹¹ OCR determined that the NYCDOE Chancellor’s Regulation X-XXX reprises the requirements of New York
State Xxxxxx Xxxxxxxxx Law § XXX, stating that “xxxx x xxxxx xxxxx xxxxxx x xxxxxxxxxxx xxxxxxxxxxx xx xxx xx
xxx xxxxxxxxxxx xx xxxxxxxxxxx xxxxx xxxxxxxxxxx xxx xxx xxxxxxxxxxx xxx xxxxxxxxxxx xxxxx xx xxxxxxx
xxxx xxx xxxxx xxx xxx xxxxxx, xxxxxxxxxxx xx xxxxxxxxxxx (“xxxx xxxxx”), xxx xxxxxxxxxxx xx
xxxxxxxx xx xxxxx xxxxxx xxx xxxxxx, xx Xxx Xxxxx Xxxx, xx XXX, xxx xxxxxxxxxxxxxxxxxxx.

This letter should not be interpreted to address the NYCDOE'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 NYCDOE 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 about OCR's determination, please contact James Moser, Compliance Team Attorney, at (646) 428-3792 or james.moser@ed.gov; or Lauren Numeroff, Compliance Team Attorney, at (646) 428-3895 or lauren.numeroff@ed.gov.

Sincerely,

/s/

Timothy C. J. Blanchard

Encl.