

alleged that during the 2003-2004 school year, peer-on-peer sexual harassment was severe, pervasive, and persistent in ASD and interfered with students' educational opportunities, creating a hostile environment in the District; ASD knew or reasonably should have known of the harassment and failed to take immediate and appropriate responsive action to stop the harassment and eliminate the hostile environment; and ASD has since failed to remedy the sexual harassment and prevent against future instances of sexual harassment as required by: Title IX; the Title IX implementing regulations, 34 CFR 106.8, 106.9 (1975); and the 2001 Revised Sexual Harassment Guidance issued by the United States Department of Education, Office for Civil Rights ("OCR").¹ *Revised Sexual Harassment Guidance: Sexual Harassment of Students by School Employees, Other Students or Third Parties*, available at <http://www2.ed.gov/about/offices/list/ocr/docs/shguide.html> (notice as 66 Fed. Reg. 5,512 (Jan. 19, 2001)) ("OCR Guidance").

The United States and ASD have conferred in good faith and negotiated the terms of this Consent Decree to resolve the United States' claims against the District. This Consent Decree is entered in full and final settlement of the claims alleged in the United States' Complaint-in-Intervention. After reviewing the terms of this Consent Decree, the Court finds them to be fair, just, reasonable, and consistent with the requirements of Title IX. ASD and the United States agree that the entry of this Consent Decree, without further litigation, is in the public interest and agree to all terms and conditions below.

¹ The 2001 Revised Sexual Harassment Guidance was supplemented in 2011 adding "additional guidance and practical examples regarding the Title IX requirements as they relate to sexual violence," and the District also has failed to implement policies and procedures in accordance with that supplement. OCR *Dear Colleague Letter: Sexual Violence* (Apr. 4, 2011), at 2.

ACCORDINGLY, THE COURT ORDERS, ADJUDGES, AND DECREES:

I. JURISDICTION AND VENUE

A. This Court has jurisdiction over the subject matter herein pursuant to 28 U.S.C. §§ 1331 and 1345 as well as 20 U.S.C. §§1681-1688. The United States' Complaint-in-Intervention stated claims upon which relief may be granted against ASD.

B. Venue in the Eastern District of Pennsylvania is proper pursuant to 28 U.S.C. §1391(b).

II. DEFINITIONS

A. "Sexual harassment," a form of sex-based harassment, is defined to include sexual harassment, sexual abuse, sexual assault, sexual violence, sexual deviancy, sexually inappropriate contact, and inappropriate touching and, as such, shall include unwelcome verbal, visual, or physical conduct of a sexual nature; rape; attempted rape; intimidation, bullying or coercion of a sexual nature (conduct need not be physical); unwelcome or inappropriate sexual advances; non-consensual, forced physical sexual behavior; nonconsensual kissing and fondling; exposure of genitalia; voyeurism; exhibitionism; sexually suggestive statements or demands; the use of a position of trust to compel otherwise unwanted sexual activity with or without physical force; the forcing of undesired sexual behavior by one person upon another; assault of a sexual nature on another person; or any sexual act committed without consent.

B. A "hostile environment" exists when sex-based harassment is sufficiently severe, persistent, or pervasive to interfere with or limit one or more students' ability to participate in or benefit from the education program.

C. "Education program" includes, without limitation, all ASD schools, facilities, property, and ASD-sponsored events.

D. The terms “parent” or “parents” mean a student’s parent, guardian, or other person in parental or legal custodial relationship to the student.

E. “ASD Personnel” means all District central office and school administrators and employees, including but not limited to principals, assistant principals, counselors, psychologists, nurses, faculty, teachers, permanent and temporary staff, contractors (including police officers) who have regular interaction with ASD students, and substitute teachers.

F. “Discipline” and “disciplinary action” mean actions taken by ASD Personnel to address student behavior consistent with District policy as set forth in its *Comprehensive Suspension Program, School-Wide Positive Behavioral Support System*, and infractions and consequences contained in the *ASD Official Code of Conduct* (“Code of Conduct”), *see* Code of Conduct at ii, 1, & 13 (2011), and the ASD Student Discipline Policy, *see* Allentown School District Policy # 218 (2011). Such actions include but are not limited to reprimand by ASD Personnel, office referral, in-school or out-of-school suspension, detention, and expulsion.

G. “Equity Coordinator” means a person designated by ASD to coordinate its anti-discrimination and harassment efforts, including but not limited to its efforts to comply with and carry out its Title IX responsibilities to, among other things, conduct investigations of sexual harassment complaints as set forth in Title IX, the Title IX implementing regulations, and the OCR Guidance. *See* 34 CFR 106.8(a) (requiring federal fund recipients, including school districts, to “designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities” under the regulations).

H. “Notes” and “interview notes” mean written, or otherwise recorded, material that memorializes observations and interviews of witnesses, the harassed student, and the alleged harasser(s) during a sexual harassment investigation.

I. The term “policies and procedures” includes any written or unwritten practice, guidance, protocol, directive, mandate, rule, regulation, plan, guideline, program, or process that involve sexual harassment.

J. The terms “complaint” and “allegation,” unless used in reference to Private Plaintiffs’ Complaint, Second Amended Complaint, or Third Amended Complaint, mean an assertion, grievance, report or statement alleging sexual harassment, whether formally filed or informally communicated and whether communicated in writing or orally.

K. The term “monitor and supervise” shall mean to observe, watch, keep track of, and check continually for purposes of maintaining full awareness of the activities that occur within the District’s education program and preventing incidents of sexual harassment.

III. BACKGROUND

A. ASD is the entity that administers educational services for all students enrolled in the District schools.

B. ASD is legally responsible for the operation of all of the schools in the District, and for the conditions therein.

C. ASD is a recipient of federal financial assistance and is therefore subject to Title IX and its implementing regulations, 34 C.F.R. § 106.31.

D. ASD currently serves almost 18,000 students in sixteen elementary schools, four middle schools, and two high schools.

E. The United States Department of Justice (“United States”) enforces Title IX in federal courts by intervening, participating as *amicus curiae*, or filing a Statement of Interest in existing suits between private litigants, or upon referral from OCR. 20 U.S.C. § 1682; Exec.

Order No. 12,250, 45 Fed. Reg. 72,995 (1980); 28 C.F.R. 0.51 (1998), 28 U.S.C. §§ 517, 518 (1966, 1992).

F. Private Plaintiffs filed suit against the District and numerous other defendants – individual ASD administrators and employees, the Lehigh Valley Hospital and individual employees, and the student harasser and his parents (collectively, “Defendants”) – alleging, *inter alia*, that (1) a 12-year-old fifth-grade student sexually harassed and assaulted four six-year-old first-grade students on four separate occasions at Central Elementary School in the District during the 2003-2004 school year, (2) the sexual harassment was “severe, persistent, and pervasive,” thereby depriving Private Plaintiffs of access to educational opportunities, (3) the District had actual knowledge of the sexual harassment, and (4) the District was deliberately indifferent to the sexual harassment. Complaint at 19-21, 26-29, ECF No. 1 (May 5, 2006); Amended Complaint at 21-24, 26-30, ECF No. 5 (Aug. 28, 2006); Second Amended Complaint at 12-20, ECF No. 118 (Mar. 9, 2009); and Third Amended Complaint at 11-21, ECF No. 233 (Aug. 3, 2011). Private Plaintiffs alleged that each incident of sexual harassment was reported to ASD administrators immediately after it occurred, but ASD did not take appropriate action to address the harassment and prevent future incidents of sexual harassment from occurring. *Id.*

G. Private Plaintiffs first filed suit on behalf of John Doe I on May 5, 2006. Complaint, ECF No. 1. Private Plaintiffs pled violations of, *inter alia*, the Due Process Clause (bodily integrity and state-created danger) and Equal Protection Clause (based on race, socioeconomic status, and age) of the Fourteenth Amendment of the United States Constitution; the Civil Rights Act of 1871 (Section 1983), 42 U.S.C. § 1983; and several state law provisions. *Id.* at 30-81. Private Plaintiffs amended their complaint on August 28, 2006, to include minors now identified as John Doe II and John Doe III. Amended Complaint, ECF No. 5. On

September 24, 2007, this Court dismissed Private Plaintiffs' Equal Protection claims and various other claims. Memorandum and Order at 2, ECF No. 79 (Sept. 24, 2007). The Court denied Defendants' motions to dismiss the Due Process and Section 1983 claims, and denied Defendants' qualified immunity defense. *Id.* On March 9, 2009, this Court entered Private Plaintiffs' Second Amended Complaint, amended to assert a Title IX cause of action and to add the fourth John Doe (John Doe IV) as a plaintiff party. Second Amended Complaint, ECF No. 118.

H. On July 10, 2009, the United States intervened in this lawsuit, and alleged and continues to allege as follows: (1) Private Plaintiffs were six and seven years old in the 2003-2004 school year and were in the first and second grade at Central Elementary School in the District; (2) on at least five separate occasions, the Private Plaintiffs were sexually assaulted, a form of sex-based harassment, in the boys' bathrooms at Central Elementary School; (3) the District was made aware of each incident immediately after it occurred, and despite this, the District did not take appropriate action – and in some circumstances, took no action – to prevent the harassment from occurring again; (4) both prior to and since the sexual harassment endured by Private Plaintiffs in the 2003-2004 school year, the District failed and continues to fail to adopt and implement adequate and effective sexual harassment policies and procedures, as required by Title IX and its implementing regulations; and (5) had the District adopted and implemented such policies and procedures, the District would have prevented (a) the sexual harassment of the Private Plaintiffs and other students in the District, (b) the creation and continued existence of the hostile environment, (c) and the deprivation of educational opportunities for the students who were subject to severe, pervasive and persistent sexual harassment.

I. During the course of fact discovery in this case, Private Plaintiffs and Plaintiff-Intervenor United States identified at least three additional students who were sexually harassed at Central Elementary School during the 2003-2004 school year by the same fifth-grade student. *See Motion for Permissive Joinder of an Additional Party Plaintiff and Leave to File a Third Amended Complaint* at 5, ECF No. 228 (July 13, 2011). On August 3, 2011, Private Plaintiffs' Third Amended Complaint was entered by this Court, adding one of the three additional students, now known as John Doe V, as a plaintiff party. Third Amended Complaint, ECF No. 233.

J. ASD denies all allegations made against it by the United States and Private Plaintiffs. Nonetheless, the United States and ASD recognize that there is benefit to the expeditious resolution of the allegations raised by the United States in this case and so agree to the terms of this Consent Decree.

IV. GENERAL REQUIREMENTS

A. Pursuant to the terms of this Consent Decree, the District will take reasonable and appropriate action to prevent, address, and eliminate sexual harassment in education programs and activities at every ASD school. *See* 20 U.S.C. § 1681(a) and OCR Guidance. To accomplish this, ASD shall revise its existing policies and procedures that address, in pertinent part, sexual harassment; appropriately and immediately respond and address all conduct that may constitute sexual harassment; fully investigate reported incidents that may constitute sexual harassment; escalate remedial efforts by instituting additional measures when students are sexually harassed on a repeated basis, including but not limited to when one student repeatedly sexually harasses other students or when one student is repeatedly sexually harassed; and

mitigate the effects of sexual harassment that occurs. The District shall take proactive measures to eliminate the hostile environment that arises from and/or contributes to sexual harassment.

B. ASD shall select qualified District and School-Based Equity Coordinators, *see infra* at V.C.; develop an ASD Sexual Harassment Policy that includes policies and procedures regarding sexual harassment monitoring and supervision, and receipt, investigation, and resolution of incidents and complaints of sexual harassment, *see infra* at V.B.; create a sexual harassment reporting system, *see infra* at V.F.; develop procedures to identify, monitor, and supervise students with a confirmed history of sexual harassment toward other students, *see infra* at V.E.1.; provide sexual harassment training, professional development, and outreach for ASD Personnel, students, and parents, *see infra* at V.D.; and develop procedures for communicating with outside agencies that work with children who are sexually abused or sexually abusive, *see infra* at V.G.

C. In order to implement the terms of this Consent Decree, ASD will retain the services of an independent, third-party consultant (“Consultant”) with expertise in addressing and preventing student-on-student harassment in elementary and secondary schools. The Consultant will not be an agent or designee of the District, the United States, or any party to this litigation. As set forth *infra* at V.A., ASD, at the recommendation of the United States, shall retain the services of the Mid-Atlantic Equity Consortium, Inc., at 5272 River Road, Suite 340, Bethesda, Maryland, to serve as the Consultant by April 2, 2012. ASD shall work with the Consultant to ensure ASD’s compliance with the requirements of this Consent Decree, as detailed *infra* at V. If, for any reason, ASD does not select the Mid-Atlantic Equity Consortium as the Consultant, ASD will retain the services of another independent, third party to serve as the Consultant in order to implement the terms of this Consent Decree. If ASD does not select the

Mid-Atlantic Equity Consortium as the Consultant, ASD will provide for the United States' review and approval by April 2, 2012, the name of the proposed third-party consultant with expertise in addressing and preventing sexual harassment between students. ASD will be responsible for any and all costs associated with the retention of the Consultant.

D. This Consent Decree shall remain in force for at least three (3) years from the date it is entered by this Court, *see infra* at V.J.1.

V. SPECIFIC REQUIREMENTS

A. The Consultant

1. The Consultant shall have the following responsibilities:

a) Draft and implement a stand-alone sexual harassment policy (“ASD Sexual Harassment Policy”) by no later than June 30, 2012, *see* discussion *infra* at V.B.

b) Identify physical spaces in which sexual harassment can occur and recommend procedures to ensure that any such places are appropriately monitored.

c) Designate all necessary and appropriate ASD Personnel who must be informed of incidents and allegations of sexual harassment, *see* discussion *infra* at V.B.1.b.ii.

d) Advise the District on hiring or selection of the District and School-Based Equity Coordinators who will be hired or selected by no later than the start of the 2012-2013 school year, *see* discussion *infra* at V.C.

e) In the first year of implementation of this Consent Decree, design and conduct sexual harassment training and professional development for all ASD Personnel, which shall include training all ASD Personnel to recognize, prevent, and report instances of sexual harassment, *see* discussion *infra* at V.D.

f) Train the District Equity Coordinator to conduct subsequent annual sexual harassment training and professional development for all ASD Personnel, *see* discussion *infra* at V.D.

g) In the first year of implementation of this Consent Decree, design and conduct age-appropriate sexual harassment training for all ASD students and sexual harassment information sessions for interested ASD parents, *see* discussion *infra* at V.D.

h) Train the District Equity Coordinator to conduct subsequent annual sexual harassment student training and parent information sessions, *see* discussion *infra* at V.D.

i) Create policies and procedures for counseling, monitoring, and supervising ASD students who have a confirmed history of sexual harassment toward other students consistent with FERPA and the IDEA, *see* discussion *infra* at V.E.1.

j) Work with the District to determine appropriate ways in which to communicate with parents regarding: the ASD Sexual Harassment Policy; the steps ASD is taking to train its employees and instruct its students on these policies and procedures; and to answer parent and student questions.

B. Sexual Harassment Policy

1. The ASD Sexual Harassment Policy will expressly prohibit sexual harassment in the District's education programs consistent with the requirements of Title IX, the Title IX implementing regulations, and the OCR Guidance, and will also include, at minimum, the following:

a) The definitions of sexual harassment and hostile environment set forth in Section II of this Consent Decree.

b) Sexual Harassment Monitoring and Supervision requirements that include the following:

i. clear and easily understood explanations and examples of student conduct that constitutes sexual harassment and would violate the ASD Sexual Harassment Policy; and

ii. a requirement that all necessary and appropriate ASD Personnel (to be designated by the Consultant and as set forth in the ASD Sexual Harassment Policy) will be informed of incidents and allegations of sexual harassment to protect against future incidents of sexual harassment.

c) Sexual Harassment Complaint and Investigation Procedures that:

i. require all ASD Personnel to report immediately to the Equity Coordinators complaints and allegations of sexual harassment and any conduct ASD Personnel may observe or hear about that might constitute sexual harassment, whether or not there has been an explicit complaint or allegation, and to take steps to ensure that all such complaints and allegations are fully investigated and addressed, as directed by the ASD Sexual Harassment Policy;

ii. provide contact information for all District and School-Based Equity Coordinators who are responsible for investigating and addressing all complaints and allegations of sexual harassment (as set forth *infra* in Section V.C.), including their names, position titles, office addresses, telephone numbers, and e-mail addresses;

iii. specify timelines and processes for the immediate reporting of complaints and allegations of sexual harassment to the appropriate ASD

Personnel; investigation of complaints and allegations of sexual harassment; notification of parents of students involved in any incident or alleged incident of sexual harassment; and resolution of complaints and allegations of sexual harassment;

iv. notify parents that harassed students, witnesses to incidents of sexual harassment, parents, any ASD Personnel, and any additional individual may report sexual harassment to the District orally, in writing, or by other additional means delineated by the District;

v. establish a process to immediately notify all necessary and appropriate ASD Personnel of incidents and alleged incidents of sexual harassment;

vi. provide written notice to all individuals involved in the sexual harassment or alleged sexual harassment – when such allegations involve younger students, notice may be provided to parents but not the students of the outcome of the complaint investigation;

vii. provide assurance to any victim of sexual harassment that ASD will take effective steps to prevent the recurrence of any sexual harassment and to address sexual harassment endured by the student(s) and others, where appropriate;

viii. provide assurance that they will be effective and applied fairly and consistently to all complainants and harassed students;

ix. include an appeals process in which the Superintendent – or other designated administrator who was not involved in the sexual harassment

investigation – will consider all issues presented by the harassed student or the student harasser(s) upon completion of the sexual harassment investigation should an appeal be requested;

x. require that no complaint or allegation of sexual harassment will be considered fully resolved unless and until these procedures are followed;

xi. require that ASD fully investigate and resolve all complaints of sexual harassment regardless of any ongoing Allentown Police Department (“APD”) criminal investigation;

xii. require that, if ASD determines that sexual harassment has occurred, ASD must take timely, context- and age-appropriate, and effective corrective action to eliminate any hostile environment that has been created, prevent further harassment, prevent retaliation (as discussed *infra* at V.B.1.d.) and provide remedial measures as required by Title IX;

xiii. are written in clear, understandable, and age-appropriate language accessible to students, parents, and ASD Personnel;

xiv. are translated and language-accessible for students and parents whose first language is not English; and

xv. shall not impair or limit the access of legal counsel or the insurance carrier to ASD to conduct and participate in sexual harassment investigations and shall not impair or limit the District Equity Coordinator in conducting and participating in sexual harassment investigations.

d) A provision prohibiting retaliation by any student or ASD Personnel against a complaining party, witness, or any other person who reports allegations of

sexual harassment or provides information to assist a sexual harassment investigation, and informing parents and students that ASD officials will not only take steps to prevent retaliation but also will take strong responsive action if retaliation occurs.

e) All other additions and recommendations made by the Consultant.

2. The ASD Sexual Harassment Policy shall supersede all policies, procedures, and other relevant language regarding sexual harassment from the *ASD Policy and Procedure Reference*, the *Allentown School District School Board Policy* (“School Board Policy”), and the Code of Conduct (collectively, the “ASD Existing Policies”), and all ASD Existing Policies shall be amended accordingly.

3. The District Equity Coordinator will review the ASD Sexual Harassment Policy on an annual basis for the duration of this Consent Decree to ensure compliance with the Consent Decree. The Consultant and the District Equity Coordinator will recommend revisions to the ASD Sexual Harassment Policy as needed following the annual review or as becomes necessary for the District to fully comply with the terms of this Consent Decree and extant federal law. Any such recommendation will be provided to the United States for review and approval in accordance with the requirements of Section V.C.4.m. and V.H., *infra*. The United States shall notify the District of its approval or required modifications within forty-five (45) days of receiving the recommendations. The District shall notify ASD Personnel, students, and parents about any such changes.

4. Procedures and Timeline for Creation and Implementation of the ASD Sexual Harassment Policy

a) No later than June 30, 2012, the District shall submit to the United States for its review and approval the District’s proposed ASD Sexual Harassment Policy. If

the District disagrees with any of the Consultant's recommendations or decisions, the District will provide the United States with the Consultant's recommendations and decisions as well as an explanation as to why the District disagrees with the Consultant's recommendations and decisions.

b) The United States shall have forty-five (45) calendar days to review and either approve the ASD Sexual Harassment Policy or inform ASD of its disapproval of the proposed ASD Sexual Harassment Policy.

c) If the United States disapproves of the proposed ASD Sexual Harassment Policy, the District, the Consultant, and the United States will work together in good faith to resolve any disagreements. The United States has final approval authority.

d) Following the United States' approval, ASD will adopt the ASD Sexual Harassment Policy within fourteen (14) calendar days.

e) No later than September 1, 2012, ASD will notify all of its students, their parents, and ASD Personnel of the new ASD Sexual Harassment Policy by:

i. providing written copies of the ASD Sexual Harassment Policy to all ASD parents;

ii. providing electronic copies of the ASD Sexual Harassment Policy to all ASD Personnel;

iii. posting copies of the ASD Sexual Harassment Policy in all school buildings, prominently displayed in well-traveled areas easily accessible to students and ASD Personnel; and

iv. including the following information on ASD's website and on each individual school website:

(a) an explicit statement setting forth ASD’s commitment to a school environment free from sexual harassment;

(b) a statement encouraging students to immediately report incidents of sexual harassment and confirming that all ASD Personnel must follow the ASD Sexual Harassment Policy for responding to all such reports;

(c) clear and easily understood explanations and examples of the types of behavior that constitute sexual harassment; and

(d) a hyperlink to the ASD Sexual Harassment Policy.

5. Once ASD adopts the ASD Sexual Harassment Policy, ASD will not modify or rescind the Policy, or adopt any additional policies that relate to or impact sexual harassment during the period of the Consent Decree without the prior written approval of the United States. The United States may reject proposed modifications, rescissions, or adoptions that are not consistent with the terms or spirit of this Consent Decree or applicable federal civil rights laws.

C. District and School-Based Equity Coordinators

1. ASD, with the assistance of the Consultant, shall hire or appoint qualified individuals to serve as the District and School-Based Equity Coordinators knowledgeable in all aspects of Title IX, the Title IX implementing regulations, and the OCR Guidance as applied to school districts. The District-wide Equity Coordinator will serve in a full-time or full-time equivalent capacity and may be hired or appointed from the ranks of existing ASD administrators.

2. The District shall designate at least one administrator or employee at each ASD school to serve as School-Based Equity Coordinators.

3. All Equity Coordinators will be hired, appointed, or designated based on their interest in, previous experience with, and knowledge of, at minimum, Title IX, the Title IX implementing regulations, and the OCR Guidance.

4. The District Equity Coordinator, who shall be independent of the District's legal counsel and its insurance carrier, shall have, at minimum, the following responsibilities:

a) Investigate and resolve sexual harassment complaints and allegations within the time frames set forth in the ASD Sexual Harassment Policy, *see* discussion *supra* at V.B.1.c.

b) Immediately inform relevant and appropriate ASD Personnel – including but not limited to the general and special education teachers, substitute teachers, all other teachers in the particular school; guidance counselors; school psychologists; principals; and assistant principals – when a complaint or allegation of sexual harassment has been received, including the nature of, and the factual circumstances that gave rise to, the complaint or allegation.

c) Provide or direct counseling and support services to students who have been sexually harassed and, as appropriate, to student harassers.

d) Within one (1) business day of becoming aware of an incident of sexual harassment, notify the parents of all suspected victims of the sexual harassment as well as the parents of the suspected sexual harasser as required by the ASD Sexual Harassment Policy.

e) Notify all suspected victims of sexual harassment as well as suspected sexual harassers and their parents when the investigation has concluded, and of the findings and resolution of the investigation. However, when such allegations involve

younger students, the findings and resolution may be provided to parents but not the students. Such information shall not include any student education records, the provision of which would violate the privacy rights of individual students under the Family Educational Rights and Privacy Act (“FERPA”).

f) Recommend appropriate, fair, and equitable action for the harassing student consistent with the District’s student discipline policy and Code of Conduct.

g) Designate the ASD Personnel responsible for administration of any student discipline following instances of sexual harassment.

h) When required by law and where appropriate, forward complaints of sexual harassment to relevant outside service agencies, including but not limited to law enforcement, *see* discussion *infra* at V.G.

i) Document and maintain complete records of all sexual harassment complaints and investigations in accordance with the Sexual Harassment Reporting System, discussed *infra* at V.F.

j) Timely notify all ASD Personnel, students, and parents if revisions are made to the ASD Sexual Harassment Policy.

k) Design, administer, and conduct all sexual harassment training, professional development, and parent information sessions as discussed *infra* at V.D.

l) Design and administer a survey instrument by March 1, 2013, that will gauge parents’ perceptions of the effectiveness of the District’s investigation and resolution of sexual harassment complaints and of transparency on the District’s part in communicating about sexual harassment and the ASD Sexual Harassment Policy. This survey will be disseminated to ASD parents electronically and in hard copy on an annual

basis for the duration of this Consent Decree. The District Equity Coordinator shall review and analyze the parent survey results on an annual basis and will report those results and any proposed revisions to the ASD Sexual Harassment Policy as a result of the survey to the United States within fourteen (14) business days after completing analysis of the survey results.

m) Review on an annual basis the ASD Sexual Harassment Policy and recommend to the United States revisions to that Policy in accordance with Section V.B.3., *supra*.

n) For each instance in which an ASD school or ASD did not follow the ASD Sexual Harassment Policy when responding to an incident or complaint of sexual harassment, record all corrective action taken by the District as described in Section V.H.2.d., *infra*.

o) The obligations of the District Equity Coordinator shall not preclude parallel investigations by the District.

p) Additional requirements set forth in Section V.C.6., *infra*.

5. The School-Based Equity Coordinators shall have, at minimum, the following duties with regard to their respective schools:

a) Receive complaints of sexual harassment pertaining to students enrolled in the school and pertaining to incidents that occur in the school building, on the school property, at school-sponsored events or about which the School-Based Equity Coordinator has or reasonably should have knowledge.

b) Inform the District Equity Coordinator of all sexual harassment complaints received.

c) With the assistance of the District Equity Coordinator, initiate building-level investigations of incidents and alleged incidents of sexual harassment in accordance with the Sexual Harassment Complaint and Investigation Procedures described *supra* at V.B.1.c.

d) Assist the District Equity Coordinator to complete investigations into incidents and alleged incidents of sexual harassment and to resolve complaints of sexual harassment in accordance with Section V.C.4.a., *supra*.

e) Additional requirements set forth in V.C.6., *infra*.

6. Both the District and the School-Based Equity Coordinators:

a) shall be available to meet upon request with ASD students about sexual harassment complaints, questions, or concerns;

b) shall not have other job responsibilities that will, or have the potential to, create a conflict of interest (for example, Equity Coordinators will not also serve as disciplinary hearing officers or legal counsel for the District); and

c) shall receive in the first year of implementation of this Consent Decree information and training from the Consultant about the legal obligations of the District and best practices for preventing and responding to sexual harassment incidents and allegations, as set forth in pertinent part in Title IX, the Title IX implementing regulations, and the OCR Guidance and as required by the ASD Sexual Harassment Policy.

7. Prior to hiring or appointing any Equity Coordinators, ASD will interview interested individuals to determine whether they are qualified to perform the requirements of the position as set forth in this Consent Decree.

8. The United States shall approve ASD's selection of the District Equity Coordinator as follows:

a) By the start of the 2012-2013 school year, ASD shall, in writing, provide the United States with the name, contact information, and resume or curriculum vitae of at least one individual it proposes to hire or appoint as the District Equity Coordinator. ASD may alternately provide the United States with a list of multiple potential Equity Coordinators (including their names, contact information, and resume or curriculum vitae), but if it does so, it must list the individuals in order of preference starting with the most preferred individual.

b) Within ten (10) business days of receiving notice of the proposed District Equity Coordinator, the United States shall inform ASD in writing as to whether or not it agrees to the hiring or appointment of the person proposed by ASD to serve as the District Equity Coordinator. The United States' approval shall not unreasonably be withheld.

c) If the United States does not agree to the hiring or appointment of the person proposed by ASD, then the parties will continue working together to designate a mutually agreeable District Equity Coordinator. Any delays in hiring or appointment of the person identified by ASD as the District Equity Coordinator will not excuse any party from fulfilling any other obligation set forth in this Consent Decree.

d) Following the United States' approval of the District Equity Coordinator, ASD shall hire or appoint the approved individual as District Equity Coordinator within fourteen (14) calendar days.

9. By the start of the 2012-2013 school year, ASD shall select all School-Based Equity Coordinators. Within five (5) business days of the selection of the School-Based Equity Coordinators, ASD shall provide for the United States' review a list of all School-Based Equity Coordinators, including the School-Based Equity Coordinators' names, titles, and qualifications for the position.

D. Sexual Harassment Training and Professional Development

1. The District shall, through the Consultant and the District Equity Coordinator, provide sexual harassment training and professional development for all ASD Personnel that shall include:

- a) detailed information about, and specific examples of, conduct that constitutes sexual harassment;
- b) the legal obligations of ASD Personnel under the ASD Sexual Harassment Policy, Title IX, the Title IX implementing regulations, the OCR Guidance, and any relevant mandatory child abuse reporting statutes to report, investigate, and resolve all complaints and allegations of sexual harassment;
- c) detailed information about the investigative and reporting obligations of the District and ASD Personnel set forth in the ASD Sexual Harassment Policy;
- d) the process and timeframes for addressing sexual harassment complaints and allegations;
- e) information for specific ASD Personnel, as deemed necessary by the Consultant, about their responsibilities under the District's procedures regarding the registration, enrollment, monitoring, and supervision of students who have a confirmed history of sexual harassment toward other students, *see* Section V.E.1., *infra*;

f) a review of student confidentiality requirements, including specific descriptions of ASD's obligations to maintain student confidentiality so that personally identifiable information about students shall not be revealed to non-ASD Personnel, but may be shared among ASD Personnel to appropriately address and protect ASD students from sexual harassment;

g) detailed information about when incidents of student-on-student sexual harassment in ASD schools should be reported to outside agencies and the appropriate circumstances for doing so;

h) discussion, interactive discussion and/or role play, and the opportunity for questions and answers;

i) the contact information for the District and School-Based Equity Coordinators responsible for addressing complaints of sexual harassment; and

j) other topics deemed germane by the Consultant and the District Equity Coordinator.

2. The sexual harassment training and professional development shall occur at regular intervals of time to be determined by the Consultant, but not less than once per year.

3. The sexual harassment training and professional development will be distinct from other ASD training and professional development.

4. All new employees, substitute teachers, temporary teachers, and other staff who have unsupervised, direct contact with children must receive the sexual harassment training and professional development described in this Section V.D. within thirty (30) days of beginning their employment in the District and, in any event, before such staff may commence providing services to ASD students or working in ASD schools. ASD may provide the sexual harassment

training and professional development required by this paragraph to new employees, substitute teachers, temporary teachers, and other staff who have unsupervised, direct contact with children by virtual means, including but not limited to online programming through the District's website or through DVD recording or other visual recording, as long as the District ensures and verifies that the new employees, substitute teachers, temporary teachers, and other staff who have unsupervised, direct contact with children have completed the training and professional development within thirty (30) days of beginning their employment in the District.

5. The District will ensure that all contractors have a criminal background clearance prior to unsupervised, direct contact with children.

6. The District shall provide, on an annual basis for all ASD students, age- and developmentally-appropriate training about sexual harassment, including what conduct constitutes sexual harassment, who to contact if they witness or are subjected to sexual harassment, and how to inform an adult when they believe sexual harassment may have occurred.

7. The District shall provide, on an annual basis, sexual harassment information sessions for all interested parents of ASD students about the ASD Sexual Harassment Policy. The information sessions also shall provide parents with the contact information of the District Equity Coordinator and all School-Based Equity Coordinators; information about sexual harassment complaint process, including the completion of any necessary forms; and detailed information about the process to appeal the findings of sexual harassment investigations or the remedies imposed by ASD upon completion of its investigation and response process.

8. The District is responsible for any and all costs associated with the sexual harassment training and professional development.

E. Additional ASD Obligations

1. Students With a Confirmed History of Sexual Harassment Toward Other Students

a) To ensure that an ASD student with a confirmed history of sexual harassment toward other students is appropriately monitored and supervised, the District shall work with the Consultant to develop policies and procedures to identify such students, and to monitor and supervise any students who have repeatedly engaged in sexual harassment. The requirements of Title IX, the Individuals with Disabilities Education Act (IDEA), Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act (“ADA”) of 1990, FERPA, and applicable state and federal laws shall govern ASD’s responsibility under this paragraph.

b) Whenever a student enrolls in ASD from a school outside of the District or transfers between two schools within ASD, the principal and/or another designated administrator at the receiving school shall review the student’s complete cumulative education file within ten (10) business days of receipt of records in order to determine if the student has a confirmed history of sexual harassment of other students.

c) If the cumulative education file of a new student enrollee or transfer student contains information that indicates the student poses a risk of sexual harassment for other students, the District Equity Coordinator and School-Based Equity Coordinator at the receiving school must be notified within two (2) business days of that determination and will work with ASD counseling and psychological support personnel and all other appropriate staff members, including the student’s teachers, to develop and implement policies and procedures to counsel, monitor, and supervise the student in a fair and equitable fashion at all times.

2. Prohibition Against Imposing Obligations on Harassed Students

a) Language from the Code of Conduct and the *ASD School Board Manual* requiring sexually harassed or allegedly sexually harassed students to “inform the harasser that the harasser’s conduct is unwelcome” or issue a “stern rebuke to the harasser,” or to take such measures before filing a complaint of sexual harassment with the school or the District shall be stricken. *See, e.g.*, Code of Conduct at 21. The ASD Sexual Harassment Policy and the Investigation and Response Procedures are prohibited from imposing any such obligation on a student who has, or alleges that he or she has, been sexually harassed.

F. Sexual Harassment Reporting System

1. The District shall, through the Consultant, create and implement a Sexual Harassment Reporting System that may, at ASD’s option, be incorporated into its existing student data and information reporting systems, and that documents and maintains complete records of all sexual harassment complaints and investigations including, but not limited to, the following information and materials:

- a) each complaint or allegation, including the date and form in which the complaint or allegation was made;
- b) specific details about the incident, including the date(s), time(s), nature, content, and location(s) of the harassment incident;
- c) the date(s) the alleged harassed student and harasser student were interviewed;
- d) the date that any relevant documentary evidence was obtained;

- e) any written or oral statements, correspondence, interview notes, and any other documentation received from the student harassed, the alleged harasser(s), the parent(s) of the student harassed and/or the alleged harasser(s); any witnesses; and/or person reporting the harassment;
- f) the date, location and contact information for the ASD Personnel member who obtained information about the alleged harassment;
- g) documentation of any prior incidents of sexual harassment involving the student(s) subject to the harassment or the alleged harasser;
- h) ASD investigating officials' findings and/or reports and the basis for those findings and/or reports;
- i) a full description of the District's response to the incident, including but not limited to discipline referral forms and discipline information for the student harasser;
- j) supporting documentation, including but not limited to interview notes, investigation report or memorandum; and
- k) documentation of all appeals proceedings, which may include written findings of facts, transcripts, or audio recordings.

2. The ASD Sexual Harassment Reporting System shall maintain the confidentiality of all ASD students, except for the District to fulfill its reporting obligations to the United States pursuant to this Consent Decree, *see* discussion *infra* at V.H.

G. Reporting Between ASD and Outside Agencies

1. ASD, through the Consultant and the District Equity Coordinator, will develop and implement policies and procedures describing when ASD Personnel must notify individuals

and agencies outside of the District (*e.g.*, local police, hospital, child protection agencies) of sexual harassment alleged to have occurred within ASD.

2. ASD will propose to outside service agencies in the Allentown and Lehigh Valley area an information-sharing agreement with regard to students who have a confirmed history of sexual harassment toward other students, as discussed *supra* at V.E.1., that ASD will take all steps necessary to receive from the outside agencies notification of such confirmed history of sexual harassment, and ASD and the outside agencies will share relevant information about such students so that ASD may provide counseling, monitoring, and supervision to identified students to prevent sexual harassment from occurring in any of the District's education programs.

H. Reporting to the United States

1. The District will provide all requisite documents and information to the United States set forth in this Section as well as the information required pursuant to Sections V.B.3. & 4., V.C.4.m., and V.C.8. & 9., *supra*, in electronic form, wherever possible, usable by the United States and if not usable by the United States in electronic form, in paper form, in accordance with the timelines set forth herein.² If ASD, despite its good faith efforts, is unable to meet any timeline set forth in this Consent Decree, it will immediately notify the United States of the delay and the reason therefore. The United States may provide a reasonable extension of the timeline at issue.

² ASD shall provide the United States with one copy of all documents and information it is required to produce to the United States pursuant to this Consent Decree, directed to the following attorney:

Melissa J. Michaud
U.S. Department of Justice
Civil Rights Division
Educational Opportunities Section, PHB 4300
601 D Street NW
Washington, DC 20004

2. On an annual basis, prior to July 15 of each school year and for the duration of this Consent Decree, the District will provide documentation of its compliance with this Consent Decree through written compliance reports produced to the United States. Each compliance report will cover the school year just completed, and will include all documents, information, and other materials generated or maintained by the District regarding sexual harassment, including the following:

a) All sexual harassment training, professional development, and parent information session materials and curricula.

b) The date and duration of each sexual harassment training, professional development, and information session required by this Consent Decree; copies of all agendas for such trainings, professional development, and information sessions; and copies of any materials distributed, including any multimedia presentations.

c) A summary of all reported sexual harassment incidents as recorded in the Sexual Harassment Reporting System, described *supra* at V.F.

d) Certification by the District Equity Coordinator that s/he has reviewed all incident reports, discipline referrals, informal complaints, and formal complaints related to incidents and alleged incidents of sexual harassment, and all documentation related to such incidents, to determine whether all incidents, allegations, or complaints related to sexual harassment were properly identified, investigated, and resolved consistent with District policies and procedures.

e) Certification by the District Equity Coordinator that all ASD Personnel received each required sexual harassment training and professional development,

described *supra* at V.D., and the District's plan for providing sexual harassment training and professional development to any individuals who did not receive it.

f) Certification by ASD that it has fully and sufficiently addressed all incidents alleging sexual harassment.

g) Copies of all supporting documentation shall be maintained at the District Equity Coordinator's office for review, upon request by the United States.

I. Enforcement

1. The United States will monitor and review compliance with this Consent Decree and may enforce this Consent Decree if it believes that this Consent Decree, or any portion of it, has been violated.

2. As part of its responsibility to monitor and review compliance with this Consent Decree, the United States may observe trainings, interview ASD Personnel 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 monitor ASD and to determine whether ASD is in compliance with this Consent Decree. Request by the United States for additional reports or data necessary to determine if ASD is in compliance with this Consent Decree shall not be withheld. Also, with seven (7) calendar days advance notice, the United States may visit any school in the District to monitor compliance and the District agrees to provide full access to the United States to perform such monitoring.

3. In the event that the United States believes that ASD has violated any provision of this Consent Decree, the United States will provide written notice (including reasonable particulars) of such violation, and ASD shall then respond to such notice and/or cure such non-compliance within thirty (30) calendar days. The parties shall negotiate in good faith in an

attempt to resolve any dispute relating thereto before the United States seeks relief from this Court.

4. Where there is a requirement in this Consent Decree that the District submit material to the United States for approval, and the District is unable to obtain approval that it believes has been unreasonably withheld, ASD will raise its concerns in writing with the United States and the United States shall then respond to such notice and/or issue the approval within thirty (30) calendar days. The parties shall negotiate in good faith in attempt to resolve any dispute relating thereto before seeking relief from this Court.

5. If any dispute under this Consent Decree is not resolved, any aggrieved party may petition the Court for relief.

6. This Consent Decree shall be enforceable only by the United States and ASD, and nothing in this Consent Decree shall be construed to give rise to an action by a third party to enforce the terms of this Consent Decree.

J. Miscellaneous

1. This Consent Decree shall remain in effect for three (3) years from the date of entry. The Court shall retain jurisdiction for the duration of this Consent Decree to enforce the terms of the Consent Decree, after which time the case may be dismissed with prejudice. Either party to this Consent Decree may apply to the Court for such further orders as may be necessary for, or consistent with, the enforcement of this Consent Decree, including but not limited to the extension of the Consent Decree, for good cause shown, for two (2) more years.

2. This Consent Decree constitutes the entire agreement by the parties, and no other statement, promise, or agreement, either written or oral, made by any party or agents of any

party, that is not contained in this written Consent Decree shall be enforceable regarding the matters raised in this Decree.

3. This Consent Decree is final and has binding effect on the parties, including all principals, agents, executors, administrators, representatives, employees, successors in interest, beneficiaries, assigns, and legal representatives thereof.

4. Failure of the United States to seek enforcement of this Consent Decree pursuant to its terms with respect to any instance or provision shall not be construed as a waiver to such enforcement with regard to that instance or provision or any other such instances or provisions.

5. This agreement does not affect the District's duty to comply with provisions of Title IX or any other law.

6. The undersigned representatives of the parties certify that they are authorized to enter into and consent to the terms and conditions of the Consent Decree and to execute and legally bind the parties to it.

7. The parties agree that, as of the date of entry of this Consent Decree, litigation is not "reasonably foreseeable" concerning the matters described herein. To the extent that any party previously implemented a litigation hold to preserve documents, electronically stored information, or things related to the matters described herein, the party is no longer required to maintain such a litigation hold. Nothing in this paragraph relieves any party of any other obligations imposed by this Consent Decree.

8. Notwithstanding Section V.J.7., the District is expected to preserve documents, including electronically stored information, used to compile all necessary reports and information for inspection by the United States as set forth in Section V.H., *supra*.

9. The parties will bear their own attorneys' fees and costs in connection with this litigation and resultant Consent Decree.

10. Neither this Consent Decree nor a violation of this Consent Decree shall serve as the basis for liability of ASD or its agents or officers, or be admissible in any proceeding, except in a proceeding brought by the United States.

11. If any term or provision of this Decree is determined by any court to be unenforceable, the other terms of this Decree shall nonetheless remain in full force and effect, provided however, that if the severance of any such provision materially alters the rights or obligations of the parties, the parties shall engage in good faith negotiations to adopt such mutually agreeable amendments to this Decree as may be necessary to restore the parties as closely as possible to the initially agreed-upon relative rights and obligations.

SO ORDERED, this ____ day of _____, 2012.

THE HONORABLE PAUL S. DIAMOND
United States District Judge


FOR THE UNITED STATES OF AMERICA:

ZANE DAVID MEMEGER
United States Attorney
Eastern District of Pennsylvania

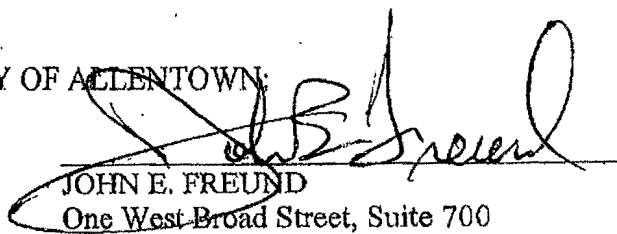
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FOR THE SCHOOL DISTRICT OF THE CITY OF ALLENTOWN:

A handwritten signature in black ink, appearing to read "John E. Freund", is written over a horizontal line. The signature is stylized and cursive.

JOHN E. FREUND
One West Broad Street, Suite 700
Bethlehem, PA 18018
Tel: (610) 332-0390