

## **RESOLUTION AGREEMENT**

Between the Tehachapi Unified School District,  
the U.S. Department of Education, Office for Civil Rights, and  
the U.S. Department of Justice, Civil Rights Division

OCR Case No. 09-11-1031  
DOJ Case Number DJ 169-11E-38

### **BACKGROUND AND JURISDICTION**

The U.S. Department of Education, Office for Civil Rights (“OCR”), has completed its investigation into a complaint (the “Complaint”) filed against the Tehachapi Unified School District (the “District”) alleging severe and pervasive peer-on-peer harassment of a student in the District (the “Student”). More specifically, OCR investigated whether the Student was subject to sexual and gender-based harassment by his peers while attending school at the Jacobsen Middle School (the “School”), and whether the District failed to take prompt and effective steps reasonably calculated to end the harassment, prevent the harassment from recurring, address the effects of the harassment, and eliminate any hostile environment resulting from the harassment. The U.S. Department of Justice, Civil Rights Division (“DOJ”) has joined OCR in the complaint resolution process.

The Complaint followed the Student’s suicide attempt on September 19, 2010, which led to his death on September 27, 2010.

Based on OCR’s investigation, OCR and DOJ (jointly referred to as the “United States”) have concluded that the District has violated the federal prohibitions against sex-based harassment under Title IX of the Education Amendments of 1972 (“Title IX”) and Title IV of the Civil Rights Act of 1964, 42 U.S.C. 2000c, et seq. (“Title IV”).<sup>1</sup> More specifically, the Student suffered sexual and gender-based harassment by his peers, including harassment based on his nonconformity with gender stereotypes;<sup>2</sup> the harassment was sufficiently severe, pervasive, and persistent to interfere with and limit his ability to participate in and benefit from the services, activities, or opportunities offered by the District;<sup>3</sup> the District had notice of the harassment; and the District did not adequately investigate or respond appropriately as it is required to do by federal law.

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<sup>1</sup> In addition to sexual and gender-based harassment, including harassment based on nonconformity with gender stereotypes, the conduct toward the Student included harassment based on his sexual orientation, which may constitute a violation of California state law prohibitions on discrimination and harassment based on gender, sexual orientation, and other categories. *See* Cal. Ed. Code §§ 200-234.3. While OCR and the DOJ do not enforce state laws, the District is obligated to comply with both federal and state laws.

<sup>2</sup> Throughout this Agreement, the phrase “gender stereotypes” refers to stereotypical notions of masculinity and femininity.

<sup>3</sup> Although the standard for administrative enforcement actions and injunctive relief under Title IX and Title IV requires that the harassment be severe, pervasive, *or* persistent, the United States found that the harassment of the Student satisfied all three standards.

The District disagrees with and disputes the United States' findings and conclusions. Nonetheless, the Board of Trustees ("Board") wishes to clearly communicate its commitment to ensuring an educational environment free from harassment, in which the individual civil and constitutional rights of each student are protected. The District therefore agrees that the District will research, develop, and implement policies, procedures, and practices designed to: (i) educate students and staff regarding the harmful effects such behavior may have on individuals; (ii) educate staff regarding the proper investigation and means of eliminating such harassment and its harmful effects; and (iii) monitor the educational climate at its schools in order to regularly assess and appropriately address the presence and effect of peer-on-peer harassment at the District's schools.

To advance these goals, and to enable the District to reach compliance with its obligations under federal law, the United States and the Board voluntarily agree to resolve OCR Case No. 09-11-1031 and DOJ Case No. DJ 169-11E-38 pursuant to the Terms of the Agreement described below. Although the District enters into this Agreement voluntarily, it acknowledges that the Agreement is binding, and that the District will be bound by its terms so long as it is in effect, regardless of changes in the District's administration, including of the Superintendent or Board.

### **TERMS OF THE AGREEMENT**

In order to resolve the disputed violations, the District will take effective steps designed to prevent harassment in its education programs and activities including, and in particular, sexual and gender-based harassment; fully investigate conduct that may constitute harassment; appropriately respond to all conduct that may constitute harassment; and mitigate the effects of harassment, including by eliminating any hostile environment that may arise from or contribute to harassment. The District also will retain the Equity Alliance at Arizona State University or another third-party consultant mutually agreed upon by the parties (the "Equity Consultant") to consult with the District in its efforts to comply with the terms of this Agreement as outlined below. In turn, OCR will not initiate enforcement action and DOJ will not initiate litigation regarding the Complaint provided that the District implements the provisions of this Agreement in good faith. As used in this Agreement, the term "sex-based harassment" includes both sexual harassment and gender-based harassment. The term "sexual harassment" means unwelcome conduct of a sexual nature. The term "gender-based harassment" means non-sexual harassment of a person because of the person's sex and/or gender, including, but not limited to, harassment based on the person's nonconformity with gender stereotypes. This Agreement will remain in force for at least five (5) school years, and will not terminate prior to the end of the 2015-2016 school year.

#### **I. REVISED POLICIES AND REGULATIONS**

- A. On or before July 15, 2011, the District will submit proposed revisions to the United States of all of its policies, regulations, and internal guidance related to harassment in order to specifically address gender-based harassment, as well as sexual and other forms of prohibited harassment. The District policies and regulations to be revised include, but are not limited to: Board Policy 0410 (Nondiscrimination in District Programs and Activities); Board Policy 5145.3

(Nondiscrimination/Harassment); Board Policy 5145.7 (Sexual Harassment Policy); Administrative Regulation 5145.7 (Sexual Harassment Regulation) and the District's Uniform Complaint Procedure (UCP).<sup>4</sup> The internal guidance includes the District's Administrator Guidance Regarding Response to Sexual Discrimination and Harassment (Administrator Guidance). The revisions will include the following:

1. Expand the scope of the Sexual Harassment Policy and Sexual Harassment Regulations so that, in addition to sexual harassment, they apply to gender-based harassment. This will entail, at a minimum:
  - a. changing the title of the Sexual Harassment Policy to "Sexual Harassment and Gender-Based Harassment Policy";
  - b. changing the title of the Sexual Harassment Regulation to "Sexual Harassment and Gender-Based Harassment Regulation";
  - c. in the revised Sexual Harassment and Gender-Based Harassment Policy's introductory paragraph, replacing the sentence reading, "The Board prohibits sexual harassment of students by other students, employees, or other persons, at school or at school-sponsored or school-related activities." with, "The Board prohibits sexual harassment and gender-based harassment (collectively, "sex-based harassment") of students by other students, employees, or other persons, at school or at school-sponsored or school-related activities.", and replacing all subsequent references to "sexual harassment" with "sex-based harassment";
  - d. in the revised Sexual Harassment and Gender-Based Harassment Regulation, adding a section addressing gender-based harassment that will, similar to the existing language on sexual harassment, separately define and provide examples of gender-based harassment; and
  - e. in the revised Sexual Harassment and Gender-Based Harassment Regulation, under the heading, *School-Level Complaint Process/Grievance Process*, replacing the sentence reading, "Any student who believes he/she has been subjected to sexual harassment or who has witnessed sexual harassment may file a complaint with any school employee." with "Any student who believes he/she has been subjected to sexual harassment or gender-based harassment (collectively, "sex-based harassment"), or who has witnessed or has knowledge of such harassment, may file a

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<sup>4</sup> Except where specific policies, regulations, or other documents are identified by name, all references in this Agreement to the District's "policies and regulations" refer to all documents identified in this paragraph and all other similar District documents that pertain to discrimination or harassment based on sex that will be revised subject to this Agreement.

complaint with any school employee.”, and replacing all subsequent references to sexual harassment with “sex-based harassment.”

2. Revise the Sexual Harassment and Gender-Based Harassment Regulation, under the heading *Investigative Process*, to ensure the adequate, reliable, and impartial investigation of complaints. The proposed revisions will include, at a minimum, requirements that:
  - a. administrators refer complainants to law enforcement authorities where appropriate;
  - b. the District follow the procedure regardless of whether the alleged harassment also is being investigated by another agency, including a law enforcement agency, unless particular procedural steps would directly impede a criminal investigation;
  - c. the District utilize a preponderance of the evidence standard to evaluate sex-based harassment complaints (*i.e.*, it is more likely than not that sex-based harassment occurred); and
  - d. all persons involved in conducting investigations have training or experience in handling complaints of sex-based harassment and in the applicable District policies and complaint procedures.
3. Provide examples in both the revised Sexual Harassment and Gender-Based Harassment Policy and Regulation of types of corrective action that may be appropriate where sex-based harassment is found to have occurred, including the provision of counseling to students who have been subjected to or who have engaged in sex-based harassment;
4. Revise the District’s other policies and regulations to clarify that each covers all forms of sex-based harassment, including sexual harassment and gender-based harassment;
5. Revise the UCP to specify that sexual and gender-based harassment will be resolved pursuant to the revised Sexual Harassment and Gender-Based Harassment Regulation; and
6. Revise the Administrator Guidance to:
  - a. be renamed “Administrator Guidance Regarding Discrimination and Harassment Based on Sex”;
  - b. specify that the guidance applies to all forms of sex-based discrimination and harassment, specifically identifying gender-based harassment;

- c. state the District’s responsibility to respond appropriately to any notice of possible sex-based harassment or discrimination, regardless of whether a formal complaint is filed; and
  - d. state that when a student experiences harassment or other discrimination based on both sex and sexual orientation, the District must respond appropriately under its policies and regulations.
- B. If the United States chooses to provide comments on the District’s proposed revisions, it will do so no later than August 1, 2011. The District will incorporate the United States’ comments, unless there is disagreement, in which case the District and the United States will work together in good faith to resolve all disagreements. If the parties are unable to agree on the revisions by August 17, 2011, the United States may pursue relief under the enforcement provisions of ¶ VII.B. below.
- C. Following the United States’ approval, or enforcement action if necessary, the District will adopt the revised policies, regulations, and internal guidance within fourteen (14) calendar days. It is the intent of the parties that the revised policies, regulations, and internal guidance be adopted no later than August 17, 2011.
- D. No later than August 31, 2011, the District will notify all of its students, their parents and guardians, and employees of its revised policies, regulations, and internal guidance by:
  - 1. providing written notice of the revised policies and regulations to all parents in the District by mail and by posting the revised policies and regulations on the District’s website;
  - 2. providing written copies of its revised Administrator Guidance to all school- and District-level administrators;
  - 3. providing the annual notifications required in the “Notifications” section of the revised Sexual Harassment Regulation; and
  - 4. publishing the revised policies and regulations, the name and contact information of the school-level and District-level individuals responsible for receiving sex-based discrimination complaints (including the District’s Title IX Compliance Officer), and contact information for OCR and the DOJ, on the District website and each individual school’s website, and in each school’s student and employee handbooks.
- E. Within forty-five (45) school days of the start of the 2011-2012 school year and following the trainings of District officials and employees listed in ¶¶ III.D.-F. below, and then annually thereafter, the District will host a parent and community meeting, at which District officials, including, but not limited to, the Superintendent, Title IX Compliance Officer, and school principals and vice

principals, will: (i) present an overview of and respond to questions about the District's revised policies and regulations for sex-based harassment, including the steps the District is taking to train its employees and instruct its students on these policies and regulations; (ii) provide information regarding the age-appropriate instruction that will be provided to students pursuant to this Agreement; and (iii) provide information on additional District, local, state, federal, and non-governmental resources for students and parents concerning all forms of discrimination and harassment, including sex -based harassment, bullying, and suicide prevention.

- F. Once the District adopts policies and regulations related to sex-based harassment pursuant to the terms above, the District will not substantively modify those policies and regulations during the period of the Agreement without the written approval of the United States. Such approval shall not be unreasonably withheld. All requests to modify such policies and regulations must be made in writing. The United States may reject proposed modifications that are not consistent with the terms of this Agreement or applicable federal civil rights laws.

## **II. IMPLEMENTATION OF POLICIES AND REGULATIONS**

- A. To ensure compliance with the District's revised Sexual Harassment and Gender-Based Harassment Policy and Regulation, the District will develop to the satisfaction of the United States, and institute a District-wide system for District review of school-level investigations and resolutions of student and employee conduct that may constitute sex-based harassment, including sexual and gender-based harassment. That system will require, at minimum, that:
1. the District appoint a designated District-level official (the "Designated Official"), with appropriate training on the requirements of Title IX and expertise in investigating and responding to discrimination and harassment;
  2. the Designated Official review all school-level incident reports to ensure that all alleged incidents that involved possible sex-based harassment were properly identified as such;
  3. for each incident report, discipline referral, informal complaint, and formal complaint involving possible sex-based harassment, the Designated Official evaluate, within five (5) school days of receiving the report, referral, or complaint:
    - a. the investigating official's findings and the basis for those findings in supporting documentation, including, but not limited to the complaint, names of witnesses, interview notes, correspondence with the parents of the student subject to the harassment and offending student(s), discipline referral(s), and documentation of

any prior incidents of discrimination or harassment involving the student subject to the harassment or the offending student(s); and

- b. whether the school or District's response complied with the revised Sexual Harassment and Gender-Based Harassment Policy and Regulation, including the investigation, the notice provided to the complaining party, and the steps taken to stop the harassment, prevent further harassing incidents and acts of retaliation, remedy harm to the student subject to the harassment, and address educational environment and school climate issues related to or affected by the incident;
4. for each instance of sex-based harassment for which the Designated Official determines that the school or District did not follow the revised Sexual Harassment and Gender-Based Harassment Policy and Regulation, the Designated Official will:
- a. promptly identify all areas where the school's response did not comply with the revised Sexual Harassment and Gender-Based Harassment Policy and Regulation;
  - b. promptly inform the employee(s) who responded to the complaint of the manner in which the response did not comply with the Policy or Regulation, and provide guidance to help ensure that a proper response is provided in the future;
  - c. initiate timely steps to remedy the non-compliance with regard to the particular complaint; and
  - d. within seven (7) school days of receiving the report, referral, or complaint, contact the parents of the student subject to the harassment and offending student(s) to inform them of the Designated Official's review of the complaint, provide them a copy of the revised Sexual Harassment and Gender-Based Harassment Policy and Regulation, and provide the timeline for resolution of the underlying complaint that does not exceed fourteen (14) school days from the date of parental contact; and
5. maintain documentation supporting compliance with this Agreement and report quarterly to the Superintendent on compliance with the Agreement.
- B. For the term of this Agreement, the District also will take the corrective action described in ¶ II.A.4. where the United States determines that the District did not respond to incidents of sexual and gender-based harassment in a timely and effective manner.

### **III. TRAINING AND PROFESSIONAL DEVELOPMENT**

- A. The District will work with the Equity Consultant to provide mandatory trainings on harassment to all students and employees, which will occur annually for the term of this Agreement, as follows:
1. For all students in grades 6-12, and all District-level and school-based administrators, faculty, certified staff, and other staff who interact with students at any grade level, training on harassment, with an emphasis on sex-based harassment, including sexual and gender-based harassment. The purpose of the trainings is to ensure that all students and employees understand their rights and obligations under the District's policies and regulations, as revised. Trainings for students and employees will take place separately.
  2. For all students in grades K-5, the Equity Consultant will provide training designed to promote an inclusive and safe educational environment for all students, which will include, but is not limited to, anti-bullying training.
  3. The District will work with the Equity Consultant to develop curricula for the trainings specified in ¶¶ III.A.1-2. above. The parties understand that the Board retains its authority under state law to adopt curriculum and materials. The District and/or the Equity Consultant will confer with the United States to ensure that the content of the trainings meets the requirements of this Agreement.
- B. By July 15, 2011, the District will retain the Equity Consultant to develop and provide the student instruction, parent education, employee training, and educational climate assessments described in ¶ I.A., ¶¶ III.A. & C.-E., and ¶¶ IV.A.-B. below.
- C. Starting with the 2011-2012 school year, and then annually thereafter for the term of this Agreement, the District, through consultation with the Equity Consultant, will provide age-appropriate instruction to all of its students as follows. Students in grades 6-12 will receive instruction on harassment, including sexual and gender-based harassment, including: (1) what types of conduct constitutes such harassment; (2) the negative impact that such harassment has on the educational environment; and (3) how students are expected to respond to such harassment that they experience or witness, or of which they otherwise know, including the reporting avenues available. The instruction will be designed to promote sensitivity to and tolerance of the diversity of the student body, and will specifically address harassment issues related to sex, gender, and nonconformity with gender stereotypes. Students in grades K-5 will receive instruction designed to promote an inclusive and safe educational environment for all students,



including on issues related to bullying. The parties understand that the Board retains its authority under state law to adopt curriculum and materials.<sup>5</sup>

- D. Within thirty (30) school days of the start of the 2011-2012 school year, and then annually thereafter for the term of this Agreement, the District, through consultation with the Equity Consultant, will provide training(s) to its employees on the following topics:
1. in-depth instruction on what type of conduct constitutes sex-based harassment, specifically addressing examples of sexual and gender-based harassment, and a discussion about the negative impact that such harassment has on the educational environment;
  2. in-depth discussion on the importance of sensitivity to and tolerance of the diversity of the student body, including, but not limited to, sex, gender, and nonconformity with gender stereotypes;
  3. a facilitated discussion on the root causes of sex-based harassment, specifically addressing gender-based harassment, and the harms resulting from such conduct;
  4. specific guidance and discussions of steps to take to foster a nondiscriminatory educational environment for students who do not conform to gender stereotypes;
  5. a review of the revised policies and regulations; the District's responsibility to respond to sexual and gender-based harassment; how students and employees are expected to respond to incidents of harassment that they experience, witness, or of which they otherwise have knowledge (including specific reporting procedures that are available); and how the school and District are required to respond when such an incident comes to their attention, including, but not limited to, remedial and disciplinary actions;
  6. identification of designated staff at each school who are available to answer questions or concerns regarding the policies and regulations or other issues related to sexual and gender-based harassment;
  7. clarification that failure by school officials to respond appropriately to sexual and gender-based harassment of which they knew or should have known violates District policy and federal law; and

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<sup>5</sup> California law provides individual parents/guardians certain rights related to the education of their children. No provision of this Agreement is intended to address such rights. While parents may exercise their rights under state law, the District remains obligated to comply with this Agreement and federal law.

8. clarification that under federal law, the District is required to take effective action to end harassment, prevent its recurrence, and as appropriate, remedy its effects.
- E. In addition to the employee training described above, on or before August 17, 2011, the District will submit a proposed plan to the United States, developed in consultation with the Equity Consultant, to provide targeted training(s) for certain school-level employees whom the United States believes require additional training regarding their obligations under Title IX and District policies and regulations. The United States will inform the District of the individuals who require this training, based on the information revealed by OCR's investigation. The Equity Consultant will conduct the targeted training within fifteen (15) school days of the start of the 2011-2012 school year. The identified employees will receive the targeted training in addition to any other training on discrimination and harassment provided by the District to its employees. The District's superintendent, Title IX Compliance Officer, the Designated Official, and the principal of each school will also attend the targeted training session(s).
- F. In addition to the employee trainings described above, OCR will provide trainings for school- and District-level administrators, the District's Title IX Compliance Officer, the Designated Official, and all other employees responsible for receiving, investigating, or supervising investigations of complaints of sexual and gender-based harassment on how to identify, investigate and respond to such complaints. Prior to the OCR training, the District will designate a District-level official to attend the trainings who will be responsible for conducting similar trainings within the District on an annual basis thereafter. This training will be provided within thirty (30) school days of the start of the 2011-2012 school year.
- G. The parties understand that the Equity Alliance at Arizona State University, if retained by the District to serve as the Equity Consultant, will provide the services specified in ¶¶ III.A.-E. and ¶¶ IV.A.-B. at no charge to the District or its personnel. Additionally, OCR will provide the services specified in ¶ III.F. at no charge to the District or its personnel. All services provided by the Equity Consultant and OCR in connection with ¶¶ III.A.-F. and ¶¶ IV.A.-B. will be provided at a Board-operated facility in Tehachapi at no cost to participants. The District will be responsible for providing facilities, utilities, payment of employee salaries, and any miscellaneous costs that may be associated with the required trainings. If the District selects a third-party consultant to serve as the Equity Consultant other than the Equity Alliance at Arizona State University, the District will be responsible for any costs associated with the retention of that consultant. In the event that, through no fault of the District, the Equity Alliance at Arizona State University becomes unable to provide the services specified in this Agreement, or becomes unable to provide the services at low or no cost, the United States will agree to a reasonable period of time to allow the District to secure a mutually-agreeable alternative consultant to provide the services specified in this Agreement.

#### **IV. EDUCATIONAL CLIMATE**

- A. The District will consult with the Equity Consultant to develop one or more school climate surveys for all students in grades 6-12 and all staff to assess the presence and effect of harassment, including sex -based harassment, at each school in the District. The District may create separate, age-appropriate surveys for middle and high school students. The District will consult with the Equity Consultant to develop a separate, age-appropriate school climate survey for students in grades K-5 to assess the inclusiveness and safety of the elementary school environment for all students. Student surveys will be designed and administered consistent with the requirements of California Education Code § 51513. It is the intent of the parties that the student surveys will include no content that would result in the application of California Education Code § 51513. Surveys administered to teachers will be designed and administered consistent with the requirements of California Education Code § 49091.24.
1. The student and staff surveys will be administered in the month of October 2011, the month of April 2012, and annually thereafter in the month of April, and will allow for respondents to answer the survey anonymously.
  2. The District will submit an analysis of the results of the survey prepared by the Equity Consultant to the United States within sixty (60) calendar days of the date the surveys are administered for each year this Agreement is in force. The analysis will include recommendations for the climate issues identified through the surveys.
  3. Based on a review of the results of the climate surveys and the recommendations of the Equity Consultant, the District will work together in good faith with the Equity Consultant to agree on appropriate corrective actions by the District to address all climate issues related to harassment, including sex -based harassment, identified through the surveys and the Equity Consultant's analysis. The District will implement the agreed upon actions and notify the United States of its actions.
- B. In conjunction with the Equity Consultant's assessment and analysis described in ¶ IV.A., the Equity Consultant will assess whether each school should designate a staffed "safe space" location that is available for all students. If the Equity Consultant recommends the creation of such a location, the District will:
1. ensure that the designated locations are supervised by teachers or staff who have been trained on the District's revised policies and regulations and who have the necessary training and expertise to recognize and respond to all forms of discrimination and harassment, including sex -based harassment;
  2. notify all parents, students, and employees at each respective school in writing, on the District's website, and through prominently displayed

posters of the availability, location, and hours of operation of the designated location;

3. verify in a written statement to the United States that the designated locations have been created; the date and hours the locations it will be operational; the location and description of the space; the name and title of all employees who will staff the designated location; the date that each individual was trained on the District's revised policies and regulations; and the manner in which notice of the staffed location was provided to students, parents, and employees; and
4. annually reevaluate, in consultation with the Equity Consultant, whether students use the designated locations and whether they are effective in improving the climate for students who have experienced and/or are concerned about harassment, including sex -based harassment.

C. Within thirty (30) school days of the start of the 2011-2012 school year, the District will form an Advisory Committee ("Committee") that includes a District-level administrator, one administrator each from Jacobsen Middle School and Tehachapi High School, at least two students each from Jacobsen Middle School and Tehachapi High School, at least three parents of students who attend those schools, and other individuals that the District determines appropriate, such as representatives from relevant community-based organizations, to advise the District regarding how best to foster a positive educational climate free of sexual and gender-based harassment. The District will consider the recommendations of the Equity Consultant when determining the composition and functions of the Committee.

1. The District will designate an employee to coordinate the Committee's meetings and work ("Committee Coordinator").
2. The Committee will meet a minimum of two (2) times each semester.
3. The Committee will maintain documentation of the date and duration of each meeting and notes from the meeting.
4. The Committee Coordinator will prepare a written summary of the recommendations and suggestions of the Committee, including but not limited to:
  - a. strategies for preventing harassment and ensuring that District students understand their right to be protected from discrimination, including sexual and gender-based harassment, and to be protected from retaliation for reporting alleged discrimination;
  - b. strategies to ensure that students understand how to report possible violations of the policies, regulations, and internal guidance related to harassment, including sex -based harassment, and that students

are aware of the District's obligation to promptly and effectively respond to complaints alleging harassment; and

- c. specific suggestions for developing an effective student orientation program that promotes respect and tolerance for others and takes steps reasonably designed to prevent the creation of a hostile environment, with an emphasis on sex -based harassment, including what role students can play in the orientation program.
5. The Committee will recommend outreach strategies to families related to the District's anti-harassment program.
- D. At each school with locker room facilities, the District will designate employees to monitor the locker rooms during all changing times for physical education and after-school activities. The designated employees will be trained on sexual and gender-based harassment and the District's policies and regulations.
  - E. The District will accommodate any student who, out of concern about harassment, wishes to change his or her clothes for physical education classes and after-school activities in an alternative private space or during an alternative changing time.
    1. The District will provide the alternative changing space or time in a manner which protects the student's confidentiality, minimizes stigmatization, and affords the student an equal opportunity to participate fully in physical education classes and athletic activities.
    2. The District will provide parents and students with written notification of the availability of, and instructions on how to make a request for, these accommodations.
  - F. The District will develop a monitoring program to assess the effectiveness of its anti-harassment efforts. At the conclusion of each school year, the District will conduct an annual assessment of the effectiveness of its anti-harassment efforts. Such assessment will include:
    1. Consultation with the Committee established pursuant to item ¶ IV.C. above;
    2. Student and parent surveys (*see* ¶ IV.A above) and at least one public meeting (*see* ¶ I.E. above) each school year to identify student and parent concerns and to determine where and when sexual and gender-based harassment occurs;
    3. A review of all reports of harassment and District responses (*see* ¶ II.A. above);

4. Evaluation and analysis of the data collected, including a disaggregated assessment of whether the reported incidents of harassment have increased or decreased in number and severity;
  5. Evaluation of all measures designed to prevent or address sexual and gender-based harassment to ensure that they do not expose students to further harassment, unnecessarily restrict any student's full access to all educational opportunities offered by the school, or result in disciplinary actions for any student who opts to utilize one or more of the accommodations provided to students concerned about harassment; and
  6. Proposed recommendations for improvement of the District's anti-harassment program and timelines for the implementation of the recommendations.
- G. Based on the Letter of Finding issued by the United States, District policies and procedures, the terms of this Agreement, and any other relevant information in the District's possession, the District, within sixty (60) calendar days of the execution of this Agreement, will conduct an investigation to determine whether any employee, including but not limited to the Principal and former Vice Principal of Jacobsen Middle School, and the teachers assigned to the Student's Middle School Physical Education classes, should be subject to corrective action because those employees had notice of the harassment of the Student and failed to take timely and appropriate action. The District will notify the United States of its findings and actions.

**V. CORRECTION OF PREVIOUSLY RELEASED INFORMATION**

- A. Within thirty (30) calendar days of the entry of this Agreement, the District will review for accuracy the information it has previously provided to parents and members of the school community, including information posted on its website, notices and newsletters sent to staff, parents, and community members, and other publicly available information released by the District, related to its investigation and resolution of all allegations of harassment against the Student, and will take appropriate action to correct any inaccurate information. The District will submit drafts of any written statements to the United States for its review and approval prior to releasing such statements publicly. Additionally, within thirty (30) days of the entry of this Agreement, the District will submit to the United States a draft statement for inclusion in Jacobsen Middle School's Parent Newsletter designed to promote tolerance of diversity at school, specifically regarding sex and nonconformity with gender stereotypes.

## VI. REPORTING

- A. The District will provide the United States all documents and information identified in Sections I through V in accordance with the timelines set forth above. If the District, despite its good faith efforts, anticipates its inability to meet any timeline set forth in this Agreement, it will immediately notify the United States of the delay and the reason for it. The United States may provide a reasonable extension of the timeline at issue.
- B. The District will provide documentation of its compliance with this Agreement through written compliance reports, which will be produced to the United States on December 1 and June 1 of each year this Agreement is in force. Each compliance report will cover the immediately preceding semester, and will include the following information and documents:
1. The date and duration of each training session required by this Agreement; copies of all agendas for such training sessions; and copies of the training materials distributed at student and employee trainings.
  2. The name and position of the employees who attended each training; the name and position of employees who were required to attend a training, but did not; the number of students, by school and grade, who did not attend a training; and the rescheduled training date for those employees who did not attend a mandatory training. The District will provide additional verification of completed training for those individuals who received rescheduled training.
  3. The date and duration of all targeted trainings provided pursuant to ¶ III.E.
  4. For each individual who receives targeted training, a signed statement by the individual acknowledging that he or she has reviewed the District's revised policies and regulations, has received the general employee training, has received the targeted individual training, and understands his or her obligations to respond to sexual and gender-based harassment under District policy and federal law.
  5. Copies of all incident reports, discipline referrals, informal complaints, and formal complaints related to sexual and gender-based harassment and harassment based on sexual orientation, and all documentation related to such incidents (*e.g.*, interview notes, correspondence with the parents of the student subject to the harassment and offending student(s), discipline referral(s), statements of findings and remedial action, and prior incidents of discrimination or harassment involving the student subject to the harassment or the offending student(s)).
  6. Certification by the Designated Official that he or she has reviewed all incident reports, discipline referrals, informal complaints, and formal complaints related to bullying, discrimination, and harassment based on

sex, including nonconformity with sex stereotypes, and sexual orientation, and all documentation related to such incidents, to determine whether any incidents, allegations, or complaints were not properly identified, investigated, or resolved consistent with District policies and procedures.

7. Certification by the Designated Official that for each instance where the school or District did not follow the District's policies and procedures when responding to an incident, allegation, or complaint related to bullying, discrimination, and harassment based on sex, including nonconformity with sex stereotypes, and sexual orientation, the Designated Official, at a minimum, took the following corrective action: (a) reviewed all documentation from the incident, (b) identified all areas where the school or District response did not comply with District policies and procedures, (c) initiated timely steps to remedy violations of District policies and procedures, and (d) contacted the parents of the student subject to the harassment and the offending student to inform them of the Designated Official's involvement in the matter, the applicable policies and procedures, and the timeline for resolution of the underlying complaint.
8. Documentation supporting each element of the Designated Official's certification of corrective action, described in ¶ VI.B.7. above.

## **VII. ENFORCEMENT**

- A. The United States may enforce the terms of this Agreement, Title IX, Title IV, and all other applicable federal laws.
- B. If OCR or the DOJ determines that the District has failed to comply with the terms of this Agreement or has failed to comply in a timely manner with any requirement of this Agreement, one or both agencies will so notify the District in writing and will attempt to resolve the issue(s) in good faith with the District. If the United States is unable to reach a satisfactory resolution of the issue(s) within thirty (30) days of providing notice to the District, OCR may initiate administrative compliance proceedings<sup>6</sup> and DOJ may initiate civil enforcement proceedings in federal court.
- C. The District understands that the United States will monitor this Agreement until it determines that the District has fulfilled the terms of this Agreement and is in compliance with all applicable federal civil rights laws regarding the issues identified in the Letter of Findings in this case. This Agreement may not be terminated prior to July 1, 2016.
- D. The District further understands that the United States retains the right to evaluate the District's compliance with this Agreement, including the right to conduct site

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<sup>6</sup> OCR may initiate compliance proceedings under 34 C.F.R §§ 100.8-100.12 and 34 C.F.R Part 101.



visits, observe trainings, interview District staff and students (including *ex parte* communications with students and employees other than school and District administrators), and request such additional reports or data as are necessary for the United States to determine whether the District has fulfilled the terms of this Agreement and is in compliance with federal law.

- E. By signing this Agreement, the District agrees to provide data and other information in a timely manner in accordance with the reporting requirements of this Agreement.

### **VIII. MISCELLANEOUS**

- A. This Agreement is entered into and shall be construed and interpreted in accordance with the laws of the United States and the State of California.
- B. This Agreement is for the purpose of resolving a disputed claim and is not, and shall not be construed as, an admission of liability, fault, or wrongdoing of any kind by the District.
- C. It is the District's intent that any actions of the District or its personnel taken to comply with this Agreement are subsequent remedial or precautionary measures, evidence of which is inadmissible to prove negligence or culpable conduct in connection with the events underlying this Complaint pursuant to California Evidence Code § 1151.
- D. The parties will bear their own attorneys' fees and costs in connection with the Complaint.
- E. No earlier than July 1, 2016 and upon full compliance with the terms of this Agreement, any and all claims associated with the Complaint which the United States may have against the District, its predecessors, successors, boards, board members, employees, representatives, or agents will be resolved.

FOR THE UNITED STATES OF AMERICA:

For the U.S. Department of Education:



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Director, OCR San Francisco

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Date: 6/30/11

For the U.S. Department of Justice:



ANURIMA BHARGAVA  
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Date: 6/30/2011

FOR THE TEHACHAPI UNIFIED SCHOOL DISTRICT:



DR. RICHARD L. SWANSON  
Superintendent  
400 South Snyder  
Tehachapi, CA 93561

Date: 6/30/11