

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

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IN THE MATTER OF THE INVESTIGATION OF  
LETITIA JAMES,  
ATTORNEY GENERAL OF THE STATE OF NEW YORK,  
OF  
BUFFALO CITY SCHOOL DISTRICT

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AOD No. 26-004

**ASSURANCE OF DISCONTINUANCE**

WHEREAS the Office of the Attorney General of the State of New York (“OAG”) commenced an investigation into the Buffalo City School District’s (the “District”) compliance with federal and state laws that protect students from discrimination and provide students with procedural safeguards in the application of school interventions and discipline;

WHEREAS this Assurance of Discontinuance (“Assurance”) contains the findings of the OAG’s investigation and the relief agreed to by the OAG and the District (collectively referred to as “the Parties”);

WHEREAS the District is subject to the requirements of: N.Y. Education Law § 3214, which requires school districts to observe student procedural safeguards when making a decision to remove a student from the education program; the Individuals with Disabilities Education Act, 20 U.S.C. § 1400 *et seq.* (“IDEA”), which establishes the procedures school districts must follow when disciplining students with disabilities; the New York State Human Rights Law (“NYSHRL”), N.Y. Executive Law § 291 *et seq.*; Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d *et seq.* (“Title VI”); Title II of the ADA, 42 U.S.C. § 12131 *et seq.*, (“ADA”); and Section 504 of the Rehabilitation Act, 29 U.S.C. § 701 *et seq.* (“Section

504”), which prohibit school districts from denying the benefits of their educational program to any student on the basis of that student’s race, ethnicity, disability, or sex;

WHEREAS the OAG has found, based on the factual findings described below, that the District is in violation of these laws in its administration of school discipline by, *inter alia*, failing to effectively address disparities in discipline across racial groups and between students with and without disabilities, failing to afford appropriate due process protections to students who are subjected to discipline, and failing to provide language access to Limited English Proficient (“LEP”) parents and students who are English Language Learners (“ELL”);

WHEREAS the Parties share a commitment to ensuring that the educational environment is safe and conducive to learning, seek to reduce the total number of suspensions and the amount of time students spend out of the classroom while serving suspensions, and agree that misconduct should be addressed through restorative practices and positive interventions;

WHEREAS the District has demonstrated a commitment to addressing disparities in suspension rates among students that exist along lines of race, ethnicity, and disability status while ensuring that all students in the District have equal access to educational opportunity;

WHEREAS the Parties are willing to accept the terms of this Assurance to resolve the investigation into the District’s discipline policies and practices; and

WHEREAS the Parties believe that the obligations imposed by this Assurance are prudent, appropriate, and necessary to ensure compliance with the legal requirements set forth in N.Y. Education Law § 3214, the IDEA, the NYSHRL, Title VI, Title II of the

ADA, and Section 504.

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

**PART ONE: DEFINITIONS**

1. As used throughout this Assurance, the terms set forth below shall have the following meanings.
  - a. “Abbreviated School Day” refers to any day that a student receives educational services for less time than age/grade-level peers within the same school and/or school program at the direction of the District or its employees for disciplinary or classroom management reasons.
  - b. “Alternative Program” refers to an education program at a location separate from the student’s general education setting that serves students who have been removed from their home school for violating the Code of Conduct.
  - c. “Assurance” means this Assurance of Discontinuance.
  - d. “Behavior Intervention Plan” or “BIP” refers to an individualized plan designed to respond to problem behavior. BIPs are developed using the findings from a Functional Behavioral Assessment and focus on the target behaviors and associated functions of target behaviors identified in the Functional Behavioral Assessment.
  - e. “Code of Conduct” or “Code” means the District-level policy governing student behavior and discipline.
  - f. “Detentions” refer to consequences for violations of the Code of Conduct that

do not remove a student from the classroom during instruction time, but do require a student to spend some amount of time in a particular school location during lunchtime, after school, or on the weekend.

- g. The “District” means the Buffalo City School District and its board of education, trustees, school authorities, school officers, school administrators, superintendents, principals, employees, agents, representatives, or other persons acting on its behalf.
- h. “Economically disadvantaged students” refers to students who participate in, or whose family participates in, economic assistance programs such as the Free or Reduced-Price Lunch Programs; Social Security Insurance (SSI); Supplemental Nutrition Assistance Program (SNAP); Foster Care; Refugee Assistance (cash or medical assistance); Earned Income Tax Credit (EITC); Home Energy Assistance Program (HEAP); Safety Net Assistance (SNA); Bureau of Indian Affairs (BIA); or Family Assistance: Temporary Assistance for Needy Families (TANF).
- i. “Effective Date” means the date this Assurance is executed by both parties.
- j. “Employee” means any person who works for the District.
- k. “Essential Information” includes, but is not limited to: (a) report cards and other academic progress reports; (b) documents concerning academic options and planning; (c) documents concerning enrollment or registration; (d) documents concerning screening procedures requesting a student’s language background, a parent/guardian’s preferred language of communication, and the process for refusing all or only specific ELL/LEP services; (e) requests for

parent/guardian permission for student participation in District/school-sponsored programs and activities; (f) promotional materials and announcements distributed to students that contain information about school and District activities for which notice is needed to participate in such activities (e.g., testing, co-curriculars activities requiring an application, parent-teacher conferences, open houses); (g) special education documents, including IEPs, BIPs, and FBAs; (h) information about student discipline; (i) parent/guardian handbooks; (j) information related to public health and safety; and (k) any other written information describing rights/responsibilities of parents/guardians or students and benefits/services available to parents/guardians and students.

- l. “Exclusionary Discipline” refers to any disciplinary consequences that remove a student from classroom instruction, including but not limited to, in-school suspension, out-of-school suspension, expulsion, or transfer to an alternative education program. The term does not refer to positive interventions, loss of privileges, detentions, or other corrective strategies that do not remove a student from instruction.
- m. “Free Appropriate Public Education” or “FAPE” refers to FAPE under the IDEA.
- n. “Functional Behavior Assessment” or “FBA” refers to a systemic process that is used to operationally define a behavior, identify factors that support the behavior, and determine the underlying function or purpose of a behavior, so that an effective Behavior Intervention Plan (BIP) can be developed.

- o. “Individualized Education Plan” or “IEP,” is provided to students with a disability so they may continue to receive a free and appropriate public education with as minimal restrictions as possible consistent with the requirements of the IDEA.
- p. “Manifestation determination review” or “MDR” refers to the IDEA’s regulations determining whether the conduct for which certain discipline is proposed is a manifestation of a student’s disability. *See* 34 C.F.R. § 300.530(e). For purposes of this document, this type of evaluation is referred to as a “manifestation determination,” and includes any hearing required under Section 504.
- q. “Outliers” refers to any instances where 1) a student is receiving disciplinary referrals or Exclusionary Discipline at more than twice the rate of the average student at that student’s school; or 2) Staff issuing disciplinary referrals at more than twice the rate of the average teacher/Staff member at the same school; or 3) a school resource officer or security guard is referring a student at more than twice the rate of the average student resource officer or security guard. The term is not intended to measure whether the conduct is discriminatory as a legal matter, rather it is for the District to be able to identify situations that warrant further inquiry to ensure nondiscrimination or further interventions, behavioral support, or support for Staff.
- r. “Staff” means any person on the payroll of the District, who is not part of the administration, Executive Level, the Superintendent’s employees, or the Board of Education.

- s. "School Administrators" or "administrators" refers to all principals and assistant principals or their designees at any District school.
- t. "School" means any elementary, K-8, middle, secondary schools, innovation zone schools, special schools, or alternative education programs currently or formerly open in the District.
- u. "School Resource Officer" or "SRO" means any personnel that provide the District with security services on school grounds, including private security officers, regardless of a written contract.
- v. "Student experiencing homelessness" refers to a student who lacks a fixed, regular, and adequate nighttime residence.
- w. "Student in foster care" refers to a student who is in the legal custody of the state.
- x. "Student Support Team" refers to the District personnel at each school primarily responsible for providing students with positive interventions and supports to divert from the use of exclusionary discipline, including the school psychologist, school social worker(s), or counselors(s), restorative workers or other similar staff. The composition of the student support team varies at each school.
- y. As used throughout this Assurance, "referrals," "teacher referrals," and "referred" means a consequence for one or more violations of the Code of Conduct that removes a student from their regular classroom and school pursuant to N.Y. Education Law § 3214(3-a).
- z. 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.

## **PART TWO: OAG FINDINGS**

2. The OAG opened an investigation into allegations that the District was, *inter alia*, engaged in a pattern of disproportionately disciplining Black and Latinx students for misconduct compared to their White peers; disproportionately disciplining students with disabilities compared to students without disabilities; and failing to provide students with all of the procedural safeguards required by state and federal law.
3. Since initiating this investigation, OAG reviewed a substantial volume of data and documents pertaining to the District’s policies and practices related to school discipline. The OAG’s investigation included: interviews of multiple parents, guardians, students, student advocates, lawyers, experts in school discipline and student development, and other witnesses; reviews of the District’s policies and procedures relating to school

discipline; and analysis of discipline data publicly available, as well as additional data produced by the District and New York State Education Department (“NYSED”).

4. Prior to executing this Assurance, the Parties met to discuss these findings and then met a number of additional times over the course of several months to negotiate the remedies contained in this Assurance. Below is a summary of the principal findings of OAG’s investigation, as well as the remedial provisions that OAG deems necessary to resolve this matter.

***The Buffalo City School District***

5. As of the 2023-2024 school year, the Buffalo City School District has approximately 27,450 students. Black students make up approximately 42% of overall enrollment. Latinx students make up approximately 21% of overall enrollment and Asian or Native Hawaiian/Other Pacific Islander make up approximately 15% of overall enrollment. White students make up approximately 17% of overall enrollment.
6. According to data reported to NYSED, students that are ELL represent approximately 19% of the student population; students with disabilities represent approximately 24% of the student body population; and economically disadvantaged students represent approximately 87% of the student body population.
7. The District is supervised by Dr. Pascal Mubenga, and a 9-member Board of Education (the “Board”). The Superintendent serves as the chief executive officer of the District and is responsible for implementing policies, as well as advising and recommending action to the Board. The Board has several responsibilities, including carrying out duties imposed by federal and state laws, providing and organizing personnel, maintaining sufficient

resources for the school system, and establishing policies and procedures necessary for the District.

***OAG Findings Regarding the District's Code of Conduct & Its Application***

8. In 2013, the District adopted a revised Code of Conduct and has updated it multiple times in the years since. Recent modifications to the Code introduced a progressive form of intervention and discipline that moved away from relying on exclusionary discipline or “zero tolerance” as a primary response to misconduct to using suspensions as a last resort when other interventions have not worked.
9. Although the Code’s revised interventions marked progress, OAG’s investigation found that certain deficiencies persisted, and that the Code of Conduct was not implemented in a manner that would reduce disparities and ensure that students’ procedural rights were consistently protected.
10. OAG’s investigation found that the Code does not include clear, objective definitions for offenses that can result in classroom removal or Exclusionary Discipline and includes undefined or ambiguous terms that do not give students or parents or guardians adequate notice of prohibited conduct.
11. OAG’s investigation found that the Code has not been followed consistently by employees in disciplinary determinations and the District must implement sufficient oversight of the employees making disciplinary determinations to ensure consistent and equitable use of the Code. The OAG investigation also determined that the District needs to provide Staff with additional guidance and training to ensure consistent responses to address specific misconduct.

12. Further, OAG’s investigation found that the District does not have adequate control measures, checklists, or other accountability measures in place to determine that Exclusionary Discipline is being accurately reported in the school management system by referral parties, clerks, or administrators.

***OAG Findings Regarding Racial and Disability Disparities in School Discipline***

13. OAG analyzed data regarding the District’s application of discipline from a variety of sources, and in multiple school years, to determine that disparities exist across several student demographic groups, including Black and Latinx students, and students with disabilities who have IEPs.

14. OAG’s analysis measured discipline disparities through an examination of the metric “days of instruction lost per 100 students,” which captures the lost instruction time when students are removed from classroom instruction, and normalizes the data across differently sized groups of students to allow for comparisons regardless of the size of the subgroup.

15. OAG determined that Black and Latinx students in both elementary and secondary schools receive disproportionate suspension durations compared to their White counterparts. For example, for the 2022-2023 school year:

- a. Black elementary students were twice as likely to receive an out of school suspension compared to their White counterparts.
- b. Black secondary students were more than 6.4 times more likely to receive an out of school suspension compared to their White counterparts.
- c. Latinx elementary students were 1.6 times more likely to receive an out of school suspension compared to their White counterparts.

- d. Latinx secondary students were more than 3.8 times more likely to receive an out of school suspension compared to their White counterparts.

16. Further detail regarding these disparities from the 2019-2023 school years<sup>1</sup> is summarized in the following tables:

<b>BPS ELEMENTARY SCHOOLS</b>				
<b>School year</b>	<b>Subgroup name</b>	<b>Total out of school suspension days</b>	<b>Total students enrolled</b>	<b>Days lost per 100 students enrolled</b>
2019-20	BLACK	11,428	9,579	<b>119</b>
	LATINX	3,287	4,786	<b>69</b>
	OTHER	957	3,375	<b>28</b>
	WHITE	1,549	3,855	<b>40</b>
2021-22	BLACK	15,568	8,290	<b>188</b>
	LATINX	4,927	4,309	<b>114</b>
	OTHER	1,981	3,659	<b>54</b>
	WHITE	2,835	3,347	<b>85</b>
2022-23	BLACK	11,124	8,085	<b>138</b>
	LATINX	4,456	4,150	<b>107</b>
	OTHER	1,616	3,747	<b>43</b>
	WHITE	2,127	3,227	<b>66</b>
<b>BPS SECONDARY SCHOOLS</b>				
<b>School year</b>	<b>Subgroup name</b>	<b>Total out of school suspension days</b>	<b>Total students enrolled</b>	<b>Days lost per 100 students enrolled</b>

<sup>1</sup> OAG's analysis excluded data from the 2020-2021 school year (the District reported zero suspensions in that school year) due to the impact of the COVID-19 pandemic and related school closures. OAG excluded the data from 2020-2021 to avoid displaying results affected by a school year radically impacted by the COVID-19 pandemic.

2019-20	BLACK	14,558	5,121	<b>284</b>
	LATINX	3,102	1,827	<b>170</b>
	OTHER	883	1,649	<b>54</b>
	WHITE	1,611	2,312	<b>70</b>
2021-22	BLACK	21,543	4,651	<b>463</b>
	LATINX	4,784	1,893	<b>253</b>
	OTHER	2,580	1,877	<b>137</b>
	WHITE	2,186	2,100	<b>104</b>
2022-23	BLACK	18,028	4,417	<b>408</b>
	LATINX	4,691	1,915	<b>245</b>
	OTHER	1,904	1,960	<b>97</b>
	WHITE	1,245	1,970	<b>63</b>

17. In its analysis of data produced by the District from 2018-2024,<sup>2</sup> OAG found that Black and Latinx students lost significantly more days compared to White students for minor non-violent incidents, including suspensions for absences, cutting class, elopement (leaving a designated school area without permission or notification), and tardiness. This data indicated that Black students were nearly three times more likely to be suspended for minor/non-violent offenses than their White counterparts. Latinx students were nearly

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<sup>2</sup> OAG's investigation included a review of data extending back to 2014, and OAG observed a similar pattern of disparities in discipline within this earlier data set. However, due to inconsistencies in the manner in which the District recorded and maintained this data, it is not included in these findings, which focus on more recent trends.

two times more likely to be suspended for minor/non-violent offense than their White counterparts. Students with disabilities and IEP plans were nearly two times more likely to be suspended for minor/non-violent offenses than students without disabilities.

18. OAG’s analysis of available data also found students with disabilities with IEPs across both elementary and secondary schools have been disciplined at far higher rates than their peers without IEPs. For example, For the 2022-2023 school year, elementary students with an IEP were 1.7 times more likely to receive an out of school suspension compared to students without an IEP. Secondary students with an IEP were 2.2 times more likely to receive an out of school suspension compared to students without an IEP.

19. Further detail on these disparities from the 2019-2023 school years is summarized in the following tables:

<b>BPS STUDENTS WITH DISABILITIES (ELEMENTARY SCHOOLS)</b>				
<b>School year</b>	<b>Subgroup name</b>	<b>Total out of school suspension days</b>	<b>Total students enrolled</b>	<b>Days lost per 100 students enrolled</b>
2019-20	No IEP	9,626	16,361	<b>59</b>
	IEP	7,595	5,234	<b>145</b>
2021-22	No IEP	16,882	15,081	<b>112</b>
	IEP	8,429	4,524	<b>186</b>
2022-23	No IEP	12,444	14,520	<b>86</b>
	IEP	6,879	4,689	<b>147</b>
<b>BPS STUDENTS WITH DISABILITIES (SECONDARY SCHOOLS)</b>				
<b>School Year</b>	<b>Subgroup Name</b>	<b>Total Out of School Suspension Days</b>	<b>Total students enrolled</b>	<b>Days lost per 100 students enrolled</b>
2019-20	No IEP	13,495	8,812	<b>153</b>

	IEP	6,659	2,097	<b>318</b>
2021-22	No IEP	19,731	8,418	<b>234</b>
	IEP	11,362	2,103	<b>540</b>
2022-23	No IEP	16,713	8,181	<b>204</b>
	IEP	9,155	2,081	<b>440</b>

20. In its examination of the data, OAG also determined that the District imposed five-day suspensions for many students' first-time offenses, which is the maximum allowable for a Short-Term Suspension.

21. The data provided by the District also showed some students were suspended for being tardy or absent, which is against state policy.

22. Beginning in or around 2021, the District began publishing some suspension data on its website as a data dashboard. The OAG identified a number of ways that the Data Dashboard does not present a full picture of the District's suspension practices, such as suspensions being miscategorized, and other issues. The remedial provisions below (Paragraph 90) are intended to address the identified deficiencies.

***OAG Findings Regarding Due Process Rights, Short-Term & Long-Term Suspension Practices, and Alternative Education***

23. The OAG investigation also identified deficiencies in the District's adherence to due process protections established by state and federal law, which are summarized here.

24. **Informal conferences:** The Code of Conduct states that for students subject to in-school suspensions, parents or guardians shall be given notification of such action as soon as possible, and the student and the student's parent or guardian must be provided with a

reasonable opportunity for an informal conference with the District official imposing the in-school suspension to discuss the conduct and the penalty involved. OAG reviewed evidence that informal conferences do not appear to be happening consistently.

25. **Adequate notices:** The OAG investigation found that sometimes students and parents or guardians were not provided the notice of Short-Term Suspension as required by law. Nor did administrators adequately describe the alleged misconduct when providing written notice to parents or guardians. For example, OAG reviewed notices that included only a reference to the incident category in the Code, such as “Minor Altercation,” “Other Disruptive Incidents,” or “Disruptive” conduct, without identifying the underlying misconduct or a narrative response that would allow an effective response to the charge or to appeal the suspension.

26. **Provision of notices in the appropriate language and with sufficient detail:** OAG also learned of instances where schools did not provide adequate notice letters in the dominant language of the parent or guardian, as required by state law despite being on notice of the language of the family. Furthermore, OAG reviewed non-English notices that did not have the same information as the English notice, such as clarifying that parents or guardians have the right to question complaining witnesses, nor did the notices adequately describe the charges against the student.

27. **Manifestation Determination Reviews:** OAG reviewed evidence that families of students with disabilities were not always adequately informed of their rights following repeated or Long-Term Suspensions that would have triggered a student’s right to an

MDR.<sup>3</sup> Even where MDRs did occur, OAG reviewed evidence that the District sometimes failed to consider a student’s IEP or 504 plan when making determinations during MDRs, whether the suspension should be overturned as a manifestation of their disability, or whether the District failed to implement the IEP or 504 plan and whether missing services may have caused the misconduct. OAG also found the District failed to consistently ensure that Staff with personal knowledge of the student’s disability and behavior, including their teachers, counselors, social workers, and/or school psychologists, were invited to attend MDRs. During discussions with the District, it acknowledged to OAG that the District does not have a system in place to track overturned suspensions due to an MDR. Nor the record to cross reference suspension data with disability data to identify trends it can measure and work to reduce.

**28. Sending students home:** In addition, many families told OAG that their children were often sent home early for “acting out” even though the student had an IEP or 504 plan that had been designed to mitigate that risk or prevent an Abbreviated School Day. Sending students home early without documenting it as a suspension deprives students of

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<sup>3</sup> If a student is suspended for ten (10) days or more consecutive days, or when cumulatively the student’s suspensions of ten (10) days or more form a pattern that constitutes a change of placement, a MDR must take place. The District must review the discipline to ensure that it has not been imposed for conduct that is a manifestation of the student’s disability or results from a failure of the District to provide the student with the services the student needs to participate in the academic curriculum (such as the student not receiving the services mandated by the IEP). If the District finds a nexus between a student’s misconduct and the student’s disability, the District must conduct a Functional Behavioral Assessment (“FBA”) to determine the underlying causes and triggers of the student’s misbehavior and create a plan. The plan is called the Behavioral Intervention Plan (“BIP”) and it is based on that assessment. The plan implements solutions and interventions to address the identified causes of the misbehavior so the District can reduce their reoccurrence.

educational opportunities, and it is likely that these incidents are not adequately tracked in the District's discipline data. Without correct reporting, such absences may never trigger a mandatory MDR following the student being out-of-school for ten (10) days or more, or lead to a review about whether the educational supports in place are sufficient for the particular student.

29. **Superintendent Hearings:** The OAG also found evidence that the District's Superintendent's Hearings did not always comply with state law.<sup>4</sup> OAG learned of instances where the District failed to require the attendance of complaining witnesses, such as teachers, and instead relied on statements read by assistant principals or others who lacked personal knowledge of the misconduct. This practice denies students an opportunity to question witnesses or challenge the evidence used against them. The OAG also reviewed instances of impartial hearing officers considering irrelevant evidence during the sentencing stage of hearings, including evidence of the academic performance of students, which is improper. Other deficiencies identified by OAG in its investigation include the failure to inform parents or guardians that they could request an interpreter in their native language, and to provide an interpreter with sufficient skills to effectively communicate to the parents and guardians to afford them meaningful participation in the hearing.

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<sup>4</sup> Under New York law, Long-Term Suspensions (more than five days) must be issued by the Superintendent or Board of Education, and the student must have an opportunity for a superintendent's hearing. At the hearing, the student has an opportunity to question witnesses and present a case in the student's defense before an impartial hearing officer. There are two phases of the hearing, an evidence stage and a sentencing stage.

30. **Alternative Education:** The OAG investigation found that the District does not consistently meet its obligation to provide Alternative Education for students who are suspended consistent with state law.<sup>5</sup> OAG reviewed evidence suggesting that the District has failed to consistently and adequately inform parents or guardians of their right to seek Alternative Education for their students while they are suspended. OAG reviewed evidence that some parents and guardians received notices that simply stated that the school will contact the family to arrange Alternative Education, but then the parents and guardians never received any further contact from the District. OAG also interviewed families who alleged they received no information from the District about how many hours of Alternative Education the student is entitled to receive, nor where to complain if the student did not receive the Alternative Education. Even when students were placed in Alternative Education, OAG reviewed evidence that students received course material not relevant to their classroom studies, were provided non-interactive material, or were taught by an instructor who did not know the material.

31. **Alleged retaliation:** OAG also spoke with families, parents or guardians, and advocates that believe retaliation occurs against students and families who raise their voices about deficiencies in the District's disciplinary policies and practices. For instance, multiple families told OAG that after they engaged in protected activity related to their student's

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<sup>5</sup> Under state law, the District has an obligation to offer Alternative Education services to students serving suspensions of any length at least two hours per day for elementary students and at least three hours for secondary students. This is the minimum amount necessary to ensure students have an opportunity to continue their education at a similar rate to their peers.

education and/or discrimination with the District, they believed that the District called Child Protective Services (“CPS”) in response, alleging they had reasonable cause to believe the families were denying their students an education or otherwise being neglectful or abusive in violation of state law. Others told OAG that they feared voicing concerns about the District’s discipline policies and practices because their access to District services and grant opportunities would be jeopardized. Retaliation against parents or guardians and families for engaging in protected activity is against the law.

### **PART THREE: PROSPECTIVE RELIEF**

#### **LEGAL COMPLIANCE AND GENERAL PRINCIPLES**

32. **General Injunction:** The District shall not engage, or attempt to engage, in conduct in violation of any applicable laws, including but not limited to N.Y. Education Law § 3214, the IDEA, the NYSHRL, Title VI, Title II of the ADA, and Section 504 and expressly agrees and acknowledges that any such conduct is a violation of the Assurance, and that the OAG thereafter may commence the civil action or proceeding contemplated in Paragraph 102 in addition to any other appropriate investigation, action, or proceeding.
33. The District shall provide all students with schools that are safe and conducive to learning by implementing the following General Principles:
  - a. Adopting fair and appropriate student discipline policies that provide students with the procedural safeguards required by state and federal law, as well as policies that protect students from disciplinary action taken on the basis of race, ethnicity, national origin, or disability status;

- b. Utilizing preventative strategies that both teach and reinforce appropriate behavior and wellness, and which ensure that students remain in the District's education program rather than in the disciplinary system; and
- c. Ensuring that Staff utilize a range of corrective measures and positive intervention services before removing a student from their educational program, except when it can be documented that the safety of students and/or Staff is threatened, the behavior in question is such that the disruption to the educational environment can only be remedied by such a referral to an out-of-school suspension, or as otherwise required by law.

**RETENTION OF AN INDEPENDENT MONITOR & DESIGNATION OF  
INTERNAL OMBUDSPERSON & SCHOOL COORDINATORS**

***Independent Monitor***

34. Within 90 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"). The Monitor shall be 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, subject to the approval of OAG. The selection of the Monitor shall be subject to the OAG review and approval. The District shall retain the Monitor for at least four (4) complete school years.<sup>6</sup> The Monitor

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<sup>6</sup> For the purposes of this Assurance, a complete school year means a year of schooling beginning on the first day of school, ending on the last day of school, and excluding summer school.

shall have sufficient experience in the subject matter of school discipline, disparities in discipline experienced by students of color and students with disabilities, and the development and use of alternatives to suspensions. The Monitor shall have access to the District's files and records sufficient to be able to audit compliance with this Assurance.

35. The Monitor shall create a plan to conduct periodic reviews of records to assess compliance with the District's policies and practices and with this Assurance, subject to OAG approval, and to make recommendations based on the findings of these reviews. The District shall implement recommendations made by the Monitor, upon approval by the Superintendent. Within 20 District business days of a written recommendation based on the findings of the review, the District will notify the OAG and Monitor that it agrees to either implement the recommendation or provide a written explanation to the Monitor and the OAG detailing its decision to reject the recommendation of the Monitor, and offering a reasonable and feasible alternative to the recommendations. The Parties agree to work cooperatively with the Monitor and in good faith, to reach an agreement.
36. The Monitor shall be in regular contact with OAG regarding any concerns about compliance with this Assurance and shall submit biannual reports to the OAG outlining the District's compliance with each provision of this Assurance.

***Ombudsperson of Discipline***

37. Within 60 days of the Effective Date, the District shall retain or designate an Employee to serve as an Ombudsperson of Discipline ("Ombudsperson"). The Ombudsperson shall have sufficient experience in the subject matter of school discipline and the development and use of alternatives to suspensions, including restorative practices and a whole school/wellness model. The Ombudsperson shall be responsible for ensuring District

compliance with state and federal laws regarding school discipline, ensuring that the implementation of the District's policies concerning discipline is fair, equitable, non-discriminatory, and in compliance with this Assurance and state and federal law. The Ombudsperson shall also be responsible for communicating with students, parents, guardians and Staff about issues relating to the District's discipline policies and the implementation of this Assurance. The Ombudsperson shall report to the Superintendent or cabinet member as designated by the Superintendent. The selection of the Ombudsperson shall be subject to OAG review and approval.

*School Coordinators*

38. Within 30 days of the Effective Date, the District shall appoint an administrator or administrator's designee at each School to serve as the Coordinator of Student Behavior ("Coordinator") for the Student Services Team. The Coordinator shall work with the Ombudsperson to ensure compliance of their school with District policies, this Assurance, and state and federal law. The Coordinator shall be available to work with the Staff at the School to help determine appropriate discipline is being administered and shall also coordinate with the Ombudsperson.

**DEVELOPING PREVENTIVE STRATEGIES & CODE OF CONDUCT REFORM**

39. The District shall continue to implement a Preventative Strategies Plan and, within 60 days of the Effective Date, update it consistent with the terms of this Assurance. This Plan develops, expands, and involves age-appropriate strategies for teaching that encourages and reinforces positive student behavior that do not require engagement with the discipline system.

40. Within 120 days of selecting the Ombudsperson, the District shall submit its updated Preventative Strategies Plan to the Monitor. Once the Monitor determines that the Preventative Strategies Plan complies with this Assurance, the Monitor shall inform the OAG, and the District shall implement the updated Preventative Strategies Plan.

41. The strategies in the Preventative Strategies Plan shall be designed to prevent the occurrence of student misconduct, provide constructive feedback, teach alternative or replacement behaviors, and motivate students to comply with established school expectations. The Preventative Strategies Plan shall include, without limitation, the following strategies and elements:

- a. **Classroom Management and Behavioral Support for Staff:** The District shall implement a requirement that Staff consider and utilize, as appropriate, a range of interventions before referring a student to disciplinary authorities and/or law enforcement, including, but not limited to, behavior contracts, reflective writing assignments, peer support, conflict resolution, and restorative practices. The District shall document interventions attempted for the student and the results of those measures before any short-term or long-term suspension.
- b. Staff may refer students to the administration without the use of intervention only where the safety of students and/or Staff is threatened, the behavior in question is such that the disruption to the educational environment can only be remedied by such a referral, or the referral is required by law. In this event, Staff must provide documentation of the safety threat, disruptive behavior, or legal justification that justifies immediate referral and the narrative explaining

why within 48 hours when practicable. The District shall also ensure that Staff have appropriate resources and support to provide effective classroom management, including, but not limited to, consultations with the Coordinator, trainings, and other resources they may require.

- c. **Rewarding Positive Behavior:** The District shall continue to have in place, at every School, a system for positively encouraging and reinforcing appropriate student behavior.

42. **Supports for Struggling Students:** If, after the corrective measures have been fully implemented, a student is referred for discipline more than once for one day or more in a school year for behavior that disrupts their education and/or the education of other students, the District will provide school-based supports to assist the student. These supports may include, but not be limited to, the following:

- a. adult in-school mentoring;
- b. access to guidance counselors, student support Staff, counselors, social workers, school psychologists, coaches, or student advocates as appropriate;
- c. involvement of parents or guardians;
- d. the development and implementation of a behavior management plan;
- e. an FBA or BIP, as appropriate;
- f. assistance with learning appropriate behavior and developing self-management skills;
- g. referral for additional educational services, where appropriate;
- h. modifications of existing IEP or 504 plan;

- i. referral for an evaluation related to a student's disability or perceived disability; and
  - j. other necessary interventions to support the student staying in the classroom.
43. **Training:** As determined by the District, relevant Staff shall attend trainings on classroom management techniques, on rewarding positive behavior, on cultural competence, and culturally relevant pedagogy.
44. **Monitoring:** The Ombudsperson, in consultation with the Superintendent, shall create a reporting schedule with each Coordinator to update the District on the progress of implementation of the Preventative Strategies Plan at each school. The Ombudsperson shall determine what information is necessary to include in such progress reports. In addition, the Ombudsperson shall determine whether, and when, to make site and classroom visits to various schools to evaluate the implementation of the Preventatives Strategies Plan and shall be given access to make site visits by the District. The Ombudsperson shall provide the Monitor reports produced pursuant to this Paragraph.
45. **Amendments:** The District may amend the Preventative Strategies Plan at any time, but any such changes must be evaluated by the Ombudsperson and the Superintendent to determine whether the change complies with this Assurance. All changes shall be submitted to OAG for review and approval.
46. The Monitor may, with appropriate notice to the District, review information or reports collected or produced pursuant to this Assurance, or make site or classroom visits to any School to measure the effectiveness of the Preventative Strategies Plan. The Monitor shall document their findings and recommendations resulting from such reviews or site visits and submit them to the OAG and the District. The Monitor may share their findings with

the Ombudsperson. The District shall implement recommendations made by the Monitor, upon approval by the Superintendent. Within 20 District business days of a written recommendation resulting from the reviews or site visits, the District will notify the OAG and Monitor that it agrees to either implement the recommendation or provide a written explanation to the Monitor and the OAG detailing its decision to reject the recommendation of the Monitor, and offering a reasonable and feasible alternative to the recommendations. The Parties agree to work cooperatively with the Monitor and in good faith, to reach an agreement.

47. **Student Code of Conduct:** Within 60 days of the Effective Date, the District shall revise and submit for OAG approval its disciplinary policies, including its amended Code of Conduct and disciplinary matrix, to implement the General Principles identified above at Paragraphs 32-33. OAG shall provide any written feedback on the Code of Conduct within ten (10) days of receipt.

48. The District shall ensure that the revised policies: (a) clearly communicate the positive behaviors expected of students; (b) adopt objective definitions of behavioral infractions, strengthen the reliance on a progressive system of discipline; (c) incorporate interventions developed pursuant to Paragraphs 39-43 as alternatives to suspensions and require Staff to consider and utilize before making any referrals not required by law; (d) offer suspended students Alternative Education, including an opportunity to progress in their academic work and work with qualified Staff, in accordance with New York State law; (e) ensure administrators and Staff make reasonable efforts to offer to work with parents or guardians to assist students' transitions back to school after serving an out-of-school suspension and provide for re-integration with minimal disruption to their academic

progress; (f) protect and secure the rights of students with disabilities as outlined by federal and state law; (g) implement the procedural safeguards guaranteed to all students under state law; and (h) provide administrators and SROs with guidelines on when it is appropriate to refer students to law enforcement.

- a. The District's review of its policies shall include an identification of objective and subjective types of misconduct, and include alternatives to suspensions for minor, non-violent behavioral infractions and reduce the reliance on subjective criteria for referrals. The District shall review its policies and practices to make it clear when restorative practices are more appropriate and how to use intervention strategies with fidelity.
- b. The District shall review the Code of Conduct's glossary to ensure the definition of all behaviors that may be subject to discipline, provide examples of behaviors subject to discipline, and incorporate definitions meant to reduce overreliance on discipline for subjective behaviors (such as "Defiance of Authority," "Insubordination," "Disrespect" or "Talking Back"), and review the definition of all included behaviors for vagueness or for being over-inclusive of student behavior that is not an ongoing threat to disrupt the academic process or does not substantially interfere with the teacher's authority over the classroom.

49. **Progressive Discipline System:** The District shall continue to provide its own objective definitions of behavioral infractions and organize misconduct into progressive tiers, in the order of severity and related consequences. The District shall continue to ensure that the possible consequences for each type and tier of infraction are clearly stated, and that out

of school suspensions are not available for the lower tiers. Likewise, the District should refrain from overcharges, where conduct that would normally be lower tier misconduct is artificially and without cause increased to a higher tier to warrant suspension. The revised Code of Conduct shall also limit out of school suspension as discipline for students through 3rd grade to situations involving a serious and immediate threat of safety to others or in cases where immediate suspension is mandated by law. The District shall continue to undertake efforts, including ongoing engagement with students, student groups, parents, and parent groups, to identify strategies to reduce or eliminate the use of out of school suspensions as discipline for students through 3rd grade.

50. The District shall include in its Code of Conduct a table or matrix of all behaviors subject to discipline (the “Discipline Matrix”), the potential disciplinary consequences, and examples. The Discipline Matrix shall be made publicly available as part of the Code of Conduct on the District website, hard copy, and in the 10 Major Languages of the District.
51. Consistent with N.Y. Educ. Law § 2803(7)(b), the District acknowledges that students cannot be suspended for solely using/possessing a personal internet-enabled device and will ensure its policies and trainings reflect compliance with this provision of law.
52. **Due Process:** The District shall develop policies to ensure that it provides students with due process in accordance with N.Y. Education Law § 3214, including but not limited to, the notice and hearing requirements for short-term and long-term suspensions.
53. **Law Enforcement:** The District shall review and, if necessary, revise its procedures regarding involvement of local law enforcement, consistent with state and federal law and to further the goals of this Agreement.

54. **Improper suspensions:** The District will end any *de facto* or *de jure* policy or practice of sending students home early in lieu of an authorized suspension or otherwise causing an Abbreviated School Day. If any improper suspensions do occur, such removals shall be documented according to a uniform process and reported to the Ombudsperson by a designee of the Superintendent pursuant to an established reporting schedule and documented not just in the attendance record, but as a suspension.

55. On a quarterly basis, the Ombudsperson shall review and evaluate the District's performance regarding short-term and long-term suspension determinations by reviewing a sample of records of such students subjected to suspensions, and provide a report to the Monitor identifying any failures to comply with the requirements of this Assurance or applicable state or federal laws, as well as the identity of staff or administrators involved in those determinations.

56. **Manifestation Determination Reviews:** The District shall conduct MDRs as required by law and as referred by the Ombudsperson.

- a. The Ombudsperson shall have access to all documents related to an MDR and shall on a quarterly basis conduct a sample of student records from the District relating to students with disabilities subjected to discipline in the previous quarter, to assess: (1) whether the students' discipline triggered the requirement to perform an MDR; and (2) whether such MDRs were conducted appropriately and with required documentation. The Ombudsperson shall also record whether the MDR resulted in the overturning of the suspension, or a requirement for the school to adhere to the IEP or 504 plan. Reports based on this sampling will be provided to the Monitor.

57. Based on these quarterly samples, the Ombudsperson shall make recommendations and the District shall take appropriate corrective action to address them. The District shall provide documentation that appropriate corrective action was taken pursuant to this Part to the Monitor. The District shall implement recommendations made by the Ombudsperson, upon approval by the Superintendent. If the District is unable to implement a particular written recommendation set forth by the Ombudsperson, the District will notify the OAG and Ombudsperson that it agrees to either implement the recommendation or provide a written explanation to the Ombudsperson and the OAG detailing its decision to reject the recommendation of the Ombudsperson, and offering a reasonable and feasible alternative to the recommendations. The Parties agree to work cooperatively with the Ombudsperson, in good faith, to reach an agreement.

#### **DISCIPLINE DATA COLLECTION AND ANALYSIS**

58. Within 60 days of the Effective Date, the District shall conduct an assessment to determine whether sufficient Staff are employed and assigned to effectively organize and analyze District-wide data, including the data collected pursuant to this Assurance (the “Data Review Team”). To the extent that the Superintendent determines that it does not employ or assign sufficient staff on the Data Review Team, the District will take steps to fill these positions accordingly, including seeking resources for new positions as necessary.

59. The Data Review Team will work in consultation with the Ombudsperson to respond to identified deficiencies in data collection or reporting practices.

60. Within 90 days of the Board's approval of the Code, the District shall establish uniform standards for the content of student discipline files at all District schools and the reporting standards. The standards will be designed, with input from the Ombudsperson, to ensure that the District keeps accurate and complete records of all incidents, including those that do not result in the imposition of disciplinary sanctions. To the extent there are administrators who fail to input accurate data in the school management system that prevents the Data Review Team or Ombudsperson from reviewing the records or using the records to reduce disparities in discipline, the District will take appropriate corrective action to ensure compliance, subject to the rights afforded to the administrators under state or federal law.

61. The District shall collect and evaluate data regarding all referrals for student discipline, including those referrals to administrators that did not result in the imposition of disciplinary sanctions, the imposition of disciplinary sanctions by administrators, referrals to law enforcement, and suspension and/or expulsion at all District schools. The data collected will include, but not be limited to, the following:

- a. The name/identification number, race, ethnicity, sex, age, disability and/or ELL status, and grade level of each student referred for discipline;
- b. For each referral, the name/identification number, race, ethnicity, sex, age, disability and/or ELL status, as applicable, and grade level of all other students alleged to be complicit in the misconduct;
- c. Including whether those students were referred for discipline;
- d. A detailed narrative and full description of the alleged misconduct;

- e. A description of all interventions, and approaches that were attempted in order to address the behavior at issue prior to referral for discipline;
- f. Where notice is required by law, the date the notice was sent;
- g. The specific Code violation for which the referral was made, and District code;
- h. The referring Staff member;
- i. The school and type of class from which the referral was made or other specific settings (e.g. classroom, bus referral, or hallway referral);
- j. Whether there were any other student and/or adult witness(es) of the incident; names of witness(es); and number of witnesses;
- k. The disciplinary disposition length (days) or other penalty, if no violation was charged or consequence imposed, the reason for declining to discipline and what intervention was implemented, if any;
- l. Whether the student was referred for a Long-Term Suspension, the date referred, the date of the notice was sent to the student and/or family, and when a Superintendent's Hearing was held;
- m. Whether the parents or guardians were notified in writing prior to the imposition of the sanction, including whether such notice was translated as necessary to the dominant language of the parent or guardian, and whether the parent or guardian were notified of Superintendent's Hearing or MDR and the date of the notice;
- n. Whether the School's notice provided an opportunity to contest the charges in an Informal Conference or Superintendent's Hearing;

- o. The date the penalty/sanction was imposed and, if at a Superintendent's Hearing, the disposition of the Hearing;
- p. The length of the penalty/sanction imposed;
- q. Whether an MDR was held, the date, who attended, if applicable, and the result of the MDR;
- r. Whether District conducted an FBA or BIP, the date, and who participated in its creation or amendment;
- s. Whether an IEP or 504 plan was modified as a result of a hearing or meeting;
- t. The actual date of return from a suspension, including suspensions resulting from Superintendent's Hearings;
- u. Whether the student was offered Alternative Education during the suspension, and for how many hours;
- v. Whether the student was referred to an Alternative Education site or transferred to a different School site;
- w. Whether SROs or local law enforcement were involved, including whether law enforcement was notified of the offense; and
- x. Any other non-punitive outcomes arising out of each referral incident, including, but not limited to, referral for homebound services or a disability-related evaluation.

62. The District shall record data on the number of Short-Term and Long-Term suspension appeals filed, the number of suspension days appealed, the bases for such appeals, the result of the appeal, the number of overturned suspensions, and the resulting suspension days ultimately imposed, if any.

63. The District shall analyze the data collected pursuant to Paragraphs 58-68 and produce reports at the conclusion of each school year that summarize the results of such analysis across the District and at each School (the “Data Reports”). Such Reports will include:

- a. Goals and benchmarks for measuring the District’s efforts at implementing its student discipline policies and practices in a non-discriminatory manner;
- b. Changes in rates of suspensions disaggregated by race, ethnicity, and disability;
- c. Information on persistent problems;
- d. Recommendations for any changes to District or School student discipline policies and practices that should be made;
- e. Identification of disproportionate discipline of particular groups; and
- f. Any corrective actions taken based on identification of Staff or Administrators who have not followed appropriate procedures in implementing the Code.

64. The District shall establish protocols and procedures that ensure District-level and School-level review of disciplinary actions. Such procedures shall include:

- a. On a quarterly basis, District-level review meetings between the Ombudsperson and the District-level administrators to discuss Data Reports at each school. The District must ensure that District-level review meetings include:
- b. Analysis of how discipline referrals and disciplinary sanctions imposed at each school compare to those at other schools in the District;
- c. Analysis of data suggesting any failures at the school in following District policies and trainings, and a review of the District’s resources available to

employees at that school to assist Staff in managing their classrooms to reinforce positive student behavior; and

- d. Any recommendations for additional training and interventions if information suggests that the principal or other School Staff are failing to adhere to the District's student discipline policies or disproportionately disciplining students of a particular group, and/or appropriate corrective action, subject to the rights afforded to the District employees under state or federal law.

65. On a quarterly basis, school-level review meetings between administrators and Staff at each School to discuss strategies for teaching, encouraging and reinforcing positive student behavior that do not require engagement with the Exclusionary Discipline and to discuss the discipline of students for that semester. Minutes of these meetings and who attended will be kept and submitted to the Ombudsperson. The District shall seek to ensure that school-level review meetings include:

- a. Analysis of the data gathered by the District and the School's Data Report;
- b. Analysis of any disproportionate discipline of particular groups identified by the Data Review Team, and a discussion and/or corrective plan on how to address disproportionality;
- c. Analysis of how discipline referrals and disciplinary sanctions imposed at the school compare to those at other schools and consideration of any data or other information suggesting a failure to follow the District's policies;
- d. Identification of support that shall be provided to Staff who have referred students for discipline on average more than other Staff;

- e. Continuation of efforts to identify any instance when a Student with Disability was not provided the accommodations, services, and/or supports in the student's 504 Plan, IEP, or BIP prior to the student having been referred for discipline or to law enforcement;
- f. Reminders to Staff of the resources that are available to assist them in managing their classrooms and reinforcing positive student behavior; and
- g. Any recommendations of additional training for Staff responsible for a disproportionate number of referrals, or who disproportionately refer members of any particular group, to meet privately with administrators to explore potential solutions and/or corrective action, subject to the rights afforded to the District employees under state or federal law.

66. On a quarterly basis, administrators and Student Services Team members will review data relating to each student who transitioned full-time from a Social Behavioral Program classroom into a general education classroom to ensure that each student's BIP, if one exists, is being implemented correctly and to determine if adjustments to accommodations, interventions, or services are necessary.

67. The Monitor may, at any time, review the Data Reports, as well as the data review procedures and practices at each school to determine whether the District is complying with this Assurance. Upon conducting the review, the Monitor shall document the Monitor's findings and recommendations and submit them to OAG and the District. The District shall implement recommendations made by the Monitor, upon approval by the Superintendent. Within 20 District business days of a written recommendation related to the data review, the District will notify the OAG and Monitor that it agrees to either

implement the recommendation or provide a written explanation to the Monitor and the OAG detailing its decision to reject the recommendation of the Monitor, and offering a reasonable and feasible alternative to the recommendations. The Parties agree to work cooperatively with the Monitor and in good faith, to reach an agreement.

68. The District will implement monitoring plans with administrators where the District has identified a school with concerns in the areas of:

- a. administration of discipline of students with disabilities, and
- b. quality and compliance of FBAs conducted and BIPs developed at the school; or reintegration of students with disabilities to ensure FAPE. The District will implement remedial measures, as necessary, to ensure that the foregoing concerns are adequately addressed, subject to the rights afforded to the District employees under state or federal law; and
- c. any and all plans shall be provided to the Monitor.

#### **LANGUAGE ACCESS**

69. Within 60 days of the Effective Date, the District will establish procedures to identify LEP parents or guardians who need language assistance, including requiring Staff to inquire as to families' preferences indicated on the state required Language Usage Survey (LUS) in what language(s) they would prefer to communicate through interpreters and/or translations. The District will make this information readily accessible to Staff and Administrators through the student information system.

70. Within 60 days of the procedures in Paragraph 69 being created, the District will train its employees to review this information before scheduling meetings with parents or

guardians and sending out notices to parents or guardians. During this training, the District will explain how to obtain qualified interpreters and translations of Essential Information into the District's 10 Major Languages. The District also will add a statement (in English and the District's 10 Major Languages) to its registration packet, its online registration form, and the homepage of the District and school websites about the availability of interpretation in multiple languages and how to request an interpreter or document translation.

71. The District shall use best efforts to ensure that notices or documents containing Essential Information that are distributed at the District or school level will be translated into the District's 10 Major Languages and distributed to parents speaking those languages; and the District will use best efforts to provide speakers of languages other than the 10 Major Languages, or those of low-incidence in Buffalo, written translations or interpretation of the documents in a language they understand either upon request, or if the need for such translation becomes apparent to the District.

72. The District shall use best efforts to ensure that oral communications of Essential Information will be provided in a language the parents or guardians understand by means of an interpreter without undue delay. The District shall provide oral interpretation or written translation of other school-related information upon receiving reasonable, specific requests for such information from LEP parents or guardians.

73. The District shall ensure that all District or school-provided interpreters, whether paid District employees, contractors, or volunteers, will be: bilingual and demonstrably qualified and competent to interpret; trained in providing the interpretation they are asked to provide or sufficiently knowledgeable in both languages of any specialized terminology

needed to provide the requested interpretation accurately; and trained in the ethics of interpretation (e.g., the need for accuracy and confidentiality in interpretation). Except in an emergency or allowed by New York education regulation(s), the District will not use students, family or friends of LEP parents or guardians, or Google Translate for interpretation of District- or school-generated documents containing Essential Information. If there is an emergency and no District interpreter is available, the District will follow up with the parents or guardians in a timely manner to communicate, through a qualified interpreter or translation, the information that was communicated by other means.

74. To ensure that all schools have access to already translated information, the District will provide central office and school-based employees with electronic access to an accurate and current inventory of translated District-level and school-specific documents. The District will continue to expand the inventory to include translations of all District-level and school-level Essential Information in the 10 Major Languages. To assist all schools in communicating with LEP parents or guardians, the District will provide principals with a list of the names, languages, and contact information for all District employees, contractors, and others who provide translation and interpretation services. The District's annual training for administrators and teachers will explain the policies and procedures for translation and interpretation services and take corrective action if the language access policies are not complied with.

### **STAFFING & PROFESSIONAL DEVELOPMENT**

75. Within 90 days of the Effective Date, the District will develop and submit a draft plan to the OAG for a multi-year plan to recruit and retain culturally competent staff, including but not limited to teachers, paraprofessionals, social workers, counselors, and school psychiatrists, as well as culturally competent administrators.
76. The District will continue to maintain Alternative Education programs in accordance with N.Y. Education Law, the District will continue to ensure the adequate and competent staffing of Alternative Education programs for all students subject to Exclusionary Discipline. The District must consider the availability of competent alternative program instructors prior to subjecting a student to Exclusionary Discipline. If needed, the District shall retain a third-party vendor who is culturally and academically competent to provide Alternative Education for students subject to exclusionary discipline and the subjects the students need to learn while suspended.
77. The District will ensure that any Alternative Education programs or in-school suspension programs will have Staff with appropriate credentials and training to serve students with disabilities and 504/IEP plans, are able to provide reasonable modifications to policies and practices to those students as needed, and provide related services and referrals as necessary.
78. After the above plans are approved, the District will conduct on-site monitoring of these programs at least once per semester to ensure that Staff at alternative programs and in school programs have appropriate credentials and training to serve those students, including in the student's IEP/504 plan, and that Staff are providing reasonable modifications as needed. If the District determines that Staff do not have appropriate

credentials and training to serve the students, it shall take appropriate corrective action to assign the correct Staff and train the Staff.

79. Within 60 days of the Effective Date, the District shall submit a draft professional development plan to the OAG for all employees that are part of the student services team, including teachers, temporary teachers, paraprofessionals, administrators, counselors, school psychologists, alternative program staff, staff responsible for students serving in-school suspensions, SROs and/or security personnel, and all other personnel the District determines will need training to implement this Assurance. The plan will include specific details about training types, frequency, and ways to measure adherence to the training or otherwise measure its efficacy. The professional development plan will include trainings inclusive of the following topic:

- a. Federal and N.Y. Education Law regarding discipline, both generally and for students with disabilities, noting seminal decisions from the State Commissioner of Education and NYSED;
- b. The appropriate application of the Code of Conduct, including restorative practices and positive interventions with illustrative examples to assist staff and administrators in understanding referral criteria for common behaviors and distinguishing between similar behaviors, to ensure equitable and consistent categorization of behaviors;
- c. Trauma-informed education;
- d. Professional oral communication skills for administrators and teachers to support solutions focused discussions with parents and guardians;
- e. Eliminating explicit and implicit bias from disciplinary determinations;

- f. Techniques and strategies for de-escalation, crisis prevention, and classroom management skills, and teaching replacement behaviors;
  - g. For employees responsible for responding to crisis situations involving students with disabilities, specific training on de-escalation, crisis prevention, and classroom managements skills and teaching replacement behaviors as to students with disabilities.
80. Employees involved in evaluating and planning interventions for students with disabilities will receive training on conducting FBAs, BIPs, and evidence-based behavioral programming for students with disabilities, including relevant administrators, teachers who have specialized training to teach students with disabilities, other teachers, Staff, and Student Support Team members; and
81. Training administrators on collecting, reviewing and analyzing data and trends related to discipline (including outliers), and law enforcement referrals of students with disabilities.
82. The District shall develop any other trainings the District determines is necessary to implement the terms of this Assurance, such as restorative practices and wellness.
83. The District shall ensure that each school has a Student Support Team that is well trained to respond to crisis situations for students with disabilities.
84. All participants in the trainings will sign-in verifying that the individual attended the training and received necessary materials to understand and effectuate the information learned by the training. All trainings shall provide an opportunity for participants to ask or submit questions of the trainer(s) or otherwise integrate a live component. All training materials, as well as attendance records, will be reviewed by the Monitor.

85. Within 30 days of the development of trainings provided pursuant to this Agreement, the District shall also develop a quality-control survey to solicit feedback from training participants on the content, format, and skill of the presenter(s) for all trainings conducted and the ability to raise concerns or suggestions regarding the improvement of the District's disciplinary policies, including any issues in connection with fairness and non-discrimination on the basis of race and disability. The District will annually evaluate its trainings based on survey responses, recommendations of the Ombudsman and Monitor, and the disciplinary data, to assess the efficacy of the training program and implement any necessary changes.

#### **STUDENT, PARENT, GUARDIAN, AND COMMUNITY ENGAGEMENT**

86. Within 90 days of the Board's approval of an amended Code of Conduct, the District shall develop an informational program, in consultation with parent, parent groups, student and student groups, to be offered to parents, guardians and students that will explain the policies referenced in this Assurance in an easily understood manner, including a description of what is expected of students under those policies and a description of the District's efforts in achieving fair discipline of all students and examples of good behavior that is rewarded and misconduct that may be subject to intervention or discipline. The District shall ensure that the informational program is offered in such a manner as to ensure the maximum possible participation by parents, guardians, and students. This may include offering the program in conjunction with other programs or at multiple times in various locations and will include providing the materials developed by the District in association with the program to parents, guardians and students who are unable to attend

the program. The District shall also offer the program and the program materials in the District's 10 Major Languages. The program shall provide parents or guardians and students with the opportunity to raise concerns or suggestions regarding the improvement of the District's disciplinary policies, including any issues in connection with fairness and non-discrimination. The informational program shall include:

- a. A statement regarding the District's commitment to using policies that will ensure a safe and orderly educational environment and ensure the fair and equitable treatment of all students when providing interventions, disciplinary referrals, disciplinary sanctions, and a focus on restorative practices;
- b. A description of resources that are available to students to assist them in developing self-management skills to avoid Exclusionary Discipline;
- c. A summary of student's and parent's due process rights under state law, including the right to notice of the charges and an opportunity to be heard and resources to better understand their legal rights;
- d. Detailed explanations of the Code of Conduct, including the definitions of misconduct, the specific manner in which progressive disciplinary interventions will be employed, and the circumstances under which deviations from established policies may be justified; and
- e. Information on the District's complaint procedures and the contact information for Staff responsible for receiving parents or guardians' comments and questions regarding the implementation of the District's discipline policies and assistance in addressing student behavioral problems.

87. Within 60 days of the Board's approval of the Code, the District shall develop strategies, in consultation with parents, parent groups, student and student groups, to implement a program to be delivered annually during the beginning of each school year to all students that will explain the policies referenced in this Assurance and what is expected of the students under those policies in an age-appropriate, easily understood manner, and inclusive of students with disabilities, ELL students, and to maximum participation of students. The program will include, but not be limited to:

- a. A statement regarding the District's commitment to using policies that will ensure a safe and orderly educational environment and ensure the fair and equitable treatment of all students when making disciplinary referrals and imposing disciplinary consequences;
- b. A description of student's rights to appropriate due process protections in connection with any disciplinary action taken or proposed by the District;
- c. Detailed explanations of the discipline code, including the definitions of offense categories, the specific manner in which progressive disciplinary consequences will be employed, and the circumstances under which deviations from established policies may be justified; and
- d. An emphasis on not only the consequences and procedures associated with non-compliance with the disciplinary code, but also guidance and information regarding appropriate behavioral standards, including resources to assist struggling students, and how restorative practices may help keep students in the classroom.

88. The District will publish its Code of Conduct and distribute it in hard copy to every student in middle or secondary school and to the families of all other students at the beginning of the school year. The District shall, within fifteen (15) days of the Board’s approval of the Code, publish the Code on its website and link to it from the homepage.
89. The District shall create resources to provide further guidance and education to parents or guardians and students on the Code, in consultation with parents, parent groups, student and student groups. Specifically, the resources will provide information on the new definitions for misconduct, the progressive system of discipline, the discipline matrix, positive alternatives, corrective measures, and the procedure due to each student facing a suspension. The resources shall include, but not be limited to, online materials and parent or guardian coordinators assigned to each school and how to submit a complaint to the Ombudsperson.
90. **Data Dashboard:** Within 60 days of the Effective Date, the District shall ensure that its public-facing discipline data dashboard:
- a. Continues to categorize its suspended denominator correctly by using data of students attending District schools and not by reporting students that reside within the District but may not be attending a District school;
  - b. Includes display of a “suspended rate” by default, with an option to view “unsuspended rate”;
  - c. Uses definitions of all fields and categories;
  - d. Includes a two-week lag time to ensure that data is as accurate as possible;
  - e. Is updated regularly, including after hearings or MDRs that have overturned suspensions;

- f. Permits an examination of whether subgroups are more affected or less affected by any positive supports the District has implemented;
- g. Permits trend analysis and year-to-year comparisons;
- h. Reports restorative practice metrics;
- i. Reports long-term suspensions data including duration of suspensions, similar to short-term suspensions;
- j. Continues to permit an examination of intersectional data, such as the ability to see how many students with disabilities are suspended who are Black and not economically disadvantaged compared to students without disabilities who are White and who are economically disadvantaged, etc.; and
- k. Continues to maintain a usable and understandable dashboard for members of the public. The District will provide a link for the public to make suggestions or ask questions about how to use the dashboard. In addition, the District will continue to work with parent groups to provide trainings on the dashboard.

91. **Climate Surveys:** Each school year for at least four (4) complete school years following the Effective Date, the District shall submit to OAG and the Independent Monitor a plan (“Climate Survey Plan”) to administer an annual climate survey for students (grades 3-12), Staff, and parents or guardians to measure perceptions of relationships among the school community members (teacher-student, teacher-parent/guardian, and student relationships), school safety, fairness and clarity of rules, behavioral expectations, and available behavioral supports. The Climate Survey Plan must also include a schedule for administration. After the Climate Survey Plan is approved, the District will implement the plan according to the schedule provided for in the plan. Within 60 days of

administering the Climate Survey Plan and administering the survey, the Ombudsperson shall create and submit annually to OAG and the Monitor a summary report of the substance of the responses on the climate survey developed pursuant to this Assurance.

92. **Student Forums:** In order to raise awareness of discipline issues, each School in the District shall conduct an annual forum that provides the opportunity for students to discuss with Staff and administrators any matters specifically relating to discipline and provide their input for any improvements in the District's discipline policies. The Coordinator of each School shall attend each forum session. The District will select an appropriate format for each session based on the age/grade levels of students and the needs of each school. The Coordinator of each school shall create a summary report of the student forums to submit and review with the Ombudsperson. The Ombudsperson may attend any student forums as necessary to assess school climate. The District shall share summary reports of student forums to the Monitor. The District shall not retaliate against any student raising concerns related to discrimination or otherwise engaging in protected activity.

93. **Staff Forums and Communication:** In order to communicate with Staff about discipline issues, the Ombudsperson shall conduct annual forums for Staff that provide the opportunity for administrators and Staff to discuss any matters specifically relating to discipline and to give their input for any improvements in the District's discipline policies. The Ombudsperson shall create a summary report of each forum and provide the summaries to the Monitor, with any redactions to maintain Staff confidentiality, if so requested. In addition, the Ombudsperson and the Coordinators shall be available, in person or by phone upon request, to field inquiries, comments and concerns from Staff regarding the District's disciplinary policies. The District shall not retaliate against any

Staff raising concerns related to discrimination or otherwise engaging in protected activity.

94. The District shall review and utilize data from annual climate surveys and forums to assess community concerns and utilize the data to inform strategies in discipline and identify any necessary corrective action, subject to the rights afforded to District employees under state and/or federal law.
95. At any time during this Assurance, the Monitor may review the available resources provided by the District and determine the effectiveness of such resources. The Monitor shall document any recommendations the Monitor makes and submit them to OAG and the District.
96. **Complaint Process:** Within 90 days of the approval of the Code, the District shall publish the process for filing complaints about the discipline process on its website and in hard copy. Publication of these materials shall be in the 10 Major Languages of the District. This complaint process is separate and apart from the process for filing appeals provided under N.Y. Education Law § 3214. The District shall distribute the hard copy notice to all parents or guardians. The notice shall include the name and contact information of the Ombudsperson, whom the complainant can contact with questions, and with whom the complainant should file the complaint.
  - a. The Ombudsperson shall keep a log of all complaints (“Complaint Log”), including information on any subsequent investigation and the resolution.
  - b. The Ombudsperson shall also retain any documentation of subsequent investigations, responses, and resolutions.

- c. The Ombudsperson shall review the Complaint Log semi-annually to ensure that the District is promptly and adequately responding to complaints.

97. If the Ombudsperson finds any evidence that the District is not adequately responding to Complaints, or if the Ombudsperson finds any evidence of non-compliance with the District's policies or this Assurance, the Ombudsperson shall take appropriate corrective action that the Ombudsperson deems necessary, subject to the rights afforded to District employees under state and/or federal law.

### **MONITORING AND REPORTING**

98. The District shall retain, for at least four (4) complete years after the Effective Date, all documents pertaining to this Assurance, including but not limited to:

- a. The Preventative Strategies Plans created pursuant to Paragraph 39 and any reporting schedules, progress reports, or documentation of site visits created pursuant to Paragraphs 44-46;
- b. Individual incident behavior reports, suspension referral forms, notices of suspensions, and records of informal conferences;
- c. The revised Code of Conduct and Discipline Matrix, as well as any amendments;
- d. Training materials developed pursuant to this Assurance, including records of participation rates;
- e. Summary reports of climate surveys pursuant to Paragraph 91, reports of student forums pursuant to Paragraph 92, and reports of staff forums pursuant to Paragraph 93;
- f. Any Data Reports produced pursuant to Paragraph 63-65; and

g. Complaint Logs and documentation of any investigations into complaints filed with the District pursuant to Paragraph 96.

99. The District shall ensure that any information, documents or data maintained under the terms of this Assurance, shall be available for review by the OAG or the Monitor.

100. ***Periodic Compliance Reports.*** The Monitor shall provide the Parties with quarterly reports for a period of four (4) years detailing the District's compliance with the requirements set forth in this Assurance. These reports shall be in writing and set forth in detail the manner and form of compliance with each provision of this Assurance. The Superintendent will have 30 District business days to review the Monitor's Report and provide written responses. In any case where the circumstances warrant, the OAG may require the Monitor or the District submit additional, relevant documentation, as well as an interim report of compliance upon 30 days' notice.

101. Twice per year, following the issuance of the Monitor's mid-year and end-of-year compliance report, the Parties and the Monitor shall meet to discuss the District's compliance with the terms of this assurance. The Ombudsperson shall also attend these meetings.

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

102. The District expressly agrees and acknowledges that the OAG may initiate a subsequent investigation, civil action, or proceeding to enforce this Assurance, for violations of the Assurance, or if the Assurance is voided pursuant to Paragraphs 111 or 117, and agrees and acknowledges that in such event:

- a. any statute of limitations or other time-related defenses are tolled from and after the effective date of this Assurance;

- b. the OAG may use statements, documents or other materials produced or provided by the Respondent prior to or after the effective date of this Assurance;
  - c. any civil action or proceeding must be adjudicated by the courts of the State of New York, and that Respondent irrevocably and unconditionally waives any objection based upon personal jurisdiction, inconvenient forum, or venue.
  - d. evidence of a violation of this Assurance shall constitute prima facie proof of a violation of the applicable law pursuant to N.Y. Executive Law § 63(15).
103. If a court of competent jurisdiction determines that the District has violated the Assurance, the Respondent shall pay to the OAG the reasonable cost, if any, of obtaining such determination and of enforcing this Assurance, including without limitation legal fees, expenses, and court costs.
104. All terms and conditions of this Assurance shall continue in full force and effect on any successor, assignee, or transferee of the District. The District shall include any such successor, assignment or transfer agreement a provision that binds the successor, assignee or transferee to the terms of the Assurance. No party may assign, delegate, or otherwise transfer any of its rights or obligations under this Assurance without the prior written consent of the OAG.
105. Nothing contained herein shall be construed as to deprive any person of any private right under the law.
106. Any failure by the OAG to insist upon the strict performance by the District of any of the provisions of this Assurance shall not be deemed a waiver of any of the provisions hereof, and the OAG, notwithstanding that failure, shall have the right thereafter to insist

upon the strict performance of any and all of the provisions of this Assurance to be performed by the District.

107. 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 (“FERPA”).

108. Nothing in this agreement shall be interpreted inconsistently with the rights afforded to District employees under state or federal law, or with any rights afforded to employees subject to the collective bargaining agreements.

109. 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.

110. All notices, reports, requests, and other communications pursuant to this Assurance must reference Assurance No. 26-004, and shall be in writing and shall, unless expressly provided otherwise herein, be given by hand delivery; express courier; or electronic mail at an address designated in writing by the recipient, followed by postage prepaid mail, and shall be addressed as follows:

OAG  
Kyle S. Rapiñan, Esq.  
Assistant Attorney General  
New York State Office of the  
Attorney General  
Civil Rights Bureau  
28 Liberty Street  
New York, New York 10005  
(212) 416-8618  
Kyle.Rapinan@ag.ny.gov

(in AAG Kyle S. Rapiñan’s absence, to the person holding the position of

Bureau Chief, Civil Rights Bureau, currently Sandra Park)

The District

Mary Scarpine, Esq.  
713 City Hall, 65 Niagara Sq.  
Buffalo, New York 14202  
(716) 816-3671  
MBScarpine@buffaloschools.org

Deonna Jones, Esq.  
713 City Hall, 65 Niagara Sq.  
Buffalo, New York 14202  
(716) 816-4958  
Djones1@buffaloschools.org

Any changes in the person to whom communications should be specifically directed shall be noticed to all parties to this Assurance in advance of the change.

111. The OAG has agreed to the terms of this Assurance based on, among other things, the representations made to the OAG by the District and their counsel and the OAG's own factual investigation as set forth in Findings, Paragraphs 1-31 above. The District represents and warrants that neither it nor its counsel has made any material representations to the OAG that are inaccurate or misleading. If any material representations by District or its counsel are later found to be inaccurate or misleading, this Assurance is voidable by the OAG in its sole discretion.
112. 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.
113. The District represents and warrants, through the signatures below, that the terms and conditions of this Assurance are duly approved. The District further represents and warrants that the District, by Dr. Mubenga as the signatory to this AOD, is a duly

authorized officer acting at the direction of the Board of Education of Buffalo City School District.

114. Unless a term limit for compliance is otherwise specified within this Assurance, the District's obligations under this Assurance are enduring. Nothing in this Agreement shall relieve the District of other obligations imposed by any applicable state or federal law or regulation or other applicable law.

115. Nothing contained herein shall be construed to limit the remedies available to the OAG in the event that the Respondent violates the Assurance after its effective date.

116. This Assurance may not be amended except by an instrument in writing signed on behalf of the Parties to this Assurance.

117. In the event that any one or more of the provisions contained in this Assurance shall for any reason be held by a court of competent jurisdiction 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.

118. The District acknowledges that they have entered this Assurance freely and voluntarily and upon due deliberation with the advice of counsel.

119. This Assurance shall be governed by the laws of the State of New York without regard to any conflict of laws principles.

120. The Assurance and all its terms shall be construed as if mutually drafted with no presumption of any type against any party that may be found to have been the drafter.

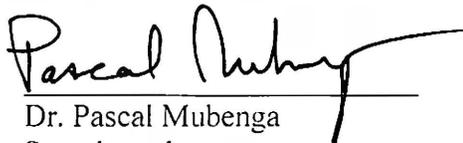
121. This Assurance may be executed in multiple counterparts by the parties hereto. All counterparts so executed shall constitute one agreement binding upon all parties, notwithstanding that all parties are not signatories to the original or the same counterpart.

Each counterpart shall be deemed an original to this Assurance, all of which shall constitute one agreement to be valid as of the effective date of this Assurance. For purposes of this Assurance, copies of signatures shall be treated the same as originals. Documents executed, scanned and transmitted electronically and electronic signatures shall be deemed original signatures for purposes of this Assurance and all matters related thereto, with such scanned and electronic signatures having the same legal effect as original signatures.

122. The Effective Date of this Assurance shall be February 12, 2026.

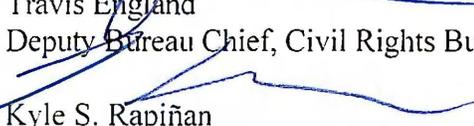
Dated: New York  
February 11, 2026

**BUFFALO CITY SCHOOL DISTRICT**

By:   
Dr. Pascal Mubenga  
Superintendent  
Buffalo City School District  
712 City Hall  
Buffalo, New York 14202

CONSENTED TO:  
Dated: New York, New York  
February 12, 2026

LETITIA JAMES  
Attorney General of the State of New York

By:   
Sandra Park  
Chief, Civil Rights Bureau  
  
Travis England  
Deputy Bureau Chief, Civil Rights Bureau  
  
Kyle S. Rapiñan  
Assistant Attorney General, Civil Rights Bureau

Kyle S. Rapiñan  
Assistant Attorney General, Civil Rights Bureau

Office of the New York State Attorney  
General  
28 Liberty Street  
New York, New York 10005  
(212) 416-8618