

**ATTORNEY GENERAL OF THE STATE OF NEW YORK  
CIVIL RIGHTS BUREAU**

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IN THE MATTER OF THE INVESTIGATION OF  
ERIC T. SCHNEIDERMAN, ATTORNEY GENERAL  
OF THE STATE OF NEW YORK,

AOD # 16-050

OF

WESTBURY UNION FREE SCHOOL DISTRICT

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**ASSURANCE OF DISCONTINUANCE**

In June 2015, the New York State Office of the Attorney General (“OAG”) began to investigate the Westbury Union Free School District (the “District”). The investigation sought to determine whether the District fulfilled its legal obligations concerning the provision of equal educational opportunities to students regardless of immigration status. Specifically, the investigation sought to determine whether the District’s policies, procedures, and practices for student enrollment and academic placement discriminated against students on the basis of immigration or citizenship status, or national origin.

This Assurance of Discontinuance (“Assurance”) contains the findings of the OAG in connection with its investigation of the District and the relief agreed to by the OAG and the District (“the Parties”).

**I.**  
**DEFINITIONS**

1. As used throughout this Assurance, the terms set forth below shall have the following meanings.
  - a. “Assurance” means this Assurance of Discontinuance.
  - b. The “District” means the Westbury Union Free School District and its board of education, trustees, school authorities, school officers, school administrators, superintendent, principals, employees, agents, representatives, or other persons acting on its behalf.
  - c. “Effective Date” means the date that this Assurance is signed by an authorized representative of the OAG.
  - d. “ELL” means English language learner, sometimes referred to as a limited English proficient, or “LEP” student.
  - e. “Employee” means any person carried on the payroll of the District, and includes salaried and hourly employees, full-time or part-time employees, temporary, probationary, or permanent employees, principals, teachers, teacher’s aides and assistants, superintendent’s staff, administrators, registration personnel, secretaries or other administrative personnel, and security guards or other security personnel.
  - f. “OAG” means the New York State Office of the Attorney General.
  - g. “Parties” means the OAG and the District.
  - h. “School” means any elementary, K-8, middle, secondary schools, innovation zone schools or alternative education programs currently or formerly open in the District.
  - i. “SED” means the New York State Education Department.
  - j. Terms of construction:

- i. “And” and “or” shall be construed conjunctively or disjunctively as necessary to make the meaning inclusive rather than exclusive.
- ii. “All” means “any and all” and “any” means “any and all.”
- iii. “Concerning” means relating to, referring to, describing, evidencing, regarding, reflecting, or constituting.
- iv. “Day” refers to a calendar day, not a business day.
- v. “Including” means without limitation.
- vi. The singular of any word includes the plural; the plural of any word includes the singular.

## **II.** **FINDINGS**

### **The Westbury Union Free School District**

2. The Westbury Union Free School District has over 4,800 enrolled students currently studying at six District schools.<sup>1</sup> The District’s student population is 71% Hispanic, 27% African-American, 1% Caucasian, and 1% Asian or Pacific Islander.
3. The District is supervised by a Superintendent and a seven-member Board of Education (the “Board”). The Superintendent serves as the chief executive officer of the District and is responsible for implementing Board policies, as well as advising and recommending action to the Board. The Board has numerous responsibilities, including drafting policies for the operation of the local schools; employing a Superintendent of Schools; authorizing the appointment of teachers and all other staff members;

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<sup>1</sup> When used throughout this Assurance, “student” means any person below the age of twenty-one (21) currently or formerly enrolled in a District school.

determining goals for educational standards; securing money for school operational needs and building programs; and authorizing specific expenditures.

4. The District's Assistant Superintendent for Curriculum, Instruction, & Personnel is responsible for enrollment and student academic placement within the District.<sup>2</sup> The Assistant Superintendent and staff responsible for student enrollment and academic placement work out of several locations, including the District's Office of Central Registration, Office of Pupil Personnel Services, and the Westbury Adult Learning Center.

#### **The OAG/SED Joint Review and the OAG's Investigation**

5. In November 2014, the OAG and SED opened a joint review of enrollment policies and procedures of school districts in Nassau, Suffolk, Westchester, and Rockland Counties, including the District, to determine whether those districts were impermissibly discriminating against students or prospective students on the basis of immigration status. The review was initiated, in part, based on complaints received from community members, as well as public information detailing the situation of students who had sought unsuccessfully to enroll in schools within the Westbury Union Free School District.
6. In September 2015, the OAG opened a formal investigation into the District, which included a review of publicly available information; information submitted by the District to the OAG/SED concerning its enrollment and registration policies and procedures; information submitted by the District in response to document requests issued by the OAG; and data concerning the District's enrollment practices. The investigation also

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<sup>2</sup> When used throughout this Assurance, "enrollment" means all District functions occurring between the time a parent (or person in parental relation) first contacts the District seeking to enroll a child and the time such child begins attending classes in a District school, regardless of where those functions are physically executed (*e.g.*, at a central registration center versus a school campus).

included interviews with witnesses, including school advocates, and students and parental relations of students who experienced delays or denials in enrollment in District schools.

### **District Denials and Delays in Enrolling Students**

7. The investigation found that, at least as early as the summer of 2012 and continuing through fall 2015 (the “Relevant Period”), the District denied or delayed the enrollment of numerous students who sought to enroll in the District (“Rejected Students”). Many of the Rejected Students were unaccompanied minors originating from Central and South America, and many were not U.S. citizens at the time they sought to enroll. The Rejected Students experienced delays in enrollment up to as long as six months. In several instances, Rejected Students sought to enroll in the District, could not obtain all documentation or proofs required by the District, and gave up seeking to enroll altogether.
8. The investigation found that, during the Relevant Period, the District delayed or denied the enrollment of the Rejected Students through a variety of methods. These methods included written inquiries in the District’s enrollment materials concerning the citizenship and immigration status of prospective students, like requests for Social Security Numbers and express questions as to whether students were citizens or immigrants. The District’s enrollment materials also made written inquiries into the national origin of prospective students. The investigation found that, during the Relevant Period, District employees supplemented these written inquiries with oral inquiries concerning the national origin of Rejected Students at the time they sought to enroll in the District.
9. The investigation found that, during the Relevant Period, the District also delayed or denied the enrollment of the Rejected Students through mandatory requirements for proof of residency, student age, and the legal status of parental relations, that may have

exceeded the requirements set forth in the New York Education Law and SED Commissioner's Regulation § 100.2(y). These proofs, which were a condition of enrollment, included: (i) the mandatory provision of an original birth certificate for a prospective student; (ii) excessive documents verifying proof of residency for those students whose parental relations are renters, *e.g.*, a deed mortgage statement, or property tax receipt from the owner of the property, or a sworn affidavit from a landlord without a corresponding unsworn option; (iii) an original marriage certificate for the parents of a prospective student; and (iv) legal custody or guardianship papers for students' parental relations.

10. The investigation further found that, during the Relevant Period, the District failed to make disclosures required by Commissioner's Regulation § 100.2(y), concerning acceptable forms of proof in the District's enrollment process, which also contributed to delays and denials of enrollment for the Rejected Students. These included disclosures concerning: (i) alternative available forms of proof of residency, *e.g.*, pay stubs, tax forms, membership documents, or a third-party statement; and (ii) alternative available forms of proof of age, *e.g.*, a driver's license, other government identification, or records from international relief or aid agencies.

**District Diversion of Older Immigrant Students into Non-Diploma Programs**

11. The investigation found that the District had an unwritten policy of excluding ELLs over the age of sixteen from the District's only public high school, and diverting these students into non-degree bearing alternative educational programs. The OAG identified nearly two dozen students between the ages of 17 and 20 who (i) sought to enroll in the District during the Relevant Period, (ii) were perceived by District employees to be ELLs, and

(iii) were asked their age and, upon stating they were over sixteen, were subsequently told they could not enroll in Westbury Senior High School (“Diverted Students”). The reasons District employees provided to the Diverted Students were their “age,” that they were “too old,” or their age and the fact that the “school was full.” District employees informed the Diverted Students that, although they could not enroll in the high school, they could enroll in English as a Second Language (“ESL”) or high-school equivalency classes at the Westbury Adult Learning Center.

12. The investigation found that the District’s unwritten policy was consistently enforced across various District locations where Diverted Students sought initially to enroll, including the District’s Offices of Central Registration and Pupil Personnel Services, as well as the high school campus. The unwritten policy was also consistently enforced over time across the Relevant Period, as several Diverted Students repeatedly sought to enroll in the District’s high school after being initially diverted to, and attending, ESL or high-school equivalency classes at the Westbury Adult Learning Center. Despite their repeated attempts, these Diverted Students were consistently denied the opportunity to enroll in Westbury Senior High School.
13. The investigation found that, as a result of the District’s unwritten policy, Diverted Students who were eligible to attend high school within the District and requested to enroll there – several repeatedly – instead remained in ESL or high-school equivalency programs that had extremely limited academic offerings and could not result in a Regents diploma. The investigation further found that, while the Diverted Students remained in alternative ESL or high-school equivalency programs, the District did not evaluate them at regular intervals in order to determine their ability to integrate into the general high

school population. The Diverted Students remained in such non-degree programs for between one and three years.

### **III.** **PROSPECTIVE RELIEF**

WHEREAS, pursuant to New York Education Law §§ 3202 and 3205, each person over five and under twenty-one years of age, who has not received a high school diploma, is entitled to attend a public school in the district in which such person resides, and school districts must ensure that all resident students of compulsory school age attend upon full-time instruction;

WHEREAS, the District is subject to the Fourteenth Amendment to the U.S. Constitution, which the U.S. Supreme Court held, in *Plyler v. Doe*, prohibits school districts from denying a resident student an equal educational opportunity on the basis of his or her immigration status;

WHEREAS, the District is subject to New York Education Law § 3201, which prohibits school districts from denying a resident student equal educational opportunity on the basis of his or her national origin;

WHEREAS, the District is subject to the federal Equal Educational Opportunities Act, 20 U.S.C. § 1703, *et seq.*, and Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d, *et seq.*, which prohibit school districts from denying a student equal educational opportunity on the basis of his or her national origin or English language proficiency;

WHEREAS, the OAG investigation included interviews of students, parents, advocates, and other witnesses; review of documents, including those produced by the District, concerning pertinent policies, procedures, and practices of the District; and analysis of data regarding the District's enrollment and academic placement practices;

WHEREAS, the District neither admits nor denies the OAG's findings set forth in Paragraphs 2 – 13;

WHEREAS, under *Plyler v. Doe*, the District must ensure that its enrollment and academic placement procedures, and their use by District personnel, do not ask for information or documentation, or otherwise create barriers that have the purpose or result of chilling, discouraging, or denying enrollment by students on the basis of their citizenship or immigration status;

WHEREAS, the District commits to ensuring that every child seeking to enroll in the District's schools is treated equally regardless of citizenship or immigration status, or national origin; that its enrollment and academic placement policies are free of discrimination; and that no eligible child is impermissibly denied his or her right to a free education in the District's schools;

WHEREAS, the Parties agree that alternative educational programs can offer benefits to English language learners and/or immigrant students, when such students are fully informed of their right to attend a general educational program and, having been so informed, choose such an alternative program;

WHEREAS, the Parties are willing to accept the terms of this Assurance to resolve the investigation into the District; and

WHEREAS, the Parties believe that the obligations imposed by this Assurance are prudent and appropriate;

IT IS HEREBY UNDERSTOOD AND AGREED, by and between the District and the OAG as follows:

**A.**  
**GENERAL INJUNCTION**

14. The District agrees to comply with the mandate of the Supreme Court's ruling in *Plyler v. Doe*; the obligations, terms, and conditions of the Fourteenth Amendment to the U.S. Constitution; New York Education Law §§ 3201, 3202 and 3205; Commissioner's Regulation § 100.2(y); the Equal Educational Opportunities Act, 20 U.S.C. § 1703, *et seq.*; Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d, *et seq.*; and any other applicable laws and regulations.

**B.**

**ENROLLMENT & ACADEMIC PLACEMENT MATERIALS**

15. Within thirty (30) days of the Effective Date of this Assurance, the District shall submit for OAG approval revised enrollment and academic placement materials, including but not limited to any and all instructions, forms, packets, guides, and "Frequently Asked Questions" ("Enrollment & Placement Materials" or "Materials"), which approval shall not be unreasonably withheld. In the event the OAG does not approve Materials submitted by the District, the District shall have an additional period of fourteen (14) days to revise the Materials and resubmit them for OAG approval. The Enrollment & Placement Materials must:
  - a. Conform to the requirements of the New York Education Law and §100.2(y) of the Commissioner's Regulations;
  - b. Must not include any inquiries into citizenship, immigration status, or any other inquiries that might chill or discourage student enrollment on the basis of immigration status; and
  - c. Must contain: (i) an express disclosure stating that all students over five and under twenty-one years of age, and regardless of English language proficiency, are entitled to attend a daytime academic program at a District school that allows such students to

obtain credit toward a Regents diploma; and (ii) an informed consent form (“Informed Consent Form”) to be signed by a student and/or parental relation, and returned to the District with the student’s other enrollment forms, reflecting that such disclosure has been made by the District prior to the student’s choice of academic placement in a District daytime or alternative educational program.

16. Within seven (7) days of OAG approval of the Enrollment & Academic Placement Materials, the District shall (a) distribute the Materials to the Employees who handle enrollment and academic placement policies at each School in the District; (b) make the Materials publicly available, including posting them on the District’s website with an announcement explaining the change in the Materials; and (c) post a statement on the District’s website stating that complaints concerning enrollment and academic placement can be submitted to the OAG by mail to 120 Broadway, 23rd Floor, New York, NY 10271, by phone to (212) 416-8250, or by email to [civil.rights@ag.ny.gov](mailto:civil.rights@ag.ny.gov).
17. Any proposed modifications to the Enrollment & Academic Placement Materials at any time during the term of this Assurance, including any changes concerning documents or information required of students in order to enroll, or to obtain or change academic placement within a District School, or pertaining to a student’s or parental relation’s immigration status, shall be subject to OAG approval.

### C.

#### **ENROLLMENT & ACADEMIC PLACEMENT PROCEDURES**

18. Within thirty (30) days of the Effective Date of this Assurance, the District shall submit for OAG approval written procedures for handling the enrollment and academic placement processes and determinations with the District (“Enrollment & Academic Placement Procedures” or “Procedures”), which approval shall not be unreasonably

withheld. In the event the OAG does not approve Procedures submitted by the District, the District shall have an additional period of fourteen (14) days to revise the Procedures and resubmit them for OAG approval. . The Procedures shall include:

- a. A statement prohibiting inquiries into citizenship or immigration status or national origin at the time of or as a condition of enrollment, except for limited and targeted post-enrollment inquiries, such as collecting necessary data for procuring funding under Title I of the Elementary and Secondary Education Act of 1965 (“ESEA”), Title III of ESEA, as amended by the No Child Left Behind Act of 2001, and N.Y. Educ. Law §3218 and §100.2(y) of the Commissioner’s Regulations;
- b. A statement permitting acceptance of multiple forms of proof of age as required by N.Y. Educ. Law §3218 and §100.2(y) of the Commissioner’s Regulations;
- c. A statement permitting acceptance of multiple forms of proof of residency as required by §100.2(y) of the Commissioner’s Regulations;
- d. A statement that, in the event it denies enrollment of a student, the District will do so in accordance with §100.2(y) of the Commissioner’s Regulations, including the provision of written notice to the student or parent/guardian as set forth in that section;
- e. Identification of a reporting structure for all District personnel responsible for enrollment, including those personnel (*e.g.*, security guards or receptionists) who may interface with children or parental relations seeking to enroll at District locations;
- f. Detailed instructions to all District personnel concerning all required steps in the District’s enrollment and academic placement processes, beginning with a child or parental relation’s first enrollment-related inquiry to the District and continuing

through the time an enrolled child begins attending appropriate classes at a District school;

- g. A statement that all students over five and under twenty-one years of age, and regardless of English language proficiency, are entitled to attend a daytime academic program at a District school that allows such students to obtain credit toward a Regents diploma;
- h. A description of how District Employees responsible for student enrollment or academic placement should present and explain the Informed Consent Form to students and/or parental relations seeking to enroll in the District, and the purpose underlying the Informed Consent Form;
- i. A statement prohibiting the diversion of actual or perceived ELLs into District alternative educational programs on the basis of their language proficiency and/or age; and
- j. A description setting forth the sequence and manner in which the formal assessment of students' language abilities should occur within the enrollment and academic placement process, consistent with Part 154 of the Commissioner's Regulations.

**D.**

**DESIGNATION OF ENROLLMENT & ACADEMIC PLACEMENT OMBUDSMAN**

19. Within sixty (60) days of the Effective Date, the District shall hire a new Employee to serve as the Enrollment & Academic Placement Ombudsman ("Ombudsman"). The selection of the Ombudsman shall be subject to OAG review and approval, and the Ombudsman shall have sufficient experience in the subject matter of student enrollment, academic placement, and legal requirements concerning the same. The Ombudsman shall be responsible for administering the District's enrollment and academic placement

processes; ensuring compliance with state and federal laws regarding school enrollment and academic placement; ensuring that the implementation of the District's enrollment and academic placement procedures is fair, equitable, and in compliance with this Assurance; and communicating with students, parents, and Staff about issues relating to the District's enrollment and academic placement policies and the implementation of this Assurance.

20. Within thirty (30) days of the Effective Date, the District shall appoint a member of the administrative Staff at each School to serve as the Coordinator of Student Enrollment & Academic Placement ("Coordinator"). The Coordinator shall work with the Ombudsman to ensure compliance at his or her School with the District's policies and this Assurance, and to ensure students do not face delays between the time of enrollment at the District's central registration and the time such students begin attending appropriate academic classes at their respective District Schools. The Coordinator shall be available to work with the Staff at his/her School to help ensure timely and appropriate placement of students into classes, and shall also work in coordination with and seek guidance from the Ombudsman on questions concerning enrollment and academic placement.

**E.**

**RETENTION OF INDEPENDENT MONITOR**

21. Within sixty (60) days of the Effective Date, the District shall retain, at its own expense, a qualified individual or organization to serve as an Independent Monitor ("Monitor") who shall be primarily responsible for monitoring the District's compliance with the terms of this Assurance. Before selecting the Monitor, the District shall develop a proposed description of duties and responsibilities of the Monitor, which shall be subject to OAG approval, which shall not be unreasonably withheld. In the event the OAG does

not approve the description submitted by the District, the District shall have an additional period of fourteen (14) days to revise the description and resubmit it for OAG approval. The District shall retain the Monitor for the first year of this Assurance, *i.e.*, a calendar year from the Effective Date. The Monitor shall have unrestricted access to the District's files and records, and have the ability to conduct on-site visits, in order to audit compliance with this Assurance. The selection of the Monitor shall be subject to OAG review and approval.

22. The Monitor shall create a plan to conduct periodic reviews of the data, files, and records to assess compliance with the District's policies and with this Assurance. The Monitor's plan shall be subject to OAG approval, which shall not be unreasonably withheld. The Monitor will also make recommendations, as necessary and appropriate, to ensure that the District complies with the terms of this Assurance and requirements of law.
23. The Monitor shall be in regular contact with the OAG regarding any concerns about compliance with this Assurance and shall submit monthly reports to the OAG outlining the District's compliance with each provision of this Assurance.

**F.**  
**TRAINING**

24. Within sixty (60) days of the Effective Date of this Assurance, the District shall create a mandatory training program for all Employees involved in the District's enrollment or academic placement processes ("Training Program"). The entity used to create the Training Program should have expertise and/or familiarity with enrollment and academic placement processes that comport with the law. Entities that can be retained for such training include, but are not limited to, third party non-profits, district counsel, advisors, or other agencies. Both the entity the District uses to help develop its Training Program,

and the Training Program itself, are subject to OAG approval, which shall not be unreasonably withheld. In the event the OAG does not approve the Training Program submitted by the District, the District shall have an additional period of fourteen (14) days to revise the Training Program and resubmit it for OAG approval. . The Training Program shall cover, but not be limited to, the following topics:

- a. The District's commitment to using policies that ensure provision of equal educational opportunities to District students regardless of citizenship or immigration status, or national origin;
- b. A detailed explanation of the District's enrollment and academic placement processes, including:
  - i. The reporting structure for all District personnel responsible for enrollment, including those personnel (*e.g.*, security guards or receptionists) who may interface with children or parental relations seeking to enroll at the District's Central Registration Office;
  - ii. Instructions to District personnel on all required steps in the District's enrollment process, beginning with a child, parent, or guardian's first enrollment-related inquiry to the District and continuing through the time an enrolled child begins attending appropriate classes at a District School;
- c. The District's obligations under the Fourteenth Amendment to the U.S. Constitution, New York Education Law §§ 3201, 3202, and 3218, §100.2(y) of the Commissioner's Regulations, the Equal Educational Opportunities Act, and Title VI of the Civil Rights Act of 1964;

- d. A description of the prohibitions concerning inquiries into citizenship and immigration status, and national origin; identification of the limited and narrow circumstances under which such inquiries are permitted; discussion of the kinds of inquiries that can potentially chill enrollment;
  - e. An explanation of the right to file an appeal under New York Education Law §310 if a student is denied enrollment;
  - f. A discussion concerning the entitlement of all students over five and under twenty-one years of age, and regardless of English language proficiency, to attend a daytime academic program at a District school that allows such students to obtain credit toward a Regents diploma;
  - g. A description of how District Employees responsible for student enrollment or academic placement should present and explain the Informed Consent Form to students and/or parental relations seeking to enroll in the District, and the purpose underlying the Informed Consent Form;
  - h. A description of the prohibited diversion of actual or perceived English language learners into District alternative educational programs on the basis of their language proficiency and/or age; and
  - i. A description setting forth the sequence and manner in which the formal assessment of students' language abilities should occur within the enrollment and academic placement processes, consistent with Part 154 of the Commissioner's Regulations.
25. Within thirty (30) days of OAG approval of the Training Program, the District shall offer, and require all Employees involved in the enrollment and/or academic placement processes to attend, a live presentation of the Training Program. The Training Program

may be offered in connection with other District Employee training opportunities, but the District shall offer, and require all Employees involved in the enrollment and academic placement processes to attend, a live presentation of the Training Program no less than once in each school year covered by this Assurance. The District shall maintain attendance sheets at each training presentation mandated by this Assurance.

**G.**  
**COMPENSATORY SERVICES**

26. Notwithstanding any other additional educational services to which District students may be entitled, within forty-five (45) days of the Effective Date of this Assurance, the District shall submit for OAG approval a plan to provide compensatory educational services to students who experienced enrollment denials, delays, or academic diversion by the District during the Relevant Period (“Compensatory Services Plan” or “Plan”), which approval shall not be unreasonably withheld. In the event the OAG does not approve the Plan submitted by the District, the District shall have an additional period of fourteen (14) days to revise the Plan and resubmit it for OAG approval. .
27. Regarding Rejected Students, the District shall offer educational enrichment services (“Services”) to each student who, during the Relevant Period, experienced a delay of fourteen days or longer between the time of first seeking to enroll in the District and the time (s)he began attending classes in any District school or alternative program, in order to compensate the student for programming and services (s)he did not receive as a result of such delay.
28. Regarding Diverted Students, the District shall offer Services to each student who, during the Relevant Period, sought to enroll in the District and was placed in an alternative

educational program instead of Westbury Senior High School, in order to compensate the student for programming and services (s)he did not receive as a result of such diversion.

29. The Services shall be offered in addition to the instruction an eligible student receives as part of his/her normal school day in the District. The Services may be provided by community-based organizations or by the District's own personnel. The Services may be offered via after-school academic programs, Saturday school, or during the summer months of 2016, but the Services shall be provided to eligible students no later than the commencement of the 2016-17 school year. The Services shall be offered in an accessible location or locations within a reasonable distance of each eligible student's residence.
30. The Compensatory Services Plan shall include the following:
  - a. A list of all students who experienced enrollment delays of fourteen days or longer during the Relevant Period;
  - b. The length of delay experienced by each such student, including the dates on which the student (i) first sought to enroll in the District, and (ii) began attending classes of any kind in the District;
  - c. A list of all students who sought to enroll in the District during the Relevant Period and were placed in an alternative educational program;
  - d. A description of proposed providers of the Services, including their qualifications to provide the Services;
  - e. A description of how the Services (i) correspond to eligible students' missed academic services, and (ii) will ameliorate the delay in the District's provision of such

services to eligible students, or the diversion of eligible students into non-degree bearing programs;

- f. The method by and timeframe in which the Services will be delivered by the District to eligible students; and
  - g. Proposed correspondence the District shall send to offer the Services to eligible students.
31. Within fourteen (14) days of OAG approval of the Plan, the District shall send to each identified eligible student (or his/her parental relation) correspondence offering the Services. In the event the District does not receive a response from the student (or his/her parent or person in parental relation) from this initial correspondence, the District shall make reasonable efforts to contact the student (or his/her parent or person in parental relation) to offer the Services.
32. The District shall maintain all records relating to the Plan, including but not limited to:
- a. All correspondence sent by the District to eligible students (or their parents or persons in parental relation) offering the Services;
  - b. All correspondence concerning decisions by students (or their parents or persons in parental relation) to accept or decline the Services; and
  - c. Documentation of all Services provided to eligible students, including the dates on which the Services were provided and by whom they were provided.

**H.**  
**RECORDKEEPING AND REPORTING**

33. The District shall retain, for at least three (3) years after the Effective Date, all documents pertaining to this Assurance, including but not limited to records on every child who is

not enrolled in the District within three business days of that child's first attempt to enroll in the District, *e.g.*:

- a. The name and address of the child and his or her parental relation(s);
- b. The application submitted on behalf of the child;
- c. Notes of any evaluation made regarding the child concerning enrollment;
- d. Any record of an enrollment determination made with respect to the child;
- e. Notice of any denials of enrollment provided to such child and/or the child's parental relation(s); and
- f. All records concerning student academic placement in District schools or alternative educational programs, including but not limited to the Informed Consent Forms for all students.

34. The District shall retain, for the duration of the Assurance, all documents pertaining to this Assurance, whether in hard copy or electronic format, including but not limited to:
  - a. The Materials created pursuant to Paragraph 15;
  - b. The Procedures created pursuant to Paragraph 18;
  - c. The training attendance sheets maintained pursuant to Paragraph 25; and
  - d. Records on the provision of Services by the District pursuant to the Plan, created or maintained pursuant to Paragraphs 30-32.
35. The District shall prepare a report and provide it to the OAG at the close of each three-month period, for at least three (3) school years following the Effective Date. The reports shall contain the current versions of documents maintained under Paragraph 31(a)-(f).
36. The District shall ensure that any information, documents or data maintained under the terms of this Assurance, shall be available for review by SED. Upon written notice from

SED requesting any such information, documents, or data, the District must produce the requested information, documents or data within fourteen (14) days.

37. As part of this Assurance the District shall cooperate with the Monitor, the OAG, and SED in their monitoring efforts.

## I.

### **SCOPE OF THE ASSURANCE, JURISDICTION, AND ENFORCEMENT PROVISIONS**

38. This Assurance shall expire three years from the Effective Date.
39. The OAG has agreed to the terms of this Assurance based on, among other things, the representations that the District and its counsel made to the OAG and the OAG's own findings from the factual investigation as set forth in Paragraphs 2 – 13. To the extent that any material representations are later found to be inaccurate or misleading, this Assurance is voidable by the OAG in its sole discretion.
40. No representation, inducement, promise, understanding, condition, or warranty not set forth in this Assurance has been made to or relied upon by the District in agreeing to this Assurance.
41. Upon execution by the Parties to this Assurance, the OAG shall discontinue the instant investigation except as otherwise related to the enforcement of the terms of this Assurance.
42. The District represents and warrants, through the signatures below, that the terms and conditions of this Assurance are duly approved, and execution of this Assurance is duly authorized. The District agrees not to take any action or make any statement denying, directly or indirectly, the propriety of this Assurance or expressing the view that this Assurance is without factual basis. Nothing in this paragraph affects the District's (i) testimonial obligations or (ii) right to take legal or factual positions in defense of

litigation or other legal proceedings to which the OAG is not a party. This Assurance is not intended for use by any third party in any other proceeding and is not intended, and should not be construed, as an admission of liability or wrongdoing by the District.

43. This Assurance may not be amended except by an instrument in writing signed on behalf of all the Parties to this Assurance.
44. This Assurance may be executed in multiple counterparts.
45. This Assurance shall be binding on and inure to the benefit of the Parties to this Assurance and their respective successors and assigns, provided that no party, other than the OAG, may assign, delegate, or otherwise transfer any of its rights or obligations under this Assurance without the prior written consent of the OAG.
46. In the event that any one or more of the provisions contained in this Assurance shall for any reason be held to be invalid, illegal, or unenforceable in any respect, in the sole discretion of the OAG such invalidity, illegality, or unenforceability shall not affect any other provision of this Assurance.
47. If the Assurance is voided or breached, the District agrees that any statute of limitations or other time-related defenses applicable to the subject of the Assurance and any claims arising from or relating thereto are tolled from and after the date of this Assurance. In the event the Assurance is voided or breached, the District expressly agrees and acknowledges that this Assurance shall in no way bar or otherwise preclude the OAG from commencing, conducting or prosecuting any investigation, action or proceeding, however denominated, related to the Assurance, against the District, or from using in any way any statements, documents or other materials produced or provided by the District prior to or after the date of this Assurance.

48. No provision of this Assurance shall be interpreted to require the disclosure of student education records where prohibited by the Family Educational Rights and Privacy Act.
49. To the extent not already provided under this Assurance, the District agrees to, upon request by the OAG, provide all documentation and information necessary for the OAG to verify compliance with this Assurance.
50. All notices, reports, requests, and other communications to any party pursuant to this Assurance shall be in writing and shall be directed as follows:

OAG  
Justin Deabler  
Assistant Attorney General  
Office of the Attorney General  
Civil Rights Bureau  
120 Broadway  
New York, New York 10271  
(212) 416-8250  
(212) 416-8074 (fax)  
Civil.Rights@ag.ny.gov (email)

The District  
Dr. Mary Lagnado  
Superintendent of Schools  
Westbury Union Free School District  
2 Hitchcock Lane  
Old Westbury NY 11568  
(516) 876-5006

Copy to:  
Lawrence J. Tenenbaum, Esq.  
Jaspan Schlesinger LLP  
300 Garden City Plaza  
Garden City, NY 11530  
(516) 746-8000

Any changes in the person to whom communications should be specifically directed shall be made in advance of the change.

51. Acceptance of this Assurance by the OAG shall not be deemed approval by the OAG of any of the practices or procedures referenced herein, and the District shall make no representation to the contrary.
52. Notwithstanding any provisions of this Assurance to the contrary, the OAG shall consider requests, when necessary, for reasonable extensions of time for the District to perform any obligations required herein.
53. Should the OAG find a breach of any component of this Assurance, the District will be notified of the breach in writing, after which the District will have fourteen (14) days to cure the breach and/or to object in writing to the OAG. Upon receipt of any objection, the OAG will make a final determination as to whether a material breach has occurred.
54. If a court of competent jurisdiction determines that the District has breached this Assurance, the District shall pay to the OAG the cost, if any, of such determination and of enforcing this Assurance, including without limitation legal fees, expenses, and court costs.

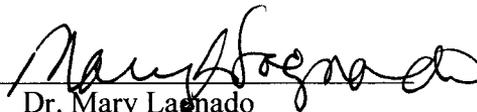
55. Nothing contained herein shall be construed so as to deprive any person of any private right under the law.

IN WITNESS THEREOF, this Assurance is executed by the parties hereto.

Dated: Westbury, New York

~~January~~, 2016  
February 11,

**WESTBURY UNION FREE  
SCHOOL DISTRICT**

By:   
Dr. Mary Lagnado  
Superintendent

CONSENTED TO:

**ERIC T. SCHNEIDERMAN**  
Attorney General of the State of New York

Dated: New York, New York

~~January~~, 2016  
February 25

By:   
Justin Deabler  
Assistant Attorney General  
Office of the New York State Attorney General  
120 Broadway  
New York, New York 10271  
Tel. (212) 416-8250  
Fax (212) 416-8074