

RESOLUTION AGREEMENT

Newark Public Schools Compliance Review 02-20-5001

The Newark Board of Education (the District) enters into this Resolution Agreement (the Agreement) to resolve the violations and compliance concern that the Office for Civil Rights (OCR) of the U.S. Department of Education (the Department) identified in Compliance Review No. 02-20-5001. This review evaluated the District's compliance with Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. §§ 1681-1688, and its implementing regulations at 34 C.F.R. Part 106, with respect to the District's policies, procedures, and responses to student-to-student and employee-to-student sexual harassment. Title IX and its regulations prohibit discrimination on the basis of sex, including sexual harassment, in any education program or activity operated by a recipient of federal financial assistance from the Department. The District agrees to the terms of this Agreement without admitting any violation of Title IX or any other law. In consideration of the District's agreement to these terms, provided that OCR finds no noncompliance with the terms of this Agreement or the Title IX statutory or regulatory obligations at issue in Compliance Review No. 02-20-5001 after execution of this Agreement, OCR agrees to take no enforcement action with respect to any matter within the scope of Compliance Review No. 02-20-5001, except as set forth herein.

Each item of the Agreement applies to all District-operated schools.

I. COORDINATION OF COMPLIANCE WITH TITLE IX

- A. The District will notify District employees, students, and their parents¹ of the District's designated Title IX Coordinator(s) by updating its website to include the telephone number, email address, and office location for the Title IX Coordinator, and by including this information in its updated grievance procedures as required in Item II.
- B. The District will ensure that the employee(s) designated as its Title IX Coordinator(s) coordinates its efforts to comply with and carry out its responsibilities under Title IX, including coordinating its Title IX investigations of complaints and reports of conduct that could constitute student-to-student or employee-to-student sexual harassment.
- C. The District will ensure that the Title IX Coordinator(s) reports directly to the Superintendent and has the appropriate authority to coordinate its compliance with Title IX effectively.
- D. The District will notify all of its employees in writing that they must promptly notify the Title IX Coordinator(s) of all Title IX reports or complaints of which they are aware.
- E. The Title IX Coordinator(s) will develop a monitoring program to assess the effectiveness of the District's overall Title IX anti-discrimination efforts. At a minimum, the Title IX Coordinator(s) or qualified designee(s) will annually: review all reports and complaints of discrimination on the basis of sex, including allegations of sexual harassment by students and employees; review all information collected during

¹ The term "parent" in this Agreement includes legal guardians of all District students.

the climate surveys required by Item VII; compile, evaluate, and analyze all surveys, reports, and complaint data collected, including an assessment of whether reported incidents of sexual harassment have increased or decreased in number and severity and whether there are any particular locations or programs in the District where a sex-based hostile climate might exist; and propose recommendations for improving the District’s anti-harassment efforts and timelines for implementing the recommendations.

F. REPORTING

1. By August 31, 2023, the District will submit to OCR for its review and approval documentation indicating compliance with Items I.A, I.B, and I.C of the Agreement.
2. Within 30 calendar days of OCR’s approval of Report I.F.1, the District will submit to OCR documentation that the District distributed the approved statement in Item I.D to all employees, including a copy of the communication sent to all employees.
3. By August 31, 2023, the District will provide documentation to OCR of the proposed monitoring program required by Item I.E. By June 30, 2024, and June 30, 2025, the District will provide documentation to OCR demonstrating that the Title IX Coordinator completed the annual reviews. This documentation will include information about the reports and complaints to the District, including: the date filed, the complainant’s name and status (e.g., student and/or employee), the respondent’s name and status, the location (e.g., school name or bus), the type of complaints (e.g., sexual assault, other sexual harassment, other sex discrimination, retaliation), and any trends or patterns identified among the reports or complaints (e.g., a repeat respondent or school). This documentation also will include: a summary of the climate survey results, any actions taken in response to the survey results or any identified trends or patterns, and recommendations and timelines for improving the District’s anti-harassment efforts.

II. TITLE IX POLICY AND GRIEVANCE PROCEDURES

- A. By September 30, 2023 or within 30 days of its receipt of OCR’s approval, whichever is later, the District will publish its revised policies prohibiting sex discrimination, including sexual harassment, and its revised procedures for providing a prompt and equitable response to reports and formal complaints of student-to-student and employee-to-student sexual harassment, and related student and employee discipline policies (hereafter collectively referred to as “the Title IX Policy and Grievance Procedures”). The District will ensure that its revised Title IX Policy and Grievance Procedures comply with the regulations implementing Title IX that are in place at the time of the revision. The District will ensure that its Title IX Policy and Grievance Procedures are cross-referenced, linked, internally consistent, and do not contain conflicting or contradictory information.

B. REPORTING

OCR acknowledges that the District has provided the proposed revisions to its Title IX Policy and Grievance Procedures to OCR for review and approval to ensure that they provide for the appropriate resolution of reports and complaints alleging discrimination on the basis of sex in accordance with the regulation implementing Title IX at 34 C.F.R. Part 106. Within 90 calendar days of OCR’s approval, the District will submit to OCR documentation that the District has approved, adopted, implemented, and published its Title IX Policy and Grievance Procedures on the District’s website and on every District school webpage, as described in Item II.A.

III. NOTICE OF NONDISCRIMINATION

A. OCR acknowledges that the District has provided to OCR for review and approval a revised Notice of Nondiscrimination to all District students, parents, administrators, employees, unions or professional organizations holding collective bargaining or professional agreements with the recipient, applicants for employment, and sources of referral of applicants for employment with the District that is compliant with the regulation implementing Title IX at 34 C.F.R. § 106.8(b).

B. Within 60 calendar days of OCR’s approval, the District will widely distribute the Notice of Nondiscrimination, including by: (1) posting it in common areas throughout the District, including at every District school and office; (2) posting it on the District’s website and on every District school webpage; (3) sending an email or letter with a copy of the Notice of Nondiscrimination to the entire District community—including students, employees, parents, and volunteers; and (4) including the Notice of Nondiscrimination in an update to its 2023-2024 Student Handbook (or any similar publication) to be provided to all current students via the District’s website.

C. REPORTING

Within 90 calendar days of OCR’s approval, the District will submit to OCR documentation that the District distributed and published the approved Notice of Nondiscrimination as required by Item III.B.

IV. TRAINING FOR PERSONNEL

A. For the duration of OCR’s monitoring of this Agreement, the District will ensure that a qualified trainer with expertise regarding the Title IX regulations applicable to sexual harassment provides annual training to the District’s Title IX Coordinator(s), school-level administrators, investigators, decision-makers, any person facilitating an informal resolution, and other District employees who are designated to be responsible for any stage of the Title IX grievance procedures and Title IX grievance process for sexual harassment complaints, including processing, investigating, adjudicating, and/or resolving reports and formal complaints of sexual harassment to ensure that investigations are prompt and equitable. OCR acknowledges that the District has

provided for OCR’s review and approval its plan to provide the training to District employees in phases during the fall of 2023, indicating the name and qualifications of the trainer(s) and the titles of District staff who will receive the training at each phase. By July 31, 2024, the District will provide for OCR’s review and approval its plan to provide training to District employees in the fall of 2024. The District also will distribute and publish on the District’s website all materials used to train these individuals as required by the Title IX regulation. The training will review and include instruction on:

1. the District’s Title IX Policy and Grievance Procedures developed under Item II above;
 2. how to identify what constitutes sexual harassment under the Title IX regulations;
 3. the scope of the District’s education program or activity;
 4. how to correctly code sexual harassment incidents to ensure that they are appropriately identified and that the District responds to them as required by the Title IX regulations;
 5. how to conduct an investigation and grievance process for complaints of sexual harassment, involving students, employees, and third parties, including hearings, appeals, and informal resolution processes;
 6. how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias;
 7. if the District decides to hold a live hearing, how to use any technology that will be utilized at a live hearing and how to handle any relevancy determinations about evidence, including when questions and evidence about the complainant’s sexual predispositions or prior sexual behavior are not relevant as described in the Title IX regulations;
 8. for investigators, how to assess relevance to create an investigative report that fairly summarizes relevant evidence;
 9. record retention requirements under 34 C.F.R. § 106.45(b)(10);
 10. available supportive measures for the parties and remedies for the complainant;
 11. Title IX prohibitions on retaliation; and
 12. notice to all parties of the outcome of the investigation.
- B. For the duration of OCR’s monitoring of this Agreement, the District will provide annual training to all District employees that will cover:

1. its revised Title IX Policy and Grievance Procedures developed under Item II;
 2. how to identify what constitutes sexual harassment, including a hostile environment;
 3. the obligation of the District's employees to report sexual harassment to the designated site administrator and the Title IX Coordinator, including allegations of employee-to-student sexual harassment;
 4. the District's responsibilities under Title IX to respond to reports and formal complaints of sexual harassment; and
 5. the remedies available to parties found to have been subject to sexual harassment.
- C. To monitor the effectiveness of the training, the District will administer a survey about the quality of each training to all trainees. The District will ensure that the Title IX Coordinator(s) or a designee(s) reviews the survey results and, as appropriate revises the training materials in response to the survey results to ensure the training's effectiveness.

D. REPORTING

1. OCR acknowledges that the District has provided to OCR for review and approval the name(s) and qualifications of the proposed trainer(s) and copies of all proposed training materials that the District will deliver under Items IV.A and IV.B above.
2. After OCR approves the training materials, the District will deliver that training to District employees during the fall of school year 2023-2024, in accordance with the training plan OCR approved. By December 31, 2023 and December 31, 2024, the District will provide to OCR documentation that it has provided the approved training referenced in Items IV.A-B to the personnel required in Items IV.A-B, including how many employees, if any, have not yet received such training, the dates of the training, its delivery method (e.g., in person, online, or hybrid), the names and titles of the trainer(s), a copy of any materials used or distributed during the training, and the training survey results.
3. The District will provide to OCR documentation that the District distributed and published on its website all materials used to train these individuals as required by Item IV.A.
4. The District will report its proposed revisions to the training in response to the survey results for OCR's review and approval when the District revises its training in response to the survey or otherwise.

V. TRAINING FOR STUDENTS

- A. By December 31, 2023, and December 31, 2024, the District will provide age-appropriate training for District students that will cover:
1. The District’s revised Title IX Policy and Grievance Procedures developed under Item II, including where to locate the policy and procedures on the District’s website, and the existence of OCR and its authority to enforce Title IX;
 2. the District’s Title IX Coordinator(s), (including current and complete contact information), as well as school administrators and their respective roles in coordinating the District’s response to reports and formal complaints of sexual harassment;
 3. what constitutes sexual harassment, the District’s prohibition against sex discrimination, including sexual harassment, the District’s commitment to having a District environment free from sexual harassment and other harassment based on sex, and a statement that harassment of students based on sex will not be tolerated;
 4. what students should do if they believe they or other students have been subjected to sexual harassment, including how to report such harassment and file a formal complaint of such harassment with the Title IX Coordinator(s) or their designee(s); and
 5. the supportive measures available to students who report sexual harassment or retaliation, and the available remedies following a finding of sexual harassment and/or retaliation after an investigation.

B. REPORTING

1. By August 31, 2023, the District will provide to OCR, for its review and approval, the District’s student training materials and its plan for delivery of the training.
2. After receipt of OCR’s approval, the District will deliver that training to District students beginning in school year 2023-2024 and will complete the training by no later than December 31, 2023. Within 30 days of delivering the training required pursuant to Item V.A.1-5 above the District will provide OCR with a copy of the training materials.

VI. MAINTENANCE OF RECORDS

- A. By September 30, 2023, the District will develop and implement a revised Title IX record-keeping system that adequately and accurately documents and preserves all records required by 34 C.F.R. § 106.45(b)(10), including but not limited to reports and formal complaints of sexual harassment, along with the District’s responses to such reports and investigations of such complaints, including any written documentation

sent or received in relation to the report or complaint, interview notes, witness statements, the delivery of any supportive measures to the parties, and any relevant correspondence.

B. The District's record-keeping procedures will require that the District:

1. Track electronically all Title IX reports and formal complaints of sexual harassment in a manner that includes relevant information related to the report or complaint, including: the reporter's name and status for reports; the complainant's name and status for formal complaints; the respondent's name and status; a description of the alleged harassment (e.g., sexual assault); the names and status of all identified witnesses of the alleged harassment; the name and job title of the person receiving the report or complaint; the date, time, and location of the harassing incident(s); the date the District became aware of the incident(s); and the date the Title IX Coordinator(s) received notice of the incident;
2. Document all disciplinary sanctions issued to students or employees for violations of the revised Title IX Policy and Title IX Grievance Procedures referenced in Item II;
3. Note in personnel files all final Title IX determinations against employees or contractors (e.g., School Resource Officers) consistent with the Title IX regulation, state and local laws, District policies, and applicable collective bargaining agreements. The notation will provide a summary of the nature of the allegations of sexual harassment, indicate whether the District found that the employee or contractor engaged in sexual harassment, including any violation of District policies, and, if so, the sanctions the District imposed on the employee or contractor.
4. Maintain a copy of all notification letters and written determinations regarding sexual harassment provided to and received by the parties; and
5. Document any supportive measures and/or any remedies offered to the parties and/or other individuals prior to, during, and/or after the completion of an investigation of sexual harassment.

C. REPORTING

1. By August 31, 2023, the District will provide OCR with a detailed description of its proposed record-keeping system and procedures for OCR's review and approval. Within 45 calendar days of OCR's approval of the proposed record-keeping system and procedures, the District will provide OCR with documentation that the District has implemented the system and adopted and disseminated the procedures.

2. Within 60 calendar days of the end of every semester (*i.e.*, by March 31 and August 31 of each year) until OCR closes its monitoring of this Agreement, the District will provide to OCR an electronic, sortable file that includes a list of all reports and formal complaints of sexual harassment that the District received in the preceding semester. The list will include separate fields for:
 - a. the name and status of the reporter (e.g., student, parent, employee);
 - b. the name and status of the complainant;
 - c. the name and status of the respondent;
 - d. the date of the report or complaint;
 - e. the date(s) of the harassing incident(s);
 - f. the nature of the alleged harassing conduct;
 - g. the school(s) involved;
 - h. the date the investigation commenced;
 - i. the date the District provided written notice of the allegations to the parties;
 - j. any supportive measures offered to the complainant, respondent, and/or any other individual;
 - k. the date the investigation was completed;
 - l. the date of the notice of the investigation's outcome to the parties;
 - m. the date of any findings;
 - n. a summary of the findings (e.g., respondent sexually assaulted the complainant at a school event on X date and retaliated against the complainant on Y date);
 - o. the date of any appeal (if applicable);
 - p. the outcome of any appeal (if applicable);
 - q. any sanctions imposed on the respondent;
 - r. any remedies offered to the complainant and/or other individual and any provided remedies; and,
 - s. a description of any steps the District took to eliminate and/or prevent the recurrence of a hostile environment created by the incident.
3. Upon request, the District will provide to OCR within 15 calendar days a copy of the complete investigative file, including applicable school-level records, student disciplinary records, employee disciplinary records, and Human Resources/Personnel files. The data will be produced electronically in a mutually agreed upon format and will be organized and labeled as individual files, with all relevant documents for an incident.

VII. CLIMATE SURVEY

- A. Beginning in school year 2023-2024, the District will administer an annual school climate assessment to employees and students in grades 3-12 to evaluate the climate at each District school with respect to sex-based harassment and the extent to which the survey respondents are subjected to or witness sex-based harassment. Participation in the survey by students will be voluntary, and the survey will be conducted in a manner consistent with applicable law. The survey will inquire about the experience, knowledge, and perceptions of employees and students about the climate at each school

with respect to sex-based harassment and will assess whether employees and students have sufficient information about the District’s anti-harassment policies and are able to find the appropriate resources when necessary. The District will analyze the results of the climate assessment and provide for OCR’s review and approval a proposed plan of action(s) to address all concerns identified.

B. REPORTING

1. By December 1, 2023, the District will submit a draft plan for conducting the school climate assessment for OCR’s review and approval. The draft plan will include an assessment timeline, the proposed student and employee survey instrument(s), and a description of how the assessment(s) will be conducted and data reviewed.
2. By July 31, 2024, and July 31, 2025, the District will provide OCR with documentation of the administration of the school climate assessment. The documentation will include, at a minimum, the date(s) the survey was administered, the survey results, the District’s analysis of the survey results, and the proposed responsive actions the District will take to remedy the school climate results, for OCR’s review and approval.

VIII. INVESTIGATIONS INVOLVING OTHER ENTITIES

- A. By September 30, 2023, the District will clarify in “the Title IX Policy and Grievance Procedures” referred to in Item II and any other relevant District policies and procedures, and publish on its website, that in the event that any other entity, e.g., the State of New Jersey Department of Children and Families’ Institutional Abuse Investigation Unit (IAIU), has the same or similar jurisdiction over complaints and reports of conduct that could constitute student-to-student or employee-to-student sexual harassment, or conduct otherwise covered by Title IX, that the District will continue to fulfill its obligations under Title IX, including promptly and effectively responding to reports and formal complaints of sexual harassment. The clarification will state that during the pendency of any other entity’s inquiry or investigation of alleged sexual harassment by a District employee, the District will offer and provide supportive measures for students who allegedly experienced sexual harassment and will take such actions as may be necessary to ensure the safety of any students (e.g., identifying whether other students were possibly harmed by the employee’s alleged harassment and taking action to protect students from further harm). This clarification will commit the District to make reasonable efforts to obtain notice of the outcome of the other entity’s process, including any findings and corrective actions, and ensure that the District completes its own Title IX investigative process and takes any corrective action deemed appropriate. The clarification also will include a provision stating that to the extent the District relies upon the findings of any other entity’s report in responding to a complaint or report of sexual harassment by an employee, the District will explain in its own report the entity’s findings and how they support the District’s findings and corrective actions, and the District will maintain the other entity’s report with its records consistent with the document-retention policies required in Item VI.

B. REPORTING

OCR acknowledges that the District has submitted a draft of the clarification as described in Item VIII.A for OCR’s review and approval. Within 90 calendar days of OCR’s approval, the District will submit to OCR documentation that the District published the clarification and where it appears in accordance with Item VIII.A.

IX. DISTRICT REVIEW OF PRIOR CASE FILES

A. The District will review the case files for a subset of the reported incidents of employee-to-student and student-to-student sexual harassment from school years 2017-2018 through 2021-2022 that OCR identifies for the District’s review to determine if further action is needed to provide an equitable resolution of the incident. Such further action may include offering remedies for individuals affected by a sex-based hostile environment. The District will complete its review within 60 days of OCR’s identifying the case files for review.

B. REPORTING

Within 30 days of the District’s completion of its review of the case files OCR identified (i.e., within 90 days of OCR’s notice to the District of the case files identified), the District will report the following to OCR for each case file:

1. a summary of the District’s review, including who reviewed the case file, if they identified other relevant documentary evidence, if they interviewed or otherwise contacted students or employees, and what the review determined (e.g., the harassment was substantiated and created a hostile environment for two students);
2. the name of any individual affected by the alleged harassment and hostile environment, including whether the individual was a student or employee;
3. a description of all corrective steps the District has taken, including the provision of any remedies to the affected individual(s) and/or other action(s) (e.g., training for an employee determined to have sexually harassed District students); and
4. the name(s) and job title(s) of the District staff responsible for determining any remedies to provide to the affected individual(s) and/or other action to be taken.

X. CONCLUSION

By signing this Agreement, the District agrees to provide the foregoing information in a timely manner in accordance with the reporting requirements of this Agreement. Further, the District understands that during the monitoring of this Agreement, OCR may visit the District, interview employees and students, and request such additional reports or data as are necessary for OCR to determine whether the District has fulfilled the terms of this Agreement. The District understands that OCR will not close the monitoring of the Agreement until such time as OCR determines that the District is in compliance with the terms of this Agreement and the Title IX statutory and regulatory obligations at issue in this case. Notwithstanding the foregoing, the parties’ expectation is that monitoring will continue through the reporting required by Item VII.B.2 of this Agreement

(July 31, 2025) and OCR’s review of the documentation submitted on that date. Should OCR find any noncompliance with the terms of this Agreement or the Title IX statutory or regulatory obligations at issue in Compliance Review No. 02-20-5001, it shall provide the District with written notice and 60 calendar days to respond and/or cure the alleged noncompliance. If, upon review of the District’s response, OCR continues to find noncompliance, its continued monitoring will address the noncompliance that it identifies at that time or OCR may initiate administrative enforcement or judicial proceedings in the event of breach as set forth below.

To the extent that the District is unable to comply with the stated timeframes in the Agreement due to unforeseen circumstances outside of the District’s control, the District may request an extension of time to comply with a specific action item and/or reporting requirement. In doing so, the District shall identify and describe the interim steps it has made to comply and indicate a projected timeframe for compliance. Any request for an extension is subject to OCR’s approval, consistent with Section 503 of OCR’s Case Processing Manual.

The District understands and acknowledges that OCR may initiate administrative enforcement or proceedings or refer this case to the Department of Justice (DOJ) for judicial proceedings in the event of breach to enforce the specific terms and obligations of this Agreement and/or the underlying Title IX statutory and regulatory obligations. Before initiating administrative enforcement (34 C.F.R. §§ 100.9, 100.10), or judicial proceedings to enforce this Agreement, OCR will give the District written notice of the alleged breach and 60 calendar days to cure the alleged breach.

This Agreement will become effective immediately upon the signature of the District’s representative below:

NEWARK BOARD OF EDUCATION

/s/

August 28, 2023

Date

Asia Norton
Board President