

July 2, 2019

Eric Knuth  
Superintendent of Schools  
Altmar-Parish-Williamstown Central School District  
639 County Route 22  
Parish, New York 13131

Re: Case No. 02-19-1124  
Altmar-Parish-Williamstown Central School District

Dear Superintendent Knuth:

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 Altmar-Parish-Williamstown Central School District (the District). The complainant alleged that the District discriminated against her daughter (the Student) and other students, on the basis of race, by failing to respond appropriately to reports of racial discrimination and harassment that she, the Student, and other students made, from September through December 2018 (Allegation 1). The complainant also alleged that the District retaliated for her disability and/or race-related advocacy, by banning her from attending all District home athletic games, effective XXXXX, 2018 (Allegation 2); and, reporting her to Child Protective Services (CPS), on or about XXXXX, 2018 (Allegation 3).

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). In addition, 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. OCR also is responsible for enforcing Title II of the Americans with Disabilities Act of 1990 (the 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 VI, Section 504 and the ADA.

The regulation implementing Section 504, at 34 C.F.R. § 104.61, 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. The regulation implementing the ADA contains a similar provision at 28 C.F.R. § 35.134.

During the course of the investigation, OCR reviewed documentation that the complainant, the Student, and the District provided. OCR also interviewed the complainant, the Student, District staff and administrators, and a member of the District’s Board of Education (the Board). OCR made the following determinations.

OCR determined that the Student was enrolled in the District during school year 2018-2019. The Student is biracial.

With respect to Allegation 1, the complainant alleged that the District discriminated against the Student and other students, on the basis of race, by failing to respond appropriately to reports of racial discrimination and harassment that she, the Student, and other students made, from September through December 2018. Specifically, the complainant alleged that she, the Student, and other students made the following reports to District staff and administrators regarding alleged race discrimination and harassment:

- Immediately after a game on or about XXXXX, 2018, in which the Student participated, the complainant reported to the District’s athletic director (AD) that during the game, a District employee, who also is a parent of a student on the same sports team as the Student (parent 1), yelled the following at the Student: the “n-word,” “that bitch always has the ball XXXXX,” and “the color of [the Student’s] skin is what gets [her] playing time” (report 1).
- During a Board meeting on XXXXX, 2018, the Student read a speech and hand-delivered a letter signed by the Student, two XXXXX (students A and B), and two XXXXX students (students C and D), regarding concerns about racial harassment and discrimination (report 2).
- During an in-person meeting with the District superintendent in early December 2018, the complainant and the Student reported that the XXXXX inappropriately touched student A’s hair because of her race in September 2018; and that on two occasions in December 2018, fellow students used the “n-word” (report 3).<sup>1</sup>
- By email to the AD, the superintendent, and other District administrators, on XXXXX, 2018, the complainant reported “bullying,” during a XXXXX game, by a District parent (parent 2), who “yell[ed] about the girls having to play defense 5 or more times. Then

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<sup>1</sup> The complainant did not recall the date of the meeting; she stated that the Student’s aunt and grandfather also attended this meeting.

sa[id] something to the effect of ‘watch that corner.’” In her email, the complainant stated, “I’m betting because they are black, nothing will be done” (report 4).

The regulation implementing Title VI, at 34 C.F.R. § 100.3(a), states that no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program provided by a recipient of financial assistance from the Department. Racial harassment that creates a hostile environment is a form of discrimination prohibited by Title VI and its implementing regulation. Harassing conduct can include verbal, written, graphic, physical or other conduct by an employee, a student, or a third party, as well as conduct that is physically threatening, harmful, or humiliating. Harassment can create a hostile environment if it is sufficiently serious so as to interfere with or deny a student’s participation in or receipt of 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 that was reasonably calculated to stop the harassment, prevent its recurrence, and as appropriate, remedy its effects. In determining whether the responsive action was reasonable, OCR will consider, among other things, whether the responsive action was consistent with any established institutional policies.

OCR determined that the District’s Policy 7531, “Dignity for All Students (D.A.S.A.) Student Harassment and Bullying Prevention and Intervention” (the DASA Policy) governs the District’s process for reporting and investigating incidents of raced-based harassment, bullying, and/or discrimination.<sup>2</sup> Pursuant to the DASA Policy, “[a]ll District staff who are aware of harassment, bullying, and/or discrimination, are required to orally report the incident(s) within one school day to the Principal, Superintendent, or his/her designee and report it in writing within two school days after making an oral report.” OCR determined that anyone who is concerned about an incident can complete the Dignity for All Students Act Reporting form (DASA form), which is available on the District’s website.<sup>3</sup> Additionally, the DASA Policy states that any staff member who has been made aware of an incident(s) must complete and return the DASA form to the DASA Coordinator (the coordinator), a counselor, or the school’s main office.<sup>4</sup> The DASA Policy further states that the principal, superintendent, or their designee will lead and/or supervise investigations into harassment, bullying, and/or discrimination; and, ensure such investigations are completed promptly after receipt of any such reports. The superintendent advised OCR that it is District practice to have building-level coordinators conduct investigations into individual allegations, and that a principal would typically be charged with investigating any school-wide allegations. The DASA Policy states that in the event that an investigation reveals harassment, bullying, and/or discrimination, the District will take prompt action reasonably calculated to end the harassment, bullying, and/or discrimination; eliminate any hostile environment; create a more positive school culture and climate; prevent recurrence of the behavior; and, ensure the safety of the student or

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<sup>2</sup> See [https://boardpolicyonline.com/?b=altmar\\_parish\\_williamstown&s=32522](https://boardpolicyonline.com/?b=altmar_parish_williamstown&s=32522) (last visited on June 20, 2019)

<sup>3</sup> See <https://www.apwschools.org/Page/1137> (last visited on June 20, 2019)

<sup>4</sup> The DASA form includes the date of the report; the name of the reporter; the names of the victim and alleged offender(s); the protected basis of the report (e.g. race, disability, religion, sexual orientation, etc.); the location of the incident; the nature of the incident; a description of the incident; and, identity of any witness(es).

students against whom such harassment, bullying, and/or discrimination was directed. The DASA Policy also prohibits retaliation.

With respect to report 1, the complainant alleged that immediately after a game on or about XXXXX, 2018, she reported to the AD that during the game, parent 1 yelled the following at the Student: the “n-word,” “that bitch always has the ball XXXXX,” and “the color of [the Student’s] skin is what gets [her] playing time.” The Student provided a different account of what occurred, informing OCR that the only racially inappropriate statement parent 1 made during the game was stating: “the color of your skin is what gets you playing time.” The Student stated that she asked to be taken out of the game because of parent 1’s comment. The Student stated that she reported the comment to the superintendent during a meeting several days later that included only the Student and the superintendent. The complainant stated that at the meeting between the Student and the superintendent regarding report 1, the superintendent stated that he “would help them out”; however, the complainant stated that the situation only got worse. The complainant acknowledged that the AD informed her that the District would monitor parent 1’s conduct at future athletic events; however, the complainant stated that the District never followed-up with her or the Student about any investigation the District conducted into report 1. The complainant acknowledged that she did not file a formal complaint pursuant to the DASA Policy regarding report 1, but stated that she had filed two DASA reports during school year 2017-2018 and was not satisfied with the outcome of those investigations.<sup>5</sup> The complainant further stated that when she mentioned any concerns about racial harassment, District administrators told her that her concerns had already been investigated in the previous DASA investigations.

The AD denied that after a game on or about XXXXX, 2018, either the complainant or the Student reported to him that during the game, parent 1 yelled the “n-word,” “that bitch always has the ball XXXXX,” and “the color of [the Student’s] skin is what gets [her] playing time,” or any other racial slurs at the Student. The AD advised OCR that immediately after a game on XXXXX, 2018, the complainant and the Student complained to him only that parent 1 had made “inappropriate comments” to the Student during the game.

OCR determined that by email on the evening of XXXXX, 2018, the AD informed the superintendent that the complainant had lodged a complaint against parent 1 for “saying inappropriate comments during the game.” The complainant was copied on this email. The AD’s email also stated that he would get a written statement from the Student the following morning, and would then conduct an investigation. The superintendent denied meeting with the Student or the complainant about this alleged incident.

OCR determined that approximately two hours later on XXXXX, 2018, the Student sent an email to the AD and the complainant, in which she wrote, “[a]s I was running XXXXX I heard [parent 1] yell ‘pass it to the center, pass it to the center.’ I then tried to pass it up but it bounced off the

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<sup>5</sup> OCR determined that the District conducted two formal DASA investigations regarding the Student and student A during school year 2017-2018. On XXXXX, 2017, the District completed an investigation and determined that there was insufficient evidence of discrimination or harassment on the basis of race to substantiate the DASA complaint regarding alleged inappropriate statements on social media by students and comments on exchanges between parents. On XXXXX, 2017, the District completed an investigation and determined that students on a school bus made inappropriate statements on the basis of race, and those students were disciplined in accordance with the District’s Code of Conduct. The complainant was notified of the results of both investigations by letter.

defense and went out. I then heard ‘jeez that girl[’]s always gotta have that stupid ball XXXXX.’ I continuously hear[d] my name coming from her and this was the breaking point.” The Student’s email did not allege or otherwise include any information indicating that parent 1 had made statements that were racial in nature or that the statements parent 1 made were due to the Student’s race.

The AD stated that the following morning, on XXXXX, 2018, he interviewed parent 1 and another student-athlete’s parent, who was near parent 1 during the game; both denied that parent 1 had made any inappropriate remarks. The AD stated that he also spoke with the coach of the team, who stated that he did not hear and was not otherwise made aware of any inappropriate comments being directed at the Student. The coach also stated that he did not know why the Student asked to be removed from the game but noted that students frequently ask to be substituted during games. The AD stated that although he found no evidence to support the allegations, he nevertheless XXXXX of all home games to monitor the parents for any inappropriate interactions with players. The AD did not notify the complainant about the outcome of his investigation.

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 that the complainant or the Student reported that parent 1 had directed racially derogatory statements at the Student during a game on XXXXX, 2018. Nevertheless, OCR determined that the District responded to the complainant’s and Student’s concerns about spectators’ comments by interviewing parent 1, another parent witness, and the coach. The District also ensured that there would be a District staff member present at future athletic events to monitor parent behavior.

With respect to report 2, the complainant alleged that during a Board meeting on XXXXX, 2018, the Student gave a speech during open session, and hand-delivered a letter to the Board regarding concerns about racial harassment and discrimination signed by the Student and students A, B, C and D. The complainant stated that despite inquiries that she and the Student’s grandfather made to the Board, the superintendent, and an assistant superintendent, on behalf of the students who co-signed the letter, the District took no action regarding the allegations of race discrimination and harassment that were raised in the Student’s speech or the co-signed letter.

OCR reviewed a copy of the text of the speech that the Student read to the Board.<sup>6</sup> In the speech, the Student stated that the District “not only condones the bullying of racist acts, but in a lot of cases now facilitates it”; students are told XXXXX; are subjected to comments such as XXXXX; are called the n-word or overhear it in the hallway XXXXX and no one stops it; students are berated, not believed or retaliated against for coming forward; “being black makes you more guilty”; and, “punishments aren’t the same.” OCR also reviewed a copy of the letter delivered to the Board, which included allegations that District minority students hear racial slurs daily; are punished more harshly for misconduct; are not believed when making reports to administrators; are harassed by parents and students; and, are “being discriminated against at every turn” in the District.

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<sup>6</sup> OCR read the text to the superintendent and a member of the Board who attended the meeting on November 15, 2018. Both confirmed that the text of the speech sounded familiar and was what they recalled the Student had stated during the Board meeting.

The superintendent stated to OCR that he met with the Student shortly after the Board meeting to discuss the Student's concerns; he did not recall the date of the meeting. The superintendent stated that the Student did not provide any specific details regarding her allegations, such as the names of individuals who allegedly made racially derogatory comments, that would warrant an investigation or further District action. The superintendent also stated that he did not speak with the other student signatories about the concerns raised in the letter because he had not received a copy of the letter from the Board; therefore, he did not know the names of the other signatories. OCR determined that the superintendent did not request a copy of the letter from the Board or ask the Student for the names of the other signatories. The superintendent did not complete a DASA form or refer the matter to the coordinator.

OCR determined that by letter dated XXXXX, 2018, the superintendent provided a response to concerns the Student raised around this period of time.<sup>7</sup> In the letter, he stated that "anything reported to [the] administration will be always thoroughly investigated and dealt with appropriately... Racism will not be tolerated at [the District] but our ability to act is limited when we are not made aware of incidents as they happen."

OCR determined that the complainant and the Student's grandfather thereafter made inquiries regarding the District's response to the concerns the Student raised in her speech and the concerns raised in the letter that was given to the Board, to which the District did not respond.<sup>8</sup> The complainant acknowledged that she did not file a formal complaint pursuant to the DASA Policy regarding report 2. The District took no further action regarding report 2.

With respect to report 3, the complainant alleged that during an in-person meeting with her, the Student, the Student's aunt, the Student's grandfather, and the superintendent, in early December 2018, she and the Student reported two instances of fellow students using the "n-word" near the Student; she did not report that the racial slur was directed at the Student. The Student stated that in this meeting, she informed the superintendent that the first incident occurred a few days before the meeting, and involved a student (student E) walking up to the Student's friend (student F) and saying, "what's up my nigga?"<sup>9</sup> The Student stated that she provided the superintendent with the name of a student witness to this incident (student G). The Student stated that the second incident occurred on the same date as the meeting with the superintendent; however, the Student could not recall what she told the superintendent about the incident, the details of the incident, or the context in which the word was used. The Student also stated that she told the superintendent that she did not know the names of the students involved in the second incident but described what they were wearing and the approximate time when the slurs were said in her vicinity. The complainant stated

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<sup>7</sup> The superintendent's letter primarily addressed a concern the Student had raised regarding the complainant's ban from all District home athletic games, which is discussed in Allegation 2 below. The superintendent's letter was not clear as to whether it also was addressing the concerns raised by the Student at the Board meeting held on XXXXX, 2018.

<sup>8</sup> For example, on XXXXX, 2018, the Student's grandfather wrote the Board stating that "myself, my daughter and granddaughters all came to the last meeting a month ago and have yet to be contacted in regard[s] to our questions and concerns... I feel a month passing on bullying and harassment claims is an unreasonable and absurd time frame without a response."

<sup>9</sup> The Student stated that she approached student E and told him "you can't say that," to which student E responded, "I can say that because I said [the n-word] with an 'a' not the 'er.'"

that during this meeting, she reported to the superintendent that in September 2018, the XXXXX inappropriately touched student A's hair because of student A's race. The complainant did not provide the names of any witnesses to this alleged incident. The complainant further reported that during this meeting, the superintendent stated, "if your kids don't get an [athletic] award, it's not because they're black." The complainant asserted that the superintendent's statement was racially discriminatory. The complainant acknowledged that she did not file a formal complaint pursuant to the DASA Policy regarding report 3. Neither the complainant nor the Student could provide the names of any witnesses (other than the Student's aunt and grandfather) or any other information to substantiate that this meeting with the superintendent occurred.

The superintendent denied meeting with the complainant, the Student, the Student's grandfather and the Student's aunt in or around this time. The superintendent stated that he typically would have had the District clerk attend such a meeting to take notes, and there is no record of such a meeting. The superintendent also denied that the Student or the complainant ever reported that two students used racial slurs, as alleged, or that the Student provided the name of a witness to any such incident. The superintendent further denied stating, "if your kids don't get an athletic award, it's not because they're black" as alleged. The superintendent stated that he had some recollection of the complainant's stating in an email that someone had touched student A's hair, but he could not locate any reports regarding this alleged incident and did not recall any details or the District's response, if any.

OCR interviewed the XXXXX, who denied touching student A's hair, as alleged. The XXXXX recalled complimenting student A on her new hair color in September 2018; he asserted that the compliment was solely related to student A's changing her hair color and was unrelated to her race. The complainant stated that she reported her concern about the XXXXX touching student A's hair to the coach. The coach advised OCR that he could not recall the complainant's raising any such concern.

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 that the complainant or the Student reported to the superintendent that fellow students had used racial slurs near the Student in or around early December 2018, or that the XXXXX had touched student A's hair because of her race; nor did the preponderance of the evidence substantiate that the superintendent had made a comment regarding athletic awards.

With respect to report 4, OCR determined that by email on XXXXX 2018, the complainant reported to the AD, the superintendent, and other District administrators, that an incident of "bullying" occurred during a game on or about XXXXX 2018, in which an unidentified District parent (parent 2) "yell[ed] about the girls having to play defense 5 or more times. Then sa[id] something to the effect of 'watch that corner.'" The complainant included a link to a video of the alleged bullying incident and stated, "I'm betting because they are black, nothing will be done." The complainant acknowledged that parent 2 had not uttered racial slurs during this incident, nor did she report to the District that parent 2 directed racial slurs towards the Student regarding this incident. The complainant also acknowledged that she did not file a formal complaint pursuant to the DASA Policy regarding report 4.

By email to the complainant the following morning, the AD responded, stating that he could not open the video and asked that it be sent in another format.<sup>10</sup> The complainant refused the request. The AD advised OCR that he could not recall whether he spoke with any spectators who might have witnessed this alleged incident. OCR determined that, even taking as true that the statement was made, such a statement, without more, does not evidence any racial animus towards the Student.

Based on the foregoing, with respect to report 1, OCR determined that the preponderance of the evidence did not substantiate that the complainant or the Student reported that parent 1 had directed racially derogatory statements at the Student during a game on XXXXX, 2018. Nevertheless, OCR determined that the District investigated the complainant's and Student's concerns about spectators' comments and took action to ensure that there would be a District staff member present at future athletic events to monitor parent behavior. With respect to report 3, OCR determined that the preponderance of the evidence did not substantiate that the complainant or the Student reported to the superintendent that fellow students had used racial slurs near the Student in or around early December 2018, or that the XXXXX had touched student A's hair because of her race; nor did the preponderance of the evidence substantiate that the superintendent had made a comment regarding athletic awards. OCR investigated the complainant's allegation that the XXXXX touching of student A's hair was discriminatory on the basis of race and found no evidence of racial animus regarding the alleged incident. With respect to report 4, OCR determined that, even taking as true that the statement was made, such a statement, without more, did not evidence any racial animus towards the Student. Prior to OCR's completing the investigation, the District signed the enclosed agreement on June 28, 2019, to resolve the portion of Allegation 1 that pertains to report 2. OCR will monitor the implementation of the resolution agreement.

With respect to Allegation 2, the complainant alleged that the District retaliated for her disability and/or race-related advocacy, by banning the complainant from attending all District home athletic games, effective XXXXX, 2018. In analyzing whether retaliation occurred, OCR must first determine whether the three prima facie elements of retaliation can be established: (1) whether a recipient or other person subjected an individual to an adverse action; (2) whether the recipient or other person (a) knew that the individual engaged in a protected activity or (b) believed that the individual might engage in a protected activity in the future; and, (3) there is some evidence of a causal connection between the adverse action and protected activity. When a prima facie case of retaliation has been established, OCR then determines whether there is a facially legitimate, non-retaliatory reason for the adverse action; and if so, whether the facially legitimate, non-retaliatory reason is a pretext for retaliation.

The complainant asserted that in a letter from the superintendent, dated XXXXX 2018, she was notified that she was banned from attending home athletic events. The complainant asserted that although she was told that she is "a bully because [she] said something to a student at some time" at an away XXXXX game, she was never told the reasons she was given the ban. The complainant also asserted that a grandparent of another student-athlete who cursed at the complainant at an

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<sup>10</sup> OCR attempted to review the video from the copy of the link the complainant provided the District and received an error message.

athletic event on XXXXX, 2018, was not banned. The complainant asserted that the grandparent had not engaged in protected activity.

OCR determined that the complainant engaged in protected activity by advocating on behalf of her children during the previous school year, 2017-2018; including filing race-related DASA complaints in fall 2017, and engaging in disability-related advocacy while invoking the ADA in requests to the AD and former superintendent to launder athletic jerseys at home in XXXXX 2017. OCR determined that the District was aware of this protected activity.

OCR determined that the District’s Code of Conduct (the code) governs the behavior and discipline of visitors. Pursuant to the code, “all visitors will conduct themselves in accordance with the normal conventions of respect, responsibility, and sportsmanlike conduct. The code prohibits visitors from disrupting the orderly conduct of school programs or other school activities and refusing to comply with any reasonable order of identifiable school district officials performing their duties. The code establishes penalties for visitors who engage in prohibited conduct, including withdrawing authorization for parents/visitors to remain on or at (and/or return to) school grounds or school functions. With respect to athletic events, the superintendent stated that, in practice, if there is a single incident involving a visitor at a District athletic event, the site supervisor is responsible for addressing the incident; however, if visitor misconduct at athletic events is pervasive, the superintendent is responsible for addressing the conduct.

OCR determined that by letter, dated XXXXX, 2018, the superintendent informed the complainant that she was banned from attending home athletic events until further notice. The letter cited several incidents of the complainant’s inappropriate conduct in violation of the code; namely, an incident of the complainant’s speaking negatively about a student-athlete (student H) at a recent XXXXX game; and, past incidents wherein the complainant “insulted and screamed at” student H. In the letter, the superintendent referred to discussions he and two previous superintendents had had with the complainant through the years about her “abusive behavior towards student-athletes and their parents.” The letter states that, despite these prior conversations, the complainant continued to engage in such behavior.<sup>11</sup>

The superintendent and the AD explained to OCR that the complainant’s ban was the result of the complainant’s persistent inappropriate behavior at games, including making disparaging comments about student-athletes within their hearing; and, creating conflict with students, parents and other spectators, despite multiple warnings dating back to 2016. The District provided to OCR a copy of a XXXXX, describing the complainant’s behavior. The alleged behavior included being a XXXXX because of the complainant’s behavior.<sup>12</sup>

The superintendent stated that no spectators other XXXXX, nor had any other spectator or parent engaged in conduct similar to that of the complainant. With regard to the incident that allegedly occurred on XXXXX, 2018, in which a grandparent of another student-athlete (the grandparent)

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<sup>11</sup> According to the letter, this behavior included speaking negatively of District children; “lambasting” coaches and staff on social media; and, “creating an environment where children have become nervous, distressed and even unwilling to participate in athletics for fear of interactions with [the complainant].” The District provided to OCR a XXXXX

<sup>12</sup> XXXXX

cursed at the complainant at an athletic event and was not banned, the AD stated that he witnessed the incident. The AD denied hearing the grandparent curse at the complainant, as alleged. The AD stated that the complainant inserted herself into a conversation the grandparent was having with other spectators; and, the grandparent became irate and began yelling at the complainant because he was not pleased with what she was saying. The AD stated that the complainant did not yell back at the grandparent or engage in any inappropriate conduct during this incident. The AD stated that he intervened to stop the grandparent's behavior and gave the grandparent a verbal warning after the game. The grandparent apologized to the AD for his behavior. The AD stated that in contrast to the complainant's ongoing behavior at sporting events, this was the grandparent's first and only misconduct at a sporting event.

OCR determined that by letter dated XXXXX, 2019, the superintendent informed the complainant that the spectator ban had been lifted. The letter noted that “[a]ny further instances of negative interactions with students, parents, or staff will not be tolerated and will result in your immediate removal for the remainder of the school year.” The superintendent and the AD stated that, since her reinstatement, the complainant has not caused any disruptions at athletic events or XXXXX.

Based on the foregoing, OCR determined that the District proffered a legitimate, non-retaliatory reason for banning the complainant from attending all District home athletic games from XXXXX, 2018, through XXXXX, 2019; namely, the complainant engaged in inappropriate behavior toward student-athletes on XXXXX, and before, during, and after athletic events, from 2016 through the date the ban was issued. OCR determined that the reason was not a pretext for retaliation, as the complainant's behavior was well-documented and the District's action was consistent with the code. Moreover, OCR determined that the grandparent was not similarly situated to the complainant; and, found no other similarly situated individuals who were treated more favorably. Therefore, OCR determined that there was insufficient evidence to substantiate the complainant's allegation that the District retaliated for her disability and/or race-related advocacy, by banning the complainant from attending all District home athletic games effective XXXXX, 2018. Accordingly, OCR will take no further action with respect to Allegation 2.

With respect to Allegation 3, the complainant alleged that the District retaliated for her race-related advocacy, by reporting her to CPS, on or about XXXXX, 2018. The complainant asserted that in a telephone conversation with the assistant superintendent on XXXXX, 2018, she complained that the District was not responding to or otherwise intervening in the race-based harassment her children were suffering. The complainant stated that on the next day, a representative from CPS came to her house in response to a report the assistant superintendent had made to CPS that the Student had XXXXX, and that the complainant, the Student's father, grandfather, and grandmother were not XXXXX taking care of the Student. The complainant stated that the report to CPS was baseless, as the Student had just been to the XXXXX and had XXXXX.

OCR determined that District Policy 7530, Child Abuse, Maltreatment or Neglect (Policy 7530), governs the referral of matters to CPS. Pursuant to Policy 7530, and the District's "Summary Guide for Mandated Reporters" (the guide), District officials, including teachers, coaches and administrators, who have reasonable cause to know or suspect that a child has been subjected to abuse or maltreatment, including that the parent or other person legally responsible for a child is responsible for harming that child or placing that child in imminent danger of harm," must

immediately report the suspicion to the New York State Central Register for Child Abuse and Maltreatment. The superintendent stated that because school officials are “mandated reporters” a District administrator cannot override another school officials’ belief that a CPS report is required.

The assistant superintendent acknowledged that she contacted CPS by telephone on XXXXX, 2018, to report the complainant for possible maltreatment of the Student. The assistant superintendent denied that she called CPS in retaliation for the complainant’s disability and/or race-related advocacy. She stated that she made the report because she was concerned about a statement that the complainant made during the previous day’s telephone conversation. The assistant superintendent stated that during the telephone conversation on XXXXX, 2018, the complainant spoke about her dissatisfaction with the District’s response to her reports of racial harassment, and asked what it would “take for the District to respond to bullying? Is it going to take [the Student] to XXXXX to do something?” The assistant superintendent informed OCR that she asked the complainant whether this was a genuine concern of hers, and the complainant responded XXXXX. The assistant superintendent stated that, in addition to the complainant’s confirmation that she was concerned about the possibility of the Student’s XXXXX, the Student also had sent an email to her on XXXXX, 2018, prior to her conversation with the complainant, that suggested XXXXX. In the email to the assistant superintendent, in response to the assistant superintendent’s refusal to lift the complainant’s ban from home games, the Student wrote, “you in administration would like to see a noose around our necks and watch us hung up over the basketball nets.” The assistant superintendent stated that although she was not certain whether the situation warranted a referral to CPS, she did not want something to happen to the Student if she failed to take action. Therefore, the assistant superintendent contacted CPS to inquire whether a referral was appropriate since she was not alleging abuse or maltreatment but was calling to report a XXXXX.<sup>13</sup> The assistant superintendent stated that the CPS representative accepted the report.

The District advised OCR that it does not maintain records of parents/guardians whom District staff have referred to CPS. The assistant superintendent stated that this was the only instance of possible student XXXXX of which she was made aware, and the only time she has contacted CPS since she began work in the District in summer 2018.

Based on the foregoing, OCR determined that the District proffered a legitimate, non-retaliatory reason for reporting the complainant to CPS; namely, the complainant’s and the Student’s statements regarding the Student’s possible XXXXX aroused the assistant superintendent’s concern that the Student would XXXXX. OCR determined that the reason was not a pretext for retaliation, as it was not disputed that the complainant and the Student made the statements at issue; and, the assistant superintendent’s referral was consistent with Policy 7530 and the guide. OCR found no similarly situated parent who was treated more favorably than the complainant. Therefore, OCR determined that there was insufficient evidence to substantiate the complainant’s allegation that the District retaliated for her disability and/or race-related advocacy, by reporting the complainant to CPS on or about XXXXX, 2018. Accordingly, OCR will take no further action with respect to Allegation 3.

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<sup>13</sup> The assistant superintendent stated that prior to calling CPS, she informed the superintendent that she was going to make a report.

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 happens, the individual may file a 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 that, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

The complainant has a right to appeal OCR’s determination regarding the portion of Allegation 1 that pertains to reports 1, 3, and 4, and Allegations 2 and 3, within 60 calendar days of the date indicated on this letter. In the appeal, the complainant must explain why the factual information was incomplete or incorrect, the legal analysis was incorrect, or the appropriate legal standard was not applied; and, how correction of any error(s) would change the outcome of the case. Failure to do so may result in dismissal of the appeal. If the complainant appeals OCR’s determination, OCR will forward a copy of the appeal form or written statement to the recipient. The recipient has the option to submit, to OCR, a response to the appeal. The recipient must submit any response within 14 calendar days of the date that OCR forwarded a copy of the appeal to the recipient.

If you have any questions regarding OCR’s determination, please contact David Krieger, Compliance Team Attorney, at (646) 428-3893 or [david.krieger@ed.gov](mailto:david.krieger@ed.gov); or Jonathon LeBeau, Compliance Team Investigator, at (646) 428-3790 or [jonathon.lebeau@ed.gov](mailto:jonathon.lebeau@ed.gov).

Sincerely,

/s/

Timothy C.J. Blanchard

Encl.