

Resolution Agreement

Bernalillo Public School District OCR Case Number 08-18-1196

Bernalillo Public School District (District) agrees to implement this Resolution Agreement (Agreement) to resolve compliance issues identified during the investigation of the above referenced complaint, which was opened for investigation by the U.S. Department of Education, Office for Civil Rights (OCR). The District will take the following actions to ensure that the District is in compliance with Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. § 1681, and its implementing regulations, at 34 C.F.R. § 106.

1. **Title IX Grievance Procedures.** The District will submit draft Title IX grievance procedures for OCR's review and approval. The grievance procedures will address complaints of sex-based discrimination, including sexual harassment and sexual violence, as required by Title IX's implementing regulation at 34 C.F.R. § 106.8(b).

The District will ensure that its Title IX grievance procedures are consistent with all other Board Policies and that they provide for the prompt and equitable resolution of every report alleging sex-based discrimination received by any District employee and will include, at a minimum, the following:

- Notice to students, parents, guardians, and employees of the grievance procedures, including how and where complaints may be filed;
- Application of the grievance procedures to complaints filed by students, or on their behalf, alleging discrimination or sexual harassment, including sexual violence, carried out by District employees, other students, or third parties;
- Provisions for the adequate, reliable, and impartial investigation of complaints, including the opportunity for the complainant and respondent to present witnesses and evidence;
- Designated and reasonably prompt timeframes for the major stages of the complaint process;
- Notice to both the complainant and respondent of the outcome of the investigation; and
- Assurance that the District will take steps to prevent recurrence of any sexual harassment, including sexual violence, and remedy discriminatory effects on the complainant and others, if appropriate.

REPORTING REQUIREMENT A: By August 17, 2018, the District will submit, for OCR review and approval, its draft grievance procedures. The District will fully and promptly address any comments by OCR as to the procedure and will continue to modify the procedure until it receives final OCR approval.

REPORTING REQUIREMENT B: Within 30 days of OCR's approval of the grievance procedures, the District will adopt and implement the procedures, and will disseminate the procedures to students, parents, and staff. Within 45 days of OCR's approval of the grievance procedures, the District will provide OCR documentation of its efforts to

disseminate the procedure, which will include, at a minimum: notification through the District's website, electronic mail messages to employees and students, updates to student and employee handbooks, and by any other additional means of notification the District deems effective to ensure that the information is widely disseminated.

2. **Notice of Nondiscrimination.** The District will submit a revised notice of nondiscrimination on the basis of sex for OCR's review and approval. Consistent with the requirements of Title IX at 34 C.F.R. § 106.9, this notice shall state that: (a) individuals or groups may direct inquiries concerning the application of Title IX to the District's Title IX Coordinator(s) or to OCR; and (b) the District is required by Title IX not to discriminate on the basis of sex.

REPORTING REQUIREMENT A: By August 17, 2018, the District will submit, for OCR review and approval, the document that it intends to issue and publish. The District will fully and promptly address any comments by OCR as to the document and will continue to modify the document until it receives final OCR approval.

REPORTING REQUIREMENT B: Within 30 days of OCR's approval of the notice, the District will disseminate the notice to students, parents, and staff. Within 45 days of OCR's approval of the notice, the District will provide OCR documentation of its efforts to disseminate the notice, including via email; any websites where the information is available to students, parents, or staff; and where the notice is published in each District school's handbook.

3. **Title IX Coordinator.** By August 17, 2018, the District will ensure that it has designated at least one employee to coordinate the District's efforts to comply with Title IX and will publish this individual's name, title, identification as "Title IX Coordinator," office address, email address, and telephone number, consistent with the requirements of Title IX at 34 C.F.R. § 106.8(a). If the District chooses to designate more than one employee to coordinate the District's efforts to comply with Title IX, its publications will make clear the scope of each person's responsibilities (*e.g.* who will handle complaints by or on behalf of students, employees, and faculty).

The District will ensure that its webpages, Board Policies, and publications contain complete, consistent, and accurate information regarding the name(s), title(s), office address(es), email address(es), and telephone number(s) of the Title IX Coordinator(s).

REPORTING REQUIREMENT A: By September 7, 2018, the District will provide OCR with copies of documents or links to the District's publications that identify the Title IX Coordinator(s), including District and school handbooks, the District's internet web site, Board Policies, and inserts used in existing printed materials.

4. **Title IX training – advanced.** The District will arrange for training to be administered to the District's Title IX Coordinator(s) and all other District employees who will be directly involved in processing, investigating, or resolving complaints of sex-based discrimination, or who will otherwise assist in the coordination of the District's compliance with Title IX,

including the School's administrators, and address, at a minimum, the following topics:

- The District's new policies and grievance procedures for Title IX complaints;
- The definition of sex-based discrimination;
- The District's responsibilities under Title IX to address sex-based harassment, regardless of whether the actions are potentially criminal in nature or reported to law enforcement;
- Recognizing and appropriately responding to allegations and complaints, pursuant to Title IX;
- Employees' responsibility to respect the privacy of the complainant, respondent, and witnesses;
- Conducting and documenting prompt, equitable, reliable, and impartial Title IX investigations, including the appropriate legal standards to apply in a Title IX investigation and how the standard differs from that of a criminal investigation;
- Coordinating and cooperating with municipal law enforcement during concurrent criminal and Title IX proceedings;
- That the District does not tolerate sex-based discrimination, sexual harassment, sexual assault, or sexual violence, and that such conduct is prohibited by law; and
- That effective action to stop sex-based discrimination, sexual harassment, sexual assault, or sexual violence, including disciplinary action, as appropriate, will be taken.

REPORTING REQUIREMENT A: By September 7, 2018, the District will submit to OCR for review and approval the draft training materials with the name of the proposed provider of training. This submission shall include:

- The draft training materials (including an agenda, presentation slides and handouts, and evaluations that will be used upon conclusion of the training);
- Identification of the intended recipients of the training;
- The name(s), title(s), and qualifications of one or more trainers; and
- Description of the format and timing for the training.

The District will promptly consider and respond to OCR's feedback with respect to the draft training materials and intended trainer(s), until OCR notifies the District, in writing, that the training materials and trainer(s) meet the requirement of Item 4 of the Agreement and are consistent with Title IX statutory and regulatory requirements.

REPORTING REQUIREMENT B: Within 30 calendar days of OCR's approval of the training materials and trainer(s), the District will conduct the initial training.

Within 30 calendar days of the completion of the training, the District will submit to OCR documentation that it has fully complied with Item 4. The documentation will include: the training materials; the location(s), date(s), and time(s) of the training session(s); and a report demonstrating each trainee's participation in the training and understanding of the material.

5. **School Title IX training.** The District will develop, for OCR's review and approval, training materials for all School staff that interact with students on a regular basis and are not otherwise required to receive the training identified at Item 4. The initial training will be administered in person, and will be provided annually thereafter while this Agreement is in effect and in an effective format. The training will address, at a minimum, the following topics:

- Guidance and instruction on preventing, recognizing, and appropriately responding to allegations and complaints of sex discrimination;
- The definition and examples of sex-based discrimination, sexual harassment, sexual assault, and sexual violence;
- The District's and School's responsibilities under Title IX to address allegations of sexually inappropriate behaviors, regardless of whether the actions are potentially criminal in nature;
- An overview of the District's revised policies and grievance procedures, as well as where these can be found; and
- Designation and identity of the District and School's Title IX Coordinator(s) as well as the person responsible for ensuring Title IX compliance at each school, if different.

REPORTING REQUIREMENT A: By September 7, 2018, the District will submit draft training materials to OCR for review and approval. The submission will include:

- Draft training materials for OCR's review and approval;
- Identification of the intended recipients of the training;
- Identification of the intended trainer(s) for the initial training and information about the trainer(s) qualifications; and
- A description of the format and timeframes for the administration of the initial and future annual trainings.

The District will promptly consider and respond to OCR's feedback with respect to the draft training materials and intended trainer(s) until OCR notifies the District, in writing, that the training materials and trainer(s) or provider meet the requirements of Item 5 of the Agreement and are consistent with Title IX statutory and regulatory requirements.

REPORTING REQUIREMENT B: Within 30 days of OCR's approval of the training materials and trainer(s), the District will schedule and conduct the initial training.

Within 30 days of the completion of the initial administration of the training, the District will submit documentation to OCR demonstrating that it has fully complied with Item 5. Such documentation will include: the agenda and handouts for the training; the location(s), date(s), and time(s) each training session was held; and sign-in sheets from the training.

6. **Training for students.** The District will develop for OCR's review and approval annual training materials for the School's students on the requirements of Title IX. Specifically, the

training will discuss:

- The definitions of sex-based discrimination, sexual harassment, and sexual assault, together with examples of each;
- The District's prohibition on sex-based discrimination, sexual harassment, and sexual assault;
- The District's responsibility to respond to reports of on-campus and off-campus sexual harassment and sexual assault against students if it may create a hostile environment on-campus;
- The importance of reporting sex-based discrimination, sexual harassment, and sexual assault;
- How and to whom to report incidents of sex-based discrimination, sexual harassment, and sexual assault; and
- The potential consequences and corrective actions that may be taken if harassment is found.

REPORTING REQUIREMENT A: By September 7, 2018, the District will submit draft training materials to OCR for review and approval. The submission will include:

- Draft training materials; and
- Identification of the intended trainer(s) and information about the trainer(s) qualifications.

The District will promptly consider and respond to OCR's feedback with respect to the draft training materials and intended trainer(s) until OCR notifies the District, in writing, that the training materials and trainer(s) or provider are in accordance with Item 6 of the Agreement and are consistent with Title IX statutory and regulatory requirements.

REPORTING REQUIREMENT B: Within 30 days of OCR's approval, the District will submit, for OCR's approval, documentation demonstrating that training has been provided at the School for all students and a plan for annually providing the training in the future.

7. **Climate assessment.** The District will develop a Climate Assessment Plan (CAP) at the School for OCR's review and approval. The CAP will assess the educational environment for the School's students and the presence and effect of sexual harassment at the School. The CAP will be designed for the School's students and staff, and will be tailored to be age appropriate. The CAP may include an assessment through a written or electronic survey, focus groups, or other methods of assessing student experiences and perceptions, provided that all students are also notified of a contact person, such as a counselor, should they wish to discuss the issue in person or privately.

The District will describe how it will analyze the results of the assessment, and how the analysis will be relied upon to modify the District's efforts to comply with Title IX, including its timeframes for responding to reports or complaints and the identification of responsible staff.

REPORTING REQUIREMENT A: By September 7, 2018, the District will submit the draft CAP for OCR's review and approval.

The District will promptly consider and respond to OCR's feedback with respect to the draft CAP until OCR notifies the District, in writing, that the CAP is in accordance with Item 7 of the Agreement.

REPORTING REQUIREMENT B: Within 30 calendar days of OCR's approval of the CAP, the District will begin to implement the CAP.

Within 60 days of the initiation of the CAP, the District will submit documentation to OCR to demonstrate that it has fully complied with Item 7. The submission of documentation shall include: an analysis of the results from each completed assessment; a description of any modifications the School is making in its efforts to comply with Title IX as a result of the analysis; and the District and School personnel responsible for making identified modifications.

8. **Reporting on future incidents.** The District agrees to report to OCR all incidents of peer-on-peer sexual harassment or sexual assault of which it has knowledge that occur between the date this Agreement is signed and May 31, 2019.

REPORTING REQUIREMENT A: By January 25, 2019, the District will submit to OCR all reports, grievances, or complaints (including those utilizing the Student Complaint Form, Title IX Grievance Form, another complaint form, or received orally) regarding peer-on-peer sexual harassment or sexual assault at the School, if any, from August 1, 2018 to December 31, 2018, as well as the District's response(s).

OCR will review the reports, grievances, and complaints, if any, and the District's and School's response(s). The District will promptly respond to OCR's concerns, if any, until OCR considers them resolved.

REPORTING REQUIREMENT B: By June 21, 2019, the District will submit to OCR all reports, grievances, or complaints (including those utilizing the Student Complaint form, Title IX Grievance Form, another complaint form, or received orally) regarding peer-on-peer sexual harassment or sexual assault at the School, if any, from January 1, 2019 to May 31, 2019, as well as the District's response(s).

OCR will review the reports, grievances, and complaints, if any, and the District's response(s). The District will promptly respond to OCR's concerns, if any, until OCR considers them resolved.

9. **Individual relief.** The District agrees to take the following steps to redress the hostile environment that the Student may have endured following the XXX incident:

- The District will meet with the Student and the Complainant to discuss what the District can do to redress any hostile environment that may have existed. During this

meeting, the District will, at a minimum:

- i. Explain how the District has or will be revising its Title IX policies and grievance procedures to ensure that its response to reports of sexual harassment and sexual assault are prompt and equitable and to ensure that students are not subjected to a hostile environment;
- ii. Provide the Student with an opportunity to meet with a mental health provider on a weekly basis at the School during the 2018-2019 school year;
- iii. Provide the Student with an opportunity to receive tutoring and/or to complete alternate assessments to ensure that she has an opportunity to close information gaps and/or raise any grades that may have suffered following the initial report of the Student's assault; and
- iv. Provide assurance to the Student that if the Respondent returns to the School at any time during the 2018-2019 school year, the District will issue a written no contact order and take any other necessary steps to ensure that the Student can safely and fully participate in the School's programs.

REPORTING REQUIREMENT A: By September 7, 2018, the District will facilitate a meeting with the Student and the Complainant, pursuant to the terms of Item 9.

Within 20 days of the meeting, the District will notify OCR that the meeting was held and provide OCR with documentation that demonstrates that the meeting met the requirements of Item 9. Such documentation may consist of, but is not limited to: a meeting agenda; a meeting summary; and/or a schedule for the provision of counseling, tutoring, or other services deemed appropriate.

10. **Respondent's return to school.** If the Respondent physically returns to the School at any time the Student still attends the School, the District and School will develop a plan to ensure that the Respondent:

- Is not enrolled in any classes with the Student;
- Does not eat lunch at the same time or in the same place as the Student;
- Follows an alternate path or schedule to travel between classes to minimize hallway interactions with the Student; and
- Does not in any way limit the Student's participation in or access to extracurricular activities and school-sponsored events.

Additionally, the School will notify the Student that the Respondent will be returning to the School and will inform both the Student and Complainant of the measures that are in place to ensure the Student's safety.

REPORTING REQUIREMENT A: Within seven calendar days of the date the District learns the Respondent intends to physically return to the School, the School will meet with the Respondent to develop a plan that fully complies with the terms of Item 10.

Within seven calendar days of the meeting, the District will provide OCR with documentation sufficient to demonstrate that the School has developed a plan that fully complies with the terms of Item 10. Such documentation may include notes from the meeting; a narrative explanation of and rationale for options considered, adopted, and rejected; copies of both students' schedules; and/or copies of any agreements signed by the Respondent.

The District will promptly consider and respond to OCR's feedback with respect to the Safety Plan until OCR notifies the District, in writing, that the Safety Plan is in accordance with Item 10 of the Agreement.

REPORTING REQUIREMENT B: Within seven calendar days of the date the District learns the Respondent intends to physically return to the School, the School will notify the Student and the Complainant that the Respondent intends to return and that the School is working to issue a no contact order and develop a plan to ensure the Student's safety.

Within seven calendar days of OCR's approval of the Safety Plan, the School will provide documentation to OCR sufficient to demonstrate that it has notified the Student and Complainant of the measures that are in place to ensure the Student's safety. Such documentation may include a copy of a certified mail receipt, or similar.

The District understands and acknowledges that OCR may initiate administrative enforcement or judicial proceedings to enforce the specific terms and obligations of this Agreement. 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.

The District understands that by signing this Agreement, it 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, if necessary, OCR may visit the District, interview staff 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 and is in compliance with Title IX and its implementing regulations. Upon completion of the obligations under this Agreement, OCR will close this case.

/s/

Keith Cowan, Superintendent
For the District

7/27/18

Date